

# Newsletter EUSOCP project

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## *European Labour Law Perspectives - Enhancing the Social Pillar*

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Within the Jean Monnet action EUSOCP, the Labour Law Departments at the University of Amsterdam and the University Carlos III-Madrid are issuing a monthly newsletter summarizing the development of the EU Pillar of Social Rights and including comments on EU legislation and case law in the field of Labour and Social Security Law. The newsletter is available via the following links:

- <https://aias-hsi.uva.nl/en/projects-a-z/jean-monnet-eusocp/european-labour-law-perspectives.html>

The European Pillar of Social Rights is divided into three main categories in the field of employment and social policies. Each of these categories contains a number of policy domains, to which different principles are attached. The three categories are:

- Equal opportunities and access to the labour market;
- Fair working conditions (adequate and reliable balance of rights and obligations between workers and employers);

- And adequate and sustainable social protection.

For a further description of the pillar see:

EN: [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en)

NL: [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights\\_nl](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_nl)

ES: [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights\\_es](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_es)

## European Pillar of Social Rights

### **The European Council wants to exclude public service workers from the scope of the new Directive on transparent and predictable working conditions**

*February 7, 2019*

The European Parliament and the Council are negotiating on a European Commission proposal to improve the rights of workers to transparent and predictable working conditions. According to EPSU, the European Council seeks to deny large groups of public service workers EU this new minimum protection. At the end of 2017, the European Commission presented a proposal for a directive on transparent and predictable working conditions that would apply to all workers. The European Parliament made several improvements to the Commission's proposal, but at the same time allowed the exception for workers in the army, police and emergency services to be treated differently and denied certain rights and protection foreseen in the new proposed Directive. European trade union institutions find this exclusion discriminatory and wants to see all workers, starting from those on zero-hour contracts covered by the new directive on transparent and predictable working conditions.

Read on: <https://www.epsu.org/article/eu-governments-set-deny-minimum-employment-standards-millions-public-service-workers>

### **New Directive over transparent and predictable working conditions: Commission welcomes provisional agreement**

*February 7, 2019*

The European Commission, the European Parliament and the Council have reached a provisional agreement on the European Commission's proposal for a new directive to create more transparent and predictable working conditions, in particular for workers in non-standard forms of employment. Up to three million workers in new forms of work, like workers on zero-hour contracts and domestic workers, will be covered by this new Directive. Workers will benefit from more transparency by receiving key information on their working conditions from the start, and they will benefit from new rights leading to more predictable working conditions.

The provisional agreement has been formally adopted by the European Parliament on 16 April. The Council is expected to formally adopt it in June 2019. This will end the legislative procedure.

In an effort to reinforce Europe's social dimension, and as part of the roll-out of the European Pillar of Social Rights, the Commission proposed the initiative on transparent and predictable

working conditions in December 2017. Its aim is to broaden and modernise existing obligations to inform each worker of his or her working conditions, create new minimum standards to ensure that all workers benefit from more transparency and predictability.

Read on:

<https://ec.europa.eu/social/main.jsp?langId=en&catId=1313&furtherNews=yes&newsId=9297>

### **Work-life balance Directive: Commission welcomes provisional agreement**

*January 24, 2019*

The European Parliament and the Council reached a provisional agreement on the European Commission's proposal for a new Directive on work-life balance for parents and carers.

New work-life balance rules will open up opportunities for working women and men to share caring responsibilities, for children and relatives, on an equal basis. The Agreement between the Parliament and the Council sets a European minimum standard of 10 days of paternity leave for fathers following the birth of their child, to be compensated at the level of sick pay. It strengthens the existing right to 4 months of parental leave, by making 2 months non-transferable between parents and introducing compensation for these 2 months at a level to be determined by the Member States. It was also agreed on new European provisions for carer's leave by attributing 5 days per worker per year, as a new European entitlement for workers. Last but not least, the new rules strengthen the right for all parents and carers to request flexible working arrangements. The new rules are a model for how to align social and economic priorities. Businesses will be able to attract and retain talented women and men. The European economy will gain from this proposal, which will contribute to closing the gender employment gap and promote a better work-life balance for both women and men.

This provisional agreement now has to be formally adopted by both the European Parliament and the Council.

