

EU Employment Law Practice

European Employment Report November 2008

EU Labour law

Towards a 48h working week for all?

On 5 November the European Parliament's EMPL Committee voted by a clear majority (35 in favour, 13 against and 2 abstentions) for the report on the revision of the Working Time Directive by the Spanish Socialist MEP Alejandro Cercas, by which exceptions to the 48-hour working week (the 'opt-out') would be phased out after three years. This, despite Member States in June agreeing to preserve the opt-out indefinitely. The UK and 14 other countries currently make use of the opt-out. Another issue dividing the Parliament and Council is whether 'on-call' should contribute to the calculation of the hours worked in a week.

The text also foresees safeguards on the use of the opt-out. Individual workers will have to agree expressly to work longer than 48 hours. Such agreement cannot be given in the first four weeks of work or in their employment contract, and is only valid for a year (renewable). A worker refusing to agree cannot suffer detriment as a result.

The revised Directive must be agreed both by the Parliament and the Council acting in 'co-decision'. Parliament is scheduled to adopt its formal position in the Plenary session on 17 December. Informal negotiations between the EP and the Council might yet result in an agreement before then. Otherwise, if the EP votes against the Council's position, the dossier will have to be resolved through the conciliation procedure, of which the outcome is uncertain.

Business groups (UEAPME, Business Europe) expressed dismay, saying the elimination of opt-outs would deprive them of the flexibility needed in times of economic crisis.

Link to [EP Press release](#), [UEAPME statement](#), [BusinessEurope statement](#) and [ETUC statement](#)

European Works Councils – EP Committee torpedoes social partner agreement

In a move which has upset business groups, Socialist Parliamentarians have introduced new amendments to the draft revised European Works Councils Directive, despite the European social partners having put forward a compromise text in August. It was expected that the compromise text would be formally endorsed by the Council and the Parliament by the end of the 2008. The amendments were voted by the European Parliament's EMPL Committee with 36 in favour, 10 against and 1 abstention.

Among the changes, MEPs amended the definition of when a situation is 'transnational' (triggering the information and consultation obligation). MEPs agreed that this would apply to cases where a decision taken in one country affects workers in another. MEPs also deleted a clause asking for a threshold of 50 employees to be required in order to establish a Works Council (EWC) for trans-European companies.

Centre-right MEP Philip Bushill-Matthews, the Parliament's Rapporteur, abstained from the vote. He said he felt deceived by the trade unions, which he said had specifically asked him not to table any amendments to the deal reached by the social partners. In a press interview he said *"I accepted their advice on the assumption that the other side would do the same and respect the agreement"*. He blamed trade unions for *"actively encouraging"* socialist MEPs to table a number of amendments *"which would move the agreement in a very different direction"*.

It will be important to follow whether further amendments are put forward for the Plenary vote in mid-December.

Link to [EP Press release](#)



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Labour Mobility

EU Blue Card scheme approved by MEPs

On 20 November, the European Parliament's approved the Blue Card scheme for highly-qualified migrants, by 388 votes to 56 with 124 abstentions thanks to mass support from Socialists and the Centre-right EPP group.

In contrast to the US Green Card scheme, the EU Blue Card will not give permanent residency and it will only be valid for two years (renewable).

Points of controversy included the definition of 'highly-qualified labour'. Under the EP's text applicants must demonstrate either higher education qualifications (at least three years of study) or professional qualifications supported by at least five years of work experience. Applicants will also have to secure an employment contract worth 1.7 times the gross average wage of the country where they will be working before their arrival.

Parliament Rapporteur Ewa Klant (EPP-ED, Germany) sees this as a step in the right direction and stressed the need for the EU not to lose out on skilled migrant labour, highlighting that *"50% of skilled migrants from Maghreb states go to the US or Canada, only 5.5 % come to EU"*.

Some Member States and left-wing parties pushed for a 'more balanced' policy including a minimum wage equivalent to 1.3 times the national average wage arguing that the higher requirements could undo the benefits of the scheme.

MEPs stressed that the card must not be seen as a right for immigrants and it should be possible to refuse to issue it if the criteria are not met. National authorities must have the option of refusing to accept holders of blue cards issued by a different Member State in order to recruit a worker instead from the country in question or another Member State. MEPs say that Member States should not actively seek to encourage a brain drain from non-EU countries particularly for healthcare workers and teachers.

