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Erasmus+ Jean Monnet Action

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

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

European Pillar of Social Rights

Legal framework for platform workers

October 20, 2018

The European Commission published a study that focusses on existing legal frameworks for emerging digital platforms and the related challenges for policy makers. The study describes the operation of platforms throughout five different phases: access and registration, selection process and hiring, performance execution and command power, rating and ranking, monitoring power, payment rewards for completed tasks. Regarding to policy on digital platforms, the study found that only a few European states have adopted specific regulations to address the numerous issues stemming from the platform economy. Platform workers have very limited access to labour protection and when no adequate policies are developed to regulate some aspects of the work, the continuing growth of the platform economy may lead to the growth of social precariousness.

Read on:

http://publications.jrc.ec.europa.eu/repository/bitstream/JRC112243/jrc112243_legal_framework_digital_labour_platforms_final.pdf

Collective bargaining and work in the digital transformation

October 19, 2018

Digitalisation in relation to developments of work is a much debated topic. Statistics show that there are already job cuts taking place, primarily in low skilled jobs, as result of the digital transformation. However, digitalisation may also create new forms of work and workers might benefit from digital change as some of the most standardised and repetitive elements of their jobs can be taken over by machines. This summer EPSU organised a seminar that focussed on the question how trade unions can use collective bargaining to uphold and improve working conditions in the context of the digital transformation of public services. The report of this seminar is now available.

Read on: <https://www.epsu.org/article/report-seminar-how-trade-unions-can-use-collective-bargaining-improve-working>

Downward trends in share of persons at risk of poverty

October 16, 2018

Eurostat published data that indicate a downward trend in the share of persons at risk of poverty or social exclusion in the EU. However, still around 113 million people are in this situation. In 2017, 112.9 million people, or 22.5% of the population, in the European Union were at risk of poverty or social exclusion. This means that they were in at least one of the following three conditions: at risk of poverty after social transfers (income poverty), severely materially deprived or living in households with very low work intensity. After three

consecutive increases between 2009 and 2012 to reach almost 25%, the proportion of persons at risk of poverty or social exclusion in the EU has since continuously decreased to 22.5% in 2017, 1.2 percentage points below its 2008 reference-point and 1 percentage point below the 2016 level.

Read on: <https://ec.europa.eu/eurostat/documents/2995521/9310033/3-16102018-BP-EN.pdf/16a1ad62-3af6-439e-ab9b-3729edd7b775>

European Reports/Studies

Labour market and wage data in the EU

September 24, 2018

According to the Employment, Social Affairs & Inclusion ESDE Quarterly Review, the EU's economy continued its expansion in the first half of 2018, yet slightly less dynamically than in 2017. Since the beginning of 2018, the pace of economic growth has moderated, and most recent survey indicators point to lower sentiment and higher uncertainty. Section 5 informs about the growth of real gross disposable household. In the first quarter of 2018 this growth reached 2.4 %, according to latest available estimates. In the following section (6) data on labour productivity and labour costs are provided. Nominal compensation per employee has been growing at a moderate from the first quarter of 2017.

Read on:

<https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8130&furtherPubs=yes>

Working conditions for European platform workers

September 25, 2018

A Eurofound report explores the working and employment conditions of three of the most common types of platform work in Europe. Based on interviews with platform workers, the physical and social environment of platform work, autonomy, employment status and access to social protection, and earnings and taxation are assessed. A comparative analysis of the regulatory frameworks applying to platform work in 18 EU Member States accompanies this review. It looks into workers' employment status, the formal relationships between clients, workers and platforms, and the organisation and representation of workers and platforms. Key findings include that European countries do not regulate the employment status of platform workers. Although the workers have limited control over their working time and the organisation of their work, they are often considered as self-employed and therefore lack social protection.

Read on: <https://www.eurofound.europa.eu/publications/report/2018/employment-and-working-conditions-of-selected-types-of-platform-work>

ILO-study on working conditions at five micro-task platforms

September 20, 2018

The ILO presents one of the first comparative studies of working conditions on five major micro-task platforms that operate globally. Micro-task platforms are a type of web-based labour platform that provide businesses and other clients with access to a large, flexible workforce for the completion of mostly clerical tasks, that can be completed remotely using a computer with internet connection. The study is based on an ILO survey covering 3,500 workers in 75 countries around the world and other qualitative surveys and analyses the working conditions on these micro-task platforms, including pay rates, work availability and intensity, social protection coverage and work–life balance. One of the major findings of the study is that micro-task

platforms are in no way regulated by any government, compensation for this type of platform work is often lower than minimum wages, workers must manage unpredictable income streams and they work without the standard labour protections of an employment relationship.

Read on: https://www.ilo.org/global/publications/books/WCMS_645337/lang--en/index.htm

EU Case Law

Social policy - Framework agreement on fixed-term work – Directive 1999/70/EC - considering measures to prevent the misuse of successive fixed-term employment contracts or relationships.

