

# The crisis and national labour law reforms: a mapping exercise

## Country report: Latvia<sup>1</sup>

### 1. Introduction

In Latvia the financial crisis was felt extremely hard and it started already comparatively very early – in 2008. Before the crisis, between 2000 and 2007, the GDP had increased by almost 90 percent; but between 2008 and 2009 it sharply dropped by 25 percent. The unemployment rate mirrored these developments by decreasing from 14 to 6 percent between 2000 and 2007, and increasing to almost 21% by 2010.

In late 2008 the Government voted to accept an **international loan** and on 18 December 2008 Latvia sent a Letter of Intent to the IMF. IMF announced a Staff-Level Agreement with Latvia on a €1.7 Billion Stand-By Arrangement as Part of Coordinated Financial Support.<sup>2</sup> Further, the Council decision from 20 January 2009 (2009/289, 2009/290 amended by 2009/592) made available medium-term financial assistance of up to EUR 3.1 billion; this assistance was provided in conjunction with the IMF loan. In addition, Nordic countries (Sweden, Denmark, Finland, Norway and Estonia) contributed EUR 1.9 billion, the World Bank – EUR 0.4 billion, the EBRD, the Czech Republic and Poland – EUR 0.4 billion.<sup>3</sup> Overall, the reforms in Latvia should be seen in the context of the conditionality of the financing, the political decision to keep the process to accede to the Eurozone going and also in the light of the Government's wish to repay the loans as quickly as possible.

From 2010 onwards, while other EU countries were still undergoing economic downturn, Latvia was already experiencing **economic recovery** (the GDP recovered in 2010 and peaked at 31.32 in 2014 followed by a slight decrease since). The **unemployment rate** decreased from almost 21% in 2010 to 9.7% in 2015. Even though the economic recovery of Latvia might seem impressive, and has been praised as a “success story” by the European Commission<sup>4</sup>, one has to take into account the social and demographic consequences of the crisis that jointly paint a much bleaker future for the country. First, Latvia has the **highest inequality in the EU**. The Gini Index is over 35% and around the fifth of the population lives at the risk of poverty. The **poverty risk is** especially high for older people (around 34%) and if they live alone (67.4% in 2014). Second, the dramatic inequality and social precariousness has been accompanied by large emigration numbers, increasingly threatening the **demographic**

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<sup>1</sup> This is a draft report. The language checked version will follow.

<sup>2</sup> Zane Rasnača, *Constitutional Change through Eurocrisis law: Latvia*. Available under: <http://eurocrisislaw.eui.eu/latvia/> (accessed on 13 Feb 2017).

<sup>3</sup> Ibid.

<sup>4</sup> [http://ec.europa.eu/economy\\_finance/articles/financial\\_operations/2012-03-05\\_latvia\\_economic\\_en.htm](http://ec.europa.eu/economy_finance/articles/financial_operations/2012-03-05_latvia_economic_en.htm) (accessed on 13 Feb 2017).

**sustainability** of the country. The net outflow of people between 2000 and 2010 was estimated to be around 200 000 which is dramatic for a population below 2 million.<sup>5</sup> The population is forecast to slide from 1.9 million today to 1.3 million by 2060.<sup>6</sup>

A significant element in Latvian experience during the crisis was **joining Eurozone** on 1 January 2014 which in the time period between 2008 and 2014 was used as the key argument for implementing drastic austerity measures without any devaluation of the currency (LVL) and for keeping it strictly pegged to Euro.

Overall, the Latvian labour law system has seen some significant changes since 2008 (when the crisis first hit); and there have been noteworthy amendments to the legislative framework regulating trade union activity. At the same time, and in spite of the enormous impact of the crisis on the Latvian labour market, no major structural reforms took place. Instead, the crisis period was characterised by numerous mechanical cuts to wages and the social protection system without structural change. Another strain of labour law changes were carried out to comply with the EU measures, like the Posted Workers Enforcement Directive<sup>7</sup> and the Working Time Directive.<sup>8</sup>

Since 2011 Latvia has been receiving Country Specific Recommendations. In 2012, 2013 the emphasis was on shifting the taxation away from labour to consumption, take measures to reduce long-term and youth unemployment, tackling high rates of poverty and social exclusion and reforming social assistance system to make it more efficient, while better protecting the poor.<sup>9</sup> In 2014, the objective to improve the quality of vocational education and training was added and in 2015, and in 2016 an obligation that any deviances from the adjustment path are limited to pension and healthcare sector reforms.<sup>10</sup>

## 2. Labour law reforms: 2008-2012

The key changes in the years 2008-2010 were related to the need to **reduce budget expenses** and were austerity-oriented. Later on (in 2011 – 2012) the changes to the labour law system were either triggered by the necessity to comply with EU law requirements or oriented towards a more structural and long-term needs of the labour law system.

### 2.1 Changes in the wage-setting system

In Latvia the employment relationships in the private sector have always been organised mainly based on the Labour Law, while for the civil servants special rules apply. At the same time for the employees working for state and local government institutions who do not have civil servant status, the Labour Law rules also used to constitute the main legal framework. However, this practice was significantly changed during the crisis. On 29 June 2009, as

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<sup>5</sup> Daniel Göler, 'A country on the move – migration and demographic crisis in Latvia', 29.05.2015, Baltic rim economies, issue No 3.

