Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

21 February 2018*

(Reference for a preliminary ruling — Directive 2003/88/EC — Protection of the safety and health of workers — Organisation of working time — Article 2 — Concepts of 'working time' and 'rest periods' — Article 17 — Derogations — Firefighters — Stand-by times — Stand-by times at home)

In Case C-518/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour du travail de Bruxelles (Higher Labour Court, Brussels, Belgium), made by decision of 14 September 2015, received at the Court on 28 September 2015, in the proceedings

**Ville de Nivelles**

v

**Rudy Matzak,**

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, E. Levits (Rapporteur), A. Borg Barthet, M. Berger and F. Biltgen, Judges,

Advocate General: E. Sharpston,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 15 December 2016,

after considering the observations submitted on behalf of:

– the Ville de Nivelles, by L. Markey, avocate,

– Mr Matzak, by P. Joassart, A. Percy and P. Knaepen, avocats,

– the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents, and by F. Baert and J. Clesse, avocats,

– the French Government, by D. Colas and R. Coesme, acting as Agents,

– the Netherlands Government, by M.K. Bulterman, M. Noort and J. Langer, acting as Agents,

* Language of the case: French.

– the United Kingdom Government, by G. Brown, S. Simmons and D. Robertson, acting as Agents, and by R. Hill and B. Lask, Barristers,

– the European Commission, by D. Martin and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 July 2017,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2 and Article 17(3)(c)(iii) 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 proceedings between the ville de Nivelles (town of Nivelles), (Belgium) and Mr Rudy Matzak concerning the remuneration of services performed within the fire service in that town.

### Legal context

#### *EU law*

3 Article 1 of Directive 2003/88 provides:

‘1. This Directive lays down minimum safety and health requirements for 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.

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.’

4 Article 2 of Directive 2003/88, entitled ‘Definitions’, provides in paragraphs 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.’

5 Article 15 of the directive, entitled ‘More favourable provisions’, is worded as follows:

‘This Directive shall not affect Member States’ right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the safety and health of workers.’

6 Article 17 of Directive 2003/88, entitled ‘Derogations’, states:

‘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 …

…

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

…

(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:

…

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

…’

### *Belgian law*

7 The Loi du 14 décembre 2000 fixant certains aspects de l’aménagement du temps de travail dans le secteur public (Law of 14 December 2000 laying down certain aspects of the organisation of working time in the public sector) (*Moniteur belge* of 5 January 2001, p. 212) transposed Directive 2003/88 for the public sector.

8 Article 3 provides:

‘For the application of the present law, the following definitions shall apply:

1 workers: persons who, under a legal or contractual relationship, including trainees and temporary workers, carry out work under the direction of another person;

2 employers: persons who employ the persons referred to in No 1.’

9 Article 8 of that law defines working time as ‘time during which the worker is at the disposal of the employer’.

10 Article 186 of the Loi du 30 décembre 2009 portant des dispositions diverses (Law of 30 December 2009 covering miscellaneous provisions) (*Moniteur belge* of 31 December 2009, p. 82925) provides:

'Article 3 of the Law of 14 December 2000 on certain aspects of the organisation of working time in the public sector shall be interpreted in the sense that volunteers in the public fire services and the rescue zones as provided for in the Law of 15 May 2007 on civil security and volunteers in operational civil protection units do not fall under the definition of workers.'

11 The règlement organique du service d'incendie de la ville de Nivelles (Regulation governing the Nivelles fire service) adopted by the arrêté royal du 6 mai 1971 fixant les types de règlements communaux relatifs à l'organisation des services communaux d'incendie (Royal Decree of 6 May 1971 laying down the types of municipal regulations relating to the organisation of municipal firefighting services, *Moniteur belge* of 19 June 1971, p. 7891), regulates matters relating to staff in that service.

12 That regulation contains provisions specific to the professional staff and the volunteer staff. As regards recruitment, the conditions of which are the same for both groups, Article 11a(1) of that regulation provides:

'At the end of the first year of the probation period, the trainee volunteer … shall meet the following residence requirement:

1. for staff assigned to the Nivelles fire station:

be domiciled or reside in a place so as not to exceed a maximum of 8 minutes to reach the Nivelles fire station when traffic is running normally and complying with the Highway Code.

During periods of stand-by duty, every member of the volunteer fire service serving in the Nivelles fire station must:

- remain at all times within a distance of the fire station such that the period necessary to reach it when traffic is running normally does not exceed a maximum of 8 minutes;

- be particularly vigilant so as to remain within range of various technical means used to call staff and to leave immediately, by the most appropriate means, when staff on stand-by duty are called.'

