

A Critical Discussion on the Effectiveness of Working Time Directive 2003/88/EC



Zhe Wang, PhD

Candidate at School of Humanities, China University of Political Science and Law, Beijing, China; graduated from School of Law, the University of Edinburgh, Edinburgh, Scotland, UK.

Postal address: China University of Political Science and Law, No. 25 Xitucheng Lu, Haidian District, Beijing 100088, China.

ABSTRACT: Since its implementation in 2003, Working Time Directive 2003/88/EC has brought a series of benefits to employees in the European Union. It has played a significant role in restricting working time and guaranteeing rest breaks, which truly protected the health and safety of workers. However, given the economic recession in the European Union, the widespread nature of atypical employment relationships and enlargement of the European Union, the effectiveness of Working Time Directive 2003/88/EC has been doubted in recent years. Therefore, it is essential to analyse whether Working Time Directive 2003/88/EC remains fit for the purpose more than 15 years after its adoption and propose corresponding solutions to protect the health and safety of employees in these member countries.

KEY WORDS: European labour law; Working Time Directive 2003/88/EC; working time; health and safety of employees

INTRODUCTION

Working Time Directive 2003/88/EC was enacted in 2003. It has played an important role in restricting working time and guaranteeing rest breaks for employees. The reason behind its enactment was to encourage member countries of the European Union to protect the health and safety of workers. However, given the economic recession in the European Union, the widespread nature of atypical employment relationships and enlargement of the European Union, there is a debate about whether Working Time Directive 2003/88/EC remains fit for the purpose more than 15 years after its adoption. To this end, it is essential to re-evaluate whether it is necessary to apply it in member countries of the European Union. This essay will analyse some of the reasons why Working Time Directive 2003/88/EC should not be applied in these member states. Apart from the introduction, the rest of this essay is structured as follows. The first part will introduce the content and development history of Working Time Directive 2003/88/EC. The second part will focus on some surveys regarding the relationship between the number of working hours and workers' health and safety, then examine whether working for long periods has a detrimental influence on the health and safety of employees. The third part will discuss how member countries have made working time adjustments during economic crises. The fourth part will address the rapid increase in atypical employment relationships in European countries and explore the role of Working Time Directive 2003/88/EC in this context. The fifth part will describe the differences in the development status of member countries in recent years and discuss the effect of Working Time Directive 2003/88/EC as the European Union continues to enlarge. Finally, this essay will conclude by declaring whether Working Time Directive 2003/88/EC should continue to be adopted in member countries of the European Union more than 15 years after its implementation.

PART ONE

In 1987, Article 118a EEC, related to the health and safety of employees, was introduced into the Treaty of the European

A Critical Discussion on the Effectiveness of Working Time Directive 2003/88/EC

Community.¹ Two years later, the Council of Ministers adopted the Directive on measures to improve the health and safety of workers.² Subsequently, a range of individual Directives was developed, based on some of the rules of the aforementioned 1989 Directive. The most well-known of them is Directive 93/104, also called the Working Time Directive, which regulates some aspects related to the organization of working time.³ After the adoption of the Directive 93/104, a series of controversial judgements was made, resulting in revisions in 2000.⁴ When long periods of working were regarded as a main cause of stress, depression and illness, Working Time Directive 93/104/EC was amended in 2003.⁵ In this Directive, minimum health and safety requirements related to the organization of working hours are proposed. EU workers are given the right to at least four weeks of paid holidays each year, rest breaks, a day off after a week's work and rest of at least 11 hours in any 24-hour period. It also provides for a right to work no more than 48 hours per week and restricts excessive night work.⁶ Like all European Union Directives, this is an instrument which requires all member states to enact its provisions in national legislation and to apply them in practice.

PART TWO

For a long time, it was regarded that long working hours have a negative influence on the health and safety of workers. As such, member countries in the European Union enacted and revised regulations related to working hours in legal practice on several occasions in order to protect the health and safety of workers. However, this argument lacks overwhelmingly convincing evidence. Firstly, the definition of long working hours has changed in recent decades and the evidence to demonstrate that working a moderately long time poses a threat to the health and safety of workers is inadequate. Generally, scholars believe that working particularly long hours is detrimental to health and safety. A study suggests that working more than 56 hours per week leads to severe health and safety risks.⁷ It is also argued that working for a long time brings health and safety risks to employees, especially when working 60 hours or above every week.⁸ However, working extremely long hours has been almost non-existent in member states of the European Union since Working Time Directive 2003/88/EC was established. In other words, some previous studies focusing on the relationship between extremely long working hours and workers' health and safety are valueless. In recent years, academics have tended to discuss the relationship between moderately long working hours and workers' health and safety. However, the research in this field has been limited until now. For example, the relation between working more than 55 hours and problems related to health and safety has been reported in many studies, but findings concerning moderately long hours are insufficient.⁹ According to the existing data, it is unclear how many hours workers should work to keep healthy and safe.¹⁰ In particular, the effects of moderate overtime, between 40 and 50 hours a week, should receive more attention¹¹ Therefore, previous studies related to moderately long working hours are insufficient to confirm that working for a moderately long time is negative to the health and safety of workers.

