



POSITION PAPER

concerning the first-phase consultation of the social partners at European Union level under Article 154 of the TFEU

reviewing Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time

25 May 2010

Summary

- After years of unsuccessful debates, time has come to overcome the old frontlines and develop innovative solutions which satisfy the primary goal of the Working Time Directive (protection of workers' health and safety) and at the same time avoid putting obstacles to flexible working time models that account for the individual requirements of both the company and the employee.
- It is necessary to review the Working Time Directive. However, the regulatory provisions should be restricted to the protection of health as its key objective. Overburdening the new Directive with issues would not only render political debate unnecessarily complicated and make it difficult to reach an agreement – it would also bear the risk of introducing new, bureaucratic burdens.
- Use of the opt-out should not become regular practice in employment relationships, however, the possibility of deviating from a weekly maximum working time that has been fixed as a standard throughout Europe, and for all sectors and employment relationships must remain possible in justified cases – in the interest of both employers and employees. The generalized, undifferentiated demand to abolish the opt-out does not come up to the world of labour in the 21st century.
- A review of the Working Time Directive must respect the existing on-call time models that have historically grown in the individual countries and sectors, and must not interfere with their operation. It must also be borne in mind that the kind and intensity of workloads accompanying on-call time vary considerably depending on the occupational groups, therefore, a one-size-fits-all solution for on-call time issues is not an option.
- The social partners play a decisive role in the framework of minimum standards with EU-wide, uniform applicability. At the level of Member States, national sectors and enterprises, they are the ones that are optimally capable of judging the needs of health protection at the individual workplaces, and of assessing possible provisions to safeguard it. For this reason, the Directive must leave sufficient scope for the independent, tailor-made design of rules.

General notes concerning the consultation document of the Commission

By presenting a consultation document, the Commission initiated not only the official consultation of the European social partners. It has also defined an initial political focus that will leave its mark on the further debate. The paper analyses current trends in working time development, summarizes the first legislative procedure aimed at a review of the Directive, which was initiated in 2004 and failed in April 2009, and outlines the key problems associated with the application of the Directive.

The character of the consultation document as a factual analysis is as appropriate as its **dynamic perspective**: The world of labour in general, and working time in particular, are correctly considered as being permanently undergoing change (e.g. the growing number of “knowledge workers” whose work is not assessed according to hours worked, but rather by the originality and quality of the results achieved), and “flexibility” is accordingly identified and used as the key concept.

However, the Commission sometimes derives **incorrect conclusions** from its generally correct review. The protection of workers’ health and safety is referred to as the “primary goal of any working time regulation”. However, the paper also states that “other goals should be considered” as well – thus threatening to reduce its own arguments focusing on the core objective to absurdity. Although it is highly desirable to attain the goal of improving the balance between work and family life it cannot be properly addressed by a set of regulations designed to fix minimum standards for the protection of workers’ health and safety in 27 Member States of the European Union. The other two goals pursued by the Commission through the review of the Working Time Directive (flexibility for companies and employees, and limitation of administrative burdens) are worth supporting as such. However, their explicit mention or even regulatory activities in this area are superfluous if the review of the Directive is consistently restricted to its core objective of defining pan-European minimum standards for the protection of health and safety, while leaving enough scope for the social partners at the national level, sector level, and company level.

The following principle applies: **The further the envisaged legislative process deviates from the key objective of protecting workers’ health and safety, the more difficult will it become to achieve consensus** both in the Council of Ministers and between the Council of Ministers and the European Parliament. The failure of the last review attempt after five years of discussion should call for caution.

Introduction

For many years, the review of the Working Time Directive has been an issue of European social policy. In 2004, the Commission put forward a proposal to amend Directive 2003/88/EC in order to address a number of unsolved problems which mainly resulted from the applicable legislative provisions and the jurisdiction of the ECJ. As many as four years later, the Member States were able to agree on a compromise in the Council of Ministers in June 2008, which solved the main controversial issues of on-call time and opt-out. However, after the second reading and several months of marathon negotiations between representatives of the Council and the European Parliament, both sides concluded in April 2009 that the conciliation process had failed.

