

JUDGMENT OF THE COURT (Third Chamber)

10 September 2015 (*)

(Reference for a preliminary ruling — Social policy — Directive 2003/88/EC — Protection of the safety and health of workers — Organisation of working time — Point (1) of Article 2 — Concept of ‘working time’ — Workers who are not assigned a fixed or habitual place of work — Time spent travelling between the workers’ homes and the premises of the first and last customers)

In Case C-266/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Audiencia Nacional (Spain), made by decision of 22 May 2014, received at the Court on 2 June 2014, in the proceedings

Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.)

v

Tyco Integrated Security SL,

Tyco Integrated Fire & Security Corporation Servicios SA,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh (Rapporteur), C. Toader, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 22 April 2015,

after considering the observations submitted on behalf of:

- the Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.), by E. Lillo Pérez and F. Gualda Alcalá, abogados,
- Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Servicios SA, by J. Martínez Pérez de Espinosa, abogado,
- the Spanish Government, by J. García-Valdecasas Dorrego, acting as Agent,
- the Czech Government, by M. Smolek, acting as Agent,
- the Italian Government, by G. Palmieri, acting as Agent, and F. Varrone, avvocato dello Stato,
- the United Kingdom Government, by L. Christie and L. Barfoot, acting as Agents, and S. Lee, QC, and G. Facenna, Barrister,
- the European Commission, by M. van Beek and N. Ruiz García, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 June 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of point (1) of Article 2 of 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 (OJ 2003 L 299, p. 9).

2 The request has been made in the course of proceedings between the Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) and Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Servicios SA (together 'Tyco') concerning the refusal by the latter undertakings to consider the time spent by their employees on daily travel between their homes and the premises of the first and last customers designated by their employer ('time spent travelling between home and customers') as 'working time', within the meaning of point (1) of Article 2 of that directive.

Legal context

EU law

3 According to recital 4 in the preamble to Directive 2003/88:

'The improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations'.

4 Article 1 of that directive provides:

'1. This Directive lays down minimum safety and health requirements for the organisation of working time.

2. This Directive shall apply 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.

3. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of [Council] Directive 89/391/EEC [of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1)], without prejudice to Articles 14, 17, 18 and 19 of this Directive.

...

4. The provisions of Directive 89/391 ... are fully applicable to the matters referred to in paragraph 2, without prejudice to more stringent and/or specific provisions contained in this Directive.'

5 Article 2 of that directive, entitled 'Definitions', provides in points 1 and 2:

'For the purposes of this Directive, the following definitions shall apply:

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;

2. "rest period" means any period which is not working time'.

6 Article 3 of the same directive, entitled 'Daily rest', is worded as follows:

'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'.

Spanish law

7 Article 34 of the Workers' Statute, in the version resulting from Royal Legislative Decree No 1/1995 approving the amended text of the Law on the Workers' Statute (Real Decreto Legislativo 1/1995, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores) of 24 March 1995 (BOE No 75 of 29 March 1995, p. 9654), provides, in paragraphs 1, 3 and 5:

'1. Working hours shall be as specified in collective agreements or employment contracts.

Normal working hours shall average no more than 40 hours per week of actual work, calculated on an annual basis.

...

3. There must be at least 12 hours between the end of one working day and the beginning of the following working day.

Normal working hours shall not exceed nine hours of actual work per day unless a different pattern of daily working hours applies by virtue of a collective agreement or, failing that, by agreement between the employer and the representatives of the workers, subject in all cases to the requirement for a rest period between working days.

...

5. Working time shall be calculated in such a way that a worker is present at his place of work both at the beginning and at the end of the working day.'

The dispute in the main proceedings and the question referred for a preliminary ruling

8 Tyco carries out, in the majority of Spanish provinces, a business that involves installing and maintaining security systems which enable intrusions to be detected and burglaries to be prevented.

9 In 2011 Tyco closed its offices in the provinces ('the regional offices') and attached all its employees to the central office in Madrid (Spain).

10 The technicians employed by Tyco install and maintain, in a functioning state, security equipment in private homes and on industrial and commercial premises located within the geographical area assigned to them, which consists of all or part of the province in which they work and sometimes more than one province.

