

Policy Department
Economic and Scientific Policy

**IMPACT ASSESSMENT
OF CERTAIN ASPECTS OF THE
WORKING TIME DIRECTIVE**

(IP/A/EMPL/FWC/105/LOT2/C1/SC1)

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Authors: Terence Hogarth
Simonas Vileikis
Ramboll Management
Norregade 7A
DK-1165 Copenhagen K

With Contributions from: Claus Adamsen
Karin Attström
Derek Bosworth

Administrator: Christa Kammerhofer-Schlegel
Policy Department Economy and Science
DG Internal Policies
European Parliament
B-1047 Brussels
E-mail: christa.kammerhofer@europarl.europa.eu

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E-mail: poldep-esc@europarl.europa.eu

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EXECUTIVE SUMMARY

Introduction

A primary purpose of the Working Time Directive (WTD) is to safeguard worker's health and safety across the EU. The current WTD sets a maximum weekly limit of 48 hours averaged out over four months, but there are derogations relating to specific occupations and industrial sectors, and there is the possibility of extending the reference period to six months or one year if certain conditions are met, or through collective bargaining. In addition, individual employees can Opt-Out from the regulations in some Member States (notably the UK).

Ten years after the adoption of the initial Directive concerning the organisation of working time (Directive 93/104/EC), it was deemed necessary to take into consideration new realities and demands from both employers and workers and provide the resources to meet the European Union's growth and employment objective, and also taking into account the interpretation of certain provisions of the Directive by the European Court of Justice, in particular of the rulings in the SIMAP¹ and Jaeger² regarding on-call duty. To this end, the European Commission submitted a proposal for a directive amending Directive 2003/88/EC concerning certain aspects of the organisation of working time in September 2004. In May 2005, the European Parliament as co-legislator on the proposition amending Directive 2003/88 adopted its first reading modifying the Commission's proposal. The European Parliament proposed to increase the reference period from the current four months to twelve months (annualisation of the reference period) and to phase out the current Opt-Out option which is applied in certain member states.

The European Parliament considered that the amendment would contribute to flexibility and improve the balance between the aims of the Directive, i.e. the protection of workers' health, and the requirement for more flexible work organisation.

The Commission proposal is still subject to a first reading debate in the Council. Currently there is a stalemate due to a polarisation among Member States regarding certain aspects of the WTD, such as phasing out of Opt-Out, reference periods and derogations relating to on-call duty.

The objective of this study is to undertake an impact assessment of certain aspects of the Working Time Directive, specifically regarding the annualisation of the reference period in the WTD.

More specifically the study has four aims:

- i. to assess the likely impact of extending the reference period to 12 months;
- ii. to examine annual hours in the Member States;
- iii. to look at the administrative burden related to the annualisation of working time and use of the Opt-Out;
- iv. to identify how the WTD might be simplified given the EU's agenda to make legislation simpler and more readable.

¹ ECJ C-303/98 Judgment of 03/10/2000, Simap (Rec.2000,p.I-7963).

² EJC C-151/02 Judgment of 09/09/2003, Jaeger (Rec.2003,p.I-8389).

Extending the reference period

Annualised hours contracts are based on a reference period of one year such that the employee has a given number of hours to work over the year rather than being given a weekly total.

The WTD already provides provision for the reference period to be extended to 12 months as specified in Articles 16 and 19. There is evidence from a number of Member States that the annual reference period is being adopted, though in most cases it is on a relatively modest scale. Currently around 6 per cent of those in employment have an annualised hours contract of employment in the EU. Such contracts are relatively common in countries such as Sweden, Portugal, and Austria, but there are a number of countries where its take up is negligible.

By introducing a single reference period of 12 months for calculating average hours over a seven-day period, the opportunity for annualised hours contracts and other forms of flexible working models that use a reference period in excess of four months will be facilitated. The analysis has shown that introducing changes to the reference period in Article 16 would simplify the legislation, but it might provide limited security for employees, whereas introducing changes in Article 19 would leave room for such provisions.

The evidence to date suggests that annualised hours – or a twelve month reference period – is found in workplaces where there is an uneven, but to some degree predictable demand for hours over the year. If demand dips, annualised hours potentially allows hours to be adjusted without laying-off employees, at least in the short-term. Similarly, if demand increases, this can be met without resorting to overtime work or recruitment of new staff – both of which are costly. As a consequence, annualised hours may dampen the demand for recruitment and improve retention, and potentially also decrease the number of atypical employments.

Use of the Opt-Out

There are no EU-wide data on the total number employees who have signed an Opt-Out from the WTD. In the UK, where use has been made of the Opt-Out, it is estimated that around 1.7 million workers might be affected by its abolition.

The evidence on the Opt-Out suggests that many employers use it as a precautionary tool: they obtain the Opt-Out just in case long working hours might be required. For many employers, whose employees have signed an Opt-Out, the impact of the Opt-Out upon their day-to-day business needs to be considered with regard to the fact that they do not often call upon their staff to work long hours.

The importance of the Opt-Out has changed following the SiMAP and Jaeger cases that established on-call time as working time for purposes of the WTD. This has had a major impact upon the health sector where large numbers of doctors are on-call – but there could be implications for other industries with on call duty too, following these judgements.

Various proposals of Presidencies of the European Councils tried to achieve an agreement upon the pending proposal by suggesting the possibility of capping the number of hours that may be worked in a seven-day period when the option not to apply Article 6 (so-called Opt-Out) is applied. Other things being equal, it is not clear that the introduction of caps – notably at the higher levels - within the Opt-Out will result in much change since there is relatively little demand for very long hours.

Annual hours

Looking at working time on an annual basis has many merits because it removes fluctuations in weekly working hours that may occur over the year. Available estimates reveal substantial differences between Member States. People in Hungary, for example, work the equivalent of eight weeks more a year than their counterparts in France. Comparison, however, with data on weekly working time between the countries, reveal that fluctuations are often due to national differences in leave entitlement, such as bank holidays and vacation leave.

There is little evidence available on annual hours with few National Statistical Offices producing estimates. This would most likely need to change if a 12-month reference period was to be introduced.

Establishment of a generally applicable reference period of 12 months for calculating average hours in a seven-day period will require amendment to Articles 16 and 19 of the WTD.

Administrative burdens

Evidence was collected from employer associations about the administrative burden attached to the WTD.

The evidence suggests that the administrative burdens of record keeping in relation to working time and annualised hours generally are not considered cumbersome for employers because of the necessity to record working time typically for payroll purposes.

Where the marginal administrative burden is large this tends to affect small enterprises where record keeping is modest, but this was not seen as a major obstacle in the interviews undertaken.

Simplifying existing legislation

The current WTD has a complicated and multi-layered system of exceptions and derogations:

- Article 16 allows the application of reference periods that are longer than the basic measuring periods in Articles 5 to 8; Article 16 is in itself a collection of derogations. In this context, Articles 17 to 19 (allowing derogations from Article 16 and certain other Articles) may partly be viewed as a second level of derogation;
- derogations from Article 16 by law (Article 17) and by collective agreements (Article 18) are considered separately, and the requirements differ significantly;
- the maximum reference periods for maximum weekly working time (Article 19) are different for derogations made by law or collective agreements.

Whilst establishing a uniform single reference period will simplify the system of derogations regarding reference periods, it is, in general, exceedingly difficult to identify how the Directive might be made less complex without altering the current balance of interests between employers and workers.

Recommendations

- Introducing a single reference period will make the WTD more readily understandable.
- Establishing a reference period of 12 months is likely to facilitate the take up of annualised hours contracts and other forms of flexible working time arrangements.

- There are considerable merits in looking at hours of work on an annual basis to take account of fluctuations in working time over the year, thereby increasing flexibility both on behalf of employers and employees.
- It is assumed that annual hours could increase job security by enabling employers to retain employees during quiet periods instead of laying them off.
- Increasing job security might have implications for the use of atypical employment contracts. For example, there may be less need to use temporary labour to meet fluctuations in demand because annualised hours allows this to be met to a greater extent by existing employees.
- At the present time very few National Statistical Offices produce robust estimates of annual hours. If there is a reference period of 12 months then robust estimates of annual hours will be needed to monitor working time with respect to the WTD.
- It is not clear what effect the introduction of caps in the Opt-Out will achieve. The evidence suggests that relatively few people work in excess of 48 hours a week and very few in excess of 68 hours.

Having said that the use of caps at least imposes some control over the working hours of those who have signed the Opt-Out if the Opt-Out is to be retained.

1. INTRODUCTION

1.1 The Evolution of Working Time

Since the establishment of industrial society, long working hours and efforts to reduce working hours have been a central and recurring theme³. Historically, working time has been regulated in many countries principally through collective and workplace agreement (local agreement between employers and employees) or has been partially and indirectly regulated through, for instance, health and safety measures. But with the introduction of the Working Time Directive (WTD) in 1993⁴ a common statutory limit was introduced for the first time regarding the length of the working week across the EU, thereby aiming to ensure workers' health and safety.

The long-term trend in weekly or annual working hours has been one of decline. Analysis of trends in working time between 1870 and 1990 shows that annual average working hours per employee fell in most industrialised countries from about 3,000 hours a year to less than 1,700 hours⁵. More recently the trend in working hours has slowed down and may even have stopped in many Member States. But within the downward trend, as this report will demonstrate, there are sectors – defined with reference to either occupation or industrial sector – where working relatively long hours is the norm. The reasons for this are multifarious relating to socio-cultural norms and the intensification of competition in most economies, amongst others.

The policy interest in working time – especially long hours – has been at different points driven by a number of factors:

- the health and safety of the individual employee;
- the relationship between shorter working hours and efficiency;
- an equitable distribution of available work (i.e. if some people worked fewer hours this may create jobs for others);
- work-life balance.

Currently, policy is aimed at tackling most, if not all of these factors simultaneously through development of flexible working practices that aim to meet both the needs of the employer and the employee. Flexible working time arrangements provide one means of achieving this goal. The European Commission proposed to amend the Working Time Directive (2003/88/EC)⁶, in order to reflect the new realities of the labour market, allowing greater scope for the flexible organisation of working time, whilst at the same time maintaining the protection of workers' health and safety, and by taking into account the interpretation of certain provisions of the Directive by the European Court of Justice, in particular of the rulings in the SIMAP⁷ and Jaeger⁸.

1.2 The Working Time Directive and its proposed amendment

Currently the Working Time Directive (WTD) establishes a maximum average working time of 48 hours over a seven-day period (Art. 6) to be calculated over a reference period of not more than four months (Art. 16).

³ Hogarth, T. *et al.*, *The Business Context to Long Hours Working*, Department for Trade and Industry, London, 2003
Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time

⁵ Maddison, A. *L'économie mondiale: une perspective millénaire*, OECD, Paris, 2001

⁶ COM(2004) 607 final

⁷ ECJ C-303/98 Judgment of 03/10/2000, Simap (Rec.2000,p.I-7963).

⁸ EJC C-151/02 Judgment of 09/09/2003, Jaeger (Rec.2003,p.I-8389).

A number of derogations from Articles 6 and 16 are specified in Article 17, the most important of which - in relation to the objectives of this study - are exemptions granted to:

- managers / those with autonomous decision making powers, family workers, workers officiating in religious ceremonies;
- employees whose health and safety would be at risk if the articles were to apply;
- employees in certain sectors and occupations - such as some workers in transport, security, health, and tourism (with regard to Article 16 only);
- doctors in training (with regard to Article 16).

