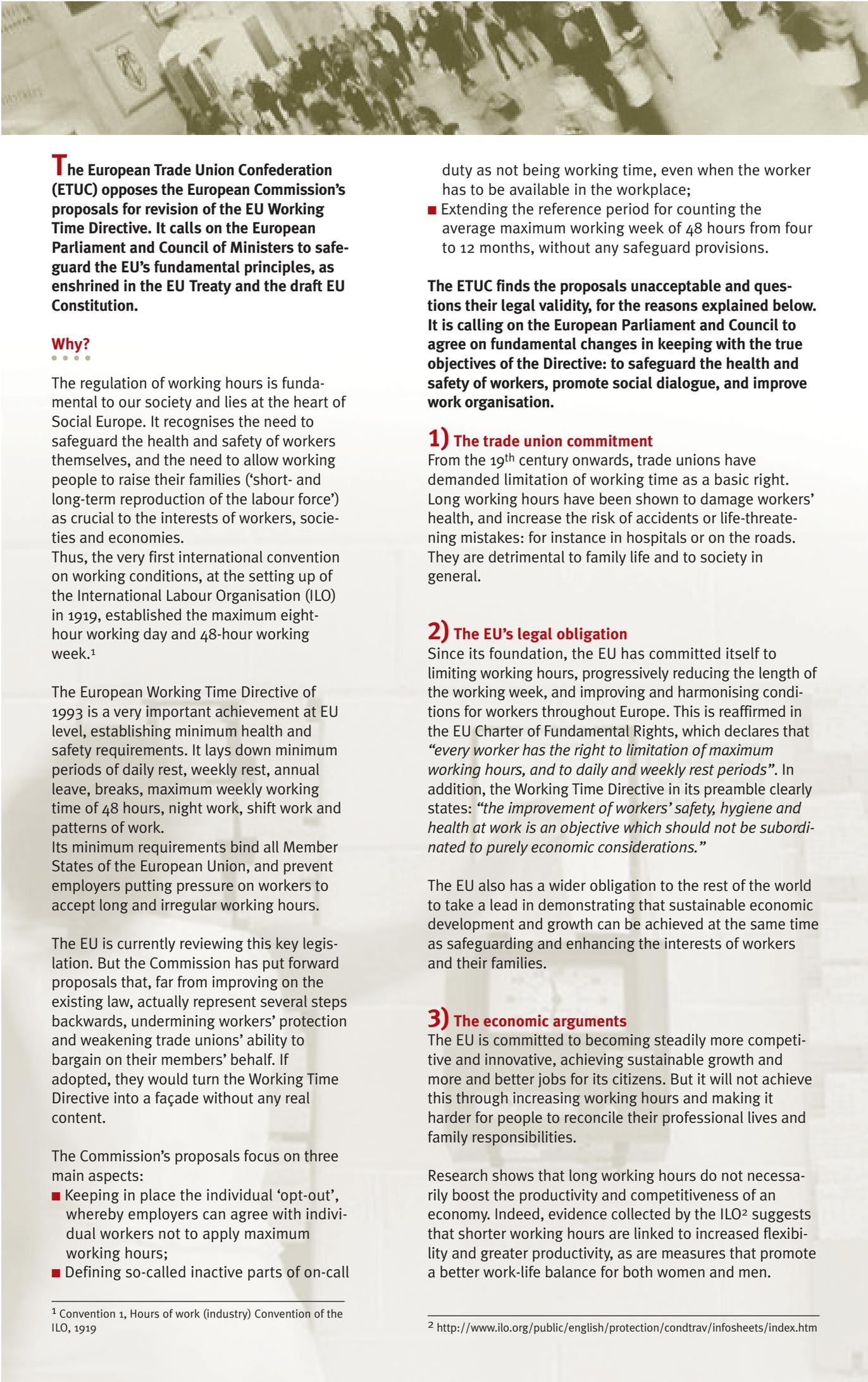




**Modern organisation
of working time and
the fundamental right
to limitation of
working hours**



EUROPEAN TRADE UNION CONFEDERATION



The European Trade Union Confederation (ETUC) opposes the European Commission's proposals for revision of the EU Working Time Directive. It calls on the European Parliament and Council of Ministers to safeguard the EU's fundamental principles, as enshrined in the EU Treaty and the draft EU Constitution.

Why?

The regulation of working hours is fundamental to our society and lies at the heart of Social Europe. It recognises the need to safeguard the health and safety of workers themselves, and the need to allow working people to raise their families ('short- and long-term reproduction of the labour force') as crucial to the interests of workers, societies and economies.

Thus, the very first international convention on working conditions, at the setting up of the International Labour Organisation (ILO) in 1919, established the maximum eight-hour working day and 48-hour working week.¹

The European Working Time Directive of 1993 is a very important achievement at EU level, establishing minimum health and safety requirements. It lays down minimum periods of daily rest, weekly rest, annual leave, breaks, maximum weekly working time of 48 hours, night work, shift work and patterns of work.

