

July-August 2009

EU Employment Law Practice

European Employment Report

July-August 2009

EU Developments

European Parliament decides Committee chairs and priorities for new term

This autumn sees the first term of the new European Parliament following the June 2009 European elections. In the shake-up of positions, the chair of the Employment & Social Affairs Committee (EMPL) has been given to the socialist grouping, renamed the Progressive Alliance of Socialists and Democrats ("S&D"), which is the second largest political group in the European Parliament with 183 members. The new chairwoman, Pervenche Berès (S&D, France), who previously chaired the Economic & Monetary Affairs Committee (ECON), announced her intention to "create a bridge" between the two committees as she feels that this is of great importance in the current economic crisis.

In a recent press interview Berès outlined her priorities, citing the recurring issues of the revision of the **Working Time Directive**, the functioning of trade unions, the revision of the **Posted Workers Directive**, CEO remuneration and **social responsibilities** of European enterprises as key. Another major point for Berès is the "inclusion of a social dimension in the redefinition of the financial system". When questioned on how the EU can emerge from the current global economic crisis, Berès said that for her the answer lies in the "energy-environment-employment trio of priorities".

The first meeting of the newly-elected EMPL committee meeting is scheduled for 2-3 September. Other members include Spanish socialist Alejandro Cercas, who was instrumental in the European Parliament's opposition against the Council on the revision of the Working Time Directive. Vice-Chairs Elizabeth Lynne (ALDE, UK) and Thomas Mann (EPP, Germany) were also members of the previous EMPL committee.

The dominance of the centre-right group in the EP – notably through the Parliament's largest group, the European People's Party (EPP) – will still likely shape EU legislation to be adopted in the area of employment law in the next five years.

Not only do the centre right groups together have the numbers to introduce amendments to legislative texts, but the Commission will also have to have in mind the political make-up of the Parliament when deciding on the content of new legislative proposals.

The Commission is not expected to put forward any major new legislative proposals in the area of employment and social affairs until the successor to the present Barroso Commission (which will finish its term in 2009) is in place.

Other Parliament Committee chairmanships which will have an impact on social and employment policies are LIBE (Civil Liberties, Justice and Home Affairs), given to Juan Fernando Lopez Aguilar (S&D Spain) – responsible for the European Blue Card and immigration policies, FEMM (Women's Rights and Gender Equality) given to Eva Britt Svensson (GUE-NGL Sweden) – responsible for gender equality in the workplace who will have to revisit the report on the revision of the directive to improve the safety and health of pregnant workers or workers who have recently given birth or are breastfeeding and IMCO (Internal Market and Consumer Protection) given to Malcolm Harbour (ECR, UK) – responsible for, inter alia, the services directive and the fight against undeclared work.

Link to [Agenda - 2-3 September](#)



THIS ISSUE

EU Developments

Labour Mobility

Growth and Jobs

Gender Equality

Working Conditions

Social Europe

National Developments

The Weeks Ahead

White & Case LLP
 Avocats-Advocaten
 rue de la Loi, 62 Wetstraat
 1040 Brussels
 Belgium
 Telephone: +32 2 219 16 20
 Facsimile: +32 2 219 16 26

www.whitecase.com

Labour Mobility

EU revises rules on coordination of social security rules

On 27 July, the European Council and Parliament adopted a legislative package updating the coordination of national social security schemes, due to take effect in March 2010. In the EU, social security systems are the exclusive responsibility of the Member States. They vary greatly from country to country in terms of how they are organised and what benefits they offer. These national systems are coordinated at EU level to ensure that citizens can move from one country to another and still be covered.

The new Regulation, like the current one (Regulation 1408/71 and its implementing regulation 574/72) is based on existing rules and does not create any new entitlements to social security. Rather it guarantees that rights in the area of sickness insurance, pensions, unemployment and family benefits are preserved in the event of moving within the EU. The provisions cover anyone who moves to another Member State to settle permanently, work temporarily or study including mobile workers (those who cross the border to work receive family benefits paid by the country where they work, even though they do not live there); job seekers (those who decide to try their luck in another Member State will continue to receive unemployment benefits for a minimum of three months, extendable to six months) and retired people (anyone who has worked in several Member States throughout their career is entitled to combine their periods of insurance to obtain a full pension).

