



25.5.2011

NOTICE TO MEMBERS

(14/2011)

Subject: Exchange of views with the Commission and the European Social Partners on the Working Time Directive and its implementation

Summary report

The exchange of views with the social partners at EU level and the Commission from 14 of April 2011, aimed to deliver an update for the Members on the revision of the Working Time Directive and its implementation.

The social partners which were invited to express their views on the revision of the WTD were Business Europe, ETUC, UEAPME, EPSU, and CEEP. The Commission was represented by Mr Armindo Silva, director. The debate focused on the assessment by the social partners on the content of envisaged action at EU level to amend the Working Time Directive.

The Commission explained that the amending directive sets a maximum daily, weekly, night work, annual leave derogations and flexibility provisions that can be established either by law or collective agreement. It applies to all economical sectors except for where there is specific legislation, as it is the case with transport sectors.

It has a triple objective:

1. To adapt the legislation on the working time to needs arising from new working patterns, new types of jobs, new composition of the work force.

2. To reduce legal uncertainty.
3. To clarify rules from jurisprudence which were contested.

The Commission held consultations with the social partners and published an implementation report which concludes that a large majority of workers are covered by minimum standards on working time; however there are some groups of workers who are not protected against excessive working hours. Other problems were also identified in the lack of implementation of European jurisprudence (hospitals and fire-fighting services) and lack of clarity of implementation of the directive.

The Commission representative also briefed Members on the latest developments, since the conciliation on this dossier failed in April 2009. Thus, on 24 March 2010 the Commission adopted a Communication launching the first phase of the consultation of the social partners. That Communication recalled the difficult situation created by the co-legislators' failure to agree on a previous revision of the Directive and invited the EU social partners to indicate their experience with the present Directive and to outline the type of working time rules that would be needed at EU level to cope with the economic, social, technological and demographic realities. On 21st December 2010 the Commission adopted a new Communication together with its Report on the implementation of the Directive, launching the second-phase consultation of the social partners at EU level. The second-phase consultation of the social partners was concluded on 25 of March 2011 and the social partners expressed willingness to enter into negotiation as provided by Article 155 of the TFEU.

Once the social partners agree to a common scope and conclude an agreement, then they may request the Commission to transpose it in the form of a Council Decision and the Parliament will be informed.

The social partners broadly agree on the need to review the Directive. However, there are significant differences between employers and unions regarding its context, scope and objectives. There is broad consensus that the last 20 years have seen major changes in the world of work, which significantly affect the organisation of working time. Nevertheless, there is strong disagreement on the implications of these changes for the organisation of working time. Employers tend to see them as requiring legal changes aimed at greater working-time flexibility, while unions consider that they necessitate changes to strengthen the legal protection for workers.

Rebecca Smith from BusinessEurope emphasised that jurisprudence can be difficult to implement for on-call time and paid sick leave and the two are important issues for workers and employees. In her opinion, the opt-out should be maintained as it is considered not realistic to ask Member States to refrain from the use of this possibility.

Ms Warneck from ETUC expressed the fear that the trade unions' concerns have not been sufficiently addressed by the Commission. In her opinion, the most worrying proposals are the continuation of the opt-out, the extension of the reference period and the counting of on-call time. She also appreciated some of the proposals, such as: compensatory rest, work-life balance and multiple contracts.

Both ETUC and EPSU are open to a comprehensive review, but consider that changes would

only be desirable if they were to genuinely address the need to put an end to the opt-out. The review should seek to enforce per-worker application, and tighten-up the derogation for "autonomous workers". It should find balanced and sustainable solutions for on-call time, but these must respect and build on the SIMAP-Jaeger case law, with no change to the definition of on-call time or working time.

Ms Volizinskis from UEAPME underlined the importance of the possibility to keep the opt-out, but if there is a longer reference period (12 months), it would be possible to abandon it.

CEEP and UEAPME would consider broadening the review to other matters and think that extending the reference period to 12 months and changing the SIMAP-Jaeger case law would substantially reduce demand for the opt-out.

Members stressed issues like the importance of protecting the safety and health of the workers, the need for more comparative studies, the Commission's obligation to take the Member States that don't respect the directive before the Court of Justice and the fact that it is a piece of legislation which has to apply to all EU Member States (a community based on values, obligations and standards).