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CHAPTER 2

The Working Time Directive in European healthcare Systems

INTRODUCTION

The WTD establishes minimum health and safety requirements regarding working hours. The original directive 93/104/EC, adopted in 1993, was modified in 2000 by directive 2000/34/EC; both were subsequently consolidated in Directive 2003/88/EC1.

The preamble to the WTD states that "the improvement of workers' safety and health at work is an objective that cannot depend on considerations of a purely economic nature".

It adopts a broad meaning of health, also including respect for the worker's family life, his psychological well-being and the regulation of rest, breaks, holidays, night shifts. This definition of health is very relevant as it is implicitly admitted that prolonged working periods produce significant effects on the health of the persons concerned and increase the risk of error

The directive is in force in all the states of the European Union and is directly binding in the body of law of the single state, regardless of the formal act of transposition (it is a self-executing directive). Previous and a fortiori subsequent State laws, which in some way hinder their correct application or deny the enforceability of the minimum protections envisaged, are therefore ineffective.

The directive contemplates:

- A maximum average weekly working time that does not exceed 48 hours, including overtime.
- Paid annual leave of at least 4 weeks.
- A break if the daily working time exceeds 6 hours.
- A minimum rest period of 11 consecutive hours in any 24-hour period.
- A minimum uninterrupted rest period of 24 hours plus the 11 hours of daily rest mentioned above.

- A maximum period of night work not exceeding 8 hours on average per 24-hour period.

The minimum requirements of the WTD are binding on all EU Member States and are important to prevent employers from gaining a competitive advantage by pressuring workers into agreeing to long and irregular working hours. The current directive is already very flexible: it sets the maximum length of the working week at 48 hours, but authorizes the average weekly working time to be calculated over 4-month periods, thus making it possible to compensate for any working weeks which exceed 48 hours with shorter working weeks.

The WTD also includes two very permissive exemptions, thanks to which it is possible to extend working hours almost indefinitely.

1. Firstly, the reference period of 4 months can be extended to one year, but only in specific cases, on the basis of collective agreements.

2. Secondly, Member States are allowed not to apply the maximum 48-hour limit at all, on the basis of voluntary agreements with individual workers: the so-called "opt-out" ("non-participation" clause). The Commission had the obligation to review this second aspect within 7 years of the implementation of the directive in November 2003. Since then, the European Trade Union Confederation has called for the elimination of the individual opt-out, in line with the obligation, enshrined in the Treaty, to limit the maximum number of working hours for all workers in the EU.

Currently five Member States allow the use of the opt-out in all sectors/activities (UK, Malta, Cyprus, Estonia and Bulgaria).

Eleven Member States authorize the use of the opt-out, but only in healthcare and in professions where on-call time is heavily used (Belgium, Czech Republic, Germany, Spain, France, Hungary, Netherlands, Poland, Slovenia, Slovakia and Latvia).

Another 11 Member States say they do not use the opt-out (Austria, Denmark, Finland, Greece, Ireland, Italy, Lithuania, Luxembourg, Portugal, Romania and Sweden).

In the course of its activity, FEMS Association has tried to investigate the current conditions of application of the directive and the critical issues encountered by professionals working in public health.

The data collected in the three-year period 2018-2020 is shown below. These do not have the ambition to offer a complete picture of the situation but offer an opportunity to reflect and discuss working times and the current organization of work in healthcare.

An interesting element to underline is that the Directive is not uniformly applied even within the same country, being affected by different interpretations and applications at regional and local level.

In the results below, the views of representatives from 12 FEMS member countries are represented:

AUSTRIA, BELGIUM, CROATIA, NORTHERN CYPRUS, ITALY, FRANCE, THE NETHERLANDS, SPAIN, PORTUGAL, ROMANIA, POLAND AND TURKEY.

Some countries have offered incomplete answers to the various questions asked over the years

The EWTD is not implemented in Europe: it is not enforced in 3 countries (Slovenia, Turkey and Romania), while it is partially implemented in the remaining countries. All the aspects that characterize it are

otherwise neglected in the various realities but are particularly penalised, compensatory rest, the use of annual holidays compared to daily or weekly working hours.