The main changes include the following:

- **More people can benefit** – it now covers not only workers and their families but also those currently out of work, not yet in work, or no longer working. The scope has been extended to cover paternity and pre-retirement benefits. Different branches of insurance such as

employment benefits, family benefits and sickness insurance have been simplified.

- **Simpler and more effective procedures will be put in place** – work has started on the creation of the EESSI (Electronic Exchange of Social Security Information) network and the preparation of the electronic messages required for the calculation and payment of benefits. As certain Member States will need to adapt their national systems, provision has been made for a transitional period of two years (March 2012) for the electronic exchange of data.
- **Faster access to benefits** – Whenever the institutions of different Member States are unable to agree on an individual's status with a view to identifying the applicable social security legislation, provision has been made for a temporary affiliation scheme with payment of benefits.

Link to [European Commission Job Mobility](#) and [EESSI](#) websites.

Countries with closed labour markets lose out

According to a recently-published book, those countries that have not opened their labour markets to citizens of countries joining the European Union in 2004 and 2007 such as Germany have suffered economically whilst those who opened up such as Ireland and the United Kingdom have benefited.

The EU nationals affected by remaining intra-EU labour market restrictions are Czechs, Estonians, Hungarians, Latvians, Lithuanians, Poles, Slovaks and Slovenes (the 2004 enlargement), whose access is restricted by Austria and Germany until 30 April 2011 and Bulgarians and Romanians (the 2007 enlargement) whose access is restricted by Austria, Belgium, France, Germany, Ireland, Italy, Luxembourg, Malta, Netherlands and the United Kingdom until 31 December 2013.

Link to [Discussion Paper on Migration](#)

Growth and Jobs

Temporary agency work in Central and Eastern Europe on the rise

According to a report published on 22 July by the European Confederation of Private Employment Agencies (Eurociett), temporary agency work in Central and Eastern Europe is on the rise and this development is beneficial to the recovery of the European economy. The report reveals that this sector provided over 181,000 jobs in full-time equivalent in 2008 in the seven countries surveyed (Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia).

For these countries, temporary agency work is a relatively new phenomenon that appeared following their accession to the EU. Current economic crisis difficulties notwithstanding, the sector is "well-placed to develop when the economy returns to contribute to recovery and job creation" according to the report. This applies in particular to those countries where the sector is "best established" and where there is a "sound regulatory framework" in place (the Czech Republic, Hungary, Poland and Slovenia). In Bulgaria and Romania, an appropriate regulatory framework must be established in order to maximise potential benefits in the post-crisis period, says the report.

Meanwhile, the EU's Employment Committee (EMCO) has recently approved a report showing how Flexicurity policies can be monitored.

Link to [Eurociett Report](#) and [Flexicurity Report](#)

Europeans have high expectations of EU's role to ease unemployment

According to a Eurobarometer survey published on 24 July, 61% of Europeans fear that the economic crisis will have further negative consequences on

employment, with the Baltic nations being the most sombre. However, 72% of those surveyed felt that the EU is playing a positive role in creating new job opportunities and combating unemployment.

One of the main tools to support those who may lose their jobs as a result of the crisis is the European Social Fund (ESF). In a further effort to boost the European economy, the Commission on 22 July adopted new measures aimed at simplifying the rules for the Cohesion Policy and as part of the measures the Commission may reimburse 100% of the costs declared by the Member States for projects financed by the European Social Fund in 2009 and 2010.

Another tool is the European Globalisation Fund (EGF). Last year 10,000 workers were helped by the fund and, according to the Commission, more than two thirds of those workers found a new job. In 2008, five applications were received from Italy, Spain and Lithuania relating to 6,587 redundancies. Three of those applications were approved in 2008 and the other two in 2009. The latest EU Member State to request assistance is Germany and concerns 1,300 workers made redundant in the mobile phone sector (the third company from this sector to apply). Other applications relate to the automotive sector, textiles, electrical equipment, computers and domestic appliances. Since the fund was established twenty-three applications have been made so far, totalling €130 million and helping around 29,000 workers.