In addition, the effects of working long hours seem to be neglected due to the excessive focus on shift work. Undeniably, working abnormal hours leads to an irregular schedule. As a result, shift workers may experience health and safety problems because of the poor quantity and quality of sleep. On the one hand, it has been stated that shift workers usually complain about fatigue and

¹ T Nowak, 'The Working Time Directive and the European Court of Justice' (2008) *Maastricht Journal of European and Comparative Law* 447.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ C Barnard, *EU Employment Law* (4th edn, Oxford University Press 2012).

⁷ J M Harrington, 'Working Long Hours and Health' (1994) *BMJ* 1581.

⁸ H M Allen, T B Slavin and W B Bunn, 'Do Long Workhours Impact Health, Safety, and Productivity at a Heavy Manufacturer?' (2007) *Journal of Occupational and Environmental Medicine* 148.

⁹ L Artazcoz, I Cortès, F G Benavides, V Escribà-Agüir, X Bartoll, H Vargas and C Borrell, 'Long Working Hours and Health in Europe: Gender and Welfare State Differences in a Context of Economic Crisis' (2016) *Health and Place* 161.

¹⁰ J Greubel, A Arlinghaus, F Nachreiner and D Lombardi, 'Higher Risks When Working Unusual Times? A Cross-validation of the Effects on Safety, Health, and Work-life Balance' (2016) *International Archives of Occupational and Environmental Health* 1205.

¹¹ *Ibid.*

A Critical Discussion on the Effectiveness of Working Time Directive 2003/88/EC

stress.¹² On the other hand, it has been demonstrated that fatigue and stress are difficult to measure and could diminish after rest.¹³ Therefore, whether or not working abnormal times has a detrimental influence on the health and safety of workers is not clear, let alone working long hours. In fact, working in shifts and working long hours are two different concepts in labour law. Working long hours means working unusual times, such as evenings and weekends.¹⁴ Shift workers are a special group with certain characteristics and skills, associated with working abnormal hours.¹⁵ The type and severity of the effects derived from shift work are different from the effects resulting from working long hours.¹⁶ Although the studies on shift work are sufficient to some extent, the findings from these studies are vague as well as unsuitable when analysing the effects of working long hours. Therefore, more attention should be paid to the impacts of working a long period time on the health and safety of employees.

Although there are limited surveys concentrating on the relation between long working hours and health outcomes, these surveys are not systematic and durative. These surveys usually focus on a certain year or a certain period and not take all factors into consideration. For example, responses from 10,793 Americans between 1987 and 2000 were analysed in a survey. Age, gender, job, industry, region, working hours, commuting hours and other aspects were taken into consideration. The results from this survey showed that jobs with overtime schedules were associated with a 61% higher injury hazard rate compared to jobs without overtime. Working at least 12 hours per day was associated with a 37% increased hazard rate, while working at least 60 hours per week was associated with a 23% increased hazard rate.¹⁷ In a Danish cohort study, it was reported that, when working between 41 and 48 hours, the mortality rate decreased.¹⁸ In an European survey, gender, welfare state differences and economic situations in 2010 were taken into consideration in order to analyse the relation between long working hours and health problems.¹⁹ From the surveys mentioned above, it is obvious that previous surveys are usually based on certain factors, such as age, gender, job and region, while many other factors are excluded. It is argued that some of the research evidence is neither recent nor systematic.²⁰ Besides, some survey results only concentrate on data from a certain year which are not consistent.²¹ Therefore, past investigations in this field are unable to support the idea that long working hours affect the health and safety of workers.

