



EU Employment Practice Group

June / July 2010

EU Developments

Proposed Directive facilitating intra-corporate transferees

On 13 July the European Commission published its long-awaited proposal for a new EU Directive on intra-corporate transferees (ICT), intended to make it easier for multinational corporations to transfer non-EU employees temporarily to another branch or subsidiary located in the EU.

Specifically, it is intended to address a number of obstacles which currently exist for companies wanting to transfer non-EU nationals to the EU temporarily: the lack of clear specific schemes, the complexity and diversity of visa or work permit requirements, costs and delays in transferring foreign ICTs from one European corporate headquarters to another and the difficulties with securing family reunification. Additional difficulties exist for the mobility of ICTs across Member States within the EU.

The main highlights of the proposal are:

- Transparent and fast-track entry procedure: 30 days to process applications, with a common definition and harmonised criteria;
- Single application for a combined work and residence permit;
- Procedural safeguards: possibility to challenge rejection decisions and requirement that authorities give reasons for such decisions;
- More attractive residence conditions for the families: handling of applications for family reunification in the first State of residence within two months;
- Enhanced mobility within the EU: ICTs would be issued with a permit allowing them to carry out their assignment in the employer's various entities, including, under certain conditions, those located in other Member States;
- Level playing field with EU workers: ICTs should enjoy the same working conditions as posted workers whose employer is established on the territory of the EU;
- Flexible system to take account Member States' needs: this Directive would not create a right of admission; Member States would still be able to determine themselves the volumes of admission of third-country nationals entering their territory.
- A fast-track procedure for recognised undertakings, allowing accelerated procedures for the issuance of permits and visas.

This is just the first stage of the legislative procedure. The proposal still has to be agreed by the European Parliament and the Member States in the Council, a process which can take more than a year and during which the proposal can be amended many times.

Link to [Press release](#) and [Background documents](#)

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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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European Council adopts directive on self-employed workers

On 24 June 2010, the European Council adopted a Directive strengthening the protection of self-employed workers and of “assisting spouses”, following an agreement in the European Parliament at second reading.

The new Directive entitles self-employed women and assisting female spouses of self-employed workers to maternity benefits for the first time.

The Member States now have two years to transpose the new directive into national law, and where justified by particular difficulties may be granted an additional period of two years.

Meanwhile, the European Parliament has postponed the vote on the Maternity Leave Directive until the Autumn, while it awaits the results of an impact study on “the costs of a longer maternity leave and on the introduction of a paternity leave”.

Link to [European Council Press Release](#)

ETUC reiterates key demands for Working Time Directive

The first phase of the European Commission’s consultation on working time closed for comment on 7 June 2010. In its contribution, the European Trade Union Confederation (ETUC) reiterated its key demands, principally an end to the opt-out and the inclusion of on-call working time and compensatory rest periods.

The ETUC considers that the dialogue with employers’ associations on a review or revision of the directive is at present impossible as the “positions of the social partners are too far apart”. These positions are set out in a resolution adopted by ETUC’s Executive Committee. They confirm the need for a second phase of consultation of the social partners as foreseen by Article 154 TFEU.

European Commissioner for Employment, László Andor, speaking before ETUC’s Executive Committee, welcomed ETUC’s recently adopted contribution to the first consultation phase and said that he was looking forward to the negotiations with the social partners in the months ahead. The Commissioner also reiterated his commitment to improve legislation of the Posting of Workers Directive through a future legislative procedure.

Link to [ETUC position paper](#)

Belgian Presidency priorities for 2010

On 1 July, Belgium assumed the rotating Presidency of the Council of the EU. The Presidency’s priorities in the field of employment and social affairs will be continue to combat the negative impact of the current economic

crisis on employment. The Presidency will also be the first Presidency to implement the Employment Strategy. Within the context of the EU2020 Strategy, Belgium will address four areas: greening the economy, promoting a work and ageing society pact; integrating and mobilising talent on the employment market; developing Flexicurity through the concept of making transition pay.

The Belgian Presidency will also continue the work done under the Spanish Presidency on the proposal for the revision of the Working Time Directive, health and safety of pregnant workers, the portability of pensions within the context of an ageing population and the new strategy on equality between men and women (2011-2015).

Link to [Belgian Presidency Programme](#)

ECJ Developments

Clarification of rules on pay during pregnancy or maternity leave

The European Court of Justice (“ECJ”) has clarified the obligations of employers to pay allowances to workers during pregnancy or maternity leave, where they are temporarily transferred to another job or granted leave from work.

Two separate references on the application of the Pregnant Workers Directive (92/85/EEC) had been made to the ECJ by national courts, one from Austria and another in Finland.

In the first case, Ms Gassmayr had worked before as a junior hospital doctor, and received in addition to her basic pay, an allowance for on-call duty. She stopped working during her pregnancy and was refused that allowance during the period when she was not working. Austrian law excluded the payment of the on-call duty allowance to persons who are not actually performing on-call duty.

In the second case, Ms Parviainen had worked before her pregnancy as a purser for the airline Finnair. A substantial part of her pay was made up of supplementary allowances attached to her seniority or intended to compensate for the specific disadvantages connected with the organisation of working time in the air transport sector. On becoming pregnant, she was temporarily transferred to a ground job until her maternity leave began. Following that transfer, her monthly pay was reduced, in particular because she no longer received the allowances for being a purser.

