

# **EUROMIL POSITION**

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## **WORKING TIME IN THE ARMED FORCES**

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The 24 March, the European Commission adopted the Communication « Reviewing the Working Time Directive », aimed to launch the first-phase consultation of the Social Partners at EU level, in accordance with the article 154 (2) TFEU on the possible direction of EU action regarding the Working Time Directive.<sup>1</sup>

Since the European Court of Justice (ECJ) SIMAP judgement of Oct 3, 2000, Council Directive (CD) 93/104/EEC, now 2003/88/EC, to apply it to the public service branches, the European Commission lodged several proposals to amend this Council Directive with wide-ranging opt-out-clauses, in each case acting on demands from the Council of Ministers.

These proposals were an attempt to overrule the relevant ECJ decisions, in order to undermine the legal authority of the ECJ to enforce the Working Time Directive in the Members States.

Thanks to the objection of the EU Parliament and the work of the European Trade Union Confederation such proposals had been rejected at the time of the last European Parliament elections in 2009.

What is described as "modernisation" of working time in the European Commission Communication is in real terms a by-pass on a strong line of jurisprudence by the ECJ in favour of the rights and entitlements of the workers in public service.

EUROMIL rejects any review of the Working Time Directive 2003/88/EC and invites the European Commission to control the full implementation of Directive 2003/88/EC to the public service inclusive of the armed forces in EU member states.

EUROMIL invokes the European Parliament to object to any proposals for review of this Council Directive.

Finally, EUROMIL strongly supports the position of the European Trade Union Confederation (ETUC) on the Working Time Directive adopted by its Executive Committee on 3 June 2010. It calls the attention to the following key issues arising in the application of the directive on matters affecting the members of EUROMIL under EU law.

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<sup>1</sup> EUROMIL is aware that is not a recognized social partner under Article 54 (2) TFEU but issues a position on working time matters affecting its members under EU law

## KEY ISSUES ARISING IN THE APPLICATION OF THE DIRECTIVE

1. The Working Time Directive is also applicable for soldiers and full implementation of WTD 2003/88/EC by Member States has to be ensured<sup>2</sup>

EUROMIL recalls that the scope of the EU Working Time Directive applies to all employment contracts, including the employment of soldiers. There should be no *en bloc* exemptions from the Working Time Directive in public service. This means that any diversion from the provisions of the Directive in these fields, shall be possible only to the extent and that specific activities of the armed forces unconditionally justify it, and that adequate compensatory safeguards simultaneously are put into effect to guarantee the highest level of workplace safety achievable in the specific situation.

The European Court of Justice has already decided in two cases that the restriction clause (Article 2) cannot serve to exclude a whole occupational group from the application of the directive, even if they are prohibited by law to strike, such as e.g. medical personnel on emergency duty (*SIMAP*), hospital personnel with standby duties (*Jaeger*) or firemen (*Personalrat Feuerwehr Hamburg*). It only enables the individual Member States to exclude precisely defined and delimited activities in the services mentioned, if it is not possible to fully comply with the provisions of the directive.

EUROMIL therefore deems it necessary to implement Council Directive 2003/88/EC fully for soldiers. It holds that since salaries of soldiers and public service employees can be identical in some EU member states, working time regulations should apply equally. To the extent that there are specific military activities, for which there are no similar forms of duty carried out by other civil servants balanced exceptions may be stipulated.

2. Clear, comprehensive, coherent and binding working time regulations specific and adapted to armed forces personnel are necessary

EUROMIL affiliates have called for many years already that binding legal instruments be issued to regulate the regular working weekly hours for soldiers, including appropriate compensation for overtime by remuneration.

In most European armies working time is managed by the commanding officers' discretion and through verbal orders. While EUROMIL acknowledges that in relevant military branches a majority of commanders administer working hours in a very caring manner, there are major problems arising from lack of personnel in most of the armies of the European Union. For many commanders the legal term "working time" or "overtime" is inexistent, as it is expected from soldiers to "serve" and fulfill their duty during 24 hours and 7 days.

EUROMIL thus calls for the creation and implementation of clear, comprehensive, coherent and binding working time regulations specific and adapted to the armed

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<sup>2</sup> There are court cases pending on the implementation of CD 2003/88/EC for soldiers in some EU countries

forces that respect working hours, on-call time, weekly working time, rest periods and overtime. These regulations are to be negotiated in a fair and social dialogue with the representatives of staff associations or military unions.

### 3. Limitation of average weekly working hours for soldiers as ensured by Directive 2003/88/EC

EUROMIL is of the opinion that the protection against long working hours has to remain the central goal of the Working Time Directive. In the armed forces, protection against long and irregular working hours is a crucial matter of health and safety prevention.

Active military personnel have the right to working conditions which respect his or her health, safety and dignity. This right is safeguarded under Article 31 of the Fundamental Rights Charter that ensures that every worker has the right to a limitation of maximum of working hours, to daily and weekly rest periods and to an annual period of paid leave.

The strain put on soldiers with the increasing participation in international missions and an ever more challenging working environment due to lacking recruitment and high budgetary pressures is lengthening working time, in particular for on-call duties. This not unnecessarily enhances the exposure to health and safety risks of the soldier, for example in cases of security or guardroom duties, but additionally puts third parties at risk which are closely linked to the armed forces working environment.

### 4. On-call time is working time

EUROMIL calls that all working time defined as any period during which the soldier is working at the employer's disposal and carrying out his activity or duties- be it on-call or for emergency preparedness- should be counted as working time.

### 5. Working time during specific military activities

EUROMIL holds that during international military operations and missions with their specific security conditions and for specific military activities such as military exercises or manoeuvres, and special training runs, exceptions to working time regulations can apply. However, daily working time periods should be clearly defined and controlled so that, for example, the total working hours are taken into account for the annual calculations.

### 6. Reconciliation of army and family Life

EUROMIL notes that the reconciliation between professional, private and family life has an important role to play to improve the attractiveness of the army profession and counter the recruitment problems in all armed forces of the European Union.

EUROMIL is of the opinion that a balanced reconciliation will contribute to improving the participation of women in the professional armed forces.

It therefore summons to streamline work-life balance measures with working time regulations in order to achieve a better balance between army and family life.

Additionally, parental and maternity leave regulations have to be formulated and implemented, while childcare facilities within army facilities should be developed further to the benefit of the families.

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Working time remains an issue of health and safety. Military personnel are assuring security for others and should therefore not be excluded to speak for its own security and safety.

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*The European Organisation of Military Associations (EUROMIL) is an umbrella organisation consisting of 37 national military associations and trade unions promoting the social and professional interests of military personnel of all ranks in Europe. It includes 25 countries from the Russian Federation in the East to Ireland in the West, and from Finland in the north to Malta in the South.*

*EUROMIL is the main Europe-wide forum for cooperation among professional military associations on issues of common concern. Through the international secretariat in Brussels, EUROMIL facilitates exchange of information, experiences and best practice among member associations. Military associations entirely respect and abide by the chain of command, and neither condone or support insubordination and mutiny. And, associations do not intend to comment on strategic or operational matters.*