

The Working Time Directive

Working time is back on the agenda and it is probable that the European Commission will publish new proposals on the Working Time Directive in early 2015. The implications for EPSU and its affiliates will be discussed at a meeting in Brussels on 4 September (see www.epsu.org/a/10169 for details).

The European Commission is currently undertaking a number of studies on working time and contributions from EPSU affiliates directly and/or through their respective national trade union confederations is important.

EPSU will need to be prepared for major lobbying and campaigning work next year and it would be very helpful if affiliates could help by answering the questions at the end of this document. YOU CAN WRITE THE RESPONSES IN YOUR OWN LANGUAGE.

The current legislation – is it working?

European Commission consultation on the implementation of the Working Time Directive

The European Commission is required to carry out a consultation on the implementation of the Working Time Directive that should include the views of employers and trade unions. On 4 July the Directorate of Employment of the Commission wrote to national social partners to ask about the transposition and implementation of the Directive, including questions on enforcement and monitoring. The letter about the consultation and the format for reporting are here: www.epsu.org/a/10650

We would encourage affiliates to follow this up with their national confederations and ensure that any working time problems in public services are highlighted in any submissions to the Commission. The deadline for responses is 4 November 2014.

Possible changes to working time rules

European Commission studies relating to a review of the Working Time Directive

At the end of 2012 negotiations on working time between the European trade union and employer organisations ended in stalemate. The European Commission is now undertaking a review of the Working Time Directive which will include consideration of possible changes to the legislation. This study will include an assessment of “administrative and regulatory costs and burdens”. Alongside this cross-sectoral review, there is also study focussing on public health care services. This will examine the economic/financial/organisational implications for the sector of various possible changes to EU working time rules.

The detailed healthcare investigation is being carried out by the Danish consultants COWI who are interviewing trade unions, employers, representatives of health ministries and health care institutions and labour inspectorates in eight countries: Denmark, Italy, Greece, Germany, France, Czech Republic, Hungary and the UK.

We have seen a draft of the questionnaire being used in the interviews and it includes the following issues: use of the Individual opt-out, reference periods, on-call time, standby time, compensatory rest, autonomous workers, concurrent contracts, reconciliation and information, and interruption of rest periods.

All of these elements could feature in the European Commission's plans to revise the Working Time Directive. Below we summarise the key points and then pose a series of related questions.

EPSU Questionnaire on the Working Time Directive

Summary of the main issues

Individual opt-out: The Working Time Directive sets a maximum limit of 48 hours a week averaged over a reference period (see below) of 17 weeks, six months or, if negotiated in a collective agreement, 12 months. The only exceptions to this maximum are allowed for "autonomous" workers (see below) and workers who have signed an individual opt-out. An individual opt-out is only possible where national legislation exists to allow this. EPSU and the ETUC have been calling for an end to the opt-out as wholly inappropriate for health and safety legislation. If phased out over several years, the unions would also want to see a requirement that use of the opt-out be closely monitored.

Reference periods: The reference period is the time over which working hours are averaged when assessing compliance with the 48-hour maximum. The standard period is 17 weeks but can be six months in exceptional circumstances. It can only be extended to 12 months if this is negotiated as part of a collective agreement. EPSU and the ETUC want the current rules to be retained in the face of pressure from the employers and the European Commission to allow for extending the reference period through legislation and not just through collective agreements.

On-call time at work: Rulings from the European Court of Justice (ECJ) have established that all on-call time at the workplace should be treated fully as working time for the purposes of complying with the directive. Various alternatives have been promoted by employers and the European Commission. These include taking only "active" on-call time into account or treating on-call time differently from other working time, for example, by taking only a percentage of the time into account. The position of EPSU and the ETUC is that the directive should be amended so that it reflects the ECJ rulings and that all on-call time at work should be treated 100% as working time.

Standby time: Standby time is taken to be time when a worker is at home but on standby to be called to work in an emergency. This is not covered by the Working Time Directive nor deemed to be working time in any ECJ rulings. It was not an issue raised in the 2011-12 negotiations although some EPSU affiliates have expressed their concerns about the way employers are imposing strict rules on standby arrangements with workers required to be at the workplace at very short notice. EPSU and the ETUC do not currently have a position on whether or not any element of standby time should be taking into account

Compensatory rest: ECJ rulings have also clarified that compensatory rest to make up for missed rest periods must be taken as soon as the period of work ends, rather than at a later time. The Commission and employers have been looking for more flexibility here but EPSU and the ETUC argue that the ECJ judgements should be respected.