Article 18 allows derogation from Articles 3, 4, 5, 8 and 16 by collective agreement or by both sides of industry where there is no statutory system of collective agreements.

Article 19 establishes that the derogations granted to the employees listed in certain sectors and occupations in Article 17 and those in Article 18 may not establish a reference period in excess of six months. But for reasons of health and safety a reference period not exceeding 12 months may be established through collective agreement or agreement by the two sides of industry.

Finally, Article 22 allows employers to require their employees to work in excess of 48 hours in seven day period, calculated over the reference period of four months, if they have obtained the employee's permission to do so – the so-called 'Opt-Out'.

The European Parliament has suggested to amend⁹ Article 19 allowing derogation from Article 16 to extend the reference period up to a maximum of 12 months under certain conditions. The EP proposed a phasing out of the Opt-Out within three years after the entry into force of the Directive.

Various proposals of Presidencies of the European Councils tried to achieve an agreement upon the pending proposal by suggesting the possibility of capping the number of hours that may be worked in a seven day period when the option not to apply Article 6 (so-called Opt-Out) is applied.

⁹ European Parliament legislative resolution P6-TA(2005)0175 on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time

1.3 The current study

Against this background, this report provides an impact assessment of certain aspects of the Working Time Directive (WTD), undertaken by Ramboll Management for the European Parliament's Committee on Employment and Social Affairs. The assignment concerns a detailed analysis of specific aspects related to the WTD, such as an extension of the reference period, increase in weekly caps, and the use of Opt-Outs under the current WTD.

The study has four aims:

- i. to assess the likely impact of extending the reference period to 12 months;
- ii. to examine annual hours in the Member States;
- iii. to look at the administrative burden related to the annualisation of working time and use of the Opt-Out;
- iv. to identify how the WTD might be simplified given the EU's agenda to make legislation simpler and more readable.

The next four sections of the report consider (i) to (iv) in turn followed by a conclusion that summarises the evidence.

2. IMPACT OF EXTENSION OF THE REFERENCE PERIOD

2.1 Aims and objectives

The aim of this chapter is to provide, so far as existing data allow, the following:

- a. an analysis of the impact on weekly and annual working time when the extension of the reference period to 12 months is laid down as a rule in Article 16 or as a limitation to derogations in Article 19 of the WTD¹⁰;
- b. an examination of the flexibility offered by the existing legal situation in Article 16 'reference period', i.e. a reference period of four months, and its extension up to 12 months;
- c. an examination of the flexibility offered by the extension of the reference period up to 12 months in Article 19 'limitations to derogations';
- d. an analysis of the use of the Opt-Out without a cap and with a cap of 68, 65, 60 or 55 hours per week calculated with a reference period of three to four months.

2.2 Extension of the reference period to 12 months

The first issue to address is what would happen if a 12-month reference period was laid down as a rule in Article 16 or as a limitation to derogations in Article 19. In effect, this would allow employers to establish a reference period of one year for calculating average working time in a seven day period (subject to derogations by law or collective agreement).

One means of addressing this question is by looking at the incidence of annualised hours contracts – that is where employers have, subject to Article 19 of the WTD, established a reference period of 12 months for calculating working time in a seven-day period. Annualised hours contracts, for example, may require people to work long hours during some weeks or months of the year and then to be compensated by lower working hours at other times. The example below indicates how annualised hours contracts operate in practice (see panel). box too small go to next page

Case study: Manufacturing Plant

The plant produced tumble dryers for domestic and export markets. The main problem it faced was the cyclical demand for its goods: demand was high during cold, wet months and low during those months when clothes could be dried outside. The cost of storing the dryers was considered to be prohibitively expensive, and it was difficult to recruit reliable temporary staff to cover the period when demand was at a peak. Accordingly the site had shifted to annualised hours. Employees were paid for a standard 37-hour week all year round but worked shorter or longer hours depending upon the time of year. It was reported that initially employees tended to dislike the additional hours worked – typically around 41 hours a week – but soon forgot about this when a four-day week arrived.

Operating the annualised hours system was not without its problems. Demand for tumble dryers tended to fluctuate, in part because of the weather and in part because of economic factors, such that the hours specified in any one week were subject to change. In order to retain flexibility in meeting fluctuations in demand, the company had an agreement with the unions whereby a minimum of 14 days notice would be given for changing hours. Although labour turnover was low, if people left at a certain time of year they had to pay back some of their wages since the company paid in excess of the work undertaken at the beginning of the annualised hours year.

Notwithstanding these problems, HR and production managers thought that the annualised hours system had delivered both the output required and had helped stabilise the numbers employed at the site.

Source: Hogarth et al., 2003, p.64

¹⁰ Directive 2003/88/EC

Research – such as the example cited above - shows that annualised hours contracts are increasingly used by employers to manage fluctuations in the demand for labour to avoid payment of overtime. This is particularly important where the Labour Code¹¹, and / or collective agreements reward overtime hours at relatively high pay rates.

The ILO¹² and the European Foundation¹³ have summarised, separately, a number of costs and benefits for the employer and the employee from the introduction of annualised hours (see Table 2.1). If a balance can be reached between the needs of employers and employees, then annualised hours offer both parties significant advantages over schemes with a shorter reference period (e.g. based over a week).

Table 2.1 Cost and Benefits to Employers and Employees resulting from the Introduction of Annualised hours

	Benefits	Costs
Employers	Increased competitiveness / efficiency Reduced labour costs Better match between labour demand and supply	Less control over weekly working time Complicated to administer Difficult to accommodate short-term changes
Employees	Stable income Reductions in working time (e.g. removal of overtime) Increased job security	Irregular hours Pay can be reduced due to loss of overtime Loss of control over weekly working hours

Source: Adapted from EIRO, 2003; ILO May 2004

The European Foundation's Establishment Survey on Working Time and Work–Life Balance 2004–2005 estimates that 13 per cent of workplaces in EU-21¹⁴ operate with annualised hours contracts¹⁵. In 2001, a survey in Germany found that 40 per cent of employees had a working time account and 28 per cent had an annual account¹⁶. In the UK, it is estimated that around 800,000 employees (around 5 per cent of the workforce) have an annual hours contract. In the UK, it is particularly common in the education sector where about 12 per cent of the workforce have this type of contract.

Data about the use of annualised hours contracts is also provided by the European Labour Force Survey (ELFS), but only for 2004 with data provided by 20 Member States¹⁷. Figure 2.1 provides information about the proportion of people who report that they have an annualised hours contract. Overall, 6 per cent of those in employment report that they have an annualised working hours contract, but there is variation by Member State, from around a quarter of those in employment in Sweden to negligible percentages in other countries.

¹¹ For example as in Poland

¹² ILO, Annualized Hours (hours averaging) Schemes, Information Sheet WT-12, May 2004

¹³ EIRO, 2003 www.eurofound.europa.eu/info/2003/08/study/tn0308101s.html

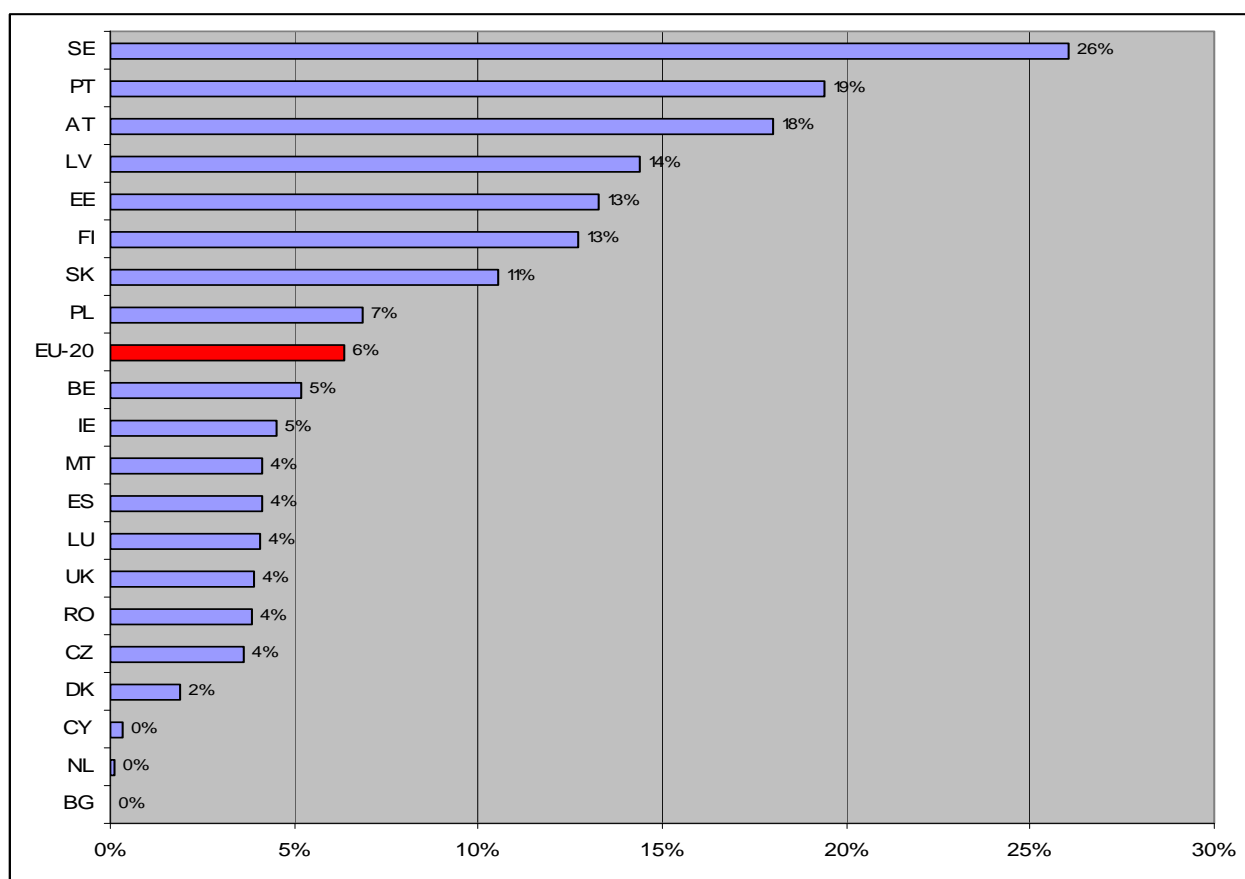
¹⁴ DE BE DK SE FI NL AT PL FR SI LU ES LV IE CZ HU PT GR UK CY IT

¹⁵ EIRO, 2006a

¹⁶ EIRO, 2003

¹⁷ Questions about annualised hours and flexible working hours were asked in a special module included in the ELFS 2004

Figure 2.1 Incidence of Annualised working hours Contracts in Member States, 2004



Source: ELFS 2004 Base: All in employment

A further question relates to who works annualised hours. Using the International Classification of Occupations (ISCO) it is possible to look at annualised hours according to job type (see Figure A.1 in Annex A). The evidence shows relatively little variation by occupation.

A further dimension to address is the industrial sector (see Figure A.2 in Annex A). There is a little more variation compared to occupation. Education is the industrial sector with the highest percentage of employees working to an annualised hours contract.

Evidence suggests that the incidence of annualised hours contracts has been an important means to both increase organisational efficiency and afford employees improved work-life balance¹⁸.

