



EU Employment Practice Group

January-February 2011

EU Developments

European Commission relaunches idea of 'European professional card'

On 7 January, the European Commission launched a broad consultation inviting stakeholders to share their views on how to better integrate professionals in the internal market, despite differing national requirements on the exercise of certain professions.

There exist over 800 regulated professions in the EU, from doctors and dentists through to engineers and architects. Different options have been suggested to facilitate better mobility within the EU, a "European Professional Card". The idea has been raised in other forms, as early as 2005, but has never been applied.

Currently, the recognition of professional qualifications in the EU is regulated by Directive 2005/36/EC on Professional Qualifications. This consultation marks the first stage of the revision of Directive 2005/36/EC, which is scheduled for 2012. The results of the consultation will form part of the evaluation report for the Commission's Green Paper to be adopted in Autumn 2011.

Link to [Background information](#)

Modest ambitions for Hungarian Presidency in employment and social affairs

On 1 January, Hungary assumed the six-month Presidency of the Council of the EU. Its priorities in the field of employment and social affairs will be to contribute to achieving the EU 2020 Strategy target of 75% employment by facilitating discussions on job creation as well as the recommendations for national reform programmes.

The Presidency will also tackle youth unemployment which has reached record levels in Europe. It also aims to adopt Council Conclusions on the development of an electronic exchange system in the framework of the Posting of Workers Directive. The Presidency will continue the work of the Belgian Presidency in the areas of gender equality, the health and safety of pregnant workers and those who have recently given birth or are breastfeeding, the ageing population and its impact on employment.

Social and employment topics will however take second place to major talks on the EU budget, the EU's agricultural policy and economic governance top. Hungary's Presidency may also have been overshadowed by the EU's criticism of a controversial media law recently adopted by Budapest.

Link to [Work Programme](#)

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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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Social dialogue

How the new rules on European Works Councils will work in practice

On 11 January, the European Commission published the report of an expert group, set up in 2009 to consider various aspects of Directive 2009/38/EC on new rules for European Works Councils (EWCs) which might prove difficult to transpose, in order to prepare the transition of the Directive into national law by [June 2011](#). The expert group also discussed ways of avoiding contradictions between the various national systems and cooperation in the transposition work.

The report answers a number of key practical questions such as:

- What do the new definitions of employee “information” and “consultation” change? In cases of national restructuring, are national representative bodies or the EWC to be consulted first?
- Who are the social partners to be informed about negotiations on the establishment of new EWC?
- How does the Directive affect companies already having such a body?
- How should EWC be adapted in cases of mergers?

Meanwhile, on 20 January, the European Industrial Relations Observatory (EIRO) published an overview of the extent, practice and impact of employee information and consultation five years after the implementation of Directive 2002/14/EC establishing a framework for informing and consulting employees in the European Community.

Link to [Working Group Expert Report](#) and [EIRO Study](#)

Social Partners in conflict over wages

On 4 February, the European Council launched a discussion on the “Competitive Pact” put forward by Germany and France. Two of the proposals, the cutting of minimum wages and abolishing wage indexation have sharply divided the social partners.

John Monks of the European Trade Union Confederation (ETUC) criticised the move in a strongly-worded letter to Commissioner Rehn, denouncing the Commission for “*ignoring social dialogue and collective bargaining and directly intervening in the labour markets*” of certain countries; notably Greece and Ireland. The ETUC refused to begin reflections on the question of wages as proposed during the macro-economic dialogue of 14 February, stating it could not accept a “*system of*

economic governance or a change in the EU Treaty turning wages into the single instrument of adjustment.”

However, for BusinessEurope and the European Association of Craft, Small- and Medium-Size Enterprises (UEAPME), the debate on economic governance must be accompanied by reflections on the evolution of wages. Philippe De Buck, Director General of BusinessEurope, is of the opinion that the present crisis is due to a “*combination of labour market rigidities*” and “*inflexible wage-setting mechanisms*”. Andrea Benassi, Secretary General of UEAPME, concurred stating “*the evolution of non-sustainable wages is one of the main reasons for the present imbalances in the eurozone*” and believes this question “*must be addressed at national level, but we should also have a discussion at an EU level*” and is encouraging trade unions to reconsider their stiff opposition to align wage with productivity levels.

