



EU Employment Practice Group

Autumn 2011

EU Developments

Commission considers the future of the EGF, while the European Parliament scrutinises how it is used

The European Globalisation Adjustment Fund (EGF) has, since 2007, been providing one-off, time-limited individual support to workers who have suffered redundancy as a result of globalisation or – more recently – the financial and economic crisis.

The fund was due to expire at the end of 2011, but the European Parliament has approved a proposal to extend it until 31 December 2013. At the same time, it requested the Commission to put in place a framework for restructuring to anticipate and manage transition, and suggested the Commission identify why some Member States have not yet made use of the EGF, despite mass redundancies. It also asked the executive to consider aligning the rate applicable to Structural Fund interventions in the Member State concerned.

For the period 2014-2020, the Commission has proposed to enlarge the scope of the fund, in terms of eligibility to apply for aid as well as the type of worker concerned: not only those holding a permanent contract, but also those with fixed employment contracts, agency workers, entrepreneurs from micro, small and medium enterprises and the self-employed, including farmers. It suggests that the EGF be used during unexpected crises that lead to serious disturbances of local, regional or national economies. The Commission has also proposed improving and accelerating the process in order to make the fund more efficient. According to new rules, Member States will have to submit their full application 3 months after the mass redundancies occur, and will have to draw up a mid-way report on the implementation of the aid after 15 months. This proposal will now be examined by the Council and the European Parliament for adoption by the end of 2012.

Meanwhile, in the last month, EGF funding has been approved to assist 778 redundant workers in the automotive industry in Germany, to the sum of €4.35 million, 325 workers in the wind-turbine industry in Denmark, to the sum of €3.94 million, and 680 workers from the footwear industry in Portugal, to the sum of €1.45 million.

However, a recent French application for EGF aid for 3,582 workers in the automotive industry has been blocked by the European Parliament. A majority of MEPs wanted further assurances as to how the money would benefit the redundant workers. One particular concern was the retirement legislation that entered into force in France after it applied for the aid, which MEPs feared might negatively affect the status of the staff leaving voluntarily for early retirement. MEPs demanded the Commission carry out an additional audit and present a new proposal to the European Parliament. This is the first time that the Parliament has blocked an application, and the Commission pronounced itself “shocked and extremely disappointed”.

Link to [Commission EGF 2014-2020](#) and [EP Cohesion Policy 2014-2020](#)

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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.

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Maternity Leave – compromise looks impossible

The draft Directive on maternity leave, which has been blocked in Council for a year, was discussed after an informal meeting of Ministers on 21 October in Poland.

Ministers were asked to give their views on whether a compromise might be possible with Parliament, which last October had voted in favour of the minimum maternity leave to 20 weeks, on full pay. A possible solution would be a “passerelle clause” that would allow Member States to derogate from the 20 weeks, if they offer women other types of family leave and if such leaves meets certain criteria.

However, most Member States expressed misgivings about continuing discussions, invoking the high cost of this measure during a period of austerity, and the fact that the policy should remain the exclusive competence of Member States.

In response to a request by the European Parliament for an update of the negotiations, Poland’s Deputy Minister of Labour and Social Policy, Radoslaw Mleczko, explained that there were 3 reasons for the present deadlock: the EP’s amendments “*would result in the view of many Member States in the deterioration of well-functioning systems currently in place*”, the Council wants “*to avoid the inclusion of too detailed provisions*” which would go against the subsidiarity principle; and the current economic context is unfavourable to new spending. The Polish Presidency said it would set up a working group on the subject in November. However, the chances of reaching a compromise are slim, given that several Member States have refused to negotiate.

Link to [EP Press Release](#)

Spain allowed to restrict access to Romanian workers

The Commission has approved a request by Spain to restrict its labour market to Romanian workers until 31 December 2012. These restrictions apply to activities in all sectors and regions, but will not affect Romanian nationals who are already active on the Spanish labour market. The Commission’s analysis established that Romanian nationals living in Spain have been strongly affected, as 30% of them are unemployed – the second highest number after Spanish nationals. Despite a fall in the number of Romanian nationals coming to work in Spain in recent years, the inflow remains high. Since Spain had already opened its labour market to new Member States, this constitutes a derogation and can only be temporary. The Commission says that it will follow events closely and may revoke the Decision at any time.

Link to [Commission Press Release](#)

ECJ Developments

Air pilots aged 60 plus win age discrimination

The ECJ has held that, while the right to act as a pilot may be limited from the age of 60, a total prohibition was unjustified.

The case was brought by three Lufthansa pilots, whose employment was terminated automatically when they reached 60, in accordance with a collective agreement.

