

EU Employment Law Practice

European Employment Report

May 2009

Jobs in the Economic Crisis

EU extends Globalisation Adjustment Fund in response to the global economic crisis

The EU has agreed to extend the scope of the European Globalisation Adjustment Fund (EGF) in response to the redundancies resulting from the current economic crisis. The fund, which has an annual budget of € 500 million, originally allowed Member States to claim financial assistance for individual workers who are made redundant due to "major structural changes in world trade patterns".

The fund has hardly been used since its creation in 2006. According to the Commission, there have been 17 applications for funding worth a total of €83 million. Twelve of those applications have been paid in full: €67.6 million in total, helping over 15 000 workers. Applications from Spain, Germany, Portugal and Austria, concerning redundancies in the motor industry, textile and mobile phone sectors are currently under assessment. According to the European Parliament report (Rapporteur Gabriele Stauner EPP-ED, DE), the main problem affecting the fund has been "the stringent intervention criteria that have prevented its full potential from being exploited".

On 6 May the European Parliament formally approved a number of changes, having struck an informal deal with the Member States in the Council. These are:

- Allowing the EGF to be used, until 31 December 2011, to "support to workers made redundant as a direct result of the global financial and economic crisis". Member States applying for an EGF contribution under this provision must establish "a direct and demonstrable link between the redundancies and the financial and economic crisis";

- Lowering of the eligibility threshold for EGF funding from 1,000 redundancies to 500 in a company (and its suppliers or downstream producers), in a sector in one or two adjoining regions;
- Extending the duration of use of EGF funds from 12 to 24 months;

Increasing the EGF's share of financing from 50% to 65%, until the end of 2011 (with the remainder to come from Member States).

Interest in the EGF appears to be picking up. It is reported that some 20 companies have contacted the Commission asking for more information on the fund. The new applicants come from Germany and Spain, among others. While the "traditional" applicants for the fund come from the textile and automotive industries, the Commission is now seeing interest from other new sectors including financial services.

The Council now has to adopt the decision formally before the new rules can enter into force. This is most likely to take place during the 8-9 June Social Affairs Council meeting.

Link to [European Parliament press release](#), [European Commission press release](#) and [EGF website](#)

EU employment summit adopts "disappointing" jobs plan

The European employment "summit" that took place on 7 May has been billed by many as a missed opportunity to initiate a top-level discussion on how economic, social and fiscal policies might be coordinated and about the shape of the post-crisis economies and societies in the EU.

The summit merely agreed a 10-point plan, which urged the EU 27 to swiftly step up action on increasing access to employment, upgrading skills, matching, labour needs and promoting mobility.



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To demonstrate their disappointment at the lack of any result, the social partners which had been invited to the meeting refused to sign the final document. John Monks, Secretary General of the European Trade Union Confederation (ETUC) was dismissive saying "There are some responses, but it's not enough." In particular, Trade Unions could not agree with the proposed introduction of "non-wage labour cost cutting" and the encouragement of the "wrong kind of entrepreneurship which got us into this mess in the first place". The social partners will once again put their heads together to work on a joint proposal to be included in the conclusions of the June European Council.

Link to [10-point plan](#) and [ETUC Statement](#)

Meanwhile, the economic crisis is adding a new impetus to the revision of the EU's "Lisbon Strategy". In 2008, the EU heads of state and government agreed to shift the Lisbon Agenda away from the "jobs and growth" focus of the past three years and put the environment and citizens in the foreground instead. The pendulum is swinging back with job creation and increasing competitiveness as the key priorities.

The Commission is reported to be preparing a wide Internet consultation on revising the Lisbon Strategy in early [autumn 2009](#). Commission resources have indicated that the consultation will in all likelihood cover: improving the business environment and the knowledge "triangle" (education, research, innovation).

A spokesperson said that the Commission would present its formal proposals "in [late 2009](#) or [early 2010](#)" in view of final adoption under the Spanish Presidency in the [first half of 2010](#). We can expect more next year from the [Spring Summit](#) with more detailed decisions expected at the [June Summit](#).

In a speech at the Brussels Economic Forum on 13 May, EU Economy Commissioner, Joaquín Almunia, said that the economic crisis was adding a new sense of urgency and political relevance to the revision process. Almunia's comments echo those of Spanish Prime Minister Zapatero who

said he would seek a greater political dimension to the EU's economic policy when he takes over the EU Presidency in [January 2010](#).

Link to [Almunia speech](#)

EU Labour law

EP postpones vote on maternity leave

On 6 May, the European Parliament decided to postpone the report on the revision of the Pregnant Workers Directive 92/85/EE. The decision came after it became clear that the positions of the political groups with the Parliament, and those of the Member States, were too far apart to allow a deal at first reading. Discussions will resume once the new legislature takes office in [July 2009](#), after the forthcoming European Parliamentary elections. Parliament Rapporteur, Edite Estrella MEP attacked the vote stating that in her opinion the European right had "shown its true colours in betraying the well-being of millions of women who want a better balance between their family life and work", highlighting that the existing legislation was 17 years old and needed to be modified. The European Trade Union Confederation (ETUC) also expressed its disappointment about the failure of the European Parliament to improve maternity protection.

