The HOSPEEM[1] (European and Hospital and Healthcare Employers' Association) response to the Commission questionnaire on the practical implementation of Directive 2003/88/EC concerning certain aspects of the organisation of working time

Introductory comments

This paper summarises the responses received from HOSPEEM members to the Commission's questionnaire. As a general remark, HOSPEEM members believe that patients should not be treated by tired staff and that staff are entitled to fair working conditions. While the Working Time Directive has been fully implemented by HOSPEEM members, the Directive and the subsequent rulings of the European Court of Justice (ECJ) have caused the hospital and healthcare sector problems and have imposed significant and unnecessary costs on hospital and healthcare employers.

The main problems emerging from the SiMAP and Jaeger judgments are around the interpretation of the term working time for on-call duties and the requirement for immediate compensatory rest. These rulings have caused serious problems in the operation of health systems and have led to Members States recruiting extra staff to prevent gaps in patient services at a large cost without improving productivity. HOSPEEM members have been both gainers and losers. In order to resolve the problems caused by the SiMAP and Jaeger judgments, some HOSPEEM members recruited staff from outside Europe as well as healthcare staff from the new Member States. Losing staff in this way has had a large adverse impact on those health systems.

[1] The European Hospital and Healthcare Employers' Association (HOSPEEM) was formed in 2005 in order to represent the interests of European Hospital and Healthcare Employers on workforce and industrial relations issues. HOSPEEM was created by the members of the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) who felt that there was a need for a separate, distinct voice on health workforce issues at European level. As CEEP has a remit covering the whole public sector, CEEP's hospital and healthcare members established HOSPEEM as a sector association. CEEP has an observer status within HOSPEEM. HOSPEEM is a full member of CEEP.

Since July 2006 HOSPEEM has been officially recognised by the European Commission as a European Social Partner in the Hospital Sector Social Dialogue alongside the European Federation of Public Service Unions (EPSU).

HOSPEEM has members across the European Union (EU) both in the state or regionally controlled hospital sector and in the private health sector. HOSPEEM members are health employer organisations with the powers to negotiate on pay and on terms and conditions of service with their respective Trade Union partners. HOSPEEM members are also concerned with ensuring good employment practice for healthcare staff.

rue de la Charité 15, boîte 6 - 1210 Brussels. Tél. 32-2-219 27 98 / Fax. 32-2-218 12 13
Email : hospeem@hospeem.eu Website : www.hospeem.eu

1. **Transposition**

Do you consider that the Working Time Directive has been transposed in a satisfactory way in the EU Member States?

The Working Time Directive has been fully transposed in the Member States. However, the SiMAP and Jaeger rulings caused significant difficulties by defining all residential on-call time as work and stating that compensatory rest has to be taken immediately after a period of work finishes. These rulings have caused serious problems in the operation of health systems and led to Members States recruiting extra staff to prevent gaps in patient services at a large cost without improving productivity. HOSPEEM members believe that the interpretation by the ECJ of the definition of working time is incorrect and that revision of the Directive based on the compromise text proposed by the Finnish presidency should be taken forward.

If you consider that there is room for concern about transposition in specific sectors or concerning specific provisions, please give details.

See above.

If you consider that transposition of the Directive has been particularly satisfactory in any respect, please give details.

No comments received in relation this question.

Do you consider that any particular issues arise regarding implementation as concerns the previously excluded sectors (implementation of Directive 2000/34/EC)? If so, please give details.

HOSPEEM members have been able to implement the Directive successfully in relation to previously excluded sectors although in some Member States it has led to large changes in working patterns. For example, in the National Health Service (NHS) in the UK there has been a significant change in working patterns for junior doctors. There has been a shift from predominantly on-call working to predominantly shift working.

These changes have not come directly from the Directive but have been driven by the SiMAP and Jaeger Rulings made by the European Court of Justice (ECJ) which have made on-call working impractical. The rulings have led to inflexible applications of working practices. For example, under the Jaeger Ruling, compensatory rest has to be taken immediately if the daily or weekly rest requirements can not be met. Danish Regions were amongst the HOSPEEM members who felt there should be sufficient flexibility in the approach to the timing of compensatory rest. Increased flexibility in relation to compensatory rest would create greater flexibility in the implementation of the Directive.

In order to make the changes necessary to comply with legislation and ECJ Rulings, European Health systems have needed considerable financial resources, which could have been used in a better way to help patients.

2. **Formerly Excluded Sectors**

Concerning the scope of former Directive 2000/34/EC (the 'excluded sectors directive'), please reply as follows:

→ Do you consider the transposition and application of Directives 2000/34/EC and 2003/88/EC satisfactory, as regards doctors in training?