To address the challenges that working parents and carers face in reconciling work and family responsibilities, the European Commission proposed the 'Work-life balance' Initiative in April 2017. This initiative is a key deliverable of the European Pillar of Social Rights. The Directive on work-life balance sets a number of new or higher standards for parental, paternity and carer's leave, and the right to request flexible working arrangements. It takes account of the needs of small and medium-sized companies and makes sure that they are not disproportionately affected. The new Directive is complemented with policy and funding measures, supporting EU countries in enforcing existing dismissal protection legislation, developing formal care services and addressing economic disincentives for second earners to work.

Read on:

<https://ec.europa.eu/social/main.jsp?langId=en&catId=1311&furtherNews=yes&newsId=9285>

### **ESCR: self-employed cannot be categorically excluded from collective bargaining**

*January 8, 2019*

Responding to a complaint in 2016 by the Irish Congress of Trade Unions, the European Committee on Social Rights (ECSR) has for the first time released a statement on the collective bargaining rights of self-employed workers. The ECSR stated that “self-employed workers should enjoy the right to bargain collectively through organisations that represent them, including in respect of remuneration for services provided, subject only to restrictions provided by law, pursuing a legitimate aim and being necessary in a democratic society”.

Read on: <https://ijrcenter.org/2019/01/08/european-social-rights-committee-addresses-self-employed-workers-collective-bargaining-rights/>

## **European Reports/Studies**

### **Right to strike in the public sector**

*February 15, 2019*

The right to strike has often been restricted for public service workers and in recent years has come frequently under attack. EPSU has published an extensive study that covers recent challenges to the right to strike, an analysis of which workers are denied the right to strike, the restrictions related to essential and minimum services, government action to prevent or suspend strike action in the public sector and procedural barriers to exercising the right to strike.

Read on: <https://www.epsu.org/article/right-strike-public-sector-europe>

### **Impact of Paris climate agreement on employment**

*February 12, 2019*

Eurofound has published a report on the impact of the climate agreement on employment, using the E3ME macro-econometric model and the Warwick Labour Market Extension model for occupational analysis. Further analysis of the employment developments in Europe are undertaken using Eurofound’s European Jobs Monitor. The report highlights that the impact the climate agreement is positive for the EU as a whole, although with considerable variation between sectors. The positive impact on employment is largely due to the investment required to achieve this transition, along with the impact of lower spending on imported fossil fuels.

Read on: <https://www.eurofound.europa.eu/publications/report/2019/energy-scenario-employment-implications-of-the-paris-climate-agreement>

### **Annual report on intra-EU labour mobility**

*February 8, 2019*

The European Commission’s annual report on intra-EU labour mobility provides updated information on labour mobility trends in EU and EFTA countries. Annual developments in stocks and flows are analyzed in the perspective of longer-term trends. The analysis considers the mobility of all working-age citizens (20-64 years) as well as the mobility of those who are active (employed and unemployed). The report also looks at indicators of economic integration of mobile citizens, such as employment/unemployment rates and occupations.

This year two specific topics on the qualifications and the household composition of the EU-28 movers are further analyzed. The report shows that the large growth in mobility seen in 2015 and 2016, has slightly slowed down. Intra-EU mobility is still increasing but with a slower speed than before.

Read on:

<https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8174&type=2&furtherPu bs=no>

### **Report: collective bargaining in outsourced services**

*February 7, 2019*

The growth in outsourcing is exerting a strong impact on collective bargaining institutions. Outsourcing does not only reshape company boundaries but at the same time also fragments the representation base of trade unions. The RECOVER report consists of six separate country studies: France, Italy, the Netherlands, Poland, Spain and the United Kingdom. For each country the collective bargaining coverage gaps and/or conflicts of workers in outsourced services at sectoral and company level are examined by focussing on two different cases per country. This report also provides some policy guidance in order to ensure inclusive and effective collective bargaining coverage.

Read on: [https://ddd.uab.cat/pub/infpro/2019/202675/Comparative\\_report\\_RECOVER.pdf](https://ddd.uab.cat/pub/infpro/2019/202675/Comparative_report_RECOVER.pdf)

### **ILO landmark report ‘Work for a brighter future’**

*January 22, 2019*

The ILO landmark report ‘Work for a brighter future’ focusses on transformations in the world of work and the challenges that these changes pose. One of the transformations that the report addresses are technological advances: artificial intelligence, automation and robotics. They will lead to new jobs, but those who lose their jobs in this transition may be the least equipped to seize the new opportunities. Another relevant transformation is the greening of our economies. This will lead to the creation of new types of jobs but at the same time jobs in the area of non-renewable energy will disappear. The ILO report calls for a universal labour guarantee that would enshrine the right to an adequate living wage, maximum limits on working hours, and health and safety protections. It would also enforce freedom of association in trade unions and the right to collective bargaining, freedom from forced labour, child labour and discrimination.