Finally, the health and safety of workers could be improved in other ways. It is undeniable that restricting working hours is widespread in most member countries of the European Union.²² However, health and safety problems have not been identified for a long time. The first reason behind this phenomenon is that the notion of uniform working hours is unscientific. For example, teachers have different numbers of classes every day. According to the characteristics of different jobs, different working hours should be adopted.²³ Another factor is that, apart from reducing working hours, many other actions have not been carried out to protect the health and safety of workers. A recent study from Hong Kong showed that a lack of training, supervision and experience can lead to severe hand injuries.²⁴ As a result, companies should improve supervision and organize regular training in

¹² J M Harrington, 'Working Long Hours and Health' (1994) *BMJ* 1581.

¹³ *Ibid.*

¹⁴ A Spurgeon, J M Harrington and C L Cooper, 'Health and Safety Problems Associated with Long Working Hours: A Review of the Current Position' (1997) *Occupational and Environmental Medicine* 367.

¹⁵ *Ibid.*

¹⁶ J Greubel, A Arlinghaus, F Nachreiner and D Lombardi, 'Higher Risks When Working Unusual Times? A Cross-validation of the Effects on Safety, Health, and Work-life Balance' (2016) *International Archives of Occupational and Environmental Health* 1205.

¹⁷ A E Dembe, J B Erickson, R G Delbos and S M Banks, 'The Impact of Overtime and Long Work Hours on Occupational Injuries and Illnesses: New Evidence from the United States' (2005) *Occupational and Environmental Medicine* 588.

¹⁸ H Hannerz and H Soll-Johanning, 'Working Hours and All-cause Mortality in Relation to the EU Working Time Directive: A Danish Cohort Study' (2018) *European Journal of Public Health* 810.

¹⁹ L Artazcoz, I Cortès, F G Benavides, V Escribà-Agüir, X Bartoll, H Vargas and C Borrell, 'Long Working Hours and Health in Europe: Gender and Welfare State Differences in a Context of Economic Crisis' (2016) *Health and Place* 161.

²⁰ C L Cooper, 'Working Hours and Health' (1996) *Work & Stress* 1.

²¹ L Artazcoz, I Cortès, L Artazcoz, I Cortès, F G Benavides, V Escribà-Agüir, X Bartoll, H Vargas and C Borrell, 'Long Working Hours and Health in Europe: Gender and Welfare State Differences in a Context of Economic Crisis' (2016) *Health and Place* 161.

²² W Wu, 'The Influence of Working Hours on Career Happiness: An Empirical Analysis Based on Three Typical Occupations' (2016) *China Industrial Economics* 130.

²³ *Ibid.*

²⁴ J Greubel, A Arlinghaus, F Nachreiner and D Lombardi, 'Higher Risks When Working Unusual Times? A Cross-validation of the Effects on Safety, Health, and Work-life Balance' (2016) *International Archives of Occupational*

A Critical Discussion on the Effectiveness of Working Time Directive 2003/88/EC

order to decrease the rate of accidents. In addition, some employees complain about work-related stress in big cities.²⁵ Therefore, companies should also focus on the mental health of workers and help them relax. Based on the analysis above, in order to improve the health and safety of workers, a range of measurements should be regulated in line with legal rules, rather than only focusing on the working time length.

Overall, there is no direct and convincing evidence to support the claim that longer working times have a negative effect on workers' health and safety. Although Working Time Directive 2003/88/EC played a significant role in protecting workers' health and safety, given the rapid development of the economy and society, the definition of long working hours has been changed and the concept of a uniform working time is unsuitable for various jobs. Therefore, Working Time Directive 2003/88/EC seems to be inapplicable to member states of the European Union.

