



14 April 2011

EUROPEAN PARLIAMENT EMPLOYMENT COMMITTEE EXCHANGE OF VIEWS WITH SOCIAL PARTNERS ON WORKING TIME DIRECTIVE 14 APRIL 2011

REBEKAH SMITH, SENIOR ADVISER, SOCIAL AFFAIRS

- Still in process of discussing the revision of the Directive internally. However, can give some preliminary indications.
- Firstly regarding the content of a revision: BUSINESSSEUROPE believes that a revision of the directive should be restricted to addressing the problems raised by the jurisprudence of the European Court of Justice on the issues of on-call time and paid annual leave/sick leave.
- Secondly regarding procedure: Our Executive Committee decided to recommend to our Council of Presidents to negotiate with ETUC a revision of the Directive limited to the two issues mentioned above.

Why this approach in terms of content?

- The issues of on-call time and paid annual leave/sick leave need to be dealt with as a matter of urgency, because the rulings have led to legal problems and adverse effects for employers and employees.
- The rulings on on-call time contradict the provisions of the directive, which means that 15 member states could be in breach of the directive on this point.
- Previous attempts to revise the Directive to deal with this have not been successful. If a solution is not found, the Commission will launch infringement procedures against member states.
- On-call is not only an issue for the public sector/health sector – the private sector is also affected. This includes, for example, IT, security in chemical plants, private security services and private care service providers.
- The rulings on paid annual leave have created legal problems, as they contradict some existing provisions of national law. Whereas the ECJ cases allow for paid annual leave entitlements to be carried over by workers on long-term sick leave, some national laws place a time limit on this.
- In both cases, the jurisprudence is very costly for employers to implement.
- If all on-call time, including the in-active part, is counted as working time, the maximum weekly working hours are reached much more quickly. This then necessitates hiring extra staff.
- On paid annual leave, the ECJ ruled that entitlements could be paid in lieu of leave not taken by an employee while on long-term sick leave. This entails a cost burden to employers.



- In both cases, the rulings have had adverse effects on work organisation. With on-call time, rescheduling of working hours is necessary if in-active on-call time is counted as working time. The problems that this causes for companies, which often have to majorly reorganize work patterns, is highlighted in the study accompanying the 2nd stage consultation document.
- Focusing on these two issues will allow the social partners to solve pressing issues not only for employers but also employees, who can find themselves in an uncertain situation.
- Also in terms of content, the opt-out must be maintained.
- The opt-out is now used by 16 member states. Therefore, the commission is correct when it states that it is not realistic to ask member states to refrain from using this possibility.
- The opt-out is important to business. It gives employers necessary flexibility, for example to deal with fluctuations in demand, to provide services and products at times that suit their customers, to work on a specific project during a restricted period of time.

Why this approach in terms of procedure?

- The only realistic way to make progress and avoid another unsuccessful revision is to adopt a pragmatic approach which is limited to the two key issues of on-call time and paid annual leave.
- If a broader approach was taken to revising the directive, it would once again complicate the discussions and not likely lead to a solution.
- This is because of the different positions of the member states and differences in opinion of the EU institutions.
- As social partners, we should focus on those issues on which we have the most realistic and feasible chance of an agreement. This is only possible if we restrict ourselves to the two issues of on-call time and paid annual leave/sick leave.
- We question the feasibility of finding an agreement between social partners on a comprehensive revision of the directive, due to the divergent positions.

Concluding remarks:

- Many broader issues were highlighted in the first stage consultation. These should not be the object of a revision of the directive.
- They are better left to companies and social partners, to find solutions at national level.
- It is important not to neglect the fact that many arrangements have been found in this way to implement the directive on the ground.
- It is important to avoid new constraints which would further reduce the scope of companies to organise working time and social partners to find win-win solutions at national or company level.
- Therefore what is important for us is to really concentrate on those issues that need solving at EU level – on-call time and paid annual leave.