The Parliament is formally only consulted on this dossier (to be adopted under the 'consultation' rather than 'co-decision' process). The dossier will return to EU interior ministers in the Council to adopt the Directive, either in December 2008 or early 2009.

Link to [European Parliament Press release](#) (20 November)

Sanctions for employers of illegal migrants

According to a Parliament report drafted by Italian MEP Claudio Fava (PES), to be presented to the Plenary in December, employers of illegal immigrants should be punished rather than the workers themselves. The report, adopted by a clear majority in the European Parliament's LIBE Committee on 4 November, will guide negotiations with EU Member States on a proposed directive to sanction employers of illegal migrants.

The 'Sanctions Directive' will introduce EU-wide minimum penalties for employers of illegal migrants. Fines will increase in proportion to the number of illegal immigrants employed. Payment of overdue taxes and contributions will have to be covered, while companies will be excluded from public procurement tenders and aid for up to five years. Criminal sanctions would also follow should the employer re-offend or use a large number of illegal migrants, or when there is evidence of violence, exploitation or human trafficking. MEPs also want to make contracting parties jointly responsible for the use of illegal labour by sub-contractors, and to that effect introduced a clause to further penalise employers of minor irregular migrants. Member States would have to ensure that illegal workers can file complaints against their employers. MEPs proposed that civil society organisations should be able to help illegal migrants in this process without facing legal proceedings for assisting them. The Parliament also called on Member States to monitor the situation by carrying out *"a sufficient number of effective inspections"*.

The dossier now goes to the Council, where southern countries on the one hand and Germany, Poland, Sweden and the Netherlands on the other are

expected disagree over the issue of criminal sanctions.

The proposal has caused an outcry from Europe's small and medium-sized construction companies, concerned that they might have to pay the cost of repatriating third-country illegal immigrants they may have employed. The European Builders Confederation (EBC) denounced the vote by the LIBE Committee, which they say goes in the direction of systematic payment of such costs, arguing that *"employers cannot be held responsible for removing illegal immigrants from European territory since they are not responsible for their entry"*. The EBC also finds unacceptable that SMEs can be held jointly and severally liable in cases of illegal practices by temporary employment agencies whose services they use. The main assignment of such agencies is to provide legal manpower, it argues.

Link to [EP Press release](#), [Draft proposal](#) and [EBC press release](#)

Free movement of workers is good for Europe's economy

According to a European Commission report published on 18 November, workers that have moved from the countries that joined the EU in 2004 and 2007 to other Member States to work have had a positive impact on host Member States' economies and have not led to serious disturbances on their labour markets.

The population statistics and labour force survey data set out in the report show that the average population share of nationals of the countries that joined in 2004 (EU-10) living in the EU-15 rose from 0.2% in 2003 to 0.5% by the end of 2007. During the same period, the population share of Bulgarians and Romanians living in the EU-15 increased from 0.2% to 0.5%. The majority of mobile workers from the new Member States which joined in 2004 – mostly from Poland, Lithuania and Slovakia – went to Ireland and the UK, while Spain and Italy have been the main destination countries for Romanians. Yet, with the exception of Ireland, post-enlargement flows from the new to the old Member States have been significantly outnumbered by recent immigration of non-EU nationals.

Evidence also suggests that many EU workers move to other Member States on a temporary basis but do not intend to stay permanently.

The report also highlights that in the wake of current economic developments it is likely that a possible decline in labour demand will reduce labour flows within the EU. Recent economic slowdowns in some countries have already led to a substantial reduction in new entries, in parallel to an increase in return migration. This is a sign that free labour mobility is self-regulatory by nature and provides a much needed flexibility in both directions: workers go to where there is demand for labour and many leave again when employment conditions become less favourable.

Link to [Report on Impact of Free Movement of Workers](#) and [Employment in Europe Report 2008](#)

Gender equality

European Parliament issues recommendations on how to tackle pay gap

Changing existing legislation, introducing regular pay audits for companies, boosting the role of equal pay bodies and introducing appropriate penalties are the key recommendations made by the European Parliament in a legislative initiative report to reduce the pay gap between men and women by Edit Bauer (EPP-ED, Slovakia), adopted by 590 to 23 with 46 abstentions by the EP plenary in Strasbourg. Current legislation has been in force for more than 30 years but is no longer narrowing the trend and MEPs therefore request the European Commission to come up with draft legislation before the end of next year to update the current rules.