Link to [ETUC letter to Commissioner Ollie Rehn](#) and the [Competitiveness Pact](#)

ECJ Developments

ECJ extends protection to Spanish fixed-term workers under Fixed-term Work Directive

The European Court of Justice (ECJ) has extended the rights of “interim” employees to claim directly against their public sector employers under the Fixed Term Work Directive 99/70/EC, containing the Framework Agreement on fixed-term work concluded by the European social partners.

The cases, C-444/09 and C-456/09 *Gavieiro and Torres v Consellería de Educación e Ordenación Universitaria de la Xunta de Galicia* were brought by Ms Gavieiro and Ms Torres, both interim teachers in Galicia for over nine years. They had applied to their employer for recognition and payment of the three-yearly length-of-service increments, relying on their right to receive the non-discriminatory treatment provided for in clause 4 of the framework agreement. The employer refused to grant, with retrospective effect, these increments.

The Spanish court put a number of questions to the ECJ concerning the interpretation of the Framework Agreement, which was designed to prevent fixed-term employees from receiving less favourable treatment than permanent employees, and which should have been transposed into national law by 19 July 2001.

The Court held that Spanish interim employees could claim directly against their public sector employer under the Framework Agreement in the Spanish courts in respect of a period of employment before Spanish implementing legislation came into force, despite a provision in the implementing legislation precluding retrospective effect. The ECJ also confirmed that a length-of-service increment was an employment

condition, covered by clause 4(1) of the Framework Agreement, and with respect to which fixed-term workers were entitled to equal treatment. Further, the temporary nature of the employment relationship of certain public servants is not, in itself, capable of constituting an objective ground such as to justify a difference in treatment.

Link to judgment in Case [C-444/09](#)

Posted workers subject to temporary restrictions

On 10 February, the European Court of Justice (ECJ) held that the fines imposed on three Polish companies that employed Polish workers in 2005-2006 in the Netherlands without having first obtained work permits were justified in light of temporary intra-EU restrictions on the free movement of workers. These temporary restrictions, permitted under Annex XII to the 2003 Act of Accession, applied by the Netherlands on “new” Member States that joined the EU in the 2004 enlargement, can remain in effect until [30 April 2011](#) (or 2014 for Romania and Bulgaria, which joined the EU in the 2007 enlargement).

Link to judgment in [Joined cases C-307-309/09](#)

Jobs and Growth

Employment and Social Outlook: focus on the automotive sector

On 15 February, the European Commission published the latest edition of its EU Employment and Social Outlook monitoring report, covering market, restructuring and sectoral trends. The report highlights that the labour market in the EU has broadly stabilised and is even showing signs of recovery in some Member States, notably Germany, but that the overall situation remains weak, particularly for the young for whom unemployment remains at a worrying 21%. Joblessness has remained stable at 9,6% in the EU27 for the past 11 months. Demand for labour has shown a relative and slow improvement and firms are more optimistic about the outlook for employment across most sectors. The economy, although still fragile, is recovering at a faster pace than previously envisaged. However, the outlook remains one of a “jobless recovery”.

The report also focuses on certain sectors: here the automotive industry. The automotive industry is the engine of manufacturing in the EU, with currently 2,4 million direct jobs and 10 million indirect jobs. Its main supplying industries are steel, aluminium, chemicals, textiles, glass, plastics, rubber, electronics and information technologies. The crisis hit the industry severely, and between 2008-2009, it declined by 7,6%. Employment in the sector gradually started to recover in 2010, but only for those companies that underwent major restructuring in the last two years. The economic and financial situation remained the biggest hurdle for car and commercial vehicle makers in 2010. Fleet

renewal schemes in 50% of Member States helped to temporarily support sales in certain passenger car segments. Countries that introduced such a scheme fared better than others. In contrast, production of heavy trucks was still down.

At EU level, the boom in passenger car sales is over. The first half of 2010 showed some positive results but the industry is now beginning to lose steam as Western economies struggle with weak consumer spending. Certain manufacturers in the high-end segment are turning to high-profile emerging countries such as China, now the world's biggest market, as well as Brazil, Russia and India.

