2017

Working Time Directive in Social Care and Support Services for Persons with Disabilities

EASPD

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This is a summary report by the European Association of Service providers for Persons with Disabilities (EASPD) and the European Observatory on Human Resources (EOHR) based on research "Implications of the Working Time Directive on working conditions in the social care sector: Cases from EU countries," prepared by:

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The full research documents can be found on EASPD website www.easpd.eu.

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A prisoner in his own home…

A while ago Gregory Smith met a leading UK MEP to explain how the Working Time Directive (WTD) was likely to affect his personalized care services in the care and support sector. Gregory, confined to a wheelchair and requiring total bodily care, told of how his Personal Assistant (PA) had that day got him up, dressed and fed, driven him to this meeting and was now 'off duty' in town. She would return, pick him up and drive him back home (3 hours), feed him and bathe him and put him to bed. She was happy to drive both ways and to have a long midday break (in the shops) and all this had been agreed with her in advance.*

If the WTD had been applied, Gregory would have had to have at least two and possibly three PA's just to make this meeting in a WTD compliant way. As an active member of civil society (Health Board member, charity trustee) with many external meetings, Gregory explained to the MEP that if the WTD applied to PAs/Live-in carers, then his current life would cease. He said "I would find it difficult to arrange to go out and attend meetings in the normal way. The WTD would in effect turn me into a prisoner in my own home."

*Names have been changed to protect identity

I. Introduction

The European Union (EU) adopted the Working Time Directive (WTD), 2003/88/EC with an aim to protect workers' health and safety by guaranteeing minimum standards on working hours. The WTD aims to fight excessive working hours, impose protection for night work, etc. Many social service providers for persons with disabilities believe that the current nature of work in social care and support, especially in live-in care, often requires more flexibility than is case under the current implementation of the WTD. **To provide individualised and community-based services, which would fully respect the human rights of persons with disabilities, service providers are pressured to find ways to overcome constraints they currently face in terms of qualified staff and funding.** The potential conflict between some aspects of the WTD and the needs of the sector to provide services compliant with the UN Convention on the Rights of Persons with Disabilities (UN CRPD) and the Charter of Fundamental Rights, may have negative implications on workforce, services and working conditions.

Objective

This report aims to draw attention to the implications of the WTD on working conditions in the sector of social care and support services (SCSS) for persons with disabilities.

Scope of the report

The report includes cases of four countries representing different European welfare models: Austria (Continental), the United Kingdom (Anglo-Saxon), Slovakia (Central European) and Spain (Mediterranean)[1], and focuses on the elements of the WTD, such as:

- The length of the normal working week
- Stand-by time, on-call time or additional availability
- Reference Periods for calculating a worker's average working time
- Night work, night workers & shift work
- Minimum daily rest – per day & per week
- Annual paid leave
- Part time or full-time work
- The use of the 'opt-out'
- Health and safety issues

Main findings

Based on desk research and interviews/questionnaires conducted in the four countries mentioned above, the following issues have been raised and must be solved:

- Implementing the WTD has increased the cost of service provision, but governments have not always funded these increases sufficiently. Unpaid so-called 'voluntary' work has sometimes been used to fill gaps in the shift coverage.
- The European Court of Justice (ECJ) decision making all on-call (active and inactive) count as working time has had a major impact on small scale 24/7 support services. Non-compliance is possible since all parties (users, workers, employers) may still prefer the late shift, sleep-in or early shift pattern of work, even though it is not WTD compliant. Perversely, for some workers, changing shift patterns to conform with the WTD has extended their working week and/or reduced their earnings.
- Some very small-scale models of care, with 24/7 care provided in a person's own home (often called 'live-in care') are simply not deliverable under the current WTD, given the current funding levels, although they do enable users to lead a full life.

