2017: Next steps regarding the Working Time Directive

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Presentation Overview
2017: Next steps regarding the Working Time Directive

1. Working time in the EU
2. The Working Time Directive
3. The review
4. The 2017 initiative
1. Working time in the EU
Working Time in the EU

**Weekly Working Time**

- Slight decrease of the average weekly working hours of employees (main job): **36.3 hours in the EU 28 in 2015** (36.9 hours in 1995 in the EU 15)
- Stable average weekly working hours for full-time employees (main job): 40.3 hours in the EU 28 in 2015 (40.3 in 1995 in the EU 15)
- In 2015, **over 8.5 million people had a second job**.
- In 2015, **one employee out of ten** in the EU-28 reported usually working more than 48 hours a week.

**Shift and Night Work**

- Increase in the percentage of employees usually working shifts: 12.3% of the total of employees in 1995 in the EU 15 to 16.2% in 2015 and 18.4% in the EU 28.
- Slight increase in the percentage of employees usually working at night: from 5.8% in 1995 for the EU 15 up to 6.8% in 2015 for the EU15 and 6.5% for the EU 28.
In the last month, has it happened that you had less than 11 hours between two working days? (Eurofound, 6th European Working Conditions Survey) – Data on employees, EU28

Yes
No
## Usual weekly working hours
*(Eurofound, 6th European Working Conditions Survey)*

### 48 or more working hours in main paid job for employees

<table>
<thead>
<tr>
<th>Sector of activity</th>
<th>Occupation</th>
<th>Total employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>Elementary occupations</td>
<td>11</td>
</tr>
<tr>
<td>Industry</td>
<td>Plant and machine operators, and assemblers</td>
<td>10</td>
</tr>
<tr>
<td>Construction</td>
<td>Craft and related trades workers</td>
<td>12</td>
</tr>
<tr>
<td>Commerce and hospitality</td>
<td>Skilled agricultural, forestry and fishery workers</td>
<td>17</td>
</tr>
<tr>
<td>Financial services</td>
<td>Service and sales workers</td>
<td>18</td>
</tr>
<tr>
<td>Public administration and defence</td>
<td>Clerical support workers</td>
<td>12</td>
</tr>
<tr>
<td>Health</td>
<td>Technicians and associate professionals</td>
<td>12</td>
</tr>
<tr>
<td>Other services</td>
<td>Professionals</td>
<td>10</td>
</tr>
<tr>
<td>Health</td>
<td>Managers</td>
<td>10</td>
</tr>
<tr>
<td>Education</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Transport</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Commerce and hospitality</td>
<td></td>
<td>14</td>
</tr>
<tr>
<td>Construction</td>
<td></td>
<td>16</td>
</tr>
<tr>
<td>Industry</td>
<td></td>
<td>12</td>
</tr>
<tr>
<td>Agriculture</td>
<td></td>
<td>23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employment status</th>
<th>Total employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>employee, other or no contract</td>
<td>11</td>
</tr>
<tr>
<td>employee, fixed term contract</td>
<td>10</td>
</tr>
<tr>
<td>employee, indefinite contract</td>
<td>11</td>
</tr>
</tbody>
</table>
Long working hours and association with aspects of working conditions  
(Eurofound, 6th European Working Conditions Survey) – Data includes self-employed

