Presentation of a study for the European Commission on the impact of the Working Time Directive

Conference: Working longer through better working conditions, new modes of work and career organisation

Luc Chalsège
Director, Deloitte
lchalsege@deloitte.com

Brussels, 17 November 2010
## Agenda

1. Context
2. Objectives of the study
3. Study approach
4. Emerging developments & needs in the world of work
5. Health and safety aspects of working time
7. Impact of the Working Time Directive on public services
8. Use of the opt-out
1. Context

- **Difficult balance** between *health and safety* on the one hand, and *a competitive economy* on the other hand:
  - Tendency to **regulate and reduce working hours** in the interests of health and safety during the last decade but overall stabilisation of reduction of working hours.
  - **Change patterns of work** due to the greater emphasis on work-life balance and part-time work, technology development, and the move towards a 24/7 and service-driven economy.
  - **Globalisation of the economy and difficult economic times** in industrialised countries as an argument against further reductions of working time or too much rigidity.
1. Context

- **European Working Time Directive** (2003) regulates the maximum working week (48 hours), rest periods, night work and paid annual leave (minimum 4 weeks). The Directive allows some flexibility in some sectors or in specific circumstances:
  - **No derogation** possible for the 48-hour working week limit, but MS can allow employees to **opt out** of this maximum under specific conditions: individual choice / consented to in advance / employer cannot penalise them if they decline to opt out.
  - ECJ interpretation of the Directive in the so-called **SIMAP and Jaeger rulings**:
    - The time at the disposal of the employer in the workplace is working time, irrespective of whether the worker is merely ‘on call’.
    - SIMAP and Jaeger rulings have had a major impact in particular on activities which require a 24/7 continuity (e.g. doctors and residential care workers).
2. Objectives of the study

- The Commission launched in 2010 a new review of the Working Time Directive, in order to:
  - Take account of changing needs and expectations of workers, businesses, citizens,
  - Address problems of interpretation and application of the Directive,
  - Ensure effective protection of workers’ health and safety.

- This study aims at providing evidence-based underpinning to the debate on key issues to assist the European Commission to design updated legislation which could reconcile the conflicting interests and take emerging trends into account.

- The findings and conclusions are based on combining the results of a literature review, stakeholder interviews in a selection of countries, and statistical/econometric analyses.
3. Study Approach

1. Study on the emerging developments & needs in the world of work
   - **Objective:** To analyse the impact of important trends on the labour market on working time arrangements.
   - **Conducted by:** HIVA Mr. Tom Vandenbrande

2. Study on the Health and safety aspects of working time
   - **Objective:** To analyse available studies on the effects of long-hours working, temporary delaying daily and weekly rest periods.
   - **Conducted by:** GAWO: Mr. Friedhelm Nachreiner

3. Study on the impact of the EWTD on business
   - **Objective:** To provide empirical evidences on the impact of EWTD on business, based on surveys of European enterprises and macroeconomic analyses.
   - **Conducted by:** Deloitte: Mr. Marc Derycke

4. Impact of the WTD on public services
   - **Objective:** To analyse financial, social and organisational costs and benefits for key public services resulting from the SIMAP-Jaeger rulings.
   - **Conducted by:** Deloitte: Mr. Benoit Vandresse

5. Use of the opt-out
   - **Objective:** To analyse the use of the opt-out from the EWTD (drivers behind the use, impact on companies and workers).
   - **Conducted by:** CSES: Mr. Mark Whittle
4. Emerging developments & needs in the world of work

- Based on an in-depth analysis of available literature on the subject;
- Main conclusions:
  - The reduction in hours actually worked has come virtually to a standstill, with periods and Member States where it has actually increased.
  - The number of hours worked has continued to come down, but it essentially reflects the increase in part-time work and the use of flexitime (including condensation of the work week into fewer days) instead of the standard ‘nine-to-five’ working day.
  - Working hours still differ significantly from Member State to Member State – with no evidence of convergence:
    - With higher incomes, workers tend to opt for more leisure time;
    - Tax and welfare regimes influence choices;
    - Strong influence of collective bargaining/industrial relations traditions.
  - Increasing diversity of working time arrangements, due to the increase of part-time work and flexitime, the move towards a service-based economy, technology (teleworking), changing attitudes to career.
  - Reductions in working time will in future be moderate, but the trend to diversity and atypical working arrangements will continue.
5. Health and safety aspects of working time

- Based on an in-depth analysis of available research and statistical analyses.
- Main conclusions:
  - Clear evidence that long working hours have a negative effect on health, safety and work-life balance of the worker:
    - Accident risk increases once working time exceeds 7-9 hours per day;
    - Health and safety effects may be stronger in onerous activities, or where rest breaks are postponed;
    - a daily rest break of 11 hours seems to be the minimum.
  - The appropriate maximum limit for weekly working times depends on the degree of health impairment which is deemed acceptable;
  - Working unusual hours increases the risk to safety, health and work-life balance (especially in combination with long working hours). Additional compensatory time off appears justified in the case of unusual working time arrangements;
  - The impact of different additive and interactive factors in combination should be taken into account; short reference periods would avoid an undue accumulation of negative effects;
  - Granting discretion to the workers to decide on the arrangement of their working hours in general has a beneficial effect, but cannot totally compensate for negative effects of detrimental factors.