13 As regards the remuneration and compensation of staff, Article 39 of the règlement organique du service d'incendie de la ville de Nivelles (Regulation governing the Nivelles fire service) provides that professional staff is remunerated in accordance with the conditions laid down by the financial rules governing the staff of the town of Nivelles.

14 Volunteer staff receive the allowances set out in Article 40 of that regulation. They are calculated pro-rata on the hours worked. As regards the 'stand-by time' of officers, an annual allowance is determined. That allowance corresponds to that of the professional staff.

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

15 The Nivelles fire service groups together professional firefighters and volunteer firefighters.

16 Volunteer firefighters are involved in the operations. Among other tasks devolved to them, they are, in particular, on stand-by and on duty at the fire station, for which a roster is established at the beginning of the year.

17 Mr Matzak entered the service of the town of Nivelles on 1 August 1980 and acquired the status of volunteer firefighter one year later. He is also employed in a private company.

18 On 16 December 2009, Mr Matzak brought judicial proceedings seeking an order that the town of Nivelles pay him a provisional sum of one euro by way of damages and interest for failure to pay remuneration for his services as a volunteer firefighter during his years of service, particularly for his stand-by services.

19 By judgment of 22 March 2012, the tribunal du travail de Nivelles (Nivelles Labour Court, Belgium) upheld Mr Matzak's action to a large extent.

20 The town of Nivelles appealed against the judgment in the cour du travail de Bruxelles (Brussels Higher Labour Court, Belgium).

21 By judgment of 14 September 2015, the referring court partially upheld the appeal. As regards the remuneration claimed for stand-by services which, according to Mr Matzak, must be categorised as working time, the referring court is uncertain whether such services may be considered to fall within the definition of working time, within the meaning of Directive 2003/88.

22 In those circumstances, the cour du travail de Bruxelles (Higher Labour Court, Brussels) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 17(3)(c)(iii) of Directive 2003/88 … be interpreted as enabling Member States to exclude certain categories of firefighters recruited by the public fire services from all the provisions transposing that Directive, including the provision that defines working time and rest periods?

(2) Inasmuch as Directive … 2003/88 … provides for only minimum requirements, must it be interpreted as not preventing the national legislature from retaining or adopting a less restrictive definition of working time?

(3) Taking account of Article 153[5] TFEU and of the objectives of Directive 2003/88 …, must Article 2 of that directive, in so far as it defines the principal concepts used in the directive, in particular those of working time and rest periods, be interpreted to the effect that it is not applicable to the concept of working time which serves to determine the remuneration owed in the case of home-based on-call time?

(4) Does Directive 2003/88 … prevent home-based on-call time from being regarded as working time when, although the on-call time is undertaken at the home of the worker, the constraints on him during the on-call time (such as the duty to respond to calls from his employer within 8 minutes) very significantly restrict the opportunities to undertake other activities?'

## Consideration of the questions referred

### *Preliminary observations*

23 At the outset, it should be pointed out, first, that both the town of Nivelles and the European Commission claim that the questions referred for a preliminary ruling are inadmissible as regards the concept of remuneration. By virtue of Article 153(5) TFEU, Directive 2003/88, which is based on Article 153(2) TFEU, does not apply to the question of remuneration of workers falling within its field

of application. They submit that the subject matter of the main proceedings is to resolve the question of Mr Matzak's remuneration for stand-by services carried out as a volunteer firefighter with the town of Nivelles.

24 In that regard, it must be observed 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 in order to protect the safety and health of workers so that, in principle, it does not apply to the remuneration of workers (judgment of 26 July 2017, *Hälvä and Others*, C-175/16, EU:C:2017:617, paragraph 25 and the case-law cited).

25 However, that finding does not mean that there is no need to reply to the questions referred to the Court for a preliminary ruling in this case.

26 As the Advocate General stated in point 20 of her Opinion, it appears from the order for reference that the referring court seeks to establish the interpretation of Article 2 and Article 17(3)(c)(iii) of Directive 2003/88, which that court considers necessary in order to be able to resolve the dispute pending before it. The fact that the dispute ultimately concerns a question of remuneration is irrelevant, in that context, since it is for the referring court and not for the Court of Justice to resolve that question in the context of the main proceedings.