<table>
<thead>
<tr>
<th>Aspect</th>
<th>Working fewer than 48 hours (% of respondents)</th>
<th>Working 48 hours or more (% of respondents)</th>
<th>Odds ratio (working 48 hours or more)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good balance between working hours and family and social commitments</td>
<td>86</td>
<td>62</td>
<td>0.267</td>
</tr>
<tr>
<td>Health and safety at risk because of work</td>
<td>22</td>
<td>31</td>
<td>1.633</td>
</tr>
<tr>
<td>Work affects health negatively</td>
<td>24</td>
<td>35</td>
<td>1.696</td>
</tr>
<tr>
<td>Working at high speed at least half the time</td>
<td>45</td>
<td>56</td>
<td>1.522</td>
</tr>
<tr>
<td>Not feeling well paid for the job</td>
<td>29</td>
<td>35</td>
<td>1.388</td>
</tr>
<tr>
<td>Consulted before work targets are set (always or most of the time)</td>
<td>45</td>
<td>56</td>
<td>1.363</td>
</tr>
<tr>
<td>Presenteeism</td>
<td>41</td>
<td>55</td>
<td>2.008</td>
</tr>
<tr>
<td>Feeling exhausted at the end of the working day</td>
<td>31</td>
<td>44</td>
<td>1.677</td>
</tr>
</tbody>
</table>
2. The Working Time Directive
A fundamental right!

Article 31(2) of the Charter of Fundamental Rights of the EU - Fair and Just Working Conditions

"Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave".
Objectives

MAIN OBJECTIVE:
Improving the working environment to protect workers' health and safety

By setting out minimum health and safety requirements for the organisation of working time:

✓ minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time; and
✓ certain aspects of night work, shift work and patterns of work.
Scope

- **Applying to 'workers'**
  - autonomous EU meaning: a person who performs services for and under the direction of another person for remuneration
  - for the national court to consider in light of national law and facts

- **Applying to 'all sectors of activity, both public and private', under normal circumstances**
  - Does not apply in the case of 'exceptional events'
## Main Rights and Obligations

<table>
<thead>
<tr>
<th><strong>Working time</strong></th>
<th>includes 'on-call time' (workplace) but not stand-by time</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Daily rest (Art. 3)</strong></td>
<td>11 consecutive hours</td>
</tr>
<tr>
<td><strong>Breaks (Art. 4)</strong></td>
<td>1 break when working &gt; 6 hrs</td>
</tr>
<tr>
<td><strong>Weekly rest (Art. 5)</strong></td>
<td>24 hours (+ 11 hrs daily rest)</td>
</tr>
<tr>
<td><strong>Max. weekly working time (Art. 6)</strong></td>
<td>48 hours in average</td>
</tr>
<tr>
<td><strong>Maximum daily working time for night workers (Art. 8)</strong></td>
<td>8 hours per 24 hours</td>
</tr>
<tr>
<td><strong>Minimum paid annual leave (Art. 7)</strong></td>
<td>4 weeks</td>
</tr>
</tbody>
</table>
## Derogations

<table>
<thead>
<tr>
<th>Reference periods (Art. 16, 18, 19)</th>
<th>Standard: 4 months; extension possible: - by law to 6 months - by collective agreements to 12 months</th>
</tr>
</thead>
<tbody>
<tr>
<td>'Autonomous workers' (Art. 17 (1))</td>
<td>Where &quot;duration of working time is not measured and/or predetermined&quot;; i.e. worker has full control over both volume &amp; organisation of working hours</td>
</tr>
<tr>
<td>Specific situations (Art. 17 (2) &amp; (3))</td>
<td>Derogating from all except Art. 6 Where continuity of service required and in case of accident or imminent risk of accident Implies 'compensatory rest'</td>
</tr>
<tr>
<td>Individual opt-out from Art. 6 (Art. 22)</td>
<td>Where the 48 hours weekly limit may be exceeded subject to individual worker's consent.</td>
</tr>
</tbody>
</table>
3. The review
Context

- **2004-2012**: Unsuccessful attempts to revise the Directive
  - Between the Council and the Parliament (2004-2009)
  - Between the Social Partners (2010-2012)

- **2013-2016**: Relaunch of the review process
The review Process - Studies

Study to support an impact assessment, 2010 by Deloitte
- The appropriate maximum limit for weekly working times depends on the degree of health impairment deemed acceptable; no constant pattern between increased yearly working hours and productivity; the opt-out is mainly in sectors where continuity of care or service is needed or demanded by competitive conditions; there is still ignorance of the existence of/provisions of the Directive in some sectors and/or businesses, notably residential care and SMEs; need for more data on implementation and enforcement of the Directive;

Study on administrative burden of potential options, 2011-12 by Economisti Associati
- The report concludes that in many instances employers seem to be already compliant with the (at the time) prospective obligations, either due to regulatory requirements already in place at the MS level (especially in the case of options related to the opt-out), or to widespread voluntary business practices (as in the case of options related to reconciliation of work and family time).