[1] The fifth model, the Nordic, is not included in this study

- Many social care and workers have more than one job. This is quite common in this sector because of low wages. It is not clear if, or how, employers are expected to monitor and control the hours spent by workers in other employment(s), which they may not even be aware of (in the UK and in Austria, employers are required to monitor such additional hours, although there is no effective mechanism for doing this; this is not the case in Slovakia and Spain).
- Rest periods in shift work are particularly problematic. The *reductio ad absurdum* of this is the technical requirement to wake up sleep-in workers after 6 hours 'work' on a shift so that they may have a 20-minute rest.
- Switching to unpaid 'voluntary' work and/or being under pressure to take up another job or interrupted sleep in fact have the opposite effect on work-life balance and the health & safety of care workers than is intended by the WTD.
- Some aspects of the WTD, such as measure on daily rest, can hinder the flexibility of care workers to better organize their private time. For instance, a care worker providing in-house care and support may prefer to stay with the user for 2,5 days (in the following sequence: 16 hours of work + 8 hours of sleep + 16 hours of work + 8h hours of sleep + 8 hours of work). In such a scenario, the worker is at work for more than 12 hours, but he/she takes 4 full days rest later in the week; while the user receives full day support. Care workers often prefer such a schedule since it saves them time on any daily commute and gives them 4 full days off and better work-life balance.
- Some states have 'gold-plated' their transposition of the Directive into local regulations, involving other requirements in excess of the WTD, whilst blaming the WTD (and the EU) for their introduction.

In the countries considered in this report, the following problems and/or serious departures from the WTD have been identified:

- Low wages and understaffing often result in the staff in SCSS in Slovakia working in excess of the 48-hour working week provided for in the WTD;
- In the UK, the re-definition of 'sleep-ins' as full working time has produced a possible requirement to pay sleep-ins at the revised rate to all staff for the past 6 years. Unless this is funded or amended, this demand will bankrupt many employers and cause a major crisis;
- In Spain, many staff prefer to work longer somewhat un-demanding shifts (often those involving sleep-ins) to free up their time to provide a better work/life balance, even though this contravenes the current WTD;

- In Austria, the reduction of maximum weekly working hours from 60 to 48 hours in residential care, falling under the Hospital Working Hours Act, will not be achieved until 2021. (This reduction has been agreed and will be funded.)
- In Austria, if a peripatetic worker visits a (pre-booked) client and the client is not there, then this 'wasted' time is not seen as working time, nor paid as such, which may result in the permanent reduction of monthly working hours in a new contract.

II. Understanding sectoral and legal and contexts

Sector of social care and support services

In the framework of this report, social care and support refers to the formal provision of social work, personal care, protection or social support services to children or adults with needs arising from disability.

In the last two decades, the nature of formal care and support has been changing from institutional to personalised care. Care can cover both physical care but also includes 'enabling' people to be independent and as active as possible, which depends on some form of relationship between carer and person being cared for[2]. Increasingly, care is delivered in people's homes as well as in community and residential settings. SCSS contribute to supportive living environments, providing protection and supporting citizenship.

High quality care and support benefits those being cared for by contributing to their quality of life, their autonomy and independence and in maintaining their well-being. They contribute to the fulfilment of rights established under the Charter of Fundamental Rights of the EU, namely, Article 7 on respect for private and family life, home and communications, as well as Article 26 on measures designed to ensure the independence, social and occupational integration and participation in community life of persons with disabilities. For society, good quality care contributes to a shared sense of responsibility for the needs of different groups. For people with disabilities, adequate care and support can determine whether they can participate within the labour force and take part in community/social activities.

Delivery of high quality services requires a high quality workforce. Despite the great social value of care and support services, the workforce in this sector faces a range of challenges[3]:

[2] Moss P. (2004) Understanding of care work in theory and practice Summary of Report on Stage Two Work package 11 Care Work in European Current understandings and future directions.

[3] Lethbridge, J. (2015) Care in the XXI century: expanding the social care workforce for people with disabilities, Commissioned by EASPD.