Link to [Eurobarometer Survey](#), [EGF Annual Report](#), [Cohesion Policy website](#), [EGF Germany Press Release](#)

Tackling undeclared work in the European Union

In July, Eurofound published a report on measures to tackle undeclared work in the EU. The report and accompanying database is designed to represent a first step in producing a comprehensive learning hub, where social partners can

pool and share knowledge on how to tackle undeclared work, review evaluations of policy initiatives and explore their feasibility and transferability to other sectors and areas. It is hoped that having identified the gaps in understanding in this database, a more proactive and concerted effort can now be taken to address these shortcomings. If pursued, this database has the potential to become the prime global site for pooling expertise on the fight against undeclared work.

Link to [Eurofound Report](#) and [Database: case studies](#)

Gender Equality

EU gender legislation helping to tackle workplace discrimination

At the end of July, the Commission published its latest report on gender equality. The report looks at how Member States have implemented the key provisions of Directive 2002/73/EC, with a view to identifying the main problems and good practices. According to the report, progress has been satisfactory but it also draws attention to the fact that the Commission has had to take action against some national governments that have not yet brought their laws and procedures into line with the Directive. On the final date for transposition, nine Member States – Austria, Belgium, Germany, Denmark, Spain, Greece, Finland, Luxembourg and the Netherlands had still to notify national transposition measures. Infringement procedures for non-transposition were therefore initiated against those Member States under Article 226 EC. Two of those procedures (against Belgium and Luxembourg) were referred to the Court of Justice. Both countries have since have adopted new legislation following the Court's judgment and the procedures against them have been closed.

Link to [Report](#)

Working Conditions

Differences in working time revealed across Europe

In July, Eurofound published its annual report on working time developments across the European Union and Norway. The report, which looks at working time agreements set by collective bargaining, found that, in 2008, the average collectively-agreed working time week remained unchanged at 38.6 hours. The report revealed major substantial differences in working time between the former EU15 Member States and the majority of the new EU Member States (NMS12). The average working week in the EU15 was 37.9 hours in 2008 (the same as in 2007), while it was longer in the new EU Member States (NMS12) – 39.5 hours (down very slightly from 39.6 in 2007).

Across the EU, the longest working weeks worked by full-time employees in their main jobs are in Romania (41.8 hours), the Czech Republic (41.7 hours) and Latvia (41.7 hours). The shortest are in France (38.4 hours), Belgium (38.6 hours) and Ireland (38.9 hours). Only three of the EU15 countries have working weeks longer than the average for the entire EU27; by contrast, workers in 10 of the 12 new Member States work longer weeks than the EU27 average.

The last attempt to revise the Directive on Working Time failed in May 2009, but the Commission may yet decide to make a new proposal.

Link to [Eurofound Press Release](#) and [Eurofound Report](#)

Social Europe

Industrial relations developments in Europe 2008

In August, Eurofound published its annual report on industrial relations. The review highlights the most significant developments that took place in industrial

relations in the EU Member States and Norway in 2008, both at national and EU level. It first sets out the political context, then goes on to examine levels of coverage of collective bargaining, and trends in bargaining regarding pay, working time and a number of other topics. In addition, this review outlines the year's main developments in employment legislation, social dialogue, industrial action and company restructuring, and explores the impact of the global economic crisis. A specific thematic chapter examines the regulation, industrial relations, employment and working conditions of self-employed workers.

Link to [Annual Review](#)

National developments

Bulgaria – Work experience and qualification bonuses to continue

The leading party in Bulgaria's new coalition government, GERB, has proposed the introduction of new laws aimed at increasing economic growth and creating more jobs. Measures include reviving the agricultural sector, reducing licensing fees for employment agencies, and expanding student loans to allow for a better-skilled workforce. The party is committed to keeping traditional service bonuses for workers. The bonuses, which benefit older workers and reward long service, have been criticised by the International Monetary Fund (IMF) for restricting the entry of older people to the employment market, as employers opt for younger workers on fixed-term contracts to avoid paying the bonus. The IMF claims it is a short-term fix for a longer-term problem in a country with one of the lowest minimum wages in Europe.

