



CPME 2010/037 EN

TITLE / TITRE

Compilation of NMA responses to

CPME- Draft 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 - [CPME 2010/028](#)

AUTHOR / AUTEUR

NMAs

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Discussion

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Compilation of NMA responses to
CPME Draft Statement [CPME 2010/028](#) to the 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

▪ **Malta (submitted via CPME members' forum; 31 March 2010)**

This sounds like our usual "entrenched position" and discourages the commission to come up with any new proposal - overall it sounds rather negative. The paper by the commission does not really go into the analysis that the "one size fits all" concept has failed. In my opinion a limitation of the opt-out is preferable to its elimination - however this could go to national law or collective bargaining. Otherwise - Dr. Montgomery's draft is quite well written and coherent

thanks

Martin Balzan

Malta

▪ **Hungary (submitted via CPME members' forum, 1 April 2010)**

We agree on the propositions Dr. Montgomery suggests. We stay to the CPME position. Unfortunately Hungary the Directive is not realized!

Dr. Podmaniczky

▪ **United Kingdom (submitted via CPME members' forum, 1 April 2010)**

The British Medical Association agrees with the comments made by Malta - it is a shame that the CPME have proposed such a 'closed' response to the Commission's questions. This is an ideal opportunity for both CPME and the Commission to engage in some free thinking and maybe come up with some general principles about working time, especially regarding part (a).

The BMA agrees that the EWTD is essential health and safety legislation that is necessary for both doctors and patients. Better rested doctors provide better patient care and the ability of doctors to learn is vastly improved when they are well rested. The BMA also agrees with the long-standing CPME position regarding the classification of on-call time and compensatory rest.

However, the BMA believes that the opt-out should be retained for those workers who have individual control of their own working hours. Where individual opt-outs are available, the maximum weekly limit of 60/65 hours should apply. Furthermore, the individual opt out must not be allowed to be presented at the point of appointment or signing of a contract.

It is extremely unlikely that junior doctors in training will fall into the category of workers who have individual control over their own working hours and so will be protected from exploitation. The decision to opt out of the maximum number of hours worked each week is one for an individual employee to make.

Thus we believe that the CPME should be flexible with regards to the question of the opt-out and ready to compromise in order to safeguard the important issues of on-call time and compensatory rest.

- **The Netherlands (submitted via email, 4 April 2010)**

Dear All,

We read the draft from mr Montgomery and we can completely agree with this draft. There is only one remark we would like to make and that's on page 1 of the draft on the 4th line.

In this paragraph we are of the opinion that "the derogation as laid down in the present EWTD should be abolished or amended to allow a limited opt-out etc". I would like to delete the possibility to allow a limited opt-out.

We also can agree completely with the answers on the questions in the annex.

With the best regards,

Alex van Bolderen

- **Dr Montgomery (response, submitted via email 4 April 2010)**

Hi Alex,

You raised a difficult question. In the Synmind process, where we discussed a similar document, many people wanted to have the amendment as an alternative.... I am also not sure whether we are going to be able to keep the clear policy of being for a total abolition of the opt out.

Personally I think that a mixture of abolition of opt out and new definitions of on-call-time would be detrimental. It would open up all chances for employers to make their employees work and work and work...

So maybe you can accept my wording as a compromise....?

Dr. Frank Ulrich Montgomery

- **Switzerland (submitted via CPME members' forum, 6 April 2010)**

The firm tone of the proposal by Monty is necessary to make the point that we're not ready to give in to flexibility for the sake of rationalization. I support it and thank Monti for the job ! We shouldn't forget that through NMA's, we're representatives of our colleagues, essentially.

It is sheer common sense that in the actual context, both the political one and the one of this communication from the Commission, any openness will be understood as a possibility of giving less

protection to our colleagues. It is sheer common sense too that an "opt-out" possibility is an open door to pressures from the employers side - a "ceiling" is the least to require.

