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Review of the Working Time Directive

What is the Working Time Directive?

The [Working Time Directive](#) (2003/88/EC) is an important part of the EU's health and safety laws to protect workers. It aims to set common minimum protective standards against the health and safety risks to workers (short and long term) posed by overwork or inadequate rest periods, while also providing flexibility for the needs of different sectors and activities. The present Directive codifies earlier Directives, going back to 1993.

What are the Directive's main provisions?

Under the Directive, each Member State must (as a minimum) ensure that every worker is entitled to:

- a limit to weekly working time, which must not exceed 48 hours on average, including any overtime;
- a minimum daily rest period, of 11 consecutive hours in every 24;
- a minimum weekly rest period of 24 uninterrupted hours for each seven-day period, which is added to the 11 hours' daily rest;
- paid annual leave, of at least four weeks per year;
- extra protection in the case of night work (e.g. average working hours should not exceed 8 hours per 24-hour period; night workers should not perform heavy or dangerous work for longer than 8 hours in any 24-hour period).

Are there any exceptions to these rules?

Self-employed persons are excluded.

The Directive also provides for some flexibility intended to cater for the needs of different sectors and activities:

- minimum daily and weekly rests can be delayed or postponed, in whole or in part, in a range of situations, on condition that the worker must receive 'equivalent compensatory rest' (i.e. the worker does ultimately receive all the minimum rest hours to which s/he is entitled, even if they are taken at a later time)
- the rules may be varied by national law for workers who are sufficiently autonomous to decide their own working time (e.g. senior managers),
- if a Member State so chooses, a worker can work longer average hours than the 48-hour limit, if she or he freely consents to do so, the so-called 'opt-out',
- when calculating the 48-hour limit, weekly working time can be averaged over up to 4 months (default provision), 6 months (by law, in certain activities) or 12 months (only by collective bargaining.)

The Directive does not govern pay rates for regular, overtime or on-call work, which remain entirely a matter for national law or collective bargaining.

More details are provided in the Commission's 2010 [Report on the implementation by Member States of the Working Time Directive](#).

What exactly is the 'opt-out', and how many Member States allow its use?

The 'opt-out' is a derogation in the Directive which allows a Member State, if it so wishes, to allow an individual worker to contract out of the protection of the 48-hour average limit, by agreement with his or her employer. In this situation, there is no explicit ceiling to the number of hours that could be worked.

Stakeholders express strongly opposed viewpoints. Some stakeholders see the opt-out as a threat to health and safety which exploits workers' unequal bargaining position, and want to see it ended or phased out. Others consider that employers need such flexibility while individual workers should have a choice on their maximum working hours, and do not want the opt-out changed in the review.

16 Member States currently allow the use of the opt-out. Of these, 5 allow its use in any sector, while 11 only allow its use in connection with the use of on-call time (in some cases, only within public health services). Member States also differ widely in the conditions which they require for use of the opt-out.

More details are provided in the Commission's 2010 [Report on the implementation by Member States of the Working Time Directive](#).

What are the 'SIMAP-Jaeger' rulings?

The European Court of Justice ruled in the [SIMAP](#) case and in the [Jaeger](#) case that 'on-call time', when a worker has to remain at the workplace after regular working time, available to work if they are needed, must be fully counted as working time under the Directive.

The Court also held in Jaeger that for health and safety reasons, compensatory rest must be taken promptly (workers should not be routinely required, for instance, to work a 36-hour shift including on-call time at the workplace).

The rulings have major implications for work organisation, notably in 24-hour public services. Certain stakeholders wish to revise the rulings, while others wish to keep them unchanged.

During 2010, the Commission launched a review of the Working Time Directive?

Yes. In September 2009, President Barroso announced at the European Parliament that the Commission would launch a new review of the Working Time Directive.

A previous effort to amend the Directive (2004-2009) had ended when Parliament and Council were ultimately unable to reach agreement on a draft amending proposal, despite long negotiations and a conciliation procedure.