PART THREE

In recent decades, several economic crises seem to have taken place in member countries of the European Union. These economic crises usually lasted for several years and negatively influenced many societal aspects. Due to the lack of vitality in production during these periods of economic crisis, the labour market did not require so many employees. In order to deal with the recession, these member states had to take certain remedial measures, such as adjusting working hours. There were three adjustment methods, including extending working hours, shortening working hours and adopting flexible working hours. However, Working Time Directive 2003 in times of crisis does not seem to be applicable. Because of the adjustment of working hours, a large group of workers and their everyday life were affected because of it. Extending working time was popular in the period 2012-2013. Increasing the maximum limit, facilitating overtime work and enabling work in free time were three manifestations in this regard. Between 2012 and 2013, employers in some member countries of the European Union required employees to work longer hours than before instead of recruiting more employees. The Greek government decided to abolish the 40-hour five-day limit and established a new rule of a six-day working week.²⁶ The Lithuanian government chose to increase the maximum working week from 48 hours to 78 hours and to raise the maximum working day from 8 hours to 13 hours.²⁷ Apart from increasing the maximum limit, the phenomenon of working overtime was intensified in some European countries from 2012 to 2013. In order to avoid unemployment, Irish workers had to work overtime without remuneration.²⁸ In Poland, workers worked overtime but received less compensation than before.²⁹ Additionally, workers in some member countries of the European Union had to work on Sundays, public holidays and nights between 2012 and 2013. In the Czech Republic, managers required employees to work during Christmas holidays in order to generate profit.³⁰ In Hungary, workers were required to work on Sundays and public holidays.³¹ For companies, the first method was a good way to reduce costs and maintain the running of the company in recession. For employees, this method meant that some of them had to work more in order to avoid being laid off. It is argued that Working Time Directive 2003/88/EC was a guarantee for employees to fight for their rights during periods of economic crisis.³² They could refuse to work long hours to protect their health and safety. However, a large group of employees nonetheless lost their job. Although they wanted to fight for their rights according to regulations in Working Time Directive 2003/88/EC, they had to work longer in order to avoid being laid off. Especially in periods of economic crisis, the chances to make money were fewer than before. In order to support their families, most employees in these member countries chose to work long hours. Therefore, it seems that Working Time Directive 2003 was not applicable in some member countries of the European Union during such

and Environmental Health 1205.

²⁵ K Zhang, C Liu and S Ding, 'How Does Working Time Affect the Health Status of Urban Workers? Experience Analysis of Data from China's Labor Force Dynamic Survey' (2018) *Studies in Labor Economics* 107.

²⁶ C Lang, S Clauwaert and I Schömann, 'Working Time Reforms in Times of Crisis' (2013) *European Trade Union Institute* 29.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² A S Chenic (Cretu), C Angelescu, A Miron and A R Gheorghita, 'Working Time – A Key Element of Health Workers, An Instrument of Labor Market Flexibility. The Situation of the Health System' (2013) *Procedia – Social and Behavioral Sciences* 1142.

A Critical Discussion on the Effectiveness of Working Time Directive 2003/88/EC

periods.

On the contrary, some member countries of the European Union chose the second method, that is, shortening working hours during periods of economic crisis. The data show that, in Germany, 1.1 million people were working on a short-time basis in 2009.³³ In Austria, amendments to the Short-time Working Act came into force in 2013 in order to bring short-time schemes into practice.³⁴ In Sweden, regulations were introduced in 2012 in order to deal with the problem of salaries when working times were cut.³⁵ In France, the procedure to reduce working hours was complex and lasted for a long time.³⁶ It is obvious that a significant group of member countries of the European Union chose to reduce working hours. During the period of economic crisis, social production lacked vitality. On this occasion, employees were not required to work hard to intensify production.³⁷ As a result, reducing production by reducing working time was considered a good solution. It seems that reducing working time is beneficial for the health of employees, as emphasized in Working Time Directive 2003/88/EC. However, this is merely a means of measurement adopted by these member countries to maintain social stability because companies could avoid laying off a large group of employees. The result was that employees received lower salaries, preventing them from being able to afford a normal life.

The third method that some member countries chose was to introduce flexibility in the allocation of working hours in times of economic crisis, especially between 2012 and 2013. In other words, employees were permitted to vary their weekly working hours in the period of economic crisis. This method was also cited in Working Time Directive 2003/88/EC in order to introduce more flexibility in calculating working time. In 2013, annual working time was introduced in the Belgian labour market.³⁸ Since 2013, employers have been allowed to allocate working time flexibly in Spain.³⁹ Although a variable allocation of working time may have had a detrimental influence on workers' health and safety, as these workers have irregular working patterns and must adapt to different working periods, this method is more applicable than Working Time Directive 2003/88/EC during economic crises.

In the light of the range of examples above, it is obvious that different countries prefer to choose different solutions to solve the problems derived from the economic crisis. Another finding is that the period will also have an influence on the choice of method. After a general decrease in average working hours between 2007 and 2009, an increasing trend emerged from 2010 to 2012.⁴⁰ The financial crisis in 2018 had a seriously detrimental influence on the economy in European countries. The economy began to recover in 2013 due to efforts in many aspects. Subsequently, the debt crisis, the Ukraine crisis and the refugee crisis presented themselves before Europeans. Therefore, it is struggling to develop the economy in the European Union and the economy may not recover for a long time. Further, member countries of the European Union may still face the problem of underemployment. In order to solve this problem, these countries should adjust their working hours. Working Time Directive 2003/88/EC thus does not seem applicable, at least in the short term.

