



★ ★ ★  
★ Senior  
★ European  
Experts

# The Working Time Directive



# The Working Time Directive

## Introduction

The Working Time Directive was adopted by the EU in 1993. It provides for minimum standards in terms of regular rest breaks for workers, night work, paid annual leave and restricts the maximum working week (in most cases) to 48 hours in any seven day period. Some groups of workers are exempt (details below) and working hours in some sectors are regulated separately (e.g. aviation and commercial shipping).

This legislation, which was introduced under an article of the treaties enabling laws concerning the health and safety of workers in the EU to be adopted by the qualified majority vote, has been controversial from the outset. The United Kingdom in particular took great exception both to the EU adopting such a measure and to the legal method used for its adoption.

Member States can allow workers to voluntarily exceed 48 hours in a week if the worker requests to do so and records are kept. Originally the UK was the only Member State to make use of this derogation but the majority of Member States have now adopted laws that utilise the provisions of the derogation.<sup>1</sup> Across the EU as a whole only nine per cent of workers exceed 48 hours a week – but in some Member States it is higher – and the trend is for a reduction in working hours.

This briefing explains what the Working Time Directive does, describes the political and legal arguments about it since 1993, including two important cases that have extended its scope, and concludes with details of the Commission's review of the directive.

## The Directive

### Entitlements

The main entitlements for workers laid down in the directive are:

- a minimum daily rest period of 11 consecutive hours per period of 24 hours;
- a rest break when working more than six hours;
- a 24 hour break in each seven day period, in addition to the daily rest period of 11 hours;
- restriction of average working time for each seven day period, including over-time, to a maximum of 48 hours (averaged over a period of up to four months);
- minimum annual paid leave entitlement of four weeks;

---

<sup>1</sup> There are: the UK, Bulgaria, Cyprus, Estonia, Malta, Germany, Hungary, the Netherlands, Poland, Slovakia, Slovenia, France, Spain, the Czech Republic, Belgium and Latvia

- night workers are restricted to working an average eight hours work at night in any 24 hour period with those doing heavy physical work *etc.*, restricted to a maximum eight hours night work per 24 hours; and
- regular health checks on those doing night work.

### Derogations

The directive contained a list of derogations exempting in whole or part groups of workers from the directive. The most comprehensive exemptions apply to four groups:

- managing executives;
- family workers;
- ministers of religion; and
- the self-employed.

All of these were exempt from the rest periods, rest breaks, maximum working week and hours of night work restrictions but not paid annual leave or night work health checks.

A large number of other sectors are exempt from all the requirements except weekly rest periods, annual paid leave, maximum working hours and night work restrictions. They include:

- those working in utilities;
- ambulance and fire services;
- health service workers, care workers and prison staff;
- dock and airport workers;
- certain railway workers; and
- agriculture.

In respect of trainee doctors, the directive allowed for a period of exemption from the terms of the 48-hour week, which was later extended when the directive was amended but which has now finished in the UK. There is also a specific derogation for those working at sea in the fishing industry which enables their 48-hour week to be averaged over a year but with a limit of a maximum of 72 hours work in any one week.

The most significant derogation is the general one by which Member States can allow workers to voluntarily exceed 48 hours in a week but they must be able to refuse without detriment to their employment and full records must be kept of their working hours. This was originally limited to seven years after the original directive came into force in 1996. In 2004 the European Commission brought forward proposals for the reform of the directive but no agreement could be reached in the Council. This means that the voluntary exemption for the 48 hour week remains in force throughout the EU and 16 Member States make use of this exemption in some way. The more extensive use of the general derogation partly results from two decisions of the Court of Justice (see below).

It is possible to extend the reference period for calculating the hours worked each week to 52 weeks (rather than four months) where unions and employers agree collectively to do so. This arrangement is more common in other Member States than here because a smaller percentage of the UK workforce belong to a union.

## **Legal Challenges**

There have been three major cases before the European Court of Justice since the original directive was adopted. The first, mentioned above, was a challenge by the United Kingdom to the legal procedure used by the European Commission to propose the directive – that is a health and safety measure under the Single Market part of the treaty, enabling it to be adopted by QMV rather than unanimity – and to adoption of the directive on the grounds that it did not comply with the subsidiarity provisions of the treaty. The UK lost that action on both counts in 1996.

The *SiMAP* case, which concerned the working hours of Spanish doctors, led the Court to decide in 2000 that "time spent on-call by doctors in primary health care teams must be regarded in its entirety as working time and, where appropriate as overtime, within the meaning of Directive 93/104 if they are required to be at the health centre".<sup>2</sup>

The second case also concerned the definition of doctors' working time. In *Jaeger*, the Court ruled that Dr Jaeger, a hospital doctor who had a room with a bed in the hospital where he worked, must have all the hours he was in the hospital counted as working time even though he was permitted to rest in his on-site bedroom for several hours each day.<sup>3</sup> The Court also determined that compensatory rest breaks must follow on immediately after the period of work.<sup>4</sup>

The impact of the *SiMAP* and *Jaeger* cases was serious for healthcare providers throughout the EU and several Member States who had not previously operated the voluntary opt-out from the 48-hour week introduced it as a result. The impact of these judgments on healthcare was greater in the UK than in most other Member States for four reasons: the UK has a lower number of doctors per head of population; it places greater reliance on doctors in training to staff our hospitals; the UK has proportionately fewer senior doctors; and doctors in training work in most hospitals rather than being concentrated in fewer centres.

## **The Reviews of the Directive**

As mentioned above, the Commission launched a major review of the directive in 2004 and brought forward amendments, partly in response to the *SiMAP* and *Jaeger* judgments, but the Parliament and the Council agreed in April 2009 that they could not reach agreement on this proposal, largely because of disagreements over the future of the voluntary opt-out.

In 2010 the Commission announced a fresh review of the directive, not just in the light of previous failure to reach agreement but also because of changes in working patterns since

<sup>2</sup> *Sindicato de Médicos de Asistencia Pública (Simap) v. Conselleria de Sanidad y Consumo de la Generalidad Valenciana*, Case C-303/98, [2000] ECR I-7963, p. 8033

<sup>3</sup> *Landeshauptstadt Kiel v. Jaeger*, Case C-151/02, [2003] ECR I-8389

<sup>4</sup> *Ibid.*, p. 8455

2004. So far, the Commission has published two consultation papers and various research documents. The Commission believes that there are two approaches to reform of the directive: either a focused approach, making narrow changes to reflect the *SiMAP* and *Jaeger* judgments and to deal with other issues of clarification; or a comprehensive review, to reflect wider changes in the world of work. The Commission has rejected abandoning the regulation of working hours at EU level. It has also rejected suggestions that the voluntary opt-out should be scrapped.

### **Next Steps**

The Commission will report its view of the way forward to the Council and the Parliament at the conclusion of the consultation. Whatever approach it adopts, the directive will remain controversial.

**October 2014**





## Senior European Experts

The Senior European Experts Group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, and former officials of the institutions of the EU.

The group provides high-quality, fact based briefing materials on EU issues.



[senioreuropeanexperts.org](https://senioreuropeanexperts.org)



[info@senioreuropeanexperts.org](mailto:info@senioreuropeanexperts.org)



[@SEE\\_Group](https://twitter.com/SEE_Group)