2.3 Flexibility provided by the current legislation

Member States tend not to have legislation that deals with annualised hours contracts explicitly but have regulatory frameworks that permit an annual reference period. Often it is collective agreements that allow for the annualisation of hours. The details of specific schemes are usually agreed at company level. There is evidence that opening clauses in national or sectoral agreements allow for working time changes to be agreed at a company level – for example in Germany¹⁹.

¹⁸ EIRO, 2003

¹⁹ The EIRO (2003) study of annualised hours reports that the maximum reference period in Germany is 4 months whereas it is 12 months in most Member States.

On the basis of this evidence, the existing provisions of the WTD have allowed, in practice, the possibility of establishing an annual reference period.

But to return to Figure 2.1 the take up of annualised hours varies substantially between Member States. Whilst some Member States have established annualised hours contracts within the existing provisions of the WTD others have not done so. There are likely to be a number of explanations for this:

- the degree of demand from employers for a 12-month reference period;
- the transposition of the WTD into national regulations and the relative ease with which national regulation allows for agreement to be reached to establish a 12-month reference period;
- socio-cultural norms that affect the organisation of working time.

2.4 The Opt-Out and possible caps

The Opt-Out

At an EU-level there is relatively little information on the use of the Opt-Out. Whilst it is clear that employers need to keep a list of employees who have signed it, there appears to be no central registry or count of people at a national level.

Relatively good information is available for the UK, the country that has made most use of the Opt-Out. A representative survey of employers conducted in 2002/2003 produced the following estimates (see Table 2.2)²⁰. Just under four million employees were estimated to have signed the Opt-Out, but other estimates suggest a lower figure of around 1.7 million people had signed the Opt-Out²¹. The UK Government estimates that around two thirds of those who have signed the Opt-Out face pay cuts if the Opt-Out were to be removed.

The survey went on to show that the Opt-Out was often signed not because hours in excess of 48 hours a week were worked, but because the employer wanted the flexibility to do so should the need to arise. In this sense the Opt-Out was a precautionary measure. The same survey also revealed that few employers had sought to extend the reference period to either 26 week (0.5 per cent) or 52 weeks (1.5 per cent).

²⁰ Hogarth, T. *et al.*, The Business Context to Long Hours Working, EMAR Research Report, DTI, London, 2003

²¹ www.dti.gov.uk/er/work_time_regs/com_response.doc December 2003; CIPD, Working Time Regulations: Calling Time on Working Time?, CIPD Survey Report, May 2004

Table 2.2: Estimated number of employees signing the Opt-Out in the UK

			absolutes/per cent	
	Total	Total	% signed	
	Employment	Signed	Opt-Out	Valid cases
Establishments with sustained long working hours (some employees working consistently longer than 48 hours a week)	3,832,634	1,207,587	32	158
Establishments with no sustained long working hours	16,644,415	2,670,592	16	763
Establishments with long working hours (some staff working more than 48 hours a week but not necessarily sustained)	12,537,321	3,216,600	26	599
Establishments with no long working hours (no staff working more than 48 hours a week whether or not sustained)	7,939,728	661,579	8	366
All establishments	20,477,049	3,878,179	19	
Base: Employment weighted				

Source: *Business Context to Long working hours Survey (IER/IFF): Hogarth et al., 2003, p.93*

The demand to retain the Opt-Out has been made with respect to the health sector in relation to the SiMAP²² and Jaeger²³ judgements by the ECJ. Both SiMAP and Jaeger cases were brought to court by doctors on call. One estimate for the UK suggests that it would result in an extra 170,000 doctors being required by the National Health Service, mainly because hospitals in the UK are reliant upon doctors in training to deliver services²⁴. In Malta, a Task Force set up within the Health Ministry following the ECJ's rulings estimated that the removal of the Opt-Out would necessitate a 100 per cent increase in the complement of Senior Registrars and a 30 per cent increase in training grades. The situation has been complicated further by a reduction in the working hours of doctors in training stipulated in the WTD such that by 2009 doctors in training must meet the 48-hour weekly average. The implications of the SiMAP and Jaeger rulings spread beyond the health sector to any sector of the economy where on call duties are common.

Introducing possible caps in the Opt-Out

What would happen if caps were introduced into the Opt-Out such that people could opt-out of the 48-hour maximum weekly working time, but would be subject to a higher cap?

²² EJC C-303/98

²³ EJC C-151/02

²⁴ Department of Trade and Industry, *Communication from the Commission Concerning the Re-Examination of Directive 93/104/EC Concerning Certain Aspects of the Organisation of Working time: Response of the United Kingdom*, 2004 <http://www.dti.gov.uk/files/file14170.doc>

Employers tend to dislike the introduction of a cap because it runs counter to the reason for having an Opt-Out: to provide flexibility²⁵. The evidence suggests that little change would be made to existing hours because the Opt-Out is used as a precautionary measure rather than a means to increase weekly working hours. But this might be a too simple interpretation. There are sectors of the EU economy where working long hours is relatively common: establishing an Opt-Out with new upper limits at 55, 60, 65 or 68 hours respectively might encourage longer working hours in these sectors should Member States decide to make greater use of the Opt-Out.

Table 2.3 shows the percentage of the workforce in each Member State who work hours in excess of the current maximum weekly working time of 48 hours a week, and in excess of the proposed caps of 55, 60, 65 and 68 hours a week. Overall, the data reveal that around 12 per cent of those in employment are known to be working in excess of 48 hours a week, with relatively few working in excess of 68 hours a week (just under 2 per cent in the EU as a whole).

Table 2.3 reveals a considerable amount of variation:

- working long hours – more than 48 hours a week – is relatively common in Austria, the Czech Republic, Greece, Poland, and the UK;
- in contrast several countries that recently acceded to the EU (Latvia, Bulgaria, Hungary) along with Luxembourg, the Netherlands and Sweden report relatively low incidences of people working long hours;
- working very long hours – in excess of 60 hours a week – is relatively more common in Austria and Greece.

A further question is who works in excess of 48-hours a week currently and in what occupations and industrial sectors are they located? The analysis begins by looking at occupation – as defined by the International Standard Classification of Occupations. Figure A.3 in Annex A shows the percentage in each occupation working different levels of weekly hours.

²⁵ <http://www.dti.gov.uk/files/file11787.doc>

Table 2.3: Usual weekly working hours: percentage of those in employment working longer than possible caps

Usual weekly hours	Member State													
	AT	BE	BG	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HU	IE
Up to 48	81.5	79.5	85.5	85.4	82.9	90.0	89.7	92.9	82.4	90.5	84.8	80.5	85.1	80.6
49-55	8.2	4.3	3.1	5.6	10.0	5.0	5.4	3.4	8.0	4.5	6.9	6.2	3.4	4.3
56-60	4.2	2.0	1.8	4.8	3.9	3.2	1.9	2.8	3.0	1.9	3.2	8.0	1.9	2.3
61-65	0.9	0.4	0.1	0.3	0.3	0.4	0.5	0.1	0.3	0.4	0.5	0.3	0.1	0.2
66-68	0.1	0.1	0.1	0.1	0.0	0.1	0.0	0.0	0.1	0.1	0.1	0.1	0.0	0.0
More than 68	3.1	2.1	0.5	3.0	2.5	1.4	1.4	0.8	1.8	1.7	2.8	4.6	0.6	1.7
Missing	2.0	11.5	9.0	0.8	0.3	0.0	1.1	0.0	4.4	0.8	1.6	0.3	8.9	10.9
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Base (000s)	3,726	4,187	2,972	337	4,699	35,707	2,693	591	18,760	2,403	24,261	4,301	3,869	1,891

Table 2.3 (continued): Usual weekly working hours: percentage of those in employment working longer than possible caps

	Member State													
	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	EU27
Up to 48	82.9	84.7	91.5	80.9	88.7	95.0	81.6	88.7	77.1	94.0	86.8	89.0	82.0	84.9
49-55	7.7	1.4	1.9	6.3	4.5	2.1	8.3	5.5	3.8	3.0	7.1	6.9	9.3	6.5
56-60	3.0	0.5	1.4	4.2	2.9	1.6	7.0	2.7	2.8	1.5	3.6	2.6	3.7	3.4
61-65	0.3	0.0	0.1	0.2	0.3	0.2	0.4	0.2	0.1	0.3	0.2	0.1	0.8	0.4
66-68	0.1	0.1	0.0	0.3	0.0	0.0	0.1	0.1	0.0	0.0	0.1	0.0	0.2	0.1
More than 68	1.5	0.2	0.8	1.8	1.2	1.1	2.6	2.0	0.3	1.0	2.2	0.9	1.5	1.8
Missing	4.6	13.2	4.4	6.4	2.5	0.0	0.0	0.9	15.9	0.2	0.0	0.6	2.5	3.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Base (000s)	22,293	1,455	193	998	147	8,005	13,683	4,806	8,818	4,280	924	2,189	27,495	205,683

Source: European Labour Force Survey, 2005

For the EU as a whole, senior officials and managers, professionals and skilled agricultural workers are most likely to work in excess of 48 hours a week. These occupational groups account for most long hours but are largely exempt from the regulations.

Thus far the analysis of occupation has been at a highly aggregated level. Table A.1 (in Annex A) shows the specific occupations with a relatively high incidence of people in each of the longer weekly hours categories²⁶. There are substantial differences across countries, with some revealing a larger range of occupations engaged in long working hours than others (i.e. Poland and the UK). There are a number of occupations that emerge across Member States; again many of these are currently exempt from the regulations. Listed below – Table 2.4 - are the occupations where relatively long hours are currently worked across Member States.

Table 2.4: Occupations in which people work relatively long hours

Occupation affected	Subject to derogations
<ul style="list-style-type: none"> • Legislators, senior officials and managers ○ Legislators and government officials ○ Directors and chief executives ○ Other specialist managers ○ Production and operations managers ○ Managers of small enterprises 	<ul style="list-style-type: none"> √ √ √ √ √
<ul style="list-style-type: none"> • Professionals ○ Legal professionals ○ Health professionals ○ Religious professionals 	<ul style="list-style-type: none"> √ √ √
<ul style="list-style-type: none"> • Technicians and associate professionals ○ Optical and electronic equipment operators ○ Ship and aircraft controllers and technicians 	<ul style="list-style-type: none"> √
<ul style="list-style-type: none"> • Skilled agricultural and fishery workers ○ Market gardeners and crop growers ○ Animal producers and related workers ○ Crop and animal producers ○ Forestry and related workers ○ Fishery workers, hunters, and trappers 	Many in this category are self-employed and would fall outside scope of the WTD
<ul style="list-style-type: none"> • Craft and related trades workers ○ Precision, handicraft, craft printing, and related trades ○ Food processing and related trades workers 	
<ul style="list-style-type: none"> • Plant and machinery operators and assemblers ○ Stationary plant and related operators ○ Motor vehicle drivers ○ Ships' deck crews and related workers 	
<ul style="list-style-type: none"> • Elementary occupations ○ Sales and service elementary occupations 	

Managers are a specific group reporting long working hours– although they are often responsible for deciding their own hours of work according to the WTD.

A further dimension to consider is the industrial sector. Figure A.4 in Annex A shows how the different categories of working hours are distributed by industrial sector. The data show that the percentage of people working over 48 hours in each industrial sector is modest outside the agriculture, fishing, hotels and restaurants, transport and real estate sectors.

²⁶ This is based on ISCO at a three-digit level. Because sample sizes are small the table should be seen as indicative.

In Annex A Table A.2 shows the industrial sectors where a relatively high incidence of long hours in each of the selected countries can be identified. Across countries there are sectors common to most:

- Agriculture, hunting, forestry, and fishing;
- Mining and quarrying activities;
- Land and water transport;
- Hotels and restaurants.

