

# Review of the Working Time Directive (Directive 2003/88/EC)

Fields marked with \* are mandatory.

## Identifying information

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English (en)



Type of your organisation:\*

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Your sector(s):

Other



Please specify:

Audiovisual sector

Register ID number (if you/your organisation is registered in the Transparency register):

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Your reply:\*

- can be published with your personal information (I consent to publication of all information in my contribution and I declare that none of it is under copyright restrictions that prevent publication)
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- cannot be published - keep it confidential (The contribution will not be published, but will be used internally within the Commission)

Nota bene

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Please note that:

- The Working Time Directive only sets minimum standards and Member States are always allowed to provide higher levels of protection for workers in their national laws and regulations.
- Filling in the questionnaire, please keep in mind that the Working Time Directive only applies to workers and not to self-employed persons. Also keep in mind that it does not set levels of pay for working time, which is a purely national responsibility.
- The background document provides useful information regarding the concepts used in the following questionnaire. Please refer to it as necessary.
- There are a number of questions offering the possibility of making additional contributions under each point, and also a longer opportunity to express your opinion at the end.

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Please confirm you have read through these important elements.

## 1. Objectives and approach to the review of the Working Time Directive

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### 1. A. Impact of the Working Time Directive

In your opinion, what is the impact of the **current Working Time Directive** giving workers the right to a limit to average weekly working time (currently set at 48 hours) and to minimum daily and weekly rest periods?

	Fully disagree	Tend to disagree	No opinion	Tend to agree	Fully agree
It protects the health and safety of workers and people they work with*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
It ensures a level playing field in working conditions across the Single Market, avoiding that countries lower their labour standards to gain a competitive advantage*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
It boosts productivity notably by fostering a healthy European workforce*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
It allows flexible organization of working time*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
It allows workers to reconcile work and private life*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
It impacts on job creation*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Self-employment is used to circumvent the application of the limits imposed by the Directive*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It impacts the costs of running a business*	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It has no major impact*	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please elaborate on your opinion with regard to the impact on health and safety of workers and people they work with

*300 character(s) maximum*

[Optional]

Due to the shortness of engagements on film and TV production there is often insufficient time during the period of an engagement for accrued holiday to be taken. As a result holiday pay is generally paid at the end of the engagement this has the effect of increasing the costs of workers”

Please elaborate on your opinion with regard to the impact on job creation

*300 character(s) maximum*

[Optional]

European film and TV production companies and their workers require flexible working arrangements to be efficient in their productions. Any change to this will, in turn, dramatically increase the costs for producing and make the process extremely difficult, with concrete on jobs.

Please elaborate on your opinion with regard to the impact on the cost of running a business

*300 character(s) maximum*

[Optional]

EU Film and TV production industry has adapted by evolving flexible organisational and management methods. Retaining such flexibility, and the possibility for employees / free lancers to choose working hours in excess to 48-hour week is a key requirement for the success of EU film and TV sector.

If you see another impact, please specify:

*500 character(s) maximum*

[Optional]

Indeed the EU film and TV production sector is characterised by a freelance work force whose pattern of employment fluctuate according to changes in the volume of new productions. Another characteristic is that film workers are required to work intensively for relatively short periods of time (the production cycle for feature length films in EU varies from 25 days to 50 days on average ; production cycles a little shorter for TV productions while providing more long-term employment prospects).

## 2. Thematic questions

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## 2. A. Scope

### Concurrent contracts

**A single worker may be employed under several concurrent contracts. Should the limits provided in the Working Time Directive apply to all contracts taken together or to each contract separately?**

**If the Directive applies per worker, this means for example that all the hours worked under the different contracts should be added together and cannot exceed 48 hours on average (unless the worker signed an opt-out).**

**If the Directive applies per contract, this means for example that the worker can work 48 hours on average under each separate contract without an upper limit. \***

[only one answer possible]

- It is up to Member States to decide whether working time rules shall apply per worker or per contract
- The Directive should stipulate that working time rules shall apply per worker in situations where a worker has more than 1 contract with the same employer
- The Directive should stipulate that working time rules shall apply per worker in situations where a worker has more than 1 contract in any event
- The Directive should make it clear that it only applies per contract
- Other
- Do not know