PART FOUR

In the 1980s, an atypical employment relationship appeared in European labour market. Although the traditional employment relationship was the mainstream in this period, there was a rising trend in the atypical employment relationship. Take Germany, for example, between 1988 and 1998: the rate of part-time jobs in West Germany increased from 11.3% to 17.3% while the rate of full-time work saw a decline from 67.4% to 62.1%.⁴¹ In an employment survey carried out by the French National Statistics Office (INSEE), part-time jobs represented 16.8% of French employed working population and temporary jobs equated to 6.3%.

³³ C Lang, S Clauwaert and I Schömann, 'Working Time Reforms in Times of Crisis' (2013) European Trade Union Institute 29.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ G-M Istrate and N Caragea, 'Working Time During the Economic Crisis and the Impact on Romanian Working Life' (2010) IDEAS Working Paper Series from RePEc 2010.

³⁸ C Lang, S Clauwaert and I Schömann, 'Working Time Reforms in Times of Crisis' (2013) European Trade Union Institute 29.

³⁹ *Ibid.*

⁴⁰ Anonymous, 'Impact of the Crisis on Working Conditions in Europe' (2013) M2 Presswire 16.

⁴¹ G Bosch, 'Towards a New Standard Employment Relationship in Western Europe' (2004) British Journal of Industrial Relations 617.

A Critical Discussion on the Effectiveness of Working Time Directive 2003/88/EC

Furthermore, since 1994, there has been greater growth in temporary work.⁴² In addition, in other European countries including France and the UK, the labour market phenomenon was quite similar in this period.⁴³ It is obvious that the atypical employment should be paid attention when analysing whether Working Time Directive 2003/88/EC should be adopted in the future.

Due to the development of technology and the innovation of business patterns, there has been a rapid increase in the proportionate nature of atypical employment relationships within the European economy in recent years. For example, in Germany, the share of atypical employment increased to more than one third of the workforce compare to the data in 2010.⁴⁴ Therefore, the rights related to atypical employment relationships should receive more attention.

‘Typical employment’ may be defined as ‘having a continuous employment relationship with a particular company and working full time for that company’.⁴⁵ The workers under the conditions of typical employment have standard working hours and a regular income. They are protected in many aspects by labour law, including limited working hours, welfare as well as unemployment and sickness insurance. On the contrary, ‘atypical employment’ is a form of employment that does not meet these criteria, nor is it regulated by labour law.⁴⁶ It can take many different forms, including part-time work, labour dispatching, self-employment, flexible employment, fixed-term work, casual and seasonal work, temporary employment, contract work, independent work and homeworkers. There is a debate about whether the atypical employment relationship should be regulated by labour law. Although people now could accept these new changes in our society, it is difficult for them to regard the atypical employment relationship as a new type of employment relationship which should be regulated by labour law. In legal practice, atypical employees are not protected by existing regulations.⁴⁷

Part-time work is one of the most popular atypical relationship forms in most member countries of the European Union. Take a Dutch survey, for example: during the period 1992-2005, women aged between 18 and 64 chose part-time jobs in order to balance the relationship between work and family life. The rate of part-time jobs increased at the expense of full-time jobs. The data also show that younger generations tend to choose part-time jobs.⁴⁸ It is argued that, based on statistics from 15 European countries, policies related to the protection of part-time employment had a positive impact on the increasing rate of such employment.⁴⁹ However, it has not been proven that part-time jobs are regulated by labour law. On-demand employment, which is also known as the gig economy, is commonly accepted in member states of the European Union. Employees under on-demand employment could offer labour through digital platforms. For example, passengers could ask for transport services through the Uber app, even though Uber drivers could be lawyers, doctors, teachers or from other walks of life.⁵⁰ Another example is InCloudCounsel, an app that promotes lawyers offering legal services.⁵¹ As a kind of atypical employment relationship, part-time work is a double-edged sword. On the one hand, these apps are of genuine convenience in our daily life. On the other hand, for employees, digital platforms cannot provide them with any guarantee of health and safety, unemployment insurance or many other basic rights, which are emphasized in labour law.

In brief, the atypical employment relationship should be regulated by labour law. In other words, atypical workers need protection from such law. However, European law makes few contributions in this field. Working Time Directive 2003/88/EC is an important example because it has not been revised in order to reflect the development of society since it was established in 2003. As the atypical employment relationship is flexible and has low subordinate attributes, what constitutes working time is difficult to

⁴² P Letrémy and M Cottrell, ‘Working Times in Atypical Forms of Employment: The Special Case of Part-time Work’ (2003) *Connectionist Approaches in Economics and Management Sciences* Kluwer 111.

