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News Europe

Working Time

The European Commission has written to all 27 EU governments asking them how they are complying with recent court rulings on the working time directive with its provisions on rest periods and a maximum 48-hour week.

The extent to which national authorities respect key judgements from the European Court of Justice (ECJ) has become more urgent after the failure of ministers last November to agree to update the legislation which first took effect nine years ago. The Commission is focusing on four central aspects: the reference period used to calculate average weekly working time, use of multiple contracts, arrangements for rest periods and treatment of on-call time.

The last two require major changes in almost all national health systems after the Luxembourg-based judges ruled that all on-call time in a hospital counts as working time and that compensatory rest for employees should be given immediately. To introduce some flexibility, the Commission had proposed amending the existing legislation by creating a category of inactive on-call time and by providing for rest within a reasonable period.

However, the stalemate last November between governments over the future of the opt-out from the 48- hour week has made an early legislative solution on implementation of the court's rulings extremely unlikely. Germany, the current EU president, does not want to address the issue in the coming months and its successor in July, Portugal, is also reluctant to tackle the problem. Suggestions in some quarters that the deadlockcould be broken if issues such as oncall time which affect the health service directly were treated in separate legislation have won little support.

On the basis of the replies it receives to the four points, the Commission will have to decide whether individual member states are complying with the rules as interpreted by the Luxembourg-based judges or whether it should take legal action to force them to do so.

Some countries have amended their legislation. Germany, which was directly affected by the Jaeger judgement a year earlier did so in 2004. However, warnings that 15,000 extra doctors would be needed if this were implemented immediately led to a transition period until the end of last year. It is only since January 2007 that the inactive period of on-call time, which had previously been classified as a rest period, has counted towards the working week.

Sweden changed its legislation last year. It now states that any collective agreement which gives employees less than is provided for in the ECJ rulings is invalid. The Netherlands made on-call time in hospitals count towards the working week in 2005. More recently, the Czech Republic amended its legislation in January. It estimates it will need an extra 2,000 doctors to comply with the new rules, while Poland has said the health and fire brigade services will require 15,000 more employees. In the United Kingdom, the emphasis has been on changes in working patterns. Rotas and on-call time have given way to shifts and a major reorganisation of the National Health Service. The cost of the various measures is estimated at between Û 300- 450 million.

The extent to which countries that have made changes are now in conformity with the Luxembourg judgements is unclear. Analyses by both the European Commission and European Parliament indicate that only Luxembourg and Italy have a clean bill of health, while Slovakia and France are in the process of amending their legislation. The research suggests that 18 countries out of the 27-member Union are not respecting the provisions on on-call time and that 21 contravene compensatory rest requirements. Four – Germany, Lithuania, Malta and Poland – do not comply with the reference period for calculating the aver age working week and a further four – Hungary, France, Spain and the UK – do not respect the individual opt-out.

However, it is by no means certain that the Commission will come to the same conclusions when it has a more complete picture of the application of the working time legislation across the Union and lawyers have examined the measures in place. It will also need to determine whether the changes made on the statute book are actually being implemented in practice. The situation is further complicated by the fact that it is not just health services which need to be taken into account. The legislation also covers other sectors such as fire brigades, the police and residential care.

Political considerations will also have to be borne in mind. Would the Commission be prepared to upset most EU governments by bringing a score or more legal cases in such a sensitive area? However, one thing is certain, whether through the blunt instrument of court action or by softer cajoling, all member states will have to ensure that their working time practices respect the EU legislation as interpreted by the European Court of Justice.

The future legal framework of healthcare must include patients' rights

In a resolution on cross-border healthcare adopted on 15 March 2007, the European parliament insisted on the obligation to guarantee absolute protection of health in the EU. The plenary assembly insisted on amongst other things, a reinforcement of patient rights and the creation of a legal framework for cross-border arrangements in healthcare matters. In regard to several cases of the European Court of Justice, the members of parliament cited juridical security, especially in regard to pan-European reimbursement of costs, as a priority of the legal framework proposed by the Commission for cross-border healthcare.

To secure the freedom of movement desired by patients, families, the professions concerned and the healthcare providers, the members of the European parliament wanted clear directives to be laid down within the framework of cross-border healthcare measures. Above all, the division of tasks at different stages (or eventually in different countries) of a treatment must be defined.

The improvement of the communication channels, the creation of a European network of reference centres and the exchanges on the accreditation and the specialist status of cross-border health professionals must also be accelerated. The reinforcement of patient information must result in a common charter of patients' rights in the future community framework, and a central contact point for patient complaints.

The addition of a charter of patient rights is the result of a call by European Liberals and Democrats. Later, the 29 March was proclaimed the 'European Patient Rights Day' and a first conference organised in Brussels. Numerous representants of patients' rights participated, as well as many European members of parliament and numerous well-known members of the healthcare sector. The European charter of patient rights, which the Active Citizen Network laid out in 2002, was presented. Article 8 of the charter which proclaims the right to high quality healthcare deserves to be emphasised.

The Commission has for the moment not adopted a position, as it is not yet certain that a charter of patient rights will be included in its future proposition for the legal framework for healthcare services.

The European Parliament Critises the Project of a Legal Framework for Social Services

The project of a legal framework for general interest social services was generally well-received by members of parliament, but gave rise however to certain criticisms.

According to the members of the European parliament, this kind of service constitues one of the pillars of the European social model, in relation to which, at a European level, all erroneous interpretations by the law must be avoided. A legal framework is welcome, within this context.

The concept of the Commission, which depends on the difference between competition, state aid and the market on one hand, and public service, general interest and social cohesion on the other will be distorted, according to members of the European Parliament. The positive synergies between economic and social aspects must be better exploited.

The lack of definition of services in the proposition is critised, such as the fact that health services are excluded, despite the fact that they should be considered as social services of general interest.

The members of parliament propose the creation of publicprivate partnerships. It will be up to each state authority however to decide if the social serices should be insured by public health insurance or by private enterprise.

Obviously, it is necessary to guarantee that the common interest is taken into account. In addition, the state authorities must check if the social services providers respect the principles and values of the social services of general interest, as well as the specified requirements.

The members of parliament finally requested the Commission, member states and social sevices providers to elaborate measures for professional training, so that the professionals of the sector can adapt to conditions of stress, shiftwork or working nights, and to dangerous or exhausting activities. The governing bodies must guarantee a high standard of professional training to social workers, in order to assure the future needs in social services.

A Harmonisation of Health Systems in Europe?

In a study recently published by Health First Europe (HFE, a patient association), health professionals (including doctors, scientists and industrialists), and numerous experts came out in favor of a harmonisation, in the long term, of European health systems. Amongst the people surveyed were representatives of the European institutions and of the members states of the EU, as well as from industry and non-governmental organisations.

41% preferred a general harmonisation in the long-term as opposed to the pursuit of different natonal systems. The majority of people questioned (58%) were however against a unique European health system.

The principle reasons for a harmonisation would be the freedom of movement of the patient covered, and equal rights for patients as well as comparable working conditions for members of the health professions. These objectives could only be guaranteed in a harmonised system, according to advocates.

89% asked for more investment in innovative technology, 86% for the creation of a programme of prevention (for example for the prevention of cancer), and 82% the introduction of diagnostics, treatment, and options for electronic documentation, as well as reducing healthcare spending in the EU. Finally, 69% think that the European Commission should publish comparison data on the qualification of healthcare providers.

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