## 2. B. Concept of working time

### On-call time

**On-call time corresponds to any period where the worker is required to remain at the workplace (or another place designated by the employer) and has to be ready to provide services. An example could be a doctor staying overnight at the hospital, where he can rest if there is no need to attend to patients.**

**Under the current Working Time Directive, as interpreted by the Court of Justice, on-call time is fully regarded as working time for the purpose of the Directive, regardless of whether active services are provided during that time. The period of on-call time within which the worker actively provides services is usually referred to as 'active on-call time', while the period within which services are not provided can be referred to as 'inactive on-call time'.**

**(See in particular Cases [C-303/98 Simap](#), [C-151/02 Jaeger](#), [C-14/04 Dellas](#))**

Please give your opinion on the following options as regards possible changes in the treatment of on-call time under the Working Time Directive:

	Very undesirable	Undesirable	No preference	Desirable	Very desirable
No change to the current rules*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that all on-call time has to be counted as working time)*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Set the principle that defining "on-call time" should be agreed in each sector by national social partners, for example determining that only part of inactive on-call time will be counted as working time*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you would like to add comments or indicate another option, please specify:

*500 character(s) maximum*

[Optional]

**Stand-by time**

Stand-by time corresponds to any period where the worker is not required to remain at the workplace, but has to be contactable and ready to provide services. An example could be when a technician of a nuclear facility is at home, but has to be ready to come to the plant to provide services in an emergency.

Under the current Working Time Directive, as interpreted by the Court of Justice, stand-by time does not have to be considered as working time for the purpose of the Directive. Only active stand-by time, i.e. time in which the worker responds to a call, has to be fully counted as working time.

(See in particular Cases [C-303/98 Simap](#), [C-151/02 Jaeger](#), [C-14/04 Dellas](#))



Please give your opinion on the following options as regards possible changes in the treatment of stand-by time under the Working Time Directive:

	Very undesirable	Undesirable	No preference	Desirable	Very desirable
No change to the current rules*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that stand-by time does not have to be considered working time)*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Introducing the obligation to partially count stand-by time as working time for the purpose of the Directive*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Introducing a limit to the maximum number of hours that a worker may be required to be on stand-by in a given period (for instance 24 hours a week), together with a derogation possibility to set a different limit via collective agreements*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you would like to add comments or indicate another option, please specify:

*500 character(s) maximum*

[Optional]

## 2.C Derogations

### Compensatory rest

**Under the current Working Time Directive, as interpreted by the Court of Justice, a worker who by derogation from the general rules has not received his/her minimum daily rest of 11 consecutive hours in a 24-hour period, will have to receive an equivalent period of compensatory rest (i.e. 11 hours) directly after finishing the extended working time period. This sets a maximum of 24 hours to a single consecutive shift. (See in particular Case [C-151/02 Jaeger](#))**

How would you assess the possible introduction in the Working Time Directive of provisions regarding the period within which such a compensatory rest has to be taken:

	Very undesirable	Undesirable	No preference	Desirable	Very desirable
No change to the current rules*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that compensatory rest has to be granted immediately after the extended period of work)*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Allowing employers the possibility of granting compensatory rest within 2 days*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Allowing the possibility of granting compensatory rest within 4 days*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you would like to add comments or indicate another option:

*500 character(s) maximum*

[Optional]

The 11 hour daily rest period is sometimes breached in the course of film production particularly in the areas of costume and make-up. This is where the services of the costume and make up department are required to prep artists at the beginning of the day's filming and then again at the end of the day's filming

A requirement to grant compensatory rest during four days of a breach of an 11 hour daily rest period would not be practical given that a shoot period is set around the access to lead

## Reference period

**The limit to weekly working time of 48 hours provided by the Working Time Directive is a limit to *average* working time. This means that in certain weeks the worker can be required to work more than 48 hours as long as this is balanced out by lower hours in other weeks. This average has to be calculated over a certain period, i.e. 'a reference period'. Currently, the standard limit to the reference period is 4 months, which can in certain sectors be extended by law up to 6 months, and by collective agreement it can be set up to 12 months.**

