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**Committee of Experts on the Application
of Conventions and Recommendations (CEACR)**

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IOE SUBMISSION - CEACR GENERAL SURVEY 2018

ILO INSTRUMENTS CONCERNING WORKING TIME

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- Weekly Rest (Industry) Convention, 1921 (No. 14),
- Hours of Work (Commerce and Offices) Convention, 1930 (No. 30),
- Forty-Hour Week Convention, 1935 (No. 47),
- Reduction of Hours of Work Recommendation, 1962 (No. 116),
- Holidays with Pay Recommendation, 1954 (No. 98),
- Night Work (Women) Convention (Revised), 1948 (No. 89) and its Protocol of 1990,
- Night Work of Women (Agriculture) Recommendation, 1921 (No. 13),
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- Holidays with Pay Convention (Revised), 1970 (No. 132),
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A. Introduction

The hours worked by individuals have been a key driver of industrial relations, and a tool to determining remuneration and working conditions. However, the Future of Work could be changing these patterns at least for a growing number of activities. The distinction between professional and private time is becoming increasingly blurred.¹ Nevertheless, the regulation of work organisation and hours can directly impact on the productivity and efficiency of enterprises and on service delivery to customers. Regulation can add to costs and can impede essential operational flexibility, particularly if governments fail to listen to businesses in different sectors and create unbalanced or impractical regulation.

The aim of good policy and regulation must be to reconcile the needs and interests of employers and workers in an effective and balanced manner specially in the scenario of the Future of Work. This means that governments should focus on setting a basic regulatory framework and rely on employers and workers to work out adequate and adaptable solutions for themselves.

Labour legislation, individual and collective agreements address working time in a number of ways:

- Regulating hours worked as the basis for terms and conditions of employment, including minimum wages and overtime payment.

¹ See 2017 IOE Brief: Understanding the Future of Work http://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/future_of_Work/EN/2017-02-03_IOE_Brief_-_understanding_the_Future_of_Work_full_publication_-_web_print_version.pdf

- Regulating the maximum number of hours per week or day of work as a means to protect workers' occupational health.
- Regulating when work may be performed and under what conditions, including for particular groups of workers (young workers, pregnant women, pilots, etc.).
- Providing flexibility in working time, including for work/life balance.
- Ensuring periods of minimum daily and weekly rest (e. g. Sunday rest) or rest between shifts.
- Using time worked to determine entitlements such as annual leave.

National labour legislation and jurisdiction often define which hours are to be treated as paid working time (e. g. stand-by duty of medical doctors or pharmacists or firemen).

Why are rules on working time important?

In addition to the importance of the public interests pursued by working time regulation, rules allowing for an effective organization of working time are important for enterprise performance, productivity and competitiveness, among others, in the following respects:

- Efficient use of machines and other means of production.
- Availability of worker expertise when markets and clients require it.
- Maintenance of production targets with the existing workforce where skilled workers are scarce in the labour market.
- Minimization of overall labour costs.

Employers recognise that new generations of individuals will make requests to vary their hours of work, most importantly for work-family balance. Competition on scope to accommodate worker needs is increasingly part of competition for skills attraction and retention for many employers. Workers in turn recognise the need for flexibility in work schedules, and the need to be available to meet the new production and service requirements of contemporary markets. These changes of attitudes often accompany higher trust approaches to managing and monitoring time worked, and substantial informal flexibility in the day-to-day organisation of work moving from managing time to managing output.

How Should Working Time Be Regulated?

Regulation of working time remains relevant in many national contexts, as a general framework for more specific working time arrangements at sector or company levels or as a default standard in the absence of these. However, it is increasingly critical that the regulation of working time:

- Ensure that any regulatory models for working time operate as a default standard rather than the only lawful option for the organisation of work.
- Allow employers and workers to agree to vary or, where appropriate, to depart from working time regulation.
- Provide options for the flexible and cost-effective organisation of work where mutually agreed.
- Support averaging of hours of work over short, medium and longer periods, including annualisation which allows greater cost predictability for employers.
- Enable employers and individual workers to enter into agreed part time work arrangements.
- Ensure innovation and continuous improvements in the organisation of work can keep pace with changing market demands.
- It is up to the realities of the future scenario of work: a mobile and disperse workforce.

