



EU Employment Practice Group

March 2010

EU Developments

New discussions underway on the revision of the Working Time Directive

The Commission has decided to take a fresh look at the EU Working Time Directive 2003/88/EC. It has opened discussions on whether a fundamental review is necessary in light of recent workplace trends, as well as difficulties with the implementation of the current Directive.

The Commission, in its Communication of 24 March 2010, acknowledges that the current Directive, the main provisions of which have not changed since 1993, is no longer equipped to deal with the challenges of the modern workplace in the EU. It notes the problems created by a number of judgments by the European Court of Justice, which held that on-call time should be considered hour-for-hour as working time for the purpose of the 48-hour week. The Commission also expresses doubts as to whether the Directive is being properly implemented in all Member States, and notes the lack of flexibility it affords to businesses and workers in the organisation of working time.

The central tenet of the current Directive is the maximum 48-hour week. The Directive allows for exceptions, such as the individual opt-out, and the Commission notes that this is widely used: five Member States use the opt-out in all sectors of the economy, and a further ten use it in certain sectors where on-call time is prevalent.

The Commission had proposed back in 2004, a revision of the Working Time Directive, but negotiations between the EU's two legislators – the Council and the European Parliament – collapsed last April over, *inter alia*, the phasing out of the opt-out from the maximum 48 hour week and the treatment of on-call time. These questions would have to be revisited in any revision of the Directive, and are unlikely to be any easier to resolve.

The UK – which had previously defended its indefinite opt-out from the 48-hour week – has already stated that it will not give up the opt-out. One solution could be to adapt the rules to the specificities of different sectors, such as those which rely on on-call time especially in the healthcare sector, residential care and emergency services.

The Commission considers that a review of the Directive should not be limited to these issues. It should rather address the wider question of how best to protect workers' health and safety in a way which takes account of modern working patterns and the need for flexibility on the part of workers and employers.

The Directive should also take account of other issues, such as the need to reconcile work and family life, the prevalence of flexible work and the situation of workers with more than one concurrent job.

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This newsletter briefly describes EU employment developments.

Due to the general nature of its content, this newsletter is not and should be regarded as legal advice.

White & Case LLP

Avocats-Advocaten
rue de la Loi, 62 Wetstraat
1040 Brussels
Belgium

Telephone: +32 2 239 26 20

Facsimile: +32 2 219 16 26

www.whitecase.com

In parallel, the Commission is undertaking an extensive impact assessment, including an examination of the ways in which Member States are actually implementing the Directive, which will also inform discussions going forward.

This Communication, seeking the views of the European Social Partners (the ETUC representing workers, and Business Europe, CEEP and UEAPME representing the employers) on whether action is needed at all, is the very first step in the process. If the Commission, in light of responses received, takes the view that action is needed, it will launch another consultation with the Social Partners on the content of any legislative proposal. The Commission would then make a proposal which would have to be agreed by both the European Parliament and the governments of the twenty-seven EU countries in the Council, under the so-called 'co-decision' procedure.

The Social Partners also have the possibility, under Article 155 TFEU, of opening negotiations themselves, with a view to reaching an agreement which could then be formally implemented as EU law.

Either way, there will have to be some difficult discussions before change is imminent.

Link to [Communication](#)

Employment Commissioner Andor promises proposal on posting of workers

During a recent conference on the "Posting of Workers and Labour Rights" held on 17-18 March 2010 in Oviedo (Spain) under the umbrella of the Spanish Presidency, László Andor, European Commissioner for Employment and Social Affairs, committed to present a legislative proposal to amend or complement the current Posting of Workers Directive (96/71/EC), adopted more than ten years ago.

The Directive has been under the spotlight since the controversial ECJ judgments in the Viking, Laval, Ruffert and Commission v Luxembourg cases, which dealt with the consequences of the free movement of services for the protection of workers' rights and trade unions' rights to take collective action, as well as the way in which some provisions of the directive are to be interpreted.

Andor does not believe that a complete overhaul of the directive as it stands is necessary but reiterated the Commission's commitment (as underlined by President Barroso to the European Parliament last year) to considering a legislative proposal to improve legal certainty and to ensure that the directive is uniformly and correctly implemented throughout the EU27.

The Commission has started preparations, including evaluation studies and projects, and also intends to

organise several conferences on this subject. An ex-post assessment on the impact of the directive is also underway. An expert committee of Member States' representatives has been set up to address the difficulties of interpreting the directive and clarifying any outstanding issues.

Meanwhile, during its meeting on 9-10 March, the Executive Committee of the European Trade Union Confederation (ETUC) adopted a "Resolution on the Posting of Workers directive: proposals for revision" in which it calls for:

- Equal treatment of local and migrant workers, no unfair competition on wages and working conditions;
- Respect for national collective bargaining and industrial relation systems;
- Equal access of all workers to social benefits; and
- Proper instruments and tools for monitoring and enforcement of labour standards.

