

COUNCIL OF MINISTERS ONCE AGAIN FAILS TO REACH AGREEMENT ON AMENDMENTS TO THE WORKING TIME DIRECTIVE

No infringement proceedings against Malta by the European Commission, Ministry says.

On Tuesday, during an extraordinary Social Affairs Council held in Brussels, the Council of Ministers once again failed to reach a political agreement on a draft directive aimed at amending Directive 2003/88/EC concerning certain aspects of the organisation of working time. This meeting took place after a set of compromise texts were tabled by the Finnish Presidency in an attempt to break the deadlock and settle this longstanding issue.

Despite the fact that all Member States, represented by their labour and employment Ministers, welcomed the Finnish Presidency's determination to achieve an overall agreement, at the end it proved impossible to attain a qualified majority in favour of one of the options tabled. The main point of divergence was yet again the opt-out clause and the possible phasing of its use, due to the notable differences in the labour market situations and the need of and conditions for maintaining the opt-out clause.

The Working Time Directive currently sets a 48-hours maximum average weekly working time, inclusive of overtime, calculated over a period of four months, together with stipulated rest periods. Nevertheless, Member States can seek derogations from the reference period for the application of the rule on the maximum working week and can opt-out from the application of the 48-hour rule if the worker agrees to carry out such work.

The salient features of the Finnish Presidency compromise aimed to tighten the application of the opt-out to ensure that such employee agreements are voluntary and that the employee will not suffer any prejudice by the employer if he or she does not agree to opt-out. The Presidency's compromise proposed a 60 hours' capping to weekly working hours, calculated as an average over a three-month period. That meant a maximum of 20 hours of overtime over a period of seven days. Furthermore, the proposal did not regard as working time the inactive part of the on-call time,

unless otherwise decided by law or collective agreement; neither was the inactive part to be taken into account in the calculation of rest periods, unless otherwise provided for in Member States.

At the start of the Social Affairs Council meeting, France, Italy and Spain, supported by Belgium, Luxembourg and Cyprus, tabled an amendment demanding a definite deadline over the scrapping of the UK-negotiated opt-out from the 48 hour maximum working week rule.

Since 2004, Malta has always opposed amendments to this effect, given that it favours the retention of the opt-out clause due to the particular nature of its irregular and seasonal trends of its labour market. The United Kingdom once again voiced its support over the retention of the opt-out and garnered enough support from other countries, especially the new Member States, to manage to fight off pressure from the blocking minority which favoured a complete abolition of the opt-out provision.

At the end of the meeting, Employment Commissioner Vladimir Spidla voiced his disappointment over the failure to reach agreement and declared that the European Commission will commence infringement proceedings against the 23 Member States not meeting the requirements of the current Directive. ***A spokesperson for the Ministry of Education, Youth and Employment has today confirmed that, Malta should not be one of these states given that the Maltese Government has never received any infringement notification from the European Commission.***

Yesterday's meeting was the latest in a series of discussions held to possibly reach agreement on amending the Directive. Following the European Court of Justice's ruling in SIMAP and Jaeger wherein it established that working time includes the entire on call duration including time spent at rest, in September 2004, the European Commission proposed a number of modifications to tighten the conditions for opt-out, to exclude the inactive part of on-call time from consideration of working time, and to grant Member States the possibility to extend the reference periods to not more than 12 months. In its reaction in 2005 however, the European Parliament disagreed on two fronts, concluding that the inactive part should also be regarded as working time, while the opt-out clause should be repealed 36 months after the revised Directive comes into force. If not, agreements with employees cannot exceed six months, which period cannot be renewed.

In its revised proposal, the European Commission included a provision aiming to ensure that inactive periods of on-call time are not taken into account in calculating the rest periods but deemed unacceptable to repeal the opt-out clause after 36 months of the Directive's entry into force. It also deleted the possible extension by Member States of the reference period to twelve months.

The current EU Presidency was the fifth Presidency to try to break the deadlock of this three-year saga.

To become EU law, the draft proposal must be approved by a qualified majority vote at Council level.

