

# European and External Affairs Committee

## EUR(2) 03-05 (p6)

Date:14 April 2005

Venue:Committee Rooms 3 and 4, National Assembly for Wales, Cardiff Bay

Title:Update on EU Working Time Directive

### **Purpose**

To update Committee Members on the ongoing negotiations on the Working Time Directive.

### **Summary / Recommendations**

Members are invited to note this report.

### **Background**

The Commission undertook a consultation exercise on possible revisions to the Working Time Directive last year. The current Working Time Directive provides for, among other provisions, a 48 hour working week (averaged over 4 months) and in-work, daily and weekly rest breaks. It also contains a derogation allowing workers to voluntarily sign an opt-out agreement from this limit. The UK is the only member state to make use of this opt-out on an "across the board" basis as opposed to on a sectoral basis (used in some other Member States).

The National Assembly for Wales' response to this consultation exercise is set out in Committee paper EUR(2) 04-04.

On 22 September 2004, following an analysis of the consultation process, the Commission published its draft legislative proposals to update the Directive. The Commission's proposals cover three main areas: on-call working and compensatory rest, the reference period for calculating working time, and the opt-out.

### **On-call Working**

In its legislative proposal, the Commission has proposed that a new category of "on-call" time be created where the "inactive" part of on-call working is not counted as working time. On

compensatory rest, the Commission proposes that this rest be taken within 72 hours rather than immediately as set out in the ECJ case law.

## Reference Period

The Commission is proposing that Member States should be able to extend the reference period for calculating working time, after consultation with social partners, from 4 to 12 months. At present, the reference period can only be extended if collective agreement is reached.

## The Opt-out

In the draft proposal, the Commission recommends that a dual system be introduced. The individual opt-out will require prior collective agreement or agreement among social partners where appropriate. Where this is not possible (i.e. where the necessary structures for collective agreement do not exist), only then will the individual opt-out be available. A directly negotiated opt-out would also be subject to stricter conditions than those that currently apply. The reporting requirements would be more stringent and no worker will be allowed to work more than 65 hours a week unless through a collective agreement.

## Discussions in Brussels

Revisions to the Directive must be agreed by Council and Parliament in co-decision.

Although good progress was made under the Dutch Presidency, Member States were unable to reach agreement on either the opt-out or the SiMAP/Jaeger issues. The current Luxembourg Presidency has indicated that discussions will not recommence until the European Parliament has adopted its first reading report. But once it has been adopted, the Presidency is likely to push for a rapid agreement (its stated objective is reaching agreement by the June Employment Council).

Discussions in the European Parliament have already begun. The Employment and Social Affairs held an exchange of views on Alejandro Cercas' (Spanish Socialist MEP) draft report on 15 March. Cercas' report, as currently drafted, proposes to abolish the opt-out from 2010; subject the 12-month reference period to a number of conditions; and require a review of the Directive every five years.

Cercas' proposals regarding on-call working and compensatory rest also differ from those put forward by the Commission. The report defines on-call time as work, with provisions for Member States to count time differently; and requires compensatory rest to be taken immediately. These would effectively negate the Commission's efforts to resolve the difficulties caused by the SIMAP/Jaeger case law.

The report is expected to be adopted in Committee by 20 April and then in Plenary on 1 May, paving the way for a possible agreement before the end of the Luxembourg Presidency.

## **Welsh Assembly Government Position**

Committee Members will be aware from my regular reports to Committee that the Welsh Assembly Government has contributed to the formulation of UK policy on this particular dossier through regular meetings of the Joint Ministerial Council (Europe).

Both the Welsh Assembly Government and the UK Government support the Commission's proposals on "on-call" time and compensatory rest as we believe that it will solve the problems raised by the SiMAP/Jaeger judgements, meeting the needs of, amongst others, NHS Wales and Welsh local authorities.

The Commission's proposal on the opt-out, as currently drafted is more problematic. Individual choice should be preserved by retaining the individual opt-out in full – available in principle to all workers. This would also recognise that different Member States have different employment traditions.

**Rt Hon Rhodri Morgan AM**  
**First Minister**

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