Its minimum requirements bind all Member States of the European Union, and prevent employers putting pressure on workers to accept long and irregular working hours.

The EU is currently reviewing this key legislation. But the Commission has put forward proposals that, far from improving on the existing law, actually represent several steps backwards, undermining workers' protection and weakening trade unions' ability to bargain on their members' behalf. If adopted, they would turn the Working Time Directive into a façade without any real content.

The Commission's proposals focus on three main aspects:

- Keeping in place the individual 'opt-out', whereby employers can agree with individual workers not to apply maximum working hours;
- Defining so-called inactive parts of on-call

duty as not being working time, even when the worker has to be available in the workplace;

- Extending the reference period for counting the average maximum working week of 48 hours from four to 12 months, without any safeguard provisions.

The ETUC finds the proposals unacceptable and questions their legal validity, for the reasons explained below. It is calling on the European Parliament and Council to agree on fundamental changes in keeping with the true objectives of the Directive: to safeguard the health and safety of workers, promote social dialogue, and improve work organisation.

1) The trade union commitment

From the 19th century onwards, trade unions have demanded limitation of working time as a basic right. Long working hours have been shown to damage workers' health, and increase the risk of accidents or life-threatening mistakes: for instance in hospitals or on the roads. They are detrimental to family life and to society in general.

2) The EU's legal obligation

Since its foundation, the EU has committed itself to limiting working hours, progressively reducing the length of the working week, and improving and harmonising conditions for workers throughout Europe. This is reaffirmed in the EU Charter of Fundamental Rights, which declares that *"every worker has the right to limitation of maximum working hours, and to daily and weekly rest periods"*. In addition, the Working Time Directive in its preamble clearly states: *"the improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations."*

The EU also has a wider obligation to the rest of the world to take a lead in demonstrating that sustainable economic development and growth can be achieved at the same time as safeguarding and enhancing the interests of workers and their families.

3) The economic arguments

The EU is committed to becoming steadily more competitive and innovative, achieving sustainable growth and more and better jobs for its citizens. But it will not achieve this through increasing working hours and making it harder for people to reconcile their professional lives and family responsibilities.

Research shows that long working hours do not necessarily boost the productivity and competitiveness of an economy. Indeed, evidence collected by the ILO² suggests that shorter working hours are linked to increased flexibility and greater productivity, as are measures that promote a better work-life balance for both women and men.

¹ Convention 1, Hours of work (industry) Convention of the ILO, 1919

² <http://www.ilo.org/public/english/protection/condtrav/infosheets/index.htm>

4) Why is the Directive being revised?

The current Directive is already very flexible. It establishes a maximum 48-hour working week, but permits working time to be averaged out over four months, thus allowing working weeks of more than 48 hours to be compensated by shorter working weeks.

In addition, it incorporates two far-reaching derogations, allowing for almost unlimited extension of working hours. The four-month reference period can be extended to one year (although only in specific cases, on the basis of collective bargaining).

The other derogation enables Member States not to apply the maximum 48-hour limit at all, on the basis of voluntary agreements with individual workers: the so-called 'opt-out'.

The Commission was under a legal obligation to re-examine these two derogations within seven years of the Directive's implementation in November 2003. Now in 2005, more than ten years after its adoption, the ETUC was hoping for a courageous move towards deleting these derogations, in line with the obligation to limit maximum working hours for all workers in the EU.

More recently, a new question has arisen following rulings by the European Court of Justice (ECJ) that on-call time in the workplace is working time. Some Member States have resisted these judgements and used them as a pretext for applying the opt-out, especially to doctors working on-call in hospitals and other health sector workers.

5) What's wrong with the Commission's proposals?

A. The individual 'opt-out'

The original Directive included an 'opt-out' clause – largely at the demand of the UK government – on the condition that this should be re-evaluated after ten years with a view to its withdrawal. Since 1993, the opt-out has been widely abused in the UK in particular, with workers being pressured to sign away their legal rights whether or not they work more than 48 hours a week. Far from making British industry more competitive, evidence suggests this has contributed to lower productivity and poor management. It has also contributed to continuing the traditional division of labour between men and women, with men doing long hours and women primarily in charge of family and care obligations, standing in the way of a more equal share for women in employment and decision-making, and men in family life.

Furthermore, a growing number of Member States have recently been turning to the opt-out to get around working time restrictions, in areas such as health services.

Commission proposal:

The opt-out should be primarily subject to agreement by the social partners. **But**, this condition falls if there is no collective agreement in force or no recognised worker representation in place.

The Commission proposes new conditions for individuals signing opt-out agreements, including a top limit of 65 hours' work in one week, and an annual review.

