



## E W T D

### European Working Time Directive 2003/88

KAD Doz.(FH) Dr. Lukas Stärker

27<sup>th</sup> September 2018



3<sup>rd</sup> International Conference of Doctors' Unions

Lisbon - Portugal

FEDERAÇÃO NACIONAL DOS MÉDICOS  
National Federation of Doctors

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### Agenda

- A. system and development
- B. definitions
- C. workers protection as salary-based view
- D. main points
- E. amendment discussion and status quo
- F. European-Court of Justice - judgements
- G. political points
- H. Conclusio

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### A. system and development /1

- EU-law **influences** national jurisdictions:
  - coordination: coexistence of EU-law and national law without contradiction
  - harmonization: content approximation
  - unification of jurisdiction
- for this, EU has available the following **instruments**:
  - treaties,
  - EU-regulations
  - EU-directives
  - Judgements of the European Court of Justice
  - recommendations and statements

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**A. system and development /2**


➤ **EU-regulations:** immediate applicability

➤ **EU-directives:** transformation into national law based on the requirements of the directive required

- in case of not-implementation
  - infringement procedure
  - direct application of the directive towards the state, not towards private
  - compensation

➤ **relation between EU-law and national law:**

- „application-priority“ adoring the EU-law
- EU-konform interpretation of national law



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**A. system and development /2**


➤ **EU-regulations:** immediate applicability

➤ **EU-directives:** transformation into national law based on the requirements of the directive required

- in case of not-implementation
  - infringement procedure
    - starts with a letter from EK, informing that some regulations are not EU-compliant
  - direct application of the directive towards the state, not towards private
  - compensation

➤ **relation between EU-law and national law:**

- „application-priority“ adoring the EU-law
- EU-konform interpretation of national law



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**A. system and development /3**

➤ directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work

➤ ewtd 93/104

➤ ewtd 2003/88: ident system as ewtd 93/104

➤ co-decision-procedure: council and EU-parlament have zu constent to new law and amandments

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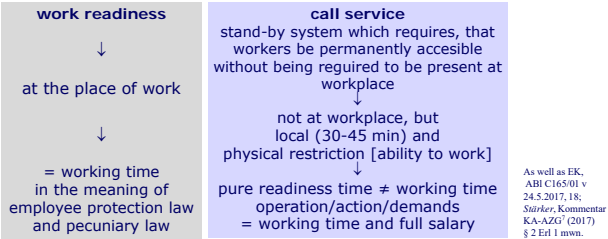
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## B. definitions

working time = 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



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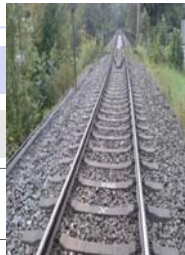
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## C. working time – 2 viewing points\*

workers protectional versus salary-based view for all questions of working time:

- health and safety protectional view:  
is a time working time? -> yes/no question
- salary-based view:  
what is the salary for a special time?  
-> 0 bis 300%
- Überschneidungen:  
no working time, but salary:  
- pure readiness time at call service  
- „lunch-breaks within working time“



\*) Siehe Stärker, Arbeits- und Sozialrecht für die Praxis\* (2010) Rz 341;  
Stärker, Kommentar KA-AZG (2017) § 1 Ert A

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## D. EWTD – main points /1

- **working time**: 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** including overtime  
at the most 48 hours for each 7-day-period\*  
- ewtd does not regulate the maximum working time per week
- **daily rest**: minimum daily rest period of 11  
consecutive hours per 24-hour period\*\*
- **breaks/respites**: every worker is entitled to a rest break, when the  
working day is longer than six hours.  
Details incl duration are fixed in collective agreements or agreements  
between the two sides of industry or, failing that, by national law.
- **daily maximum working time**: = 24 minus 11 minus break-duration.

see Stärker, Comment of EU-Working Time Directive (2006)

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#### D. EWTD – main points /2

➤ **Weekly rest period:** per each 7-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest period = 35h.\*\*  
If objective, technical or work organisation conditions so justify, a minimum rest period of 24 hours may be applied.

➤ No differentiation between public and private sector\*\*



- \*) based on art 22, longer working times are possible possible, if the individual worker agrees („opt out“ = „can-determination“, if implemented in the national law)
- \*\*) derogations are especially permissible, if
  - in case of activities involving the need for continuity of service or production, particularly, if the workers get equivalent periods of compensatory rest or, if not possible, appropriate protection:
  - services relating to the reception, **treatment and/or care provided by hospitals or similar establishments, including activities of doctors in training**, residential institutions and prisons

see Stärker, Comment of EU-Working Time Directive (2006)

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#### E. amendment discussion and status quo

**amendment discussion runs since 2004, core items:**

- definition if working time – keyword „inactive standby-times“
- opt out
- derogations für doctors in training from Art 6
- extensions of reference periods, max 12 instead of currently 6 month

