



Republic of Bulgaria  
ECONOMIC  
AND SOCIAL COUNCIL

## **OPINION**

**on**

**“PROBLEMS IN THE IMPLEMENTATION  
OF THE SYSTEM FOR SUMMARISED CALCULATION  
OF WORKING HOURS”  
(own-initiative opinion)**

**Sofia, 2019**

The Economic and Social Council of the Republic of Bulgaria included in its Action Plan for 2019 the elaboration of an opinion on "Problems in the implementation of the system of summarised calculation of working hours".

The opinion was distributed to the Standing Commission on Labour, Income, Living Standards and Industrial Relations (CLILSIR) and the Commission on Social Policy Commission (CSP). Ivelin Zhelyazkov - member of ESC Group 1 - Employers and Paunita Petrova, member of ESC Group 2 - Trade Unions - were appointed rapporteur and co-rapporteur, respectively. The draft opinion was discussed and adopted by CLILSIR and CSP on 10 April 2019.

At its plenary session held on 10 May 2019, ESC adopted this opinion.

## 1. CONCLUSIONS AND RECOMMENDATIONS

- 1.1. The Economic and Social Council (ESC) found that in the period between 1992 and 2001 in Bulgarian labour legislation there has been considerable liberalization of the institute for summarised calculation of working hours, which aims at easing the economic turnover and the activity of the economic entities, assisting the employers in the complex economic conditions in the period of the period of transition from planned to a market economy.
- 1.2. The implementation of the system of summarised calculation of working hours (SSCWH) has the following implications:
  - 1.2.1. the intensity of labour is considerably increased, which should be adequately compensated;
  - 1.2.2. employee engagement is increased;
  - 1.2.3. reporting overtime and night work is complicated for certain categories of persons defined by the law;
  - 1.2.4. the usual weekly breaks are changed;
  - 1.2.5. employers are offered the possibility to utilize better the capacity of their staff.
- 1.3. ESC is of the opinion that the state, taking into account the positions of the social partners and other stakeholders, and in cooperation with them, should take measures to increase the public understanding of the findings made in this opinion in order to implement the conclusions and recommendations on the need to refine the legal framework regarding SSCWH.
- 1.4. With a view to the widespread use of SSCWH, ESC invites all stakeholders, the state and the social partners to work actively to clarify the problems encountered in applying the provisions of SSCWH and to make public the changes in the regulation of SSCWH, in accordance with the amendments to the Regulation on working time, breaks and leave (RWTBL).
- 1.5. The use of summarised calculation of working hours is linked to the specifics of the organisation of the production process in some industries. In the long run, it could have negative effects on employees who should be actively managed through health prevention.
- 1.6. ESC agrees that it is necessary to create mechanisms to ensure as much as possible the correct and comprehensive account of the actual amount of work done and its adequate remuneration, and also to ensure the restriction of working beyond the prescribed limits.

- 1.7. In view of the above conclusions, ESC is of the opinion that:
- 1.7.1. there is a need for an analysis of the existing legal norms regulating SSCWH and an assessment of necessary, urgent amendments and improvements both in the Labour Code (LC) and in the Civil Servants Act (SSA);
  - 1.7.2. the above should be carried out within a regime of tripartite co-operation with the leading role of the Ministry of Labour and Social Policy (MLSP) through a working group under Art. 45 of the Administration Act or through the possibilities provided by the Regulation on the Organisation of the Activities of the National Council for Tripartite Cooperation (ROANCTC)<sup>1</sup>.

## 2. INTRODUCTION AND GENERAL CONTEXT

- 2.1. The problems of SSCWH in Bulgarian labour law have not been the subject of an ESC opinion.
- 2.2. ESC considers that the full-time model of regular shift work in a fixed-term employment relationship is the traditional working time model established in the Labour Code. This means an 8-hour workday day in a 5-day workweek, which begins in the first half of the day and ends late into the afternoon, with Saturday and Sunday set aside for weekly rest.
- 2.3. ESC acknowledges the fact that the SSCWH is not introduced through the individual employment contract (Art. 66 of the Labour Code) or by additional agreements annexed to it (Art. 119 of the Labour Code). It is the right to organise the working time and it is implemented by an act of the employer and the Labour Code does not indicate what exact kind of act this should be. According to Art. 142, para. 2 of the Labour Code "the employer can establish" summarised calculation of working hours, i.e. it is the employer who has the right to organise, order, monitor, control and calculate working hours. Usually in practice this is done through an employer's order with which he introduces SSCWH: for a reference period - weekly, monthly or other, but not longer than 6 months; he determines for which structures, units, employees this applies; affirms individual, i.e. for each employee, shift-work schedules; defines organisational and technical measures related to this regime of calculating working hours; designates the persons who will monitor and report the implementation of the schedules; if necessary, issues additional orders concerning the reporting and payment of overtime.
- 2.4. ESC is of the opinion that the traditional model of working time (the so-called "fixed working time") is consistent with the physiological features of the human organism and the need for alternation of work and rest, on the one hand, and with the

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<sup>1</sup> Art. 45. (1) In carrying out his activity, the Minister may establish councils as expert advisory units for solving problems of his special competence, as well as working groups for carrying out specific tasks.