The European Parliament suggests: 1) the introduction of compulsory regular pay audits for companies (of at least 20 members of staff, for example) and the compulsory publication of the results; and 2) a clear definition of concepts like the gender pay gap and direct and indirect discrimination as well as establishing job evaluations complying with equal pay for men and women rules. It also suggests: 1) that the Commission and Member

States boost existing legislation by introducing appropriate penalties; 2) conducting a study on the feasibility and effectiveness of introducing penalties like compensating victims, administrative fines, employers being disqualified from benefits and subsidies, and naming and shaming offenders; and 3) that equal opportunities bodies should play a special role by influencing more effectively and more independently the application of gender equality legislation.

The Commission is under no obligation to follow these recommendations.

Link to [Legislative Report](#)

Informal Council of Lille spells out stakes of professional equality between sexes

On 14 November in Lille, an Informal Council and conference were held to discuss equality in the workplace, and also to lay down the objectives to be achieved and to promote best practice existing in the EU. The event brought together representatives from European institutions and civil society. On this occasion the ministers of the three current and future Council Presidencies (France, the Czech Republic and Sweden) adopted their gender equality programme for the next 18 months.

In their joint declaration, the ministers announced their intention to amongst other things (i) reinforce gender equality, particularly by specific measures contained in the future post-Lisbon strategy, (ii) step up the fight against gender stereotypes to improve the balance between men and women in professional life; (iii) improve the quality of life of women, by giving them flexible working hours rather than prescribing part-time work; (v) assess concrete progress in the framework of the Beijing platform and see what remains to be done for post-2010; and (vi) continue to promote gender equality in all configurations of the Council by raising awareness among the Member States of the EU.

A series of meetings will be held over the next 18 months by each Presidency:

France

- Informal meeting of ministers for family affairs on reconciliation of professional and family life;
- Informal meeting of ministers for gender equality on professional equality between men and women;
- Second Equality summit;
- Follow-up of the Beijing Platform for Action: adoption of Council conclusions on: reconciliation between professional, family and personal life

Czech Republic (which takes over the Presidency in January 2009):

- European conference on new ways to overcome gender stereotypes;
- Adoption of Council conclusions on equal opportunities for women and men in generation 50+ in active life and dignified ageing;
- The 98th Session of the International Labour Conference 2009;

Sweden (taking over from 1 July 2009)

- Ministerial conference on gender equality for economic growth and employment in the next decade, adoption of Council conclusions based on conclusions from conference;
- Follow-up of Beijing Platform for Action: adoption of Council conclusions based on a report on Beijing +15;
- Promote women entrepreneurship at the Informal Competitiveness Council;

Welcoming the declaration *"which shows the importance of the subjects dealt with and in order to ensure the continuity of the first declaration and actions carried out by the first presidential Trio"*, Commissioner Špidla, announced that the Commission was soon to adopt a mid-term progress report on the road map on equal opportunities. The Commission is also working on preparations for the political agenda post-2010: in 2009, it will hold a conference which will take stock of the situation and propose action plans for the future.

Link to [Lille Declaration](#) and [Opening Speech](#)

Working Conditions

Unions & industry join forces for “fair conditions” for agency workers

UNI, the global union for skills and services (representing 900 individual trade unions) and the corporate members of Ciett, the International Confederation of Private Employment Agencies, have decided to combine forces to fight for “fair conditions” for temporary agency workers. For this purpose, they signed a Memorandum of Understanding (MoU) to create a partnership and to launch a global social dialogue. UNI and Ciett also aim to work with the International Labour Organisation to promote the ratification of ILO Convention 181 and the application of Recommendation 188 on private employment agencies.

Link to [Press release](#) and [MoU](#)

ILO strengthens efforts to help private sector fight forced labour and human trafficking

The Special Action Programme to Combat Forced Labour (SAP-FL) of the ILO has prepared a new handbook to fortify the capacity of employers and business leaders to assess the risk of forced labour and human trafficking in their operations and global supply chains. The new publication entitled “Combating forced labour: A handbook for Employers and Business”, provides information on issues such as forced labour, human trafficking, prison labour, debt bondage, abuses in labour contract systems, overtime and different forms of coercion in employment. It was developed in extensive consultation with experts from companies, as well as international and national employers’ organisations and civil society groups, all from different regions and economic sectors. The handbook provides practical guidance for businesses of all kinds, including advice on what action they can take to prevent or get rid of forced labour in their supply chains. The new handbook has been endorsed by the International Organization of Employers.