Key concerns of the European chemical employers

Workers' health and safety are at the core of European labour legislation. This **primary goal**, and thus the scope of the Working Time Directive, should not be touched. Although the Commission's diagnosis concerning fundamental change in the world of labour is absolutely correct, it would be totally wrong to conclude that the transition from the fordist age to "liquid modernity" had to be accompanied by additional, uniform working time standards applicable throughout the EU. Flexibilization of the living and working conditions requires a high degree of flexibility in working time schemes – and thus scope of action for the social partners, companies and employees rather than a new corset of rules.

This approach of the European chemical employers (to restrict the scope of the Directive to aspects of the protection of workers' health and safety) suggests a **differentiated view** (according to individual occupational groups): A uniform framework applicable throughout the EU should set joint standards that guarantee high-quality health protection to every single employee covered by the scope of the Directive. At the same time, however, this set of rules should contain **elements of flexibility** that come up to the specific situation in individual sectors and companies.

1. The primary, high-priority element of flexibility in the Working Time Directive is the so-called **opt-out**. The possibility of deviating from standard weekly maximum working hours that have been fixed for all segments and employment relationships throughout Europe should not become the rule in Europe. However, the justified flexibility requirements of companies and employees under special circumstances must not be generally barred, either, by prohibiting opt-out on principle. Any opt-out scheme should be practical and must not be subject to exaggerated bureaucratic requirements. According to the principle of subsidiarity, it should lie in the hands of the social partners.
2. As a second instrument of flexibility, the Working Time Directive must enable the continued application of proven on-call time models which are appreciated by the employees and companies alike and do not pose an obstacle to health protection whatsoever. For this purpose, it is necessary to introduce an instrument that provides for the **differentiation of different forms of on-call time**. A review of the Working Time Directive

should make a distinction between different forms of on-call times (e.g. by providing for a weighting of “inactive” times – which would have to be made by the social partners). The relevant social partners should be afforded the greatest possible scope for finding tailor-made, balanced solutions.

3. In general, the **social partners** must remain in control of the working time structures. They are the ones that best know the working conditions in their companies, sectors and Member States (where working time traditions and regulations differ, as is well known, widely). Maintaining and promoting their autonomy should be a primary goal – the third element of flexibility – in the review of the Directive. Thus, it can also be optimally ensured that the specific design of the general European framework of minimum standards is developed by those who are most familiar with the different situations in the individual countries, sectors, and activities. This is the only way of making sure that a revised European Working Time Directive comes up to modern working (time) schemes.

In addition, the **reference period for averaging the weekly maximum working time** should be extended. Especially the volatile economic development since 2008 has shown that flexibility is a must in order to respond to varying workloads. With respect to the **definition of rest times**, the chemical employers firmly reject any additional regulations. Rest times can be purposefully defined with respect to the specific needs of the relevant application area only. The social partners account for the requirement of health and safety. They are the only ones capable of making proper assessments based on the specific local situation.

A **review of the Working Time Directive** is **necessary** and desirable from the point of view of the European chemical employers. However, a review of the current provisions should **focus on the obvious and well-known problem areas** (mainly opt-out and on-call time). We are opposed to a total revision of the Working Time Directive. Where the Member States and European institutions have not been able to agree on a reform of limited controversial issues for a number of years, it seems almost unconceivable to overcome the large number of lines of conflict that would result from a complete revision of the European working time rules. The previous, yet still prevailing differences in political positions make an **agreement among the interprofessional European social partners concerning a review of the Directive by way of negotiations appear very difficult**. However, we would welcome any attempts for this purpose. Nevertheless, we are convinced that the social partners should play a decisive role in the reform of the working time rules in Europe. If the review of the Directive consistently restricts itself to a definition of EU minimum standards, the modernized framework can be filled with life by the **social partners at the various levels** – after all, they are the ones that **the most competent in the assessment of recent developments in working time arrangements**.