In other words, employers require a legislative and regulatory framework that provides sufficient scope to make necessary variations to the organisation of work. Employers and workers need latitude to reach the mutual accommodations that suit them on working time. Employers require sufficient temporal and functional flexibility to meet productive, operational and customer demands upon them changing demands from workers to vary the organisation of their work.

The legal system in each country should empower employers to manage and deliver what is being asked of them on working time, creatively and balanced with the other productive and commercial requirements on business.

At the same time, employers require scope to better align the organisation of work, and working time, with modern human resource and remuneration strategies, and commercial strategies to improve the operation of the business. Employers require the capacity to change the organisation of working time in

responding to serious economic and operational crises. This is not restricted to work sharing and a wider range of working time responses must be available to employers and workers in responding to crises.

Working time must be able to be organised, and varied from prevailing norms by agreement, by whatever lawful means is most appropriate to the needs of the enterprise – including individual, team, workplace, collective, union and non-union agreement options. The involvement and support of a trade union should not be mandatory to vary working time arrangements in any workplace. The working time preferences and imperatives of workers, particularly in the area of work and family, are inherently individual. No individual worker should require trade union support or endorsement of their preferred organisation of their working time, where this can be voluntary agreed with the employer. Collective bargaining is one option for addressing the organisation of working time, however it cannot be the only option for varying prescribed or legislated minima. Collective bargaining can at most, like legislation and regulation, provide a framework that empowers scope within which individual accommodations are reached on particular matters.

The ILO Supervisory System and the International Labour Office should pay equal or greater regard to non-collectively agreed approaches to organising working time, and to the options individuals need to organise their working time as best suits them and their families, and as can be agreed with employers. Care must also be taken not to lose sight of the needs of SMEs and all workplaces for informal, ad hoc accommodations on working time.

The collection of data remains important, and employers support evidence-led policy making and regulation based on a solid foundation of relevant data where possible. However, the wish to obtain comprehensive data should not lead the ILO and its Member States to impose on companies the obligation to monitor working time through overly tight monitoring systems (“industrial age type time punch machines”). On the contrary, the ILO should encourage Member States to develop smarter, more cost-effective means to collect data and monitor working time.

B. 2018 CEACR General Survey

The IOE looks forward to the 2018 General Survey on the following sixteen ILO instruments in the field of working time:

Hours of Work (Industry) Convention, 1919 (No. 1), Weekly Rest (Industry) Convention, 1921 (No. 14), Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), Forty-Hour Week Convention, 1935 (No. 47), Reduction of Hours of Work Recommendation, 1962 (No. 116), Holidays with Pay Recommendation, 1954 (No. 98), Night Work (Women) Convention (Revised), 1948 (No. 89) and its Protocol of 1990, Night Work of Women (Agriculture) Recommendation, 1921 (No. 13), Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103), Holidays with Pay Convention (Revised), 1970 (No. 132), Night Work Convention, 1990 (No. 171), Night Work Recommendation, 1990 (No. 178), Part-Time Work Convention, 1994 (No. 175) and Part-Time Work Recommendation, 1994 (No. 182)

It is expected that the CEACR will provide in the Survey:

- ***A summary of the “travaux préparatoires” that preceded the adoption of each instrument to understand the position of Governments, Employers and Workers at the time of adoption,***
- ***Voting information at the time of adoption of the instruments,***
- ***Non-binding technical guidance on the scope and the meaning of the provisions of the instruments concerned in a reader-friendly manner,***
- ***An analysis of the evolution of ratification since the adoption of each instrument,***
- ***An overview as to which Governments that voted for the adoption of a given Convention finally ratified it;***
- ***An overview of the difficulties raised by governments and social partners as standing in the way of ratification and implementation in law and practice, and indicate possible means of overcoming these obstacles,***
- ***Also, it is expected that the General Survey will present new trends, developments and challenges in working time.***

