

# Employment Practice Group

October 2009

## EU developments

### Barroso reappointed as Commission President for new 5-year term

In September 2009, José Manuel Barroso was reappointed European Commission President for a second term. The process for selecting his team of Commissioners is underway, and it is expected that the new Commission could be approved by the European Parliament in early January 2010.

The priorities of the new Commission are not yet clear. His manifesto "Political Guidelines for the next Commission" stated generally the need to stem the rise in unemployment, aggravated by the current economic and financial crisis, and boost new sources of growth and social cohesion. *"The Commission has an important role to play – even if most of the competences for employment policy lie with Member States. We can bring the leverage of the EU budget into play, as we have done in adapting the European Social Fund; we can help national actions to take the EU dimension fully into account; we can use our power to bring expertise together to promote good solutions and practices and find new ways of dealing with unemployment and creating new jobs"*.

Two very specific objectives have emerged. Barroso has indicated that under his leadership the Commission would propose a **new regulation to help Member States enforce the Posted Workers Directive 96/71/EC**. The Directive is designed to prevent a lowering of social protection arising from the free movement of labour within the EU. Its basic principle is that certain minimum conditions of employment in effect in a given Member State should be applicable both to national workers and those from other EU countries posted to work there. However, a number of judgments from the ECJ have qualified what can be considered to be minimum conditions of employment. A new regulation would not change the principles behind the Directive, but would assist its interpretation, implementation and enforcement by Member States. It would have to be adopted by the European Parliament and the Council acting in 'co-decision'. Unlike a directive, a regulation is directly applicable without having to be transposed into national law.

Barroso also told the European Parliament that he would, after consultation with social partners, present a new comprehensive legislative proposal for the revision of the **Working Time Directive**. Negotiations on the revision of the Directive collapsed dramatically in spring this year, over the controversial opt-out clause and the definition of on-call time.

Link to [Barroso mandate](#)

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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](http://www.whitecase.com)

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## European Court Developments

### ECJ: Full-time worker dismissed when on part-time parental leave entitled to compensation based on full-time salary

The European Court of Justice (ECJ) has clarified that Directive 96/34 on Parental Leave precludes, where an employer unilaterally terminates a worker's full-time employment contract of indefinite duration, without urgent cause or without observing the statutory period of notice, whilst the worker is on part-time parental leave, the compensation to be paid to the worker from being determined on the basis of the reduced salary being received when the dismissal takes place.

The case arose from the dismissal of Ms Meerts during her period of parental leave, while she was working part-time. Before that she had been employed on a full-time basis since 1992 under an employment contract of indefinite duration. On dismissal she was paid compensation equal to ten months' salary, calculated on the basis of the salary she was receiving at the time, which was reduced by half because of the equivalent reduction in her working hours. She challenged this before Belgian Labour Court, which referred the matter to the ECJ for a preliminary ruling.

Council Directive 96/34/EC on Parental Leave puts into effect the framework agreement on parental leave agreed by the European social partners in 1995. It aims to improve work-life balance, and provides for the individual right of workers, men and women, to parental leave on the grounds of the birth or adoption of a child for at least three months.

The Court noted that Clause 2.6 of the framework agreement provides that rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are to be maintained as they stand until the end of parental leave. The intention is to avoid the loss of or reduction in employment rights acquired, or being acquired, to which the worker is entitled when he starts parental leave, and to ensure that, at the end of that leave, he finds himself in the same situation with regard to those rights as before the leave.

Taking note of the objective of equal treatment between men and women, the Court gave a broad interpretation of the concept of 'rights acquired or in the process of being acquired', covering all the rights and benefits, whether in cash or in kind, derived directly or indirectly from the employment relationship, which the worker is entitled to claim from the employer at the date on which parental leave starts. This includes the right of a full-time worker on part-time parental leave to a notice period in the event of the employer's unilateral termination of a contract of indefinite duration, the length of which depends on the worker's length of service in the company and the aim of which is to facilitate the search for a new job.

That body of rights and benefits would be compromised if, where the statutory period of notice was not observed in the event of dismissal during part-time parental leave, a worker employed on a full-time basis lost the right to have the compensation for dismissal due to him based on the salary relating to his employment contract.

The Court held that a reduction in the rights arising from the employment relationship in the event of parental leave could discourage workers from taking parental leave and could encourage employers to prefer to dismiss those workers who are on parental leave. This would run directly counter to the aim of the framework agreement on parental leave, one of the objectives of which is to make it easier to reconcile working and family life.

The case now returns to the referring court in Belgium, to apply this ruling to the facts of Ms Meerts' case.

Link to the [judgment](#)

### European Commission commences action against Hungary on parental leave

In its ongoing task of ensuring the Member States correctly apply EU law, the European Commission has started the procedure against Hungary for incorrectly implementing the Parental Leave Directive 96/34/EC.

It has sent a "reasoned opinion" setting out in detail how Hungary has failed to meet its obligations. According to the Commission, Hungarian national law is not in line with the Directive on three points:

- in the armed forces, unpaid parental leave is available only after the end of the maternity leave;
- national law does not protect workers against dismissal on the grounds of an application for parental leave;
- national law does not provide for the right to return to the same job or equivalent job after taking parental leave.

If Hungary does not comply within the given time frame, the Commission may initiate formal proceedings before the ECJ.

