



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

## **NO! TO LONG HOURS AND WEAKENING OF WORKING TIME STANDARDS**

**Europe requires a modern organisation of work and working time meeting workers' needs in terms of:**

- **healthy working hours**
- **better work-life balance**
- **decent wages**

**A revision of the Working Time Directive?**

**Yes,**

**but only if the EU's fundamental principles are safeguarded**

**The European Trade Union Confederation (ETUC) opposes the June 2008 Council proposals for a revision of the Working Time Directive, as they do not safeguard these principles, and do not respect nor protect the rights and interests of workers and their families.**

This is why ETUC is calling for:

- the Council proposals for a revision of the Working Time Directive to be rejected as fundamentally unbalanced and harmful;
- the European Parliament, in its second reading, to play its important independent and democratic role in proposing essential changes that can be adopted by a convincing majority;
- the European Institutions to cooperate closely with the Parliament in the revision process to safeguard fundamental social rights in the EU and support the development of a sustainable Europe.

**Now it is high time for the European Parliament to take a firm position vis-à-vis the Commission and the Council, and to confirm its position taken in the first reading.**

**The Charter of Fundamental Rights guarantees all workers the right to limitation of their working hours and protection against the health and safety risks of long and irregular hours of work. *This provision is incompatible with individual opt-outs and other exclusions from working time protection.***

**The EU Treaties stipulate that social policies should be developed to improve the living and working conditions of European workers and citizens. *This provision is incompatible with proposals to weaken existing standards.***

**The regulation of working hours is fundamental to our society and lies at the heart of Social Europe. Safeguarding the health and safety of workers, as well as that of third parties such as doctors' patients or other participants in traffic, and allowing working people to raise their families is crucial to the interests of workers, societies and economies.**

### ***WHAT is it about?***

The June 2008 Council agreement contains three main proposals:

- keeping in place the individual 'opt-out', whereby employers can agree with individual workers not to apply maximum working hours;
- defining so-called inactive parts of on-call duty as not being working time, even when the worker has to be available in the workplace;
- extending the reference period for counting the average maximum working week of 48 hours from four to 12 months, without any proper safeguard provisions.

These proposals, far from improving the existing law, represent several **steps backwards**, undermining workers' protection and weakening trade unions' ability to bargain on their members' behalf. If adopted in final legislation, they would turn the Working Time Directive into a façade without any real content, and represent the first **regression** ever in European legislation in the social policy field.

**ETUC finds these proposals unacceptable and questions their legal validity, for the reasons outlined in this leaflet.**

**ETUC calls on the European Parliament to agree in its second reading only with changes that are in line with the true objectives of the directive:**

- **to safeguard the health and safety of workers;**
- **to support work–life balance;**
- **to promote social dialogue;**
- **to improve work organisation.**

## ***WHY is the directive being revised?***

The European Working Time Directive of 1993 is a very important achievement at EU level, establishing minimum health and safety requirements. It lays down minimum daily and weekly rest periods, annual leave, breaks, maximum weekly working time of 48 hours, night work, shift work and patterns of work. Its minimum requirements are binding for all Member States of the EU and prevent employers from getting a competitive advantage by putting pressure on workers to accept long and irregular working hours.

The current directive is already very flexible. It establishes a maximum 48-hour working week, but permits working time to be averaged out over four months, thus allowing working weeks of more than 48 hours to be compensated by shorter working weeks.

In addition, it incorporates two far-reaching derogations, allowing for almost unlimited extension of working hours:

1. The four-month reference period can already now be extended to one year, but only in specific cases, on the basis of collective bargaining.
2. Member States are allowed not to apply the maximum 48-hour limit at all, on the basis of voluntary agreements with individual workers: the so-called 'opt-out'.

The Commission was under a legal obligation to re-examine these two derogations within seven years of the directive's implementation in November 2003. Since then, and now in 2008 more than 15 years after its adoption, ETUC has been demanding a courageous move towards deleting the individual opt-out in particular, in line with the obligation to limit maximum working hours for all workers in the EU.

More recently, questions have arisen about the definition of working time, following rulings by the European Court of Justice (ECJ) that on-call time in the workplace is working time. Some Member States have refused to implement these judgements, and used them as a pretext for applying the opt-out, especially to doctors in hospitals and workers working on-call in other professions and sectors, such as fire fighters.

The European Parliament, in its first reading, adopted with a convincing majority balanced proposals on all these issues. The Council, however, did not take any of these proposals on board.