Most importantly, the General Survey should be a ***reader-friendly, useful tool for tripartite examination and discussion in the Conference Committee on the Application of Standards*** to determine any necessary action to be taken by the Organization with regards to the instruments concerned. As requested by the Employers Group in the 2016 and 2017 Committee on Application of

Standards, the *IOE would appreciate that the present submission is made available online to other ILO constituents and the outside world, including in the ILO webpage.*

Hours of Work

Hours of Work (Industry) Convention, 1919 (No. 1) and Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)

ILO Conventions 1 and 30 address hours of work. The thinking behind the ILO standards on hours was already decades old when they were created, between the first and second world wars.

The two major Conventions in the field of hours of work, No. 1 and 30 have been ratified by and are in force in only 25 % and 13 %, respectively, of ILO member States. These relatively detailed instruments, according to the 2005 CEACR General Survey, in many respects no longer respond to current needs. The conventions have achieved their broad aims, despite not being attractive in terms of ratification for years. Conventions No. 1 and 30 remain relevant for those countries that wish to make direct use of them through ratification, and countries can also look to various international practices and models that have themselves been informed by the ILO standards.

Other international standards may be playing a more universal role, such as Article 24 of the Universal Declaration of Human Rights, and Article 7(d) of the International Covenant on Economic, Social and Cultural Rights as creating rights to rest and leisure, including reasonable limitations on working hours. If this is the case, then it not only explains why ratification of ILO standards on working time may have waned in favour of these more general instruments, but it also means that it is not necessary to revisit the ILO standards.

The “fixed” working hours system, adopted by both Conventions as a cornerstone for the regulation of working time, conflicts with today’s demands for more flexibility and does not reflect the current reality of diverse forms of work.² Severe restrictions on the number of hours by which the standard daily and weekly limits of hours of work may be extended have, in many cases, created an obstacle to the ratification of the two Conventions. Furthermore, in an increasing number of countries, hours of work are governed not by laws or regulations, as required by certain of the provisions of the Conventions, but by collective agreements or awards, and in some cases by individual agreements.

Whether through collective or individual bargaining, national practice has moved well past the approaches and assumptions in the ILO’s working time standards, reflecting the Future of Work happening now. It is fair to say that working time remains a prominent and well-examined issue at the national and regional level, notwithstanding that ILO standards may be playing a less direct role.

It is important to highlight that Conventions Nos. 1 and 30 are included for review in set of instrument N. 8 of the Standards Review Mechanisms Tripartite Working Group (SRM TWG) initial programme of work.

Reduction of hours of work

The movement to reduce hours of work successfully accomplished its mission in most countries, and most systems have settled into stable patterns of both prescribed hours and actual hours worked, that do not warrant reconsideration. Logically there could not be an indefinite reduction in prescribed or statutory hours, nor in hours actually worked. An end point had to be reached and it has been reached in most systems.

Forty-Hour Week Convention, 1935 (No. 47)

Voting information: 81 votes in favour, 33 against. No record is available regarding the position of the delegates.

Ratification information as of July 2017: 15 ratifications.

Convention currently open for denunciation: 23 June 2017 until 23 Jun 2018.

² See March 2014 IOE Position Paper on Flexible Forms of Work http://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/employment/EN/IOE_Flexible_Forms_of_Work_eng_06_03.pdf

Status of the instrument: The Cartier Working Group classified Convention N. 47 as an instrument with interim status. Convention N. 47 is included in set of instruments N. 8 in the initial programme of work of the SRM TWG for review.

Reduction of Hours of Work Recommendation, 1962 (No. 116)

Voting information: 255 votes in favour (44 Employers, 132 Governments, 79 Workers, 22 against (all Employers), 46 abstentions (11 Employers, 34 Governments, 1 Worker).

Status of the instrument: The Recommendation was classified as up-to-date by the Cartier Working Group. The instrument has not been included in the SRM TWG initial programme of work.

