

CONFERENCE ON 'WORKING FOR BETTER TIMES'

Brussels, 8-9 February 2011

"EU commitment with regard to working time regulation and plans for the revision of the Directive"

Ladies and Gentlemen,

- On behalf of the European Commission, I would like to congratulate ETUC for the initiative to organize this debate on the revision of the working time directive and the invitation made to the DG for Employment, Social Affairs and Inclusion.
- I see from the programme that you did not want to limit your discussion to a closed circle but you invited employers' representatives, the Commission and a Member of the Parliament. Of course, we know that the stakeholders' list is long and does not stop here. But the only way to make progress in this difficult dossier is to listen to people with different views, and measure the chances of reaching a balanced compromise.
- The present debate was launched by the publication in December of a second consultation paper addressed to the European social partners. The paper provides an

outline analysis of various working time challenges and trends, and asks for the social partners' views on a series of options for possible change to the current Working Time rules.

- Simultaneously with the adoption of the consultation paper, the Commission published a report on the implementation of the Directive and an external evaluation study focusing on the economic and social impact of the EU Directive.
- With this package the Commission wanted to put at the disposal of all stakeholders the most up-to-date and reliable information on EU working time patterns and rules, in order to endow everybody with the same evidence basis. This was a point correctly made by ETUC and other stakeholders in their replies to the first consultation.
- We expect that, with these and other studies, the debates will rely more on detailed evidence, and less on re-stating established positions from the previous negotiations. This is how we can find more imaginative, broad-based and sustainable solutions.
- Yesterday, you had the opportunity to listen to the conclusions drawn from social and economic research produced by Deloitte and the Eurofound.
- I'd like today to highlight some conclusions of our implementation report and to make a few general points

about our approach to the review of working time, which I think are important.

- As regards our examination of the way the member States apply the Directive, the first thing I would like to state, is that, contrary to a widespread misconception, the working time of a large majority of EU workers is actually protected by minimum standards that are based on the EU legislation. These standards are clearly inspired by the European Charter of Fundamental Rights and fully respect the ILO Conventions.
- However, the analysis identified a number of serious problems that is urgent to tackle:
 - Non-compliance with EU standards which leave certain categories of workers deprived of protection (because they are wrongly excluded from transposition, or have inadequate rest);
 - Clear problems with the implementation of the SIMAP-Jaeger-Dellas jurisprudence in 24-hour public services in several member States;
 - Swift and broad proliferation of the opt-out, without adequate monitoring or guarantees;
 - Lack of clarity in the application of some rules ('autonomous workers', multiple contracts, public defence and security services).

- The first operational conclusion we draw from this analysis is that we need to bring clarification to a number of provisions of the Directive in order to make rules more effective and obligations more transparent.
- The second conclusion is that, on those matters where obligations are clearly defined, we must pursue our action of control of the implementation of the Directive by using the instruments provided for in the Treaty.
- Now, turning to the issue of the revision of the working time directive.
- Firstly, it's clear from our first round of consultations with European social partners last spring that there is a real need for changes to Working Time rules, in order to match the profound changes in the world of work during the last two decades.
- Trade unions rightly highlight factors such as the general intensification of work, the development of precarious work, the persistence of excessive working time and of involuntary atypical shift patterns for certain workers. They also emphasise the need for much better reconciliation of work and family life, in order to attend to the situations where both partners in a couple go out to work, and to support more women to enter and more older workers to stay in work.

- Employers, equally understandably, point to the very difficult economic environment. They highlight increased competitive pressures, volatile globalised markets with rapidly-fluctuating demand, and increasing expectations of 24-hour availability. Public service employers face specific challenges, in trying to provide the quality 24-hour services that we all expect, when they are faced with major demographic changes and long-term shortages of skilled staff.
- However, although there is thus wide agreement on the need for change, there is much less agreement on what the change should be. There is a strong case for better protection of workers' health and safety, in the face of the trends identified by unions. There is also a strong case for more flexibility regarding certain working time rules, if businesses and public services are to adapt successfully to current demands. Stakeholders continue to have strongly opposed views on several core issues.
- How do we respond to this situation? We have no illusions that it will be easy to resolve these differences about changes to Working Time rules. We all recall the breakdown of previous discussions in 2009, because the Council and Parliament could not reach agreement.
- However, working time is an issue which really matters to millions of workers and their families, public services and

employers right across the EU. I know that my Commissioner is determined not to give up and that he is committed to continue, with patience and an open mind, to find solutions which could enjoy broad support.

- Our objectives for the review are that it should adapt EU working time rules to better match the changes which have been outlined both by workers and by employers. The Directive should both provide more effective protection for workers' health and safety, and also allow more flexibility for the needs of employers, public services and workers.
- It's for precisely these reasons that the Commission has approached this review with the intention to make a fresh start.
- I would like to recall that the main purpose of the consultation paper is to present options to social partners and ask for their views in order to determine possibilities for broad-based solutions. There are two options however that we discard already at this stage: one is the 'status quo', the other is de-regulation at EU level.
- We ask the social partners about their preferred solution: a comprehensive review encompassing a large range of open issues, or a focused review, concentrating on a small number of provisions where consensus could be established more easily, and for which it is urgent to find a legal solution.

- The consultation paper lists the issues that we consider as priority for a review. But we are of course open to suggestions for widening or streamlining this list.
- In striving for solutions, we should be well grounded on present reality and not the reality of 2004 when the previous revision was launched. In this connection I would like to stress the following key aspects:
 - The need to respect what is now well consolidated Court jurisprudence on on-call time and compensatory rest, while providing for flexibility for social partners at sectoral or local level to adjust to specific situations;
 - The need to take into account the reality of the expansion of the opt-out to 16 member States, as well as the need to afford special protection to workers having accepted to work more than 48 hours in order to prevent risks for health and safety;
 - The need to prevent abuses caused by some slippage in compliance with the current rules, in cases of multiple contracts and excessively wide application of the ‘autonomous worker’ derogation;
 - The need to take into account the increasingly diversified nature of the workforce with more women, more older workers, more individualised career

profiles, by allowing workers a greater role in working time choices;

- The need to allow social partners to determine or to influence flexible local solutions for distributing working time in response to technological or market challenges.

- On the basis of a thorough analysis of the social partners' replies, that are expected until the end of February, the Commission will prepare a draft amending proposal for adoption by the Commission in the autumn. Of course, the European social partners have a special right under the Treaty to agree on such changes themselves by social dialogue, should they jointly wish to do so, either at cross-industry or at sectoral level. If they do, the Commission will adjust its programme to respect the results of the social dialogue.

Thank you for your attention.