

European Working Time Directive

— Opting out?

Committee on Employment and Social Affairs
European Parliament
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- European Working Time Directive
- Derogations and provisions to opt-out
- The research
- Mapping the use of the opt-out
- Extent of use
- Current debates
- Concluding remarks



- The EWTD lays down the requirements of organisation of working time in the frame of the principles of **health and safety** (Directive 89/391/EEC – OSH Framework Directive).
- EWTD requires EU countries to guarantee certain **rights for all workers**, including:
 - a limit to weekly working hours, which must not exceed 48 hours on average, including any overtime;
 - a minimum daily rest period of 11 consecutive hours in every 24;
 - a rest break during working hours if the worker is on duty for longer than 6 hours;
 - a minimum weekly rest period of 24 uninterrupted hours for each 7-day period, in addition to the 11 hours' daily rest;
 - paid annual leave of at least 4 weeks per year.
 - extra protection for night work.

Articles 3, 4, 5, 6, 7, 8 and 9.

- Adopted by the EP and Council under **Article 153(2) of TFEU** (previously Article 137(2) of the EC Treaty)
- **Court of Justice** recognises provisions of maximum working time, paid annual leave and minimum rest periods **‘constitute rules of Community social law** of particular importance, from which every worker must benefit as a minimum requirement necessary to ensure protection of his safety and health’
- **Charter of Fundamental Rights** provides for ‘fair and just working conditions’, including that (1) ‘every worker has the right to working conditions which respect his or her health, safety and dignity’ and that (2) Every worker has a right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave’ (Article 31. paragraphs 1 and 2).

- **Article 17**

- (1) Autonomous workers
- (3) Specific activities or situations
- (4) Shifts and split work
- (5) Doctors in training



- **Article 18** - derogations by means of collective agreements
- **Article 22.1** – MS option not to apply Article 6 [maximum working week = 48 hours]

Article 22.1 - Provisions for opt out

A Member State shall have the option not to apply Article 6 [maximum weekly working time], while respecting the general principles of the protection of the safety and health of workers, and provided it takes the necessary measures to ensure that:

- no employer requires a worker to work more than 48 hours over a seven-day period, calculated as an average for the reference period referred to in point 2 of Article 16(b), unless he has first obtained the worker's agreement to perform such work;*
- no worker is subjected to any detriment by his employer because he is not willing to give his agreement to perform such work;*
- the employer keeps up-to-date records of all workers who carry out such work;*
- the records are placed at the disposal of the competent authorities, which may, for reasons connected with the safety and/or health of workers, prohibit or restrict the possibility of exceeding the maximum weekly working hours;*
- the employer provides the competent authorities at their request with information on cases in which agreement has been given by workers to perform work exceeding 48 hours over a period of seven days, calculated as an average for the reference period referred to in Article 16(b).*

Are there limits to the opt out?

- The Directive **does not specify limits** to the number of working hours the workers can may agree to work through the opt-out...
- However, there are **2 implicit limits**:
 - 78 hours per week (168 h – 90h of rest)
 - Its application must respect the **principles of safety and health of workers** => even when workers agree, the competent authorities (labour inspectorate) can intervene preventing them from opting –out for reasons concerned with their safety and health.
- The Directive also does not specify the **reference period** over which the workers may agree to work in excess of the 48 hours.
- There are many studies (several by Eurofound) showing the relationship between **long working hours**, in particular over long periods of time, and outcomes such as more **accidents**, more **mistakes**, decreased **productivity**, more difficulties in **work life balance**, **stress** and **fatigue**, negative impact on **health of workers**, etc.