Link to [Monitoring Report](#)

Working Conditions

Eurofound and OECD publish reports on part-time work

On 27 January, the European Foundation for the Improvement of Living and Working Conditions (Eurofound) published its annual report on part-time work in Europe. On the same day, it also published its work programme for [2011](#). This year, it will focus on job creation, European structural weaknesses and competitive developments.

Meanwhile, the OECD has published its report on “The Role of Short-Time Work Schemes during the 2008-2009 Recession”. The report found that such schemes helped retain jobs in 19 Member States during that time. Take-up was highest in Belgium, Turkey, Italy and Germany.

Link to [Eurofound Part-time work in Europe, Executive Summary](#), [Annual Work Programme](#) and [OECD Report](#)

Greening the economy

Towards a greener labour market

In February 2010, the Employment Committee established a temporary Working Group on Employment and Climate Change (EMCO) to pursue further work on policy and measurement issues concerning the employment dimension of tackling climate change. The Working Group consisted of experts from 11 Member States as well as DG Empl and DG Eurostat. The Group's report, “Towards a greener labour market: the employment dimension on tackling climate change”, endorsed last November under the Belgian Presidency, was one of their flagship priorities. The report addresses the following issues:

- Where is the main focus from a labour perspective?
- How can the labour market impact of climate change be approached and conceptualised?

- What is the availability and quality of statistics for analysing and monitoring the employment dimension of the issue?
- What are the likely implications for policy formulation?
- What are the areas which may require specific employment policy attention (e.g. impact on skills needs, labour supply, matching, transitions, rapid reintegration of laid-off workers, work organisations etc.)?
- Given the complexity of the issues what is the most practical way forward in terms of policy and indicator development?

Link to [EMCO Report](#)

National Developments

United Kingdom

Abolition of UK retirement age

Draft regulations on the abolition of the default retirement age of 65 have been made available in the UK. The new regulations will enter into force on 6 April 2011 subject to transitional provisions and will apply to England, Wales and Scotland. The provisions, which make a dismissal for retirement fair provided certain procedural requirements are met, will also be abolished from 6 April 2011. The main legislation affected is:

- Paragraph 8 of Schedule 9 to the Equality Act 2010 will be removed. This currently provides that it is not an age contravention to dismiss someone at or over 65. This means that from 6 April 2011, any dismissal because of age will constitute direct age discrimination, unless it can be objectively justified.
- Paragraph 9 of Schedule 9 to the Equality Act 2010 will be removed. This currently makes it lawful not to recruit someone who is 65 (or, if higher, the normal retirement age) or is within 6 months of reaching that age.
- Various sections of the Employment Rights Act 1996 will be amended to reflect the fact that retirement will no longer be a fair reason for dismissal and the framework contained in section 98ZA to 98ZH for judging the fairness of retirement dismissals will no longer apply.
- Schedule 6 to the Employment Equality (Age) Regulations 2006 (duty to consider procedure) will be revoked.

Link to [Draft Regulations](#) and [ACAS Guide](#)

Visa reform for workers

The UK Government has unveiled changes to the work visa route and set out the criteria for its national limit on non-EU workers. The changes will take effect on 6 April 2011. Under the new annual system, employers will have to apply for a certificate of sponsorship from the UK Border Agency for a specific post if they want to bring someone to the UK. The annual limit of 27,700 certificates of sponsorship will be divided into 12 monthly allocations. The intra-company transfer route, which is not part of the annual limit, will also be changed in 3 ways:

- The job will have to be an occupation on the graduate occupation list.
- Only those paid £40,000 or more will be able to stay for more than a year. They will be granted for 3 years with the possibility of extending for another 2.
- Those paid between £24,000 and £40,000 will be allowed to come to the UK for a maximum of 12 months, at which point they must leave and will not be able to re-apply for 12 months.

Link to [UK Border Agency](#)

Ukraine

Concerns about inequality of male workers

The Ukrainian Cabinet has postponed the implementation of several important amendments to the Labour Code (MAJ 2010/24), mainly due to the Ministry of Justice concerns that the Code contains a number of discriminatory provisions. The principal objections to the current code centre on the availability of certain rights exclusively to working mothers – such as the reduction in working time, flexible working hours and holiday carryover.

Tipping the balance to a more gender-neutral approach is also a key element in the Government's pension reform programme. Under current proposals the retirement age for women will increase by six months each year from 1 February 2011 until it has risen from age 55 to age 60.

