

EU Employment Law Practice

European Employment Report January 2009

EU Labour law

Ministers discuss new strategy on working time

During the 22-24 January informal Employment and Social Affairs Council, the hotly debated issue of the Working Time Directive again took centre stage. The major stumbling blocks remain the way to calculate on-call time, the opt-out from the maximum 48-hour week and compensatory rest.

The Czech Presidency has given itself until March to work out a compromise on the Directive. It faces two challenges. First, obtaining a negotiating brief from the Council, identifying aspects on which the 27 Member States might agree to concede. Second, finding common ground with the European Parliament which in December 2008 overwhelmingly rejected the Council common position.

The Czechs will now present a proposal to the Committee of Permanent Representatives (Coreper I) with the aim of starting informal talks with the European Parliament. Probable dates are either 10 February or 3 March. Formal conciliation proceedings are most likely to start on 17 March.

The Czech Presidency put forward a compromise proposal suggesting that the current opt-out would not be part of the proposed revision, but would be reviewed after a certain period of time. The proposal also asks ministers whether the use of the opt-out should be narrowed down to only certain sectors if the economy.

Commissioner Spidla commented that "*It is very important that we reach a compromise as soon as possible because the current directive is not satisfactory for any of the Member States*".

Link to [Commission Press Release](#)

Opinions diverge on maternity leave

On 19 January, the European Parliament held a public hearing on the European Commission's 3 October 2008 proposal to extend minimum maternity leave in the EU from 14 to 18 weeks and to improve payment levels during such leave.

The Czech Presidency is pushing for a first reading agreement and has stated that it is doing its best to bring the negotiations to a successful conclusion. The issue will be on the agenda of the scheduled 3 February session of the Working Party on Social Questions. The Czech Presidency will prepare a policy debate on this issue during the March Employment Council and will aim to reach a general approach or "*possibly*" a political consensus during the Employment Council in June.

Opinions diverge on the proposal. Some Member States – notably the Czech Republic – have commented that the public budget would not support these new obligations. Other critics suggest the proposed measure could turn against women as they would potentially represent higher costs for their employers.

Edite Estrela (PES, Portugal), draftsman of the EP report on maternity leave, said that women must not be overprotected. "*Gender equality requires balanced participation by women and men in work and the private sphere. Extending the legal basis of the directive to equal treatment would enable provisions on paternity leave to be included*". The EP committee vote is scheduled for 16 April and the plenary vote for May.



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The social partners are also divided. Heidi Loughheed, for BusinessEurope's said "*questions to do with reconciling work and family life must be dealt with separately. The other problem with the proposal is the financial side, which is a matter for all the Member States*". Meanwhile, the delegate from the European Trade Union Confederation (ETUC), Catelene Passchier, argued in favour of a 100% continuation of the salary payments to women.

Link to [BusinessEurope Presentation](#) and [Estrela Report](#)

EU developments

Worker mobility, employment, family policies and social services at the heart of the Czech Presidency Priorities

Under the motto "a Europe without barriers", the Czech Republic took over the rotating EU presidency on 1 January, which will last until the end of June 2009. On 6 January, the Czech Presidency presented its work programme for the next six months. In terms of employment and social policy the Presidency will focus on the following four areas:

1. **Worker mobility in the EU:** with the aim of highlighting the advantages of full liberalisation of the movement of workers within the EU and to facilitate and increase workers' occupational and geographic mobility on the labour market. In concrete terms, the Presidency will propose Council conclusions on the Commission report on the impact of free movement after the enlargement of the EU; will work to complete the modernisation of the legislation on social security coordination for migrant workers; will focus on measures to put an end to undeclared work, to better inform the public of the possibilities and advantages of mobility and will emphasise sharing best practice on removing barriers, such as language barriers. As part of the preparation for the European Spring summit 2009, it will highlight the negative impact of current transitional measures on the free movement of labour.