Read on: [https://www.ilo.org/global/topics/future-of-work/publications/WCMS\\_662410/lang--en/index.htm](https://www.ilo.org/global/topics/future-of-work/publications/WCMS_662410/lang--en/index.htm)

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## **EU Case Law**

**Social policy - Charter of Fundamental Rights of the European Union — Equal treatment in employment and occupation — Directive 2000/78/EC — Direct discrimination on grounds of religion**

*January 22, 2018*

### **Facts**

In Austria, where the majority of the population belongs to the Roman Catholic Church, Good Friday is a paid public holiday only for members of the Evangelical Churches of the Augsburg and Helvetic Confessions, the Old Catholic Church and the United Methodist Church. This special regime allows members of those churches to practice their religion on a religious holiday that is particularly important for them, without having to obtain their employer's consent to take a day's leave. If a member of one of those churches works on that day, he is entitled to additional pay in respect of that public holiday. Mr Markus Achatzi is an employee of Cresco Investigation, a private detective agency, and is not a member of any of the churches in question. He claims that he suffered discrimination by being denied public holiday pay for the work he did on 3 April 2015, which was Good Friday, and, for that reason, seeks such pay from his employer. The Oberster Gerichtshof (Supreme Court, Austria), which is hearing the case, asked the Court on preliminary ruling whether the Austrian legislation at issue is compatible with the EU law prohibition on discrimination on grounds of religion.

### **Considerations of the European Court of Justice**

In this judgment, the Court finds that national legislation, such as that at issue, under which, first, Good Friday is a public holiday only for employees who are members of certain Christian churches and, second, only those employees are entitled, if required to work on that public holiday, to additional payment, constitutes direct discrimination on grounds of religion. Such legislation cannot be justified either as a measure necessary for the protection of the rights and freedoms of others or as a specific measure intended to compensate for disadvantages linked to religion. Until Austria has amended its legislation, in order to restore equal treatment, a private employer who is subject to that legislation is obliged also to grant his other employees a public holiday on Good Friday, provided that they have sought prior permission from their employer to be absent from work on that day, and, consequently, to recognise that those employees are entitled to a payment in addition to their regular salary for work done on that day where the employer has refused to agree to such a request.

With regard to direct discrimination on grounds of religion, the Court finds that the Austrian legislation at issue gives rise to a difference in treatment that is directly based on the religion of employees. The test used by the legislation in order to differentiate is based directly on whether an employee belongs to a particular religion. Further, that legislation has the effect of treating comparable situations differently on the basis of religion. The Court notes, in that regard, in particular, that the grant of a public holiday on Good Friday to an employee who is a member of one of the churches in question is not subject to the condition that the employee must perform a particular religious duty on that day, but is subject only to the condition that such an employee must formally belong to one of those churches. Thus, that employee remains free to choose, as he wishes, how to spend his time on that public holiday, and may, for example, use it for rest or leisure purposes. With regard to possible justifications for that direct discrimination, the Court notes that the objective of granting a public holiday on Good Friday to employees who are members of one of the churches in question is to take account of the particular importance of the religious celebrations associated with that day for members of those churches. However, the Court concludes that the legislation at issue cannot be considered necessary for the protection of freedom of religion. Provision is made in Austrian law, for employees not belonging to the churches in question, to celebrate a religious festival that does not coincide with any of the standard public holidays in Austria not by the grant of an additional public holiday, but principally by the imposition of a duty of

care on employers vis-à-vis their employees, which allows the latter to obtain, if they so wish, the right to be absent from their work for the amount of time necessary to perform certain religious rites. Nor can the Austrian legislation at issue be regarded as including specific measures the aim of which is to compensate for a disadvantage linked to religion in accordance with the principle of proportionality and, as far as possible, the principle of equal treatment. The provisions at issue grant a 24-hour rest period on Good Friday to employees who are members of one of the churches in question, while employees belonging to other religions, whose important festivals do not coincide with the standard public holidays in Austria, can, in principle, be absent from work in order to perform the religious rites associated with those festivals only if they are so authorised by their employer in accordance with the duty of care. It follows that the measures at issue go beyond what is necessary to compensate for that alleged disadvantage and establish a difference in treatment between employees who are subject to comparable religious duties that does not guarantee, as far as is possible, observance of the principle of equal treatment.