(2) The councils under par. 1 may include experts as well as representatives of non-governmental organisations relevant to the activity of the respective ministry.

(3) The Minister may set up working groups for drafting bills or a draft acts within the competence of the government which he is designated to propose to the National Assembly. Workers from other administrations may also be included in the working group with the agreement of the respective general secretary, or respectively the permanent secretary of the Ministry of Defence and the permanent secretary of the Ministry of Foreign Affairs.

social needs of leisure time in which employees can carry out their chosen activities according to their needs, on the other. This provides physiological health and social integrity.

- 2.5. ESC also takes into account the fact that the conditions for organising and managing certain production processes objectively impose deviations from the basic model of working time, rest time and leisure time.
  - 2.6. In cases expressly mentioned by the law, the legislator also allows work to be carried out in excess of the prescribed working hours for the employee. This is usually relevant for uninterrupted productions and activities, the management of which cannot be adapted to the physiological and social needs of the human being - activities related to defence, public order, health care, transport and communications, urgent disaster suppression activities and elimination of consequences of accidents. In these activities, the need arises suddenly (or may occur suddenly at any time) and the meeting of this necessity cannot be postponed - the workers concerned must take immediate action to respond to it, receive remuneration for their work until the task is completed, regardless of the general rules for working hours.
  - 2.7. It is also a fact that Bulgarian labour law recognizes different forms of organisation of working hours depending on the nature of industrial needs, necessitating diversion from the general, basic model of full-time work with regular shifts. Some productions and activities cannot be interrupted, and this necessitates their 24-hour service, including weekly rest days and holidays. This in turn requires the establishment of a three-shift mode of operation. Such a mode of work means that working time cannot accommodate the normal physiology of the human organism, where the night is supposed to be assigned to sleep, and the day - for work and other activities. Some employees will have to wake up earlier than normal (to go to work for the first shift), others will work later than usual (until the end of the working time of a second shift), and others will work during the night (third or night shift). The Bulgarian legislator has provided in such cases special additional wages and social benefits for night work and a number of restrictions on minors, pregnant women, young children and people with disabilities.
  - 2.8. ESC recognises the degree of flexibility in organising working hours by establishing different types of working time - part-time, unfixed working hours, extended working hours, on-call duty, shift mode, shift work, etc., which are regulated in the Labour Code.
  - 2.9. At the same time, ESC emphasizes that in Bulgarian law, SSCWH is regulated and fully related to the reporting and remuneration of labour - although the introduction of such a calculation in the enterprise has significant consequences for the working regime, rest and pay regime and has a significant impact on the physiological conditions, on the one hand, and the opportunities for social life of the working people, on the other.
3. INTERNATIONAL LAW AND EUROPEAN UNION LAW REGULATIONS AFFECTING THE ORGANISATION OF WORKING TIME

3.1. ESC notes the existing international instruments on the organisation of working time:

3.1.1. International Covenant on Economic, Social and Cultural Rights (ICESCR). According to Art. 7 of the ICESCR signatory states recognise the right of every person to enjoy fair and favourable working conditions that ensure rest, recreation and reasonable limitation of working time and periodical paid leave, as well as paid holidays.

3.1.2. International Labour Organisation (ILO) Conventions:

3.1.3. Convention No. 1 on Working Time (Industry), 1919 of the ILO sets the time limits for working time in industrial enterprises<sup>2</sup>.

3.1.4. Convention No. 30 on Working Time (Trade) 1930 of the ILO sets the time limits for working time in the trade, post and telecommunications as well as in office work.

3.1.5. Convention No. 43 on Sheet-Glass Works, 1943 of the ILO defines what should be understood as an uninterrupted production process which require shift work.

