

## ROADMAP

<i>Title of the initiative:</i>	<b>Review of the Working Time Directive</b>
<i>Type of initiative (CWP/Catalogue/Comitology):</i>	CWP
<i>Lead DG/contact person/details:</i>	EMPL /F2
<i>Expected date of adoption of the initiative:</i>	December 2010
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<i>Version No:</i>	1

### Initial IA screening & planning of further work

#### **A. Context and problem definition**

*(i) What is the political context of the initiative?*

President Barroso announced at the European Parliament in September 2009 that the Commission would make a new proposal to amend Directive 2003/88/EC (the Working Time Directive) in 2010, following consultation of the social partners under Article 154 TFEU and a comprehensive impact assessment which should have a strong social dimension.

*(ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?*

The Commission already put forward an amending legislative proposal in 2004, which was extensively discussed by the Council and Parliament over the period 2004-2009. However, the co-legislators were ultimately unable to reach agreement on the proposal, with the failure of a conciliation procedure in April 2009, leading to the automatic lapse of that amending proposal.

*What are the main problems identified?*

There is insufficient clarity on how to interpret a number of legal issues, left unresolved by the co-legislators. There are also substantial difficulties for some Member States in implementing certain aspects of the *acquis*; notably the Court's judgments in the SIMAP, Jaeger and Dellas cases on the treatment of on-call time at the workplace as working time, and the timing of compensatory rest for any missed or delayed minimum rest periods.

In addition, there have been wide-ranging changes in working patterns since the Directive was originally adopted, which are relevant to the organisation of working time, and which should be taken into account in order to ensure that the Directive meets the current and prospective needs of workers, businesses and public services.

*Who is affected?*

The Directive applies to all workers generally, in both the private and the public sectors, other than the self-employed. It is important for employees, for small and large businesses, and public sector employers, including notably workers and clients of public services which need to maintain a 24-hour service (e.g. hospitals, residential care, emergency services ...)

A number of employees in certain sectors are governed instead by more specific Working Time legislation: long-distance road transport (for their driving time), mobile workers in civil aviation or international rail transport, seafarers.

*(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?*

The problems identified above concern the application of a Community directive which establishes common minimum standards at EU level for protecting workers' health and safety, in accordance with Art. 153 TFEU. The ECJ rulings on on-call time and compensatory rest, mentioned above, expressly emphasise that they relate to Community law concepts, which must have a common meaning across the EU.

Therefore, any amendment or clarification of the existing rules must be made at EU level, and could not validly be made at national level. However, four options are considered (see section C below), including the option of taking no action at EU level to change or clarify existing rules.

In the first-stage consultation of EU social partners (COM (2010) 106), they are expressly consulted on these alternatives and on whether they see a need for action at EU level. Their views will be taken into account in formulating any proposal for action.

## **B. Objectives of EU initiative**

*What are the main policy objectives?*

To ensure that EU working time regulation achieves effectively its objective under Art 153 TFEU (improving protection of workers' health and safety and of their working conditions) in a way which meets the current and prospective needs of workers, businesses and consumers in the EU in the 21<sup>st</sup> century.

*Do the objectives imply developing EU policy in new areas or in areas of strategic importance?*

Revision of existing legislation.

## **C. Options**

*(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine up-date of existing legislation?*

Policy options include:

- ***maintaining the legal status quo*** (enforcement by the Commission of the *acquis*)
- taking ***'soft law' measures*** to improve the clarity or implementation of the Directive without changing the *acquis* (Commission guidelines, communication campaigns, co-operation mechanisms at administrative level with participation of Member States and possibly the social partners ...)
- an ***amending legislative proposal*** to clarify/amend the *acquis*
- a ***negotiation by the European social partners under Article 155 TFEU*** (should they so desire) at cross-sector or sectoral level, which could result in agreements which would complement or amend the existing legal framework.

*Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?*

Actions proposed in the above options could cut across policy areas/planned action by other departments, notably:

- EU 2020 Strategy
  - Community Strategy on Health and Safety at Work 2007-2012
  - EU health strategy 'Together for health'
- The Commission's agenda for reduction of administrative burden and better regulation  
The 'decent work' agenda, notably with 3<sup>rd</sup> countries

*Explain how the options respect the proportionality principle*

The options identified do not go beyond what is necessary to achieve to ensure that common minimum standards for workers' health and safety across the EU are effective and operational, while avoiding unnecessary burden on business and providing flexible solutions for the organisation of working time in accordance with the needs of workers, businesses and public services in the 21<sup>st</sup> century. Proportionality of each option in terms of the objectives will be further assessed in the impact assessment report.

## **D. Initial assessment of impacts**

*What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?*

**Status quo** – The SIMAP-Jaeger jurisprudence would have to be applied in full. The Commission should open infringements against all Member States that are in breach, even in the absence of formal complaints. As a result many Member States would move towards opt-out solutions, at least in the hospital and fire-fighting sectors. Continued legal insecurity about multiple contracts and status of autonomous workers. Impossibility of businesses to extend reference period beyond 4 months, in the absence of collective agreements. Unrestricted opt-out would continue. In sum, the impossibility to find flexible solutions inside the Directive would create favourable conditions for the extension of exceptional solutions, depriving workers from any protection against excessive hours.

**Soft law measures** – Can have positive impact if complementary to legislative action. However, on their own, they are insufficient to address current open issues.

**Negotiation by social partners** – The decision by the social partners to open negotiations would suspend the preparation of the legislative proposal for the issues covered by such negotiation. The impact of an agreement from social partners which would complement or amend the existing legal framework would depend on its content.

**Amending legislation** – Impact assessment to be developed upon precise sub-options  
The significant impacts which could potentially result from Community action in this area (depending on its exact scope) and which could be positive or negative (depending on its content) are as follows:

### **Economic impacts:**

Possible impact on productivity and competitiveness

Possibility of adding/reducing compliance costs for SMEs and administrative burdens on businesses

Possible budgetary consequences for public authorities (primarily, the national, regional and local administrations responsible for health, residential care, and emergency services), and possibility of increased/reduced administrative burden for such public authorities

Possible consequences for the quality of public services (health, residential care, emergency services)

Possible consequences in particular for the health, care and emergency sectors

### **Social impacts:**

Possible impact on protection of workers' health and safety.

Possibility of affecting workers' existing rights and obligations regarding working time.

Possibility of affecting employers' existing rights and obligations.

Possibility of affecting minimum employment standards across the EU.

Possibility of negative/positive consequences for specific groups of workers (those working consistently long hours, vulnerable workers, workers most at risk of poverty, workers with family responsibilities and particularly women, older workers, workers in health, care and emergency sectors.)

Possible impact on reconciliation between private, family and professional life

Possible impact on access to public services (health, care, emergency services)

Possible impact on fundamental social rights of workers under the Charter of Fundamental Rights (limit to working time, minimum rest periods, minimum paid annual leave).

Possible impact on health and safety of consumers (e.g. users of health, residential care and emergency services; passengers and other drivers in short-distance road transport and in most rail transport)

### **Environmental impacts:**

Possible impact on the likelihood or prevention of accidents with environmental consequences (fires, breakdowns, accidental emissions,

*Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?*

No such budget impact.

*Could the options have significant impacts on*

- (i) Simplification – The options 'legislative amendment' and 'framework agreement by social partners' would contribute to the simplification of the legislation on working time to the extent that they reduce legal uncertainty, diminish litigation and adapt EU rules to modern working patterns. Given the complexity of the policy area, the proposal will be accompanied by a risk-based implementation plan in order to propose to Member States suggestions to facilitate timely and correct implementation.
- (ii) Currently the Directive has not been earmarked as especially burdensome in terms of administrative costs. However the final impact assessment will include an estimation of administrative burdens for some of the sub-options to be considered.
- (iii) Working time is a key indicator set by ILO for the measurement of 'decent work' in the context of the Commission's 'decent work' agenda with 3<sup>rd</sup> countries

## **E. Planning of further impact assessment work**

*When will the impact assessment work start?*

Impact assessment started in the 4<sup>th</sup> quarter of 2009 with the drafting of the terms of reference of a substantial independent expert study (0.5 m EUR, 6 months). This study was formally launched on 24.03.2010.

