



European Trade Union Confederation (ETUC)  
Confédération européenne des syndicats (CES)

## **The Working Time Directive: Limitation of working hours and more influence of workers, for healthier working lives**

Resolution on the Communication of the European Commission of 24 March 2010, being the first stage consultation of the social partners at EU level on the review of the Working Time Directive

Adopted by the ETUC Executive Committee in Brussels on 2 June 2010

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### **Introduction**

- 1) On 24 March 2010, the Commission adopted a Communication on the review of the Working Time Directive (WTD), which constitutes the first stage in consulting the EU social partners (again) on the '*possible direction of EU action regarding the Working Time Directive*'. The Commission proposes a **comprehensive review** of the WTD, and invites the social partners '*to reflect broadly on the kind of working time regulation the EU will need in order to cope with the challenges of the 21<sup>st</sup> century.*'
- 2) Directive 2003/88/EC (revising the original WTD of 1993) is a key element of the EU's social policy acquis, based on the Treaty's 'health and safety' legal basis, but also on ILO conventions and other international standards. The Commission in its Communication does not give due consideration to this legal framework, and especially the implications of the Charter of Fundamental Rights (CFR) which is now legally binding, for the current re-examination process.
- 3) The EU and its Member States have a double legal obligation, to ensure that "**every worker has a right to limitation of his working hours**" which respects his health, safety and dignity (Article 31 CFR), and **to progressively reduce (long) working hours, while improvements are being maintained** (Article 151 TFEU). Moreover, the WTD states that "*the improvement of workers' safety and health at work is an objective which should not be subordinated to purely economic considerations*". Any 'comprehensive review' of the Directive must clearly respect and build on this Community acquis.

- 4) This means that any revision will have to put an end to the opt-out, and include full recognition of on-call time in the workplace as working time, as well as compensatory rest taken immediately after periods of time spent on duty, in accordance with the jurisprudence of the ECJ. In this respect, the ETUC recalls the clear and strong position taken by the European Parliament, and calls for its absolute majority vote of 17 December 2008 to be respected. Any attempt to prolong or extend working time practices, involving long, irregular and unhealthy hours for business and/or financial reasons must be considered to be not in conformity with these legal obligations and with basic principles of health and safety protection. . The ETUC will not support any initiative for revision that does not address these points clearly and unambiguously.

### **The Working Time Directive, fit for the 21-st century?**

- 5) The main goal of the WTD is, and must remain the protection of workers against the health and safety risks of long and irregular hours. The concept of health and safety must be interpreted in a wide sense, as embracing all factors, physical or otherwise, capable of affecting the health and safety of the worker in his working environment, and take on board new insights in the health and safety needs of workers. New forms of flexible and precarious working time arrangements, unsocial working hours, intensification and higher paces of work, and working time patterns that stand in the way of work-life balance can lead to increased stress and illnesses, related to lack of control over one's work and life. These must be addressed in any review of the WTD.
- 6) Protection against long and irregular working hours is important to protect the individual worker and possible third parties (in traffic, in health care, etc.), but also to limit downward competition on working conditions. In a context of globalization and Europeanizing labour markets, clear and unambiguous minimum standards – without opt-outs - providing for a bottom in competition, both nationally and cross border are necessary to ensure fair competition and the support of workers for open borders and markets. Decent levels of pay are an essential pre-condition for health and safety protection, to prevent undue pressure on workers to accept unhealthy and unjust working conditions.
- 7) There is no basis in recent research supporting the view that protection of workers against long and irregular hours is outdated. Its provisions already allow for a wide range of flexibility options and derogations. Rather than introducing even more 'flexibility', the WTD needs to be strengthened, to ensure that workers are better protected against the health and safety risks of new practices in the organization of work and new forms of contractual arrangements affecting working time.

