

Assessing On-Call Time under EU Law: Is it True that the Court of Justice Determines ‘Working Time’ by reference to response time, location constraints, distance, and available leisure opportunities?

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This article by **Adele Gatt Livori** was previously submitted as part of ECL4001 and is being published with the author’s permission. It examines whether periods spent on-call constitute ‘working time’ or ‘rest periods’ under Directive 2003/88/EC. Through an analysis of key judgments such as *SIMAP*, *Jaeger*, *Matzak*, *Radiotelevizija Slovenija*, and *Stadt Offenbach*, it argues that the Court of Justice of the European Union has adopted a structured, constraint-based approach centred on the degree of employer-imposed limitations on the worker. The article contends that while certain commonly cited factors may appear relevant, the Court ultimately rejects considerations based on personal circumstances, instead favouring an objective assessment grounded in health and safety. It concludes that the legal test is more nuanced than often presented, requiring a holistic evaluation rather than a checklist of criteria.

TAGS: Labour law, EU law, Employment, Working Time Directive, Worker’s Rights, CJEU

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Introduction

This article examines whether the above statement accurately reflects the approach of the Court of Justice of the European Union (CJEU) when determining whether periods spent on-call constitute ‘working time’ or ‘rest periods’ under Directive 2003/88/EC. The classification of on-call time has long presented difficulties within EU labour law, particularly in light of evolving work patterns that blur the boundary between professional obligations and personal time.

The Working Time Directive establishes a strict distinction between working time and rest periods but does not expressly regulate on-call arrangements. As a result, the task of defining the legal status of such periods has fallen largely to the CJEU, whose case law has progressively refined the applicable criteria. While early judgments focused primarily on physical presence at the workplace, more recent decisions have developed a nuanced, constraint-based approach applicable to on-call time performed away from the workplace.

Against this background, the article critically assesses the accuracy of the statement by analysing the Court’s jurisprudence and academic commentary. It argues that although certain elements of the statement correspond to factors considered by the CJEU, it ultimately misrepresents the methodology applied by treating indicative considerations as autonomous legal criteria.

Legal Framework: Directive 2003/88/EC

Directive 2003/88/EC concerning certain aspects of the organisation of working time lays down minimum requirements intended to protect the safety and health of workers through the regulation of working time. Its objective is expressly stated to ensure that the improvement of workers’ safety and health ‘should not be subordinated to purely economic considerations’.¹ The Directive applies broadly across both the public and private sectors and constitutes a central instrument of EU social policy.

The Directive delineates a clear conceptual distinction between working time and rest period. Article 2(1) defines working time as ‘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 By contrast, Article 2(2) defines a rest period as ‘any period which is not

¹ 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 [2003] OJ L299/9, Recital 4.

² *ibid* article 2(1).

working time’.³ The CJEU has consistently interpreted these concepts as mutually exclusive, such that the Directive ‘does not provide for any intermediate category between working time and rest periods’.⁴

The definitions contained in Article 2 constitute autonomous concepts of EU law and must therefore be interpreted uniformly across the Member States by reference to the scheme and purpose of the Directive.⁵ As the CJEU has emphasised, only such an autonomous interpretation is capable of ensuring the full effectiveness of the Directive and the uniform application of minimum health and safety standards.⁶ Member States may not derogate from the definitions in Article 2 when applying the Directive for the purpose of protecting workers’ health and safety.⁷

It is also well established that Directive 2003/88/EC does not regulate remuneration. The CJEU has repeatedly held that, save for the specific case of paid annual leave, the Directive ‘does not apply to the remuneration of workers’.⁸ Consequently, while periods classified as working time under EU law must be taken into account for the purposes of rest and maximum working time limits, the question of whether and how such periods are remunerated remains a matter for national law.⁹

On-Call Time at the Workplace: *SIMAP* and *Jaeger*

The CJEU first addressed the classification of on-call time under EU working time law in the context of healthcare workers who were required to remain physically present at their place of work. In *SIMAP*, the Court examined whether periods during which doctors were on call at health centres constituted working time within the meaning of Directive 93/104, the predecessor to Directive 2003/88.¹⁰ The Court held that where a worker is required to be physically present at a place determined by the employer and to be available to provide services immediately, the entirety of that period must be classified as working time, irrespective of whether the worker is actively performing tasks throughout that period.¹¹

This approach was confirmed and further clarified in *Landeshauptstadt Kiel v Jaeger*, which concerned a hospital doctor who was required to remain at the hospital during on-call periods, including overnight.¹² The Court

³ *ibid* article 2(2).

