

**EPSU response to the Commission communication concerning the re-examination of Directive 93/104/EC concerning certain aspects of the organisation of working time  
(COM2003, 843 Final)**

*Adopted by the EPSU Executive Committee, 4 & 5 March 2004*

***Executive Summary of EPSU position:***

- The individual opt-out option (article 18 paragraph 1 (b) (i)) is not a viable solution. The opt-out clause is being applied by a significant number of member states, particularly to their respective health sectors, for economic considerations, and ignoring health and safety protection as the legal base of the directive.
- The rulings of the European Court of Justice in the SIMAP and Jaeger cases must be respected.
- While the economic implications of the judgements are significant, there can be no dilution of health and safety standards for economic reasons.
- Social Dialogue at the European level (Inter-sectoral and sectoral) should be developed to identify solutions to the repercussions of these judgements.
- As the Communication makes particular reference to the Hospital Sector (pages 17-20), the European Commission should strongly facilitate a practical resolution of the issues raised particularly in the Hospital social dialogue process at European level.
- In the interim only, EPSU calls for a technical committee to be established on working time.
- Genuine commitment to using the provisions of the directive to improve the work and family life balance should be clearly signalled by the Commission.

***Introduction***

The European Federation of Public Service Unions (EPSU) represents over 8 million public service workers, including 3 million health and hospital workers. The list of national affiliates with representatives in the hospital sector is attached (note to Executive Committee – this will be attached in the final version).

While the wider political focus, and indeed much of the technical content of the Commission communication, has been on the hospital sector, EPSU wishes to remind the Commission that the working time directive, and particularly the issues raised by the communication, have a wider impact. Even within the public services, examples such as institutions for child or elderly care, the prison services and police work are affected. EPSU would also like to emphasise that this issue is also related to low-paid workers. Institutionalised overtime, due to the need for insufficient basic remuneration to be augmented to a 'living wage', is directly related to the uneven application of this directive.

The communication states that; “the commission would like the addressees of this communication to express their opinion on the need to revise the current text or introduce other initiatives, not necessarily legislative”<sup>1</sup>. Five main issues are identified;

1. The reference periods
2. The European Court of Justice rulings in the SIMAP and Jaeger cases.
3. The application of the individual opt-out.
4. The reconciliation of work and family life.
5. **The possibility of an interrelated approach to these issues.**

1. The reference periods

The working time regulations, which have been adopted based on health and safety considerations, must ensure the employees safe working conditions. **The sole legal basis** for the working time directive is **health and safety protection**. This allows for the worker to be adequately protected. However, health and safety in the context of the health care worker is not just an issue of good working conditions but also can have a profound impact on patients. Issues of fatigue and diminished capacity to concentrate are vital in the context of an individual worker’s health and safety, but essential in the context of patient care.

After extensive consultation with our affiliates, EPSU is of the opinion that there is considerable misuse of the original intention of articles 17 and 18 as provisions for derogations.

Therefore EPSU is of the opinion that the reference periods as outlined in the introduction to the communication should be regarded as the norm. Any derogation from this **MUST** be by collective agreement.

2. The European Court of Justice rulings in the SIMAP and Jaeger cases

It is EPSU’s clear view that working time conditions are a matter for the labour market parties (social partners). This still leaves the issue of how best to practically address the recommendations of the judgements. Thus, it is natural to start negotiations between the labour market parties on this issue – at the European as well as national level.

It is not an option, legally nor politically, for revisions to the working time directive to be made on economic or capacity criteria. EPSU is strongly concerned that attempts are made in the Communication to projected national budgetary impact of the SIMAP and Jaeger judgements<sup>2</sup>. This is considerably beyond the remit of the directive, is speculative and could be interpreted as an invitation to reduce health and safety standards.

All parties must accept the judgement of the European Court of Justice in both the SIMAP and JAEGER cases and seek adequate implementation.

3. The application of the individual opt-out

EPSU is very concerned about certain member countries interpretations’ of the Jaeger and SIMAP judgements, in which they have applied the individual “**opt-out**” provision as a rule instead of the exception that it was originally intended to be, with the sole intention of circumventing these judgements. This is not a sustainable strategic approach.. It is also worrying that several countries are in the process of preparing national legislation similar to the “opt – out” provision. For EPSU the significance of this is that “*all the Member States*

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<sup>1</sup> Commission communication(2003) 843 FINAL, page 23.

<sup>2</sup> Ibid, paragraph 2, page 20,

*which incorporated the opt-out clause in their legislation did so **for the health sector alone (except Luxembourg)***".<sup>3</sup>

In the UK application of the opt-out in the hospital sector has also been due to capacity issues, which is highlighted in the Commission communication, and is unnecessary due to agreements around working time that recognise issues around capacity and workforce labour hotspots.

The individual opt out has proven difficult to monitor, subject to abuse, and hazardous to the application of adequate health and safety standards. EPSU recommends that it be deleted.

#### **4. The reconciliation of work and family life**

The reconciliation of work and family life has, of course, long been a policy goal of EPSU. In the context of the working time directive, the point EPSU wishes to emphasis is that the existence of the opt-out and derogations through article 17 act as a barrier to addressing work-life balance issues. As long as the possibility of long-hours as a "quick-fix" exists, there is no incentive to devise new, balanced, working patterns.

The opt-out is a considerable obstacle to the reconciliation of work and family life.

#### **5. The possibility of an interrelated approach to these issues.**

EPSU as the recognised social partner in the hospital sector is particularly well placed to contribute to this issue being constructively addressed in a sectoral social dialogue process. As the European Commission is aware, EPSU is part of a pre-social dialogue process in the hospital sector in Europe. For further details please see [www.eurocarenet.org](http://www.eurocarenet.org). The validity and indeed the urgency of developing this process have been put into stark relief by the rapid working time developments in the sector. Therefore EPSU calls on the European Commission to strongly outline to the European employers' organisations in the hospital sector, while respecting the own initiative aspects of the social dialogue process, the benefits in discussing this issue in a sectoral social dialogue context.

- Given the profound working time developments in the sector, the European Commission should facilitate the formalisation of the sectoral social dialogue in the hospital sector.
- The European Commission should give public recognition to the fact that a social dialogue process in the hospital sector would negate the problem of the European Court of Justice being the de facto policy maker on working time.
- EPSU wishes to strongly advertise its confidence that if the Jaeger and SIMAP judgements are fully respected, steps to identify practical responses can be undertaken through a European social dialogue.
- As an interim measure EPSU suggests the Commission establish a technical group, with ETUC and EPSU and the CEEP (the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest) to outline possible initiatives, which would facilitate the development of a sectoral response.

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<sup>3</sup> Communication from the Commission concerning the re-exam of Directive 93/104/EC concerning certain aspects of the organisation of working time. Page 15 paragraph 2.2.2