Question for written answer E-002772/19 to the Commission
Sylvie Brunet (Renew), Véronique Trillet-Lenoir (Renew), Fabienne Keller (Renew), Marie-Pierre Vedrenne (Renew) and Irène Tolleret (Renew)
(13 September 2019)

Subject: Application of the Working Time Directive to voluntary work

In a question for a preliminary ruling (Matzak judgment), the European Court of Justice found that directive 2003/88/EC concerning certain aspects of the organisation of working time should apply to the case of a volunteer firefighter on stand-by at home and having to respond to calls from his employer within a short time.

If that judgment were to set a legal precedent, the directive could apply to citizens participating in civil security arrangements on a voluntary basis, with the result that voluntary service would be regarded as working time when the person concerned was on stand-by at home.

This would make it more difficult to have a parallel job at the same time. Furthermore, it would have an impact on the material organisation of these services, and limit the possibility of mobilising manpower in emergency situations.

1. Does the Commission consider that the Court’s broad interpretation would apply to all cases of citizens providing a home-based stand-by service on a voluntary basis?

2. Does the Commission consider that if this interpretation sets a legal precedent it could have potentially detrimental consequences for the organisation and effectiveness of civil security services in the Member States?

Answer given by Ms Thyssen on behalf of the European Commission
(23 October 2019)

1. No. According to the consistent case law of the Court of Justice of the European Union (CJEU), the concept of ‘worker’ has an autonomous meaning specific to EC law, meaning that directive 2003/88/EC (1) applies to those who pursue real, genuine activities for and under the direction of another person in return for which they receive remuneration.

In its judgment in the Matzak case, (2) the CJEU considered that, in the particular circumstances of Mr Matzak, the conditions to qualify as ‘worker’ were met. The CJEU further ruled that stand-by time which a worker spends at home with the duty to respond to calls from his employer within eight minutes, very significantly restricting the opportunities for other activities, must be regarded as ‘working time’.

This judgment does not imply that every citizen providing a home-based stand-by service on a voluntary basis in the EU automatically qualifies as a ‘worker’, since the conditions under which they do so will vary from those in the Matzak case. It is in the first instance for national courts to determine in each specific case brought before them.

---


(2) Case C-518/15, Matzak, EU:C:2018:82.
2. Where the Working Time Directive does apply, it provides for flexibility to accommodate the needs of emergency services, such as fire services, without denying firefighters protection of their health and safety.

A Member State can derogate from rules on daily and weekly rest, provided that equivalent periods of compensatory rest are granted. Member States can also introduce an 'opt-out' which allows individual workers to consent not to be bound by the maximum average weekly working time under a number of conditions.

Answer given by Ms Thyssen on behalf of the European Commission
(23 October 2019)

1. No. According to the consistent case law of the Court of Justice of the European Union (CJEU), the concept of ‘worker’ has an autonomous meaning specific to EC law, meaning that directive 2003/88/EC applies to those who pursue real, genuine activities for and under the direction of another person in return for which they receive remuneration.

In its judgment in the Matzak case, the CJEU considered that, in the particular circumstances of Mr Matzak, the conditions to qualify as ‘worker’ were met. The CJEU further ruled that stand-by time which a worker spends at home with the duty to respond to calls from his employer within eight minutes, very significantly restricting the opportunities for other activities, must be regarded as ‘working time’.

This judgment does not imply that every citizen providing a home-based stand-by service on a voluntary basis in the EU automatically qualifies as a ‘worker’, since the conditions under which they do so will vary from those in the Matzak case. It is in the first instance for national courts to determine in each specific case brought before them.

2. Where the Working Time Directive does apply, it provides for flexibility to accommodate the needs of emergency services, such as fire services, without denying firefighters protection of their health and safety. A Member State can derogate from rules on daily and weekly rest, provided that equivalent periods of compensatory rest are granted. Member States can also introduce an ‘opt-out’ which allows individual workers to consent not to be bound by the maximum average weekly working time under a number of conditions.