



PARTNERSHIP OF PUBLIC EMPLOYERS

NEWSLETTER – DECEMBER 2010

The **Working Time Directive** returned to the top of the Social Affairs agenda when the Commission published a “**second stage consultation paper**” on 21 December with their proposals for the way forward out of the thicket in which this issue has been caught for several years. They accept that doing nothing is not an option and propose either a limited reform focused on the standby issue or a wider range of changes. These options are summarised by Kate Ling of the NHS Confederation later in the Newsletter. Member organisations are asked to let our Director, Janet Beaumont, have their views on the options in the consultation paper in time for the Executive Committee’s meeting on 3 February so that a strong UK view can be fed into the CEEP discussions on how to respond to this important consultation.

We report in this Newsletter on meetings of CEEP’s **Social Affairs** Committee on 14 December and of their **General Assembly** and associated meetings the following day.

We also feature the Commission’s **European Disability Strategy** and the **Employment in Europe 2010** report that was published at the end of November and the potential priorities of the Hungarian Presidency which commenced on 1/1/11.

This newsletter features a list of latest information posted on the PPE website and you are urged to register for access to this member only area which is your means of engaging in the work of PPE.

Finally, we cover some interesting UK news indicating a potentially significant change of attitude in BIS towards the **drafting of UK legislation** incorporating EU Directives.

This December edition of the Newsletter will not be published until early January. We intend to issue the next edition between the PPE Executive meeting on 3 February and the Social Affairs meeting on 14 February.

Kate Ling (NHS Confederation) summarises the Commission's second stage consultation paper on working time:

**REVIEWING THE WORKING TIME DIRECTIVE:
SECOND-PHASE CONSULTATION OF THE SOCIAL PARTNERS AT EUROPEAN LEVEL**

Purpose

The purpose of this communication from the Commission is to seek the views of social partners at European level, and establish whether they want to negotiate on the revision of the directive.

Conclusions

The communication reaches the following conclusions:

- Minimum requirements on working time at EU level are here to stay
- The status quo is not an option
- EU rules should allow greater flexibility for social partner negotiations at an appropriate level
- There is no consensus on priorities for revision, or on what the revision should contain.

Options

The communication proposes two alternatives:

1. Focused review

Focused on finding a solution to the problems caused by the Simap/Jaeger judgments. The aim would be to “find an appropriate EU common framework that would allow for negotiated solutions at local or sectoral level.”

The Commission says that in certain sectors it “could also envisage a solution by means of sectoral negotiations at European level: however, this is a matter for autonomous decision of the social partners”.

On-call time: they suggest that whilst all on-call time at the workplace would be working time, a derogation could be introduced for sectors requiring continuity of service which would allow on call time to be *counted* differently (i.e. not always on an hour-for-hour basis) subject to certain maximum weekly limits.

Compensatory rest: need for new provisions to clarify the timing of daily and weekly compensatory rest. More flexibility is needed for arrange of specific situations but should be carefully limited and should be subject to overall measures to protect the health and safety of the workers concerned.

2. Comprehensive review

In addition to the issues of on-call time and compensatory rest, this option would look more widely at the whole WTD “package” including the possibility of

- additional flexibility to decide WT arrangements by collective bargaining, subject to certain specified core requirements



- derogations to allow reference periods longer than 12 months, in specific cases, by agreement with the social partners
- extension of the reference period for averaging working time to 12 months by legislation, in sectors/MS where the opt-out is not in use
- encouraging SP agreements on reconciliation of work and family life
- a provision that MS will, in consultation with SPs, ensure that employers inform workers well in advance of substantial changes to patterns of work
- a provision for employers to examine workers' requests for changes to their working hours and patterns and to provide reasons if such requests are refused
- revise definition of autonomous workers
- clarifying that provisions of Directive apply per worker, not per job
- clarification of the rules regarding accumulation of paid annual leave where a worker is sick.

