

## ETUC strategy on the review of the Working Time Directive

Adopted at the ETUC Executive Committee on 10-11 March 2015

---

### **Political context**

The Commission announced in its Refit communication in June 2014 that they would clarify and simplify the legal framework on working time.

In order to prepare the impact assessment for the Working Time Directive (WTD) the Commission has been conducting studies on administrative burden and costs of the WTD through consultancy firms since the summer 2014.

The review of the WTD was not taken up by the Commission in its work programme 2015, which indicates that it is not one of the top priorities of the new Commission and that this will not be a speedy dossier, but it does not mean that this topic is off the agenda.

In December 2014 the Commission launched a public consultation on the review of the WTD running until 15 March 2015. The ETUC has prepared a reply to the consultation and encourages all affiliates to use it as a basis for their input so that the European trade union movement speaks with one voice.

### **Strategy to adopt towards the Commission in the public consultation concerning the review of the WTD**

The demands adopted at the Executive Committee in 2011 remain valid: end the individual opt-out from the 48 hour limit on weekly working time; keep the current reference periods in place; codify the Court of Justice of the European Union (CJEU) jurisprudence on on-call time in the workplace; further limit the derogation of autonomous workers; and codify that the Directive applies per worker and to all workers.

In the public consultation on the WTD the Commission is proposing four options for future action: a) no new initiative – maintaining the current rules; b) no legislative changes but initiatives towards improved legal clarity; c) legislative changes but focused on the sectors where there is a specific need in terms of continuity of service; d) an overall revision of the WTD, containing a mix of simplification and additional derogations while, according to the Commission, avoiding regression of the protection of workers.

Taking into consideration the current political context, such as the political forces in the EU institutions and the fact that the option for revision is formulated in terms of simplifications, derogations and REFIT, the safest option at the moment is not to open the directive for revision. The advantages (on-call time is working time; case law of the CJEU remains valid; lowering of standards is avoided) outweigh the disadvantages (no improvement of working time rules in the EU; the opt-out as well as other derogations remain).

The ETUC has repeatedly insisted that the WTD, as well as the case law of the CJEU, is not properly transposed in national legislation and enforced in the different EU Member States. It is the Commission's duty to start infringement proceedings against those countries.

The ETUC and affiliates need to actively ensure that the Commission and the national governments speed up their efforts to correctly enforce the WTD.

## **Annex**

### **ETUC approach to working time**

For the ETUC it is important to reflect on a broader approach to working time in general, not only focusing on the WTD as such, making an inventory of the topics important to the work force in Europe concerning working time and taking into consideration recent developments of working realities.

The ETUC considers that a number of issues can best be tackled through collective bargaining at the appropriate level in the Member States, but certain issues could also be taken up at European level, for example through new legislation on work-life balance or in case the Commission decides to open the WTD.

### **New working realities**

It is clear that working realities are rapidly evolving and therefore so too are the needs and obligations of workers concerning working time. Those realities vary considerably between sectors and professions.

Workers are confronted with the problem of intensification of work, of extensive working time, workers having to work long and very long hours, doing a lot of overtime resulting in severe health problems, like stress, depression and burn-out. For a growing proportion of those workers the contractual hours only play a minor role for the length of their working day.

Workers are confronted with precarious work and under-employment, such as zero hour contracts, broken hours, etc. For those workers, planning their working and private lives is nearly impossible as they have to handle unnecessary uncertainty of working patterns. Typically these workers receive very short notice of work which is a great source of stress and it is extremely difficult for these workers to cope financially.

But workers are also confronted with growing flexibility in working time arrangements, with new forms of work due to the possibilities resulting from new technology (mobile work). Workers are reachable anywhere at any time. Work no longer has limits in time or location.

### **Work-life balance**

Working time should be adapted to workers' needs. The working time needs change throughout a lifecycle dependent on the specific stages and circumstances of life.

Workers need more time sovereignty for a good work-life balance. Workers are not against working time flexibility if the needs of the workers are taken into consideration.

Furthermore workers need to be able to plan and organise their life, therefore they need scheduled working time well in advance.

Mobile work including working at home in the evenings, at week-ends and during holidays has a huge impact on the work-life balance and on the health of workers, as rest time gets eaten up and there is no total disconnection time.

Atypical working hours, such as shift work, night work, broken hours and weekend work have serious negative effects on the health and safety of workers. Unsustainable working time patterns lead to increased stress and illnesses, as well as absenteeism related to strong feelings of a lack of control and influence on one's work and life.

## **Working time reduction**

Working time reduction is a topic taken up through collective bargaining either in a general way or with a specific angle, such as a) demographic developments and special working time needs for older workers, which would be accommodated through a gradual transition from working life to retirement under socially acceptable conditions (e.g. 3-day working week from 60 onwards). Working time needs to be health-preserving and age-appropriate. b) Special working times for young parents opening the possibility for a gender balanced distribution of work and private life, e.g. “short full time” between 32 to 35 hours for both parents. c) Lifelong learning demands and hazardous work.

At Congress in 2003 the ETUC decided to continue to campaign for the 35-hour week and innovative working time reduction measures via collective agreements, combined, where necessary, with legislation, including a revision of the Working Time Directive to ensure that it covers all workers. In 2007 and 2011 the ETUC made demands concerning the work-life balance and the revision of the Working Time Directive.

A discussion on maximum limits of working time in legislation can help make the public aware of the culture in certain professions of long working hours, of problems of overtime, etc. and that an upper limit on European level sets incentives for the national level.

Research shows that extending working hours beyond the limits of the current WTD would result in an increased risk of health impairments – while a reduction of working hours should lead to a reduction in health problems. Work-life balance begins to decline substantially beyond 40 hours/week. Combining a 5-day week with the evidence on daily working time and safety yields a recommendation of  $5 \times 8 = 40$  hours per week, which would be in agreement with the limit indicated by the effects on work-life balance.

When discussing working time reduction the aspect of wage compensation cannot be ignored, but this aspect cannot be tackled nor resolved at EU level.

## **Issues which could be taken up on EU level**

All the following issues could be taken up on EU level for example through a new specific directive on work life balance, while the development of detailed solutions is the task of collective agreements at the appropriate levels taking into consideration the different national practices.

Workers need to have an individual choice and more self-determination over the working hours and working time distribution, as well as over the length of working time. This should be ensured within safe boundaries established by legislation and collective agreements. The right to work flexibly could be taken up on European level.

The possibilities of life cycle working time for men and women needs to be developed, including an individual right to working time reduction.

Due to the developments concerning mobile work, the reflection on a definition of a workplace and its link to working time would be useful. Clarity is needed on the definition of compensatory rest. Reflection is needed as well on how mobile work can be linked to more regulated telework.

Furthermore it needs to be ensured that workers do not only get the formal right to mobile work, but can themselves effectively determine, e.g. in time corridors, when and where they work. One tool to make sure that a worker is actually remunerated for all the working time he/she provides is electronic registration. This should be ensured within safe boundaries established by legislation and collective agreements.

Employers must be made responsible to limit and control working time and the workers should have the right to log-off outside their contractual working hours, if this is in the evenings, week-ends or holidays.

On the other side of the scale the abuse of short time workers needs to be stopped. This category of workers needs just as much to have control over their working time. A weekly minimum working time should be introduced, which should be detailed through collective agreements at the appropriate levels, as well as an obligation for employers to inform workers well in advance of their working time schedule.