



European Trade Union Confederation (ETUC)  
Confédération européenne des syndicats (CES)

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JM/CP/em

Ms Marjeta Cotman  
Minister of Labour  
Family and Social Affairs  
Kotnikova 5  
SI - 1000 Ljubljana  
Slovenia

via e-mail & post [gp.mdds@gov.si](mailto:gp.mdds@gov.si)

**Re:**  
**Revision of Directive 93/104/EC,**  
**concerning the organisation of working time**

Dear Minister,

In the upcoming week, the Council of the European Union (Employment, Social Policy, Health and Consumer Affairs) will have on its agenda the next steps to take with regard to the revision of the Working Time Directive.

The ETUC is addressing you in your capacity as Minister of Labour, representing the Slovenian Presidency and as such chairing next week's Council meeting.

As you know, the ETUC is very concerned about the developments with regard to this Directive.

In summary, the ETUC is disappointed that the current set of proposals falls short of protecting workers against the health and safety hazards of long working hours, introduces an overall diminution of protection without proper safeguards, does not in any way provide for a proper balance between flexibility and security, and will create incentives for avoiding and evading collectively agreed solutions to flexibility needs of companies.

If adopted in its current form, the revised Directive will be the first social Directive ever to introduce a **regression in the level of protection** provided, while not offering citizens and workers in Europe an acceptable and sustainable deal on modernisation and innovation of the organisation of working time.

The proposals on the table will:

- a) reverse the very clear and unambiguous series of decisions of the European Court of Justice saying that the notion of working time in the Directive includes on-call time in the workplace; instead, the Directive will define 'inactive time in the workplace' as not being working time;
- b) delete the existing safeguards in the Directive with regard to the obligation to provide workers with 'equivalent compensatory rest' in case of derogations from the Directive, allowing Member States almost unlimited scope to define the 'reasonable period' in which compensatory rest must be given;

- c) allow for a reference period of 12 months for the counting of the average 48 hour working week not only on the basis of collective agreements but also by law or regulation, without proper safeguards regarding the prevention of health and safety hazards involving long and irregular hours, and without obligation to properly inform and consult workers and their representatives;
- d) not put an end to the 'individual opt-out' of the average 48 hour working week, but only tighten the conditions of its use in a way that will not sufficiently prevent misuse.

In ETUC's view, these proposals are not in line with Article 136, which clearly states that the Community and the Member States shall have as one of their objectives "*improved living and working conditions (...) while their improvement is being maintained*", nor respect the EU Charter of Fundamental Rights, which in its Article 31 lays down that every worker has the right to fair and equitable working conditions and especially "*the right to limitation of maximum working hours and daily and weekly rest periods (...)*"

On one point, the ETUC would like to express its positive appreciation: the proposal of your Presidency – based on a similar proposal adopted by the EP in its first reading – to give workers the **right to request changes** in their working hours and to **ensure that employers inform workers in good time of any changes** in the pattern or organisation of working time is a step in the right direction. It recognizes that with the increased potential of long and irregular working hours arising from changes in working time regulation and practices, workers will need a tool to adapt working time to their needs, in particular to be able to reconcile work, family and private life. These proposals should be supported by all Member States, and especially those that place a high emphasis on the importance of individual choice.

However, this proposal on its own is not sufficient to ensure that the interests and health-and-safety needs of workers are properly taken into account in decisions on the collective organisation of working time and working hours.

### **Specific comments**

#### **On the opt-out**

We understand that you have based your proposals on previous work by the Finnish and Portuguese presidency, notably by **limiting the cumulative use of the opt-out** with other flexibility arrangements in the Directive. This might have been a useful step in the direction of putting pressure on Member States to forego the use of the opt-out. However, as we already said in previous stages of the debate, by not including the new provisions on on-call work in this approach, and by allowing those Member States using the opt-out in any case a reference period of 6 months, this proposal has **lost its potential meaning**.

We also note your proposals regarding extra requirements on member states that use the **opt-out**. For instance, it will be regarded as an "exception", subject to specific monitoring and reporting exercises, nationally and at EU level. However, by only saying that these reports **may** be accompanied by appropriate proposals to reduce excessive working hours, and with no language at all on a possible end of the opt-out in any – even distant – future, these proposals fall clearly short of legitimate expectations of workers around Europe.