Autonomous workers: Anyone defined as an “autonomous” worker can be excluded from the 48-hour average maximum working week. The concern of trade unions is that the definition of “autonomous” is too vague and that some employers have use a very broad interpretation that means that many managers and other senior staff have been classified as “autonomous” in order to avoid the 48-hour limit. EPSU and the ETUC argue for a definition that restricts this group of workers only to the most senior executives.

Application to workers or contracts: The position of EPSU and the ETUC is clear that in calculating working time an employees’ hours must be totalled from all concurrent contracts. This is not is not clear in some national legislation.

Reconciliation of work and private life and rights to information: The Working Time Directive has nothing to say on reconciliation of work and private life nor on workers’ rights to be informed about changes to working time arrangements. EPSU and the ETUC would argue that the directive would be improved if these elements were included.

Interrupted rest periods: One of the studies being carried out for the European Commission raises the question of interrupting rest periods. It asks: “What are the workplace implications of introducing the possibility for a worker to agree that the worker does not take an uninterrupted rest, but has the possibility to interrupt his/her rest for max. 3 hours and work again during this period (e.g. finish earlier and work additional hours later at home)?” This is not an issue that has been discussed in any detail before and it is not an issue on which EPSU and the ETUC have a formal position. It remains to be seen whether the Commission will come forward with any proposals on this but there must be a serious question as to whether this is aiming to provide more flexibility for the worker or for the employer.

EPSU would be very grateful if affiliates would answer the following questions about these aspects of working time. The information you provide will help us to respond effectively to the European Commission and to provide input into any ETUC discussions about possible changes to the Directive.

We have sent this questionnaire to you in Word format so that you can type your responses below each question and take as much space as you need. YOU CAN WRITE THE RESPONSES IN YOUR OWN LANGUAGE.

It would be helpful if you could send responses before the EPSU meeting on working time on 4 September. However, we realise this may be difficult over the summer break. If you cannot manage 4 September then we would set a later deadline of 17 October. This will enable us to translate and analyse the responses before the end of the year

1. Individual opt-out

- Is the individual opt-out used in your sector?
- Is use of the individual opt-out regulated by collective agreements in your sector?
- Do you have any (estimated) data for the number of workers in your sector who have signed the opt-out?

- Is there any monitoring of use of the opt-out in your sector by labour inspectorates or other public bodies?
- Please provide any further information about any problems arising from the use of the individual opt-out:

2. Reference period

- What is the reference period applied in your sector for the purposes of calculating working time?
 - 17 weeks
 - Six months
 - 12 months
- Please provide any further information about any problems arising from application of the reference period:

3. On-call time at work

- Are workers in your sector required to be on-call at work?
- Do you have any data on the numbers of workers and the length and regulatory of on-call periods?
- For the purposes of calculating working time in respect of the Working Time Directive, is all on-call time at work regarded 100% as working time?
- Please provide any further information about any problems relating to on-call work in your sector:

4. Standby time

- Are workers in your sector required to be on standby at home?
- Do you have any data on the numbers of workers and the length and regulatory of standby periods?
- Do workers in your sector face any problems with standby arrangements, such as the requirement to be at the workplace at very short notice?
- Please provide any further information about any problems relating to on-call work in your sector:

5. Compensatory rest

- Are there any problems in your sector in relation to employees taking compensatory rest for extra hours worked immediately after the prolonged shift?
- Can they be sure to take compensatory rest immediately?

- Please provide any further information about any problems arising from the taking of compensatory rest:

6. Autonomous workers

- Are you aware of any problems in your sector arising from the definition of autonomous workers?
- Do you think employers have included some employees in this category even though they are not senior staff?
- Please provide any further information about any problems arising from the definition of autonomous workers:

7. Concurrent contracts

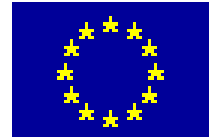
- Is it clear in your national legislation or in any agreements applied in your sector that all concurrent contracts on which a worker is employed should be taken into account when calculating working time?
- Please provide any further information about any problems arising from the calculation of working time for employees on more than one contract:

8. Reconciliation of work and family time and rights to information

- Do workers in your sector have a right to ask for more flexible working hours?
 - If no, would it help if this right were included in the Working Time Directive?
- Do workers in your sector have a right to be informed about changes to working time arrangements?
 - If no, would it help if this right were included in the Working Time Directive?
- Please provide any further information about improving reconciliation of work and family life and/or workers' rights to information on working time:

9. Interrupting rest periods

- How would your union respond to the idea that working time flexibility might be achieved through workers interrupting their rest periods?



Please make any other comments on the main working time issues affecting your sector.

Please also inform us of any new studies that have been done regarding working time and health and safety.

Country:

Sector:

Name of contact person:

Trade union:

Email:

Telephone: