



10 March 2009

CONCILIATION PROCEDURE ON THE REVISION OF THE WORKING TIME DIRECTIVE

I. Introduction

On 17 December 2008, the European Parliament adopted its second reading report on the Council's common position on the revision of the working time directive. On 4 February 2009, the European Commission gave its formal opinion on the European Parliament's amendments to the Council's common position. Of the 22 amendments adopted by the European Parliament, the Commission can accept 15, either in full or in part, and rejects seven. This paper summarises BUSINESSEUROPE's position on the key issues.

II. Main issues

On-call time

EC opinion:

In agreement with the European Parliament, all on-call time, including the in-active part will count as working time. Some conditions apply: the in-active part will not count towards the minimum rest periods and can be counted in a specific way when calculating working time, if agreed by national law or collective agreement.

BUSINESSEUROPE statement:

BUSINESSEUROPE does not agree with the Commission's opinion, which is in contradiction to the approach it took in its original proposal.

Counting the in-active part of on-call time as working time would have negative consequences for both public and private sectors where on-call time is a common feature. Workers in those sectors affected would more quickly reach the 48 hour weekly maximum, thereby requiring extra staff to be hired to cover the extra hours. This would put pressure on financing in the public sector and on companies in a number of sectors, which would be even more marked at a time of economic crisis.

Although member states would be able to count the in-active part in a 'specific way', this would have to be agreed either by national law or collective agreement, requiring further negotiation without solutions necessarily being found. It would also cause uncertainty in the sectors concerned, since the problems arising from the rulings in the ECJ (Simap and Jaeger) would continue until there was an agreement.



The Council's common position is a better solution, as in-active periods are not regarded as working time, unless national law or collective agreements provide for this. Therefore, the uncertainty regarding the rulings in the ECJ (Simap and Jaeger) would be resolved.

Opt-out

EC opinion:

The opt-out is maintained. The Commission gives two reasons – major changes in the pattern of use of the opt-out by member states and their positions in the Council. In addition, the signature of an individual opt-out would be valid for one year, not six months as requested by the EP.

BUSINESSEUROPE statement:

BUSINESSEUROPE is pleased to see that the Commission has taken a pragmatic approach and supports the Council on the retention of the opt-out. This provision is vital to companies and workers in all member states, to derogate from the rule of a maximum working time of 48 hours per week. It allows companies to deal with fluctuations in demand, for example when they receive a large order or at peak business times. It allows workers to work overtime in order to improve their purchasing power. This provision is vital in ensuring the competitiveness of the European economy even more so in the current economic climate.

BUSINESSEUROPE also agrees that when an individual signs an opt-out, it should be valid for one year, not six months. Reviewing individual workers' opt-outs every six months would cause an extra administrative burden for companies. In order to comply, companies would have to establish a much more burdensome checking procedure to verify every six months that each individual employee who has signed an opt-out, wishes to continue to do so. This would also have a negative effect on a company's ability to plan work schedules. Other conditions to use of the individual opt-out provide sufficient safeguards for workers, particularly the option for a worker to withdraw his agreement with maximum two months notice.

Compensatory rest

EC opinion:

The Commission agrees with the EP that compensatory rest should be taken 'following time spent on duty' rather than 'within a reasonable period'. In order to provide some flexibility, the Commission proposes that in specified sectors or activities, where justified and if set through national law or collective agreement, compensatory rest can be taken 'within a reasonable period'.

BUSINESSEUROPE statement:

BUSINESSEUROPE does not agree with the general rule supported by the Commission that compensatory rest should be taken following time spent on duty.



Even though specific sectors or activities could be exempt from this, this would still have to be justified and negotiated in national law or collective agreement. BUSINESSEUROPE would prefer that the general rule is for compensatory rest to be taken within a reasonable period, to provide companies with necessary flexibility in planning working time.

III. Other issues

Counting working hours per contract or per worker

EC opinion:

In the case of multiple contracts, i.e. where a worker is working under more than one contract, the EP stated that working hours should be counted per worker. However, in the Commission's opinion, working hours should be counted per contract.

BUSINESSEUROPE statement:

In the case of multiple contracts, BUSINESSEUROPE supports the Commission position, to count working hours per contract. Counting working hours per worker, as requested by the EP, would place unnecessary administrative burdens on companies: They would have to check whether their employees have contracts with other companies and count how many hours in total a person was working per week, not only taking into consideration their own company.

Autonomous workers

EC opinion:

The Commission agrees with the EP that there should only be a derogation to the 48 hour maximum working week for people in 'senior management positions' rather than for 'persons with autonomous decision-taking powers'. However it believes that a different formulation is needed which provides for more flexibility, as the EP formulation is too restrictive.

BUSINESSEUROPE statement:

BUSINESSEUROPE does not support the Commission's opinion that the derogation to the 48 hour maximum working week in terms of autonomous workers should only be for people in senior management positions. BUSINESSEUROPE advocates the current broader definition of autonomous workers, which also includes persons with autonomous decision-taking powers. Restricting this derogation to people in senior management positions would hamper the flexibility afforded to a company to allow other workers, also competent to work autonomously, to, when necessary work longer hours. This is a particularly useful provision in providing companies with flexibility to assign competent workers to specific projects or to deal with a sudden rise in demand, which may require additional work. In a company context, in reality, the possibility to work autonomously is often open to a much broader group of workers than solely senior managers.



Special provisions for short-term contracts

EC opinion:

In the Commission's opinion, workers on short-term contracts (less than 10 weeks over a 12 month period in a company) should still be use the opt-out and sign it within the first 4 weeks of employment. The EP was against this.

BUSINESSEUROPE statement:

BUSINESSEUROPE supports the Commission's position, that workers on short-term contracts (less than 10 weeks over a 12 month period in a company) should still be able to use the opt-out and sign it within the first 4 weeks of employment. Short-term contracts provide companies with the necessary flexibility to deal with fluctuations in demand and production, for example in the case of seasonal peaks, or for the organisation of specific events. Allowing use of the opt-out during this short period, including signature in the first 4 weeks, is a necessary component in ensuring this flexibility. Such contracts provide companies with the possibility to respond to market or customer demands quickly, over a short period. Therefore, if the opt-out could not be used in the first 4 weeks, this would render such contracts less useful.

IV. Conclusion

BUSINESSEUROPE gives a negative assessment to the Commission's opinion. While European companies completely support the Commission's desire to maintain the opt-out, we strongly criticise the Commission's support for the EP position on on-call time and compensatory rest periods.

European companies do not agree that a trade-off can be made between these three issues; a satisfactory result needs to be found for all of them. This must not only include retention of the opt-out, but also a solution on on-call time which provides legal certainty and a more practical approach to compensatory rest periods.