⁴³ G Bosch, ‘Towards a New Standard Employment Relationship in Western Europe’ (2004) *British Journal of Industrial Relations* 617.

⁴⁴ B Keller and H Seifert, ‘Atypical Employment in Germany. Forms, Development, Patterns’ (2013) *Transfer: European Review of Labour and Research* 457.

⁴⁵ S Hiroki, ‘Atypical Employment: A Source of Flexible Work Opportunities?’ (2001) *Social Science Japan Journal* 161.

⁴⁶ *Ibid.*

⁴⁷ R Dicks, ‘The Growing Informalisation of Work: Challenges for Labour – Recent Developments to Improve the Rights of Atypical Workers’ (2007) *Law, Democracy and Development* 39.

⁴⁸ N Bosch, A Deelen and R Euwals, ‘Is Part-time Employment Here to Stay? Working Hours of Dutch Women over Successive Generations’ (2010) *Labour* 35.

⁴⁹ *Ibid.*

⁵⁰ O Lobel, ‘The Gig Economy & the Future of Employment and Labor Law’ (2016) *University of San Francisco Law Review* 73.

⁵¹ *Ibid.*

A Critical Discussion on the Effectiveness of Working Time Directive 2003/88/EC

calculate. What is more, the rate of atypical workers in member countries of the European Union is different.⁵² Therefore, Working Time Directive 2003/88/EC should not be adopted in member countries of the European Union. In order to protect the health and safety of atypical employees, a new Directive related to restricting working hours should focus on both the characteristics of this atypical relationship and the different development levels of member countries.

PART FIVE

The European Community was established in 1965. At the beginning, there were six participating countries, namely, Germany, France, Italy, the Netherlands, Belgium and Luxembourg. Then the European Community experienced several expansions and became the European Union. The most important enlargement was in 2004, when a series of Central and Eastern European countries, such as Poland, Hungary, the Czech Republic and Slovakia, joined the European Union. At present, there are 28 countries in the European Union.

There is a debate about what influences the enlargement of the European Union has brought to member countries. On the one hand, the expansion of the European Union prompted the integration of member countries. It is undeniable that European integration has promoted economic cooperation, cultural reciprocity and many other aspects among member countries. On the other hand, it has intensified imbalanced development across the European Union. To be more precise, its enlargement has had different influences on these member countries. Some countries, namely, Austria, Germany, Sweden, Italy and Finland, have benefited from enlargement, while countries including Portugal, Spain, Belgium and the UK have been negatively affected.⁵³ Especially in Eastern Europe, most countries have faced a range of problems including deep recession, a high rate of unemployment, financial crisis and nationalist conflicts.⁵⁴ It is argued that, in the period 1997-1998, the economic level of all Eastern European countries (except for Poland and Hungary) decreased to that of 1989 (that is, before the Berlin Wall collapsed).⁵⁵ In the same period, the GDP of these countries was also below that of 1989.⁵⁶ Therefore, Eastern European countries have had to make more efforts to stabilize development in many respects, especially the economy. Overall, although enlargement of the European Union has promoted the integration of Europe, the economic development gap in member countries has become bigger. It is argued that, as more countries participate in the European Union, it will be difficult to balance the legal traditions among these member countries.⁵⁷ Working Time Directive 2003/88/EC neglects the different development levels in member countries, yet applies the same standard of working hours to different countries. However, based on the analysis above, regulations from the European Union should not only focus on the integration of Europe, but also take different political situations, economic levels, educational standards and population structures in these member countries into consideration.

As a significant element in European law, Working Time Directive 2003/88/EC has played an important role in the integration process of Europe since it was established in 2003. This and other Directives are binding upon member states and beneficial for the integration of Europe. However, member countries are required to transfer these Directives into domestic regulations. In other words, member countries should also adjust or revise national law or domestic policies in order to follow the Directives of the European Union. Article 249 of the revised European Community Treaty states that, for each member state, the Directive shall be binding in legal practice, provided that alternative forms and methods are reserved for member states. It is stated that it is more important to achieve the aim of the Directives in member countries rather than to combine domestic regulations and European Directives in a literal document.⁵⁸ This means that directives are not binding in terms of the form and the method of action; rather, they are only binding in terms of the purpose and the practical outcome. However, in the process of transfer, the real meaning of the Directives may be weakened because member countries hope that they are appropriate for current situations. It is common for

⁵² R Konle-Seidl, H Ullmann & U Walwei, 'The European Social Space: Atypical Forms of Employment and Working Hours in the European Community' (1990) *International Social Security Review* 143.