27 Second, the Court has held that Directive 2003/88 is to apply to the activities of the fire service, even when they are carried out by operational forces on the ground and it does not matter whether the object of those activities is to fight a fire or to provide help in another way, so long as they are carried out under normal circumstances, consistent with the task allocated to the service concerned, and even though the actions which those activities may entail are inherently unforeseeable and liable to expose the workers carrying them out to certain safety and/or health risks (order of 14 July 2005, *Personalrat der Feuerwehr Hamburg*, C-52/04, EU:C:2005:467, paragraph 52).

28 Third, as regards Mr Matzak's classification as 'worker', it should be noted that, for the purposes of applying Directive 2003/88, that concept may not be interpreted differently according to the law of the Member States but has an autonomous meaning specific to EU law (judgment of 14 October 2010, *Union syndicale Solidaires Isère*, C-428/09, EU:C:2010:612, paragraph 28). In accordance with settled case-law on the matter, any person who pursues real, genuine activities — with the exception of activities on such a small scale as to be regarded as purely marginal and ancillary — must be regarded as a 'worker'. The defining feature of an employment relationship resides in the fact that for a certain period of time a person performs for and under the direction of another person services in return for which he receives remuneration (judgment of 26 March 2015, *Fenoll*, C-316/13, EU:C:2015:200, paragraph 27 and the case-law cited).

29 The Court has also held that the legal nature of an employment relationship under national law cannot have any consequence in regard to whether or not the person is a worker for the purposes of EU law (judgment of 20 September 2007, *Kiiski*, C-116/06, EU:C:2007:536, paragraph 26 and the case-law cited).

30 Thus, as regards the case in the main proceedings, the fact that under national law Mr Matzak does not have the status of a professional firefighter, but that of a volunteer firefighter, is irrelevant for his classification as 'worker', within the meaning of Directive 2003/88.

31 Having regard to the foregoing, it must be held that a person in Mr Matzak's circumstances must be classified as a 'worker', within the meaning of Directive 2003/88, in so far as it appears from the information available to the Court that he was integrated into the Nivelles fire service where he pursued real, genuine activities under the direction of another person for which he received remuneration; it is for the referring court to verify whether that is the case.

32 Fourth, as Articles 1 to 8 of Directive 2003/88 are drafted in terms which are in substance identical to those of Articles 1 to 8 of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18), as amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 (OJ 2000 L 195, p. 41), the Court's interpretation of the latter is transposable to the abovementioned articles of Directive 2003/88 (order of 4 March 2011, *Grigore*, C-258/10, not published, EU:C:2011:122, paragraph 39 and the case-law cited).

### *The first question*

33 By its first question the referring court asks, in essence, whether Article 17(3)(c)(iii) of Directive 2003/88 must be interpreted as meaning that the Member States may derogate, with regard to certain categories of firefighters recruited by the public fire services, from all the obligations arising from the provisions of that directive, including Article 2 thereof, which defines, in particular, the concepts of 'working time' and 'rest periods'.

34 In that regard, the Court has held that Article 2 of Directive 2003/88 is not one of the provisions from which the directive allows derogations (order of 4 March 2011, *Grigore*, C-258/10, not published, EU:C:2011:122, paragraph 45).

35 According to the wording of Article 17(1) of Directive 2003/88, Member States may derogate from Articles 3 to 6, 8 and 16 of this directive, and Article 17(3) states that for services listed therein, including those of firefighters, derogations may be made from Articles 3, 4, 5, 8 and 16 of that directive.

36 Thus, the very wording of Article 17 of Directive 2003/88 does not allow a derogation from Article 2, which defines the main concepts contained in the directive.

37 Furthermore, as the Advocate General observed in point 27 of her Opinion, there is no scope for adopting a broad interpretation of Article 17 of the directive which might go beyond the express wording of the derogations which are authorised there.

38 It is clear from the Court's case-law that, as regards permitted derogations provided for by Directive 2003/88, in particular in Article 17, as exceptions to the European Union system for the organisation of working time put in place by that directive, those derogations must be interpreted in such a way that their scope is limited to what is strictly necessary in order to safeguard the interests which those derogations enable to be protected (see, to that effect, judgment of 14 October 2010, *Union syndicale Solidaires Isère*, C-428/09, EU:C:2010:612, paragraphs 39 and 40).

39 In view of the foregoing, the answer to the first question is that Article 17(3)(c)(iii) of Directive 2003/88 must be interpreted as meaning that the 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 that directive, including Article 2 thereof, which defines, in particular, the concepts of 'working time' and 'rest periods'.