Link to the [Commission press release](#)

### European Commission sends reasoned opinions to Germany and Portugal for discrimination laws

The European Commission has also sent reasoned opinions to Germany and Portugal in respect of their incorrect transposition of Directive 2002/73/EC, which prohibits discrimination in employment and occupation on the grounds of gender.

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The Commission has indicated that in its view Polish laws are not in conformity in three respects: its scope, the rights of associations to engage in judicial procedures on behalf of or in support of complaints, and the competences of the national equality body. The concern about the German law is that it does not grant the level of protection required as it does not prohibit discrimination on the grounds of gender concerning dismissals.

Both Member States have two months to reply. If there is no satisfactory reply the Commission may initiate formal proceedings before the ECJ.

Link to [Press release](#)

## Jobs in the Economic Crisis

### EU Globalisation Fund helps workers in five Member States

In September and October, the EU's Globalisation Fund approved 5 requests for funding from Austria, Sweden, The Netherlands, Ireland and Belgium.

The Swedish and Austrian applications concerned a total of 2,244 workers made redundant in the motor industry, which has been badly affected by plummeting sales throughout Europe. The application in the Netherlands concerned some 435 workers in the construction industry, which has also been hard hit by the economic downturn. The application from Ireland concerned 2,840 workers in the telecommunications industry and the Belgian application concerned 2,168 workers in the textile industry.

To date, a total of 33 applications have been submitted to the EGF for a total amount of over €157 million.

Link to [Swedish case](#), [Austrian case](#), [Dutch case](#), [Irish case](#) and [Belgian case](#)

## Jobs and Growth

### Greening the European economy

On 5 October, Commissioner Špidla, gave a keynote speech at the European Trade Union Conference (ETUC) on growth and jobs in the "green economy", highlighting the importance of the renewable energy sector for European employment.

In 2005, the renewable energy sector already employed 1.4 million people across the EU and predicted that in the future, the number of jobs in the renewable energy sector should rise spectacularly. According to the latest Commission study, meeting the target in terms of renewable energy will involve creating around 410,000 extra jobs. In addition to renewable energy, it would seem that prospects are bright in other sectors too such as energy-efficient transport and buildings, where more than 200,000 jobs could be created by 2020, mainly for the

renovation of existing buildings and to bring them up to standard in terms of insulation.

Link to [Spidla speech](#)

Another report by Eurofound examines the responses, initiatives and activities undertaken by national governments and the social partners in the EU Member States plus Norway in working towards a greener economy and maximising the job creation potential of this new area. The report looks specifically at various measures undertaken by governments with a view to stimulating the economy in the current context of the global economic crisis.

Link to [Eurofound Report](#)

## Gender Equality

### European Council issues report on Gender equality, economic growth and employment

On 19 October, the European Council published a report discussing the question of whether there is a connection between gender equality, economic growth and employment. Based on the assumptions made in the study, labour market equality means women and men working to the same extent in paid jobs, having an equal share of part-time work and self-employment – everything suggests that there are major benefits to be gained from enhancing gender equality.

Link to [Report](#)

## Working Conditions

### New reviews of working conditions in the EU

Eurofound recently published its 6th Annual Report on working conditions in the EU. The Report outlines relevant legislative and policy developments during the period of 2008-2009 in the context of labour market mobility and demographic change. It also explores a range of issues and challenges related to working life and the workplace.

Link to [Annual Report](#)

Meanwhile, the European Agency for Health and Safety at Work (EU-OSHA) has released the results of a Europe-wide opinion poll on health and safety at work. According to the findings, there is widespread concern among European citizens that the current economic crisis could adversely affect health and safety at work, putting at risk the improvements that they report having seen over the last five years. Many Europeans also feel well informed about occupational safety and health and consider it an important factor when choosing a new job.

Link to [Survey results](#)

## National Developments

### France

#### Residence permits for creating jobs

The French Government has published a decree that will grant 10-year residence permits to foreign entrepreneurs and business people if they help to create (or save) fifty or more jobs, or are willing to invest at least 10 million euros in France. It is estimated that 1,000 people will eventually receive permits, with 200 permits set to be awarded in 2010.

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

#### Change to redundancy procedures

The French National assembly has adopted at first reading a draft amendment to the labour code designed to ensure that employees of international companies who are at risk of redundancy are given the option of working for the same company in another country. In the event of such an offer the employee would be informed about the salary, terms and conditions applicable to the position. The employee would then have six days to consider the offer. If no response is forthcoming then their employer may assume that the offer has been refused.

Link to [Proposed law](#) (in French)

### United Kingdom

#### Greater flexibility for working parents

In future, working mothers in the UK who only use six months of their twelve month entitlement to maternity leave will be able to transfer the remainder of the period to their partner. In such circumstances, fathers will continue to be entitled to two weeks paid paternity leave, but may additionally take three months paid parental leave, plus three months unpaid leave.

Link to [BIS website](#)

#### Implementation of Agency Workers Directive to be delayed

In October, the UK government announced that it would delay until 2011 the implementing into domestic legislation of the Agency Workers Directive (2002/104/EC) which gives workers hired through temporary agencies rights equal to those of formal employees. Implementation should therefore be complete just two months before the official deadline set by the Directive, which is 5 December 2011.

Link to [Press release](#)

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