Indeed, rest is not always guaranteed to the worker in the Netherlands, Romania and Poland; in other realities it is sometimes less than the 11 hours required. The doctors can find themselves working more than 13 consecutive hours in Portugal, Northern Cyprus, Poland, Austria, Croatia and the Netherlands.

Professionals from Slovenia, Spain, Italy, Romania and Turkey report that this can happen in exceptional circumstances, while in France and Belgium, replacement of doctors is always ensured.

The special circumstances that can lead to an extension of working hours are: emergency situations, surgical activity linked to organ transplants, organizational criticalities linked to staff shortages, sudden illnesses or during holiday periods.

The problem becomes more complicated because despite the extension of working hours, adequate rest is not always guaranteed at the end of one's shift.

Stand by duties (at home) are used in almost all European countries. It is almost always organized to follow the on-call activity in the hospital, thus creating the conditions for a deregulation from the directive. In some Countries there isn't any limit to the number of stand-by duties a doctor is going to work in a month.

If the stand by duties are transformed into active working hours, a compensatory rest period is not foreseen (especially in Northern Cyprus, Italy, Spain, Turkey, Portugal, Netherlands) or it is not of adequate duration to compensate for the duration of the working activity . This problem can cause serious damage if you consider that in some European countries the stand by duties can be even 24 hours!

Till now, any FEMS country is adopting a rule or a method to identify when a stand –by duty (at home) is so often activated than there is a need to commute in on call shift (at hospital). The fact is that stand by duty is used both as an integration to a colleague that is working in the hospital and as a replacement for on call activity.

Fortunately, in some realities, some doctors can be exempted from the activity for various reasons: employees with health problems, doctors with management roles or who asks for.

In most European Countries, if the stand-by-duty activity is not worked, it is considered rest time. This point raises a reflection:

a period in which a professional does not work but is not free to choose what to do, because at the disposal of the employer, is it really a time of rest?

The **MAZTAK SENTENCE** of the European Court of Justice finds the key to interpretation in the time factor. The worker, who must reach the workplace within 8 minutes, cannot carry out other activities during working hours and therefore this must be considered working hours. So: **WHAT IS THE TEMPORARY RANGE THAT ESTABLISHES THE DIFFERENCE BETWEEN REST TIME AND WORKING TIME?**

This topic is probably one of the cornerstones to reflect on from a trade union point of view.

In many countries the time within which the worker must get to the hospital is not specified, using a generic definition such “as soon as possible” but in 7 Countries (Portugal, Turkey, Cyprus, Austria, the

Netherlands, France, Romania), doctors are forced to stay nearby their workplace, at least during stand-by duties.

It's not clear if they are forced to have their state of residence near workplace and if there is any compensation for this obligation.

Furthermore, it is impossible to make any comparison among Countries regarding the payment of stand by duties. Different factors determine the wage. It is relevant to underline that in Portugal, Stand by duty is not paid if not actual work.

The analysis conducted also shows that there is no awareness on the part of doctors and experts of risk management about the issues deriving from the lack of rest. The derogation from the application of the Working Time Directive occurs more frequently during the summer periods and holidays due to the exacerbation of the already ongoing staff shortages.

European trade union associations are aware that the directive is not fully applied and ask for clarifications regarding the specific circumstances in which it cannot be followed (organ transplants, emergencies) in order to protect workers also from an insurance point of view. Chronic understaffing worsens this condition.

The limits of the Directive are amplified by the fact that this not only does not adapt perfectly to some aspects of the medical activity but above all it is not perceived as a good thing for the worker in some EU countries. Indeed, in Austria, Romania and Sweden it is considered a limitation to a better organization of work. Institutions, hospital managers and workers contribute to the non-application. Only the trade unions seem interested, in the various European realities, in the application of this shield.

