

## **Joint General Assembly AEMH + EJD + FEMS, 8 and 9 May 2015, Vienna**

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### **Updates on studies and consultations in preparation of a possible review of the Working Time Directive 2003/88/EC**

#### **Process**

- DG EMPL studies in the context of the revision of Directive 2003/88/EC (WTD), starting in May 2014 and submitted to the EC in early 2015
  - Economic impact of changes to WTD, including the assessment of administrative and regulatory costs and burdens + review of evidence and analysis of broader economic impact
  - Economic/financial/organisations implications for public health/care services of possible changes to the EU working time rates
  - These studies have not yet been published
  - EC has obtained the reports by the EU MS on the application of the WTD. This national reports should comprise the views of the social partners. This evaluation has to be done by the national governments every 5 years
- EC public consultation on the review of the WTD (deadline for submissions of responses: 15 March 2015)
  - 1,900 answers received, of which 130 by organisations registered to the Transparency Register, 730 organisations not registered there and 1040 anonymous replies
  - EC announced that should they do a new legislative initiative or proposal they would consult the social partners (in whatever format)
  - EC has not included the revision of the WTD in its Work Programme for 2015

#### **Contents**

- Recalling list of countries and sectors with an individual opt-out (Austria to be added, with phasing out of opt-out until 2021)
- Comparison of answers to EC consultation on review of WTD of selected organisations: EPSU, ETUC, CPME, HOPE, HOSPEEM, CEMR, CEEP (the information for FEMS and AEMH, are added at the end of the table below)
- Explication of differences in reply of CPME compared to EPSU and ETUC
- Issues of proper enforcement and of infringement procedures (e.g. Italy: doctors as autonomous workers; PL: Polish government to push reference period to 12 month without collective agreement)

#### **Strategic considerations**

- EPSU, ETUC and CPME have chosen the option “No change” => guarantee acquis of WTD and ECJ favourable for workers (e.g. on on-call time); political majorities in EP and European Council; options for negotiating a compromise?
- Cross-sectoral or sectoral approach
- Infringement procedures => need to have a good overview on infringement procedures and of their outcomes; mutual support and learning

## Introduction of individual opt-out

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1993	UK (general)
2002	France (public health)
2003	Germany (public health, police, fire) Spain (public health)
2004	Malta, Cyprus, Estonia (general) Hungary (health, standby in private sector) Slovenia (health) Latvia (health) Netherlands (health, fire)
2007	Bulgaria (general) Poland (doctors and health professionals) Slovakia (health)
2008	Czech Republic (health) – abolished January 2014 Germany (federal civil servants)
2011	Belgium (health professionals)



EPSU Meeting on Working Time, Brussels, 4 September 2014

Comparison of Selected Replies to EC Consultation on Review of Working Time Directive (Directive 2003/88/EC) (Deadline: 15.03.15)

EPSU + ETUC + CPME + HOSPEEM + HOPE + CEMR + CEEP (still to be added)

	EPSU	ETUC	CPME	HOPE	HOSPEEM	CEMR
<b>1. Objectives and approach to review of WTD</b>						
<b>1. A Impacts of WTD</b>						
- Protects H&S	Tend to agree	= EPSU	Fully agree	= EPSU	= EPSU / = HOPE	Fully agree
- Ensures level playing field	Tend to disagree	Fully disagree	No opinion	Tend to agree	No opinion	= EPSU
- Allows flexible WT organisation	Fully agree	= EPSU	Tend to agree	No opinion	Tend to disagree	Fully disagree
- Impact on costs	No opinion	= EPSU	Tend to agree	Fully agree	Fully agree / = HOPE + CEMR	Fully agree / = HOPE + HOSPEEM
<b>2. Thematic questions</b>						
<b>2. A Scope</b>						
Concurrent contracts	Per worker if 1+ contracts	= EPSU	Other	Up to MS to decide	Per worker if 1+ contracts with same employer	Up to MS to decide / = HOPE
<b>2. B Concept of WT</b>						
<b>On-call time</b>						
- No change	Very desirable	= EPSU	= EPSU	Undesirable	Very undesirable	Very undesirable / = HOSPEEM
- Incorporation of ECJ rulings	Desirable	= EPSU	Undesirable [CPME supporting current CJE interpretation of on-call time fully regarded as	Undesirable	Very undesirable	Very undesirable / = HOSPEEM

