

**COMMUNICATION****Possible action at Community level regarding any revision of Directive 2003/88/EC  
(‘The Working Time Directive’)****- first phase consultation of the social partners at Community level  
under Article 154 of the Treaty -****CEEMET REPLY****19 May 2010**

On 24 March 2010, CEEMET received the European Commission communication on ‘*Reviewing the Working Time Directive*’ that constitutes the consultation paper for the first stage consultation of the social partners at EU level, in accordance with Article 154(2) TFEU, on the possible direction of EU action on the Working Time Directive. Acknowledging that fundamental changes have occurred in the world of work over the last 20 years, the Commission has invited the social partners to reflect broadly on the kind of working time regulation the EU will need in order to cope with the challenges of the 21<sup>st</sup> century. Please find below our response.

**General comments**

The management of working time is a crucial factor in determining a company's competitiveness, impacting on the organisation and production processes of a company. At a time of globalised economies and markets, cyclical changes and just-in-time production methods, working time needs to be managed in a way so that employers can cope quickly and efficiently with these challenges both in terms of the number of hours worked and their flexible organisation. During the economic crisis, it is noticeable that flexible working time arrangements have been used by many companies as a buffer that has enabled them to cope with reduced orders, thus sometimes avoiding dismissals in the short term.

The flexibility and adaptability of working time also contributes to meeting the wishes and expectations of individual workers through, for example, the opportunity for enhanced earnings or helping to support the work-life balance requirements of individuals. Furthermore, demographic changes and projected skills shortages are likely to maintain or increase the need for flexible working time arrangements.

We are pleased that the European Commission acknowledges these trends in the consultation document which takes a broader view of the world of work and the changes that have occurred since the Working Time Directive was first discussed, rather than simply tries to address some of the complex issues relating to this Directive.

- *How could we develop balanced and innovative proposals regarding the organisation of working time that move beyond the unsuccessful debates of the last conciliation process?  
What is your long-term vision for the organisation of working time in a modern setting?*

CEEMET is firmly of the view that it is important that *any* initiative regarding the organisation of working time must help to take forward and not impede ‘flexicurity’ policies in Member States. CEEMET supports ‘flexicurity’ as it can help Member States to improve the performance of their labour markets. Flexible contractual arrangements are a crucial component of this approach.

Social partners, at the appropriate level, can agree to adapt collective agreements, providing for any necessary flexibility measures. However, this can only be done if legislation leaves sufficient room for them to find tailor-made solutions. This ability is often limited in European labour markets by rigid and overly detailed working time regulations at both national and European level.

Furthermore, CEEMET would argue that a range of national and European legislation already protects the health and safety of workers to a high degree. As regards working time, we believe that this has been demonstrated by the general reduction of total working time outlined in the consultation document. We therefore consider that the ability of European businesses to compete in an increasingly challenging global marketplace should be supported by any new European legislation.

- *What impact do you think that changes in working patterns and practices have had on the application of the Directive? Have any particular provisions become obsolete, or more difficult to apply?*

The Commission rightly identifies the de-standardisation of individual working time as one of the key trends in the world of work today. The proportion of companies making use of flexible working time arrangements has increased considerably in recent years in traditional activities as well as in new types of activities.

In many Member States, the 12 months' reference period has now become a normal pattern in collective agreements or other agreements organising flexitime schemes. Nevertheless flexitime arrangements still differ greatly from country to country and sometimes from company to company, notably as regard the reference period within which the agreed and actual working time has to be balanced out. In some cases, long-term time accounts allow employees to accumulate hours over periods of more than one year and even occasionally with a lifelong perspective (e.g. financing training or early retirement). For employees, flexitime arrangements therefore represent an increased opportunity to influence the management of their work-life balance.

Historically, flexibility was not provided for in traditional labour laws and collective agreements, which were meant to guarantee stability in the distribution of working hours. Over the past few decades, however, many countries have introduced new rules into their legal frameworks allowing daily and weekly working hours to vary within a specified reference period around a specified average (the "normal" or "standard" working hours). Meanwhile, an increasing number of collective agreements have introduced provisions allowing deviations from standard working hours (for example, the so-called Öffnungsklauseln or "opening clauses" in Germany). Moreover, the trend towards the decentralization of working time regulation from the national, regional or branch levels to the company level has also facilitated the introduction of flexitime and time account schemes thus contributing to the generalisation of the 12 month reference period.

We also agree with the Commission that the transition to a knowledge-based economy has an impact on the way work is organised. As a result of technological change, there are more forms of work organisation today that are becoming less tied to the factors of "time" and "place".

There is also a clear increase in the number of workers for whom the organisation of work depends primarily on the achievement of agreed goals, rather than on the number of hours at work. These workers are employees who, typically due to their skills or tasks undertaken, are of pivotal importance to companies. Consequently, more flexibility is not only needed but is absolutely necessary for companies.

These developments contribute to soften the boundaries between working time and rest periods and for many workers this is seen as a chance to optimise their work-life balance. However, this model only works if companies and employees address these new opportunities with mutual trust and in a responsible way.

Because a variety of different factors have to be taken into account in these recent forms of work organisation, the level of flexibility in the organisation of working time and the level of risk in terms of

health and safety cannot be treated as co-dependent. This development needs to be acknowledged in the debate on working time regulation.