- Cuts in public spending due to austerity policies.
- The privatisation of services, the introduction of public procurement processes - focusing on cost rather than quality - and the lack of regulatory frameworks in the SCSS sector are resulting in low pay and the deskilling of the workforce, which also threaten the values that inform the delivery of social care services.
- Shortage of skilled staff is a major problem. Although new qualifications are being introduced, which will contribute to improving the quality of basic grade care workers, many hands-on care workers can still obtain a job without experience. There are extensive training needs.
- Mobility of the workforce - staff who are qualified and experienced leave the country to find higher paid work in other European countries and this results in countries losing valuable human resources.
- Care work is often seen as something that is done by women in the household and this is reflected in the formal care workforce, which is predominantly female (over 80% of the workforce in SCSS sector).

The nature of work in SCSS (particularly in residential care and 24/7 services) commonly involves:

- **On-call time** - any period where the worker is required to remain at the workplace (or another place designated by the employer) and has to be ready to provide services. Under the current WTD, as interpreted by the ECJ, on-call time is fully regarded as working time for the purpose of the Directive, regardless of whether active services are provided during that time.
- **Stand-by time** - any period where the worker is not required to remain at the workplace, but has to be contactable and ready to provide services. Under the current WTD, as interpreted by the ECJ, stand-by time does not have to be considered as working time for the purpose of the Directive. Only active stand-by time, i.e. time in which the worker responds to a call, has to be fully counted as working time (see in particular Cases C-303/98 Simap, C-151/02 Jaeger, C-14/04 Dellas).
- **Night time -** any period of not less than seven hours, as defined by national law, and which must include, in any case, the period between midnight and 05.00. Normal hours of work for night workers do not exceed an average of eight hours in any 24-hour period.
- **Shift work** - any method of organising work in shifts whereby workers succeed each other at the same work stations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks.

Working Time Directive

The WTD 2003/88/EC gives EU workers the right to at least 4 weeks (20 days) paid holidays each year, rest breaks, and rest of at least 11 hours in any 24 hours; restricts excessive night work; a day off after a week's work; and provides for a right to work no more than 48 hours per week. Since excessive working time is cited as a major cause of stress, depression and illness, the purpose of the Directive is to protect workers' health and safety.

The WTD requires all EU Member States to incorporate its principles into national laws. Its current version has been the subject of repeated attempts to reform it at EU level, but all such attempts have failed, mostly for political reasons. Over the years, various rulings at both national and European court levels have gradually expanded and 'clarified' what the original wording of the WTD means.

There have been many (sometimes contradictory) legal rulings on the national implementations of the WTD – often transposed into national employment regulations in some form, e.g. 'Working Time Regulations' (WTR). These 'local' transpositions are quite separate from the original WTD and the European Commission (EC) has over time issued formal Opinions to several Member States when it considers that the Member States has not adequately transposed the WTD requirements into their own national WTRs. This has resulted in states needing to amend their legislation or regulations to comply with the WTD. However, as the two EC 2017 reports (see below) show, there are many areas in which states are still not WTD compliant.

In April 2017, the EC issued an Interpretative Communication on the overall use of the WTD[4]. This had no legal force, but contained some new 'interpretations' of the current law and rulings by the ECJ. It was intended to offer 'greater clarity' to assist states seeking to incorporate the WTD into their national laws, to promote enforcement and to better apply the Directive's provisions in a fast-changing world of employment. Also in 2017 a second EU report on how Member States have implemented the WTD[5] concluded that the WTD has "for the most part been transposed in both the public and private sectors." However, after detailing numerous and extensive areas of common non-compliance, the EC promised future action and support to states trying to improve their implementation.