In general, northern European countries tend to report long working hours in agriculture and mining and quarrying, whereas southern European countries tend to report a larger more varied number of industrial sectors. Many of the newer Member States tend to report relatively few industries with long working hours. Again the evidence shows that where working long hours is relatively common, it is often in sectors where exemptions from the WTD apply.

A final issue relates to the effect of establishing a reference period for the caps that might be established in the Opt-Out. There is little evidence available about the introduction of caps except from consultations with employers in the UK. Where employers were resistant to the idea of caps some conceded that if they were introduced a reference period would help “iron out peaks in short-term long-hours working”²⁷.

2.5 Conclusions

An important element in achieving flexible working arrangements is the ability to adapt the supply of hours to its demand, whilst at the same time providing for workers’ health and security in employment. Annualised hours contracts, where hours of work are referenced over a 12-month period rather than, as is more usual, a week, can be one means of achieving this goal²⁸.

Establishing a reference period of 12 months can be made either through *Article 16 (b)* or in *Article 19*. The benefit of establishing a reference period in *Article 16* is that it produces a simplification of the regulation but would, other things being equal, provide little protection to workers.

If the example of annualised hours contracts is taken as an indication of what can occur when an annual reference period is established, Table 2.1 lists a number of potential disadvantages to workers alongside a number of advantages. Hence there is reason to ensure that the position of workers is protected if an annual reference period should be established. *Article 19* potentially provides more protection if the reference period to be determined through collective agreement or both sides of industry is extended to 12 months.

There are some wider labour market considerations in relation to establishing a 12-month reference period.

If both sides of industry are persuaded to move over to annualised hours it will have implications on how changes in the demand for labour are met.

²⁷ Department of Trade and Industry, *Working Time – Widening the Debate Summary of Responses to a preliminary consultation on long working hours in the UK and the application and operation of the working time opt-out*, December 2004 <http://www.dti.gov.uk/files/file11787.doc>

²⁸ EIRO, 2003 www.eurofound.europa.eu/info/2003/08/study/tm0308101s.html

The evidence to date suggests that annualised hours – or a twelve month reference period – is found in workplaces where there is an uneven, but to some degree predictable demand for hours over the year. If the demand dips, annualised hours potentially allow employers to adjust working hours without laying-off employees, at least in the short-term. Similarly, an increased demand can be met without resorting to overtime work or recruitment of new staff – both of which are costly. As a consequence, annualised hours may dampen the demand for recruitment and improve retention and potentially also decrease the number of atypical employments.

Employers sometimes use temporary labour to meet fluctuations in demand. The use of annualised hours removes, at least in part, the necessity for this because averaging weekly hours over a reference period of a year allows greater flexibility in matching the existing supply of hours to the demand for these hours in the workplace.

While this may run counter to the establishment of a more flexible labour market in some countries, in the sense of reducing the focus on the ease of hiring and firing, it will, other things being equal, reduce employers' labour costs and increase employee job security.

With respect to the Opt-Out the evidence demonstrates that the Opt-Out is often used as a precautionary measure rather than a means to introduce working hours in excess of 48 hours a week. The implications of establishing a cap on weekly hours when the Opt-Out is used suggests on the basis of this evidence that relatively few people would be affected since the demand for very long weekly working hours is modest and many of those who work them – but not all - are exempt from the WTD. It needs to be borne in mind that weekly working hours of 68 for example, will result in an extremely long working week when rest periods are factored in, and the ILO suggests that there are health and safety risks from working very long hours²⁹.

²⁹ ILO. Working Time and Health, Information Sheet WT-1, May 2004

3. ANNUAL WORKING HOURS

3.1 Comparison of annual working hours

Usual weekly hours give a partial picture of the duration of working time for the individual. Leave, holidays and flexibility arrangements will affect the average total number of hours worked over a year. Data, however, on annual hours are quite limited; they are produced by few national statistical offices in the EU³⁰, so relatively little is known about annual durations. The OECD's *Employment Outlook* publishes the most comprehensive and statistically robust estimates (see Table 3.1).

Table 3.1 demonstrates two factors: (i) over time annual hours have been in decline across most countries; and (ii) the actual level of annual hours varies substantially between countries. Within the EU there is variation between Member States, with France for example, recording annual hours of 1546, compared to 2053 in Greece – a difference of 507 hours or around 12½ weeks based on a 40-hour working week.

By combining data on usual working hours found stipulated in collective agreements with data on leave arrangements, the European Foundation has provided indicative evidence of the duration of annual hours in each Member State (see Table 3.2). The evidence reveals a divide between recent entrants from East European Member States where the longest hours are worked over a year and the rest of the EU.

Much of the difference between Members States' annual hours derives from leave entitlement. As has been presented previously, the duration of usual weekly working hours reveals relatively modest variation between Member States³¹, annual leave entitlements vary much more with a resulting impact upon annual hours. In Hungary, for instance, the country where the highest numbers of hours are worked in a year, leave entitlement is around 208 hours compared to the EU-27 average of 257 hours.

By dividing annual hours by 52 an indication is provided of notional weekly working time, i.e. the hours an individual would have worked in each week if leave entitlement was evenly spread across the year. This brings weekly working hours down to 34 in the EU-27.

Sectoral data are not available but some indicative estimates have been produced by taking the average usual weekly hours in selected sectors and combining these with the European Foundation's estimates of leave entitlement across all sectors (see Table 3.3). These estimates will under-estimate the number of hours worked because not everyone in the sector will have the full leave entitlement.

The shaded areas in Table 3.3 indicate where hours are in excess of the EU average for the given industry. These are a mix of Southern and Eastern Member States, plus the UK. There are sectoral differences too with construction and hotels and restaurants recording relatively long hours.

The European Parliament requested the consultants to explore the situation in six countries in more detail: Germany, Estonia, Malta, Poland, Slovakia and the UK. Estonia, Slovakia and Poland stand out with relatively high annual hours compared to the EU average. But there are sectoral effects within each industry.

³⁰Source: EIRO Working time developments – 2005
<http://www.eurofound.europa.eu/eiro/2006/08/update/tn0608101u.html#6>; see also Bosch and Lehndorff, 1995 for the statistical method for calculating annual hours.

³¹ The exception is France which records lowest annual hours stemming in large part from the Aubry Laws establishing a 35-hour week.

For example in the UK which records relatively high annual hours in manufacturing, construction and health / social care due to a combination of relatively high usual weekly hours and below average leave entitlements.

Across Europe, flexible working time arrangements, such as flexitime and annualised hours have been taken up; therefore the idea of usual working hours has little meaning for some groups of workers. By addressing working time durations on an annual basis not only allows flexible working time arrangements to be taken account of, but also differing levels of leave entitlement and a range of cyclical or seasonal effects.

The indicative data produced by the European Foundation³² suggest that annual hours are highest in Hungary (due to the lowest level of leave in the EU) where individuals are working the equivalent of nearly eight weeks more than their French counterparts (who have the lowest hours due to low weekly durations), and the equivalent of three weeks more compared to the European average. Simply addressing working time in relation to weekly working hours fails to capture these types of differences.

Table 3.1: Annual hours of work

	1970	1980	1990	2000	2001	2002	2003	2004	2005
AT				1632	1630	1632	1642	1650	1656
BE	1865	1690	1601	1545	1547	1548	1542	1522	1534
CZ				2092	2000	1980	1972	1986	2002
DK	1879	1646	1518	1554	1562	1556	1552	1540	1551
FI	1981	1849	1769	1750	1734	1728	1720	1724	1714
FR	2011	1842	1702	1591	1578	1536	1530	1555	1546
DE	1964	1746	1572	1473	1458	1445	1439	1441	1437
GR			2075	2080	2086	2087	2087	2060	2053
HU		2228	1975	2061	2019	2026	1997	1997	1994
IE	2141	1947	1911	1688	1679	1666	1646	1642	1638
IT	2181	1983	1934	1871	1866	1844	1820	1813	1801
LU			1724	1639	1622	1613	1592	1556	1557
NL	1868	1613	1456	1368	1368	1338	1354	1357	1367
PL				1988	1974	1979	1984	1983	1994
PO			1858	1691	1696	1697	1678	1694	1685
SK				1811	1799	1746	1697	1735	1739
ES	2040	1912	1741	1731	1727	1721	1706	1689	1669
SE	1730	1517	1561	1625	1603	1580	1562	1584	1587
UK	1939	1769	1767	1708	1711	1692	1673	1669	1672
MT								1784*	

Source: OECD <http://www.oecd.org/dataoecd/28/18/36396770.xls>,

Note: * Eurofoundation 2004

³² European Foundation for the Improvement of Living and Working Conditions, 2006c

Table 3.2: Average collectively agreed normal annual working time, 2005

Country	A. Weekly hours	B. Gross annual hours (Ax52)	C. Annual leave (days)	D. Public holidays (days)	E. All leave (C+D) expressed in hours	F. Annual hours (B-E)	Notional weekly hours (F/52)
<i>hu</i> Hungary	40	2,080	20.0*	6	208	1,872	36
<i>lv</i> Latvia	40	2,080	20.0*	9	232	1,848	36
<i>lt</i> Lithuania	40	2,080	20.0*	9	232	1,848	36
<i>ee</i> Estonia	40	2,080	20.0*	8	240	1,840	35
<i>si</i> Slovenia	40	2,080	20	10	240	1,840	35
<i>pl</i> Poland	40	2,080	20.0*	11	248	1,832	35
<i>ro</i> Romania	40	2,080	24	7	248	1,832	35
<i>bg</i> Bulgaria	40	2,080	22	10	256	1,824	35
<i>gr</i> Greece	40	2,080	23	10	264	1,816	35
New Member States (2004)	39.5	2,051	21	9.6	243.2	1,808	35
<i>ie</i> Ireland	39	2,028	20.0*	9	226.2	1,801	35
<i>mt</i> Malta	40	2,080	24.0*	12	288	1,792	34
<i>be</i> Belgium	38	1,976	20.0*	8	212.8	1,763	34
<i>sl</i> Slovakia	38.6	2,007	21.3	12	257.1	1,750	34
EU -27	38.6	2,006	23.8	9.6	257.6	1,748	34
<i>es</i> Spain	38.5	2,002	22.0*	11	254.1	1,747	34
<i>at</i> Austria	38.8	2,017	25	10	271.6	1,746	34
<i>cy</i> Cyprus	38	1,976	20.0*	11	235.6	1,740	33
<i>lu</i> Luxembourg	39	2,028	28	10	296.4	1,731	33
<i>cz</i> Czech Republic	38	1,976	25	8	250.8	1,725	33
<i>pt</i> Portugal	38.3	1,991	24.5	12	279.6	1,712	33
<i>uk</i> United Kingdom	37.2	1,934	24.6	8	242.5	1,691	33
<i>se</i> Sweden	38.8	2,017	33	9	325.9	1,691	33
<i>fi</i> Finland	37.5	1,950	25	10	262.5	1,687	32
<i>it</i> Italy	38	1,976	28	10	288.8	1,687	32
<i>nl</i> Netherlands	37	1,924	25.6	8	248.6	1,675	32
<i>de</i> Germany	37.7	1,960	30	9	294.1	1,666	32
<i>dk</i> Denmark	37	1,924	30	9	288.6	1,635	31
<i>fr</i> France	35	1,820	25	11	252	1,568	30