### *The second question*

40 By its second question, the referring court asks, in essence, whether Article 15 of Directive 2003/88 must be interpreted as meaning that it permits Member States to maintain or adopt a less restrictive definition of the concept of 'working time' than that laid down in Article 2 of that directive.

41 To answer that question, it is necessary to examine the wording of Article 15 of Directive 2003/88, having regard to the scheme established by the directive and its purpose.

42 According to the wording of Article 15 of Directive 2003/88, Member States may apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers. It follows from this article that the national provisions to which it refers are those which may be compared with those laid down by Directive 2003/88 for the protection of the safety and health of workers.

43 The latter provisions can only be those which, by virtue of their function and purpose, are designed to set a minimum level of protection of the safety and health of workers. This is the case for the provisions of Chapters 2 and 3 of the directive. By contrast, the provisions of Chapter 1 of that directive, which includes Articles 1 and 2 thereof, are different in nature. Those provisions do not set minimum rest periods or concern other aspects of the organisation of working time, but establish the necessary definitions to define the subject matter of Directive 2003/88 and its field of application.

44 Consequently, it follows from the wording of Article 15 of Directive 2003/88, read in the light of the scheme established by that directive, that the power provided for by that article does not apply to the definition of the concept of 'working time' set out in Article 2 of the directive.

45 That finding is borne out by the purpose of Directive 2003/88. As the Advocate General observed in point 33 of her Opinion, that directive seeks to ensure, in its field of application, a minimum protection applicable to all workers of the Union. For that purpose, and in order to ensure that the directive is fully effective, the definitions provided for in Article 2 thereof may not be interpreted differently according to the law of Member States but have an autonomous meaning specific to EU law as regards the concept of 'worker', as has been stated in paragraph 28 of the present judgment (see, to that effect, judgment of 1 December 2005, *Dellas and Others*, C-14/04, EU:C:2005:728, paragraph 44 and the case-law cited).

46 In that context, it should nevertheless be noted that while Member States are not entitled to alter the definition of 'working time', within the meaning of Article 2 of Directive 2003/88, they remain, as has been recalled in paragraph 42 of the present judgment, 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.

47 Having regard to the foregoing, the answer to the second question is that Article 15 of Directive 2003/88 must be interpreted as not permitting Member States to maintain or adopt a less restrictive definition of the concept of 'working time' than that laid down in Article 2 of that directive.

### *The third question*

48 By its third question, the referring court asks, in essence, whether Article 2 of Directive 2003/88 must be interpreted as meaning that it requires Member States to determine the remuneration of periods of stand-by time such as those at issue in the main proceedings according to the classification of those periods as 'working time' and 'rest period'.

49 In that regard, it should be noted, as pointed out by the referring court, that it is common ground that Directive 2003/88 does not govern the question of workers' remuneration, as that aspect falls outside the scope of the European Union's competence by virtue of Article 153(5) TFEU.

50 Therefore, although Member States are entitled to determine the remuneration of workers falling within the field of application of Directive 2003/88, according to the definition of 'working time' and 'rest period' in Article 2 of that directive, they are not obliged to do so.

51 Thus, Member States may lay down in their national law that the remuneration of a worker in 'working time' differs from that of a worker in a 'rest period', and even to the point of not granting any remuneration during the latter type of period.

52 Having regard to the foregoing, the answer to the third question is that Article 2 of Directive 2003/88 must be interpreted as not requiring Member States to determine the remuneration of periods of stand-by time such as those at issue in the main proceedings according to the classification of those periods as 'working time' or 'rest period'.

***The fourth question***

53 By its fourth question, the referring court asks, in essence, whether Article 2 of Directive 2003/88 must be interpreted as not meaning that stand-by time which a worker spends at home with the duty to respond to calls from his employer within 8 minutes, very significantly restricting the opportunities to have other activities, must be regarded as 'working time'.

54 In that regard, it should be recalled that the Court has already had occasion to give a ruling on the question of the classification of stand-by time as 'working time' or 'rest period' in respect of workers falling within the scope of Directive 2003/88.

55 In that context, the Court has specified, first of all, that the concepts of 'working time' and of 'rest period' are mutually exclusive (see, to that effect, judgments of 3 October 2000, *Simap*, C-303/98, EU:C:2000:528, paragraph 47, and of 10 September 2015, *Federación de Servicios Privados del sindicato Comisiones obreras*, C-266/14, EU:C:2015:578, paragraph 26 and the case-law cited). Thus, it must be observed that, as EU law currently stands, the stand-by time spent by a worker in the course of his activities carried out for his employer must be classified either as 'working time' or 'rest period'.