A few more points :

- I find it striking how little the issue of quality is addressed; I can't find the exact quote at the moment but I do remember an american study correlating the rate of car accidents driving home from hospital and the number of hours worked by interns during the past 24 hours ... ; it's not only a matter of family life (I'd rather say "private" or "personal" life, by the way), it's also a matter of patient safety and of quality of care;
- I completely disagree with the "Communication" when it states that workforce shortage will be eased by flexibility in working times (p. 9, end of pt. 5); we need to attract more students, and that's definitely no way of attracting high school graduates into Medical school ...
- I can't remember if anything like this was ever discussed, but I find the alternative "family" time vs. work time too rigid and not efficient in the current discussions. Where we could introduce a bit of flexibility might be by suggesting to separate "family/personal/private" time and resting time - on-call time could then integrate some rest (but is definitely no family etc. time). A due share of each (family/rest/work) could be foreseen, on-call being split between work and rest.

Jacques de Haller, President of the Swiss Medical Association

▪ **Austria (submitted via CPME members' forum and email, 7 April 2010)**

1.)

Dear all,

Many thanks to Dr. Montgomery for the preparation of this draft.

We do agree very much with the statement, however, we would like to make a remark on page 1, paragraph 4 regarding a possible amendment of the directive as towards a limited opt-out with a firm ceiling.

The Austrian Medical Chamber favors the complete withdrawal of the opt-out of the directive and therefore asks to delete "to allow a limited opt-out with a firm ceiling" in this paragraph of the draft statement.

Furthermore, we would also like to outline the position of the Austrian Medical Chamber for the improvement of the working situation at European Union level as follows:

- a. the private and public sector comply with the same rules – no different rating
- b. effective controls and sanctions in case of violations, also in the public sector
- c. the aim is to maintain the Austrian working time act for hospitals in its present form, as well as to guarantee the observance of maximum limits of working time, in order to protect patients and hospital employees.
- d. The current definition of working time shall be maintained.
- e. All periods of working time accomplished by doctors at their workplace, including stand-by duty, have to be considered as working time and have to be remunerated accordingly.
- f. Hours of stand-by duty (also inactive) can never be regarded as rest periods, and therefore have to

remain unconsidered within daily, weekly and compensatory rest time.

g. The “opt-out regulation” should be completely withdrawn from the Directive (see also Art. II.91 Draft EU constitution, as well as European Parliament draft document on considerations 14, according to which each employee has the “right to a limitation of maximum working hours, to daily and weekly rest periods, as well as to an annual period of paid leave”).

h. The best solution, however, would be to raise the 48 hours limitation, as set out in Article 6 of the EU Working Time Directive 2003/88, to an average of up to 60 hours by means of works agreements and the consent of employee representatives, i.e. at collective and not at individual level. The European Working Time Directive 2003/88 should be amended accordingly.

With apologies for the delay,

On behalf of the Austrian Medical Chamber,
Christiane Wucsits

2.)

Dear All,

Austria`s Point of View is:

The Austrian Federal Body of Employed Doctors has decided the following issues for the purpose of improving the working situation at European Union level:

a. the private and public sector comply with the same rules – no different rating

b. effective controls and sanctions in case of violations, also in the public sector

c. the aim is to maintain the Austrian working time act for hospitals in its present form, as well as to guarantee the observance of maximum limits of working time, in order to protect patients and hospital employees.

d. The current definition of working time shall be maintained.

e. All periods of working time accomplished by doctors at their workplace, including stand-by duty, have to be considered as working time and have to be remunerated accordingly.

f. Hours of stand-by duty (also inactive) can never be regarded as rest periods, and therefore have to remain unconsidered within daily, weekly and compensatory rest time.

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Best regards

Lukas Stärker

▪ **Czech Republic (submitted via email, 7 April 2010)**

Dear All,

the position of The Czech Medical Chamber is:

We do not need any revision of existing EWTD at all.

All hours spending in hospital (on work place) must be count and renumerated like workingtime.