Yet there are several aspects that are appreciated by doctors. Here are some comments made by the interviewees:

Romania: 'Doctors work on a separate individual contract for working time and shifts. There is the need for rest compensation and time for gaining money.'

Romania: 'In Romania doctors are not interested to take a rest after shifts. They work the day after because they want money not time. OK, that was till this year in march, when the salaries increases by 100%. Let's see in the future, with this very high salaries (compared with the level of life) if the doctors changes their style of working.'

Slovenia: 'EWTD is bringing better working conditions: safe work with the patient and safe work for the doctor (less stress at work)'

Spain: "Better unified criteria for compensatory rest"

Italy: 'Ewtd allows an adequate rest and limits overtime'

Croatia: 'Due to many doctors leaving abroad for better working conditions, doctors in Croatia are practically forced to work enormous extra hours to keep health system working'!!!!!!!!!!'

Sweden: 'Increased awareness among both employees and management of the importance of rest. Old traditions force doctors to believe they are in full capacity even After long shifts'

Slovakia: 'In past, we regularly worked 32,5 hours without rest, in case of shift and the next working day'

Slovakia	YES	YES	YES			YES	
Austria				YES			
Croatia							YES
Cyprus		YES	YES	YES			
Sweden			YES				
Slovenia		YES	YES				
Turkey				YES		YES	
Netherlands							YES

However, the willingness remains to derogate from the directive for various reasons, as shown by the following table:

	Yes, for an independent management of working time	Yes, to increase my income	Yes, to offer a better service to my patients	Yes, because I don't see any advantage deriving from the EWTD	No, I wouldn't derogate	Other
Romania		YES				
Czech Republic		YES	YES			
Portugal	YES					
Italy					YES	
Spain						YES

Austria	YES					
Croatia					YES	
Cyprus					YES	
Sweden						YES
Slovenia					YES	
Turkey	YES		YES			
Slovakia	YES		YES			
Netherlands		YES				

It can be commented that:

- Directive is perceived as a cause of income reduction
- Directive is meant as a limitation in working time organization, even in countries with a supposed good healthcare system (Sweden)
- Although unionists perceive the role and relevance of EWTD and fully support it, in their own country, they would derogate from the law for different reasons

Information on Work Organization in some European Countries.

QUESTIONS

- 1- Weekly minimum full working time, according to Collective Labour Agreement
- 2- Is on call time (at hospital) included in/counted as working time?
- 3- In your Country, is opt-out allowed?
- 4- How long is a working day?
- 5- How many hours can you maximally work in 24 hours?
- 6- Do you have any exceptions?
- 7- In your Country, is guaranteed a daily compensatory rest of minimum 11 hours?

Country	1	2	3	4	5	6	7
Austria	no data	Yes	Yes	8	13	yes	Yes
France	no regulatory lower limit for service obligations but maximum of 48 hours per week, over a reference period	Yes	Yes, practitioner can voluntarily exceed 48 hours in the form of "additional working time"	2 half-days in approximatively 9,6 hours	by way of derogation from labor rights or EWTD, up to 24 hours	no	Yes, even if lately compensatory rest is not respected
Cyprus Turkish	no data	No	No	7 hours in summer 8 hours in winter Except mandatory overtime work	24 hours	No	No
Slovenia	40	No	Yes	8 hours	12	On duty you can be on working place for a	Yes

						maximum of 32 hours in a row	
Italy	38	Yes	No	6 hours and 20 minutes (if working on a six days/a week basis) 7 hours and 35 minutes (if working on a five days/ week basis)	13, according to EWTD	yes, in case of an emergency, it is not allowed to discontinue the service if there isn't any replacement	Yes
Romania	35	No	No	7	7, 16 or 24	saturday 16, and sunday 24 hours	No
Czech Republic	40	Yes	Yes	8 hours	12 hours, accordingly to EWTD	No by law Yes in facts	Yes if not fulfilled, following rest prolonged
The Netherlands	38	Yes	Yes	08-Oct	13	1x per 7 x 24 hours resting time can be limited to a minimum of 8 hours.	No
Croatia	40	Yes	No	8	24	yes	Yes
Portugal	35-40-42	Yes	No	7-8-9 hours maximum (according to 35-40-42 weekly working time). minimum of 12 weekly hours if ER service (up to 18)	12	No, although some doctors accept to work 24 hours straight	Yes
Spain	35-37.5	Yes	Generally Yes	7 and 7.5	24 hours during on call time 12 hours during ordinary shifts		Yes

8- How many days (minimum and maximum) for annual leave?