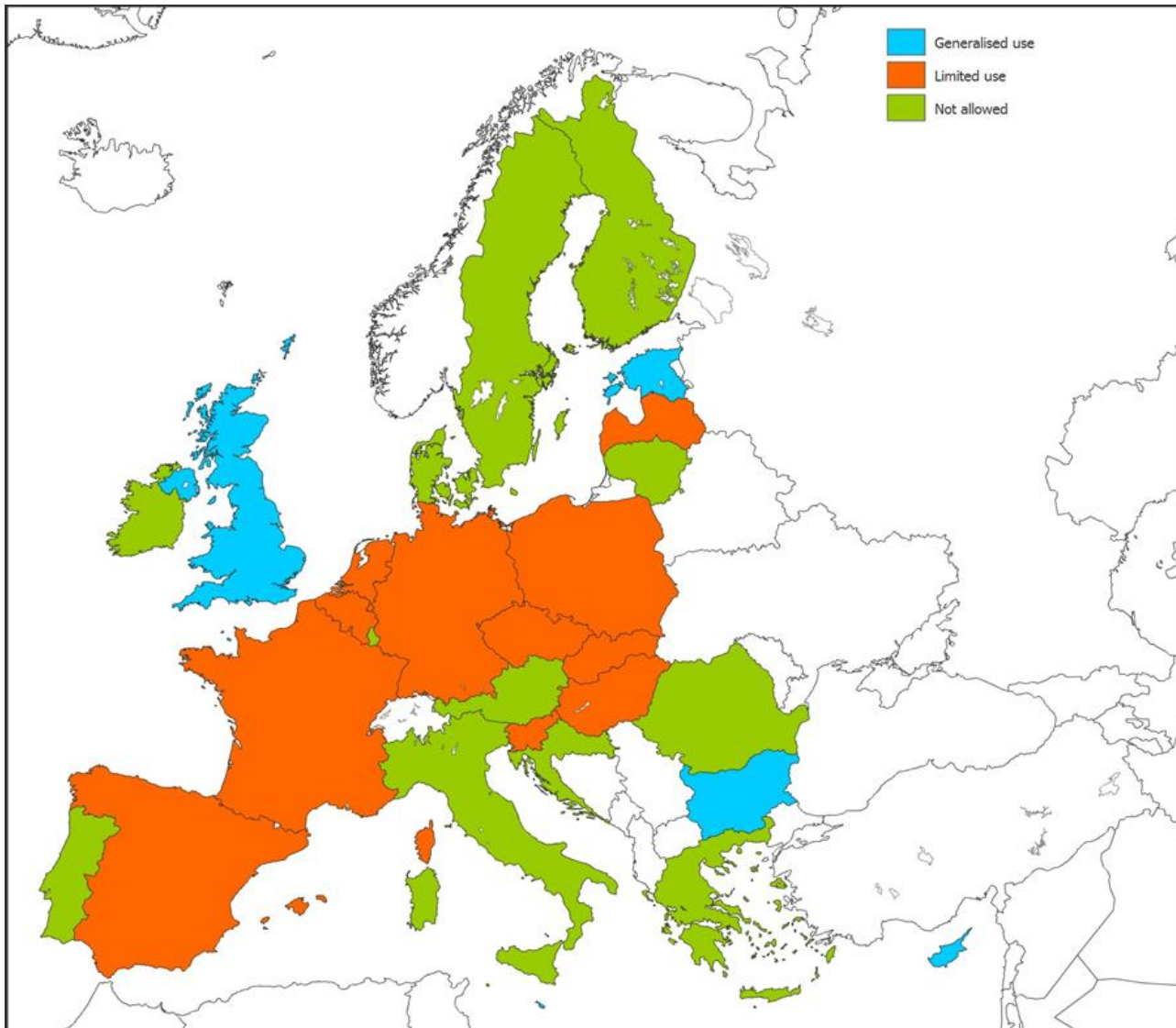
- **Request** by the Committee on Employment and Social Affairs of the EP to carry out a “up to date study that clarifies how and if the Member States use the opt-out and its impact on the employees and employers”.
- **Methodology:** consultation of Eurofound’s Network of European Correspondents through the questionnaire for Eurofound’s Annual update on working time on 4 points:
 - Possibility for not applying the 48-hour weekly working limit,
 - Data availability on the use of the opt-out,
 - Research on main impacts of the opt-out
 - Recent debates on the use of the opt-out

Limited exercise !!!

Mapping the use of the opt out

- **Permitted of generalised use – opt out may be used in any/all sectors of activity:** Bulgaria, Cyprus, Estonia, Malta and UK;
- **Permitted of restricted use – opt out may be used only in certain sectors or by certain occupations:** Belgium, *Czech Republic*, France, Germany, Hungary, Latvia, the Netherlands, Poland, Slovakia, Slovenia and *Spain*.
- **Not permitted – countries which did not avail of the option not to apply Article 6 of the EWTD:** *Austria (!)*, *Croatia*, Denmark, Finland, Greece, Ireland, Italy, Lithuania, Luxembourg, Portugal, Romania and Sweden

