



EUROPEAN COMMISSION

Ursula von der Leyen
The President

Brussels, 21. 02. 2022
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Dear Honourable Members,

I would like to thank you and the co-signatories for your letter about the application of Directive 2003/88/EC on the organisation of working time and its impact on volunteering activities and on the armed forces in Europe.

Let me start by paying tribute to the dedication of the staff in all our emergency services and armed forces in the European Union, whether volunteers or professionals. Those who ensure our safety and security, under difficult conditions and at great personal risk, deserve our steadfast support. We must ensure that the organisation of emergency services and armed forces can continue to tackle a wide and unfortunately growing range of threats and challenges. That is the spirit in which I read and respond to your letter.

The Working Time Directive is a health and safety measure that protects workers from excessive working hours and inadequate rest. Workers providing emergency services or the armed forces should not be deprived of this protection. However, as the EU legislator recognised, where activities notably of the armed forces, police or civil protection services inevitably conflict with the provisions of the Directive, these provisions can be derogated from, while ensuring as far as possible the health and safety of the workers concerned.

Regarding firefighters and the Matzak judgment (C-518/15) of the Court of Justice of the European Union (CJEU), allow me to underline that it does not oblige Member States to phase out volunteer firefighter status, nor to always treat volunteers in exactly the same way as career professionals. The central issue of the Matzak judgment was about rest time for firefighters who, while on standby, are obliged to remain near to their fire station, and to return within eight minutes if called.

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The Court's conclusion that Mr Matzak should, subject to verification by the national court, be considered a worker under the Directive followed a long line of case law according to which 'worker' status under EU law depends on whether the person pursues real and genuine activities, is subordinated to another person, and is remunerated in return.

Following the judgment, many stakeholders concluded that EU law had made it impossible to have volunteer firefighters. I believe this conclusion is not correct. The Matzak judgment does not mean that every volunteer firefighter in the EU automatically qualifies as a 'worker'. There is no one-size-fits-all reply to the question of the status of volunteer firefighters under the Working Time Directive. Each specific case needs to be assessed against the criteria for qualification as 'worker' established by the Court. If the Directive does apply, its provisions on resting time should be respected.

However, the Directive offers a lot of flexibility for sectors such as firefighting and emergency services. For instance, derogations from daily and weekly rest are possible if compensatory rest is provided. Member States may also allow workers to 'opt-out' of the 48-hour average maximum working time under certain conditions. In exceptional circumstances of significant gravity – such as natural or technological disasters, attacks or major accidents – it is justified to give priority to the objective of protecting the population, to the detriment of compliance with the provisions of the Directive, which may be temporarily disregarded within services in the areas of public health, public safety and public order.

In respect of the armed forces, the judgment of the Court in the Ministrstvo za obrambo case that you mention (C-742/19) confirms the long-established principle that the Directive applies to the personnel of the armed forces, but takes specific account of their special role in ensuring the territorial integrity of the Member State, maintaining law and order, and safeguarding national security. In particular, the Court identified specific circumstances when a security activity performed by a member of military personnel is excluded from the scope of that directive¹

I believe that this judgment offers Member States the right tools to organise their armed forces in a way that does not hamper their effectiveness nor prevent their urgent mobilisation, while ensuring that the health and safety of the personnel is protected as far as possible.

I do not underestimate how challenging it is to implement and apply a Directive that protects all workers, publicly or privately employed across all sectors of activity. My services are in discussion with the Member States, bilaterally and collectively, about how best to apply it, in the light of the case law of the Court. In 2022, the Commission will present a report on the implementation of the Working Time Directive, based on inputs from Member States and social partners, which will be accompanied by an update of 2017 Interpretative Communication.

Yours faithfully,



Ursula von der Leyen

¹ See judgment of the CJEU in case C-742/19, *B. K. v Republika Slovenija (Ministrstvo za obrambo)*, point 88.