ETUC's view:

The ETUC is in favour of allowing flexibility in the *application* of working time regulations through collective bargaining. But the Commission's proposal, far from tightening restrictions on the use of the opt-out, could even widen its use. It would put pressure on trade unions to bargain away the 48-hour maximum working week, offer employers a lazy way out of negotiating more sustainable flexible working time arrangements, and may even offer an incentive to employers to refuse collective bargaining or trade union recognition.

In addition, the very introduction of a 65 hour maximum working week would begin to make this limit look acceptable!

The ETUC, in line with the majority of the European Parliament, insists that the Directive must be revised to phase out the individual opt-out as soon as possible.

B. On-call work

In the last five years, three important rulings by the ECJ (in the SIMAP, Jaeger and Pfeiffer cases), have confirmed that 'on call working time', when the employee must be available in the workplace, should be defined as working time under the terms of the Directive. Compensatory rest time must be available immediately after the working period.

Commission proposal:

The Commission wants to divide 'on-call working time', into 'active' and 'inactive' periods. Only 'active' on-call duty would be defined as working time, unless Member States or collective agreements rule otherwise. Compensatory rest could be delayed for up to 72 hours.

ETUC's view:

The ECJ rulings are clear and binding, and cannot simply be put aside for economic reasons, or to solve practical problems! In the SIMAP case (2000), the Court clearly referred to the link between on-call work and the objectives of the Working Time Directive, being: *"...to ensure the health and safety of workers by granting them minimum periods of rest and adequate breaks... To exclude duty on-call from working time if physical presence is required would seriously undermine that objective."*

Excluding on-call duty in the workplace from working time could undermine existing collective agreements and have a far-reaching and disastrous impact on work organisation in many sectors. Any form of

'inactivity' – among waiters in restaurants, for example – could potentially be excluded from the working hours rules. Such a move would make it even more difficult for workers with families to manage their time.

The ETUC has found no convincing evidence that Member States cannot implement the ECJ's rulings, and has continuously demanded proposals that respect the ECJ judgements, promote balanced solutions on the basis of collective bargaining, and guarantee workers the right to adequate rest periods.

C. Reference periods

The existing maximum reference period for calculating the average maximum working week of 48 hours is four months. It can be extended up to 12 months, but only through collective agreement.

Commission proposal:

Member States would be free to allow for a 12-month reference period, subject only to ill-defined 'consultation' with the social partners.

ETUC's view

This change would be likely to bring about unilaterally imposed longer, more irregular and unpredictable working hours for many workers, without the protection of collective bargaining or any other safeguard. They could be required to work anything up to 78 (and in some cases even 85!) hours a week over periods of weeks or even months, without proper rest. This could have a serious impact on their health and safety, and once again undermine any expectation of reconciling work and family life, for men and women alike.

The existing Directive already offers employers considerable flexibility – allowing for working weeks of up to 78 hours, provided compensation is offered in the form of shorter working weeks within the four-month reference period. The ETUC is convinced that collective bargaining offers ample scope for **increasing flexibility** and modernising working time arrangements, often combined with average **reduction** of working time, as has been shown in many Member States.

The ETUC demands that the existing four-month reference period remains in place. Longer reference periods, up to 12 months, should be allowed only on the basis of:

- **collective bargaining, or**
- **additional legal safeguards and conditions that guarantee information and consultation of workers and/or their representatives and adequate protection of their health and safety.**

6) What Europe needs now and in the future

A step backwards towards longer and more irregular and unpredictable working hours is not going to help the EU meet its targets. On the contrary, over recent decades European societies have changed radically, with more women entering the labour market, an ageing population, and falling birth rates. To enable male and female workers to take up the responsibilities of raising children and caring for elderly family members, while increasingly participating on the labour market, Europe needs to modernise working time organisation, so as to provide flexibility to both workers and companies within a framework of security and social dialogue.

Therefore, the revision of the Working Time Directive must also be used as an opportunity to introduce provisions that oblige employers to accommodate a work-life balance for male and female workers.

This is all the more necessary when other provisions in the Directive, for instance with regard to on-call work and annualisation of working hours, will allow for more irregular and unpredictable working hours.

Current choices regarding the organisation of working time will decide the opportunities of future generations.

Going back to long and unhealthy working hours and a traditional division of labour between women and men will hinder fully fledged participation of women on the labour market, and negatively influence the choice of young parents to combine labour market participation with raising families. This will eventually have a damaging influence on economic growth and productivity.

Going forward to a limitation of working hours will promote modern working time arrangements that can provide flexibility to both workers and companies, and will thereby contribute to economic sustainability.

In the interest of working people and their families and the future of Europe, the ETUC calls for:

- **the current unbalanced and harmful proposals for revision of the Working Time Directive to be rejected;**
- **the European Parliament to play its important independent and democratic role in proposing fundamental changes;**
- **the Council of Ministers to act accordingly, and cooperate closely with the Parliament in the further revision process, to safeguard fundamental social rights in the EU.**



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