



COMITÉ PERMANENT DES MÉDECINS EUROPÉENS
STANDING COMMITTEE OF EUROPEAN DOCTORS



CPME/AD/EC/12032015/009_Final/EN

On 12 March 2015, the CPME Executive Committee adopted the 'CPME Response to the Public Consultation on the Review of the Working Time Directive (Directive 2003/88/EC)' (CPME 2015/009FINAL)

**CPME Response to the Public Consultation on the
Review of the Working Time Directive (Directive 2003/88/EC)**

Review of the Working Time Directive (Directive 2003/88/EC)

Fields marked with * are mandatory.

Identifying information

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Other

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CPME represents National Medical Associations across Europe.

Your sector(s):

Healthcare / residential care



Register ID number (if you/your organisation is registered in the Transparency register):

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Your reply:*

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- cannot be published - keep it confidential (The contribution will not be published, but will be used internally within the Commission)

Nota bene

Please note that:

- The Working Time Directive only sets minimum standards and Member States are always allowed to provide higher levels of protection for workers in their national laws and regulations.
- Filling in the questionnaire, please keep in mind that the Working Time Directive only applies to workers and not to self-employed persons. Also keep in mind that it does not set levels of pay for working time, which is a purely national responsibility.
- The background document provides useful information regarding the concepts used in the following questionnaire. Please refer to it as necessary.
- There are a number of questions offering the possibility of making additional contributions under each point, and also a longer opportunity to express your opinion at the end.

*

Please confirm you have read through these important elements.

1. Objectives and approach to the review of the Working Time Directive

1. A. Impact of the Working Time Directive

In your opinion, what is the impact of the **current Working Time Directive** giving workers the right to a limit to average weekly working time (currently set at 48 hours) and to minimum daily and weekly rest periods?

	Fully disagree	Tend to disagree	No opinion	Tend to agree	Fully agree
It protects the health and safety of workers and people they work with*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
It ensures a level playing field in working conditions across the Single Market, avoiding that countries lower their labour standards to gain a competitive advantage*	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
It boosts productivity notably by fostering a healthy European workforce*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
It allows flexible organization of working time*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
It allows workers to reconcile work and private life*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
It impacts on job creation*	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Self-employment is used to circumvent the application of the limits imposed by the Directive*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
It impacts the costs of running a business*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
It has no major impact*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please elaborate on your opinion with regard to the impact on health and safety of workers and people they work with

300 character(s) maximum

[Optional]

CPME reaffirms that the Working Time Directive is the essential tool to ensure a high level of safety for both patients and doctors. The primary aim of the Directive must always be the protection of workers' health and safety. This objective may never be endangered.

Please elaborate on your opinion with regard to the impact on the cost of running a business

300 character(s) maximum

[Optional]

CPME acknowledges that the implementation of the Working Time Directive has cost implications for the healthcare system and individual care unit. However, economic considerations may never infringe the rights established by the Directive.

If you see another impact, please specify:

500 character(s) maximum

[Optional]

It is in the direct public interest to ensure that the Working Time Directive enshrines high standards of protection of worker's health and safety and that it is implemented fully, since high quality healthcare is crucially dependent on safe and lawful working conditions for the health workforce. The Working Time Directive thus directly impacts on the quality, sustainability and safety of health and healthcare in the EU.

2. Thematic questions

2. A. Scope

Concurrent contracts

A single worker may be employed under several concurrent contracts. Should the limits provided in the Working Time Directive apply to all contracts taken together or to each contract separately?

If the Directive applies per worker, this means for example that all the hours worked under the different contracts should be added together and cannot exceed 48 hours on average (unless the worker signed an opt-out).

If the Directive applies per contract, this means for example that the worker can work 48 hours on average under each separate contract without an upper limit. *

[only one answer possible]

- It is up to Member States to decide whether working time rules shall apply per worker or per contract
- The Directive should stipulate that working time rules shall apply per worker in situations where a worker has more than 1 contract with the same employer
- The Directive should stipulate that working time rules shall apply per worker in situations where a worker has more than 1 contract in any event
- The Directive should make it clear that it only applies per contract
- Other
- Do not know

Please specify*

300 character(s) maximum

N/A

2. B. Concept of working time

On-call time

On-call time corresponds to any period where the worker is required to remain at the workplace (or another place designated by the employer) and has to be ready to provide services. An example could be a doctor staying overnight at the hospital, where he can rest if there is no need to attend to patients.

