



2nd PHASE CONSULTATION ON REVIEWING THE WORKING TIME DIRECTIVE

Position of CEC European Managers

FEBRUARY 2011

CEC EUROPEAN MANAGERS ASKS THE COMMISSION TO CONSIDER THE SPECIFIC NEEDS OF MANAGERS BY INITIATING A COMPREHENSIVE SET OF CHANGES TO THE DIRECTIVE

In this second-stage consultation, the European Commission is seeking the views of the social partners at EU level on the content of envisaged action and to ask whether they wish to enter into negotiation.

In its answer to the first phase consultation, CEC highlighted its concern regarding the issue of permitted derogations to daily rest, maximum weekly working time, length of night work and reference period, which includes managers¹.

At this occasion, CEC has put forward two requests to the Commission.

First, CEC has welcomed the EU's initiative to define more specifically the types or hierarchical levels of managerial staff who are excluded from the scope of the Directive – taking into account the proposals made by the European Parliament in 2005 and 2009²;

Second, CEC has wished that (notwithstanding the possible outcome that a larger group of managers will be in the scope of the directive than before) enough room should remain to ensure a flexible distribution of working time for managers – in accordance with the specific tasks and responsibilities managers have in their companies

Today, and in response to the second phase of the consultation, CEC welcomes once more the Commission's initiative to consider further legislative action to shape the EU rules to changing working time patterns while respecting their objective of protecting workers' health and safety, as well as to clarify critical issues of interpretation.

To this effect, **we would favour the option of a more comprehensive set of changes** on the matters highlighted by the social partners in their replies.

¹ Article 17 1a of Directive 2003/88/EC

² The European Parliaments position was that the following persons should not be subject to the Directive "CEOs (or persons occupying a similar position), executives who are their direct subordinates and those directly appointed by their Board".



To answer the specific questions of the consultation:

Question 1: Should changes to EU working time rules be limited to the issues of on-call time and compensatory rest, or should they address a wider range of issues, such as some or all of those listed in section 5.2?

CEC asks that changes to EU working time rules address additional issues to on-call time and compensatory rest. We are especially interested in addressing the following topics suggested in the Commission's comprehensive review: flexibility, work-life balance, autonomous workers, the opt-out, better regulation and enforcement measures.

*Question 2: Bearing in mind the requirements of Article 153 TFEU do you consider that:
a) the options set out in section 5.1 regarding on-call time and compensatory rest,
b) some or all of the options set out in section 5.2 regarding other issues raised by social partners and the current review, could provide an acceptable overall framework for addressing the concerns set out in your replies to the first phase consultation?*

Reviewing the options set by the Commission to address the concerns set by social partners in the first phase consultation, we would like to make the following comments:

- Regarding on-call time: On-call time must be excluded from the definition of rest period - the Directive must ensure that rest periods enable effectively to recover from physical and mental fatigue.
- Regarding flexibility: Managers should be able to adapt their working hours according to the specific needs of their business activity. They should have the possibility to temporarily extend their working hours, provided that the rest period between two days of work is sufficient. Generally, managers should not be subject to the strict rules of physical presence at the workplace: there are better places to express one's creativity and sense of innovation than behind a computer or in an open space office. However, this should not impact working conditions of non-managerial employees. Additionally, the organisation of flexible working time should not lead to the exclusion of people from the labour market (cases of involuntary part-time, or the exclusion of women from the labour market because there is no existing childcare).

Regarding work-life balance: Work should be reconciled with family life, but also with social and political activities. Activities in the field of employee representation in a union or an association require available time to dedicate.

- Regarding autonomous workers: CEC agrees with the Commission's proposal³. And thus highlights the need to define precisely the scope of the derogation.
- Regarding opt-out: CEC asks for a removal of the opt-out on the long run.
- Regarding better regulation and enforcement measures: CEC pushes strongly for the enforcement of EU-wide binding rules and ensuring that points leading to uncertainty are clarified.

³ Quote: A revised definition should provide that this derogation only applies to senior managers in the public or private sectors, and other workers with genuine and effective autonomy over both the amount and the organisation of their working time.)

Question 3. Are the EU social partners, at cross-industry or sectoral level, willing to enter into negotiations on all or part of the issues raised in this communication with a view to concluding an agreement that would make it possible to amend the Directive by using the possibilities provided under Article 155 TFEU?

CEC is willing to get involved in European negotiations to discuss matters presented under the answer to question 2. As the representative organisation of managers, CEC is especially interested to help define the scope of derogation from the Directive for managers.