



31.7.2023

## NOTICE TO MEMBERS

**Subject: Petition No 1071/2016 by André Goretti (French), on behalf of the Fédération Autonome des Sapeurs-Pompiers professionnels et des personnels administratifs, techniques et spécialisés, on the working time of professional firefighters**

### 1. Summary of petition

The petitioner refers to his previous petition on the same subject, closed in March 2015 after receipt of the Commission's position, which was that the amendment by decree of the disputed French legislation had remedied the situation of that Member State regarding the EU legislation on the organisation of working time. However, the petitioner argues that in the meantime the Judgment of the Court of Justice in case C-180/14, European Commission v Hellenic Republic, has contradicted the Commission's position. Therefore, the position should be revised and new proceedings brought against France for non-compliance with Directive 2003/88/EC.

### 2. Admissibility

Declared admissible on 11 January 2017. Information requested from Commission under Rule 227(6).

### 3. Commission reply, received on 30 August 2017

An earlier petition from the same person and on the same topic (762/2011) was included in an infringement against France (registered under reference NIF 2006/4581) concerning the working time of professional firefighters. Following the infringement procedure, the French authorities amended the applicable legislation (Décret n°2013-1186 du 18 décembre 2013 which modified the Décret 2001-1382). The modified legislation was considered compliant with EU law. Consequently, the Commission closed the infringement procedure on 20 February 2014.

However, the petitioner now argues that, in the meantime, the Judgment of the Court of Justice of the European Union in case C-180/14 (European Commission v Hellenic Republic), contradicted the Commission's position. Therefore, the position should be revised and new proceedings brought against France for non-compliance with Directive 2003/88/EC.

The Commission services assessed the impact that the judgment Commission v. Hellenic Republic C-180/14 could have on the compliance of the legislation at stake. They concluded that no new points emerge that could justify reopening an infringement already closed on grounds of a modification of the legal framework at stake.

#### **4. Commission reply (REV. I), received on 21 May 2019**

In reaction to the Commission's first observations on the petition, which were transmitted to Parliament in August 2017, the petitioner provided complementary information and explanations. In particular, he stated that professional firefighters in France are subject to 24-hour periods of on-call duty which were in breach of the right to daily rest, compensatory rest, rest linked to night work and weekly rest guaranteed by the Working Time Directive<sup>1</sup>.

#### Conclusion

The Commission is currently examining the information transmitted by the petitioner and is analysing the legislation and regulations applicable to professional firefighters who perform on-call duty during 24-hour shifts in France. Once it has completed its analysis the Commission will inform Parliament of its findings and conclusions.

#### **5. Further reply from the Commission (REV. II), received on 31 July 2023**

#### The Commission's observations

In its second set of observations on the petition, which were forwarded to Parliament in 2019, the Commission stated that it was examining the information transmitted by the petitioner and analysing the legislation and regulations applicable to professional firefighters who perform on-call duty during 24-hour shifts in France. The Commission further indicated that once it will have completed its analysis it would inform Parliament of its findings and conclusions.

In his communication of November 2017, the petitioner argued that professional firefighters performing shifts of 24 consecutive hours must be considered as night workers. He considered that, since French legislation recognises the dangerous character of the firefighters' occupation and tasks, under Article 8, under b), of the Working Time Directive<sup>2</sup> (2003/88/EC) professional firefighters cannot work more than eight hours in any period of 24 hours during which they perform night work. He maintained that the Directive permitted no derogations from this provision. Therefore, the applicable legislation ("Décret n° 2001-1382 du 31 décembre 2001 relatif au temps de travail des sapeurs-pompiers professionnels", as modified by Décret n° 2013-1186 of 18 December 2013), which allows under certain conditions for periods of on-call duty of 24 consecutive hours followed by an interruption of service of at least the same duration, would not be in line with the Working Time Directive.

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<sup>1</sup> 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, *OJ L 299, 18.11.2003, p. 9–19*.

<sup>2</sup> 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, *OJ L 299, 18.11.2003, p. 9–19*.

Contrary to what the petitioner states in relation to the length of night work, Directive 2003/88/EC allows Member States to derogate not only from Article 8, under a), of the Directive, but also from Article 8), under b), which applies to night workers whose work involves special hazards or heavy physical or mental strain. Indeed, according to Article 17(3) of the Directive, derogations may be made from Article 3, 4, 5, 8 and 16, notably in the case of activities involving the need for continuity of service or production, particularly fire and civil protection services, as stated in Article 17(3)(c), under (iii). In accordance with Article 17(2), such derogations may be adopted provided that the workers concerned are afforded equivalent periods of compensatory rest or that, in exceptional cases in which it is not possible, for objective reasons, to grant such equivalent periods of compensatory rest, the workers concerned are afforded appropriate protection.

Considering the fact that Article 3 of Directive 2003/88/EC entitles workers to a minimum daily rest period of 11 consecutive hours per 24-hour period, the provision of amended Decree n° 2001-1382 which allows for periods of on-call duty of 24 consecutive hours followed by an interruption of service of at least the same duration does not appear to be in breach of the Working Time Directive.

### Conclusion

The information provided by the petitioner does not allow the Commission to identify a possible breach of EU rules by the French authorities. The Commission therefore maintains its position given in its previous observations, according to which no new points emerge that could justify reopening an infringement already closed on grounds of a modification of the legal framework at stake.