



Irish Congress Trade Unions
Statement to the Oireachtas Joint Committee on European Affairs on
their consideration of the Working Time Directive

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The Irish Congress of Trade Unions thanks the Joint Committee on European Affairs for the invitation to make a presentation on the Working Time Directive. Congress is the representative body for workers on the island of Ireland representing over 800,000 workers. The ICTU is an affiliate of the European Trade Union Confederation (ETUC) and we have been an active participant in the discussions and campaigns in respect of the Working Time Directive. Congress supports the position of the ETUC approved by the ETUC Executive Committee on 3rd June 2010 and we attach a copy.

1. **From the perspective of Congress the main goal of the Directive is, and must remain, the protection of workers against the health and safety risks of long and irregular working hours.** Our key message is that the Charter of Fundamental Rights is now legally binding and it requires a limitation of working hours it also requires that workers and their unions are given the tools to negotiate better working times and schedules. The basic rules and principles of the Working Time Directive are as relevant as ever. But there are some problems that require the Directive to be strengthened and the legislation in Ireland to be amended to enforce European Court of Justice decisions and to respond to recent negative developments.

- 2. Employers are responding to the recession by putting pressure on their employees to work longer hours for their week's wage.** This is particularly the case where salaries are based on commission, instead of the employer resetting sales targets to more realistic and achievable levels, the pressure is instead put onto workers to work for longer hours, many of which are not recorded as they are considered to be employees 'who control their own hours'. Excessive and unpaid hours are not limited to the private sector; it is also a feature of some parts of the public sector in particular the health sector. The economic crisis is giving a particular edge to the debate on working time, with unemployment on the increase the logical thing to do is to promote solutions which keep as many workers as possible in employment, rather than putting pressure on some workers to work longer hours. Although the Working Time Directive is a Health and Safety Directive and only deals with the organisation of working time rather than with how it is paid, the reality is that when workers are not paid enough to be able to earn decent wage from a normal working week they will be under pressure to work long hours.
- 3. We are concerned about the growth of excessively flexible, unpredictable and precarious working time arrangements, where employees do not know from one week to the next what hours they will be working.** This is part of a casualisation of employment by employers, especially large profitable retailers, through the endless subdivision of jobs into hourly paid units which fail to afford workers the opportunity to earn a decent living wage. Employers not only demand excessive flexibility from their workforce they also treat unsocial working hours (shift work, night and weekend work) as if it was nine to five they want to pay the same flat rate no matter what day or what time the person is working at. All of which can lead to increased stress and illnesses, directly related to lack of control over one's work and life because the worker is trying to earn a living wage . These must be addressed in any review of the Working Time legislation.
- 4. From the ICTU point of view, access to full-time employment specifically and some control over working time should be a legislative entitlement for employee** we are seeking legislation to place a legal duty on employers to (i) provide reasonable notice of working arrangements (ii) seriously consider requests for an alteration of working time from employees; and (iii) to provide that employers can only refuse such requests for certain limited objective reasons;(iv) to provide an obligation on employers to provide timely information on the availability of part-time and full-time positions in the establishment in order to facilitate transfers from full-time to part-time or vice versa. These legal requirements are necessary to rebalance the ability of workers and their unions to negotiate with employers.

5. **We are increasingly concerned that EU rules and the decisions of the European Court of Justice are ignored where the outcome is favorable to workers.** It is worth pointing out here that with the entry into force of the Lisbon Treaty the Charter of Fundamental Rights has become legally binding. Article 31 of the Charter provides that '*every worker has the right to working conditions that respect his or her health, safety and dignity*'... '*that every worker has the right to limitation of maximum working hours, to daily and weekly rest and to an annual period of paid leave*'. The 'individual opt out' is clearly incompatible with Article 31 of the Charter of Fundamental Rights. Its use in other EU member states and in Northern Ireland must be stopped not promoted on grounds of 'competitiveness'. Workers safety and health at work cannot be subordinated to purely economic or financial considerations. It is worth recalling that in circumstances where employers have needed specific arrangements these have been successfully and fairly negotiated by workers collectively and with the oversight of the Labour Court.
6. **Two specific examples where rulings of the ECJ on working time, favorable to workers, are being ignored,** in *Jaeger* the ECJ found that on-call work in the workplace is not rest time and compensatory rest must follow on-call duties. Likewise in March 2009 the ECJ in *Stringer/Schultz-Hoff* held (among other things) that the European Working Time Directive requires that employees on long-term sick leave should continue to accrue annual leave while on that sick leave. Disappointingly the Minister for Enterprise, Trade and Innovation has made no move to amend the Organisation of Working Time Act and as a consequence is denying workers in Ireland the benefits enjoyed by their EU colleagues. The advice from IBEC to its members to ignore the ruling is equally disappointing

'IBEC's legal advice is that employers in the private sector cannot be obliged to apply the ECJ decision at this time. It appears that the Oireachtas will have to change the Irish law to bring it into line with the ECJ ruling. Until that time, private sector employers are entitled to continue to apply the Irish law. It may be that claimants in Irish courts will try to apply the ECJ decision directly, even in the absence of a change in the Irish legislation. IBEC will oppose any such claims.

Public sector employers may be in a different category. If the state failed to properly implement the European Directive, then questions may arise as to whether employees of the state or the various state bodies may have a right to claim directly in respect of these entitlements. However, this remains to be established through the courts.

IBEC members who receive claims on foot of the ECJ decision should contact their IBEC executive as a matter of urgency. (Sourced Monday 19th July 2010 at http://newsweaver.co.uk/ibec/e_article001346959.cfm?x=bdSvm6K,bbv0PqT4,w)

- 7. We are concerned that employers are lobbying to have their obligation to maintain working time records removed.** It is difficult to overstate the negative consequences of this from a health and safety perspective and from the point of view of workers seeking their entitlement to minimum wage the availability of records of what hours were worked is essential.

Ends
20th July 2010
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