
The crisis and national labour law reforms: a mapping exercise

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Annex to Working Paper 2012.04

Country by country analysis

etui.

This document consists of an annex to ETUI Working Paper 2012.04 by Stefan Clauwaert and Isabelle Schömann entitled *The crisis and national labour law reforms. A mapping exercise*. Whereas the Working Paper as such presents a summary of the main trends and tendencies of these labour law reforms in various member states, this annex provides the country studies on a country by country basis. These country studies will be regularly updated and are available on the ETUI website:

<http://www.etui.org/Topics/Social-dialogue-collective-bargaining/Social-legislation>.

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Belgium

After 535 days of political crisis and without a federal government, the new government policy was presented to the Parliament by Prime Minister Elio Di Rupo (PS) on 7 December 2011. It includes reform of the early retirement scheme and the pension system (for example, an increase in the early retirement age), but also foresees a plan to simplify and update the laws on temporary agency work, part-time work and overtime, but no further details have been provided. The government also intends to encourage and facilitate forms of work that favour a better work–life balance, such as teleworking.

With regard to working time arrangements, the government wants the 38-hour working week to be more flexible and is even planning to annualise it. The time-credit system will also be reformed: (i) a new requirement – five years of active employment, two with the relevant company – will be added; (ii) the possibility of extending the duration of the break in a collective agreement will be limited or cancelled (whether justified or not), with the aim of limiting career breaks taken via this system to one year.

It is also planned to ‘re-evaluate the Renault law’ which deals with information and consultation obligations in case of collective redundancies.

On 24 January 2012, the Belgian government adopted a bill containing a series of measures on the employment of older workers (such as the introduction of seniors' programmes at company level and the obligation to take account of the age pyramid when there are layoffs), as well as on training, imposing sanctions on businesses that do not comply with training obligations. However, the bill was prepared without social partner consultation. Furthermore, it is feared that the employment measures for older workers will increase inter-generational competition.

Bulgaria

Although the National Council for Tripartite Cooperation (NCTC) managed to reach agreement on a new anti-crisis package containing 59 measures on 30 March 2010, the government unilaterally introduced a sixtieth measure on which no compromise could be reached during the negotiations on the new package. The contested measure concerned in particular the *payment of the first three days of sick leave*. Whereas, at present, employees receive 100 per cent of the daily payment for the first day from the employer and from the second day 80 per cent via the National Social Security Institute, it was now proposed that the employer

pay the first two days, with the third day at the expense of the employee. The final outcome seems to be that the employer will be responsible for paying the first three days at 70 per cent and the NSSI from the fourth day at 80 per cent of the sick leave allowance.

As for other relevant labour law measures in the package one might mention the introduction of the *possibility for the Minister of Labour and Social Policy to extend sectoral collective agreements* to all companies of the respective branch or industry.

On a more positive note, in November 2010, within the NCTC, two national agreements were signed, one for *home-based workers* (and related to Bulgaria's ratification of ILO Convention No. 177 on home work of 1996) and one on *teleworking* (implementing the European social partners' agreement on teleworking of 16 July 2002). Both issues formed part of the 'Bulgarian path 2009–2011', Bulgaria's strategy to reform the labour market by ensuring both more flexibility and more security. Although the conclusion of these two agreements is considered to be a milestone for social dialogue in the country, to ensure effective rights they will need to be accompanied by changes in social security and tax legislation. After the failure of social partners' attempts to establish a framework of rules on temporary agency work to implement EU Directive 2008/104/EC, a tripartite forum has now been established and an outcome is expected by the end of 2011. The Bulgarian trade unions have already declared that the first drafts grant too much flexibility and far from enough security for this type of work and the workers engaged in it.

Czech Republic

On 1 January 2011, important changes to the Czech labour code came into force.

Although some of them are to be welcomed because they tighten up the regulation of (atypical) employment contracts, other changes, mainly related to the reduction and even cancellation of social support allowances, are not.

On the positive side, there is written formalisation of the '*agreement to perform work*' (*dohoda o provedení práce*) via an amendment to Act 262/2006 Coll. This form of employment can be concluded for a maximum of 150 hours per calendar year, but subject to more flexible rules than labour contracts (for example, in relation to termination rules and payment of health and social insurance).

Second, stricter rules have been established for *employment agencies*, which now need to have insurance against insolvency, either its own or that of its customers (the premium must be three times the average monthly earnings of all temporarily

assigned employees) and they now need a permit to operate from the Ministry of Interior.

Less positive is that *unemployment benefits are being reduced for workers who terminate their employment* without a compelling reason but who nevertheless qualify for a severance payment. Workers will not now receive unemployment benefit for the period corresponding to the value of the severance pay.

Despite these changes introduced in January 2011, new ones are came into force on 1 January 2012. The amendments provide, among other things, for:

- An *extension of the maximum length of a fixed-term contract* from two to three years. It may be prolonged only twice (instead of three times), but it could mean that fixed-term contracts can be extended to nine years.
- As for the '*agreement to perform work*' (see above) the amendment provides for an increase of the 150 hour limit per calendar year to 300 hours per calendar year and if income in the calendar month exceeds a certain amount (about 400 euros) it would be subject to social security and health insurance contributions, which is not the case at present.
- Other amendments foresee agreements on *extended trial periods for managerial employees* of up to six months (currently three months and applicable to all workers).
- The *concept of temporary assignment* (in other words, employers hiring out their employees to other employers) outside the framework of an employment agency has been re-introduced. Unlike agencies these employers will not need a permit to perform such hiring-out. Furthermore, as from 1 January 2012, a new ban would be introduced on assignment in the form of agency employment of foreigners from third (non-EU) countries and disabled employees.
- Amendments to the *rules on severance pay* are also envisaged. Whereas now all employees, including newly hired ones, receive three months' severance pay if dismissed for organisational reasons, the amendment foresees one month's severance pay in the first year, two months for the second year and those who have worked more than two years will receive the current three months' pay.
- As for *working time and overtime pay*, it seems that amendments are likely to raise the maximum shift length to 12 hours for both even and uneven schedules of working hours (currently the maximum is nine hours for even shifts) and also provide for the extended possibility to negotiate the inclusion of potential overtime in wages. Also to be permitted is up to 416 hours'

overtime per calendar year for managers (now up to 150 hours) and up to 150 hours for other workers (whereas this was not possible before).

In addition, alongside the amendment of atypical work contracts, the 2012 reform amends layoff regulations, adding (i) a new reason for giving employees notice to: a particularly egregious breach of the treatment regime for incapacitated employees (in other words, the regime governing sick employees). This is an important change because, according to the current legislation, termination of employment for a breach of the treatment regime is expressly prohibited. On the other hand, it will be very difficult for employers to prove that an employee has breached their obligations during illness. (ii) The amount of an employee's severance pay will correspond to the number of years worked at the employer (currently, all employees, including those newly hired, are entitled to three months' severance pay if dismissed for organisational reasons). Furthermore, employees will not be entitled to severance pay if they terminate employment with immediate effect (for example, if the employer has not paid their salary) as they will be entitled to wage compensation corresponding to the length of the notice period (in a nutshell, they will receive two instead of three salaries). Also, the reform reintroduces discretionary power for judges in awarding compensation to employees dismissed in an unlawful manner. Currently, such employees are entitled to full salary compensation for the whole period of court proceedings, which can take years in the Czech Republic. Under the amendment, if the employee's entitlement to compensation exceeds six months, the judge can mitigate such compensation upon a motion filed by the employer, taking into account whether the employee was employed in the meantime, what kind of job they performed, how much was earned or why the employee didn't work.

Estonia

A new law on labour contracts was adopted by the Estonian Parliament (Riigikogu) in December 2008 and came into force on 1 July 2009. The new law on labour contracts offers employers more flexibility in organising labour relationships to improve business competitiveness.

- For all new employees, the try-out period will now last four months, which the employer may terminate with two weeks' notice.
- Fixed-term contracts may be concluded for a maximum of five years if this is justified by the nature of the task.

- Pregnant women, employees with children under the age of three and staff representatives who cannot be dismissed without prior authorisation from the labour inspectorate no longer systematically enjoy this protection.
- In some extraordinary circumstances, notably in the event of financial problems, the employer is allowed to temporarily reduce the employees' wages during the contract. To make up for this loss, the amounts paid by the unemployment insurance were increased.
- Restrictive clauses without compensation (compensation used to be the rule) can be included in the labour contract. On the other hand, for restrictive clauses lasting after the termination of the contract, the employer will have to pay monthly compensation for 12 months after the end of the contract (maximum duration of the clause).
- The obligation to pay a special tariff for night work has been removed. However, night work is still paid 25 per cent more than day work.

As far as changes to collective redundancies are concerned, in order to increase labour market flexibility, dismissal procedures have been made easier by reducing the term of advance notice by 30 calendar days to between two weeks and three months, depending on the length of the previous employment contract. To ease the financial burden of redundancies for the employer, the payment of redundancy benefits is shared by the employer and the Estonian Unemployment Insurance Fund. In all redundancy cases, the employer must pay a proportion of the redundancy benefit amounting to one month's average wage of the employee, while the Unemployment Insurance Fund finances the rest of the benefit. In addition, the redundancy benefit amount has been reduced by one month's salary and will remain between one and three months' average wages, depending on the length of previous employment. In the case of people who have been employed for more than 20 years, a five-year transitional period will be implemented, during which they will retain the existing level of redundancy benefits (four months' earnings).

Finally, to promote the use of flexible forms of employment, the conclusion of fixed-term contracts will be allowed across the board. In the event of the premature cancellation of a fixed-term employment contract due to economic difficulties, the employer must make an additional payment to the worker concerned to compensate them for the income they would have received up to the end of the contract term.

Estonia's new Employment Contracts Act of 2009 was based on a tripartite agreement, but has been severely criticised by the trade unions as well as several political parties, in particular because it emphasises labour market flexibility too strongly and less the security and protection of workers, especially when the

government made a number of last minute changes to the act, postponing several provisions that would have increased the spending of the Unemployment Insurance Fund but were part of the 'security' package.¹

In early February 2012 another debate was launched in Parliament about the bill amending the Collective Agreements Act (*kehtiv kollektiivlepingu Seadus*) of 1993 (and as amended in 2009) with a view to allowing businesses to refrain from negotiating a new agreement when the previous one expires. The new bill, which is to come into force on 1 March 2012, is aimed at changing the current system, whereby, when a collective agreement expires the existing agreement continues to apply until the parties sign a new one, with no deadline. Thus, at any time, employees can demand that the conditions of the previous collective agreement be respected, as long as it has not been replaced. The amendment is motivated by the fact that continuing to apply a collective agreement which has expired apparently goes against the Constitution. As a consequence, the bill states that companies will no longer be subject to a particular collective agreement throughout negotiations, even if they fail to reach agreement, if the expiry date of the previous agreement has passed. The amendment would also allow employers to withdraw unilaterally from a collective agreement by letting it expire without making an effort to negotiate a new one.

The Estonian trade union EAKL argues that not only would such an amendment go against the principles of the European Social Charter, but also that the review procedure was launched without consulting the social partners beforehand and without analysing what consequences amending the law could have.

Finland

In August 2011, the employers, who were increasingly reluctant to negotiate a framework agreement at national level, announced that, this year, they were refusing to bargain on the new general agreement, leaving sectors and businesses to regulate themselves without a national framework. This repudiates more than 40 years of collective bargaining practice.

However, the coalition government and the social democratic Finance Minister declared they were ready to 'make a pact' with the social partners and reduce income tax at the end of the 2012 spring bargaining cycle to maintain purchasing

¹ For instance, unemployment insurance benefit has been maintained at the current level until 2013 – that is, at 50 per cent of previous average remuneration during the first 100 days of unemployment and at 40 per cent after that, instead of the planned increase to 70 per cent and 50 per cent, respectively. Moreover, people who terminate their employment relationship voluntarily or by agreement will not be eligible for unemployment insurance benefit until 2013. In addition, some parental leave provisions have been changed to reduce public expenditure.

power. This led the social partners to sign a national agreement in October 2011, which has now spread to several sectors.