Link to [Handbook](#)

Growth and Jobs

Commission publishes Employment Report 2008

On 18 November, the European Commission published its 20th annual edition of the Employment in Europe report, which has become one of the main tools of the Commission in supporting Member States in the analysis, formulation and implementation of their employment policies. As in previous years, the report addresses topics that are high on the European Union’s employment policy agenda. It gives a comprehensive overview of the employment situation in the EU, as well as an analysis of key labour market issues, including:

- immigration
- post-enlargement intra-EU labour mobility
- quality of work
- the link between education and employment

Link to [Communication re Key Messages](#) and [2008 Report](#)

First meeting of Euromed employment ministers

On 9-10 November in Marrakech (Morocco), the employment ministers of the 27 EU countries and 16 Mediterranean partner states met for the first time to discuss employment, employability and decent work. At the end of the conference the ministers adopted a framework for action to strengthen dialogue and joint measures at regional level. The meeting looked at concrete proposals to promote job creation, labour market modernisation to improve the ability to react to changes, and development of human resources geared to the needs of the labour market. The ministers emphasised the importance of an integrated approach combining employment policy with economic, tax, social and environmental policies, as well as education and training policy. The next Euro-Mediterranean conference of ministers of employment and labour is scheduled for 2010.

Link to [Meeting conclusions](#)

National Developments

Denmark – International framework agreement on labour rights signed at Danske Bank

In September 2008, the largest Danish financial enterprise, Danske Bank, and UNI global union signed an international framework agreement on fundamental labour rights covering 24,000 workers. As the majority of Danske Bank’s employees are in Denmark, Finland, Ireland, Norway and Sweden, the agreement was negotiated by UNI Finance, the global union for finance workers, in cooperation with the finance unions in these countries. The trade unions involved included the Irish Bank Officials Association in Ireland, the Finance Sector Union in Norway, the Financial Sector Union in Sweden, the Financial Sector Union in Finland, as well as the National Insurance Workers’ Association and the Financial Services Union in Denmark.

This agreement is the latest in a series of international framework agreements (other agreements include the car, media and steel sectors) that aim to guarantee minimum international labour standards. In the case of Danske Bank, the agreement also contains far-reaching commitments regarding employment policies. The agreement represents a transnational framework of industrial relations, which will be used for the implementation of the group-wide human relations policies.

Link to [Agreement](#)

Netherlands – New scheme to reduce redundancies

Employers and unions in the Netherlands are currently discussing a ‘credit crisis bridging scheme’ to shorten the work week of employees in companies affected by the downturn. The scheme would last for between six and eighteen months, during which time employees would continue to receive their normal remuneration. However, employees subject to the scheme would undertake training during their lay-off periods and their employers would receive interest-free state credits equal to 70% of the remuneration due for the cut in working

time (repayable after the scheme ends). The Dutch government appears to be in favour of the scheme, but it will still be necessary to gain formal cabinet approval and the personal support of the social affairs minister, Piet Hein Donner. If the scheme is endorsed, it could be up and running by the end of the year.

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

Portugal – Parliament approves revised labour code

Portugal's parliament has now approved extensive revisions to the country's labour code. The changes include scope to: (i) extend probationary periods from 90 to 180 days, unless a contract is temporary or with a previous employee; (ii) increase average working time to 50 hours a week for periods of up to two months; (iii) transfer workers to other tasks for up to six months, unless such a change will 'seriously disadvantage the worker; (iv) arrange with employees to create a working time reserve. This will permit the employer to extend working time up to 200 additional hours per year, paid at the normal (rather than a premium) rate; (v) concentrate full-time weekly work schedules into three or four days; and (vi) introduce new 'intermittent' employment contracts, which provide a minimum of 6 months' full-time employment per year (of which 4 months must be continuous). However, fixed-term contracts will be limited to a total duration of three, rather than six years. The new legislation will come into force on 1 January 2009.

Link to [Minister of Labour OECD Speech](#)

The Weeks Ahead

Council

11-12 December – European Council meeting

15-16 December – Employment, Social Policy, Health and Consumer Affairs Council

1 January 2009 – Czech Republic takes over Presidency

European Parliament

1-2 December – LIBE Committee meeting

2 December – EMPL Committee meeting. Link to [Draft Agenda](#)

15-18 December – Plenary

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:

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