

# Report

*Implications of the Working Time Directive on working conditions in the Social Care and Supported Services for Persons with Disabilities: Cases from EU countries.*

The European  
Association of  
Service providers  
for Persons with  
Disabilities



IMPROVING SERVICES  
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# Implications of the Working Time Directive on working conditions in the Social Care and Supported Services for Persons with Disabilities: Cases from EU countries

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## Executive Summary

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This report (consisting of 4 country reports) aims to provide evidence on the implications of the Directive on working conditions in the social care sector. EASPD commissioned this research in order to investigate the implications of the EU Working Time Directive on working conditions in the social care sector for persons with disabilities, including four European welfare models: Continental, Anglo-Saxon, Central European and Mediterranean (the fifth model, the Nordic, is not included in this study). EASPD provides in this study: 1. analysis of how the WTD impacts on working practices in the social care sector for PwD; 2. examination of how selected EU Member states have adapted to and worked with the WTD, noting both models of good practice and also examples of failure/disregarding the WTD; 3. recommendations on new labour law provisions that will promote a fairer way of working in the social care sector, which cover both the need to protect against excessive hours and excessive casualization and yet still meet the needs of the people needing support.

The needs of the social care sector were defined firstly in a series of interviews with experts or/and later in a questionnaire, so we received very concrete data, practical examples, mismatches and also suggestions and recommendations. Research was done from January - March 2017 in each of 4 countries (Slovakia, Spain, UK, Austria) and analysed by qualitative methodology.

Based on our research in SCSS for PwD sector:

- for all type of EU welfare models, the usual **weekly working time** for staff in SCSS for PwD is 37,5 - 38,5 hours; staff in SCSS for PwD often work within usual working hours (eg; 08:00 till 16:00 in Slovakia, 09:00 till 17:00 in Austria), but there are also unusual working hours (e.g weekend, afternoons, 3-shift cycles etc.) especially in residential facilities and in flexible models of peripatetic services or for working patterns for senior staff; some differences can be expected – such as the fact that evening work is more common in the Spain
- in Anglo-Saxon welfare model (UK) **stand-by time** is not much used in the SCSS for PwD. Workers don't give time "voluntarily" (i.e. where there is no pay). "Sleep-ins", sometimes called "on-call", are used extensively. There is uncertainty about the law in this area and current legal challenges about whether this time should be considered full working time (and paid as such) when the worker is asleep, because only between 1 and 5% of all sleep-ins are disturbed (and any work undertaken then awake is, of course, treated as normal working time and is fully paid). Otherwise, time asleep is paid at a flat rate and not counted as working time. This practice is particularly relevant for the "live-in" model of support. In Mediteranean welfare model (Spain) the hours of availability that must be carried out within the premises of the employer are hours of work that

are remunerated as worked, but nothing is contained in the legislation on the hours of availability that are held outside the premises of the company, waiting to be called. In the *Dependency Care Agreement* it is determined in its article additional availability, which will be paid to workers who volunteer to be available during the day to meet any requirements that may arise due to a specific emergency at work. The agreement specifies that the availability time will not be computed for the computations of the ordinary day and that the period of extra time actually rendered will count from the call to thirty minutes after the end of the service that had been provided.

- in the Continental welfare model (Austria) **on-call time** at the workplace in SCSS for PwD is usual in residential facilities, where special working time provisions allow 24 hour shifts and in the case of on-call time outside the workplace, travelling time to the workplace is usually fully paid, when the worker is “activated”. The Central European welfare model (Slovakia), used this on-call time very rarely. In 24/7 services (most of them are residential), there are shifts and staff are regularly paid as full working time (only in 15% of all SCSS for PwD staff does working on stand-by occur). Then the time is either mostly unpaid (and classified as “voluntary work”) or in a very few cases it is paid as overtime).
- In the Continental welfare model (Austria) the **reference periods** according to collective agreements in SCSS for PwD sector, based on our research is stated as 3 months (48 hours per a week in maximum), 6 months (45 hours max), 12 months (42 hours max) and choice of the reference period is determined by the type of services. For the Central European welfare model the reference period is 4 months (approx. 70% of all SCSS for PwD staff) and in some sectors (mostly for staff of public SCSS for PwD) this can be extended up to 6 month by law (approx. 11,5%) and 12 months by collective agreements (with the same conditions, mostly for public service providers too). As regards the Anglo-Saxon welfare model (UK) the most usual period is 17 weeks (so 4 months) and a longer period (such as 12 months) is generally not felt to be useful in the sector due to high turnover of staff and lack of long term planning. In Mediterranean welfare model (Spain), in general law, 40 weekly hours of average in annual computation. The *Centers and Services Agreement* establishes that the workers will have a maximum annual working day of 1729 hours of effective working time, differently the *Dependency Care Agreement* determines 1792 hours for their services except for the home help service, whose maximum hours in a year will be 1755 hours.
- the Central European welfare model (Slovakia) uses **night work** in SCSS for PwD mostly in 24/7 residential services with staff mostly carers, instructors of social rehabilitation, health assistants and nurses with higher medical education degrees (organised under the social services, not health

services). 35-70% of all staff work during on a night shift 6-times per a month (max 10-times). Most of service providers for PwD work in 2 or 3-shifts cycles and most of them are carers. In Spain, Mediteranean welfare model, also carers and nurses are usual night-workers, but they may not exceed eight hours, each period of 24 hours, on average within a reference period of fifteen days and that night workers may not work overtime. Agreements establishes that a bonus will be paid on the hours worked by night. Shift workers may accumulate for periods of up to four weeks half day of the weekly rest, so this rest can be reduced to 24 hours. It also, gives the option to separate these 12 hours from the one corresponding to the weekly rest, and then the workers can enjoy the leisure on another day of the week, and it also allows to reduce the rest period between days to 7 hours when the workers change their shift, reducing drastically the 12 hours' rest between daily working days for such specific situation.

- In the Anglo-saxon welfare model (UK) nearly 100% of work in SCSS for PwD involves **shift work**. The most common pattern is 3-shifts, covering 24 hour period (a popular pattern is an evening shift, a sleep in and the next morning shift because this limits travel time and disruption). Live-in workers may work two weeks on and one week off. Whilst this welfare model includes the usual night work in SCSS for PwD (ie waking nights, full active night shifts) for residential services (not for community based services), most night work is in fact "sleep-in" and involves long periods of inactive time (usually night work is 8 hours). The Continental model (Austria) used mostly shifts and also classified some night work as "easier duty" in residential facilities (in SCSS for PwD sector). There is provision for a 24 hour shift but these can only be worked a maximum of 3-times a week.
- in the Continental welfare model (Austria) daily **minimum rest** (11 hours) can be reduced to 9 hours by collective agreement at company level and weekly rest is 2 full consecutive days, after night work 48 hours of minimum rest. After providing 24-hours care 2 full continuous days have to be granted. For the Central European welfare model (Slovakia) if the continuous daily rest is interrupted by overtime or on-call or stand-by time, these are considered to be formally outside of the continuous daily or weekly rest (in terms of counting of working time), although there is clearly the potential for a lack of rest. In the Anglo-Saxon welfare model (UK) sleep-in and stand-by time is usually counted as rest unless disturbed (i.e the worker becomes active). However, there is much confusion and uncertainty about this with current legal challenges pending. Compensatory rest seems to be little used or understood.
- in the Central European welfare model (Slovakia) paid **annual leave** depended on the age of employee by law and for workers under 33 years it was 25 days, and over 33 years it was 30 days) and there is an additional 5 days leave for staff in working directly with clients (users of SCSS for

PwD) in accordance with a national higher collective agreement. This is in contrast to the Anglo-Saxon (UK) welfare model, where there is no change with age or gender and 28 days per annum is a minimum holiday entitlement for all. Giving more days is depending on individual organisational decision, sometimes based on length of service or seniority. In the Continental welfare model (Austria), annual leave increases gradually after 10, 15 and 20 years of work in accordance with a collective agreement for the sector of SCSS for PwD (the maximum is 6 weeks. This provides for a faster increase of leave days than the majority of Austrian workers). Mediterranean welfare model (Spain), Centers and Services Agreement establishes the right to enjoy 25 paid working days and the Dependency Care Agreement fixes it in 30 calendar days. In two cases can be enjoyed split over 2 periods.

- **Part-time work** is most dominant form of work in SCSS for PwD sector in the Continental welfare model (Austria), where full-time permanent employment contracts are only partly used due to the dominance of part-time work. This model (part time work) is very often found, (often at the request of the worker) in the Anglo-Saxon welfare model (UK), because it fits in very well with home and life responsibilities of women, who constitute over 80% of the workforce in SCSS for PwD sector. The second most common in UK is the full time employment contract. In contrast, the Central European welfare model (Slovakia) uses part time contracts only for around 10 % of all staff in SCSS for PwD. Almost 80% of such part time staff are carers or maintenance staff and in practice, part-time jobs are generally taken up by workers only when full-time work is not available for health reasons or to suit the needs of employers. So the most common employment contract in the Central European welfare model (Slovakia) is full-time permanent work, and almost all university educated staff have this type of contract.
- most senior managers in SCSS for PwD in the Anglo-Saxon welfare model (UK) are seen as “autonomous workers” and are therefore able to claim exemption, also the 48-hours **opt-out** is used extensively, often required to be written into contracts and therefore not WTD compliant. Because of the fragmented workforce, social dialogue structures are weak so collective agreements are unusual beyond individual organisations. In contrast, the Central European welfare model (Slovakia) for staff in SCSS for PwD applied the reduction of working hours for public sector employees in SCSS for PwD from 40 to 37.5 working hours by collective agreement. The Continental welfare model (Austria) uses sector multiple derogations regarding working time, annual leave, reference periods etc in SCSS for PwD
- the obligation to secure regular training by a certified **health and safety** technician is required by law for all employees in the Central European welfare model - Slovakia, but only in particular area

( the Anglo-saxon welfare model - UK) or additionally to meet various regular precautions, special medical examinations have to be available to the night time workforce (the Continental welfare model - Austria). It is mandatory in Mediteranean welfare model (Spain) to train and report on occupational risk prevention, and entities are awareness on it. Depends on the agreement the ancillary services and the annual salary.



## List of Abbreviations

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EASPD - European Association of Service Providers for Persons with Disabilities

EC - European Commission

SCSS - social care and supported services sector

PwD - Persons with disabilities

## 1. Introduction

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The European Union adopted the Working Time Directive (WTD) - DIRECTIVE 2003/88/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 November 2003) with an aim to protect workers' health and safety by guaranteeing minimum standards on working hours. The WTD aims to fight excessive working hours, impose protection for night work, etc. The current nature of work in social care and support, however, requires more flexibility. This potential conflict between legal labour requirements and the needs of the sector may have negative implications on workforce, services and working conditions. This research aims to provide evidence on the implications of the Directive on working conditions in the social care sector.

### Key Points of this report:

1. WTD is not working well in social care
2. Human rights are absolutely non-negotiable - they serve the essential purpose of protecting all human dignity and their importance is especially relevant for people with disabilities and all those needing support services.
3. Innovation in the provision of care and support services is being stifled
4. Social care and support is a special case, especially in domestic scale services
5. With forethought it is possible to uphold human rights for PWD and provide sufficient protection for workers

## II. General framework

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### Theoretical framework and EU legislation on WTD in scope of SCSS workforce for PwD

In these reports we will not be examining two specific examples of Working Time Directives (WTD) - covering doctors in training (because it relates more to health care sector) and mobile work (because it relates to air, sea and railway transport services). All of the other criteria of WTD are described in detail with debates and different attitudes in the text below.

#### Working Time Directive (2003/88/EC)

Working Time Directive (WTD)<sup>1</sup> was adopted in EU to protect workers' health and safety, and working hours must meet the minimum standards which are applicable throughout the EU. The EU's Working Time Directive (2003/88/EC) requires EU countries to guarantee the following **rights for all workers**:

- a limit to weekly working hours, which must not exceed 48 hours on average, including any overtime
- a minimum daily rest period of 11 consecutive hours in every 24
- a rest break during working hours if the worker is on duty for longer than 6 hours
- a minimum weekly rest period of 24 uninterrupted hours for each 7-day period, in addition to the 11 hours' daily rest
- paid annual leave of at least 4 weeks per year
- extra protection for night work, e.g.
- average working hours must not exceed 8 hours per 24-hour period,
- night workers must not perform heavy or dangerous work for longer than 8 hours in any 24-hour period,
- night workers have the right to free health assessments and, under certain circumstances, to transfer to day work.

**Based on our research, we can conclude to what extent each country is compliant in between EU and national laws regarding WTD (very strong, strong, moderate, weak, very weak):**

TAB 1 - Strength of linking in between EU and national laws regarding WTD

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<sup>1</sup>EC - <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

Key WTD Elements/ Countries	Slovakia	Spain	UK	Austria
Working Time in SCSS for PwD	very strong	very strong	moderate	moderate
Night Work in SCSS for PwD	moderate	very strong	weak	moderate
Shift Work in SCSS for PwD	moderate	strong	weak	moderate
Rest in SCSS for PwD	moderate	strong	weak	weak
Annual Leave in SCSS for PwD	moderate	very strong	Very strong	weak
Derogations and Exceptions and Derogations by Collective Agreements in SCSS for PwD	weak	very weak	weak	moderate
Safety and Health Protection in SCSS for PwD	strong	strong	Very strong	strong

### Two-stage consultation of EU-level on WTD

The European Commission reviewed Directive 2003/88/EC through a 2-stage consultation of EU-level workers' and employers' representatives and a detailed impact assessment. European workers' and employers' organisations took part in the **first stage** of consultation COM (2010) 106<sup>2</sup>, launched in March 2010. Most agreed that EU rules on working hours needed to be reviewed. The **second stage** consultation paper asks social partners for their views on two alternative approaches based on either a narrower or a broader scope for the review. At the same time, the Commission has presented a detailed Report on the implementation of the current Directive **in the Member States** COM (2010) 802<sup>3</sup>. It sets out the current state-of-play, identifying the main areas of non-compliance or of legal uncertainty in the various countries.

### Interpretative Communication (2017) on WTD from the Social Care Providers point of view

The European Commission has **launched a social package proposing progress on the social dimension** of the European Union (26/04/2017). The package includes initiatives relating to the Working Time Directive, providing an 'Interpretative Communication' on Directive 2003/88/EC. The purpose of this Communication is to help interpret aspects of the Directive in line with the growing body of case law.

<sup>2</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0106>

<sup>3</sup>EC - <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

It is for guidance only, and does not provide a full review of the legislation. In this recent 'Interpretative Communication' on the WTD there is **no specific mention of the Social Care sector**, nor any consideration of how the WTD creates difficulties for both employers and those receiving services. This is surprising given the size of the social care sector in terms of employment and may be related to its low status and the absence of any meaningful social dialogue structures in social care at European level. The needs and views of people with disabilities are nowhere considered.

Although the Communication concedes that there can be exceptions to the Directive made for 'public service activities' (even when provided by private organisations), this is only where work patterns are 'exceptional'. 'Usual' work conditions presume patterns other than those common **in social care, where practical considerations of care provision dictate that they must fit in with the needs of the client**. In places, the Communication actually appears to reduce the possibility of flexibilities that could work better for the sector e.g. it seeks to strengthen the rigour of the requirements around rest/break periods and confirms a narrow interpretation of 'on-call' time as working time. Social care work is not amongst those occupations listed as needing different treatment under the Directive (e.g. oil-rig and mobile workers). Overall, interpretations of the Directive in this latest document seem to become ever more complex and consequently are unlikely to offer assistance to other than legal minds.

There are, however, three areas where there could be room for interpretation in favour of the social care sector, although it must be born in mind that most such interpretations are required to be based on collective agreements in each sector, far beyond the individual simple worker/employer agreement. In many member states, this is problematic due to the fragmented nature of the social care workforce and the lack of internal social dialogue structures. The following areas may be of **interest**:

1. There is the possibility of a reduction in WTD requirements justified by the need to 'encourage another objective, distinct from the implementation of the agreement'. This could perhaps include be the pursuance of human rights for PWD as enshrined in other EU law e.g. the UNCRPD.
2. The list of 'autonomous workers' given in the original text of the Directive only provides examples, and is not exhaustive. It would therefore be feasible to add more categories to it, especially, for example, 'live-in workers'. The test that autonomous workers must be able to manage their own time with reference to no-one else could apply equally to 'family workers' and social care workers, though potentially questionable in both cases.
3. Derogations can be made for 'certain activities'. This includes 'the need for continuity of service (or production)'. Social care is not in the list of examples, but again, this list is not exhaustive and social care could therefore be added.

Given that the 'Interpretative Communication' is narrowly aimed at the clarification of the current Directive it is perhaps not surprising that it does not address those issues which impact on the **social care sector**. Reference to the 'growing body of case law' cements its focus on legalistic aspects of interpretation in a way that does nothing to support or assist a flexible and responsive social care sector. Only a full review of the WTD, which includes consultation with people who have disabilities, demonstrates both an understanding and regard for their services and provides for national differences, will resolve the WTD issues currently faced by the sector.

## Working Time in SCSS for PwD

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### Definition from EU legislative (2003/88/EC)

**Working time** (Art. 2, par. 1)<sup>4</sup> means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice. Average working time is max. of 48 hours per a week (Art. 17, par. 5b).

### Average weekly working hours

Working time – its duration and organisation – is **important for job quality** in two ways. On the one hand, working time plays a role in workers' health and well-being. On the other hand, a good fit between working time and non-working time throughout working life is essential for workers to be able to work and to continue working. A good fit can be promoted through adapting both the duration and the organisation of working time to the needs of organisations, clients or users of services and individuals.

While the 48-hour week is the maximum, 40 hours is generally regarded as the norm for the actual average standard **work week** (38.7 hours)<sup>5</sup>. The weekly working time of the self-employed<sup>6</sup> (44.8 hours) is on average longer than for employed workers (38 hours), perhaps because the former are not subject to the normal working time legislation. However, self-employed workers (with employees) and part-time workers on average are working longer now than 10 years ago<sup>7</sup>. In general, **long hours** clearly affect work-life balance<sup>8</sup>. Working very **short working hours** (20 hours or fewer) is associated with earning less, with a strong preference for working more, suggesting that many people are not working such short hours by choice. On average, men worked 3.1 **long working days** per month and women 1.6.

Greater **regularity of working hours** – working the same number of hours every day, and hours and days every week, along with fixed starting and finishing times – is associated with a good work-life balance.<sup>9</sup> **Working at unusual hours**, i.e. work on Saturdays, Sundays, in the evenings and working

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<sup>4</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

<sup>5</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

<sup>6</sup>European Foundation for the Improvement of Living and Working Conditions (2013): Working time and work-life balance in a life course perspective, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1273en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1273en.pdf)

<sup>7</sup>European Foundation for the Improvement of Living and Working Conditions (2016): Sixth European Working Condition Survey, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1634en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1634en.pdf)

<sup>8</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

<sup>9</sup>European Foundation for the Improvement of Living and Working Conditions (2016): Sixth European Working Condition Survey, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1634en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1634en.pdf)

nights or shifts, increases the risk to safety, health and work-life balance, especially in combination with long working hours. Autonomy of the workers in deciding on the arrangement of their working hours in general has a beneficiary effect in that it reduces negative outcomes.<sup>10</sup> The proportion of the EU workforce who **works during weekends** (mostly Saturdays) is largely unchanged since 2010: more than half work at least one Saturday per month.<sup>11</sup>

Now there is an increasement of part-time work and the usage of flexitime (including condensation of the work week into fewer days) in place of the standard 'nine to-five' working day. Contemporary reductions in EU working time are caused by the **growing diversity in working time arrangements on the labour market**.<sup>12</sup> Today, increasingly flexible and non-standard working time arrangements are being developed with regard to starting and finishing times, rest periods, on-call time, and so on; this is also a result of information and communication technologies (ICT) that allow work to be performed anytime and anywhere.<sup>13</sup> Overall, the length of a country's weekly working time is negatively correlated with **female employment rates** (the higher the labour force participation of women, the shorter the average weekly working time)<sup>14</sup>.

Attitudes to careers<sup>15</sup> have also changed: the concept of working in and moving up within a **single company over a lifetime as the norm is no longer predominant**. At the same time, the **move towards a 24/7 economy** has changed patterns of work (e.g. greater intensity of work, tighter deadlines). All this suggests that reductions in working time will in future be moderate, but the trend to diversity and atypical working arrangements will continue, and that there are strong economic and social factors which mean that convergence across the EU cannot be assumed.

The available evidence, based on several EU researches (Deloitte Study<sup>16</sup>; Eurofound's Sixth EWCS<sup>17</sup>), clearly shows that long working hours have a detrimental **impact on the safety, health, and work-life**

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<sup>10</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation / Executive Summary / Annexes 1-4

- Annex 1: Study on health and safety aspects of working time, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

<sup>11</sup> European Foundation for the Improvement of Living and Working Conditions (2016): Sixth European Working Condition Survey, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1634en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1634en.pdf)

<sup>12</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

<sup>13</sup> European Foundation for the Improvement of Living and Working Conditions (2016): Sixth European Working Condition Survey, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1634en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1634en.pdf)

<sup>14</sup> European Foundation for the Improvement of Living and Working Conditions (2013): Working time and work-life balance in a life course perspective, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1273en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1273en.pdf)

<sup>15</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

<sup>16</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation / Executive Summary / Annexes 1-4

- Annex 1: Study on health and safety aspects of working time, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

<sup>17</sup> European Foundation for the Improvement of Living and Working Conditions (2016): Sixth European Working Condition Survey, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1634en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1634en.pdf)



**balance of the worker.** Besides any direct impact on the worker there is also a negative impact of working long hours on the general public, e.g. with regard to environmental or patient safety, or the social integration of these workers. Based on safety considerations, a maximum number of 8 hours of working time per day can be recommended. It would argue for an increased weekly rest period and thus a reduction in the number of work days to five per week. Combining this with the results from daily working time and safety yields a recommendation of 5 x 8 hours, so 40 hours per week. **Long working hours** (48 hours or more a week; long working days - 10 hours or more a day and the lack of a recovery period between two working days) and **atypical working time** (includes weekend work, night work and shift work) are associated with negative consequences for health and well-being, such as increased risk of cardiovascular disease, fatigue, reduction in the quantity and quality of sleep, anxiety, depression, gastrointestinal disorders, increased risk of miscarriage, low birth weight and premature birth, and cancer. In principle, more **discretion over working time arrangements** (who sets the working time arrangements and to what extent workers are informed in advance of changes in their work schedules or are requested to come to work at very short notice) by workers is a positive resource. **Flexibility** includes the possibility to take an hour or two off during working hours to take care of personal or family matters. For most workers in the EU (56%) working time arrangements are set by the organisation with no possibility for change. And for a majority (69%), changes to their working time arrangements do not happen regularly.<sup>18</sup>

**Travelling time**, quite usual in social care sector for people with disabilities, is also working time if employee doesn't have a fixed or habitual place of work says European Court<sup>19</sup>. The European Court of Justice (the case of 'Federacion de Servicios Privados del sindicato Comisiones obreras v Tyco Integrated Security SL') ruled that where workers do not have a fixed or habitual place of work, the time spent by those workers travelling each day between their homes and the premises of the first and last customers designated by their employer constitutes working time within the meaning of the working time directive (WTD). Employers should look carefully at their own local policies in order to establish whether or not they comply with the law as now set out in this decision.

The table 2 below concludes **usual week working time in SCSS for PwD**, based on our research:

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<sup>18</sup> European Foundation for the Improvement of Living and Working Conditions (2016): Sixth European Working Condition Survey, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1634en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1634en.pdf)

<sup>19</sup> NHS Employers: Latest News - Commission to issue new communication (2017), <http://www.nhsemployers.org/about-us/nhs-european-office/nhs-workforce-and-the-eu/working-time-directive>

Key WTD Elements/ Countries	Slovakia	Spain	UK	Austria
<b>Working Time in SCSS for PwD</b>	37.5 hours (in public sector, based on collective agreement) till 40 hours (80%), only few (20%) of them work maximum of 48 hours. 65% work usually in time from 8am till 4pm and 35% work in unual time (e.g. weekend, afternoons after 4pm, nights, holidays or 3-shift cycles)	40 hours a week based on the general Law of the Statute of Workers Right, and 38,5 hours of effective working time based on Centers and Services agreement	37.5 hours is the most common pattern. However, nearly all work is shift work and covers 'unusual time'. Workers often cover more than 40 hours when 'sleep-ins' are included in the calculations as full working time.	Standard: 38 hours , 8 hours per day, extension to 10, 12 or 24 hours possible (collective agreement), types: "normal" office hours of 9-17 (administrative workforce), longer hours, night and shift work (in housing facilities) and flexible models in mobile services. Heads of staff: contracts that contain all-in-clauses.

## On-call time

On-call time corresponds to any period where the worker is required to remain at the workplace (or another place designated by the employer) and has to be ready to provide services. An example could be a doctor staying overnight at the hospital, where he can rest if there is no need to attend to patients. Under the current Working Time Directive, as interpreted by the Court of Justice, on-call time is fully regarded as working time for the purpose of the Directive, regardless of whether active services are provided during that time. The period of on-call time within which the worker actively provides services is usually referred to as '**active on-call time**', while the period within which services are not provided can be referred to as '**inactive on-call time**' (see in particular Cases C-303/98 Simap, C-151/02 Jaeger, C-14/04 Dellas).<sup>20</sup>

**Stand-by time** corresponds to any period where the worker is not required to remain at the workplace, but has to be contactable and ready to provide services. An example could be when a technician of a nuclear facility is at home, but has to be ready to come to the plant to provide services in an emergency. Under the current Working Time Directive, as interpreted by the Court of Justice, stand-by time does not have to be considered as working time for the purpose of the Directive. Only active stand-by time, i.e. time in which the worker responds to a call, has to be fully counted as working time (see in particular Cases C-303/98 Simap, C-151/02 Jaeger, C-14/04 Dellas).<sup>21</sup>

On-call time is particularly common in 24-hour healthcare services<sup>22</sup>, **residential care** and emergency services, such as police and fire-fighters. Levels of actual activity during on-call time vary widely between sectors and between Member States. In some situations workers may have to maintain high levels of activity over long periods with little or no opportunity to rest. In others, they may very rarely

<sup>20</sup> EC - [http://easpd.eu/sites/default/files/sites/default/files/working\\_time\\_directive\\_-\\_easpd\\_response.pdf](http://easpd.eu/sites/default/files/sites/default/files/working_time_directive_-_easpd_response.pdf)

<sup>21</sup> EC - [http://easpd.eu/sites/default/files/sites/default/files/working\\_time\\_directive\\_-\\_easpd\\_response.pdf](http://easpd.eu/sites/default/files/sites/default/files/working_time_directive_-_easpd_response.pdf)

<sup>22</sup> EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0106>

be called to work in practice, but are still subject to the constraints of remaining present at the workplace. This particular type of working-time flexibility required by the functioning of permanent services creates the delicate problem of how to calculate working hours and rest periods in cases of ‘on-call time’ under the Directive. On the other hand, it has been stressed that counting on-call periods 100% as working time, while at the same time setting a 48-hour limit, can have very damaging consequences for the functioning and financing of services that need special flexibility in order to function on a 24-hour basis. It is argued for instance that in certain Member States, the costs of health (as well as social care) services would increase dramatically, adding to other challenges such as the increasing cost of medical products and the effects of population ageing. Shortages of some skilled social sector workers already make it extremely difficult for some Member States to recruit or retain enough specialised personnel.

The table 3 below concludes **on-call working time in SCSS for PwD**, based on our research:

Key WTD Elements/ Countries	Slovakia	Spain	UK	Austria
<b>Working Time in SCSS for PwD - on call time</b>	unusual for 24/7 services (there are shifts and staff are regularly paid as full working time), approx. only 15% of SCSS for PwD staff are working on stand-by time (mostly no paid, classified as voluntary work or in very few cases paid as overtime), approx. 20% of service providers - most of staff work also as volunteers (during unpaid care hours - mostly 5-10 hours weekly - over the announced 37,5 or 40 limited working time - mostly directors (more of NGO, but also of public providers) and the reason is that there are no money or granting for managing of service provision	the hours of availability that must be carried out within the premises of the employer are hours of work that are remunerated as worked, but nothing is contained in the legislation on the hours of availability that are held outside the premises of the company, waiting to be called. In the <i>Dependency Care Agreement</i> it is determined additional availability, which will be paid to workers who volunteer to be available during the day to meet any requirements that may arise due to a specific emergency at work. The agreement specifies that the availability time will not be computed for the computations of the ordinary day and that the period of extra time actually rendered will count from the call to thirty minutes after the end of the service that had been provided.	Stand-by is not much used in the sector.. Workers do not give time voluntarily (no pay). ‘Sleep-ins’, sometimes called ‘on-call’ are used extensively. There is uncertainty about the law in this area and current legal challenges about whether this time should be considered full working time (and paid as such) when the worker is asleep. Only between 1 and 7% of sleep-ins are disturbed. All disturbed time is treated as full working time and paid in full. Time asleep is paid at a flat rate and not counted as working time. This is particularly true in relevant for the ‘live-in’ model of support.	On call time at the workplace is usual in housing facilities, where special working time provisions allow 24 hour shifts (“easier work”), in the case of on-call time off the workplace, travelling time to the workplace is usually fully paid when the worker is “activated”

Staff shortages have made **work reorganisation difficult to achieve** - in practice this means that some workers exceed the 48-hour maximum working week when on-call hours are included<sup>23</sup>. Alternative options have been considered to avoid these consequences. Some of these options would require changes to the acquis. For example, inactive periods of on-call time at the workplace could be disregarded when calculating working time. Or inactive periods could be calculated less than 100% as working time, proportionate to the level of attention required (the so-called equivalence system).<sup>24</sup>

In public services (health, residential care, fire services and the police), public spending constraints, increased demand for services and world-wide shortages of skilled workers have led to employers seeking ways around the Directive's rules regarding on-call time and compensatory rest.<sup>25</sup> The NHS European Office<sup>26</sup> highlighted (**in the scope of health as well as social care sector**) that Member States should be able to decide at national level by legislation or collective bargaining how inactive on-call time should be treated (where the healthcare worker is on call, but actually resting). The NHS view is that any inactive on-call time should count as rest and that time spent on standby – where the employee is not working, should also count as rest. The reference period (length of time used to calculate the average weekly hours) should be set at national level. But, there are some cases, e.g in Ireland unions in the residential care sector won a court case with the outcome that all sleepover time should, in line with legislation, be recognised as working time and so paid at least the minimum wage hourly rate (this means an increase from €3.27 to €8.65 for some workers).<sup>27</sup>

### Reference period - flexibility on the averaging of weekly working hours

The limit to weekly working time of 48 hours provided by the Working Time Directive is a limit to average working time. This means that in certain weeks the worker can be required to work more than 48 hours, as long as this is balanced out by lower hours in other weeks. This **average has to be calculated over a certain period**, i.e. 'a reference period'. Currently, the standard limit to the reference period is 4 months, which can in certain sectors be extended by law up to 6 months, and by collective agreement it can be set up to 12 months.<sup>28</sup>

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<sup>23</sup> European Trade Union Confederation (ETUC): Fact sheet: Working time in the health sector in Europe (2014). [europehttps://www.etuc.org/IMG/pdf/A\\_TT\\_secteur\\_sante\\_u\\_EN-2.pdf](https://www.etuc.org/IMG/pdf/A_TT_secteur_sante_u_EN-2.pdf)

<sup>24</sup> EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0106>

<sup>25</sup> EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0801>

<sup>26</sup> NHS Employers: Latest News - Commission to issue new communication (2017), <http://www.nhsemployers.org/about-us/nhs-european-office/nhs-workforce-and-the-eu/working-time-directive>

<sup>27</sup> EPSU (2014): Union win working time case. <http://www.epsu.org/epsucob/2014-september-epsucobnews-16/unions-win-working-time-case>

<sup>28</sup> EC - [http://easpd.eu/sites/default/files/sites/default/files/working\\_time\\_directive\\_-\\_easpd\\_response.pdf](http://easpd.eu/sites/default/files/sites/default/files/working_time_directive_-_easpd_response.pdf)

However, concerns about **the restrictions on extending the 4-month basic reference period** have been raised by businesses operating in sectors or countries where there is no tradition of collective bargaining, and more generally, by SMEs. They consider that they are put at a disadvantage by these restrictions, and that the need for working-time flexibility is not correlated with the industrial relations model or the size of the undertaking. These rules could be made more flexible by allowing national law to fix a reference period of up to 12 months. This would certainly help companies to adjust opening or production times to the variations in activity caused by seasonal or economic cycles. On the other hand, longer reference periods may be seen as encouraging long-hours working over a prolonged period, and accordingly, as provoking undesirable effects on health and safety and for reconciliation between work and family life. Some type of protective condition may be necessary in order to avoid this outcome.<sup>29</sup>

The table 4 below shows the customary **reference period for working time in SCSS for PwD**, based on our research:

Key WTD Elements/ Countries	Slovakia	Spain	UK	Austria
<b>Working Time in SCSS for PwD reference period</b>	4 months (using 70% of all SCSS for PwD service providers, some of them for 1 month), which can in certain sectors be extended by law up to 6 months (11,5%), and by collective agreement it can be set up to 12 months (11,5%)	In general law, 40 weekly hours of average in annual computation. The <i>Centers and Services Agreement</i> establishes that the workers will have a maximum annual working day of 1729 hours of effective working time, differently the <i>Dependency Care Agreement</i> determines 1792 hours for their services except for the home help service, whose maximum hours in a year will be 1755 hours	The most usual period is 17 weeks. Longer periods (e.g. 12 months) are generally not useful in the sector due to high turnover of staff and lack of long term planning.	Reference periods according to collective agreement: 3 months (48 hours/week max.), 6 months (45 hours max.), 12 months (42 hours max.), which reference period applies is determined by the type of service

<sup>29</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0106>

## Night Work in SCSS for PwD

### Definition from EU legislative (2003/88/EC)

**Night time (Art.2, par. 3)**<sup>30</sup> means any period of not less than seven hours, as defined by national law, and which must include, in any case, the period between midnight and 05.00. Normal hours of work for night workers do not exceed an average of eight hours in any 24-hour period.

**Night worker (Art. 2, par. 4)**<sup>31</sup> is a worker, who works at least 3 hours from his/her working time in the period between midnight and 5.00 am. On the other hand, any worker who is likely during night time to work a certain proportion of his annual working time, as defined at the choice of the Member State concerned by national legislation, following consultation with the two sides of industry; or by collective agreements or agreements concluded between the two sides of industry at national or regional level. Night workers whose work involves special hazards or heavy physical or mental strain do not work more than eight hours in any period of 24 hours during which they perform night work.

**Guarantees for night-time working (Art. 10)**<sup>32</sup> Member States may make the work of certain categories of night workers subject to certain guarantees, under conditions laid down by national legislation and/or practice, in the case of workers who incur risks to their safety or health linked to night-time working.

The table 5 below shows the usual approach to **night work in SCSS for PwD**, based on our research:

Key WTD Elements/ Countries	Slovakia	Spain	UK	Austria
<b>Night work in SCSS for PwD</b>	in 24/7 services - mostly carers, instructors of social rehabilitation, health assistants and nurses with higher medical education degree. Mostly 1/3 (max 70% in few cases) of all staff of service providers, who provide 24/7 services, work during a night 6-times per a month (max 10-times)	The Statute considers night work between 22:00 and 06:00 in the morning. In 24/7 services - mostly do it carers, in residencies also nurses, they may not exceed eight hours, each period of 24 hours, on average within a reference period of fifteen days and that night workers may not work overtime. Agreements establishes that a bonus will be paid on the hours worked by night.	'Waking nights', i.e. full active night shifts, are most common in residential services. As most care/support for PwD is in the community, waking nights are not the most common pattern overall. Most night work is 'sleep-in' and involves long periods of inactive time (worker is usually asleep)...see 'on-call' section above. Shifts at night are usually 8 hours.	Night work as "easier duty" in housing facilities, in some cases such 24 hours shifts can be worked max. 3 times/week

<sup>30</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

<sup>31</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

<sup>32</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

Example of good practice from the health (not SCSS sector for PwD) - The 'Hospital at Night' **initiative for 24/7 acute care is a good example** of how the Working Time Regulations have been implemented in the UK to reduce working hours from 56 hours a week to 48 hours a week by 2009. This has provided an opportunity for positive change, to retaining levels of service, patient safety, high quality care and the quality of training. The benefits have been better clinical outcomes and a 20% reduction in length of stay, admissions and readmissions. In meeting the Regulations strategies have included moving doctors from on-call rotas to full shifts, an increase in the numbers of doctors employed at junior grade level, reorganisation from three to two rotas, more effective planning of shift-work, and a whole system approach. The implementation of the system has had positive outcomes on training, work-life balance and safer patient care.<sup>33</sup>

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<sup>33</sup> European Trade Union Confederation (ETUC): Fact sheet: Working time in the health sector in Europe (2014). [europehttps://www.etuc.org/IMG/pdf/A\\_TT\\_secteur\\_sante\\_u\\_EN-2.pdf](https://www.etuc.org/IMG/pdf/A_TT_secteur_sante_u_EN-2.pdf)

## Shift Work in SCSS for PwD

### Definition from EU legislative (2003/88/EC)

**Shift work (Art. 2, par.5)<sup>34</sup>** means any method of organising work in shifts whereby workers succeed each other at the same work stations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks. Shift work is more prevalent among service and sales workers and plant and machine operators, and in the sectors of health, social sector, transport, industry, and commerce and hospitality. Shift work is **associated unfavourably** with a number of outcomes. Shift workers find work–life balance more difficult, feel their health and safety is at risk because of work, and that work affects their health negatively. They are more likely to feel exhausted at the end of the day and to report that they are not appropriately paid and are less likely to feel they can work until 60 years of age.<sup>35</sup>

The NHS European Office<sup>36</sup> responded to the recent European Commission’s public consultation on how the WTD should be changed and highlighted that the current rules have a negative impact on running **costs of health and social care services**, with some hospitals or social residential care homes having to employ additional workers to cover shift patterns.

The table 6 below shows the usual approach to **shift work in SCSS for PwD**, based on our research:

Key WTD Elements/ Countries	Slovakia	Spain	UK	Austria
<b>Shift work in SCSS for PwD</b>	more service providers (approx. 60%) with no shift work. The rest varied in the ratio between the number of shift workers and workers with usual working time with no shift from 25% to 75% (more of them have 75% of staff working in 2 or 3-shifts circles). Most of staff working on shift work are carers.	Shift workers may accumulate for periods of up to four weeks half day of the weekly rest, so this rest can be reduced to 24 hours. It also, gives the option to separate these 12 hours from the one corresponding to the weekly rest, and then the workers can enjoy the leisure on another day of the week, and it also allows to reduce the rest period between days to 7 hours when the workers change their shift, reducing drastically the 12 hours’ rest between daily working days for such specific situation.	Nearly 100% of work in the sector is shift work. The most common pattern is 3 shifts, covering a 24 hour period. A pattern popular with workers is to do the evening shift, a sleep in, and the morning shift. This limits travel time and disruption. ‘Live-in’ workers may work two weeks on, one week off.	No data could be gathered on how many percent of services rely on shift work, however, shift work is a model that is used in Austria

<sup>34</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

<sup>35</sup> European Foundation for the Improvement of Living and Working Conditions (2016): Sixth European Working Condition Survey, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1634en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1634en.pdf)

<sup>36</sup> NHS Employers: Latest News - Commission to issue new communication (2017), <http://www.nhsemployers.org/about-us/nhs-european-office/nhs-workforce-and-the-eu/working-time-directive>



## Rest Period in SCSS for PwD

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### Definition from EU legislative (2003/88/EC)

**Rest period (Art.2, par.2)**<sup>37</sup> means any period which is not working time. Rest periods should be taken / scheduled with the aim of avoiding impairing effects as for example fatigue, monotony, satiation, or reduced vigilance. This would also argue for rather short reference periods for calculating averages of the exposure to work, in order to avoid any undue accumulation of impairing effects during times with high workload or extended hours within the reference period.<sup>38</sup>

**Adequate rest ( Art. 2, par. 9)**<sup>39</sup> means that workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term.

**Daily rest (Art. 3)**<sup>40</sup> every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period. The Working Time Directive entitles workers to a daily rest period of 11 consecutive hours in every 24-hour period. Some 26% of workers reported that at least once in the month prior to the survey they had a break of less than 11 hours between the end of one working day and the start of the next. This is substantially more prevalent among self-employed workers (36% of self-employed workers without employees and 46% of self-employed with employees) than employees (23%). Working longer hours (48 or more per week) and having a higher income is associated with not having sufficient rest between working days.<sup>41</sup>

**Breaks (Art.4)**<sup>42</sup> if the working day is longer than six hours, every worker is entitled to a rest break, the details of which, including duration and the terms on which it is granted, shall be laid down in collective agreements or agreements between the two sides of industry or, failing that, by national legislation.

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<sup>37</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

<sup>38</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation / Executive Summary / Annexes 1-4  
- Annex 1: Study on health and safety aspects of working time, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

<sup>39</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

<sup>40</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

<sup>41</sup> European Foundation for the Improvement of Living and Working Conditions (2016): Sixth European Working Condition Survey, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1634en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1634en.pdf)

<sup>42</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

**Weekly rest period (Art.5)**<sup>43</sup> per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest referred to in Article 3. If objective, technical or work organisation conditions so justify, a minimum rest period of 24 hours may be applied. The NHS European Office<sup>44</sup> responded to the recent European Commission's public consultation on how the WTD should be changed and highlighted that detailed rules on (for example) timing of rest for **health and social care sector** should be decided at national level, to fit in with the way services and training are organised differently in different Member States, whilst respecting staff health and safety. Shorter working hours overall and compensatory rest periods mean that staff in training get less time with supervisors and less experience of performing procedures. There should be greater flexibility in deciding the timing of compensatory rest and this should be done at national level; the important consideration should be whether or not the healthcare (the same as social care) worker is fit to work, both for their own safety and of others.