The proposal to introduce a **cap of 60 hours** for workers who have signed an opt-out agreement is an important **step in the right direction**. However, the fact that it is not an absolute cap per week, but counted on the basis of a reference period of 3 months makes it a much weaker provision, allowing for very long and irregular working hours. Your proposal to introduce the possibility of derogating from this cap by collective agreement or agreement between the social partners is in our view **not** at all desirable: an average of 60 hours with a reference period of 3 months is already far beyond the standards of the Directive (48 hours average!), and it should not be possible to derogate from it.

The introduction of a **separate cap of 65 hours** for on-call workers in situations in which on-call time is regarded as working time is in our view also giving the **wrong message**, as if on-call workers need less protection against excessively long working hours.

In our view, the proposals regarding the conditions of the opt-out still fail to protect **workers when they are most vulnerable** to undue pressure, such as when they are in their **probation period** (which in many countries may be in reality in the first 2 or 3 months of their employment contract, while they are only protected according to the draft text in the first 4 weeks of their contract).

We have **strong objections to the new exclusion** of workers with **contracts of up to 4 months** from several of the protections regarding the opt-out, as this would exclude in practice all seasonal workers, while it would – in its current phrasing – also be an incentive for hiring workers via agencies and subcontractors.

### **On-call work and reference periods**

The ETUC agrees that the debate on the opt-out is a crucial one, but regrets the fact that at this stage there no longer seems to be a proper discussion in the Council on other equally important matters that are dealt with in the revision.

With regard to **on-call work**, already during previous presidencies the Council seems to have taken for granted that it is legitimate to reverse the consistent jurisprudence of the ECJ, which is saying that on-call work in the workplace has to be regarded as working time, to 'solve the (mostly budgetary!) problem' of Member States with on call doctors and fire-fighters. Combined with the proposals to allow Member States almost unlimited scope to define what is a reasonable period in which **compensatory rest** has to be granted, these provisions will leave the millions of on-call workers without any meaningful protection against very long and irregular working hours. The ETUC warns Member States, that continuing on this road will prove to be a very short sighted action, which among other things will only exacerbate the already high drop out rate of doctors (increasingly being female) from work in hospitals.

Another issue of major concern to ETUC is the issue of the **reference periods** to calculate the average maximum of 48 hours work a week. It has to be understood that the longer the reference period, the more the worker can be confronted with very long and irregular hours per week.

It seems that the Council has already in previous stages deleted the necessary safeguards for the introduction of a **12 month reference period** - proposed by the European Parliament and supported by the Commission in its revised draft - that would counterbalance the scope for employers to unilaterally decide on

working time patterns, such as the **obligation to inform and consult workers and their representatives** before introducing such reference periods, and the obligation to take additional **health and safety measures**. Just demanding that such long reference periods can only be set 'following consultation of the social partners' is not sufficient.

### **Conclusions**

We ask you to do everything within your competence:

- *to ensure that the key principles of the Working Time Directive are upheld and that any proposals for revision, developed in the Council of Ministers, are compatible with the European Treaties and the EU Charter of Fundamental Rights;*
- *to convince your fellow Ministers in the Council that the current texts need further improvement, to receive the support of workers and citizens around Europe and especially the support of the European Parliament in its second reading.*

This debate is taking place in the context of another debate, on the draft Directive on Temporary Agency Work, about which we will send you our views in a separate letter. The ETUC would welcome progress on that dossier, providing for a clear regulatory framework for Temporary agency work at EU level, based on the principle of equal treatment. This would give a clear signal that social progress at EU level is necessary and possible. However, this should not be used as a good reason or excuse to adopt a revised Working Time Directive that can not be considered to offer any social progress at all, and may even do the opposite, as argued above. The ETUC has always opposed the linking of the two dossiers, and we call on you **to deal with both very important dossiers independently**, and ensure that decisions are made based on the merits of each dossier separately.

This debate is also taking place against the backdrop of the ratification of the Lisbon Treaty. We ask you to convince your fellow Ministers that ignoring the concerns of workers and trade unions would seriously harm the perspective of a sustainable social Europe that will receive the support of its citizens.

We thank you in advance for your support, and wish you strength and success in the upcoming negotiations in the Council.

Yours sincerely,

John Monks  
General Secretary

Cc: Commissioner Vladimír Špidla and  
Permanent Representatives of MS's to the EU