



PUBLIC CONSULTATION ON THE REVISION OF THE WORKING TIME DIRECTIVE

Position by CEC European Managers

CEC European Managers, the European social partner organization representing the interests of the managerial workforce in Europe, had actively participated in the negotiations of Social Partners on the revision of the Working Time Directive launched in December 2011, which regrettably did not come to a successful conclusion.

We are very much in agreement with the intention of your services to launch a revision of this piece of European legislation: working patterns have evolved considerably in the last years, new mobile technologies are increasingly being applied to the way workers can perform their professional activities; and legislation needs to adapt to these new features to make sure that the potential productivity and efficiency gains these new technologies can bring are compatible with the necessity to ensure the protection of private life and the respect of minimum standards for health and safety. Besides these general remarks on the necessity to update the content of legislation to our times, we would like to focus on the provisions set in the directive concerning the derogation that can be applicable to "managing executives or other persons with autonomous decision-taking powers" (art. 17.1a of the Directive).

Given the specific structure of the consultation, coherent with its nature of public consultation open to the participation of both individuals and organizations, which sets the necessity to respond to all the questions in which the questionnaire is divided, we have preferred to summarize our response in a separate position paper. In fact, we have decided in this specific case to focus only on those issues concerning directly the situation of the category we represent, as we believe that this approach is more closely in line with our role and profile of voice of the European management.

CEC European Managers supports the goal to better define the group of higher-level employees who, through the nature of their tasks, need and want the autonomy over their working time. The capacity to organize their working time in an autonomous way is a consequence of one of the distinctive traits of the working profile of managers, whose professional activity is measured in terms of goals achieved rather than on the actual time spent on the workplace. And the increasing application of mobile technologies to the way work is performed, which is proportionally more frequent for managers and other workers with profiles of higher responsibility, is an additional reason for insisting on the opportunity that a revision of the Directive should ensure an increased flexibility for managers of their working time.

Our Organization has discussed at length the position to adopt, and considers it important to make sure that a relatively large pool of managers can remain exempt from the provisions set by the Directive, focusing on the "objective" element of the independence they enjoy in deciding how their professional activity can be organized. The presence of this element should be inherent to the very professional profile of the single manager, with a clear reference to the provisions relating to his/her contract. We believe that the current definition expresses these principles, and defines the nature of those workers for whom the provisions of the directive do not apply. Furthermore, given



the variety of legal provisions and definitions applied in the European countries, we agree with the decision not to use definitions to identify the categories of managers who are exempt from the Directive, but rather to focus on the functions they fulfill and the "objective" capacity to decide of their working patterns of which they enjoy.

For this reason, we would suggest not to amend the current wording of art. 17.1a ; if though a change in the text should prove necessary, we would rather focus on a minor adaptation of the text, to further specify a category of managers, chief executive officers, who cannot (by nature of their profile) be subject to a delimitation of their working time and whose characteristics are easily identifiable and common to the different European countries. Along the same lines, we would in this case favor the insertion of an additional sentence to stress the criteria of the capacity to self-define the aspects concerning the organization of the working patterns (including working time) for managers included in the derogation set by the article.

In brief:

The current version of Article 17.1a of the Directive 2003/88/EC stating that:

"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) managing executives or other persons with autonomous decision-taking powers"

Is considered as a satisfactory option, and can remain unchanged. If though a modification should result necessary, we would suggest the following wording:

"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 executive 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."