Another important issue is the **flexibility** left for businesses to determine when the minimum daily and weekly rest periods required by the Directive should take place. The Directive currently allows some or all of a minimum rest period to be delayed, subject to the condition that all missed minimum rest hours must be fully compensated afterwards. According to the jurisprudence of the Court of Justice, such compensatory rest hours should be taken as soon as possible; in any event, any missed daily rest should be taken immediately after an extended shift. Some stakeholders argue that minimum rest (whether daily or weekly) should always be taken promptly; or, at the very least, to the minimum extent possible and fully compensated immediately. They point to the potential health and safety risks posed by overtired workers to themselves and to others, and to the impairments in functioning capacity and productivity which can result from missed rest. On the other hand, greater flexibility in the timing and organisation of compensatory rest may help businesses to organise work, particularly when providing 24-hour services in remote areas, or facing shortages of skilled workers. In some cases, such flexibility can also help workers to reconcile work and family life, or match their individual preferences.<sup>45</sup>

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<sup>43</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

<sup>44</sup> NHS Employers: Latest News - Commission to issue new communication (2017), <http://www.nhsemployers.org/about-us/nhs-european-office/nhs-workforce-and-the-eu/working-time-directive>

<sup>45</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0106>

The table 7 below concludes **rest period in SCSS for PwD**, based on our research:

Key WTD Elements/ Countries	Slovakia	Spain	UK	Austria
<b>Rest period in SCSS for PwD</b>	<p>If the <b>continuous daily rest</b> is interrupted by overtime or on-call time, stand-by time, this overtime work formally doesn't interrupt the continuous daily rest, because overtime is out of shift framework, but in reality there is a shortage of daily rest. The same is with <b>continuous weekly rest</b>.</p> <p><b>Delays in providing compensatory rest for missed minimum rests</b> - employers provide within one month, generally, for daily rest; up to 8 months in some circumstances, for weekly rest. The organisation of breaks during the work in SCSS sector for PwD is usually <b>after each 3 or 4 hours</b> (in some few cases after 5 hours) and <b>lasting from 15 to 30 minutes</b> (30 minutes for lunch).</p>	<p>Between the end of one day and the beginning of the next one, at least 12 hours will be measured. A minimum weekly rest of day and a half, and the Centers and Services Agreement establishes that it will be accumulated for periods of up to fourteen days, stating that the accumulated rest days must be enjoyed in an uninterrupted manner and workers with disability will be entitled to two uninterrupted days of rest. The breaks when the duration of the daily continuous work exceeds 6 hours, for the agreement of attention to dependents, will be at least 15 minutes of duration, and this quarter of hour will have the consideration of effective time of work to all the effects</p>	<p>It is acknowledged that rest needs to be taken, but to fit with the needs of PWD there should be more flexible patterns. It can be difficult for lone workers to take breaks as sometimes PWD cannot be left alone. Sleep in and standby times are usually counted as rest unless disturbed (i.e. active). There is confusion and uncertainty about this along with current legal challenges. Compensatory rest seems to be little regarded.</p>	<p>Daily minimum rest is 11 hours in the sector, but can be reduced to 9 hours by collective agreement at the business level ("Betriebsvereinbarung"), the minimum of weekly rest is 2 full consecutive days, after night work, 48 hours of minimum rest have to be granted, in 24-hours-care, two full continuous days have to be granted</p>

## Annual Leave in SCSS for PwD

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### Definition from EU legislative (2003/88/EC)

#### Annual Leave (Art. 7, par. 1, 2)<sup>46</sup>

1. Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.
2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

The table 8 below records the usual approach to **annual leave in SCSS for PwD**, based on our research:

Key WTD Elements/Countries	Slovakia	Spain	UK	Austria
<b>Annual leave in SCSS for PwD</b>	depends on the age of employee in SCSS for PwD - till 33 years it is 25 days, over 33 years 30 days. Additional 5 days leave is for staff in direct performance with clients/users of SCSS in accordance with national higher collective agreement	<i>Centers and Services Agreement</i> establishes the right to enjoy twenty-five paid working days and the <i>Dependency Care Agreement</i> fixes it in thirty calendar days. It two cases can be enjoyed split over 2 periods.	28 days per annum as a minimum for all. No change with age or gender. Some organisations give more than this, sometimes based on length of service or seniority.	The collective agreement for the sector of SCSS for PwD (for details: see below) raises annual leave gradually after 10, 15 and 20 years of work, so workers in SCSS for PwD reach the maximum of 6 weeks of annual leave faster than the majority of workers in Austria.

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<sup>46</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

## Pattern of Work in SCSS for PwD

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### Definition from EU legislative (2003/88/EC)

**Pattern of Work (Art. 13)<sup>47</sup>** - Member States shall take the measures necessary to ensure that an employer who intends to organise work according to a certain pattern takes account of the general principle of adapting work to the worker, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate, depending on the type of activity, and of safety and health requirements, especially as regards breaks during working time.

The Working Time Directive was conceived more than 20 years ago, when information and communication technologies were not as developed and many types of present jobs did not exist yet. In **light of these changes in working patterns and organisation**, the Working Time Directive should introduce specific rules regulating particular situations and types of contracts such as telework, zero-hour contracts, flexitime, performance-based contracts without working time conditions, etc.<sup>48</sup>

**Full-Time Permanent Employment Contracts** can be based upon the employee being hourly paid or salaried and should set out the employees working hours, holiday entitlements, position within the organisation, and various other aspects of the employee's working arrangements.<sup>49</sup>

**Part-time employment contracts** means, that employers need to have a particular focus on the employees' working hours and pay, the law protects part-time workers from being treated unfavourably on the basis that they are employed part-time<sup>50</sup>. An increasing number of Europeans are working part-time, EC<sup>51</sup> report in 2016. This can be a positive development if it means that people can choose more freely the balance between work and other pursuits – and between income and leisure – or if it brings employment opportunities to people who were previously excluded from the labour market: such as mothers, older workers, disabled and students. But part-time work also has a downside if it is involuntary or is the only available option because of the difficulty of reconciling a 'standard' job with one's private life and family responsibilities. Working part-time can have costs beyond the loss of earnings compared to full-time working: part-time jobs are often of lower quality with lower hourly wages, provide poorer training and career opportunities, and, in the long run, reduce

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<sup>47</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

<sup>48</sup>EC - [http://easpd.eu/sites/default/files/sites/default/files/working\\_time\\_directive\\_-\\_easpd\\_response.pdf](http://easpd.eu/sites/default/files/sites/default/files/working_time_directive_-_easpd_response.pdf)

<sup>49</sup> Employment Law Contract - <http://employmentlawcontract.co.uk/employmentcontracts/>

<sup>50</sup> Employment Law Contract - <http://employmentlawcontract.co.uk/employmentcontracts/>

<sup>51</sup>EC - <http://ec.europa.eu/social/main.jsp?langId=en&catId=1196&newsId=2535&furtherNews=yes>

pension entitlements. The first striking observation is how gendered the phenomenon is. Far more women than men work on a part-time basis. In 2015, on average in the EU, 8.9 per cent of men worked part-time in contrast to 32.1 per cent of women, while the gap has been slowly closing.

**Director's Service Agreements** are generally the most detailed and heavy duty type of employment contract, which contain specific details about how the director should behave within the business and the scope and extent of their duties.<sup>52</sup>

**Fixed-Term Employment Contracts** are normally for temporary employees, the duration of the contract can be anything from a couple of weeks to a few years, temporary staff who are expected to be with your business for a few weeks may only require a very basic set of terms and conditions whereas employees undertaking specific projects over the course of a year or two can sometimes need very carefully drafted and prescriptive employment contracts.<sup>53</sup>

**Zero Hours Contracts** are normal employment contracts which would normally create a mutual obligation between the employer and the employee; the employer agrees to provide a certain amount of work and the employee agrees to go and carry that work out; but - the zero hours contract waters this obligation down by allowing the employer to require the employee to come to work without guaranteeing to provide work to the employee; this means that the employer can call upon the services of the employee as and when required.<sup>54</sup> Zero-hour contracts are a type of contract between an employer and a worker, where the employer is not obliged to provide any minimum working hours, while the worker is not obliged to accept any work offered.<sup>55</sup>

**Casual Work Contracts** are generally applicable to a person who is classed as being a 'worker' rather than an 'employee'; workers have fewer employment rights than employees; is not normally a permanent employment contract and would be used for seasonal workers who work only a few weeks of the year; unlike the zero hours model, a casual worker would not normally be obliged to accept work offered to them and may not qualify to be paid statutory payments such as statutory sick pay.<sup>56</sup>

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<sup>52</sup> Employment Law Contract - <http://employmentlawcontract.co.uk/employmentcontracts/>

<sup>53</sup> Employment Law Contract - <http://employmentlawcontract.co.uk/employmentcontracts/>

<sup>54</sup> Employment Law Contract - <http://employmentlawcontract.co.uk/employmentcontracts/>

<sup>55</sup> [https://en.wikipedia.org/wiki/Zero-hour\\_contract](https://en.wikipedia.org/wiki/Zero-hour_contract)

<sup>56</sup> Employment Law Contract - <http://employmentlawcontract.co.uk/employmentcontracts/>

A **Consultancy Agreement** is normally used when an organisation wants to engage the services of an individual who will not be employed; where an individual will be self-employed, they will normally need to be provided with a consultancy agreement; a consultancy agreement is often a key tool in protecting the parties from complicated tax and employment rights issues.<sup>57</sup>

A **single worker** may be employed under several concurrent contracts.<sup>58</sup>

"**Autonomous workers**"- such as for example managing executives, can fully determine their own working time (i.e. decide when and how many hours they work). Member States have the option to apply the main provisions of the Working Time Directive to these workers.<sup>59</sup>

Besides the type of contract mentioned above there are also **agencies, sole traders and direct employment by one disabled person** dependent on state support.<sup>60</sup>

**Temporary agency work** is very debateable both for health as well as for social care sector. The example of practice could be Ireland national agreements, which includes clauses requiring consultation over any public sector employers' plans to outsource work or use agency staff. The public service union IMPACT has won a Labour Court judgement stating that managers at University College Hospital Galway should have consulted over the proposal to use agency staff for a range of clerical and administrative jobs. The union points out that the agency workers are doing the same job as permanent staff but for less pay. The Court has required the hospital to take immediate steps to take on permanent staff rather than agency workers.<sup>61</sup>

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<sup>57</sup> Employment Law Contract - <http://employmentlawcontract.co.uk/employmentcontracts/>

<sup>58</sup>EC - [http://easpd.eu/sites/default/files/sites/default/files/working\\_time\\_directive\\_-\\_easpd\\_response.pdf](http://easpd.eu/sites/default/files/sites/default/files/working_time_directive_-_easpd_response.pdf)

<sup>59</sup>EC - [http://easpd.eu/sites/default/files/sites/default/files/working\\_time\\_directive\\_-\\_easpd\\_response.pdf](http://easpd.eu/sites/default/files/sites/default/files/working_time_directive_-_easpd_response.pdf)

<sup>60</sup>EC - [http://easpd.eu/sites/default/files/sites/default/files/working\\_time\\_directive\\_-\\_easpd\\_response.pdf](http://easpd.eu/sites/default/files/sites/default/files/working_time_directive_-_easpd_response.pdf)

<sup>61</sup>EPSU (2007) Ireland: Union wins court case over agency staff. <http://www.epsu.org/epsucob/12-2007-epsucobnews-27-june-2007/union-wins-court-case-over-agency-staff>

The table 9 below demonstrates the usual **pattern of work in SCSS for PwD**, based on our research:

Pattern of work in SCSS for PwD	Slovakia	Spain	UK	Austria
<b>Part-time permanent employment contract</b>	approx. 10% of all staff in SCSS for PwD, approx. 80% of this kind of contract has carers, there is also social pedagogs, special pedagogs, some of them are also cooks and maintenance staff (handyman, driver, informant at the reception etc.) - the incidence of part-time working is significantly low, involving only 1.3% of men in employment and 4.7% of women, with only a modest increase over the years. In practice, part-time jobs are generally taken up by workers only when full-time work is not available, for health reasons, or to suit the needs of employers	66,63% of the staff has permanent contracts, 65 % full time and 35% part time. Part time permanent contracts are most common in in direct services to PwD, in particular carers.	Common. Usually at the request of the worker. Fits well with home/life responsibilities especially as over 80% of the workforce is female.	Dominant form of work in the sector
<b>Fixed-Term Employment Contract</b>	approx. 5% of all staff in SCSS for PwD, most of them are carers, project managers, reasons are mostly limited time for conducting EU social projects from ESF or work on time, while the core employee employed on full-time permanent employment contract is at maternity leave or is unable to work for a longer time because of illness etc.	38,37% has temporary contracts, some of them for temporary services and other fixed-terms, depending on the needs of the service or the budget to provide the service, also to substitute vacations (annual leave) and medical leave.	Not much used. Occasionally for project based specialists.	Used for foreign workers who return to their home countries after a certain period of time
<b>Full-time permanent employment contract</b>	most common (70-100% of all staff in SCSS for PwD - management, university educated professional staff as social workers, psychologists and special pedagogs, social workers` assistants, instructors of social rehabilitation, ergotherapists, nurses, administrators, some carers and also cooks	66,63% of the staff has permanent contracts, 65 % full time and 35% part time. Full time and permanent contracts are most common in management staff and part time in direct services to PwD.	Most common, along with part-time permanent	Due to the dominance of part-time employment, only partly used
<b>Zero hour contract</b>	(in Slovakia named Agreement on work activity in a regular basis lasting only for actual calendar year) - approx. 15-30 % of all staff, most of them are carers, few are also animators for PwD, IT staff or accountant, etc	Can not be used in Spain	Little used in survey of disability services, unless requested by worker. However, in the social care sector as a whole it is more common, especially in home care for older people.	Not in use



In each life phase, employed women still spend on average more hours on **non-paid** domestic or care activities than employed men. The smallest gender gap is found in the northern cluster and the largest in the continental and southern cluster. While the gender gap is lowest at the two ends of the life cycle, it increases dramatically during the parenting phase, with employed women spending twice as many hours on care and household activities compared with employed men. When entering the parenting phase, employed women reduce their paid work by four hours a week but increase their unpaid work by 25 hours, while men's unpaid work increases by 12 hours.<sup>62</sup>

**Example of good practice** - Working time flexibility in the Finnish health sector<sup>63</sup> as an innovative method of shift planning for nurses has been developed in a project led by the Finnish nurses union SuPer, in partnership with Trade Unions of the Public Welfare Sectors (JHL) and the Union of Health and Social Care Professionals (Tehy), and two employers organisations. A participatory planning model has been put in place to enable staff to plan roles and tasks together, based on principles of fairness and equality. The shift planning model has adopted principles of ergonomic working time based on a model of two mornings, two evenings, two nights and four days off. This is also based on a greater deal of regularity, 8-10 hour shifts, at least 11 hours off duty between shifts, no more than 48 hours working time a week and consecutive days off. Staff are able to plan their working time schedules and ward shifts in a participatory way, taking into account skill mix, staffing levels and the preferences of other workers on a ward. There has been a very positive impact on staff who now have more control over their work, which in turn has had an impact on their well-being. This has also led to high quality nursing, effective use of resources, motivated and committed workers, and better retention of staff. The example shows the benefits of a participatory approach and the role that the social partners can play in inspiring positive forms of flexibility with benefits for staff and the organisation.

As regards working time flexibility in the health sector<sup>64</sup> (and with some range of similarity in social care and supported services sector for persons with disabilities), there has been a significant growth of flexible working agreements in the health and social sector across Europe, and unions have played a key role in developing workplace agreements on flexible working time. Flexible working arrangements have been used to improve the quality of services, for example, to extend opening times

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<sup>62</sup>European Foundation for the Improvement of Living and Working Conditions (2013): Working time and work–life balance in a life course perspective, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1273en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1273en.pdf)

<sup>63</sup> European Trade Union Confederation (ETUC): Fact sheet: Working time in the health sector in Europe (2014). [europehttps://www.etuc.org/IMG/pdf/A\\_TT\\_secteur\\_sante\\_u\\_EN-2.pdf](https://www.etuc.org/IMG/pdf/A_TT_secteur_sante_u_EN-2.pdf)

<sup>64</sup> European Trade Union Confederation (ETUC): Fact sheet: Working time in the health sector in Europe (2014). [europehttps://www.etuc.org/IMG/pdf/A\\_TT\\_secteur\\_sante\\_u\\_EN-2.pdf](https://www.etuc.org/IMG/pdf/A_TT_secteur_sante_u_EN-2.pdf)

of services, and to enable workers to have greater time-sovereignty and to balance family and care responsibilities. Many of the agreements have been designed to recruit and retain the best staff, particularly because in the **health (and social care) sector** the majority of workers are women. The most common agreements have covered: Flexi-time schemes, with average working hours maintained over a reference period of up to three months. These give a choice of when to work within a core period of time; Annualised hours where hours are worked out over a year. These are

often organised around set shift work patterns, leaving flexibility when to work other hours. These schemes have been valuable in planning shifts and in addressing peak times for health (or social) service delivery. Differential hours over the year, for example, enabling parents to work term-times only in order to balance work and family life. Compressed hours, which enable a worker to agree hours over fewer days, for example over a 4 day week or a 9 day fortnight. Staggered hours, with different starting, break and finishing times for workers in the same workplace. Job sharing, leading to two persons sharing one job. Part-time and reduced hours working negotiated between the employer and the worker, with schemes to enable workers to reduce their hours or work fewer days per week.

## Derogations and Exceptions in SCSS for PwD

### Definition from EU legislative (2003/88/EC)

#### Derogations and Exceptions (Art. 17, par. 1-5) and Derogations by collective agreements (Art. 18)<sup>65</sup>.

In each country, mandatory working time regulation is a complex mix of general and sectoral rules founded in statutory law and collective agreements. International regulation in this area is extensive, and historically has exerted a decisive influence on the progressive reduction of the hours worked by employees. ILO standards (of which there are 39 different ones) continue to play a very significant role worldwide, particularly in countries with poorer working conditions. The basic principles on which working time regulation is based are set out in Article 31 of the EU Charter of Fundamental Rights.<sup>66</sup>

The table 10 below concludes **derogations and exceptions in SCSS for PwD**, based on our research:

Key WTD Elements/ Countries	Slovakia	Spain	UK	Austria
Derogations and exceptions in SCSS for PwD	to reduce the working hours of public sector employees in SCSS for PwD (only for public staff from 40 to 37,5 hours)	No applications specifically for SCSS for PwD,	Most managers are seen as 'autonomous workers' and therefore exceptions. The 48 hour opt-out is used extensively, often written into contracts and therefore not compliant. Because of the fragmented workforce, social dialogue structures are weak so collective agreements are unusual beyond individual organisations.	Multiple derogations regarding working time, annual leave, reference periods et al (see country report below for details)

The current Directive contains several derogations that can be applied to the working time and rest periods of these workers (especially in **emergency services**, e.g. civil protection services like fire-fighting services) in order to ensure the effective provision of these services. In the event of a catastrophe/disaster, the Working Time Directive does not apply at all (See in particular Cases C 397/01 to C 403/01 Pfeiffer and Case C-52/04 Feuerwehr Hamburg). Under the current Working Time Directive, as interpreted by the Court of Justice, a worker who by derogation from the general rules has not received his/her minimum daily rest of 11 consecutive hours in a 24-hour period, will have to receive an equivalent period of compensatory rest (i.e. 11 hours) directly after finishing the extended working time period. This sets a maximum of 24 hours to a single consecutive shift (See in particular Case C-151/02 Jaeger).<sup>67</sup>

<sup>65</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

<sup>66</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0106>

<sup>67</sup>EC - [http://easpd.eu/sites/default/files/sites/default/files/working\\_time\\_directive\\_-\\_easpd\\_response.pdf](http://easpd.eu/sites/default/files/sites/default/files/working_time_directive_-_easpd_response.pdf)

The use of the opt-out has increased substantially in recent years **across the EU**. Today, five Member States use the opt-out in all sectors of the economy; another ten Member States use it in certain sectors, mostly those where on-call time is prevalent. There is also the particular issue of workers with more than one contract, who may work in excess of 48 hours for the same or different employers (0.6 % of workers in the EU both work more than 48 hours a week on average, and work in multiple jobs - in 4th EWCS, 2005).<sup>68</sup> The average maximum of 48 hours of the WTD must be understood to be applied 'per worker' and not per contract, regardless if the worker has more contracts with the same or another employer, said ETUC<sup>69</sup>. This is the only interpretation compatible with the health and safety objective of the Directive.

A survey of EPSU (2014)<sup>70</sup> affiliates carried out in 2009 highlighted working time developments and trends, including examples of **collective agreements** and policies. Overall the survey found that:

- Since 2003 there have been very few collectively agreed reductions in working time in the public services, and in the health sector overall. There has been little change in average working hours with reduced working hours, without a loss of pay, and lesser importance given to this issue on collective bargaining agendas.
- The economic crisis has led to cuts in working hours of a new kind in the health sector in some countries, for example, through extra days off, reduced holiday leave or cuts in annual working hours, leaving the normal working week unchanged. This has been particularly the case in services that are contracted-out, for example, in catering and cleaning.
- One of the more retrograde developments has been that some workers, working in contracted-out services in the health sector, work on a zero-hour contract basis.
- Annualised working hours, calculating working time on the basis of annual, rather than a weekly calculation has become more common in the scheduling of hours and working time in the health sector.
- In many countries the nursing workforce (the same as social care and supported services for people with disabilities) is ageing and this led some unions to negotiate flexible working options

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<sup>68</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0106>

<sup>69</sup> ETUC - European Trade Union Confederation (2010), Confédération européenne des syndicats (CES): The Working Time Directive: Limitation of working hours and more influence of workers, for healthier working lives. [https://www.etuc.org/sites/www.etuc.org/files/ETUC\\_position\\_WTD\\_070610\\_EN-ff\\_2\\_\\_2.pdf](https://www.etuc.org/sites/www.etuc.org/files/ETUC_position_WTD_070610_EN-ff_2__2.pdf)

<sup>70</sup> European Trade Union Confederation (ETUC): Fact sheet: Working time in the health sector in Europe (2014). [https://www.etuc.org/IMG/pdf/A\\_TT\\_secteur\\_sante\\_u\\_EN-2.pdf](https://www.etuc.org/IMG/pdf/A_TT_secteur_sante_u_EN-2.pdf)

for nurses who are considering retirement. The objective has been to give access to retirement planning and flexible work options in order to retain staff.

- In some countries the introduction in the health sector of the individual opt-out from the 48-hour week has been used as a short-term solution to staff shortages. Trade unions have argued against the use of the individual opt-out on the basis that the Working Time Directive is essential to protect workers and the public.
- For example, the Slovak Trade Union of Health and Social Services used the policy as a basis for negotiating working time arrangements in the health sector, and achieved reductions in working time and extended annual leave. However, low levels of public expenditure have had an impact on the recruitment of new staff and health staff tend to work overtime to make up for the shortfall in staffing levels required to provide decent services.<sup>71</sup>
- In France a collective agreement between trade unions and employers in the health sector in 2008 has led to an innovative scheme to reduce working time and lighten the workload for older staff, particularly nurses, as a means of retaining them in the workforce. The initiative provides for the right to days off for nursing and other paramedic staff as they get older, with up to an additional 36 days off per year for those aged 55 years and above. The agreement resulted from concerns about a shortage of nurses and work-related physical and psychological health problems faced by older nurses, and the need to retain nurses in the workplace until retirement. The lost time is compensated through the creation of new jobs.<sup>72</sup>

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<sup>71</sup> European Trade Union Confederation (ETUC): Fact sheet: Working time in the health sector in Europe (2014). [europehttps://www.etuc.org/IMG/pdf/A\\_TT\\_secteur\\_sante\\_u\\_EN-2.pdf](https://www.etuc.org/IMG/pdf/A_TT_secteur_sante_u_EN-2.pdf)

<sup>72</sup> European Trade Union Confederation (ETUC): Fact sheet: Working time in the health sector in Europe (2014). [europehttps://www.etuc.org/IMG/pdf/A\\_TT\\_secteur\\_sante\\_u\\_EN-2.pdf](https://www.etuc.org/IMG/pdf/A_TT_secteur_sante_u_EN-2.pdf)

## Safety and health protection in SCSS for PwD

### Definition from EU legislative (2003/88/EC)

#### Safety and health protection (Art. 12)<sup>73</sup>

(a) night workers and shift workers have safety and health protection appropriate to the nature of their work; (b) appropriate protection and prevention services or facilities with regard to the safety and health of night workers and shift workers are equivalent to those applicable to other workers and are available at all times.

The table 11 below concludes **safety and health protection in SCSS for PwD**, based on our research:

Key WTD Elements/Countries	Slovakia	Spain	UK	Austria
Safety and health protection in SCSS for PwD	the obligation to secure regular training and education courses by certified Safe and Health protection technician. Moreover, there is also obligation for service provider as employer to provide work medical services (so employer has to pay regular orders to doctor for workforce) and most of service providers in SCSS for PwD (mainly NGO as non-public provider) have a problem with this.	It is mandatory to train and report on occupational risk prevention, and entities are awareness on it. Depends on the agreement the ancillary services and the annual salary.	H&S training required in particular areas. Various legislation covers workplace safety. This has been in place for some years and is very effective,	Additionally to regular precautions, special medical examinations have to be available to workforce in night work

According to a recent Eurobarometer survey, a large majority of workers express **satisfaction with workplace health and safety** in their current job (85%) and over three quarters (77%) say that obligation of safety and health protections` information and/or training is available in their workplace.<sup>74</sup>

Regulation of working time always involves striking a delicate **balance between two competing interests**. On the one hand, both employers and workers have a clear pecuniary incentive in long hours. Employing workers for longer hours increases the profit margins of their employers. Workers may be well inclined to work longer hours in order to earn a higher pay and to improve their living conditions. On the other hand, working for too many hours may be detrimental to health and safety

<sup>73</sup>EC - [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088)

<sup>74</sup>EC - <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0332>

due to insufficient rest breaks, inadequate time to recuperate or excessive consecutive hours or days (e.g. increased risk of burn-out or an occupational accident due to fatigue).<sup>75</sup>

This is of particular relevance for the **health and social care sector**. On the one hand, patient (clients, users) safety needs to be ensured by making sure social, health and emergency services are not delivered by workers whose skills and judgement are undermined by exhaustion and stress resulting from long working hours. On the other hand, the sector is already facing a gap in supply of skilled professionals that will widen in the future unless appropriate measures are taken to address it. In order to recruit and retain health workers, it is important to make the working conditions more attractive. Reasonable working hours and work-life balance are crucial in that respect.<sup>76</sup>

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<sup>75</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

<sup>76</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0801>

## Implications of the EU Working Time Directive (WTD) on working conditions in the Social Care and Support Services (SCSS) for persons with disabilities (PwD)

### Working Time: Trends and Prospects

The existing text of the Directive is **difficult to read and confusingly structured**, with a number of now-obsolete provisions. In particular, it contains a number of overlapping derogations and provisions (for example, on reference periods) with some duplication and repetition. Any revision should, however, be carried out with particular care and restraint to ensure that substantive law is unaffected and to avoid any risk of uncertainty.<sup>77</sup>

Over the last twenty years, fundamental changes have occurred in the world of work, and they have had a clear impact on the overall length and distribution of working time. The key trends<sup>78</sup> and challenges (based on EU Strategic Framework on Health and Safety at Work 2014-2020)<sup>79</sup> are:

- A **general reduction in total working time**: average weekly working hours in the EU have decreased from 39 hours in 1990 to 37.8 hours in 2006;
- A **polarisation of working time between groups of workers**. Part-time workers, most of them voluntary, increased their share in the workforce from 14 % in 1992 to 18.8 % in 2009; however, 10 % of all employees still work more than 48 hours a week and nearly 7% of all employees work in multiple jobs;
- A **progressive de-standardisation of individual working time**, with increasing variation of working times throughout the year or the working life, along with more flexible practices in companies (flexitime, annualisation of working hours, time banks, time credits, etc.).
- Improvement of the implementation record of Member States, in particular by **enhancing the capacity of micro and small enterprises** to put in place effective and efficient risk prevention measures.
- Improvement of the prevention of work-related diseases by tackling existing, new and emerging risks and **tackling demographic change** (the ageing of the population and reintegration and rehabilitation measures allowing for early return to work after an accident or disease are needed to avoid the permanent exclusion of workers from the labour market).

<sup>77</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0801>

<sup>78</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0106>

<sup>79</sup>EC - <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0332>



## Greater flexibility for new working patterns

**Part-time work** and **flexible forms of work** organisation are just two examples of the increasing diversity of working time arrangements. The significant numbers of people teleworking, working in shifts (17 %), evenings/nights (10 % at least three times a month) or Saturdays/Sundays (53 % at least once a month), as well as the non-quantified but increasing phenomenon of ‘taking work home’ compound a general picture of increasingly diversified work patterns across Europe. The number of workers with multiple jobs (3.8% of the labour force) provides another illustration of this flexibility.<sup>80</sup>

These developments reflect the influence of multiple structural changes such as the shift from manufacturing to services, and the rise in productivity due to technological progress and an increasingly competitive business environment. Also the growth of **female participation in employment** and the **increasing individualisation of lifestyles** (with the emergence of a greater variety of preferences as regards the distribution of time between work and leisure) have influenced developments. For the future these structural changes will probably accelerate as the global economy completes the transition from an industry-based to a knowledge-based economy. New jobs are being created in analytical, scientific and technical occupations, i.e. workers actively involved in the creation and diffusion of knowledge. This transition is affecting not only the types and quality of jobs available in the economy and the skills it requires; it is also affecting the way work is organised. Improved information and communication technologies may reduce the need for physical presence at a centralised work location and promote more mobile and autonomous types of work (tele-working, nomadic working).<sup>81</sup>

For a growing number of **‘knowledge workers’**, work may be assessed not on the number of hours worked, but on the originality and quality of the product delivered. Such workers may enjoy extensive autonomy over the organisation and location of their work, raising questions about the application of normal working time rules. However, the new knowledge-based economy is also producing many jobs in routine production services (call centres, data treatment), entailing repetitive tasks under close supervision. In these cases, high levels of work intensity and stress can be found, which may require regulation in the interests of workers’ health and safety, just as in traditional industrial activities.<sup>82</sup>

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<sup>80</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0801>

<sup>81</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0106>

<sup>82</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0106>

Increasingly, working time management is becoming an **important element of businesses' competitive strategies**. Cutting average costs in manufacturing and extending opening hours in services both mean that total production time has to be longer. Adapting to variations in consumer demand and to seasonal cycles calls for more varied distribution of production time. New forms of working-time flexibility have been and will continue to be implemented as a result, such as the organisation of rosters and shifts to allow organisational flexibility, and the adoption of flexible work schedules. More recently, in the current crisis, working-time flexibility has become a key instrument for many businesses to adapt to sharply declining demand. Short-time working schedules have been introduced, often with partial wage compensation or in combination with training, and some Member States took policy measures to provide financial support for such practices. In parallel with these business-led transformations, there is a growing awareness that working-time flexibility can help workers to reconcile their work and private life. Now that we have a more diversified EU workforce, flexible work schedules may provide workers with more opportunities to adapt working time to individual needs. Under certain circumstances, it may also enhance equal opportunities for employment and career progress, and facilitate access to employment for disadvantaged categories of job seekers.<sup>83</sup>

A staffing deficit may emerge, particularly in highly skilled professions, making work more attractive for those able to earn higher salaries, and exerting upward pressure on the working time of scarce skilled workers. The **ageing of our societies** may also impact on the way workers allocate their time between work and leisure increasing the desire for a better work-life balance with a resulting backlash against the long-hours culture.<sup>84</sup>

### **Work-life balance for new demographic realities**

Major changes are occurring in the world of work, owing to the **increasing participation of women and older people**, the fact that both partners often now work, sometimes at different hours and on different days, and the challenges posed by care of children and the elderly. The rapid and widespread increase in flexitime working illustrates the strength of demand for more balanced solutions, along with greater individualisation of lifestyles for workers of all ages. Making working time rules more flexible could help Member States achieve the EU 2020 target of increasing workforce participation to

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<sup>83</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0106>

<sup>84</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0106>

75% (from a current 69%), particularly by further increasing the participation of women and older workers.<sup>85</sup>

Drawing on data from Eurofound's fifth European Working Conditions Survey (EWCS), based on interviews with more than 38,000 respondents in 34 countries, around 80% of respondents report that their working time fits well or very well with their family or other social commitments outside work. Male employees are slightly less satisfied with their work–life balance than their female counterparts. Compared to the northern European cluster, women in almost all other country clusters report great difficulties in combining work and family life. **Family-friendly working time organisation** can facilitate reconciliation of work and private life. However, during the parenting phase, employees report greater difficulties with work–life balance, even when working time and other characteristics are controlled for. Almost 40% of employees indicate that they would like to change their current working time. There is a preference among men and women for a convergence of working time: shorter full-time hours for both. Working time preferences vary significantly across the life course. In particular, mothers of pre-school children are more inclined to want a reduction of working time than their male counterparts.<sup>86</sup>

### Autonomous workers

Member States may allow derogations from the 48-hour limit, rest periods and other provisions, under Article 17(1) of the Directive, in the case of **certain workers who can determine their own working time** or whose working time is not predetermined. However, there is a need to define this derogation more clearly, both to respond to changing work patterns which allow for relatively autonomous working without clear time boundaries, and also to avoid abuse. A revised definition should provide that this derogation only applies to senior managers in the public or private sectors, and other workers with genuine and effective autonomy over both the amount and the organisation of their working time.<sup>87</sup>

### Multiple contracts

A significant minority of workers in the EU work **under concurrent employment contracts with different employers** or, sometimes, with the same employer. It needs to be made clearer that the

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<sup>85</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0801>

<sup>86</sup>European Foundation for the Improvement of Living and Working Conditions (2013): Working time and work–life balance in a life course perspective, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1273en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1273en.pdf)

<sup>87</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0801>

working time limit in the Directive applies per worker in such situations. The Commission has previously stated that as far as possible, the Directive must be applied per worker, given its aim of protecting health and safety. However, enforcement can be problematic if the employer is not aware of the worker's other job(s). A first step may be to clarify that if an employee works under more than one contract with the same employer, Member States should put in place effective mechanisms to enforce the Directive's provisions on a per-worker basis. Appropriate mechanisms for monitoring and enforcement are more complex when there are concurrent contracts with different employers. These matters could be a subject for an exchange of good practice between member states.<sup>88</sup>

### The scope of the Directive and specific sectoral problems

One option raised by some replies was **to exclude certain groups** (for example, defence forces or voluntary firefighters) from the scope of the Directive. However, this appears inconsistent with the Charter, which refers to 'every worker', as well as with the basic principle stated in several rulings of the Court of Justice that the Directive protects fundamental social rights of every 'worker'. The Court held that the concept of 'worker' in the Directive has an autonomous meaning under EU law, referring to an objectively defined employment relationship, although the application of the concept in particular cases is a matter for national courts.<sup>89</sup>

### Opt-out

It is relevant to note here that out of the 27 Member States, 16 currently allow use of the opt-out, but 11 of them only permit it **in sectors or activities which make heavy use of on-call time**. It does not seem realistic to ask all these Member States to refrain from using this derogation, without ensuring feasible alternative solutions. It is clear that the future use of the opt-out in on-call services will depend on how public services absorb the changes introduced by this review regarding on-call time and compensatory rest. Other opportunities for flexibility introduced by the revision of the Directive may discourage wider use of the opt-out, such as an extension of the reference period for averaging weekly working time.<sup>90</sup>

It is worrying that "several stakeholders" should be calling for the individual right to work more than 48 hours a week to **"earn additional income, or achieve more rapid career advancement"**. This raises

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<sup>88</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0801>

<sup>89</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0801>

<sup>90</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0801>

the question about decent levels of pay and the need to ensure that workers are adequately paid so that they do not need to work such long hours. This and the issue of career advancement also put the focus on equality and the discrimination against women workers who are overwhelmingly still the primary carers and who would not be able to work such long hours to improve their pay or promotion prospects. As a matter of balance, it should also be noted that “several stakeholders” have called for a shorter working week to create more employment, ensure better work-life balance and deal with environmental challenges.<sup>91</sup>

On-call time is a key issue for the public sector and particularly the provision of health and **residential care** and emergency services. Social partners in these sectors have been working to negotiate solutions on the basis that a revised Directive requires on-call time at work to be counted as working time. However, because of the position of the Commission and doubts over possible revisions to the Working Time Directive, the easiest solution for some employers has been to say that the potential costs are excessive and instead of trying to find a solution they avoid the issue entirely by using the opt-out. This does raise an important issue about the health workforce and recruitment and retention.<sup>92</sup>

It therefore makes more sense to reduce the need for using the opt-out in the long term, by **providing more targeted forms of flexibility**, than to re-open a debate on its abolition in which no consensus appears possible between the social partners or between the co-legislators. It is worth recalling that the number of EU workers working more than 48 hours, now representing 9 % of the workforce, continues to decline, although there are still large differences between Member States, and arises from other factors (particularly multiple contracts) as well as from use of the opt-out.<sup>93</sup>

## **Paid annual leave**

Replies highlighted difficulties with one aspect of the law relating to paid annual leave – the rulings in Schultz-Hoff and Stringer, which held that a worker who is absent from work for reasons (such as illness) outside his control is still entitled to paid annual leave in respect of that period. It should be borne in mind that **proof of incapacity for work and rates of pay** during such absence are matters for national law and are outside the scope of the Directive.<sup>94</sup>

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<sup>91</sup> EPSU (2010): Final response to the Commission’s Communication on Reviewing the Working Time Directive. [http://www.epsu.org/sites/default/files/article/files/WTD\\_communication\\_response\\_FINAL.pdf](http://www.epsu.org/sites/default/files/article/files/WTD_communication_response_FINAL.pdf)

<sup>92</sup> EPSU (2010): Final response to the Commission’s Communication on Reviewing the Working Time Directive. [http://www.epsu.org/sites/default/files/article/files/WTD\\_communication\\_response\\_FINAL.pdf](http://www.epsu.org/sites/default/files/article/files/WTD_communication_response_FINAL.pdf)

<sup>93</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0801>

<sup>94</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0801>

The core problem seems to arise from **a lack of clarity on whether a worker on long-term sick leave** could accumulate paid annual leave entitlements over successive years. Such a prospect creates an unpredictable and potentially substantial cost for employers, and could have the unintended effect of encouraging them to terminate employment of workers on long-term illness before it is clear whether they can return to work after recuperation. Moreover, unlimited accumulation would seem to go beyond what is required to achieve the Directive's aims. The best solution seems to be an amendment to make it clear that Member States may set appropriate ceilings to the accumulation of paid annual leave entitlements over successive years, once they exceed the number of weeks required to achieve the Directive's aims of minimum rest and recuperation.<sup>95</sup>

### **Safety and health protection**

The growing **new trends for atypical working arrangements** could lead to health and safety problems<sup>96</sup>:

- Working at 'unusual times', notably at weekends, is detrimental to safety, health, wellbeing and work-life balance. Despite the trend to a 24/7 society, evenings and weekends are still not seen by society as 'usual' working times, so that working during these times – even occasionally - can be expected to be associated with physical and psychosocial impairments. Compensatory rest cannot fully outweigh these effects.
- Shift work increases the risk of impairments to safety, health, and social participation. Shift workers are susceptible to sleep, digestive and cardiovascular disorders. The more night shifts someone works, the more likely are accidents. In addition, the children of shift workers perform less well at school and are less likely to go on to higher education. Shift workers show a higher incidence of broken relationships and less involvement in the pursuit of their interests in participative institutions (councils, trade unions, political parties etc.)
- The risk of accidents is greater where rest breaks are postponed or infrequent. Postponing rest breaks during the working day thus leads to an increased risk to safety, due to the cumulative effect of fatigue – though it is difficult to unbundle the effect of what are normally associated factors of long hours and lack of sleep.

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<sup>95</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0801>

<sup>96</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPagelId=205>

- Flexible working hours may seem superficially attractive, but can be a mixed blessing. A high degree of variability or irregularity of working hours can be detrimental to health and well-being in the same way as shift work. The decision-making process plays a role: there is evidence that “company-controlled” variability has stronger negative effects than “employee-controlled” variability, but employee control does not totally negate the detriments.
- Factors in combination: there are effects on health and safety which result from a combination of different characteristics of working hours and their interactions. These effects can be purely additive, as is the case with long working hours and shift work, but also interactive, as is the case with flexible and long working hours.

In order to respond in a **holistic, cross-thematic way** to challenges identified above, the Commission EU Strategic Framework on Health and Safety at Work 2014-2020<sup>97</sup> proposes a range of actions to be implemented or developed in close collaboration with Member States, social partners and other stakeholders, grouped under seven **key strategic objectives**:

1. Further consolidate national strategies.
2. Facilitate compliance with occupational safety and health (OSH) legislation, particularly by micro and small enterprises.
3. Better enforcement of OSH legislation by Member States.
4. Simplify existing legislation.
5. Address the ageing of the workforce, emerging new risks, prevention of work-related and occupational diseases.
6. Improve statistical data collection and develop the information base.
7. Better coordinate EU and international efforts to address OSH and engage with international organisations.

**Public policy in other areas can contribute to an improved working environment.** Potential synergies with OSH policy need to be more actively explored. The key areas, as EC EU Strategic Framework on Health and Safety at Work 2014-2020<sup>98</sup> identified, in this respect are as follows:

- Education: Raising awareness of OSH starts at school. There have been recommendations to better reflect OSH issues in school curricula (especially in vocational training) as well as to better promote mental health and wellbeing (OECD (2012), Sick on the Job? Myths and Realities about Mental Health

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<sup>97</sup>EC - <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0332>

<sup>98</sup>EC - <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0332>

- and Work, Mental Health and Work). There have been successful pilot projects, but the results of these need to be better disseminated. Information and training for entrepreneurs need to continue;
- Research: OSH research priorities have been established, focusing on the impact of ageing, globalisation, new technologies and occupational, work-related diseases and disabilities. There is a need to better disseminate the results of this research and better reflect them in policy-making; teaching children and young adults to live and work safely.
  - Public health: Better coordination between policy-makers in this area is needed, in order to build on existing programmes and guidelines and create synergies. Cooperation with key stakeholders (end users, public authorities, industry) is needed through the Joint Action on mental health and well-being and within the European innovation partnership on active and healthy ageing. This will improve the conditions for uptake of innovation and investment in innovation;
  - Environment: Efforts should be made to increase complementarity and coherence between environmental policy and workers' protection, since the workplace can be considered a micro-environment where similar exposure to hazardous substances can occur, although at levels and with specific determinants;
  - Industrial policy: Simple solutions, such as guidance on avoiding accidents or indicating exposure to vibration, can help SMEs to implement OSH in a more cost-effective way, as they would not need to hire OHS experts to carry out assessments. Efforts should be made to step up coherence and create synergies between industrial policy and workers' protection policy, in particular with regard to chemical substances.
  - Equality: OSH policy can contribute to combating discrimination and promoting equal opportunities in EU policies, in particular by promoting the accurate implementation of Directive 2000/78/EC40 relating to protection of health and safety at work of people with disabilities and Directive 2006/54/EC41 prohibiting less favourable treatment of women in the workplace because of pregnancy or maternity.

ETUC<sup>99</sup> think, that on most issues at stake (opt-out, reference periods, on-call work, counting working time per worker or per contract), it is not the lack of legal clarity but **the lack of political will or courage** to deal with the consequences of this clarity which has been the problem for the last 7 years.