- *What is your experience to date on the overall functioning of the Working Time Directive? What has been your experience regarding the specific questions of working hours which exceed 48 hours per week on average, and the use of the 'opt-out'?*

Beyond the changes in working time patterns, the fact that 15 Member States are currently using the possibility to opt-out either at national or at sectoral level demonstrates that the full range of flexibility offered by the Directive is required.

The implementation of the Directive has created considerable difficulties in, for example, countries where the reference period of 12 months cannot be implemented by collective agreement. Several rulings from the European Court of Justice have also created difficult implementation issues in some sectors. This applies notably in the "*Simap and Jaeger*" cases which have led to major problems for many companies and sectors in organising working time.

Some problems have been solved to a varying extent on a Member State, sectoral or company level through innovative solutions in legislation and/or in collective agreements, using the opportunities for flexibility that *do* exist in the Directive. However, it is clear that more flexibility in the EU-level regulation is required. These individual solutions show the importance of being able to adapt to national, sectoral or local situations and should be promoted and not jeopardized by any new initiative at European level.

- *Do you agree with the analysis contained in this paper as regards the organisation and the regulation of working time in the EU? Are there any further issues which you consider should be added?*

CEEMET welcomes the realistic representation of changes in the world of work contained in the consultation paper and, in particular, the acknowledgment that greater flexibility is not only imperative for companies to maintain international competitiveness, but is also sought by workers to improve their work-life balance. Furthermore, CEEMET shares the view of the European Commission that the protection of workers' health and safety must remain the only factor determining the legal basis for any European working time regulation.

Nevertheless, we also believe that the Commission's analysis does not reflect fully the importance of individual solutions found in collective and company agreements at all levels. Companies are today increasingly working to develop strategies in which the management of working time is used to the benefit of both the company and its employees. Flexible working hours and working time management are key tools for maintaining efficiency and competitiveness in increasingly volatile markets. Sustainable and equitable working arrangements will be of ever greater importance as demographic developments will require new solutions. The opportunity to have a better work-life balance is also crucial for maintaining employability. Good strategies are the basis for successful acquisition and retention of qualified workers who, due to the demographic trend in Europe, are increasingly valuable to our companies. Overall, companies are trying to find solutions within the limits set by domestic legislation, addressing companies' and employees' needs for flexibility through collective and company agreements.

However, European labour markets are in general extremely rigid particularly regarding working time regulation, making it difficult for businesses to develop good strategies and adapt the use of labour to their needs in terms of working time. This greatly harms competitiveness and thus employment. In the light of the economic crisis, it is vital not to restrict the possibility of enterprises to adapt. In the longer term, it would undermine the EU's prospects of achieving a high rate of employment and job creation.

Finally, since the establishment of the Court of Justice of the European Union in 1952, its mission has been to ensure that "the law is observed" "in the interpretation and application" of the Treaties. However, we feel that the *SiMAP* and *Jaeger* judgments, as well as the *Schultz-Hoff* court decision, go beyond the Directive's original underlying principles. In both cases, they make compliance with the Directive extremely difficult for some sectors and increase the burdens for companies with no direct benefit in terms of the protection of the health and safety of workers. We consider that lessons should be learned from this experience regarding the Court's contribution to creating a secure European legal environment.

- *Do you consider that the Commission should launch an initiative to amend the Directive? If so, do you agree with the objectives of a review as set out in this paper? What do you consider should be its scope? Should we consider a different approach to the regulation of working time?*

Over recent years and despite the rigidity of European labour markets, the social partners in the metal, engineering and technology-based industries in many European countries have adapted their collective agreements (as far as the respective domestic provisions have allowed) by introducing innovative measures that offer more room for tailor-made solutions at company level, especially regarding working time organisation. CEEMET welcomes these developments which must be acknowledged by the European Commission so that any new EU initiatives do not become an obstacle to such decentralisation.

**Only if it is certain** that an initiative would reflect the interests of both businesses and employees in terms of flexibility and that, once it has passed through the European legislative process, it would not lead to more restrictive rules or jeopardize solutions already found at Member State, sectoral or company level, could CEEMET then support the principle of an initiative from the European Commission.

Further, CEEMET believes that the current Directive includes the potential for flexibility which is not fully used in national regulations on working time. Therefore, we hope that the outcome of the consultation will be that the European Commission will give a positive signal regarding changes in the world of work and that it will contribute to maintaining or improving the necessary room for manoeuvre for Member States to be able to meet employers' and employees' increasing demand for flexibility.

- *Do you think that, apart from legislative measures, other action at European Union level would merit consideration? If so, what form of action should be taken, and on which issues?*

The traditional approach of working time regulation cannot be implemented when work can "*de facto*" not be referenced to "time" or "place". At European level, we believe that only a non-legislative approach should be promoted to address health and safety issues regarding new forms of working time organisation. CEEMET is prepared to provide practical support for this approach, helping to promote and support good management practices.

- *Do you wish to consider initiating a dialogue under Article 155 TFEU on any of the issues identified in this consultation? If so, on which ones?*

We believe that the metal, engineering and technology-based sector does not provide the appropriate basis for a dialogue on the issues mentioned in the consultation document as they are of cross-sectoral character. Nevertheless, we consider that, whatever the outcome of the consultation on this question, it is of utmost importance that it should not reduce the room for tailor-made solutions at company or branch level.