



CEC European Managers

Reports by the social partners on the practical implementation of Directive 2003/88/EC

Position paper – October 2014

General remarks

CEC European Managers is the voice of European managers. The individuals affiliated to CEC Member organizations, although at different levels and degrees of responsibility, autonomy and hierarchy, are all subject to provisions regulating their working time based on the principle of attaining specific goals/objectives within a precise amount of time, rather than on working hours per day and/or week. Of course, managers are subject to the same concerns as all other ordinary workers regarding health and safety issues and the need to ensure a sound balance between work and private life; and because of the specific obligations towards subordinate workers resulting from their management responsibilities, managers have an indirect interest in the implementation procedures of the Directive; but we believe that the issue that is being debated is of a more direct concern of generalist trade unions. Our contribution to this consultation will therefore not cover all the points listed below, but will rather focus on those specific issues concerning some professional categories and national situations we are able to report. We will state more clearly our position concerning the future evolution of the Directive, presenting our remarks and suggestions at point 5.

1. TRANSPOSITION

We would like to draw your attention on the French legislative provision setting the principle of yearly *forfait-jours*, whereby the individual worker (enjoying the statute of *cadre*) autonomously willing to sign a *forfait-jours* convention consents to having the duration of his/her working time calculated on the basis of a set number of days throughout the year and a remuneration proportional to this amount, irrespective of the hours effectively worked. The application of this provision is subject to specific conditions, and only applies to certain categories of *cadres*, but is an effective way to make sure that some manager can effectively enjoy a sound balance between professional and private life. Yet, it is necessary that French authorities ensure the correct implementation of the provision, and notably of the limits to the daily and weekly working time as well as the minimum rest time.

5. OUTLOOK

CEC European Managers has actively participated in Social Partners' negotiations on the revision of the Working Time Directive launched in 2011, as a member of the employees' delegation. We regret that the negotiations could not come to a successful conclusion, as we believe in the necessity to demonstrate the great value of Social Dialogue as an effective tool to tackle all those issues relating to employment and work arrangements.

For the future, we believe in the first place that a new formulation of the current art. 17.1a is necessary. Art. 17 sets all cases in which a derogation from the application of the directive is possible, and indicates the group of “*managing executives or other persons with autonomous decision-taking powers*” as a category of workers for which derogations are possible. CEC position is that the wording of the article should be clearer and more defined, and should also be wider, so that it would be possible for more workers with managerial profiles to decide autonomously of the way their working time should be arranged. In preparation of the 2011-2012 negotiations, CEC had formulated a proposal for a new definition, which reads as follows:

“With due regard for the general principles of the protection of the safety and health of workers, Member States may derogate from the Article 3 to 6, 8 and 16 when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, and particularly in the case of:

(a) chief executives officers (or persons in comparable positions), or managing executives, who enjoy independence over the organisation of their working time and have autonomous decision taking powers”

The question of the derogation for managers is put in the wider context of how to ensure the highest degree of flexibility in all aspects of their working activity (workplace, new technological instruments allowing for professional availability) insofar they are compatible with the execution of the objectives set to managers and with the necessity to ensure the work-life balance (including not only the family dimension, but also the social, union and political one).

Other issues that CEC considers necessary to cover in future include:

- The opt-out provision set in article 22 should be removed, to ensure a uniform implementation of the Directive throughout Europe and the application to all workers of the same rights, irrespective of the country they work in. The repeal of the opt-out should be considered in the wider context of enhancing the freedom of movement for workers.
- The “on-call time”: CEC considers it necessary to come to a precise definition of the principle of “on-call time” that considers it essentially as working time effectively provided.