

## Review of the Working Time Directive (Directive 2003/88/EC)

Fields marked with \* are mandatory.

### Identifying information

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## Nota bene

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### Please note that:

- **The Working Time Directive only sets minimum standards and Member States are always allowed to provide higher levels of protection for workers in their national laws and regulations.**
- **Filling in the questionnaire, please keep in mind that the Working Time Directive only applies to workers and not to self-employed persons. Also keep in mind that it does not set levels of pay for working time, which is a purely national responsibility.**
- **The background document provides useful information regarding the concepts used in the following questionnaire. Please refer to it as necessary.**
- **There are a number of questions offering the possibility of making additional contributions under each point, and also a longer opportunity to express your opinion at the end.**

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- Please confirm you have read through these important elements.

# 1. Objectives and approach to the review of the Working Time Directive

## 1. A. Impact of the Working Time Directive

In your opinion, what is the impact of the **current Working Time Directive** giving workers the right to a limit to average weekly working time (currently set at 48 hours) and to minimum daily and weekly rest periods?

	Fully disagree	Tend to disagree	No opinion	Tend to agree	Fully agree
It protects the health and safety of workers and people they work with*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
It ensures a level playing field in working conditions across the Single Market, avoiding that countries lower their labour standards to gain a competitive advantage*	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It boosts productivity notably by fostering a healthy European workforce*	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
It allows flexible organization of working time*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It allows workers to reconcile work and private life*	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It impacts on job creation*	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Self-employment is used to circumvent the application of the limits imposed by the Directive*	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It impacts the costs of running a business*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
It has no major impact*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please elaborate on your opinion with regard to the impact on health and safety of workers and people they work with

*300 character(s) maximum*

[Optional]

The control of working time periods does contribute to securing the Health and Safety of workers. Fatigue may have a negative impact on the safety at workplace level through for instance a higher risk of occupational accidents. However the lack of clarity of the present WTD threatens this purpose.

Please elaborate on your opinion with regard to the impact on job creation

*300 character(s) maximum*

[Optional]

There is no concrete scientific evidence to support a direct causality link between reduction of working hours and job creation. The actual Growth rate is a most determining factor and as the WTD directly impacts the flexibility of the work organisation it might discourage new recruitments.

Please elaborate on your opinion with regard to the impact on the cost of running a business

*300 character(s) maximum*

[Optional]

Many essential public services operate on a 24/7 basis. The rules regarding on-call time and compensatory rest periods directly impact the organisation of these services and create rigidities. There is also evidence that the WTD can have negative effects on the delivery of some public services.

If you see another impact, please specify:

*500 character(s) maximum*

[Optional]

The WTD makes it difficult for some public services to provide continuity of care where needed e.g. for some children and vulnerable adults in residential care where the best form of service delivery involves the same member of staff being present when children/vulnerable adults go to bed, during the night and when they wake in the morning. This may involve sleeping in "on-call" and the WTD restricts the ability of service providers to meet the needs of their service users.

## 2. Thematic questions

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## 2. A. Scope

### Concurrent contracts

**A single worker may be employed under several concurrent contracts. Should the limits provided in the Working Time Directive apply to all contracts taken together or to each contract separately?**

**If the Directive applies per worker, this means for example that all the hours worked under the different contracts should be added together and cannot exceed 48 hours on average (unless the worker signed an opt-out).**

**If the Directive applies per contract, this means for example that the worker can work 48 hours on average under each separate contract without an upper limit. \***

[only one answer possible]

- It is up to Member States to decide whether working time rules shall apply per worker or per contract
- The Directive should stipulate that working time rules shall apply per worker in situations where a worker has more than 1 contract with the same employer
- The Directive should stipulate that working time rules shall apply per worker in situations where a worker has more than 1 contract in any event
- The Directive should make it clear that it only applies per contract
- Other
- Do not know

## 2. B. Concept of working time

### On-call time

**On-call time corresponds to any period where the worker is required to remain at the workplace (or another place designated by the employer) and has to be ready to provide services. An example could be a doctor staying overnight at the hospital, where he can rest if there is no need to attend to patients.**

**Under the current Working Time Directive, as interpreted by the Court of Justice, on-call time is fully regarded as working time for the purpose of the Directive, regardless of whether active services are provided during that time. The period of on-call time within which the worker actively provides services is usually referred to as 'active on-call time', while the period within which services are not provided can be referred to as 'inactive on-call time'.**

**(See in particular Cases [C-303/98 Simap](#), [C-151/02 Jaeger](#), [C-14/04 Dellas](#))**

Please give your opinion on the following options as regards possible changes in the treatment of on-call time under the Working Time Directive:

	Very undesirable	Undesirable	No preference	Desirable	Very desirable
No change to the current rules*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that all on-call time has to be counted as working time)*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Set the principle that defining "on-call time" should be agreed in each sector by national social partners, for example determining that only part of inactive on-call time will be counted as working time*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

If you would like to add comments or indicate another option, please specify:

*500 character(s) maximum*

[Optional]

Inactive time should not count as working time. The impact of on-call time rules can be substantially different depending on the types of activity. In some situations on-call time mainly correspond to undisturbed rest, while in other cases work needs to be carried out frequently during on-call time. Regulations must remain flexible and adaptable to each specific situation. Collective agreements and/or national legislation would be best suited to sort out the situations.

