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

CEEMET response to the consultation on the practical implementation of Directive 2003/88/EC concerning certain aspects of the organisation of working time November 2014

CEEMET has chosen, as a European-level organisation, to not comment in detail on the transposition and implementation of the Directive at Member State level. The views of our national members regarding national level transposition and implementation of the Directive have already been either sent as separate responses to the consultation or have been expressed through the national level confederations in their responses. Instead, CEEMETs views concern issues that are related to the EU directive and not to national transposition and are set out in our response to question five.

5. Outlook
Please indicate:

- **Any priorities for your organisation in this subject area;**
- **Any proposal for additions or changes to the Directive, stating the reasons;**
- **Any flanking measures at EU level which you consider could be useful**

The priorities for CEEMET are:

1) To obtain legal clarity on the Working Time Directive

It is a fundamental problem that several rulings from the European Court of Justice have created difficult implementation issues in some sectors and have led to major problems for many companies and sectors in organising working time. The legal uncertainty generated by the ECJ rulings – and the resultant cost - has a damaging effect on companies and their ability to invest and take on new people.

Since the establishment of the Court of Justice of the European Union in 1952, its mission has been to ensure that "the law is observed" "in the interpretation and application" of the Treaties. However, CEEMET would argue that, for instance, the *SiMAP* and *Jaeger* judgments, as well as the *Schultz-Hoff* court decision, go beyond the Directive's original underlying health and safety principles. In both cases, they make compliance with the Directive extremely difficult for some sectors and increase the burdens for companies with no direct benefit in terms of the protection of the health and safety of workers. Moreover, on a political level the ECJ has, through its many *ad hoc* rulings on the Directive, *de facto* become both legislator and executer, creating more legal uncertainty for companies rather than clarifying how the Directive should be implemented.

We consider that lessons should be learned from this experience regarding the Court's contribution to creating a secure European legal environment.

Examples of areas where ECJ rulings have led to further legal uncertainty and compliance issues:

1. **On-call time** – European Court of Justice (ECJ) case law on on-call time has created problems in terms of a lack of practicability and legal uncertainty in application of the directive. Some approaches have already been developed at national and sectoral level to deal with the problems caused by the ECJ case law.

2. **Compensatory rest** – Rulings of the ECJ on on-call time also established strict conditions for the provision of compensatory rest, i.e. that it should be taken immediately following the corresponding periods worked. This is impractical as it is not always possible to comply with this condition.

3. **Paid annual leave** – Rulings of the ECJ have provided that paid annual leave can be accrued during periods of protracted absence due to illness. This is in contradiction to the objective of paid annual leave, which is to allow workers to rest from work, not from periods of illness.

4. **Holiday pay** – A recent ECJ ruling (*Lock* v *British Gas Trading Ltd*) on how holiday pay should be calculated goes beyond the intentions of the Directive – which does not say how holiday pay should be calculated, stating only that workers have the right to four weeks' paid annual leave. The ruling also does not respect the EU treaty which reserves matters of pay to the Member States.

For CEEMET is it a priority that all legal problems created by ECJ rulings be addressed without leading to more restrictive rules or jeopardizing any flexibility that allows solutions to be found at Member State, sectoral or company level.

2) Ensure the possibilities for companies to use flexible working time arrangements according to their specific needs.

Flexibility is crucial for companies' competitiveness and also benefits workers, particularly in the context of new technological developments and the trend towards individualisation of working time models.

It is also important that the directive gives room for national solutions and allows member states to take account of specific national situations, for example through the use of derogations. It should be possible to agree on flexible working time arrangements at all levels – between the employer and individual employee, between the employer and worker representative and through collective bargaining. The further application of existing collective agreements should not be impeded.