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<sup>99</sup> ETUC - European Trade Union Confederation (2010), Confédération européenne des syndicats (CES): The Working Time Directive: Limitation of working hours and more influence of workers, for healthier working lives. [https://www.etuc.org/sites/www.etuc.org/files/ETUC\\_position\\_WTD\\_070610\\_EN-ff\\_2\\_2.pdf](https://www.etuc.org/sites/www.etuc.org/files/ETUC_position_WTD_070610_EN-ff_2_2.pdf)



### **III. Country reports**

#### **SLOVAKIA**

Working Time in SCSS for PwD

Night Work in SCSS for PwD

Shift Work in SCSS for PwD

Rest in SCSS for PwD

Annual Leave in SCSS for PwD

Pattern of Work in SCSS for PwD

Derogations, Exceptions and Derogations by Collective Agreements in SCSS for PwD

Safety and Health Protection in SCSS for PwD

Recommendations and implications of the WTD and national labour laws on workforce in social care services for persons with disabilities on new labour law provisions that will promote a fairer way of working in the SCSS sector

On 31 December 2015, there were 5,426,252<sup>100</sup> inhabitants in the Slovak republic and the share of **people with disabilities** in the age of 15-65 year in population is 18,1%.<sup>101</sup> There were 234,451 (4,32% of overall population in productive age) people with disabilities as disability pension receivers.<sup>102</sup>

**The long-term care system remains underdeveloped.** Family carers still provide a substantial proportion of long-term care in Slovakia. As a result, female inactivity due to care responsibilities ranks among the highest in the EU. The status of informal carers has been boosted since January 2017. The allowance for caring for a person with a severe disability has been increased by EUR 27.10 to EUR 247.65, benefitting 33,450 eligible recipients, and state pension insurance for carers will no longer be subject to a time limit. This should provide caregivers with better protection against poverty in old age. Likewise, the safeguard limit on the income of people with severe disabilities has been increased, by EUR 59.44 to EUR 336.75, benefitting 17,598 eligible recipients. Overall, however, progress in the transition from institutional to community-based care is too slow and does not go far enough, and support for independent living is still insufficient (Concluding Observations of the UN Committee on the Rights of Persons with Disabilities, 2016).<sup>103</sup>

In 2015, there were 47,149 persons (0.87 % of overall Slovak population) as receivers of social services in 1,158 social service homes established by municipalities, self-governing regions or private providers. 491 of service providers were private (mostly non-profit organisations), taking care of about 78,482 clients (mostly people with disabilities). Long term social care was provided for 38,567 clients in 997 homes (facilities for the elderly, social services homes (SSH), specialised facilities, day-care centre, supported living homes, rehabilitation centres, home-care service facilities). In 2014, there were 46,094 clients places in social service of all types, 39,078 of which were associated with year-round care (84.8 %), 1,554 with weekly care (3.4 %), 3,412 with daily care (7.4 %) and 1,925 with transient

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<sup>100</sup> Report on the Social Situation of the Population of the Slovak Republic for 2015.

<https://www.employment.gov.sk/files/slovensky/ministerstvo/analyticke-centrum/sprava-socialnej-situacii-obyvatelstva-za-rok-2015.pdf>

<sup>101</sup> Statistic Office of Slovak Republik (2011): Results of Ad hoc Module 2011 - Employment of disabled people in Slovakia. [staging.ilo.org/public/libdoc/igo/P/49725/49725\(2011q4\)146.pdf](https://staging.ilo.org/public/libdoc/igo/P/49725/49725(2011q4)146.pdf)

<sup>102</sup> Report on the Social Situation of the Population of the Slovak Republic for 2015.

<https://www.employment.gov.sk/files/slovensky/ministerstvo/analyticke-centrum/sprava-socialnej-situacii-obyvatelstva-za-rok-2015.pdf>

<sup>103</sup> EC - Country Report Slovakia 2017 Accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN CENTRAL BANK AND THE EUROGROUP 2017 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2017) 90 final} {SWD(2017) 67 final to SWD(2017) 93 final,

[https://ec.europa.eu/info/publications/2017-european-semester-country-reports\\_en](https://ec.europa.eu/info/publications/2017-european-semester-country-reports_en)

care (4.2 %). 42,418 clients` places of these are intended as being associated with **social services** with the character of long-term care (92 %).<sup>104</sup>

In 2015, the **home-care service** was provided by municipalities, i.e. public providers, to 12,332 individuals by 4,867 employees of cities and municipalities and 130 private providers to 4,276 individuals (**a significant year-on-year increase by 2,336 clients**), working on employment contract, agreement on work activity, work performance agreement.<sup>105</sup>

In 2015, cities and municipalities provided **transport service** to 3,032 persons with disabilities. Transport services were provided by 42 private providers (23 in 2013) for 7,188 clients, representing a **year-on-year increase by 3,304 clients**).<sup>106</sup>

The second most important category are **residential social services** for people with disabilities. Overall, the number of facilities for elderly and care homes for adults is 787 facilities, with 34 931 available places and 30 396 clients. It creates 59% of facilities and 70% of available places in facilities. Those 2 categories of facilities provide services for 64% of clients from total number of social services receivers of residential care. In the case of people with disabilities, services are provided in several different types of facilities: social service home (SSH) for adults with physical handicap; SSH for adults with a combination of handicaps; SSH for adults with sensory handicap; SSH for adults with mental disorders. The table below presents the overview of the total number of facilities, available places and inhabitants (clients) of those facilities. As it is shown, the dominant provider of services for people with disabilities are self-governmental regions. They establish more than half of the facilities (51%). This proportion is visible also from the point of view of available places as well as clients of facilities.<sup>107</sup>

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<sup>104</sup> Report on the Social Situation of the Population of the Slovak Republic for 2015.

<https://www.employment.gov.sk/files/slovensky/ministerstvo/analyticke-centrum/sprava-socialnej-situacii-obyvatelstva-za-rok-2015.pdf>

<sup>105</sup> Report on the Social Situation of the Population of the Slovak Republic for 2015.

<https://www.employment.gov.sk/files/slovensky/ministerstvo/analyticke-centrum/sprava-socialnej-situacii-obyvatelstva-za-rok-2015.pdf>

<sup>106</sup> Report on the Social Situation of the Population of the Slovak Republic for 2015.

<https://www.employment.gov.sk/files/slovensky/ministerstvo/analyticke-centrum/sprava-socialnej-situacii-obyvatelstva-za-rok-2015.pdf>

<sup>107</sup> Ministry of Labour, Social Affairs and Family of Slovak Republic (2014): National priorities of social services` development in 2015-2020. <https://www.employment.gov.sk/files/slovensky/rodina-socialna-pomoc/socialne-sluzby/nprss-2015-2020.pdf>

	Total	Municipality	Church legal person	Other legal person	Natural persons	Self-governmental region
Number of facilities	487	55	47	114	25	246
Number of places	21876	1303	987	3063	895	15628
Number of persons	19133	993	795	2341	771	14233

Regarding the **number of employees of the social services sector** in Slovakia (24,865 employees of social care sector), the highest proportion, almost a half (47%) are employees of the social services homes for adult people with disabilities. Almost the quarter of employees (24%) are employees of facilities for the elderly. Third biggest employer of social care staff are employers of facilities for children (19%). This workforce has a very striking gender, age and income imbalance - it is a female-dominated sector with average age more than 40, and an average monthly wage of 858 EUR in comparison with 883 EUR as the average wage of the Slovak economy in 2015).<sup>108</sup> Relatively low wages, hard work, often difficulties in the sector, organisational conditions and lack of funding in the care system - all of these contribute to the situation which makes social services employment not a very attractive prospect, especially for young, well-educated and trained people.

WTD was adopted into the Slovak legislative in 2003 by the Labor Act and there was some analysis of its implications and comparative analysis with some other existing laws in Slovakia. There was no complex analysis of it in the SCSS for PwD, only some partial research (mostly on annual weekly working time) managed by the trade unions. Therefore, in the absence of other research, we conducted our own research in this field of study.

Our research of WTD in Slovakia was conducted by questionnaire (17 questions) in January - February 2017 distributed by internet to key stakeholders of SCSS for PwD in Slovakia and then we provided individual interviews with some of them to clarify some questions and themes. These EU directives (i.e. the original at the EU level, not the regulations adopted by Slovak Republic through our national labour laws) were known to only 31% of all 30 participants, most of them are aware only of the national

<sup>108</sup> Ministry of Labour, Social Affairs and Family of Slovak Republic (2014): National priorities of social services` development in 2015-2020. <https://www.employment.gov.sk/files/slovensky/rodina-socialna-pomoc/socialne-sluzby/nprss-2015-2020.pdf>

WTD in Slovak legislation and so our questionnaire also had an educational function, because each section of the WTD was explained in detail and defined in our document. This explanation was something which our participants appreciated and they were pleasantly surprised by the level of higher working hours at EU level than is allowed in our current national practice.

The target group of participants consisted of 1 national policy maker, 3 municipal policy makers, 1 national trade union for social care, 1 national expert on social care sector, 1 umbrella service provider at national level, 24 service providers at local level. 38% of them are public providers and 62% are from the non-profit sector. 40% of them provided only residential care and the rest mostly de-institutional community based services and home care. 44% of them provided mainly residential services and 32% mainly peripatetic services, 24% of participants provide both type. Their financial sources for service provision were based primarily on funding from municipalities, secondarily from the state funding system and, in third place, private funding, with services paid by clients as private services (but not for all participants had private funding). Most of participants (64%) provided long-term care, education services (36%), social rehabilitation services (32%), social consultancy and therapy (21%), supported employment services (18%), early childhood intervention (14%), social-protection (11%), supported living services in sheltered home care (4%) and other very different and specialised social care and supported services.

Below we provide detailed information based on our research.

### **Working Time in SCSS for PwD**

The number of hours worked in a year (1750) **in general (not only in SCSS for PwD)** is not a topic of political discussions and social partner negotiations, and Slovak labour legislation only defines weekly working time. The number of public holidays has not change significantly but, according to collective agreements, the number of companies providing holidays above the statutory level has increased. In Slovakia, average hours fell significantly over the 2000–2006 period from 42.6 to 41 hours. This is attributed to part-time workers working fewer hours rather than any reduction in the proportion of persons working very long hours, with 20% of workers apparently working more than 48 hours a week, with no discernable influence from of Directive 2000/34/EC. In Slovakia, a standard working week – 40 hours over five days – is the dominant form: 73% of workers usually work five days a week and 37% work between 39 and 41 hours. According to the Labour Code, daily working time cannot exceed nine hours and employers are obliged to distribute working time over five days when conditions allow. As regards the non-standard work arrangements in Slovakia, nearly 60% of those employed work on

Saturdays and 37% on Sundays at least some of the time. This occurs in many sectors of the economy and is essentially driven by demand. Employees do not appear to be opposed to such atypical types of work, with 75% of those working Saturdays, 70% of those working Sundays, and 86% of those working evenings considering these arrangements to be satisfactory. In Slovakia, only around 1% of employed people have the opportunity to determine their own work schedules. However, 4.5% of men and 6% of women effectively have the opportunity to 'bank' hours and take time off at a later stage. The Labour Code obliges employers to negotiate working time issues with employees or their representatives, but employees may not always feel able to insist on their rights. Flexible working time arrangements most commonly apply to those in higher ranking jobs. However, the incidence of such arrangements also varies between sectors of activity, being highest in public administration and defence (38% of employees), financial services (36%) and construction (over 30%). There appear to be no significant differences between men and women.<sup>109</sup>

Most of SCSS workers for PwD in Slovakia have the **usual typical working time during a week** from 37,5 hours (in public sector, based on collective agreement) up to 40 hours (80%), only a few (20%) of them work the maximum of 48 hours. 65% work usually in the period from 8am till 4pm and 35% work in unusual time (e.g. weekend, afternoons after 4pm, nights, holidays or 3-shift cycles). Especially in the case of peripatetic social work<sup>110</sup>, there is applied flexi-time in accordance with the Labour Law Act, and working time is adapted to needs of clients, especially in case of crises intervention. In 24/7 services, there is the example of usual working time of SCSS for PwD staff in Slovakia - normal working time is 37,5 hours weekly; with those employees working regularly in 2 shift work cycles working 36,25 hour weekly; and employees working regularly in 3 shifts or in 24 hours services having only 35 hours working time weekly.

There is almost no **on-call time** in SCSS for PwD in Slovakia (nobody from our participants used it), it is not usual, because if service providers provide services 24/7, there are shifts and staff are regularly paid as full working time. Most participants agreed that fully paid on-call time has led to increased costs for running 24h services, whilst not always improving working conditions. Approximately only 15% of SCSS for PwD staff are working on **stand-by time** and they are not paid, classified as voluntary work or, in very few cases, this is paid as overtime. Most of our research participants suggested the

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<sup>109</sup>European Foundation for the Improvement of Living and Working Conditions (2009): Comparative analysis of working time in the European Union, <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/comparative-analysis-of-working-time-in-the-european-union>

<sup>110</sup> Ministry of Labour, Social Affairs and Family of Slovak Republic (2016): The Introduction into the terrain social work in the villages with special focus on work with excluded communities. [https://www.ia.gov.sk/data/files/np\\_tsp/Priloha\\_c2\\_Uvod\\_do\\_standardov\\_TSP.pdf](https://www.ia.gov.sk/data/files/np_tsp/Priloha_c2_Uvod_do_standardov_TSP.pdf).

introduction of a limit to the maximum number of hours that a worker may be required to be on stand-by in a given period (for instance 24 hours a week), together with a derogation capacity to set a different limit via collective agreements). The best format would be to maximize autonomy of social partners to negotiate on this, whilst implementing limits. If social dialogue structures are not sufficiently developed, Public Authorities should guarantee their development. Public Authorities should guarantee adequate financing to service providers to ensure quality services are provided. As it noted elsewhere in this research, the application of the WTD in Slovak working conditions<sup>111</sup> with regard to on-call time (or stand by time), especially in SCSS for PwD (which is the same as health sector) often has the effect of **exceeding the maximum weekly working time**.

Slovakia has made significant changes to legislation or practice in order to comply more closely with the acquis regarding on-call time, so an '**opt-out**' under WTD was introduced as part of these changes. Slovakia already allows a more limited use of the opt-out, restricted to certain jobs which make extensive use of on-call time.<sup>112</sup> Under the current WTD and the possibility not to apply the limit to average weekly working time of 48 hours (the 'opt-out'), most SCSS for PwD in Slovakia do not make much use of this (almost no work - max 8% of all work in SCSS for PwD in Slovakia - is over 48 hours weekly). The reasons for and examples of using the opt-out in SCSS for PwD in Slovakia are twofold - lack of staff and low wages. Most of the qualified SCSS staff from Slovakia working with PwD work in Austria as home care staff with much lower stress because they only work one to one PwD and with much higher wages). As regards **emergency services** most of SCSS staff for PwD seem to have preference for change in a way, that there should be additional derogations applicable to some categories of these workers, addressing their specific situation. The Social services and long-term care sectors for persons with disabilities should also receive the **same additional derogations as the healthcare sector** to improve continuity of service. The same problem or the need for continuity of service which applies to the health services sector also applies to the social services sector, in particular for the health and safety of the recipient of the service.

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<sup>111</sup> Perichtová, B. (2011), CEIT: Application of EU WTD in Slovak working conditions. [http://www.ceit.sk/IVPR/images/IVPR/vyskum/2011/Perichtova/perichtova\\_2336.pdf](http://www.ceit.sk/IVPR/images/IVPR/vyskum/2011/Perichtova/perichtova_2336.pdf).

<sup>112</sup> EC - Detailed report on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time ('The Working Time Directive'). Accompanying document to the REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time ('The Working Time Directive') {COM(2010) 802 final} [ec.europa.eu/social/BlobServlet?docId=6426&langId=en](http://ec.europa.eu/social/BlobServlet?docId=6426&langId=en)

Currently, the standard limit to the **reference period** is 4 months (using 70% of all SCSS for PwD service providers, some of them for 1 month), which can in certain sectors be extended by law up to 6 months (11,5%), and by collective agreement it can be set up to 12 months (11,5%).

**Overtime** as a paid working time is in accordance with this reference period (4-12 months). The maximum for overtime is formally limited to 400 hours per a calendar year. But in reality in SCSS for PwD in Slovakia, there is often more working extra hours (e.g. emergency services during crisis interventions).<sup>113</sup>

Approximately 20% of service providers in Slovakia state can tell that most of their workers of SCSS for PwD work also as volunteers (i.e providing **unpaid care hours**). It is mostly 5-10 hours weekly (over the announced 37,5 or 40 limited working time). These are mostly directors (usually of NGOs, but also of public providers) and the reason is that there is no money or grant for managing service provision - most finance and grants are earmarked for services performance, not for the preparation of methodologies and tools, studies, administration of grants, networking at local, national or transnational levels, or other ways and tools of service quality improvement.

As regards the **distribution of usual working time during a week** in the SCSS sector for PwD by job position:

- The usual working time is from 8am till 3,50pm or 4 pm (37,5 working hours weekly for public service provider based on collective agreement, 40 hours weekly for NGO service providers) - social workers, psychologists, special pedagogues and other professional university educated staff (these often do unpaid voluntary work at the evening or during a weekend on things like networking activities or when there is a lot of work), also maintenance staff (administrative staff, charwomen, handymen etc.). In some cases involving 24/7 services some cooks (max 8% of all staff) work in 2-shifts circle (6,30a-2,15pm and 10,30am-5,15pm) or “short-week” (12 hours 2-times a week) changing with “long-week” (12 hours 4-times plus 7 hours on Sunday).
- working in 12-hours shifts 3 or 4-times a week - in 24/7 services 33-62% of all staff are carers (nurses only with short-time medical training and with no medical higher education), health assistants and nurses with higher medical education degree. In some cases, especially for non-public providers, 90% of all staff are often carers working 2-6 hours daily each day, including

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<sup>113</sup> Perichtová, B. (2011), CEIT: Application of EU WTD in Slovak working conditions.  
[http://www.ceit.sk/IVPR/images/IVPR/vyskum/2011/Perichtova/perichtova\\_2336.pdf](http://www.ceit.sk/IVPR/images/IVPR/vyskum/2011/Perichtova/perichtova_2336.pdf).



weekends and especially where peripatetic social and supported services are provided using flexible working time which is dependent on the needs of users.

- In the light of the impact of the current WTD giving workers of SCSS sector for PwD the right to a limit to average weekly working time (currently set at 48 hours) and to **minimum daily and weekly rest periods**, our participants in our research in Slovakia made these comments:
- It protects the health and safety of workers and people they work with; allows flexible organization of working time; allows workers to reconcile work and private life;
- It impacts on job creation - on one hand it raises costs for service providers running 24h care/support, without additional financial support from public authorities and this in turn has negative effects on the recruitment and retention of staff, because having to pay passive on-call time workers a full salary has increased the cost of running 24h services (both residential or personal and individualised) for persons with disabilities; for smaller service providers, this has led to cases of resinstitutionalisation to save costs; but on the other hand it ensures a level playing field in working conditions across the Single Market, avoiding that other countries may experience when employers can lower their labour standards to gain a competitive advantage.

### Night Work in SCSS for PwD

Night work in 24/7 services are usual especially in case of **carers, instructors of social rehabilitation, health assistants and nurses** with higher medical education degree. Mostly 1/3 (max 70% in few cases) of all staff of service providers, who provide 24/7 services, work during a night **6-times per a month** (max 10-times).

### Shift Work in SCSS for PwD

Approximately 60% of service providers do not use shift work in SCSS for PwD in Slovakia. The rest of providers have mixed operation with 25% - 75% of shift workers and the remaining staff are non-shift workers. There are typically 2 or 3 shift operations in Slovakia. Most of staff working on shift work are **carers**.

The typical **example of residential care service provider** for 24/7 services: 4 nurses have 8-hour shifts, either the “morning” shift of 6am-2pm or the “afternoon” shift of 2pm-10pm, then on the second day they have an 8-hour night shift (10pm - 6am) and then 2 days off. In the same residential center 3 carers work 8 hours daily for 4 days, and then they have 2 days off. Also 2 cooks work 10,67 hours for

2 days and then 2 days off. And 2 social workers work 8 hours daily during usual working time (8am-3,30pm) from Monday till Friday. Or another example of social care service provider: All staff have 12-hour shifts, and then they have 12 hours off, followed by another 12-hour shift and subsequently they have 2 days off.

### Rest in SCSS for PwD

In Slovakia, especially in SCSS for PwD, there are some cases of implementation mismatches. For instance, daily rest should be in between the end of one shift and the beginning of another shift. If the **continuous daily rest** is interrupted by overtime or on-call time, stand-by time, this overtime work formally does not interrupt the continuous daily rest, because overtime is considered to be outside the shift framework, but in reality there is a shortage of daily rest. The same is with **continuous weekly rest**.<sup>114</sup>

**Delays in providing compensatory rest for missed minimum rests** - employers provide within one month, generally, for daily rest; up to 8 months in some circumstances, for weekly rest.<sup>115</sup>

The organisation of breaks during the work in SCSS sector for PwD is usually **after each 3 or 4 hours** (in a some few cases after 5 hours) and **lasting from 15 to 30 minutes** (30 minutes for lunch). But most service providers define rest by the needs of users and staffs, so it depends on concrete employee of SCSS, also taking into account the travel time from one client's home to another.

### Annual Leave in SCSS for PwD

Annual leave **depends on the age of employee** (for all employees based on Labour Code, not only for staff in SCSS for PwD)- up to 33 years of age it is 20 days, over 33 years it is 25 days. Staff in direct performance with clients/users of SCSS for PwD, most cases of public residential social care providers, are entitled to have additional 5-day leave in accordance with national higher collective agreement - i.e. 25-day holiday for employees of SCSS for PwD in the age up to 33, and 30-day in the age over 33.

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<sup>114</sup> Perichtová, B. (2011), CEIT: Application of EU WTD in Slovak working conditions. [http://www.ceit.sk/IVPR/images/IVPR/vyskum/2011/Perichtova/perichtova\\_2336.pdf](http://www.ceit.sk/IVPR/images/IVPR/vyskum/2011/Perichtova/perichtova_2336.pdf).

<sup>115</sup> EC - Detailed report on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time ('The Working Time Directive'). Accompanying document to the REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time ('The Working Time Directive') {COM(2010) 802 final} [ec.europa.eu/social/BlobServlet?docId=6426&langId=en](http://ec.europa.eu/social/BlobServlet?docId=6426&langId=en)

## Pattern of Work in SCSS for PwD

As regards to the **kind of contracts** (pattern of work), which do usually workers in the SCSS sector for PwD usually do, in general in Slovakia there are several types:

**Full-time permanent employment contract** - most common (70-100% of all staff in SCSS for PwD), this is typical for management, professional (university educated) staff as social workers, psychologists and special pedagogues, social workers` assistants (BSc university degree of social work) then instructors of social rehabilitation, ergotherapists, nurses, administrators, some carers and also cooks.

**Zero hour contract** (in Slovakia this is called an “Agreement on work activity” in a regular basis lasting only for an actual calendar year - approx. 15-30 % of all staff use this type of contract, most of them are carers, a few are also animators for PwD, IT staff or accountants, etc. Very similar to this type of contract is the Casual Work Contract called an “Agreement on concrete work” this covers just all the work involved in in a defined concrete task from the beginning to the end with outcomes and concrete results, usually lasting not longer than half a year. This contract only applies to max 3% of all staff in SCSS for PwD. This is often very specific to the provision of SCSS for PwD in villages (so a local municipality or an NGO is the most common employer for these staff) and is often for acting as a carer to a named PwD and when/if this client/user of SCSS dies, the contract is terminated.

**Part-time permanent employment contract** - approx. 10% of all staff in SCSS for PwD, approx. 80% of this kind of contract has carers, there is also social pedagogs, special pedagogs, some of them are also cooks and maintenance staff (handyman, driver, informant at the reception etc.). In general<sup>116</sup>, in Slovakia, the incidence of part-time working is significantly low, involving only 1.3% of men in employment and 4.7% of women, with only a modest increase over the years. In practice, part-time jobs are generally taken up by workers only when full-time work is not available, for health reasons, or to suit the needs of employers. Changes to the Labour Code in 2007 have brought about better protection for part-time workers, with some tax incentives for those who are the lowest paid, which may serve to encourage more people to seek part-time work.

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<sup>116</sup>European Foundation for the Improvement of Living and Working Conditions (2009): Comparative analysis of working time in the European Union, <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/comparative-analysis-of-working-time-in-the-european-union>

**Fixed-Term Employment Contract** - approx. 5% of all staff in SCSS for PwD, most of them are carers, project managers, reasons are mostly limited time for conducting EU social projects from ESF or work on time, while the core employee employed on full-time permanent employment contract is at maternity leave or is unable to work for a longer time because of illness etc. But there is one special moment - our Slovak labour law allow to employ new employee only for 1 year (in order if employer will not be satisfied with this employee, no 2 months wage fine severance should be paid also not 2 months time for finishing the contract) and then to give him/her the full-time permanent employment contract. This possibility is often used in SCSS for PwD, what has negative effect not only on staff recruiting (low wages and unsecured job), but also on staff retention (a lot of young staff even don't stay a year, after they find out how the work with PwD are physically and mentally difficult).

In Slovakia in SCSS for PwD (although in any other sector it is often used), no usage of - **Director's Service Agreement, Consultancy Agreement or Autonomous worker, staff leased by Agency of employment services, Sole Traders** in SCSS for PwD.

**Direct employment by one disabled person dependent on state support** - in Slovakia we have only one possibility to be contracted by PwD as his/her personal assistant and wage is paid by this PwD, while he/she is a receiver of state support for compensation of disability. It is very low wage based on hour rate (2,76 EUR/hour with max of 1000 hours per a year, so 230 EUR monthly in case not exceed 4-time the living wage in actual year). This is very often type of work contract by members of family or young students or carers (as extra job).

**Part-time permanent employment contract** - approx. 10% of all staff in SCSS for PwD, approx. 80% of people with this kind of contract are carers, but it is also used for some social pedagogues, special pedagogues, some of them are also cooks and maintenance staff (handyman, driver, receptionists etc.). In general<sup>117</sup>, in Slovakia, the incidence of part-time working is significantly low, involving only 1.3% of men in employment and 4.7% of women, with only a modest increase over the years. In practice, part-time jobs are generally taken up by workers only when full-time work is not available, for health reasons, or to suit the needs of employers. Changes to the Labour Code in 2007 have brought

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<sup>117</sup>European Foundation for the Improvement of Living and Working Conditions (2009): Comparative analysis of working time in the European Union, <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/comparative-analysis-of-working-time-in-the-european-union>

about better protection for part-time workers, with some tax incentives for those who are the lowest paid, which may serve to encourage more people to seek part-time work.

**Fixed-Term Employment Contract** - approx. 5% of all staff in SCSS for PwD use this type of contract, most of them are carers, project managers. The reasons for using these contracts are mostly factors such as, time-limited funding for conducting EU social projects from ESF, or 'replacement' work while the core employee employed on the full-time permanent employment contract is on maternity leave or is unable to work because of long term illness etc. But there is one special circumstance - our Slovak labour law allows employers to employ a new employee for 1 year only (so that if the employer is not satisfied with this employee, there is no 2 months wage fine severance paid and no 2 months notice time for ending the contract). After this period the employer is required to give him/her a full-time permanent employment contract. This one year employment option is often used in SCSS for PwD, and it has a negative effect not only on staff recruitment (low wages and an insecure job), but also on staff retention (a lot of young staff do not even stay for a year, after they find out how work with PwD can be physically and mentally demanding).

In Slovakia in SCSS for PwD (although in any other sector it is often used), there is no usage of the following types of contract- **Director's Service Agreements, Consultancy Agreements or Autonomous workers, the use of Agency staff, Sole Traders** in SCSS for PwD.

**Direct employment by one disabled person dependent on state support** - in Slovakia there is only one possibility to be contracted by PwD as his/her personal assistant and where the wage is paid by this PwD, while he/she is in receipt of state support for compensation of disability. This contract leads to a very low wage based on an hourly rate of 2,76 EUR/hour with max of 1000 hours per a year or 230 EUR a month. This is very often the type of work contract filled by members of the family or by young students or carers (as an extra job).

### **Derogations, Exceptions and Derogations by Collective Agreements in SCSS for PwD**

Under the current WTD, a worker who by derogation from the general rules has not received his/her minimum daily rest of 11 consecutive hours in a 24-hour period, will have to receive an equivalent period of **compensatory rest** (i.e. 11 hours) directly after finishing the extended working time period. This sets a maximum of 24 hours to a single consecutive shift. Most of service providers in SCSS for

PwD in Slovakia agreed with codification to clarify that compensatory rest has to be granted immediately after the extended period of work.

The nationwide problem is the **additional working holiday**. Here is a paradox, because the Labour Code it enshrines (specifically §106), but the Ministry of Labour, Social Affairs and Families has not published any directive since 2001, which should define and adjust these issues. If the collective agreement is not clear then the employer does not comply with it. In 2015, Slovak trade unions were able to arrange an extra week of working holiday beyond the scope of the Labour Code (5-6 weeks, compared to the Labour Code approved 4-5 weeks per year). Nevertheless, only a few people may choose to use them, in order not to threaten the 24-hour operation of SCSS for PwD. Because the working time is not the same as the regular working time of health professional staff, what usually happens is, that working time is assessed over a period of 3 months. Overtime is reimbursed up to 3 months later and often staff are not paid due to lack of funds and so staff have to take time off.

In Slovakia, the most notable collective bargaining developments<sup>118</sup> in trade union views concern an agreement **to reduce the working hours of public sector employees**. Trade unions have taken a positive approach to part-time working, but are concerned about ensuring job security for the workers involved.

In Slovakia there are no **other extensions, derogations or collective agreements** regarding to working time for workers of SCSS sector for PwD declared by any kind of extensions or derogations. Some service providers agreed, that flexi-time is the best solution for avoiding any problems with working time. Also there is a possibility to take 3 months unpaid off from work. There are no differences regarding age and/or years worked and/or any other criteria in SCSS sector for PwD.

### **Safety and Health Protection in SCSS for PwD**

The situation with **prevention against the monotonous work or work under the stress and pressure** of employees in SCSS sector for PwD in Slovakia is not very well handled. It depends only on the management of service provider - personal interviews, intravision (supervision in between colleagues), working meetings, supervisions or coaching (but because of financial constraints these are very

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<sup>118</sup>European Foundation for the Improvement of Living and Working Conditions (2009): Comparative analysis of working time in the European Union, <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/comparative-analysis-of-working-time-in-the-european-union>

limited). Some service providers do internal teambuilding activities before and after transnational project meetings abroad or hold common organisational teambuilding activities for staff and their families on some weekends per a year. Staff with higher qualification training and education have also higher wage, it depends on decision of service provider and funding possibilities. It is very important to ensure a the regular change of work content or a change of staff taking care about individual clients. Some of them provide for staff to have discussions with priests and social benefits such as vouchers for relaxation time.

**Benefits** secured by employer of SCSS staff are mostly ticket restaurant vouchers, working clothes, working shoes or coffee and tea paid by employers during breaks, supervision or higher education and specialisats training paid for by the employer. Social benefits means also massage vouchers free of charge for SCSS staff (paid by the employer, very often masseurs are PwD working in sheltered workshops and social businesses). And of course, benefits of a non-financial character - open friendly communication, socialisation and familiar approach of employer to SCSS staff.

**The Safety and Health Protection Directive** in Slovakia is defined in Act nr. 124/2006. This contains the obligation to secure regular training and education courses by a certified Safe and Health protection technician. Moreover, there is also an obligation for service providers as employers to provide work medical services (so employers has to pay for regular visits by the doctor for their staff) and most of the service providers in SCSS for PwD (mainly NGO as non-public provider) have a problem with this. Especially in peripatetic work for carers, the application of these directives are very problematic (e.g. the article about not lifting heavy loads - how to change the pack of diapers for lying patient?). There are also some age restrictions which impact on services – e.g. any employee over 50 can only be employed in SCSS for PwD with his/her explicit consent for any night time work.

### **Recommendations and implications of the WTD and national labour laws on workforce in social care services for persons with disabilities on new labour law provisions that will promote a fairer way of working in the SCSS sector**

The work in **SCSS sector for PwD is very specific and at the same time varies from country to country all over the EU**, so therefore it is very difficult to apply universal EU working condition standards to an

individual country. But from our research in Slovakia in SCSS for PwD, there are some important recommendations, worthy of being considered in the light of WTD:

There is a need for legislative changes in the application of the WTD for SCSS for PwD, to improve legal clarity, so that the rights and obligations following from the Directive are clearer and **more readable and accessible to all**. These changes should be focused on the sectors where there is a specific need in terms of continuity of service (e.g. public services; sectors that work on a '24/7' basis like hospital services and emergency services), while avoiding any regression in the protection provided to workers. The derogation for health care services must also include both the social support and long-term care services, due to similarities regarding the non-standard format of working hours in these sectors too.

As regards the WTD both at national levels and through government at regional or municipal levels, it is very difficult to find the right balance - not to regulate too much, in order that market can be free and helps improve SCSS for PwD. Properly and gently balanced WTD regulations could bring not only flexible adaptation to the needs of clients, but also increase their satisfaction and improve their quality of life. There is now a lack of professional skilled staff for PwD, so by changing these regulations to improve working conditions there could be a chance for more job creation and more interest in working in SCSS for PwD.

The Working Time Directive should support the better **reconciliation of work and private life**, as well as the capacity of workers to ask for more **flexible working time arrangements** and have their requests duly considered by employers. To provide more flexibility in working time organisation for workers, but at the same time also for employer and of course, with respect to protection of third parties involved (clients, their families, their social environment etc.).The rules should be changed in light of increased use of flexitime and telework.

The recommendation from this research in this issues is that more support to social partners and **adequate financing** is essential if WTD is to improve quality of services and unlock the job creation potential of the social care sector. The European Commission should take into account the specificities of the sector and in particular with regard to the triangular relationship between Public Authorities, Service Providers and Users. If the WTD continues to increase the costs of running some forms of service provision, and in particular 24h services, then it should also require public authorities to increase their funding of such services accordingly. This would lead to ensuring better quality services



for users, improving working conditions for the staff and unlocking the job creation potential in the sector.

Very important for all is the need to **involve NGO and non-public** service providers in all policy creation (including the financing of services). For example, if home care services are not paid by state or municipality financial sources (as it is now mostly) and PwD as clients also pay for these services, service providers must be able to be most flexible to meet the needs of clients. At present state or EU WTD regulations and each regulation is an obstacle to the service provider and seen as the major cause of losing this much needed flexibility of services.

At the same time, the **inadequacy of employment administration** in SCSS for PwD in Slovakia needs to be addressed (maybe with using ICT and on-line software). This will help not only service providers, but also grant donors for controlling processes in order to ensure the highest quality of provided services.

Specific case - for instance: Single worker in SCSS for PwD can be employed parallelly at multiple employers, even on multiple contracts at the same employer. If WTD is to be applied to all contracts together (i.e. limits have to be per employee, not per employer), then who will control the compliance of these WTD regulations? Nowadays, this responsibility is on employer's side. Thus, service providers must somehow check whether employees have multiple contracts, and in the case that such employees lie about or do not report their other contracts with other employers, thus breaching WTD regulations on contracts (especially the limit of having a maximum of one full and one part-time employment contracts with the same employer, alternatively two full employments with two different employers etc.) has negative impact only for his/her employer, because if an employee of SCSS for PwD works in a project funded by the state or EU, and the donor finds out that this WTD directive had been breached (the State can find this out through the transfers to the Social Insurance), then they will ask the employer - service provider to return the wage costs on this employee for a given month, even if the employer was not aware that an employee had two contracts.

**Applied research** is the basis for improving the quality of SCSS for PwD, so employment of social researchers with academic research experience in the past is needed in order to create new more efficient tools and methods of service provision for PwD. Moreover, research outcomes (objective

facts, gained from field research) are the best background for effective lobbying for changing social, employment and family protection policy.

## **SPAIN**

Law of the Statute of Workers Rights

Royal Decree on special working days

Collective agreements

Recommendations and implications of the WTD and national labour laws on workforce in social care services for persons with disabilities on new labour law provisions that will promote a fairer way of working in the SCSS sector

In Spain, the protection of dependent people, people with disabilities and old people, has historically developed in a rather fragmented and dispersed way, with sectoral plans drawn up from the central administration, but with the actual provision of social services implemented at the local and regional level. This split has always led to significant differences between the regions. Actually, the basic legal framework of attention to people with disability is the Law 39/2006, of 14 December 2006, called the 'Promotion of the Personal Autonomy and Attention to the people in situation of dependence'<sup>119</sup>, popularly known as the "Dependency Law".

Following the recommendation adopted by the Council of Europe, which determines that dependency is "*a state in which are persons who, for reasons linked to lack or loss of physical, mental or intellectual autonomy, need assistance and/or important help in order to carry out the ordinary activities of daily life*", the Spanish Law of Dependency defines this with almost the same words, adding for the case of people with intellectual disabilities that "*support will be provided for their personal autonomy*". The Dependency Law includes those social services to which both elderly and disabled people are entitled.

In order to be a beneficiary of such services, the user must pass an assessment which will determine their situation based on three factors: a) their own operating deficit, b) their degree of limitation of autonomy, basic and/or instrumental activities of daily living, and c) their need for assistance and care from a third party.

The Spanish Dependency Law compiled a catalogue of services, which until then had been dispersed in various different laws and regulations. It is divided into five sections: preventive services, telecare services, home help, day and night center services and residential care services.

In some cases, they are subdivided according to whether the benefit is for the elderly or for people with disabilities, because the vital needs of both are completely different, as well as social development and restrictions on their social participation. Each of these five general services can be provided independently or complementary to others, for example: some people may require telecare services, complementary to home help, and day care service, or just one from them.

This research, will mainly focus on services related to personal care for daily life activities, in the care services for sheltered homes, residences, and telecare services, because workers and users in such

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<sup>119</sup> BOE núm. 299, de 15/12/2006 <https://www.boe.es/buscar/act.php?id=BOE-A-2006-21990>

services are directly affected by the WTD. The provision of these services requires an ample disposition of personnel, involving many shift changes, provision of night services, entering fully within the limits regulated in the Directive.

There will be no consideration of the impact of the WTD legislation on disability prevention services, on daily care in day care Centres, or in occupational Centres, because there appears to be no problems arising there. As has been said, frictions deriving from the WTD between workers' rights and users' rights arise, more intensely, in the provision of support services in everyday life. The work of instructors in sheltered employment or supported employment are excluded from this report because they are not considered part of the remit of social services in Spain.

Regarding to those who provide dependency services, a social network linked to organizations in the third sector - especially religious ones - has always coexisted in Spain with the private 'for-profit' sector which has assumed growing importance since the 90's<sup>120</sup>. As stated in the Law of Dependency itself, Spanish care for dependents continues to take place predominantly in the family, the Dependent Law refers to this as "*informal support*", provided by non-professional caregivers. The Law offers a wide catalogue of services provided or established by the administration, and exceptionally offers payments to the individual dependent person who can contract carers for themselves.

The most common services in where there are frequent problems with the WTD, given that some of them provide services 365 days a year and 24 hours a day (so as 24/7 services), are the following:

Sheltered housing, offers a comprehensive care during the day and night period to people in a situation of dependency, with the aim of improving or maintaining the best possible level of personal autonomy, supporting families and carers. It covers the needs of counselling, prevention, rehabilitation, orientation for the promotion of autonomy, personal assistance and personal care.

Residential care, this service provides continuous social services and also offers health care. It is provided in the residential Centres categorized according to the type and degree of dependency, and level of care that the person needs. The provision of this service can be permanent, when the

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<sup>120</sup> Aragón Medina. J., Cruces Aguilera. J., Rocha Sánchez. F. Dependency care sector and collective agreements. Collection Reports and Studies. Labour Relations Series. Núm. 81. Ministry of Labour and Social Affairs. Madrid. Spain. 2007.

residential center becomes the habitual residence of the person, or temporary, when taking temporary stays of convalescence or during vacations, weekends and illness or to provide rest periods of non-professionals carers.

Assistance at home, integrates very diverse benefits that can be classified into two main groups: services related to domestic or household activities such as cleaning, cooking or others; and services related to personal care, to achieve a normal daily life, this one requires different hours of care.

Telecare services, this service facilitates the beneficiaries, using information and communication technologies, and with the support of the necessary personnel, immediate response to emergency situations, insecurity, solitude, and isolation. It can be provided as an independent or complementary service to the home help.

The services of sheltered housing, residential care and telecare services are always provided by organisations which hire personnel and so are subject to labour legislation. Home help services, in addition to being able to be provided in the same way as the aforementioned, can also be provided by personnel hired directly by the dependent person, who is then able to contract them as an employee, as a self-employed contractor, or even pay relatives who perform the work as non-professional carers, and receive grants from the administration if the support is needed.

The Directive is fundamentally a standard for workers' health, since it establishes many obligations and restrictions on working time<sup>121</sup>. The basic and most important rule of Spanish labour law in which the WTD have been incorporated is the Statute of Workers Rights, in which all the general aspects of the relations between employer and employees are regulated. In addition to the organization of working time, the Royal Decree 1561/1995 of 21<sup>st</sup> September on special working days is still in force. This was issued after the publication of Directive 1993/104/EC, which is the prior Directive to the current 2003/88/EC, which is under consideration here. The Royal Decree of 1995 regulates situations which differ from common labour standards and was established to adapt the general employment rules to the characteristics and needs of certain sectors. Also, various collective agreements record the different accords reached between employers and employees in our sector. The limitations and rights regulated in each of these three areas were written bearing in mind the Working Time Directive.

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<sup>121</sup> 10% of the interviewed knows some of the rights, and obligations for employers established in the Directive, the other 90% none of them.

Also, multiple rules on schedules and working hours are applied in collective agreements, which were authorized by the Statute of Workers Rights and by the 1995 Royal Decree mentioned above. These improve workers' rights above those established in these norms (The Royal Decree and also the Statute of Workers Rights). It is important to remember that the text of the WTD often promotes the use of collective agreements in sectors as a means of implementing the WTD's requirements.

It is important to have in mind that employees are subjected to these rules, but the self-employed workers are not considered as employees and therefore are not subject to the Statute, nor to the Royal Decree of special days, nor to any collective agreement. Non-professional carers are also not under the protection offered by the Directive, so this puts them at more risk in their work but they also do have more freedom to control in the provision of their services<sup>122</sup>.

In order of importance, this report will first consider what is established in the Statute, then the Royal Decree (RD) on special working days, and finally the collective agreements, in all cases noting the obligations which have to be fulfilled in the organization of the work of employees.

### **Law of the Statute of Workers Rights**

In Spain, following the mandate of the Constitution, the Statute of Workers Rights<sup>123</sup> was promulgated and its rules determine the operation of Spanish labour relations. Within this wide law, this research will only refer to those points related to the WTD.

First, the labour code marks in its art. 34 that the maximum duration of the working week will be 40 hours averaged over a year, thus using a working time limit determined in a week, but referenced across the period of a whole year. These 40 hours per week can be increased in some weeks provided that the annual average is below this number. In a very different way the Directive in its art. 6.b) in relation to art. 16.b) provides that the average of working time should not exceed 48 hours, including overtime, for each seven-day period in a reference period of four months. Spanish legislation does not expressly estate a maximum duration of daily working time, but such limitations are established by

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<sup>122</sup> Hurtado Martinez. J.A., Organization of working time and breaks in the European Directive: a regulation pending in Spain. Revista Jurisprudencial. Núm. 4. El Derecho.2011.