What would be in your view the most appropriate approach to the limit set to the reference period to calculate average weekly working time:

[only one answer possible]

- No change in the current provisions
- Allow that reference periods can be set up to 6 months by law in any sector, and maintain that they can only be set up to 12 months by collective agreements
- Maintain that reference periods can be set up to 4 months by law in any sector, but allow that reference periods can be set up to 12 months by law in certain specific sectors (e.g. to take into account the size of the undertaking or to take into account fluctuations of demand)
- Allow both previous options (i.e. option 2 and option 3), meaning that reference periods can be set up to 6 months by law for any sector and up to 12 months by law in certain specific sectors
- Allow that reference periods can be set up to 12 months by law in any sector
- Other
- Do not know

## Opt-out

**Under the current Working Time Directive, Member States have the possibility not to apply the limit to average weekly working time of 48 hours, when the worker agrees to it individually and freely with the employer, and does not suffer prejudice for revoking such agreement (the 'opt-out').**

What is your view on this opt-out clause:\*

[only one answer possible]

- It should be maintained unchanged
- It should be maintained, but stricter conditions for the protection of the worker should be added in the Directive
- It should be maintained, but it should be provided in the Directive that the opt-out cannot be combined with other derogations under the current Directive
- It should be abolished, but in compensation there should be additional derogations made available for employers (e.g. allowing not to count on-call time fully as working time)
- It should be abolished
- Other
- Do not know

## Autonomous workers

**"Autonomous workers", such as for example managing executives, can fully determine their own working time (i.e. decide when and how many hours they work). Member States have the option to apply the main provisions of the Working Time Directive to these workers.**

Please choose the most appropriate statement according to your views:\*

[only one answer possible]

- The current Working Time Directive provides an adequate exemption as regards autonomous workers, and should not be changed
- The current exemption should be maintained in substance, but more clearly formulated, in order to enhance legal clarity and to prevent abuse
- The definition of autonomous workers is too narrow and should be expanded to other categories of workers who should be exempted too
- The definition of autonomous workers is too wide and should be limited
- Other
- Do not know

## 2.D Specific sectors/activities

### Emergency services

**The current Working Time Directive as interpreted by the Court of Justice applies to workers in emergency services, e.g. civil protection services like fire-fighting services, in the normal operation of these services. The current Directive contains several derogations that can be applied to the working time and rest periods of these workers in order to ensure the effective provision of these services. In the event of a catastrophe/disaster, the Working Time Directive does not apply at all.**

(See in particular Cases [C 397/01](#) to [C 403/01 Pfeiffer](#) and [Case C-52/04 Feuerwehr Hamburg](#))

Please state your view on the application of the Directive to emergency services:\*

[only one answer possible]

- The current rules adequately balance the need to protect the health and safety of the workers and the people they work with/for with the need to guarantee effective provision of emergency services, and should remain unchanged
- The current rules should be maintained in substance, but clarified in light of the case law of the Court of Justice, to improve legal certainty
- There should be additional derogations applicable to all or some categories of these workers, addressing their specific situation
- The Working Time Directive should not be applied to workers in emergency services
- Other
- Do not know

## Health care sector

**The current Working Time Directive provides a derogation for health care services when they require continuity of service, meaning particularly that the rest periods of health care staff can be postponed to some extent.**

Should there be a different provision on the working time organisation of health care staff with a view to safeguarding patient safety?

Please state your view:\*

[Only one answer possible]

- The current rules provide enough safety for patients
- The current rules should be maintained in substance, but clarified in light of the case law of the Court of Justice on on-call time and on timing of compensatory rest to improve legal certainty
- There should be additional derogations applicable to workers in the health care sector in order to improve continuity of service
- There should be a more narrow derogation applicable to workers in the health care sector in order to improve patient safety
- Other
- Do not know

## 2.E Patterns of work

## Changes in working patterns

**The Working Time Directive was conceived more than 20 years ago, when information and communication technologies were not as developed and many types of present jobs did not exist yet. In light of these changes in working patterns and organisation, should the Working Time Directive introduce specific rules regulating particular situations and types of contracts such as telework, zero-hour contracts, flexitime, performance-based contracts without working time conditions, etc.?**