## ***WHAT IS WRONG with the Council proposals?***

### **Individual 'opt-out'**

Since 1993, the opt-out has been widely abused, particularly in the UK, with workers being pressured to sign away their legal rights whether or not they work more than 48 hours a week. This is not only to make them work long hours, but also to avoid having to keep records of their working hours. Far from making British industry more competitive, evidence suggests the long working hours culture has contributed to lower productivity and poor management. It has also contributed to continuing the traditional division of labour between men and women, with men doing long hours and women primarily in charge of family and care obligations. This stands in the way of a more equal share for women in employment and decision making, and for men in family life.

Furthermore, a growing number of Member States have recently been turning to the opt-out to get around working time restrictions, in areas such as health services.

#### **Council position:**

The opt-out will remain in place **without any end date**. Its implementation must be laid down in a collective agreement or other agreement between the social partners, but can also be envisaged in law after consultation of the social partners.

The individual agreement of the worker with the employer remains an obligation, but some new conditions are proposed with a view to diminish the possibilities for abuses:

- it cannot be signed at the time of the signature of an employment contract or within 4 weeks after that;
- for workers who have opted out of the 48 hours, a new maximum of 60 hours (calculated as an average over three months) or 65 hours for on-call workers will exist. However, these conditions will not apply to workers with seasonal or fixed-term contracts working for the same employer less than 10 weeks a year.
- Employers cannot make use of the opt-out and simultaneously introduce a reference period of 12 months.

#### **ETUC's view:**

ETUC is in favour of allowing flexibility in the **application** of working time regulations through collective bargaining. But the Council proposal, far from tightening restrictions on the use of the opt-out, could even widen its use. It would put pressure on trade unions to bargain away the 48-hour maximum working week, offer employers a lazy way out of negotiating more sustainable flexible working time arrangements, and may even offer an incentive to employers to refuse collective bargaining or trade union recognition.

The very introduction of a 60-hour or even 65-hour maximum working week would begin to make this working time limit look acceptable in the future!

**The ETUC, in line with the European Parliament in its first reading, insists that the directive must be revised to phase out the individual opt-out as soon as possible.**

### **On-call work**

Three important recent rulings by the ECJ in the SIMAP, Jaeger and Pfeiffer cases have confirmed that 'on-call working time' – when the employee must be available in the workplace – should be defined as **working time** under the terms of the directive.

In addition, compensatory rest time must be available **immediately** after the working period.

#### **Council position:**

On-call working time will be divided into 'active' and 'inactive' periods:

- **Only 'active' on-call duty** will be defined as working time, unless Member States or collective agreements rule otherwise.
- The inactive part of on-call time can even count as daily or weekly rest, when foreseen by law or collective agreement.

Compensatory rest must only be granted **within a reasonable period** to be defined by national law or a collective agreement or agreement concluded between the social partners.

#### **ETUC's view:**

The ECJ rulings are clear and binding, and cannot be put aside for economic reasons or to solve practical problems.

In the SIMAP case in 2000, the Court clearly stated, by referring to the link between on-call work and the health and safety objective of the Working Time Directive, that: "*To exclude duty on-call from working time if physical presence is required would seriously undermine that objective.*"

Excluding on-call duty in the workplace from working time could undermine existing collective agreements and have a far-reaching and disastrous impact on work organisation in many sectors. Any form of 'inactivity' – among waiters in restaurants, for example – could potentially be excluded from the working-hours rules. Such a move would make it even more difficult for workers with families to manage their time.

**ETUC has found no convincing evidence that Member States cannot implement the ECJ rulings.**

**It insists that the ECJ judgements must be respected and balanced solutions be found,**

**which promote solutions by collective bargaining and which guarantee workers the right to adequate rest periods, especially after long and irregular hours and shift work.**

**The Cercas report, going back to the proposals of the EP in first reading, contains such balanced solutions.**

### **Reference periods**

The existing maximum reference period for calculating the average maximum working week of 48 hours is four months. It can be extended up to 12 months, but only through collective agreement.

#### **Council position:**

Member States would be free to allow for a 12-month reference period under the following two conditions:

- collective bargaining;
- by law, following consultation of the social partners, while respecting the obligations of the Health and Safety Directive 89/391/EEC to consult their workers in specific cases.