Link to [PM Speech on new structure](#)

Czech Republic – Plans to reduce working week

A working group comprising of representatives from the Czech Labour and Finance ministries, employers and

trade unions has been established with the aim of reducing unemployment and the threat of redundancy through the implementation of a four-day working week. Under the proposed scheme employees would work a reduced workweek for less pay, but would receive extra vocational training.

Link to [Press release](#)

France – More aid for economic participation of disabled workers

Employers who employ disabled workers in France are to receive more aid from the Association for the Financial Support of Disabled People at Work (Agefiph). Premiums will increase by 50% if the worker is under 30 and is employed on a young worker or apprenticeship contract, and will increase by 100% for those over the age of 30 employed on a adult worker or apprenticeship contract. To qualify for premiums the employment contracts must be for at least 16 hours per week or 720 hours per year.

Link to [Agefiph website](#)

France – Final approval for Sunday opening hours

The French Senate has approved a bill permitting retail businesses in Lille, Marseilles and Paris to trade on Sundays. Employees working on Sundays will be entitled to be paid double time and, in the absence of a collective agreement, employees regularly working on Sundays will have the right to take off three Sundays a year.

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

Germany – Minimum wage commission established

The German government has established a Minimum Wage Commission headed by SPD politician Klaus von Dohnanyi, with the aim of determining which industries could benefit from a government prescribed minimum wage. The Commission will start its formal

deliberations on the 27th September 2009 and has already identified the meat industry and call centres, among others, as areas for regulation. It will also seek to expand current minimum wages in other industries and has estimated that by the end of the year four million more workers will be protected by a minimum wage.

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

Germany – interim report on 2009 bargaining round

In June 2009, the Institute of Economic and Social Research presented its interim report on Germany's 2009 round of collective bargaining. The study evaluates the collective agreements concluded in the first half of 2009, affecting about 25% of all employees covered by such agreements.

Link to [Report](#) (in German)

Latvia – Labour Code amendments

The Latvian parliament (Saeima) has approved at first reading its most extensive set of changes to the Latvian Labour Code since 2002. Amendments include requiring job advertisements to specify the person responsible for applicant selection, a provision allowing employers to terminate employees on long-term sick leave, an obligation for employers to retain employment contracts within the workplace, and new record-keeping requirements for employees on aggregated working time. The amendments will face two more readings before being made law.

Link to [Press release](#)

Netherlands – Measures to encourage the employment of disabled people

The Dutch Central Bureau for Statistics has just reported that the number of people receiving disability benefits rose from 167,000 in 2007 to 178,000 last year. With new illnesses now qualifying

as disabilities, costs are likely to escalate over the next few years. To counter this trend, the government is in consultation with employers' associations concerning the introduction of a special logo on recruitment advertisements welcoming disabled applicants. 21% of collective agreements concluded since March 2009 have included clauses relating to the employment of disabled workers. Furthermore, the Dutch social affairs ministry will introduce vouchers in September 2009 offering free advice to employers on the benefits of employing people with disabilities.

Link to [Social Affairs Ministry - Benefits and Statistics](#)

Spain – Talks break down in spite of compromise offer

Negotiations on a 'social pact' in Spain have finally broken down. According to economics minister Elena Salgado, the failure of talks was due to the intransigence of the national employers' organisation Ceoe, whilst industry minister Miguel Sebastian commented that "the attitude of the business organization has left much to be desired". Moving to take advantage of the impasse the General Secretary of the trade union CC.OO, Ignacio Fernandez Toxo, has called upon the government to go ahead with "necessary" reforms rather than allow the failure of tripartite social dialogue to lead to inaction. In a document submitted to the government, Ceoe has stressed that it has never broached the sticky subject of lowering firing costs or sought to reduce the current rights of workers. Instead, it had proposed a 5% reduction in social security contributions and, in order to reach a compromise position, had offered to accept a half percentage point cut in social security payments for this year and a one percentage point cut in 2010.

Link to [CEOE statement](#)

The Weeks Ahead

Council

8 September – Committee on Equal Opportunities for Women and Men

30 November – Employment, Social Policy, Health and Consumer Affairs Council

European Parliament

2-3 September 2009 – EMPL Committee meeting

29-30 September – EMPL Committee meeting

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:

James Killick Genevra Forwood
jkillick@whitecase.com gforwood@whitecase.com