**Stand-by time**

**Stand-by time corresponds to any period where the worker is not required to remain at the workplace, but has to be contactable and ready to provide services. An example could be when a technician of a nuclear facility is at home, but has to be ready to come to the plant to provide services in an emergency.**

**Under the current Working Time Directive, as interpreted by the Court of Justice, stand-by time does not have to be considered as working time for the purpose of the Directive. Only active stand-by time, i.e. time in which the worker responds to a call, has to be fully counted as working time.**

**(See in particular Cases [C-303/98 Simap](#), [C-151/02 Jaeger](#), [C-14/04 Dellas](#))**

Please give your opinion on the following options as regards possible changes in the treatment of stand-by time under the Working Time Directive:

	Very undesirable	Undesirable	No preference	Desirable	Very desirable
No change to the current rules*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that stand-by time does not have to be considered working time)*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Introducing the obligation to partially count stand-by time as working time for the purpose of the Directive*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Introducing a limit to the maximum number of hours that a worker may be required to be on stand-by in a given period (for instance 24 hours a week), together with a derogation possibility to set a different limit via collective agreements*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you would like to add comments or indicate another option, please specify:

*500 character(s) maximum*

[Optional]

It is important for the delivery of 24 hour essential services that stand-by time is not counted as working time. Today the public is more and more counting on 24 h services which are now widespread. Time spent on standby (e.g. on call from home) but not working should be counted as rest periods. If not public services providers would not be able to rely upon their current stand-by working arrangements resulting in a further increase in costs and likely reduction in the services quality.

## 2.C Derogations

### Compensatory rest

**Under the current Working Time Directive, as interpreted by the Court of Justice, a worker who by derogation from the general rules has not received his/her minimum daily rest of 11 consecutive hours in a 24-hour period, will have to receive an equivalent period of compensatory rest (i.e. 11 hours) directly after finishing the extended working time period. This sets a maximum of 24 hours to a single consecutive shift.  
(See in particular Case [C-151/02 Jaeger](#))**

How would you assess the possible introduction in the Working Time Directive of provisions regarding the period within which such a compensatory rest has to be taken:

	Very undesirable	Undesirable	No preference	Desirable	Very desirable
No change to the current rules*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that compensatory rest has to be granted immediately after the extended period of work)*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Allowing employers the possibility of granting compensatory rest within 2 days*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Allowing the possibility of granting compensatory rest within 4 days*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you would like to add comments or indicate another option:

*500 character(s) maximum*

[Optional]

CEEP believes that the WTD should not be too prescriptive. Compensatory rest periods should be taken within a "reasonable time", to be defined either by national law or collective agreements between the national social partners. A prescriptive timescale in the Directive would hamper the employers' flexibility in organizing and carrying out their operations in the most efficient way. Other H&S rules already provide the necessary protection for employees for this not to be abused.

Reference period

The limit to weekly working time of 48 hours provided by the Working Time Directive is a limit to *average* working time. This means that in certain weeks the worker can be required to work more than 48 hours as long as this is balanced out by lower hours in other weeks. This average has to be calculated over a certain period, i.e. 'a reference period'. Currently, the standard limit to the reference period is 4 months, which can in certain sectors be extended by law up to 6 months, and by collective agreement it can be set up to 12 months.

What would be in your view the most appropriate approach to the limit set to the reference period to calculate average weekly working time:

[only one answer possible]

- No change in the current provisions
- Allow that reference periods can be set up to 6 months by law in any sector, and maintain that they can only be set up to 12 months by collective agreements
- Maintain that reference periods can be set up to 4 months by law in any sector, but allow that reference periods can be set up to 12 months by law in certain specific sectors (e.g. to take into account the size of the undertaking or to take into account fluctuations of demand)
- Allow both previous options (i.e. option 2 and option 3), meaning that reference periods can be set up to 6 months by law for any sector and up to 12 months by law in certain specific sectors
- Allow that reference periods can be set up to 12 months by law in any sector
- Other
- Do not know

Please specify\*

*300 character(s) maximum*

Reference periods should be set up to 12 months by either national law or in collective agreements in any sector.

