

Working Time

Report of meeting, Brussels, 26.10.17

The meeting was convened to provide EPSU affiliates with the opportunity to discuss the European Commission's Interpretative Communication on the Working Time Directive and to have a broader debate on working time policy with a focus on shorter working time. The meeting was attended by 38 people with representatives from 28 EPSU affiliates from 17 countries and the European Union along with colleagues from the European doctors' organisations CPME and FEMS.

Introduction

Richard Pond (EPSU) provided some background on developments around the Working Time Directive since the failed cross-sector negotiations in 2012. He outlined the position of the EPSU, usually reflecting also that of the European Trade Union Confederation, with particular concerns around on-call time at work, compensatory rest, the use of the individual opt-out, the definition of autonomous workers, the application of the Directive per worker rather than per contract and the reference period used to calculate average weekly working hours.

Interpretative Communication

Marie-Aude Tannou (DG Employment) explained that the Communication was intended to bring more transparency and clarification to the working time issue and assist social partners and Member States in understanding and ensuring compliance with the extensive case law. She confirmed that the Communication was non-binding as only the European Court of Justice can formally interpret the law and that the intention was to focus on better implementation and more effective action against infringement. An initial meeting with Member States had already taken place to discuss these issues.

Zane Rasnaca of the European Trade Union Institute set out the main points from her analysis of the Communication noting that it provided a good overview of the case law although it said little about the broader context and the role of collective bargaining. She also said that the Communication made too much of the flexibility of the Directive and not enough about the fact that it set minimum standards only and that Member States should be encouraged to go beyond these minima.

A number of questions were raised in the presentations and the subsequent debate relating to:

- **Travelling time:** It was clear that travelling between jobs during the working day (particularly relevant for home-care workers) should be counted as working time but a question remained about travelling to/from the first/last appointment of the day.
- **Standby time:** While the case law generally implied that standby time away from the workplace was not working time, a recent Advocate General opinion in a case involving a volunteer firefighter in Belgium (Matzak) took a different view. It remains to be seen whether or not the European Court of Justice will confirm this opinion in its final judgement.
- **Status of volunteers, particularly in fire services:** Generally speaking the Directive did not cover volunteers as they are not workers although the Matzak case referred to above raises questions about this. However, the particular details of the Belgian case might mean it would have limited relevance to the position of volunteers in other sectors or countries.

- **Rest breaks and compensatory rest:** There was some criticism of the guidance in the Communication on when to take rest breaks but the Commission said this was to address the problem of employers often claiming that rest breaks were covered by taking off time at the start or end of the working day. The main problem with compensatory rest was ensuring in practice that employers allowed this to be taken at the earliest opportunity rather than at later date.
- **The relationship between annual leave and parental and other leave:** The main point here was that the entitlement to each kind of leave should be clearly treated separately and one could not cancel out the other.
- **The individual opt-out and reference periods:** The issue raised here was that the Communication wasn't clear about the application of the four-month period to any calculation of average working time in the context where a worker has signed the individual opt-out.
- **The individual opt-out and monitoring:** While the Directive was clear about the need to monitor workers who signed the opt-out there was little evidence this was being done systematically, particularly in relation to actual hours worked as well as the circumstances in which employees signed the opt-out.
- **The situation of personal assistants/live-in care workers:** There had been no case law to test this but no reason to assume that this group of workers should be treated any differently or have any special derogation from the Directive.
- **Updating the Communication and the role of the European Parliament:** The Commission was considering what to do about amending and updating the Communication particularly in the light of the large amount of case law but no decision on this had been made. It was not apparent that the European Parliament would be discussing the Communication and it has no formal role in respect of the Communication.
- **Enforcement:** While the Commission could take up issues with Member States about implementation in law and regulations, any question about infringement in practice required enough evidence to be collected to ensure that the case could be effectively pursued through the courts.

Marie-Oude Tannou said that the European Commission was open to further discussions about any issues arising from the Communication and the Directive. Richard Pond said that EPSU would review the discussions at the meeting and draft a letter highlighting some of the questions that deserve further clarification.

Working time policies and shorter working hours

The second part of the meeting was a wider discussion on working time with reference to the policy document that was agreed at the EPSU Assembly (Congress) in 2000 and with a particular focus on shorter working hours. EPSU had commissioned a new guide from the ETUI, *The why and how of working time reduction*, in order to prompt some debate around an issue that has effectively lain dormant for many years. One of the authors of the report, researcher Stan de Speigelaere, introduced the guide, referring to some of its arguments around health and safety, gender equality and work-life balance.

There was a very wide ranging debate with a number of key points made in relation to:

- continuing pressure on working time from employers and governments and little scope currently to shift to a shorter working time agenda;
- concerns particularly around intensification of work, excessive working time and the resulting psycho-social risks;
- importance of understanding the situation across Europe and the impact of low pay, particularly in Central and Eastern Europe, pushing workers towards longer hours and multiple jobs;
- the importance of linking any shorter working time initiative with the creation of new jobs, particularly for younger workers;
- the risk of being at the disposal of the employer even after “normal” working hours and the importance of the right to disconnect;
- the need to address weaknesses in the Working Time Directive, particularly the continuing use of the individual opt-out;
- the role of safe and effective staffing levels in addressing working time issues, particularly in health and social services; and
- tackling zero-hours contracts and involuntary part-time work.

EPSU will now look at how it can take up some of these issues at European level and develop its policy in the run up to the next Congress in 2019.