3.1.6. Convention No 49 of 1935 on reducing working hours in Glass-Bottle Works.

3.2. Acts of the European Union (EU) Law on the organisation of working time:

3.2.1. Directive 2003/88/EC concerning certain aspects of the organisation of working time of 4 November 2003 Directive 2003/88/EC further develops the legal provisions of Council Directive 93/104/EC of 23 November 1993 on certain aspects of the organisation of working time laying down the minimum safety and health requirements for the organisation of working time as regards the daily and weekly rest, breaks, night work as well as annual leave and maximum weekly working time - to "improve the working environment for the protection of the health and safety of workers". It is clear from the European legislator's findings in the Preamble to Directive 2003/88/EC that we should highlight the following: "Improving safety, hygiene and the health of workers at work is an objective that should not be subordinated solely to economic considerations"(p. 4); and "the organisation of work under a particular regime must take account of the general principle of adapting work to the worker" (p. 11). The first quoted statement is in

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<sup>2</sup> "In all industrial or commercial establishments, whether public or private, or in their branches, except those employing the members of the family of the employer, the duration of the staff working day may not exceed 8 hours per day; and 48 hours a week except as provided below:

(a) the provisions of this Convention shall not apply to persons occupying a supervisory, managerial position or a position requiring trust;

(b) where, by virtue of law, custom, or agreement between employers' and workers' organisations or, in the absence of such organisations, between employer and employee representatives, the working day duration is one or more days of the week, less than eight hours, an act of competent authority or an agreement between those organisations or between representatives of interested parties may authorize the limit of 8 hours to be exceeded on the other days of the week; the estimated excess can never be more than 1 hour per day;

(c) in case of shift work, the working day may exceed 8 hours a day or 48 hours a week, provided that the average number of hours worked, calculated over a period of 3 weeks or less, does not exceed 8 hours day and 48 hours a week."

the interest of human health and quality of life, which is undoubtedly a higher value than economic prosperity. The second statement is aimed at the complication and technologization of the production process, which transcends the rules of physiological existence of the organism and imposes an increasingly unsustainable adaptation of human life to the machine cycle. Each of these unfavourable trends leads to significant damage to human resources and this is precisely what the legislator is opposing through Directive 2003/88/EC.

3.3. ESC draws attention to one key issue related to SSCWH resulting from the definition of Art. 2, § 9 of Directive 2003/88/EC, according to which "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". The quoted legal definition binds rest periods to the physiological nature of the human organism.

#### 4. THE LEGAL SYSTEM OF SSCWH IN THE REPUBLIC OF BULGARIA

4.1. ESC draws attention to the fact that the leading normative act on working time in the Republic of Bulgaria is the Labour Code, followed by the Regulations regarding working time, rest and leave.

4.2. By virtue of Art. 5, para. 4 of the Constitution the above-mentioned normative acts should be applied in accordance with the international treaties ratified by constitutional order promulgated and enacted for the Republic of Bulgaria which are "part of the domestic law of the country" and "take precedence over those norms of the internal legislation which they contradict ". Relevant international legal acts binding on the Republic of Bulgaria by virtue of the said constitutional provision are the ICESCR listed above, the ILO conventions and Directive 2003/88/EC.

4.3. ESC considers that the explicit regulation of SSCWH in Bulgarian labour legislation is scarce. It covers Art. 141, Art. 142, para. 2, 3 and 4, Art. 153, para. 2 and 3, and Art. 262, para. 1, item 4 of the LC; the newly adopted Art. 9a, 9b, 9c and 9d of the Regulations regarding working time, rest and leave; Art. 9a, para. 2 and 3, and Art. 18, para. 3 of the Regulations regarding structuring and organisation of labour remuneration; and Art. 38, para. 3, 4, 15 and 16 of the Regulations regarding pensions and social security periods.

4.4. According to the definition of working time given in §1. item 11 of the Additional Provisions of the Labour Code (in force since 1 June 2006), "working time" is any period during which the employee is obliged to carry out the work for which he has agreed".

4.5. Basically, SSCWH is regulated in Art. 142 of the Labour Code - where, as mentioned above, the calculation of working time is considered, but not its organisation and distribution<sup>3</sup>.

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<sup>3</sup> Art. 142. (1) The working hours shall be calculated in working days - each day.

(2) The employer may establish SSCWH - weekly, monthly or for another calendar period, which may not be longer than 6 months.