11 Those workers each have the use of a company vehicle in which they travel every day from their homes to the places where they are to carry out the installation or maintenance of security systems. They use the same vehicle to return home at the end of the day.

12 According to the referring court, the distances from those workers' homes to the places where they are to carry out work vary a great deal and are sometimes more than 100 kilometres. It gives the example of a case in which, because of the volume of traffic, the time spent travelling between home and customers was three hours.

13 The same workers are also required to travel at least once per week to the offices of a transport logistics company near their homes to pick up equipment, parts and materials needed for their work.

14 In order to carry out their duties, the workers at issue in the main proceedings are each provided with a mobile phone, which they use to communicate remotely with the central office in Madrid. An application installed on their phone allows workers to receive on the eve of their working day the task list for the following day identifying the various premises that they are required to visit that day within their geographical area of work, and the times of their customer appointments. By means of another application, the workers input the details relating to the work they have done and send them to their company in order to record the incidents that have occurred and the work that has been carried out.

15 The referring court notes that Tyco does not count the time spent travelling between home and customers as working time, thus regarding it as a rest period.

16 According to that court, Tyco calculates daily working hours by counting the time elapsing between when its employees arrive at the premises of the first customer of the day and when those employees leave the premises of the last customer, account being taken only of the time of the work on the premises and of the journeys getting from one customer to another. Before the closure of the regional offices, however, Tyco used to count the daily working time of its employees as starting when they arrived at those offices in order to pick up the vehicle they were to use and receive the list of customers to be visited and the task list and ending when they returned in the evening to leave the vehicle at these offices.

17 That court takes the view that the concept of working time is placed in opposition to that of a rest period in Directive 2003/88 and that therefore that directive makes no provision for other situations falling between the two. It notes that the time spent travelling between home and customers is not regarded as working time under Article 34(5) of the Workers' Statute, in the version resulting from Royal Legislative Decree 1/1995. According to the same court, the Spanish legislature opted for that approach on the basis that the worker is free to choose where to have his home. It is the worker alone who therefore decides, within the limits of his means, on the distance between his place of work and his home.

18 The referring court observes that this is subject to some variation in the case of mobile workers in the road transport sector. For that category of workers, the national legislature would appear to have taken the view that their vehicle is the workplace and consequently the travelling time is considered to be working time. That court asks whether the situation of the workers at issue in the main proceedings might be considered to be the same as that of mobile workers in that sector.

19 In that court's view, the fact that the workers at issue in the main proceedings are informed of what route to follow and what particular work must be done for the customers, via mobile phone, a few hours before their appointment means that those workers are no longer able to choose to adjust their private life and their place of residence in relation to its proximity to their place of work, since that place varies daily. The time spent travelling between home and customers cannot therefore be regarded as a rest period, bearing in mind in particular the safety and health objectives of Directive 2003/88. According to that court, neither is it time during which the workers are, strictly speaking, at their employer's disposal so that they can be assigned work other than the travelling itself. Therefore, it is not

sufficiently clear whether, pursuant to that directive, the time spent travelling between home and customers constitutes working time or a rest period.

20 In those circumstances, the Audiencia Nacional (National High Court) decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 2 of Directive 2003/88 be interpreted as meaning that the time spent travelling at the beginning and end of the day by a worker who is not assigned to a fixed place of work but is required to travel every day from home to the premises of a different customer of the employer and to return home from the premises of another, different, customer (following a route or list that is determined for the worker by the employer the previous day), at all times within a geographical area that is more or less extensive, in the conditions of the main proceedings as described in the background to this question, constitutes “working time” as that concept is defined in Article 2 of the directive or, conversely, must it be regarded as a “rest period”?’

The question referred for a preliminary ruling

21 By its question, the referring court essentially whether point (1) of Article 2 of Directive 2003/88 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, in which the workers are not assigned to a fixed or habitual place of work, the time spent by those workers travelling between home and customers constitutes ‘working time’, within the meaning of that provision.

22 It should be noted, as a preliminary point, that, given that Articles 1 to 8 of the directive are framed in essentially the same terms as Articles 1 to 8 of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time (OJ 1993 L 307, p. 18), as amended by Directive 2000/34/EC of 22 June 2000 of the European Parliament and of the Council (OJ 2000 L 195, p. 41), the interpretation of those latter articles by the Court is clearly transposable to the abovementioned articles of Directive 2003/88 (see, to that effect, judgment in *Fuß*, C-429/09, EU:C:2010:717, paragraph 32, and order in *Grigore*, C-258/10, EU:C:2011:122, paragraph 39).