[end]

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**IL-KUNSILL TAL-MINISTRI GĦAL DARB'OHRA JONQOS MILLI
JILĦAQ FTEHIM DWAR EMENDI GĦAD-DIRETTIVA TAL-ĦIN
TAX-XOGĦOL**

L-ebda proċeduri legali kontra Malta, jgħid il-Ministeru

Ilbieraħ it-Tlieta, waqt laqgħa straordinarja tal-Kunsill għall-Affarijiet Soċjali ġo Brussell, il-Kunsill tal-Ministri għal darb'ohra naqas li jsib qbil dwar l-emendi għad-Direttiva dwar il-Ħin tax-Xogħol (Direttiva 2003/88/EC) abbażi ta' abbozz mħejji mill-Presidenza Finlandiża sabiex possibilment jintlaħaq kompromess bejn l-Istati Membri.

Minkejja li l-Membri Stati kollha, rappreżentati mill-Ministri rispettivi tagħhom għax-Xogħol u l-Impjiegi, laqgħu id-determinazzjoni tal-Presidenza Finlandiża sabiex jintlaħaq qbil, fl-aħħar mill-aħħar reġa' deher ċar li kien impossibli li jkun hemm maġġoranza kkwalifikata għal xi waħda mill-possibilitajiet proposti. L-akbar punt ta' divergenza għal darb'ohra kienet il-klawżola *opt-out* u l-implimentazzjoni tagħha minħabba d-differenzi kbar li jeżistu fl-iswieq tax-xogħol tal-pajjiżi Ewropej.

Fil-preżent, id-Direttiva dwar il-Ħin tax-Xogħol tistipula massimu ta' 48 siegħa bħala medja ta' sigħat li ħaddiem jista' jaħdem fil-ġimgħa, inkluż is-sahra, kkalkulat fuq perjodu t'erba' xhur. Id-Direttiva tistipula wkoll kemm għandu jkun hemm perjodi ta' mistrieħ. Madanakollu, l-istess Direttiva tagħti spazju lill-istati membri sabiex jekk iħossu l-bżonn, jitolbu għal deroga li permezz tagħha jkunu jistgħu ma japplikawx il-massimu ta' 48 siegħa u li konsegwentament, ħaddiem jista' volontarjament jaċċetta li jaħdem aktar minn dan l-ammont ta' sigħat.

Wara diversi laqgħat ta' diskussjoni dwar ir-riformi meħtieġa għal din id-Direttiva u li matulhom qatt ma ntlahaq ftehim, il-Presidenza Finlandiża hejjiet abbozz sabiex possibilment finalment jintlaħaq kompromess bejn l-istati membri. Il-ħsieb tal-Presidenza kien li tiġi kkontrollata aħjar il-possibilità ta' l-*opt-out* sabiex jiġi żgurat li dak il-ħaddiem li ma jaċċettax li jaħdem aktar minn 48 siegħa fil-ġimgħa ma jsofri l-ebda diskriminazzjoni fuq il-post tax-xogħol. Il-kompromess Finlandiż fuq kollox ippropona li l-massimu ta' sigħat jitla' minn 48 għal 60 iżda min-naħa l-oħra, il-perjodu ta' referenza li fuqu tiġi kkalkulata l-medja jinżel għal-tlett xhur. Dan ifisser li bażikament, ħaddiem ma jistax jagħmel aktar minn 20 siegħa sahra fil-ġimgħa. Apparti minn hekk, il-Presidenza Finlandiża qablet ukoll li l-parti inattiva ta' meta

wieħed ikun fuq il-post tax-xogħol (*on call time*) m'għandiex tgħodd bħala parti mill-ħin tax-xogħol.

Fil-laqqgħa tal-bieraħ, Franza, l-Italja u Spanja bl-appoġġ tal-Belġju, l-Lussemburgu u Ċipru, ipprezentaw emenda li fiha talbu għal data definita li fiha titneħħa għal kollox il-klawżola *opt-out* u li permezz tagħha ċerti Membri Stati jagħzlu li ma japplikawx il-massimu tat-48 siegħa.