2. **Increasing employment and labour market flexibility:** the Presidency wants to implement guidelines for growth and employment, and also the general principles of flexicurity. It intends to give priority to increasing labour market flexibility, to flexible employment relationships, based on the principle of "making work pay", to increasing motivation for an active approach to returning to the labour market, and to enhancing the quality of human resources through adult training. In light of these priorities, the Presidency (a) will prepare the conclusions of the Council on the Commission communication "New Skills for New Jobs" with an emphasis on an integrated approach in times of economic crisis: (b) will seek a compromise with the European Parliament in a conciliation procedure on the Working Time Directive. Lastly, during the debate on the Lisbon strategy after 2010, the Presidency will address the issue of modernising labour law.
3. **Support for families:** as part of the debate on work-life balance, the Presidency will consider the issue of parents who stay at home to look after their children and its relation to employment policy. It will continue the discussion of legislative proposals made by the Commission in this area. At a Presidency conference and the informal meeting of EU ministers for family policy (Prague, 4-5 February), the Presidency will emphasise the need to respect the autonomy and freedom of choice for families. It will take account of the qualitative aspect of care services, the socio-cultural environment and the past experience of Member States. At the informal meeting, the Presidency will propose opening a debate on pre-school childcare services.
4. **Social services and social exclusion:** the Presidency will focus on services as a tool for preventing social exclusion and for active inclusion of the most vulnerable and, at the same time, as an area of growing employment opportunities. It will address the availability of social services; will support the

combination of policies in the areas of the labour market inclusion policy, workforce mobility, motivation to find a job, support for adequate income and high quality, accessible and efficient social services; will pay particular attention to improving the quality, availability and financing of long-term care, protection of the dignity and rights of persons dependent on care, and support for active, healthy ageing and ageing well.

Link to [Work Programme](#)

Labour mobility

Bulgarian and Romanian workers granted free access to Greek, Spanish, Hungarian and Portuguese labour markets

On 8 January, the European Commission announced that Greece, Spain, Hungary and Portugal have now lifted restrictions on access to their labour markets for Bulgarian and Romanian workers. These join ten other Member States which already opened their labour markets to these workers (Finland, Sweden, Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Poland, Slovenia and Slovakia).

By contrast, the UK, Ireland, Germany, Austria, Luxembourg, Netherlands and Belgium announced in the last weeks that they would keep their labour markets closed to Bulgarians and Romanians for a second period of three years, citing as the main reason the economic downturn.

The issue of the free movement of labour topped the agenda of the informal Employment and Social Affairs Council (22-24 January). Discussions focused on:

Geographical mobility: How to eliminate obstacles to mobility such as linguistic barriers and cross-border recognition of qualifications.

Professional mobility: Exchange of views on how to increase the efficiency of job markets and the quality of human resources.

Mobility towards employment (active inclusion): How to integrate workers from disadvantaged groups into the

labour market, including incentives to enter the labour market, income support schemes and high-quality, easily accessible services, including social services.

Link to [European Parliament Press release](#), [Petr Necas speech](#) and [BusinessEurope speech](#)

EP and Council agree on penalising employers of illegal immigrants

On 21 January, members of the EP Civil Liberties Committee adopted by a large majority a compromise on a Directive providing for sanctions on employers of illegal immigrants.

Under this compromise Member States will be obliged to punish employers by introducing fines, with an obligation to pay back wages due under the conditions applying to legal workers and ineligibility for up to five years for participation in tenders for public contracts in their country and at EU level, imposing penal sanctions for repeat offenders, employers of large numbers of illegal workers, those imposing slave-like conditions or employers knowingly employing victims of human trafficking.

This text is set for likely adoption at first-reading, but first has to be debated at in the European Parliament's plenary session on 19 February.

Link to [European Parliament Press Release](#)

ECJ allows employees to accrue holiday while on sick leave

In a judgment of 20 January in the joined cases C-350/06 and C-520/06 *Schultz-Hoff v Deutsche Rentenversicherung Bund* and *Stringer v HM Revenue and Customs*, the ECJ confirmed that a worker does not lose his right to paid annual leave which he has been unable to exercise because of sickness. He may take the annual leave on his return or be compensated for his annual leave not taken if their employment terminates.

The Landesarbeitsgericht Düsseldorf (Germany) and the House of Lords (United Kingdom) had both sought

clarification on the entitlement to paid annual leave enshrined by the Community working time directive 2003/88/EC in cases relating workers on sick leave.

Referring to the four weeks' minimum holiday that workers are entitled to under the Working Time Directive, the ECJ held that national legislation or practices can prevent workers from taking this holiday while on sick leave. However, workers do accrue the holiday for the entire duration of sick leave and must be allowed to take it on their return to work, whenever that is, or to be paid in lieu of it if their employment terminates.

The judgment has potentially serious financial and practical ramifications for employers, who could find themselves facing significant financial liabilities or disruption when employees seek to take significant periods of holiday following extended sick leave.