The employers agreed to negotiate due to the political and union pressure and growing public dissatisfaction in response to the announcement of numerous business relocations. Another factor that affected the debate is that there is no proof that decentralised bargaining works: in Finland, although such bargaining has grown over the past 18 months it has rarely led to significant agreements and the number of illegal strikes has soared, which does not bode well. There have already been conflicts in sectors where the collective agreements were about to expire, including services, banking, the public sector (where all contracts are regulated by collective agreements) and technology.

France

In the wake of the Social Summit dedicated to emergency employment measures held on 18 January 2012 the French government launched a number of social measures, including the removal of legal obstacles to the conclusion of agreements offering poorer working conditions in return for employment guarantees, so-called 'competitiveness employment agreements' or 'concession' agreements'. Since these poorer working conditions are considered substantial amendments to the labour contract, French labour law currently provides for the employee's consent, even if they are negotiated at collective level.

Greece

During the main reference period of the research conducted for this report (beginning 2010–February 2012), several major reforms were implemented, mainly forced upon Greece by the Memorandum of Understanding it agreed with the so-called 'Troika', comprising the EU, the IMF and the ECB.

After the first drastic reform measures, mainly concerning pensions and including raising the retirement age/seniority requirements but also wage and pension cuts, on 6 May 2010 the Greek Parliament approved Law 3845/2010 introducing so-called 'stage agreements' for hiring unemployed persons up to 24 years of age, who are registered in the Labour Force Employment Organisation (Οργανισμός Απασχόλησης Εργατικού Δυναμικού, OAED) lists, for a period of up to 12 months. During the term of this agreement, gross earnings will correspond to 80 per cent of an unskilled worker's minimum wage, as stipulated by the National General Collective Agreement (Εθνική Γενική Συλλογική Σύμβαση Εργασίας, GSEE) in

force at the time. Also, the ban on placing employees in the public sector through temporary employment agencies has been lifted for three years, while provision is made for the OAED to subsidise temporary employment agencies in hiring unemployed persons aged 55–64 to work in the public sector. The latter age restriction does not apply to the placement of employees through temporary employment agencies to organisations supervised by the Ministry of Health and Social Solidarity, such as welfare institutions, mental health establishments and so on. Furthermore, the law provides for the adoption of presidential decrees raising the limit in the event of collective redundancies and at the same time reducing redundancy compensation.

In that same month, the Greek parliament passed another law entitled ‘Guarantees on Job Security and Other Provisions’ covering issues such as economically dependent work, part-time and short-time work and temporary agency work, but also dealing with certain aspects of working time arrangements. The most important provisions are as follows:

- *Economically dependent workers* no longer have to prove that they are in fact employed by a company and entitled to the rights that this entails; this burden is now shifted to the employer.
- *Subsidised short-time employment* can be continued but only for up to six months in the same calendar year.
- For *temporary agency workers* the principle of non-discrimination is extended to all terms and conditions of employment, whereas before it applied only to pay. Temporary agency work may be used only for specific reasons justified by exceptional, temporary or seasonal needs. The use of temporary agency work is prohibited (1) if the indirect employer has, during the previous six months, dismissed employees in the same occupation for economic or technical reasons; (2) if due to its nature the work entails particular risks to workers’ health and safety; and (3) for construction workers. Furthermore, the new law provides that a person working at a company on a temporary basis for more than 18 months is entitled to an open-ended contract of dependent employment.
- Regarding *working time arrangements*, the previous legislation provided that working time arrangements may be imposed on a four-month basis, following unilateral recourse of the employer to a tripartite Working Time Arrangements Committee. Under the new law, these arrangements must now be set by agreement between the employer and the workers’ representatives at company level. Furthermore, employees normally working

a five-day working week but expected to work six days a week will be paid *30 per cent extra* for the sixth day.

Further changes to individual as well as collective labour relations were introduced by Law 3863/2010 which, among other things, provides for:

- *Lower thresholds for collective dismissals*: dismissals are now considered to be collective when more than six employees lose their jobs at companies with between 20 and 150 employees, compared to the previous threshold of four employees for companies with 20–200 employees. The threshold is set at 5 per cent of staff or more than 30 employees for companies with more than 150 employees, compared to the previous level of 2–3 per cent of staff and 30 employees for companies with more than 200 employees.
- *Shorter notice periods* for terminating white-collar workers' open-ended employment contracts.
- Possible abolition of unilateral recourse to the Mediation and Arbitration Service (OMED) as available under existing law.

In October 2010, the government issued a presidential decree on decentralising the collective bargaining system and weakening the mediation and arbitration system. Under Law 3899/2010 a new type of company-related collective agreements, the 'special company-related collective agreement', is introduced, which may provide for remuneration and other working conditions that are less favourable than those provided for by the respective sectoral collective agreement. Until Law 3899/2010 was passed, the principle of regulations more favourable to the employee in case of concurrent collective agreements applied absolutely: there was no possibility of departing from it. Law 3899/2010 subjects the conclusion of the special company-related collective agreement, as well as its extension and renewal, to a preliminary procedure: parties interested in concluding a special agreement submit a joint explanatory statement to the Social Inspection Council of the Labour Inspectorate (SKEEE) setting forth the reasons justifying their intention to enter into a special company-related collective agreement. SKEEE's opinion is not binding, however. This means that parties may proceed to conclude the special company-related collective agreement even if the Council is against it.

Second, Law 3899/2010 considerably weakens the Organisation for Mediation and Arbitration (OMED). More specifically, the new regulations still offer the possibility of referring matters unilaterally to arbitration. This means that arbitration is still mandatory, as arbitration proceedings may be initiated freely by one party alone, but result in an arbitration award which is binding on both parties. However, Law 3899/2010 provides that, should mediation be unsuccessful, not only the trade unions but also the employer may refer matters unilaterally to arbitration if the

other party does not accept the mediator's proposals. In terms of the scope of arbitration proceedings, the new regulations introduce a significant restriction: arbitration awards shall, from now on, determine only minimum monthly or daily wages. Other terms of employment, such as benefits, bonuses, working hours, holidays and the regulation of other employment terms (such as filling job vacancies, recruitment, termination of employment, grounds for termination and termination procedures, severance pay), can no longer be regulated by arbitration awards.

Furthermore, Law 3899/2010 also provided for further intrusive measures to make the labour market more flexible, such as: (1) redefining the calculation of part-time workers' pay to ensure it never exceeds the pay of a full-time worker doing the same job even with overtime; (2) the maximum period allowed for posting workers is raised from 6 to 9 months for employees in businesses with serious economic problems; (3) for the first time providing for a trial period within the framework of a permanent contract, which would be 12 months during which the labour contract may be terminated without notice and termination compensation, unless this is provided for in the contract; and (4) reducing layoff notices for permanent contracts to one month for employees who have been working at the company for between one and two years compared to the previously applicable four months, regardless of seniority.

In June 2011, and following another 'visit' by the Troika, new austerity measures were announced, including the following:

- *A new 'youth' contract.* This applies particularly to the recruitment of young people (up to 25 years of age) at a wage 20 per cent lower than what used to be offered for a first job, with a two-year trial period, with no social contributions for employers and no entitlement to unemployment benefits at the end of the contract. On the other hand and before hiring people on such contracts, employers will have to prove that they have not cut staff within the past three months; seasonal businesses will have to prove that they did not cut staff during the same period the previous year.
- *Working time adjustments.* Depending on a business's needs and situation, it will be possible to increase working time by allowing employees to work two more hours each day, for up to six months a year, provided that working time is cut an equal amount for the rest of the year. Such adjustments are possible within the framework of a company collective agreement, or of an agreement between the employer and union or works council.
- *Fixed-term contracts.* The period permitted for successive fixed-term contracts goes up from two to three years.

By means of Act 4024/2011 passed on 20 October 2011, the provision introducing special company agreements (see above) has been abolished and replaced by Article 37 of Act 4024/2011. This stipulates (1) that company agreements take precedence over sectoral agreements; (2) that, when there is no trade union organisation, company agreements may be signed by 'groups of employees', even in large businesses with 40+ employees, provided that 3–5 employees in the company are involved; (3) it also extends company agreements to businesses with fewer than 50 employees; and (4) according to Article 37-5 in case of conflicting collective agreements governing labour relations in one company, and contrary to the procedure so far, company agreements automatically prevail over sectoral collective agreements, even if they do not favour the employee (with the exception of minimum working conditions and remuneration based on general national collective agreements).

On 12 February 2012, the Greek Parliament adopted a new austerity programme, again giving in to pressure from the EU and the IMF. Apart from cutting the minimum wage laid down in the general national collective agreements (EGSEE) by 22 per cent compared to 1 January 2012 (and by 32 per cent for young people under the age of 25), the programme also provides for measures requiring amendment of the law on sectoral agreements, whereby sectoral agreements will now be signed for up to three years and expired sectoral agreements will remain in force for three months. If no agreement is reached by the end of that period, wages will fall to the level of basic pay, combined with general bonuses based on seniority, number of children, education, performance and so on. This will last until a new sectoral agreement or individual contract is signed.

Over the reference period with which this report is concerned, the Greek trade unions were very active in seeking the help and intervention of international and European fundamental (social) rights supervisory bodies to analyse the extent to which several of the above-described measures run counter to obligations under several ILO Conventions, as well as the Council of Europe (Revised) Social Charter.

Already in June 2011, the ILO decided to send an ILO High Level Mission to Greece to assess the situation following the alleged violation of 11 ratified ILO Conventions (mainly in the areas of freedom of association, collective bargaining, wages, social security and employment policy) due to the emergency economic reform package. The ILO High Level Mission took place from 19 to 23 September 2011. At its session of 9 December 2011, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) considered the Mission's report.² The CEACR underlined the important role that can be played by the ILO in

² The report on the ILO Mission is available at:
http://www.ilo.org/global/standards/WCMS_170435/lang--en/index.htm

supporting government and social partners in the development and implementation of appropriate reforms to the labour market and its institutions, so that they are in conformity with ratified International Labour Standards. It further emphasised the need for rapid support to bolster the labour relations system, promote collective bargaining and create a meaningful space for social dialogue which builds upon the traditions of the social partners.

Concerning the Council of Europe (Revised Social Charter), currently no less than six collective complaints lodged by trade unions are pending against Greece under the collective complaints procedure to the Revised Social Charter Council of Europe. They include the following:

- No. 80/2012 Pensioner's Union of the Agricultural Bank of Greece (ATE) vs. Greece concerns recent legislation, No. 79/2012 Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI) vs. Greece, No. 78/2012 Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) vs. Greece, No. 77/2012 Panhellenic Federation of Public Service Pensioners vs. Greece and No. 76/2012 Federation of Employed Pensioners of Greece ((IKA –ETAM) vs. Greece. All four complaints allege that recent legislation passed in Greece (Law No. 3845 of 6 May 2010, Law No. 3847 of 11 May 2010, Law No. 3863 of 15 July 2010, Law No. 3865 of 21 July 2010, Law No.3896 of 1 July 2011 and Law No. 4024 of 27 October 2011) impose a reduction in pension schemes, in both the private and public sectors, and are in violation of Articles 12§3 (Right to social security) and 31§1 (Right to housing) of the 1961 Charter.
- No. 66/2011 General Federation of Employees of the National Electric Power Corporation (GENOP-DEI)/Confederation of Greek Civil Servants' Trade Unions (ADEDY) vs. Greece: according to the complainant trade unions the measures related to remuneration and working conditions contained in Act No. 3899/2010 of 17 December 2010 are in violation of Articles 1 (right to work), 4 (right to fair remuneration), 7 (right of children and young persons to protection), 10 (right to vocational training) and 12 (right to social security) of the European Social Charter; and
- No. 65/2011 General Federation of Employees of the National Electric Power Corporation (GENOP-DEI)/Confederation of Greek Civil Servants' Trade Unions (ADEDY) vs. Greece: according to the complainant trade unions the measures related to remuneration and working conditions contained in Act No. 3899/2010 of 17 December 2010 are in violation of Article 4 (right to fair remuneration) of the European Social Charter and Article 3 of the Additional

Protocol of 1988 (right to take part in the determination and improvement of working conditions and working environment).³

Hungary

The first real signs of deregulatory labour law reforms in Hungary came in June 2009 when the Hungarian Parliament adopted amendments to the Labour Code allowing the temporary introduction of more flexible working time. The new amendments provided that statutory working time of eight hours a day, or 40 hours a week excluding overtime, may be increased to 44 hours a week, as long as the average basic working time does not exceed 40 hours a week over the reference period (between 1 April 2009 and 31 December 2011). Such an increase in working time is possible only on the basis of a written agreement between employer and worker. For instance, if the employer decreases working time to 30 hours a week between 1 September 2009, and 31 December 2011, the total amount of working time reduced during that period is 160 hours (40 hours – 30 hours = 10 hours per week; 16 weeks x 10 hours = 160 hours), which the employer may use flexibly until 31 December 2011. While the employer needs the employee's consent, he is free to use the working time 'stock' as he pleases. The new regulation also provides for a series of guarantees, the key guarantee being the 44-hour limit on the working week. Furthermore, employees whose working time exceeds 40 hours per week are protected from termination of their employment relationship unless for personal reasons until 31 December 2011. However, during the period of increased working time, employees' basic remuneration does not vary.

