

Revision of the Working Time Directive

**An ETUC plan for immediate action
Adopted by the ETUC Executive Committee,
Brussels, 14 October 2004**

The Executive Committee of the ETUC,

- taking note of the recent proposals from the European Commission for revision of the Working Time Directive,
- agreeing that these proposals, if adopted, would seriously undermine fundamental rights, collective bargaining, and working time protection all over Europe,
- taking into account the enormous pressure from many Member States for speedy adoption of these proposals, and therefore the urgency of taking action,

has adopted the following plan for immediate action at its meeting in Brussels on 13-14 October 2004 :

The ETUC, at the European level:

- 1) will step up its activities towards the Council of Ministers and its working group, preparing the position of the Council to be adopted in December
- 2) will increase contacts with all political groups in the European Parliament, and closely work together with all relevant MEP's, to influence the parliamentary process and its outcomes as much as possible
- 3) will continue to work together with european industry federations and national affiliates via the informal taskforce on working time, providing a platform (via internet and regular meetings in Brussels) for exchange of information and strategic debate, within the framework of overall responsibility of the Social Policy and Legislation working group, whose next meeting is taking place on 16 November 2004
- 4) will establish contacts with all relevant NGO's and other possible allies, with a view to mobilize support for ETUC's views, and to put pressure on all European institutions
- 5) will explore innovative ways and actions to get public attention and support for ETUC's views on modern working time policies, that provide workers with healthy and safe working time patterns, allow for a good work-life balance, and combine flexibility with security
- 6) will seek legal expertise to underpin ETUC's opinion, that the Commission is violating fundamental rights and obligations under the EU-Treaties, with a view to take some form of legal action.

The affiliates, at the national and/or sectoral level:

- 1) will take up the issue with their governments, to influence their position in the Council
- 2) will lobby their national MEP's from all major political groups in the EP
- 3) will provide the ETUC with all necessary information and material about the legal and collective bargaining situation in their country/sector with regard to working time, preferably via a contactperson (minimum one per country), as requested in June '04

Action will be taken by all above mentioned actors on the basis of the political message and 4 key-points, as explained in the Annex.

ANNEX

Political message

One year ago there were three obligations for the Commission, on the basis of the Working Time Directive:

- to evaluate the use of the individual opt-out with a view to its deletion
- to evaluate the derogation of the reference period from 4 months to 12 on the basis of collective bargaining, with a view to its further restriction
- to ensure implementation of the ECJ-judgements about on-call work.

Instead of coming up with balanced proposals to improve the Working Time Directive, the European Commission has come up with proposals that

- are all together totally out of proportion,
- are in clear contradiction to Community obligations and legislation (notably the obligations under the EU-Treaty to harmonize upwards, and to promote dialogue between management and labour),
- and if adopted would turn the Working Time Directive into a façade without any real content,
- while overall threatening the coming about of modern working time arrangements on the basis of collective bargaining.

Therefore the proposals on the table have to be rejected / withdrawn.

The only acceptable way forward is:

- a) keeping in place the existing provisions on reference periods
- b) phasing out of the individual opt out
- c) providing for balanced and proportional solutions for 'on-call work' (meaning being available in the workplace, ready to start work when called upon), that are consistent with Community law
- d) provide for genuine measures to reconcile work and family life

Explanation of key points

1) Reference periods

Current provision: reference period for counting the 'average' maximum working week of 48 hours of 4 months, extension possible by collective bargaining.

Commission proposal:

- reference period stays four months
- *however*, MS's are free to extend the reference period to 12 months; the only condition is, that they 'consult the interested social partners', and should promote social dialogue

Unacceptable because :

deletion of safeguard of collective bargaining, is unacceptable and may lead to working time patterns with very long working hours per week on a regular basis (78, and under certain conditions even 89!), and also to a very irregular and unpredictable working time pattern, which may make it very hard for workers to manage their working and private lives.