- 4.6. ESC acknowledges the fact that, with the latest amendments and additions to the Regulations regarding working time, rest and leave, an attempt is made to correct some of the problems with SSCWH.
- 4.6.1. ESC finds the changes to the Regulations regarding working time, rest and leave for timely and creating clear rules and requirements for introducing SSCWH, but at the same time recognizes that the problems of extraordinary labour under the conditions of the SSCWH and otherwise should be resolved by changes in the law, not by secondary legislation.
- 4.6.2. ESC notes that the frequent replacement of work schedules (including immediately prior to the commencement of the shift) and the complexity of summarised calculation of working hours are some of the most frequently reported problems in complying with labour law and no doubt their adjustment is necessary to be achieved by means of the cited normative amendments and supplementation.
- 4.6.3. ESC acknowledges the fact that a change in the SSCWH legislation will be difficult to implement as there are significant differences between the nationally representative workers' organisations, on one side, and the employers, on the other:
- 4.6.3.1. Trade unions claim that there are contradictions between national legislation and Directive 2003/88/EC, since under the legal framework under Art. 142, para. 1 of the Labour Code, the SSCWH reference periods are allowed to last up to 6 months, which is contrary to Art. 16, letter "b" in connection with Art. 6, letter "b" of Directive 2003/88/EC, restricting these reference periods to 4 months. Moreover, they find that the Bulgarian state has not applied any of the possibilities under Art. 17 of Directive 2003/88/EC to derogate from one or more of the above-mentioned provisions - it must therefore seek to achieve all the objectives laid down by the Directive in its national legislation.
- 4.6.3.2. Employers' organisations do not share this position, claiming that the Bulgarian legislation is not in conflict with Directive 2003/88/EC, recalling that our country did not avail itself of the opportunity provided by Art. 19 of the Directive, to set reference periods within 12 months<sup>4</sup>.
- 4.6.3.3. Employers' organisations have also stated other common positions to ease the terms and conditions for applying the summarised calculation of working hours to solve the problems in production processes and activities with uninterrupted or working regime or shift work and introducing the so-called "individual schedules for working time". It has been repeatedly stated that there is a need to abolish the prohibition and excessive restrictions on overtime work and the so-called extended

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(3) SSCWH is not allowed in case of employees with unstructured working day.

(4) The maximum duration of a shift in case of SSCWH may be up to 12 hours, the working week cannot exceed 56 hours, and for employees with reduced working hours - up to 1 hour more than their reduced working hours.

<sup>4</sup> Article 19 Restrictions on derogations from reference periods

The possibility of derogating from Article 16, letter b) provided for in Article 17 (3) and Article 18 may not lead to the establishment of a reference period which exceeds six months.

However, Member States may, subject to the general principles of the protection of the safety and health of workers, for objective, technical or organisational reasons, allow collective agreements or agreements concluded between the social partners reference periods shall be determined which shall in no case exceed 12 months.

working hours, reconciliation of the summarised calculation of working hours and overtime work that do not comply with the requirements of the relevant Directive 2003/88/EC and the practice in the EU Member States. By changing Art. 146, para. (1) and subject to the requirements of daily and weekly rest, the maximum number of overtime hours worked per calendar year from 150 to 300 hours should be increased by the worker's agreement. There is also a need to make changes in the regulation of extended working hours under Art. 136a of the Labour Code, by removing the requirements and restrictions that constitute an obstacle to the full use of this possibility provided by the legislator in the interest of the parties to labour relations.

## 5. PROBLEMS IN THE IMPLEMENTATION OF LEGISLATION RELEVANT TO SSCWH

5.1. ESC recognizes that the following problems are made visible in the implementation of the legislation relevant to SSCWH:

- 5.1.1. conflicting understandings what should be counted as overtime in SSCWH;
- 5.1.2. emerging problems and contradictions in calculating total working time in cases of business travel;
- 5.1.3. emerging problems in transforming the night hours into day hours in SSCWH according to the provisions of Art. 9; para. 2 from the Regulations regarding structuring and organisation of labour remuneration, including:
  - problems related to the payment of overtime due to the introduced payment system in SSCWH, and
  - problems related to the issuance of an order for the introduction of SSCWH, which coincide with the day of inspection on part of the control bodies of the General Labour Inspectorate.
- 5.1.4. possibility that Sunday is not one of the days of weekly rest;
- 5.1.5. problem related to the transformation of the night hours into day hours according to the provision of Art. 9, para. 2 of the Regulations regarding structuring and organisation of labour remuneration. However, it is imperative to make a clear distinction between the rules governing overtime and those relating to systems for the remuneration of labour;
- 5.1.6. it is problematic that in case of shift work the persons continue to perform their duties also after the definite end time of the shift for the worker concerned. Due to the lack of a statutory regulation on mandatory attendance, it is difficult to establish overtime in these cases.
- 5.1.7. ESC takes into account the following most frequently encountered violations in practice:

- 5.1.8. the hours worked are not equalized and the hours worked as night work are not converted into day hours;
- 5.2.2. summarised calculation of working hours schedules do not in all cases correspond to the actual hours worked by the workers;
- 5.2.3. it is allowed in SSCWH employees to work for more than 12 hours on a single shift;
- 5.2.4. the approved individual schedules for the SSCWH period are not preserved for at least 3 years after the end of the period; individual schedules located in the objects under inspection have not been prepared in compliance with the relevant statutory requirements and are not endorsed by the employer;
- 5.2.5. failure to comply with the requirement that at the same time when SSCWH is established individual schedules for the entire reporting period should be also prepared;
- 5.2.6. at the time of establishing SSCWH there is a prohibition on overtime work, which in some cases is violated.

## 6. SOCIAL EFFECTS

- 6.1. ESC considers that the length of reference periods is important in that within each of them the actual working time divided by the number of days worked must be equal to baseline daily norm for the type of work (generally 8 hours). On some days, however, actual work may be more and on other days less, with the ultimate goal that the sum calculated for the entire reference period corresponds to the expected baseline daily norm.
- 6.2. ESC finds it possible that for longer reference periods it will be allowed that workers receive more workload for longer periods (for 6 months, this allows for example increased workload in the second quarter of one reference period and in the first quarter of the next reference period - in total half a year). At the same time, regardless of the due or consequential overtime compensation for periods of increased workload, wear and health risks increase and the risk of labour traumatism increases. This is due to the natural physiology of the human organism, which is damaged by workload above certain limits - regardless of the subsequent or previous compensation with rest. According to ESC, SSCWH should not allow for significant deviations from the fundamental for labour law concept of the limited working day, organised within the calendar day and in line with the natural human physiology.
  - 6.2.1. SSCWH allows for the establishment of different working day duration, i.e. of daily working hours the normal duration of which should normally be up to 8 hours. Within SSCWH the maximum duration of a work shift may be up to 12 hours, and for workers with reduced working hours - up to 1 hour more than their reduced working hours (Art. 142, para. 2 of LC).
  - 6.2.2. SSCWH allows a smaller weekly rest than the normal 48-hour period, which can last up to 36 hours and under certain conditions up to 24 hours.

- 6.2.3. SSCWH has as a direct result the workload of employees engaged in the work process. This is manifested not only in terms of increasing the time they have to be available to their employer, but also in increasing the possibilities for their availability to be determined and changed unilaterally by the employer, including immediately before the start of the specific work shift.
- 6.3. ESC notes that SSCWH allows such intensification of work, so that with significantly lower number of employees to cover significantly higher number of work units. This could encourage employers to introduce SSCWH and reduce their staff costs - thus increasing their competitiveness.
- 6.4. In this regard, ESC believes that as per its current regulation, with the amendments in Art. 142, para. 2 LC since 2001 (i.e. in its current version and as a result of its implementation for more than 10 years), from an atypical, limited only to some types of situations mode of calculating working hours, SSCWH has become an instrument of organising working time that provides opportunities for:
- 6.4.1. establishing another duration of the working day, i.e. of daily working hours in production processes in which the normal duration should, in principle, be up to 8 hours (this is normally the case in labour contracts). In case of SSCWH the maximum duration of a work shift may be up to 12 hours, and for workers with reduced working hours up to 1 hour more than their reduced working hours (Art. 142, para. 2 LC);
  - 6.4.2. whatever the working day's duration - less than or equal to 8 hours (but not more than 12 hours), the total weekly working time may be up to 11.2 hours a day for a five-day working week, i.e. within the allowable time of up to 56 hours per week;
  - 6.4.3. introducing a weekly rest period of less than the normal (48 hours), the duration of which shall be not less than 36 hours and, under certain conditions, not less than 24 hours (Art. 153, para. 2 and 3 LC);
  - 6.4.4. possibility of using Saturdays and Sundays as working days;
  - 6.4.5. using part of the weekly rest as working hours, taking into account the eligibility of Art. 153, para. 2 and para. 3 LC;
  - 6.4.6. on this basis, or as a combination of these options, there is the possibility of using a smaller workforce to cover a certain production over a longer period of time - both daily and weekly, incl. on Sundays;
  - 6.4.7. to organise the working time of an individual worker so that on certain days of the relevant period he could work for longer periods, and on others - for shorter periods, in different parts of the day.
  - 6.4.8. ESC notes that, in a similar manner to the regulations of the Labour Code, the regime of SSCWH was reproduced (with the amendments of 2008) and with regard to the civil servants (Art. 49 of the Civil Servant Act).

(signed)

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