Second, the amendments provide that as of 1 June 2009 an employer has the possibility to unilaterally set the working time reference period at four months. Under the previous regulation, the employer could unilaterally order a three-month reference period for calculating basic weekly working time. This reference period, however, could be extended to 12 months under certain circumstances by way of collective agreements.

Third, the amendments also provide that employers do not have to grant rest time to employees if no work is performed during on-call duty.

Finally, the amendments allow employers to reach agreement with employees on increasing annual overtime to 300 hours, but this must be done by way of collective agreement or by individual agreement between employer and worker. This arrangement was formerly reserved for employees with special skills and there was a 200-hour limit. However, employers still have to prove that they requested,

³ More information is available at:
http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp.

without success, a public employment agency to fill the vacancy before resorting to such agreements.

During summer 2009 and based on a ruling of the Hungarian Constitutional Court questioning the codetermination rights granted to national and sectoral social dialogue structures, the Hungarian Parliament adopted two acts – Act LXXIII on the National Interest Reconciliation Council (*Országos Érdekegyeztető Tanács, OÉT*) and Act LXXIV on sectoral social dialogue committees (*Ágazati Párbeszéd Bizottságok, ÁPB*) – revising the powers of these structures and setting representation criteria for the organisations involved. The new system came into force in October 2009. These acts amend the extent of social dialogue by reducing their role, which used to be quite significant. Furthermore, representation criteria concerning participation in the national tripartite forum and the bipartite sectoral social dialogue committees have been revisited. Hitherto, the prevailing principle was self-regulation and mutual recognition, even if there was a list of criteria. Both at national and sectoral level, participation is now conditional on the weight of the organisation, in other words, the number of members and participation in the economy and labour market. However, at national level, organisations that are already members of the National Interest Reconciliation Council can stay and even veto the admission of an applicant organisation. This new definition of representativeness affects the procedure for extending sectoral collective agreements. Indeed, the sectoral social dialogue committee will have to determine whether the signatory organisations are representative enough – for employers, whether they represent businesses which employ at least 50 per cent of employees, and for unions, whether they obtain at least 50 per cent of the votes in works council elections – to be permitted to ask the competent Minister for an extension of the agreement they negotiated.

In 2010, the new government, a coalition of the Hungarian Civic Union (FIDESZ) and the Christian Democratic (KDNP) parties, said it wanted to introduce a new constitution and civil law, as well as a new Labour Code. The draft code was published by the Hungarian Government on the website of the Ministry of the Economy in July 2011.

The Hungarian government submitted a comprehensive revision of the Labour Code to Parliament on 26 October 2011. The new Labour Code is expected to come into force on 1 July 2012. This was fiercely opposed by, among others, the national trade unions. The six Hungarian trade union confederations (ASZSZ, ÉSZT, LIGA, MSZOSZ, MOSZ and SZEFE) asked in a joint letter of 4 September 2011 for the technical assistance of the ILO to examine the proposed Labour Code amendments as regards their compatibility with Hungary's obligations under a number of ILO Conventions. There was also a high-level mission composed of trade union leaders

from the ITUC and the ETUC at the end of August and beginning of September 2011. The main amendments are as follows:

- *Protecting employees from employment termination.* The Bill provides that an employment relationship may not be terminated by the employer during pregnancy, maternity leave, parental leave (if the child is under three years of age), the first six months of treatment related to human reproduction and regular or reserve army service. In contrast to existing regulations, sick leave is no longer classified as a protected category under the Bill, a change that was implemented with a view to reducing sick leave abuses. The Bill provides that termination of employment can be communicated during a period of incapacity due to illness, although the notification period commences only after the end of the incapacity due to illness. If an employee interrupts their parental leave before a child is three years old, their employment can be ended on the basis of extraordinary termination, due to incapacity, or due to operational reasons (economic grounds). In the latter case, the contract can be terminated only if there is no suitable vacancy matching the employee's work experience and capabilities or if the employee rejects an offer made by the employer to work in such position. This rule is applicable to termination of employment within five years prior to retirement age.
- *Reduced damages for unlawful termination.* Under the existing framework an employer may be fined up to 36 months of an employee's average salary for unlawful termination: the Bill reduces this amount to 12 months.
- *Working time.* The bill introduces a number of changes affecting labour law:
 - An employer may change the announced working hours – due to unforeseen circumstances – three days before the change.
 - The Bill defines the requirements of working on Sunday and on public holidays. It is possible only within the framework of activities that serve the public interest or are objectively necessary for the proper functioning of the employer, seasonal or non-stop. It is also possible when work is multi-shift, for standby work or for part-time jobs performed exclusively on Saturday and Sunday.
 - The annual limit on working time is raised from the present 200 hours up to 250 hours, which could be increased to 300 hours by a collective agreement.
- *Allowances for irregular working time.* The Bill maintains the 50 per cent Sunday wage supplement for employees who work multi-shift work schedules or do standby work. Employees who would expect regular Sunday work due to their type of work are not entitled to such a supplement. In

contrast to the existing regulation, the Bill introduces remuneration 30 per cent higher for work performed between 6 p.m. and 6 a.m., provided that the employee's work schedule regularly changes. According to the present regulation the shift allowance for those who do multi-shift work from 2 p.m. until 10 p.m. is 15 per cent and for those who work from 10 p.m. until 6 a.m. it is 30 per cent. The nightshift allowance remains 15 per cent.

- *Employee damages for malfeasance or negligence.* The Bill provides, like the current regulation, that an employee is obligated to compensate an employer for damages caused by violation of their employment duties, whether intentional or due to negligence. The burden of proof lies with the employer with respect to the amount of the damage, proof of misconduct (malfeasance or negligence) and causation. However, in contrast to the current 1.5 monthly average salary limitation, the Bill provides for 4 months for negligence and unlimited liability for gross negligence or intentional wrongdoing.

- *Employees' representation.* The existing labour law protection shall remain for certain trade union officials and for the works' council chair. It is an important rule that labour protection is granted only for officials of trade unions whose membership accounts for 10 per cent of total employees. The number of protected officials depends on the average number of employees. The maximum number of protected officers is four, if there are more than 4,000 employees per premises. The scope of protection is therefore reduced.

According to the Bill, both trade union officials and members of the works council are entitled to time off. The works council chair is entitled to 15 per cent, works council members are entitled to 10 per cent and trade union officials are entitled to 10 per cent of time off. According to a new rule time off that goes unused cannot be redeemed in cash.

The Bill does not include the right to object to unlawful measures. If an objection escalates into court proceedings, the employer may not implement the measure objected to until the court proceedings have been completed. This is the most powerful instrument in the hands of the trade unions against the employer. In accordance with the Bill, in case of disagreement between the works council and the employer, the parties may negotiate or appoint an arbitrator.

In accordance with the Bill, a collective agreement can be concluded by a trade union whose members account for 10 per cent of the employees affected by the collective agreement. A new rule is that a collective agreement

can also be concluded by a works council, if there is no trade union whose membership covers 10 per cent of the employees.

On 8 November 2011, the ILO delivered its Memorandum of Technical Comments on Hungary's draft Labour Code, criticising several provisions on both collective and individual rights which run counter to Hungary's obligations under various ILO Conventions (ILOb 2011).

At the time of writing, no further information was available on possible developments as regards revision of the Labour Code and how the Hungarian government intended to at least take into account the ILO's criticisms.

Italy

On 14 September 2011, the Italian Chamber of Deputies approved a new budget austerity plan which includes as its main innovation with regard to industrial relations/labour law the *possibility to derogate, by a company agreement, from conventional and statutory provisions, including those governing layoffs*. This relates to the extremely controversial Article 8 of Decree No. 138 of 12 August 2011 which allows company or regional local agreements to derogate from national laws and collective agreements. It has now been further clarified. The conclusion of such special agreements is allowed in order to 'increase employment, improve the quality of employment contracts, put a stop to illegal labour, increase competitiveness and pay, manage industrial and employment crises, and encourage new investments and the start of new activities'. As for the signatory parties to the agreement, whereas previously the rather vague expression 'union representation structures operating in the company' was used, this is now replaced by 'trade union organisations operating in the company following existing laws and interconfederal agreements'. This makes it at least more likely that the creation of fictitious trade unions in the company will be prevented. These special derogatory agreements are to be valid for all the workers concerned, provided that they were signed by a majority of the union organisations thus defined. These agreements may affect 'all aspects of labour organisations and production', including 'recruitment modalities and the regulation of the working relationship', as well as the consequences of the termination of the employment relationship, except for discriminatory layoffs. This new Article 8 allows proximity bargaining to opt out on several issues, provided the resulting agreement still conforms to the Italian Constitution, EU norms and international requirements. The issues include: working hours; workers' tasks and job classification; fixed-term work contracts, part-time contracts and temporary agency work; audio-visual equipment and the introduction of new technologies; hiring procedures; the regulation of freelance work; the transformation and

conversion of employment contracts; and firing employees, with some exceptions (such as discriminatory firing, pregnant workers, mothers with babies under the age of one, firing during matrimonial leave or firing those who have requested parental or adoption leave). This clarification of Article 8 has to be read in conjunction with the adoption on 28 June 2011 of an interconfederal agreement which defines the criteria for union representativeness and the universal validity of company agreements approved by a majority of unions and extends the possibility of derogating from national collective agreements at company level. The main objective of this new interconfederal agreement is to ensure the further development of company-level bargaining and, except for the possibility of derogatory company agreements, it ensures the universal validity of company agreements. From now on and unlike what was previously the case, if the company agreement is approved by a majority of RSU members, they will be valid for all employees and not only members of the signing unions. In businesses with RSAs – that is, company union representation bodies based on Act No. 300/70 – the agreement applies to all employees if the unions composing the RSA that approved it received a majority of the union contributions registered in the company the year before the signing of the agreement in question. The interconfederal agreement also provides that RSAs will get a three-year term. Agreements approved by RSAs will only be subject to a workers' vote if at least one of the organisations signing the interconfederal agreement or at least 30 per cent of workers in the company request it within 10 days of the signing of the agreement. The agreement may be rejected by a simple majority of voters.

Decree No. 138, furthermore, lays down *new rules for internships*, in particular to avoid excessive resort to internships. Article 11 establishes a uniform rule whereby internships can no longer exceed six months and will only be open to high-school or college graduates within 12 months of their graduation.

