



WORKING TIME DIRECTIVE

Analytical examination of the acquis communautaire 8 February 2006

Fernando Pereira
DG Employment, Social Affairs
and Equal Opportunities

Unit D2 -Labour Law and Work Organisation

Employment & Social Affairs



European Commission



WORKING TIME DIRECTIVE

Introduction

Working time is dealt with by the following Directives:

- Directive 2003/88/EC (general)
- Directive 1999/63/EC (seafarers)
- Directive 2000/79/EC (civil aviation)
- Directive 2005/47/EC (railways, cross-border workers)





WORKING TIME DIRECTIVE

Introduction

Other texts dealing with working time:

- Directive 2002/15/EC and Regulation No 3820/85 (road transport)
- Directive 1999/95/EC (seafarers)

DG TREN





WORKING TIME DIRECTIVE

Aim of the Directive

Aim of the WORKING TIME DIRECTIVE:

- ➔ To adopt minimum requirements covering certain aspects of the organization of working time connected with workers' health and safety.





WORKING TIME DIRECTIVE

Scope

- ➔ **Directive 2003/88**
Applies to all sectors of activity, both public and private
- ➔ **Exceptions**
The exceptions in terms of scope are found in the health and safety framework Directive (89/391/EEC)





WORKING TIME DIRECTIVE

Scope - Exceptions

Article 2.2 :

It is not applicable where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it

“certain activities” and not armed forces or police as a whole

➔ Relevant case law: *Pfeiffer (C-397/01)*,
Personalrat der Feuerwehr Hamburg (C-52/04) *Commission v. Spain (C-132/04)*





WORKING TIME DIRECTIVE

Definition of “worker”

Who is a worker?

- No definition in the Directive
- Definition to be found in Article 3 of the health and safety framework Directive (Directive 89/391/EC):

(a) worker: any person employed by an employer, including trainees and apprentices but excluding domestic servants;





WORKING TIME DIRECTIVE

Definition of “working time”

Working time: *any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice;*

Relevant case law: *SIMAP (c-303/98) Jaeger (C-151/02), Dellas (C-14/04):*

Time spent on call by doctors in primary health care teams must be regarded in its entirety as working time





WORKING TIME DIRECTIVE

Key provisions

→ Daily rest (Article 3):

Workers are entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period.

- **Every 24-hour period**
- **No average**
- **Derogations allowed by Article 17, paragraphs 1, 3 and 4**



WORKING TIME DIRECTIVE

Key provisions

→ Breaks (Article 4):

Every worker is entitled to a rest break where the working day is longer than six hours.

- Duration not fixed
- Derogations allowed by Article 17, paragraphs 1, 3 and 4





WORKING TIME DIRECTIVE

Key provisions

→ Weekly rest period (Article 5):

Every worker is entitled to an uninterrupted rest period of 24 hours for each seven-day period plus the 11 hours daily rest.

- **Combine with Article 16.1 (reference period not exceeding 14 days)**
- **Derogations allowed by Article 17, paragraphs 1, 3 and 4**





WORKING TIME DIRECTIVE

Key provisions

→ **Maximum weekly working time (Article 6):**

The average working time for each seven-day period, including overtime, cannot exceed 48 hours.

- **Combine with Articles 16.2 (reference period not exceeding 4 months) and 19 (reference period not exceeding 6 months, or 12 months)**
- **Derogations allowed only by Article 17.1**





WORKING TIME DIRECTIVE

Key provisions

→ Maximum weekly working time (Article 6):

- **Article 22: possibility not to apply Article 6 (individual opt-out)**
- **under re-examination**





WORKING TIME DIRECTIVE

Key provisions

→ Paid annual leave (Article 7):

Workers are entitled to paid annual leave of at least four weeks.

- **No derogations allowed**

- **Relevant case law:** *BECTU (C-173/99)* (Article 7 does not allow a Member State to adopt national rules under which a worker does not begin to accrue rights to paid annual leave until he has completed a minimum period of 13 weeks' uninterrupted employment with the same employer.), *Merino Gómez (C-342/01)*: a worker must be able to take her annual leave during a period other than the period of her maternity leave, including in a case in which the period of maternity leave coincides with the general period of annual leave fixed, by a collective agreement, for the entire workforce.