Sa mill-2004, Malta kienet kontra li d-Direttiva tiġi amendata għaliex hija favur li tinzamm il-klawżola ta' l-*opt-out* minħabba n-natura partikolari tas-suq tax-xogħol Malti li jvarja ħafna minn perjodu għall-ieħor fl-esiġenzi tiegħu. Ir-Renju Unit, għal darb'oħra esprima l-appoġġ tiegħu sabiex l-*opt-out* tinzamm u flimkien ma' alleati oħra, il-biċċa l-kbira kollha Stati Membri ġodda, irnexxielha tegħleb il-pressjoni ta' dawk li riedu jneħħuha.

Fi tmiem il-laqqgħa, il-Kummissarju għax-Xogħol Vladimir Spidla esprimiet id-dispjaċir tagħha għall-fatt li ma ntlahaqx ftehim u fl-istess nifs iddikjarat li l-Kummissjoni Ewropea ser tibda proċeduri legali kontra dawk it-23 pajjiż li mhux qed japplikaw id-Direttiva kif suppost abbażi ta' deċiżjonijiet meħuda mill-Qorti Ewropea xi snin ilu. ***Il-Forum Malta fl-Ewropa illum ikkonferma mal-Ministeru ta' l-Edukazzjoni, Żgħażaġh u Impjieg li Malta jidher li mhux ser tkun fost dawn it-23 pajjiż għall-fatt li l-Gvern Malti qatt ma rċieva xi forma ta' ċanfira mill-Kummissjoni Ewropea rigward l-implimentazzjoni ta' l-istess Direttiva.***

Is-saga dwar ir-riforma tad-Direttiva ilha sejra għal aktar minn sentejn. Fil-fatt din hija l-ħames Presidenza li kienet qed tipprova ssib qbil dwar ir-riformi meħtieġa li originaw wara li l-Qorti tal-Ġustizzja Ewropea, fil-każijiet SIMAP u Jaeger iddikjarat li l-ħin tax-xogħol għandu jinkludi dak il-ħin kollu li wieħed ikun imsejjaħ għax-xogħol inkluż il-ħin inattiv. F'Settembru 2004, il-Kummissjoni Ewropea kienet ipproponiet diversi emendi għal din id-Direttiva sabiex tiġi kkontrollata aħjar il-possibiltà ta' l-*opt-out*, sabiex tiġi eskluża l-parti inattiva mill-kalkulazzjoni tal-ħin tax-xogħol, u sabiex l-istati membri jkunu jistgħu jestendu l-perjodu ta' referenza li fuqu tiġi kkalkulata l-medja ta' sigħat maħduma sa 12-il xahar. Fir-reazzjoni tiegħu iżda, l-Parlament Ewropew ma qabilx ma' dawn il-proposti u ssuġġerixxa li l-ħin inattiv għandu wkoll ikun inkluż fil-kalkulazzjoni tal-ħin tax-xogħol filwaqt li l-possibiltà ta' l-*opt-out* għandha tkun imneħħija għal kollox 36 xahar wara li d-Direttiva tidhol fis-seħħ. Jekk le, l-kuntratti tax-xogħol ma jistgħux ikunu itwal minn sitt xhur u ma jistgħux ikunu mġedda. Il-Kummissjoni Ewropea rreaġixxiet għall-proposti tal-Parlament u ssuġġeriet għal darb'oħra li l-parti inattiva m'għandiex tiġi inkluża fil-kalkulazzjoni tal-ħin tax-xogħol filwaqt li sejħet "inaċċettabbli" li titneħħa għal kollox il-klawżola għall-*opt-out*. Il-Kummissjoni Ewropea neħħiet ukoll il-possibiltà li l-istati membri jestedu l-perjodu ta' referenza għal 12-il xahar. Minkejja dawn il-proposti, xorta waħda qatt ma ntlahaq qbil bejn l-istati membri dwar l-emendi neċessarji u finalment daħlet il-Prezidenza Finlandiża sabiex possibilment tilhaq kompromess qabel l-iskadenza tal-Prezidenza tagħha, liema kompromess baqa' ma ntlahaqx.

Id-Direttiva teħtieġ li ġgib maġġoranza kkwalifikata fil-Kunsill sabiex issir liġi ta' l-Unjoni Ewropea.

[tmiem]