Weekly Rest

Weekly Rest (Industry) Convention, 1921 (N.14)

Voting information at the adoption of Convention N.14: 73 delegates voted in favour, 24 against (19 Employers), and 2 abstentions were registered (1 Employer). The majority of the Employers present in the meeting voted against it.

Ratification information as of July 2017: 120 ratifications

Status of the instrument: The Convention was classified as up-to-date by the Cartier Working Group. The instrument has not been included in the SRM TWG initial programme of work.

Weekly Rest (Commerce and Offices) Convention, 1957 (N.106)

Voting information: 176 votes in favour (8 Employers, 111 Governments, 57 Workers), 27 against (25 Employers, 2 Governments) and 31 abstentions (19 Employers, 11 Governments, 1 Worker).

Ratification information as of July 2017: 63 ratifications

Convention may be denounced: between 4 March 2019 until 4 March 2020

Status: The Convention was classified as up-to-date by the Cartier Working Group. The instrument has not been included in the SRM TWG initial programme of work.

Weekly Rest (Commerce and Offices) Recommendation, 1957 (N.103)

Voting information: 183 votes in favour (12 Employers, 116 Governments, 55 Workers), and 46 abstentions (42 Employers, 4 Governments).

Status: The Recommendation was classified as up-to-date by the Cartier Working Group. The instrument has not been included in the SRM TWG initial programme of work.

Paid Annual Leave

Holidays with Pay Convention (Revised), 1970 (No. 132)

Convention N. 132 is an example of how a revised convention does not make a Convention more "ratifiable". The predecessor, Convention N.52, was ratified by 54 countries where the revised succeeding C132 on the same topic only has 37 ratifications, the last one being very recent in 2016 (Azerbaijan) and the one before being in 2010 (Russian Federation). It appears that detailed and non-flexible provisions in the Convention are the main driving factor behind low ratification rates.

Voting information: 142 votes in favour, 51 against, with 51 abstentions. No record is available regarding the position of the delegates.

Ratification information as of July 2017: 37 ratifications

Convention may be denounced: between 30 June 2023 and 30 June 2024

Status of the instrument: The Cartier Working Group classified Convention N. 132 as an instrument with interim status. Convention N.132 is included in set of instrument N. 8 of the initial programme of work of the SRM TWG for review.

Holidays with Pay Recommendation, 1954 (No. 98)

Voting information: 146 votes in favour (10 Employers, 90 Governments and 46 Workers), 11 against (all Employers) and 39 abstentions.

Status of the instrument: The Cartier Working Group classified Recommendation N. 98 as an instrument with interim status. Recommendation N. 98 is included in set of instruments N. 8 of the initial programme of work of the SRM TWG for review.

Night Work

Night Work Convention, 1990 (No. 171)

Voting information at time of adoption: 348 votes in favour (63 Employers, 197 Governments, 88 Workers), 24 against (23 Employers and 1 Worker), with 15 abstentions (6 Employers and 9 Governments).

Ratification information as of July 2017: 15 ratifications. The Convention will enter into force in Montenegro on 8 November 2017.

Convention may be denounced: between 4 January 2025 until 4 January 2026.

Status of the instrument: The Convention is included in set of instruments N. 8 of the SRM TWG initial programme of work for review.

Night Work Recommendation, 1990 (No. 178)

Voting information: 341 votes in favour (60 Employers, 197 Governments, 84 Workers), 22 against (20 Employers and 1 Worker), with 17 abstentions (8 Employers and 9 Governments)

Status of the instrument: The Recommendation is included in set of instruments N. 8 of the SRM TWG initial programme of work for review.

Night Work (Women) Convention (Revised), 1948 (No. 89) and its Protocol of 1990

Voting information: **Convention N. 89:** 120 votes in favour to 2 against (2 Governments), and 9 abstentions. **Protocol:** 323 votes in favour (72 Employers, 171 Governments, 80 Workers), 7 against (4 Employers, 2 Governments, 1 Worker) and 27 abstentions (5 Employers, 20 Governments, 2 Workers).

Ratification information: 67 ratifications and 23 denunciations of Convention No. 89; 5 ratifications and 2 denunciations of the Protocol.

