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Sweden's plans for revision of working-time rules in jeopardy

By Jim Brunsten

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Member states split over re-opening of talks. On-call time and opt-outs are points of contention.

The Swedish government's hopes of making progress, while it holds the EU presidency, on revising the rules on working time have been thrown into jeopardy by calls from other member states for a period of reflection before the issue is re-opened.

Negotiations between the European Parliament and member states on revising the existing rules broke down earlier this year after five years of attempts.

The European Commission must present a fresh legal proposal before discussions between the two sides can restart.

Labour ministers held an informal discussion earlier this month on how the matter should be taken forward. Germany led a group of countries saying that no quick attempt should be made to re-open the issue, arguing that it would be time-consuming and with only a limited chance of success.

A source said the German government had informed the Commission that it would not welcome a proposal within the next two years.

But the Swedish government, with support from Denmark, Finland and Austria, has called for a re-opening of the revision process as soon as possible, because it believes rulings from the European Court of Justice (ECJ) have made the current situation untenable.

Healthcare opt-outs

The Commission launched a previous attempt at revision in 2004, partly in

response to rulings from the ECJ in 2000 and 2003 that the time that doctors spend 'on call' (ie, when they are required to be available in case of need) should be counted as part of the EU's 48-hour maximum working week.

The judgments led to a large increase in the number of governments applying opt-outs from the 48-hour rule.

A total of 15 member states currently apply opt-outs. Many are specific to employment in healthcare, but the UK, Malta, Estonia, Cyprus and Bulgaria apply opt-outs across their entire economies. Croatia, whose application to join the EU has stalled over a border dispute with Slovenia, has indicated that it would apply a general opt-out as an EU member.

Sweden is among the 12 countries that still do not apply opt-outs and would, in common with Denmark and Finland, face particular difficulties introducing them because of the nature of its national labour laws.

The Commission's attempts at a revision failed, however, largely because MEPs and member states could not agree about what to do about on-call time and opt-outs, with Parliament seeking a strict adherence to the 48-hour week.

An EU official said: "One of the options being considered is to go back to square one and properly understand what the impact of the directive is – what are its costs and benefits."

Infringement cases

The European Trade Union Confederation earlier this month called for the Commission to pursue infringement cases against member states that are not in adherence with the current working-time rules.

It said in a statement that the Commission "should fulfil its responsibility, as guardian of the treaties, and ... ensure the full implementation of the existing legislative texts".

Vladimír Špidla, the European commissioner for employment and social affairs, has said, however, that the Commission will give member states time, following the collapse of negotiations with the Parliament, to bring their national practices into line with the current working-time legislation.

One likely upshot is that more member states will start to apply opt-outs, because it is the simplest way to avoid being challenged over on-call time.

The Commission believes that many member states are not complying with rules on compensatory rest for people who work overtime, which was also affected by the 2003 court judgment.