COMITÉ PERMANENT DES MÉDECINS EUROPÉENS
STANDING COMMITTEE OF EUROPEAN DOCTORS

**CPME/Brd/121104/155/EN**

CPME position on the revision of the Working time Directive according to the policy lines defined by the Board in Göteborg, Sweden, on 12 November 2004 (CPME 2004/155 Final EN/Fr)

**12 November 2004**

# CPME position on the revision of the Working time Directive

The CPME[1] has examined the Commission's proposal for a Directive amending Directive 2003/88/EC concerning certain aspects of the organization of the working time [2].

The CPME has decided to clearly express its opposition to the main proposals of revision of the existing European Working Time Directive (EWTD).

## 1. Definition of on call time (article 2)

– When a doctor is on-call at the hospital, he/she is required by his/her employer to be present at the working place and prepared to provide his/her professional services. The doctor is not at liberty to leave the hospital. In addition, during on-call the doctor is away from home and his/her family regardless of whether he/she is working actively the whole time or not.

[1] *The Standing Committee of European Doctors (CPME) is the representative body of about 2 million physicians in Europe.*

*Its aims are:*

- *to promote the highest standards of medical training and medical practice, through advocating:*
  - *public health,*
  - *the relationship between patients and doctors*
  - *the free movement of doctors and patients within the European Union*
- *to achieve the highest quality of health care in Europe.*

*It is composed of the most representative non-governmental national medical organisations in EU/EEA countries, that is to say 26 National Medical Associations. It also unites associated members, observers and associated organisations (specialised European medical organisations).*

[2] COM (2004) 607 Final

Rue de la Science 41 (3rd floor) - B-1040 Brussels - Belgium
Tel. : +32 (0)2 732 72 02 - Fax : +32 (0)2 732 73 44 - E-mail : secretariat@cpme.be - Web : http://www.cpme.be

- If the doctor is required to stay at the working place, there is clear need for rapidly available doctor's services. Therefore, being available on-site is part of the doctor's work.

- Even if the doctor could occasionally sleep during an on-call night, the sleep is fragmented by pages and calls. A period of fragmented sleep is not as refreshing as an equivalent period of continuous sleep, because the amount of deep sleep phases (S3-S4) is lower. Cardiac arrhythmias have been observed in doctors who are suddenly woken up from sleep. Being on-call at night is physically demanding and can be harmful to the doctors' health.

- Besides being invalid, the distinction between the inactive part of on call time and the active part generates uncertainties. On one hand regarding the legal consequences of such a distinction and, on the other hand, on the practical calculation of these two categories. For safety of both doctors and of patients, it is of the utmost importance that the inactive part of on-call time is not counted as rest.

- All these aspects considered, the logical conclusion is there should be no difference in the definition of normal work and on-call work.

  - **The time doctors spend on-call at the working place should be counted working time as defined in the SIMAP and Jaeger judgements.**

## 2. Extension of the reference period (article 16 b)

- Currently, the reference period for counting the average weekly working time is 4 months, which can be extended to 6 months by the Member State. By a collective agreement, it is possible to extend the reference period up to 12 months.

- The shorter the reference period, the more protective it is. A long reference period (e.g. 12 months) would make it possible for the employer to make the doctor work very long hours for many months, by giving compensatory rest in the latter part of the year. This could lead to doctors becoming over-tired, which is clearly harmful for their health. On top of that it could have consequences on patient safety.

- Particularly young doctors, in the beginning of their career, are often employed in short-term contracts and by different employers. The Directive leaves unsaid whether the time worked for different employers will be counted towards the same limit, or whether working time is studied separately for every employer. Therefore, it can and is interpreted liberally. With a 12-month reference period, if the doctor is employed in two 6-month contracts with different employers, the work intensity for both these employers can be very high, and the actual working time could far exceed the average 48 hours.

– However, the fact that the extension of the reference period to 12 months would only be possible via an agreement between the national or regional workers' and employers' representatives diminishes the danger of this possibility being abused. In some countries, doctors have chosen to use the 12-month reference period.

  - **A unilateral extension of the reference period from 6 months to 12 months should not be possible. The provisions of the EWTD concerning reference periods should therefore not be changed into more a liberal direction. However, we welcome the Commission proposal that the length of the reference period should not be longer than the length of the work contract.**

### 3. Individual opt-out (article 22)

- The possibility to opt out of the protection provided by Article 6 of the EWTD undermines the basic principle of the Directive. There is evidence that workers have been pressured to sign the opt-out form, and it is likely that the ones who can most easily be pressured are the youngest and most inexperienced of the workforce.

- The pressure can be direct or indirect; even if there were no direct pressure from the employer's side, the worker can be expected by others at the workplace to opt out.

- The purpose of the EWTD is to protect the health and safety of workers. In the case of doctors, there is a link between doctors' and patients' health. Doctors should be responsible for their own health and performance in order to protect their patients.

- The EWTD already provides for derogation for doctors in training with regard to implementation of the 48-hour limit of average weekly working time; therefore, a further derogation should be possible with regard to the individual opt-out.

  - **The possibility for individual opt-out for doctors in training should be abolished from the Directive.**

Rue de la Science 41 (3rd floor) - B-1040 Brussels - Belgium
Tel. : +32 (0)2 732 72 02 - Fax : +32 (0)2 732 73 44 - E-mail : secretariat@cpme.be - Web : http://www.cpme.be

**4. <u>Limit of 72 hours for the compensatory rest (article 17 b and 18)</u>)**

- The setting of a limit of 72 hours for the compensatory rest to be taken is not appropriate for the medical profession especially after on-call times.

- The interpretation of the European Court of Justice imposing the compensatory rest to be taken immediately after the work periods safeguards better the safety of doctors and indirectly the one of patients. This requirement should be maintained unless specified otherwise by way of collective agreement.

  - **As far as the Medical Profession is concerned, compensatory rest needs to be taken at times immediately following the corresponding periods worked unless otherwise decided by collective agreement.**

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