Mapping the use of the opt out



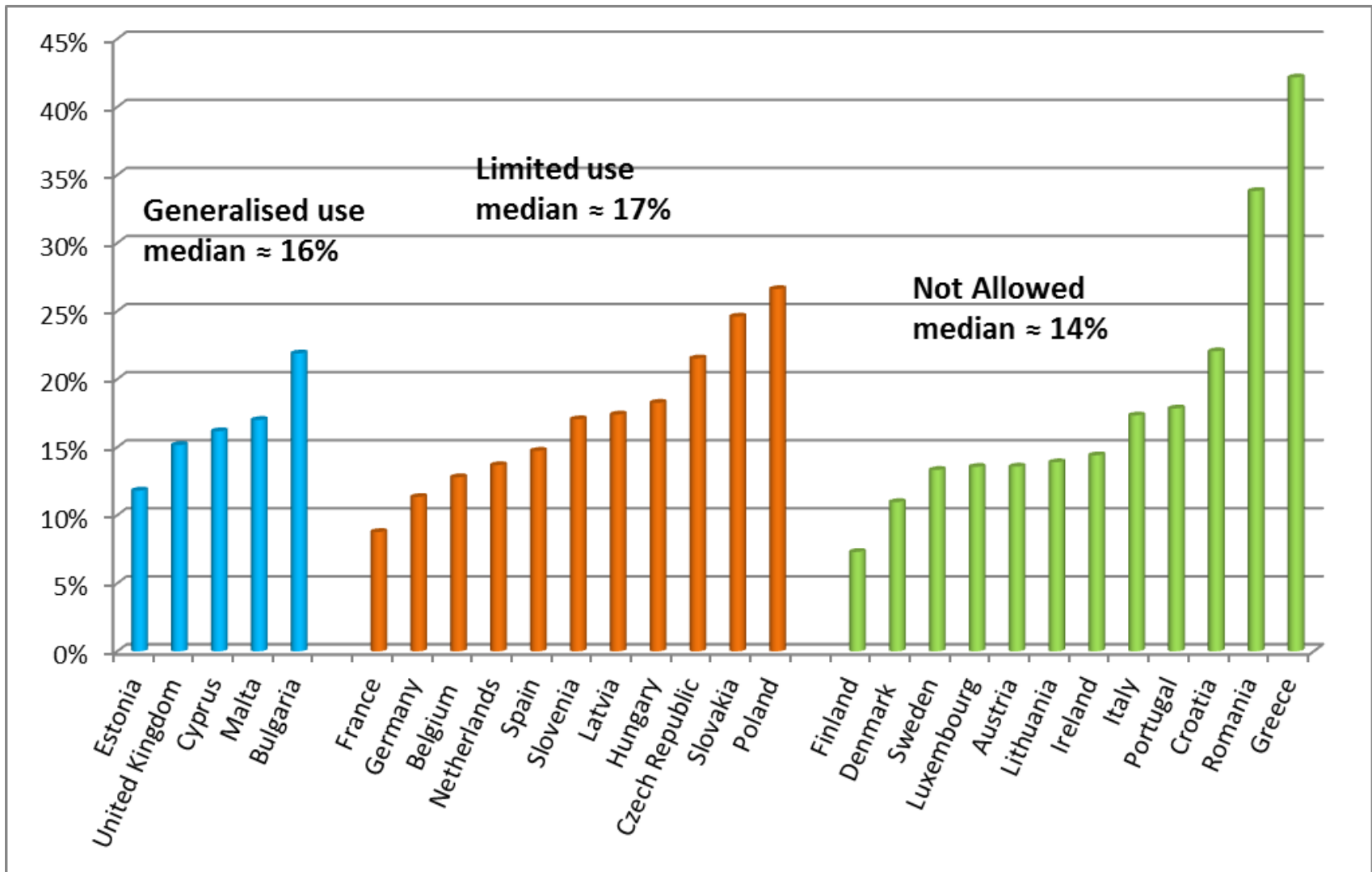
Opt out permitted - of restricted use

Belgium	Since Dec 2010: doctors, dentists, veterinarians, candidate doctors in training, candidate trainee dentists and student interns; Cap @ 60 hours; In the public sector, for emergency workers (eg. medical staff and firemen).
<i>Czech Republic</i>	Temporary provision in the Labour Code between October 2008 and December 2013; for medical staff in the health-care sector; for no longer than 52 weeks.
France	Allows excess hours to be worked on a voluntary basis by doctors and pharmacists in public health services, but there is not always a legal requirement of advance individual consent.
Germany	Working Time Act (Arbeitszeitgesetz, ArbZG); “substantial amount of on-call or emergency service time exists on a regular basis”; various collective agreements, notably in the health sector; cap @ 54 and 58 hours. Same for civil servants with cap @54 hours.
Hungary	Since 2003 (amended 04, 07, and 2012); Health Care Act (health care sector); cap @ max 12 hours per day.
Latvia	Medical Treatment law (amended in 2009 and 2012); applicable to medical and non-medical emergency service team members; cap @ 60 hours per week/240 hours per month.
The Netherlands	Applicable to jobs which make use of on-call time, such as health service workers and firefighters; cap @ 60 hours.
Poland	Act on Medical Activities, of 2011; medical doctors.
Slovakia	Labour Code; health care workers; cap @ 400 hours of overtime per year.
Slovenia	Medical Services Act, of 2004; medical workers in hospitals or health centres.
<i>Spain</i>	Framework Statute of statutory staff in health services, Law no. 55/2003; transitional provision expired in December 2013.

- **DATA on the extent of use is extremely limited / inexistent;**
- **UK – Workplace Employment Relations Study (WERS) 2011:**
 - In 32.4% of workplaces at least some workers had signed an opt-out agreement.
 - In 15.6% of workplaces all employees signed an opt-out agreement.
 - Highest rates in construction, other business services and transport/communication
- **Austria - representative survey commissioned by the Austrian Medical Chamber, 2,000 telephonic interviews, 2013, by the Institute for Empirical Social Studies:**
 - the average weekly working time of medical doctors decreased from 59 hours in 2006 to 54 in 2012;
 - majority of respondents would like to have an average weekly working time of 42 hours.
 - 76% argued for a compulsory decrease of the limit of one consecutive working period down to 25 hours.

Are the opt-outs related to long hours?

Share of workers working more than 48 hours per week (main and second job)
EWCS 2010



- Some MS from the 12 not allowing individual opt-outs have on-going issues or debates about the matter;
