



## 1. Working Time Directive

### Purpose of the consultation

The European Commission's Working Time Directive aims to protect workers from unfair working hours and exploitation by their employers. It does not regulate the wages of workers, but does impact a number of other factors by imposing a limit on average weekly working time and enforcing minimum daily and weekly rest periods. This consultation evaluates the scope and priorities of the Working Time Directive.

### Summary of Response:

**The Directive's current assumption that the employer-employee relationship is necessarily exploitative or antagonistic is long outdated. Additionally, the emergence of new working patterns and workplace structures requires a reformed approach to workplace regulation. Despite the difficulties associated with a complete overhaul of the current Directive, moderate reform should be considered, and should prioritize simplicity and added flexibility of the regulations as well as adaption to the work practices of the 21<sup>st</sup> century. Where possible, decisions about workplace management should be left to the discretion of individual companies and their employees.**

Any potential reform of the European Commission's Working Time Directive should be focused on ensuring maximum flexibility for employers and employees. Undeniably, working time regulations impact on job creation, the costs of running a business, and the performance of the economy as a whole, and in order to ensure the competitiveness of the European Union's economy, the European Commission should aim to reduce the administrative burden on countries imposed by the working time regulations.

In a pre-industrial society (around 1919) the International Labour Organization (ILO) attempted to regulate working time to prevent extremely long or even unlimited working hours. In the 21<sup>st</sup> century, nearly one hundred years after that time, there is no empirical evidence to suggest that continued strict regulation of working hours like that which exists in the Directive is an effective strategy to

promote worker health and safety. Such regulations stem from outdated legislative traditions and assumptions. Safety in a rapidly evolving workplace is best ensured through individual and collective technical and organizational instruments used to combat health and safety issues which are specific to the situation.

The Directive stipulates mandatory requirements that employers must fulfil, thus creating an administrative burden on businesses. This burden is particularly prominent in non-standard workplaces. Furthermore, the Directive can obstruct businesses from operating at their full potential by limiting flexibility on working hours and thus conceivably forcing the business to hire extra workers they would not otherwise need. The Directive can also be irrelevant in today's changing world where businesses can use different forms of work such as telework, distant-work, zero-hour contracts, flexitime and performance-based contracts.

In an ideal workplace, workers and employers would be able to independently and individually negotiate the best working time arrangement for each particular situation. This may include long shifts followed by extended rest periods or a number of short shifts, working from home or from an office, working in the employee's own time or working as part of a team. The Working Time Directive should aim to foster this flexibility and not obstruct the worker and employer from reaching the most beneficial outcome.

In regards to the concept of on-call time and stand-by time, the Commission should be cognisant of the fact that technological advances have blurred the lines in our economy between the workplace and the home, and between "work time" and "rest time". Any regulated limitations on working time are growing less and less relevant to the real economic life of individuals and enterprises. A limit to the maximum number of hours that a worker may be required to be on-call or on stand-by could be indicated in the Directive as a recommendation or a guideline, but specific numbers should be agreed upon nationally by sector stakeholders or, even better, within companies themselves.

On the issues of on-call time and stand-by time, decisions handed down by the Courts in specific cases should not be incorporated into the Directive. This is because the Directive should be performed in an "outside the box" manner, leaving open a wide range of possibilities, and the court's decisions are based on a very narrow, specific set of circumstances. In particular, this consultation referred to a number of specific cases (C-303/98 Simap, C-151/02 Jaeger, C-14/04 Dellas) which would codify clarifications on whether stand-by time and on-call time must be counted as working time or not.

Under the current Directive, Member States have the possibility to not apply the average weekly working time limit of 48 hours when the worker agrees to do so individually and freely with the employer, and does not suffer prejudice for revoking such agreement (the 'opt-out' agreement). These arrangements should be allowed to continue. Additionally, the current system allows for "autonomous workers" (such as managing executives) to have complete discretion over their own working time, and Member States have the option of applying the main points of the Working Time Directive to these workers. The allowance for such flexibility in the Directive is beneficial, and should indeed be expended to include other categories of workers who should be exempted from the conditions as well.

The Directive should be amended in light of several modern workplace trends, such as the increased possibility of teleworking, zero-hour contracts, the emergence of flexitime and performance-based contracts. The Directive should recognize the advantages of a constantly adapting economy and be updated to reflect regulations which are appropriate for a work environment containing these alternative arrangements.

While it is clear that a complete overhaul of the Working Time Directive is impossible in the current political climate, moderate revisions should be considered. These should focus on updating the Directive to being suitable for the modern workplace and minimizing the regulatory burden on businesses. The outdated tone of protecting workers from their exploitative employers should also be avoided. Overall, it should be recognized that the best interests of all parties involved are most effectively protected when these parties act on their own behalf without government interference.