[4] Working Time Directive: Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time – C(2017) 2601

[5] Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee. Report on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time COM/2017/0254

Given the scale of present non-compliance and interpretative problems which these reports reveal (18 out of 28 states make some provision for the use of the opt-out), the Commission's unspoken assumption that the problems lie with the inability of Member States to transpose the WTD, rather than with the WTD itself, is unhelpful and perhaps indicates the unwillingness to consider any meaningful change. If this assumption does exist, it needs to be examined and the consequences of the current application of the WTD need to be tested in each case. The social care and support sector is one such case.

Human rights of persons with disabilities

UN Convention on the Rights of Persons with Disability (UN CRPD), adopted in 2006, recognizes the right of persons with disabilities to have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community. Similarly, the European Disability Strategy 2010-2020 (EDS) and the Charter of Fundamental Rights (CFR) of the EU provide additional support to the underlying principles expressed in the UN CRPD.

The UN CPRD provides for the rights of persons with disabilities. It is based on the principles of respect for dignity; non-discrimination; participation and inclusion; respect for difference; equality of opportunity; accessibility; equality between men and women; and respect for children. Countries must take a range of measures, with the active involvement of people with disabilities, to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind.

This includes (inter alia):

- Article 19: Living independently and being included in the community
- Article 20: Personal mobility
- Article 21: Freedom of expression and opinion, and access to information
- Article 22: Respect for privacy
- Article 23: Respect for home and the family
- Article 24: Education
- Article 25: Health
- Article 26: Habilitation and rehabilitation.
- Article 27: Work and employment
- Article 28: Adequate standard of living and social protection
- Article 29: Participation in political and public life
- Article 30: Participation in cultural life, recreation, leisure and sport

The WTD preceded the passing of the UN CRPD by a number of years, but the EU is committed to both these documents and the principles they espouse. When some rules of the Directive cut across the provision of a service which delivers a user's human rights – what should happen? Can they be reconciled in day to day work and daily care?

There should in principle be no conflict between the WTD and meeting the provisions in actual real-life services of the UN CRPD, but it is clear from our research in social care and support that there are a number of fundamental problems. In our view, these show that the WTD is often being seen by people with disabilities, employers and (some) workers as positively obstructing the provision of the best possible care and support within current resources. EASPD can only speak for service providers for people with disabilities and they are clear that, although the WTD has produced some welcome improvements in the pay and conditions of sector workers, it can also hinder the flexibility and autonomy of care workers to organize their private life and deters the development of innovative and flexible personalized services which many users want. By doing this, it prevents providers from developing services which enable service users to enjoy their full human rights as envisaged in the UN CRPD.

III. Working time in social care and support services for persons with disabilities

Based on our research in SCSS for persons with disabilities, we have found the following current aspects of employment in SCSS relating to the WTD across the four countries considered in this report.

The length of the normal working week

For all countries considered, the usual weekly working time for staff in SCSS is approximately 37,5 - 38,5 hours. Staff in SCSS often work within usual working hours (e.g. 08:00 till 16:00 in **Slovakia**, 09:00 till 17:00 in **Austria**). There are also 'unusual' working hours (e.g. weekend, afternoons, 3-shift cycles etc.) especially in residential facilities and in flexible models of peripatetic services or for working patterns for some senior staff. In the **UK**, 37.5 hours is the most common pattern. However, nearly all work is shift work and covers 'unusual time'. Workers often cover more than 40 hours when 'sleep-ins' are included in the calculations as full working time. In **Austria**, standard time is 38 hours, 8 hours per day, with an extension to 10, 12 or 24 hours possible (collective agreement). In **Spain**, the maximum ordinary hours can be 45, with an average of 40 in annual computation, but the two-main collective agreements reduce this limits to 38 and 36,5 hours.