Opt-out

On the opt-out, the communication points out that 16 of the 27 MS make use of the opt-out, 11 of them only in sectors which make heavy use of on-call time, and that "it does not seem realistic to ask all these MS to renounce using this derogation without ensuring feasible alternative solutions. It is clear that future use of the opt-out in on-call services will depend on how public services absorb the changes introduced by this review regarding on-call time and compensatory rest. It therefore appears more promising to reduce the need for using the opt-out in the long term by providing more targeted forms of flexibility, than to re-open a debate on its abolition in which no consensus appears possible..."

Next steps

The Commission will take into account the results of this second stage consultation in its work on reviewing the Directive. It may suspend such work if the social partners decide to negotiate among themselves on matters with a sufficiently wide scope. Otherwise, it will proceed to adopt an amending legislative proposal.

Questions to the social partners

1. Should changes to EU working time rules be limited to the issues of on-call time and compensatory rest, or should they address a wider range of issues?
2. Bearing in mind the requirements of article 153 TFEU do you consider that
 - (a) The options set out in the communication regarding on-call time and compensatory rest'
 - (b) The options set out regarding other issues raised by the social partners and the current review,

could provide an acceptable overall framework for addressing the concerns set out in your replies to the first phase consultation?

3. Are the EU social partners, at cross-industry or sectoral level, willing to enter into negotiations on all or part of the issues raised in this communication with a view to



conclude an agreement that would make it possible to amend the Directive by using the possibilities provided under article 155 TFEU?

CEEP meetings in December

The agenda for the **Social Affairs Committee's meeting on 14 December** was exceptionally long. PPE was represented by our new President, Dave Allan, and by Stephen Cooper (LGE) and Kate Ling. Among the matters discussed and decisions made were the following:

- A drafting group was set up to prepare CEEP's answer to the second stage consultation on working time. PPE will be represented on this group by Kate Ling and Stephen Cooper. The group will report to the next SAC meeting (14 February).
- The Committee's rapporteur (Jeanette Grenfors from Sweden) will draft an Opinion on the EU Disability Strategy 2010-2020 (see below), assisted by volunteers including Dave Allan.
- The meeting was informed that CEEP's draft Opinion on the Commission's strategy for equality between men and women 2010-2015 had been approved by written procedure and would be uploaded onto the CEEP website. Janet Beaumont was closely involved in the drafting of this Opinion.
- A third new Opinion will be drafted, on the subject of the Commission's initiative on "New Skills for New Jobs". The aim, as with the draft Opinion on working time, is to have a draft ready for the SAC meeting on 14 February.

The next day, PPE was represented at the **General Assembly** and associated meetings by Dave Allan, Janet Beaumont, Stephen Cooper, Elisabetta Zanon (NHS Confederation) and Ian Fleetwood (NARE). An attempt by the French section to maintain their voting power despite reducing their subscription was not supported. The French were however successful in persuading CEEP to undertake a "strategic review" of the entire structure of subscriptions and votes for the future.

Appointments as presidents and vice-presidents of several CEEP committees were agreed. In most cases, these appointments were not contested but an interesting exception was that the previous general secretary, Rainer Plassmann (Germany) was appointed as president of the influential Services of General Interest (SGI) Committee after an election also involving Laurent Ghekiere (France). The UK has one of the vice-presidencies of the equally influential Social Affairs Committee (Mick Brodie, NARE) and have been asked to field a vice President of the Macro Economic Committee. A copy of the work programme



can be found at www.ppe.uk.com under news and blog. Expressions of interest in this role along with a short CV should be submitted to janetmbeaumont@btinternet.com no later than 17/1/11.

The outlines of a budget for next year were agreed. Expenditure reductions will be made, for instance by not recruiting to fill a current vacancy. It is accepted that the UK subscription next year will be limited to 66,000 euros, 60% of the rate we have been paying up to now. Other countries that have reduced their subscriptions are France and Portugal; like ourselves the French section has lost some large member organisations. [There is an ongoing uncertainty about whether the Belgian authorities will require CEEP to add VAT to part of the subscription for the first time and we are seeking a decision from CEEP as a matter of urgency in view of the potential impact on the UK subscriptions].