## Opt-out

**Under the current Working Time Directive, Member States have the possibility not to apply the limit to average weekly working time of 48 hours, when the worker agrees to it individually and freely with the employer, and does not suffer prejudice for revoking such agreement (the 'opt-out').**

What is your view on this opt-out clause:\*

[only one answer possible]

- It should be maintained unchanged
- It should be maintained, but stricter conditions for the protection of the worker should be added in the Directive
- It should be maintained, but it should be provided in the Directive that the opt-out cannot be combined with other derogations under the current Directive
- It should be abolished, but in compensation there should be additional derogations made available for employers (e.g. allowing not to count on-call time fully as working time)
- It should be abolished
- Other
- Do not know

Please specify\*

*300 character(s) maximum*

The opt-out is used by an increasing number of Member States as a consequence of the ECJ rulings. When the directive is no longer a viable regulation the opt-out is a way out. It is important that the directive is changed in a way that makes it applicable decreasing the recourse to the opt-out.

## Autonomous workers

**"Autonomous workers", such as for example managing executives, can fully determine their own working time (i.e. decide when and how many hours they work). Member States have the option to apply the main provisions of the Working Time Directive to these workers.**

Please choose the most appropriate statement according to your views:\*

[only one answer possible]

- The current Working Time Directive provides an adequate exemption as regards autonomous workers, and should not be changed
- The current exemption should be maintained in substance, but more clearly formulated, in order to enhance legal clarity and to prevent abuse
- The definition of autonomous workers is too narrow and should be expanded to other categories of workers who should be exempted too
- The definition of autonomous workers is too wide and should be limited
- Other
- Do not know

Please specify\*

*300 character(s) maximum*

For the long-term viability of the concept of autonomous workers and for it not to endanger the purpose of the directive, it appears necessary to clearly identify either by national law or by collective agreements between the national social partners.

## 2.D Specific sectors/activities

### Emergency services

**The current Working Time Directive as interpreted by the Court of Justice applies to workers in emergency services, e.g. civil protection services like fire-fighting services, in the normal operation of these services. The current Directive contains several derogations that can be applied to the working time and rest periods of these workers in order to ensure the effective provision of these services. In the event of a catastrophe/disaster, the Working Time Directive does not apply at all.**

(See in particular Cases [C 397/01 to C 403/01 Pfeiffer](#) and [Case C-52/04 Feuerwehr Hamburg](#))

Please state your view on the application of the Directive to emergency services:\*

[only one answer possible]

- The current rules adequately balance the need to protect the health and safety of the workers and the people they work with/for with the need to guarantee effective provision of emergency services, and should remain unchanged
- The current rules should be maintained in substance, but clarified in light of the case law of the Court of Justice, to improve legal certainty
- There should be additional derogations applicable to all or some categories of these workers, addressing their specific situation
- The Working Time Directive should not be applied to workers in emergency services
- Other
- Do not know

Please specify:\*

*300 character(s) maximum*

The very nature of the work undertaken by emergency services means that working arrangements on occasions need to remain flexible. Special rules for special sectors/activities as emergency services should be possible to arrange by national law or collective agreements.

### Health care sector

**The current Working Time Directive provides a derogation for health care services when they require continuity of service, meaning particularly that the rest periods of health care staff can be postponed to some extent.**

Should there be a different provision on the working time organisation of health care staff with a view to safeguarding patient safety?

Please state your view:\*

[Only one answer possible]

- The current rules provide enough safety for patients
- The current rules should be maintained in substance, but clarified in light of the case law of the Court of Justice on on-call time and on timing of compensatory rest to improve legal certainty
- There should be additional derogations applicable to workers in the health care sector in order to improve continuity of service
- There should be a more narrow derogation applicable to workers in the health care sector in order to improve patient safety
- Other
- Do not know

Please specify:\*

*300 character(s) maximum*

It is neither the purpose nor the scope of the WTD to regulate patient's safety issues. The derogation for the Healthcare sector is justified as it means permanent presence at work. Special rules for specific sectors/activities should be possible to arrange by national law or by collective agreement

## 2.E Patterns of work

### Changes in working patterns

**The Working Time Directive was conceived more than 20 years ago, when information and communication technologies were not as developed and many types of present jobs did not exist yet. In light of these changes in working patterns and organisation, should the Working Time Directive introduce specific rules regulating particular situations and types of contracts such as telework, zero-hour contracts, flexitime, performance-based contracts without working time conditions, etc.?**

Please state your view.\*

[multiple answers possible]

- The current rules are satisfactory and do not need to be changed
- The rules should be changed in light of increasing telework
- The rules should be changed in light of zero-hour contracts
- The rules should be changed in light of increased use of flexitime
- The rules should be changed in light of increased use of performance-based contracts without working time conditions
- Other
- Do not know

Please specify\*

*500 character(s) maximum*

IIn order to ensure a flexible framework able to adapt to the evolution of the labour market we believe that these issues do not belong to the WTD. Working patterns are dealt with nationally and locally and are best regulated at local level. There could be room for MS to regulate some of these issues within their own labour market legislation. The contractual element of all the examples mentioned is not a priori a matter of regulation through the WTD.