⁴ Case C-258/10 *Grigore v Regia Națională a Pădurilor Romsilva* [2011] ECLI:EU:C:2011:122, para 43.

⁵ Case C-14/04 *Abdelkader Dellas and Others v Premier ministre and Ministre des Affaires sociales* [2005] ECLI:EU:C:2005:728, paras 44–45.

⁶ *Grigore* (n 4) para 44.

⁷ *Grigore* (n 4) para 45.

⁸ Case C-266/14 *Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Servicios SA* [2015] ECLI:EU:C:2015:578, para 48.

⁹ Case C-518/15 *Ville de Nivelles v Rudy Matzak* [2017] ECLI:EU:C:2017:619, para 49.

¹⁰ Case C-303/98 *Public Healthcare Doctors' Union (Simap) v Valencian Regional Ministry of Health and Consumer Affairs* [2000] ECLI:EU:C:2000:528.

¹¹ *ibid* paras 48–50.

¹² Case C-151/02 *Landeshauptstadt Kiel v Norbert Jaeger* [2003] ECLI:EU:C:2003:437.

rejected the argument that on-call time spent resting or sleeping at the workplace could be treated differently from periods of active work. It held that the decisive factor is the obligation to remain at the workplace and to be available to the employer, rather than the intensity of activity performed.¹³ Consequently, all on-call time spent at the workplace must be regarded as working time in its entirety for the purposes of the Directive.¹⁴

A central element of the Court's reasoning in both cases is the degree of control exercised by the employer over the worker during the on-call period. By requiring the worker to remain at a specific location and to be immediately available, the employer significantly restricts the worker's ability to manage time freely and to pursue personal interests.¹⁵ The Court therefore treated physical presence at the workplace as incompatible with classification as a rest period, even where the worker is permitted to rest or sleep.¹⁶

These early judgments establish a clear and strict rule that on-call time spent at the workplace automatically constitutes working time within the meaning of EU law. This principle is of direct relevance to the statement under consideration as it confirms that the requirement to remain at the workplace during an on-call period is not merely one factor among others but a decisive criterion that conclusively determines classification as working time.¹⁷ The complexity addressed in later case law arises only where the worker is permitted to remain away from the workplace during on-call periods.

On-Call Time Away from the Workplace: *Ville de Nivelles v Matzak*

The judgment in *Ville de Nivelles v Matzak* represents a decisive development in the Court's jurisprudence on on-call time, extending the concept of working time beyond situations where the worker is required to remain physically present at the workplace. The case concerned a firefighter who, during on-call periods was required to remain at his home, to be reachable by telephone, and to report to the fire station within a very short time limit.¹⁸

The Court reaffirmed that the classification of a period as working time depends on whether the worker is 'working, at the employer's disposal and carrying out his activity or duties'.¹⁹ It then emphasised that the absence of a requirement to remain at the workplace is not decisive in itself. Instead, it

¹³ *ibid* paras 71–75.

¹⁴ *ibid* para 75.

¹⁵ *SIMAP* (n 10) para 48.

¹⁶ *Jaeger* (n 12) paras 71–73.

¹⁷ *Grigore* (n 4) para 45.

¹⁸ *Matzak* (n 9) paras 7–10.

¹⁹ *ibid* para 28.

focused on the extent of the constraints imposed on the worker during the on-call period. It held that:

*the obligation to remain physically present at the place determined by the employer and the geographical and temporal constraints resulting from the obligation to reach the workplace within eight minutes are such as to objectively limit the opportunities which a worker... has to devote himself to his personal and social interests.*²⁰

On that basis, the Court concluded that the on-call period at issue constituted working time in its entirety. Crucially, the Court rejected the argument that only periods of actual intervention should be classified as working time, stating that:

*a period of stand-by time during which a worker is required to be available to his employer must be regarded as 'working time' if the constraints imposed on the worker are such as to objectively limit his ability to manage the time during which his professional services are not required.*²¹

The judgment in *Matzak* thus marks a shift away from a purely location-based approach towards a constraint-based analysis, in which the decisive factor is the degree to which the worker's freedom to manage time is restricted by employer-imposed obligations. At the same time, the Court reiterated that the Directive does not regulate remuneration, noting that 'the method of remunerating workers does not fall within the scope of Directive 2003/88'.²²

This case is central to the assessment of the statement under consideration as it confirms that factors such as response time and the intensity of constraints may be relevant even where the worker is not required to remain at the workplace.