23 Moreover, it is important, first of all, to point out that the aim of that latter directive is to lay down minimum requirements intended to improve the living and working conditions of workers through an approximation of the provisions of national law, in particular, those governing working time. That harmonisation at EU level in relation to the organisation of working time is intended to guarantee better protection of the safety and health of workers by ensuring that they are entitled to minimum rest periods — particularly daily and weekly — and adequate breaks and by setting the maximum average duration of the working week at 48 hours, which is expressly stated to encompass overtime (see judgments in *BECTU*, C-173/99, EU:C:2001:356, paragraphs 37 and 38; *Jaeger*, C-151/02, EU:C:2003:437, paragraph 46, and order in *Grigore*, C-258/10, EU:C:2011:122, paragraph 40).

24 The various requirements laid down in that directive concerning maximum working time and minimum rest periods constitute rules of EU social law of particular importance from which every worker must benefit as a minimum requirement necessary to ensure protection of his safety and health (judgment in *Dellas and Others*, C-14/04, EU:C:2005:728, paragraph 49 and the case-law cited, and order in *Grigore*, C-258/10, EU:C:2011:122, paragraph 41).

25 Next, with regard to the concept of ‘working time’, within the meaning of point (1) of Article 2 of Directive 2003/88, it is important to note that the Court has repeatedly held that the directive defines that concept as any period during which the worker is at work, at the employer’s disposal and carrying out his activity or duties, in accordance with national laws and/or practices, and that that concept is placed in opposition to rest periods, the two being mutually exclusive (judgments in *Jaeger*, C-151/02, EU:C:2003:437, paragraph 48; *Dellas and Others*, C-14/04, EU:C:2005:728, paragraph 42, and orders in *Vorel*, C-437/05, EU:C:2007:23, paragraph 24, and *Grigore*, C-258/10, EU:C:2011:122, paragraph 42).

26 The conclusion in this context must be that the directive does not provide for any intermediate category between working time and rest periods (see, to that effect, judgment in *Dellas and Others*, C-14/04, EU:C:2005:728, paragraph 43, and orders in *Vorel*, C-437/05, EU:C:2007:23, paragraph 25, and *Grigore*, C-258/10, EU:C:2011:122, paragraph 43).

27 In that regard, the Court has held that the concepts of ‘working time’ and ‘rest period’ within the meaning of Directive 2003/88 constitute concepts of EU law which must be defined in accordance with objective characteristics, by reference to the scheme and purpose of that directive, which is intended to improve workers’ living and working conditions. Only such an autonomous interpretation is capable of securing full effectiveness for that directive and uniform application of those concepts in all the Member States (see judgment in *Dellas and Others*, C-14/04, EU:C:2005:728, paragraphs 44 and 45, and orders in *Vorel*, C-437/05, EU:C:2007:23, paragraph 26, and *Grigore*, C-258/10, EU:C:2011:122, paragraph 44).

28 Last, it should be noted that Article 2 of the same directive is not one of the provisions from which the directive allows derogations (see order in *Grigore*, C-258/10, EU:C:2011:122, paragraph 45).

29 In order to answer the question referred for a preliminary ruling, it should therefore be examined whether or not, in a situation such as that at issue in the main proceedings, the elements of the concept of ‘working time’, set out in paragraph 25 of this judgment, are present during the time spent travelling between home and customers and, therefore, whether that time must be regarded as working time or as a rest period.

30 As regards the first element of the concept of ‘working time’, within the meaning of point (1) of Article 2 of Directive 2003/88, according to which the worker must be carrying out his activity or duties, it should be noted that it is not disputed that, before Tyco’s decision to abolish the regional offices, that employer regarded the travelling time of its workers between the regional offices and the premises of their first and last customers of the day as working time, but not their travelling time from their homes to the regional offices at the beginning and at the end of the day. Moreover, it is not disputed that, before that decision, the workers at issue in the main proceedings travelled each day to those offices in order to pick up the vehicles provided to them by Tyco and start their working day. Those workers moreover completed their working day at those offices.

