Working Time Negotiations

and

EU White Paper on Pensions
EU Working time directive 1993 - Main points

✓ Introduced in 1993 and amended in 2000 to cover previously excluded sectors in transport and doctors in training (parts of transport sector still covered by separate directives)

✓ Directive based on EC treaty provisions on health and safety

✓ Also, reminder: Framework Health and Safety Directive 89/391/EEC places the responsibility on employers to establish a systematic prevention policy covering all risks, irrespective of a worker’s status, and to ensure that employees are not damaged by occupational factors, including the effects of workplace bullying;
The directive sets
maximum working week – 48-hour average
daily (11 hours) and weekly (24 hours) rest periods
daily rest break if working day longer than six hours
provides extra protection for night workers
minimum annual paid leave – four weeks
Does not regulate pay
Working time directive: Lead up to negotiations

Two consultation periods in 2010 and 2011 with the second asking the social partners whether they wanted a broad or narrow review of working time and whether they would be prepared to negotiate.

The ETUC, reflecting the views of EPSU, said it would enter into negotiations on the basis of a mandate which had the following objectives:

✓ a comprehensive revision of the WTD which can serve the health and safety of workers;
✓ the end or phasing-out of the individual opt-out in the near future;
✓ keeping the status quo concerning reference periods;
✓ and ensuring compliance of the European Court of Justice rulings on on-call time at work and compensatory rest.

Major report prepared for Commission by consultants Deloitte provided useful evidence in support of the trade union position: no reason for any shift in previous positions on working time.
Working time: Negotiations

Trade unions: ETUC- including EPSU and Eurocadres

Employers: businesseurope, UEAPME, CEEP

First round: December 2011, followed by meetings in February and March

- 9 month limit for negotiations unless agreement to extend
- Employers have put question of annual leave and sick leave on the table
- ETUC has put focus on reconciliation of work and private life
April: annual leave and sick leave + reconciliation of work and private life

May: expert seminar on implementation of the directive and the ECJ rulings on on-call time at work – examples proposed from EPSU of UK health service (Hospital at Night) and German fire service (specifically Cologne)

Employers want to move quickly to start drafting text and to finish negotiations within the nine-month period.
Main issues

✓ Annual leave and sick leave (raised by employers)
✓ Work-life balance and information rights (raised by ETUC)
✓ On-call time at work (to be addressed in May)
✓ Individual opt-out (not yet on the table)
✓ Autonomous workers (not yet on the table)
✓ Reference periods (not yet on the table)
✓ Compensatory rest (not yet on the table)
Main issues (2)

Paid leave and long-term sickness

This concerns a workers’ right to accumulate paid holiday leave from one year to the next if long-term sick with a judgement from the European Court of Justice that says that Member States can decide on carry-over period and that a carry-over period of 15 months is not unreasonable. This has emerged as the priority issue for business Europe and their main concerns on this should be revealed at the negotiations in April.
Main issues (3)

On-call time at work

In line with the European Court of Justice rulings in Jaeger, SIMAP and Dellas, all on-call time at work should be counted hour-for-hour as working time.

This has posed problems in some countries, particularly those facing major recruitment difficulties and has been a factor in the spread of the use of the individual opt-out.
Main issues (4)

Work-life balance and rights to information

Rights to be informed and measures on work-life balance

This is about employers informing workers in advance on changes to working time and rights for individual workers to ask for more flexibility working hours.

ETUC internal note argues that there should be fewer derogations from rest and reference periods etc. and highlights the need to move away from unusual working hours, precarious work and zero hours contracts. Stress on adapting work to the worker.
Main issues (5)

Individual opt-out

Unlike the other main provisions of the Working Time Directive, it is not possible to derogate from the 48-hour working week. The individual opt-out is the main way to do this unless workers can be classified as “autonomous”.

The Commission’s implementation reports confirm that there are no reliable data on how many workers sign an opt-out, the circumstances in which they sign or the number of hours they work. This is despite the requirement in the Directive to keep such information and provide it to the relevant authorities.

The EPSU position is that the individual opt-out is wholly inappropriate for health and safety legislation and that it should be abolished or at least phased over an agreed period, during which there should be proper monitoring and enforcement.
Main issues (6)
Spread of the individual opt-out

**General opt-out**

**Sector-specific opt-out**
- France (2002) public health
- Germany (2003) public health, police, fire; federal civil servants (from 2008)
- Spain (2003) doctors and nurses in public health
- Hungary (2003) health, standby in private sector
- Slovenia (2004) health and medical services
- Netherlands (2004-05) health and fire service
- Poland (2007) doctors and professionals in health care
- Slovakia (2007) medical workers
- Czech Republic (2008) health services
- Belgium (2010-11) certain health service professionals
Main issues (7)

Reference periods and compensatory rest

The reference period for calculating the 48-hour week is normally four months but can be extended to six months in special circumstances and up to 12 months by collective agreement. Before the negotiations this had been an issue highlighted by UEAPME but has not so far been raised in the negotiations. **EPSU position:** no convincing argument for need for more flexibility either beyond 12 months or without protection of collective bargaining.

Problem with delays in taking compensatory rest after extended shifts identified in Jaeger case. Argument that this should be clarified in the directive but not yet on the negotiating agenda.
Main issues (7)

Autonomous workers

Clarification of definition of autonomous workers

Need for clearer definition so that it applies only to senior managers in public and private sectors and to those with autonomy over working time and is not abused to allow employers to increase the number of workers to which the 48-hour maximum working week does not apply
Questions to Working Group

✓ Average working time in your country
✓ Impact of the crisis, job cuts: longer and or shorter working hours? Link with pay cuts?
✓ Impact of EU directive, problems with on call time in prisons? During transfers?
✓ List 3 key improvements to working time

COM publishes on 16 February “A strategy for adequate, safe and viable pensions” (COM (2012) 55 final)

✓ Country recommendations of the European economic semester include as well recommendations on pensions
✓ Proposal of measures, including further reports, exchanges of best practice and potentially some revision to legislation, and therefore it remains to be seen what the actual outcomes might be
✓ ETUC welcomes the general analysis but ignores social purposes by proposing only two solutions:

1) Putting back the legal pension age without taking account length of activity or difficulty of profession
2) Enforcing subscription to private pension schemes
Main critical issues

- EU competence on pension issues: pension not an EU competence
- The Priority given to fiscal consolidation: dominate the country specific recommendations on pension reforms, reduction of pension costs, in only two cases recommendations refer to adequacy of pensions
- The use of statistics and analysis of trends: consistency of data lacking, spotlight on the economic dependency ration- the proportion of those in work to those in retirement- rather than the broader population trends
- The responsibilities of governments and employers and the shift to defined contribution pension schemes
- Gender Equality
- Working Time, work intensity and precarious employment
- Transfer or preservation of pension rights
Next steps

✓ EPSU response for adoption Executive Committee on 24-25 April
✓ Follow-up through ETUC on monitoring and responding where necessary to the specific initiatives that emerge from the White Paper and in particular the impact of the country recommendations on pensions reform that are part of the European Semester.