<sup>123</sup> Royal Legislative Decree 2/2015, of 23th October, approving the consolidated text of the Law of the Statute of Workers Rights. <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430>

following the rules of the daily rest and weekly rest periods<sup>124</sup>, and with the limits of the sectorial agreements which will be seen later.

The Spanish Statute in paragraph 2, art. 34, established that an irregular distribution of the working day may be established throughout the year, determining that by agreement with the workers or by a collective agreement. In the absence of any such pact, the employers may distribute irregularly throughout the year up to 10% of the working day. In this irregular distribution, the maximum weekly limit of 48 hours in average of four months of the Directive may well come into play.

Also, the Statute determines in art. 34.3 that the number of ordinary hours of effective labour may not exceed nine per day, unless a collective agreement or agreement between the employer and the workers' representatives, establishes another distribution of daily working time. So if there is agreement with the representatives, the ordinary hours of a day can be increased, but if there is no general agreement, employers can increase the daily work individually by overtime, which is voluntary for workers, with a limit of 80 hours in a year. Directive (is different the right to rest, than the limit of working hours; they play different roles but they have to stay connected) does not establish any limitation on the ordinary working day, nor limitation in overtime working hours<sup>125</sup>, but speaks about daily rest.

Regarding the rest period between consecutive working days, the Spanish labour code in its art. 34.3 states that between the end of one day and the beginning of the next one, at least 12 hours will be measured, improving by one hour more in favour of the worker, on the 11 hours established in art. 3 of the WTD.

With regard to breaks at work, when the work day exceeds 6 continuous hours, the same art. 3 of the Directive establishes that states must take measures to provide workers with a break period, and in Spain art. 34.4 of the Statute establishes that, whenever the duration of the daily continuous working day exceeds 6 hours, a period of rest of not less than 15 minutes must be established.

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<sup>124</sup> Martin Puebla. E., The unsuccessful process of revising the EU directive on working time. *Revista Aranzadi Doctrinal*, Vol. 2, Nº. 22. Editorial Aranzadi. Spain. 2010.

<sup>125</sup> In the interview, all entities expose that more than 16% of workers do more than 8 hours a day, but later they are compensated with rest hours.



On night work the Directive defines in art. 2 that the night period shall be a period of not less than 7 hours, which shall include the interval from 24:00 and 05:00 and which shall be defined by national legislation. Within these conditions, in Spain, the Statute in art. 36.1 considers night work, the time between 22:00 and 6:00, again improving by 1 hour on the night period defined in the Directive<sup>126</sup>.

The Directive stipulates in article 8.a) that the working time of night workers should not exceed an average of 8 hours each period of 24 hours. The Spanish Statute establishes, in art. 36 that the working hours of night workers may not exceed eight hours per day on average within a reference period of fifteen days and that night workers may not work overtime. For Spain, therefore, the period over which the average is to be established is every 15 days and also prohibits overtime. In addition the Statute defines night workers as those who work for more than a third of their annual work at night, again effectively extending the scope of the Directive and its restrictions on night work.

Art. 7 of the Directive establishes a minimum of four weeks of annual leave. The Statute of Workers Rights establishes in art. 38 that the period of paid annual leave in no case will be less than 30 calendar days, so again this aspect labour law has improved in the Spanish context. In the same way as the Directive, vacations cannot be replaced by economic compensation.

### **Royal Decree on special working days**

The Royal Decree 1561/1995 of 21<sup>st</sup> September of special working days<sup>127</sup> was issued in Spain following the publication of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of management of working time.

As stated in its preamble, this Royal Decree was developed due to the need to adapt general labour standards to the specific characteristics and needs of certain sectors and jobs, in order to allow a more flexible use of these rules in the light of the organizational requirements of certain activities, or of the peculiarities of certain types of work. It also seeks to establish additional constraints in order to

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<sup>126</sup> 26% of workers who works in entities which have sheltered houses or residencies work by night, none in those entities which don't have those services.

<sup>127</sup> <https://www.boe.es/buscar/doc.php?id=BOE-A-1995-21346>

reinforce the protection of workers' health and safety, especially in those cases where excessive overtime may present a risk.

The Royal Decree establishes reductions in the minimum breaks between days and weeks provided for in the Statute and stated in the Directive, but these reductions must be compensated by alternative breaks, in all cases requiring one or more periods of rest during each day of work and to be taken within the hours of service<sup>128</sup>.

This Royal Decree allows collective agreements to authorize, by arrangement between the company and the worker concerned, that all or part of the compensatory breaks provided between sessions may be accumulated for their enjoyment in conjunction with annual leave, and, in the same way, workers have to rest a minimum of 24 hours in a week and will be able to accumulate also the other half day of the weekly rest towards their annual leave.

The Royal Decree establishes flexibility for some cases, for example the service of employees of urban properties (workers who live on the premises that he works, and has to clean, maintain and also watch over the property. In rural property and in urban property - e.g care takers), for these workers it establishes that they can have several periods of rest during the day, by agreement with the owner of the property, and reducing the minimum of general daily rest of twelve hours, compelling a minimum of 10 consecutive hours of rest between consecutive working days, determining that the differences up to the 12 hours should be compensated, generally established for periods of up to four weeks. Employees can accumulate half day rest periods over a 4 week period and so create one or more whole days off to be taken on another weekday. As a result, we can verify that for this specific service, which certainly has no more needs than social care, the general rule of the Statute of Workers Rights has been modified, allowing for the opt-out by the art. 6 of in relation with art. 22 of the Directive. This is a significant precedent (for this workers there is a special rule, we have to fight to achieve the same for our service).

Also making use of the possibility of an opt –out provided for in the Directive, the Spanish legislator by Royal Decree of special working days allows the extension of the working day to 60 hours a week, with two limits: the daily work cannot exceed 12 hours of effective work, and the workers should enjoy a

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<sup>128</sup> Holidays, work permits and working day. El derecho. Grupo Francis Lefebvre. Madrid. Spain. 2015.

minimum of 10 consecutive hours of rest. These provisions apply to guards and watchmen and also workers in agricultural, forestry or livestock work.

Also, the RD makes use of the non-implementation option of the Directive for trade, hotel and restaurants sectors, where it authorizes the accumulation of half-days of weekly rest, thus leaving only a minimum weekly rest of 24 continuous hours, for periods of up to four weeks, having to compensate the rest afterwards, and can also agree in those sectors the reduction to ten hours of the rest between days.

This Royal Decree also includes exceptions for seafarers, and workers related to aircraft and railway activities and some others, reducing breaks between sessions, among other variations.

The Royal Decree does not provide any specific adaptation to the social care services, but it is possible to apply the adaptations of the general regulations established for shift work and in activities with divided days. Residential and sheltered homes provide 24 hour care services 365 days per year, so there is shift work and split days could be applicable. Also this specific rule can be applied in home help services, for example when workers have to support the basic activities of daily living, such as getting up, going to bed, taking a shower, eating, dining, etc.

Article 19 of the Royal Decree establishes that shift workers may accumulate for periods of up to four weeks half day of the weekly rest, so this rest can be reduced to 24 hours. It also, gives the option to separate these 12 hours from the 36 hours corresponding to the weekly rest, and so the workers can enjoy these 12 hours of leisure on another day of the week. This article also allows to reduce the rest period between days to 7 hours when the workers change their shift, reducing drastically the 12 hours rest between daily working days for such specific situation, it can be applied in residences and sheltered housing, and telecare services<sup>129</sup>.

Moreover, art. 22 considers the activities with split shift, which do not exceed their total duration of the ordinary working day, must by their very nature, be discontinued over a period of time, greater than twelve hours per day, so that it is not possible for the worker to enjoy an uninterrupted rest of

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<sup>129</sup> 43% of workers do ordinary day (approx.. 9:00 to 17:00) and 57% special work schedules, including, afternoons, weekends and nights.

12 hours between the end of one day and the beginning of the next<sup>130</sup>. This article allows that by means of collective agreement or, in its absence, by agreement between the company and the legal representatives of the workers, a minimum rest be established between days of up to nine hours, provided that the worker can enjoy during the day, compensatory alternative rest, of an uninterrupted rest period of not less than five hours, it can be applied in and services related to personal care, to the provision of daily life support, and also in sheltered housing.

Even though it would be better to have a legal adaptation dedicated to the social care services sector like the above named sectors affected directly by the Royal Decree, it is possible within the current text of the law to make adaptations to working hours through a pact with workers' representatives. This could result in a better organization of the company making them financially sustainable, and especially better to guarantee the quality of service delivery to the people they care for.

### Collective agreements

The WTD often mentions that collective agreements can improve the working conditions it regulates, specifically allowing in article 18, among others, exceptions to be made to the application of some of its provisions, in recognition of the high importance placed on such formal negotiation between the social partners.

Regarding the social care services sector, in Spain there are many national, autonomous, provincial and company agreements, covering them all would be too much for this research, so it will only deal with state agreements, in particular the "*XIV General collective agreement of Centres and services of assistance to persons with disabilities*"<sup>131</sup>, (hereinafter referred to as Centres and Services Agreement) and the "*VI Collective Agreement for the state framework of services for care of Dependents and Development of the Promotion of Personal Autonomy*"<sup>132</sup> (hereinafter referred to as Dependency Care Agreement).

These agreements cover the subsectors of residential services, day centres, care for people with disabilities and home help services, both of them were in force in February 2017. The two agreements

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<sup>130</sup> Most of the entities interviewed, did not know this possibility.

<sup>131</sup> [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2012-12618](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12618)

<sup>132</sup> [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2012-6592](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-6592)

have areas of quite similar application, in both cases they affect centres of public or private ownership, for profit or not for profit.

The scope of the two agreements includes the care of residential homes, day centres, night centres, sheltered homes. The most notable differences between the two are that the *Centres and Services Agreement (CSA)* also include diagnosis, rehabilitation, training, education, promotion, and labour integration of persons with disabilities and these particular activities are not included in the other agreement. The *Dependency Care Agreement (DCA)*, includes residential homes for seniors, home help services and telecare, and these services are not within the scope of the CSA. In spite of these differences the shared scope of application of the two agreements, especially in relation to this WTD study, is quite considerable.

In both agreements, as in the Statute of workers rights, it is established that the company may distribute the working time irregularly in a percentage of 10% in annual calculation. There are considerable problems for employees and employers in reconciling the conflicting demands of the WTD, the CSA and the Royal Decree. For example, the CSA establishes that the weekly working day will have a maximum duration of 38.5 hours of effective working time and that the number of daily hours of effective work cannot exceed 8 hours. In addition the CSA determines that any hours of work in excess of 45 per week will be considered as overtime hours. The CSA limit of 45 hours is near the limit of the WTD, but the 48 hour limit in the Directive also includes overtime, whilst the CSA the agreement only takes into account ordinary hours up to 45.

On the other hand, the DCA is clearer when it states that "*no more than nine hours of effective work*" may be carried out "*unless a minimum of 12 hours has elapsed between the beginning of one day and the beginning of the next*". "*Always respecting the maximum annual hours of work that this agreement establishes.*"

It is interesting to note that in Spain, for a better determination of working times, agreements usually fix annual hours in this way. Many of the issues or restrictions that arise in the application of rests, vacation and other rules can be overcome by the use of the annual calculation. The application of the Statute, without conventional improvements, would require workers to work between 1808 and 1826 hours a year, but collective agreements usually improve these conditions. For example, the CSA establishes that the workers will have a maximum annual working day of 1729 hours of effective

working time, whereas the DCA determines it will be 1792 hours for their workers' services (except for the home help service, whose maximum hours in a year is 1755 hours.)

Regarding the weekly rest, in the DCA, the staff are entitled to a minimum weekly rest of a day and a half, in the same terms as determined by the WTD. However the CSA establishes three specific provisions regarding rest periods,

- a) it will be accumulated for periods of up to fourteen days, stating that the accumulated rest days must be enjoyed in an uninterrupted manner,
- b) workers with disabilities will be entitled to two uninterrupted days of rest, and
- c) where shift work and irregular distribution of working days occur, the normal CSA rules cannot be applied, because they must instead follow what is established in the Royal Decree 1561/1995, which has been explained previously.

When daily continuous work exceeds 6 hours there must be a minimum of a 15 minute break, for the agreement of attention to dependents, and this quarter of hour will count as working time for all calculations. The CSA also establishes that when the breaks are longer than 1 hour it will be understood as a split shift, with the proviso that days cannot be divided into in more than two fractions.

On annual leave, art. 7 of the Directive, determines workers will have a minimum of four weeks, the CSA establishes the right to enjoy twenty-five paid working days and the DCA fixes it as thirty calendar days paid leave, improving on both the CSA and the WTD. They both describe a preferential enjoyment of this leave, if the needs of the service allow it, between 1<sup>st</sup> June and 30<sup>th</sup> September and determine that it can be enjoyed split over 2 periods.

Regarding night work, the two agreements establish that a bonus will be paid on the hours worked at night. In addition, the DCA establishes that not only will the period established in the Statute be considered for the computation, between 22:00 and 06:00 in the morning, but it also adds one hour more to the night time schedule extending it from 22:00 to 07:00. The arrangements seem not to be aimed at protecting the health of night workers, but rather on securing the cost if the extra hour.

**Recommendations and implications of the WTD and national labour laws on workforce in social care services for persons with disabilities on new labour law provisions that will promote a fairer way of working in the SCSS sector**

The first consequence of the Directive on Spanish legislation is the adaptation of all labour legislation, so as not to go contravene this EU rule in any of its aspects, except in those where it is possible to choose not to follow what is prescribed in it. As has been seen on many occasions in this research, the limits used by the WTD and the Spanish regulations are different but complementary, for example, the WTD speaks of a maximum of 48 hours of work per week including overtime, and Spanish legislation refers to a limit of 45 hours, but only ordinary, not taken to account overtime. The differences between those limits, one of maximum 48 hours of work in a week and the other limiting only the ordinary hours.

On the full adaptation of Spanish legislation to the Directive, it is remarkable that the European Commission sent a formal Opinion<sup>133</sup> to Spain, for not correctly incorporating part of Article 8 of the WTD into national law. The basis of this document was the European Commission's consideration that Spain had not transposed the eight-hour absolute limit for night work involving special risks or significant tensions, provided for in Article 8.b) of the Directive.

Because this was considered a breach, and its transposition was mandatory Spain, published Royal Decree 311/2016, of July 29, which adds a new article, determining it to Royal Decree 1561/1995, on special working days. This last legal amendment about a special aspect of the WTD, clearly indicates that the rest of the articles of this Royal Decree, despite being drafted in 1995, prior to the publication of the current Directive, is in accordance with it. The Spanish State understood that it had to determine more clearly that in the case of night work, when there were jobs with special risks or significant tensions, the prohibition of exceeding 8 hours should be total and unconditional, and so this was modified by the Royal Decree in 2016.

Spanish national labour laws do not fully meet the needs of the care sector, since none of them has been adapted to social services for people with disabilities. It would be advisable, in order to give a higher quality of service, to better serve the needs of the users of Services, as well as to give employers more flexibility in their organization, to make provision for sector specific exceptions, such as other sectors already have in the Royal Decree of special days.

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<sup>133</sup> Reasoned Opinion 2014/4169 of the European Commission

Of course, any legal amendment should not have the effect of increasing the cost of services, and therefore comply with what the European Commission established in the Gottemburg Council<sup>134</sup> in 2001, where it established that all policies also care in situations of dependency, should have as objectives accessibility, quality and financial sustainability. This latter objective creates a tension between two elements that should not be contradictory, but do in fact conflict: on the one hand the economic and institutional pressure in favour of the containment of expenditure and on the other hand the growing demand for long-term personal care. These two realities require more flexibility for the organization of working time than the current laws allow.

But the need for flexibility between the needs of the service and the rights of workers also cause friction, mostly in care services, in sheltered housing and residential care homes, and also in those dedicated to the care of basic activities of daily living. This is true for all those activities that must be rendered every day of the year in very long hours, in the case of domiciliary and residential care services working 24 hours a day, 365 days a year (24/7 services).

In the author's opinion, Spanish legislation should be adapted in the social services and support services sector (SCSS) just as it has been done in other sectors, (for example by allowing employees of urban properties to reduce rest between working days to 10 hours because their services require a broader schedule). In the case of social care this possibility would help to improve personal services to help lift and get a person into bed, since such services are often provided by a single person. It would also allow daily rest to occur during the day and that rest periods between days is reduced so as not to force the dependent person to get up very late and go to bed early (to allow the support worker to keep to the current WTD rules). Such changes would be able to give the person in need of support the possibility of having a normal life, not one which was ruled by arbitrary working time considerations. This is matter of human rights under the UN Convention on the Rights of Persons with Disabilities.

The possibility of working (as in the agricultural sector) for twelve hours, if the activities are not very painful, would also be a positive step to implement in the services of sheltered housing. This is especially appropriate where the carer supports the work of housing and the lives of users and it is difficult to allocate work shifts that do not cut the normal daily activities in half.

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<sup>134</sup> [http://ec.europa.eu/regional\\_policy/archive/innovation/pdf/library/strategy\\_sustdev\\_en.pdf](http://ec.europa.eu/regional_policy/archive/innovation/pdf/library/strategy_sustdev_en.pdf)



The needs of the sector are even more evident when trying to normalize the lives of people living in sheltered homes. For example, at weekends or on vacations trips are scheduled to encourage leisure in the community, but if the trip involves travel outside their home city, even if the excursion is just a single day, then changes of shifts are impossible to manage within working days limited to 8 or 9 hours. The only way round this is that the worker who must later replace the first on-shift worker also has to go on the journey and this increases the cost of the outing, to point where it forces them not to do it.

In long trips, accompanying people with disabilities, you can organize shifts with responsibilities in each of the shifts, and agree with workers that rest times that are not counted as working hours, but either they carry out very long hours with low staff cover, or the increased travel costs due to travel times and carers' accommodation costs, increase the cost of the trip in a way that reduces the viability of travel for leisure.

It also affects very negatively the legislation on night work, since it is established that when more than three hours of work are carried out during the night, the whole day is considered to be work at night, and also workers can not work on this schedule more than 8 hours on average. This not only makes the service more expensive to pay for night staffing, but also makes it necessary to hire three workers per day to attend these services, which leads to a large turnover of staff, which complicates organization and is not good for the people served who, far from feeling at home, see many workers who attend them, all coming and going when they are doing activities.

Night work in a protected housing scheme is not a demanding job and changes to working hours could easily be made. Modifying the hourly limits and their related pay and expanding the permitted period of distribution of the hours in sheltered homes would help to accommodate the shift work in a more rational way, serve people with disabilities far better and also improve the lives of workers, who could complete their weekly schedule in a shorter time.

Recently, in 2013<sup>135</sup> a greater flexibility was added in Statute of Workers Rights, determining that, on the published annual calendar, and taking the limitations explained in the previous points, the company may have as a flexible bag of hours up to 10% of these annual hours, to distribute them irregularly. This gives a margin of flexibility to accommodate schedules, but since notice in Spain is

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<sup>135</sup> Royal Legislative Decree 16/2013. <https://www.boe.es/buscar/doc.php?id=BOE-A-2013-13426>

mandatory, with at least five days, for work on call, this flexibility can only be used in a structured and planned manner, not in cases of necessity of specific support services, which cannot be anticipated in advance.

Collective agreements do not at present provide any assistance to the social care sector, but their main concern is to improve working conditions, mainly tending to reduce hours of work and increase the wages, rather than finding a way to adapt to the specific needs of the sector. There is an exception concerning the ‘hours of availability’ that should be mentioned as an example of good practice and which could also be proposed to be regulated not only in the conventional way but also in national legislation and in any future changes to the WTD.

In Spain the ‘hours of availability’ for work that must be carried out within the premises of the employer are hours of work that are remunerated as worked, but there is nothing in the legislation on the ‘hours of availability’ that are held outside the premises of the company, where the worker is waiting to be called in to work (‘on call time’). In the DCA it is determined in art. 45 that ‘on call time’ for additional availability will be paid to workers who volunteer to be available during the day to meet any requirements that may arise due to a specific emergency at work. The DCA specifies that ‘on call time’ time will not be included in the computation of the ordinary day and that the period of extra time actually rendered will count from the actual call to work up to thirty minutes after the end of the service that had been provided. It would be possible for a similar idea to be established in general terms as a recommendation for any future legal modifications, since this time on-call availability facility for possible emergencies can be useful to avoid having excess staff on duty, it also increases the wage cost in a rational way. Neither is contained in the legislation nor in the agreements about on the hours of availability that are held outside the premises of the company, waiting to be called, and it would be possible to pay differently the hours worked of the hours of guarded lending inside the installations of the company<sup>136</sup>.

It would be advisable to establish the special needs of the social care and support services of sector within the exceptions determined in art. 17.3.c) of the WTD. Also, in Spanish legislation, for example in the Royal Decree on special working days, provision could be made for the special needs of the sector because of the need to guarantee a continuous service.

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<sup>136</sup> Serrano Arguello, N., The organization of working time from the perspective of Community law and its case law: special attention to its impact on the health sector. University journal of work sciences, N.6. University of Valladolid. Spain. 2005.

It could be useful if the reference periods taken to compute the average weekly hours were increased. Also, increasing the maximum number of permitted night hours that can be worked and also their period of reference would help meet the intimate care needs of pwd as well achieve greater flexibility of staff use and a better service to users<sup>137</sup>.

Perhaps the most important mismatch between the labour rights determined both in the Directive and in Spanish national legislation is that some of the services provided for persons with disabilities, in particular those related to personal care for daily life, can also be carried out by self-employed workers, in addition to non-professional relatives, who have no obligation to prevent occupational risks or schedules and are outside the scope of the WTD.

Self-employed persons, who can only be hired directly by the people to be supported,(but never by companies), are not covered by the Statute of Workers Rights, nor any collective agreement since they are considered to be individual entrepreneurs and therefore do not have any time limits on the provision of services. The general scheme of employed persons, the system of self-employed workers and that of non-professional family caregivers have very distinct and different obligations and rights.

Lastly, it should be noted that many workers prefer the concentration of working hours in a few days, also almost 75% of the interviewed entities, above the limits currently established, since this provides more free days during the week and therefore a better reconciliation of working life with family. In jobs without special risks and those that are not physically hard (like the majority that are provided in this sector), extending the limits of hours of service delivery would also benefit workers and the improve the lives of the people receiving those services.

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<sup>137</sup> All entities interviewed which has sheltered houses and residences, demand that want that the working days will be more similar to the schedule in similar way in which an ordinary family is related so that the carers have a more personal contact, with users.

## United Kingdom

Working Time in SCSS for PwD

Night Work in SCSS for PwD

Shift Work in SCSS for PwD

Rest in SCSS for PwD

Annual Leave in SCSS for PwD

Pattern of Work in SCSS for PwD

Derogations, Exceptions and Derogations by Collective Agreements in SCSS for PwD

Safety and Health Protection in SCSS for PwD

Recommendations and implications of the WTD and national labour laws on workforce in social care services for persons with disabilities on new labour law provisions that will promote a fairer way of working in the SCSS sector

## Basis for the report

This report is based on existing academic research and ‘grey’ sources, including articles in newspapers and professional journals. Although effort has been made to focus on the social services sector, it is often not possible in the literature to disaggregate workers who support people with disabilities and long term conditions from those who provide support for older people.

Qualitative data has been gathered from telephone interviews (interview schedules are available on request), as on-line questionnaires, especially lengthy ones, do not generally generate a good return rate in the UK. In addition, interviews (on average 1 hour long) enabled a fuller exploration of the issues. Interview schedules were drawn up to cover the research areas of focus so that these made sense in both the UK context and for the type of interviewee. The background and purpose of the research was explained and care was taken to ensure each interviewee fully understood the questions, giving information about the WTR (Working Time Regulations) where necessary. The target groups were as follows:

- i) Sector experts (3), including one who uses personal assistants for live-in care/support.
- ii) Unions with social care coverage (2)
- iii) Umbrella Organisations (2) which consulted with a sample of members
- iv) Employers (6), including one agency which employs workers who provide 24 hour live-in care/support

**Coverage of the organisations interviewed is summarised in the table below:**

Type of organisation	Disability services offered	Number of employers/members	Geographical coverage
Sector expert	N/A	N/A	UK
Sector expert	N/A	N/A	UK
Sector Expert who is also pwd and uses PAs	N/A	N/A	UK
Union	N/A	Not known how many SC members.	UK
Union	N/A	Uncertain how many SC members	UK
Employer (co-operative)	Children’s day care (fully integrated) and family outreach	100+ workers	Regional (England)

Employer	Adult/young people. Home care, residential care, supported living, employment services	3,500 workers	England and Wales
Employer	Adult/young people. Supported living, community support, respite, residential	10,000 workers	England, Scotland, Wales
Employer	Adults, young people. Home care, sheltered housing, supported living, residential care	900+ workers	England and Wales
Employer	Adults and children. Support at home, including specialist person centred 24 hour live-in care	560 workers	England
Employer (Agency)	Adults and children. Support at home, including specialist person centred 24 hour live-in care for physical disability and neurological conditions. Respite Care.	1,700 workers	England, Wales, Scotland
Umbrella org	Members cover full range of services for pwld	200+ organisations	UK
Umbrella org	Members cover full range of services for pwld	144 members including councils (statutory sector), independent sector providers, and individuals	Wales

The advent of Brexit has meant that some see this research as no longer relevant for the UK. To combat this it was stressed that in addition to supporting European colleagues, the research findings would be very useful when the UK is negotiating new working time arrangements post Brexit. This did not, however, always convince. In addition, as the report reveals, many employers in the UK are often unsure about the current detail of the WTR and its case law, especially in relation to the contentious issue of payment for inactive 'on-call' or 'stand-by' time. Others have been forced to 'bend' the rules to provide support in a reducing funding envelope. Consequently some employers have understandable concerns about whether they are meeting all WTR requirements adequately/ properly. Anonymity was therefore guaranteed. All were familiar with the WTR, but some employers were not sure of the detail.

## Definition

The social services sector in the UK includes people working in early years, children and young people's services, and those working in social work and social care for children and adults. Early Years provides services for preschool children (up to 5 years of age) and includes nurseries, play groups, childminders and nannies. The latter 2 are self-employed. The Department of Health predicts the number of people

over 65 needing support with long term conditions will increase 4 fold in England by 2050.<sup>138</sup> Younger adults and children with long term/life threatening conditions or disabilities are also living longer. This has increased the demand on social services across the UK, and the sector continues to grow steadily. Pressure for the recruitment and retention of staff remains high, with average turnover in the sector at 27%. Although there are a few very large employers, 92% of the 63,000 employ less than 50 people, meaning that the workforce is fragmented. The distribution is not even across the UK, with England accounting for by far the largest percentage of social service workers: 81% of the workforce is in England, 11% in Scotland, 6% in Wales and 2% in Northern Ireland.<sup>139</sup> Unionisation is poor outside of public sector employees, providing little opportunity for Social Dialogue or collective agreements. Over 80% of the workforce is female.

Social work in the UK is part of the Social Services Sector, but is separate from social care. The term 'Social Worker' is a protected title across the UK. This means anyone who calls themselves a social worker must hold a specified qualification, be registered with the appropriate regulator (dependent on country) and undertake continuous professional development. There are approximately 116,000 registered social workers in the UK: 93,000 in England<sup>140</sup>, 11,000 in Scotland<sup>141</sup>, 6,000 in Wales<sup>142</sup> and 5,700 in NI<sup>143</sup>. They are employed mainly by Local Authorities and as public sector workers enjoy a good level of unionisation. Pay scales are negotiated through collective agreements and are much higher than those in social care.

### Interface with health services

It is relatively easy in the UK to differentiate between social services and health, both in terms of statistics and of employment, although sometimes the former measures 'Human Health and Social Work' activity without a disaggregation of the two.<sup>144</sup> Nevertheless, health and social service workers

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<sup>138</sup> Care: Sector Skills Assessment. Briefing Paper UK Commission for Employment and Skills (UKCES) 2013.

<sup>139</sup> 'Care: Sector Skills Assessment briefing paper' ibid.

<sup>140</sup> HPCP 2016

<sup>141</sup> Social Services Workforce Statistics for Scotland 2014

<sup>142</sup> Care Council for Wales Annual review 2014/15

<sup>143</sup> Annual report of NISCC 2015

<sup>144</sup> There is also some blurring of roles between health and social services, created by the increase in integrated services. For example, in Scotland new legislation (2014) requires the 32 Local Authorities and 14 Health Boards to work together to plan and deliver integrated Health and Social Care services across the country. In Northern Ireland work is underway to develop a new hybrid role, 'Advanced Care Practitioner', that will bridge the gap between a social services support worker and a qualified nurse. In England, new induction training has been developed for use with workers across both health and adult social care to signal commonalities in the roles.

across the UK continue to work to different professional codes, different job descriptions and different rates of pay. In general, health is better resourced and has higher status.

### **Types of service provision for people with disabilities**

The European Disability Strategy 2010-2020 seeks to empower people with disabilities to fully exercise their rights and in the UK this has meant a move from the medical to a social model of support and services have tended to reflect this as they are designed to maximise personal choice and control for those people living with disabilities.

Service provision in the social care sector in the UK is varied and includes domiciliary care services (supporting people in their own homes), supported living (including the support of people in custom made accommodation e.g. sheltered housing) and residential and day care services. Residential care is no longer provided in large institutions, but some would argue that although the largest of care/nursing homes offer economy of scale, they are still too large to support proper implementation of the UNCRPD through things such as person centred planning, active support and active risk taking.

The introduction of direct payments/personalised budgets has meant that some people with disabilities have been able to employ their own staff (personal assistants), though this number is still relatively small. Figures have been difficult to find, but the Department of Health has anticipated there will be nearly 1.2 million personal assistants in England (adult social care) by 2025.<sup>145</sup> Many of these will be provided by agencies specialising in person centred care at home, including the 24 hour 'live-in' model. These personal assistants are most often not unionised and they work alone or in very small teams.

There are also some well established 'intentional communities' in the UK where people with learning disabilities live together in small 'villages' and their staff live amongst them as a lifestyle choice. There is disagreement about the desirability of this type of service provision and it certainly presents some challenges for the application of the WTR. 'Lifestyle choices' do not easily fit within regulatory or national frameworks which are often aimed at 'controlling' the kind of services which have been rejected by those in intentional communities.

The majority of those with care needs, however, are still cared for by family members. There are 6.5 million family carers in the UK, providing £132 billion of care per annum<sup>146</sup>. In contrast there are 1.87

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<sup>145</sup> Supporting Personal Assistants working in adult social care DH 2011.

<sup>146</sup> Carers UK 2014.



million social work/care and support employees working for 63,000 employers.<sup>147</sup> Reflecting a mixed economy, most services are now in the independent sector, a mixture of private and voluntary (not for profit) sector provision.

This wide variety of service provision means that there are many different work patterns in operation, and each has differing challenges in relation to the WTR.

### **Funding systems**

Despite the economic downturn starting in 2008, the Social Services sector has grown steadily in size in the UK. The shift from public to private employment/services in the sector since the 1990s means that the majority of services are now outsourced and purchased through a competitive and open market. Less than a third of services are provided by the public sector (27%), 49% are provided by the private (for profit) sector and 24% by the voluntary (not for profit) sector.<sup>148</sup> Public sector services are provided by Local Authorities (Health and Social Care Trusts in Northern Ireland). These same Local Authorities use central government funding to commission services from the private and voluntary sectors for those people who are unable to pay for all of their own care. Market forces are therefore heavily influenced by the superior purchasing power of local authority commissioners, who can drive down prices for their own block purchases. Funding for Social Services is means tested across the UK. Rules are complex and vary between countries, as each nation takes decisions about how the central government grant will be used. They may also vary between Local Authorities where decisions about certain aspects of payment can be taken locally. Central government funding for social care was cut by one third during the life of the last parliament. All UK Nations have felt the effects of this. Age UK (2016) noted that in England only 21% of those in need received Local Authority help with costs, 80% either self-funding, receiving help from family/friends or receiving no help at all.

### **National Minimum/Living Wage**

The National Minimum Wage (NMW) was introduced in 1999. It was set at what the market was thought to be able to stand and varied according to the employee's age. Later, the Living Wage Foundation (LWF) campaigned for and set different wage rates for London and the UK (London being set higher) based on the poverty threshold, although these were not legal requirements. Subsequently, in response to LWF lobbying, the government pledged to introduce a National Living

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<sup>147</sup> Skills for Care and Development 2015.

<sup>148</sup> Care: Sector Skills Assessment. 2013. Op cit.

Wage (NLW) of £9 per hour (10.68 Euros<sup>149</sup>) by 2020, starting incrementally at £7.20 per hour for all (8.5 Euros) in April 2016. This is now being implemented but there is no difference between London and the rest of the UK, so in fact this does not reflect poverty thresholds for all, and pay levels are still dependent on age, with younger workers (under 25 years) being paid less.<sup>150</sup> The hourly rate rose to £7.50 (8.9 Euros) per hour in April 2017.

### Working Time in SCSS for PwD

Britain implemented the Working Time Directive (WTD) under an unwilling Conservative Government in 1998. It was transposed into UK law as the Working Time Regulations (WTR). Later that year (and until 2010) the new Labour Government embraced the WTD and EU employment legislation in general. Since that time, however, whilst Trade Unions (via the TUC) have been broadly in favour of the WTR, The Confederation of British Industry (CBI) and other business representatives have been less enthusiastic. Public opinion has swung between these two positions. The employment protections offered by the European Parliament were initially welcomed, for example, as many workers saw their holiday entitlement improve at a stroke.<sup>151</sup> However, a shock referendum result in 2016 saw the British public vote to leave the EU, apparently eschewing its employment protections with no guarantee of what will replace them. 'Brexit' will undoubtedly take some considerable time to fully unfold, some observers say potentially as long as 10 years.<sup>152</sup>

### The general impact of the WTD in the UK

The UK is amongst the member- states that have implemented the WTD most assiduously. In many states there has often been a degree of 'gold-plating' of European legislation during transposition. This term means going beyond what the Directive requires. The WTD is no exception and the UK has extended the scope of the WTD in several areas, for example, in relation to record keeping, additional paid leave and its associated payment and notice given by workers choosing to 'opt out' of the 48 hour limit. In addition, wording in the WTR is often far more complex and unclear than in the WTD.<sup>153</sup> Since 1998 the WTR have been amended so many times through case law that it can be difficult for non-

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<sup>149</sup> Conversions correct at April 2017.

<sup>150</sup> The NLW does not apply to all to 16-17 year olds. People in the age bands 18-20 and 21-25 receive lower rates than the over 25s. Apprentices receive the lowest rates of all.

<sup>151</sup> When the directive came into force in the UK over 6 million workers got an extra week holiday, and some (mainly women) enjoyed paid leave for the first time. (Barysch, K. 2013).

<sup>152</sup> E.g. Neil Kinnock, Vice President of the European Commission and leader of the opposition in the UK 1983- 1992.

<sup>153</sup> The Midas Touch. Philip Sack. 2013 IoD policy paper re 'gold-plating' of European legislation.

lawyers to establish what exactly they now mean, creating both complexity and confusion. Nor is it easy to establish the overall impact of the WTR in the UK, as its effects are inevitably intertwined with other trends and initiatives. In 1998 there was already a move toward a general reduction in the incidence of long working hours, as industrialisation led to big gains in productivity.

In 2010 The European Commission asked Deloitte to study the impact of lower working hours on productivity in Europe.<sup>154</sup> The researchers found “no clear pattern” across industries or countries. For the UK, clear results were only obtained for textiles, banking and the power sector: in all three productivity went up as working hours fell. The move to shorter working hours has continued since that time, with the trend being towards shorter working days.<sup>155</sup> This may in part be due to the effects of the WTR, but is also created by changes in working patterns and culture. Patterns have become more diverse: there is an increase in remote working and virtual teams: there are more part-time, flexible and temporary jobs with specialists contracted for short-term projects: people are working for longer as the distinction between work and retirement blurs, and there are more women in the workforce. In addition, Health and Safety legislation in the UK was already well established in 1998.<sup>156</sup>

The WTR in the UK had the intention of protecting **all** workers, and has undoubtedly brought many benefits. It is applied universally across the UK, despite any differences in the way services are provided at devolved 4 country level. However, it has had some unintended and negative consequences for some sectors. Social Care is one of those.

The aim of the WTR is to ensure workplace health and safety for workers. The WTR in the UK are implemented in the following way:

- The maximum working week should be no longer than 48 hours. Workers can work longer provided their working weeks average out as 48 hours over a ‘reference period’. This is most usually 4 months, but can be extended to 6 or 12 months in certain circumstances and if Trade Unions agree, for example, in relation to some migrant workers who wish to work longer hours for an intense period and then move onto other commitments. Other workers such as personal assistants or those living in ‘intentional communities’ work with fewer clients (often only one) for much longer periods of time. They may ‘live in’ or work longer shifts outside of the WTR.

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<sup>154</sup> Deloitte Study. 2010. DG for employment, social affairs and equal opportunities. An impact assessment on further action at European level re directive 2003/88/EC and the evolution of working time organisation.

<sup>155</sup> Devlin, Ciaran and Shirvani Alex. Dec 2014. Dept. for Business, Innovation and Skills (BIS). The impact of the working time regulations on the UK labour market. A review of evidence. EASPD: response to review of the WTR 2003/88/EC 2016.

<sup>156</sup> E.g. Health and Safety at Work Act 1974. Workplace (Health and Safety and Welfare) Regulations 1992.

- Workers should have a break every six hours (20 minutes) and 11 consecutive hours rest every 24 hour period. They should have a full day off each week; or two days off every two weeks.
- Everyone is entitled to 4 weeks of paid holiday (pro-rata). Since 2008 this has been extended to 5.6 weeks when ‘bank holidays’ were also included in the holiday entitlement.
- Night shifts must not be longer than 8 hours and night workers should be offered a risk assessment with regards to the effect on their health.
- Workers under 18 are subject to different rules.

It will be clear from the above that the *precise* definition of what constitutes ‘work’ and ‘work time’ will be critical. In the UK this has been the subject of much legal argument, with differing definitions emerging under NMW/NLW case law compared to WTR case law. All of the following areas (night work, shift work, rest periods, etc.) are complicated by this legal uncertainty.

### **Night Work in SCSS for PwD**

‘Waking nights’ are usually based on a 37.5 hour per week model, with shifts being 8 hours, including rest breaks. They are paid at full NLW as they are expected to be awake and active throughout the shift. Night work only presents difficulties in the social care sector where it is seen as ‘on-call’, or ‘sleep-in’. Workers on this type of shift are expected to be inactive and asleep for most of the time. This situation is dealt with in some detail separately below (section 2.3). Throughout the UK social work services operate a separate ‘emergency duty’ team which covers night time, weekends and bank holidays. This is based on a 37.5 hour week and is paid as full work time according to the social worker pay scales negotiated through collective agreements with Trade Union (e.g. Unison and the National Union of Social Workers).

‘Stand-by’ work is not used frequently in the social care sector in the UK and this was confirmed by interviewees. Where it is used, it is most often for workers such as wardens of sheltered housing who have their own accommodation on the complex and can therefore be seen as available to respond to any emergencies that occur. It is usually paid at a flat rate (assuming inactivity) with normal hourly rates paid for disrupted time. Workers in intentional communities can be in a similar position. For these workers, with their chosen different lifestyle the application of the WTR is unclear.

It was suggested by interviewees that ‘stand-by’ work is now sometimes being considered as a cost cutting exercise. With the use of surveillance technology, one worker could cover several worksites which would otherwise be covered by multiple workers on ‘sleep-ins’, thus ensuring savings even

where full NLW is paid per hour. This does, however, represent a poorer quality service and may involve significant risk in some settings. Some see this development as inevitable as worker availability decreases and demand rises.

### **Shift Work in SCSS for PwD**

Shift work is common in the social care sector in the UK, and this includes night work, especially in residential services. As care is often required 24/7, outside of 'live-in' care/support this most usually involves multi-shifts. The most common pattern is three shifts between the following hours: 7-2, 2-10 and 10-7. The latter is the night shift, and when 'sleep-ins/on-call' or 'waking nights' take place. Sleep-ins require a worker to be available at their place of work, but the expectation is that they will be asleep for all or the majority of their shift.

Many workers prefer to attach either a late or an early shift (and sometimes both) to a sleep-in, in the knowledge that the 10-7 shift is likely to involve around 8 hours sleep. This maximises pay and minimises travel/disruption, but the WTD effectively rules this work pattern out, unless an opt-out is specifically exercised. Research has shown that only between 1-5% of sleep-ins require any active work time.<sup>157</sup> Qualitative data collected for this report confirms this. Sleep-ins, sometimes known as 'on call', are most usually paid by a flat rate. This rate varies dependent on Local Authority funding, some pay more than others for commissioned services and data collected for this report found the range offered by a single employer to be as wide as £25-£60 per night. Most employers would expect workers to report when a sleep-in is disrupted by active work: these 'active' hours are then paid at the normal hourly rate. Unions are uncomfortable with this practice as they feel it is not the workers' responsibility to determine when active work is called for, and that there is the constant possibility of claims being disputed by management. However, no evidence of this was found in the qualitative data collected for this report and the system was said to work well. Waking nights are counted as 'active' work in their entirety, and no opportunity for sleep is expected. They are therefore single shifts and are paid at the usual rates (see 2.2.2 above).

### **Rest in SCSS for PwD**

Rest per 6 hours work is usually for 20 minutes with 11 consecutive hours rest per 24 hour period. It has not been possible to find any existing research about how far this is adhered to in the sector as a whole, but employers report that it is difficult to ensure rest away from the 'job' for lone workers

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<sup>157</sup> E.g. VODG (Voluntary Organisations Disability Group) based on a call for evidence from its members.

supporting pwd, as clients can often not be left unattended. Employers also reported that rest and compensatory rest needs to happen in a more flexible way as rigidity does not take into account the needs of pwd. This is particularly so for organisations providing 'live-in' care: rest time of 3 hours per day is most usually organised through negotiation between worker and client, and this may vary according to changes in client need. Opportunities for regular short breaks are also available, but not to a regular pattern. 'Sleep-in/on-call' time is also counted as rest when it is inactive (which is most of the time). As workers may be working a 'two weeks on one week off' pattern, it would be impossible to take rest/compensatory rest as the WTR require without instigating a multi-shift pattern involving a number of workers and numerous handovers. This would be both expensive and disruptive (see 2.3 below).

Compensatory rest was not raised as an issue outside of 'live-in' care/support. This may be because the 'rules' are not well known and/or that it is difficult to apply where flexibility is important and so is frequently not considered.

