

RESPONSE
TO EUROPEAN COMMISSION COMMUNICATION
ON THE WORKING TIME DIRECTIVE

This response is made on behalf of 14 of the 15 delegations to HOPE (the Standing Committee of the Hospitals of the EU). The exception is the Austrian delegation, which was not able to comment.

We welcome the opportunity to comment on the Commission's recent communication re-examining Directive 93/104/EC on certain aspects of working time (the working Time directive).

In commenting, we do so, not as social partners because some delegations are not, but at least as highly interested parties in this important communication process.

In commenting, we wish to make clear our commitment to ensuring that employees do not work excessive hours and have proper rest periods. This is particularly important for healthcare workers given their responsibility for caring for ill patients and the increased risks of adverse outcomes when patients are treated by tired staff. The specific comments made by us should be seen in this context.

The Commission communication sought comments on five issues:

- the reference periods for calculating working time
- the Court of justice's interpretation of the concept of working time in the SIMAP and Jaeger cases
- the conditions of application of article 18.1 b)l) (opt out)
- measures to improve the reconciliation between work and family life
- whether an interrelated approach to these issues would allow a balanced solution capable of meeting the criteria set by the Commission.



These criteria were that any approach should:

Give workers a high level of health and safety protection in respect of working time

Give firms and Member States more flexibility in the way they manage working time

Make it easier to reconcile work and family life

Avoid imposing unreasonable constraints on firms, particularly small and medium-sized businesses.

In this context, we regret that the criteria have been framed solely in terms of the impact on the business sector and have not recognised the importance of the wider social and healthcare sectors which are also affected by the Working Time Directive and which have the ability to demonstrate exemplary behaviour in its application.

REFERENCE PERIOD

We would welcome an extension of the reference period so that working hours could be averaged over a period of up to twelve months and believes that there should be flexibility for longer reference periods – up to two years – to be negotiated by collective agreement. A longer reference period would permit a more realistic approach to calculating working time particularly where this may fluctuate over the period.

THE COURT OF JUSTICE'S INTERPRETATION OF THE CONCEPT OF WORKING TIME IN THE SIMAP AND JAEGER CASES

We are seriously concerned about the impact of these judgements on healthcare services across Europe and regrets that the Commission's communication does not fully address the implications of the rulings, particularly the Jaeger ruling that compensatory rest must be taken immediately.

The Court's interpretation that working time should include all time spent by staff when on call at their place of work has profound implications for the way in which medical services are delivered in many countries, an impact which will be still greater when the Directive applies to doctors in training from 1 August 2004. This is because it is common for medical work to be organised in such a way as to include regular periods of residential on-call duty and for healthcare staff to be



required to be available for work during rest periods. In order to comply with the Court's interpretation of the Directive it will be necessary for some countries to recruit significant numbers of additional doctors or to make major changes to the way in which hospital services are organised at a time when healthcare budgets are already under strain.

Furthermore, the Jaeger judgement's ruling that compensatory rest should be taken immediately creates potential difficulties whenever (for example) doctors on call overnight who are called out and are due compensatory rest as a result are also scheduled to work the following day. This requirement could disrupt the effective management of hospitals and adversely affect patients.

We consider that it is important that there should be an urgent and sustainable solution to the problems caused for the healthcare sector – and to other sectors – by these rulings. In relation to the definition of working time it would propose that, the directive should be amended so that time which staff spends resident on-call when they are not actively working (eg, when they are sleeping) does not count as working time. It would be possible either to define this time as resting time or to introduce a new concept of "inactive time" for these periods, which would be classified as neither working time, nor resting time.

In relation to compensatory rest, we would propose that this should be taken as soon as is possible but in any event within a limited period after the end of the period of work. This period could either be specified in the Directive or be determined by collective agreement within each Member State. Such an approach would ensure that the worker is afforded compensatory rest soon after the interruption whilst minimising the risk of disruption to services.

THE CONDITIONS OF APPLICATION OF ARTICLE 18.1 B) I) (OPT OUT)

We recognise the concerns, which have been raised about the use of the individual opt-out and particularly about the potential for the current provisions to be abused to the detriment of workers. However, we believe it is important that the opt-out facility is retained to provide both employers and workers with flexibility in the organisation of services and working time. In particular, it is aware that some countries are considering its use in the healthcare sector to mitigate the impact of the SiMAP and Jaeger rulings. However we believe that it is essential that there are proper safeguards over the use of the opt-out to avoid the exploitation of workers and particularly considers that workers should not be required to sign an opt-out before she or he takes up employment or to make signing an opt-out part of a worker's contract.



MEASURES AIMED AT IMPROVING THE RECONCILIATION BETWEEN WORK AND FAMILY LIFE

We are committed to ensuring that healthcare workers have a proper balance between work and family life. Ensuring this is very much a matter for individual member states and there is undoubtedly much good practice, which can be shared. More generally we believe that the work-life balance could be enhanced if there were flexibility to allow workers who undertake on-call work to receive additional holiday time in lieu of payment if they so choose.

WHETHER AN INTERRELATED APPROACH TO THESE ISSUES WOULD ALLOW A BALANCED SOLUTION CAPABLE OF MEETING THE CRITERIA SET BY THE COMMISSION.

We believe it is important that there is an early and lasting solution to the problems faced by health services arising from the SiMAP and Jaeger rulings. It does not, however, believe that such a solution should be achieved at the expense of the provisions allowing workers to opt out as such a facility is important to enable healthcare organisations and their staff to manage services effectively to the benefit of the employer, staff and patients.

Brussels, March 24, 2004