Link to [European Parliament press release](#) and [ETUC reaction](#)

The Parliament did however make progress by adopted in first reading a report on the proposal for a directive of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC calling for rights for assisting spouses and boosting maternity protection for self-employed women and assisting spouses. The text now goes to the Member States in the Council for them to adopt their first reading position.

Link to [Lulling Report](#)

Labour Mobility

Two new EU Directives to attract skilled workers with new "blue card" and to sanction employers of illegal immigrants

On 25 May the Council adopted two directives on immigration. One creates a European "Blue Card" to attract highly-skilled migrant workers to EU countries and the other intends to sanction those employing illegal immigrants.

According to the Commission, at present 85% of unskilled labour currently goes to EU countries and only 5% to the USA, while 55% of skilled migrant labour goes to the USA and only 5% to the EU. The Blue Card Directive intends to establish more attractive conditions for third-country workers to take up highly qualified employment in EU by creating a fast-track procedure for issuing a special residence and work permit (the Blue Card). This will facilitate access to the labour market and will entitle workers to a series of socio-economic rights and favourable conditions for family reunification and movement across the EU. The Directive lays down common criteria - to be set by the Member States for applicants of the Blue Card, without prejudice to more advantageous conditions provided for by national laws. The period of validity of a Blue Card will be between one and four years, with possibility of renewal. A Blue Card may also be issued or renewed for shorter periods in order to cover the work contract period plus three months. After eighteen months of legal residence in the first Member State, the Blue Card holder and his family members may move, under certain conditions, to another Member State for the purpose of highly qualified employment.

Under the new sanctions directive, EU employers will have to carry-out tougher pre-recruitment checks on third country nationals. Failure to do so will mean fines and a possible loss of national or EU business subsidies. The rules also oblige governments signed up to the scheme to impose criminal sanctions in serious cases such as repeated infringements, the simultaneous employment of a "significant number" of illegal workers or 'knowingly using work

or services extracted by a person who is a victim of human trafficking". EU Justice Commissioner Barrot said that the new sanctions against EU employers taking on illegal immigrants would make it harder for migrants to find jobs. "The ease of finding illegal work in Member States is a main driving force for illegal immigration" he said adding that "such migrants run a high risk of ending up in the harsh reality of exploitation and even sometimes slavery-like conditions.

The Directive will be published in the Official Journal in the coming months. Member States will then have two years to transpose the Blue Card Directive into national law, and five years to transpose the sanctions Directive.

Link to press releases on [New measures regarding illegal foreign workers](#) and [Adoption of EU "Blue Card"](#)

[New study on the economic impacts of post-enlargement labour mobility within the EU](#)

Five years after the 2004 enlargement of the EU and against the background of temporary restrictions on the free movement of workers from Central and Eastern Europe, the Commission has published a study looking at the economic and labour market impact of east-west labour mobility flows in recent years. The study examines the scale and structure of east-west labour both at national and regional level, its impact on labour markets, the macro-economy, and public finances, and human capital issues such as brain-drain and down-skilling of mobile workers. The findings confirm that labour mobility flows from Central and Eastern European Member States to the EU-15 have had a positive impact on economic growth in the EU, that mobile workers have not been a disproportionate burden to the welfare systems of major receiving countries and that it has not led to serious disturbances of labour markets in the Member States.

Link to [Study](#)

International

[ILO publishes study on forced labour](#)

On 12 May 2009, the International Labour Organisation (ILO) published a

study on the patterns of forced labour worldwide. The report details the growing number of unethical, fraudulent and criminal practices that can lead people into forced labour and calls for action to eradicate these practices. The study paints a mixed picture of global efforts to combat forced labour. While most countries have introduced legislation that deals with forced labour as a criminal offence, others are finding it difficult to identify cases of abuse, let alone define adequate responses.

Link to study [The Cost of Coercion](#)

[OECD urges governments to do more to help the most vulnerable amid rising unemployment](#)

On 15 May, the OECD held a high-level Forum on Sickness, Disability and Work policies. Ministers and state secretaries from 15 countries, together with EU Commissioner Vladimir Špidla, met to discuss what governments must do to help people with reduced work capacity caused by illness or disability. According to statistics, in 2007, just over 2¼ million more people in OECD countries received disability benefits than employment benefits. The OECD suggests that governments follow the example of the Netherlands where employers are working together to form employer networks that facilitate the redeployment of workers no longer able to continue in their current role due to illness or injury.