2) On-call work

Current situation: ECJ-judgements have defined on-call duty (of doctors in hospitals) as working time

Commission proposal:

- working time definition itself stays unchanged
- *however*, in addition a definition of on-call working time is introduced, and also a definition of 'inactive part of on-call time';
- only the 'active' part of on-call duty is working time in the sense of the Directive, unless Member States or collective agreements regulate otherwise
- *compensatory rest* does not have to be given immediately, but within a reasonable time not exceeding 72 hours

Unacceptable because:

The proposal is in clear contradiction with the fundamental objectives of the Directive and with other existing Community legislation, and has disproportionate effects.

There is a real danger that the introduction of a definition of the 'inactive part of working time' will have a disastrous effect on working time arrangements in many more sectors and jobs than only healthcare.

3) Individual opt-out

Current situation: opting out of 'average 48 hour working week' is possible on basis of individual agreement with employee

Part one: on the possibility for Member States to opt out**Commission proposal:**

- MS's can decide not to apply the maximum 48 hours working week only if this is explicitly allowed for by the collective agreement or the agreement by the social partners at the national, regional or 'adequate' level (nb: the consent of the individual worker is also then still needed)
- *however*, this condition does not apply if there is no collective agreement **in force** (*lorsque aucune convention collective n' est pas en vigueur*), and if there is also not a worker representation in the enterprise that *is empowered* to conclude an agreement between the social partners in this area, in accordance with national law and practice

Unacceptable because:

The proposal, instead of restricting the use of the opt-out, keeps the individual opt-out in place, and may lead to an increase in various forms of opting-out of maximum working time regulations, and will lead to increased pressure on trade unions at the negotiating table to accept individual opt-outs within the framework of a collective agreement, because the employer may threaten not to agree on the collective agreement, or even not to recognize the trade union at all.....!

Part two: on the conditions for the individual opt out**Commission proposal:**

(new parts, as compared with existing text of Directive, in italic)

- prior consent by the individual worker
- *agreement shall only be valid for one year*
- *agreement is renewable every year*
- *agreement, when made at time of signature of individual employment contract or during any probation period is null and void*
- no victimisation
- *absolute limit of 65 hours per working week, unless collective agreement provides otherwise*

- employer should keep up records, and present these at their request to the competent authorities, of all workers who carry out such work, *and of the numbers of hours actually worked.*

Acceptable, but

- These proposals could be welcomed as short term measures within the framework of a longer term perspective to phase-out the opt-out, as the European Parliament has asked for. Putting an end to several of the most pressing abuses in the UK has already been the duty of the Commission for years.
- However, the proposal to introduce an absolute limit of 65 hours, but at the same time still provide for derogation by collective bargaining, is an ambiguous one. It introduces a notion of acceptability of a 65-hour working week (on a regular basis, because otherwise one would not need an opt-out!), and at the same time provides for a possibility to go even beyond that maximum on the basis of collective bargaining! This proposal should therefore be rejected.

4) Work-life balance

Current situation: no provisions in Working Time Directive that take account of the link between health and safety workers and (lack of) work-life balance.

Commission proposal:

- no specific proposals are made
- according to the Explanatory Memorandum, the Commission regards all its proposals and especially the ones about the opt-out as allowing for a better compatibility between work and family life
- in the recitals it is stated that reconciliation of work and family life is an essential element to allow the Union to reach the Lisbon objectives
- but the issue is then referred to the Member States, stating that *it is for Member States to encourage social partners to conclude agreements to ensure better compatibility between work and family life.*

Unacceptable, because:

All proposals for revision lead to longer working hours, and less favourable conditions for working parents to combine work with family life and caring tasks. To present the proposals on the opt-out as providing for better compatibility is an insult to the workers of Europe. The texts as presented do not take the needs of workers and their families seriously at all!

Because of the major imbalance of the proposals, that will give trade unions many negotiating disadvantages, the chances for agreements between the social partners on the national or sectoral level that ensure better compatibility are nil.