31 Tyco disputes the contention that the time spent by the workers at issue in the main proceedings travelling between home and customers may be regarded as working time, within the meaning of that provision, on the ground that, even if those workers have to undertake a journey to go to the premises of the customers it designates, the activity and duties of those workers entail providing technical services, installing and maintaining security systems to those customers. Therefore, during the time spent travelling between home and customers, the same workers are not carrying out their activity or duties.

32 That argument cannot be accepted. As the Advocate General observed in point 38 of his Opinion, the journeys of the workers, who are employed in a job such as that at issue in the main proceedings, to go to the customers designated by their employer, is a necessary means of providing those workers' technical services to those customers. Not taking those journeys into account would enable an employer such as Tyco to claim that only the time spent carrying out the activity of installing and maintaining the security systems falls within the concept of 'working time', within the meaning of point (1) of Article 2 of Directive 2003/88, which would distort that concept and jeopardise the objective of protecting the safety and health of workers.

33 The fact that the journeys of the workers in question, at the beginning and at the end of the day, to or from the customers, were regarded by Tyco as working time before the abolition of the regional offices also shows that the work consisting in driving a vehicle from a regional office to the first customer and from the last customer to that regional office was previously among the duties and activity of those workers. Yet the nature of those journeys has not changed since the abolition of the regional offices. It is only the departure point of those journeys that has changed.

34 In those circumstances, workers in a situation such as that at issue in the main proceedings must be regarded as carrying out their activity or duties during the time spent travelling between home and customers.

35 As regards the second element of the concept of 'travelling time', within the meaning of point (1) of Article 2 of Directive 2003/88, according to which the worker must be at the employer's disposal during that time, it should be noted that the decisive factor is that the worker is required to be physically present at the place determined by the employer and to be available to the employer in order to be able to provide the appropriate services immediately in case of need (see, to that effect, judgment in *Dellas and Others*, C-14/04, EU:C:2005:728, paragraph 48, and orders in *Vorel*, C-437/05, EU:C:2007:23, paragraph 28, and *Grigore*, C-258/10, EU:C:2011:122, paragraph 63).

36 Accordingly, in order for a worker to be regarded as being at the disposal of his employer, that worker must be placed in a situation in which he is legally obliged to obey the instructions of his employer and carry out his activity for that employer.

37 Conversely, it is apparent from the case-law of the Court that the possibility for workers to manage their time without major constraints and to pursue their own interests is a factor capable of demonstrating that the period of time in question does not constitute working time within the meaning of Directive 2003/88 (see, to that effect, judgment in *Simap*, C-303/98, EU:C:2000:528, paragraph 50).

38 In the present case, it follows from the details provided during the hearing by Tyco that it determines the list and order of the customers to be followed by the workers at issue in the main proceedings and the times at which they have appointments with its customers. It also stated that, despite the fact that a mobile phone was provided to each of the workers at issue in the main proceedings, on which they receive their itinerary on the eve of the working day, those workers are not required to keep that phone on during the time spent travelling between home and customers. Thus, the itinerary for getting to those appointments is not determined by Tyco, the workers at issue remaining free to get there via the route they wish, with the result that they can manage their travelling time as they see fit.

39 In that regard, it should be stated that, during the time spent travelling between home and customers, workers in a situation such as that at issue in the main proceedings have a certain freedom that they do not have during the time spent working on a customer's premises, provided that they arrive at the designated customer at the time agreed upon by their employer. Nevertheless, it is apparent from the file provided to the Court that that freedom already existed before the abolition of the regional offices, the only thing to have changed being the departure point of the journey to get to that customer. Such a change does not affect the legal nature of the obligation of those workers to obey their employer's instructions. During those journeys, the workers act on those instructions of the employer, who may change the order of the customers or cancel or add an appointment. In any event, it should be stated that, during the necessary travelling time, which generally cannot be shortened, those workers are not able to use their time freely and pursue their own interests, so that, consequently, they are at their employer's disposal.

40 Tyco and the Spanish and United Kingdom Governments expressed the concern that such workers would conduct their personal business at the beginning and end of the day. Such a concern cannot affect the legal classification of journey time. In a situation such as that in the main proceedings, it is for the employer to put in place the necessary monitoring procedures to avoid any potential abuse.