The implementation of the Directive in relation to doctors in training is considered satisfactory by HOSPEEM members. While the "direct" provisions of the Directive as implemented in the Member States is generally perceived to have been helpful (if difficult and in many cases costly), the implications of the SiMAP and Jaeger rulings have not. As stated above these rulings have led to inflexible applications of working practices.

→ Has this aspect been transposed in any Member States by way of collective agreement? Please give details.

The responses received from HOSPEEM members indicate that this varies between countries depending on national industrial relations structure and traditions.

→ Please refer to any particular effects of transposition in this area, and to any positive or negative effects you perceive.

The positive effects of transposition have included the reduction of the hours worked by junior doctors. This had been good for the health and safety of healthcare staff and for patient safety. No patient should be treated by tired staff and doctors are entitled to fair working hours.

Parts of European healthcare systems have clearly benefited from Working Time Directive compliance but there have also been significant costs which have resulted from the SiMAP / Jaeger judgments. In some cases the judgments have resulted in increased shift working which has reduced the amount of (better quality) daytime training opportunities for junior doctors. SiMAP / Jaeger has been particularly challenging for small and isolated hospitals.

3. **Social Partnership**

Do you consider that the social partners have been sufficiently consulted and involved by the national authorities, regarding the transposition and practical implementation of the Directive?

Yes. Responses received from HOSPEEM members indicate that the Social Partners have been sufficiently consulted and involved by the national authorities.

The Directive provides at Articles 17 and 18 for derogations by means of collective agreements or agreements concluded between the two sides of industry. Please indicate how you evaluate the experience in this regard. Are there any examples which you consider as providing models of good practice?

4. Monitoring of Implementation

Please indicate whether you consider that the enforcement and monitoring of the Directive at national level is satisfactory.

HOSPEEM members are satisfied with the enforcement and monitoring of the Directive.

If you see any problems, please indicate their overall impact and make recommendations for improvement.

Can you identify any examples of good practice as concerning monitoring and enforcement?

5. Evaluation

Please list any positive and negative aspects of the practical implementation of the Directive.

Several HOSPEEM members have implemented the 2004 Working Time Directive requirements for doctors in training by recruiting thousands of extra doctors from abroad and adopting new and innovative working practices. However, the recruitment of extra medical staff from outside Europe and from some of the newer EU states has had an adverse effect on those health systems as many have experienced staff shortages.

A great deal of innovative work continues by HOSPEEM members to find new ways of working which comply with the Working Time Directive 2009 provisions and to improve services. For example, in the NHS in the UK many hospitals have implemented a project called Hospital at Night which uses multidisciplinary teams to provide the range of care patients need at night and replace demarcated teams.

Maintaining good quality medical education, quality of patient care and delivering on key priorities for improving patient services is made more difficult for HOSPEEM members by the restrictions on working patterns from the SiMAP/Jaeger Judgments. The SiMAP and Jaeger rulings have caused the HOSPEEM members difficulties by defining all residential on-call time as work and stating that compensatory rest has to be taken immediately after a period of work finishes. In the Netherlands, employers

see a revision of the directive in relation to the ECJ judgment in respect to 'on-call' time as urgent.

The judgments have also resulted led to increased shift working in some health systems which has reduced the amount of (better quality) daytime training opportunities for doctors. They have also created difficulties in scheduling services. The nature of patient care means that staff sometimes need to work into rest breaks. The immediate compensatory rest requirement can occasionally result in some Member States in patient care being withdrawn because it is not always possible to arrange cover to replace staff taking immediate compensatory rest.

HOSPEEM members consider the Working Time Directive to be a useful addition to the health and safety of workers. However, because the subsequent Court rulings it has been expensive to put into operation and has been costly to health employers. HOSPEEM also believes that retaining the right for individuals to choose whether to voluntarily opt out is also essential to maintaining twenty four hour, seven day a week services to patients. In Germany the rulings of the ECJ have caused significant organizational and financial burdens and VKA particularly supports the introduction of a third time category (inactive time during on-call duty) as well as the retention of the opt-out.

Does the practical application of the Directive in the Member States, in your view, meet its objectives (to protect and improve the health and safety of workers, while providing flexibility in the application of certain provisions and avoiding imposing unnecessary constraints on SMEs)?

The practical application of the Directive has led to an improvement in the health and safety of healthcare workers and also to increased patient safety. However, as mentioned above, due to subsequent ECJ Rulings, the Directive lost some of its flexibility.

6. Outlook

Please indicate:

- **any priorities for your organisation, within this subject area.**
- **any proposal for additions or changes to the Directive, stating the reasons**
- **any flanking measures at EU level which you consider could be useful.**

HOSPEEM members generally support the proposals by the Finnish presidency to amend the European Working Time Directive to give greater flexibility over the timing of compensatory rest; to ensure that resident on-call time is not counted as work and to maintain the right for individuals to opt-out subject to reasonable safeguards. The amendment of the Directive should take precedence over any other flanking measures.