Clarification and Limits to *Matzak*: *Radiotelevizijam Slovenija* and *Stadt Offenbach*

In its Grand Chamber judgments in *Radiotelevizija Slovenija* and *Stadt Offenbach*, the CJEU clarified the scope of its earlier ruling in *Matzak* and articulated a structured framework for assessing on-call time performed away from the workplace. In both cases, the Court reaffirmed that periods of stand-by time must be classified either as working time or as rest periods, since Directive 2003/88 'does not provide for any intermediate category'.²³

The Court held that a period of stand-by time performed according to a

²⁰ *ibid* para 59.

²¹ *ibid* para 56.

²² *ibid* para 49.

²³ Case C-344/19 *D J v Radiotelevizija Slovenija* [2021] ECLI:EU:C:2021:182, para 29; Case C-580/19 *RJ v Stadt Offenbach am Main* ECLI:EU:C:2021:183, para 29.

stand-by system may constitute working time:

*where, having regard to the impact, which is objective and very significant, that the constraints imposed on the worker have on the latter's opportunities to pursue his or her personal and social interests, it differs from a period during which a worker is required simply to be at his or her employer's disposal.*²⁴

The decisive criterion is therefore whether the constraints imposed during the on-call period 'affect, objectively and very significantly, the possibility for the latter freely to manage the time during which his or her professional services are not required and to pursue his or her own interests'.²⁵

At the same time, the Court expressly limited the scope of relevant considerations and stated that 'only the constraints that are imposed on the worker, whether by the law of the Member State concerned, by a collective agreement or by the employer' may be taken into account.²⁶ By contrast, 'organisational difficulties that a period of stand-by time may generate for the worker, which are not the result of such constraints but are, for example, the consequence of natural factors or of his or her own free choice, may not be taken into account'.²⁷

Applying these principles, the Court rejected reliance on factors such as distance from the workplace and local leisure opportunities. It held that 'a substantial distance between the residence freely chosen by the worker and the place that he or she must be able to reach within a certain time...is not, in itself, a relevant criterion',²⁸ and that 'the limited nature of opportunities to pursue leisure activities within the immediate vicinity of the place concerned is irrelevant'.²⁹

Finally, the Court emphasised that in the absence of an obligation to remain at the workplace, national courts must carry out 'an overall assessment of all the circumstances of the case', including the response time required and, where appropriate, the average frequency of interventions.³⁰ These judgments therefore confirm that *Matzak* does not establish an automatic rule, but rather a fact-sensitive test focused on the intensity of employer-imposed constraints.

²⁴ *Radiotelevizija* (n 23) para 36.

²⁵ *ibid* para 37.

²⁶ *Radiotelevizija* (n 23) para 39.

²⁷ *ibid* para 40.

²⁸ *ibid* para 41.

²⁹ *ibid* para 42.

³⁰ *ibid* paras 45–46; *Offenbach* (n 23) para 46.

Tyco and the Rejection of Personal Circumstances

In *Tyco*, the CJEU adopted a functional interpretation of working time which is directly relevant to the assessment of factors such as distance and personal inconvenience.³¹ The case concerned technicians who no longer had a fixed workplace and were required to travel directly from their homes to customers' premises.

The Court held that the time spent travelling between home and the first and last customers of the day constituted working time within the meaning of Article 2(1) of Directive 2003/88, since during that time the workers were 'at the employer's disposal' and subject to the employer's instructions.³² Crucially, the Court emphasised that the decisive consideration was not the personal circumstances of the workers, but the fact that the employer had chosen to eliminate fixed workplaces, thereby imposing the travel obligation as an intrinsic part of the job.³³

The Court expressly rejected arguments based on the distance between home and work, noting that such factors were a consequence of the employer's organisational choices rather than the workers' private decisions.³⁴ This reasoning reinforces the Court's broader approach to working time, according to which classification depends on objective constraints imposed by the employer rather than on subjective inconvenience or individual lifestyle choices.

Although *Tyco* concerned commuting time rather than stand-by time, its emphasis on employer control and its rejection of personal circumstances directly support the exclusion of factors such as residential distance and local leisure opportunities from the assessment of on-call periods under Directive 2003/88.³⁵

Evaluation of the Statement

The statement under consideration is partially correct but conceptually misleading because it presents a series of factual elements as if they were autonomous criteria applied by the CJEU, whereas the Court's jurisprudence demonstrates a holistic and constraint-based methodology grounded in objective employer-imposed limitations.

It is correct that the Court takes into account the time limit within which the worker must respond when called upon since short response times may significantly restrict the worker's ability to manage free time.³⁶ However, as

³¹ *Tyco* (n 8).

³² *ibid* paras 35–36.

