

EU Employment Law Practice

European Employment Report December 2008

EU Labour law

Parliament rejects Council Common Position on Working Time

Hopes of an agreement on the revision of the Working Time Directive by the end of 2008 were quashed with the EP's vote on 17 December. In its Second Reading position, adopted by an absolute majority of members (with 421 votes in favour, 273 against and 11 abstentions) the EP reintroduced a number of its First Reading amendments which the Council had rejected in its June 2008 common position. The disagreement between the EP and the Council centres on the possibility of individual workers to opt-out from the maximum 48 hour week (strongly supported by the UK in particular, but which the EP would like to phase out after 3 years). The other key points of discord is the treatment of on-call time, a matter of particular importance for the health sector.

In an official statement, European Commissioner for Employment and Social Affairs, Vladimir Spidla, stated that *"No changes can be made to the existing Working Time Directive unless there is an agreement between the EP and the Council. It is now up to the Council to respond to the vote."* He also said he was willing to act as mediator during future negotiations.

Unless the Council (under the Czech Presidency, which takes over from France on 1 January 2009) reverses its position and endorses the EP text, the dossier will go into 'conciliation' where representatives of the Council and the EP try to hammer out a joint text. It remains to be seen whether this can be done before the EP stops working in May 2009 for the European elections.

The size of the majority, which far exceeded the 393 votes needed, indicates that MEPs are clear that the opt-out must end three years after the adoption of the directive. Upon hearing the results of the vote, Spanish

Socialist MEP, Alejandro Cercas (Rapporteur on the Working Time Directive) called it *"a glorious day for social Europe"*.

European employer and business organisations were deeply disappointed by the results of the EP's vote. UEAPME "condemned" the vote, BusinessEurope "deplored" it and Eurochambres called the decision "disastrous" for European business.

However, John Monks, Secretary General of the European Trade Union Conference (ETUC) declared: *'This very welcome decision by the European Parliament completes a very good week for all workers of the EU. We have equality for temporary agency workers. Now, we have defeated moves to make it easier for bad employers to impose excessive working hours. Obviously the economic situation is very worrying, but these three steps have shown that Social Europe is alive and well. We are grateful for all those who have supported us in this fight'*.

Link to [European Parliament Press release](#), [ETUC reaction](#), [BusinessEurope reaction](#) and [Eurochambres reaction](#) and [Spidla statement](#)

Political agreement reached on new rules on European Works Councils

On 16 December, the EP adopted, on first reading, a compromise text on the recast directive on European Works Councils. The report by Philip Bushill-Matthews (EPP-ED, UK) was adopted by a majority of 411 votes to 44, with 181 abstentions.

Changes include the expanding the definition of 'information' given to employees' representatives, stating that this must enable them *"to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent body"* of the company.



THIS ISSUE

EU Labour Law

Equal Treatment

Working Conditions

Growth and Jobs

National Developments

The Weeks Ahead

White & Case LLP
Avocats-Advocaten
rue de la Loi, 62 Wetstraat
1040 Brussels
Belgium

Telephone: +32 2 219 16 20

Facsimile: +32 2 219 16 26

www.whitecase.com

Crucially for companies with EWC agreements already in place, Article 14 states that the new Directive would not apply to existing EWC agreements, based either on Articles 13 or Article 6 of the current EWC Directive 94/45/EC, as well as those EWC agreements concluded pursuant to Article 6 which are signed or revised until two years after the entry into force of the new Directive.

Link to [European Parliament press release](#), [Position of European Parliament at first reading](#) and [ETUC statement](#)

Equal Treatment

Commission acts against six countries on gender equality law

The Commission has sent reasoned opinions to six countries for failing to properly implement Directive 2002/73/EC prohibiting discrimination in employment and occupation on the grounds of gender. Austria, Lithuania, Slovenia, Hungary, Italy and Malta have two months to respond. Failure to reply satisfactorily, may lead to an action before the ECJ. Problems include definitions of direct and indirect discrimination; rights of women on maternity leave; and the functioning of equality bodies.

Earlier this year the Commission sent letters of formal notice to 22 Member States (Austria, Cyprus, the Czech Republic, Germany, Denmark, Estonia, Greece, Finland, France, Hungary, Ireland, Italy, Lithuania, Latvia, Malta, the Netherlands, Poland, Portugal, Sweden, Slovenia, Slovakia and the United Kingdom). The formal procedures against Cyprus and Greece have already been filed. After analysing the Member States' responses, the Commission found that Austria, Lithuania, Slovenia, Hungary, Italy and Malta had not implemented the Directive correctly. Similar reasoned opinions were sent to Finland and Estonia in June 2008. The analysis is still ongoing for other Member States.

The Commission will produce a report on the implementation of the Directive [next year](#), as required by the legislation.

Link to [MEMO - Directive on equal treatment for men and women in employment](#) and [Legislation](#)

Working Conditions

Report reveals differences in tackling work-related stress

A joint report from the EU social partners on how national social partners have carried out their 'autonomous framework agreement on work-related stress' was presented on 15 December. Stress is considered as the primary cause of lost working days in Europe and is seen as a serious work-related health problem.