Study on economic impacts, 2014-15 by ICF:
- Most of the options tested tend to reveal tensions between the potential greater flexibility to employers and potential worsened health and safety due to longer working hours in particular.

Study on impacts in the healthcare sector, 2014-15 by COWI:
- The study reveals extrinsic challenges in terms of staff shortages in the sector which put pressure on work organisation and working time arrangements.
The review Process

Public consultation (01/12/2014 → 18/03/2015)

- 2193 responses

- Submissions from all Member States but Hungary but uneven distribution: the contributions from the 5 "most-involved" countries - UK, Germany, France, Netherlands & Austria - constitute more than 70% of the overall turnout and in 11 Member States, less than 10 respondents participated in the public consultation.

- Important participation from certain sectors: a considerable number of participants affiliate with the public services (27%) and the healthcare/residential care sector (22%)
Public consultation (01/12/2014 ➔ 18/03/2015)

- On crucial substantive issues **widely divergent views**
- **Awareness of the difficulty of meeting everybody's requirements.**
  - a majority of trade unions and several employers' organisations opposed a general revision, at present, despite sometimes explicit dissatisfaction with the current rules on both sides.
  - Among the 11 governments, views are not homogenous
Implementation situation

• Improvements since 2010, but problems remain largely the same.
• Most common compliance issue: the use of derogations on daily and weekly rest
• Persisting problems concerning specific groups of workers, in particular public sector workers (armed forces, police and firefighters)
• The opt-out is used by 18 member states: Croatia and Austria are new users of this provision since 2010
• The protective measures related to the use of the opt out remain largely respected.
Cases brought before the CJEU

- **61 cases** concerning the Working Time Directive (93/104, 2000/34 and 2003/88)
- **51 were preliminary references**, 9 infringement proceedings by the Commission and 1 annulment proceeding
- 5 cases are still pending
- Cases arose from 16 **Member States** - Germany, Spain and the UK being most represented
State of Play – Recurring infringements

Sectors
- Police and armed force
- General legislation
- Public sector
- Sectors requiring continuity of service (security, health care...)

Topics
- Paid annual leave
- Maximum weekly working time and opt-out
- Derogation for continuity of service
- Definition of working time
Outcome of the review

- the Working Time Directive remains a relevant instrument in today's world of work

- pressing need to bring clarity and guidance on its content and application

The Commission proposes to retain the Directive un-amended while ensuring both legal clarity and its sound application
4. The 2017 initiative
Commission Work Programme 2017

- Point 11 of Annex I on New Initiatives:

European Pillar of Social Rights

'Following the public consultation, the initiative will set out its proposal for a Pillar of Social Rights (Q1/2017) and will present related initiatives, such as [...] the implementation of the Working Time Directive (non-legislative) [...]'
Objective of the new initiative

Increase legal certainty and clarity, through an Interpretative Communication on the Directive;

Also based on the Implementation Report, analysing the state of play as regards the transposition of the Directive and identifying the remaining or arising issues.
The Working Time Interpretative Communication

Compiling and clarifying the provisions of the Directive and their interpretation arising from the Court's case-law in a single document

- Based on case-law and historical documents
- Includes own Commission interpretation (clearly identifiable)
The Implementation Report

Analysing the state of play as regards the transposition of the Directive and identifying the remaining or arising issues.

• Sources: Member States reports, social partners reports, own legal research, previous infringements and complaints, previous implementation report, national labour law experts advise
Thank you for your attention

• Questions?