

ETUC CONSIDERS PROPOSALS OF EUROPEAN COMMISSION TO REVISE THE WORKING TIME DIRECTIVE AS UNACCEPTABLE AND TOTALLY OUT OF PROPORTION

Brussels, 22nd September 2004

John Monks, General Secretary of the European Trade Union (ETUC) declared:
“ I am very disappointed in the Commission. It has largely caved in to pressure from certain Member States and employers’ lobbies on key issues like making the individual opt-out more widely available, giving employers a unilateral right to organise working time over 12 months, and practically ending protection for on-call workers. Employers’ lobbies are complaining about new limitations on the individual opt-out, but that is a smokescreen.

“The fact is that individuals without union help will be under huge pressure to work longer. The Commission has sided with the general employer offensive on working time. It should have deferred a decision, and passed the matter to the new Commission. Now the Commission has failed in its duty, the ETUC expects the Parliament to confirm its earlier stance and protect Europe’s citizens from longer and longer working hours.”

ETUC comments on revision of WORKING TIME DIRECTIVE

General remarks

The ETUC regards the current proposals as totally out of proportion. The Commission is putting itself at risk, in that it puts forward proposals that are in clear contradiction to its obligations under EU treaties, notably to improve living and working conditions and ensure that improvements will be maintained. While Community law obliges the EU to limit working hours for every worker, the maximum of 48 hours is further ‘flexibilised’, and a new maximum of 65 hours per week is introduced.

Millions of workers will become more vulnerable to long and unhealthy working hours, and will find it impossible to reconcile work with the need to take care of their family and relatives.

Moreover, the Lisbon goals of flexibility, higher productivity, employment growth and higher participation rates on a lifetime basis are not well served by going back to old-fashioned methods like the reintroduction of long working hours per week.

If adopted, the proposals would turn the Working Time Directive into a façade without any real content, while generally threatening the introduction of modern working time arrangements that take account of legitimate needs of workers and enterprises, on the basis of balanced negotiations between the two sides of industry.

To state, as the Commission does in its explanatory note, that its proposal will increase the level of protection of workers’ health and safety, and a

better compatibility between work and family life, is an insult to every citizen and worker who wants these needs to be taken seriously.

Therefore, the proposals on the table have to be totally rejected.

The ETUC reiterates its demands on the only acceptable way forward:

- a) To phase out any form of individual opt-out, and in the meantime tighten the conditions of the individual opt-out so as immediately to tackle the most pressing forms of abuse
- b) to keep in place the existing safeguards about flexibilisation of the 48-hour working week, notably the need for collective bargaining to extend reference periods and annualisation of working hours
- c) to provide for balanced and proportional solutions for on-call work, that are consistent with Community law, and take account of the legitimate needs of workers, notably in the health care sector, to protect not only the health and safety of staff, but also of their patients.

About the specific proposals:

On the opt-out

The ETUC acknowledges and welcomes the fact that the Commission has tried to come up with proposals to limit the use of the individual opt-out and to put boundaries to the many abuses linked to the individual opt-out.

However, the ETUC does not see the outcome as very successful. Far from introducing a 'veto' for trade unions, as employers' organisations and the UK government have protested, the proposal would still allow for individual opt-outs whenever there is no collective agreement, thereby not only continuing the current situation in the UK, but also creating a dangerous dynamic in which trade unions can be put under pressure to allow for individual opt-outs or otherwise not be recognised as collective bargaining partners.

The ETUC in general is in favour of providing for flexibility in the application of working time regulations through collective bargaining. But the social partners will also have to respect the fundamental right enshrined in European law that each and every worker has a right to limitation of working hours. Why on earth do we need to give everybody on every level a possibility to allow for opt-outs, if we have a Directive in place that on the one hand is already very flexible, and at the same time has as its fundamental objective to limit working time, for reasons of health and safety?

With regard to the proposals to tighten the conditions of the individual opt-out, the ETUC wants to stress that these could be welcomed as short-term measures within the framework of a longer-term perspective to phase out the opt-out, as the European Parliament has asked for.

Putting an end to several of the most pressing abuses in the UK has already been the duty of the Commission for years.

On reference periods

No research is presented, nor any business case proven, for allowing Member States the possibility to extend reference periods to 12 months without any further conditions. To delete the existing safeguard of collective bargaining for the introduction of annualised hours will allow employers to manage the working time of their employees at will, leading to very long and/or irregular scheduling of working hours. The proposal runs counter to the obligation under the EU Treaty for the Commission to promote collective bargaining, and may in fact jeopardise the many existing and valuable practices at national, sectoral and company level on balanced forms of negotiated flexibility.

On on-call work

The proposal to only define the 'active part' of on-call working time as working time, will deprive workers in many sectors (and not only health care) from the right to have appropriate and compensatory rest periods after long hours of work, very often in situations where a full day's work has been followed up by an on-call night shift.

This is unacceptable from the point of view of health and safety, but also from the perspective of the long-term needs of sectors such as the health sector, to provide for a working environment that attracts new staff, instead of forcing workers to leave because of over-burdensome working time arrangements.

The Commission apparently has not made enough of an effort to take note of the many experiences and studies on the national and sectoral level that show the feasibility of dealing with on-call working time in conformity with the judgements of the Court of Justice, and with the available financial and human resources.

The ETUC emphasises that the Working Time Directive, in its preamble, explicitly states " that the improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic reasons".

In the view of the ETUC, the proposal goes far beyond what can be considered a proportional measure. The ETUC is convinced that more appropriate measures are feasible on the basis of agreements between the social partners at the European, national or sectoral level.

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