Guidelines on working time in the sport and active leisure sector

by the European Sectoral Social Dialogue Committee for sports and active leisure (Test Phase)

In Brussels on 31st May 2013 during a Working Group Meeting of the European Sectoral Social Dialogue Committee for sports and active leisure (Test Phase), EASE and UNI Europa Sport ("the Parties") agreed to provide guidelines on working time for social partners in the European sport and active leisure sector.

The guidelines are addressed to national social partners who are called upon to review their practices to ensure they are in line with International and European minimum standards (attached), and negotiate, if necessary (within national law).

The core purpose of these guidelines on working time is to lay down minimum standards for the organisation of working time within a safe and healthy work environment which is in the interest and responsibility of both sport employers and workers. In that regard, standards on rest time will also have to be identified.

Both parties agree that international conventions (ILO), European (i.e. directives) and national labour legislation standards on working time apply in general to the sport and active leisure sector, as to any other.

Both parties underline that, due to the unique nature of some work in the sport and active leisure sector, the minimum standards set down in the abovementioned regulations should be adapted to adequately take into account the specificities of sport regarding working time while addressing the health and safety concerns in the sector. Many common practices, which may be in the interest of both social partners, represent derogations from the minimum standards that are not always, as they must be, supported by social dialogue agreements.

EASE and UNI Europa Sport call upon social partners at the national level to participate in the European social dialogue and work along these guidelines towards national agreements on working time in order to provide a legal basis for commonly practiced derogations from working time regulations.

Specific common practices shared by all the sub-sectors (not-for-profit sport, professional sport and active leisure) may include:

- Work on evenings, weekends and public holidays,
- Work during activities, training camps, events, tournaments and competitions spread over several days with the issue of daily or weekly breaks.

Specific common practices in the professional sport sub-sector may include:

- Extended travel,
- Training and playing time,
- Rest time linked to national team/club competitions.

Specific common practices in the active leisure sub-sector may include:

- Night work.

These potential issues underscore the need for continuous social dialogue at the European level on working time in the sport and active leisure sector.

In principle, EASE and UNI Europa Sport recognise the need for great flexibility in working time and hours in the sector that must be balanced by the protection of the health and safety of workers.

The following list includes issues for social dialogue at the European level, and bargaining at the national and individual levels.

<u>European level in the scope of the European social dialogue</u>:

- Flexibility during events, tournaments and competitions
- Work on weekends and public holidays
- Variable weekly working times due to weather, scheduling of competitions (calendar), tourist seasons or school holidays
- Compatibility of working time with health and safety

The following issues regarding working time should be included at the <u>national level</u> in the scope of national collective agreements:

- Additional definitions of the actual working time (i.e. for instance, warm-ups, time needed to implement the activity or check the equipment)
- Arrangements should be made:
  - Per day and/or per week and/or per month and/or per year: on the maximum working hours and minimum rest periods,
  - Per year: on the minimum period of rest weeks.
- Arrangements should be made on the **compensation (in time or money) of extra working hours**.
- In order to **adapt** the working time to the variations of the sporting activity, arrangements could be made:
  - to **modulate** the weekly working hours during the year,
  - to **alternate** during the year periods of working time and periods of rest.

Individual level within the scope of individual employment contracts:

- Employers and workers should agree on **individual working time and rest periods**.
- The working time and hours should be stated in the employment contract and/or by reference to a collective agreement.

Conclusion

Due to the specificities of sport regarding working time for workers supervising the practice or practising (for example fitness instructors or professional sportsmen and –women with high risk of injury), it is necessary that these specificities and concerns be addressed in the context of a national and European social dialogue.

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The English version is the original.

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Appendix 1: Overview of European 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

"2. This Directive applies to (a) minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time; and (b) certain aspects of night work, shift work and patterns of work" (Chapter 1, Article 1).

Of particular relevance to the parties are the following definitions:

Chapter 1 – Scope and definitions, Article 2 – Definitions

"1. 'working time' means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice;"

"9. 'adequate rest' means that workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term."

Chapter 2 – Minimum rest periods – other aspects of the organisation of working time

- ***Article 3 – Daily rest***
  "Member States shall take the measures necessary to ensure that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period."

- ***Article 4 – Breaks***
  "where the working day is longer than six hours, every worker is entitled to a rest break, the details of which, including duration and the terms on which it is granted, shall be laid down in collective agreements or agreements between the two sides of industry or, failing that, by national legislation."

- ***Article 5 – Weekly rest period***
  "per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest referred to in Article 3."

- ***Article 6 – Maximum weekly working time***
  "Member States shall take the measures necessary to ensure that, in keeping with the need to protect the safety and health of workers: (a) the period of weekly working time is limited by means of laws, regulations or administrative provisions or by collective agreements or agreements between the two sides of industry; (b) the average working time for each seven-day period, including overtime, does not exceed 48 hours."

- ***Article 7 – Annual leave***
  "1. Member States shall take the measures necessary to ensure that every worker is

entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.
2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated."

Also of particular relevance is the following chapter on derogations and exceptions:

Chapter 5 – Derogations and exceptions, Article 17 – Derogations

"1. With due regard for the general principles of the protection of the safety and health of workers, Member States may derogate from Articles 3 to 6, 8 and 16 when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, and particularly in the case of:

(a) managing executives or other persons with autonomous decision-taking powers;

(b) family workers; or

(c) workers officiating at religious ceremonies in churches and religious communities.