### **Annual Leave in SCSS for PwD**

All workers in the social care sector in the UK, regardless of age and length of time working for the organisation, receive the same basic rights in terms of holiday entitlement (5.6 weeks at full pay, pro rata). Some organisations offer levels above this and it is common for extra days to be granted based on length of service or seniority. Employers saw the reference period used to calculate holiday entitlement as important. When sleep-ins are included in the calculations as full work time, holiday entitlement increases, with its attendant costs. This appeared to be an area presenting some uncertainty.

### **Pattern of Work in SCSS for PwD**

#### **Contracts**

The most usual contracts in social care are full/part time permanent employment. Fixed term contracts are little used. There has been an increase in the number of people working part time (voluntarily) in the sector. This is in part due to the fact that of the 1.7 million people who work in the UK social care workforce, over 81% are women: 1 in 10 of all women workers in the UK are in the Social Services sector.<sup>158</sup> Part time work is often seen by women to be helpful in terms of fitting work around family responsibilities. Anecdotally, some employers are careful to ensure that the hours of workers are kept

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<sup>158</sup> 'Care: Sector Skills Assessment briefing paper' Op cit

low enough to avoid triggering the payment of employer national insurance contributions. In practice, this currently means (assuming hourly rates at the NLW levels) around 20 hours a week, though this can vary with the age of the employee. This has the effect of increasing the number of part time workers needed to cover a 24/7 shift pattern, as compared with full time workers.

Zero hour contracts are also used in the sector, most often by care at home services, where some of the worst conditions of service can be found. Whilst these contracts can offer welcome flexibility for some (and they are therefore somewhat controversial), for those who require a regular guaranteed income, they are damaging, especially when accompanied by clauses forbidding other employment. The Kings College Research Unit found that there were some 307,000 workers on zero hour contracts in 2013, and Skills for Care reported in 2016 that one in four care workers in England were on zero hour contracts.<sup>159</sup>

Increasingly contracts are including 'unmeasured work time'. This is based on remuneration for the completion of a task rather than on the number of hours worked. Employers are now considering this type of contract to resolve the issues presented by 'on-call' and 'stand-by' time. This approach has the effect of by-passing the WTR in terms of hours but it is still necessary to have a 'daily average (hours) agreement' for the purposes of the NLW.

It is uncertain how the WTR 48 hour maximum applies to multiple contracts in the UK and there is variation in the attitude towards these. Where employers ask their staff about other work commitments, this is often only at the point of employment, with an expectation that other contracts down the line will be declared by the worker. It relies on worker honesty and is not easy to monitor throughout the life of the employment. Whilst some social care employers will not allow additional contracts that take the worker over the agreed full-time hours, others have the clear view that it is none of their business what their workers do outside of their contract. Some could see the benefits of such monitoring in terms of health and safety but feel, as one senior manager put it, 'it would be an absolute nightmare to manage', especially in the home care sector where zero hour contracts are more common. Overall, it would be fair to say all felt it to be the workers' own responsibility to monitor and report the number of hours worked, with some feeling additional oversight from employers would be helpful.

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<sup>159</sup> Skills for Care 2016: National Minimum Data Set

## Agency workers

Short term agency workers are used in social care only when absolutely necessary as they are expensive and because they do not know the client well (or at all) the quality of care offered can be somewhat mechanical and not appropriately responsive to individual needs. Establishing continuity of care is also an issue. Nevertheless, agency workers are used extensively in some locations due to acute shortages of staff. This shortage is likely to worsen as a result of Brexit as workers from Europe return to their own countries, either by choice or requirement. Some larger employers tender for agency work and produce a list of 'preferred providers', using only the best applicants. This approach minimises some of the worst aspects of agency work, introducing competition and building relationships with particular companies.

Agencies are also used by pwd who use PAs to provide 'live-in care', sometimes funded by direct payments or by health care budgets. These agencies remove the burden of pwd having to become employers themselves. They supply staff on a long term basis and therefore fully meet the needs of the client.

## Derogations, Exceptions and Derogations by Collective Agreements in SCSS for PwD in the UK

The WTD allows EU countries various 'opt-outs':

- The 48-hour rule and rest requirements do not apply to 'persons with autonomous decision-making powers'. This term is not properly defined in the UK, and the application of this exception is therefore inconsistent. Where it is used, it tends to apply to senior managers and to self-employed people, though the latter is itself a group with uncertain parameters. Some feel that managers should themselves be covered by the WTR but more often this was seen to be inappropriate (managers should be able to monitor and manage own time) and unworkable (long hours often necessary but other flexibilities make up for this e.g. ability to work from home).
- Trade Unions and employers have leeway to agree their own rules in some cases (e.g. changes to rest periods and the consequent inclusion of 'compensatory rest') through collective agreements. In the UK, collective agreements cover less than one third of the social care



workforce (usually in the public sector)<sup>160</sup> so this particular tool to establish flexibility is not effective in social care. Trade Unions are sometimes felt to take an adversarial stance in relation to employers rather than working with them to resolve challenges.

- Of particular importance is the fact that member-states can allow workers to opt out of the 48-hour rule individually. Workers need to agree the opt-out in writing and have the right to change their minds. Employers must not pressure workers to sign opt-out agreements, but this research found evidence of opt-outs commonly being written into contracts and therefore required. This derogation has been used by the UK since the WTD was implemented in 1998, (the UK was the first country to use the individual opt-out, with some additional conditions). The requirements for rest and holidays remain unaffected.

## Safety and Health Protection in SCSS for PwD

### Stress management

Work in the social care sector is rarely monotonous. It can, however, be stressful: supporting clients who have behaviour that challenges or working with end of life care provide examples of work that can create emotional stress. Although service providers would like to provide extra help for workers who experience these kinds of stresses, for example through support groups, counselling, help-lines and 'well-being' activities (gym, yoga, meditation, mindfulness) in reality this is expensive and is unlikely to happen with more than the very best providers. Commissioners of services have demonstrated a refusal to provide extra funding to support such activities. It is more common for training or individual 'supervision' to be the only support on offer, though this, when done properly, can be very effective.

Recent reports have highlighted that the suicide rate for care workers in England has been increasing and is at now at 70% above the national average, higher than for any other occupation.<sup>161</sup> This is thought to be a result of poor working pay and conditions and increased pressure on workers due to high turnover rates and staff vacancies.

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<sup>160</sup> Blackburn J.et al. 2016. Pessis 3: Promoting employers' social services organisations in social dialogue: Country Study. United Kingdom.

<sup>161</sup> ONS. Suicide by Occupation, England. March 2017. Reported by BBC 11:04:17

## Benefits

Some interviewees reported that working in a satisfying job that supports the worker's own value system is a benefit in itself! Beyond this, the range of things on offer varies enormously, with larger organisations able to provide such things as child care vouchers, bicycle schemes, support for further education and lunch vouchers. However, many of the SMEs are not able to provide anything beyond basic training. Age and gender do not appear to be factors.

## The effects of age and length of service on entitlements

Using the NLW as the basic minimum, it is not uncommon for remuneration to improve with length of service and the associated expected increase in experience. The NLW itself varies, somewhat inexplicably, with age, being paid at a higher rate for the over 25s. Gender has no effect on entitlements.

## Health and Safety Legislation

Health and Safety legislation in the UK was well established in 1998 when the WTD was transposed into UK law. The Health and Safety at Work Act 1974 and the Workplace Health and Safety and Welfare Regulations 1992 offer a range of protections both to the workforce and by implication to the people with disabilities they support. Statutory Instruments have been developed to underpin the implementation of the Acts and these provide an interface with European Regulations. The government has provided Codes of Practice and guidance to support this legislation, and training for social care workers in some aspects of their work is a statutory requirement. This includes: manual handling (of people and objects), control of substances hazardous to health (COSHH), reporting of injuries, diseases and dangerous occurrences (RIDDOR), first aid, and food safety. Living conditions in care homes are governed by a whole host of regulations and are monitored by government regulators. Personal assistants paid for by direct payments are, however, unregulated.

## Recommendations and implications of the WTD and national labour laws on workforce in social care services for persons with disabilities on new labour law provisions that will promote a fairer way of working in the SCSS sector

The WTR in the UK had the intention of protecting *all* workers, but has had some unintended and negative consequences for social care. The main issues for social care employers and their workforce (and by extension for the people with disabilities who they support) are the definitions of and payment for 'on call' time and travel time.

## ‘Sleep-ins/On-call’ time

In 2000 and 2003 (SiMAP and Jaeger respectively) and Dellas in 2005 the ECJ established that on-call time should, in its entirety, be counted as working time for the purpose of calculating working hours, even when a worker is asleep and inactive. The UK felt that these decisions went beyond the underlying principles of the WTD, and was concerned (rightly) that they would also have implications for sectors beyond health, which was the focus of the ruling.<sup>162</sup> This ambivalence is reflected in the National Minimum Wage Regulations 2015, which state:

27 (2) In paragraph (1)(b), hours when a worker is available only includes hours when the worker is awake for the purposes of working, even if a worker is required to sleep at or near a place of work and the employer provides suitable facilities for sleeping.

This interpretation contradicts the earlier SiMAP/Jaeger rulings and adds to the lack of clarity and confusion, which continue to affect the implementation of the WTR in the social care sector in the UK.

### ‘Live-in care’

An increasing number of disabled people in the UK use a model of care where a worker (or workers) live for periods of time in their private residence. This model is known as ‘live-in’ care. It includes employment by private individuals or families as well as employment commissioned by care provider organisations, often using direct payments as a source of funding. More than one worker may be employed as part of a small team, covering support needs 24/7 between them and living with their employer for regular periods of time. The worker is at the ‘workplace’ for long periods, often 24 hours a day and several weeks at a time.

The ECJ interpretations of inactive ‘on-call’ time as working time potentially make all ‘live-in’ care unlawful, even though adequate rest is assured in a variety of ways which cannot be rigidly dictated, as they must fit in with the needs of the person being supported. Prohibiting the use of this ‘live-in’ care model would have a serious impact on the ability of people with disabilities or long term conditions to engage in normal activities of daily living such as work, education and family life. It would prevent them from fully exercising their rights and participating in society and the economy on an equal basis to others and as such would contravene the UNCRPD and undermine the European Disability Strategy 2010-2020. Domestic servants and ‘family workers’ are exempt from the WTD, but

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<sup>162</sup> Select Committee on the European Union. 9<sup>th</sup> Report. 2009.

there is no definition of these groups in the Directive and it is unclear if the terms could be used to cover 'live-in' social care staff.

No employment law case is known yet to have addressed inactive on-call time in the specific circumstances of 'live-in' care, but reference has been made, in personal injury compensation cases, to the possible unlawfulness of the 'live-in' model. This uncertainty has denied some individuals the opportunity to choose their preferred support model, with consequent adverse effect on their lifestyle. The same kind of impact appears to extend into a wide variety of other social care work, where the worker resides at the place in which they are 'on-call'. For example, in the UK case *MacCartney v Oversley House Management* (2006), it was held that wardens living in their own apartment, within a housing complex for elderly/ disabled people, were working 24/7 because they might have to respond to an emergency with one of the other residents of the complex.

In pursuit of greater social integration, choice and independence for people with disabilities, the UK Government strongly encourages 'self-directed' care arrangements. This approach maximises individual choice and autonomy and is in tune with the support of the rights of disabled persons, enabling them to establish a greater degree of normality in their lives. This normality is not available to people if their lives are required by the working of the WTD to be bound by the strict, regular timetables of visiting or shift-based models of care. The intrusion of a number of workers working shifts over a 24 hour period inevitably disrupts relationships and household organisation and is expensive to maintain...often beyond the means of direct payments and other UK funding systems. For some, the removal of 'live-in' support would mean the very real threat of 're-institutionalisation'. For others, regular shift changes and the resultant need to be at home and available for handovers, means that the individual being supported is effectively trapped in their home. One interviewee described this as 'isolated institutionalisation'.

### **Interface of WTR NM/L wage regulations**

The impact of the WTR on social care in the UK cannot be properly understood without some discussion of its interface with the NM/L wage regulations. It seems sensible that if hours count as full working time, they should also count as full paid time, and vice-versa. However, the progressive merging over time of the interpretation of the WTR and the NLW (as well as some confusing differences) has created problems and employers do not know which regulations/ guidance to follow. Sometimes hours must be counted as working time, but not necessarily paid, and vice-versa.

A report in 2015 estimated that 160,000 workers in the UK are paid less than the NMW and are losing out on £130 million per annum as a result.<sup>163</sup> Her Majesty's Revenues and Customs (HMRC) has begun to crack down on these breaches and where they are confirmed, to require up to 6 years of back pay (plus a potential fine). With the high turnover of staff in the care sector<sup>164</sup>, this back payment will be difficult to achieve. Nonetheless, a judgement in an Employment *Appeal* Tribunal in 2014 (Whittlestone v BJP Home Support Ltd.) found that a worker 'on-call' who can sleep for a significant portion of the shift, should be paid for all hours, including when they are asleep. This overturned the original tribunal decision. Despite the fact that the National Minimum Wage Regulations (2015) contradict this (see above), the Department for Business Energy and Industrial Strategy (BEIS) has provided guidance that supports it:

'A worker who is found to be working, even though they are asleep, is entitled to the NM/L wage for the entire time they are at work'.

HMRC has decided to apply the BEIS guidance rather than the Minimum Wage Regulations. This decision has massive implications for the social care sector. Not only will 'inactive on-call' time be counted for working hours, it will have to be paid in full at the NM/L wage (with 6 years back pay). This would seem very unfair when 6 years ago there was no case law in place, and legal advice given at the time was being followed. The Voluntary Organisations Disability Group (VODG) estimates that one member with an annual turnover of £10 million is anticipating a back pay liability of £1.8 million. This situation is untenable unless the government provides funding to help employers with these payments or the current interpretation of working time is changed. Providers will otherwise be forced to close down and the current crisis over lack of sufficient social care provision in the UK will deepen.

Interviews revealed that employers are extremely concerned about this situation and it is not going without challenge. For example, Anthony Collins, a Solicitor, is presenting numerous challenges to HMRC on behalf of employers and is considering judicial reviews for all areas concerned.<sup>165</sup> At least one judicial review is being currently undertaken directly by an employer. There seems to be a good legal basis for these challenges and many employers are awaiting the outcome before deciding on their strategy for managing sleep-in/on-call time. Some are choosing to do nothing yet in the hope that government will intervene, some are considering different ways to 'get around' the problem e.g. the use of contracts based on 'unmeasured work time', or the use of workers 'on standby' rather than

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<sup>163</sup> The Scale of Minimum Wage Underpayment in Social Care Laura Gardiner 2015 (Resolution Foundation Briefing)

<sup>164</sup> Turnover can be well over 20% in some areas.

<sup>165</sup> Anthony Collins Solicitors 31<sup>st</sup> March 2017 post. New grounds to challenge HMRC on sleep-in inspections.

‘on-call’. The latter means fewer workers can be used to respond to the needs of people with disabilities in the night, as one worker could cover several sites. Others still are considering an increased use of technology (surveillance equipment) to resolve the issue. Although these models reduce cost, they also reduce quality of service and may have health and safety implications. One large employer conducted internal research which suggested ‘on call’ workers were active for only 1% of their time on call. Given findings such as this, and the context of reductions in funding, it is easy to see why new options are being considered, even if they represent a poorer service.

### **Travel time and the WTR**

There is also considerable confusion in the UK about the treatment of travel time, both in relation to whether it should count towards working hours and if it should be paid. Domiciliary (home care) workers in the social care sector usually travel to support a number of clients throughout each day/evening, often spending very little time with each. Most usually visiting for 15-30 minute slots, they support people to wash/dress/eat/sleep. There is no time for anything more. Unions have been pressing service providers and commissioners of services to extend these slots but so far with little effect. Staff shortages and reductions in funding linked to increased demand have meant that improvements to services cannot be easily made (or, some would argue, made at all) within the current financial envelope. Most employers do not count the hours their workers spend travelling from one client to another as working time and only pay for direct contact time between worker and client, defining only this as ‘working time’. However, the Minimum Pay Regulations say that a worker should be paid for:

27 (3) (a) hours when the worker is travelling for the purpose of carrying out assignments to be carried out at different places between which the worker is obliged to travel, and which are not places occupied by the employer.<sup>166</sup>

An Employment Appeal Tribunal (*Whittleston v BJP Home Support Ltd.* 2014) had already found in favour of this position and overturned a Tribunal decision in relation to the payment of travel time, stating that travelling time is ‘time work, except where incidental to the duties being carried out and the time work is not assignment work’.<sup>167</sup> Nevertheless, despite Union pressure, both payment of travelling time and its inclusion in working hour calculations is patchy in the UK. The interface between

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<sup>166</sup> Minimum Pay Regulations. 2015.

<sup>167</sup> Appeal number UKEAT/0128/13/BA

the WTR and the Minimum Pay Regulations, and their application to the sector, are far from clear and therefore make challenge difficult.

## Conclusion

Conclusions drawn in this research must be considered within the UK context of continuing austerity measures and a shrinking financial envelope for employers in the social care sector. Many feel that social care is in crisis. The wide variation in service delivery means that regulations must provide sufficient flexibility to support a range of working patterns tailored to client need. The following has emerged from this research:

- There is wide support for the WTR in the social care sector in terms of protection of workers, work/life balance and health and safety. The Regulations are generally well known, but the detail is not always understood.
- In most areas the WTR seem to work well, despite some areas of the WTR becoming overly complex and confusing in the transposition from the WTD into UK law. However, there are some very specific problems of application in the social care sector for which there are no sector specific derogations or exceptions. The WTD of 20 years ago was not constructed in a way that considered the needs of an emerging social care sector. It was more applicable to occupations where rest and work-time are less able to be flexible e.g. lorry drivers and machine operatives, and where more rigid regimes do not impinge upon the human rights of others. The social care workforce in the UK is fragmented and not supported by social dialogue structures beyond the immediate workplace (and sometimes not even there), making it difficult to negotiate flexibilities through collective agreements. The lack of a specific body for social dialogue in the sector at a European level exacerbates this situation. Derogations and exceptions for the social care sector have therefore not occurred.
- The main areas of concern for the social care sector in relation to the WTD/R are:
  - the treatment of inactive 'sleep-in/on-call' time 'as work time,
  - the inflexibility of 'rest/compensatory rest' in relation to meeting the needs of people with disabilities, especially when it is applied to 'live-in' care and support.
  - the treatment of stand-by time creates similar problems, but this type of work is less used in the sector. (NB 'Waking nights', where a worker is awake, available for work and paid in full for the whole shift, are not at issue.)

‘Sleep-in/on-call’ time is a different matter: here the worker is most likely to be asleep for the whole of the shift. This has historically not been counted as work time, and has most commonly been paid at a flat rate. Any hours where sleep is counted as working time and paid accordingly. The European Court of Justice (ECJ) set the stage in 2000, 2003 and 2005 by ruling that ‘sleep-in/on-call’ time should, in its entirety, be counted as working time for the purpose of calculating working hours, even when the worker is asleep and inactive.

UK ambivalence about these ECJ rulings is reflected in the National Minimum Wage Regulations 2015, which state that a worker is only ‘available for work’ when awake and so NMW calculations are to be based on these hours alone. Nevertheless, an employment appeal tribunal in the UK has found in favour of the ECJ ruling, and BEIS has issued guidance supporting this. Confusion reigns.

Recent judgments pointing to the necessity to pay the NLW for all hours counted as ‘working time’ means that the cost of providing care and support at night has escalated to a point where it is untenable for many employers. HMRC is currently enforcing payment of NLW for ‘sleep-in/on-call’ time, with fines and 6 years back pay also being demanded. Legal challenges are being mounted, but the situation remains very serious for the sector and for the people it supports. All types of service provision with a ‘sleep-in/on-call’ element are affected, including ‘live in’ care/support.

In addition, the WTR requirements for rest/compensatory effectively make the ‘live-in’ care support model unlawful. These requirements also have implications for ‘sleep-in/on-call’ work, in that workers would (technically) need to be woken up in order for them to take their 20 minutes rest breaks! This is clearly ludicrous.

- The effects of these interpretations and rulings are potentially severe for people with disabilities. As end recipients, they have not been consulted about how their care and support might be affected and what their preferences might be. There is clearly a balance to be struck between the welfare rights of workers and the human rights of people with disabilities. Both are enshrined in international law, the former by Health and Safety legislation and the WTD and the latter by legislation including the UNCRPD and the wider Charter of Fundamental Rights of the European Union. The European Disability Strategy 2010-2020 builds on these charters and seeks to empower people with disabilities to fully exercise their rights and participate in society and the economy on an equal basis to others. The focus is on dignity, choice, freedoms, and citizen’s rights. In order to be equal partners in society, people with



disabilities must be able to influence the shape of the care/support packages they receive and have access to flexible provision which does not prejudice the health and safety of workers. However, if current rulings and interpretations re the WTR/D stand, they will have the following effects:

- Being unable to fund the necessary increases in wage bills, many smaller UK providers will be forced to close, reducing available services and deepening the crisis in social care.
- Those workers formerly employed in these businesses will lose their jobs.
- The model of 'live-in' care will no longer be tenable, due not only to wage bills but also to inflexible rest requirements. Those people who have enjoyed this model face a very real threat of re-institutionalisation.
- Those employers who are able to survive will be forced to 'find ways around' the legislation. This may lead to unofficial practices which will not be scrutinised or monitored.
- There will be a wider threat of re-institutionalisation as a cost saving exercise.
- The rights of people with disabilities will be eroded.

## Recommendations

Recommendations can only be sector specific. The social care sector has very particular features which make it different from others, and one size will not fit all. The issues identified in this report require resolution at both European and National levels. Both routes would benefit from consultation with the social care sector, with the aim of working towards specific derogations /exemptions where these will not work across the board. The following would be useful considerations:

European level:

- Inactive 'sleep-in/on-call' time could be re-designated non work time in the social care sector. Inactive stand-by time could be treated in the same way.
- Requirements for rest/compensatory rest could be made more flexible to enable wider models of service provision.

- Live-in care/support workers could be exempted from the WTD (like domestic servants and ‘family workers’).
- Travel time between clients could be clearly designated work time.
- It could be made possible for the 48 hour opt out to be written into contracts where there is a demonstrated requirement for longer hours *in order to meet client need*.

National level:

- More funding could be made available by central government. This is unlikely to happen unless a new party is elected in the forthcoming general election (June 2017). This money would need to be ring-fenced in some way for use in commissioning of care services by Local Authorities.
- A clearer interface between WTR and the National Minimum Pay Regulations. This could include a declaration that inactive ‘sleep-in/on-call’ time be paid at a designated flat rate (e.g. a percentage of the NLW) and only active time paid at full NLW.
- The wording of the WTR could be revisited to aim for greater clarity. It would of course be important to ensure that the regulations are fit for purpose in the UK context and not oversimplified.

## **AUSTRIA**

Working Time in SCSS for PwD

Night Work in SCSS for PwD

Shift Work in SCSS for PwD

Rest in SCSS for PwD

Annual Leave in SCSS for PwD

Pattern of Work in SCSS for PwD

Derogations, Exceptions and Derogations by Collective Agreements in SCSS for PwD

Safety and Health Protection in SCSS for PwD

Recommendations and implications of the WTD and national labour laws on workforce in social care services for persons with disabilities on new labour law provisions that will promote a fairer way of working in the SCSS sector

This country report gives a brief description of the architecture of the social care and health sector and the economic and organizational conditions in which service providers for persons with disabilities in Austria operate. Subsequently, it elaborates on the legal framework in which working time in the sector of social care and support services (SCSS) for persons with disabilities (PwD) is regulated in Austria and the influence of the WTD on the domestic norms. It also touches upon the significance of the Austrian social partners in shaping working conditions via collective agreements. Thereafter, the results of qualitative interviews conducted with stakeholders in the sector aim to shed light on the working realities in the sector: To exemplify present developments and to provide a comprehensive picture of the sector, the relevant legal documents, scientific publications and journals are used along with statements from staff and employer representatives to make this report as comprising as possible.

As a starting point for this country report, it is essential to look at the legal framework in which issues of disability, the functioning of the distribution of state support for persons with disabilities and the structure of the sector are embedded in Austria.

### **“Disability” in Austria – Legal Term, Action Plan and Statistics**

Austrian laws contain different definitions of the term “disability”. The *Behinderteneinstellungsgesetz* (Disabled Employment Act) contains a comprehensive definition related to disability at the workplace, for example, which was enshrined also in §1 the “Evaluation Regulation” linked to the Act, reading: “A disability in the sense of this regulation is the effect of a non-temporary, physical, mental or psychical sensory or functional impairment that is likely to impede the participation in public life, especially in working life. Non-temporary is to be understood as a timeframe of more than six months.”<sup>168</sup> Accordingly, Austrian authorities operate with a very broad understanding of “disability” here that also includes, for example, effects of work accidents that last longer than 6 months but do not persist indefinitely.

Statistical surveys come to the same conclusion: A mini census in 2007 has revealed a percentage of 20.5% of the Austrian population living with (at least) one form of a disability, amounting to 1.7 million

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<sup>168</sup> Verordnung des Bundesministers für Arbeit, Soziales und Konsumentenschutz betreffend nähere Bestimmungen über die Feststellung des Grades der Behinderung (Einschätzungsverordnung), StF: BGBl. II Nr. 261/2010 idF BGBl. II Nr. 251/2012; Behinderteneinstellungsgesetz (BEinstG) StF: BGBl. Nr. 22/1970, §3.

persons by the time of the survey.<sup>169</sup> Amongst people older than 60 years, the percentage of persons with disabilities rises up to 48.4%.<sup>170</sup> Issues of disabilities are therefore discussed closely linked with those of the general health sector, care for elderly people and rehabilitation and are not expressly distinguished from those other sectors. This way of assessment heavily affects the way data on disability and the workforce in social care and support services for persons with disabilities is gathered, and it can be difficult to draw conclusions from most official statistics regarding only this sector. Nonetheless, the best will be done in this report to provide as complete a picture as possible from existing information.

In 2008, Austria ratified the Convention on the Rights of Persons with Disabilities that reaffirms the equal enjoyment of human rights by persons with disabilities and, *inter alia*, equal access to health and social services.<sup>171</sup> This step led to a multitude of activities at the national level, for example the drafting of reports, action plans and reinforced efforts by ministries and other stakeholders regarding the issues faced by persons with disabilities. The “National Action Plan Disability 2012-2020” includes a far-ranging catalogue of measures to guarantee the inclusion of persons with disabilities in the labour market, the education system and health and rehabilitation, among other areas.<sup>172</sup> Also, the Monitoring Group of the Action Plan, tasked with the evaluation of the Plan and prioritizing the goals enshrined in the Action Plan<sup>173</sup>, set out to gather statistical data from all ministry departments on persons with disabilities in Austria.<sup>174</sup>

### Access to Social Care and Support Services for Persons with Disabilities

The Austrian model of disability policy, including the access to social care and support services for persons with disabilities, is based on the principle of self-determination.<sup>175</sup> Accordingly, persons with

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<sup>169</sup> See: Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Nationaler Aktionsplan Behinderung 2012-2020, 2<sup>nd</sup> edition, 2016, 14; Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Begleitgruppe zum Nationalen Aktionsplan Behinderung – Statistiken, 2013, 2.

<sup>170</sup> See: Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Nationaler Aktionsplan Behinderung 2012-2020, 2<sup>nd</sup> edition, 2016, 22.

<sup>171</sup> GA-Res.: Convention on the Rights of Persons with Disabilities, A/RES/61/106, 13 December 2006, Art. 25.

<sup>172</sup> Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Nationaler Aktionsplan Behinderung 2012-2020, 2<sup>nd</sup> edition, 2016.

<sup>173</sup> See *ibid.*, 11.

<sup>174</sup> See Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Begleitgruppe zum Nationalen Aktionsplan Behinderung – Statistiken, 2013.

<sup>175</sup> See Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Nationaler Aktionsplan Behinderung 2012-2020, 2<sup>nd</sup> edition, 2016, 9.

disabilities or their legal representatives can choose freely which forms of assistance they deem fit to meet their respective needs. In doing so, they are publicly supported by being granted the so-called *Pflegegeld* (Care Allowance) 12 times a year, at the end of every month and free from income tax.<sup>176</sup>

The circumstances under which a person may receive this care allowance is determined by the *Pflegegeldgesetz* (Care Allowance Act) that came into force in 2012, concentrating the competences in this area at the level of the federal government and tasking the *Pensionsversicherungsanstalt* (Pension Insurance Institution) with the administration of all care allowance payments. The most important requirements to be granted Care Allowance are:

- a) a constant need for assistance due to a disability as defined by the Evaluation Regulation described above,
- b) that this need amounts to at least 65 hours per month, and
- c) a habitual residence in Austria.

The value of the allowance is determined in a 7-level-scheme, level 1 being the “lightest” form of disability and level 7 the “gravest”.<sup>177</sup> The designation to which group a person belongs is regulated by §4 of the Care Allowance Act: The assessment, other than in the Disabled Employment Act mentioned above, is based solely on how many hours of assistance a person needs in practice. While in level 1 (at least 65 hours), persons entitled to Care Allowance receive € 157.30 per month, persons in level 7 (180 hours and accompanying serious impairment of movement) receive € 1688.90.<sup>178</sup> The basis for the assessment as to which level is assigned to a person has to be a medical assessment by a doctor or a higher health and care service expert.<sup>179</sup> In its statistical report, the Monitoring Group identified 432,819 persons entitled to receive Care Allowance in 2012.<sup>180</sup>

Some *Länder* (regions) of Austria, that were responsible for Care Allowances before 2012, choose to additionally support their inhabitants with disabilities by granting an additional *Pflegegeldzuschuss* (Care Allowance subsidy) that covers a portion of care expenses. For example, the region *Vorarlberg*

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<sup>176</sup> See Pensionsversicherungsanstalt (ed.), *Pflegegeld-Auszahlung*, online: <http://www.pensionsversicherung.at/portal27/pvportal/content?contentid=10007.707702&viewmode=content> [accessed 4 April, 2017].

<sup>177</sup> Bundesgesetz, mit dem ein Pflegegeld eingeführt wird (Bundespflegegeldgesetz — BPGG) StF: BGBl. Nr. 110/1993, §4 para. 2.

<sup>178</sup> See *Ibid.*, §5.

<sup>179</sup> Verordnung der Bundesministerin für Arbeit, Gesundheit und Soziales über die Beurteilung des Pflegebedarfes nach dem Bundespflegegeldgesetz (Einstufungsverordnung zum Bundespflegegeldgesetz - EinstV), StF: BGBl. II Nr. 37/1999, §8.

<sup>180</sup> See Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), *Nationaler Aktionsplan Behinderung 2012-2020*, 2<sup>nd</sup> edition, 2016, 30.

grants an extra € 200.00 a month to persons within level 5, 6 or 7 of the disability scheme prescribed by the Care Allowance Act.<sup>181</sup>

In contrast with the precisely regulated conditions under which financial support is granted, the practical access to social care and support services seems to be more problematic: In 2010, 53% of persons entitled to Care Allowance did not receive formal social care services, 29% relied on peripatetic domiciliary care services, 16% on full time specialist residential care and 2% on 24/7 care at home. In 2011, 48% did not receive any formal services, 32% made use of peripatetic domiciliary services, 17% were in full time specialist residential care and 3% in 24-hours-care at home.<sup>182</sup> The high percentage of persons with disabilities who are not receiving formal care services is supplemented by reports that care for other groups, e.g. for elderly people, is largely provided by families in Austria.<sup>183</sup> They are, in other words, deliberately or non-deliberately, excluded from the formal sector and supported informally by their relatives. Of course, they are still entitled to receive the care allowance.

Since 2014, family members who take care of relatives that have a disability of at least level 3 are entitled to go on care leave and to receive the so-called *Pflegekarenzgeld* (care leave allowance) which amounts to 55% of the prior net wage for up to 3 months. Such a period of care leave has to be agreed upon by employer and employee.<sup>184</sup>

## Providers of Social Care and Support Services for Persons with Disabilities, Workforce and Types of Contracts

Social care and support services are provided by a large spectrum of organizations in Austria; however, no comprehensive, centralized information on the state of the sector seems to be available. The ministry of social affairs provides a database called “Austria Social” containing service providers all across Austria that lists 95 organizations offering services like care, legal or work assistance, 907 residential facilities, and 991 social service providers.<sup>185</sup> Even though this data is not exhaustive, it still provides a good overview of the shape of the sector: The list contains public, ecclesiastical, non-profit

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<sup>181</sup> See Land Vorarlberg (ed.), Zuschuss zum Pflegegeld bei ambulanter Pflege, online: <http://www.behinderung-vorarlberg.at/Seiten/ZuschusszumPflegegeldbeiambulanterPflege.aspx> [accessed 4 April, 2017].

<sup>182</sup> See *ibid.*, 29.

<sup>183</sup> Arbeiterkammer (ed.), Pflege und Betreuung von älteren Menschen, online: [https://media.arbeiterkammer.at/PDF/Pflege\\_und\\_Betreuung\\_2014.pdf](https://media.arbeiterkammer.at/PDF/Pflege_und_Betreuung_2014.pdf) [accessed 4 April, 2017].

<sup>184</sup> Arbeitsvertragsrechts-Anpassungsgesetz – AVRAG StF: BGBl. Nr. 459/1993 idGF, §14a.

<sup>185</sup> Ministry for Social Affairs (ed.), Österreich Sozial, online: <https://www.infoservice.sozialministerium.at/InfoService2/> [accessed: 7 April, 2017].

and private institutions and also individuals that are active in the sector. Presently, there are 12,312 one-person-businesses in the health sector, part of which provide services for persons with disabilities.<sup>186</sup>

The workforce in SCSS for PwD consists of “helpers” for PwD, certified social workers for work and assistance with/for PwD, diploma caregivers and qualified persons for work with PwD. The latter group includes persons who have undergone special training in the field or are pedagogues, special kindergarten staff, psychologists or social workers.<sup>187</sup> Monthly wages are determined by the relevant collective agreement (see below, “Social Partners, Collective Agreements and their Significance”) and are affected by the level of the employee’s education.<sup>188</sup>

Service providers do not rely heavily on freelance workers in general; they are typically employed only in leisure time assistance services for PwD. Regarding the possibility of circumvention of the protection of workers’ rights by falsely declared self-employment, employee representatives praise the public health insurance services for their close scrutiny of such practices in the sector.<sup>189</sup> However, employer representatives see a risk in such practices, caused by too strict and/or narrow possibilities of contract types, distribution of working hours and forms of employment.<sup>190</sup>

Subcontract employment is not a significant form of working contracts in the sector, according to both employer and employee representatives. However, the latter see a rise in such contractual forms lately, predominantly in housing services.<sup>191</sup>

To cover the demand for social care and support services in general, foreign workers from eastern and southern Europe, such as from Poland and Slovakia, are employed by Austrian institutions. Here, the phenomenon of temporary employment contracts, which is otherwise of no great relevance, can be observed.<sup>192</sup>

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<sup>186</sup> See Lukawetz et. al., Demographie und Sozialstatistik von EPU/Solo-Selbstständigen - Analysen aus den Datenbeständen der Statistik Austria, 2015, 12.

<sup>187</sup> See Questionnaire, 24 April 2017.

<sup>188</sup> E.g. Kollektivvertrag der Sozialwirtschaft Österreich (hereinafter: SWÖ-KV), online: [http://www.bags-kv.at/folder/770/BAGS\\_2017\\_SWOe\\_Netz.pdf](http://www.bags-kv.at/folder/770/BAGS_2017_SWOe_Netz.pdf) [accessed: 4 April 2017], §§28, 29.

<sup>189</sup> See Interview, 21 April 2017.

<sup>190</sup> See Questionnaire, 24 April 2017.

<sup>191</sup> See Interview, 21 April 2017; Questionnaire, 24 April 2017.

<sup>192</sup> See Questionnaire, 24 April 2017.



Additionally, service providers rely on providing training for their potential employees themselves to develop their potential. In the interviews conducted for this report, union representatives underlined the importance of the formal recognition of ‘occupation’ in the social sector as a “profession of the future” in order to be able to meet the needs of providers of care and social services for the future workforce. They also questioned the high standards that apply to the sector’s workforce in general, making it hard to acquire employees. Additionally, they criticized the present training schemes and standards that differ from region to region (*Bundesland*) of Austria.<sup>193</sup>

### Legal Framework of Working Time and Rest in Austria

Austrian Labor Law is characterized by particularities and sectoral subtleties. Hereafter, only the most important general principles and significant features of the social care and support services sector will be taken into account. Depending on what exact service is provided by social care and support services staff, different working time and rest periods law may be applicable.

Working time is one of the key elements of an employment contract. Accordingly, many aspects of working time that are discussed below are regulated in a three-step approach: First, there must be a legal basis for the extension or relocation of working time or rest periods in the sense of a special exception prescribed by law. Second, there must be a collective agreement at a sectoral level (“*Kollektivvertrag*”). As a third step, employee representatives and employers must collectively agree on the level of the individual business (“*Betriebsvereinbarung*”). Only then may an individual employment contract introduce special rules regarding working time and rest.

## Working Time in SCSS for PwD

### EU Law & National Legislation

Since Austria’s accession to the European Economic Area in 1994 and the subsequent accession to the European Union (1995), EU directives have to be transposed into national law. With regard to working time and rest periods, such legal acts were already in force upon Austria’s accession to the EU. The requirements of Directive 93/104/EG were to be met by the main Austrian implementation provisions i.e. the *Arbeitszeitgesetz* (Working Hours Act, being the general catalogue of norms), the

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<sup>193</sup> See Interview, 21 April 2017.

*Krankenanstalten-Arbeitszeitgesetz* (Hospital Working Hours Act, applicable to certain types of facilities and workforce) and the *Arbeitsruhegesetz* (Act on Rest Periods).<sup>194</sup> The legal framework for working time and rest in SCSS for PwD is determined by a complex interplay and/or exclusive applicability all these provisions.

### Transposition into National Law

§32 (1) of the Austrian Working Hours Act expressly refers to the present WTD, directive 2003/88/EG, stating that the Act implements, among other EU norms, the directive in question. However, this is a mere declaration and has, according to academia, no added value.<sup>195</sup> The present Austrian regulations therefore have to be evaluated paragraph by paragraph and measured by the material content of the WTD.

The limit for normal working time is defined in the Working Hours Act (AZG) as 8 daily hours and 40 weekly hours, with the possibility to extend daily normal working time to 10 hours by collective agreement for a sector ("*Kollektivvertrag*").<sup>196</sup> This general rule is subject to a plethora of exceptions and possibilities of derogations, as will be described below.

### Night Work in SCSS for PwD and Special Safety and Health Precautions

According to the Working Hours Act, night hours are those working hours between 10pm and 5am.<sup>197</sup> Persons regularly working night shifts are entitled to undergo medical examinations to determine whether this type of work has adverse effects on him/her, and to be transferred to a regular workplace (day shifts) when and if night work is harming the person in question's health or he/she has to take care of his/her children.<sup>198</sup>

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<sup>194</sup> See: Klaus Mayr, Einfluss des Gemeinschaftsrechts auf das österreichische Arbeitsrecht, in: WISO 4/2001, 115-139, 122; Bundesgesetz vom 11. Dezember 1969 über die Regelung der Arbeitszeit (Arbeitszeitgesetz) (AZG), StF: BGBl. Nr. 461/1969; Bundesgesetz, mit dem ein Arbeitszeitgesetz für Angehörige von Gesundheitsberufen in Kranken-, Pflegeanstalten und ähnlichen Einrichtungen geschaffen wird (Krankenanstalten-Arbeitszeitgesetz - KA-AZG), StF: BGBl. I Nr. 8/1997; Bundesgesetz vom 3. Feber 1983 über die wöchentliche Ruhezeit und die Arbeitsruhe an Feiertagen (Arbeitsruhegesetz - ARG), StF: BGBl. Nr. 144/1983.

<sup>195</sup> Franz Schrank, Arbeitszeitgesetze – Kommentar, 2015, 601.

<sup>196</sup> See Arbeitszeitgesetz, §3.

<sup>197</sup> See *ibid.*, §12a.

<sup>198</sup> See *ibid.*, §§12b, 12c.

## Shift Work in SCSS for PwD

For shift work, daily working time may not exceed 9 hours, with a weekly maximum of 40 hours.<sup>199</sup> Flexitime may be introduced by collective agreement at the level of an individual business or company (“*Betriebsvereinbarung*”).<sup>200</sup> In the case of standby duty, weekly normal working time may be extended to 60 hours and daily working time to 12 hours by collective agreement on the sectoral *and* company level.<sup>201</sup> The maximum limit for weekly working time (= average working time as defined by the WTD) is 48 hours, with a reference period of 17 weeks/4 months, as required by the WTD.<sup>202</sup> The Working Hours Act, however, allows exceptions for certain sectors and types of work, for example, as indicated above, in the case of standby duty, which is seen as problematic by experts in the light of the rules of the WTD.<sup>203</sup> In practice, this translates into the so-called *leichter Dienst* (easier duty), meaning shifts with available recreational opportunities audited by an occupational health professional for the workforce. Such distribution of working is, according to the interviews conducted for this study<sup>204</sup>, highly common in SCSS for PwD, as it allows extended working hours, even 24 hour shifts and up to 72 weekly working hours in three of these shifts per week with 60 on average over the reference period.<sup>205</sup> This type of work requires a collective agreement on the level of the individual business.<sup>206</sup> Further details and implications of these provisions will be discussed below in connection to problems that occur in practice in SCSS for PwD.

## Rest in SCSS for PwD

Daily rest times are also regulated in the AZG. Generally, employees have the right to 11 hours of daily continuous rest. By collective agreement, the period of rest can be shortened to 8 hours of daily rest.<sup>207</sup>

The Act on Rest Periods (ARG), as its basic norm, regulates the right to 36 hours of continuous rest on the weekend, which is in line with the provisions of the WTD (35 hours – 24 continuous weekly hours + 11 daily hours).<sup>208</sup> If an employee’s working time arrangement foresees working hours on the

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<sup>199</sup> See *ibid.*, §4a.

<sup>200</sup> See *ibid.*, §4b.

<sup>201</sup> See *ibid.*, §5.

<sup>202</sup> See *ibid.*, §9 para. 4; WTD, Art. 16 lit. b.

<sup>203</sup> See Schrank, Arbeitszeitgesetze, 284: standby duty in general as defined in §5 Working Hours Act, lorry drivers - §13b para. 3 Working Hours Act, public pharmacy workers - §19a para. 2 Working Hours Act.

<sup>204</sup> Interview, 21 April 2017.

<sup>205</sup> See §5a AZG.

<sup>206</sup> See *ibid.*, §8 (3) lit. c SWÖ-KV.

<sup>207</sup> §12 AZG.