9- Do you have other kind of leaves, in addition?

10- If YES, what kind?

11- Do you have sickness leave?

12- Is there any limit to the length of sickness leave?

Country	8	9	10	11	12
Austria	25	Yes	care leave	Yes	no In the first 5 years, workers are entitled to 6 weeks of full pay and 4 weeks of half pay per year of work. From the 6th year of work they receive 8 weeks, from the 16th year of work 10 weeks and from the 26th year of work 12 weeks full pay; thereafter 4 weeks half pay each.
France	Hospital doctors work 227 days a year (365 - 104 [weekend days] -9 [public holidays] - 25 [annual leave])	Yes	Maternity, Paternity, Training (15 days) leaves. Special additional leaves: birth, wedding...	Yes	Long term sick leave is granted within the limit of a maximum period of thirty months during which the practitioner receives all his emolument for twelve months then half for eighteen months
Cyprus Turkish	Minimum 15 days Legally maximum 84 days but it is not possible for doctors to leave such long because of the shortage of the staff. Moreover currently there is a law proposal to decrease max leave time	Yes	Radiation leave Pregnancy and maternity leave Sick leave	Yes	42 days Sick leave depends on a regulation concerning doctor reports
Slovenia	35/50	Yes	For education and training	Yes	No It depends on the sickness you have ...
Italy	32 or 34 days, accordingly	Yes	- Anaesthesiologists have 8 days in a year	Yes	18 months cumulatively in three years

	to the length of service		<ul style="list-style-type: none"> - Radiologists have 15 days in a year - All the employees have parental leave (from 6 months to 11 months, depending if one or both parents use this leave - salary reduction) 3 days for personal or familiar leave wedding leaves (15 days)		During these months, emoluments are granted but with a progressive reduction
Romania	minim 20 working days	Yes	study leave - 3 days a year	Yes	maximum 90 calendar days (not working) per year, over 90 days a year sick leave is granted only through the commission of expertise
Czech Republic	20 days or 25 working days	Yes	Radiologists have 5 working days as additional leave maternal leave (only for women) is 6 months and parental leave (both mother and father) is 24 to 36 months	Yes usually 2-3 days depends on employer or CLA	No
The Netherlands	minimum of 4 times the contractual weekly hours. no official maximum. On average people have 5 times the weekly contractual hours for annual leave	Yes	parental leave, sick leave, maternity leave, extra statutory leave on top of annual leave (the amount depends on the employer)	Yes	quite complicated, but it is maximised at 2 years with salary. After one year the salary is lowered. After two years in principle you can still be on sick leave but without salary
Croatia	20 and 35	Yes	For parents/childrens death, for education...	No	no
Portugal	22 days minimum, plus 1 extra day for every 10 years of work in NHS	Yes	compensation for working on Sunday or holidays (paid) parental leave (paid-entirely or partially)	Yes	Generally, 18 months (36 months in some cases)

			working student leave (maximum 10 days - without payment		
Spain	22 days, Saturdays and Sundays not included	Yes	Related to lenght of service or other provision (minimum 6 days) Parental leave	same provisions of other workers	18 months

13- is there a limit to the number of night shift you can work in a month?

14- Is there a limit to the number of on call shift, you can work in a month?

15- When you are on call, how many patients (or beds) do you monitor?

16- How many overtime can you work in a year?

17- How much is paid one hour of overtime?