Link to [Press release](#) and [Forum presentations](#)

National Developments

[France - Reform of vocational training rights](#)

In June 2009 the French National Assembly is scheduled to debate a new vocational training bill. The bill is based on an agreement concluded between employers and trade unions earlier this year. It divides training into two categories:

- that carried out during the normal working day, for which an employee is entitled to receive their normal remuneration; and

- that undertaken outside normal working hours, for which an employee would be entitled to an allowance equal to half their remuneration.

Employees would also become entitled to transfer their accumulated allocation of training time (DIF) to be used during a period of unemployment or within two years of joining a new employer. Access to individual training leave (CIF) will be widened, and further measures will be established to assist job applicants with few formal qualifications. Once an employee has been in post for two years, they will become entitled to an assessment of their training needs. Further assessment will then take place every five years.

Link to [Agreement](#) (in French)

[France – New rules to encourage the employment of older workers](#)

From 1 January 2010, companies in France with 50 or more employees will have to pay a 1% payroll levy if they have not concluded an agreement or established an action plan concerning the employment of older workers. The agreement/plan must operate for a maximum of three years and must set out targets for retaining employees aged 55+ and recruiting people aged 50+. Employers are obliged to draw upon at least three measures from a list contained in the enacting decree and also to set out follow-up methods for achieving the objectives. In companies with less than 300 employees, it will be possible to meet these requirements by compliance with an industry-wide collective agreement.

Link to [Decree](#) (in French)

[Germany – Minimum wage extended to six more sectors](#)

A revised German employee assignment law has just been published. Collective agreements already set statutory minimum wage rates in the building, electrical handicraft, janitorial and postal sectors, and the new regulations extend minimum wage protection to employees in six further sectors - care of the elderly, security services, refuse collection and disposal, vocational and further

education, industrial textile services and hard coal mining (special work). The rates will also have to be paid by foreign companies posting employees to Germany to work on assignments in these sectors.

Link to [Press release](#) (in German)

Ireland – Collapse of national pay talks

In the first week of May, a last-ditch attempt by the Irish government to secure a revised social partnership pay deal came to nothing after an offer by employers for a bilateral agreement covering the private sector had been rejected by Ireland's largest trade union, SIPTU. Whilst employers are seeking a pay freeze until 2011, unions are still clinging to the 21-month 6% deal concluded early last autumn, which allows exemptions only where companies are experiencing severe economic difficulties.

Link to [Irish times article](#)

Spain – Seeks cooperation to stem immigration

The Spanish government wants to achieve closer control on the numbers of Ukrainian workers entering Spain and has signed a bilateral agreement to that effect. According to statistics, some 275,000 Ukrainians have entered the country since 2001, mainly to work in sectors such as construction and tourism which have recently been heavily hit by the economic downturn (over the last year, the unemployment rate in Spain has risen from 9.5% to 17.4%). Under the agreement, visas will only be issued to Ukrainian workers if there is a clear shortage of available skilled labour in a particular field. However, legal immigrants will have immediate access to social security provisions and enjoy equal employment and family reunion rights. Both countries will also cooperate on arrangements for the return of employees after employment contracts come to an end.

Link to [Government statement](#)

UK – Consults on implementation of the EU Agency Workers Directive

On 8 May, the Department for Business, Enterprise and Regulatory Reform (BERR) published *Employment agencies: Implementation of the agency workers directive: A consultation paper on the Temporary Agency Workers Directive 2008/104/EC* (the Directive). The consultation, which covers implementation of the Directive in England, Scotland and Wales, will be open until 31 July 2009. It seeks views on who should be covered by the Directive; the implementation of the 12-week qualifying period previously agreed by the CBI and TUC; how the principle of equal treatment should be established; how pay should be defined; who should be liable for compliance; and means of dispute resolution. The Government will publish its response before undertaking further consultation on draft Regulations. At that stage it will also invite views on the guidance that will accompany the final Regulations. Member States have until 5 December 2011 to implement the Directive.

Link to [Consultation documents](#)

UK – worker protests

On 20 May, the EU warned against the negative effects of "closed borders" on jobs following two-day strikes by workers at British oil refineries angered by proposals to employ dozens of foreign workers instead of local ones. However, after talks with trade union officials, the UK contractor at the company in Milford Haven where the strikes started said that it had agreed to replace the foreign workers with local ones. Meanwhile, figures published recently by the British Office for National Statistics showed an increasing number of Eastern European workers are actually leaving Britain.

Link to [Financial Times](#) article and [Office of National Statistics](#) website

The Weeks Ahead

Council

8-9 June – Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) meeting (Luxembourg)

8-9 July – Informal Employment and Social Security Ministers (EPSCO) meeting (Jönköping)

European Parliament

4-7 June – Parliamentary elections

13-16 July – Plenary (Strasbourg)

2 September 2009 – EMPL Committee meeting

29-30 September – EMPL Committee meeting

EUROPEAN EMPLOYMENT REPORT is a White & Case LLP Newsletter produced by the Brussels Employment Team. Due to the general nature of its content, this report is not and should not be regarded as legal advice. For further information please contact:

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