

CEEMET

Council of European Employers of the Metal, Engineering and Technology-based Industries

COMMISSION'S COMMUNICATION ON THE REVIEW OF DIRECTIVE 93/104/EC CONCERNING CERTAIN ASPECTS OF THE ORGANISATION OF WORKING TIME

POSITION PAPER

CEEMET¹ is the employers' organisation of the metal, engineering and technology-based industries in Europe. CEEMET represents national employer organisations from these industries in 15 European countries, covering some 200,000 companies which employ about 12 millions of workers. The metal, engineering and technology-based industries are the largest industrial sector in Europe in terms of employment and added value.

CEEMET expresses its strong **support for the UNICE position paper of 4 March 2004** on the Commission's Communication on the review of the Working Time Directive (the Directive)

The management of working time is a crucial factor in determining a company's competitiveness, impacting on the organisation and production processes of a company. At a time of increased pressure from the globalisation of economies and markets, cyclical changes and just-in-time production methods, working time needs to be managed in a way that can cope with these challenges both in terms of the number of hours worked and their flexible organisation. On the other hand and as referred to in the Commission's Communication, the flexibility / adaptability of working time also contributes to meeting the wishes and expectations of individual workers through, for example, the opportunity for enhanced earnings or helping to support the work-life balance requirements of individuals.

CEEMET argue that a range of national and European legislation already protects the health of safety of workers to a high degree and that any new legislation should not introduce new rigidities or administrative burdens, especially for SMEs.

CEEMET considers that the current text of the Directive is already quite detailed and sometimes unduly and unnecessarily confusing, thus leading to some legal uncertainty - especially Art. 17 paras. 2 - 4. We would like to stress that, according to Art. 249 of the Treaty, a Directive should be binding, only as to the *result* to be achieved, but it should leave to the national authorities the choice of form and methods.

CEEMET also acknowledges the fact that the Commission's Communication refers to the **imminent EU Enlargement**. However, we feel it should take more into account the problems that these countries will face with the introduction of this Directive.

On the four specific points in the Commission's Communication on which views are being sought, CEEMET highlights and endorses some major comments in UNICE's response, adding its own ideas and some company examples from its sector:

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¹ Since January 2004 CEEMET "Council of European Employers of the Metal, Engineering and Technology-based Industries" is the new name of "WEM - The Employer Organisation of the Metal Trades in Europe"

Reference periods: CEEMET - like UNICE - is convinced that the reference period for averaging the *maximum weekly working time* (Art. 6) over **12 months should be the general rule**. The Commission's Communication seems to support the finding that the 12 months reference period has now become a general pattern in collective agreements or other agreements derogating the Directive's reference periods on the basis of Art. 17 (4). The Commission also identifies a tendency towards calculating working time as an annual figure, calculated over a reference period of 12 months. In addition it is considered that it should be possible, with the *agreement* of the social partners, for the reference period to be extended beyond 12 months.

As far as the reference period for the *weekly rest period* is concerned, we support UNICE's position that this should be extended from 7 to 14 days.

Use of opt-out: The retention of the individual "opt-out" provision is essential to ensure the flexibility that companies need for the management of working time. Furthermore, the nature of many businesses is such that workers know that overtime working is an integral feature of the industry and they actively join these businesses in that full knowledge, seeking the additional earning opportunities that this overtime working provides.

Therefore, CEEMET is firmly of the view that the individual opt-out should remain part of the Directive and also considers that companies should be able to obtain opt-outs by collective agreement as well as by an individual agreement between the employer and the employee.

- Companies which provide equipment to the aviation or railway industries or to food manufacturers/retailers sometimes are expected to produce or be open for 24 hours per day. Companies simply could not afford to recruit additional staff - which might anyway be difficult to achieve due to skill shortages.
- One engineering company has a factory in Poland where employees work on average 50 hours per week through voluntary overtime, an arrangement in which the trade unions were involved and to which they agreed. The skilled workers in this company are interested in the "higher" income arising from this overtime working and have voluntarily chosen to work longer than their normal working hours.
- Some manual workers would see the unilateral imposition of a 48 hour maximum working week as a potential pay cut.
- The need for employees in some companies to work more than 48 hours can sometimes be due a lack of available skilled workers.

In response to the Commission's concerns about some alleged abuses of the use of individual opt-outs, CEEMET considers that workers' interests could be protected by granting them the *right* to withdraw from their agreement. However, any re-examination of the provisions of Art. 18 para. 1. (b) (i) should not be based solely on the experience in the United Kingdom. As is mentioned in the Commission's Communication, several EU Member States have recently incorporated the individual opt out into their domestic legislation – mainly in response to the ECJ's ruling in the SIMAP case - with the result that, for these countries, no reliable practical experience of the use of the individual opt-out is available. In our view, a comprehensive and detailed analysis of experiences with the use of the individual opt-out clause has still to be made, including taking into account the experience of the acceding countries.

Definition of Working Time:

The Commission is correct in stating that the European Court's case law (*SIMAP; Jäger*) has a major impact on those Member States which did not define "time spent on call requiring physical presence at the workplace" as being working time and its implications go beyond the health sector. The Commission's Communication stresses that, in most Member States, periods spent not working during on-call duty are excluded from working time and CEEMET supports these approaches. It considers that there should be a distinction drawn between working time actually worked and periods of inactivity during time spent on call with only time actually worked being considered as working time in line with Art. 2 para. 1 of the Directive.

CEEMET also agrees with UNICE that the creation of a new category of "time at the disposal of the employer" is not necessarily the only or the best approach to adopt. In a horizontal directive aimed at protecting the health and safety of workers, it is important to make clear that rest periods should be considered as rest even if this rest occurs at the workplace.

The likelihood that the metal, engineering and technology-based industries will also be affected by this issue is highlighted by the following company examples.

A number of *services* and non-core activities increasingly figure among the important activities of engineering companies and would be seriously limited if the SIMAP or Jäger cases rulings were directly applied to them.

- Although many of the companies represented by CEEMET are SME's, CEEMET also represents some of the largest companies in the EU. The latter often have *activities* other than their traditional core activities (*company fire brigades, canteens, cleaning services, etc*) which might be affected by the SIMAP and Jäger rulings.

Problems will occur in companies where the demand for services is unpredictable and/or subject to peaks and troughs

- Service managers / engineers sometimes have to wait for a new part to be delivered in order to repair machinery at a customer's premise. The least disruption to the customer's business may be achieved if the engineer remains at the customer's premises while the part is delivered. The engineer is free to rest pending the delivery yet that time would count as working time.

Conciliation of work and family life: Whilst acknowledging the increasing importance of this aspect, CEEMET is convinced that it should not be addressed by this Directive but be left to the discretion of national social partners and / or company level discussions.

In addition, a Directive based on Art. 137 with a view to protecting workers' health & safety is not the appropriate mechanism to deal with this issue.

Brussels, March 2004