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Court of Justice of the European Union  
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Judgment in Case C-518/15  
Ville de Nivelles v Rudy Matzak

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## **Stand-by time of a worker at home who is obliged to respond to calls from the employer within a short period must be regarded as ‘working time’**

*The obligation to remain physically present at the place determined by the employer and the requirement to reach the place of work within a short period very significantly restrict a worker’s opportunities for other activities*

The fire service of the town of Nivelles (Belgium) groups together professional and volunteer firefighters. Volunteer firefighters are involved in the operations and also provide stand-by and on duty services. Mr Rudy Matzak acquired the status of volunteer firefighter in 1981. He is also employed in a private company. In 2009, Mr Matzak brought judicial proceedings against the Ville de Nivelles (Town of Nivelles) in order to obtain, inter alia, compensation for his stand-by services, which according to Mr Matzak must be categorised as working time.

Hearing the case on appeal, the cour du travail de Bruxelles (Belgium) (Brussels Higher Labour Court) decided to refer the matter to the Court of Justice. It asks, in particular, if stand-by services at home may be considered as falling within the definition of working time within the meaning of EU law.<sup>1</sup>

In today’s judgment, the Court first of all states that Member States may not derogate, with regard to certain categories of firefighters recruited by the public fire services, from all the obligations arising from the provisions of the directive, including the concepts of ‘working time’ and ‘rest periods’.

The directive also does not permit Member States to maintain or adopt a definition of the concept of ‘working time’ different from that laid down in the directive. Even though the directive provides for the power of Member States to apply or introduce provisions more favourable to the protection of the safety and health of workers, that power does not apply to the definition of the concept of ‘working time’. That finding is borne out by the purpose of the directive, which seeks to ensure that the definitions provided for therein may not be interpreted differently according to the law of the Member States.

The Court points out, however, that Member States remain free to adopt in their national legislation provisions providing for periods of working time and rest periods which are more favourable to workers than those laid down in that directive.

The Court also notes that the directive does not deal with the question of workers’ remuneration, as that aspect falls outside the scope of the EU’s competence. Thus, Member States may lay down in their national law that the remuneration of a worker during ‘working time’ differs from that of a worker in a ‘rest period’ and even to the point of not granting any remuneration during that period.

Lastly, the Court clarifies that **stand-by time which a worker is required to spend at home with the duty to respond to calls from his employer within eight minutes – which very significantly restricts the opportunities to carry out other activities – must be regarded as**

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<sup>1</sup> 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).

**'working time'**. The Court points out in that regard that the determining factor for the classification of 'working time', within the meaning of the directive is the requirement that the worker be physically present at the place determined by the employer and be available to the employer in order to be able to provide the appropriate services immediately in case of need.

In the present case, it appears that Mr Matzak was not only to be contactable during his stand-by time. He was, on the one hand, obliged to respond to calls from his employer within eight minutes and, on the other hand, required to be physically present at the place determined by the employer.

The Court considers that even if that place in the present case is Mr Matzak's home and not his place of work, the obligation to remain physically present at the place determined by the employer and the geographical and temporal constraints resulting from the need to reach his place of work within eight minutes are such as to objectively limit the opportunities which a worker in Mr Matzak's circumstances has to devote himself to his personal and social interests. In the light of those constraints, Mr Matzak's situation differs from that of a worker who, during his stand-by duty, must simply be at his employer's disposal inasmuch as it must be possible to contact him.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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