<sup>208</sup> See §2 ARG, further elaborating on the 36 hours of weekly rest already enshrined in §12 (3) AZG.

weekend, the weekly resting period can be supplemented by allocating the hours of rest to other days.<sup>209</sup> The ARG also allows exceptions for shift work and different types of work and sectors, again leaving room for collective agreements to determine further possibilities of consuming weekly rest.<sup>210</sup>

### Annual Leave in SCSS for PwD

Annual leave in Austria is regulated in the Urlaubsgesetz (Holiday Act). Per usual, workers are entitled to 30 days of annual leave. As this basic assumption includes Saturday as a working day, annual holiday leave amounts to 5 weeks. After 25 years of work, annual leave raises to 6 weeks.<sup>211</sup> The legislation allows for derogation from this general rule by collective agreement. The collective agreement for the sector of SCSS for PwD (for details: see below) raises annual leave gradually after 10, 15 and 20 years of work, so workers in SCSS for PwD reach the maximum of 6 weeks of annual leave faster than the majority of workers in Austria.<sup>212</sup>

The implementation of EU working time law by the Austrian legislator was mostly unproblematic. The health and care sectors however, in parts of which special Austrian legislation is applicable (the Hospital Working Hours Act), have been at the centre of discussions about working time in Austria. In 2010, a report by the European Commission identified these problematic areas where Austrian legislation was inconsistent with EU law.<sup>213</sup> As a consequence, Austria was prompted to bring its laws in line with the WTD by the European Commission in 2014. For details, see “Shift Work in ‘Organizational Units’” below.

### Pattern of Work in SCSS for PwD

In Austria, employees in the sector are predominantly female and employed part-time.<sup>214</sup> However, working hours range from “normal” office hours of 09:00-17:00 (administrative workforce) over longer hours, night and shift work (in housing facilities, see details below) and flexible models in mobile services. Heads of staff tend to receive manager contracts that contain all-in-clauses.<sup>215</sup> Consequently, all patterns of work considered in this report are relevant in the sector, and the above mentioned irregularities in the transposition of the WTD into Austrian national law indicated by the European

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<sup>209</sup> §4 ARG.

<sup>210</sup> See §§ 5, 12, 12a ARG.

<sup>211</sup> Bundesgesetz vom 7. Juli 1976 betreffend die Vereinheitlichung des Urlaubsrechtes und die Einführung einer Pflegefreistellung, StF: BGBl. Nr. 390/1976, §§1-2.

<sup>212</sup> §16 SWÖ-KV.

<sup>213</sup> Report from the Commission to the European Parliament, the Council, the European Committee and the Committee of the Regions on implementation by Member States of Directive 2003/88/EC (‘The Working Time Directive’), SEC (2010) 1611, 3ff.

<sup>214</sup> See Interview, 21 April 2017.

<sup>215</sup> See Questionnaire, 24 April 2017.

Commission do, in fact, have repercussions for SCSS for PwD in the country. Subsequently, the problems identified by interviewees concerning patterns of work, remuneration and irregular types of work will be analyzed in relation to the different types of working time under scrutiny as defined by the design of this study.

### Shift Work in “Organizational Units”

The Austrian Hospital Working Hours Act (KA-AZG) is, contrary to its name, not only applicable to hospitals *per se*, but also to other “organizational units” that provide residential care and has precedence over the general Working Hours Act.<sup>216</sup> These “organizational units” include, as indicated in the legislative materials<sup>217</sup>, institutions where persons receive full time residential assistance and care.

With regard to the professional groups covered, the KA-AZG applies, *inter alia*, to caregivers, social and health psychologists and psychotherapists, who are likely to be working in institutions for persons with disabilities. The Hospital Working Hours Act can therefore be applicable to some of the workforce of a residential unit for persons with disabilities that, for example, provides care for a small portion of its residents, while the (general) Working Hours Act applies to the rest of the employees. To the displeasure of the European Commission, the provisions of the Hospital Working Hours Act used to average working times of more than 60 hours a week while making it difficult for workers to utilise their rest periods. Since then, the Hospital Working Hours Act has been reformed, not without taking into account care providers’ needing time to adapt to the new legislation, which will incrementally bring Austrian law in line with the requirements of the WTD by 2021 by lowering the average weekly working hours to 48.<sup>218</sup> In the meantime, collective agreements on the level of individual businesses and individual consent of employees (“opt-out”) allow average weekly working hours of 60 (until 2017), respectively 55 (from 2017 to 2021). According to labour union representatives, this legislation applies to only a small portion of workforce in SCSS for PwD.<sup>219</sup>

### Derogations, Exceptions and Derogations by Collective Agreements in SCSS for PwD

The most important collective agreement for the social sector is the *Sozialwirtschaft Österreich Kollektivvertrag (SWÖ-KV)* which is, as a statute, not only applicable for member institutions of the

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<sup>216</sup> KA-AZG, §1 para. 1 (11).

<sup>217</sup> EB RV 386 B1gNR XX. GP.

<sup>218</sup> KA-AZG, §4 para. 4b.

<sup>219</sup> Interview, 21 April 2017.

representing body of employers (*Sozialwirtschaft Österreich*), but to all organizations in the sector that do not fall under the scope of another collective agreement. Hence, it applies to about 100.000 employees, among them those working for/with people with disabilities. Its most significant features are normal weekly working time of 38 hours<sup>220</sup>, the possibility to attain the right to 6 weeks of holidays (instead of the standard 5) in a shorter amount of time than prescribed by law<sup>221</sup>, and flexibility with regards to reference periods for weekly normal working time<sup>222</sup>. Further details shall be illustrated only where there are questions of conformity with EU law or divergences between the social partners' standpoints.

In addition to the *SWÖ-KV*, there are several further collective agreements applicable to workforce and institutions in SCSS for PwD: Service providers in the region *Vorarlberg*, the ecclesiastical organizations *Caritas* and *Diakonie* and public institutions have their own, special collective agreements that differ slightly, but not fundamentally, from the provisions of the *SWÖ-KV*. Together, the aforementioned documents cover the whole workforce in SCSS for PwD in Austria.

In the interviews conducted for this study, representatives of employees declared that the WTD had "little to no significance" as an argumentative tool in the conclusion of collective agreements and they relied largely on Austrian national legislation throughout the negotiations. However, employee and employer representatives alike were highly interested in participating in the study. Due to the complexity of the issues examined, potential participants at the level of single institutions and regional umbrella organizations turned out to be overburdened by questions regarding the details of the WTD, partly because no representative data was available to them. However, the representatives in question also articulated a high interest in the outcome of this study, recognizing the importance of European law and its future reforms for their operations in practice. This indicates that the present study is, on the one hand, highly necessary, and on the other hand, that future research in the field will have to include classic quantitative studies in order to develop a comprehensive data set. Finally, this study relied on experts from both employer and employee sides at the highest level, legal experts and negotiators from the national social partners in SCSS for PwD, with a well-founded overview of the needs and challenges in the sector. The subsequent observations are based on their expertise.

An important practice of working time distribution in the sector is the very common utilization of 24-hour-shifts in SCSS for PwD, in particular in social housing facilities, which is predominantly used with

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<sup>220</sup> §4 SWÖ-KV.

<sup>221</sup> §16 SWÖ-KV.

<sup>222</sup> §7 SWÖ-KV.

regards to night shifts. These shifts are considered “easier” work due to the assumption that clients are normally asleep and that employees are therefore able to sleep themselves – in other words: as standby duty at the workplace, or *leichter Dienst* (easier duty). According to union representatives, workers in these types of housing facilities often *want* to work under those circumstances to attain longer periods of rest after the shifts.<sup>223</sup>

The *SWÖ-KV*, as the relevant collective agreement, provides for the possibility of collective agreements at a company level to allow such a distribution of working time.<sup>224</sup> According to workers’ union experts, the speculative assumption that employees are able to sleep during these shifts often fails to meet the real circumstances in the sector, where employees are not able to use the recreational opportunities as prescribed by law. However, at the same time, there is an active demand from employees for such shifts, allowing them to work fewer days per week while still earning full wages.<sup>225</sup>

With regards to remuneration, the collective agreement *SWÖ-KV* entitles workers to receive their full standard wage for standby duty during daytime – which is in line with the present interpretation of the WTD by the ECJ – and 50% of normal hourly rates for night shift standby duty (22:00-06:00), which seems problematic in the light of the relevant ECJ jurisdiction.<sup>226</sup> However, some employers freely choose to pay full wages for hours of standby duty also during night time.<sup>227</sup> When employees are actively working during such night shifts, they are entitled to an extra pay of €6.59 per hour.<sup>228</sup>

Employer representatives see a need to give the parties of collective bargaining more leeway to determine the treatment of standby duty hours and are of the view that the present jurisdiction of the ECJ has increased the cost of 24-hours-services without adequate compensation being provided by public authorities.<sup>229</sup>

### Standby Duty off the Workplace

Standby duty away from the workplace is, as enshrined in the *SWÖ-KV*, remunerated with €3.04 per hour and employees are fully paid when and if they are called to work. Working time in this sense typically includes travel time to the workplace.<sup>230</sup> According to workers’ union representatives, institutions tend to circumvent paid on-call work via informally calling employees during their rest

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<sup>223</sup> See Interview, 21 April 2017.

<sup>224</sup> See §8 *SWÖ-KV*, §5 *AZG*.

<sup>225</sup> *Arbeitszeitgesetz*, §5a; Interview, 21 April 2017.

<sup>226</sup> Most recent: ECJ Case C-151/02, *Landeshauptstadt Kiel v Norbert Jaeger*.

<sup>227</sup> Interview, 21 April 2017.

<sup>228</sup> See §9 *SWÖ-KV*.

<sup>229</sup> Answers to the questionnaire, 24 April 2017.

<sup>230</sup> See §13 *SWÖ-KV*.

periods when shifts need to be reassigned due to other workers' unavailability.<sup>231</sup> Employers' representatives, on the other hand, are generally satisfied with the present conditions, under which standby duty away from the workplace in SCSS for PwD is possible; however, they also see a need for more autonomy for the sector in the sense of more leeway for collective agreements.

### Peripatetic Services

Workers in peripatetic services, according to workers' union experts, face the problem that when clients are not at home – despite having a fixed appointment with the client – employers do not consider the failed attempt to provide the services as working time. This results in lower working hours for employees, and may over time lead to a permanent reduction of working hours in reduced contracts, in effect passing the 'cost' of the clients' non-availability from employers on to employees. Workers' union experts see a solution for this problem in compelling employers to fix appointments with the clients and to bear the risk of failed appointments, freeing employers from the risk of losing working hours.<sup>232</sup>

## Recommendations and implications of the WTD and national labour laws on workforce in social care services for persons with disabilities on new labour law provisions that will promote a fairer way of working in the SCSS sector

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The research conducted for this report has shown that the European labour market, and even more so the fast-growing social sector, are in need for a re-evaluation of the present European legal provisions determining working time throughout the union. Due to the social care workforce crossing national borders, being subject to different social systems, working time and remuneration schemes, the single market, without question, heavily relies on gradual harmonization in all these sectors and areas of legislation. Hence, the reform of Directive 2003/88/EG could be a step towards the realization of both, a more effective protection of workers' rights, and securing the potential of a sector that will provide new jobs for years to come. This process will, however, heavily depend on the European social partners, who, in turn, can rely on the tradition of collective bargaining in many member states of the EU. In this vein, the complexity of Austrian working time law and the social partners' ability to cope with the national legal instruments nonetheless can be a positive example for the functioning of self-

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<sup>231</sup> See Interview, 21 April 2017.

<sup>232</sup> See Interview, 21 April 2017.



organization in a sector. However, as employer representatives put it, Austrian national legislation could indeed profit from simplification and the reduction of bureaucracy. The continuity of services demanded by SCSS for PwD, as the basic design of this study has already indicated, is one of the main points where a delicate (legal) balance between the competing interests at stake has to be found.

The lack of usage of the WTD in domestic collective bargaining shows that information does not pass as fluently as to enable national social partners to take an active, effective part on the European stage. Also, further research and awareness-raising by the European Commission and the other stakeholders in the area, such as EASPD, would highly benefit a renewed effort to undertake reform, as well as lead to more support for social partners on the national and European level.

Moreover, and most importantly, the conformity of SCSS for PwD with the relevant human rights standards has to be at the centre of all further developments regarding working time legislation in the sector. Self-determination must be the central principle that present forms of housing, working and living of PwD will need to give more attention to, as a recently published report by the Austrian Volksanwaltschaft (Ombudsman Board) emphasizes: “Austria is, in spite of slow progress, still far away from the goal of the CRPD to enable persons with disabilities to lead a self-determined life in dignity and full participation in society.”<sup>233</sup> Critical areas identified by the Ombudsman Board include the medical model of the assessment of disabilities, the low remuneration (“pocket money”) persons with disabilities receive for their work in special workshop facilities for PwD, structural deficits liable to cause violence, gaps in the provision of individual care resulting in PwDs’ factual deprivation of liberty, constructional shortcomings of housing facilities rendering PwD unable to enjoy their privacy, and housing projects’ staff struggling to fulfill their duties adequately due to sheer lack of time.<sup>234</sup> Accordingly, overburdened workers and gaps on provision and/or badly equipped facilities make up the main problems at present.

The further development of working time in SCSS for PwD must therefore be discussed in the frame of mutual relations between clients, workers, service providers and public administrations, and the possible adverse impacts of financial cuts also have to be part of the considerations. To do so, the potential of true autonomy and self-determination of clients might serve as a new pathway towards a sustainable policy regarding SCSS for PwD in terms of cutting back “services” that unnecessarily

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<sup>233</sup> See Volksanwaltschaft (ed.), Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2016 - Präventive Menschenrechtskontrolle (2017), 87.

<sup>234</sup> See *ibid.*, 89, 93, 94, 101.

undermine self-determination or inclusion of PwD. Working groups and advisory panels in the field of human rights and disabilities<sup>235</sup> will serve as valuable sources of input in this regard.

### **Main Issues in the SCSS sector in Austria**

- Informal care carried out by relatives is dominant in Austria.
- Austrian service providers in the sector heavily rely/will rely heavily on foreign workers in the future.
- Particularities in the health sector (see Hospital Working Hours Act) have already been criticized by the European Commission. Any future changes, namely liberalization, proposed for the SCSS sector should therefore be carefully evaluated in the light of the experiences in the health sector.
- Due to the long-standing tradition of Austrian social partners, large parts of the practical possibilities for the distribution of working time are determined by collective agreements at the general and business level.
- The social partners rely on national legal provisions in their negotiations, not the WTD explicitly.
- Further gathering of data by the social partners and/or researchers will be necessary to obtain a complete picture of the SCSS sector in Austria – regarding, for example, the distribution of part/full time employment contracts, details on shift and night work distribution and atypical kinds of work in the sector. Distinctions have to be made herein regarding the different services provided.
- In Austria, the sector relies heavily on-call night shifts in housing projects.

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<sup>235</sup> Such as the national monitoring committees in the framework of the CRPD.

## IV. WTD & SCSS in different EU welfare social models

### Comparison of the implications of national labour laws on SCSS for persons with disabilities in EU

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#### Limits to working time

Under the Directive, the average weekly working time (including overtime) must not exceed 48 hours per week. In general, this limit has been satisfactorily transposed; many Member States lay down more restrictive standards.<sup>236</sup> Based on our research, for all type of EU welfare models, the usual weekly working time for staff in SCSS for PwD is 37,5 - 38,5 hours. **Average annual hours** worked per person varied considerably between Member States – ranging from over 2,100 hours a year mostly for Mediterranean (Greece) and Central European welfare social model (Poland) to under 1,500 hours in Continental (Germany) or Nordic (Netherlands and Norway) welfare social model – and these levels are rather highly (inversely) correlated with levels of hourly productivity.<sup>237</sup>

The proportion of people working outside ‘**normal working hours**’ has only decreased slightly compared with the position a decade ago and considerable differences can be found between Member States. Based on our research, staff in SCSS for PwD often work within usual working hours (eg; 08:00 till 16:00 in Slovakia, 09:00 till 17:00 in Austria), but there are also unusual working hours (e.g weekend, afternoons, 3-shift cycles etc.) especially in residential facilities and in flexible models of peripatetic services or for working patterns for senior staff. Some differences can be expected<sup>238</sup> – such as the fact that evening work is more common in the Mediterranean Member States – but the incidence of working outside normal hours is also relatively high in Nordic countries. Germany stands out in terms of low levels of weekend working.

Only in the Nordic countries, the Benelux countries (except Belgium), France and Germany do the number of people working **long working hours** - so 48 hours or more a week account for less than 10%

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<sup>236</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

<sup>237</sup>European Foundation for the Improvement of Living and Working Conditions (2009): Comparative analysis of working time in the European Union, <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/comparative-analysis-of-working-time-in-the-european-union>

<sup>238</sup>European Foundation for the Improvement of Living and Working Conditions (2009): Comparative analysis of working time in the European Union, <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/comparative-analysis-of-working-time-in-the-european-union>

of total employment.<sup>239</sup> In the Nordic welfare model<sup>240</sup> (Sweden) and also in the Anglo-Saxon model (UK) only parents with young children have the right by law to ask for reduction of working times.

### On-call time

The analysis showed that a number of Member States have made significant changes to their legislation or practice, in order to bring it closer to what is required by the Court of Justice's decisions regarding **active and inactive on-call time**: notably the Czech Republic, France, Germany, Hungary, Netherlands, Poland (for certain sectors), Slovakia and the UK. In eleven Member States these changes included introducing the 'opt-out'.<sup>241</sup> Based on our research, in Anglo-Saxon welfare model (UK) stand-by time is not much used in the SCSS for PwD. Workers don't give time "voluntarily" (i.e. where there is no pay). "Sleep-ins", sometimes called "on-call", are used extensively. There is uncertainty about the law in this area and current legal challenges about whether this time should be considered full working time (and paid as such) when the worker is asleep, because only between 1 and 5% of all sleep-ins are disturbed (and any work undertaken then awake is, of course, treated as normal working time and is fully paid). Otherwise, time asleep is paid at a flat rate and not counted as working time. This practice is particularly relevant for the "live-in" model of support. In Mediterranean welfare model (Spain) the hours of availability that must be carried out within the premises of the employer are hours of work that are remunerated as worked, but nothing is contained in the legislation on the hours of availability that are held outside the premises of the company, waiting to be called. In the *Dependency Care Agreement* it is determined in its article additional availability, which will be paid to workers who volunteer to be available during the day to meet any requirements that may arise due to a specific emergency at work. The agreement specifies that the availability time will not be computed for the computations of the ordinary day and that the period of extra time actually rendered will count from the call to thirty minutes after the end of the service that had been provided.

At this stage, it seems from available information that on-call time at the workplace is **entirely treated as working time** under national law in nine Member States: Cyprus, the Czech Republic, Estonia, Italy, Latvia, Lithuania, Malta, the Netherlands, and the UK. This is also the general position, with some

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<sup>239</sup>European Foundation for the Improvement of Living and Working Conditions (2009): Comparative analysis of working time in the European Union, <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/comparative-analysis-of-working-time-in-the-european-union>

<sup>240</sup> The European Foundation for the Improvement of Living and Working Conditions: Working time options over the life course: Changing social security structures (2005), <http://www.eurofound.europa.eu/publications/2006/working-time-options-over-the-life-course-changing-social-security-structures>

<sup>241</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

relatively limited sectoral exceptions, in Austria and Hungary. In addition, on-call time at the workplace is entirely treated as working time under the Labour Code as regards the private sector (but not for all of the public sector) in Spain and Slovakia. Moreover, on-call time at the workplace in the specific context of the public health sector is now entirely treated as working time in France, Poland, Slovakia and Spain.<sup>242</sup> Based on our research, in the Continental welfare model (Austria) on-call time at the workplace in SCSS for PwD is usual in residential facilities, where special working time provisions allow 24 hour shifts and in the case of on-call time outside the workplace, travelling time to the workplace is usually fully paid, when the worker is “activated”. The Central European welfare model (Slovakia), used this on-call time very rarely. In 24/7 services (most of them are residential), there are shifts and staff are regularly paid as full working time (only in 15% of all SCSS for PwD staff does working on stand-by occur). Then the time is either mostly unpaid (and classified as “voluntary work”) or in a very few cases it is paid as overtime).

It is also clear that there is a significant number of Member States where on-call time at the workplace is still **not fully treated as working time in accordance with the Court’s decisions**:

- There is no legal requirement or practice of treating ‘active’ on-call time as working time in Ireland (as a general rule) or in Greece (doctors in public health services).
- ‘Inactive’ on-call time at the workplace is, as a general rule, not fully counted as working time by the applicable national law or collective agreements in Denmark, Greece and Ireland; this is also the case (except in specific sectors) in Poland<sup>7</sup>. It is not fully counted as working time, under specific sectoral rules, in Greece (public sector doctors); Slovenia (armed forces, police, prisons, judges, prosecutors) and Spain (Guardia Civil).
- In Belgium, Finland and Sweden, national law generally treat inactive on-call time as working time, but has allowed derogations from this principle through collective agreements, which often do not comply with the Court’s decisions. In France, it is common for sectoral collective agreements to provide for ‘équivalence’ (meaning that inactive periods of on-call time at the workplace will be only partially counted). The French authorities have called on the social partners to review their agreements, but it is not clear that they all comply fully.
- Compliance regarding on-call time remains unclear in Bulgaria and Romania (generally), in Slovenia (other than parts of the public service already mentioned above) and in Spain (public service, police, firefighters).<sup>243</sup>

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<sup>242</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

<sup>243</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

### Reference period - flexibility on the averaging of weekly working hours

In the Continental welfare model (Austria) the reference periods **according to collective agreements** in SCSS for PwD sector, based on our research is stated as 3 months (48 hours per a week in maximum), 6 months (45 hours max), 12 months (42 hours max) and choice of the reference period is determined by the type of services. For the Central European welfare model the reference period is 4 months (approx. 70% of all SCSS for PwD staff) and in some sectors (mostly for staff of public SCSS for PwD) this can be extended up to 6 month by law (approx. 11,5%) and 12 months by collective agreements (with the same conditions, mostly for public service providers too). As regards the Anglo-Saxon welfare model (UK) the most usual period is 17 weeks (so 4 months) and a longer period (such as 12 months) is generally not felt to be useful in the sector due to high turnover of staff and lack of long term planning. In Mediteranean welfare model (Spain), in general law, 40 weekly hours of average in annual computation. The *Centers and Services Agreement* establishes that the workers will have a maximum annual working day of 1729 hours of effective working time, differently the *Dependency Care Agreement* determines 1792 hours for their services except for the home help service, whose maximum hours in a year will be 1755 hours.

Working time schemes that allow a **flexible distribution of time over a longer period of time** can help individuals to organise time over the life course according to their needs. The example of flexible distribution can be a working time accounts - a system that enables employees to save and accumulate time and/or money in order to plan periods of time off work or periods of part-time work, which can be taken at a later phase of their life course. This allows employees to finance periods of training, to care for children or other dependent people, to pursue leisure prospects or to retire gradually. Working time account is a more neutral phrase than annualisation in terms of time, as the reference period is no part of it. Time banking is also a neutral term in that respect, but used less often than working time accounts (mainly in Italy). As far as social security protection is concerned, however, long-term schemes contain some risks. One serious shortcoming is that many time credits, to date, are not insured against the insolvency of the employer. Independent of existing rights to interrupt working life or to adjust the number of working hours, the general finding is that universalistic and individualised social security schemes (e.g. healthcare systems or pension systems based on citizenship, rather than on the individual work record) give people some freedom to make use of different time schemes and

options offered. In this respect, the Scandinavian countries<sup>244</sup> and the Netherlands provide a better institutional background for a flexible distribution of time over the life course than some of the continental/conservative countries.

**Long-term working time accounts**<sup>245</sup> can help employees to adjust their time over the life course. Such accounts can also be advantageous for employers. As far as the financial impact on social security systems is concerned, however, the analysis leads to a more pessimistic result. In theory, working time accounts can help to reduce overtime and redistribute working time more evenly among the population, with positive effects for the financing of social security. In Germany, however, where working time accounts are most widespread, they currently do not contribute to a more equal distribution of working time and money among the population, but rather decrease the financial basis for the social security system and, therefore, tend to increase the financial pressures of the system.

### Night and shift work

Overall, the rules regarding night work have been **transposed satisfactorily**<sup>246</sup>. Based on our research, the Central European welfare model (Slovakia) uses night work in SCSS for PwD mostly in 24/7 residential services with staff mostly carers, instructors of social rehabilitation, health assistants and nurses with higher medical education degrees (organised under the social services, not health services). 35-70% of all staff work during on a night shift 6-times per a month (max 10-times). Most of service providers for PwD work in 2 or 3-shifts cycles and most of them are carers. However, in Hungary, the limit to night work does not seem to have been transposed.

The special limit for working time in particularly hazardous or stressful night work does not seem to be transposed fully in Estonia or transposed at all in Italy; and in Spain (Mediterranean welfare model) it can be exceeded.<sup>247</sup> Moreover, in Estonia, Latvia, Romania, Ireland and Italy, such work does not seem to be clearly defined, which risks making any limit ineffective. In Spain, Mediterranean welfare model, based on our research also carers and nurses are usual night-workers, but they may not exceed eight hours, each period of 24 hours, on average within a reference period of fifteen days and that

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<sup>244</sup> The European Foundation for the Improvement of Living and Working Conditions: Working time options over the life course: Changing social security structures (2005), <http://www.eurofound.europa.eu/publications/2006/working-time-options-over-the-life-course-changing-social-security-structures>

<sup>245</sup> The European Foundation for the Improvement of Living and Working Conditions: Working time options over the life course: Changing social security structures (2005), <http://www.eurofound.europa.eu/publications/2006/working-time-options-over-the-life-course-changing-social-security-structures>

<sup>246</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

<sup>247</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

night workers may not work overtime. Agreements establishes that a bonus will be paid on the hours worked by night. Shift workers may accumulate for periods of up to four weeks half day of the weekly rest, so this rest can be reduced to 24 hours. It also, gives the option to separate these 12 hours from the one corresponding to the weekly rest, and then the workers can enjoy the leisure on another day of the week, and it also allows to reduce the rest period between days to 7 hours when the workers change their shift, reducing drastically the 12 hours' rest between daily working days for such specific situation.

In the Anglo-saxon welfare model (UK) nearly 100% of work in SCSS for PwD involves shift work. The most common pattern is 3-shifts, covering 24 hour period (a popular pattern is an evening shift, a sleep in and the next morning shift because this limits travel time and disruption). Live-in workers may work two weeks on and one week off. Whilst this welfare model includes the usual night work in SCSS for PwD (ie waking nights, full active night shifts) for residential services (not for community based services), most night work is in fact “sleep-in” and involves long periods of inactive time (usually night work is 8 hours).

The Continental model (Austria) used mostly shifts and also classified some night work as “easier duty” in residential facilities (in SCSS for PwD sector). There is provision for a 24 hour shift but these can only be worked a maximum of 3-times a week.

### Compensatory rest

In several Member States, derogations have been used in a way which goes beyond what WTD rules permit. Excluding certain workers from the **right to rest periods**: this is a problem for specific sectors in Belgium (residential schools, defence forces); Greece (public sector doctors); and Hungary (occasional workers, public sector schools, defence forces). It is a problem, more broadly, as regards certain workers in Austria (including workers in health institutions and residential care) and in Latvia.<sup>248</sup> Based on our research in SCSS for PwD - in the Continental welfare model (Austria) daily minimum rest (11 hours) can be reduced to 9 hours by collective agreement at company level and weekly rest is 2 full consecutive days, after night work 48 hours of minimum rest. After providing 24-hours care 2 full continuous days have to be granted. For the Central European welfare model (Slovakia) if the continuous daily rest is interrupted by overtime or on-call or stand-by time, these are

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<sup>248</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>



considered to be formally outside of the continuous daily or weekly rest (in terms of counting of working time), although there is clearly the potential for a lack of rest. In the Anglo-Saxon welfare model (UK) sleep-in and stand-by time is usually counted as rest unless disturbed (i.e the worker becomes active). However, there is much confusion and uncertainty about this with current legal challenges pending. Compensatory rest seems to be little used or understood.

Allowing derogations which do not **require equivalent compensatory rest**<sup>249</sup>: Belgium, Bulgaria, Estonia, Hungary, and Latvia all allow such derogations in a widely-defined range of activities or sectors. Germany (by collective agreement only) and Romania allow them in on-call work and health services respectively. Portugal allows them for the public sector.

**Delays in providing compensatory rest**, contrary to the Jaeger judgement<sup>250</sup>, in nine Member States, there seems to be no general legally binding norm about the timing of compensatory rest. They are: Austria (as regards weekly rest), Cyprus, Denmark, France, Greece, Ireland, Italy, Luxembourg and Malta. In Belgium, Germany, and Latvia, there is no legally binding norm for substantial sectors or situations. In Austria (as regards daily rest), Belgium (public sector), Denmark (under some collective agreements), Finland, Hungary, Poland (for some sectors), Portugal (public sector), Slovakia, Slovenia, and Spain, compensatory rest must be provided within a specified period, but that period can involve a much longer delay than under the Jaeger judgment.

## Annual leave

In some Member States<sup>251</sup>, national law can require a worker to wait up to one year before he or she **may actually take any paid annual leave**. Also, in some Member States, the right to paid annual leave conferred by the Directive is lost at the end of a leave year or of a carry-over period, even if the worker has not had an opportunity to take it for reasons beyond their control, such as illness. This is not compatible with the Directive.

**Based on our research**, in the Central European welfare model (Slovakia) paid annual leave depended on the age of employee by law and for workers under 33 years it was 25 days, and over 33 years it was 30 days) and there is an additional 5 days leave for staff in working directly with clients (users of SCSS

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<sup>249</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

<sup>250</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

<sup>251</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

for PwD) in accordance with a national higher collective agreement. This is in contrast to the Anglo-Saxon (UK) welfare model, where there is no change with age or gender and 28 days per annum is a minimum holiday entitlement for all. Giving more days is depending on individual organisational decision, sometimes based on length of service or seniority. In the Continental welfare model (Austria), annual leave increases gradually after 10, 15 and 20 years of work in accordance with a collective agreement for the sector of SCCS for PwD (the maximum is 6 weeks. This provides for a faster increase of leave days than the majority of Austrian workers). Mediterranean welfare model (Spain), Centers and Services Agreement establishes the right to enjoy 25 paid working days and the Dependency Care Agreement fixes it in 30 calendar days. In two cases can be enjoyed split over 2 periods.

Most countries<sup>252</sup> to date offer some **leave schemes**, at least for maternity leave. The right to take leave, however, is often not used when no benefits or only low flat-rate benefits are paid. In fact, many existing parental leave schemes in EU countries do not provide cash benefits (except for Sweden, where parental leave is accompanied by income-related cash benefits). In the case of care for elderly people – a field of growing importance – the options are even more limited, and most countries (with the exception of Sweden and the Netherlands) do not even have a right to take eldercare leave. For all leave systems, a second important aspect from the life course perspective is the question of whether employment security (the right to return to the former employer) is given. If this is not granted (as in the French parental leave scheme), a period of leave can turn out to be a trap for one's future career. Schemes for sabbaticals or training leave (as in the Netherlands or Germany) are often based on a redistribution of time and money by the leave-taker. This gives people some time options and the continuation of the work contract has the advantage that access to existing branches of social security is usually granted. If these time-saving systems are used for care work (e.g. supporting elderly people) or other socially useful activities, however, it has to be asked whether there should not also be some collective support for this? So far, the state contributes to these schemes through the income tax system only; a highly progressive tax rate could help to make these schemes more attractive.

Different time options<sup>253</sup> and their take-up also have an impact on the expenditure and financial sustainability of social security systems. In principle, all **kinds of leave schemes that provide cash**

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<sup>252</sup> The European Foundation for the Improvement of Living and Working Conditions: Working time options over the life course: Changing social security structures (2005), <http://www.eurofound.europa.eu/publications/2006/working-time-options-over-the-life-course-changing-social-security-structures>

<sup>253</sup> The European Foundation for the Improvement of Living and Working Conditions: Working time options over the life course: Changing social security structures (2005), <http://www.eurofound.europa.eu/publications/2006/working-time-options-over-the-life-course-changing-social-security-structures>

**benefits** (and/or other benefits, such as access to training measures) cause direct social expenditure. However, so far, leave schemes have not contributed much to the financial crisis of most welfare states. Firstly, many leave schemes (e.g. several European parental leave schemes) are unpaid. Secondly, from the available data, many schemes have had low take-up rates until recently (e.g. sabbatical leave schemes). Thirdly, due to demographic change and low fertility, maternity leave (the best paid leave scheme in a cross-country comparison) plays a minor role financially, compared with other social security systems (such as old age pensions). Finally, public expenditure on certain leave schemes can, in the long term, lead to savings in social security expenditure; the Danish job rotation programmes, where an employee's training leave is combined with employment chances for unemployed people, served as an example of this.

**Other kinds of work interruption**, particularly unemployment and inactivity (meaning 'not active in the labour market'), threaten the financial sustainability of many social security systems to a much greater degree. Unemployment causes greater public expenditure and the loss of social security contributions and taxes on many levels, particularly in countries with high unemployment (e.g. Spain) and in countries that provide long-term and high cash benefits (e.g. the conservative and Scandinavian countries). Inactivity rates have gone down and should go down further, according to European estimates. However, inactivity (in particular the inactivity of spouses) still induces high collective costs, mainly in countries that still support a breadwinner-type model (e.g. Germany). In the Scandinavian countries, inactivity is much lower.

### **Pattern of work**

The potential for employees **to control or influence the organisation of their work** varies between Member States, with the greatest opportunity to do so occurring in the Nordic countries – where some 60% of workers consider that they are able to exercise some control – compared with only 25% in the Mediterranean and eastern European Member States.<sup>254</sup>

The analysis<sup>255</sup> of time options/arrangements and their impact on the individual's social protection has shown that one has to differentiate between **interruptions of the working career, part-time work and**

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<sup>254</sup>European Foundation for the Improvement of Living and Working Conditions (2009): Comparative analysis of working time in the European Union, <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/comparative-analysis-of-working-time-in-the-european-union>

<sup>255</sup>The European Foundation for the Improvement of Living and Working Conditions: Working time options over the life course: Changing social security structures (2005), <http://www.eurofound.europa.eu/publications/2006/working-time-options-over-the-life-course-changing-social-security-structures>

**systems that allow a flexible distribution of working time.** Interruptions of working life are not always a matter of choice: unemployment is increasingly becoming part of working biographies in many European countries. Although unemployment is still one of the bestcovered social risks, existing social security systems differ greatly with regard to access to unemployment schemes, eligibility and re-eligibility criteria, duration of benefits and income replacement rate of benefits. Deficits in social protection mainly occur in the case of long-term unemployment. In addition, unemployment early in the life course is often not protected as well as unemployment in later stages of life by cash benefits. For the future development of one's career, access to active labour market programmes plays a decisive role. Deficits in pension income mainly occur in occupational pension systems. This particularly affects pensioners in those countries where secondary private/occupational systems are of relatively high significance compared with any universal state pension (as in the UK).

### Part-time

The latter also holds true for **part-time work**. Based on our research, this is most dominant form of work in SCSS for PwD sector in the Continental welfare model (Austria), where full-time permanent employment contracts are only partly used due to the dominance of part-time work. This model (part time work) is very often found, (often at the request of the worker) in the Anglo-Saxon welfare model (UK), because it fits in very well with home and life responsibilities of women, who constitute over 80% of the workforce in SCSS for PwD sector. The second most common in UK is the full time employment contract. In contrast, the Central European welfare model (Slovakia) uses part time contracts only for around 10 % of all staff in SCSS for PwD. Almost 80% of such part time staff are carers or maintenance staff and in practice, part-time jobs are generally taken up by workers only when full-time work is not available for health reasons or to suit the needs of employers. So the most common employment contract in the Central European welfare model (Slovakia) is full-time permanent work, and almost all university educated staff have this type of contract. Part-time workers (as well as full-time workers with low income) can profit<sup>256</sup> from redistributive elements in many social security systems and often receive more than proportional benefits, compared with people working full time. In Mediterranean welfare model (Spain), 66,63% of the staff has permanent contracts, 65 % full time and 35% part time. Full time and permanent contracts are most common in management staff and part time in direct services to PwD. Part time permanent contracts are most common in in direct services to PwD, in

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<sup>256</sup> The European Foundation for the Improvement of Living and Working Conditions: Working time options over the life course: Changing social security structures (2005), <http://www.eurofound.europa.eu/publications/2006/working-time-options-over-the-life-course-changing-social-security-structures>

particular carers. In some countries, there are additional targeted subsidies for special groups of part-time workers (e.g. in Germany, for parents working part time or elderly workers in partial retirement). However, the take-up of part-time work still contains an additional risk of poverty, particularly in countries with social insurance systems oriented towards the principle of equivalence. From a life course perspective, the total duration of periods of part-time work is a decisive factor (e.g. for later pension claims). Special social risks are connected with marginal part-time jobs. Although there is no universally accepted definition of terminology in this field, in some countries (e.g. Germany, Sweden and UK), people with shorter working hours or income from work below certain thresholds have no, or only limited, access to social security. Again, the decisive question for people's social security protection over the life course is whether marginal part-time jobs only have a minor weight in one's employment career (e.g. in the entrance phase) or whether one becomes trapped in such jobs.

One might assume that **the rise of part-time jobs would endanger the financial basis of social security**<sup>257</sup> since part-time workers in absolute terms pay less into the social security system, while being capable of claiming more than proportional benefits, compared with full-time workers. In a historical perspective, however, this hypothesis does not hold true since part-time work has mainly replaced the inactivity of women, who already had access either to universal or to derived benefits. As far as small or marginal part-time work is concerned, some countries (e.g. France and the Netherlands) collectively support these jobs by reduced contribution rates or benefits that are more than proportional. In countries where small jobs do not give (full) access to social protection, costs nevertheless arise indirectly, for example, when social assistance or minimum pensions have to be paid. In fact, the level of social costs depends on the level of distribution or (lifetime) concentration of such jobs among the population. From the perspective of the financial sustainability of welfare states, an even distribution of working time among the whole population and a low concentration of poor quality jobs is a desirable goal.

As the macro analysis of European Foundation for the Improvement of Living and Working Conditions<sup>258</sup> has made obvious, the common welfare state typology is a useful tool to analyse the labour market integration of men and women over the life course. All welfare state regimes reveal

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<sup>257</sup> The European Foundation for the Improvement of Living and Working Conditions: Working time options over the life course: Changing social security structures (2005), <http://www.eurofound.europa.eu/publications/2006/working-time-options-over-the-life-course-changing-social-security-structures>

<sup>258</sup> The European Foundation for the Improvement of Living and Working Conditions: Working time options over the life course: Changing social security structures (2005), <http://www.eurofound.europa.eu/publications/2006/working-time-options-over-the-life-course-changing-social-security-structures>

significant differences in this regard: while a high labour market integration of both sexes over the whole life course is typical for the Scandinavian regime, all the other regime types still show strongly **gendered patterns**. The conservative countries show the most obvious concentration of working time (on prime-age men), while, in the liberal countries, younger groups are better integrated into the labour market. The Mediterranean countries show a bifurcation of women's labour market integration: due to the lack of part-time work, women work either full time or are inactive in the labour market.

There is also a clear East-West divide between countries: in Central and Eastern European countries part-time work remains a marginal phenomenon even **among women**, while the Western countries have embraced it much more widely. A clear outlier is the Netherlands where three quarters of women work part-time, but also one fifth of men, almost three times as many as on average in the EU. In absolute terms, since 2007 till last year (2016) part-time employment has grown in Europe, while full-time employment has declined. The share of part-time workers in the EU has increased in all but two countries (Croatia and Poland), on average from 16.8 percent to 18.9 percent. The increase has been especially strong among men: the share has almost tripled in Greece, Cyprus and Slovakia, and more than doubled in Bulgaria, Czech Republic, Ireland, Spain, and Malta. The changes among women have been more modest.<sup>259</sup>

The northern countries exhibits the lowest gender gap in **time allocation**, even when taking into account compositional and structural effects. This result can be ascribed to the active mainstreaming policies that promote gender equality, and to measures intended to help parents achieve a balance between paid work and family life. These measures include the provision of high-quality public childcare and elderly care facilities, and the option of flexible and reversible working time over the life course.<sup>260</sup>

**Involuntary part-time work**<sup>261</sup> has increased by a third, both among men and women. This means that people have taken up part-time work, or reduced their working hours, as full-time alternatives have not been available. On average 23.1 per cent part-time workers reported to be working part-time involuntarily in 2007; in 2015 this share had increased to 29.9 per cent (with a slight decrease from

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<sup>259</sup>EC - <http://ec.europa.eu/social/main.jsp?langId=en&catId=1196&newsId=2535&furtherNews=yes>

<sup>260</sup>European Foundation for the Improvement of Living and Working Conditions (2013): Working time and work–life balance in a life course perspective, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1273en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1273en.pdf)

<sup>261</sup>EC - <http://ec.europa.eu/social/main.jsp?langId=en&catId=1196&newsId=2535&furtherNews=yes>

2014). For men, the share is higher than for women: 42.4 compared to 26.2 per cent. The share of involuntary part-time work is especially high in Southern countries where it has also increased significantly during the crisis (in Greece from 45.8% to 72.9%, Cyprus 31.2% to 69.4%, Italy 39.4% to 65.5%, Spain 33.6% to 63.7%). The strongest increase in involuntary part-time work took place in another crisis country, Ireland (from 11.5% to 39.2%). The Netherlands also has one of the lowest shares of **involuntary** part-time workers. Reconciliation difficulties are likely to be an important driver of part-time working also in the Netherlands, but it also seems that there is more freedom for individual work/life choices and that this freedom is widely used. The increase in part-time work can be a consequence of the economic crisis, especially in the worst-hit countries, but it remains to be seen if it is also the future of work and society. A pessimistic scenario would be that involuntary and precarious part-time work becomes the only option for more and more people. The optimistic scenario would present growing part-time work as a reflection of more flexibility and freedom of choice when it comes to the work/life balance – and this hopefully for both women and men.

As regards other type of contracts - **Zero hours contract** are not be used in Spain (Mediterranean welfare model), is not in use in SCSS for PwD sector in the Continental welfare model (Austria). They are increasingly used in the Anglo-Saxon model, especially in home care for older people (UK). For the Central European welfare model (Slovakia) a common contract is a year long agreement on regular work activity which is used by 15-30% of all staff in SCSS for Pwd, most of them are carers, with a few also animators or IT staff and accountants.

A **fixed term employment contract** is not much used (or only occasionally for project based specialists) in SCSS for PwD in the Anglo-Saxon welfare model (UK). This type of contract is used for foreign workers, who return to their home countries after a certain period of time in Continental welfare model (Austria), but for the Central European welfare model (Slovakia) it is used approx. in 5% of all staff of SCSS for PwD (mostly carers, project managers). The reasons for being contracted in this manner is mostly because of time-limited funding for conducting EU social projects from ESF or providing temporary cover while the core employee employed on full time permanent employment contract is on maternity leave or is unable to work for a longer time because of illness etc. In Mediterranean welfare model (Spain), 38,37% of all staff in SCSS for PwD has temporary contracts, some of them for temporary services and other fixed-terms, depending on the needs of the service or the budget to provide the service, also to substitute vacations (annual leave) and medical leave.