	EPSU	ETUC	CPME	HOPE	HOSPEEM	CEMR
			working time; CPME opposes any proposal to circumvent or weaken this interpretation]			
- Sector-based definition	Very undesirable	= EPSU	= EPSU	Very desirable	Desirable	Very desirable / = HOPE
<u>Stand-by time</u>						
- No change	Very desirable	= EPSU	= EPSU	Undesirable	= EPSU	= EPSU
- Incorporation of ECJ rulings	Very undesirable	= EPSU	Undesirable	Desirable	Very desirable	= EPSU
- Add obligation to partially count stand-by time as wt	Very undesirable	= EPSU	Undesirable	= EPSU	= EPSU	= EPSU
- Introduction of limit with max. number of hours stand-by time can be requested	Desirable	= EPSU	No preference	Very undesirable	Very undesirable / = HOPE	Very undesirable / = HOPE + HOSPEEM
<b>2. C Derogations</b>						
<u>Compensatory rest</u>						
- No change	Very desirable	= EPSU	= EPSU	Undesirable	Very undesirable	Undesirable / = HOPE
- Incorporation of ECJ rulings	Desirable	= EPSU	Undesirable [CPME reaffirms that Directive must ensure cr should be taken immediately after the period worked]	Undesirable	Very undesirable	Very undesirable / = HOSPEEM
- Allow granting cr within 2 days	Very undesirable	= EPSU	= EPSU	Desirable	Desirable = HOPE	No preference
- Allow granting cr	Very undesirable	= EPSU	= EPSU	Desirable	Very desirable	No preference

	EPSU	ETUC	CPME	HOPE	HOSPEEM	CEMR
within 4 days						
<u>Reference period</u>	No change	= EPSU	= EPSU	Allow rp up to 12 months	Other [Length of rp to be decided at national level]	Allow rp up to 12 months, not only by national law, but also by ca and/or social bargaining / = HOPE
<u>Opt-out</u>	To be abolished	= EPSU	Other [Phase-out and abolition]	Maintained unchanged	Maintained unchanged = HOPE	Maintained unchanged = HOPE + HOSPEEM
<u>Autonomous worker</u>	Definition too wide and to be limited	= EPSU	Adequate exemptions	Definition too narrow and to be expanded	Other [Defintions of groups of aw at national level]	Other [Defintions of groups of aw at national, regional or local level, through social bargaining or ca] / ~ HOSPEEM]
<b>2. D Specific sectors</b>						
- Emergency services	Current rules o.k.	Other [No ETUC position on this]	= EPSU	Do not know	Other [WTD to allow for national organisation for specific groups]	= EPSU
- <u>Health care sector</u>	Other [Needed: proper enforcement]	= EPSU	Current rules o.k.	Additional derogations to improve continuity of services	Do not know	Current rules o.k.
<b>2. E Patterns of work</b>						
Changes in working patterns	Other [Needed: further consideration]	= EPSU [WTD not appropriate tool]	Current rules o.k.	Current rules o.k.	Current rules o.k. / = HOPE	Current rules o.k. / = CPME + HOPE + HOSPEEM
<u>Reconciliation of work and private</u>						

	EPSU	ETUC	CPME	HOPE	HOSPEEM	CEMR
life						
- Right to ask for specific WT arrangement	Very desirable	= EPSU	- [Support for principle, however to be regulated in specific legislation]	Undesirable	Very undesirable	No preference
<b>3. Looking ahead</b>						
<b>Objectives for future of WTD</b>						
- Correct and effective implementation	Very important	= EPSU	= EPSU	Of little importance	Of little importance / = HOPE	Do not know
- Improve legal clarity	Very important	= EPSU	Of little importance	Quite important	Quite important / = HOPE	Do not know
- Provide greater flexibility for workers	Very important	= EPSU	Not at all important	Not at all important	Quite important	= EPSU
- Provide greater flexibility for employers	Not at all important	= EPSU	= EPSU	Very important	Very important / = HOPE	Very important / = HOPE + HOSPEEM
- Provide higher level of protection for workers	Very important	= EPSU	= EPSU	Not at all important	Quite important	Do not know
<b>Approach for future of WTD</b>	Other [Not appropriate to open up WTD to general amendment]	Directive clearer, more readable and accessible for all [Alternatives: No legislative change / Other]	No new initiative / Maintaining current rules	Legislative changes where specific needs in terms of continuity of services	Legislative changes where specific needs in terms of continuity of services = HOPE	No new initiative / Maintaining current rules / = CEMR

N.B.:

- The European Federation of Salaried Doctors (FEMS) did not submit a reply.
- The European Association of Senior Hospital Physicians (AEMH) replied to the consultation. The only (major) difference as to the answers concerns the issue of stand-by time. AEMH opted in favour of the third option, the introduction of an obligation to partially count stand-by time as working time, referring to the example of Portugal where stand-by time is considered as 50% of working time and is paid at a rate of 50% of the regular salary.