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Date :	26 April 2011	Document:	F11-029 EN
Title:	Gloomy prospects for EWTD talks		
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Gloomy prospects for Working Time Directive talks

Published: 26 April 2011

Trade unions and employers' groups are set to start dialogue on the Working Time Directive before the autumn even though they disagree over the scope of the talks. Meanwhile, MEPs remain pessimistic about the chances that the two sides will eventually strike an agreement.

BACKGROUND

Working time is a long-standing issue at EU level. The 1993 Working Time Directive stipulates that workers must not work more than an average of 48 hours a week (calculated over any four-month period), although it allows for broad derogations.

However, the text needs to be revised following a number of European Court of Justice rulings.

The European Commission presented its proposal for a revised directive back in May 2004.

The last round of negotiations failed in 2009 after the European Parliament and Council failed to compromise on three crucial points: the opt-out, on-call time and multiple contracts. The failure prompted a host of finger-pointing as to who was to blame.

It was the first time that no agreement had been found in a conciliation committee - the 'last-chance saloon' for negotiations between Council and Parliament - since the entry into force of the Amsterdam Treaty, which significantly extended the scope of the co-decision procedure for legislative acts.

Since there was no agreement, the current directive, dating from 1993, remains in force. A consultation by the Commission last year asked the European social partners whether action is needed at EU level on the Working Time Directive (2003/88/EC) and what scope it should take.

Under EU procedural rules the Commission will take no further action to issue amendments to the directive if the social partners enter into dialogue. It will instead await the outcome of the dialogue before proceeding.

A time limit of nine months is fixed for the dialogue from the moment that the social partners notify the Commission that they are prepared to talk. At the end of the nine months the Commission may prepare draft amendments to the directive based on any agreement reached by the social partners.

If the social partners fail to reach agreement, they may apply for an extension of time for further talks. The Commission may offer more time, but is not obliged to do so. It could go ahead and issue amendments on its own initiative.

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News:[Parliament gives Working Time opt-outs the red card](#)

News:[Business furious after MEPs scrap working time optouts](#)

Late last year the [European Commission published a paper](#) following a consultation on the scope for amending the Working Time Directive, after previous attempts to revisit it failed spectacularly in 2009.

The next phase in attempting to amend the directive is on hold while the social partners – representatives of workers and employers – decide if they want to get together to try and agree how the law can be changed.

Now the social partners have indicated to EurActiv that they will be ready to begin a dialogue from June at the earliest, and before the end of September.

Negotiations on amending the directive failed in 2009 over issues such as the opt-out provisions allowing the UK and other countries to go beyond the agreed weekly 48-hour working cap.

Other controversial issues up for review include the extent to which 'on-call' time should be counted as working time under the directive – something doctors and nurses are following with interest – and carve-outs designed to allow employers to pay compensation in lieu of working hours.

Let's talk. About what?

Under EU rules the social partners must send a joint letter to the Commission indicating their willingness to talk. Once the letter is sent, a time limit of nine months will start to run within which the parties can agree together how the controversial directive should be changed.

If the talks fail, the parties can appeal for an extension of time, but the Commission is under no obligation to grant one. The EU executive could go ahead and issue draft amendments to the directive regardless, but it would prefer to achieve broad agreement between the social partners.

There is little sign of that, however. BusinessEurope, the lead social partner representing employers, wants the dialogue to track only those issues on which it believes progress can be made. These include on-call time, but leave the controversial issue of the opt-out off the table.

By contrast the European Trade Union Confederation (ETUC) – the key voice on the workers' side of the argument – is calling for a comprehensive negotiation, with everything including the opt-out up for discussion.

Despite disagreeing over the scope of talks, both parties are still willing to enter dialogue. Sources within both BusinessEurope and ETUC told EurActiv that agreement on the terms of dialogue was not a pre-condition of starting talks, and both believe talks will commence.

Parliamentary pessimism prevails

Meanwhile, at an exchange of views between the social partners, the Commission and the Parliament recently, MEPs on the committee for employment and social affairs lined up to express their doubts about any dialogue's chances of success.

"I am no less pessimistic now [about the amendment of the directive] than before, and boy was I pessimistic before! I have heard nothing new and I do not see how this attempt should be more successful," said Hungarian centre-right MEP Csaba Öry (European People's Party).

Fellow EPP member Thomas Mann (Germany) said, "we know that we are not getting anywhere, it has been the same situation for eight years".

His words were echoed by Danish Socialist MEP Ole Christiansen.

The other social partners in the Working Time Directive are UEAPME, the European association of craft, small and medium-sized enterprises, public employers' group CEEP, and European public sector unions' federation EPSU.

POSITIONS

"Our fundamental approach to the proposals remains unchanged," said **Wiebke Warnek**, an adviser at the **European Trades Union Confederation (ETUC)**. "We have essentially said we are prepared to enter negotiations on certain conditions: that everything is on the table for revision. We want the end of the opt-out to be on the table."

She added: "Something is going to happen in the dialogue, but not before June."

Steven D'Haeseleer, a director at **BusinessEurope**, said: "We have recommended that a meeting of our council presidents in June will give a mandate for us to enter dialogue. There has to be a chance for the dialogue, because both sides would not enter into it if there was no prospect whatever of success."

MEP Csaba Öry (European People's Party; Hungary), said: "I am no less pessimistic now [about the amendment of the directive] than before, and boy was I pessimistic before! I have heard nothing new and I do not see how this attempt should be more successful."

"We know that we are not getting anywhere, it has been the same situation for eight years," said **German Christian Democrat MEP Thomas Mann**. Acknowledging that there was a "glimmer of hope" for the dialogue between the social partners, he said that the Commission's most recent paper was disappointing.

He said: "We can see that people have been consulted have no impact. Are you [the Commission] just trying to make it look like a consultation?"

"I can see we are going nowhere. There is a paradox in that the Commission will to help those countries which are breaking the law. The countries which want limits [to employment conditions] are being discriminated against," said **Danish Socialist MEP Ole Christiansen**.

NEXT STEPS

- **By June 2011:** Key social partners anticipate obtaining internal clearances for dialogue to begin.
- They will send a letter to the Commission to indicate start of dialogue.
- **Nine months after letter received by the Commission:** EU executive must act and either issue draft amendments to the directive, or offer social partners an extension of time if talks have failed to deliver.

LINKS

European Union

- EURLex [Working time directive](#)
- European Parliament [No agreement reached on the Working Time Directive](#)

Industry federations and trade unions

- [European Trade Union Confederation \(ETUC\)](#)
- [BusinessEurope](#)

Press articles

- EurActiv.sk [Smernica o pracovnom čase neschválená, hľadá sa vinník](#)
- EurActiv.fr [Echec des ultimes négociations sur la directive temps de travail](#)