Country	13	14	15	16	17
Austria	Within an average period of 17 weeks (approx. 4 months), a maximum of six extended services may be provided per month, i.e. a maximum of 24 extended services may be provided over a period of 17 weeks.	No	different		
France	No	No	No regulatory limit, depends on local organization	There is no maximum regulatory threshold specified	An additional time slot (half day) is paid 166,3 euro or 248,22 euros depending on whether it is day or night work respectively; approximately 24 euros (gross income) per hour at night
Turkish Cyprus	Nights shifts are accepted as overtime work. Legally overtime work cannot exceed monthly working time, which corresponds to 6-8 nights and weekends.	No	No limit	Night/oncall shifts are accepted as overtime. Overtime payment cannot exceed monthly salary	There is inequality in doctors fees Approximately 11 euro/hour through the week Approximately 13 euro/hour through weekends and holidays
Slovenia	yes	yes	I am an anaesthesiologist and I can not talk about patients or beds. When I am on call I come to the hospital do assist the college who is on duty.	5 days per month, 60 days per year app.	30% more, 40% more during the night, 90% more on sundays and 120% more on holidays (celebration)
Italy	MAXIMUM 10 PER MONTH	MAXIMUM 10 IN A MONTH	There isn't any limit. It could be defined at local level	200 HOURS IN A YEAR	About 25 euro (gross income)
Romania	no	no	In a smaller hospital all the	and over 200	Unfortunately,

			sections of the profile are monitored, for example surgery, urology, traumatology is monitored only by the on-call surgeon. In large - university hospitals, only the profile section is monitored. the number of beds depends on the size of the section		overtime is still paid worse than normal working hours
Czech Republic	No	No but employee must adhere to EWTD	There is a limit to 90 beds or 1 unit of ICU	416 hours if employee agrees 150 hours without any agreement	Additionally, 25% of average income on Working days, 50% on Saturdays and Sundays and 100% on national holidays. Incl. 20% addition on night hour work (6pm to 6 am)
The Netherlands	maximum of 140 night shifts per year. maximum of 7 night shifts in a row. per 16 weeks a maximum of 36 night shifts	14 days per 4 weeks (consignment shifts)	no data	not mentioned by law. it should not interfere with the working time law	only when employer gave the explicit assignment to work overtime, there is a possibility of payment. the amount varies between CLA and between professions/salary scale
Croatia	no	no	80-100	Officially (by law): 180; Practically UNLIMITED	depends on level of education -subspecialist about 15(!) Eur
Portugal	No Doctors older than 50 years are entitled to be dispensed by nights shifts	No but employee must agree	undefined	150 hours	Extremely variable From 125% of a normal working hour up to 250%
Spain	No	No, but employee	No defined limits, according		According to CLA

		must adhere to EWTD	to organization needs		
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18- How much is paid standby time, when it becomes active working time (per hour)?

19- How many stand-by duties in a month?

20- Is EWTD implemented in your Country?

21- Is it implemented?

22- If you answered NO or NOT FULLY, why?

23- At the end of a shift work, is there an adequate (11 hours) compensatory rest?

Country	18	19	20	21	22	23
Austria	no data	no data	Yes	yes	no data	yes
France	same amount as on-site duty, based on the half day periods metric bur whose duration is defined at 5 hours	no regulatory upper limit	Yes	not fully	mainly, the calculation of working time is not done on an hourly basis and this is a limit for an effective application of Directive	not applied
Turkish cyprus	No standby time payment	Only occasionally, depends on the doctors initiative. It is not paid	No	No	Since the salaries are low and doctor shortage is high in our country doctors prefer/ has to work overtime. Economical status and human source is not appropriate for the directive yet	No
Slovenia	20% of the working hour is standby time, when it becomes active, you receive 100% of normal hour	04-May	Yes	No	lack of doctors	yes

