



**CESI@noon – 26<sup>th</sup> of September 2018**

**“What is working time? The interpretation of the European Court of Justice”**

“The impacts of the Matzak judgment on ‘home-based on-call time’ on employment and working conditions”

**Debrief of the event**

**I) Introduction**

In February 2018, the Court of Justice of the European Union delivered a significant verdict in favour of a Belgian volunteer firefighter concerning his home-based on-call time. In its ruling, the Court stated that “stand-by time which a worker spends at home with the duty to respond to calls from his employer within 8 minutes, very significantly restricting the opportunities for other activities, must be regarded as ‘working time’”.

The European Confederation of Independent Trade Unions (CESI) believes that this case may have a fundamental impact on services which heavily depend on ‘on-call’ and ‘stand-by’ duties, in particular in the areas of health, civil protection and law enforcement.

On the 26<sup>th</sup> of September, CESI gathered relevant stakeholders on its premises to discuss the possible impacts of this judgment.

The discussion was moderated by Mr Baussand, Head of the Eurofound Office in Brussels, and involved Ms Andrea Grgic, Legal Officer at DG EMPL of the European Commission, Maître Pierre Joassart, Deckers&Joassart, lawyer of Mr Matzak, Mr Alain Laratta, Vice-President of Avenir Secours, Lieutenant-Colonel of French firefighters, Mr Javier Jordan de Urries, Vice-President of the justice sector at the Spanish trade union, CSIF, and Marco Thomé, President of the Luxembourgish trade union Fédération Générale de la Fonction Communale (FGFC).

**II) The background**

The fire service of the town of Nivelles (Belgium) is composed of professional and volunteer firefighters. Volunteer firefighters are involved in the operations and also provide stand-by and on-duty services. Mr Rudy Matzak acquired the status of volunteer firefighter in 1981. He is also employed by a private company. In 2009, Mr Matzak brought judicial proceedings against the Ville de Nivelles (Town of Nivelles) in order to obtain, inter alia, compensation for his stand-by services, which, according to Mr Matzak, must be categorised as working time.



According to EU law and its interpretation, ‘stand-by time’ of a worker must be classified either as ‘working time’ or ‘rest periods’: “The concepts of ‘working time’ and of ‘rest period’ are mutually exclusive.”

Furthermore, the ECJ had already established that “the physical presence and availability of the worker at the place of work during the stand-by period” must be regarded as working time.

Through this ruling, the Court clarified that stand-by time at home can also be considered as working time when it “very significantly restricts the opportunities to carry out other activities” – in this case the obligation to respond to calls from his employer within eight minutes.

Finally, the Court also highlighted that this concrete case differs from those in which a worker is at the employer’s disposal, but still “may manage his time with fewer constraints and pursue his own interests. In those circumstances, only time linked to the actual provision of services must be regarded as ‘working time’”.





### III) The main consequences

#### 1. What professions will be affected by this decision?

Basically, all professional activities which correspond to this description will be affected by the Court's definition of "working time". The judgement will have an impact on customs officers, social services, interpreters, hospital employees, etc.

It is noteworthy that the Court also established that in accordance with settled case law Mr. Matzak has to be considered as a worker. Although having the status of a voluntary firefighter in Belgium, the classification as a worker under EU law "may not be interpreted differently according to the law of the Member States but has an autonomous meaning specific to EU law" and that "the fact that under national law Mr Matzak does not have the status of a professional firefighter, but that of a volunteer firefighter, is irrelevant for his classification as 'worker', within the meaning of Directive 2003/88."

#### 2. What is the impact on working time provisions?

This case may have a fundamental impact on services which heavily depend on 'on-call' and 'stand-by' duties, in particular in the areas of health, civil protection and law enforcement.

The particularity of the case lies in the fact that Mr Matzak is a voluntary firefighter, who, during normal working hours, exercises a different profession. Defining his home-based stand-by duty as working time means that the working time of these duties would be added to the working time of his normal profession. Hence, the limits established by the WTD will be exceeded very quickly.

As a consequence, those services which heavily depend on voluntary work will be particularly affected, provided that the volunteer is considered a worker.

This decision may also increasingly blur the traditional distinction between 'stand-by' time at the workplace and 'on-call' time outside the workplace. Since 'on-call' time (regardless at which place) may have similar constraints as 'stand-by' duties at the workplace, it can be considered as 'working time' (So far, in those cases, only the time linked to the actual provision of services was considered as 'working time').

#### 3. Who should be held responsible or is held responsible for ensuring that the maximum number of working hours is not exceeded?

The Commission has reaffirmed in its [communication](#) that, in the light of the Directive's objective to improve the health and safety of workers, the limits on average weekly working



time and daily and weekly rest should, as far as possible, apply per worker and not per contract.

If a worker only has one job, **employers** are responsible for this monitoring task, as they detain all the information to make sure the employees do not exceed the number of working hours prescribed by the legislation. However, in the case of multiple jobs, the **employees** would be responsible because it is impossible for employers to obtain the necessary information about the respective workers' overall working times and conditions.

The **Member States**, as addressees of the Directive, need to ensure that all laws and guidelines are applied in order to ensure that both employers and employees can comply with the working time legislation. In the above-mentioned communication, the Commission underlines that the health and safety objective of the Working Time Directive is given full effect, Member States' legislation must provide for appropriate mechanisms for monitoring and enforcement.

First and foremost, generally speaking, **trade unions** need to feel responsible for the protection of employees and the respect of legislation. It is highlighted that trade unions cannot anticipate structural changes due to the impact of EU legislation and case law.

#### **4. What is the impact on the organisation of systems which heavily depend on on-call and stand-by duties within Member States?**

The judgement calls into question the sustainability of traditional volunteering systems in some Member States in general, and more specifically, those applying to volunteer firefighters.

This debate will increasingly focus on whether trade unions should still try to promote volunteering activities as beneficial and positive for society, so as to maintain a sense of community and solidarity, or whether they should protect workers and ensure that all hours considered as working time be recognised accordingly, and consequently remunerated in order to stop and prevent abuse.

#### **5. What is the impact on remuneration?**

Generally speaking, activities which correspond to the one of the volunteer firefighters in Nivelles are to be considered as working time. Working time provided by a worker has to be remunerated.

While remuneration falls under the competence of the Member States, national laws on remuneration have to abide by the principles of non-discrimination established by national, supra-national or international legal orders.



Regarding firefighting services, volunteer firefighters are, in some Member States, entitled to the same pay as professional firefighters. In those Member States, the issue of equal pay is not the major problem.

The particular remuneration for night or week-end duties and shift work however, may lead to remuneration of 125% up to 200% of the usual wage.

This is what is being requested by Mr Matzak and many other firefighters in the same situation.

#### **IV) Conclusions**

The main conclusion is that there is an urgent need to consider changes to traditional volunteer-based services, especially if they have taken over a large amount of professional duties as a result of budget cuts.

Taking the duties of firefighters as an example, volunteer firefighters are increasingly facing the same demands as professional firefighters. In this case, a distinction is, becoming more and more obsolete.

As a consequence, the organisation of different services that heavily depend on volunteering will certainly be subject to a higher number of reviews. However, the general underlying ideas of volunteer services for the benefit of society should not be put at risk.

Trade unions, however, should first and foremost focus on the defence of their members. As a result, the judgment of the ECJ and its clarification as to what constitutes working time may be highly significant and bring about positive reforms in several Member States. The discussion regarding on-call working time will remain lively on the EU level, but this ruling now needs to be considered on both local and national levels too.



PUBLIC SERVICES WORK.