A special Congress to celebrate CEEP's 50th anniversary will take place next summer in Budapest, probably on 16/17 June (tbc). Thereafter there will be Congresses every second year, starting in 2013 in Ireland.

Draft CEEP Opinions on the Monti-Kroes competition package and on service concessions were approved. The draft Opinion that the Social Affairs Committee had prepared on Sectoral Social Dialogue was considered to be rather unclear and they were asked to reconsider the issue, including whether or not CEEP should publish an Opinion on this matter at all. This is a difficult issue for CEEP as member organisations are divided between those who are content to be involved in both sectoral and cross-sectoral dialogue and those who believe that sectoral dialogue could undermine CEEP's credentials as a cross-sectoral partner.

Janet Beaumont attended a meeting of **national correspondents** on 14 December which had been a preparatory meeting for the General Assembly. Interestingly, of the eight countries represented at that meeting only the British and French sections do not have at least one full-time employee looking after CEEP affairs.

Dave Allan attended the **Presidents' dinner** for the first time on the evening of 14 December and was able to make good contacts with other national Presidents. These relationships are important for the standing of PPE within CEEP.

Disability

*The Commission's new **strategy on disability** was adopted on 15 November. It focuses on eliminating barriers and fostering an EU-wide market for "assistive technologies". According to the Commission, there is a strong business case for making services and products for all, given demand from a growing number of ageing consumers; over a third of people aged over 75 have disabilities that restrict them to some extent. Moreover, for people with*



disabilities the rate of poverty is 70% higher than the average due partly to limited access to employment.

Specific measures in the strategy include promoting better access to services such as travel insurance and the development and publicising of EU-wide standards on accessibility to the built environment. This will allow public authorities to include accessibility requirements in procurement contracts.

The Commission will consider whether to propose European legislation on accessibility by 2012. This could include specific standards for particular sectors.

The strategy is intended to bring the EU into line with the United Nations Convention on the Rights of Persons with Disabilities. Although all 27 EU governments signed this convention in 2007, it seems that so far only 16 have ratified it and taken on the obligation to change national laws accordingly.

One of the aims of the strategy is to “eliminate discrimination on the grounds of disability in the EU” but critics point out that without legislation which is rigorously monitored and enforced this is likely to be more of an aspiration than a reality across Europe as a whole.

The Commission intend to develop indicators to monitor the integration of disabled people with reference to key Europe 2020 targets in relation to education, employment and poverty reduction.

As mentioned above in the report on the December meeting of CEEP’s Social Affairs Committee, CEEP are preparing an Opinion on the strategy and Dave Allan is one of the people who have volunteered to help.

Employment in Europe 2010

Every two years, the Commission publishes a lengthy report packed with statistical graphs and charts, together with comprehensive analysis of the employment situation in the EU. The latest of these reports runs to over 200 pages and was issued at the end of November. Stephen Cooper attended the conference to launch this year’s publication and this short note is based on his input.

The main purpose of the report is to help member states to get people back to work after the deep downturn and to learn lessons for the future by analysing what has happened in the past. Fiscal consolidation, the process of balancing government budgets, is under way in most EU countries and this is seen as a challenge in this context.

Different countries dealt with the downturn in different ways. The Germans experienced a 6.5% drop in GDP but only a 0.3% reduction in employment, due to reducing working hours (by 0.7 hours a week on average); this was also the pattern in Belgium and Austria. By



contrast to Spain, Ireland and Portugal, all of whom have cut employment numbers substantially, the UK and the Netherlands were seen as having “hoarded labour”, with a reduction in productivity as a result. Some countries used temporary subsidies to encourage employers to avoid lay-offs, but this of course raises the problem of when such subsidies should be unwound.