Under the current Working Time Directive, as interpreted by the Court of Justice, on-call time is fully regarded as working time for the purpose of the Directive, regardless of whether active services are provided during that time. The period of on-call time within which the worker actively provides services is usually referred to as 'active on-call time', while the period within which services are not provided can be referred to as 'inactive on-call time'.

(See in particular Cases [C-303/98 Simap](#), [C-151/02 Jaeger](#), [C-14/04 Dellas](#))

Please give your opinion on the following options as regards possible changes in the treatment of on-call time under the Working Time Directive:

	Very undesirable	Undesirable	No preference	Desirable	Very desirable
No change to the current rules*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that all on-call time has to be counted as working time)*	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Set the principle that defining "on-call time" should be agreed in each sector by national social partners, for example determining that only part of inactive on-call time will be counted as working time*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you would like to add comments or indicate another option, please specify:

500 character(s) maximum

[Optional]

CPME fully supports the interpretation of on-call time as confirmed by the European Court of Justice, in particular in C-303/98 Simap, Jaeger C-151/02 and C-14/04 Dellas. There is an established evidence base for the appropriateness of this interpretation. CPME will strongly oppose any proposal which aims to circumvent or weaken this interpretation of on-call time.

Stand-by time

Stand-by time corresponds to any period where the worker is not required to remain at the workplace, but has to be contactable and ready to provide services. An example could be when a technician of a nuclear facility is at home, but has to be ready to come to the plant to provide services in an emergency.

Under the current Working Time Directive, as interpreted by the Court of Justice, stand-by time does not have to be considered as working time for the purpose of the Directive. Only active stand-by time, i.e. time in which the worker responds to a call, has to be fully counted as working time.

(See in particular Cases [C-303/98 Simap](#), [C-151/02 Jaeger](#), [C-14/04 Dellas](#))

Please give your opinion on the following options as regards possible changes in the treatment of stand-by time under the Working Time Directive:

	Very undesirable	Undesirable	No preference	Desirable	Very desirable
No change to the current rules*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that stand-by time does not have to be considered working time)*	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Introducing the obligation to partially count stand-by time as working time for the purpose of the Directive*	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Introducing a limit to the maximum number of hours that a worker may be required to be on stand-by in a given period (for instance 24 hours a week), together with a derogation possibility to set a different limit via collective agreements*	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you would like to add comments or indicate another option, please specify:

500 character(s) maximum

[Optional]

2.C Derogations

Compensatory rest

Under the current Working Time Directive, as interpreted by the Court of Justice, a worker who by derogation from the general rules has not received his/her minimum daily rest of 11 consecutive hours in a 24-hour period, will have to receive an equivalent period of compensatory rest (i.e. 11 hours) directly after finishing the extended working time period. This sets a maximum of 24 hours to a single consecutive shift. (See in particular Case [C-151/02 Jaeger](#))

How would you assess the possible introduction in the Working Time Directive of provisions regarding the period within which such a compensatory rest has to be taken:

	Very undesirable	Undesirable	No preference	Desirable	Very desirable
No change to the current rules*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that compensatory rest has to be granted immediately after the extended period of work)*	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Allowing employers the possibility of granting compensatory rest within 2 days*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Allowing the possibility of granting compensatory rest within 4 days*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you would like to add comments or indicate another option:

500 character(s) maximum

[Optional]

CPME reaffirms that the Directive must ensure that compensatory rest should be taken immediately after the period worked.

Reference period

The limit to weekly working time of 48 hours provided by the Working Time Directive is a limit to *average* working time. This means that in certain weeks the worker can be required to work more than 48 hours as long as this is balanced out by lower hours in other weeks. This average has to be calculated over a certain period, i.e. 'a reference period'. Currently, the standard limit to the reference period is 4 months, which can in certain sectors be extended by law up to 6 months, and by collective agreement it can be set up to 12 months.