- **Austrian** case - Hospital Working Time Act (1 January 2015);
- In 2014, the **Croatian** government opened negotiations with the social partners over a new Labour Law, including greater flexibilisation of working time. Employers reps in favour and Workers reps underlining the need to look at both sides of the employment relationship (employers and workers needs).
- **Ireland, Greece** and **Italy** were referred by the Commission to the EU Court of Justice (2013 and 2014) for not complying with the EU rules on limits to working time for doctors in public health services.
- **Czech Republic** – expiry of the temporary provision for the health sector – in practice, long hours continue in the sector.
- **France** – end of 2014, medical interns went on strike against (*inter alia*) excessive working time (reported to be over 60 hours per week, on average).

- Little change since 2010:
 - Croatia, joining in 2013, decided not to apply the option for opt-out
 - In Czech Republic and Spain the temporary provisions for the health sector expired – currently, it is not possible;
 - Greece, Ireland and Italy – referred to the EU Court;
- Scarce knowledge about the extent of the use of the opt out (including conditions, duration, period of time, etc.);
- Abundant knowledge about negative consequences of long working hours, including over workers (health, safety, work-life balance, etc.), and clients or patients, indicates that *time limits* are beneficial for workers and employers;

- Still unanswered:
 - Coverage – worker or contracts?
 - Competent authorities – do they have the means to monitor the use of the individual opt-outs and intervene if necessary, including checking the reference period (starting and ending time-date)?
 - The rationale behind the opting-out – financial/economical need of the worker, the employer, or both?
- More and deeper research is needed.

- (2012) [Fifth European Working Conditions Survey](#) - Overview report
- (2013) Working time and work–life balance in a life course perspective – secondary analysis of 5th EWCS
- (2009) Working Conditions in the European Union: Working time and work intensity – secondary analysis of the 4th EWCS
- (2009) Comparative analysis of working time in the European Union
- Since 1999 - Collectively agreed working time – annual reports
- Since 2014 - EurWORK topical updates on working time

In 2015:

- **Developments in collectively agreed working time 2014 – annual report**
- **Working time developments into the XXI century – comprehensive report on collectively agree working time since 1999.**

In 2016:

- **Working Time Patterns for sustainable work, including impact of ICT mobile work on working time and workers' health and wellbeing and secondary analysis of the European Working Conditions Survey.**

**Thank you
for
your attention!**