



**EPSU Firefighters Network meeting
3 April 2012**

**Working Time Negotiations and
EU White Paper on Pensions**



Working time: Lead up to negotiations

Two consultation periods in 2010 and 2011 with the second asking the social partners whether they wanted a broad or narrow review of working time and whether they would be prepared to negotiate.

The ETUC, reflecting the views of EPSU, said it would enter into negotiations on the basis of a mandate which had the following objectives:

- a comprehensive revision of the WTD which can serve the health and safety of workers;
- the end or phasing-out of the individual opt-out in the near future;
- keeping the status quo concerning reference periods;
- and ensuring compliance of the European Court of Justice rulings on on-call time at work and compensatory rest.

Major report prepared for Commission by consultants Deloitte provided useful evidence in support of the trade union position. Emphasising that there was no reason for any shift in previous positions on working time.



Working Time: Negotiations

Trade unions: ETUC and Eurocadres
Employers: businessseurope, UEAPME, CEEP

First round: December 2011, followed by meetings in February and March
Nine month limit for negotiations unless agreement to extend

Agreement that there would be no statements to press unless agreed by both sides

Employers have put question of annual leave and sick leave on the table
ETUC has put focus on reconciliation of work and private life



Working Time: Negotiations

April: annual leave and sick leave + reconciliation of work and private life

May: expert seminar on implementation of the directive and the ECJ rulings on on-call time at work – examples proposed from EPSU of UK health service (Hospital at Night) and German fire service (specifically Cologne)

Employers want to move quickly to start drafting text and to finish negotiations within the nine-month period.



Main issues

- Annual leave and sick leave (raised by employers)
- Work-life balance and information rights (raised by ETUC)
- On-call time at work (to be addressed in May)
- Individual opt-out (not yet on the table)
- Autonomous workers (not yet on the table)
- Reference periods (not yet on the table)
- Compensatory rest (not yet on the table)

Paid leave and long-term sickness

This concerns a workers' right to accumulate paid holiday leave from one year to the next if long-term sick with a judgement from the European Court of Justice that says that Member States can decide on carry-over period and that a carry-over period of 15 months is not unreasonable. This has emerged as the priority issue for businessseurope and their main concerns on this should be revealed at the negotiations in April.



On-call time at work

In line with the European Court of Justice rulings in *Jaeger*, *SIMAP* and *Dellas*, all on-call time at work should be counted hour-for-hour as working time. This has posed problems in some countries, particularly those facing major recruitment difficulties and has been a factor in the spread of the use of the individual opt-out.



Work-life balance and rights to information

Rights to be informed and measures on work-life balance

This is about employers informing workers in advance on changes to working time and rights for individual workers to ask for more flexibility working hours.

ETUC internal note argues that there should be fewer derogations from rest and reference periods etc. and highlights the need to move away from unusual working hours, precarious work and zero hours contracts. Stress on adapting work to the worker.



Individual opt-out

Unlike the other main provisions of the Working Time Directive, it is not possible to derogate from the 48-hour working week. The individual opt-out is the main way to do this unless workers can be classified as “autonomous”.

The Commission’s implementation reports confirm that there are no reliable data on how many workers sign an opt-out, the circumstances in which they sign or the number of hours they work. This is despite the requirement in the Directive to keep such information and provide it to the relevant authorities.

The EPSU position is that the individual opt-out is wholly inappropriate for health and safety legislation and that it should be abolished or at least phased over an agreed period, during which there should be proper monitoring and enforcement.

Working Time

Spread of the individual opt-out



General opt-out

UK (1993), Malta, Cyprus, Estonia (2004), Bulgaria (2007)

Sector-specific opt-out

- France (2002) public health
- Germany (2003) public health, police, fire; federal civil servants (from 2008)
- Spain (2003) doctors and nurses in public health
- Hungary (2003) health, standby in private sector
- Slovenia (2004) health and medical services
- Latvia (2004)
- Netherlands (2004-05) health and fire service
- Poland (2007) doctors and professionals in health care
- Slovakia (2007) medical workers
- Czech Republic (2008) health services
- Belgium (2010-11) certain health service professionals

Reference periods and compensatory rest



The **reference period** for calculating the 48-hour week is normally four months but can be extended to six months in special circumstances and up to 12 months by collective agreement. Before the negotiations this had been an issue highlighted by UEAPME but has **not so far** been raised in the negotiations. **EPSU position:** no convincing argument for need for more flexibility either beyond 12 months or without protection of collective bargaining

Problem with delays in taking **compensatory rest** after extended shifts identified in Jaeger case. Argument that this should be clarified in the directive but not yet on the negotiating agenda.



Autonomous workers

Clarification of definition of autonomous workers

Need for clearer definition so that it applies only to senior managers in public and private sectors and to those with autonomy over working time and is not abused to allow employers to increase the number of workers to which the 48-hour maximum working week does not apply



General principles

One proposal from EPSU to the ETUC negotiating team is to put forward some general principles that could be added to the Directive, such as:

- In its primary aim of protecting the health and safety of workers, the Directive should apply the principle, in accordance with the constitution of the World Health Organisation, that health is a state of complete physical, mental and social well-being that does not consist only in the absence of illness or infirmity.
- The issue of health and safety is not a matter of choice for the individual worker. Regulations to improve health and safety are there not just to protect the individual worker but by protecting him they also afford protection to his co-workers and others who are affected by his actions at work.
- Health and safety at work is best guaranteed on the basis of good practice in relation to information, consultation and negotiation. Trade unions have a vital role to play in this process but in the absence of trade unions, individual workers should have the right to information and consultation over matters affecting their health and safety.