What would be in your view the most appropriate approach to the limit set to the reference period to calculate average weekly working time:

[only one answer possible]

- No change in the current provisions
- Allow that reference periods can be set up to 6 months by law in any sector, and maintain that they can only be set up to 12 months by collective agreements
- Maintain that reference periods can be set up to 4 months by law in any sector, but allow that reference periods can be set up to 12 months by law in certain specific sectors (e.g. to take into account the size of the undertaking or to take into account fluctuations of demand)
- Allow both previous options (i.e. option 2 and option 3), meaning that reference periods can be set up to 6 months by law for any sector and up to 12 months by law in certain specific sectors
- Allow that reference periods can be set up to 12 months by law in any sector
- Other
- Do not know

Opt-out

Under the current Working Time Directive, Member States have the possibility not to apply the limit to average weekly working time of 48 hours, when the worker agrees to it individually and freely with the employer, and does not suffer prejudice for revoking such agreement (the 'opt-out').

What is your view on this opt-out clause:*

[only one answer possible]

- It should be maintained unchanged
- It should be maintained, but stricter conditions for the protection of the worker should be added in the Directive
- It should be maintained, but it should be provided in the Directive that the opt-out cannot be combined with other derogations under the current Directive
- It should be abolished, but in compensation there should be additional derogations made available for employers (e.g. allowing not to count on-call time fully as working time)
- It should be abolished
- Other
- Do not know

Please specify*

300 character(s) maximum

CPME supports the phase-out and eventual abolition of the opt-out clause, since it runs contrary to the primary purpose of the Directive, but opposes any changes to the current Directive. Please find details on this position in the response to section 4.

Autonomous workers

"Autonomous workers", such as for example managing executives, can fully determine their own working time (i.e. decide when and how many hours they work). Member States have the option to apply the main provisions of the Working Time Directive to these workers.

Please choose the most appropriate statement according to your views:*

[only one answer possible]

- The current Working Time Directive provides an adequate exemption as regards autonomous workers, and should not be changed
- The current exemption should be maintained in substance, but more clearly formulated, in order to enhance legal clarity and to prevent abuse
- The definition of autonomous workers is too narrow and should be expanded to other categories of workers who should be exempted too
- The definition of autonomous workers is too wide and should be limited
- Other
- Do not know

2.D Specific sectors/activities

Emergency services

The current Working Time Directive as interpreted by the Court of Justice applies to workers in emergency services, e.g. civil protection services like fire-fighting services, in the normal operation of these services. The current Directive contains several derogations that can be applied to the working time and rest periods of these workers in order to ensure the effective provision of these services. In the event of a catastrophe/disaster, the Working Time Directive does not apply at all.

(See in particular Cases [C 397/01](#) to [C 403/01 Pfeiffer](#) and [Case C-52/04 Feuerwehr Hamburg](#))

Please state your view on the application of the Directive to emergency services:*

[only one answer possible]

- The current rules adequately balance the need to protect the health and safety of the workers and the people they work with/for with the need to guarantee effective provision of emergency services, and should remain unchanged
- The current rules should be maintained in substance, but clarified in light of the case law of the Court of Justice, to improve legal certainty
- There should be additional derogations applicable to all or some categories of these workers, addressing their specific situation
- The Working Time Directive should not be applied to workers in emergency services
- Other
- Do not know

Health care sector

The current Working Time Directive provides a derogation for health care services when they require continuity of service, meaning particularly that the rest periods of health care staff can be postponed to some extent.

Should there be a different provision on the working time organisation of health care staff with a view to safeguarding patient safety?

Please state your view:*

[Only one answer possible]

- The current rules provide enough safety for patients
- The current rules should be maintained in substance, but clarified in light of the case law of the Court of Justice on on-call time and on timing of compensatory rest to improve legal certainty
- There should be additional derogations applicable to workers in the health care sector in order to improve continuity of service
- There should be a more narrow derogation applicable to workers in the health care sector in order to improve patient safety
- Other
- Do not know

2.E Patterns of work

Changes in working patterns

The Working Time Directive was conceived more than 20 years ago, when information and communication technologies were not as developed and many types of present jobs did not exist yet. In light of these changes in working patterns and organisation, should the Working Time Directive introduce specific rules regulating particular situations and types of contracts such as telework, zero-hour contracts, flexitime, performance-based contracts without working time conditions, etc.?

