



E.A.N.A.



Statement on

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions

Reviewing the Working Time Directive (“WTD”)

(Second-phase consultation of the social partners at European level under Article 154 TFEU)

In its communication the Commission points out that while organising working time, common minimum standards valid in all member states should be maintained. The Presidents of the undersigned European Medical Organisations expressly welcome this position.

The undersigned European Medical Organisations are of the opinion that all member states have to respect ECJ rulings. Infringements of member states of legal requirements deriving from ECJ rulings must not give rise to disrespect of valid Union law.

In its communication the Commission considers **two options on how to review** the WTD. On the one hand the Commission considers a focused review limited to on-call time and compensatory rest. On the other hand the Commission considers a comprehensive review including on-call time and compensatory rest but also further aspects, e. g. opt-out, multiple employment contracts, reference periods, autonomous workers and paid annual leave.

Regarding **on-call time** the Commission suggests that all time the worker is required to be available to the employer at the workplace in order to provide his or her services in case of need, could be considered working time and not counted as rest period. However, sectors requiring a continuity of service may be subject to exceptions. The Commission proposes that periods of on-call time could be counted differently, subject to certain maximum weekly limits and provided workers concerned are afforded appropriate protection (i.e. not always on an hour-per-hour basis but on the ‘equivalence’ principle).

Regarding **compensatory rest** the Commission suggests introducing new provisions clarifying the timing of daily and weekly compensatory rest. On the one hand the

Commission argues that often more flexibility is required regarding the timing of compensatory rest. On the other hand the Commission refers to studies confirming severe health and safety effects of delaying minimum daily or weekly rest periods. The Commission suggests that delaying rest periods should be limited to situations where it is necessary for objective reasons.

The undersigned European Medical Organisations recall the **objective of the WTD** which is protecting the health and safety of workers. If the WTD – as suggested by the Commission – is reviewed solely in the areas of on-call time and compensatory rest, the level of protection will decrease. The average maximum weekly working time could be exceeded while serving on-call time and while applying the opt-out clause. Furthermore, compensatory rest could be delayed in some cases. The undersigned European Medical Organisations strongly oppose such an unbalanced review of the WTD, which would jeopardize patients' and doctors' safety in Europe and would penalize European health services as a whole through the reduction in the level of protection of both patients and doctors.

Also, the envisaged **comprehensive review** will severely decrease the level of protection since the Commission does not advocate the abolishment of the opt-out clause. The undersigned European Medical Organisations are of the opinion that in view of negative experiences the opt-out clause is to be deleted. It is not acceptable that workers should make concessions in terms of on-call time, compensatory rest, reference periods and paid annual leave, conversely having to rely on the mere hope that employers might want to abstain from applying the opt-out clause.

In April 2009, the **European Parliament** was serious about the protection of workers' health and safety and averted one-sided deterioration. Already, the European Parliament agreed to a compromise with regard to on-call time and reference periods. If the protection of workers' health and safety is still paramount, European Parliaments' demands from 2009 are the starting point.

Therefore, **the undersigned European Medical Organisations urge once more:**

- The opt-out clause is to be removed.
- On-call time is working time as stipulated by the ECJ.
- Compensatory rest has to be granted immediately following longer working periods as also stipulated by the ECJ.

If the deletion of the opt-out clause is not feasible - in contrast to the Commission - the undersigned European Medical Organisations advocate to maintain the status quo.



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