WORKING TIME DIRECTIVE

Key provisions

- ➔ **Night work (Article 8):**
 - ➔ Combine with definition of night worker
 - ➔ normal hours of work can not exceed an average of 8 hours in any 24-hour period
 - ➔ for night workers whose work involves special hazards or heavy physical or mental strain: a maximum of 8 hours in any period of 24 hours during which they perform night work
 - ➔ Combine with Articles 16.2 (reference period defined by collective agreement)
 - ➔ Derogations allowed by Article 17, paragraphs 1, 3 and 4





WORKING TIME DIRECTIVE

Key provisions

- ➔ **Transitional period for doctors in training (Article 17.5):**
 - ➔ Directive applies to doctors in training from the 1st August 2004
 - ➔ For the application of Article 6:
 - Transitional period of 5 years
 - Extendable for 2 additional periods of 2 and 1 years.





WORKING TIME DIRECTIVE

Key provisions

- ➔ **Doctors in training**
 - ➔ during the transitional period, the number of weekly working hours is limited:
 - to 58 hours during the first three years (2004-2007)
 - to 56 hours during the next two years (2007-2009)
 - to 52 for any remaining period (2009-2011 or 2012).
 - ➔ Includes all on call time





WORKING TIME DIRECTIVE

Key provisions

- ➔ **Mobile workers (Articles 2.7 and 20):**
 - Definition:** *any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road, air or inland waterway.*
 - ➔ **Articles 3 (daily rest), 4 (breaks), 5 (weekly rest period) and 8 (length of night work) do not apply**
 - ➔ **Reference period for the application of Article 6 extendable to 12 months**





WORKING TIME DIRECTIVE

Key provisions

- ➔ **Workers on board sea-going fishing vessels (Article 21):**
 - ➔ Directive does not apply to “seafarers” as defined in clause 2 of the European Agreement annexed to Council Directive 1999/63/EC
 - ➔ Workers on board sea-going fishing vessels:
Articles 3, 4, 5, 6 and 8 are not applicable.
 - ➔ Nevertheless, workers are entitled to adequate rest and to have the number of hours of work limited to 48 hours a week on average calculated over a reference period not exceeding 12 months





WORKING TIME DIRECTIVE

Key provisions

- **Within these limits, the limits on hours of work or rest shall be either:**
 - (a) **maximum hours of work which shall not exceed:**
 - (i) **14 hours in any 24-hour period; and**
 - (ii) **72 hours in any seven-day period;**
 - or
 - (b) **minimum hours of rest which shall not be less than:**
 - (i) **10 hours in any 24-hour period; and**
 - (ii) **77 hours in any seven-day period.**





WORKING TIME DIRECTIVE

Key provisions

- ➔ **Reference periods (Article 16):**
Reference periods for the application of Articles 5, 6 and 8:
 - ➔ for Article 5 (weekly rest period): a reference period not exceeding 14 days
 - ➔ for Article 6 (maximum weekly working time): a reference period not exceeding 4 months
 - Article 19: by derogation, not exceeding 6 months or 12 months





WORKING TIME DIRECTIVE

Key provisions

→ Reference periods:

→ for Article 8 (length of night work): a reference period to be defined after consultation of the social partners or by collective agreement.





WORKING TIME DIRECTIVE

Derogations

Three types of derogation:

- ➔ Article 17(1): derogations from Articles 3, 4, 5, 6, 8 and 16 in situations where, the duration of working time is not measured and/or predetermined or can be determined by the workers themselves.
- ➔ Article 17(3): derogations from Articles 3, 4, 5, 8 and 16 in seven cases:
 - (a) in the case of activities where the worker's place of work and his place of residence are distant from one another including offshore work;
 - (b) in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons;





WORKING TIME DIRECTIVE

Derogations

- (c) in the case of activities involving the need for continuity of service or production;
- (d) where there is a foreseeable surge of activity;
- (e) in the case of persons working in railway transport (i) whose activities are intermittent; (ii) who spend their working time on board trains (iii) whose activities are linked to transport timetables and to ensuring the continuity and regularity of traffic;
- (f) in case of unforeseeable circumstances or exceptional events;
- (g) in cases of accident or risk of accident.