56 Moreover, the intensity of the work by the employee and his output are not among the characteristic elements of the concept of 'working time', within the meaning of Article 2 of Directive 2003/88 (judgment of 1 December 2005, *Dellas and Others*, C-14/04, EU:C:2005:728, paragraph 43).

57 It has also been held that the physical presence and availability of the worker at the place of work during the stand-by period with a view to providing his professional services must be regarded as carrying out his duties, even if the activity actually performed varies according to the circumstances (see, to that effect, judgment of 3 October 2000, *Simap*, C-303/98, EU:C:2000:528, paragraph 48).

58 If the stand-by period in the form of physical presence at the place of work were excluded from the concept of 'working time', that would seriously undermine the objective of Directive 2003/88, which is to ensure the safety and health of workers by granting them adequate rest periods and breaks (see, to that effect, judgment of 3 October 2000, *Simap*, C-303/98, EU:C:2000:528, paragraph 49).

59 Furthermore, it is apparent from the case-law of the Court that the determining factor for the classification of 'working time', within the meaning of Directive 2003/88, is the requirement that the worker 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. In fact, those obligations, which make it impossible for the workers concerned to choose the place where they stay during stand-by periods, must be regarded as coming within the ambit of the performance of their duties (see, to that effect, judgment of 9 September 2003, *Jaeger*, C-151/02, EU:C:2003:437, paragraph 63, and order of 4 March 2011, *Grigore*, C-258/10, not published, EU:C:2011:122, paragraph 53 and the case-law cited).

60 Finally, it must be observed that the situation is different where the worker performs a stand-by duty according to a stand-by system which requires that the worker be permanently accessible without being required to be present at the place of work. Even if he is at the disposal of his employer, since it must be possible to contact him, in that situation the worker may manage his time with fewer constraints and pursue his own interests. In those circumstances, only time linked to the actual provision of services must be regarded as 'working time', within the meaning of Directive 2003/88 (see, to that effect, judgment of 9 September 2003, *Jaeger*, C-151/02, EU:C:2003:437, paragraph 65 and the case-law cited).

61 In the case in the main proceedings, according to the information available to the Court, which it is for the referring court to verify, 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 8 minutes and, on the other hand, required to be physically present at the place determined by the employer. However, that place was Mr Matzak's home and not, as in the cases which gave rise to the case-law cited in paragraphs 57 to 59 of the present judgment, his place of work.

62 In that regard, it should be pointed out that, according to the Court's case-law, 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 (judgment of 10 September 2015, *Federación de Servicios Privados del sindicato Comisiones obreras*, C-266/14, EU:C:2015:578, paragraph 27).

63 The obligation to remain physically present at the place determined by the employer and the geographical and temporal constraints resulting from the requirement to reach his place of work within 8 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.

64 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.

65 In those circumstances, it is necessary to interpret the concept of 'working time' provided for in Article 2 of Directive 2003/88 as applying to a situation in which a worker is obliged to spend stand-by time at his home, to be available there to his employer and to be able to reach his place of work within 8 minutes.

66 It follows from all the foregoing that the answer to the fourth question is that Article 2 of Directive 2003/88 must be interpreted as meaning that stand-by time which a worker spends at home with the duty to respond to calls from his employer within 8 minutes, very significantly restricting the opportunities for other activities, must be regarded as 'working time'.

## Costs

67 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 (Fifth Chamber) hereby rules:

1. **Article 17(3)(c)(iii) 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 the 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 that directive, including Article 2 thereof, which defines, in particular, the concepts of 'working time' and 'rest periods'.**

2. **Article 15 of Directive 2003/88 must be interpreted as not permitting Member States to maintain or adopt a less restrictive definition of the concept of 'working time' than that laid down in Article 2 of that directive.**

3. **Article 2 of Directive 2003/88 must be interpreted as not requiring Member States to determine the remuneration of periods of stand-by time such as those at issue in the main proceedings according to the prior classification of those periods as 'working time' or 'rest period'.**

4. **Article 2 of Directive 2003/88 must be interpreted as meaning that stand-by time which a worker spends at home with the duty to respond to calls from his employer within 8 minutes, very significantly restricting the opportunities for other activities, must be regarded as 'working time'.**

[Signatures]