



30.1.2015

## NOTICE TO MEMBERS

**Subject: Petition 0762/2011 by André Goretti (French), on behalf of the Fédération Autonome des Sapeurs-pompiers professionnels et des personnels administratifs, techniques et spécialisés, on alleged infringement of Directive 2003/88/EC concerning certain aspects of the organisation of working time**

### 1. Summary of petition

The petitioner maintains that France is infringing Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. According to the petitioner, under a national mechanism, a differential calculation of hours worked is applied to members of the public fire and rescue service depending on the intensity of the activity. This mechanism, which establishes a principle of equivalence, was implemented through national legislation on the working time of professional firemen. Thus, instead of working 1 607 conditioned hours per annum, the majority of the members of the public fire and rescue services work between 2 160 and 2 400 hours per annum, which is illegal under the directive in question.

### 2. Admissibility

Declared admissible on 15 November 2011. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 24 October 2012

The petitioner states that the French laws governing the working time of professional firefighters (*les sapeurs-pompiers professionnels*) do not comply with the requirements of the Working Time Directive (directive 2003/88/EC). Under the legal measures mentioned in the

petition, their working time may be organised in 24-hour continuous on-call shifts (*gardes*), during which time they are required to remain physically present at the workplace and ready to provide services when called. In practice, a professional firefighter may be rostered to work a certain number of such shifts, resulting in a total of between 2160 and 2400 working hours per year.

Article 6 of the Working Time Directive provides that:

*'Member States shall take the measures necessary to ensure that, in keeping with the need to protect the safety and health of workers:*

*(b) the average working time for each seven-day period, including overtime, does not exceed 48 hours.'*<sup>1</sup>

All periods during which the worker is required to remain at the workplace, available to provide services to the employer, must be fully counted as working time for the purposes of Article 6 of the Directive.<sup>2</sup>

Article 16 provides that the minimum 4 weeks' annual leave under Article 7 of the Directive shall not be included, or shall be neutral, in calculating the 48-hour limit.

Taking account of Article 16, the limit of 48 hours per week on average would be equivalent to 2304 hours per year. Accordingly, working up to 2400 hours per year clearly exceeds the Directive's 48-hour average weekly limit.

In addition, the Directive provides that weekly working time may be averaged over a period not exceeding 4 months (or, by way of derogation, in certain activities including those of firefighters, 6 months.) Calculating the average over a longer period of one year is not permitted, unless this is based on agreements of the social partners.<sup>3</sup>

The national laws mentioned by the petition do not, therefore, appear to comply with the Directive, according to the information currently available to the Commission.

## Conclusion

The Commission is aware of the facts stated by the petition as regards the conformity of French law and practice, and has already registered a complaint on this issue.

The Commission reserves the right to take such decisions as it considers appropriate in order to ensure the application of EU law, in the light of its examination of complaints. The Commission services will keep the Parliament informed about decisions made which are

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<sup>1</sup> The petition also refers to a working time limit of 35 hours per week: however, this is not required by the Directive, which only lays down minimum rules at EU level (Member States remaining free to apply or continue more favourable provisions.)

<sup>2</sup> C-303/98 *SIMAP*, C-151/02 *Jaeger*, C-14/04 *Dellas*.

<sup>3</sup> Directive 2003/88/EC, Articles 16(b), 17(3) and 19.)

relevant to this petition.

#### **4. Commission reply (REV), received on 31 January 2014**

In its previous communication, the Commission informed the Parliament that, on the basis of the information in its possession, it considered the national legislation mentioned by the petitioner not to appear to comply with the Working Time Directive.

In 2012, the Commission invited the French authorities to present their observations regarding the non-compliance issues that were identified. The French authorities informed the Commission in December 2012 of their intention to amend the applicable legislation (*decree 2001-1382* of 31 December 2001) to ensure its compliance with EU law. According to the information available to the Commission, this process is currently ongoing. The Commission will decide on the next steps in the procedure on the basis of the analysis by its services of these provisions once published. The Commission services will keep the Parliament informed about decisions made which are relevant to this petition.

#### **5. Commission reply (REV II), received on 30 January 2015**

The Commission has informed the Parliament in its previous communication regarding this petition that, on the basis of the information in its possession, it considered that the national legislation mentioned by the petitioner appeared not to comply with the Working Time Directive.

In 2012, the Commission invited the French authorities to present their observations regarding the non-compliance issues that were identified. The French authorities informed the Commission in December 2012 of their intention to amend the applicable legislation (*decree 2001-1382* of 31 December 2001) to ensure its compliance with EU law.

The amending decree that was announced by France was adopted on 18 December 2013 and published in the Official Journal on 20 December 2013. It remedies non-compliance issues for the following reasons:

- Reference period for the calculation of average weekly working hours is set at 6 months instead of 12 and as a result of the ceiling established by the new decree, the working hour limit is set at an average of 47 hours per week (instead of an average of 52/54 hours before). These amendments entered into force on 1 January 2014.
- The possibility to increase working hours for firefighters benefiting from accommodation (and potentially exceeding 48 hours in average per week) is suppressed – their working conditions are aligned to those of non-accommodated firefighters. This amendment will enter into force on 1 July 2016 to allow for some substantial reorganisation which will be required to ensure its implementation.

On this basis, the Commission decided on 20 February 2014 to close the corresponding infringement procedure.