Maximum weekly working time regulated by Directive 2003/88/EC (Article 6) – Limit of 48 hours per 7-day period – Employees whose working time arrangements are determined according to a reference period – Limit of 48 hours assessed, on average, over the whole of the reference period – Case – Limit of 48 hours per calendar week – Compliance with the directive – Maximum weekly working time of firefighters set at 48 hours over a reference period of 6 months – Compliance with the directive – Condition – Calculation over a rolling 6-month period.

Where the working time arrangements of employees, such as professional firefighters, are determined according to a reference period, pursuant to Articles 16, 17 and 19 of Directive 2003/88/EC of 4 November 2003, the maximum weekly working time of 48 hours provided for in Article 6 of that Directive shall not be assessed for each of the 7-day periods included in that reference period but only, on average, over the whole of that period.

Regulation of the Moselle Departmental Fire and Rescue Service (SDIS) stipulating that the actual weekly working time may not exceed 48 hours in a single week. Memorandum issued for the application of this regulation, specifying that this time is counted from 7 a.m. on Monday to 7 a.m. on Monday.

The fact that the maximum working time of 48 hours laid down by the regulation must be observed for each calendar week and not for each 7-day period does not infringe the provisions of Directive 2003/88/EC of 4 November 2003, since the working time arrangements were determined on the basis of a reference period during which the weekly working time must not exceed 48 hours on average.

By the Syndicat des cadres de la sécurité intérieure judgment of 11 April 2019 (C-254/18), the Court of Justice of the European Union ruled that the provisions of Directive 2003/88/EC of 4 November 2003 do not preclude national legislation that provides for reference periods that begin and end on fixed calendar dates for the purpose of calculating the average weekly working time, provided that that legislation includes mechanisms to ensure that the maximum average weekly working time of 48 hours is complied with during each 6-month period straddling two successive fixed reference periods.

It follows that, since the Moselle SDIS has set the maximum average working time at the ceiling of 48 hours per week provided for in Article 6 of the Directive and extended to 6 months the reference period used for calculating that average, pursuant to Articles 17 and 19 of the Directive, only the use of rolling reference periods makes it possible to guarantee that the maximum average weekly working time of 48 hours is complied with during any 6-month period.

Since the memorandum issued for the purposes of the SDIS merely states that ‘the maximum 1128 hours per 6-month period must be respected’, it must, in the absence of any details on how this reference period is to be calculated, be regarded, like the regulation, as referring to a sliding 6-month period.