Almost immediately after it was installed the new Monti government – which succeeded the Berlusconi government – clashed with the trade unions because of its proposed austerity measures. Apart from raising the retirement age for both men (up to 66) and women (up to 62, but rising gradually to 66 in 2018) from 2012, the new government also announced a reform of the Labour Code (in particular with regard to labour relations) and measures to 'move the centre of gravity of collective bargaining towards the workplace'.

As part of the reform of Italian labour law, the Minister of Labour announced the possibility of reviewing Article 18 of the Workers' Statute which provides that employers have to re-hire any worker proved to have been let go without just cause. This led to another conflict between the Monti government and the trade unions. There was 'informal' bilateral consultation with the social partners in early January

2012, as a preliminary to a tripartite meeting with the social partners at the end of the month. Trade unions remain very sceptical about what has been seen as an economic manoeuvre on Monti's part and have established a joint platform to emphasise their joint demands, in particular to reduce precarity in employment and to make flexibility more expensive for employers and therefore less appealing. Concerning Article 18, it seems that the government intends to propose a draft revision to be inserted in the forthcoming decree on liberalisation, and thus without consultation.

The National Economic and Labour Council (CNEL) was reformed by a Decree of 22 December. As part of its restructuring its membership has been reduced without respecting proportionate social partner representation. The new total membership is 10 economic, social and legal experts, 22 members representing employees (instead of 44), 9 members representing self-employed workers (instead of 18) and 17 employers' representatives (instead of 37).

Furthermore, the government has outlined a so-called 'single contract' and suggested a need to review Article 18 of the Workers' Statute, which provides that employers must rehire any worker proven to have been let go without just cause.

Ireland

The Irish government, as part of its bailout by the EU and the IMF on 28 November 2010, has agreed to a range of measures which directly impact the labour market. The terms are set out in the Memorandum of Understanding with the EU and the IMF, which lays down the schedule of reforms on a quarterly basis until the end of 2013 and among other things provides for a review of the framework of Registered Employment Agreements (REAs) and Employment Regulation Orders (EROs) by the Ministry for Enterprise, Trade and Innovation.

In Ireland, the Joint Labour Committees (JLCs) or independent bodies determine minimum rates of pay and working conditions for workers in certain sectors. Each JLC is composed of workers' and employers' representatives in the sector concerned. The pay and conditions agreed by the representatives on the JLCs are given force of law in Employment Regulation Orders (EROs), which exist in sectors such as hotels and catering, cleaning and retail. Registered Employment Agreements (REAs), on the other hand, are minimum rates of pay and conditions agreed between employers and workers/unions in a sector or enterprise, which are then registered with the Labour Court to make them legally binding. They exist in sectors such as agriculture, construction and electrical contracting.

The so-called 'Duffy-Walsh review' – after the independent experts conducting it, Kevin Duffy, Chair of the Labour Court and Dr Frank Walsh of University College Dublin – was considered necessary as EROs and REAs are fuelling 'labour market rigidity by preventing wage levels from adjusting'.

In April 2011, their report, entitled 'Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Settling Mechanisms', was published. The report states that continued maintenance of the current system of JLCs and REAs is necessary and justified. In the case of JLCs, the overriding rationale for this conclusion is the need to provide a mechanism to maintain reasonable employment standards for unorganised vulnerable workers in the sectors concerned. As for the REAs, the report identified a need for a system in which collective agreements concluded between substantially representative parties can be made universally applicable and given legal effect. However, the report also concludes that the system requires a radical overhaul to make it fairer and more responsive to changing economic circumstances and labour market conditions and makes 19 recommendations along those lines. It remains to be seen how this reform will be pursued.

Latvia

In February 2011, Latvia's Cabinet of Ministers adopted several amendments to the Labour Code. Some concerned the transposition of Directive 2008/104/EC on *temporary work agencies*, while others seem to *simplify the procedures* employers need to follow in case of *collective redundancies* by altering the threshold above which collective redundancy is deemed to have occurred, thus requiring them to inform the State Employment Agency.

Lithuania

On 11 June 2010, the Seimas (Lithuania's parliament) approved a series of amendments to the Labour Code, aimed at encouraging job creation via more flexible industrial relations. An earlier draft presented by the government in April underwent some amendments by a tripartite committee, which according to a new national agreement of 2009 must reach agreement on all labour law amendments.

The proposal of 14 April 2010, among other things, provided for layoffs without notice (in exchange for double compensation for the employee), fixed-term contracts for all new forms of employment (including those meeting the company's permanent needs) and changes to working time, up to its 'annualisation,' while

maintaining the existing limits (12 hours a day and 48 hours a week, as opposed to a statutory 8-hour working day and 40-hour working week, as well as 120 extra hours per year). This draft was then discussed in the tripartite committee where it became clear that the employers' side was willing to give up the proposals concerning layoffs without notice, while the liberalisation of fixed-term contracts did not pose a problem for the union side (as it was a temporary measure for two years only anyway). Some major issues remained, however, such as overtime and the right to strike. In principle, overtime, except in some cases listed in the Labour Code or in collective agreements, was banned in Lithuania. In exchange, the right to strike was liberalised – formerly restricted by the need for a majority of employees to approve it via a secret ballot – and notably the possibility of taking strike action at company level, after a vote. The compromise reached is as follows. The principle of strikes at establishment level was validated, as well as the principle of two-hour strikes – ‘warning strikes’ – organised by union divisions without a vote among the employees but with seven days' notice. On the other hand, overtime was liberalised – with the prior consent of the employees, except in some cases – with a maximum of 120 hours a year or 180 hours if collectively agreed. Another major improvement for employees, in particular in times of crisis, was the introduction of the possibility to stop work for up to three months, if the employer fails to meet his obligations – paying wages, for instance – for at least two months in a row. In that case, he will have to pay at least the minimum wage for every month the employee is not working.

On a more positive note – at least regarding trade unions' joining forces against devastating and anti-social measures – a historic meeting of all the trade union organisations in Lithuania took place in October 2011. Since the early 1990s, there have been three national trade union confederations: the Lithuanian Trade Union Confederation (LPSK), the Lithuanian Labour Federation (LDF) and the Lithuanian Trade Union ‘Solidarumas’ (LPS ‘Solidarumas’). There are also a number of small trade union organisations, including the Joint Trade Union (JPS), Klaipėda Town and Region Trade Union (KMAPS), the Lithuanian Medical Workers' Trade Union (LMDPS), Lithuanian Trade Union Unification ‘Sandrauga’ (LPSS ‘Sandrauga’), Lithuanian Education Employees Trade Union (LSDPS) and the National Association of Officials (NPPSS). Only the three peak trade union organisations are involved in social dialogue at national level, however, via the Coordination Centre of Lithuanian Trade Unions (LPSKC).

On 17 October 2011, the LPSKC initiated the first historic meeting of representatives from all trade unions in Lithuania. Following several further meetings, the unions' demands were agreed and signed by all nine unions for submission to the government and parliament (LRS) on 21 November. All nine

trade unions are in particular furious about successive proposals passed by the government to liberalise labour relations, including the simplification of dismissal procedures, non-payment of severance pay and extension of working time. In particular, they are demanding:

- an increase in the minimum monthly wage to LTL 1,000 (€290) from 1 January 2012;
- making amendments to labour legislation only after reaching agreement with trade unions and employers' organisations;
- ratification by the government of ILO Convention No. 102 on minimum social protection standards; and
- ensuring the right of workers to go on strike and an end to the intimidation of workers' representatives.

Luxembourg

The Prime Minister Juncker announced at the end of December 2011 that he was ready to discuss adding flexibility to labour law. One idea was to extend the scope of fixed-term contracts for highly skilled workers, as well as to introduce more flexibility for statutory working time by introducing a four-month reference period and a 54-hour maximum working week.

Netherlands

For the period from 9 July 2010 to 1 January 2012, a new paragraph was added to Article 7:668a of the Dutch Civil Code. This article states that after three consecutive contracts – each time renewed directly within three months of the previous one – the fourth contract becomes automatically permanent. If during the second or subsequent contact, the total duration exceeds 36 months, the contract is automatically converted into a permanent contract, provided the period between contracts is no more than three months. The new paragraph states, however – with the aim of reducing youth unemployment during the crisis – that for young people below 27 years of age the fifth contract (instead of the fourth, as previously) becomes permanent. It also states that after 48 months (instead of the previous 36) a contract becomes permanent.

On 28 November 2011, Henk Kamp, Minister of Labour and Social Affairs, presented to Parliament a draft reform giving employers exceptional room to manoeuvre because of the crisis to derogate from wage policies and working

conditions negotiated at sectoral level within the framework of collective agreements. The main goal is to avoid further bankruptcies and allow weak businesses to shrug off the sectoral agreements negotiated annually and in particular to overrule agreements on early retirement to reduce their number if the economic situation demands it.

Attacks on trade union powers continued and it looks like a majority may be found in the Dutch Parliament in favour of a bill presented on 14 December by the right-wing populist Freedom Party (PVV), backed by both coalition parties, the Christian Democratic Appeal (CDA) and the Liberal Party (VVD). The draft bill provides that collective agreements negotiated by trade unions should be binding for the entire sector only if a majority of employees support them. This system would thus provide workers who are not affiliated with a trade union with a voice in the negotiation process on collective agreements. Hitherto, this has been the prerogative of trade unions and their members. Other ideas include giving company works councils a bigger role in negotiating sectoral collective agreements. Trade unions have reacted strongly against the envisaged measures.

Poland

On 1 July 2009, the Council of Ministers adopted two laws based partly on proposals negotiated with the social partners. One was aimed at 'alleviating the impact of the economic crisis on workers and employers' and included measures on labour law, such as reference periods for working time, limits on fixed-term contracts and partial unemployment schemes. The measures include:

- The *reference period used to calculate working time* can be extended to 12 months (instead of the current three), but must be laid down in a company agreement. The bill also provides that more rushed work periods may be compensated by slow periods or additional rest days. Individual work schedules may also be applied if the worker requests it to take care of a relative or a child under 14 years of age.
- *Fixed-term contracts* are limited to a maximum of 24 months. The new law also suspends until the end of 2011 a Labour Code clause stipulating that only two consecutive fixed-term contracts are allowed and that any subsequent contract is by law a permanent contract. There is no longer a limit on the number of consecutive fixed-term contracts.
- Whereas the three abovementioned measures apply to all businesses, the law also provides for *specific measures for companies experiencing temporary financial difficulties*, such as a possibility to reduce working time and pay for

(a maximum) six months and the introduction of 'inactivity leave', allowing employers who cannot offer their employees any work to dismiss them for (a maximum) six months as an alternative for collective redundancies.

- The bill also introduces special protection for employees receiving benefits due to decreased activity and for employees attending training as they cannot be laid off for 12 months.

This 'Anti-crisis Act', adopted on 22 August 2009, will expire on 31 December 2011, however. In June 2011, the social partners, gathered under the aegis of the tripartite committee, opened talks with a view to extending some of the provisions of the Act. On the menu were the maximum duration of fixed-term contracts, the introduction of a 'project contract' and the extension of the reference period for the calculation of working time:

- *Maximum duration of fixed-term contracts.* Whereas Article 25 of the Labour Code provides that employers can only sign two fixed-term contracts in a row with employees, by way of exception Article 13 of the Anti-crisis Act allowed the signing of several fixed-term contracts in a row with the same employee, provided that they do not exceed 24 months. One new proposal tabled by the employers was to introduce the possibility for fixed-term contracts of a maximum of four years, with the alternative of becoming a permanent contract after two years. However, in that case for the next two years employers would be allowed to terminate the contract with one month's notice without having to provide a reason. At their last meeting, in September 2011, the social partners agreed to limit fixed-term contracts to a maximum of 18 months, regardless of the number of successive contracts. Should the employment relationship be extended after the end of the contract, the fixed-term contract would automatically become permanent. The social partners want these principles to be added to the Labour Code.
- *Extending the reference period for the calculation of working time.* Whereas according to the Labour Code the reference period for the calculation of working time is three months, the Anti-crisis Act has extended it to 12 months. Again, the employers would like to make the 12 months the rule and repeal the three month period laid down in the Labour Code. At the September 2011 meeting, the social partners decided to split the difference, setting it at six months. Extending the reference period from three to six months could be done via company agreements signed with unions. If there is no union in the company, agreements may be signed with other employee representatives and the Labour Inspectorate notified.