⁵³ I Zloch-Christy, 'Problems and Challenges of the EU Eastern European Engagement' (2000) *International Studies Association Annual Meetings* 1.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ Y Bai, 'Study on the Pre-effectiveness of EU Directives' (2016) *Graduate Law Review* 64.

⁵⁸ H van Drongelen, 'The Concept of Working Time in the Working Time Directive and the Dutch Working Time Act' (2012) *European Labour Law Journal* 98.

A Critical Discussion on the Effectiveness of Working Time Directive 2003/88/EC

member countries to ignore the obligations or refuse to obey them, as emphasized in the Directives.⁵⁹ Working Time Directive 2003/88/EC is no exception in any practical sense. It is demonstrated that the concepts of 'work' and 'working time' are not contained in the Dutch Working Time Act.⁶⁰ Hence, Working Time Directive 2003/88/EC has not been implemented properly in legal practice. The reason behind this phenomenon is clear. In the process of integrating legal systems, the European Union has applied some artificially technical methods and ignored the particularity of member states.⁶¹ Overall, Working Time Directive 2003/88/EC is not scientific, nor should it be adopted to a great extent.

In a word, given the enlargement of the European Union, the development level in member countries is different. Additionally, the Directives of the European Union have inherent problems in the process of application in a range of countries. Therefore, Working Time Directive 2003/88/EC should not be applied in member countries of the European Union more than 15 years after its adoption.

CONCLUSION

In conclusion, it is undeniable that Working Time Directive 2003/88/EC brings benefits to employees in the European Union since its implementation in 2003. It has truly protected the health and safety of European workers in the past 15 years. However, it should not be applied in member countries in the future. There are four main reasons for this. According to some surveys, long periods of working do not directly affect the health and safety of employees. In recent years, member countries have needed to adjust working hours to cope with economic recession. Furthermore, atypical employment relationships are increasing, which cannot be regulated by Working Time Directive 2003/88/EC. The last rationale is that there will be more countries entering the European Union and that Working Time Directive 2003/88/EC ignores the different conditions found in member countries. As a result, Working Time Directive 2003/88/EC cannot conform to the development of the European Union. Moreover, the health and safety of employees could be influenced by many aspects in modern society. We cannot expect to solve relevant problems via a Directive which was enacted 15 years ago. In the future, the European Union should take many aspects, including the new employment relationships which have appeared in recent decades, the current economic situation in the European Union and different development situations in member countries, into consideration when enacting or revising the Directive. The new Directive should systematically pay attention to the elements which affect the health and safety of employees rather than only concentrating on the working time.

ACKNOWLEDGMENTS

This essay received help from professors at law school, the University of Edinburgh. Dr Remus Valsan, who worked as a senior lecturer in corporate law, his main research interests lie in the fields of fiduciary law, comparative corporate law and governance, law and economics, and trust law. Dr Jonathan Hardman, who was a solicitor in private practice for 10 years before starting at the Law School, His research is conducted across a broad range of commercial law (particularly rights in security) and company law (particularly the law of private companies). Most of his research has a law and economics methodology, which he has applied to a broad range of different subject matters. At the beginning, they encouraged me to spend more time reading primary sources, which were considerably useful for researching. After completing my draft, they provided me with a series of constructive suggestions. The revision of this essay experienced a long term and thanks a lot for their patience.

CONFLICT OF INTEREST: none.

REFERENCES

Books

- 1) Barnard C, *EU Employment Law* (4th edn, Oxford University Press 2012)

⁵⁹ W-R Tseng, 'Directive Effect and Consistent interpretation of EU Directives' (1997) *Chung Hsing Law Review* 113.

⁶⁰ H van Drongelen, 'The Concept of Working Time in the Working Time Directive and the Dutch Working Time Act' (2012) *European Labour Law Journal* 98.

⁶¹ Y Bai, 'Study on the Pre-effectiveness of EU Directives' (2016) *Graduate Law Review* 64.

