Organisation of working time. Codification

2002/0131(COD) - 21/12/2010 - Follow-up document

In accordance with the provisions of Directive 2003/88/EC, this report reviews the implementation by Member States of the Working Time Directive 2003/88/EC. It recalls the Directive's objectives and main provisions and sets out the principal results of the Commission's examination of implementation by Member States, backed by the annexed Working Paper of the Commission services, where the results of the examination are developed in greater detail. The aim of the Report is to provide an overview of how Member States have implemented the Directive and to highlight the key problems.

The Commission acknowledges the considerable efforts that have been made in many Member States to achieve transposition or to improve compliance following decisions of the Court of Justice or national courts, or notifications by the Commission. In general terms, the large majority of employees in the EU work under working time rules that respect EU legislation. In many cases, national rules afford greater protection than what is required under the Directive.

Opt-out: however, the Commission's analysis shows that a large number of Member States have introduced the use of the '**opt-out**' since 2000, with eleven doing so, in order to manage their **current difficulties regarding on-call time and compensatory rest in 24-hour services.** The report notes that the picture regarding use of the opt-out has changed considerably over recent years. In 2000, the UK was the only Member State to make use of the opt-out. 16 Member States now do so, including one which is currently legislating to introduce it. 11 Member States indicate that they have not allowed the use of the opt-out in their transposing legislation: they are Austria, Denmark, Finland, Greece, Ireland, Italy, Lithuania, Luxembourg, Portugal, Romania and Sweden.

It is important to note that the use of the opt-out varies considerably. Five Member States (Bulgaria, Cyprus, Estonia, Malta, and the UK) allow its use, irrespective of sector. 11 allow a more limited use of the opt-out, restricted to specific sectors or to jobs which make extensive use of on-call time.

There is also **wide variation in the protective conditions attached to the opt-out**. For example, some Member States specify limits to average weekly hours of opted-out workers (ranging from 51 hours in Spain, to 72 hours including on-call time in Hungary), while seven Member States have no explicit limit for these workers. Two Member States (Germany and the Netherlands) require a collective agreement, as well as the consent of the individual worker, for an opt-out to be valid. Only three Member States (Germany, Latvia and Malta) mention a clear obligation for the employer to record working hours of opted-out workers, and only two (Czech Republic and Slovakia) mention an obligation for the employer to notify the labour inspectorate when the opt-out is used. In addition, Germany requires specific measures to take account of health and safety, and the Netherlands requires the social partners to consider first whether the need for an opt-out could be avoided by organising the work differently.

The opt-out has been introduced very recently in many Member States. However, the Commission is unable to fully evaluate its operation in practice, since **Member States' reports do not provide adequate information about the number of hours actually worked by opted-out workers**, and over what period of time. Most Member States do not seem to provide for any monitoring or recording of working time of opted-out workers. This situation deprives policymakers of the basic information needed to examine how far opted-out employees (as well as co-workers or clients) may be exposed to risks caused by excessive working time.

There is also cause for concern that, in some Member States, the health and safety objectives of the Directive may not be respected, and the requirement of the worker's advance voluntary consent to opt out may not be properly applied.

On call time: it is clear that there is a significant number of Member States where on-call time at the workplace is still not fully treated as working time in accordance with the Court's decisions. In some cases, there is no requirement to treat 'active' on-call time as working time; in others 'inactive' on-call time at the workplace is, as a general rule, not fully counted as working time by the applicable national law or collective agreements.

Interpretation of core elements: the analysis also shows that there remain problems with the implementation of core elements of the Directive, as interpreted by the Court of Justice, such as:

- the definition of working time (including 'on-call' time), and the rules on equivalent compensatory rest (where minimum rest periods are postponed), particularly in services operating on a 24 hour/ 7 day basis;
- the situation of workers with multiple contracts;
- the situation of specific groups of workers (particularly in public defence and security services; and so-called 'autonomous workers');
- the lack of proper monitoring or enforcement of the conditions attached to the opt-out, in many of the Member States who allow its use.

The Commission will :

- assess the Directive's overall impact on workers' health and safety against the background of evolving work patterns and models of work organisation;
- clarify the interpretation of some rules, taking into account the jurisprudence, the experience of Member States in its application, and the opinions of the social partners;
- address the position arising under national laws or practices, with particular attention to those which result in workers being obliged to work excessive hours or to work without adequate rest.

The Commission will continue to support Member States' efforts to improve their implementation, and is ready to facilitate exchanges between Member States, and between the social partners, where these can be helpful.

The Commission launched a review of the Directive in March 2010, based on consultation of the social partners at European level. It has also launched a detailed study of the economic and social impact of the Directive, which will complement the impact assessment provided by this Report. The Commission is adopting, simultaneously with this Report, a Communication launching the second phase consultation of the social partners under the TFEU.