



2 November 2011

## WORKING TIME DIRECTIVE

### KEY MESSAGES

- 1 On-call time should not be considered as working time.
- 2 Possibilities for individual workers to opt out must be preserved.
- 3 Only a pragmatic and realistic approach to revision of the working time directive, focusing on the legal problems raised by ECJ jurisprudence will bring about an agreement.

### WHAT DOES BUSINESSEUROPE AIM FOR?

- In 1993 the EU adopted the working time directive, which set a limit of an average 48 working hours per week. This directive then gave rise to jurisprudence in the European Court of Justice, which created major problems for employers. This included the issues of on-call time and annual leave for workers on long-term sick leave. The directive was supposed to be revised ten years after its adoption. However in 2009 following five years of discussions, the Council and the European Parliament failed to reach an agreement.
- On 24 March 2010, the European Commission launched the first-stage consultation of the European social partners on a review of the working time directive. A second stage consultation was launched on 21 December 2010.
- The two key issues at stake are: the individual opt-out (or the possibility to derogate from the 48-hour limit to the average working week) and the definition of on-call time.

### KEY FACTS AND FIGURES

The opt-out provision in the working time directive is now used by 16 member states	15 member states could be in breach of the directive following the court rulings on on-call time	In a survey by Eurofound, 87% of workers considered the option of “working more or less hours if needed” an important factor in determining their satisfaction with work
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- European social partners have indicated their willingness to negotiate on a revision of the working time directive. Negotiations are expected to start at the end of the year, with nine months to find an agreement.
- Flexibility is crucial for companies to be able to organise working time according to the nature of their activity, the production cycle and customer demands. They also need to adapt to workers' individual needs. Rules at EU level should not hamper flexibility and should avoid placing an obstacle in the way of economic growth and job creation.
- A number of rulings by the European Court of Justice (including Simap and Jaeger) concluded that time spent on call had to be counted as working time if a person is required to be at their place of employment, even if they are resting.
- The rulings raise serious legal, financial and human resources problems for those activities which make use of workers on on-call time in the public sector, but also private sector companies (IT, security services in chemical plants, private security and care services, etc.)
- Other rulings of the European Court of Justice (Schulz-Hoff and Stringer) on paid annual leave and sick leave have also created problems and costs for companies, and could impact negatively on workers.
- 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. This is the only realistic approach to make progress and avoid another failure.
- The opt-out from the maximum 48-hour working week must be maintained as a permanent provision of the directive. It gives employers necessary flexibility, for example to deal with fluctuations in demand, to provide services and products at times that suit their customers, and to work on specific projects during a restricted period of time. Individual workers should have the opportunity to work more than 48 hours a week, through the opt-out, if they wish to do so.