Source: EIRO Working time developments – 2005; Table 16

<http://www.eurofound.europa.eu/eiro/2006/08/update/m0608101u.html#6>; own calculations

Note: * Statutory annual leave figure

Table 3.3: Estimated annual hours in selected industries

	Estimated annual hours				Average weekly hours derived from annual hours (annual hours / 52)			
	Manufacturing	Construction	Hotels and restaurants	Health and social work	Manufacturing	Construction	Hotels and restaurants	Health and social work
EU-27	1854	1906	1973	1791	36	37	38	34
<i>be</i> Belgium	1841	1857	1893	1826	35	36	36	35
<i>bg</i> Bulgaria	1876	1959	1975	1824	36	38	38	35
<i>cz</i> Czech Republic	1851	1996	1970	1944	36	38	38	37
<i>dk</i> Denmark	1739	1729	1807	1687	33	33	35	32
<i>de</i> Germany	1744	1802	1874	1750	34	35	36	34
<i>ee</i> Estonia	1882	1928	1897	1861	36	37	36	36
<i>ie</i> Ireland	1843	1885	1838	1776	35	36	35	34
<i>gr</i> Greece	1915	1962	2107	1816	37	38	41	35
<i>es</i> Spain	1904	1940	2076	1769	37	37	40	34
<i>fr</i> France	1760	1771	1953	1755	34	34	38	34
<i>it</i> Italy	1833	1843	1952	1682	35	35	38	32
<i>cy</i> Cyprus	1891	1829	1974	1756	36	35	38	34
<i>lv</i> Latvia	1957	2066	1988	1973	38	40	38	38
<i>lt</i> Lithuania	1848	1874	1874	1780	36	36	36	34
<i>lu</i> Luxembourg	1804	1794	1825	1799	35	35	35	35
<i>hu</i> Hungary	1903	1955	1950	1898	37	38	38	37
<i>mt</i> Malta	1839	1839	1875	1854	35	35	36	36
<i>nl</i> Netherlands	1774	1805	1774	1686	34	35	34	32
<i>at</i> Austria	1886	1886	2011	1954	36	36	39	38
<i>pl</i> Poland	1962	2118	2014	1868	38	41	39	36
<i>pt</i> Portugal	1832	1868	1993	1712	35	36	38	33
<i>ro</i> Romania	1905	2004	2030	1894	37	39	39	36
<i>si</i> Slovenia	1902	2048	1949	1954	37	39	37	38
<i>sk</i> Slovakia	1839	1943	1963	1885	35	37	38	36
<i>fi</i> Finland	1807	1859	1734	1771	35	36	33	34
<i>se</i> Sweden	1718	1754	1775	1702	33	34	34	33
<i>uk</i> United Kingdom	1994	2046	1858	1858	38	39	36	36

Source: EIRO Working time developments – 2005 <http://www.eurofound.europa.eu/eiro/2006/08/update/t0608101u.html#6>; own calculations

4. ASSESSMENT OF BARRIERS TOWARDS IMPLEMENTATION OF AN ANNUALISED REFERENCE PERIOD

For the employer, the potential administrative burden of the WTD relates to complying with regulatory standards, ensuring that processes are in place to ensure compliance and consultation with works councils or unions (where necessary). The OECD estimates that compliance with employment legislation, in general, amounts to roughly one third of all administrative costs incurred by businesses per employee per year³³.

Essentially, the aim is to gauge the marginal effect of amending the WTD. As employers already need to comply with the WTD and generally larger employers have payroll systems in place to measure working time, the aim is to identify the potential costs / administrative burdens associated with extending the reference period of the WTD.

At present, other things being equal, employers need the agreement of their workforce to introduce annualised hours (or some other variation of the reference period). Currently for workers who do not have autonomy over the hours they work, their hours of work will be established by the contract of employment and/or collective agreement.

If the reference period for working hours were to be changed, then this would need to be agreed with the workforce collectively – which can be undertaken under the current regulations - unless the employer wanted or needed to shift to individualised contracts of employment. In this case there would be a one-off cost attached to establishing the individual contracts of employment.

As noted above, for larger organisations it is generally reported that existing payroll systems monitor working hours adequately. For smaller organisations moving to annualised hours, there may be a cost attached to measuring working hours over a year, but this relates in many respects to poor record keeping of hours under the existing regulations.

In order to explore the potential effects of extending the reference period explorative telephone interviews were undertaken with the relevant stakeholders including a number of international organisations such as ETUC, UEAPME and ORGALIME (see Annex B)³⁴.

A number of conclusions emerged from the discussion with stakeholders:

- respondents recognised that estimating the administrative burden arising from the proposed amendments to the WTD is far from straightforward;
- whilst costs might be incurred by employers, it was not a major concern of the stakeholders;
- with the introduction of more flexible working time arrangements, monitoring working time over the short-run can be administratively burdensome – e.g. taking account of holiday entitlement, other leave entitlements, flexitime, etc.;
- the above point is particularly relevant for SMEs where the administrative costs can be proportionately more onerous;
- UEAPME (European Association Of Craft, Small And Medium-Sized Enterprises) argues for an even longer reference period;

³³ OECD, *Businesses' Views on Red Tape. Administrative and Regulatory burdens on small and medium-sized enterprises*. Paris, 2001

³⁴ A questionnaire was prepared in order to explore the administrative burden that might be associated with an extension of reference period or removal of the opt-out

- any further restrictions or requirements relating to the Opt-Out, collective agreement or agreement between social partners would be seen as an unnecessary bureaucratic hurdle for SMEs.

The views above are essentially from the employer side, but the ETUC recognises that there is an administrative burden upon the employer to monitor working hours especially where working hours are irregular or flexible. The Opt-Out favours those countries where it is widely used because employers there are potentially exempt from the burden of monitoring working time. But as noted earlier many employers need to monitor working time in order to manage their payroll.

Hypothetically there are potential additional administrative benefits resulting from the extension of the reference period, but it depends very much on the following three factors:

- **industry type:** where there are uncertain levels of demand for labour or where there is a highly seasonal / cyclical demand for labour, extending the reference period may well reduce the administrative burden;
- **labour regulation tradition:** where collective bargaining is not well established the employer is faced with a reduction in the administrative costs of securing a 52-week reference period because the employer does not need to engage in extensive discussion with worker representatives; and
- **size of enterprise:** OECD and EC studies confirm that in general SMEs tend to have fewer resources to cope with administration costs. For example, in Sweden administrative costs per employee were five times higher than for medium or large companies in 2004³⁵.

³⁵ A survey by the Confederation of Swedish Enterprise, Brussels Office: The regulatory burden and administrative compliance costs for companies. Miriam Munnich, 2004.

5. SIMPLIFICATION OF LEGAL MODEL

Making EU legislation simpler and more readable has become an important item on the EU institutional agenda, as evidenced by the 2003 Inter-institutional Agreement on Better Lawmaking³⁶ and subsequent initiatives by the EU institutions to simplify existing legislation, including the European Parliament resolution of 16 May 2006 on a strategy for the simplification of the regulatory environment³⁷. In this context, it is relevant to consider the available options for simplifying the current WTD, particularly the system of multiple derogations from Article 16 on reference periods.

The current WTD (Directive 2003/88/EC) has a complicated and multi-layered system of exceptions and derogations. Article 16 allows the application of reference periods that are longer than the basic measuring periods in Articles 5, 6 and 8. The available derogations are found in Article 17 (derogations by law) and Article 18 (derogations by collective agreements), which have different requirements for making use of the derogations. Articles 17 and 18 not only allow derogations from the maximum reference periods established by Article 16, but also allow direct derogations from other Articles³⁸. The maximum reference periods for maximum weekly working time are different for derogations made by law or by collective agreements.

While the current complexity of the system of derogations may suggest significant opportunities for simplification, it should be noted that the WTD is intended to protect workers' health and safety, while at the same time taking into account the needs and interests of all actors concerned, as well as of different national labour market traditions. It is quite difficult to make simplifications without interfering with this balance of interests, and the main limiting factor for simplification appears to be the availability of sufficient political support to implement substantive amendments to the Directive.

5.1 Derogations regarding maximum weekly working time

The various versions of the proposed Directive subject to negotiation in the Council³⁹ have already taken significant steps toward simplification of the system of derogations applicable to the reference period for maximum weekly working time (Article 16(b)). If the Finnish Presidency Proposal of 31 October 2006⁴⁰ was adopted, Article 19 of the WTD (as amended by the Proposal) would establish a uniform maximum reference period of 12 months, which would be available for derogations whether they were made by law or collective agreements, and subject only to a few specific conditions. This would greatly simplify the system of derogations regarding reference periods for maximum weekly working time, but it should be noted that this simplification is almost exclusively due to the substantive changes to the scope of derogations which are suggested in the Proposal.

The headline to Article 19 in the WTD is "Limitations to derogations from reference periods". If the Finnish Presidency Proposal were adopted, this headline would no longer fully reflect the actual contents of Article 19.

For derogations made by collective agreements, the amended Article 19 would still concern limitations (to derogations made according to Article 18).

³⁶ OJ 2003 C 321, p. 1 (31.12.2003)

³⁷ OJ 2006 C 297E, p. 136 (7.12.2006)

³⁸ Articles 17 and 18 both allow derogations from Articles 3, 4, 5, 8 and 16. To a very limited extent, Article 17 also allows derogations from Article 6.

³⁹ COM(2004) 607 final, COM(2005) 246 final, EP 11 May 2005

⁴⁰ Council documents 14704/06 SOC 501 and 14676/06 SOC 499

But as to derogations made by law, the amended Article 19 would state the full scope for derogations, not just the limitations to these derogations.⁴¹ In principle, this issue could be solved by making Article 19 the single provision in the Directive dealing with derogations from Article 16(b),⁴² but the effect on simplification would be only marginal.

Assuming that the Finnish Presidency Proposal's amendments to Articles 17 and 19 were adopted, it would be possible to have one single provision on reference periods for maximum weekly working time. For instance, this could be achieved if the current Article 16(b) became Article 19(1), while Article 19 in the version proposed in the Finnish Presidency Proposal became Article 19(2). This would not affect the substantive legal standards employed in the Finnish Presidency Proposal, since the norm would still be a reference period of no more than four months, with the possibility of extension up to 12 months on the conditions described in the Proposal. But it would mean a change of structure, since this norm would be stated in Article 19, rather than in Article 16 where the other norms for reference periods would still be located. Whether this would make the overall structure of the Directive simpler or more accessible is largely a matter of opinion.

5.2 Other derogations from Article 16

The previous versions of the proposals amending the WTD (including the Finnish Presidency Proposal) do not contain proposals which would similarly simplify the derogations from Article 16(a) and (c).

As mentioned above, the brief and focused text of Article 19 proposed in the Finnish Presidency Proposal has been made possible due to the Proposal's acceptance of a single maximum reference period which is generally available, subject only to a few specific conditions.

There are two additional obstacles for achieving similar significant simplifications of the current Article 17:

- the current Directive contains no specific maximum reference periods regarding Article 16(a) and 16(c); and
- Article 17 of the current Directive contains derogations from not only Article 16, but also from Articles 3, 4, 5, 6 and 8.⁴³

These factors increase the need for retaining specific limitations on the justifications for derogation. As a consequence, the practical scope for simplification of the current Article 17 is limited, and it has not been possible to identify any major simplifications which do not reduce worker protection or interfere with the balance of interests between the relevant actors.