The resolution also sets out the 8 proposals developed by the ETUC expert group of trade unions experts and academics to revise and strengthen the Posting Directive.

Link to [Andor Speech](#) and [ETUC Resolution](#)

EU Labour law

EU employment ministers agree to extension of minimum parental leave

On 8-9 March, the EU employment ministers agreed to extend minimum parental leave per parent, irrespective of what kind of contract they may have. This will require changes to national laws in Belgium, Ireland, the UK, Portugal, Romania and Malta. Under the new rules, parents will be allowed to take four months between them, to allow one parent to take seven months off. One month however will be un-transferable. The new directive repeals Directive 96/34/EC. The Member States now have two years to transpose the new directive into national law.

EU ministers also moved to strengthen social protection for the self-employed and assistant spouses by adopting at a first reading a position on a draft directive.

However, the vote on the extension of maternity leave to 20 weeks, due to be voted on on 25 March, has now been postponed until 18 May.

Link to [Council Press Release Parental Leave](#), [Council Press Release self-employed workers](#) and [Press release maternity leave vote](#)

Jobs & Growth

2020 Economic roadmap for Europe unveiled

On 3 March, President Barroso unveiled the ten year plan for greener growth and jobs in the EU. The new agenda places innovation and green growth at the heart of its blueprint and proposes tighter monitoring of national reform programmes, in an effort to address one of the most important weaknesses of the Lisbon Strategy it replaces.

However, the proposal could meet with resistance from Member States. Germany's Chancellor Angela Merkel has already written a letter to Barroso stating that linking targets to compliance with the Stability and Growth Pact would make fiscal surveillance "unnecessarily political". Barroso in turn dismissed those concerns stating that the two processes would remain "separate" in order to "maintain the integrity of the Stability Growth Pact."

There has also been wide-spread criticism from the political parties. The S&D group in the European Parliament have called the programme "lacking ambition" and feel the Commission's proposals are "not green enough and not strong enough on jobs and social policy" and are overall "too lukewarm". Others have been a little more positive. ALDE welcomed the proposal calling the objectives "ambitious and realistic". However, it also said that the strategy needed "more teeth".

The social partners said the proposal provided "a useful basis" for making Europe a "greater player" in the world and promised to propose changes in order to "turn the Commission Communication into a real roadmap for action".

The next steps in the process are:

- 17-18 June : EU summit to adopt further details, including country-specific targets.
- Autumn 2010-03-31 : Member States to submit stability and convergence programmes as well as national reform programmes.

Link to [Europe 2020 Strategy](#) and [European Council Conclusions 25-26 March](#)

EU Globalisation Funds assists over 7,000 workers

On 2 March, the European Commission announced that it would be assisting over 7,000 dismissed workers with payments from the European Globalisation Fund totalling almost 40 million euros. The countries and sectors impacted are:

- Belgium (two cases): 2,199 workers in 46 different textile companies;

- Sweden and Austria – respectively 1,500 and 400 workers in the car industry;
- Ireland – 2,400 workers in the computers sector; and
- The Netherlands – 435 workers in the construction sector.

These 6 cases are the first batch to be approved and paid under the amended Regulation. This means they will have 24 months to implement the measures compared to the previous deadline of 12 months stipulated under the former Regulation.

Link to [Press releases](#)

Gender Equality

Closing the gender pay gap

On 5 March, a few days before International Woman's Day, the European Commission announced its intention to use over the next 5 years a series of measures in an effort to reduce the pay gap between men and women, which currently stands at around 18% (and varies from 10% in Italy to 25% in Austria, the Czech Republic and Estonia). The Commission will consult the European social partners and analyse the impact of a number of options, which may even go so far as new legal measures. The announcement coincides with a Eurobarometer survey that shows that more than 80% of Europeans support urgent action.

In the second half of 2010, the European Commission will put forward a new strategy for 2010-2015, with reducing the gender pay gap as a top priority. Meanwhile, the Commission on 5 May 2010 will present the conclusions of a study it is currently conducting on initiatives promoting gender equality in the workplace.

Also on 5 March, the Commission adopted a Woman's Charter, which aims to promote amongst other things: equality on the labour market and equal economic independence; the principle of equal pay for equal work so as to reduce the gender pay gap within five years; and gender equality beyond the EU, addressing this question in external relations and with international organisations.

Both Eurofound and the OECD have also issued recent reports on the subject.