Link to [Press release](#)

Slovakia

Negotiations on labour code revisions

Proposals for several revisions to the Labour Code have been presented by the Slovak Labour Minister, Jozef Mihál, to a tripartite social partner working group. The proposed changes include a new formula linking job protection to labour market vulnerability, the introduction of more flexible working hours and a facility to break parental leave into several discrete periods.

Link to [Press release](#)

Netherlands

Compulsory registration of temporary agencies

The Dutch government is introducing an obligatory registration scheme for all temporary work agencies. In 2010 the Labour Inspectorate investigated over 1,000 bureaux and in a quarter of all cases irregularities were found. These infringements mainly concerned payments that were not in line with collective labour accords or the making of unjustified and unlawful deductions from wages.

Link to [Press release](#)

Germany

Flexible working time accounts prove their worth

A study by the Institute for Employment Research (IAB) has shown that working time accounts were widely exploited by German companies between summer 2008 and autumn 2009 to combat the adverse impact of the economic crisis. Existing working time deposits decreased by 45 hours on average. In addition, a proportion of 60% or more of the employees in the majority of companies surveyed were affected by the use of working time accounts to reduce costs while avoiding redundancies.

Link to [Study](#) (in German) and [IAB Press release](#) (in English)

Denmark

Work-sharing saves jobs

In Denmark work-sharing was introduced as a short-term measure that could be used to mitigate the effects of the global financial crisis. It proved popular, with many companies preferring it to redundancy schemes when there was not enough work to keep staff fully employed, because they were able to retain staff in readiness for an economic upturn. The Danish Employment Regions and the union 3F believe that work-sharing has played a key role in maintaining employment levels.

Link to [Report](#) (in Danish) and [3F website](#)

Austria

Law amendment on income transparency to be implemented

Austria has the third highest gender pay gap in the European Union. On average, women earn 25.5% less than men. Over 18% of the income gap can be ascribed to discrimination. An amendment to the Equal Treatment Act, stipulating the disclosure of average annual incomes by gender for companies employing more than 1,000 workers, will be implemented in 2011. The social

partners were closely involved in the development of the law and are generally satisfied with its provisions.

Link to [Report](#) (in German) and [Government website](#)

Spain

Immigrants more affected by labour market crisis

A recent study by the 1st May Foundation of Spain's Trade Union Confederation of Workers' Commissions (CCOO) analyses labour integration among immigrants in Spain, using a set of socio-economic indicators to compare the Spanish native working population with the immigrant working population. Among other conclusions, the report states that the current economic crisis is having worse consequences for immigrant workers than for the population as a whole.

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

Poland

Leave for adoptive fathers

An amendment has been made to the Polish Labour Code to give adoptive fathers the right to take paternity leave for up to one week. The leave may be taken at any time within the first year following adoption. From 2012 this right will be extended to two-week's leave.

Link to [Background note](#)

Increasing numbers of employers break wages law

A report from the National Labour Inspectorate highlights the increasing number of employers in Poland who do not comply with the law on the payment of wages to their employees. The report compares data from inspections during the first half of 2010 with data from inspections in the first half of 2009. Almost 19% more employers were in arrears with payments in the first half of 2010 than in the first half of 2009; the total of overdue payments increased by 62% in the same period.

Link to [Statistics](#) (in Polish)

Slovakia

Provision of personal protective equipment and safety of working conditions

In late 2009, the National Labour Inspectorate visited 110 enterprises in Slovakia to inspect the surveillance by companies of the safety and quality of personal protective equipment (PPE) produced in the Slovak Republic or imported, and to monitor the compliance of employers with their obligation to provide employees with appropriate PPE. Over three-quarters of the 550 deficiencies identified by the inspectors involved failures in the provision and use of PPE.

Link to [Slovak Labour Inspectorate](#)

Lithuania

Social partners discuss renewal of national agreement

The national agreement, signed between the Lithuanian government and social partners in October 2009, expired at the end of 2010. The social partners feel the agreement is crucial to the development of relations between them and the government, even though it has not been fully implemented. Suggestions for a new agreement include calls for more involvement of the social partners, proposals to combat the shadow economy and for reforms in education, health and social security.

Link to [Eurofound report](#)

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