



Working Time in the Public Services the next steps for the Directive

Report of Meeting: 4 September 2014

Twenty-seven participants from EPSU affiliates in 15 countries along with a representative of the ETUC met to discuss the latest developments in relation to working time and in particular the studies that are currently being carried out on behalf of the European Commission. The discussions also covered the cross-sector negotiations on the Directive, the previous legislative process and the Commission's consultations in 2010-11.

Working Time Directive – a review of the negotiations 2011-12

There was a brief discussion about the process and content of the cross-sector negotiations that took place between December 2011 and November 2012. After several meetings and a focus on exchanging information, it was not until September 2012 that the two sides started to exchange concrete proposals to amend the Directive and then the negotiations ended in stalemate in November shortly after each side had addressed the central questions of on-call time and the opt-out. It was noted that the employers appeared unwilling to take on board any suggestion of closer monitoring of or further restrictions on the individual opt out, let alone full abolition. It also seemed clear that they were not interested in any alternative way of tackling the on-call issue apart from introducing the definitions of active and inactive working time.

The new initiative from the Commission – studies on working time

There were three different investigations on working time being carried out. Two studies had been commissioned by the European Commission - a survey of the public health sector focusing on eight countries and a broader survey of different sectors covering 10 countries. At the same time the Commission had written to all governments and social partners to ask their views about the implementation of the Directive. It was noted that the way questions were framed was often problematic and that the Swedish confederations, for example, had agreed on a joint approach where they stress the health and safety angle and not be drawn into specific responses to the questions.

There was a debate about the way in which the Commission had launched the new studies on the Directive with concern expressed by several colleagues about the transparency and timing of the process as well as about the way in which some of the questions in the surveys were framed. The ETUC had just written a letter to the Commission raising these matters, arguing that the focus was much more on costs and administrative “burdens” than about health and safety. It was agreed that EPSU write a letter to the Commission expressing its concern about the way the studies are being carried out, the way the questions have been framed and the reliability of any report being produced at such short notice. Affiliates were also invited to raise these issues at the national level by writing to their prime minister and/or labour and/or health ministry.



It was also suggested that EPSU approach the employers in the social dialogue, particularly HOSPEEM in the hospital sector and CEMR in local and regional government to see to what extent they were also concerned about the way the studies were being carried out.

A new element in the Commission's questionnaire on the health sector was the suggestion that some element of standby time should be treated as working time. It was noted that this might have an immediate appeal for some workers. However, it was felt that standby time away from the workplace was usually a very different arrangement from being on-call at the workplace and so it would be a risk to mix up the two and potentially undermine the recognition of all on-call time at work as 100% working time.

The situation at national level

Colleagues from several countries provided updates on issues related to the Working Time Directive. In the Czech Republic the individual opt-out that had been used in the health sector since 2008 was abolished as of the beginning of 2014. However, there was still a problem in the health sector of long working hours and on-call shifts for doctors which was simply dealt through agreements to allow special working conditions that defined additional working hours in a different way so that they are not taken into account in total working hours. Further information on this situation would be available shortly following the formal publication of a report by the Ministry of Health.

In Lithuania the opt-out was not used and all on-call time at work was treated fully as working time. The problem in the health sector was that many doctors worked on multiple contracts and so it was difficult to monitor their working time and ensure compliance with the directive. This problem also occurred in the Slovak Republic where the opt-out was in use although combined with a specific limit of 56 hours a week. It was not clear that the treatment of on-call time was in line with the European Court rulings.

In Spain, workers were confronted with widespread deregulation of the labour market and in the health sector over 30000 workers had been laid off while there was no longer any proper collective bargaining. While in France the pressure on working hours continued with widespread disregard for the regulations, many working in excess of the 48-hour week and more generally increasing pressure to reform the 35-hour week legislation.

Comments on Germany were made in relation to the Commission's health sector survey, noting that the questions were framed in a way to link problems in the sector to the Directive when the fundamental problems in Germany are related to recruiting and retaining skilled staff and the way the health system was financed and not to the claimed "inflexibility" created by the Directive.

In Austria, there was currently no opt-out but the European Commission had called on the government to revise legislation covering the health sector as it contravened the Directive. New working time regulations were due to come into force in 2015 which would allow for use of the opt-out (in the framework of a local agreement) in the health sector during a specific period 2015-2021.

What happened last time – the legislative process (2003-2009) and the Commission Communication 2010

The meeting discussed some of the elements of the last legislative process that finished in deadlock between the European Parliament and European Council in 2009, focusing in particular on the Cercas report on the Directive. It went on to consider the main issues raised by the Commission in its Communications and two consultations during 2011 and 2012. The meeting noted in particular that in 2010 (*Communication on a Revision of the Working Time Directive*, December 2010 (COM)2010 801) the Commission proposed to allow for on-call time at work to be calculated differently from other working time. This contrasts with the alternative approach of using different definitions of on-call time (“active” and “inactive”) that were the preferred approach of the employers in the cross-sector negotiations..

Possible strategy and tactics on the Working Time Directive

There was a broad discussion about the current political climate, composition of new European Parliament and new European Commission, along with developments at national level. While there was not much in the way of positive developments it was argued that EPSU affiliates should try to be active in their approach to MEPs, particularly, new MEPs to brief them on this subject and explain the trade union position on key issues. It was noted that members of the European Parliament had expressed some concern that the Commission had embarked on the new studies on working time without informing Parliament of the initiative.

It was agreed to try to coordinate some clear messages on the negative impact of long working hours on health and safety. Distributing and publicising new as well as older studies (including the Deloitte report that had been commissioned by the European Commission itself), research and surveys on this issue would help create awareness around the issue, particularly if this could be coordinated well between European and national levels. It was also thought important to highlight the significance of the Directive as a central piece of social legislation and remind the new Commission and new Parliament of how it would look if one of their first initiatives was to preside over a weakening of the legislation.

In relation to the health sector in particular it was suggested that arguments could focus on the need for increased recruitment of staff to provide improved quality of services, making the case for the positive contribution that health spending makes to the economy overall.

It was pointed out that the European Commission tended to focus on the question of costs but failed to recognise the costs associated with the impact of long working hours on health and safety with increased levels of sickness and injury and resulting absence from work that could be linked to stressed and exhausted employees.

It was noted that the ETUC was planning to convene a meeting of its working time taskforce in October and that it was already thinking ahead of the key positive demands it could put forward on working time in advance of anything being published by the Commission. EPSU affiliates were encouraged to coordinate with their national confederations on participation in the taskforce.



Working time on the collective bargaining agenda

There had been very little movement on working time for many years and the trend of negotiating shorter working hours had stopped some time ago. In fact, beginning with Germany nearly 10 years ago, there had been some examples of increased working time and more recently in countries facing sharp austerity measures. In Ireland, Spain, Greece and Portugal increased working hours had been imposed although EPSU affiliates in Portugal had reacted to the national government imposition of increased hours by negotiating hundreds of local level deals with public sector employers to retain the 35-hour week.

While shorter hours had not been on the collective bargaining agenda for some time, they had been the subject of discussions in academic circles and among environmental and other groups looking at alternative approaches to the economy. It was proposed to summarise some of the key arguments coming from outside the trade union movement about shorter hours to see if this would create any momentum towards getting the issue back on the trade union agenda.

This meeting was organised with the financial support of the European Commission as part of the project: "The European Semester, austerity and social dialogue in the public services"