## **Ruling**

The grant under Austrian law of a paid public holiday on Good Friday only to employees who are members of certain churches constitutes discrimination on grounds of religion prohibited under EU law. Until Austria amends its legislation in order to restore equal treatment, a private employer must, subject to certain conditions, also grant his other employees a paid public holiday on Good Friday.

In this case the Court ruled:

1. Articles 1 and 2(2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that national legislation under which, first, Good Friday is a public holiday only for employees who are members of certain Christian churches and, second, only those employees are entitled, if required to work on that public holiday, to a payment in addition to their regular salary for work done on that day, constitutes direct discrimination on grounds of religion.

The measures provided for by that national legislation cannot be regarded either as measures necessary for the protection of the rights and freedoms of others, within the meaning of Article 2(5) of that directive, or as specific measures intended to compensate for disadvantages linked to religion, within the meaning of Article 7(1) of the directive.

2. Article 21 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that, until the Member State concerned has amended its legislation granting the right to a public holiday on Good Friday only to employees who are members of certain Christian churches, in order to restore equal treatment, a private employer who is subject to such legislation is obliged also to grant his other employees a public holiday on Good Friday, provided that the latter have sought prior permission from that employer to be absent from work on that day, and, consequently, to recognise that those employees are entitled to a payment in addition to their regular salary for work done on that day where the employer has refused to approve such a request.

Read full text on:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=210073&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=5307232>

## Events of the Project

- **The seminar: *European Labour Law Perspectives – Enhancing the Social Pillar***, took place at the University Carlos III-Madrid on 18 & 19 January 2018, Madrid, Spain. The recordings of the presentations at this Jean Monet Seminar are available at the following links:

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1. [https://arcamm.uc3m.es/arcamm\\_3/item/show/5fd5d75416103ff3185db4aab0b7c357](https://arcamm.uc3m.es/arcamm_3/item/show/5fd5d75416103ff3185db4aab0b7c357)
  2. [https://arcamm.uc3m.es/arcamm\\_3/item/show/a7262a469e9bff226605a8bc26a9b6b0](https://arcamm.uc3m.es/arcamm_3/item/show/a7262a469e9bff226605a8bc26a9b6b0)
  3. [https://arcamm.uc3m.es/arcamm\\_3/item/show/ea080356e304ed054ce60a231b0d7006](https://arcamm.uc3m.es/arcamm_3/item/show/ea080356e304ed054ce60a231b0d7006)
  4. [https://arcamm.uc3m.es/arcamm\\_3/item/show/fb3050d315154d8ffe923d28d8107e18](https://arcamm.uc3m.es/arcamm_3/item/show/fb3050d315154d8ffe923d28d8107e18)
  5. [https://arcamm.uc3m.es/arcamm\\_3/item/show/6220166b54f76e83283bdfd1985bdc04](https://arcamm.uc3m.es/arcamm_3/item/show/6220166b54f76e83283bdfd1985bdc04)
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- **The summer Course: *European Labour Law Perspectives – Enhancing the Social Pillar***, was held on 20-22 June 2018 at the Law Faculty - University of Amsterdam, the Netherlands. Venue: Nieuwe Achtergracht 166, 1018 WV, Amsterdam.

This course aimed at keeping employment specialists and labour law practitioners up -to -date by providing an overview of the latest policy developments, legislative initiatives and case law in the field of EU labour law.

### **Key topics discussed**

The European Pillar of Social Rights

Workers protection in insolvency proceedings

Labour law and the on-demand economy

EU social security law

Update on the revision of the Posting of Workers legislation

Temporary agency work and flexible employment

Working time Directive

Workers involvement in the undertaking

EU Antidiscrimination Law and protection of atypical workers (fixed-term contracts, part-time workers), discrimination on grounds of gender, religion and age at work, etc.

Other recent legislative and policy developments at EU level: work -life balance and proposal on a Directive on transparent and predictable working conditions.

This conference is aimed at academics, lawyers specialised in employment and labour law, and other legal practitioners.

### **Keynote speakers**

Prof. dr. Catherine Barnard

Prof. dr. Anthony Kerr

Prof. dr. Frank Hendrickx

Prof. dr. Manfred Weiss

Prof. dr. Jaap van Slooten

Prof. dr. Evert Verhulp

Prof. dr. Mies Westerveld

Prof. dr. Auke van Hoek

The recordings of the presentations at this Jean Monnet Summer School are available at the following link: <https://aias-hsi.uva.nl/en/projects-a-z/jean-monnet-eusocp/multimedia/multimedia.html>

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