- *Introduction of a 'project contract'*: Another proposal from the employers' side is the introduction of a new contract, a so-called 'project contract', signed with employees to complete a special project. Such a contract could even last for more than four years. It is unclear whether this proposal is still on the table or not.
- The social partners also committed themselves at the September 2011 meeting to developing a joint position on the *representativeness of union and employers' organisations*, in particular looking at introducing a representativeness criterion at sectoral level and establishing rules on *employee representatives' entitlement to sign collective agreements at company level*, in particular in companies where there is no trade union representation.

At the beginning of January 2012, talks were still going on. At the last meeting of the Tripartite Committee in December 2011, the Minister of Labour and Social Policy apparently presented the social partners with three possible scenarios in an effort to break the deadlock:

- The first proposal consists of creating a temporary bill containing special provisions modelled after the Anti-crisis Act.
- A second proposal aims to permanently add to the Labour Code two provisions from the Anti-crisis Act: namely, increasing the reference period for the calculation of working time to two months and introducing personalised working hours.
- A third proposal foresees a completely new part of the Labour Code on working time in light of the lessons learned from the Anti-crisis Act, while complying with EU law (maximum working time and minimum resting time) and protecting some categories of workers (women who are pregnant or breastfeeding, parents, those doing strenuous jobs and so on).

Both social partners continued to put forward other amendments. The trade unions presented proposals for (1) limiting fixed-term contracts to 24 months, (2) reviewing the regulations governing collective disputes, notably to make possible strikes against central management (or the parent company) and (3) the development of regulations governing union membership to let people working on the basis of a civil-law contract (particularly the self-employed) to join unions and enjoy the same rights as employees. The employers' organisations, for their part, asked for (1) renewal of the 20 per cent threshold of union representativeness at company level, (2) amendment of the regulations on collective disputes, notably by making unions give clearer grounds for a strike and criteria for determining the lawful character of a social movement, (3) improving independent collective

bargaining at company level and (4) reviewing union representatives' special protection.

Discussions became even more complicated in mid-January 2012 when the three union confederations – NSZZ Solidarnosc, FZZ and OPZZ – announced that they would suspend their involvement in the Tripartite Committee, mainly because they consider that the government is violating the Tripartite Committee Act. For instance, the Act provides for at least one Committee meeting every two months – in other words, four meetings of the Presidency and three plenary meetings – but in 2011 only two such meetings took place. The government was also blamed for not properly consulting the social partners via this Committee and for presenting controversial draft reforms without consultation or debate.

In the meantime, the trade unions also started a campaign against the excessive use in Poland of so-called 'junk contracts', in other words, fixed-term contracts and civil law contracts. According to Eurostat figures, at the end of 2010 Poland had the highest proportion of workers in the European Union employed on fixed-term contracts, at 27.7 per cent of total employees, in comparison to the EU27 average of 14 per cent. These contracts do not offer proper protection. For instance, some temporary contracts which are valid for more than six months allow the employer to give only two weeks' notice for dismissal with no obligation to give a reason. Furthermore, according to the National Labour Inspectorate, in 2010 20.9 per cent of workers had such a civil law contract, which are not governed by labour law (for example, they do not offer the right to paid leave or the minimum wage) and are in particular used for young people. Apart from the high use of these contracts, the trade unions are also strongly concerned by the plan of the main coalition party, the Civic Platform (PO), (proposed in its election programme) to amend the Labour Code to include measures on renewable seasonal contracts. Along similar lines NSZZ Solidarność planned to ask the Polish branch of the International Labour Organization (ILO) to examine whether it is a breach of international conventions that people with civil law contracts have no right to join a union. Not surprisingly, the Polish employers' organisations objected to extending the rights of workers on civil contracts, in particular to allow them to join a trade union, arguing that these flexible contracts should remain as they are crucial to combating the economic crisis.

Poland's new parliament was elected on 9 October 2011 and a new government was formed in mid-November. The re-elected centre-right Civic Platform (PO) and the Polish People's Party (PSL) announced in their programme for the next four years such significant proposals as equalising the retirement ages of women and men (currently 60 for women and 65 for men) and raising the retirement age to 67 and stricter retirement requirements for miners and uniformed services. The social

partners unanimously and immediately appealed to the government to start dialogue in the Tripartite Commission for Social and Economic Affairs (KT). Seemingly, the government has no interest in doing so; on the contrary, it continues to block such discussions by either not attending meetings or coming unprepared or by the Prime Minister not appointing new KT members after the elections.

Portugal

Despite the strong insistence of the European Commission and the employers throughout 2010, the government refused to amend the Labour Code, in particular on the issues of further flexibilising the regulations on fixed-term work and lay-offs.

It was only by the end of 2010 that the government submitted to the social partners new proposals in particular on lay-off compensation schemes. At that time, employees subject to collective redundancies or whose position was cancelled can claim one month's pay per year worked in the company. The government proposed removing ten days' pay per year worked (dismissed workers had to be paid compensation of 30 days per year worked; this would be brought down to 20 days) and to introduce an overall limit of the benefits to 12 months' pay (no such limit existed before). The then existing guarantees of three months' pay would be removed. Benefits will amount to 1.66 days per month of work, as opposed to 3 currently for fixed-term contracts of six months. Minister of Labour Helena André also suggested the creation of a fund for layoff compensation, exclusively subsidised by businesses and supervised by an organisation composed of representatives of the social partners.

On 22 March 2011, a temporary tripartite agreement was reached between all social partners, with the exception of the CGTP. Lay-off benefits were indeed to be reduced to 20 days for every year spent at the company as against 30 days before. There was a 12-month limit on benefits but with an additional limit of 116,000 euros as opposed to 145,000 euros in the government's previous offer. Benefits will be based on daily basic pay. The measure was to be applied to new labour contracts (after the agreement's measures are published), and not those already signed. The agreement also provided for the creation of a fund to finance benefits, exclusively subsidised by businesses. If the company goes bankrupt and closes the fund may guarantee immediate payment of 50 per cent of the sum owed to the laid-off workers. However in April 2011, the agreement was suspended due to the fall of the government.

However, at the end of March the government's proposed austerity plans were defeated in Parliament and the government collapsed. Only two weeks later the caretaker government announced, following Greece and Ireland, that Portugal would receive a mission of the European Commission, ECB and IMF (the so-called 'Troika').

In its Memorandum of Understanding of 17 May 2011, agreed with the Troika, the caretaker government agreed to pursue some important labour market and labour law reforms, in particular in relation to severance payments, rules governing individual dismissals, working time arrangements and wage-setting, collective agreements between works councils and companies (all in principle had to be realised by the end of 2011) and further reforms to collective bargaining (by the second half of 2012).

Concerning *regulation of redundancies*, the government agreed to enforce the measures defined within the framework of social dialogue before the fall of the government and strengthened them by providing for their application to all existing labour contracts from 2012. In particular, redundancy benefits for permanent contracts would be reduced from 30 days per year of seniority to 10. The limit to 12 months' pay remains. Changes would also be made to termination benefits for fixed-term contracts, which would be reduced from 36 days per year worked to 10 days. The notion of a compensation fund remains in the text.

In terms of *working time arrangements*, the Memorandum provides for the minimum *additional pay for overtime* established in the Labour Code to be reduced to a maximum of 50 per cent (at present, employees are paid 50 per cent extra for the first hour of overtime worked, 75 per cent extra for additional hours and 100 per cent extra for overtime during holidays) and it also wants an end to *compensatory time off*, equal to 25 per cent of overtime hours worked. Regarding the latter, it would, however, be possible to revise these norms upwards by collective agreement but also downwards.

The Memorandum also foresees *major changes to the Portuguese industrial relations system*. Draft legislation can be expected by the first quarter of 2012 on:

- Criteria for extending collective agreements, including the representativeness of the negotiating organisations (to be assessed on the basis of 'both quantitative and qualitative' indicators) and how extension would affect the competitiveness of non-affiliated firms.
- A further reduction of the continued application of collective agreements that have expired and have not been renewed.

- Further decentralisation of bargaining in favour of company level bargaining.
- Allowing works councils to negotiate functional and geographical mobility conditions and working-time arrangements.
- Lowering the company size threshold, so that works councils can conclude agreements with companies of 250 employees.
- Inclusion of conditions in sectoral collective agreements by which works councils would be able to conclude firm-level agreements without the involvement of trade unions.

As regards termination of the labour contract, on 8 September 2011, Parliament adopted a law providing for compensation of 20 days per year worked (instead of the previous 30 days) and benefits cannot exceed 12 times the reference base (the 20 days per year) and will be limited to 240 times the guaranteed minimum wage. The new rules will apply for all cases of termination: individual, collective, abolition of the job position, relocation, bankruptcy, restructuring or even the death of the head of the company. The new law will apply to all labour contracts signed after its approval, although the government did not rule out the possibility of making this measure retroactive. The idea of a compensation fund remained valid but could not be fully realised due to the resistance of both employers' and trade union organisations, albeit for different reasons.

Also in September 2011, the extraordinary tax on employees' Christmas bonuses came into force. The 50 per cent tax will apply to the part of the Christmas bonus exceeding the minimum wage (SMN). According to the implementing decree of 7 September families may deduct 2.5 per cent of the minimum wage per child, that is, 12.12 euros. The bonus could also be paid in instalments. The new tax also swallows up Portuguese workers' fourteenth month bonus. In October, plans were announced to apply this tax also to public sector workers.

On 7 December 2011, the Council of Ministers adopted – without consultation with the social partners – a draft bill increasing the working day by 30 minutes in the private sector, with no financial compensation. This measure is intended to be exceptional, applying only to 2012 and 2013, and will raise weekly working time from the current 40 hours to 42.5 hours. Public businesses or businesses with a majority of public capital will not be affected. The bill also included an 'anti-abuse' clause, which states that a company may not make use of the extra-time clause within 30 days of any job losses. Some categories of workers (miners, pregnant women/young mothers, workers with reduced abilities or suffering from chronic illness) will also be excluded from this increase. For part-time work, the working time increase will be proportional. The daily half hour can be applied over four

weeks, in which case the employer can call for an additional working Saturday. However, this is possible only if workers agree. On 16 December 2011, draft bill No 36/XII was presented to Parliament.

In the meantime, on 10 January 2012, Act 3/2012 came into force temporarily amending the maximum duration of fixed-term contracts. Fixed-term contracts can now be renewed twice in 18 months. However, this exceptional extension cannot extend the contract beyond 31 December 2014. Currently, the Labour Code provides that fixed-term contracts can last up to three years (instead of six months, as previously).

Following fierce opposition to the working time proposals from the trade unions, as well as the main opposition parties in Parliament, the government decided to back down and return to tripartite dialogue. A 'Compromise for growth, competitiveness and employment' was reached by the tripartite committee (CPSC) on 16 January 2012 and contains a series of measures on flexible labour, as well as confirming the previously agreed rules on lay-offs.