## **ETUC's views**

- 8) For the last 7 years, ETUC and its member organizations have mobilized against proposals to weaken the WTD, with the support of the majority of the European Parliament (EP). The process in the end led to the failure of the Conciliation process with Council in spring 2009. One year later, in ETUC's view, the Commission cannot just ignore this history.
- 9) The ETUC cannot and will not abandon the fundamental concepts underlying a long history of health and safety research and regulation, which continue to underpin our major demands:
- a) Workers' safety and health at work **cannot be subordinated to purely economic or financial considerations.**
  - b) **The individual opt-out is not compatible** with the basic principles of health and safety protection. Working hours must be limited to the average maximum of 48 hours, without opt-out. The ETUC will continue to mobilize for an end to the opt-out in the WTD, and its use in practice.
  - c) **On-call work in the work-place is working time, and not rest.** This is the Community acquis which must now urgently be enforced. The ETUC will not accept the introduction of a new category of 'inactive' working time between work and rest.
  - d) The notion of **'equivalent compensatory rest'** in the WTD is **fundamental.** The ETUC cannot accept a hollowing out of this principle. Compensatory rest must immediately follow on-call duties, as judged by the ECJ.
  - e) A reference period of 4 months for the average 48 hour working week gives ample scope for modern needs of companies and workers. **Longer reference periods without proper safeguards** can lead to unilaterally imposed extremely long and irregular working time patterns, which are **unacceptable.** Derogations from this basic rule, when inevitable, must be put in such a form that they promote negotiated solutions between sufficiently strong bargaining parties which can guarantee a balanced outcome. Keeping **collective bargaining as a pre-condition** to derogate from the 4-month reference period is therefore the best safeguard.
  - f) The average maximum of 48 hours of the WTD must be understood to be applied **'per worker' and not per contract**, regardless if the worker has more contracts with the same or another employer. This is the only interpretation compatible with the health and safety objective of the Directive.

- 10) In addition, the WTD might need to be reviewed in terms of its relevance for the 21-st century, in order to:
- a) Update the notion of **‘adapting the work to the worker’**, acknowledging that the average modern worker is a worker (male/female) with other obligations in life than work, which can lead to different needs throughout the life course;
  - b) Introducing provisions that **strengthen the bargaining position of workers** to influence working time patterns adapted to their needs;
  - c) Recognizing **‘better working time’** as a factor to improve productivity and reduce absenteeism;
  - d) **Clarifying the definition of ‘worker’** covered by the WTD, **limiting exclusions from the scope for higher and managerial staff** to genuine senior management positions, **tackling bogus self employment**, and considering to extend protection to own-account workers;
  - e) Calling on MS’s to **strengthen enforcement**, by investing in labour inspection and support social partner initiatives.
- 11) These issues are of particular relevance for the public sector (especially health care and social services, but also other front line services such as police and fire fighters), with an increasing female workforce and increased needs and demands for services supporting working families and the ageing population. Recruitment and retention, and ensuring public services as attractive workplaces delivering high quality services, are of key importance for the quality and sustainability of EU’s societies.
- 12) **Adaptable working hours throughout working life are an important precondition for a healthier working life**; this can contribute to achieving the objective of increasing the employment rate of older workers, which is only possible if workers are not exhausted by long working hours many years before the actual pension date. A “life course approach”, in which working time patterns are potentially regularly adapted to the worker’s needs, can lead to a win-win approach also from an employer’s perspective.
- 13) The economic crisis is giving a particular edge to the debate on working time and adaptability. With unemployment on the increase in many EU countries, the logical thing to do is to promote solutions which keep as many workers as possible in employment, **rather than putting pressure on some workers to make longer hours!**
- 14) Promoting healthy working hours is not just ‘the right thing to do’ in the interest of workers but can also serve as an effective competitiveness strategy. Work organisations and businesses can benefit through increased productivity, reduced rates of absenteeism and staff turnover, and improved motivation and morale of workers and more efficient use of time leading to better work performance. There is a strong business case for a win-win approach, in which there is a combined effort to put limitations to long working hours in the framework of offering more ‘adaptability’ to employers and workers.

- 15) The Commission must integrate all relevant research and evidence of the ILO, Dublin Foundation and others, in its upcoming social and economic impact assessment, and take it into account while drafting its proposals on the revision of the Working Time Directive. This impact assessment should be available **before** the second stage consultation of the EU social partners, to ensure that they can take an informed position on the proposals of the Commission.
  
- 16) **Any initiative to amend the Directive must put an end to the opt-out and find balanced and sustainable solutions for on-call working time which respect the ECJ jurisprudence.** ETUC and its member organisations will not support any proposals to weaken the current Directive. In such a situation, they will focus on better implementation and enforcement of the current Directive and jurisprudence, and raise awareness and mobilise at all relevant levels against the use of the opt-out and other bad working time arrangements in practice.
  
- 17) **The ETUC will not consider initiating a dialogue** with the European level employers' organisations on the review or revision of the WTD as long as the positions of the European social partners are too far apart to expect a fruitful exercise. In ETUC's view, the conditions are currently not there for addressing the matter in the social dialogue.

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