	+30% +night, sunday, holiday ...					
Italy	About 17 euro	Up to 10 in a month	Yes	NOT fully	Italian doctors don't have a full awareness of the relevance of the topic and they prefer to manage their working time as they prefer. Furthermore, staff shortages affects the possibility to implement the Directive	Not always
Romania	40% of normal daylight hours	3 to 6	Yes	no	the employer reasons that the directive cannot be implemented due to the lack of staff, especially in small hospitals	no
Czech Republic	20% of average salary	up to 4-6, or according to needs	Yes	Fully but it is usually tampered	Especially in healthcare facilities is tampered week overtime and length of shifts	Not always but usually yes
The Netherlands	only active working time, per call a minimum of 30 minutes paid, sometimes payment is in a lower salary scale	3 per 7 days and 32 x per 16 weeks	Yes	yes, but with an opt-out	no data	yes
Croatia	Depends on level of education - subspecialist about 15 Eur	Unlimited	Yes	no	You should ask Croatian Government	Not always

Portugal	no data	undefined	Yes	Yes		Yes
Spain	According to CLA	Defined at local level	yes	not always	According to organization needs or to increase salaries	not uniformly implemented

24- In your opinion, how long should it be an adequate compensatory rest?

25- What happens if you can't enjoy your annual leave?

26- Are you forced to live nearby your workplace?

27- Can you choose full time or part-time job freely? Please give an explanation

28- What's the age of retirement in public Healthcare Sector?

Country	24	25	26	27	28
Austria	no data	no data	no data	no data	65
France		By law, payment or deposit time-savings account	Yes. By law in an area where you can reach the hospital in a reasonable time (approx. 20 minutes). Not applied in practice	Transition to part-time is possible after local agreement. there is a non-competition clause which limits the choice of location or exercise	legal retirement age has been 64 since April 17, 2023
Turkish Cyprus	24 hour working, 24 hours rest	Wait for the next year	If the doctor has on call duty he/she has to live nearby	There is no part-time option. Because it is against the law. The Supreme Court found part-time option for the doctors against the constitution	60 years But currently there is a law proposal to increase the age
Slovenia	minimum 2 times working time	It is quite impossible that can occur but you can receive compensatory money (you can be paid instead of)	no	You can choose but is not so often. You can work in one hospital for less than 100% (50-80%) and in an other till 120% of your full time. University hospital and faculty for example ...	40 years of working or at the age of 65 years
Italy	11 HOURS	Theoretically, annual leaves should be enjoyed within June, 30th. Commonly, leaves are cumulated and it happens to	NO	the majority of positions are full time. in case you look for a part time position, you have to ask for but it can be refused.	from 67 to 68 years old but Law changes very often..

		use it in the months before retirement			
Romania	minim 12 hours	the law allows you to use your leave not made in the first 3 months of the calendar year. If you cannot get your rest leave during this period, it will be lost, without any compensation	no	no, the choice cannot be made freely. The conditions and working time are set by your employer. Only in exceptional cases can you negotiate half the norm.	62 f , 65 m
Czech Republic	Minimally 8 hours after normal shifts, 12 hours after overtime shift. in case of tampering overtime shift lenght 24 hours	It's possible to use in the following year, theoretically till 30th of May. There is obligation on employers not employee	No	Yes, it's employees' decision	65 with the exception of Emergency service
The Netherlands	at least 11 hours	you can have annual leave days paid in salary, you can take them with you to next year (bound by rules for how long this is possible), or you can loose them after a few years	no	you can choose freely and most employers agree with working parttime, but the employer can deny an application for parttime work when it intervenes strongly with company policy.	on average 67 years
Croatia	at least 48 hours after 24-hours shift and 24 hours after 12-	You can enjoy it until June 30 next year	no	Only if retired	65

	hours shift				
Portugal	12 hours	it is possible to use in the next year, until 30th of April	No	No It must be authorized by the hierarchy	same as everybody else Currently, 66 years and 4 months
Spain	12 hours	It's possible to use the year after	no	It's possible to ask in case of work-life balance, assistance for elderly and children	Currently, 60 years and 4 months. in the future, 67 years