2. Derogations provided for in paragraphs 3, 4 and 5 may be adopted by means of laws, regulations or administrative provisions or by means of collective agreements or agreements between the two sides of industry provided that the workers concerned are afforded equivalent periods of compensatory rest or that, in exceptional cases in which it is not possible, for objective reasons, to grant such equivalent periods of compensatory rest, the workers concerned are afforded appropriate protection.

3. In accordance with paragraph 2 of this Article derogations may be made from Articles 3, 4, 5, 8 and 16:

(a) in the case of activities where the worker's place of work and his place of residence are distant from one another, including offshore work, or where the worker's different places of work are distant from one another;

(b) in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms;

(c) in the case of activities involving the need for continuity of service or production, particularly:

(i) services relating to the reception, treatment and/or care provided by hospitals or similar establishments, including the activities of doctors in training, residential institutions and prisons;

(ii) dock or airport workers;

(iii) press, radio, television, cinematographic production, postal and telecommunications services, ambulance, fire and civil protection services;

(iv) gas, water and electricity production, transmission and distribution, household refuse collection and incineration plants;

(v) industries in which work cannot be interrupted on technical grounds;

(vi) research and development activities;

(vii) agriculture;

(viii) workers concerned with the carriage of passengers on regular urban transport services;

(d) where there is a foreseeable surge of activity, particularly in:

(i) agriculture;

(ii) tourism;

(iii) postal services;

(e) in the case of persons working in railway transport:

(i) whose activities are intermittent;

(ii) who spend their working time on board trains; or

(iii) whose activities are linked to transport timetables and to ensuring the continuity and regularity of traffic;

(f) in the circumstances described in Article 5(4) of Directive 89/391/EEC;

(g) in cases of accident or imminent risk of accident.

4. In accordance with paragraph 2 of this Article derogations may be made from Articles 3 and 5:

(a) in the case of shift work activities, each time the worker changes shift and cannot take daily and/or weekly rest periods between the end of one shift and the start of the next one;

(b) in the case of activities involving periods of work split up over the day, particularly those of cleaning staff.

5. In accordance with paragraph 2 of this Article, derogations may be made from Article 6 and Article 16(b), in the case of doctors in training, in accordance with the provisions set out in the second to the seventh subparagraphs of this paragraph.

With respect to Article 6 derogations referred to in the first subparagraph shall be permitted for a transitional period of five years from 1 August 2004.

Member States may have up to two more years, if necessary, to take account of difficulties in meeting the working time provisions with respect to their responsibilities for the organisation and delivery of health services and medical care. At least six months before the end of the transitional period, the Member State concerned shall inform the Commission giving its reasons, so that the Commission can give an opinion, after appropriate consultations, within the three months following receipt of such information. If the Member State does not follow the opinion of the Commission, it will justify its decision. The notification and justification of the Member State and the opinion of the Commission shall be published in the Official Journal of the European Union and forwarded to the European Parliament.

Member States may have an additional period of up to one year, if necessary, to take account of special difficulties in meeting the responsibilities referred to in the third subparagraph. They shall follow the procedure set out in that subparagraph.

Member States shall ensure that in no case will the number of weekly working hours exceed an average of 58 during the first three years of the transitional period, an average of 56 for the following two years and an average of 52 for any remaining period.

The employer shall consult the representatives of the employees in good time with a view to reaching an agreement, wherever possible, on the arrangements applying to the transitional period. Within the limits set out in the fifth subparagraph, such an agreement may cover:

(a) the average number of weekly hours of work during the transitional period; and

(b) the measures to be adopted to reduce weekly working hours to an average of 48 by the end of the transitional period.

With respect to Article 16(b) derogations referred to in the first subparagraph shall be permitted provided that the reference period does not exceed 12 months, during the first part of the transitional period specified in the fifth subparagraph, and six months thereafter".

Chapter 5 – Derogations and exceptions, Article 18 – Derogations by collective agreements

"Derogations may be made from Articles 3, 4, 5, 8 and 16 by means of collective agreements or agreements concluded between the two sides of industry at national or regional level or, in conformity with the rules laid down by them, by means of collective agreements or agreements concluded between the two sides of industry at a lower level.

Member States in which there is no statutory system ensuring the conclusion of collective agreements or agreements concluded between the two sides of industry at national or regional level, on the matters covered by this Directive, or those Member States in which there is a specific legislative framework for this purpose and within the limits thereof, may, in accordance with national legislation and/or practice, allow derogations from Articles 3, 4, 5, 8 and 16 by way of collective agreements or agreements concluded between the two sides of industry at the appropriate collective level.

The derogations provided for in the first and second subparagraphs shall be allowed on condition that equivalent compensating rest periods are granted to the workers concerned or, in exceptional cases where it is not possible for objective reasons to grant such periods, the workers concerned are afforded appropriate protection.

Member States may lay down rules:

(a) for the application of this Article by the two sides of industry; and

(b) for the extension of the provisions of collective agreements or agreements concluded in conformity with this Article to other workers in accordance with national legislation and/or practice".