October 25, 2018

Judgment of the Court of 25 October 2018, Case C 331/17 *Martina Sciotto v Fondazione Teatro dell'Opera di Roma*,

Facts

According to Clause 1 of the Framework Agreement, the purpose of that agreement is, first, to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination and, second, to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships. Clause 5 of the Framework Agreement, entitled 'Measures to prevent abuse', states, at point 1: 'To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures:

- (a) objective reasons justifying the renewal of such contracts or relationships;
- (b) the maximum total duration of successive fixed-term employment contracts or relationships;
- (c) the number of renewals of such contracts or relationships.'

Relevant national Italian legislation: Article 4 of Legislative Decree No 368/2001 provides that the term of a fixed-term contract can be extended, with the worker's consent, only when the initial duration of the contract is less than three years. The extension is to be permitted once, provided that it is done on objective grounds and relates to the same activity. The

burden of proving objective grounds is a matter for the employer. In accordance with Article 5 of Legislative Decree No 368/2001, where, by operation of successive contracts, the employment relationship exceeds, as a whole, a duration of 36 months, the employment relationship is considered to be of indefinite duration. Besides, according to Article 11(4) of Legislative Decree No 368/2001, the rules laid down in Articles 4 and 5 thereof are not to apply to the artistic and technical personnel of musical foundations.

Question referred for a preliminary ruling

The referring court raises the question of whether the protection of workers who have concluded, with operatic and orchestral foundations, successive fixed-term employment contracts for a total period exceeding three years complies with the requirements of EU law, where the national legislation applicable to that sector does not require a statement of the objective reasons justifying the renewal of the contracts, does not mention the maximum duration of the contracts, does not specify the maximum number of times those fixed-term contracts may be renewed, does not contain any legislative measures and does not restrict the conclusion of fixed-term contracts in that sector to reasons of replacement.

Consideration of the Court and ruling

Accordingly, Clause 5(1) of the Framework Agreement requires the effective and binding adoption by Member States of at least one of the measures listed in that provision, where their domestic law does not already include equivalent legal measures. The measures listed in Clause 5(1)(a) to (c), of which there are three, relate, respectively, to objective reasons justifying the renewal of such contracts or relationships, the maximum total duration of successive fixed-term employment contracts or relationships, and the number of renewals of such contracts or relationships.

The concept of ‘objective reasons’ must be understood as referring to precise and concrete circumstances characterising a given activity, which are therefore capable, in that particular context, of justifying the use of successive fixed-term employment contracts. With regard to the characteristics peculiar to the sector of activity of operatic and orchestral foundations, it is the case that the annual programming of artistic spectacles necessarily entails temporary recruitment needs for the employer. In that regard, the temporary employment of a worker in order to satisfy the employer’s temporary and specific staffing requirements may, in principle, constitute an ‘objective reason’ within the meaning of Clause 5(1)(a) of the Framework Agreement.

However, compliance with Clause 5(1)(a) of the Framework Agreement requires that it be specifically verified that the renewal of successive fixed-term employment contracts or relationships is intended to cover temporary needs. In this case there is no verification to cover temporary needs. In order for national legislation such as that at issue in the main proceedings to be regarded as compatible with the Framework Agreement, the domestic law of the Member State concerned must include, in that sector, another effective measure to prevent and, where relevant, punish the abuse of successive fixed-term contracts.

However, it is established that, even in the case of abuse, workers in the operatic and orchestral foundations sector are not entitled to the transformation of their fixed-term employment contracts into an employment relationship of indefinite duration, nor do they benefit from other forms of protection such as the setting of a limit to the possibility of

having recourse to fixed-term contracts. It follows that the Italian legal system does not include, in the operatic and orchestral foundations sector, any effective measure.

In the light of all the foregoing, the answer to the question referred is that Clause 5 of the Framework Agreement must be interpreted as precluding national legislation, such as that at issue in the main proceedings, pursuant to which the rules governing employment relationships and intended to penalise the misuse of successive fixed-term contracts by the automatic transformation of the fixed-term contract into a contract of indefinite duration if the employment relationship goes beyond a specific date are not applicable to the sector of activity of operatic and orchestral foundations, where there is no other effective measure in the domestic legal system penalising abuses identified in that sector.

Read full text on:

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=F958F913F376AF4E27F5A7121C9432C7?text=&docid=207010&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5253362>

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
 2. https://arcamm.uc3m.es/arcamm_3/item/show/a7262a469e9bff226605a8bc26a9b6b0
 3. https://arcamm.uc3m.es/arcamm_3/item/show/ea080356e304ed054ce60a231b0d7006
 4. https://arcamm.uc3m.es/arcamm_3/item/show/fb3050d315154d8ffe923d28d8107e18
 5. 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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