Both women brought actions against their employers on the ground that their remuneration had been reduced during their pregnancy or maternity leave. The national courts referred the cases to the ECJ, asking whether the Pregnant Workers Directive allows employers to refuse to pay certain allowances which the workers had received before their pregnancies.

The ECJ held that:

- Both Ms Gassmayr and Ms Parviainen were no longer able to perform the duties which had been entrusted to them before their pregnancies.
- Certain allowances were dependent on the performance of specific functions, intended to compensate for the disadvantages related to those functions. The payment of these allowances may therefore be conditional on the pregnant worker actually performing specific duties in return.
- A pregnant worker who is granted leave from work or temporarily transferred to another job because of her pregnancy must be entitled to remuneration consisting of her basic monthly pay and the pay components and supplementary allowances relating to her occupational status, such as those relating to her seniority, length of service and professional qualifications.
- The remuneration which must be maintained for a pregnant worker temporarily transferred to another job cannot be less than that paid to workers occupying that job. For the duration of the temporary transfer, the pregnant worker is also entitled in principle to the pay components and supplementary allowances relating to that job.
- As regards workers on maternity leave, the Court notes that their position is not comparable to those actually at work, and they are not therefore entitled to continue to receive their full pay or to be paid an on-call duty allowance. Moreover, the directive itself provides that the minimum remuneration payable to them is equivalent to that which the worker concerned would receive in the event of a break in her activities on health grounds.

Finally, the Court noted that the Directive only lay down the minimum and that Member States were free to maintain, for workers granted leave from work or temporarily transferred to another job during their pregnancy or on maternity leave, their entire remuneration, at a higher level than that guaranteed by the Directive.

The cases now return to the national courts for final determination.

Link to Cases [C-194/08](#) and [C-471/08](#)

Social Dialogue

First European agreement at Thales aims to improve professional development of employees

The first European framework agreement on the subject of annual discussions on individual and collective performance between employees and their managers has been concluded at the electronic systems group Thales. The agreement, signed in April 2010 between the Thales group and the European Metalworkers' Federation, sets out an annual cycle as part of the discussion process and highlights the need for training to ensure an effective evaluation.

Link to [Thales Agreement](#)

Developments in social partner organisations – employer organisations

In June, Eurofound published a report examining the structure and role of employer organisations in the European Union and Norway, highlighting recent trends and developments. The report focuses mainly on national 'peak' employer organisations and sectoral organisations, their role in collective bargaining and tripartite/bipartite dialogue, and the services they provide to members. Other areas examined include sub-national (regional or provincial) employer organisations, organisations that group employers with shared characteristics or interests, and the composition of the leadership of employer bodies.

Link to [Eurofound Report](#)

National Developments

UK

Pension age: Ministers to speed up rise to 66

The UK government recently announced that it intends to speed up plans to raise the state pension for men to 66, possibly by as early as 2016. The previous government's policy was to raise the pension age to 66 in 2024 and then gradually to 68 by 2046. Ministers will also discuss extending it further, perhaps even to 70 and beyond in the following decades. The government also wants to scrap the default age of retirement, which is currently 65. Unions have condemned the move and say these plans will create a "work-until-you-drop" system.

Link to [Press release](#)

Czech Republic

Major improvements to Czech Labour Code

The Czech coalition government has drawn up a number of employer-friendly amendments to the Labour Code including a facility to hire employees on fixed-term contracts of any duration, a reduction in severance pay for new employees and an improved incentive to employ casual workers. Under the proposals, employees with

less than one year's service would be entitled to only one month's compensation, whereas those with one to two years' service would receive two months' compensation. Only after a minimum of two years would an employee be entitled to severance amounting to three months' salary. The government would also like to reduce the costs of employing casual workers for short periods during the year – such as seasonal work. The current exemption from employer and employee social security contributions for such workers would therefore be raised from a total of 150 hours to 300 hours of employment per year.

Link to [New Employment Act](#)

Spain

Spanish Government rushes through labour reforms

The Spanish government has ratified its promised tranche of Labour reforms designed to bring down high unemployment. The new rules simplify employment contracts, reduce severance payments (in some cases) to 25 days per year of service rather than the current 45 days, and make it easier for companies to establish short-time working arrangements. A new Wage Guarantee Fund (Fogasa) is to be established to reduce the burden of severance costs to individual companies. This will top up severance payments by up to eight days per year of service. Spain's two big unions – the UGT and CCOO – have announced that in September they will hold a general strike to protest against the reforms.

Link to [Press release](#)

The Netherlands

Strong demand for temporary workers in industrial sector

Over the year to May 2010 the total hours worked in the Dutch temporary work sector grew by 9%. According to the Dutch Association of Temporary Work Agencies (ABU) growth was particularly strong in the industrial sector, with hours worked up by 26% compared with the same period last year.

Link to [ABU press release](#) (in Dutch)

France

Business transfers and shared employment

The French Supreme Court has clarified the legal position of workers involved in a business transfer who continue, on a temporary basis, to perform some of their duties for their former employer. The court ruled that the new employer assumes responsibility for all employment contracts at the date of the business transfer. Furthermore, if a worker refuses to complete the transfer after a period of shared employment payment of severance compensation falls on the transferee.

Link to [Supreme Court website](#)

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