Stand-by time, on-call time or additional availability

This issue is complicated and differs considerably between countries. In the **UK**, stand-by time is not much used in the SCSS for persons with disabilities. Instead, "sleep-ins", sometimes called "on-call", are used extensively. There are current legal disputes about whether this time should be considered full working time (and paid as such) when the worker is asleep. Or, should time asleep not be counted as working time, but paid at a flat rate instead – which is commonly done? In **Spain**, the hours of availability that must be carried out within the premises of the employer are hours of work that are paid normally. However, in a national agreement 'additional availability' is defined and is paid to workers who volunteer to be available outside the employers' premises to meet requirements due to work needs. This agreement specifies that this kind of 'availability time' will not be included in the computations of the ordinary working day. If called on to work, the period of extra time actually worked will count from the time of the call to thirty minutes after the end of the service that had been provided. This is, however, not very common in **Spain**. In **Austria**, on-call time at the workplace in SCSS is common in residential facilities, where special working time provisions allow 24 hour shifts. For on-call time outside the workplace, travelling time to the workplace is usually fully paid, when the worker is "activated". **Slovakia** uses on-call time very rarely but, when it does, it is either mostly unpaid (and classified as "voluntary work") or (in a very few cases) it is paid as overtime.

Reference Periods for calculating a worker's average working time

In **Austria**, the reference periods according to collective agreements in SCSS is variable: 3 months (with 48 hours per a week maximum), or 6 months (with 45 hours maximum), or 12 months (with 42 hours maximum). For **Slovakia** and the **UK**, the reference period is usually 4 months, with some provision for extending this by agreements. In **Spain**, there is an annual calculation of an average of 38 -36,5 hours per week, according to collective agreements. Employers may distribute the working time irregularly in percentage (10% in annual calculation).

Night work, night workers & shift work

Slovakia uses night work in SCSS mostly in 24/7 residential services. 35-70% of all staff do a night shift around 6-times per a month (with a max 10-times). Most carers for persons with disabilities work in 2 or 3-shift cycles. In **Spain**, night-work may not exceed eight hours within each 24-hour period on average within a reference period of fifteen days and night workers may not work overtime. National Agreements provide for a bonus for night work and provide some flexibility to accumulate accrued time off which can then be added to rest days when the worker has agreed shorter rest

periods between hours of work. In the **UK**, nearly all work in SCSS involves shift work. A popular pattern is 3-shifts, covering a 24-hour period (i.e. an evening shift, a sleep in and the next morning shift because this limits travel time and disruption to home life). This is not entirely compliant with the WTD. Live-in workers may work two weeks on and one week off. This model includes the usual night work (i.e. waking nights, full active night shifts) but also (for residential services) most night work is in fact a "sleep-in" and involves long periods of inactive time (usually night work is 8 hours). **Austria** also follows this pattern and a national agreement has provided (within the WTD) for a 24-hours shift involving "easier duty" in residential facilities for a maximum of 3-times a week.

Minimum daily rest – per day and per week

In **Austria**, daily minimum rest (11 hours) can be reduced to 9 hours by collective agreement at company level, which deviates from the WTD rules. Weekly rest is 2 full consecutive days. After providing 24-hours care, which is also considered a deviation from the WTD, 2 full continuous day rest must be granted. In **Slovakia**, if the continuous daily rest is interrupted by overtime or on-call or stand-by time, then this is held to be outside the shift framework (This is again not complaint with the WTD). As a result, it does not 'interrupt' the rest period (daily or weekly), but in reality, there is clearly an impact on the amount of rest the worker is getting. In the **UK**, sleep-in and stand-by time is usually counted as rest unless disturbed (i.e. the worker becomes 'active'). However, there is much confusion and uncertainty about this with current legal challenges pending. In **Spain**, between the end of one day and the beginning of the next one, at least a 12-hour gap will be required. There is also a minimum weekly rest of day and a half, and the Centres and Services Agreement establishes that it may be accumulated for periods of up to fourteen days, stating that the accumulated rest days must be enjoyed in an uninterrupted manner.