**current status:**

- political agreement of the EU-ministers of labour in june 2008, based on SLO suggestion
- common position of EU-council on 15. Sept 2008
- then EU-parliament had to be involved, because „co-decision-procedure“: rejection / approval / decision of modifications
- EU-parlament was against this revision of ewtd
- arbitration proceedings: failed: gescheitert, RL (status quo) remains
- present step: consultation of social partners at EU-level and EC-survey

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#### F. European-Court of Justice – judgements /1

SIMAP 2000	<ul style="list-style-type: none"><li>• time spent on call by doctors in primary health care teams must be regarded in its entirety as working time, and where appropriate as overtime, if they are required to be at the health centre.</li><li>• if doctors must merely be contactable at all times when on call, only time linked to the actual provision of primary health care services must be regarded as working time (rn75)</li></ul>
CIG Sergas 2001	<ul style="list-style-type: none"><li>• time spent on call by doctors in primary care teams when their physical presence is required at health centres must be regarded in its entirety as working time, and where appropriate as overtime, within the meaning of the directive (rn 33)</li></ul>
Jäger 2003	<ul style="list-style-type: none"><li>• on-call duty (Bereitschaftsdienst) performed by a doctor where he is required to be physically present in the hospital must be regarded as constituting in its totality working time, even where the person concerned is permitted to rest at his place of work during the periods when his services are not required (rn 104)</li><li>• employee's periods of inactivity in the context of such on-call duty must not be classified as rest periods</li></ul>

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**F. European-Court of Justice – judgements /1**

Pfeiffer 2004	<ul style="list-style-type: none"><li>on-call time ('Bereitschaftsdienst'), where the worker is required to be physically present at a place specified by his employer, must be regarded as wholly working time, irrespective of the fact that, during periods of on-call time, the person concerned is not continuously carrying on any professional activity (rn 93, see also Jaeger rn 71, 75 and 103).</li></ul>
Fire Department Hamburg 2005	<ul style="list-style-type: none"><li>Article 6(2) of EWTd precludes exceeding the 48 hour ceiling prescribed as the maximum weekly working time, including time on call</li><li>activities of a public fire service are not, in principle, covered by the exception (rn 57)</li></ul>
Dellas 2005	<ul style="list-style-type: none"><li>it is settled case-law that on-call duty performed by a worker where he is required to be physically present on the employer's premises must be regarded in its entirety as working time within the meaning of ewtd, regardless of the work actually done by the person concerned during that on-call duty .</li><li>according to that case-law, the decisive factor is that the worker is required to be physically present at the place determined by the employer and to be available to the employer in order to be able to provide the appropriate services immediately in case of need. Those obligations must therefore be regarded as coming within the ambit of the performance of that worker's duties. (rn 46-48)</li></ul>

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**F. European-Court of Justice – judgements /2**

Vorel 2007	<ul style="list-style-type: none"><li>If a doctor performs on-call duty at his place of work, the entire period of waiting for actual work should be treated as working time and, where appropriate, as overtime</li><li>ewtd does not prevent a Member State applying legislation on the remuneration of workers.</li><li>differences between the treatment of periods in the course of which work is actually done and those during which no actual work is done are permissible, if such a system wholly guarantees the rights conferred on workers by the ewtd in order to ensure the effective protection of their health and safety</li></ul>
Fuss 2010	<ul style="list-style-type: none"><li>on-call duties spent at workplace have to be counted as working times</li><li>exceeding the 48 hour ceiling prescribed as the maximum weekly working time, including time on call, is inadmissible.</li></ul>

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**F. European-Court of Justice – judgements /3**

Matzak 2018	<ul style="list-style-type: none"><li>According to that case-law, <b>the decisive factor is that the worker is required to be physically present at a place determined by the employer</b> and to be available to the employer in order to be able to provide the appropriate services immediately in case of need. Those obligations must therefore be regarded as coming within the ambit of the performance of that worker's duties.</li><li>Finally, it must be observed that the situation is different where the worker performs a stand-by duty according to a stand-by system which <b>requires that the worker be permanently accessible without being required to be present at the place of work</b>. Even if he is at the disposal of his employer, since it must be possible to contact him, in that situation the worker may manage his time with fewer constraints and pursue his own interests. In those circumstances, only time linked to the actual provision of services must be regarded as 'working time', within the meaning of Directive 2003/88 (rn 60)</li></ul>
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### G. political points

1. **all time spent in hospital has to be counted as working time**  
=> „inactive on call times“ that are not working times are not acceptable
2. **opt out should be abolished from the directive**  
=> opt out does not fit to workers protection  
=> we also do not ask truck drivers, whether they agree to drive faster oder longer
3. **ewtd is safety and health protection law and patient safety law**  
=> saving money is no motiv:  
see reason 4: The improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations.

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### H. conclusio

- > EU-states have empty cash registers
- > staff is the largest budget item in hospitals
- > management consultants try to save in that area
- > building pressure against that is necessary
- > hospital staff is not only a cost factor
- > good health care with sufficient financing has to be worth it
- > actions against increasing working compression and increasing workload are required



for success:



- > attractive working conditions are the plants of future

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