³³ *ibid* paras 38–40.

³⁴ *ibid* para 44.

³⁵ *ibid* paras 47–48.

³⁶ *Matzak* (n 9) para 59.

clarified in *Radiotelevizija Slovenija* and *Stadt Offenbach*, response time is only one element in an overall assessment and is never decisive in isolation.³⁷ Likewise, the obligation to remain at the workplace during on-call periods remains decisive, as established by *SIMAP* and *Jaeger*, because such an obligation places the worker continuously at the employer's disposal and is inherently incompatible with rest.³⁸ To that extent, the statement accurately reflects settled case law.

By contrast, the inclusion of the distance between the worker's residence and the workplace and the availability of leisure activities in the vicinity misconstrues the Court's approach. The Court has expressly excluded such considerations on the ground that they do not constitute constraints imposed by the employer but rather arise from personal choices or natural circumstances.³⁹ This position has been consistently reaffirmed and reflects a deliberate effort to preserve the objective and uniform application of Directive 2003/88 across Member States.⁴⁰ The European Commission has endorsed this interpretation, emphasising that only constraints resulting from legal, contractual, or employer-imposed obligations may be taken into account when classifying on-call time.⁴¹

Academic commentary strongly supports this approach. Barnard explains that the Court's methodology is intentionally functional, focusing on the degree of control exercised by the employer rather than on the subjective quality of the worker's free time, in order to safeguard the health and safety objectives of EU working time law.⁴² Anghel similarly observes that the Court's insistence on a binary distinction between working time and rest reflects a structural commitment to legal certainty, even at the cost of excluding factors that may be personally burdensome but legally irrelevant.⁴³ Deakin and Morris further justify this exclusion by noting that EU working time law is not designed to remedy all forms of inconvenience associated with modern work, but to prevent arrangements that undermine minimum standards of rest and recovery.⁴⁴

At the same time, this jurisprudence is not without difficulty. The 'very significant constraint' test articulated in *Radiotelevizija Slovenija* introduces a degree of factual complexity that places a considerable burden on national courts, potentially generating uncertainty in borderline cases.⁴⁵ Nevertheless, this flexibility allows the Court to balance worker protection

³⁷ *Radiotelevizija* (n 23) paras 45–49; *Offenbach* (n 23) para 46.

³⁸ *SIMAP* (n 10) para 48; *Jaeger* (n.12) para 63.

³⁹ *Tyco* (n 8) para 44; *Radiotelevizija* (n 23) paras 41–42.

⁴⁰ *Radiotelevizija* (n 23) para 39.

⁴¹ European Commission, 'Interpretative Communication on Directive 2003/88/EC concerning certain aspects of the organisation of working time' [2017] OJ C165/1, paras 3.1–3.2.

⁴² Catherine Barnard, *EU Employment Law* (6th ed, Oxford University Press 2022).

⁴³ Răzvan Anghel, 'Shaping the Concept of Working Time: The CJEU's Case Law on Stand-By Time' (2020) SSRN Electronic Journal <<https://ssrn.com/abstract=3767437>> accessed 12 January 2026.

⁴⁴ Simon Deakin and Gillian S Morris, *Labour Law* (7th ed, Hart Publishing 2021).

⁴⁵ Răzvan Anghel (n 43).

against organisational diversity, preventing employers from circumventing the Directive through formally permissive but substantively restrictive on-call arrangements.

Accordingly, the statement is inaccurate insofar as it treats distance and leisure opportunities as relevant criteria and fails to acknowledge that the decisive issue is whether the on-call regime objectively and very significantly restricts the worker's ability to manage time freely. The Court's case law thus reflects a principled, though demanding, approach rooted in the health and safety objectives of Directive 2003/88.

Conclusion

The analysis demonstrates that the statement is partially correct but ultimately misleading. It is accurate insofar as it recognises the relevance of response time and the decisive nature of an obligation to remain at the workplace. These factors reflect well-established principles in the Court's jurisprudence and continue to play an important role in the classification of on-call periods.

However, the statement fails to capture the essence of the Court's approach by elevating distance from the workplace and the availability of leisure activities to the status of relevant criteria. The Court has consistently rejected such considerations on the ground that they do not stem from employer-imposed constraints and would undermine the objective and uniform application of the Working Time Directive. What emerges instead is a holistic and fact-sensitive assessment centred on whether the on-call regime objectively and very significantly restricts the worker's ability to manage time freely.

Accordingly, the Court's case law reveals a principled, though demanding, methodology rooted in the health and safety objectives of Directive 2003/88 rather than a checklist of factual elements.



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