#### **ETUC's view**

The 48-hour working week is only a meaningful limitation of working time, if the reference period is not too long. The current situation, in which long reference periods are only allowed on the basis of collective bargaining, ensures a situation of 'negotiated flexibility' in which the interests of workers and their families have been taken into account.

The European Parliament in its first reading was only ready to compromise on this provision in exchange for the end of the opt-out. It demanded stronger safeguards for the introduction of a 12-month reference period, notably the consultation of workers and their representatives, and taking measures to prevent and/or remedy any health and safety risks.

#### The Council proposal

- ignores the EP's conditions and only refers to the obligation in the Health and Safety Directive to consult workers and their representatives when the employer considers that the new working time pattern is affecting **substantially** the health and safety of workers. We can expect that in most cases employers will consider that there is no substantial impact.
- is likely to bring about unilaterally imposed longer, more irregular and unpredictable working hours for many workers, without the protection of collective bargaining or any other safeguard. They could be required to work anything up to 78 (and in some cases even 85!) hours a week over periods of weeks or even months, without proper rest. This could have a serious impact on their health and safety, and once again undermine any expectation of reconciling work and family life, for men and women alike.

**ETUC demands that the existing four-month reference period remains in place and that longer reference periods, up to 12 months, should be allowed only on the conditions provided by the European Parliament in its first reading. However, this major increase in flexibility can only be accepted if the opt-out is deleted, and other safeguards in the Working Time Directive with regard to on-call work and the reconciliation of work and family life are put in place.**

### **Reconciliation of work, private and family life**

Over recent decades European societies have changed radically, with more women entering the labour market, an ageing population, and falling birth rates. To enable male and female workers to take up the responsibilities of raising children and caring for elderly family members, while increasing participation on the labour market, Europe needs to modernise working time organisation, so as to provide flexibility to both workers and companies within a framework of security and social dialogue. A step backwards towards longer and more irregular and unpredictable working hours is not going to help the EU meet its economic and social targets.

Therefore, the revision of the Working Time Directive must also be used as an opportunity to introduce provisions that oblige employers to accommodate a work-life balance for male and female workers.

The EP in its first reading, with the strong support of the ETUC, had proposed to introduce two rights for workers which should take into account their needs for flexibility as well as allow them to organise their private life and their work adequately:

- employers should **inform workers well in advance of any change** in their working time pattern;
- workers should have the **right to request a change to their hours** of work and employers should be obliged to consider such requests fairly and only refuse with strong motivations.

#### **Council position:**

The Council weakens the proposals of the EP considerably, by only obliging the employer to inform the worker **in due time** about **substantial** changes in their working time pattern, and only **encouraging** employers to examine requests for changes in their working hours.

#### **ETUC's view:**

**The current pressure on workers to accept more flexibility in their working hours must be matched by 'flexibility rights' for workers, as proposed by the European Parliament in its first reading.**

This is all the more necessary when the revision of the Working Time Directive will be implemented in Member States, and new provisions in the directive, for instance with regard to on-call work and annualisation of working hours, will allow for more irregular and unpredictable working hours. The Council's weak proposals in this regard are insufficient.

### **Exclusion of managerial and autonomous workers**

All workers have a right to limitation of their working hours. Therefore, general exclusions from working time protection should be avoided.

The directive currently contains in Article 17.1 the possibility of excluding from the 48-hour working week specific groups of workers in cases in which the duration of the working time is not measured or can be determined by the workers themselves, such as managers and other persons with autonomous decision-making powers.

ETUC has demanded that this provision be limited to only those workers which are in such high positions that they normally decide on other workers' working time and are themselves not subject to others deciding on their working time pattern.

The European Parliament in its first reading agreed **to limit the scope of this Article by giving it a more precise definition**, only covering chief executives, senior managers who are direct subordinates to them and persons directly appointed by the board of directors.

Neither the Commission nor the Council has taken over this proposal. The European Parliament in its second reading should therefore bring this issue back on the table.

### ***What Europe needs now and in the future***

Current choices regarding the organisation of working time will decide the opportunities of future generations.

**Going back** to long and unhealthy working hours and a traditional division of labour between women and men will hinder fully fledged participation of women in the labour market and negatively influence the choice of young parents to combine labour market participation with raising families. This will have a damaging influence on economic growth and productivity.

**Going forward** to a limitation of working hours will promote modern working time arrangements that provide flexibility to both workers and companies, thereby contributing to economic sustainability.

**This is why the European Parliament should adopt the Cercas report in second reading with a convincing majority.**