Status of the instruments: Convention N. 89 is an instrument with interim status; the Protocol has been classified as an up-to-date instrument. Both Convention N. 89 and the Protocol are included in set of instruments N. 8 of the SRM TWG initial programme of work for review.

Part Time Work

Part-Time Work Convention, 1994 (No. 175)

Part time work is a form of work flexibility that can make a substantial contribution to balancing employer and worker priorities.³ Millions of people around the world are harnessing the benefits of part time work for work-life balance and millions of employers are retaining skilled and experienced staff, particularly women, in work. It also offers exciting prospects to keep older workers engaged in work.

For employers, the ability to employ staff on a part-time basis, particularly where there are peak periods and periods of lesser activity, is invaluable. But part-time employment serves the needs of a great many workers as well. Part-time work can play a key role in social and economic development. Barriers to part time work opportunities should therefore be removed.

The failure to ratify Convention N.175 possibly reflects the fact that the level at which work is considered to become part-time varies considerably from country to country.

Voting information: 258 votes in favour (11 Employers, 152 Governments, 95 Workers), 88 against (69 Employers, 18 Governments, 1 Workers) and 43 abstentions (11 Employers, 30 Governments, 2 Workers).

³ See March 2014 IOE Position Paper on Flexible Forms of Work http://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/employment/EN/IOE_Flexible_Forms_of_Work_eng_06_03.pdf

Ratification information as of July 2017: 17 ratifications. The Convention will enter into force for Guatemala on 28 February 2018.

Convention may be denounced: between 28 February 2018 until 28 February 2019

Status of the instrument: The instrument is included in set of instruments n. 8 of the SRMTWG initial programme of work for review.

4. Concluding remarks

Flexibility in regulating working time, and scope to agree, and to vary prescribed or ordinary approaches is a critical issue. It is critical both for the capacity of employers to operate productively, competitively and flexibly, and for workers' capacity to balance their working and non-working lives. A critical issue for employers is the scope for flexibility national laws and regulations allow, and how these may be accessed. The ILO should be a leader in promoting win-win options and the mutual benefits of more flexible operations. The ILO should identify good practices and promote them. Employers support the ILO being able to report on trends and best practices, innovations and developments in shifts patterns and the organisation of work.

Employers support the collection of data for evidence led policy making and regulation based on a solid foundation where possible. However, the wish to obtain comprehensive data should not lead the ILO and its Member States to impose on companies the obligation to monitor working time through overly tight monitoring systems ("industrial age type time punch machines"). On the contrary, the ILO should encourage Member States to develop smarter and more cost effective means to collect data and monitor working time, recognizing the current realities in the world of work.

Analysing ILO standards governing working time is instructive in that it clearly reflects the difficulty of regulating working time at the universal level. The role of ILO international labour standards on working time is much more limited than has been considered in the past. The ratification rates are, in most cases, low and show that ILO standards in this field are not accepted in the large majority of Member States. This is true both for older and newer standards.

Member states should benefit from ILO research and promotion of contemporary arrangements for the organisation of working time, including flexible approaches suited to contemporary workplaces.

The IOE trust that the General Survey will be a useful and reader-friendly tool for tripartite examination and discussion in the Conference Committee on the Application of Standards to stimulate at national level working time arrangements which are more in line with the expectations of workers and employers in the current as well as new scenario of work.

Yours sincerely,



Linda Kromjong
Secretary General

The International Organisation of Employers (IOE) is the largest network of the private sector in the world, with more than 150 business and employer organisation members. In social and labour policy debate taking place in the International Labour Organization, across the UN and multilateral system, and in the G20 and other emerging processes, the IOE is the recognized voice of business. The IOE seeks to influence the environment for doing business, including by advocating for regulatory frameworks at the international level that favour entrepreneurship, private sector development, and sustainable job creation. The IOE supports national business organisations in guiding corporate members in matters of international labour standards, business and human rights, CSR, occupational health and safety, and international industrial relations. For more information visit www.ioe-emp.org