The Equal Treatment Directive 2000/78/EC prohibits any unjustified difference in treatment, related to age, in the workplace. It does however allow Member States, when implementing the directive, to provide that a difference in treatment based on workers’ physical capabilities, which themselves are related to age, does not constitute discrimination, as long as such capabilities are a genuine and determining requirement for the job.

The Directive also allows Member States to entrust the implementation of the Directive to social partners. In Germany, there was in place a collective agreement applicable to the Lufthansa crew, which prohibited pilots from acting as such above the age of 60.

Meanwhile, international and German legislation provided that, between the ages of 60 and 64, an airline pilot may pilot a plane unless as part of a multi-pilot crew, with other pilots aged under 60. That legislation only prohibited pilots from acting as pilots beyond 65.

In response to a question from the German Federal Labour Court, the ECJ recognised that the limitation of the possibility for pilots aged 60 plus to act as pilots pursues the objective of guaranteeing the safety of passenger, persons in areas over which aircraft fly and the pilots themselves. This may justify a difference in treatment. However, international and German legislation did not consider it necessary to prohibit piloting over the age of 60; only to restrict their activities. Thus the prohibition on piloting at 60 was unnecessary.

The ECJ also recognised that possessing particular physical capabilities may be considered as a genuine and determining occupational requirement for acting as an airline pilot, and that the possession of such capabilities is age-related. Such a requirement, aimed at guaranteeing safety, may justify a difference in treatment on grounds of age. However, since international and German authorities consider that, until the age of 65, pilots have the physical capabilities to pilot a plane. In those circumstances, the age-limit of 60, imposed by the social partners, to be able to pilot an airplane, constitutes a disproportionate requirement.

The case now returns to the German court to dispose of the case in accordance with the ECJ's ruling, which is also binding on other national courts or tribunals before which a similar issue is raised.

Link to [Judgment Case C-447/09](#)

National Developments

Spain

Integration of private agencies to tackle unemployment

The Spanish Ministry of Work and Employment has amended regulations to allow leading private employment agencies to work with the public sector employment service. Approximately 50 private agencies will now work in the same way as government job centres (SEPE) to find jobs for unemployed workers. Temporary employment agencies are excluded from the scheme however, unless they form a new independent entity specifically to allow for such a collaboration.

Link to [SEPE website](#)

Netherlands

Boost for older workers

The Dutch Social Affairs Minister, Henk Kamp, has tabled a draft Bill designed to make it easier to work beyond the age of 65. Under the Bill employers will be allowed to extend temporary employment contracts for older workers beyond the current limit of two renewals. The over 65s will not be entitled to sick pay and employers will not have to take special steps to reintegrate them after sick leave. From 2013 employees will also be able to postpone their state pension for up to five years and receive a pension bonus of 6.5% for each year that they exceed the normal retirement age.

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

Italy

Fiat to leave Confindustria

Fiat, Italy's largest private sector employer, has confirmed that it will be leaving the country's powerful employers' association Confindustria at the end of 2011. According to Fiat's chief executive, this decision was made because new labour laws and collective agreements have failed to offer the "operating flexibility" required. From 2012 the company will not have to adhere to nationally negotiated agreements and will therefore be free to determine new working practices and conditions in all its Italian operations.

Link to [Press release](#)

Slovakia

Launch of the Blue Card scheme

The EU Blue Card scheme has been incorporated into Slovak law. It applies to non-EU nationals wishing to work and gain residence in Slovakia. The Blue Card is valid for an initial period of three years. To qualify, a candidate must have a written job-offer, be genuinely qualified for the position and educated to at least University degree level. The Slovak Labour Office has yet to confirm an official list of qualifying occupations, but is accepting applications in the interim.

Link to [Press Release](#)

Germany

Growing support for general minimum wage

Germany's ruling coalition Christian Democratic Union (CDU) will consider a proposal at this autumn's party conference to introduce a national minimum wage covering all industry and service sectors. The resolution is also gaining support amongst members of the Free Democratic Party – the junior coalition partner.

Link to [Press Release](#)

Hungary

Co-decision rights removed from social partners

The Hungarian government will no longer have to seek agreement from employers and trade unions before setting the national minimum wage. With effect from 1 January 2012 the tripartite interest reconciliation system will be replaced by a new body – the National Economic and Social Council (NGTT). The NGTT will include representatives of employers, workers and chambers of commerce, but will have no decision-making rights – only the right to draft proposals to the government. In effect, the government alone will now decide on wage and employment-related regulations.

Link to [Press Release](#)

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