**Direct employment contract** by one disabled person dependent on state support is in common usage in the Continental welfare model (Austria), and is increasingly promoted by governments in the Anglo-Saxon welfare model (UK). There is an unusual difference on this in the Central European welfare model (Slovakia), because it is used only as an extra job (not very well paid, contracted as personal assistant by PwD, who is a receiver of state compensatory support for disability) and the worker is very often a family member or young person/student. In Mediterranean welfare model (Spain), people with support needs can hire self-employed workers and non-professional family caregivers. The dependants receive money of the state to pay them directly to his carers, who has to be autonomous workers or family who works less than 20 hours a week in other work.

Senior staff of SCSS for PwD in the Continental welfare model (Austria) often used a **Director's Service Agreement, Consultancy agreement or their status as an Autonomous worker**, although in the Central European welfare model (Slovakia) this was not used at all. Service level agreements between public and independent sector bodies are very common in the Anglo-Saxon welfare model (UK), while they don't include working time arrangements or contracts for workers. They determine the type amount and cost of services provided. As such they do affect what is and is not possible in terms of pay levels and hours paid. The Director's Service Agreement is not much used. Self employed consultants are sometimes used for short term pieces of work in SCSS for PwD in UK. In Mediterranean welfare model (Spain), Director's agreement is not possible for the provision of direct services by the entities.

**Agency of employment services** in SCSS for PwD is not used in the Central European welfare model (Slovakia) and seldomly used in housing projects in the Continental welfare model (Austria). Temporary employment agencies are legal, but usually not used in SCSS for PwD in Mediterranean welfare model (Spain). In contrast, in the Anglo-Saxon welfare model (UK) such agencies are widely used as there are staff shortages. Agency staff are expensive to hire and often present difficulties with quality and continuity of care. Where a preferred provider list exists, established through tender, the quality tends to be better. An exception to this is the agencies providing 24 hours live in care. The workers provided by these agencies are long term and high quality. The service removes the burden of being an employer from the PwD.

There is no usage of **Sole traders** in SCSS for PwD in the Central European welfare model (Slovakia). It is seldomly used, if and when only in family and leisure time assistance in Continental welfare model (Austria). Self employed sole traders in Anglo-Saxon welfare model (UK) are little used in the sector.



Occasionally they may be used as experts to work on specific projects, to conduct research or to fill a temporarily vacant managerial position. They would not normally be employed as carers/supporters. In Mediterranean welfare model (Spain), sole traders is not possible for the provision of direct services by the entities.

### Workers with more than one employment contract

The Directive does not expressly state how working time limits should be applied in the case of a worker who is working under two or more employment relationships at the same time. Should the **limits be respected ‘per-worker’** (adding up the hours worked for all concurrent employers): or **‘per-contract’** (applying the limits to each employment relationship separately)? The practice in Member States varies<sup>262</sup> considerably on this point. Fourteen Member States apply the Directive per-worker. However, eleven Member States apply it per-contract. They are: the Czech Republic, Denmark, Hungary, Latvia, Malta, Poland, Portugal, Romania, Slovakia, Spain, and Sweden. Belgium and Finland adopt an intermediate position. The Commission has already stated that, as far as possible, the Directive must be applied per worker. Given its objective of protecting workers’ health and safety, Member States should put in place appropriate mechanisms for monitoring and enforcement, particularly where there are concurrent contracts with the same employer. This present severe practical difficulties.

### The ‘opt-out’

There are 12 EU Member States<sup>263</sup> that do not use the opt-out at all, 5 use the full opt-out across all sectors and 10 only use the partial opt-out. The opt-out is implemented in different ways, e.g. there may or may not be an upper limit on working time. In some Member States, the opt-out is used either very largely or entirely **via collective bargaining**; in others, the opt-out **has been legislated for**. Very few mechanisms appear to be in place for monitoring the use of the opt-out in practice and to ensure that there are no excesses. But the picture regarding use of the opt-out has changed considerably over recent years. In 2000, the UK was the only Member State to make use of the opt-out. Sixteen Member States now do so, including one which is currently legislating to introduce it.<sup>264</sup>

<sup>262</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

<sup>263</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

<sup>264</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

Based on our research, most senior managers in SCSS for PwD in the Anglo-Saxon welfare model (UK) are seen as “autonomous workers” and are therefore able to claim exemption, also the 48-hours opt-out is used extensively, often required to be written into contracts and therefore not WTD compliant. Because of the fragmented workforce, social dialogue structures are weak so collective agreements are unusual beyond individual organisations. In contrast, the Central European welfare model (Slovakia) for staff in SCSS for PwD applied the reduction of working hours for public sector employees in SCSS for PwD from 40 to 37.5 working hours by collective agreement. The Continental welfare model (Austria) uses sector multiple derogations regarding working time, annual leave, reference periods etc in SCSS for PwD.

Eleven Member States indicate that they have **not allowed the use** of the opt-out in their transposing legislation: they are Austria, Denmark, Finland, Greece, Ireland, Italy, Lithuania, Luxembourg, Portugal, Romania and Sweden.<sup>265</sup>

It is important to note that the use of the opt-out varies considerably. Five Member States (Bulgaria, Cyprus, Estonia, Malta, and the UK) **allow its use, irrespective of sector**. Eleven (Belgium, the Czech Republic, France, Germany, Hungary, Latvia, the Netherlands, Poland, Slovakia, Slovenia, and Spain) allow (or are currently introducing) a more limited use of the opt-out, restricted to specific sectors or to jobs which make extensive use of on-call time.<sup>266</sup>

The five Member States using the opt-out across all sectors (‘full opt-out’) are Bulgaria, Cyprus, Estonia, Malta and the United Kingdom. The policy rationale in EU countries for using the full opt-out has centred on both competitiveness (e.g. the need to ensure maximum flexibility for businesses, for example in responding to varying levels of demand, and adapting to seasonal work) and the importance of retaining individual choice (the employee should determine how many hours they work and whether they wish voluntarily to exceed the maximum statutory limit in the Directive).<sup>267</sup>

The most **common uses of the opt-out in partial opt-out countries** are first in respect of “on call” time for public sector workers (Belgium, Germany, France, and Poland) and secondly, those that allow the opt-out in public services more widely without restricting this to on-call time alone (Czech Republic,

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<sup>265</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

<sup>266</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

<sup>267</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

Hungary, the Netherlands, Slovenia, Slovakia and Spain). There has been an increase in the number of EU countries using the partial opt-out in the past few years, principally as a result of the impact of the SIMAP-Jaeger ECJ rulings.<sup>268</sup>

There is also wide variation in **the protective conditions attached to the opt-out**. For example, some Member States specify limits to average weekly hours of opted-out workers (ranging from 51 hours in Spain, to 72 hours including on-call time in Hungary), while seven Member States have no explicit limit for these workers. Two Member States (Germany and the Netherlands) require a collective agreement, as well as the consent of the individual worker, for an opt-out to be valid. Only three Member States (Germany, Latvia and Malta) mention a clear obligation for the employer to record the working hours of opted-out workers, and only two (Czech Republic and Slovakia) mention an obligation for the employer to notify the labour inspectorate when the opt-out is used. In addition, Germany requires specific measures to take account of health and safety, and the Netherlands requires the social partners to first consider whether the need for an opt-out could be avoided by organising the work differently.<sup>269</sup>

The opt-out has been introduced very recently in many Member States. However, the Commission is unable to fully evaluate its operation in practice, since Member States' reports do not provide adequate information about the number of hours actually worked by opted-out workers, and over what period of time. Most Member States **do not seem to provide for any monitoring or recording of working time of opted-out workers**. This situation deprives policymakers, Member States who are primarily responsible for enforcing EU law, and the Commission as the guardian of the Treaties, of the basic information needed to examine how far opted-out employees (as well as co-workers or clients) may be exposed to risks caused by excessive working time.<sup>270</sup>

In general, Member States have transposed the Directive for the public sector. However, several Member States **have not transposed it to cover certain groups of workers**.<sup>271</sup> The Directive has not been transposed in Cyprus, Ireland, or Italy, as regards the armed forces and the police. In Spain, it has not been transposed for the police (Guardia Civil) and it does not seem to have been transposed for most other public sector workers, including civil protection services. In Italy, it is also not transposed

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<sup>268</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

<sup>269</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

<sup>270</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

<sup>271</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

for the emergency services; and derogations for doctors in public health services, court and prison staff, as well as the exclusion of employees in libraries, museums and State archaeological sites, seem to exceed what the Directive would allow. In Greece, the Directive is not transposed for doctors working in the public sector.<sup>272</sup>

### **Safety and health protection**

There is also cause for concern that, in some Member States, the health and safety objectives of the Directive may not be respected, and the requirement of the worker's advance voluntary consent to opt out may not be properly applied.<sup>273</sup> Based on our research, the obligation to secure regular training by a certified H&S technician is required by law for all employees in the Central European welfare model - Slovakia, but only in particular areas (the Anglo-saxon welfare model - UK) or additionally to meet various regular precautions, special medical examinations have to be available to the night time workforce (the Continental welfare model - Austria). It is mandatory in the Mediterranean welfare model (Spain) to train and report on occupational risk prevention, and entities are aware of it. Depends on the agreement of ancillary services and the annual salary.

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<sup>272</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

<sup>273</sup>EC - <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex:52010DC0802>

## Recommendations on new labour law provisions that will promote a fairer way of working in the SCSS sector at European level

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**Social Services**<sup>274</sup> is one of the biggest job creators in Europe today. The sector employs directly over 10 million staff in Europe, with over 1.4 million jobs having been created between 2008 and 2015, making it one of the biggest job creating sectors in Europe. Together with health services, social services represents 7% of the total economic output in the EU-28 (EC, 2016). With changing demographics and family patterns, the social services sector is expected to grow significantly over the next few decades. The same can be said for social service providers for persons with disabilities, in particular in response to the transition to community-based care and support.

However, many issues are currently limiting the sector's job creation potential with many service providers experiencing staff shortages. This is due to (often significant) cuts to public expenditure in social services despite the increase in demand and the lack of recognition given to the sector. This has led to below average wages, often difficult working conditions, undeclared work, an ageing workforce and stronger gender imbalances in the workforce in most countries in Europe. The European Union has significant competence when it comes to employment and labour policy, in particular, but not only, through European Social Dialogue. EASPD is strongly involved in setting up social dialogue structures at European level for the social services sector. Its economic and social policy, in particular the Stability and Growth Pact and the European Semester, also affects the job creation potential of the sector, in particular as it impacts public expenditure towards social services. It is the view of the European Commission has yet to act sufficiently to ensure that the Social Services sector's job creation potential is fully unlocked.

The immediately obvious **impacts** of the WTD are on the labour market, on gender and work-life balance, on quality of care or services, organisations and finance. However, there is a hidden but potentially much more fundamental and far reaching impact, which is the impact on the rights, hopes and life choices of pwd who depend on staff support. Herein lies the dilemma of two competing principles, the right of a worker to healthy and safe working practices and the right of a disabled person to live their life as they choose, without unnecessary interference by others.

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<sup>274</sup> EASPD: Job Creation and Decent Working Conditions (2016), <http://www.easpd.eu/en/content/job-creation-and-decent-working-conditions>

### Labour market impacts<sup>275, 276, 277, 278</sup>:

- The importance of social services in the EU for job creation and structural change on the labour market is clearly visible - it contributes to the increase of female employment and the participation of higher age groups. Even in times when other sectors were shrinking, the sector continued to grow and this is likely to continue in the future. This has consequently helped to raise the labour market participation of groups that did not gain from past periods of employment growth. But there are a number of challenges for job growth in health and social services. As the sector provides more services to more individuals, non-standard working hours are more frequent. Moreover, the above-average educational levels and the higher share of many non-standard working hours workers contrast strongly with gross hourly earnings that are below average in those countries for which data are available. Findings from the in-depth country studies also indicate that the priority on sustainable public funding, or actual cuts in funding, continues to put pressure on the already relatively low wage levels in the sector. As a result, staff shortages are already a major concern for a number of services, such as for long-term care.
- The interviews conducted with the social services organisations and potential employees confirmed the hypothesis that Social Services sector has a somewhat negative image for potential employees. This perception is driven by low wages, often poor working conditions, a lack of career advancement opportunities and the potential for accidents involving employees' abuse by their service users (and vice versa) which receive a great coverage in mass media. On the other hand, it is rare to find an article about how meaningful and fulfilling a job of a social care worker can be, or a testimonial of a happy and proud employee about his or her job in social care. This imbalance can only be addressed through a dedicated marketing campaign aimed at improving attractiveness of the Social Services sector. It should be targeted at potential employees and convey the values and benefits of a job in the social services sector. Therefore it is recommended to the European Commission to develop and launch such a campaign across the member states.
- The implementation of the Working Time Directive has led to an increased demand for specialised and qualified labour in the healthcare and residential care sectors, but the same as for other

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<sup>275</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPagId=205>

<sup>276</sup>Huber, M., Maucher, M., Sak, B.: Study on Social and Health Services of General Interest in the European Union, Final Synthesis Report (2006). [ec.europa.eu/social/BlobServlet?docId=3878&langId=en](http://ec.europa.eu/social/BlobServlet?docId=3878&langId=en)

<sup>277</sup> EASPD - Recommendations to the European policy makers and the tool kit for the social service providers (2013), <http://www.easpd.eu/sites/default/files/sites/default/files/Policy/Vlerick/recommendations.pdf>

<sup>278</sup>European Parliament (2016): European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI)). <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0010+0+DOC+XML+V0//EN>

community based services for PwD, leaving the sector forced to juggle between the requirements of the Directive and shortages of qualified personnel.

- In residential care, there is evidence of noncompliance as a result of ignorance about WTD requirements and a high use of the individual opt-out.
- The availability and affordability of long-term care remains a major problem across Europe, trapping informal family carers.
  - There are frequent abuses of carers employed through work agencies or on an informal basis.
  - Access to quality and affordable long-term care services, including home-based care and independent living schemes should be a right that should be upheld with the support of adequately qualified professionals employed under decent conditions.
  - Adequate public services and assistance should be put in place for households, in particularly those living on low incomes, to avoid institutionalisation and the risk of poverty.
  - Legislation should be enacted on carers' leave to limit the implications on remuneration and social protection entitlements when workers temporarily need to take care of relatives.
  - The Commission should set out a concrete action plan in this area, including targets on care for elderly persons, persons with disabilities and other dependents, similar to the Barcelona targets, with monitoring tools which should measure quality, accessibility and affordability.
  - There should also be greater sharing and take-up of best practices in this area.

### **Gender and work-life balance<sup>279</sup>:**

The Europe 2020 strategy is critically dependent on the further labour market integration of women in Europe. An increase of female labour supply both at the extensive (participation) and intensive (working hours) margins is crucial. In most countries, the parenting phase remains a critical period for integrating women into the labour market. Increasing female labour force participation requires policy measures favouring a better balance between work, family and other social commitments, particularly in countries with low female employment. Working men and women living in the northern country cluster appear to be at a significant advantage, which is undoubtedly due to an institutional design that promotes a more equal time allocation across gender.

It is essential in policy design to consider time allocation as a whole (looking at paid and unpaid work), and its distribution across the life course.

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<sup>279</sup>European Foundation for the Improvement of Living and Working Conditions (2013): Working time and work–life balance in a life course perspective, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1273en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1273en.pdf)

- Policy measures intended to reduce the gender gap in both paid work and unpaid domestic activities (both housework and care) are needed.
- Family-friendly, flexible and reversible working time options across the life course are also important.
- Predictable working time and working time autonomy are associated with positive work–life balance outcomes, whereas employer-induced working time flexibility and atypical working hours are associated with adverse outcomes. (Around 15% of male employees and 7% of female employees in the EU27 work 48 hours or more per week.) Due to the negative effects of long working hours, policy and legal measures should be taken to ensure that working time limits are strictly enforced.

**Quality of care or service<sup>280</sup> :**

- Ensuring the quality of care or service has also been one of the key drivers behind the choice of a growing number of Member States to opt out fully or in some sectors that have a high prevalence of on-call time, and in rural areas, where hospitals are smaller and find it anyway more difficult to find staff. Fire services also suffer from recruiting problems in rural areas.
- Although examples of longer residential waiting lists were found during the data collection phase (the Central-European welfare model - Slovakia), it is difficult to attribute them directly to the implementation of the Working Time Directive.
- There are also concerns in many Member States about clients' safety, e.g. linked to good quality handovers and more intensive work as a result of changed shift patterns. However, there are also instances where quality of care is perceived to have increased or be unchanged.

**Organisational impact<sup>281</sup> :**

- Any impact at organisational level has to be seen in the context of very different starting points even within Member States. These are a function of traditional practices, skills shortages and their impact on bargaining power, and citizens' needs – with different pathologies in rural areas (where there are more older people), and different service requirements in rural as opposed to urban areas.
- There has clearly been an impact in the SCSS for PwD sector. The impact has been addressed in some instances with additional funds for recruiting, in some by moving to shift systems, in some by more

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<sup>280</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

<sup>281</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>



use of temporary, external or self-employed staff, in some by redeployment (via role substitution or cross-cover), in others by organisational re-engineering (including by the introduction of greater ‘democracy’, i.e. consultation of staff), and in some by use of the opt-out. These solutions may be used in combination. There is also evidence that the only realistic way to find a solution is to break the law around the WTD, which will better suits to SCSS for PwD sector.

### **Financial impact<sup>282</sup>:**

- There is little data for quantifying the financial impact of implementation of the Directive, or for measuring trade-offs. While there have clearly been one-off administrative costs from business re-engineering and new systems of time and remuneration measurement, and increased personnel costs as a result of additional recruiting, figures are hard to come by, especially in the SCSS for PwD sector. Still less is it possible to measure the trade-off with savings on overtime pay and payments for on-call time.
- The same is true of the costs and benefits to employees. There are examples of an apparent loss of income from shorter working hours as a result of implementation of the Directive, but there is also clear evidence of improved fringe benefits and some evidence of employees using their bargaining power given the existence of skill shortages to increase their pay. It may also be that doctors who have moved to self-employment have improved their income or avoided a loss of income.
- Governments have in some cases provided funding for the introduction of alternative working models (though they appear to be a minority) or for additional recruiting. The data for all these costs is strongest in the health sector, but the pattern is consistent across all sectors.

### **Impact on Human Rights:**

All the above recommendations could fairly be described as ‘technical’ or ‘employment-centric’ with their main focus on making the current law work better. There is however, another way of viewing the whole question of the way the WTD operates and that is through the prism of its impact on the human rights of the end user and the way in which it is constraining the development of truly person centred services. It is arguable that there is a fundamental clash between upholding the rights of a service user to effective inclusion in society (as enshrined in the UNCRPD and the EU’s own Charter of Fundamental Rights (CFR) on the one hand and the rights of the worker under the WTD on the other.

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<sup>282</sup>EC - Deloitte Study (December 2010) to support an Impact Assessment on Further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation, Final Report, <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

There are several proposals which can be implemented without revising the WTD which would ease current operational and practical problems. These are as follows:

***Possible actions within the current legal framework***

- greater flexibility through developing sectoral agreements. Effective social dialogue in the social care and support sector is very patchy at national levels and non-existent at EU level. This creating a significant disadvantage for the whole sector. The sector and the EU should take immediate steps to improve this situation.
- WTD derogations could well be applied to workers involved in small scale ‘live-in’ care services where workers effectively live in the user’s own home for an extended period (see attached report for more details) and actual working hours are often a matter for (daily) negotiation between the user and worker.
- The WTD list of ‘autonomous workers’ who may be exempted from the WTD is not closed and there is no reason why ‘live in support workers’ should not be added to it.
- The WTD derogations to be made for ‘activities where there is ‘the need for continuity of service (or production).’ This applies to many social care and support services and there is no reason why the social care and support sector could not be added to the list.
- The WTD makes explicit provision for derogations where there is a need to ‘encourage another objective, distinct from the implementation of the agreement.’ . Using this idea social care could be exempted via a derogation because the other ‘objective’ could be the achievement of a user’s UNCRPD Human Rights through a more flexible service. Since the EU has already signed the Convention and created the CFR how could they object?

***Recommendations for any future revision of the WTD***

- Any future negotiations must include all the relevant stakeholders including, crucially, end users of services and providers.
- The Commission should recognize and find ways to address in any revised WTD the problems which the current laws cause service providers when they attempt to create truly person centred services capable of delivering UNCRPD compliant services.
- Any future changes must assess the likely financial impact they will have and ensure that states have time to meet any extra costs. Measures leading to unfunded significant cost increases should be avoided because they will undermine the credibility of any new WTD

- Greater flexibility should be allowed regarding inactive sleep in/on call time and inactive stand-by time, currently all on-call time (active or inactive) at the workplace counts as working time.
- Particular attention should be paid to the situation of individualised support services using formal and/or informal ‘family carers’ and the impact any reforms may have on their situation and the user’s rights to lead a normal life under the UNCRPD
- Any changes to the WTD must make working in this sector more attractive, enabling employers to offer full time and part time options and family-friendly working time flexibility.
- Any new Directive wording should make it plain that the responsibility for managing the number of hours a worker with multiple contracts works should be shared between the worker and the employer and the means of monitoring the situation should not be so onerous as to be unworkable at employer level.

The European Pillar of Social Rights (EPSR)<sup>283</sup> should be used in 2017 as a means to establish an agreement between Parliament, the Commission and the European Council, involving the social partners and civil society at the highest level, and it should contain a clear roadmap for a revision of the WTD & its subsequent implementation.

The Commission should propose mechanisms for adequate involvement of all the relevant stakeholders at all relevant levels in the implementation of the EPSR, including at the forefront the rights of pwd as enshrined in the UNCRPD. It should be clear that this is not just a matter of labour law but also of human rights.<sup>284</sup>

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<sup>283</sup>European Parliament (2016): European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI)). <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0010+0+DOC+XML+V0//EN>

<sup>284</sup>European Parliament (2016): European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI)). <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0010+0+DOC+XML+V0//EN>

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## Annexes

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1. Summary table of 4 EU welfare model represented each by specific country in key WTD elements in SCSS sector for PwD
2. Questionnaire
3. Interview schedules
4. PR: Working Time or Human Rights?

## ANNEX 1

Key WTD Elements/ Countries	Central European Welfare Model (SLOVAKIA)	Mediterranean Welfare Model (SPAIN)	Anglo-Saxon Welfare Model (UK)	Continental Welfare Model (AUSTRIA)
<b>Working Time in SCSS for PwD</b>	37.5 hours (in public sector, based on collective agreement) till 40 hours (80%), only few (20%) of them work maximum of 48 hours. 65% work usually in time from 8am till 4pm and 35% work in unusual time (e.g. weekend, afternoons after 4pm, nights, holidays or 3-shift cycles)	40 hours a week based on the general Law of the Statute of Workers Right, and 38,5 hours of effective working time based on Centers and Services agreement	37.5 hours is the most common pattern. However, nearly all work is shift work and covers 'unusual time'. Workers often cover more than 40 hours when 'sleep-ins' are included in the calculations as full working time.	Standard: 38 hours , 8 hours per day, extension to 10, 12 or 24 hours possible (collective agreement), types: "normal" office hours of 9-17 (administrative workforce), longer hours, night and shift work (in housing facilities) and flexible models in mobile services. Heads of staff: contracts that contain all-in-clauses.
<b>Working Time in SCSS for PwD - on call time</b>	unusual for 24/7 services (there are shifts and staff are regularly paid as full working time), approx. only 15% of SCSS for PwD staff are working on stand-by time (mostly no paid, classified as voluntary work or in very few cases paid as overtime), approx.20% of service providers - most of staff work also as volunteers (during unpaid care hours - mostly 5-10 hours weekly - over the announced 37,5 or 40 limited working time - mostly directors (more of NGO, but also of public providers) and the reason is that there are no money or granting for managing of service provision	the hours of availability must be carried out within the premises of the employer are hours of work that are remunerated as worked, but nothing is contained in the legislation on the hours of availability that are held outside the premises of the company, waiting to be called. In the <i>Dependency Care Agreement</i> it is determined additional availability, which will be paid to workers who volunteer to be available during the day to meet any requirements that may arise due to a specific emergency at work. The agreement specifies that the availability time will not be computed for the computations of the ordinary day and that the period of extra time actually rendered will count from the call to thirty minutes after the end of the service that had been provided.	Stand-by is not much used in the sector.. Workers do not give time voluntarily (no pay). 'Sleep-ins', sometimes called 'on-call' are used extensively. There is uncertainty about the law in this area and current legal challenges about whether this time should be considered full working time (and paid as such) when the worker is asleep. Only between 1 and 7% of sleep- ins are disturbed. All disturbed time is treated as full working time and paid in full. Time asleep is paid at a flat rate and not counted as working time. This is particularly true in relevant for the 'live-in' model of support.	On call time at the workplace is usual in housing facilities, where special working time provisions allow 24 hour shifts ("easier work"), in the case of on-call time off the workplace, travelling time to the workplace is usually fully paid when the worker is "activated"

<p><b>Working Time in SCSS for PwD - reference period</b></p>	<p>4 months (using 70% of all SCSS for PwD service providers, some of them for 1 month), which can in certain sectors be extended by law up to 6 months (11,5%), and by collective agreement it can be set up to 12 months (11,5%)</p>	<p>In general law, 40 weekly hours of average in annual computation. The <i>Centers and Services Agreement</i> establishes that the workers will have a maximum annual working day of 1729 hours of effective working time, differently the <i>Dependency Care Agreement</i> determines 1792 hours for their services except for the home help service, whose maximum hours in a year will be 1755 hours</p>	<p>The most usual period is 17 weeks. Longer periods (e.g. 12 months) are generally not useful in the sector due to high turnover of staff and lack of long term planning.</p>	<p>Reference periods according to collective agreement: 3 months (48 hours/week max.), 6 months (45 hours max.), 12 months (42 hours max.), which reference period applies is determined by the type of service</p>
<p><b>Night work in SCSS for PwD</b></p>	<p>in 24/7 services - mostly carers, instructors of social rehabilitation, health assistants and nurses with higher medical education degree. Mostly 1/3 (max 70% in few cases) of all staff of service providers, who provide 24/7 services, work during a night 6-times per a month (max 10-times)</p>	<p>The Statute considers night work between 22:00 and 06:00 in the morning. In 24/7 services - mostly do it carers, in residencies also nurses, they may not exceed eight hours, each period of 24 hours, on average within a reference period of fifteen days and that night workers may not work overtime. Agreements establishes that a bonus will be paid on the hours worked by night.</p>	<p>‘Waking nights’, i.e. full active night shifts, are most common in residential services. As most care/support for PwD is in the community, waking nights are not the most common pattern overall. Most night work is ‘sleep-in’ and involves long periods of inactive time (worker is usually asleep)...see ‘on-call’ section above. Shifts at night are usually 8 hours.</p>	<p>Night work as “easier duty” in housing facilities, in some cases such 24 hours shifts can be worked max. 3 times/week</p>
<p><b>Shift work in SCSS for PwD</b></p>	<p>more service providers (approx. 60%) with no shift work. The rest varied in the ratio between the number of shift workers and workers with usual working time with no shift from 25% to 75% (more of them have 75% of staff working in 2 or 3-shifts circles). Most of staff working on shift work are carers.</p>	<p>Shift workers may accumulate for periods of up to four weeks half day of the weekly rest, so this rest can be reduced to 24 hours. It also, gives the option to separate these 12 hours from the one corresponding to the weekly rest, and then the workers can enjoy the leisure on another day of the week, and it also allows to reduce the rest period between days to 7 hours when the workers change their shift, reducing drastically the 12 hours’ rest between daily working days for such specific situation.</p>	<p>Nearly 100% of work in the sector is shift work. The most common pattern is 3 shifts, covering a 24 hour period. A pattern popular with workers is to do the evening shift, a sleep in, and the morning shift. This limits travel time and disruption. ‘Live-in’ workers may work two weeks on, one week off.</p>	<p>No data could be gathered on how many percent of services rely on shift work, however, shift work is a model that is used in Austria</p>



<p><b>Rest period in SCSS for PwD</b></p>	<p>If the <b>continuous daily rest</b> is interrupted by overtime or on-call time, stand-by time, this overtime work formally doesn't interrupt the continuous daily rest, because overtime is out of shift framework, but in reality there is a shortage of daily rest. The same is with <b>continuous weekly rest</b>. <b>Delays in providing compensatory rest for missed minimum rests</b> - employers provide within one month, generally, for daily rest; up to 8 months in some circumstances, for weekly rest. The organisation of breaks during the work in SCSS sector for PwD is usually <b>after each 3 or 4 hours</b> (in some few cases after 5 hours) and <b>lasting from 15 to 30 minutes</b> (30 minutes for lunch).</p>	<p>Between the end of one day and the beginning of the next one, at least 12 hours will be measured. A minimum weekly rest of day and a half, and the Centers and Services Agreement establishes that it will be accumulated for periods of up to fourteen days, stating that the accumulated rest days must be enjoyed in an uninterrupted manner and workers with disability will be entitled to two uninterrupted days of rest. The breaks when the duration of the daily continuous work exceeds 6 hours, for the agreement of attention to dependents, will be at least 15 minutes of duration, and this quarter of hour will have the consideration of effective time of work to all the effects</p>	<p>It is acknowledged that rest needs to be taken, but to fit with the needs of PWD there should be more flexible patterns. It can be difficult for lone workers to take breaks as sometimes PWD cannot be left alone. Sleep in and standby times are usually counted as rest unless disturbed ((i.e. active). There is confusion and uncertainty about this along with current legal challenges. Compensatory rest seems to be little regarded.</p>	<p>Daily minimum rest is 11 hours in the sector, but can be reduced to 9 hours by collective agreement at the business level ("Betriebsvereinbarung"), the minimum of weekly rest is 2 full consecutive days, after night work, 48 hours of minimum rest have to be granted, in 24-hours-care, two full continuous days have to be granted</p>
<p><b>Annual leave in SCSS for PwD</b></p>	<p>depends on the age of employee in SCSS for PwD - till 33 years it is 25 days, over 33 years 30 days. Additional 5 days leave is for staff in direct performance with clients/users of SCSS in accordance with national higher collective agreement</p>	<p><i>Centers and Services Agreement</i> establishes the right to enjoy twenty-five paid working days and the <i>Dependency Care Agreement</i> fixes it in thirty calendar days. In two cases can be enjoyed split over 2 periods.</p>	<p>28 days per annum as a minimum for all. No change with age or gender. Some organisations give more than this, sometimes based on length of service or seniority.</p>	<p>The collective agreement for the sector of SCSS for PwD (for details: see below) raises annual leave gradually after 10, 15 and 20 years of work, so workers in SCSS for PwD reach the maximum of 6 weeks of annual leave faster than the majority of workers in Austria.</p>
<p><b>Derogations and exceptions in SCSS for PwD</b></p>	<p>to reduce the working hours of public sector employees in SCSS for PwD (only for public staff from 40 to 37,5 hours)</p>	<p>No applications specifically for SCSS for PwD</p>	<p>Most managers are seen as 'autonomous workers' and therefore exceptions. The 48 hour opt-out is used extensively, often written into contracts and therefore not compliant. Because of the fragmented workforce, social dialogue structures are weak so collective agreements are unusual beyond individual organisations.</p>	<p>Multiple derogations regarding working time, annual leave, reference periods et al (see country report below for details)</p>

<b>Safety and health protection in SCSS for PwD</b>	the obligation to secure regular training and education courses by certified Safe and Health protection technician. Moreover, there is also obligation for service provider as employer to provide work medical services (so employer has to pay regular orders to doctor for workforce) and most of service providers in SCSS for PwD (mainly NGO as non-public provider) have a problem with this.	It is mandatory to train and report on occupational risk prevention, and entities are awareness on it. Depends on the agreement the ancillary services and the annual salary.	H&S training required in particular areas. Various legislation covers workplace safety. This has been in place for some years and is very effective,	Additionally to regular precautions, special medical examinations have to be available to workforce in night work
<b>Full-time permanent employment contract</b>	most common (70-100% of all staff in SCSS for PwD - management, university educated professional staff as social workers, psychologists and special pedagogs, social workers` assistants, instructors of social rehabilitation, ergotherapists, nurses, administrators, some carers and also cooks	66,63% of the staff has permanent contracts, 65 % full time and 35% part time. Full time and permanent contracts are most common in management staff and part time in direct services to PwD.	Most common, along with part-time permanent	Due to the dominance of part-time employment, only partly used
<b>Zero hour contract</b>	(in Slovakia named Agreement on work activity in a regular basis lasting only for actual callendar year) - approx. 15-30 % of all staff, most of them are carers, few are also animators for PwD, IT staff or accountant, etc	Can not be used in Spain	Little used in survey of disability services, unless requested by worker. However, in the social care sector as a whole it is more common, especially in home care for older people.	Not in use

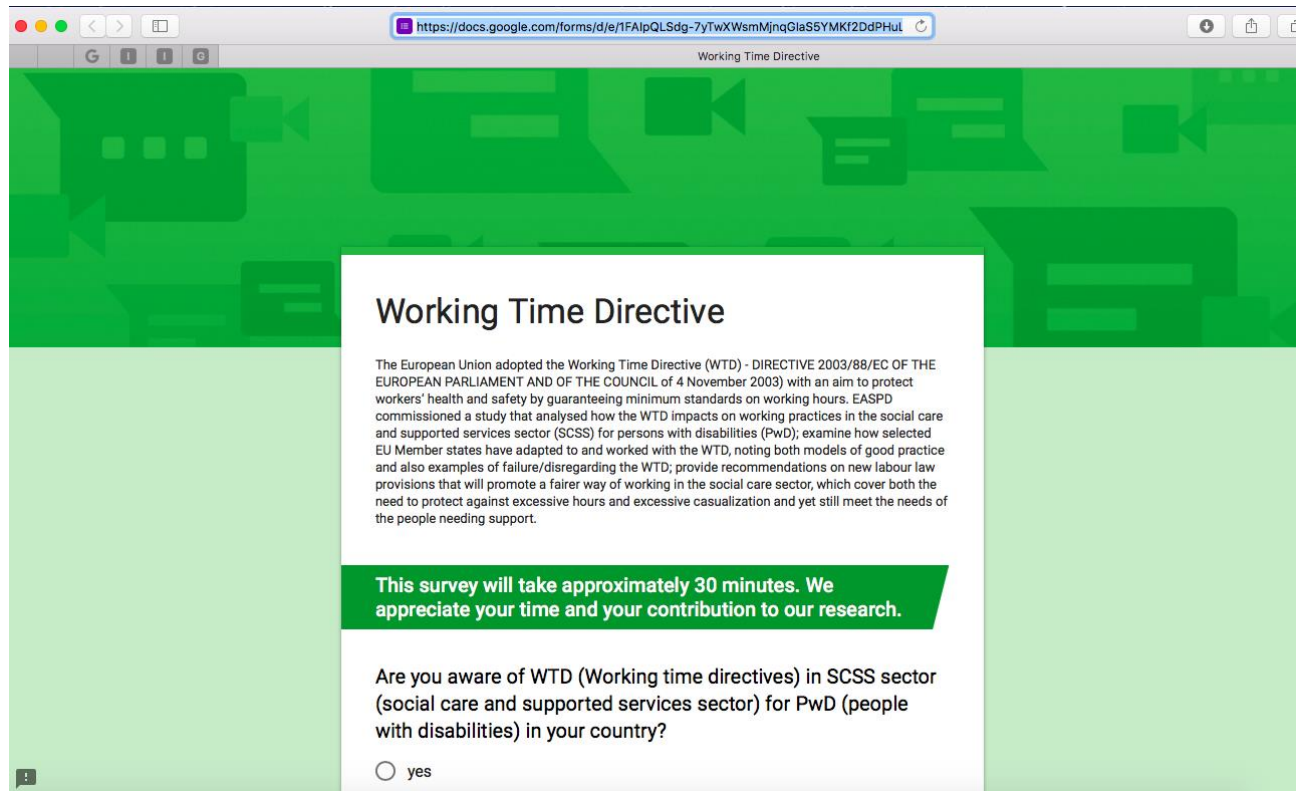
<p><b>Part-time permanent employment contract</b></p>	<p>approx. 10% of all staff in SCSS for PwD, approx. 80% of this kind of contract has carers, there is also social pedagogs, special pedagogs, some of them are also cooks and maintenance staff (handyman, driver, informantor at the reception etc.) - the incidence of part-time working is significantly low, involving only 1.3% of men in employment and 4.7% of women, with only a modest increase over the years. In practice, part-time jobs are generally taken up by workers only when full-time work is not available, for health reasons, or to suit the needs of employers</p>	<p>66,63% of the staff has permanent contracts, 65 % full time and 35% part time. Part time permanent contracts are most common in in direct services to PwD, in particular carers.</p>	<p>Common. Usually at the request of the worker. Fits well with home/life responsibilities especially as over 80% of the workforce is female.</p>	<p>Dominant form of work in the sector</p>
<p><b>Fixed-Term Employment Contract</b></p>	<p>approx. 5% of all staff in SCSS for PwD, most of them are carers, project managers, reasons are mostly limited time for conducting EU social projects from ESF or work on time, while the core employee employed on full-time premanent employment contract is at maternity leave or is unable to work for a longer time because of illness etc.</p>	<p>38,37% has temporary contracts, some of them for temporary services and other fixed-terms, depending on the needs of the service or the budget to provide the service, also to substitute vacations (annual leave) and medical leave.</p>	<p>Not much used. Occasionally for project based specialists.</p>	<p>Used for foreign workers who return to their home countries after a certain period of time</p>
<p><b>Direct employment by one disabled person dependent on state support</b></p>	<p>only one possibility to be contracted by PwD as his/her personal assistant and wage is paid by this PwD, while he/she is a receiver of state support for compensation of disability - very often type of work contract by members of family or young students or carers (as extra job)</p>	<p>People with support needs can hire self-employed workers and non-professional family caregivers. The dependants receive money of the state to pay them directly to his carers, who has to be autonomous workers or family who works less than 20 hours a week in other work.</p>	<p>Is increasing and promoted by government. Accurate figures difficult to find so far.</p>	<p>In use</p>

<p><b>Director's Service Agreement, Consultancy Agreement or Autonomous worker</b></p>	<p>no usage</p>	<p>Hire them is not possible for the provision of direct services by the entities.</p>	<p>Service level agreements between the public and independent sectors are very common. They do not include working time arrangements or contracts for workers. They determine the type, amount and cost of services provided. As such they do affect what is and is not possible in terms of pay levels and hours paid. The Directors Service Agreement as described below is not used. Self employed consultants are sometimes used for short term pieces of work.</p>	<p>Used for heads of staff</p>
<p><b>staff leased by Agency of employment services</b></p>	<p>no usage</p>	<p>Temporary employment agencies are legal, but usually not used in SCSS</p>	<p>Agencies are widely used as there are staff shortages. They are expensive and often present difficulties with quality and continuity of care. Where a preferred provider list exists, established through tender, the quality tends to be better. An exception to this is the agencies providing 24 hour live in care. The workers provided by these agencies are long term and high quality. The service removes the burden of being an employer from the PWD.</p>	<p>Seldomly used in housing projects</p>
<p><b>Sole Traders in SCSS for PwD</b></p>	<p>no usage</p>	<p>Hire them is not possible for the provision of direct services by the entities.</p>	<p>Self employed sole traders are little used in the sector. Occasionally they may be used as experts to work on specific projects, to conduct research or to fill a temporarily vacant managerial position. They would not be employed as carers/supporters.</p>	<p>Seldomly used, if and when only in family and leisure time assistance</p>

## ANNEX 2

### QUESTIONNAIRE TEMPLATE (WTD in SCSS sector for PwD)

- distributed on-line through this link [https://docs.google.com/forms/d/e/1FAIpQLSdg-7yTwXWsmMjngGlaS5YMKf2DdPHuL560x\\_DRI-6-rKWtw/viewform?c=0&w=1](https://docs.google.com/forms/d/e/1FAIpQLSdg-7yTwXWsmMjngGlaS5YMKf2DdPHuL560x_DRI-6-rKWtw/viewform?c=0&w=1)



The screenshot shows a Google Forms interface for a questionnaire titled "Working Time Directive". The form is set against a green background with a pattern of speech bubbles. The main heading is "Working Time Directive". Below the heading, there is a paragraph of text explaining the purpose of the survey: "The European Union adopted the Working Time Directive (WTD) - DIRECTIVE 2003/88/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 November 2003 with an aim to protect workers' health and safety by guaranteeing minimum standards on working hours. EASPD commissioned a study that analysed how the WTD impacts on working practices in the social care and supported services sector (SCSS) for persons with disabilities (PwD); examine how selected EU Member states have adapted to and worked with the WTD, noting both models of good practice and also examples of failure/disregarding the WTD; provide recommendations on new labour law provisions that will promote a fairer way of working in the social care sector, which cover both the need to protect against excessive hours and excessive casualization and yet still meet the needs of the people needing support."

Below the text, there is a green box with white text that reads: "This survey will take approximately 30 minutes. We appreciate your time and your contribution to our research."

The first question is: "Are you aware of WTD (Working time directives) in SCSS sector (social care and supported services sector) for PwD (people with disabilities) in your country?"

There is a radio button next to the word "yes".

The European Union adopted the Working Time Directive (WTD)<sup>285</sup> with an aim to protect workers' health and safety by guaranteeing minimum standards on working hours. The WTD aims to fight excessive working hours, impose protection for night work, etc. It does not address how small amounts of working time might be offered to workers and the restrictions which might unfairly be placed on that worker. The current nature of work in social care and support, however, requires more flexibility. This potential conflict between legal labour requirements and the needs of the sector may have negative implications on workforce, services and working conditions. This research aims to provide scientific evidence on the implications of the Directive on working conditions in the social care sector. EASPD made a research in order to investigate the implications of the EU Working Time Directive on working conditions in the social care sector for persons with disabilities, including 5 European welfare models: Continental, Anglo-Saskian, Nordic, Central European and Mediterranean.

<sup>285</sup> DIRECTIVE 2003/88/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 November 2003

EASPD commissioned a study that analysed how the WTD impacts on working practices in the social care sector for PwD; examine how selected EU Member states have adapted to and worked with the WTD, noting both models of good practice and also examples of failure/disregarding the WTD; provide recommendations on new labour law provisions that will promote a fairer way of working in the social care sector, which cover both the need to protect against excessive hours and excessive casualization and yet still meet the needs of the people needing support.

We would like to ask you about approximately 30 minutes to filling this questionnaire and we are very thankful for your help.

1. Please, mark one or more of your **statuses**:

- policy makers,
- university experts,
- municipality public bodies
- trade union representatives in SCSS sector or PwD rights
- national platform/ association /union of service provider/umbrella organisation representing social care employers
- national service provider
- local service provider
- individual employer
- other: Please define:

*Only if they click on National platform or National SP or Local SP :*

1A Which **kind of services** do you provide (or represent)?