**Reconciliation of work and private life**

**Do you think the Working Time Directive should support better reconciliation of work and private life by introducing any of the following specific rights:**

	Very undesirable	Undesirable	No preference	Desirable	Very desirable
The right for a worker to ask for specific working time arrangements (e.g. flexitime, telework) depending on their personal situation, and to have their request duly considered	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The right for a worker to request to take daily rest in blocks of time instead of uninterruptedly, allowing the worker for example to go home early in the afternoon and later continue work from home at night, and to have their request duly considered	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you would like to add comments or indicate another option:

*500 character(s) maximum*

As a principle CEEP believes that within the frames set up by the demands of the area of activity the employer should take the wishes of the employee into consideration when deciding working hours. The WTD only serves to protect occupational health and safety. The work life balance however important is not part of the WTD's scope. It would be better secured through MS legislation or collective agreement and not by extending the WTD scope.

### 3. Looking ahead

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## Objectives for the future of the Working Time Directive

For the future of the Working Time Directive, how important do you consider the following objectives?

	Not at all important	Of little importance	Quite important	Very important	Do not know
While keeping the current Working Time Directive, to better ensure that Member States correctly and effectively put it into national law and practice*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To improve legal clarity, so that the rights and obligations following from the Directive are clearer and more readable and accessible to all*	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
To provide more flexibility in working time organisation for workers*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
To provide more flexibility in working time organisation for employers*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
To provide a higher level of protection to workers*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To protect third parties involved (co-workers, passengers, patients, etc...) *	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Approach for the future of the Working Time Directive

**Which of the following approaches for the future of the Working Time Directive do you prefer?\***

[only one answer possible]

- No new initiative (maintaining the current rules)  
No legislative changes but initiatives towards improved legal clarity so that the rights and obligations following from the Directive are clearer and more readable and accessible to all (interpretative communication; 'codification' of the case law (i.e. clearly stating the case law of the Court of Justice in the legal text)
- Legislative changes but focused on the sectors where there is a specific need in terms of continuity of service (e.g. public services; sectors that work on a '24/7' basis like hospital services and emergency services)
- Legislative changes which would lead to an overall revision of the Directive, containing a mix of simplification and additional derogations while avoiding regression of the protection of workers
- Other
- Do not know

Please motivate your answer:

*500 character(s) maximum*

[optional]

The WTD needs to be changed. It needs to be simplified, be made clearer and more intelligible. The present regulation is too detailed to be adaptable to very different national contexts. The Court of Justice judgements made the situation even more complex and created a clear lack of legal clarity for the implementation of the directive. For CEEP the solution is a much simpler, clearer, less restrictive directive which can be implemented by national governments and/or social partners.

#### 4. Other comments or suggestions

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## Do you have any other comment or suggestion on the review of the Working Time Directive that you would like to share?

*2,000 character(s) maximum*

Optional. No hyperlinked or attached documents allowed.

It is urgent for the WTD to be revised in order to address the legal uncertainty caused by the ECJ rulings on on-call time and compensatory rest. It is highly welcomed that the Commission is going through the process of revising the directive. It is especially key to find a cross-sectoral solution so that current problems are solved for the whole labour market. The consequences of the ECJ rulings may be most severe in the health care sector but the whole labour market is affected by the rulings, not least concerning compensatory rest.

To sum-up, On-call time and compensatory rest provisions are the main priorities for public services providers and more flexibility for the national level regarding the reference period would be helpful. The various ECJ cases regarding the accrual of annual leave while on sick leave and holiday pay have not always been consistent and are creating new law to deal with issues that are not addressed by the WTD. It is therefore no surprise that employers are left perplexed.

The link between these and H&S considerations is a tenuous one. In conclusion, the world is very different today in comparison to what it was over 20 years ago, and the WTD does not reflect those changes.

Examples would be:

- developments in information technology leading to more mobile, flexible working;
- increase in the number of self-employed "autonomous" workers;
- increase in part-time working and employees having "multiple" contracts.

To adapt and face the transformations within the labour market, the working time directive should become a stable, clear and more certain legal instrument able to give the flexibility to national law or collective bargaining to address the matters which are highly dependent of national circumstances and practice of the labour law. Social partners in particular are able to offer a more tailored approach, and have a better understanding of the situation in their specific sector.

## Contact

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