Link to [judgment](#)

Corporate Social Responsibility

Denmark - introduces mandatory CSR reporting

Mandatory CSR reporting will become a reality for most of the largest private and state-owned companies in Denmark as from 2010 following the adoption by the Danish Parliament in mid-December 2008 of a law forcing some 1,100 companies in Denmark to include corporate social responsibility information in their annual financial reports. Their reports will now have to contain information about their corporate CSR or socially responsible investment policies, the ways in which they have been implemented and the results they have produced. For the time being, reporting is voluntary. The purpose behind the proposal is to encourage Danish businesses to actively work on social responsibility, which, at the same time, could create better business opportunities.

Denmark is following the lead of other countries in Europe where CSR reporting has become mandatory. In France for example, all listed companies have had

to divulge information about social and environmental conditions in their annual reports since 2001. In the UK, companies have been required to report on social and environmental conditions since 2007.

Meanwhile, corporate social responsibility still features on the EU agenda, as indicated recently by Günter Verheugen, Commissioner for Enterprise and Industry in a speech made at the presentation of the results of the European Alliance on CSR.

Such a statement has also been highlighted in the recently published annual report analysing productivity and competitiveness issues in the EU. For the first time the report points out the positive link between competitiveness and CSR.

Link to speech: [Verheugen Speech](#), [European Competitiveness Report](#) and [Danish Law](#)

European Parliament own initiative Resolution on social responsibility of subcontractors

A Parliament Committee is putting forward a draft Resolution on the social responsibility of subcontracting undertakings in production chains.

The draft report by Finnish Social Democrat MEP Lasse Lehtinen, discussed in the 20-21 January EP Employment and Social Affairs Committee (EMPL) sets out a European solution to subcontracting problems. He explains that while subcontracting has been on the increase, the potential for misusing it and avoiding legislation has been on the increase as well. He proposes a European 'joint/client liability' system which would ensure that the main contractor gives greater consideration as to whether the contracting party is reliable and intends to act in compliance with the requirements of the legislation in place, notably the Posting of Workers Directive.

He calls on the Commission to put forward a proposal on social labelling, based on criteria such as compliance with core labour standards, social rights, employee training and equal treatment.

He also calls on the Commission to propose legislation introducing joint and

several liability at European level. In Mr. Lehtinen's view clear, transparent EU rules would drive dubious operators out of the market and improve the functioning of the single market. According to him, the scope of the liability prescribed in such a piece of legislation should include at least wages, social security contributions and taxes.

The Employment Committee is expected to vote on this report on 11 February 2009. The vote in Plenary is scheduled to take place in March 2009.

A Parliament Resolution is not constitute a legislative proposal, and its recommendations to the Commission to propose legislation are non-binding.

Link to Draft report: [Draft Report](#) and [Proposed amendments](#)

National Developments

Germany – Parliament votes to extend minimum wage

On 22 January the German government announced minimum wages in the field of old-age care, waste industry, security industry, large-scale laundries, advanced job training and special mining tasks. Previously Germany had a minimum wage for construction workers, building cleaners and mail services.

Rather than a general minimum wage act Germany takes a sector by sector approach. If the government feels that salaries are too low in a given sector, it will set a minimum wage for that sector. Due to the equal pay rule, temporary work agencies must also obey these rules when seconding employees.

Link to [Financial Times Article](#)

Slovenia – Job subsidy plan moves ahead

The Slovenian national assembly will shortly debate a bill that will provide job subsidies to companies that agree to cut the working week rather than make employees redundant. Under the proposed plan approved by the parliamentary labour committee on 12 January 2009, subsidies will only be granted if an agreement has been reached between a company and a representative trade union.

Companies reducing the work week from 40 to 36 hours will receive 60 euros per worker and those reducing the workweek from 40 to 32 hours will receive 120 euros per worker. The subsidy will be available for a period of six months, during which redundancies will be prohibited and recipient companies will not be permitted to pay out executive bonuses.

The move to introduce job subsidies arises from a collective agreement reached between employers associations and trade unions last year. It has little support within the Slovenian labour ministry and the Labour Minister, Ivan Svetlik, has pointed out that it would be far cheaper for the state to support unemployed workers than to give subsidies to a high proportion of the national workforce.

Link to [Randstad article](#)

The Weeks Ahead

Council

5-6 February – parental Childcare and Employment Policy

9-10 March – Employment, Social Policy, Health and Consumer Affairs Council (EPSCO)

19-20 March – European Council

25-26 March – Flexicurity: Lifelong Learning and Social Protection Components (Prague)

European Parliament

2-5 February – Plenary (Strasbourg)

10-11 February – EMPL Committee meeting

2 March – EMPL Committee meeting

30-31 March – EMPL Committee meeting

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