- *Working time accounts.* The working time accounts system has been extended. The company may now directly negotiate with the worker up to 150 hours a year, within the limit of two additional hours a day and 50 additional hours a week. The social dialogue agreement also provides for the introduction of a working time account of up to 200 hours a year, negotiated in individual sectors, regardless of collective agreements. Overtime compensation will be negotiated on an individual basis.
- *Overtime pay.* In addition to the removal of overtime from the individual working time account, overtime will be compensated 50 per cent less. The first extra hour will be paid 25 per cent more and following hours will be paid 37.5 per cent more. Holidays and work on Sunday will be paid 50 per cent more (currently 100 per cent).
- *Annual leave, long weekends and holidays.* The attendance bonus provided for in the Labour Code was removed. It provided for three additional days off, bringing annual leave from 22 up to 25 days. The agreement provides for the termination of four holidays a year. When the holidays maintained are on a Tuesday or a Thursday, thus giving the opportunity for a four-day weekend, the company can completely or partially close for the period, thus withdrawing employees' possible leaves or compensation time. However, the company will have to post a preliminary schedule to let employees plan their vacations.
- *Layoffs.* Termination on the grounds of the abolition of a job position or the worker's inappropriateness for the job is made easier:

- when the position is abolished: the employer now has the possibility of laying down a definitive – non-discriminatory – criterion abolishing the position. Consulting employee representatives is still required.
- In case of inappropriateness for the job: ‘a substantial change in the employee’s work leading to a decline in production or quality, or to repetitive failures or a dangerous situation for the worker or third parties’. These words were already laid down in the Labour Code, but the new social dialogue agreement introduces the word ‘notably’ before the definitions, which opens up the possibility of extending the principle of inadequacy to other measures. In both cases, the company is no longer required to offer another job.
- *Layoff benefits.* The agreement provides for three steps for establishing a procedure to cut layoff benefits from 30 to 20 days per year worked at the company and the establishment of a maximum limit amounting to 12 months’ pay. Therefore, this measure will be implemented gradually and start to affect all employment contracts from the third quarter of 2012. In the meantime, the government also needs to draft a bill to introduce an employers’ compensation fund to finance the benefits.

Shortly, following this agreement of 18 January 2012, the Council of Ministers of Portugal decided to cancel four holidays, namely ‘Corpus Christi’ (60 days after Easter Sunday), 15 August, 5 October and 1 December. The government will also allow businesses to close over long weekends – when holidays are on a Tuesday or a Thursday – but unlike the first drafts which foresaw the implementation of this measure for 2012, this will now come into force only in 2013. When the company closes, the workers either have to take a day off or accept to work more to compensate. The company will have to determine the conditions with the employees in advance. Thirdly, government proposals provide for the introduction by businesses of a working time account, a pool of 150 working hours per employee, negotiated with them, which is not paid as overtime, however.

Romania

In July 2011, the Romanian government passed Act 62/2011 which not only governs *new collective bargaining rules* for all levels from national to company, but also regulates representativeness criteria for trade unions and employers’ organisations, the Economic and Social Council (CES) and labour conflicts, among other things. It extracts and somewhat modifies the relevant rules on collective bargaining contained in the Labour Code (Law No. 53/2003), the Collective

Agreement Law (Law No. 130/1996) and Laws No. 54/2003 (on the establishment, structure and management of trade unions) and Law No. 356/2001 (on employers).

However, the government adopted this new law on Social Dialogue circumventing the normal parliamentary procedure. This was contested unsuccessfully by opposition parties in the Constitutional Court. There was also dissatisfaction among the social partners in particular because for several provisions there were no supporting impact studies and comments and observations made by the Economic and Social Council and the International Labour Organization (ILO 2011) were not taken into consideration. Major changes involve the following:

- *Abolition of the national collective agreement* (as reference point for collective bargaining at all levels). This collective agreement used to stipulate minimum rights and obligation applicable to all employees in Romania, irrespective of whether lower levels were covered by collective agreements and among other things laid down the terms of reference regarding minimum wage, length of working time and working conditions.
- Collective agreements, which previously were negotiated for each branch of the national economy (with 32 of those listed in the national agreement), have been replaced by *sectoral collective agreements*. Furthermore, previous branch collective agreements were applicable to all workers and all businesses in the branch, regardless of whether there were other agreements at company or group level. The new ‘sectoral’ agreements, however, will apply only to companies that are members of employers’ organisations that have signed the sectoral agreement and can only be enforced at sectoral level if more than 50 per cent of all employees in the sector work for companies that are members of the signatory employers’ organisations.
- Collective bargaining previously took place annually and the national agreement was in principle made for four years; now there is no longer a compulsory agenda for negotiations. Only the minimum (12 months) and maximum (24 months) duration of a collective agreement is fixed.
- *Representativeness criteria*. The new law sets out such criteria for social partners at all levels (company, groups of companies, sectoral and national). Whereas previously, 15 persons working in the same branch or profession, albeit in different companies, were required to set up a trade union, 15 workers in the same company are now required. However, 90 per cent of Romanian companies have only nine workers or fewer. National representativeness criteria are still required because only nationally representative social partners may appoint representatives to the National

Tripartite Council for Social Dialogue (CNTDS), the CES and social dialogue committees for central and county public administration bodies.

- Furthermore, a trade union is representative and allowed to negotiate a single-employer collective agreement only if at least half plus one of the company's workers are affiliated to it (compared to one-third under the previous legislation). This also has as a consequence that only one trade union can be representative in one company compared to up to three under the old legislation. When there are no representative unions in a company because there are not enough members, negotiations can be carried out by the federation to which the existing union belongs. If there is no union at all, negotiations will be carried out by employee representatives only.
- As for the *Social and Economic Council*, this will become a public institution of national interest charged with creating the conditions for a civic dialogue between employers' associations, trade unions and structured entities of civil society and government, thus leaving its place in the CES to the latter entities. A tripartite national social dialogue committee, composed of union and employers' representatives, as well as representatives of the financial and banking industry, will be set up and coordinated by the Prime Minister, but will act only in an advisory capacity.
- Finally, a mediation and arbitration body will be set up to handle industrial conflicts.

Apparently, mainly due to the problems encountered by the social partners in acquiring recognition at sectoral level, collective bargaining has come to a standstill in Romania. In September 2011, Romania's five trade union confederations – Cartel Alfa, BNS, CLSR-FRatia, the Democratic Trade Union Confederation of Romania and the Meridian National Trade Union Confederation – and some employers' organisations (Conpirom, the National Union of Romanian Employers and UGIR-1903) joined forces and signed a memorandum of understanding (MoU) calling on the centre-right government to revive social dialogue as soon as possible in order, notably, to discuss concrete measures to prevent a possible new economic crisis. Both employers and unions apparently think that the text conflicts with ILO conventions and the principles promoted by the various EU treaties and have therefore – supported by the ITUC and ETUC – requested the assistance of ILO experts.

At the end of October 2011, Patrorm – an umbrella for four employers' associations: Conpirom, UGIT-1903, UGIR-1903 (Romanian employers) and the National Union of Romanian Employers – signed a social agreement with five union confederations (Cartel Alfa, BNS, CLSR-FRATIA, the Confederation of

Democratic Unions of Romania and the Meridian National Union Confederation). This agreement lays down the foundations for bilateral cooperation, whereby they recognise each other in their respective capacity as social partner. The agreement also lays down rules for the tripartite social dialogue. Thus, the text provides that collective agreements will be negotiated outside the framework of tripartite dialogue provided for in the Social Dialogue Act and will apply to all businesses whose representatives signed this agreement. The signatory employers and unions have also decided to leave the Social and Economic Council until the government replaces its representatives with civil society representatives, as provided for in the new Social Dialogue Act.

At the beginning of 2012, the government and the social partners had still not found a compromise solution on the number and description of sectors. This dispute about numbers – the government initially wanted only 25 sectors with a minimum of 70,000 workers in each sector, whereas the social partners aimed at a list of 41 sectors – is seriously delaying and even blocking wage negotiations in the different sectors. After several rounds of negotiations both sides wanted to compromise on the figures (government 28; social partners around 35) but no final solution had been reached at the time of writing (mid-February 2012).

With the first proposals launched in December 2010, *reform of the Labour Code* was finally adopted via Law 40/2011 of 1 May 2011. The new Law on Social Dialogue was also adopted by the government, although without involving the Parliament and was unsuccessfully contested before the Constitutional Court. The main bottlenecks in the negotiations were the prolongation of trial periods, the more flexible use of fixed-term contracts and (the abolition of national) collective agreements.

According to the new Code, the *trial period* is now longer: for workers it has been extended from 30 to 90 days, whereas for executive positions it has been extended from 90 to 120 days. Employers will also be allowed to try three candidates for the same position and can multiply trial periods for the same job for up to 12 months. It should also be noted that under Romanian law a trial period may be terminated without notice, at any time and without a reason.

Furthermore, the *maximum length of fixed-term contracts* has been increased from 24 to 36 months and the only restriction regarding extension is that only three successive fixed-term contracts can be concluded, with the first for a maximum of 36 months and the following ones for a maximum of 12 months each (previously, only three successive contracts could be concluded, not exceeding 24 months).

As for *temporary agency work*, the maximum period has been set at 24 months, but with a possibility to extend it to 36 months, and there are hardly any limits on the reasons for using agency workers, except in cases where the employer wants to replace existing workers or to substitute workers on strike. The new Labour Code also foresees that agency workers have the right to remuneration equal at least to the legal minimum wage and thus not necessarily to the same wage as a permanent worker in the user enterprise performing the same or a similar job.

In case of *reduced activity*, the employer has the possibility, after consultation with the trade unions or workers' representatives, to unilaterally reduce the working week from five to four days and to reduce wages proportionately. Also in relation to working time, the maximum weekly *working time* remains 48 hours but the new Code foresees an increase in the reference period from three to four months and in the near future even to six or even 12 months. In addition, the period of time off as compensation for overtime work has been increased from 30 to 60 days and it becomes possible to grant free days in advance in order to compensate for future overtime. It is also still possible for one person to conclude two employment contracts with the same employer, which could lead to situations in which the rules on limiting overtime are bypassed.

Changes were also made to *dismissal protection*, in particular, the abrogation of a number of protective norms for union leaders, including the ban on dismissing them within two years of the end of their mandate or during their mandate for reasons not specific to the employee in question. In case of collective redundancies, employers will be able to give priority to performance criteria, not social criteria as was previously the case. The rules on collective redundancies also no longer apply to public sector employees.

Although these provisions have only just been adopted, the European Commission has apparently already asked for the review of some of them.

After almost a month of daily protests and demonstrations, Prime Minister Emil Boc was replaced by Mihai Razvan Ungureanu on 6 February 2012. The ongoing protests were mainly against the austerity measures in force for two years, accepted as part of the agreement between Romania and the IMF in 2009. The new government programme's main objective is to save existing jobs and boost job creation. The measures include the payment of subsidies to employers who create jobs, but also incentives to get parents to return to work, notably by giving subsidies to businesses recruiting women with children under the age of 6 or developing 'alternative' forms of labour, such as teleworking or part-time work. The government also wants to develop national social dialogue to boost employment.

Slovakia

In January 2010, important changes were made to the collective bargaining system, including a new mechanism for the extension of multi-employer collective agreements. These changes came about following consultation with ILO experts and include the following:

- the scope of multi-employer collective agreements should be specified by the respective code under the General Industrial Classification of Economic Activities (NACE);
- collective agreements shall be applied to employers affiliated to the employers' associations that signed the agreement, and if their activities fall within the NACE specification;
- multi-employer collective agreements can also be applied to a particular employer, even if it is not a member of the contracting employers' association, if the contracting parties agree;
- at the request of one or both of the contracting parties, the Ministry of Labour, Social Affairs and Family can extend a collective agreement to all or some employers in the sector/s covered by the agreement;
- the law also specifies cases in which the extension of a multi-employer agreement cannot be applied to an employer in the following instances: if the employer is covered by another multi-employer agreement, employs fewer than 20 employees or bankrupt. It also provides that the extension of such a multi-employer agreement to the whole sector or branch can be done without the consent of the employer but on the recommendation of a special advisory committee. Apparently, the government was ready to accept changing the latter in October 2010, but it is unclear what the current state of play is.