As an example, theoretically it would be possible to achieve a major simplification of Article 17 by applying an approach similar to the Finnish Presidency Proposal's approach to reference periods for maximum weekly working time, i.e. by removing the current specific limitations on the acceptable justifications for derogation by law, while requiring that derogations by law are only made following consultation of the appropriate social partners.

⁴¹ The reason is that the Finnish Presidency Proposal would remove all references to Article 16(b) from Article 17 (see Annex 1 to the Proposal, Article 1(5)(a), (c) and (d)). Combined with the proposed amendment of Article 19, the result would be that Article 17 would no longer apply to derogations by law from Article 16(b) – such derogations would be considered only in Article 19.

⁴² This could be achieved by removing all references to Article 16(b) from Article 18, and by changing the headline to Article 19 to "Derogations from reference periods regarding maximum weekly working time"

⁴³ Derogations from Article 6 are only allowed to a very limited extent

But removing the specific limitations would significantly increase the possibilities for adopting derogations (with the risk of negative impact on workers' health and safety), while inserting a consultation requirement may make it more difficult to adopt derogations in Member States where social partnership and dialogue is not so well-developed - even where such derogations are consistent with the purpose of the Directive.

Some minor modifications to Article 17 may be considered in order to increase the accessibility of the text of the Article. These modifications are strictly technical and are not specifically connected to the Finnish Presidency Proposal:

- the full text of Article 5(4) of Directive 89/391/EEC may be inserted in paragraph 3(f), either directly or in a footnote; and
- the extensive exemplifications (particularly in paragraph (3) (c)) may possibly be deleted or moved to an annex, in order to reduce the main body of text and to clarify that the exemplifications are non-exhaustive.

5.3 Conclusions on simplifications of WTD

It has not been possible to identify any major simplifications of the Working Time Directive which may be carried out with no reduction in worker protection and without interfering with the current balance of interests between the relevant actors.

While possibilities for major simplifications to the current system of exceptions and derogations do exist, they cannot be carried out without adopting significant substantive changes to the Directive. The Finnish Presidency Proposal is a case in point, since it would significantly simplify the derogations applicable to weekly working time, but this would largely be accomplished by giving the Member States a higher degree of freedom to adopt derogations by law.

Some smaller potential modifications have been identified that would not interfere with the balance of interests in the Directive, but they are of minor importance and would only have a fairly limited impact upon simplification.

6. CONCLUSIONS

On the basis of the evidence provided in this report the introduction of a single reference period of one year will facilitate the introduction of more flexible working time practices across the EU. This is to be welcomed because it potentially benefits both employers and employees. The important element is in balancing the needs of employers and employees because there can be disadvantages too. It has not been possible to identify any major simplifications of the Working Time Directive which may be carried out with no reduction in worker protection and without interfering with the current balance of interests between the relevant actors.

The WTD already provides provision for the reference period to be extended to 12 months as specified in Articles 16 and 19. There is evidence from a number of Member States that the annual reference period is being adopted, though in most cases it is on a relatively modest scale. The analysis has shown that introducing changes to the reference period in Article 16 would simplify the legislation, whilst on the other hand it might provide limited security for employees, whereas introducing changes in Article 19 would leave room for such provisions.

From a policy perspective the issue is not so much about establishing a 12 month reference period per se, but establishing a system that does not discourage flexible working time arrangements being introduced. In many countries there is a trend towards the introduction of “working time accounts” where people are expected to work a given number of hours over a specified period but have a degree of flexibility with regard to when those hours are worked. By establishing a 12-month reference period this then allows for a range of “working time accounts” that may use reference period less than 12 months but more than the four months currently specified (before any derogations).

The evidence also suggests that the administrative burdens of record keeping in relation to working time and annualised hours generally are not cumbersome for employers because of the necessity to record working time typically for payroll purposes. Where the marginal administrative burden is large this tends to affect small enterprises where record keeping is modest. But it seems odd to base reform of a regulation to meet “worst practice” – i.e. designing laws to meet the poorest labour standards, levelling down rather than levelling up.

With respect to the Opt-Out and the introduction of caps within it, the evidence suggests that the Opt-Out is often used as a precautionary measure by employers (outside of the health sector where the on-call hours of doctors has necessitated the use of the Opt-Out in some countries) rather than a means to increase working hours. Other things being equal, it is not clear that the introduction of caps within the Opt-Out will result in much change since there is relatively little demand for very long hours to be worked, and many of those who work very long hours are exempt from the regulations.

Though it is not certain what impact the introduction of caps within the Opt-Out will have because relatively few people work very long hours and many of these are subject to other derogations, caps at least impose some control over very long working hours for some groups of employees. The statistics show that setting the cap at over 60 hours will affect very few people indeed.

Looking at working time on an annual basis allows fluctuations in working time over the year to be taken into account. But compared to the amount of information on weekly working hours (either usual or actual) there is relatively little information available on the total number of hours worked by an individual over a year. If the move to an annual reference period is to go ahead consideration needs to be given to monitoring annual hours.

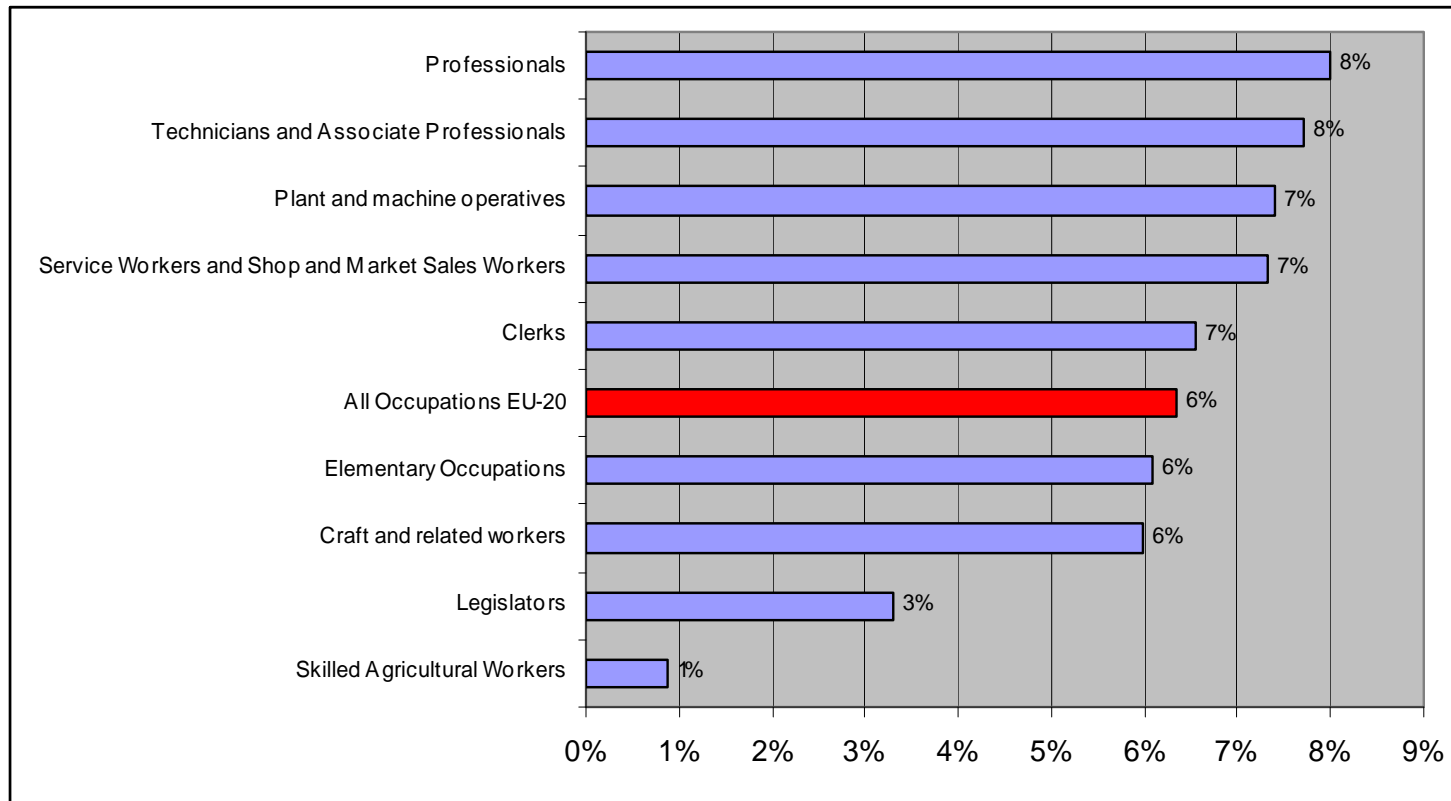
Finally, if the WTD is to facilitate, or at the very least, not stand in the way of the introduction of flexible working time arrangements that benefit both employers and employees, then there is scope for the simplification of the WTD. The introduction of single reference period will be beneficial.

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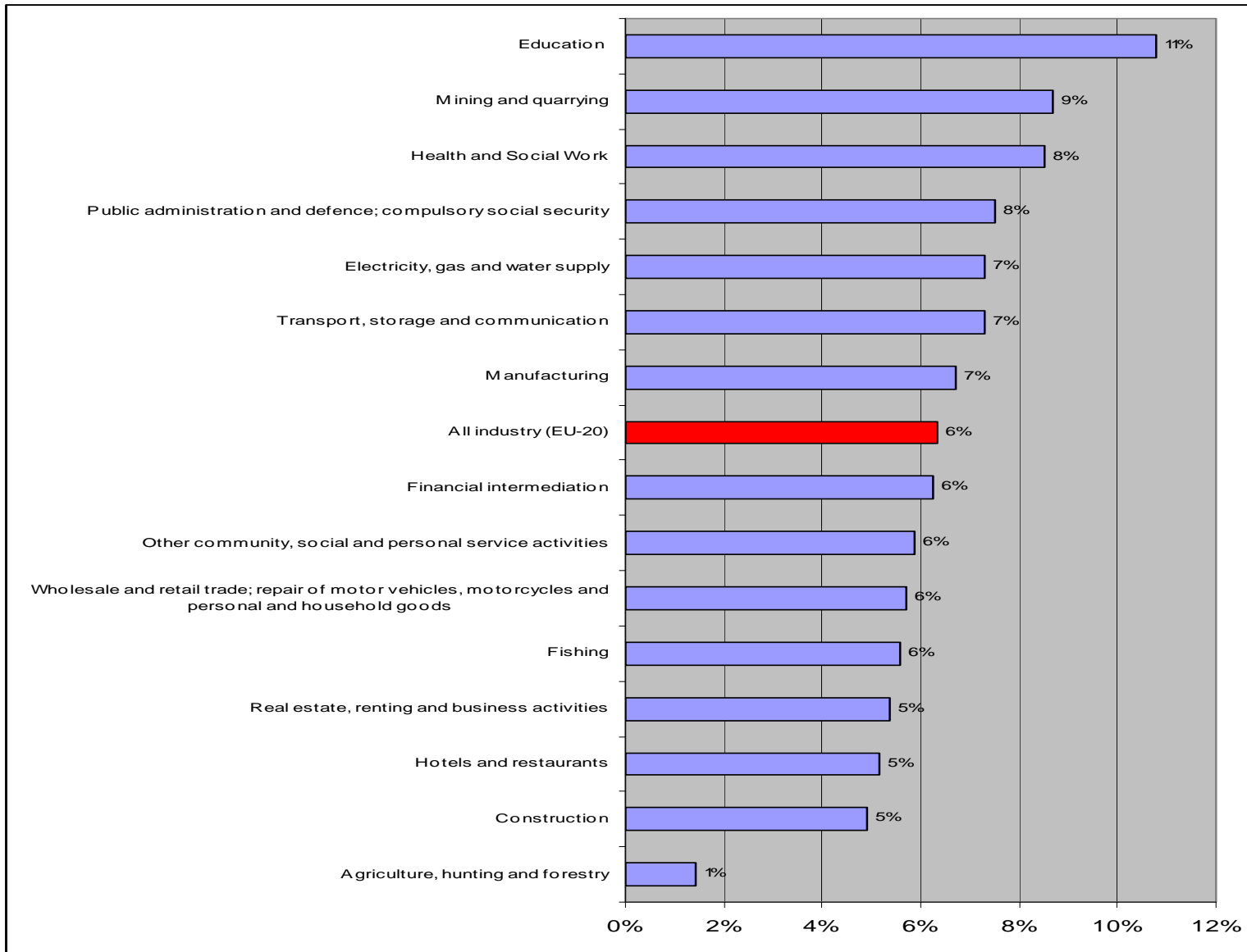
ANNEX A: Additional Tables and Charts