We do not support the opt-out. This transition possibility must be abolish (like a slavery) as soon as possible. We are ready do accept prologation of opt-out system only like a painful compromise in case if it would be the only possibility how to keep the rule, that all hours spending on work place are count and renumerated like workingtime. It would be mistake to offer our acceptation of opt-out.

Therefore we support comments done by our friends from Dutch and Austria. respekting this comments is paper prepared by Dr.Montgomery excelent.

Best Regards Milan Kubek

▪ **Finland (submitted via email, 8 April 2010)**

1.)

The Finnish Medical Association appreciates all the work done by Dr Montgomery to draft the statement. We agree that the primary goal of working time regulation is and should be the protection of workers' health and safety. Having said that it is in our view only acknowledgement of facts that modern working life requires certain level of flexibility of which both the employee and the employer will benefit.

During the rehearsal round last December on commenting the draft Communication and CPME's draft reply to it, it became quite evident that there are clearly different views amongst the NMA's as regards the working time directive. This makes it even more challenging to formulate the CPME statement.

Despite all the merits of the draft statement, the FMA would like to express its concern on couple of issues of principle nature relating to the statement.

The draft statement follows the same lines as CPME statements before, which is logical. However, in its Communication, the Commission has taken broader, and maybe a somewhat fresher, view on the European regulation of working time. As we understand it, the Commission is trying to avoid certain mistakes made during the last, unsuccessful negotiation round, and aims to gather more and better quality information e.g. on the impacts of the European Court of Justice's (ECJ) jurisprudence in the health sector. According to our opinion, both the broader viewpoint and better impact assessment of the working time regulation as interpreted by the ECJ are supportable.

Therefore, we would like the CPME statement to show some appreciation of the endeavours of the Commission to start with the clean sheet. This would mean altering especially the tone of answers to questions a) and d) to a more positive one.

We would also like to see the CPME's statement to rise above the former discussions on the directive, and to look forward on how to solve the practical problems of the current situation. In our opinion, the answer is not to do anything, and just hope that all the Member States will implement the directive as interpreted by the ECJ. We completely agree that the prosecution of Member States before the ECJ is not a positive or desirable solution. Instead, discussions on the best achievable formulation of the directive text, however difficult they may be, should continue, and the Commission should launch a process to renew the directive.

From the physician's point of view, one of the most important questions on the European regulation of working time is the definition of on-call-time. This is not an issue where one solution fits all. Finland belongs to the group of countries where such issues have been successfully solved by collective agreements. This has allowed sufficient flexibility to adjust to the local circumstances without undermining the protection of workers' health and safety. We would like to have this flexibility also in the future. Nonetheless, we support the abolition or amending of the individual derogation of working time i.e. opt-out.

In our view, a little more open and forward looking statement would be strategically better at this stage and would enhance the influence of CPME also in the future negotiations on the European regulation on working time.

2.)

Dear all,

Attached please find the answer of the Finnish Medical Association. Since this e-mail has (surprisingly) become a common discussion platform I want to add some remarks - somewhat differing from the earlier ones.

We see that the previous road lead to a dead end. It means that the comission (and others) have to find new ways out. Therefore parties should not hard-headedly stick to the old but leave some room for different new solutions. CPME should not corner itself by bluntly denying possible new solution in order to have a good chance to be heard as the (possible) changes will be proposed.

Secondly - at least in Finland - we see that either 'on-call workingtime' should be kept as one mode of working time or there has to be opt out in order to have a functioning health care system. We as an association can protect our members by common agreement on the national level. The fact of national common agreements should be acknowledged as one way to take care of the protection of individual workers. We favor having the possiblity to make an agreement about the on-call on national level rather than make it possible to agree on opt out individually or on work place level which is extremely difficult to master.

Because of this we feel that the directive should also be renewed.

I suppose there will be a lively debate on this issue in Brussels.

best

Heikki Pälve