This list is exhaustive. The sublists in (c) and (d) are not exhaustive, but examples.





WORKING TIME DIRECTIVE

Derogations

- Article 18: derogations from Articles 3, 4, 5, 8 and 16 by means of collective agreements or agreements concluded between the two sides of industry

Remarks:

- Derogations laid down by Article 17.1 are conditioned to the respect of the “general principles of the protection of the safety and health of workers”
- Derogations laid down by Article 17.3, 17.4 and 18 are granted “provided the workers concerned are afforded equivalent periods of compensatory rest or, in exceptional cases, appropriate protection”.





WORKING TIME DIRECTIVE

Opt-out

- Article 22: option not to apply Article 6 (48 hours) provided the MS takes the necessary measures to ensure that:
- - no employer requires a worker to work more than 48 hours unless he has first obtained the worker's agreement to perform such work,
- - no worker is subjected to any detriment by his employer because he is not willing to give his agreement to perform such work,
- - the employer keeps up-to-date records of all workers who carry out such work





WORKING TIME DIRECTIVE

Directive 1999/63 (seafarers)

- Implements an agreement concluded by European social partners
- It contains "more specific requirements" within the meaning of Article 14 of the WTD and therefore, the WTD is not applicable to the workers covered
- It applies to "seafarers on board every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member State and is ordinarily engaged in commercial maritime operations".





WORKING TIME DIRECTIVE

Directive 1999/63: main provisions

- **Clause 5**
 1. The limits on hours of work or rest shall be either:
 - (a) maximum hours of work which shall not exceed
 - (i) fourteen hours in any 24 hour period; and
 - (ii) 72 hours in any seven-day period; OR
 - (b) minimum hours of rest which shall not be less than:
 - (i) ten hours in any 24 hour period; and
 - (ii) 77 hours in any seven-day period
- **Clauses 6 and 11**

No seafarer under 18 years of age shall work at night.
No person under 16 years of age shall work on a ship
- **Clause 16**

Every seafarer shall be entitled to paid annual leave of at least 4 weeks.





WORKING TIME DIRECTIVE

Directive 2000/79/EC: civil aviation

- Implements an agreement concluded by European social partners
- It contains "more specific requirements" within the meaning of Article 14 of the WTD and therefore, the WTD is not applicable to the workers covered
- It applies to "mobile staff in civil aviation" defined as "crew members on board a civil aircraft, employed by an undertaking established in a Member State".





WORKING TIME DIRECTIVE

Directive 2000/79/EC: main provisions

- **Clause 8:**
The maximum annual working time shall be 2000 hours in which the block flying time shall be limited to 900 hours.
- **Clause 9:**
Workers will be given days free of all duty and standby, which are notified in advance, as follows:
 - (a) at least seven local days in each calendar month, which may include any rest periods required by law; and
 - (b) at least 96 local days in each calendar year, which may include any rest.
- **Clause 3:**
Workers are entitled to paid annual leave of at least four weeks





WORKING TIME DIRECTIVE

Directive 2005/47/EC: cross-border services in the railway sector

- Implements an agreement concluded by European social partners
- The WTD does not apply to those aspects for which it contains more specific provisions
- It applies to "mobile workers engaged in interoperable cross-border services", defined as "services for which at least two safety certificates are required."





WORKING TIME DIRECTIVE

Directive 2005/47/EC: main provisions

- **Clause 3:**
Daily rest at home of 12 consecutive hours per 24-hour period, which can be reduced to a minimum of 9 hours.
- **Clause 4:**
Daily rest away from home of 8 consecutive hours per 24-hour period.
A daily rest away from home must be followed by a daily rest at home. A second rest away from home can be collectively agreed.
- **Clause 6:**
Weekly rest period of 24 + 12 hours. Provisions concerning the distribution of weekly rest during the year.
- **Clause 7:**
Driving time not exceeding 9 hours (day) or 8 hours (night)





WORKING TIME DIRECTIVE

Additional remarks

- ➔ Link between this Directive and the health and safety framework Directive (89/391/EEC)
- ➔ Operational nature of definitions ("worker", "night worker", etc.)
- ➔ Complexity of derogations. Need to interpret them restrictively.
- ➔ Relevance of case law.

