

Working Time

Negotiations 2011-2012

Main employer proposals:

- definition of working time to cover 'on-call time' with distinction between active and inactive working time, with only the active part of on-call being counted as working time;
- Annual leave: include a minimum period of work to qualify for paid leave related to court rulings on leave and sickness
- Reference period: extend to 12 months by means of national legislation, administrative provisions and not just collective agreements.
- Compensatory rest to be taken 'within a reasonable period' to be determined by national legislation, collective agreement or agreement concluded between the social partners.

Working Time Commission studies 2014

Three studies

- implementation study aimed at all Member State governments

Plus two specially commissioned studies:

- one cross-sector covering industry, hotel and restaurant services as well as the gas, water and electricity distribution and, in part, production, covering 10 countries: United Kingdom, Sweden, Poland, the Netherlands, Italy, Hungary, France, Spain, Germany and the Czech Republic.
- one study of the 24/7 public health sector covering eight countries – Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy and UK

Working Time Commission studies 2014

Research to assess:

- “The economic impacts of various possible changes to EU working time rules, including the assessment of administrative and regulatory costs and burdens and, a review of evidence and analysis of the broader economic impact of the working time organisation, and
- The economic/financial/organizational implications for public health/care services of various possible changes to EU working time rules.”

Working Time RE-FIT

Communication (2013) 685 of 2 October 2013 on Regulatory Fitness and Performance (REFIT)

- “at the forefront of REFIT is the action to reduce regulatory burdens on small and medium-sized enterprises..., the most burdensome EU legislation identified, amongst others, is health and safety.
- The entire acquis on occupational health and safety (directive 89/391/EEC and its 23 related directives) is currently submitted to a full evaluation which will include specific consultations of social partners...The conclusion of this expert evaluation will be made available before the end of 2015.”

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Legislative process 2003-2009

- Following consultation in 2003, Commission adopted a legislative proposal in 2004, amended in 2005.
- But political agreement only by qualified majority in Council in June 2008 to further amended version
- European Parliament agreed substantial amendments to this in December 2008 but these were rejected by Council in second reading in February-March 2009.
- Deadlock in the Conciliation Committee involving both Parliament and Council

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European Parliament – Cercas Report

European Parliament amendments:

- Phase out opt-out in 3 years, limit validity to 6 months not 1 year, no opt-out during probation
- All on-call time as working time except by collective agreement or other social partner agreement when could be calculated differently
- 48-hour limit applies to all worker's contracts
- Right to information before changes in hours
- Limit definition of autonomous workers to chief executives and those directly below
- Compensatory rest as soon as possible after time on duty

Working Time Implementation

- European Commission failed to formally publish implementation report in 2008 and clear that it failed to or was slow to take action against countries that had not implemented Directive fully and properly
- Question as to full implementation of Directive as regards public sector
- Also failure to ensure that Member States took on board the ECJ rulings on on-call time (SIMAP, Jaeger, Dellas)

	Introduction of individual opt-out
1993	UK (general)
2002	France (public health)
2003	Germany (public health, police, fire) Spain (public health)
2004	Malta, Cyprus, Estonia (general) Hungary (health, standby in private sector) Slovenia (health) Latvia (health) Netherlands (health, fire)
2007	Bulgaria (general) Poland (doctors and health professionals) Slovakia (health)
2008	Czech Republic (health) – abolished January 2014 Germany (federal civil servants)
2011	Belgium (health professionals)

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2010-2011 Commission review

First phase 2010 – Commission emphasis on changing working patterns and need for innovative proposals – “long-term vision for the organisation of working time in a modern setting”

Further stress on competitiveness – pushing it up as priority issue alongside health and safety:

“For the Commission it is therefore vital that a new balance be found between protecting workers’ health and safety across the EU and affording sufficient flexibility to businesses and workers in the organisation of working time to ensure productivity and competitiveness.”

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2010-11 consultation

On-call time at work

- The Commission abandoned the idea of dividing on-call time at work between “active” and “inactive” periods but puts forward the possibility of calculating on-call time only as a proportion of full working time.
- This would contradict the European Court of Justice’s ruling in the Dellas case which said that on-call time at work should be counted hour-for-hour as working time

Compensatory rest

- The Commission highlights problem of missed daily rest periods and the Jaeger ruling that compensatory rest should be taken immediately at the end of the extended work period. But no concrete proposal put forward.

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2010-11 consultation

Opt-out

- Commission argues that the spread of the opt-out to 16 countries means that it is not “realistic” to abolish the opt-out without measures to tackle on-call time and that “no agreement appears possible” on abolition.
- The 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 Commission proposes more effective monitoring and periodic evaluation.

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2010-11 consultation

Increased flexibility in reference periods

- 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.

Commission proposals included:

- a reference period longer than 12 months (after agreement with social partners) and
- reference periods of up to 12 months implemented through national legislation and not just collective bargaining.

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2010-11 consultation

Rights to be informed and measures on work-life balance

- Commission proposed including encouragement to social partners to negotiate agreements on work-life balance, requirements on employers to inform workers in advance on changes to working time and rights for individual workers to ask for more flexibility working hours with employer providing written explanation for refusal

Clarification of definition of autonomous workers

- Acknowledges problems and suggests clearer definition so that it applies only to senior managers in public and private sectors and to those with autonomy over working time

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2010-11 consultation

Clarification that directive applies to workers not contracts

- Commission proposed clarifying that working time limits apply to workers and all their concurrent contracts.

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 the Commission proposing to allow Member States to set ceilings to how much is accumulated – thereby contradicting European Court rulings on this issue – *this issue appears not have been addressed in the current studies*

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New issues for 2014

Standby time

- Studies are asking how standby time at home is treated and whether it should be taken into account by the Directive

Interrupting daily rest periods

- Studies also ask for reaction to idea that daily rest period could be interrupted