

## **2005-03 E: Summary of advisory report on the simplification of the Working Hours Act**

In this advisory report, drawn up in response to a request for advice from the Minister of Social Affairs and Employment, the Social and Economic Council (SER) makes recommendations to simplify the Working Hours Act (*Arbeidstijdenwet*, ATW). The Act consists mainly of a system of norms for employees, including norms for maximum working hours per day, minimum rest periods per week, and night work.

The SER's main argument is that the legal regulation of working hours must create opportunities and encourage employers and employees to make concrete agreements at both individual and collective level, as agreements on working hours play an important role in the Dutch system of labour relations.

### **Simplification**

Like the Cabinet, the SER is in favour of simplifying regulations governing working hours and rest periods. This simplification must take into account both objectives of the Working Hours Act: (1) to protect the health, safety and wellbeing of employees, and (2) to make it easier for employees to combine employment with other responsibilities outside the work environment, such as caring for others. Account must also be taken of international legal requirements.

### **Protection and flexibility**

The SER identifies companies' need for flexibility and customisation as an important area for attention in the Working Hours Act. Tension can exist between, on the one hand, the need of companies to be able to operate flexibly and, on the other hand, employees' need to have their health, safety and wellbeing protected and to be able to more easily combine work and their private lives.

Ultimately, in fact, these are shared interests. Preventing employee health problems (e.g., as a result of long-term night work) is clearly in the interest of employees, but it is also in the interest of employers, if only to limit the threat to employee performance or attendance posed by illness or incapacity for work. This threat has negative financial implications, and can ultimately lead to the loss of qualified and experienced workers.

Equally, flexible working hours and rest periods should not be considered to be in the interest of employers only. Flexibility can also have benefits for employees, such as the opportunity to adjust their working hours and rest periods in the event of unforeseen personal circumstances. On this issue, the SER refers to the Memorandum recently published by the Labour Foundation (*Stichting van de Arbeid*), entitled *On the Way to a More Productive Economy*. In this Memorandum, the Foundation points to the ongoing process of decentralisation in determining terms of employment. In this process, decision-making is being deliberately transferred to lower levels in order to enable customisation. The Memorandum examines the management of working hours as a means of gearing the work available to the employees available, for instance through effective rosters that take into account both the dynamic nature of the labour process and the desired working hours of employees.

### **International context**

The SER agrees with the Cabinet that the regulation of working hours and rest periods must not lead to a less favourable climate for establishing a business or have a negative effect on

employment. This means that the regulation should not unnecessarily hinder companies' operational flexibility or economic performance. In this, a number of other factors also play a role, such as the physical infrastructure, the level of education of the working population, and the taxation regime in force.

Research shows that the regulation of working hours and rest periods in other European countries varies greatly, both in how (and by whom) norms are set (e.g., the government, social partners, or employers and employees), and in the content of the norms themselves. The European Working Time Directive allows for this variation.

### **Legal norms and possible deviations**

In view of the desired simplification and transparency of regulation, the SER, like the Cabinet, is in favour of straightforward norms. At the same time, the SER considers it important for the system of norms in the Working Hours Act to offer scope for flexibility and customisation. To this end, the Act must offer employers and employees opportunities to deviate from certain specific legal norms, subject to mutual consultation. This would promote consultation between employers and employees with regard to working hours and place more responsibility for norms at a decentralised level, thereby enabling greater flexibility and customisation.

The possibility of deviation calls for collective agreements, both between parties to collective labour agreements (CAOs) and between employers and employee participation bodies (e.g., Works Councils or employee representative bodies), including written agreements. Deviations from norms that are agreed with the employee participation body may not be implemented if they conflict with the terms of the collective labour agreement currently in force.

In addition, for specific situations and in certain sectors, it must remain possible to introduce alternative norms by means of an Order in Council (in this case, the Working Hours Decree). However, implementing a system of norms that allows scope for some deviation will reduce the need for alternative norms in the Working Hours Decree, thereby significantly simplifying and reducing regulation.

### **Cohesive system of norms**

Based on the above views on the objective and structure of the amended Working Hours Act, the SER has developed a cohesive system of norms for working hours and rest periods. As the meaning of a norm is partly determined by the content of one or more other norms, the SER has created a package of recommendations that constitute a balanced and integrated whole.

The SER's recommendations pertain both to the Working Hours Act and the Working Hours Decree, and will result not only in a simpler Act, but also in significantly reduced and much simpler regulation in the Decree. However, the SER states that it does not endorse any restriction of the possibilities that the Act currently offers.

In addition to recommending norms, the advisory report also goes into the means of enforcing these norms. The basic principle is that many of the norms must be enforced in administrative law, and any deviations from these norms – with the proviso that these have been collectively discussed – are to be dealt with in the Working Hours Decree. Other norms will, in principle, be the responsibility of the parties involved (i.e., they will be enforced under civil law) and may, in most cases, be deviated from on the basis of collective consultation.

The SER's recommendations concern minimum rest periods, Sunday work, maximum working hours, night work, breaks and stand-by duty. These recommendations aim to strike a balance between protection, flexibility and customisation: as a result, the norms for night work in particular offer a higher level of protection than provided for in the Cabinet's own proposals. At the same time, the system provides the necessary flexibility to meet the specific needs of certain circumstances or sectors.

The advisory report contains a table in which the SER's recommendations and the Cabinet's proposals are juxtaposed.

### **Scope of the Working Hours Act**

In the advisory report, the SER also examines the scope of the Working Hours Act, and argues that this scope should be extended somewhat to include managers who earn up to three times as much as the minimum wage (the current Act extends only to managers who earn up to twice as much as the minimum wage). For part-time workers, this maximum salary will be adjusted on a pro rata basis. The SER argues that the scope of the Act should also be extended to cover managers with a higher salary who carry out dangerous work or night work.