



## **Second consultation concerning on the revision of the directive on certain aspects of the organisation of working time 93/104/EC**

### **General remarks**

The Danish Confederation of Professional Associations, AC would like to comment on the Commissions second consultation on the revision of the working time directive of 19, May 2004.

The European Commission proposes a revision of the working time directive, including one or several of the following options:

1. Extending the reference period (average weekly working hours).
2. Safeguarding but tightening the conditions under which (National) opt-out is possible (article 18 (1) (b) (i)) by introducing a max. average weekly working time in order to meet problems of abuse.
3. Phasing-out the individual opt-out as soon as possible.
4. Derogation from the average 48 hour working week (article 6,2).
5. Introduction of a European definition of inactive or on-call time.

The revision of the directive was already proposed in the directive of 1993. AC finds it important to stress that the intention was then to revise whether the objective of the directive to provide for the necessary safety and protection for workers had been obtained.

### **Option 1**

It's important to stress that an insufficient or inadequate implementation of the working time directive in one or several member states should not be used as a reason for lowering the level of protection in the working time directive. Further more the directive already provides for flexible opportunities to extend the reference period by way of collective agreement. In other words there is absolutely no documentation or justification for extending the reference period.

### **Option 2 and 3**

AC fully agrees with ETUC that a tightening of the conditions for application which will allow for and justify a safeguarding of the opt-out will not put an end to the extensive abuse in a limited number of countries, e.g. the UK.

AC will like to support the phasing-out of the individual opt-out, which has already been suggested and supported by the European Parliament.

### **Option 4**

Derogation from the 48 hour working week should only be possible by way of collective bargaining, agreement, following the practice already in place in many countries.

### **Option 5**

Recent rulings from the court of justice (the Simap-case, 3, October 2000 and Jaeger-case 9, September 2003) have clarified that duty on call is to be considered as working time, as is the case in the directive on the organisation of working time of persons performing mobile road transport (directive 2002/15/EC).

From what have been reported neither the articles of the working time directive nor the rulings of the Court of Justice give reason to major economical or recruiting problems in the field of doctors in Denmark. The social partners have at National level implemented the minimum prescriptions of the directive both within the agreed transition period and following the guidelines of the SIMAP and Jaeger rulings.

This is why AC finds no need for a European definition of inactive time. Should a definition of inactive time however seem needed, AC would like to insist on leaving it to National regulation and/or the social partners to indicate the precise procedures on how to calculate working time, including the time spent on-call time.

### **Managerial staff**

AC find it strange that the European Commission has not commented on the need for a revision of the article on managerial staff (article 17 (1) (a)) and would like to remind the need for a definition of managerial staff. There seems to be no justifiable reason for excluding all managerial staff from the working directive, instead AC would like to suggest introducing an obligation for the employers to enter into collective negotiations with the relevant groups on a possible derogation from the working time directive.

### **Conclusion**

The Executive Committee of AC discussed the proposed revision of the working time directive 22, June 2004.

Given the outlined directions of a revision of the directive by the European Commission and the AC comments to the proposed revision, the Executive Committee of AC has unanimously rejected to enter into European negotiations on the revision of the working time directive.