Figure A.1 Incidence of Annualised working hours Contracts by Occupation, 2004



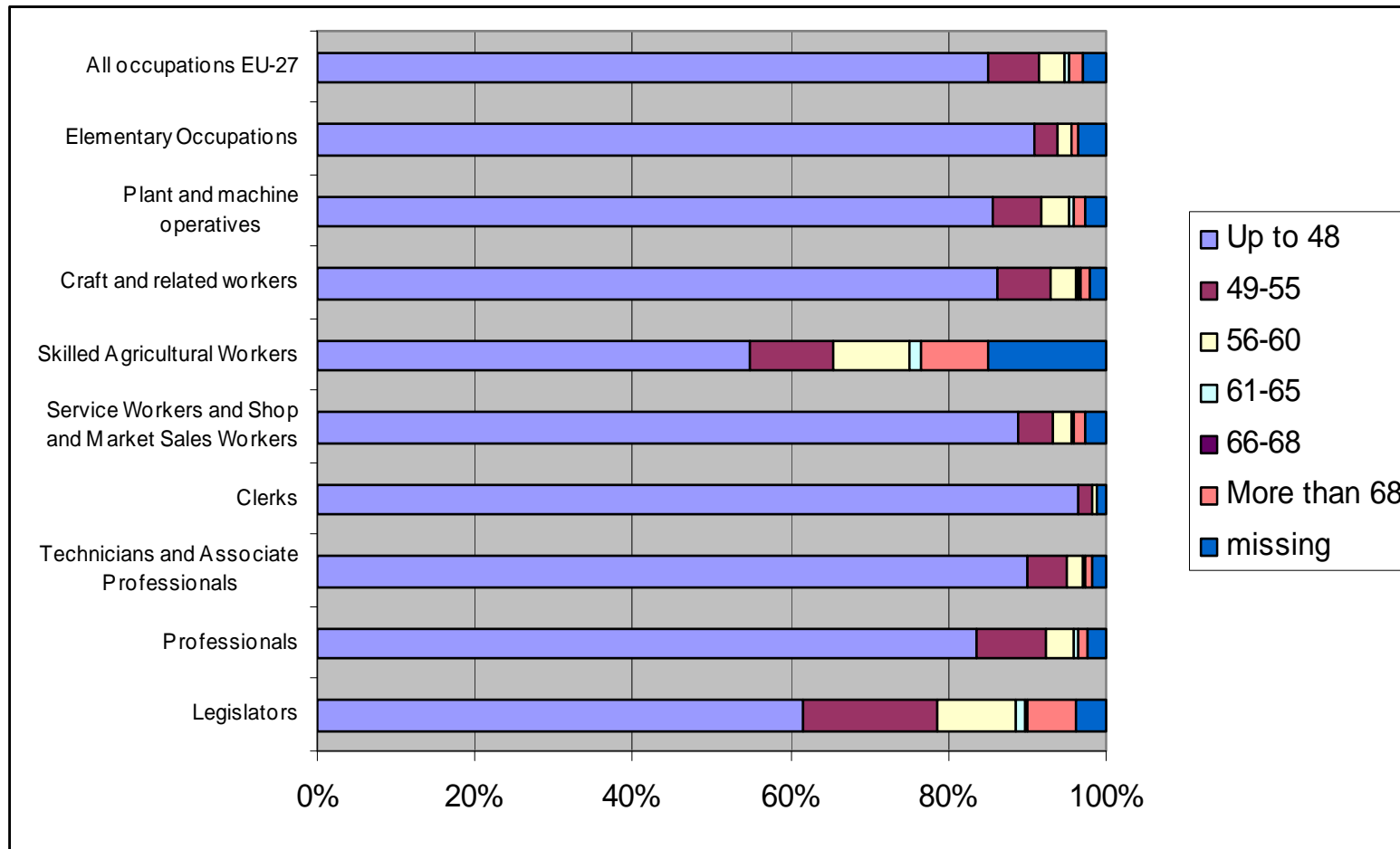
Source: ELFS 2004; Base: All in employment

Figure A.2 Incidence of Annualised working hours Contracts by Industrial Sector, 2004



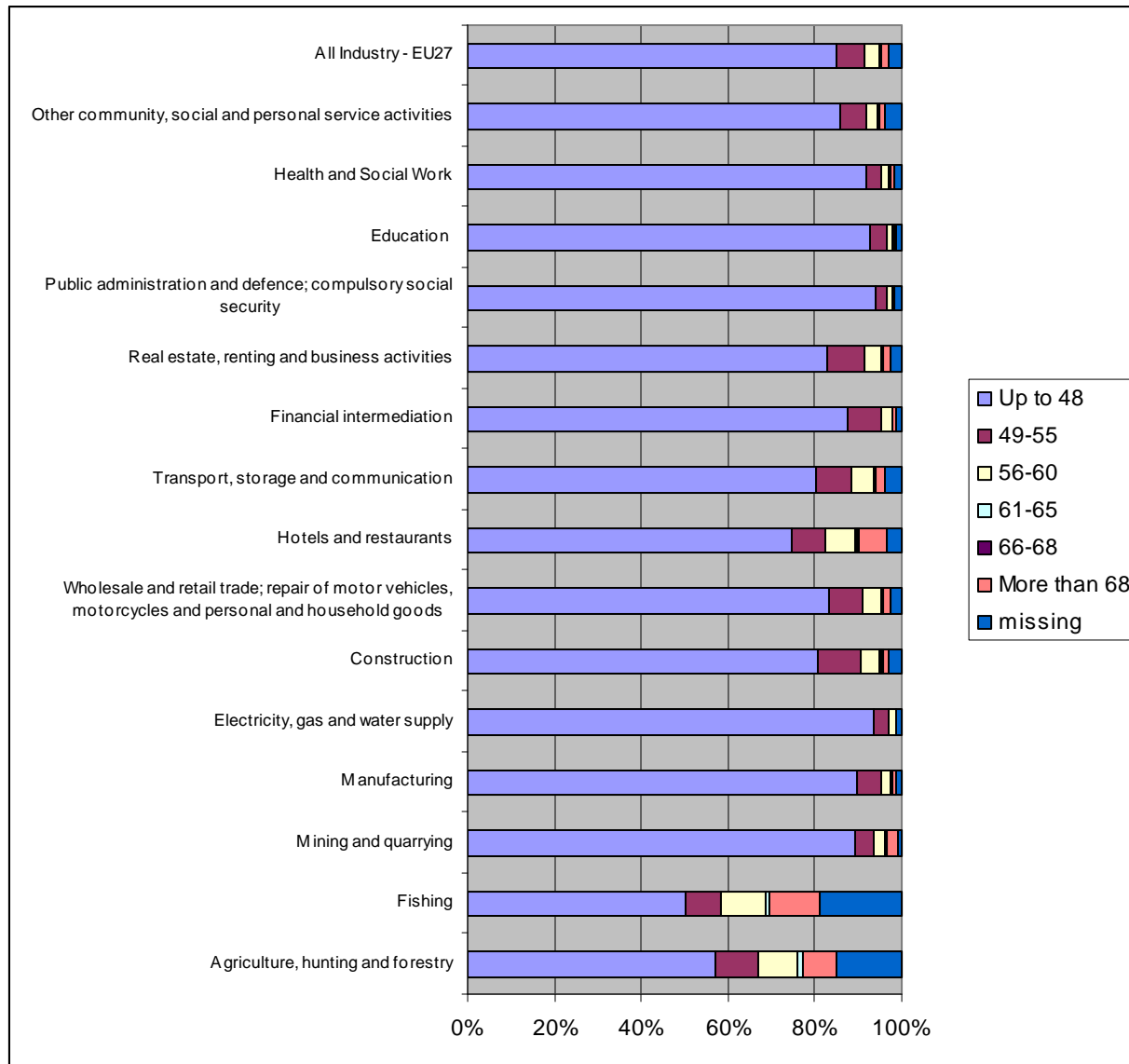
Source: ELFS 2004; Base: All in employment

Figure A.3: Occupational distribution of long working hours in EU-27



Source: European Labour Force Survey, 2005

Figure A.4: Sectoral distribution of long working hours in EU-27



Source: European Labour Force Survey, 2005

Table A.1: Occupations with a relatively high incidence of long hours working

	AT	BE	BG	CY	CZ	DE
LEGISLATORS, SENIOR OFFICIALS AND MANAGERS	Legislators and senior officials Directors and CEOs Specialist managers Managers of small enterprises	Directors and CEOs Specialist managers Managers of small enterprises		Production and operation managers Specialist managers		Legislators and senior officials Managers of small enterprises
PROFESSIONALS	Religious professionals	Health professionals (except nursing) Higher education professionals Legal professionals		Life science professionals		Legal professionals Business professionals Religious professionals
TECHNICIANS AND ASSOCIATE PROFESSIONALS				Ship and aircraft controllers and technicians Artistic, entertainment and sports professionals		
SKILLED AGRICULTURAL AND FISHERY WORKERS	Animal producers and related workers	Animal producers and related workers	Market gardeners Animal producers and related workers Crop and animal workers Fishery workers, hunters, trappers	Skilled agricultural workers Animal producers and related workers Crop and animal workers Fishery workers, hunters, trappers		
CRAFT AND RELATED TRADES WORKERS				Metal moulders Blacksmiths Potters, glass makers Wood treaters		
PLANT AND MACHINE OPERATORS AND ASSEMBLERS	Power production workers	Other craft and related workers		Printing, binding operators		
ELEMENTARY OCCUPATIONS				Street vendors		

Source: Derived from European Labour Force Survey, 2005

Table A.1 (continued): Occupations with a relatively high incidence of long hours working

