



## CPME 2010/028

### TITLE / TITRE

**CPME-Statement to Communication from the Commission concerning possible action at Community level regarding any revision of Directive 2003/88/EC (The Working Time Directive) COM 2010 106 final**

### AUTHOR / AUTEUR

Dr Montgomery

### CONCERNING / CONCERNE

All delegates

### PURPOSE / OBJET

**Discussion**

### DATE

30/03/2010

### KEYWORDS / MOTS CLEFS

Working Time

**CPME-Statement to Communication from the Commission concerning possible action at Community level regarding any revision of Directive 2003/88/EC (The Working Time Directive) COM 2010 106 final**

*“Man shall not put new wine into old bottles. The bottles break and the wine runs out”  
Matthew Chapter 9, Vers 17*

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CPME reconfirms its statements and political documents on the issue of an amendment of the EWTD ([CPME 2008/141 FINAL](#) ; [CPME 2008/155 FINAL](#)). CPME believes that is vital in the interest of the healthcare workforce and their patients to maintain high standards of protection from long working hours and deprivating working conditions. CPME therefore strongly endorses the wording of the Commission communication: *The protection of workers' health and safety must continue to be seen as **the** primary goal of any working time regulation, since the legal basis for the Directive is Article 153(1a) 'improvement of the working environment to protect workers' health and safety'.*

Other goals as they are mentioned in the Communication, such as flexibility of businesses or 'competitive cost advantages for businesses created through making production times more flexible' are definitely subsidiary to the primary goal of the Directive and should therefore be discussed very carefully and primarily under the light of workers protection and not business perfection.

We urge the Commission to analyze and publish the Implementation report to which many social partner contributed in 2007 before making new analytical rounds of communication or new proposals. The existing material of information and communication should be analyzed first before new information on the same subject is gathered from the same partners.

Furthermore we reaffirm our position that the "individual opt-out" derogation as laid down in the present EWTD should be abolished or amended to allow a limited opt-out with a firm ceiling and no further derogations from the full protective scope of the EWTD should be permitted.

CPME is strongly opposed to any change of the definitions of "working time" and "rest period". The introduction of new definitions of working time as proposed by the intention to introduce different definitions during "on-call-periods" has repeatedly been opposed by us. This would pervert the issue of the EWTD which is protection of the workforce into the opposite as it would open employers' possibilities to demand very long working hours in the combination of work and "on-call-periods" from doctors and nurses.

CPME was therefore overall content that all attempts to amend the EWTD were defeated by the EU Parliament.

**Questions and Answers:**

- (a) How could we develop balanced and innovative proposals regarding the organisation of working time that move beyond the unsuccessful debates of the last conciliation process? What is your long-term vision for the organisation of working time in a modern setting?

Under the concept of “diagnosis before treatment” we urge the Commission to analyse the existing material on the conflicting issues of ‘protection’ and ‘flexibility’ before starting further Communication processes. There is no further need for communication and discussion. In the context of workers’ protection and the EWTD everything has been said already. The facts are known. The refusal of the European Parliament to follow the flexibility-lines of the Commission and the final defeat of the last Commission proposal have to be considered under this light.

- (b) What impact do you think that changes in working patterns and practices have had on the application of the Directive? Have any particular provisions become obsolete, or more difficult to apply?

In the health care sector the EWTD has had substantial impact on the improvement of working conditions. Many of the reported problems (SIMAP-Jaeger-Dellas cases) arise rather from an insufficient or inappropriate implementation of the Directive into national law by the Member States. In these cases Individuals had to seek the support of the ECJ and received it. It is natural that enhancing workers’ rights leads to reactions of employers and a cry for more flexibility. However – the exploitation of flexibility was the spurring impulse for the Commission to formulate and pass the EWTD in 1990 - 1993. Therefore the ECJ rulings should be seen as a positive endorsement of the original position of the Commission in passing the EWTD and not as an impulse to change it.

However there is a clear indication that the ‘opt out’ derogation is a severe problem for workers in many Member States and would therefore be supported by CPME. In the light of the fundamental political problem which were encountered during the discussion of this proposal in the past, we see however little chance for such a proposal.

- (c) What is your experience to date on the overall functioning of the Working Time Directive? What has been your experience regarding the key issues identified in section 5 of this paper?

As said before the EWTD has indeed improved the situation – although in many countries we are far from optimal working conditions. The individual ‘opt-out’ is seen as an instrument to bypass workers protection and it is exploited massively in many Member States. On the other hand the definition of “working time” and “rest period” have proven successful in bringing down overall working times and in promoting a better reconciliation of private-life and work-life.

(d) Do you agree with the analysis contained in this paper as regards the organisation and the regulation of working time in the EU? Are there any further issues which you consider should be added?

The Commission analysis of the key issues gives a correct overview of the discussion and the concerns as they are formulated by the Member States and the EU institutions. It is however rather one-sided in an attempt to overemphasize problems and support the employers' views on enhanced flexibility. Therefore the question needs to be asked, whether this discussion should be continued. CPME sees the main motive being the desire to reduce workforce protection and the protection level under the pretext of "flexibility" in order to alleviate the employers' position. It therefore turns the scope of the EWTD from a protective one to an economic one. This will be strongly opposed by CPME

(e) Do you consider that the Commission should launch an initiative to amend the Directive? If so, do you agree with the objectives of a review as set out in this paper? What do you consider should be its scope?

No. Apart from the abolition or amendment of the 'opt out' derogation we do not see the necessity of amendments. The Commission should rather enforce the implementation of the existing EWTD.

(f) Do you think that, apart from legislative measures, other action at European Union level would merit consideration? If so, what form of action should be taken, and on which issues?

The EWTD was formulated in a Europe of 15 countries. With now 27 members not all of the new Member States comply fully with the rules. The Commission should therefore consider a process of bringing these countries up to standard through means of information, assistance and persuasion. CPME is not convinced that the prosecution of Member States before the ECJ is a positive solution to a political problem.

(g) Do you wish to consider initiating a dialogue under Article 155 TFEU on any of the issues identified in this consultation? If so, on which ones?

No, not at the present time. But if it came to a dialogue under Art. 155 we would however insist on taking part in it.