Link to [Commission press releases](#), [Woman's Charter](#), [Eurobarometer survey](#), [Eurofound Report](#) and [OECD Gender Brief](#)

Working Conditions

Eurofound presents findings from survey on flexibility and social dialogue

On 3 March, the conclusions from the latest survey on flexibility and social dialogue were presented at the European Parliament in a seminar attended by experts and the new European Commissioner for Employment and Social Affairs, László Andor.

The survey, conducted by the European Foundation for the Improvement of Living and Working Conditions (Eurofound), covered 27,000 public and private companies in Europe. The overall conclusion is that in general social dialogue is solid and that companies across Europe apply a broad range of flexibility measures.

The findings reveal that more than half the companies offer flexible working time arrangements: with two thirds offering part-time work, that work outside of normal hours is used widely by employers and that overtime continues to be the most widely used instrument to tackle excessive workloads in particular in Germany, the Netherlands, the Nordic countries, Ireland, France and the UK.

However, the survey also highlighted certain limitations and differences across Europe. A third of representatives receive infrequent information on the economic and financial condition of their organisation; in many cases employment representation is limited to health and safety controls and one in six employee representatives are not entitled to take any paid time off to carry out their duties.

Meanwhile, Eurofound has also published a comparative report on “Flexible forms of work ‘very atypical’ contractual arrangements” covering recent evolution in the EU Member States and Norway. Atypical work includes part-time work of fewer than 10 hours a week, very short fixed-term contracts, zero hours working and non-written contracts. The study explores actions which seek to guarantee both flexibility and security in the labour market through a degree of regulation and monitoring of these forms of work. The use of atypical work raises challenges in terms of health and safety, the risk of poverty and the propensity for undeclared work.

Link to [Flexibility Survey](#), [Atypical contracts](#) and [Undeclared work](#)

Commission publishes report on restructuring in the EU

The European Commission has recently published the Final Report of the study it commissioned on “Organising transitions in response to restructuring”. The study focuses on instruments and schemes of job and professional transition and re-conversion at national, sectoral or regional level in the EU.

The study covers a wide range of different economic and social contexts, and the instruments and schemes identified as relevant show significant differences with regard to legal sources, types of support measures, scope, co-financing by the enterprises and the status of workers.

The report highlights that while in the past restructuring measures were often rather “passive” in nature, learning processes in the context of previous local and sectoral crises as well as learning from good and innovative practice throughout the EU has resulted in more proactive schemes of re-conversion and transition.

In Europe there is a significant variety of national backgrounds and experiences. In Nordic countries, restructuring processes at company level have been accompanied since the 1970s by measures in support of professional reorganisation and transition. While in countries such as Belgium and the Netherlands, which have high levels of part-time work and fixed-term contracts, there is a strong tradition of outplacement support measures. And although active measures in Southern European countries and the new Member States in Central and Eastern Europe have been less important in the past, this has changed in recent years against structural changes in the context of globalisation.

Link to [Commission Report](#)

Eurofound publishes report on the alternative disputes resolution

Eurofound recently published a report examining the use of the alternative disputes resolution (ADR) as a means of settling individual workplace disputes before they go to a court hearing. The report examines the trends in ADR use and how workers gain access to such services.

The report concludes that although ADR usage is growing across Europe, it varies between individual countries. ADR appears to be most successful in resolving ambiguous and complex issues. Attitudes seem to be becoming more positive with advocates viewing it as a more speedy and cost-effective alternative to court proceedings.

Link to [Eurofound report](#) and [ACAS website](#)

National Developments

The Netherlands

Tighter enforcement of child labour ban

The Dutch economic affairs ministry has announced that it is tightening up its ante child-labour policies. In future, stricter conditions will be imposed on companies investing abroad and greater financial penalties applied if it is found that a company employs children in any of its operations around the globe.

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

Denmark

Two-year industry deal enhances leave and severance terms

A new industry-sector collective agreement has been concluded between the Confederation of Danish Industry and the trade union CO-industri. The two-year deal runs until 1 March 2012. It provides for increases in minimum hourly wage rates of 0.15 euros in the first year and 0.24 euros in the second year i.e. increases of 1.1% and 1.7% respectively.

As is usual with Scandinavian agreements the “devil is in the detail”. Employees will benefit from an additional two weeks parental leave (one week per parent). Severance payments will also be enhanced from 1 May 2010. In future redundant workers with at least three years’ service will receive a payment for the first month after their notice expires equal to the difference between their subsistence welfare payment and original salary, minus 15%. After six years’ service this allowance will be doubled and after eight years’ service it will be trebled.

Both sides of industry have also agreed to incorporate the terms of the Equal Pay Act into the national accord and to establish a special board to deal with violations of equal pay principles.