41 In fact, first, there was already, before the abolition of the regional offices, the possibility of conducting such business, at the beginning and at the end of the working day, during the journeys between customers' premises and the regional offices. Second, according to recital 4 of Directive 2003/98, the objectives of that directive should not be subordinated to purely economic considerations. Moreover, Tyco indicated during the hearing before the Court that the credit cards it issues to its staff can be used only to pay for the fuel — meant for professional use — of the vehicles provided to its workers. Tyco thus has one means among others of monitoring their journeys.

42 In addition, while it is true that such monitoring could create an additional burden for an undertaking in a situation such as Tyco, it must be observed that that burden is an inherent consequence of its decision to abolish the regional offices. However, it would be contrary to the directive's stated objective of protecting the safety and health of workers if that decision had the effect of placing the entirety of the burden on Tyco's employees.

43 In respect of the third element of the concept of 'working time', within the meaning of point (1) of Article 2 of Directive 2003/88, according to which the worker must be working during the period in question, it should be noted that, as follows from paragraph 34 of this judgment, if a worker who no longer has a fixed place of work is carrying out his duties during his journey to or from a customer, that worker must also be regarded as working during that journey. As the Advocate General observed in point 48 of his Opinion, given that travelling is an integral part of being a worker without a fixed or habitual place of work, the place of work of such workers cannot be reduced to the physical areas of their work on the premises of their employer's customers.

44 That finding cannot be affected by the fact that workers in a situation such as that at issue in the main proceedings begin and finish such journeys at their homes, as that fact stems directly from the decision of their employer to abolish regional offices and not from the desire of those workers. Having lost the ability to freely determine the distance between their homes

and the usual place of the start and finish of their working day, they cannot be required to bear the burden of their employer's choice to close those offices.

45 Such a result would also be contrary to the objective of protecting the safety and health of workers pursued by Directive 2003/88, which includes the necessity of guaranteeing workers a minimum rest period. It would therefore be contrary to that directive if the resting time of workers without a habitual or fixed place of work were to be reduced because the time they spend travelling between home and customers was excluded from the concept of 'working time', within the meaning of point (1) of Article 2 of that directive.

46 It follows from the foregoing that, where workers in circumstances such as those at issue in the main proceedings use a company vehicle to go from their homes to the premises of a customer designated by their employer or to return to their homes from the premises of such a customer and to go from the premises of one customer to another during their working day, those workers must, when they make those journeys, be regarded as 'working', within the meaning of point (1) of Article 2 of the directive.

47 That conclusion cannot be called into question by the argument of the United Kingdom Government that it would lead to an inevitable increase in costs, in particular, for Tyco. In that regard, it suffices to point out that, even if, in the specific circumstances of the case at issue in the main proceedings, travelling time must be regarded as working time, Tyco remains free to determine the remuneration for the time spent travelling between home and customers.

48 It also follows from the case-law of the Court that, save in the special case envisaged by Article 7(1) of Directive 2003/88 concerning annual paid holidays, that directive is limited to regulating certain aspects of the organisation of working time so that, generally, it does not apply to the remuneration of workers (see judgment in *Dellas and Others*, C-14/04, EU:C:2005:728, paragraph 38, and orders in *Vorel*, C-437/05, EU:C:2007:23, paragraph 32, and *Grigore*, C-258/10, EU:C:2011:122, paragraphs 81 and 83).

49 Accordingly, the method of remunerating workers in a situation such as that at issue in the main proceedings is not covered by the directive but by the relevant provisions of national law.

50 In the light of all the foregoing considerations, the answer to the question asked is that point (1) of Article 2 of Directive 2003/88 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, in which workers do not have a fixed or habitual place of work, the time spent by those workers travelling each day between their homes and the premises of the first and last customers designated by their employer constitutes 'working time', within the meaning of that provision.

Costs

51 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Point (1) of Article 2 of 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 must be

interpreted as meaning that, in circumstances such as those at issue in the main proceedings, in which workers do not have a fixed or habitual place of work, the time spent by those workers travelling each day between their homes and the premises of the first and last customers designated by their employer constitutes 'working time', within the meaning of that provision.