Following an intensive debate which started in October 2010, the government adopted the proposed changes in April 2011 after it had discussed them with ILO experts in mid-April. However, the text was still significantly altered following debates in June and July in the Slovak Parliament. The text of the new law was finally signed on 27 July 2011 and came into effect on 1 September 2011. The main changes are as follows:

- *Industrial relations/employee representation.* Any new trade union organisation created in a company after 1 September 2011 and claiming to represent all employees would have to prove to the employer, on request, that it represents at least 30 per cent of employees. For existing union

organisations, employers will be able to apply this system from 1 January 2013. Furthermore, if a union organisation and a works council are active in the company at the same time, the union's rights are diminished in favour of the works council and it is thus now possible for workers' representatives other than unions to sign an agreement with the employer on working and employment conditions, as in a collective agreement. In addition – and for the first time – it is now possible in the Slovak Republic to agree in a collective agreement on working and employment conditions that are less advantageous for employees than those provided for in the Labour Code, although some strict exceptions are stipulated. For instance: less advantageous provisions cannot be agreed on trial periods and overtime (see below), the temporary suspension of work in certain cases, sanctions for failure to comply with the notice period by employees when they terminate the employment relationship and the employer's obligation to offer another job to laid-off employees, under some circumstances.

- *Working time*: the changes provide for more flexibility regarding *overtime* and *night work*. It is now possible to lay down in a collective agreement that employees may work up to 100 extra hours beyond the current 150-hour limit. While the maximum annual amount of overtime (commissioned and agreed to) remains 400 hours for regular employees, executives may work 150 hours more than this limit, making a total of 550 hours. Regarding *night work*, the new rules provide for more flexibility and the possibilities to perform night work have been extended.
- *Fixed-term work*: contracts can now last three years instead of two. Such employment can also now be extended three times in this three-year period (instead of twice in a two-year period as before). In relation to *trial periods*, these remain three months for regular employees. However, it is now possible to agree on a trial period of up to six months for managerial staff. In addition, collective agreements may provide for an additional three months on top of the maximum duration of the trial period for both types of employees, which would bring it up to six and nine months, respectively. In practice, this seems to come down to an extension of the period during which employers and employees may terminate the employment relationship for any reason or without even giving a reason after a simple notification issued at least three days earlier. However, for contract termination during the trial period of pregnant women, mothers of a child up to nine months old or breastfeeding women, this can be applied only under extraordinary circumstances which have nothing to do with the fact that she is pregnant or a mother.

- Major changes also affect *flexible working time arrangements*. First, it concerns the '*flexi-account*' system which enables employers, with the consent of the company's union representatives, to dismiss employees for serious operational reasons. During periods of reduced working time, employers have to pay basic pay to their employees and when normal activity resumes, overtime will not be considered as such. This anti-crisis measure was introduced in 2009 and was supposed to end on 31 December 2012 but is thus permanently introduced in the Labour Code. On top of that, another major change is that using the flexi-account no longer requires that the employers and unions sign an agreement but can be done following a simple consultation with the employee representatives (unions, works' council and so on). In addition to the flexi-account, a *new working time account* has been introduced which represents a special form of irregular working time which employers may use to meet temporary needs to increase production or, on the other hand, to reduce it. Again, to use the working time account, employers need to sign an agreement with workers' representatives.
- The amendments also introduce the new concept of *job sharing*, whereby several part-time workers can work on the same job, dividing working time and tasks amongst themselves. Employers will only step in if the employees fail to reach agreement.
- Regarding *termination of the employment relationship after notice has been given*, instead of the two months' notice for employers and employees, there will be a differentiated notice period, ranging from one to three months, arranged as follows: if the employment relationship lasted for less than a year, there will be a one-month notice period; if the employee has worked for the employer for at least a year, the notice period is two months. The three-month notice period applies only if the employer terminates the relationship for economic or health reasons, and only if the employee has been at the company for at least five years. Furthermore, when employers terminate the employment relationship because of economic or health reasons, employees' entitlement to benefits is removed if they remain at work during the notice period.
- The amendments also provide a possibility for the employer to insert a *non-competition* clause in employment contracts. The non-competition period can be a maximum of one year and during this period the employer must pay an indemnity of at least 50 per cent of the worker's wage. The penalty for the worker to be paid in case of a breach of the clause cannot be higher than the amount of the indemnity paid by the employer during the period of application of the non-competition clause.

Slovenia

A new law on temporary work regulating different forms of temporary work or so-called 'minor work' was initially passed by the National Assembly in October 2010. After heavy opposition from, among others, the trade unions, the National Council voted to delay the law, but in November 2010 the Assembly passed it for a second time. Continuing opposition from the trade unions and youth organisations, however, led to a national referendum on 10 April 2011 in which 80 per cent voted against the new law. The law regulates several forms of paid temporary or occasional work by particular categories of people, such as students, pensioners and the unemployed. However, such jobs are to be performed under a special contractual relationship which is not considered an employment relationship and thus as not falling under the protection offered by Slovenian employment law. The new law was going to allow these groups to work up to 60 hours per month and 720 hours per year (the latter only applicable to students), but with fewer rights in relation to (lower) pay, no remuneration in case of sick leave, no holiday allowance, no severance pay and no annual holidays. The new law did, however, also foresee some restrictions on the use of this kind of work by companies, depending on their size: for example, companies with 1–10 workers were restricted to a maximum of 360 hours, companies with 10–30 workers to 720 hours, those with 30–50 workers to 1,080 hours and so on. It remains to be seen how the government intends to regulate this matter in future.

Spain

Without reaching agreement with the social partners, on 11 June 2010 the government presented its proposal on labour reform, which was adopted by the government on 16 June, following a debate in Parliament. The proposals include the following:

Measures regarding temporary employment contracts and dismissal protection

- Limit temporary contracts: temporary contracts (*'de obra o servicio'*) would last for three years, maximum. Via collective agreements an additional year could be added. During the parliamentary debate a derogation was introduced for the construction sector, together with the possibility of further derogations from these limits via collective agreement.
- Limit successive contracts: persons employed for at least 24 months over two years and a half were to be considered as having a permanent contract.

- Increase in the minimum severance payment that employers must provide employees at the end of their fixed-term contracts. Previously, it was eight days' wages per year worked. The idea was to keep it at that level until the end of 2011, but then from 2012 to 2015 to increase it gradually to 12 days (9 days for 2012, 10 days for 2013, 11 for 2014 and 12 days for 2015).
- Redefine fair layoffs, with 20 days' compensation per year: the Workers Act was to be amended to include the possibility of invoking 'economic losses, not only cyclical ones', which would have to be documented, to allow for appeals under the fair layoffs procedure, compensated on the basis of 20 days per year instead of 45 days for unfair layoffs.
- More flexible use of the recruitment incentive contract: the contract, which comes with a right to 33 days' compensation per seniority year in case of unfair layoff (instead of 45 days for ordinary contracts) used to be reserved for a few groups. The idea was to apply it to all precarious contracts turned into permanent contracts by 31 December 2011. The Social Guarantee Fund (Fogasa) would pay for 8 days' compensation in addition to the 33 days the company pays to employees laid off to compensate the latter's loss of income.
- Creation of a new 'layoff' fund: within one year, a new capitalisation fund, based on the Austrian system, would be established to pay for layoffs. If employees do not use it in the course of their working lives, they can receive payment when they retire. The fund is supposed to start working in 2012 in relation to contracts signed from that date onwards.

Measures to encourage collectively-agreed internal flexibility and working time cuts

- Improving internal flexibility and using 'unhooking' clauses: businesses will be freer to amend employees' working conditions in terms of hours, working time and functional and geographical mobility. In case of a disagreement, there will be an arbitration system without going through a legal procedure.
- Appeal against short-time working: previously, there was only unemployment coverage if working hours were reduced by at least one-third. Now, employers may cut working hours by 10–70 per cent. Employees will receive proportional unemployment compensation. Businesses will receive bonuses of 50–80 per cent if they commit to training the employees affected. Short-time working benefits will be based on hours off and not days off work.

Measures to encourage the employment of young people and jobseekers

- New measures to support training were established with new training contracts for people under 25 years of age and incentives to reintegrate jobseekers include lower social contributions for employers.

Measures to improve the intermediation and functioning of temporary work agencies

- The legal framework for the operation of placement and temporary work agencies was to be reviewed. Private employment agencies are also able to become recruitment agencies and permitted to intervene in sectors formerly closed to them, such as construction and public administration. Following the parliamentary debate appeals against temporary work in the public sector were to be disallowed from 1 April 2011.

On 15 September 2011, Parliament confirmed a new labour market reform measure. Act 35/2010 (published in the Official Journal on 18 September 2010) had already been passed by the Council of Ministers in August 2011 and contains a series of measures, including some to encourage youth employment. It also suspends the provision of the Workers Act which restricts appeal against consecutive temporary contracts.

The decree also creates *a new training and dual education contract for unskilled young people* aged 25–30, with the possibility of increasing the age limit to 34, depending on the duration of training undertaken. The aim of this new contract is to help people get back into the labour market, while giving them access to training. It will last for a minimum of one year and a maximum of two, and may be extended another 12 months depending on the type of training. Working time as determined in the contract represents 75 per cent of habitual working time in the company. The remaining 25 per cent will be dedicated to training activities at a specialised centre. Employers may be completely exempt from social security contributions for the whole period of the contract; companies with 250+ employees are only exempted up to 75 per cent. Furthermore and in order to stimulate the conversion of this contract into an open-ended contract, employers may benefit from a reduction in social security contributions up to a total of 1,500 euros per year for a maximum of three years (1,800 euros in case of women). The workers are to be covered by social protection, including unemployment benefits and a wage guarantee fund. Second, the decree provides for a *suspension of the limit on successive temporary contracts* until 2014. The limit is aimed at combating use of successive temporary contracts by turning the employment of all precarious

workers (fixed-term, temporary and so on) working in the same job for 24 months (over a 30-month period) via two or more contracts into a permanent contract.

The decree also:

- *makes fixed-term contracts less attractive* by setting a maximum length of three years but with the possibility of exceeding it by an additional 12 months by industry collective agreement and by increasing the minimum severance payment that employers must give employees – but not apprentices, trainees and substitutes – at the end of their fixed-term contracts from a minimum of eight days' wages per year worked in 2010 up to 12 days by 2015;
- extends the use of so-called 'development contracts', a new type of employment contract with fewer rights;
- extends the period during which an employer may transform a temporary contract into an 'open-ended contract to promote employment', a contract form that is more advantageous for the employer who, on the termination of employment, only has to pay an indemnity of 33 days per year of seniority instead of the 45 days applying in the case of 'normal' open-ended contracts.

Another innovation in the decree is a *new definition of reasons for dismissal*. For both collective and individual procedures, the employer need only show the *reasonableness* of the connection between an organisational, productive or technological change and improving the company's situation. This notion of reasonableness did not previously exist and should encourage employers to resort to justified dismissals (20 days per year worked) instead of automatically choosing unjustified dismissal, which gives rise to compensation of 45 days' salary per year worked. However, the precise interpretation of the new legal text rests with the judiciary (for individual redundancies) and with the labour administrations, which must authorise or reject collective dismissals if there is no collective agreement. Furthermore, this new law introduces 15 days' notice (instead of 30 days) in case of individual dismissals. Also from now on, non-compliance with the redundancy procedure will not render the employer's decision void and therefore the employee will not be entitled to reinstatement but only to a severance payment in the amount established for unfair dismissals.

As for changes to the industrial relations system, on 10 June 2011 the Council of Ministers approved a *royal decree reforming the framework of collective bargaining (Royal Decree Law 7/2011)*. It was published on 11 June in the Official Gazette and entered into force on 12 June. The text facilitates internal flexibility for businesses and introduces mediation to solve conflicts, but the main change is that it *gives precedence to company collective agreements over provincial collective*

agreements. Company agreements may provide for less advantageous terms on, for example, pay, working time, organisation of leave, job categories, recruitment and work–life reconciliation. Such precedence shall apply unless a national, sectoral or regional agreement states otherwise. This is a substantial change in the hierarchy of collective bargaining, as currently provincial agreements cover about 70 per cent of businesses.