Annual paid leave

In **Slovakia**, a Central European model, paid annual leave varies with the employee's age. It is 25 days for workers under 33 years old and 30 days for workers older than 33 years. A national agreement provides an additional 5 days leave for staff in working directly with clients. In the **UK**, there is a minimum of 28 days per annum for all, with perhaps more holidays earned by long service or seniority. In **Austria**, annual leave increases gradually after 10, 15 and 20 years of work in accordance with a collective agreement for the SCSS sector. **Spain** has two national agreements providing for 25 working days' or 30 calendar days' leave.

Part time or full-time work

Part-time work is the usual pattern of work in SCSS sector in the Continental and Anglo-Saxon models. In **Austria**, a part-time permanent employment contract is a dominant form of employment in the sector. In contrast, the Central European welfare model (**Slovakia**) uses part time contracts for around 10 % of all staff with most staff on full time contracts. Other forms of contracts such as fixed period contracts, self-employed contractors are rarely used, although there has been some increase in 'zero-hour' contracts (i.e. you are paid for the hours you work but there is no obligation on the employer to provide any minimum hours) in recent years in the **UK**. **Spain** bans such zero hour contracts in SCSS, the main contract is full time work.

The use of the 'opt-out'

The WTD provides for opt-outs under certain specific conditions, for people such as 'autonomous workers' or by individual or collective voluntary agreement with an employer. Most senior managers in SCSS in the Anglo-Saxon model (**UK**) are seen as "autonomous workers" and are therefore able to claim exemption. Also, the 48-hours opt-out is used extensively, but because it is often required by employers to be written into contracts as a condition of employment, it is therefore not WTD compliant. Because of the UK's fragmented SCSS workforce, social dialogue structures are weak, so collective agreements are unusual beyond individual organisations. By contrast, the Central European model (**Slovakia**) for staff in SCSS negotiated a reduction of working hours from 40 to 37.5 for public sector employees in SCSS by a collective agreement. **Austria** uses sector wide multiple derogations regarding working time, annual leave, reference periods etc. in SCSS. In **Spain**, no application derogations or exceptions specifically for SCSS have been identified, but self-employed have no limits of weekly hours and no obligations to rest. Generally speaking, the number of countries using the WTD opt-out provision has increased over time.

Health & safety issues

The WTD was introduced into EU law as a health and safety measure, but in practice it contains remarkably few specific requirements related to this topic beyond the issue of regulating working hours. **Slovakia** requires employers to provide regular training by a certified health and safety technician for all employees in certain areas. In the **UK**, these issues are dealt with outside the WTD and provide for mandatory training for all SCSS staff on key issues (e.g. Food Hygiene, Moving and Handling etc.). In **Austria**, special medical examinations have to be available to the night time workforce. It is mandatory in **Spain** to train and to report on occupational risk prevention. It is also mandatory to for employers to guarantee free and regular health evaluation for employees.

IV. Implications of the Working Time Directive in social care and support services for persons with disabilities

The findings of our research show that implementing the WTD has increased the cost of service provision (e.g. counting on-call periods 100% as working time). Governments have not always funded these increases sufficiently. As the case of Slovakia shows, unpaid so-called 'voluntary' work has sometimes been used to fill gaps in the shift coverage.

Certain aspects of the WTD can hinder the flexibility of care workers to organize their private/free time work/life balance (e.g. interrupted sleep for having breaks, inflexible schedules, etc.).

Staff shortages, public spending constraints (particularly for public and not-for-profit SCSS), and increased demand for services makes it challenging for employers to organise services and their workforce when the weekly working time exceeds the 48-hour maximum for some workers when on-call hours are included[6].

The ECJ decision making all on-call (active and inactive) count as working time has had a major impact on small scale 24/7 support services. Non-compliance is common since all parties (users, workers, employers) still prefer the late shift, sleep-in or early shift pattern of work, even though it is not WTD compliant. Perversely, for some workers, changing shift patterns to conform with the WTD has extended their working week and/or reduced their earnings. Not surprisingly, many have resisted this.