The report comes a year after the deadline for implementation of the 2004 joint social partner agreement on improving the identification, prevention and management of stress. It sets out a variety of actions undertaken, shows how Norway, Iceland and 21 Member States performed and highlights differences in the achievements of different Member States.

The measures took different forms: social partner (framework) agreements (for example joint guidelines in Sweden), national, sectoral or company collective agreements (in Belgium and France) and national legislation (Czech Republic and Latvia).

The success of the agreement hard to know since the latest figures for workers who have felt affected by stress are from 2005. New figures are expected in 2009.

Link to [Framework Agreement and Report](#)

Growth and Jobs

Restructuring in Europe Report 2008

On 16 December, the European Commission published its Restructuring in Europe Report, giving a global overview of the EU's main strategies, policies and actions to anticipate change and tackle the negative effects of

restructuring. The report reviews the principal factors of change affecting Europe's economies and analyses each in turn: globalisation, technological change, demographic ageing and climate change. It also examines the enlargement of the EU to countries in central and Eastern Europe, which led to important changes in their economies.

Link to [Press release and report](#)

National coordinators for the Lisbon Strategy meet to discuss structural reforms for growth and employment

On 5 December, national coordinators for the Lisbon Strategy discussed structural reforms for growth and employment with the Commission in the light of the financial crisis. The national coordinators agreed with the goals outlined in the Commission's economic recovery plan (launched on 26 November). This was also the outcome of an EESC debate on the Lisbon Strategy on the same day that focused on the need for targeted, timely and temporary action (the three "t"s). Further on growth and jobs, the Commission issued guidelines on bank recapitalisation to support credit flows to the economy and welcomed 10 major new EU research infrastructures.

Link to [Lisbon Strategy: Results of the meeting with the 27 national coordinators](#), [State aid: Commission adopts guidance on bank recapitalisation in current financial crisis to boost credit flows to real economy](#), [EESC debate on growth and jobs with Commission President Barroso: targeted, timely and temporary action is needed](#), [Recovery plan](#) and [Commission's Strategic Report Better matching of jobs](#)

National Developments

France – Reform of retirement provisions

The French Senate adopted a law that will allow an employee to retire at any age between 65 and 70, provided they inform their employer of their intention before they reach 65. The measure will become effective on 1 January 2010.

Meanwhile, a legal amendment that came into force this summer has proven to be badly drafted and is now being urgently revised. The amendment was intended to make it more difficult for employers to carry out involuntary retirements before the normal retirement age. Under the text of the law as it stands, however, the newly introduced higher severance indemnities would appear to apply equally to voluntary as well as involuntary retirements.

Link to [Q&A on new reform](#) (in French)

Netherlands – New measure to help avoid redundancies

The Dutch government has agreed to the extension of its ATV scheme, which allows employers to introduce short-time working, with lay-off days funded through the unemployment benefit system (WW) at 70% of normal hourly pay rates. This facility is currently restricted to companies suffering emergencies, such as factory fires, that lead to falls in sales revenue of 20% or more.

Employers have until 1 January 2009 to apply for up to six months funding from the new scheme. To qualify, they must have experienced a 30% drop in sales revenue over two months preceding their application. In return for funding, companies are expected to undertake the training or retraining of surplus staff.

Link to [Press release](#)

UK – Employment Act 2008 becomes law

On 13 November, the UK's Employment Act 2008 received Royal Assent. The Act seeks to provide a sensible and proportionate way of enabling employers and employees to settle disputes.

The Employment Act 2002 had introduced compulsory procedures aimed at improving workplace dispute resolution, comprising dismissal and disciplinary procedures and grievance procedures. Since 2004, a precondition of an employment tribunal having jurisdiction in any particular case, was that employers and employees could show that they have followed the statutory procedures. The 2008 Act abolishes the well intentioned but impractical compulsory rules. Instead, from April 2009, there will be a new semi-voluntary ACAS Code of Practice, again designed to help settle disputes out of court. It will be semi-voluntary because if an employer or employee fails to observe it and the matter goes before an employment tribunal, the tribunal will have discretion to increase or decrease monetary awards by up to 25%.

Other matters covered by the Employment Act 2008 are:

- increasing National Minimum Wage enforcement powers (*in sections 8 to 14*);
- strengthening the Employment Agencies Act 1973 (*in sections 15 to 17*); and
- enabling trade unions to refuse membership to individuals who belong to a political party if membership of that party is contrary to the rules of the union (*in sections 18 and 19*).

Link to [ACAS Code of Practice](#) and [Employment Act 2008](#)

The Weeks Ahead

Commission

22-24 January – Employment, Social Policy, Health and Consumer Affairs (EPSCO) meeting

Council

1 January 2009 – Czech Republic takes over Presidency

European Parliament

12-15 January 2009 – EP Plenary

20-21 January 2009 – EMPL Committee meeting

20-21 January 2009 – LIBE 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:

James Killick

Genevra Forwood

jkillick@whitecase.com gforwood@whitecase.com