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Ms Marianne Thyssen
Commissioner for Employment, Social Affairs, Skills and Mobility
European Commission
Rue de la Loi 200
1049 Brussels

25 March 2015

Dear Commissioner,

We have replied to the public consultation on the review of the working time directive. Both the process and form of the consultation have caused us concerns. The consultation was open to all potential respondents, not only the social partners and given the limited opportunity to highlight our views in a meaningful and comprehensive way, we have decided to also present them to you in this letter.

The legal basis of the working time directive is and should remain protecting workers' health and safety and the current directive sufficiently meets this objective.

The directive has a clear impact on business, as many of the rules are overly detailed and prescriptive, and therefore complicated and costly for business to apply. This lack of flexibility can also hamper employers and workers in devising arrangements at national, sectoral and company level. We note that the non-regression clause in the directive limits the opportunity for flexibility in national transposing measures after the adoption of the directive.

At the same time, business, in some cases through collective agreements, has found ways to operate within the frame of the directive. That is why we do not support a revision of the directive at this time. In case the European Commission decides to pursue a revision, it should take a targeted approach to dealing with the legal uncertainty and practical problems caused by the ECJ rulings, in particular on on-call time and paid annual leave.

The lack of flexibility and practicability as well as legal uncertainty faced by companies and workers is particularly due to the excessively wide interpretation of the directive by the European Court of Justice (ECJ), which include rulings on on-call time and paid annual leave. If the directive is revised, the only sensible approach would be for a narrow review focused on finding solutions to these issues for both public and private sectors. More concretely, this would mean:

- Defining on-call time in the directive, distinguishing between active and inactive, whereby all inactive on-call time is not counted as working time.
- Stipulating that when a worker is on-call but does not need to be present at the workplace (standby time), this does not count as working time, unless the worker is called to actively perform his work.
- Clarifying that compensatory rest is to be taken within a reasonable period, to be defined at national level.
- Clarifying that the annual leave provisions aim to allow workers to rest from work, not other periods of absence and that the directive allows member states to make paid annual leave dependent on attendance at work.

Only a cross-sectoral approach would be appropriate, given the nature of the directive.

Furthermore, any changes should not impede the continuing application of existing collective agreements and use of existing derogations, including those for specific sectors. In particular, the opt-out should be retained as a permanent provision of the directive, as well as the derogation for autonomous workers.

A further ruling on how to calculate holiday pay also goes beyond the intentions of the directive, which does not say how holiday pay should be calculated, only that workers have right to four weeks paid annual leave. Member states and national social partners should be free to define how holiday pay should be calculated at national level.

Any new attempt by the commission to revise the directive should avoid introducing more rigid rules for the organisation of working time. Preferably, it should increase the possibilities for companies to adapt working patterns and efficiently organise working time according to their specific needs. The objective should also be to create more space for devising and implementing concrete arrangements at national level, in sectors and in companies, respecting the diverse industrial relations practices.

The world of work has changed considerably since the directive came into force. This creates the need for more flexibility in the organisation of working time for both employers and workers. At the same time, in many cases solutions have been found within the limits of the current directive. Therefore, these broader issues should not be dealt with through changes to the directive at EU level - room should be left for more flexible working time arrangements at national level, in sectors and in companies.

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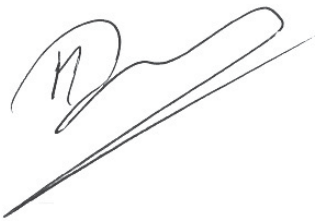
Yours sincerely,



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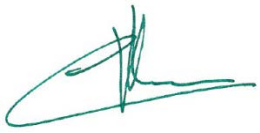

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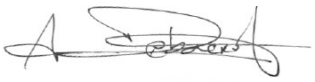

Anita Debaere
Director
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