Some very small-scale models of care, with 24/7 care provided in a person's own home (often called 'live-in care') are simply not deliverable under the current WTD - within the current funding levels - although such live-in models of care do enable people with disabilities to lead a full life.

Many social care and workers have more than one job. This is quite common in this sector because of low wages. It is not clear if, or how, employers are expected to monitor and control the hours spent by workers in other employment(s), which they may not even be aware of.

The NHS European Office[7] responded to the recent EC's public consultation on how the WTD should be changed and highlighted that the current rules have a negative impact on running **costs of health and social care services**, with some hospitals or social residential care homes having to employ additional workers to cover shift patterns.

[6] European Trade Union Confederation (ETUC): Fact sheet: Working time in the health sector in Europe (2014). europehttps://www.etuc.org/IMG/pdf/A_TT_secteur_sante_u_EN-2.pdf

[7] NHS Employers: Latest News - Commission to issue new communication (2017), http://www.nhsemployers.org/about-us/nhs-european-office/nhs-workforce-and-the-eu/working-time-directive

V. Recommendations to promote a fairer way of working in the SCSS sector

Social Services[8] is one of the biggest job creators in Europe today. The sector employs directly over 10 million staff in Europe. Together with health services, social services represent 7% of the total economic output in the EU-28[9]. The social services sector is expected to grow significantly over the next few decades. The same can be said for social service providers for persons with disabilities, in response to the transition to community-based care and support.

However, many issues are currently limiting the sector's job creation potential with many service providers experiencing staff shortages. This is due to (often significant) cuts to public expenditure in social services, despite the increase in demand and the lack of recognition given to the sector. This has led to below average wages, often difficult working conditions, undeclared (or so-called 'voluntary') work, an ageing workforce and stronger gender imbalances in the workforce in most countries in Europe.

EASPD is strongly involved in helping the Federation of European Social Employers set up social dialogue structures at European level for the social services sector. Its economic and social policy, in particular the Stability and Growth Pact and the European Semester, also affects the job creation potential of the sector, especially as it impacts public expenditure towards social services. **It is the view of EASPD that the EC has yet to act sufficiently to ensure that the Social Services sector's job creation potential is fully unlocked.**

Whilst the immediately obvious **impacts** of the WTD are on the labour market, on gender and work-life balance, on quality of care or services, organisations and cost, there is a hidden but potentially much more fundamental and far reaching impact, **which is the impact of the WTD on the rights, hopes and life choices of persons with disabilities who depend on staff support**. The WTD aims to protect the right of a worker to healthy and safe working practices, but at the same time in doing so it can also impact on the rights of persons with disabilities to live their life as they choose, without unnecessary interference by others. There is evidence of the impact of WTD on the labour market, gender and work-life balance, quality of services, provider organisations and the increase in the cost of service provision when it becomes WTD compliant. What is also obvious, but less reported on and utterly disregarded in the WTD is the impact on the human rights of service users. Looking at

[8] EASPD: Job Creation and Decent Working Conditions (2016), http://www.easpd.eu/en/content/job-creation-and-decent-working-conditions

[9] http://ec.europa.eu/europe2020/pdf/themes/2016/health_health_systems_201605.pdf

the WTD through the prism of its impact on the human rights of the end user and bearing in mind the way in which the current operation of the WTD is constraining the development of truly person-centred services, it is clear there is a significant problem. It is arguable that there is a fundamental clash between upholding the rights of a service user to effective inclusion in society (as enshrined in the UN CRPD and the EU's own CFR on the one hand and the rights of the worker under the current implementation of the WTD on the other).