Please state your view.*

[multiple answers possible]

- The current rules are satisfactory and do not need to be changed
- The rules should be changed in light of increasing telework
- The rules should be changed in light of zero-hour contracts
- The rules should be changed in light of increased use of flexitime
- The rules should be changed in light of increased use of performance-based contracts without working time conditions
- Other
- Do not know

Reconciliation of work and private life

Do you think the Working Time Directive should support better reconciliation of work and private life by introducing any of the following specific rights:

	Very undesirable	Undesirable	No preference	Desirable	Very desirable
The right for a worker to ask for specific working time arrangements (e.g. flexitime, telework) depending on their personal situation, and to have their request duly considered	<input type="radio"/>				
The right for a worker to request to take daily rest in blocks of time instead of uninterruptedly, allowing the worker for example to go home early in the afternoon and later continue work from home at night, and to have their request duly considered	<input type="radio"/>				

If you would like to add comments or indicate another option:

500 character(s) maximum

While CPME supports the reconciliation of work and family life, working time models are better addressed in specific legislation. The Working Time Directive best serves the reconciliation of work and family life by providing clear rules for defining working time and a high standard of protection for workers' health and safety regardless of working time model, which specific laws on working time arrangements can reference mutatis mutandum.

3. Looking ahead

Objectives for the future of the Working Time Directive

For the future of the Working Time Directive, how important do you consider the following objectives?

	Not at all important	Of little importance	Quite important	Very important	Do not know
While keeping the current Working Time Directive, to better ensure that Member States correctly and effectively put it into national law and practice*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
To improve legal clarity, so that the rights and obligations following from the Directive are clearer and more readable and accessible to all*	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To provide more flexibility in working time organisation for workers*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To provide more flexibility in working time organisation for employers*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To provide a higher level of protection to workers*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
To protect third parties involved (co-workers, passengers, patients, etc...) *	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Approach for the future of the Working Time Directive

Which of the following approaches for the future of the Working Time Directive do you prefer?*

[only one answer possible]

- No new initiative (maintaining the current rules)
No legislative changes but initiatives towards improved legal clarity so that the rights and obligations following from the Directive are clearer and more readable and accessible to all (interpretative communication; 'codification' of the case law (i.e. clearly stating the case law of the Court of Justice in the legal text)
- Legislative changes but focused on the sectors where there is a specific need in terms of continuity of service (e.g. public services; sectors that work on a '24/7' basis like hospital services and emergency services)
- Legislative changes which would lead to an overall revision of the Directive, containing a mix of simplification and additional derogations while avoiding regression of the protection of workers
- Other
- Do not know

Please motivate your answer:

500 character(s) maximum

[optional]

CPME supports improved protection of workers' health and safety, e.g. by abolishing the opt-out clause, but recognises that this may not be politically feasible. To prevent a substantive legislative change, which, as the 2004-2009 proposal to amend Directive 2003/88/EC threatens to weaken the existing level of protection, CPME opposes any changes to the current Directive.

4. Other comments or suggestions

Do you have any other comment or suggestion on the review of the Working Time Directive that you would like to share?

2,000 character(s) maximum

Optional. No hyperlinked or attached documents allowed.

CPME underlines the crucial importance of the Directive as the primary law protecting workers' health and safety. For the medical profession, this extends to the protection of the safety of patients and their rights to high quality healthcare.

In light of this objective, CPME continues to oppose the existence of the opt-out clause which runs contrary to the Directive's aim and substantially weakens its legal effect. The application of the opt-out clause in real-life has shown that there is no effective safeguard to ensure workers' agreement is secured without the implication of detrimental consequences if agreement is denied. In practice, it is especially the vulnerable groups of workers, e.g. junior doctors, whose rights are infringed through the application of the opt-out clause. CPME would therefore support the phase-out and eventual abolition of the opt-out clause.

CPME likewise admonishes the failure of many Member States to implement the Directive fully and accurately. Purported justifications, referring for example to cost-containment pressures or the promotion of flexible working arrangements, must not be accepted. The protection of doctors' and patients' health and safety must always take priority over economic interests.

To conclude, CPME strongly opposes any initiative which directly or indirectly weakens the level of protection provided by the current Directive and the relevant case law.

Notwithstanding these continued shortcomings of the current legal framework, CPME recognises the political pressures and must assume that any initiative relating to a recasting of the Directive risks the weakening of current levels of protection, as was seen in the 2004–2009 proposal to amend the Directive. Therefore, on balance, CPME opposes any action on the side of the Commission and supports the unchanged maintenance of the current Directive, complemented by the applicable case law.

Contact

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