Following the legislative election of 20 November 2011, Mariano Rajoy, the new Spanish President, presented the social partners with a roadmap for the coming labour market reform. Key issues he wants to work on are the role of collective bargaining, recruitment modalities, absenteeism, out-of-court dispute resolution and training. The social partners were asked to deliver a negotiated text on these issues by 6 January 2012. On that day, the social partners informed the government that agreement had been reached on only a few some issues. The deadline was then extended to 13 January.

On 25 January 2012, the social partners – CCOO and UGT for the trade union side and the CEOE and CEPYME for the employers' side – signed a series of agreements affecting wage moderation and internal flexibility in businesses, but also affecting collective bargaining structures and the conditions under which ailing businesses can derogate from the conditions laid down in sectoral or regional agreements. The agreement distinguishes between ordinary internal flexibility and temporary extraordinary flexibility.

As for ordinary internal flexibility measures, and in particular regarding working time, the agreement foresees, for example, that collective agreements should make it easier for employers to do as they see fit with 10 per cent (as opposed to 5 per cent under current regulations) of annual working time and divide it irregularly in accordance with production or organisational needs. Collective agreements should allow for the introduction of a pool of 5 days or 40 hours a year for this purpose, depending on employers' needs, over the annual schedule. As for extraordinary temporary flexibility, the text foresees that, should it be justified by economic, technical or organisational reasons, employees may be asked to perform different tasks or roles than those listed for their occupational group, provided that these measures do not exceed six months over one year or eight months over two years. To extend this period, employers need to sign a preliminary agreement with employee representatives.

The agreement also contains 'temporary maladjustment clauses' – or 'disengagement' clauses – in particular in relation to pay or the division of working time, team shifts, remuneration, work and profit systems. Sectoral agreements have to determine the conditions and situations in which businesses may derogate from what was agreed. The basis will have to be 'objective parameters', such as a

fall in results, sales or productivity over the past financial year or the past 12 months. The conditions for disengagement must be negotiated with employee representatives. In case of disagreement, the parties involved may turn to an arbitration committee.

Finally, the agreement reasserts that sectoral and regional agreements take precedence while pointing out that they should encourage the decentralisation of negotiations and that sectoral agreements must facilitate company bargaining in terms of working time, functional mobility and pay.

Following this agreement, the same Spanish social partner organisations signed another agreement on 7 February 2012 reviewing the public mediation and arbitration system (SIMA) for collective disputes. This agreement also allows appeals to alternative dispute settlement in cases of disagreement arising within the framework of consultation with employee representatives with regard to the application, in the company, of the disengagement clause (that is, when employers, for economic reasons, wish to opt out of wage increases provided for in a collective agreement at a higher level), or when negotiating a company agreement derogating from conventional provisions from a higher level. Secondly, to help boost sectoral bargaining, the agreement also provides that the parties to a sectoral agreement can, in turn, provide for mandatory appeal to arbitration when negotiations on the renewal of an agreement are deadlocked. The agreement also provides recommendations for so-called bipartite committees on collective agreements (or *comisiones paritarias*) which now also have to determine, in addition to the modalities for settling disputes that may arise from their application or interpretation, the modalities for settling disagreements during consultations on substantial changes to working conditions or disengagement clauses.

Only three days later, on 10 February 2012, the government adopted Law 3/2012, profoundly reforming the labour market, for the third times in three years. The reform was published in the Official Journal on 11 February and came into force on 13 February, although Parliament has to pass it for it to become permanent. Key points of the reform are as follows:

- *Compensation for unfair dismissal* is reduced from 45 days' wages for every year worked (up to a ceiling of 42 monthly wages) to 33 days per year of service (with a ceiling of 24 months' wages).
- *Simpler modalities for economic layoffs*, compensated at 20 days per year. Businesses may resort to economic layoffs when they experience economic deterioration, such as actual or foreseen losses, or when invoicing or sales levels fall constantly for three quarters in a row. The objective is to make layoffs safer, in legal terms, in order to reverse the trend of employers

directly applying unfair dismissals (*despido improcedente*), which are more costly – they are compensated at 45 days per year spent at the company – but faster, and thus spare them lengthy legal proceedings which may not turn out in their favour.

- *Opening up the possibility of mass layoffs in public organisations.* Businesses and organisations in the public sector may instigate staff cuts for economic, technical, organisational or production reasons. This was not previously provided for by law. This measure is supposed to make it easier to resize administrations to adjust them to budget reviews.
- *Removal of authorisation for administrative layoffs.* Permission from national, regional or local public authorities – depending on the size of businesses – is no longer necessary to launch an *expediente de regulación de empleo* (ERE), a collective redundancies programme. It should be noted that in Spain collective redundancies are defined as dismissals for economic, technical, organisational and production reasons affecting 10 employees in undertakings of up to 100 employees, or 10 per cent of the employees in undertakings with between 100 and 300 employees, or at least 30 employees in undertakings employing more than 300 employees. In practice, this means that unions will have less room for manoeuvre to negotiate proper leaving conditions.
- As regards *working time flexibility*, three new measures have been introduced:
 - (i) The new reform removes a rule that has been in force for about 15 years prohibiting standard overtime in part-time employment. In addition to what Spanish law calls *horas complementarias* (specific overtime for part-timers, subject to some formal requirements and numerical limitations: this specific form of overtime continues to be lawful), part-timers can now work standard overtime (*horas extraordinarias*) like any other employee. The annual limit of 80 hours must be applied for part-time employment on a pro rata basis (the limit does not apply if overtime is compensated with time off within the subsequent four months).
 - (ii) Flexible allocation of working hours over the year: after the 2010 labour reform employers could freely allocate up to 5 per cent of annual working hours over the year unless otherwise agreed in the applicable collective agreement. This rule has now been clarified: it can also be applied prior to negotiations on a new collective agreement.

- (iii) The law no longer requires that employers obtain permission from the labour authority to temporarily reduce working hours or to institute temporary layoffs. Firms may implement temporary layoffs and temporarily reduce between 10 and 70 per cent of employees' working hours after following the legal procedure of collective consultation with employee representatives.
- *Unlimited successive temporary contracts are prohibited.* The reform restores the ban on successive layoffs for 24 months, which the previous government temporarily suspended on 26 August 2012. The ban will come into force on 31 December 2012.
 - Companies with fewer than 50 employees (99 per cent of the total) may introduce *a new employment contract (so-called 'employment contracts in support of entrepreneurs')*. It is open-ended with a trial period of one year but with unrestricted dismissal possibilities and compensation during the first year.
 - *Apprenticeship contracts.* Furthermore the reform provides that the apprenticeship contract, reserved for people below 25 years of age, will be extended to people under 30 until the unemployment rate falls below 15 per cent. The new contract encourages businesses with fewer than 50 employees and self-employed workers to recruit, as well as granting a deduction from social security contributions of 3,000 euros for the recruitment of a first employee under 30. Deductions can go up to 3,600 euros if a company recruits someone who has been without a job for at least three months, up to 4,200 euros for long-term jobseekers over 45 and even 4,500 euros for women. There will be a one-year trial period for this contract, during which the employee may keep 25 per cent of their unemployment benefits and employers only have to pay 50 per cent of their social security contributions.
 - *Training account throughout working life.* All employees with seniority of at least one year must receive 20 hours' annual paid leave for work-related training. This leave can be accumulated over three year. The employer must also provide employees with training to enable them to adapt if their jobs are altered, for example due to technological change.
 - *The extension of expired collective agreements is limited to two years.* The reform puts an end to indefinite '*ultraactividad*', the automatic extension of collective agreements until the next collective agreement is signed, as used to be the case. This will force the social partners to speed up negotiations and sign agreements.

- *Company agreements take precedence over higher level collective agreements.* The reform gives precedence to agreements signed directly in the workplace to facilitate internal flexibility in businesses with regard to working time organisation, working hours, pay, internal mobility or productivity systems, among other things. The 2011 reform allowed sectoral agreements to reverse this by simply stating that company level agreements would not prevail; the 2012 reform eliminates this option and company level agreements will now prevail over sectoral ones. The Decree also provides that businesses reporting losses for more than two quarters may resort to the disengagement clause to derogate from the conditions laid down in territorial or sectoral collective agreements.
- In disputes on the application or modification of collective agreements, when the parties are unable to resolve matters themselves or by voluntary bilateral submission to *binding arbitration*, the law now imposes binding arbitration on the parties by a tripartite body within the Ministry of Employment (*Comision Consultativa Nacional de Convenios Colectivos*).

The trade unions immediately rejected these labour reform measures and called for protest demonstrations across the country. The employers' side, in contrast, welcomed them as a 'step forward' in the modernisation of labour law. The trade unions have sought legal advice on lodging an appeal against the Decree as unconstitutional and perhaps lodging a complaint with the ILO for violating ILO Convention No. 98 on the right of association and collective bargaining.

Sweden

In July 2011, the Swedish Parliament adopted a law amending the rules on working time. The new provisions, among other things, make it easier to introduce overtime. For instance, the requirement of prior administrative authorisation for overtime beyond 150 hours a year has been abolished. It is now sufficient if overtime is needed because of a temporary and unforeseeable increase in work, to cover the absence of another worker or a lack of competent workers, which cannot be rectified immediately by hiring other workers. Employers must also always be able to justify the overtime by proving that they had no other solution.

United Kingdom

When it took office in May 2010, the United Kingdom's Conservative-Liberal Democrat coalition government launched a review of employment law which

continued during 2011 and led to a public consultation in October 2011. So far, this review has given rise to the following. First, the measures provide for the *cancellation of foreseen changes in, for example, training leave* (from April 2011 it was planned to extend the right to ask for time to study or train on or off the job to workers in companies with 250 or fewer employees) and for the *extension of the right to request flexible working* to all parents of children under 18 (this right was previously foreseen only for those with children under 17 [or 18 for children with disabilities]). Furthermore, plans to allow workers who declared themselves to be discriminated against because of two 'protected characteristics' (for example, gender, disability, age, race and so on) to bring a combined claim were also cancelled, as were obligations on businesses to take reasonable steps to prevent harassment of their staff by third parties. Another part of the plan is to *exempt business with fewer than 10 employees and certain business start-ups from a large part of all (new) domestic labour legislation* for a period of three years. Finally, the government publicly announced that it would launch *a drive to revise burdensome EU directives*, such as the Directive on pregnant workers (92/85/EEC) and the Directive on information and consultation (2002/14/EC).

More recently, however, the government confirmed the *doubling of the qualification period for unfair dismissal tribunal claims*, from one year to two, as from 1 April 2012. The reform also provides for the charging of a fee for lodging a tribunal case, professedly in a bid to prevent so-called 'vexatious' claims.

Finally, on 23 November the United Kingdom government issued a draft Labour Law reform in response to a consultation on resolving workplace disputes and reviewing Labour Law, under scrutiny – as already mentioned – since May 2010. This radical reform includes the following proposals: introducing more flexible layoffs in SMEs with 10 employees or fewer; reducing the consultation period for mass layoffs; introducing 'protected conversations' between employees and employers; doubling the qualification period to object to unfair dismissals; and introducing charges for appealing to employment tribunals:

- All workplace disputes have to go through the ACAS conciliation service before being brought to an employment tribunal.
- The qualifying period enabling a person to object to unfair dismissals will go from 12 up to 24 months in April 2012.
- In 2012, a new consultation will be instigated on 'protected conversations', allowing employers to openly discuss retirement or poor performance with their employees without these conversations being used in court proceedings later on.

- The government will launch a consultation on two bills affecting dismissal: the first allowing SMEs with 10 employees or fewer to dismiss people even if they are performing their duties properly and the second reducing the consultation period for mass layoffs (more than 100 redundancies), which is currently set at 90 days at a minimum.
- The Ministry of Justice will also publish a consultation on the introduction of a fee for claimants bringing a case before an employment tribunal.
- A new consultation will be launched on measures designed to simplify the agreement by which employees or former employees receive a certain (negotiated) sum of money in return for not suing their employer.

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