- a) Please, mark one choice from these alternatives: public or non-public providers,
- b) Please, mark one choice from these alternatives: institutional or de-institutional providers
- c) Please, mark one choice from these alternatives: terrain and ambulant services providers etc.
- d) Please if you provide services, in which there is another very important criterium similar to those mentioned above, write here some description:
- e) Please, what is the distribution of main financial sources for your service provision in %? (e.g. 40% from state financial dotation scheme, 10% from European Social fund, 10% from Municipality, 10%

from private business sources, 10 % paid services by clients, 10 % charity from any religious foundations etc.)

2. Please, mark one or more of your **fields of interest or care** for PwD:

- long-term care
- Early Childhood Education and Care,
- Social-protection of children and youth
- Employment Services,
- Social Housing
- other: Please define:

3. What is the usual typical **working time** during a week (including overtime) in SCSS sector for PwD in your opinion? If you are service provider (or national platform of service providers) please, what is the usual working time during a week (including overtime) in your organisation?

- a) Do most of employees of SCSS for PwD/in your organisation work in usual hours (e.g. 8-16 from Monday till Friday) or often in unusual time (e.g. Saturdays, Sundays, in the afternoon etc.)? If unusual time, please, define:
- b) Do most of employees of SCSS for PwD/in your organisation work 40 hours per a week or more? If more, please define:
- c) Do employees of SCSS for PwD/in your organisation working on-call time (corresponds to any period where the worker is required to remain at the workplace (or another place designated by the employer and has to be ready to provide services; an example could be a doctor staying overnight at the hospital, where he can rest if there is no need to attend to patients; fully regarded as working time for the purpose of the Directive, regardless of whether active services are provided during that time; the period of on-call time within which the worker actively provides services is usually referred to as 'active on-call time', while the period within which services are not provided can be referred to as 'inactive on-call time')?
  - a) How are they paid for this on-call time in SCSS for PwD/in your organisation?
  - b) Please give your opinion on the following options as regards possible changes in the treatment of on-call time under the Working Time Directive: Very undesirable, Undesirable, No preference, Desirable, Very desirable,
    - No change to the current rules

- codification to clarify that all on-call time has to be counted as working time
  - Set the principle that defining "on-call time" should be agreed in SCSS for PwD by national social partners, for example determining that only part of inactive on-call time will be counted as working
  - fully paid on-call time has led to increased costs for running 24h services, whilst not always improving working conditions
  - Decisions should be based on collective agreements made by sector's Social Partners. If social dialogue structures are not sufficiently developed, Public Authorities should support their development. Public Authorities should guarantee adequate financing to service providers to ensure quality services are provided & working conditions improved.
- d) Do employees of SCSS for PwD/in your organisation working stand-by time (corresponds to any period where the worker is not required to remain at the workplace, but has to be contactable and ready to provide services; an example could be when a technician of a nuclear facility is at home, but has to be ready to come to the plant to provide services in an emergency; under the current Working Time Directive, as interpreted by the Court of Justice, stand-by time does not have to be considered as working time for the purpose of the Directive; only active stand-by time, i.e. time in which the worker responds to a call, has to be fully counted as working time.
- a) How are they paid for this stand-by time in SCSS for PwD/in your organisation?
  - b) Please give your opinion on the following options as regards possible changes in the treatment of stand-by time under the Working Time Directive - Very undesirable, Undesirable, No preference, Desirable, Very desirable,
    - No change to the current rules
    - Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that stand-by time does not have to be considered working time)
    - Introducing the obligation to partially count stand-by time as working time for the purpose of the Directive
    - Introducing a limit to the maximum number of hours that a worker may be required to be on stand-by in a given period (for instance 24 hours a week), together with a derogation possibility to set a different limit via collective agreements)



- The best format would be to maximize autonomy of social partners to negotiate on this, whilst implementing limits. If social dialogue structures are not sufficiently developed, Public Authorities should support their development. Public Authorities should guarantee adequate financing to service providers to ensure quality services are provided.
- e) Under the current Working Time Directive, Member States have the possibility not to apply the limit to average weekly working time of 48 hours, when the worker agrees to it individually and freely with the employer, and does not suffer prejudice for revoking such agreement (the 'opt-out').
- a) What is your view on this opt-out clause:\* [only one answer possible]
- It should be maintained unchanged
  - It should be maintained, but stricter conditions for the protection of the worker should be added in the Directive
  - It should be maintained, but it should be provided in the Directive that the opt-out cannot be combined with other derogations under the current Directive
  - It should be abolished, but in compensation there should be additional derogations made available for employers (e.g. allowing not to count on-call time fully as working time)
  - It should be abolished Other
  - Do not know
- b) Is there in SCSS for PwD/in your organisation any opt-out exceptions (individual opt-out from the 48-hour rule)? Why and when it is used?
- c) Emergency services - The current Working Time Directive as interpreted by the Court of Justice applies to workers in emergency services, e.g. civil protection services like fire-fighting services, in the normal operation of these services. The current Directive contains several derogations that can be applied to the working time and rest periods of these workers in order to ensure the effective provision of these services. In the event of a catastrophe/disaster, the Working Time Directive does not apply at all. Please state your view on the application of the Directive to emergency services: [only one answer possible]
- The current rules adequately balance the need to protect the health and safety of the workers and the people they work with/for with the need to

- guarantee effective provision of emergency services, and should remain unchanged
- The current rules should be maintained in substance, but clarified in light of the case law of the Court of Justice, to improve legal certainty
  - There should be additional derogations applicable to all or some categories of these workers, addressing their specific situation
  - The Working Time Directive should not be applied to workers in emergency services Other
  - Do not know
- f) Health care sector - The current Working Time Directive provides a derogation for health care services when they require continuity of service, meaning particularly that the rest periods of health care staff can be postponed to some extent. Should there be a different provision on the working time organisation of health care staff with a view to safeguarding patient safety? Please state your view: [Only one answer possible]
- The current rules provide enough safety for patients
  - The current rules should be maintained in substance, but clarified in light of the case law of the Court of Justice on on-call time and on timing of compensatory rest to improve legal certainty
  - There should be additional derogations applicable to workers in the health care sector in order to improve continuity of service
  - There should be a more narrow derogation applicable to workers in the health care sector in order to improve patient safety
  - Other
  - Do not know
  - The Social services and long-term care sectors for persons with disabilities should also receive the same additional derogations as the healthcare sector to improve continuity of service. The same problematic for the health services sector goes for the social services sector as the need for continuity often remains the same, in particular for the health and safety of the recipient of the service.
- f) The Directive already allows for some flexibility — when calculating the 48-hour limit to working time, the weekly hours worked are averaged over a ‘reference period’. The limit to weekly working

time of 48 hours provided by the Working Time Directive is a limit to average working time. This means that in certain weeks the worker can be required to work more than 48 hours as long as this is balanced out by lower hours in other weeks. This average has to be calculated over a certain period, i.e. 'a reference period'. Currently, the standard limit to the reference period is 4 months, which can in certain sectors be extended by law up to 6 months, and by collective agreement it can be set up to 12 months.

- a) What is the usual reference period for calculating this 48-hour limit ( 1,4 or 6 or 12 months)?
- b) What would be in your view the most appropriate approach to the limit set to the reference period to calculate average weekly working time: -[only one answer possible]
  - No change in the current provisions
  - Allow that reference periods can be set up to 6 months by law in any sector, and maintain that they can only be set up to 12 months by collective agreements
  - Maintain that reference periods can be set up to 4 months by law in any sector, but allow that reference periods can be set up to 12 months by law in certain specific sectors (e.g. to take into account the size of the undertaking or to take into account fluctuations of demand)
  - Allow both previous options (i.e. option 2 and option 3), meaning that reference periods can be set up to 6 months by law for any sector and up to 12 months by law in certain specific sectors
  - Allow that reference periods can be set up to 12 months by law in any sector Other
  - Do not know
- g) Do most of employees of SCSS for PwD/in your organisation work also during unpaid care hours? How many hours per a week? Please specify, which kind of employees work like this, what is their usual content of work and why are they doing it?
- h) Please, what is the distribution of usual working time during a week in SCSS sector for PwD by job position in %? (e.g.40% of all staff are nurses and working usually in 12-hour shifts 4-times a week, 20% of all staff are social workers and working usually 8-hours daily from 8am till 4pm, 10% of all staff are doctors in training and working usually in 8-hours daily from 8am till 4pm and on-call time 3-times per a week for 12 hours etc.)

- i) In your opinion, what is the impact of the current Working Time Directive giving workers of SCSS sector for PwD the right to a limit to average weekly working time (currently set at 48 hours) and to minimum daily and weekly rest periods? - grid Fully disagree, Tend to disagree, No opinion, Tend to agree, Fully agree
- a) It protects the health and safety of workers and people they work with
  - b) It ensures a level playing field in working conditions across the Single Market, avoiding that countries lower their labour standards to gain a competitive advantage
  - c) It boosts productivity notably by fostering a healthy European workforce
  - d) It allows flexible organization of working time
  - e) It allows workers to reconcile work and private life
  - f) It impacts on job creation
  - g) it raises costs for service providers running 24h care/support, without additional financial support from public authorities; this in turn has negative effects on the recruitment & retention of staff
  - h) Self-employment is used to circumvent the application of the limits imposed by the Directive
  - i) It impacts the costs of running a business
  - j) having to pay passive on-call time workers a full salary has increased the cost of running 24h services (both residential or personal and individualised) for persons with disabilities; for smaller service providers, this has led to cases of resinstitutionalisation to save costs
  - k) It has no major impact
  - l) More support to social partners and adequate financing is essential if WTD is to improve quality of services & unlock job creation of social sector

4. How it is with **night work** of employees in SCSS sector for PwD/of your organisation?

- a) Please specify, which kind of employees (social workers, psychologist, therapists, nurses, doctors in training, managers, personal assistants etc.) work like this and how much in % of all staff during a week? And per a month?
- b) Please, specify for each kind of employees you mentioned above, are working like this.

5. How it is with **shift work** of employees in SCSS sector for PwD/of your organisation? What is a ratio between the number of shift workers of SCSS sector for PwD in comparison to number of workers in one-shift work?

- a) How many workers of SCSS sector for PwD/ in your organisation work on one-shift operation in % of all employees?
- b) How many workers of SCSS sector for PwD/ in your organisation usually work on shift-plus operation in % of all employees?
- c) Please specify, which kind of employees (social workers, psychologist, therapists, nurses, doctors in training, managers, personal assistants etc.) work like this and how much in % of all employees?
- d) In shift-plus operation, how many hours take the shift and in how long lasting intervals do the shifts changing?

6. What is the organisation of **breaks** during the work in SCSS sector for PwD/ in your organisation? (after how many hours of work employee can have a break and how long lasting?)

7. How it is with **annual leave** of employees in SCSS sector for PwD/of your organisation?

- a) How long lasting annual leave is eligible for employees of SCSS sector for PwD/ of your organisation?
- b) Are there any differences regarding age and/or years worked and/or any other criteria in SCSS sector for PwD? Please specify:

8. What **kind of contracts (pattern of work)** do usually employees of SCSS sector for PwD have in general in your opinion? If you are service provider (or national platform of service providers) please, what is the usual type of contract in your organisation? Please, what is the distribution of contracts by type of employees in SCSS sector for PwD in general or if you are service providers, in your organisation, in %?

- a) Full-Time Permanent Employment Contract (can be based upon the employee being hourly paid or salaried and should set out the employees working hours, holiday entitlements, position within the organisation, and various other aspects of the employee's working arrangements) - ? % of overall employees and what are the names of their job positions?
- b) part-time employment contract (employers need to have a particular focus on the employee's working hours and pay, the law protects part-time workers from being treated unfavourably on

- the basis that they are employed part-time) - ? % of overall employees and what are the names of their job positions and how long contract is usually lasting?
- c) Director's Service Agreement (generally the most detailed and heavy duty type of employment contract, which contain specific details about how the director should behave within the business and the scope and extent of their duties) - ? % of overall employees and what are the names of their job positions and how long contract is usually lasting?
  - d) Fixed-Term Employment Contract (is normally for temporary employees, the duration of the contract can be anything from a couple of weeks to a few years, temporary staff who are expected to be with your business for a few weeks may only require a very basic set of terms and conditions whereas employees undertaking specific projects over the course of a year or two can sometimes need very carefully drafted and prescriptive employment contracts.) - ? % of overall employees and what are the names of their job positions and how long contract is usually lasting?
  - e) Zero Hours Contract (normal employment contract would create a mutual obligation between the employer and the employee; the employer agrees to provide a certain amount of work and the employee agrees to go and carry that work out; the zero hours contract waters this obligation down by allowing the employer to require the employee to come to work without guaranteeing to provide work to the employee; this means that the employer can call upon the services of the employee as and when required) - ? % of overall employees and what are the names of their job positions and how long contract is usually lasting?
  - f) Casual Work Contract (is generally applicable to a person who is classed as being a 'worker' rather than an 'employee'; workers have fewer employment rights than employees; is not normally a permanent employment contract and would be used for seasonal workers who work only a few weeks of the year; unlike the zero hours model, a casual worker would not normally be obliged to accept work offered to them and may not qualify to be paid statutory payments such as statutory sick pay) - ? % of overall employees and what are the names of their job positions and how long contract is usually lasting?
  - g) Consultancy Agreement (is normally used when an organisation wants to engage the services of an individual who will not be employed; where an individual will be self-employed, they will normally need to be provided with a consultancy agreement; a consultancy agreement is often a key tool in protecting the parties from complicated tax and employment rights issues) - ? % of overall employees and what are the names of their job positions and how long contract is usually lasting?

h) Changes in working patterns - The Working Time Directive was conceived more than 20 years ago, when information and communication technologies were not as developed and many types of present jobs did not exist yet. In light of these changes in working patterns and organisation, should the Working Time Directive introduce specific rules regulating particular situations and types of contracts such as telework, zero-hour contracts, flexitime, performance-based contracts without working time conditions, etc.? Please state your view:\* [multiple answers possible]:

- The current rules are satisfactory and do not need to be changed
- The rules should be changed in light of increasing telework
- The rules should be changed in light of zero-hour contracts
- The rules should be changed in light of increased use of flexitime
- The rules should be changed in light of increased use of performance-based contracts without working time conditions
- Other
- Do not know

9. It is usual for SCSS sector for PwD/ your organisation to **contracting**:

a) the single worker - how many in % for whole SCSS sector for PwD in your opinion/ in % of overall your employees? Please, specify your opinion on strenghts, weaknesses and satisfaction with them.

- a) A single worker may be employed under several concurrent contracts. Should the limits provided in the Working Time Directive apply to all contracts taken together or to each contract separately?
  - b) If the Directive applies per worker, this means for example that all the hours worked under the different contracts should be added together and cannot exceed 48 hours on average (unless the worker signed an opt-out).
  - c) If the Directive applies per contract, this means for example that the worker can work 48 hours on average under each separate contract without an upper limit.
- Please, makr only one best answer in your opinion:

- It is up to Member States to decide whether working time rules shall apply per worker or per contract
- The Directive should stipulate that working time rules shall apply per worker in situations where a worker has more than 1 contract with the same employer

- The Directive should stipulate that working time rules shall apply per worker in situations where a worker has more than 1 contract in any event
  - The Directive should make it clear that it only applies per contract Other
  - Do not know
- b) "Autonomous workers"- such as for example managing executives, can fully determine their own working time (i.e. decide when and how many hours they work). Member States have the option to apply the main provisions of the Working Time Directive to these workers.
- c) Please choose the most appropriate statement according to your views:\* [only one answer possible]
- The current Working Time Directive provides an adequate exemption as regards autonomous workers, and should not be changed
  - The current exemption should be maintained in substance, but more clearly formulated, in order to enhance legal clarity and to prevent abuse
  - The definition of autonomous workers is too narrow and should be expanded to other categories of workers who should be exempted too
  - The definition of autonomous workers is too wide and should be limited Other
  - Do not know
- c) agencies - how many in % for whole SCSS sector for PwD in your opinion/ in % of overall your employees? Please, specify your opinion on strenghts, weaknesses and satisfaction with them.
- d) sole traders - how many in % for whole SCSS sector for PwD in your opinion/ in % of overall your employees? Please, specify your opinion on strenghts, weaknesses and satisfaction with them.
- e) direct employment by one disabled person dependent on state support - how many in % for whole SCSS sector for PwD in your opinion/ in % of overall your employees? Please, specify your opinion on strenghts, weaknesses and satisfaction with them.
- f) any others? Please specify and also describe how many in % for whole SCSS sector for PwD in your opinion/ in % of overall your employees? Please, specify your opinion on strenghts, weaknesses and satisfaction with them.
10. How it is with **preventions against the monotone work or work under the stress and presure** of employees in SCSS sector for PwD/of your organisation?
- a) What preventions against the monotone work or work under the stress and presure, against the burn-out syndrom are secured by employer in SCSS sector for PwD?



- b) Are there any differences regarding age and/or years worked and/or any other criteria in SCSS sector for PwD? Please specify:

11. How it is with **benefits** for employees of SCSS sector for PwD/of your organisation?

- a) What benefits are secured by employer in SCSS sector for PwD?
- b) Are there any differences regarding age and/or years worked and/or any other criteria in SCSS sector for PwD? Please specify:

12. How it is with **extentions, derogations or collective agreements** regarding to working time for employees of SCSS sector for PwD/of your organisation?

- a) Compensatory rest - Under the current Working Time Directive, as interpreted by the Court of Justice, a worker who by derogation from the general rules has not received his/her minimum daily rest of 11 consecutive hours in a 24-hour period, will have to receive an equivalent period of compensatory rest (i.e. 11 hours) directly after finishing the extended working time period. This sets a maximum of 24 hours to a single consecutive shift. How would you assess the possible introduction in the Working Time Directive of provisions regarding the period within which such a compensatory rest has to be taken: Very undesirable, Undesirable, No preference, Desirable, Very desirable,
- No change to the current rules
  - codification to clarify that compensatory rest has to be granted immediately after the extended period of work
  - Allowing employers the possibility of granting compensatory rest within 2 days
  - Allowing the possibility of granting compensatory rest within 4 days
  - The best format would be to maximize autonomy of social partners to negotiate on this, whilst implementing limits. If social dialogue structures are not sufficiently developed, Public Authorities should support their development. Public Authorities should guarantee adequate financing to service providers to ensure quality services are provided.
- b) What extentions, derogations or collective agreements regarding to working time for workers of SCSS sector for PwD are declared by what kind of extentions or derogations?

- c) What extensions, derogations or collective agreements regarding to working time for workers of SCSS sector for PwD are declared by collective agreements?
- d) Are there any differences regarding age and/or years worked and/or any other criteria in SCSS sector for PwD? Please specify:

13. How it is with **safety and health protection** secured by employers for employees of SCSS sector for PwD/of your organisation?

- a) What safety and health protection regulations and processes for employees of SCSS sector for PwD are secured by employer?
- b) Are there any differences regarding age and/or years worked and/or any other criteria in SCSS sector for PwD? Please specify:
- c) Reconciliation of work and private life - Do you think the Working Time Directive should support better reconciliation of work and private life by introducing any of the following specific rights:  
Very undesirable, Undesirable, No preference, Desirable, Very desirable
  - The right for a worker to ask for specific working time arrangements (e.g. flexitime, telework) depending on their personal situation, and to have their request duly considered
  - The right for a worker to request to take daily rest in blocks of time instead of uninterruptedly, allowing the worker for example to go home early in the afternoon and later continue work from home at night, and to have their request duly considered
  - The Working Time directive should support the better reconciliation of work and private life, as well as the capacity of workers to ask for more flexible working time arrangements and have their requests duly considered by employers.
  - The best format of this would be to have collective agreements at company/sectoral level.

14. As you know more about working time directives after filling questions above, in your opinion, how could these WTD directives (contract type, working time, call on time, opt-out, night work, shift work, safety and health protection in work) **influenced the workforce** (working condition, work-life balance, work stress, quality of service provision by staff etc.) of SCSS for PwD?

15. **Objectives for the future** of the Working Time Directive

- a) For the future of the Working Time Directive, how important do you consider the following objectives? - Not at all important, Of little importance, Quite important, Very important, Do not know
- While keeping the current Working Time Directive, to better ensure that Member States correctly and effectively put it into national law and practice
  - To improve legal clarity, so that the rights and obligations following from the Directive are clearer and more readable and accessible to all
  - To provide more flexibility in working time organisation for workers
  - To provide more flexibility in working time organisation for employer
  - To provide a higher level of protection to workers
  - To protect third parties involved (co-workers, passengers, patients, etc...)
- b) Which of the following approaches for the future of the Working Time Directive do you prefer?  
[only one answer possible]
- No new initiative (maintaining the current rules)
  - No legislative changes but initiatives towards improved legal clarity so that the rights and obligations following from the Directive are clearer and more readable and accessible to all (interpretative communication; 'codification' of the case law (i.e. clearly stating the case law of the Court of Justice in the legal text)
  - Legislative changes but focused on the sectors where there is a specific need in terms of continuity of service (e.g. public services; sectors that work on a '24/7' basis like hospital services and emergency services)
  - Legislative changes which would lead to an overall revision of the Directive, containing a mix of simplification and additional derogations while avoiding regression of the protection of workers
  - Other
  - Do not know
- c) Approach for the future of the Working Time Directive - Please give your opinion on the following options - Very undesirable, Undesirable, No preference, Desirable, Very desirable
- Changes are required to allow more flexibility for sectors where there is a specific need in terms of continuity of service, which includes the social care/support sector for persons with disabilities.

- The current impact of the directive has at times increased costs for service providers to pursue 24h care/support, yet without any according increase in funding from public authorities.
- This has at times resulted in poorer services, reinstitutionalisation and loss of jobs.
- The derogation for health care services must also include both the social support and long-term care services, due to similarities regarding the non-standard format of working hours in these sectors too.
- The European Commission should take into account the specificities of the sector; and in particular with regard to the triangular relationship between Public Authorities, Service Providers and Users. If the working time directive will continue to increase the costs of running some forms of service provision, and in particular 24h services, then it should also enforce public authorities to increase their funding of such services accordingly.
- This would lead to ensuring quality services for users, improving working conditions for the staff and unlocking the job creation potential in the sector.
- The best format would be to allow social partners in the sector/company to negotiate what is the best possible outcome for them regarding working hours and costs, and to have the full support of public authorities in implementing the agreement, including the potential raise in funding to ensure sufficient funding for quality community-based service provision for the users. In countries where social dialogue structures are not fully developed, Public Authorities should pro-actively support their development.

16. Do you have any **recommendation** on these issues?

17. Please, for other potential clarification, write down your contact details:

- Your Name,
- Position in Organisation,
- Name of your organisation,
- If you are Service provider - how many employees has your organisation,
- Phone,
- email contact

Thank you very much for your time and your will to fill in this questionnaires, which will help much for better and more effective changing the policies for improving services for persons with disabilities. In case, you wish to know more about this research and you wish to receive final report or you have any comments, please, contact [ena@tenenet.sk](mailto:ena@tenenet.sk).

## ANNEX 3

### Interview schedule for employers:

1. What type of service does your organisation offer?
  - a) Client group(s)
  - b) Service delivery e.g. dom. care, residential care, supported living, employment services
  - c) National (UK), National (one or more nations), Regional (England)
  
2. Which sector does your organisation belong to?
  - a) Statutory (public)
  - b) Private
  - c) Voluntary (not for profit)
  - d) Other (describe)
  
3. Is your funding mainly from local government (commissioned), self- funders or other sources?
  
4. Do any of your workers work unsociable/unusual hours eg shift work, night work, on call? Do you know roughly what percentage?
  
5. Are 'on-call' hours/ 'sleep-ins' (at workplace) included in these hours? If so, how are they paid? E.g. flat rate, percentage of hourly rate, active 'on-call' only paid, all hours paid at usual hourly rate.
  
6. In your view, should the working time regulations in relation to the treatment of 'on call'/'sleep-ins' be changed in any way? If so, how?
  
7. Do any of your staff work 'stand-by', i.e. away from the workplace but available if needed?
  
8. How are they paid for this standby time?
  
9. In your view should the working time regulations in relation to the treatment of stand-by time be changed in any way? If so, how? E.g. should there be a maximum stand-by time in a given period?

10. Do you use the 'opt-out clause' in relation to the working-time regulations?
11. What is your view on the opt-out clause? E.g. is it useful, does it provide sufficient flexibility, should it be amended in any way?
12. Do you know roughly what percentage of workers work over 40 hours per week?
13. Do you know of differences in the way the WTR apply to Health Care Services? If so, would the application of these to the Social Care Sector be beneficial?
14. The 48 hours per week referred to in the WTR are averaged over a period of time. When averaging hours, does your organisation use the period of 1, 4, 6 or 12 months?
15. In your view, do these periods offer sufficient flexibility? Should they be amended in any way?
16. What is the most usual working pattern per job position? E.g. typical working week for support worker, senior support worker, manager, senior manager, nurse, social worker.
17. What is the current impact of the WTR on your organisation (positive and/or challenges).
18. Does your organisation employ night workers? If so, roughly what % of all staff do night work?
19. How many night shifts does each worker do per week/per month?
20. Roughly what % of your workers are in a multi-shift job, and what % in single shift?
21. What positions work multi shift? What positions work single shift?
22. How much annual leave does your organisation offer to workers? Does it vary according to things such as age, position, or time worked for the organisation?
23. What is the most usual type of contract used by your organisation?

- a) Full or part-time permanent
  - b) Fixed term
  - c) Zero hour
  - d) Other (please describe)
24. The WTR are now 20 years old. Should any changes be made to them to reflect changing working patterns e.g. flexitime, performance based work, telework, live-in support for people with disabilities?
25. Is it common for your workers to have several contracts at the same time? If so, roughly what % of workers?
26. Should the WTR apply to all contracts taken together or to each separately? What are the benefits/drawbacks of each approach?
27. How should 'autonomous workers' e.g. senior managers be covered by the WTR
28. Do you use agencies? If so, are you satisfied with the service they offer?
29. Do you support your workers to manage stress? If so, how?
30. What additional benefits do your workers get? Does this vary with things like age, position, time with organisation?
31. How does rest and 'compensatory rest' work in your organisation? Should the WTR on rest and compensatory rest be amended in any way?
32. Any other comments?

**Interview schedule for sector experts, umbrella organisations and unions:**

1. Is your knowledge/experience of the social care sector UK wide? If not, what is the geographical scope?



2. Is there a typical working week for the staff employed in the SC sector? E.g. Is shift work common? Are unsociable/unusual hours a general feature?
3. Is it typical in the sector for workers to work a 40 hour week or more?
4. Are 'on-call' work (i.e. at place of work) and sleep-ins common features?
5. What is the most usual way for 'on-call' and 'sleep-ins' to be paid? E.g. all hours paid at full hourly rate, hours paid at % of hourly rate, only 'active' on call time paid, flat rate paid.
6. In your view, should the WTR treatment of 'on-call/sleep-ins' be amended in any way?
7. Is 'stand-by time' i.e. available for work if required but not present at workplace, used in the sector. If so, how is this paid?
8. In your view, should the WTR treatment of 'stand-by' hours be amended in any way? E.g. should there be a maximum number of stand-by hours allowed in a given period?
9. Is the individual Opt-out much used in the sector? If so, what is the general view about it? E.g. is it sufficiently flexible, should it be amended in any way?
10. Do you know of differences in the way the WTR apply to Health Care Services? If so, would the application of these to the Social Care Sector be beneficial to the sector?
11. The 48 hours per week referred to in the WTR are averaged over a period of time. When averaging hours, does the sector most often use the period of 1, 4, 6 or 12 months?
12. In your view, do these periods offer sufficient flexibility? Should they be amended in any way?
13. What is the current impact of the WTR on you're the social care sector? (positive and/or challenges).
14. What is the most usual type of contract used in the social care sector?

- e) Full or part-time permanent
  - f) Fixed term
  - g) Zero hour
  - h) Other (describe)
15. The WTR are now 20 years old. Should any changes be made to them to reflect changing working patterns e.g. flexitime, performance based work, telework, live-in support for people with disabilities?
16. Is it common for workers in the social care sector to have several contracts at the same time?
17. Should the WTR apply to all contracts taken together or to each separately? What are the benefits/drawbacks of each approach?
18. How should 'autonomous workers' e.g. senior managers be covered by the WTR?
19. Are agencies used in the social care sector? If so, is the service offered generally satisfactory?
20. How do employers in the social care sector support workers to manage stress? Does this vary with things like age, position, time with organisation?
21. Has the social care sector identified any issues with 'compensatory rest'? Should the WTR on compensatory rest be amended in any way?
22. Are the WTR clear? Could clarity be improved?
23. Could the WTR better support Social Care? How? E.g. offer more protection for workers, offer more flexibility for both workers and employers, be funded differently?.
24. Any other comments?

## Annex 4

### PR: Working Time or Human Rights?

#### Working Time or Human Rights?

##### Key Points

- it is not working well in social care
- human rights are absolutely non-negotiable - they serve the essential purpose of protecting all human dignity and their importance is especially relevant for people with disabilities and all those needing support services.
- innovation in the provision of care and support services is being stifled
- social care and support is a special case, especially in domestic scale services
- with forethought it is possible to uphold human rights for PWD and provide sufficient protection for workers

As an umbrella body for providers of social care and support services across the EU, EASPD has long been aware of the different impacts of the Working Time Directive (WTD) on social care and support services for people with disabilities. It decided to commission some research into the impact of the WTD across four of the five commonly classified models of social care and support in the EU:

1. Central European Welfare Model (SLOVAKIA)
2. Mediterranean Welfare Model (SPAIN)
3. Anglo-Saxon Welfare Model (UK)
4. Continental Welfare Model (AUSTRIA)
5. The Nordic model was not included in this research

The full detailed report with findings and recommendations, based on researchers working in countries representing the four different models is available from [www.easpd.eu](http://www.easpd.eu)

This short summary document is aimed at policy makers, elected representatives in the European Parliament and national assemblies, the European Commission, sectoral bodies, users, unions and employers associations and the commentariat.

### **The WTD – a short history**

The WTD was originally introduced as an EU Directive but the UK vetoed it, so it was re-introduced as a Health and Safety measure (which the UK could not block) in 1998. It requires all EU member state to incorporate its principles into national laws. Its current version, 2003/88/EG, has been the subject of repeated attempts to reform it at EU level, but all such attempts have failed, mostly for political reasons. Over the years various rulings at both national and European court levels have gradually expanded and ‘clarified’ what the original wording of the WTD means.

There have been many (sometimes contradictory) legal rulings on the national implementations of the WTD – often transposed into national employment regulations in some form eg such as ‘Working Time Regulations’ (WTR). These ‘local’ transpositions are quite separate from the original WTD and the EC has over time issued formal Opinions to several member states when it considers that the member state has not adequately transposed the WTD requirements into their own national WTRs. This has resulted in states needing to amend their legislation or regulations to comply with the WTD. However, as the two EC 2017 reports (see below) show, there are many areas in which states are still not WTD compliant.

### **Present situation**

In April 2017 the EC issued an Interpretative Communication on the overall use of the WTD. This had no legal force, but contained some new ‘interpretations’ of the current law and rulings by the European Court of Justice. It was intended to offer ‘greater clarity’ to assist states seeking to incorporate the WTD into their national laws, to promote enforcement and to better apply the Directive’s provisions in a fast changing world of employment. Also in 2017 a second EU report on how member states have implemented the WTD concluded that the WTD has “for the most part been transposed in both the public and private sectors.” However, after detailing numerous and extensive areas of common non-compliance, the Commission promised future action and support to states trying to improve their implementation.

Given the scale of present non-compliance and interpretative problems which these reports reveal (18 out of 28 states make some provision for the use of the opt-out), the Commission’s unspoken

assumption that the problems lie with the member states' inability to transpose the WTD, rather than with the WTD itself, is unhelpful and perhaps indicates an unwillingness to consider any meaningful change. If this assumption does exist, it needs to be examined and the consequences of the current application of the WTD tested in each case. The social care and support sector is one such case.

### **WTD & social care and support**

This report looks at how the WTD impacts on the social care and support sector. After interviews/questionnaires and desk research in 4 countries, the following broad impacts can be identified;

- Implementing the WTD has increased the cost of service provision, but governments have not always funded these increases sufficiently. Unpaid so-called 'voluntary' work has sometimes been used to fill gaps in the shift coverage.
- The ECJ decision making all on-call (active and inactive) count as working time has had a major impact on small scale 24/7 support services. Non-compliance is common since all parties (users, workers, employers) still prefer the late shift/sleep-in/early shift pattern of work, even though it is not WTD compliant. Perversely, for some workers, changing shift patterns to conform with the WTD has extended their working week and/or reduced their earnings. Not surprisingly, many have resisted this.
- Some very small scale models of care, with 24/7 care provided in a person's own home (often called 'live-in care') are simply not deliverable under the current WTD, although they do enable people to lead a full life.
- Many workers have more than one job. This is quite common in the care and support sector because of low wages. It is not clear if, or how, employers are expected to monitor/control the hours a worker spends in other employment(s), which they may not even be aware of.
- Rest periods in shift work are particularly problematic. The *reductio ad absurdum* of this is the technical requirement to wake up a sleep-in worker after 6 hours 'work' on a shift so that s/he may have a 20 minute rest!
- Some states have 'gold-plated' their transposition of the WTD into local regulations, involving other requirements in excess of the WTD whilst blaming the WTD (and the EU) for their introduction.

In some countries there are particular problems and / or serious departures from the WTD eg

- Low wages and understaffing often result in the staff in care and support services in Slovakia working in excess of the 48 hr working week provided for in the WTD

- In the UK, the re-definition of 'sleep-ins' as full working time has produced a possible requirement, going back 6 years, to pay past sleep-ins at the revised rate to all staff. Unless this is funded or amended, this demand will bankrupt many employers and cause a major crisis.
- In Spain, many staff prefer to work longer somewhat un-demanding shifts (often those involving sleep-ins) so as to free up their time to provide a better work/life balance, even though this contravenes the current WTD.
- In Austria the reduction of maximum weekly working hours in residential care falling under the Hospital Working Hours Act from 60 to 48 hours will not be achieved until 2021. (The good news is that this reduction has, at least, been agreed and will be funded.)
- In Austria if a peripatetic worker visits a (pre-booked) client and the client is not there, then this 'wasted' time is not seen as working time, nor paid as such, which may result in the permanent reduction of monthly working hours in a new contract.

### **A fundamental issue? – human rights and the WTD**

The WTD preceded the passing of the UN Convention on the Rights of Persons with Disability (UNCRPD) by a number of years, but the EU is committed to both these documents and the principles they espouse. Similarly the European Disability Strategy 2010-2020 and the Charter of Fundamental Rights of the European Union (CFR) provide additional support to the underlying principles expressed in the UNCRPD. When workers' rights cut across the provision of a service which delivers a user's human rights – what should happen? Can they actually be reconciled in day to day work?

There should in principle be no conflict between the WTD and meeting the provisions in actual real-life services of the UNCRPD, but it is clear from our research in social care and support that there are a number of fundamental problems. In our view, these show that the WTD is often being seen by people with disabilities, employers and (some) workers as *positively obstructing the provision of the best possible care and support within current resources*. EASPD can only speak for employers providing services for people with disabilities and they are clear that, although the WTD has produced some welcome improvements in the pay and conditions of sector workers, it also deters the development of innovative and flexible personalized services which many users want. By doing this, it prevents providers from developing services which enable service users to enjoy their full human rights as envisaged in the UNCRPD.

The UNCRPD provides for the rights of persons with disabilities. It is based on the principles of respect for dignity; non-discrimination; participation and inclusion; respect for difference; equality of

opportunity; accessibility; equality between men and women; and respect for children. Countries must take a range of measures, with the active involvement of people with disabilities, to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind.

This includes (*inter alia*):

Article 19: Living independently and being included in the community

Article 20: Personal mobility

Article 21: Freedom of expression and opinion, and access to information.

Article 22: Respect for privacy

Article 23: Respect for home and the family

Article 24: Education

Article 25: Health

Article 26: Habilitation and rehabilitation.

Article 27: Work and employment

Article 28: Adequate standard of living and social protection

Article 29: Participation in political and public life

Article 30: Participation in cultural life, recreation, leisure and sport

The way the WTD currently operates in social care and support makes it extremely difficult if not impossible for providers to develop person-centred services which can live up to these expectations. As ever, the devil is in the detail of how and where people work, but the fundamental dilemma remains. This report contains many such examples of the difficulties caused. One common theme is that it is far easier for a large institution to arrange its workforce practices so as to be WTD compliant than it is for a small scale personalised setting with fewer staff. This provides a perverse incentive to retain institutional care or, for some, the risk of re-institutionalising their life (in order to be WTD compliant). This would be in direct contravention of the EC's own policy on de-institutionalisation.

Whenever there is a clash between providing a service in compliance with a user's human rights under the UNCRPD (eg by staff working 'unsocial/long hours' or night shifts) or complying with the workers rights as presently defined under the WTD – which should take precedence? The current clear answer, in legal terms, is that normally the WTD takes precedence (even if the worker disagrees with the WTD and would be happy to work as needed). This is because the WTD is enshrined in EU and national legal

frameworks and the Commission sees its role as the active ‘guardian’ of the WTD and is quite prepared to take enforcement action. In comparison, the UNCRPD, due to insufficient implementation and enforcement procedures, seems to share the fate of many human rights documents being ‘merely’ a Convention containing agreed aspirational targets. Although all EU member states are committed to developing and delivering services based on UNCRPD principles the Convention has a (relatively) weak compliance monitoring process. The CFR, however, enshrining non-discrimination<sup>286</sup> and the integration of persons with disabilities<sup>287</sup>, is primary EU law and must be taken into account in drafting any secondary legislation – such as the WTD.

EASPD’s position is that this ‘conflict’ is mostly an unnecessary dilemma, although it acknowledges that there are numerous practical problems with the current operation of the WTD in the care and support sector. It is ‘unnecessary’ because with care and negotiation many of the problems this report details could be overcome if greater working flexibility could be (legally) introduced. Some examples of how this has been done are included. However, the current structure and representation of the sector workforce at national and EU levels is so weak that this is unlikely to happen without far greater efforts on all sides and a willingness to listen to the views and needs of service users. There are, however, some residual sector specific issues which can only be properly resolved with a revision of the WTD.

It is noteworthy that the views of ‘end users’ (ie the people with disabilities who are supported in social care services) appear not to have been seriously considered, nor to have had any apparent impact in any of the WTD legislation, reviews or reports. In spite of being one of the largest employment sectors in the EU, social care and support is not mentioned in either of the 2017 EU reports, except by way of illustrating problems, areas of non-compliance and enforcement. In any future consideration by the EC of the operation or changes to the WTD the views of service users should be sought and given full weight.

## **Recommendations**

It is clear that a full revision of the WTD seems unlikely at present and is not envisaged in either of the recent Commission documents. Recognising this political reality, we have divided our recommendations into two groups – those which we consider can be actioned within the current legal framework of the WTD and those which will require a formal revision of the WTD.

### **Possible actions within the current legal framework**

- One route to greater flexibility of working time under the WTD is through developing sectoral agreements. Effective social dialogue in the social care and support sector is very patchy at



national levels and non-existent at EU level. This is creating a significant disadvantage for the whole sector. The sector and the EU should take immediate steps to improve this situation, with a view developing specimen sector agreements on contentious issues for the care and support sector. States could then use these to address the specific concerns of the sector on matters such as on-call time, concurrent work contracts, flexible

286 Article 21

287 Article 26

rest periods etc. Any such discussion should of course involve all the relevant stakeholders including, crucially, end users of services and providers.

- The WTD provides that derogations can be made for groups of workers, subject to certain conditions and safeguards, where flexibility is needed ‘on account of the specific characteristics of the activity concerned.’ This capacity for derogation could well be applied to workers involved in small scale ‘live-in’ care services where workers effectively live in the user’s own home for an extended period (see attached report for more details) and actual working hours are often a matter for (daily) negotiation between the user and worker.
- More broadly, the WTD includes an exemplary list of ‘autonomous workers’ who may be exempted from the WTD. This list is not closed and there is no reason why ‘live in support workers’ should not be added to it, or be included in the currently rather ill-defined ‘family worker’ category.
- The WTD allows for derogations to be made for ‘certain activities’. This includes activities where there is ‘the need for continuity of service (or production).’ Such a criterion could well be applied to many social care and support services, where 24/7 support is essential and there is no reason why the social care and support sector could not be added to the illustrative list of examples.
- Bearing in mind the human rights issues raised above, it would further be possible to argue that social care and support services are such that, where the current operation of the WTD arguably inhibits the achievement of full human rights by the end user because of operational restrictions imposed on the workforce, then the WTD requirements may be relaxed because of the overriding need to ‘encourage another objective, distinct from the implementation of the agreement.’ The WTD makes explicit provision for this kind of ‘fundamental’ exemption. Under this approach the ‘other objective’ could arguably be the achievement of a user’s UNCRPD Human Rights and CFR fundamental rights through a more flexible service. Since the

EU has already signed the Convention and itself created the CFR, it would be hard to sustain an objection to this line of thinking.

### **Recommendations for any future revision of the WTD**

- Any future revision must make greater provision for the special needs of the sector. Any negotiations must involve all the relevant stakeholders including, crucially, end users of services and providers.
- The Commission should recognize and find ways to address in any revised WTD the problems which the current laws cause service providers when they attempt to create truly person-centred services capable of delivering UNCRPD compliant services.
- Any future changes must assess the likely financial impact they will have and ensure that states have time to meet any extra costs. Measures leading to unfunded significant cost increases should be avoided as they will be no more than aspirational window dressing and so undermine the credibility of any new WTD.
- Greater flexibility should be allowed regarding inactive sleep in/on call time and inactive stand-by time, currently all on-call time (active or inactive) at the workplace counts as working time. There are many current examples where the WTD is presently disregarded as impractical in the sector because established overnight working patterns involving sleep-ins provide better support and are popular with users, staff and employers. Any revision must adapt to that reality.
- Particular attention should be paid to the situation of individualised support services using formal and/or informal 'family carers' and the impact any reforms may have on their situation and the users' right to lead a normal life under the UNCRPD.
- Employers are already struggling to fill vacancies, any changes to the WTD must make working in this sector more attractive, enabling employers to offer full time and part time options and family-friendly working time flexibility.
- Any new Directive wording should make it plain that the responsibility for managing the number of hours a worker with multiple contracts works should be shared between the worker and the employer and the means of monitoring the situation should not be so onerous as to be unworkable at employer level.

## Note for editors

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The European Association of Service providers for Persons with Disabilities is a non-profit European umbrella organization, established in 1996, and currently representing over 12,000 social and health services for persons with disabilities. EASPD advocates effective and high-quality disability-related services in the field of education, employment and individualised support, in line with the UN CRPD principles, which could bring benefits not only to persons with disabilities, but to society as a whole.

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**EASPD is the European Association of Service providers for Persons with Disabilities. We are a European not-for-profit organisation representing over 10,000 social services and disability organisations across Europe. The main objective of EASPD is to promote equal opportunities for people with disabilities through effective and high-quality service systems.**

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