A Critical Discussion on the Effectiveness of Working Time Directive 2003/88/EC

Articles

- 1) Nowak T, 'The Working Time Directive and the European Court of Justice' (2008) *Maastricht Journal of European and Comparative Law* 447
- 2) Harrington J M, 'Working Long Hours and Health' (1994) *BMJ* 1581
- 3) Dembe A E, Erickson J B, Delbos R G and Banks S M, 'The Impact of Overtime and Long Work Hours on Occupational Injuries and Illnesses: New Evidence from the United States' (2005) *Occupational and Environmental Medicine* 588
- 4) Hannerz H and Soll-Johanning H, 'Working Hours and All-cause Mortality in Relation to the EU Working Time Directive: a Danish Cohort Study' (2018) *European Journal of Public Health* 810
- 5) Cooper C L, 'Working Hours and Health' (1996) *Work & Stress* 1
- 6) rtazcoz L, Cortès I, Benavides F G, Escribà-Agüir V, Bartoll X, Vargas H and Borrell C, 'Long Working Hours and Health in Europe: Gender and Welfare State Differences in a Context of Economic Crisis' (2016) *Health and Place* 161
- 7) Greubel J, Arlinghaus A, Nachreiner F and Lombardi D, 'Higher Risks When Working Unusual Times? A Cross-validation of the Effects on Safety, Health, and Work-life Balance' (2016) *International Archives of Occupational and Environmental Health* 1205
- 8) Spurgeon A, Harrington J M and Cooper C L, 'Health and Safety Problems Associated with Long Working Hours: A Review of the Current Position' (1997) *Occupational and Environmental Medicine* 367
- 9) Allen H M, Slavin T B and Bunn W B, 'Do Long Workhours Impact Health, Safety, and Productivity at a Heavy Manufacturer?' (2007) *Journal of Occupational and Environmental Medicine* 148
- 10) Wu W, 'The Influence of Working Hours on Career Happiness: An Empirical Analysis Based on Three Typical Occupations' (2016) *China Industrial Economics* 130
- 11) Zhang K, Liu C and Ding S, 'How Does Working Time Affect the Health Status of Urban Workers? Experience Analysis of Data from China's Labor Force Dynamic Survey' (2018) *Studies in Labor Economics* 107
- 12) Istrate G-M and Caragea N, 'Working Time During the Economic Crisis and the Impact on Romanian Working Life' (2010) *IDEAS Working Paper Series from RePEc* 2010
- 13) Anonymous, 'Impact of the Crisis on Working Conditions in Europe' (2013) *M2 Presswire* 16
- 14) Lang C, Clauwaert S and Schömann I, 'Working Time Reforms in Times of Crisis' (2013) *European Trade Union Institute* 29
- 15) Chenic (Cretu) A S, Angelescu C, Miron A and Gheorghita A R, 'Working Time – A Key Element of Health Workers, An Instrument of Labor Market Flexibility. The Situation of the Health System' (2013) *Procedia – Social and Behavioral Sciences* 1142
- 16) Konle-Seidl R, Ullmann H and Walwei U, 'The European Social Space: Atypical Forms of Employment and Working Hours in the European Community' (1990) *International Social Security Review* 143
- 17) Letrémy P and Cottrell M, 'Working Times in Atypical Forms of Employment: The Special Case of Part-time Work' (2003) *Connectionist Approaches in Economics and Management Sciences* Kluwer 111
- 18) Hiroki S, 'Atypical Employment: A Source of Flexible Work Opportunities?' (2001) *Social Science Japan Journal* 161
- 19) Bosch N, Deelen A and Euwals R, 'Is Part-time Employment Here to Stay? Working Hours of Dutch Women over Successive Generations' (2010) *Labour* 35
- 20) Lobel O, 'The Gig Economy and the Future of Employment and Labor Law' (2016) *University of San Francisco Law Review* 73
- 21) Keller B and Seifert H, 'Atypical Employment in Germany. Forms, Development, Patterns' (2013) *Transfer: European Review of Labour and Research* 457
- 22) Bosch G, 'Towards a New Standard Employment Relationship in Western Europe' (2004) *British Journal of Industrial Relations* 617
- 23) Dicks R, 'The Growing Informalisation of Work: Challenges for Labour - Recent Developments to Improve the Rights of Atypical Workers' (2007) *Law, Democracy and Development* 39
- 24) Zloch-Christy I, 'Problems and Challenges of the EU Eastern European Engagement' (2000) *International Studies Association Annual Meetings* 1

A Critical Discussion on the Effectiveness of Working Time Directive 2003/88/EC

- 25) Bai Y, 'Study on the Pre-effectiveness of EU Directives' (2016) Graduate Law Review 64
- 26) Drongelen H van, 'The Concept of Working Time in the Working Time Directive and the Dutch Working Time Act' (2012) European Labour Law Journal 98
- 27) Tseng W-R, 'Directive Effect and Consistent interpretation of EU Directives' (1997) Chung Hsing Law Review 113



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.