*(i) What information and data are already available?*

Detailed draft report on legal application of Directive in all 27 MS based on detailed contributions from MS, social partners and independent experts. Data updated to February 2009.

Range of expert reports and studies on relevant aspects of working time patterns and their impact. Relevant statistical data and research (EUROSTAT, European Foundation for Living and Working Conditions, ILO, OSHA).

*(ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out?*

Little previous impact assessment work, due to age of the Directive (drafted 1990, revision proposal 2004).

*(iii) What further information needs to be gathered?*

This impact assessment will build on:

- a) the detailed draft report on legal application of the Directive in all 27 Member States
- b) a major study carried out by an independent consultant (see above)
- c) several additional inquiries which are presently being launched (use of Business Test Panel in co-operation with DG MARKT, use of 'listening to SMEs' tool in co-operation with DG ENTR, study on administrative burdens in co-operation with SG/ENTR, with results expected in the same timeframe.
- d) The outcome of the consultation of social partners

In particular, the expert study to support this impact assessment will develop the following tasks:

a) *General study:* To identify the key economic and social developments in the world of work over last 20 years which affect the organisation of working time. What are the current and prospective needs of businesses, workers, public services, consumers, other stakeholders, regarding EU working time rules? How far does the current directive meet them? What could be appropriate action at EU level?

b) *Four specific studies:*

- To review the available expert research on the health and safety implications for workers of different working time patterns

- To assess the economic costs and benefits to businesses of the working time directive (as distinct from obligations arising at national level) - other than administrative burdens (to be treated under a separate study).

- To assess the financial and organisational costs and benefits of the WTD on key public services (health, residential care, fire, ambulance, police, ..) and identify current patterns of work organisation in response to the acquis

- To assess the current use of the opt-out (in which activities, how widely used, by what sort of

workers, what are main benefits and costs in practice for the workers and businesses concerned).  
*(iv) How will this be done (e.g. internally or by an external contractor) and by when?*  
*The expert study will be done by an external contractor, by end of September 2010.*  
*(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?*  
See details of studies above.

*Which stakeholders & experts have been/will be consulted, how and at what stage?*

Full consultation of the social partners under Article 154 TFEU (launched 24.03.2010 with COM (2010) 106), plus further studies and stakeholder consultations as mentioned above.

In accordance with Art 154 TFEU, the European social partners are consulted in 2 stages.

First, they are asked (by COM (2010) 106) for their opinion on the need for action at EU level regarding the existing Working Time acquis, in the light of the issues mentioned above, and their opinion the possible direction of such action, including their vision of how working time in the EU could best be organised to meet the needs of the 21<sup>st</sup> century.

They are also asked whether they consider that measures other than legislative measures would be useful, and whether they wish to consider initiating a dialogue under Article 155 TFEU which could lead to an agreement by the European social partners on some or all of the issues raised.

The Commission then normally prepares a second consultation document, summarising the replies and setting out the broad lines of any action it proposes to take. In a second stage of consultation, the European social partners are then asked for their views on the content of the action proposed by the Commission. After taking account of the outcomes of this second stage consultation, the Commission then proceeds with the detailed formulation of its proposal for action.

Normally six weeks are given for the social partners to reply in each stage of consultation, but they often seek an extension of time. There is also the necessary time in each stage for the analysis of replies and the formal adoption of the necessary Commission responses. The process can be expected to take a minimum of 7-8 months.

At any stage the cross-sector or sectoral European social partners can take the initiative to start such negotiations. Such an initiative would suspend the preparation of a legislative proposal on the issues covered by the initiative.

In addition, the impact assessment study by external experts will consult a range of stakeholders including, for example, labour inspectorates, authorities responsible for public services, and organisations representing patients/consumers of public services.

The other studies mentioned above will consult panels of businesses, and SMEs, across the EU in accordance with the 'Business Test Panel' and 'Listening to SMEs' instruments (respectively in DG ENTR and DG MARKT).