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

Spain

National pay deal to curb creeping stagflation

A three-year national pay agreement has been concluded between the leading Spanish employers’ association CEOE and two principal union confederations CCOO and UGT. The deal provides for a 1.0% increase in basic rates this year, 1.0%-2.0% in 2011 and 1.5%-2.0% in 2012. Conversely, although Spain’s economy remains in recession and unemployment is twice the EU average, many employees have continued to enjoy significant wage increases. According to the Bank of Spain the average collectively agreed pay increase in 2009 was 2.6%, whilst Spain’s latest labour cost survey has revealed that the over the year to Q3 2009 wage cost for full-time workers increased by 4.1%. This is only 1.6% lower than at the onset of the present recession in Q3 2008.

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

Portugal

Government announces new measures to tackle unemployment

In January 2010, the Portuguese government announced a new economic package to tackle unemployment, which will cost the state €490 million, €90 million less than the previous package. The overall

objectives of the Employment Initiative 2010 are to maintain jobs, encourage young people into the labour market, create employment and combat unemployment. The Minister of Labour and Social Solidarity estimates that the measures will affect about 760,000 people.

Link to [Government Press release](#) (in Portuguese)

Germany

Agreement creates collective staffing pool in metal and electrical industry

In December 2009, the Ruhr Employer Association and the North-Rhine Westphalia Metalworkers’ Union concluded a collective agreement that provides for a temporary staffing pool among manufacturers in the metal and electrical industry in the Ruhr region. The Ruhr Agreement is the largest of its kind in Germany in terms of coverage rate to date. However, the outcome of the agreement remains to be seen.

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

Germany

Impact of new management practices on working conditions

The results of the 2008–2009 works council survey, carried out by the Institute of Economic and Social Research within the Hans Böckler Foundation, highlight the effects of various management practices on work strains in German companies. The survey findings provide a new insight into health risk management at establishment level, also highlighting that only a minority of companies are carrying out health risk assessments, albeit being prescribed by law.

Link to [Survey](#) (in German)

Sweden

Impact of “Toyota model” in healthcare sector

A recent study by Stockholm University assesses the correlation between shorter working hours and improvements in health, well-being and the level of physiological stress among workers in the healthcare sector. The study evaluates the effect of introducing a new working time model, the so-called ‘Toyota model’, and its effect on employee health and work satisfaction. It concludes that the new working time model has no significant effect on workers’ health or stress levels.

Link to [Eurofound background article](#)

Sweden

Proposal to screen and certify workplaces in order to improve work environment

The Swedish government has issued a report evaluating the potential benefits and opportunities associated with market-oriented policy instruments in the working

environment. The report investigates the possible implementation of a Danish system of screening and certification of workplaces, as well as a number of other measures.

The report concludes that further implementation of such policy instruments would improve the working environment and its role as a means of competition.

Link to [Government report](#) (in Swedish)

Czech Republic

Differences in corporate family policies between MNC HQ and Czech subsidiary

Companies operating in different countries do not automatically adopt the same approach towards working parents or regarding work–life balance. Case studies carried out at the headquarters of engineering companies in France, Germany and Sweden and in their Czech subsidiaries pointed to differences and identified factors which determine corporate family policies.

Link to [Report](#)

Luxembourg

Role of temporary work in company recruitment

A survey conducted on behalf of the Ministry of Labour and Employment in 2007 shows that temporary work is an important recruitment channel for companies in Luxembourg. Between 2004 and early 2007, 42% of enterprises which had recruited stated that they had used temporary workers. About 15% of these companies do so all or nearly all of the time, while 46% do so from time to time and 39% rarely do so.

Link to [Survey results](#) (in French)

UK

Survey highlights increase in temporary and part-time workers

The recent Labour Force Survey has shown a year-on-year increase of 32% in the number of temporary workers who could not find a permanent job (i.e. people who work full-time on a short-term contract). The figure was even higher for part-time workers who could not find a permanent job (i.e. people who work fewer hours a week than full-time workers). This is mainly due to the fact that when the UK economy started to shrink and new job offers became scarce, people started to consider working in jobs with shorter hours. According to the latest figures there are 1.43 million people in the UK with temporary jobs and 7.7 million in part-time jobs.

Link to [Office of National Statistics website](#)

UK

Tenfold rise in whistleblower cases taken to court

According to the latest employment tribunal statistics, the number of UK employees claiming to have been sacked, mistreated or bullied for exposing corrupt practices at work has increased tenfold over the last decade. According to the figures, the number of persons using whistleblowing legislation increased from 157 cases in 1999 to 1,791 in 2009. These figures, compiled for the first time have increased fears among campaigners that whistleblowers are being deliberately undermined or removed from their workplace, despite repeated promises to protect them.

Link to [Public Concern At Work - Whistleblowing Presentation](#)

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White & Case
Wetstraat 62 Rue de la Loi
1040 Brussels
Belgium

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