

Brussels, 5 January 2004

## **Frequently asked questions about Working Time**

The Commission has published its analysis of two aspects of the current working time directive, and at the same time launched a consultation on a future revision.

### **What is the Working Time Directive?**

Directive 93/104/EC lays down provisions for a maximum 48 hour working week (including overtime), rest periods and breaks and a minimum of four weeks paid leave per year, to protect workers from adverse health and safety risks. It applies to all sectors of activity, both public and private. A number of areas, such as air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and doctors in training, which were exempt from the 1993 Directive, were brought within its scope in an amendment agreed in 2000. The measures to implement these new categories were to have been put in place in Member States by 1 August 2003 (1 August 2004 for doctors in training).

There remain a number of categories of worker who are excluded from the Directive:

- Managing executives or other persons with autonomous decision-making powers
- Family workers
- Workers officiating at religious ceremonies in churches and religious communities.

### **Why does fixing a ceiling on working time protect workers?**

The link between long working hours and health and safety is well-established. Research has shown that work-related fatigue increases with the number of hours worked. Fatigue and loss of concentration cannot be avoided after a certain period of time and the risk of industrial accidents increases during the final hours of work.

### **How is the 48 hour maximum calculated?**

The ceiling of 48 hours worked per week is not calculated on a weekly basis, but over a reference period of at least four months. This ensures that enterprises can organise the working time of their employees to respond best to their economic activities. The directive also allows for the reference period to be extended to 6 months in certain specific cases, such as patterns of shift work, security or surveillance work, or where the workers' home and place of work are distant from one another. Furthermore, collective agreements can be concluded on a sectoral basis to extend the reference period to one year.

## **How is working time defined?**

The 1993 Directive defines working time as “any period during which the worker is working, at the employer’s disposal and carrying out his activities or duties, in accordance with national laws and/or practice”. A rest period is defined as “any period which is not working time”. The directive does not allow for any interim category.

In 2003, the European Court of Justice (ECJ) was asked on two occasions to rule on cases which involved the definition of working time. Both cases turned on whether time spent on call constituted working time, and both concerned the health care sector, the SIMAP case in primary health care and the Jaeger case in hospitals. In both cases the ECJ ruled that time spent on call should be regarded as working time.

## **What is the impact of the ECJ rulings on on-call time?**

Member States differed in how they put the definition of working time into national legislation. Some left such a definition to collective agreements between employers and workers. Some defined categories beyond the two in the Directive, which generally excluded time on call from the definition of working time.

The judgements will affect the health care sector most heavily, though not exclusively. An impact assessment still has to be carried out at national and Community level, but some preliminary estimations were given during the two court cases:

- The German Government said that staffing requirements would increase by 24%, requiring the employment of between 15000 and 27000 additional doctors and costing €1.75 billion.
- UK indicated that it would be necessary to recruit between 6250 and 12550 doctors and 1250 staff other than doctors, at a cost of £380-£780 million (€540-1100 million)
- Netherlands estimated that it would need 10000 new care staff, at a cost of €400 million.

The implications are not just budgetary – all these Member States agreed that there was a lack of candidates with the necessary training to fill such positions.

## **What is the opt-out?**

Article 18 of the 1993 Directive allows Member States not to apply the maximum working week of 48 hours if a number of conditions are complied with. It was negotiated by the UK during the process of adoption of the 1993 Directive. The opt-out is not specific to the UK, but the UK remains the only country to make widespread use of its provisions.

The conditions for the opt-out are:

- The worker must agree to work more than 48 hours a week
- No worker should be disadvantaged by deciding not to opt-out.
- The employer must keep up to date records of all workers who carry out such work
- These records must be made available to the competent authorities, who can restrict working hours above the maximum for health and safety reasons.

## What is the situation regarding working time in the UK?

The main characteristics of the system governing working time in the UK have not really changed since the Directive was introduced, largely due to the opt-out.