Deloitte
6. Impact on business

- Based on a macro-economic analysis and business surveys:
  - Analysis of the relationship between total factor productivity (TFP) and changes in the number of hours worked (HPE) in six sectors.
  - Analysis of two surveys on business awareness of, compliance with and perceptions of the WTD.

- Main conclusions:
  - The macro-economic analysis shows no clear pattern but demonstrates a generalised positive impact from decreased yearly working hours on productivity in two sectors analysed.
  - The surveys among European enterprises show gaps in knowledge and compliance;
  - Business is concerned about the effect of working time regulation on competitiveness and the ability to deal with seasonal fluctuations:
    - Strong support for allowing working time measurement over 12 months rather than 4;
    - Companies in countries where the opt-out is in use in some form want it continued.
  - Relatively low use of on-call time at the workplace by the private sector.
  - Among companies which reported that some of their workers work more than 48 hours / week, some did not ask for the worker’s consent.
7. Impact on public services

- Based on case studies, focus groups and face-to-face interviews in four key public services (hospitals, residential care, firefighters and police) in a selection of MS.

- Emphasis on the effects of the SIMAP and Jaeger rulings on working time organisation.

- Main conclusions:
  - Broad support for the health and safety objectives of the WTD.
  - Public sector budget constraints and skills shortages have resulted in governments and/or employers looking for ways to reduce the impact of the WTD and the SIMAP/Jaeger rulings:
    - recruitment from other EU and non-EU countries;
    - moves to (fake) self-employment, particularly of doctors;
    - greater use of temporary staff;
    - high use of the individual opt-out;
    - evidence of non-compliance as a result of ignorance about requirements.

- The WTD and the SIMAP/Jaeger rulings can provide leverage for employees to negotiate or receive better working conditions or overall pay. However, in some cases, there can be a loss of income in the absence of an opt-out.

- The WTD and the SIMAP/Jaeger rulings can act as catalysts for efficiency gains and measures to improve work/life balance for employees and the quality of service for citizens.
8. Use of the opt-out

- 5 Member States allow **use of the opt-out in** any sector/activity
- 11 Member States allow use of the opt-out, but **only in** the health sector/in jobs which make **extensive use of on-call time**
- 11 Member States state that they do **not use the opt-out**

<table>
<thead>
<tr>
<th>Approach to opt-out</th>
<th>Member State concerned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generalised opt-out:</td>
<td>United Kingdom; Malta; Cyprus; Estonia; Bulgaria</td>
</tr>
<tr>
<td>Opt-out only in jobs using extensive on-call time:</td>
<td>Belgium; Czech Republic; Germany; Spain; France; Hungary; The Netherlands; Poland; Slovenia; Slovakia; Latvia</td>
</tr>
<tr>
<td>Do not use the opt-out</td>
<td>Austria; Denmark; Finland; Greece; Ireland; Italy; Lithuania; Luxemburg; Portugal; Romania; Sweden</td>
</tr>
</tbody>
</table>
8. Use of the opt-out

Based on case studies, focus groups and face-to-face interviews in a selection of MS.

Main conclusions:

- The opt-out is used in both the private and public sectors mainly in those sectors where continuity of care or service is needed, irrespective of the type of opt-out.
- There is still ignorance of the existence of/provisions of the Directive in some sectors and/or businesses, notably residential care and SMEs.
- No direct cause and effect between the use of opt-out and the presence of longer working hours.
  - Big variations in use of the opt-out (e.g. MS with/without upper limits, stronger protective conditions, precautionary opt-outs...)
  - But it is clear that some opted-out workers are working extremely long hours.
- In the public services/on-call services, the opt-out is primarily used as a tool for flexibility in particular in order to provide solutions for:
  - the specific requirements of 24-hour public services;
  - resource shortages (human and financial).
- There is a need for more data on implementation and enforcement of the Directive: where the opt-out is used, study shows little/no monitoring or evaluation, which makes it harder to evaluate the effects of the use of the opt-out.
Deloitte.