Why does the Commission want to review the existing rules?

There have been fundamental changes in the world of work over the past twenty years, which affect the organisation of working time. They include the impact of technological change, globalisation, a much more diverse workforce, work intensification, increasing variation in individual working time patterns and greater competitive pressures. Employers, broadly speaking, wish to see more flexibility while workers' organisations, broadly speaking, seek more effective protection of health and safety. Some questions remain unclear, and there are substantial difficulties for some Member States in implementing some aspects of the rules.

The Commission's review aims at finding sustainable solutions to these challenges, which would be capable of enjoying broad-based support.

More details on working time trends and on the issues covered by the review are available in the Commission's [Communication on reviewing the Working Time Directive](#).

How does the review process work?

President Barroso told the European Parliament in September 2009 that the new review would be based on a two-stage consultation of the social partners at European level and a detailed impact assessment paying attention to both social and economic aspects.

During 2010, the Commission:

- launched the [two successive stages](#) of [consultation](#) of the social partners (each based on a consultation paper published as a Communication),
- launched and published a substantial impact assessment study by independent experts (the '[Deloitte study](#)'),
- published a comprehensive [legal Report](#) of the Commission services on the current implementation of the Directive in all Member States.

What is the process for consulting the social partners at European level?

The [Treaty on the Functioning of the EU](#) (TFEU) sets out particular rules for social policy legislation, including Working Time, which specifically requires the Commission to consult with representative social partner organisations at EU level before making any legislative proposal in this area.

The procedure is provided for in Article 154(2) TFEU. Details are available on the Commission's [social dialogue webpage](#).

What are so far the results of the consultation?

There was a [large response](#) from the European social partners to the [first stage](#) consultation. Broadly speaking, there was overall consensus that EU working time rules needed review; but strongly differing viewpoints on what sort of changes were needed, with business calling for more flexibility, and unions for more effective levels of protection.

The main outcome of the [second stage](#) consultation was the interest expressed by all the main cross-sectoral social partners in the option available to them under Art 155 TFEU of choosing to negotiate themselves on the Working Time review.

What will happen next?

The social partners have jointly decided to launch talks under [Art 155 TFEU](#).

Under the relevant Treaty provisions, they enjoy autonomy as regards the content and structure of their discussions, and have nine months to reach agreement.

If they reach an agreement, they are entitled under Art 155 to ask for its implementation as a Directive. This has been done in many previous cases. The Commission would then present the social partners' agreement to the Council in the form of a Directive. Under the Treaty, the Council may either adopt it, or reject it, by qualified majority, but may not amend it. The Parliament is informed, but is not a co-legislator.

Out of respect for the autonomy of the social partners, the Commission will not put forward a legislative proposal on the issues covered by their talks.

In the event that the social partners do not reach an agreement, the Commission would then come forward as promised with a legislative proposal, based on its consultation and impact assessment work.

Is the Commission taking legal action against Member States which do not comply with the Working Time Directive?

There is no moratorium on Working Time infringements during this review. The Commission has already been in contact with different Member States about a range of issues raised in our 2010 Report. In some cases, the MS concerned have now changed their law to come into conformity. In others, where there has been no satisfactory progress, the Commission is taking the appropriate action

The Commission's main concern at present is with a range of situations in different Member States where workers are being obliged to work very excessive hours, without adequate rest. (For example, reasoned opinions were issued in September 2011 against [two Member States](#) for requiring doctors in public health services to work excessively long hours without adequate rest).

Further information:

Fresh round of consultation on review of EU working time Directive begins as new implementation report published, [IP/10/1760](#)

Information related to the Working time Directive:

<http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPagelId=205>

[Communication COM \(2010\) 801](#): Reviewing the Working Time Directive (second-phase consultation) of the social partners at European level

Eurofound (EFWL) studies: [Comparative analysis of working time in the European Union \(2010\)](#)