A number of speakers at the conference spoke about the problems of “dual labour markets”, with the young, the low skilled, migrants and the long-term unemployed at risk of being trapped in a series of temporary insecure contracts. There is concern that in modernising labour markets at national level some countries have tended to de-regulate temporary work while safeguarding the position of permanent employees, the so-called “insiders”. This has led some to suggest that there should be fiscal incentives to companies to convert temporary contracts into permanent ones, provide more training for temporary workers and to promote a “single contract” which is open-ended but provides only a gradual build-up of protection rights. This idea of a single contract seems to be emerging as a key theme within DG Employment, who sponsored the conference. Rather interestingly however, it was opposed by the ETUC representative in the roundtable at the end of the conference, who feared that in practice such a single contract might be “too flexible” in respect of the great majority of employees. Critics of the unions might think that they want their cake and to eat it in their insistence that greater security for those at the margins of the labour market should not be at the expense of less security (or more flexibility) for those in established and relatively secure jobs, but it is a point of view that reflects the feelings of their members. Indeed, increasingly the unions at European level say that they are opposed to the Commission’s concept of “flexicurity”, the balance between flexibility and security in employment contracts which is intended to enhance the effectiveness of labour market policy.

Hungarian Presidency

Hungary took over the rotating presidency of the Council of the European Union on 1 January. Hungary’s priorities will include continued talks on enlargement, environmental protection and water management as well as efforts to maintain the cultural diversity of Europe. The position of Europe’s Roma population and the economic crisis will feature highly.

The following list of opinions has been requested by Hungary:

- The integration of water policy into other relevant policies
- The impact of financial and economic crisis on the distribution of the labour force with specific emphasis on SMEs
- Consumers and cross border opportunities within the single market



- The contribution of civil society to the Eastern Partnerships
- The role and priorities of cohesion policy within the EU 2020 strategy
- Smart fiscal policy consolidation strategies. How can we fully exploit the labour potential of our economies in the light of the need for fiscal adjustment?
- The role of family policy in the process of demographic change: sharing best practice
- Societal empowerment and the integration of Roma citizens
- Energy supply :what kind of neighbourhood policy do we need to ensure security of supply in the EU?

Drafting of UK legislation

A recent announcement by Business Secretary, Vince Cable, opens up the possibility of a radically different approach in the future to UK implementation of EU directives. For many years one of the criticisms from eurosceptics about health and safety and employment legislation has been that UK laws tend to be much more detailed than the EU directives that they implement. This process is often referred to as “gold-plating” and critics argue that it means that the UK’s interpretation of EU directives is consequently more far-reaching than in those countries where the EU directives are simply “copied out” in the national legislation, leaving it to national courts to interpret any resulting uncertainties and ambiguities.

Dr Cable announced on 15 December that in order to protect British business interests European legislation will normally be directly copied into UK legislation, except where that would adversely affect UK interests. Moreover, every five years Ministers will review European legislation, consulting business interests to ensure that as small a burden is imposed on them as possible.

While some business interests have welcomed this announcement, the TUC is strongly opposed. General secretary Brendan Barber called them “dangerous, depressing and counter-productive.”

A possibly less predictable source of concern comes from a review two years ago by Lord Davidson QC. He agreed that some EU legislation has been “over-implemented” but said that gold-plating “may not be as big a problem in the UK as is alleged”. He went on to say that simply copying out the text of a directive may be inappropriate if the wording of the directive is so ambiguous that those being regulated call for greater clarity to minimise legal uncertainty.

If the government pushes ahead along the lines they have outlined, it does indeed seem likely that there will be more legal uncertainty and more work for lawyers. PPE will need to



watch this on a case-by-case basis and be ready to comment accordingly to BIS and to advise our members.

Future meetings

PPE Executive Committee : 3 February (London), 15 March (tbc) and 17 June.

CEEP Social Affairs Committee: 14 February (Brussels) and 21 June (Munich).

CEEP General Assembly: March, June and December(Brussels) – all tbc.

PPE AGM: 20/21 October (London).

DATES OF OTHER CEEP MEETINGS HAVE NOT BEEN ISSUED YET. AS SOON AS THESE ARE AVAILABLE WE WILL ALERT YOU BY EMAIL AND ALSO ADD TO THE EVENTS SECTION OF OUR WEBSITE. PLEASE ACCEPT OUR APOLOGIES FOR THIS DELAY.