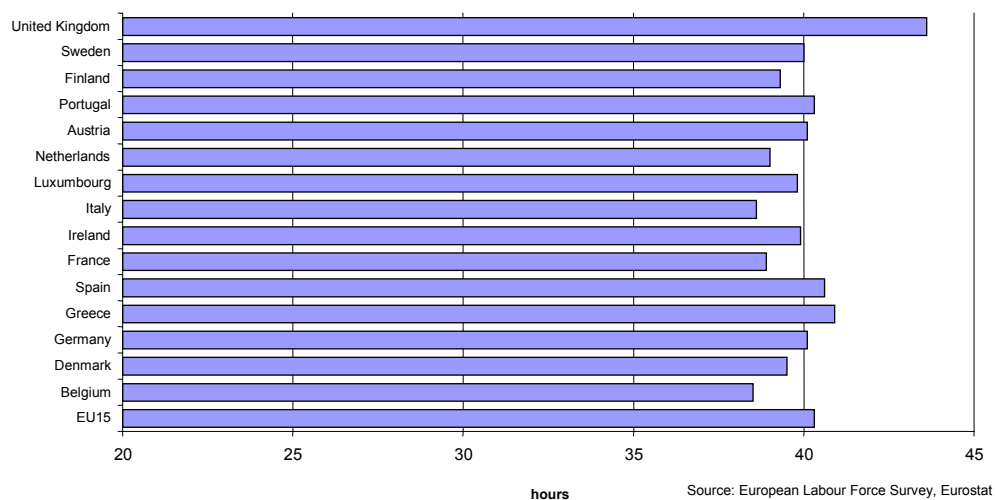
Latest figures show that about 16% of the workforce currently works more than 48 hours per week, compared with a figure of 15% at the beginning of the 1990s. About 8% of the workforce say they work over 55 hours per week, 3.2% over 60 hours per week and 1% over 70 hours per week. The UK is the only Member State where weekly working time has increased over the last decade.

Many (approximately 46%) of those that say they work over 48 hours are in managerial positions and are covered by the exemption relating to managers.

Therefore the number of workers that actually require an opt-out is quite limited.

TABLE 1

**Usual number of hours worked per week, 2000**  
Full time employees, men and women



## How is the opt-out implemented in the UK?

Although approximately 16% of workers are thought to work more than 48 hours per week, the number that have signed an opt-out agreement is considerably higher. There are no reliable statistics, but the consensus is that many more people have opted-out than strictly need to. A survey of UK employers carried out by the Employment Lawyers Association in collaboration with Personnel Today showed that 65% of the 759 companies that replied had asked their employees to sign an opt-out. In 61% of those companies, over half the workers had signed. In 28% of companies, all workers had signed an opt-out. A CBI survey showed that 33% of UK workers - that is, twice as many as say they work more than 48 hours - have signed an opt-out agreement.

## **What are the Commission's concerns about the implementation of the opt-out in the UK?**

Legislation and practice do not appear to offer all the guarantees required by the Directive. There is a generalisation in the presentation of the opt-out agreement when the work contract is signed, a practice which *de facto* undermines the freedom of choice of the worker. There are also concerns about the procedure put in place to keep records. It is clear that the intention of the Directive is to keep a record of hours actually worked, but the national legislation requires only that the opt-out agreement itself is kept. Indeed, the anomalous situation could arise that more complete records are kept of those workers that have not opted out than of those that have, while the latter are arguable more in need of the protection that such records afford.

## **Do other Member States use the opt-out?**

Following the recent ECJ rulings relating to on-call time, some Member States have seen the opt-out as a way of alleviating the problems caused by the judgements. France has amended its decrees relating to hospitals and public health care establishments, allowing workers there to work beyond their usual weekly duties, in return for time off in lieu, or compensation.

Germany, Netherlands and Spain are drawing up legislation to incorporate the opt-out in the health sector.

Luxembourg uses the opt-out for its hotel and catering sector, with reference periods that are much shorter than those set out in the Directive. The aim is to allow the hotel and catering sector to be responsive to seasonal fluctuations.

Of the future Member States, Malta and Cyprus has already put the opt-out into their national measures. Slovenia applies it to doctors. Estonia, Hungary, Latvia and Lithuania have indicated that they could make use of this provision to avoid the problems arising from the ECJ rulings.

## **Why is the Commission proposing a revision of the Directive?**

The Commission was required under the 1993 Directive to prepare a report on the implementation of the opt-out and the reference periods by the end of 2003. Given the implications of the ECJ rulings in 2003 it was decided to include these aspects in the report. The Commission has not made specific proposals as to how the Directive could be amended, but is asking the views of all those with an interest as to whether they identify a need to amend the existing legislation to address the issues raised in the Commission's report:

- The length of reference periods used for calculating working time;
- The definition of working time, following the ECJ rulings
- The application of the opt-out.
- How to use the Directive not only for the protection of workers' health and safety, but as a tool for the reconciliation of work and family life.

**What are the terms of the consultation?**

The Communication is addressed to the European parliament, Council of Ministers, Economic and Social Committee and Committee of the Regions.

It is also intended as the first stage of the consultation of workers and employers as provided for in the Treaty prior to any legislative action in this field.

The document will also be available on the Commission's website

[http://europa.eu.int/comm/employment\\_social/consultation\\_en.html](http://europa.eu.int/comm/employment_social/consultation_en.html).

All interested organisations can send their comments and suggestions by e-mail to

[empl-labour-law@cec.eu.int](mailto:empl-labour-law@cec.eu.int).

Deadline for comments is 31 March 2004.