Please state your view.\*

[multiple answers possible]

- The current rules are satisfactory and do not need to be changed
- The rules should be changed in light of increasing telework
- The rules should be changed in light of zero-hour contracts
- The rules should be changed in light of increased use of flexitime
- The rules should be changed in light of increased use of performance-based contracts without working time conditions
- Other
- Do not know

## Reconciliation of work and private life

**Do you think the Working Time Directive should support better reconciliation of work and private life by introducing any of the following specific rights:**

	Very undesirable	Undesirable	No preference	Desirable	Very desirable
The right for a worker to ask for specific working time arrangements (e.g. flexitime, telework) depending on their personal situation, and to have their request duly considered	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The right for a worker to request to take daily rest in blocks of time instead of uninterruptedly, allowing the worker for example to go home early in the afternoon and later continue work from home at night, and to have their request duly considered	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you would like to add comments or indicate another option:

*500 character(s) maximum*

### 3. Looking ahead

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Objectives for the future of the Working Time Directive

**For the future of the Working Time Directive, how important do you consider the following objectives?**

	Not at all important	Of little importance	Quite important	Very important	Do not know
While keeping the current Working Time Directive, to better ensure that Member States correctly and effectively put it into national law and practice*	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
To improve legal clarity, so that the rights and obligations following from the Directive are clearer and more readable and accessible to all*	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To provide more flexibility in working time organisation for workers*	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
To provide more flexibility in working time organisation for employers*	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
To provide a higher level of protection to workers*	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To protect third parties involved (co-workers, passengers, patients, etc...) *	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Approach for the future of the Working Time Directive**



**Which of the following approaches for the future of the Working Time Directive do you prefer?\***

[only one answer possible]

- No new initiative (maintaining the current rules)  
No legislative changes but initiatives towards improved legal clarity so that the rights and obligations following from the Directive are clearer and more readable and accessible to all (interpretative communication; 'codification' of the case law (i.e. clearly stating the case law of the Court of Justice in the legal text)
- Legislative changes but focused on the sectors where there is a specific need in terms of continuity of service (e.g. public services; sectors that work on a '24/7' basis like hospital services and emergency services)
- Legislative changes which would lead to an overall revision of the Directive, containing a mix of simplification and additional derogations while avoiding regression of the protection of workers
- Other
- Do not know

Please motivate your answer:

*500 character(s) maximum*

[optional]

CEPI urges the Commission to consider carefully the need to maintain flexible work practices in Europe's film and TV production industry, bearing in mind especially the competitive challenges that our industry are facing globally and the need to contain the costs for production within a reasonable budget range. A suppression or reduction of the opt-out clause would seriously impede European industry's sustainability.

## 4. Other comments or suggestions

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## Do you have any other comment or suggestion on the review of the Working Time Directive that you would like to share?

*2,000 character(s) maximum*

Optional. No hyperlinked or attached documents allowed.

The current Working Time Directive has worked well for the EU TV and film sector. The Directive has provided an appropriate minimum standard for member states allowing countries to enhance provisions and protections that are appropriate to each member state.

The film and TV industry would be greatly concerned about the future impact, if for example, there were remove the opt-out clause and the right of individuals to consent to work more than the average 48-hour week. Losing this important element of the directive would have a serious impact on the film and TV industry.

Film and television production companies and their workers require flexible working arrangements to be efficient in their productions. The film and TV industry does not employ individuals on the 9-5 contracts that are typical of other business sectors. In fact, the film and TV industry consists largely of a freelance labour market. Due to the unpredictability of film and TV production, the majority of freelancers do not work across a whole year. However, when they are working, individuals typically work for intensive periods of time over a number of weeks or months.

In many instances productions also have to structure working patterns around the availability of studios/locations. This can necessitate short bursts of intense working to meet filming and production objectives within the period of time that a studio/location is available.

Consequently, any restriction on an individual's ability to consent to work for longer than an average 48 hour week will invariably impact on the costs of production of film and TV programmes which could have a seriously detrimental effect on the economy.

## Contact

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