Opinion

by the European Confederation of Independent Trade Unions (CESI)


of 4th November, 2003
concerning certain aspects of the organisation of working time

EN Brussels, 30. May, 2010
The European Confederation of Independent Trade Unions adopted the following opinion of 10 June, 2010.

Introduction

In its communication on the revision of the Working Time Directive (2003/88/EC), made available to the European Parliament, Council, the European Economic and Social Committee and the Committee of the Regions on 24 March, the European Commission is once again tackling the issue of working time, a key component of working conditions in Europe. The Commission's efforts to bring about the necessary revisions to the 2003 directive failed in spring 2009 due to insurmountable differences between European legislators, the Council and the Parliament. Key bones of contention resided in the issues of how to classify on-call time and how to deal with what is known as the 'opt-out'.

Action by the European Commission with regard to subsidiarity within the framework of article 153 EC Treaty

The Working Time Directive serves to guarantee the safety and health of workers in Europe. The competences of the European Commission to set regulations in this field are-based in particular on article 153 para 2 of the EC Treaty.

The primary law basis for action merely justifies action on the part of the Commission in the framework of article 153 paras 1a-i of the EC Treaty and thus does not include article 153 para 1k. Adapting social security systems to the conditions of the modern working world is thus explicitly not covered by the directive's competence.

CESI feels that there is a need to revise the existing Working Time Directive.

At the same time, CESI stresses the need to provide a high minimum standard of worker health and safety taking into account the subsidiarity principle when revising the Working Time Directive. Under no circumstances can purely economic policy goals form the basis of the revision.

Abolition of the general opt-out rule in line with article 22
CESI views the key challenge in the revision of the Working Time Directive to reside in whether or not sufficient account is taken of the manifold types of working conditions, characterised by an increasingly flexible availability and assignment on the part of the workforce. The rise of what is known atypical working conditions and with it the growing number of workers, who hold several types of job, must be taken into account in the new working time directive in the interests of protecting worker health.

Equally, protecting the health of workers must deal with an increasingly ageing working population due to the rising retirement age. Maintaining the working potential of an ageing workforce requires an approach to protect workers' health right at the beginning of a person's working life.

Accordingly, CESI is very much in favour of establishing binding maximum weekly working hours, which as a matter of principle must not exceed 48 hours.

The general opt-out possibility currently foreseen in article 22 of the Working Time Directive should be rejected. In particular, the adjustment measures provided for in article 22 para1 a-e) for Member States which do not provide for minimum weekly working hours of 48 hours, do not provide adequate worker protection. The general opt-out from the maximum weekly working time can be legitimised according to article 22 by individual contractual agreement. This means that the basic inequality which holds sway between the position of the individual worker and the strong position of the employer is not addressed.

CESI demands that exceptions to the regular working time are agreed on in each case in negotiations between the social partners and under no circumstances via individual contractual agreement between the employer and individual workers.

Restrictive administration of the rules governing deviation and exceptions

CESI recognises the fact that certain jobs are unsuit for a 48 hour week with no exceptions. The fields of catastrophe prevention, police and fire service are characterised by the need to react to unpredictable events, which are a day-to-day phenomenon in these jobs. Deviations and exceptions in line with article 17 ff are thus principally sensible in CESI's view where their scope is based on the needs of the job description. Here, CESI rejects an application of exceptions to, and deviations from, article 17 ff wherever these are merely intended to serve working conditions established by the employer. Here the new Working Time Directive must lay down clearly limited transitional deadlines, to ensure a sensible reorganisation of working time.
Deviations from the reference time period in article 16 letter b) when calculating the weekly maximum working time should, as a matter of principle, not exceed 6 months. Extending the deviations by way of agreement between the social partners by up to 12 months is in CESI's view a sensible idea when it comes to guaranteeing the necessary amount of flexibility in individual sectors.

**On-call time**

The current Working Time Directive defines working time in article 2 Nr. 1 as the time in which the worker is at the employer's disposal and is carrying out his/her tasks or being assigned his/her duties. Coordination is to be conducted to that effect via European Court of Justice case law in the Jäger case (C-151/02), according to which that time in which the worker is at the employer's disposal either in his workplace or an established place is unreservedly to be considered as working time. This assessment of on-call time as working time is justified.

During on-call time, the worker cannot choose how he/she spends his/her time and is under at least subliminal constant psychological and occasionally physical tension. The aim of the rest period (to promote health) is thus not provided. On-call time is thus just as much a burden to worker health as executing one's job and thus should be seen as working time.

*In CESI's view, the time during which a worker can at any time provide his/her working services at the request of the employer, independently of the actual usage of the services must be wholly considered as working time.*

**Strengthening work/life balance**

**Striking a good work/life balance is a core theme of the modern working world, in which people are increasingly giving up work due to psychological pressure. The Working Time Directive must take account of this aspect of health protection for workers.** Here, organising child care and, in the context of demographic change, of older family members, is but one factor in the work/life balance issue. The modern globalised world enables and calls for a variety of lifestyles, which require different approaches towards combining working and private life. Approaches such as life work-time accounts should be sufficiently taken into account in the new Working Time Directive.

Brussels, 10 June, 2010