There are several proposals which can be implemented *without revising the WTD* which would ease these current operational and practical problems. These are as follows:

Possible actions within the current Working Time Directive legal framework

- The sector needs greater flexibility through developing more sectoral agreements. Effective social dialogue in the social care and support sector is very patchy at national levels and non-existent at EU level. This creates a significant disadvantage for the whole sector. The sector and the EU should take immediate steps to improve this situation.
- WTD derogations could well be applied to workers involved in small scale 'live-in' care services where workers effectively live in the user's own home for an extended period (see appendices for more details) and actual working hours are often a matter for (daily) negotiation between the user and worker.
- The WTD list of 'autonomous workers' who may be exempted from the WTD is not closed and there is no reason why 'live in support workers' should not be added to it.
- The WTD already provides for derogations to be made for activities where there is the need for continuity of service (or production). This applies to many 24/7 SCSS and there is no reason why the SCSS sector could not be added to the list.
- The WTD makes explicit provision for derogations where there is a need to 'encourage another objective, distinct from the implementation of the agreement.' Using this provision, social care could be exempted via a derogation because the other 'objective' would be the achievement of a user's UN CRPD Human Rights through the provision of a more flexible service. Since the EU has already signed the UN CRD and created the CFR this would be a natural step to take.
- This, however, should not imply any compromise on the right of employees to healthy and safe working conditions in SCSS, meaning that sector-specific instruments should be developed to ensure workers' rights are respected, yet not detrimental to the development of high quality care and support services.

However, some desirable changes will require revisions to the WTD. We recognize that this will be a long term and difficult objective to meet, but the principles and general direction of the recommendations listed below should inform future debate and decisions in the interim.

Recommendations for any future revision of the Working Time Directive

- Any future negotiations must include all the relevant stakeholders including, crucially, end users of services and providers.
- The Commission should recognize and find ways to address in any revised WTD the problems which the current laws cause service providers when they attempt to create truly person-centred services capable of delivering UN CRPD compliant services.
- The WTD should consider the European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights, and contribute to the development of the European social model in line with the Sustainable Development Goals and with respect for adequate social protection and quality essential services for all.
- As stated in the WTD, "the improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations." This means that Member States have the obligation to meet any extra costs which will be incurred. The need to ensure both the implementation of the WTD and quality of social care and support services leads to unfunded significant cost increases by social service providers. A failure by Members States to finance these costs would undermine both the credibility and deliverability of any new WTD.
- Greater flexibility should be allowed regarding inactive sleep in/on call time and inactive stand-by time, currently all on-call time (active or inactive) at the workplace counts as working time, while still having in place decent sector-specific health and safety standards for workers. This poses special problems for residential care and staff who live and work on site.
- Attention should be paid to the situation of individualised support services using formal and/or informal 'family carers' and the impact any reforms may have on their situation and the user's rights to lead a normal life under the UN CRPD
- Any changes to the WTD must make working in this sector more attractive, enabling employers to offer full time and part time options and family-friendly working time flexibility.
- Any new WTD wording should make it plain that the responsibility for managing the number of hours a worker with multiple contracts works should be shared between the worker and the

employer and the means of monitoring the situation should not be so onerous as to be unworkable at employer level.

The European Pillar of Social Rights (EPSR)[10] should be used in 2017 as a means to establish an agreement between Parliament, the Commission and the European Council, involving the social partners and civil society at the highest level, and it should contain a clear roadmap for a revision of the WTD & its subsequent implementation.

The Commission should propose mechanisms for adequate involvement of all the relevant stakeholders at all relevant levels in the implementation of the EPSR, including at the forefront the rights of persons with disabilities as enshrined in the UN CRPD. It should be clear that this is not just a matter of labour law but also of human rights.[11]

[10] European Parliament (2016): European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI)). http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0010+0+DOC+XML+V0//EN

[11] European Parliament (2016): European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI)). http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0010+0+DOC+XML+V0//EN

EASPD is the Association of Service providers for Persons with Disabilities. We are a European not-for-profit organisation representing over 15,000 social services and disability organisations across Europe. The main objective of EASPD is to promote equal opportunities for people with disabilities through effective and high-quality service systems.

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