

## 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 was reached end of 2011. The Law on Amendments and Supplements of the Labour Code of 15 November 2011. The new Section VIII c in Chapter V of the Labour Code entitled "Additional conditions for the performance of work through temporary work agencies", as well as supplements and amendments of other provisions [e.g. Article 121 (4); Article 127 (5); Article 130c (1); 327 (1)] establishes the legal regime of such work. The employment contract, the obligations of the temporary work enterprise, as well as of the user enterprise, the relationships between the two enterprises, the rights and duties of the employee, etc., transpose the said directive. The employees are entitled to the same basic work and employment conditions as the employees of the user enterprise. A supplement to Para 1, Item 1 of the Additional Provisions of the Labour Code now stipulates that individuals who are employed by a temporary work agency are considered employees within the scope of the legal definition of the concept

“employee”. The new Paragraph 3 of Article 357 also deems disputes between an employee of a temporary work agency and the employer who is using the temporary agency workers services to be individual labour disputes.

The new Item 20 of Para 1 of the additional provisions of the Labour Code established a legal definition of the concept “Basic work and employment conditions”. These are “work and employment conditions, set forth by laws, normative acts for implementation of laws, administrative acts, collective labour agreements and/or other provisions in force in the user enterprise and concern the length of working time, overtime, rest periods during working time, daily and weekly rest periods, night work, basic and additional leave, official holidays, protection of persons under 18 years of age and women, as well as remuneration.” With regard to posting of workers, the temporary work agency and employee have to agree at least on the same minimum conditions of work as the conditions for the same type of work in the host state. The supplements to the Promotion of Employment Act provides for the obligation of registration of temporary work agencies with the Employment Agency and the consequences of its violations (new Chapter VIII e).

In January 2012, changes were made to the Bulgarian Labour Code which introduced more stringent criteria for social partners acting as national representatives on the tripartite consultative council. Already in 2010–2011, social partners in Bulgaria began discussions on new criteria for representation at national level on the country’s tripartite council. The council brings together social partners from employer organisations and unions to discuss a range of national issues with the government. The trade unions wanted more exact criteria for employer associations because many of the employers were members of several associations and this for them caused difficulties at the start of the collective bargaining process, and at the conclusion of the collective branch agreements. During the discussions, some of the employers’ organisations protested against the Government’s suggested new criteria for their representativeness. They insisted that organisations should qualify on the basis of the number of companies they represented rather than on the total number of employees their members had. The suggested changes, according to the employers, were contrary to freedom of association in employers’ associations as set out in Bulgaria’s constitution. In the end, government proposals for new and more stringent criteria for representativeness were approved by Parliament. The new criteria are more stringent than those adopted in 2001.

To be representative, a trade union must:

- have at least 75,000 members (instead of 50,000 before);
- have organisations in more than a quarter of [NACE code](#)-defined economic activities, with at least five members in each, or at least 50 member organisations that have at least five members from different NACE code economic activities.
- represent staff in local authorities in more than a quarter of Bulgaria’s municipalities, and have both a national managing body and the status of a legal entity, obtained by registration as a non-profit association at least three years before the census.

For employers’ organisations, the requirements introduced were even stricter and to be representative an employers’ organization must:

- unite sector/branch structures and companies that have a total of no fewer than 100,000 employees on labour contracts (instead of 30,000 before);
- represent employers in more than a quarter of the NACE code-defined economic activities with no less than 5% of employees in each economic activity, or a minimum of 10 employers in each activity;
- represent public employers in more than a quarter of Bulgaria's municipalities, plus a national managing body;
- fulfil no other role assigned to it by law or other regulation.

However, Bulgaria's Constitutional Court ruled that the first and last of these four criteria were unconstitutional.

Based on these criteria, the Ministry of Labour and Social Policy carried out a national census of social partners' organisations. On 25 July 2012, the government announced the census results. Three employer associations met the representativeness criteria – the Bulgarian Industrial Association ([BIA](#)), the Confederation of the Employers and Industrialists in Bulgaria ([CEIBG](#)), and Bulgarian Industrial Capital Association (BICA – and to which the Union of Private Entrepreneurs in Bulgaria (UPEB) had merged in order to preserve the national representation of its members; This was permitted because, under the Labour Code, all subdivisions of employers' associations recognised as representative at national level are also recognised as representative at local level.) . The decision of the Constitutional Court also meant that the Bulgarian Chamber of Commerce and Industry ([BCCI](#)) qualified. There were no changes in trade union representativeness at national level. Both trade union confederations, the Confederation of Independent Trade Unions in Bulgaria ([CITUB](#)) and the Confederation of Labour Podkrepa ([Podkrepa CL](#)), met the new criteria.

The National Council for Tripartite Cooperation (NCTC) will work under this new configuration, as will a range of national councils built on the tripartite principle in the fields of employment, vocational education, lifelong learning, health and safety and gender equality. The changes will also be made in management / supervisory bodies of institutions set up in the areas of employment, social and health insurance, vocational education and training, health and safety, conflict resolution.

## References/sources

### Electronic newsletters/websites

Planet Labor: <http://www.planetlabor.com>

EIROnline: <http://www.eurofound.europa.eu/eiro/>

Epsucob@NEWS – Collective Bargaining in the Public Services: <http://www.epsu.org/>

ETUI-AIAS Collective Bargaining newsletter:

<http://www.etui.org/E-Newsletters/Collective-bargaining-newsletter>

ETUC website section on economic and social crisis: <http://www.etuc.org/r/1378>

ETUI website section on crisis: <http://www.etui.org/Topics/Crisis>

European Labour Law Network (ELLN) - <http://www.labourlawnetwork.eu>

## Periodicals

Liaisons sociales Europe

Social International

## Other

ILO (2012) World of Work Report 2012: Better jobs for a Better Economy, ILO, Geneva

Muller, A. (2011) Employment protection legislation tested by the economic crisis: A global review of collective dismissals for economic reasons. Dialogue in Brief, No. 3, September 2011, ILO, Geneva.

Available in French, English and Spanish at: [http://www.ilo.org/ifpdial/information-resources/publications/WCMS\\_166754/lang--en/index.htm](http://www.ilo.org/ifpdial/information-resources/publications/WCMS_166754/lang--en/index.htm)

## Contributions by ETUC affiliated organisations:

ETUC Litigation network (meetings 29 June 2012 and 10 December 2012)

ETUC Social Policy and Legislation Ad hoc working group (Meetings 13 November 2011, 5 April 2012, 24 October 2012).

ETUC Legal Experts Network NETLEX (Annual Conference 1-2 December 2011, 11–12 December 2012)