	DK	EE	ES	FI	FR	GR
LEGISLATORS, SENIOR OFFICIALS AND MANAGERS	Legislators and senior officials Senior officials special interest groups Directors and CEOs Production managers Specialist managers Managers of small enterprises		Legislators and senior officials Senior officials special interest groups Production managers Specialist managers Managers of small enterprises	Directors and CEOs Production managers Managers of small enterprises	Legislators and senior officials Senior officials special interest groups Directors and CEOs Production managers Specialist managers Managers of small enterprises	Legislators and senior officials Directors and CEOs Production managers Managers of small enterprises
PROFESSIONALS	Legal professionals Religious professionals			Legal professionals Religious professionals	Physicists, chemists Architects Life science professionals Health professionals Business professionals Legal professionals Religious professionals	Architects Business professionals Legal professionals Religious professionals
TECHNICIANS AND ASSOCIATE PROFESSIONALS						Ship and aircraft controllers and technicians Business service / agents
SKILLED AGRICULTURAL AND FISHERY WORKERS	Animal producers and related workers Crop and animal workers Forestry and related workers	Skilled agricultural workers	Animal producers and related workers Crop and animal workers Forestry and related workers	Animal producers and related workers Crop and animal workers Fishery workers, hunters, trappers	Animal producers and related workers Crop and animal workers Fishery workers, hunters, trappers	Animal producers and related workers Crop and animal workers Forestry and related Fishery workers, hunters, trappers
CRAFT AND RELATED TRADES WORKERS			Wood treaters		Painters, building structure cleaners Other craft and related Wood treaters	Food processing workers Wood treaters.
PLANT MACHINE OPERATORS AND ASSEMBLERS	Ships' deck crews			Ships' deck crews		
ELEMENTARY OCCUPATIONS						Sales and service Agricultural labourers

Source: Derived from European Labour Force Survey, 2005

Table A.1 (continued): Occupations with a relatively high incidence of long hours working

	HU	IE	IT	LT	LU	LV
LEGISLATORS, SENIOR OFFICIALS AND MANAGERS		Managers of small enterprises	Legislators and senior officials Directors and CEOs Production managers Specialist managers Managers of small enterprises	Legislators and senior officials	Legislators and senior officials Senior officials special interest groups Managers of small enterprises	Directors and CEOs
PROFESSIONALS			Mathematicians, statisticians Business professionals Legal professionals			
TECHNICIANS AND ASSOCIATE PROFESSIONALS	Other teaching and associate professionals		Religious associate professionals			Ship and aircraft controllers and technicians
SKILLED AGRICULTURAL AND FISHERY WORKERS	Crop and animal producers	Crop and animal producers	Animal producers and related workers Crop and animal workers Fishery workers, hunters, trappers		Animal producers and related workers	Animal producers and related workers
CRAFT AND RELATED TRADES WORKERS						
PLANT AND MACHINE OPERATORS AND ASSEMBLERS					Wood product machine operators	Stationary plant and related workers
ELEMENTARY OCCUPATIONS			Sales and service			

Source: Derived from European Labour Force Survey, 2005

Table A.1 (continued): Occupations with a relatively high incidence of long hours working

	NL	MT	PL	PT	RO	SE
LEGISLATORS, SENIOR OFFICIALS AND MANAGERS		Directors and CEOs Managers of small enterprises		Legislators and senior officials Directors and CEOs Specialist managers Managers of small enterprises	Directors and CEOs Production managers Managers of small enterprises	Legislators and senior officials Directors and CEOs Managers of small enterprises
PROFESSIONALS	Health professionals Religious professionals	Business professionals Religious professionals	Writers and creative performing artists Science and Related Professionals	Legal professionals Religious professionals		
TECHNICIANS AND ASSOCIATE PROFESSIONALS	Ship and aircraft controllers and technicians		Life Science and Related Professionals			
SERVICE WORKERS				Housekeeping and restaurant services workers		
SKILLED AGRICULTURAL AND FISHERY WORKERS	Crop and animal producers Forestry workers animal workers Fishery workers, hunters, trappers	Skilled agricultural workers	Skilled agricultural workers	Market gardeners Animal producers and related workers Crop and animal workers Fishery workers, hunters, trappers		Crop and animal producers Fishery workers, hunters, trappers
CRAFT AND RELATED TRADES WORKERS	Pelt and leather workers		Building frames and related workers			.
PLANT AND MACHINE OPERATORS AND ASSEMBLERS				Ships' deck crews		
ELEMENTARY OCCUPATIONS			Sales and service			Sales and service

Source: Derived from European Labour Force Survey, 2005

Table A.1 (continued): Occupations with a relatively high incidence of long hours working

	SI	SK	UK	EU-27
LEGISLATORS, SENIOR OFFICIALS AND MANAGERS	Legislators and senior officials Senior officials special interest groups Directors and CEOs Managers of small enterprises	Senior Officials in special interest organisations Managers of small enterprises	Production managers Managers of small enterprises	Directors and CEOs Managers of small enterprises
PROFESSIONALS	Life science professionals Medical doctors Secondary school teachers College university teachers		Secondary education and teaching professionals	Health professionals (except nursing) Religious professionals
TECHNICIANS AND ASSOCIATE PROFESSIONALS	Optic and electronic equipment operators	Optic and electronic equipment operators	Ship and aircraft controllers and technicians Police inspectors and detectives	
SERVICE WORKERS	Animal producers and related workers Crop and animal workers Forestry and related workers		Skilled agricultural workers	Skilled agricultural workers
SKILLED AGRICULTURAL AND FISHERY WORKERS		Handicraft in wood, textiles, leather, etc.		Precision, handicraft, and craft printing
CRAFT AND RELATED TRADES WORKERS	Building frame and related workers Painters and building structure cleaners Metal moulders Precision workers in metal		Motor vehicle drivers	Stationary plant and related operatives
PLANT AND MACHINE OPERATORS AND ASSEMBLERS	Mining operatives Power production operatives		Agricultural, fishery and related labourers	
ELEMENTARY OCCUPATIONS	Service workers		Sales and service	

Source: Derived from European Labour Force Survey, 2005

Table A.2: Industrial sectors with a relatively high incidence of long hours working

	AT	BE	BG	CY	CZ	DE
PRIMARY AND MANUFACTURING	Agriculture, hunting Extraction of petroleum and natural gas Recycling	Agriculture, hunting Fishing Extraction of petroleum and natural gas Manufacture of wood products Manufacture of office machinery and computers Recycling		Agriculture, hunting Fishing Mining of uranium, and thorium Textiles Manufacture of apparel Manufacture of metal products Manufacture of medical precision instruments etc. Manufacture of other transport equipment	Agriculture, hunting Forestry Extraction of petroleum and natural gas Manufacture of wood products Construction	Agriculture, hunting Mining of metal ores
SERVICES	Air Transport Supporting Transport activities Activities auxiliary to financial intermediation Renting machinery and equipment Computer and related activities Research and development Other business activities	Hotels and restaurants Water Transport		Sale and maintenance of motor vehicles Land transport Water transport Activities auxiliary to financial intermediation Renting machinery and equipment	Sale and maintenance of motor vehicles Wholesale Retail Hotels and restaurants Land Transport Air Transport Supporting Transport activities Activities auxiliary to financial intermediation Real estate Computer and related activities Research and development Other business activities	Hotels and restaurants Land Transport Water Transport Supporting Transport activities Computer and related activities

Source: Derived from European Labour Force Survey, 2005

Table A.2 (continued): Industrial sectors with a relatively high incidence of long working hours

	DK	EE	ES	FI	FR	GR
PRIMARY AND MANUFACTURING	Agriculture, hunting Fishing Extraction of petroleum and natural gas Manufacture of tobacco products Manufacture of office machinery and computers	Agriculture, hunting Forestry Manufacture of office machinery and computers	Agriculture, hunting Other mining and quarrying	Agriculture, hunting Fishing Mining of coal and lignite	Agriculture, hunting Fishing Manufacture of office machinery and computers	Agriculture, hunting Forestry Fishing
SERVICES		Water Transport Renting machinery and equipment	Hotels and restaurants Land transport	Land Transport Water Transport	Hotels and restaurants Activities auxiliary to financial intermediation	Sale and maintenance of motor vehicles Retail Hotels and restaurants Land Transport Water Transport Real estate Renting machinery and equipment

Source: Derived from European Labour Force Survey, 2005

Table A.2 (continued): Industrial sectors with a relatively high incidence of long working hours

	HU	IE	IT	LT	LU	LV
PRIMARY AND MANUFACTURING	Agriculture, hunting Fishing Construction	Agriculture, hunting Fishing Recycling	Agriculture, hunting Fishing	Fishing	Agriculture, hunting Manufacture of furniture	Agriculture, hunting Forestry Tanning leather Manufacture of rubber and plastic products Manufacture of furniture Construction
SERVICES		Hotels and restaurants Land transport	Sale and maintenance of motor vehicles Wholesale Retail Hotels and restaurants Land Transport Water Transport Real estate Renting machinery and equipment Water transport Supporting Transport activities	Water transport Renting machinery and equipment		Sale and maintenance of motor vehicles Land Transport Water Transport Real estate Renting machinery and equipment Other business activities

Source: Derived from European Labour Force Survey, 2005

Table A.2 (continued): Industrial sectors with a relatively high incidence of long working hours

	NL	MT	PL	PT	RO	SE
PRIMARY AND MANUFACTURING	Agriculture, hunting Forestry Fishing	Agriculture, hunting Fishing Extraction of petroleum and natural gas Other mining and quarrying Manufacture of non-metallic products Manufacture of fabricated metal products	Agriculture, hunting Fishing Construction	Agriculture, hunting Fishing Recycling	Construction Water transport	Agriculture, hunting Forestry Fishing Extraction of petroleum and natural gas Manufacture of tobacco products Manufacture of office machinery and computers
SERVICES	Land Water Transport	Land transport Supporting Transport activities Real Estate Computer and related activities Research and development Renting machinery and equipment	Sale and maintenance of motor vehicles Wholesale Land Transport Supporting Transport activities Computer and related activities	Hotels and restaurants Land transport		Water transport

Source: Derived from European Labour Force Survey

Table A.2 (continued): Occupations with a relatively high incidence of long hours working

	SI	SK	UK	EU-27
PRIMARY AND MANUFACTURING	Agriculture, hunting Collection and purification of water Construction	Fishing Water transport Air transport	Agriculture, hunting Fishing Mining of coal and lignite Extraction of petroleum and natural gas Mining of metal ores Other mining and quarrying	Agriculture, hunting Fishing
SERVICES	Land transport Research and development		Land transport Renting machinery and equipment	Hotels and restaurants Land transport Water transport

Source: Derived from European Labour Force Survey, 2005

ANNEX B: Social Partners Contacted

Organisation	Representation	Contact with:	Country	Contact
ETUC - European Trade Union Confederation	Employees' organisation	Confederal Secretary	EU	e-mail
UEAPME - European Association of Craft, Small and small-medium enterprises	Employer's organisation	Director Social Affairs	EU	phone interview
ORGALIME - European Union Engineering Industries Association	Employer's organisation	Personal and Administration Officer	EU	e-mail
ACV/CSC - Belgian Christian Trade Union	Employees' organisation	Research department	BE	phone interview
VOKA - Flemish Employers' association	Employers' organisation	Research department	BE	phone interview
AGORIA - Belgian federation for the Technology Industry	Employer's organisation	Director Communication	BE	e-mail
IBEC – Irish Business and Employers Confederations	Employers' organisation	Social Affairs Responsible	IRL	phone interview
Malta Business Bureau	Employers' organisation	CEO	MT	phone interview
Union Haddiema Maghqudin - Malta Workers' Union	Employees' organisation	Secretary General	MT	phone interview
GRTU - Malta Chamber of Small and Medium Enterprises	Employers' organisation	Director General	MT	phone interview
Permanent Representation of the Slovak Republic to the European Union	Governmental agency	First Secretary	SK	phone interview
Institute of Employment	Governmental agency	Research department	SK	phone interview
VNO-NCW - The Confederation of Netherlands Industry and Employers	Employers' organisation	Social Affairs Responsible	NL	phone interview