<sup>6</sup> Matthew Holehouse, *Latvia fights against the great EU exodus*. Available under: <http://www.telegraph.co.uk/news/2016/04/29/latvia-fights-against-the-great-eu-exodus/> (accessed on 13 Feb 2017).

<sup>7</sup> Directive 2014/67/EU, *OJ L 159*, 28.5.2014, p. 11–31.

<sup>8</sup> Directive 2003/88/EC, *Official Journal L 299*, 18/11/2003 P. 0009 – 0019.

<sup>9</sup> Stefan Clauwaert, (2015) The country-specific recommendations (CSRs) in the social field. An overview and comparison – Update including the CSRs 2015-2016. ETUI, Brussels, p. 100.

<sup>10</sup> Stefan Clauwaert, (2016) The country-specific recommendations (CSRs) in the social field An overview and comparison. Update including the CSRs 2016-2017, ETUI, Brussels, p. 93.

one of the first measures during the crisis the Parliament amended the Labour Law by introducing a derogation for all the employees in public and local government institutions regarding all matters relating to **pay, severance pay, and the priority rights** to continue working in case of collective dismissals. It was stated that concerning such matters the “Law on Remuneration of Officials and Employees of State and Local Government Authorities in 2009” (which was adopted by the Parliament on the same day) is applicable.

The Law on Remuneration of Officials and Employees of State and Local Government Authorities in 2009 provided that all the state and local government institutions have to **introduce wage cuts** amounting to no less than 15% (Article 4), the payment of any types of bonuses, the annual leave allowance and the practice of concluding ‘*management agreements*’ (a measure that was used to boost the low wages in the public sector for promising employees) have to be suspended. The amount of benefit for the birth of a child and also the benefits in case of death of a family member were limited to amount not exceeding 1500 EUR (Article 5). Finally, in cases of replacement of an absent employee, the premium was capped to 20% of the absent employee’s salary (Article 6). In case, the necessary reduction of expenses (as determined by the Cabinet of Ministers for each of the institutions) was not achieved, then the state and local government institutions had to revert to staff reductions (Article 7). Finally, regarding the priority rights the Law introduced an additional rule; in case of collective dismissals the preference to maintain the employment where qualifications and results of two employees were equal was given to those employees who did not have any other/alternative source of income. Further the same rules as in the Labour Law applied (Article 10). This law was applied to all the employees working for state institutions and local governments and covered also civil servants.<sup>11</sup>

In practice this was already the “**second wave**” of the cuts of the wages in state institutions, at least for the civil servants, because the “first wave” amounting to approximately 30% reductions in salaries and elimination of all “vacant” positions had been already carried out based on the Order by the Prime Minister.

In 2010, this practice of regulating the **wage-related matters for employees in the public sector** based on a separate set of rules from the Labour Law was permanently embodied in the Latvian labour law system with the adoption of the Law on Remuneration of Officials and Employees of State and local government authorities.<sup>12</sup> This law permanently introduced a **united system for remuneration** in the public sector. It applies to all the state institutions, including “independent institutions”, such as the State Audit Service, the Ombudsman and others. It also applies to all the state universities, municipalities, and healthcare workers in the public healthcare institutions (see Article 2). The only two full institutional exceptions were the Bank of Latvia and the Financial and Capital Market Commission; in addition, the law applies only partially to the President’s Chancery, MPs, the judges, prosecutors, teachers, port supervisors and port workers and only some aspects of this law apply to state-owned companies. The law regulates remuneration (salary, social guarantees and annual leave), wages (monthly wage, bonuses and cash prizes) and social guarantees (benefits, compensations, insurance and cover of the expenses). It loosely could be described as creating a pyramid with the prime minister as the highest earner in the country and the rest of the salaries being determined with the reference to his salary and the average wage in the country. The wages for individual positions are then further determined based on “qualification classes” and the years of professional experience in the public sector.

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<sup>11</sup> “Latvijas Vēstnesis”, 23.12.2008., Nr. 200 (3984)

<sup>12</sup> “Latvijas Vēstnesis”, 199 (4185), 18.12.2009.

## **2.2. Labour Law reform 2010**

On 4 March 2010 the Parliament adopted a set of amendments to the Labour Law that were not austerity or crisis-related (at least not directly).<sup>13</sup> The amendments introduced a wide set of changes that in part were meant to add to the implementation of the Working Time Directive (2003/88/EC), Employment Equality Directive (2006/54/EC) and the Directive of minimum sanctions for the employers who employ third country nationals that are in the EU territory illegally (2009/53/EC). The main changes were:

- An obligation was introduced for a **posting undertaking** who posts workers to Latvian territory to identify the person for whom the service will be provided and to submit such information to the Latvian authorities, and also a certification certifying that the said worker lawfully works for the employer in another EU or EEA country (Article 14).
- The **thresholds for concluding a universally applicable (sectorial) collective agreement** were reduced. Previously the employers' organisations had to employ at least 60% of the workers in the sector to reach the threshold for universal applicability, after the amendment two alternative thresholds apply: either coverage of 50% of workers or 60% of the industry's turnover of goods and services (Article 18 Labour Law).
- The legislator introduced a **prohibition to discriminate fathers** in cases where they take parental or childcare leave (Article 29 Labour Law).
- An obligation in a job advertisement to **identify the employer** (or the recruiting agency) was introduced (Article 32 Labour Law).
- In cases of suspicion about **discrimination during hiring process** the deadline for bringing a case before the court was extended from one month (from the refusal) to three months (Article 34(1) Labour Law). Similarly the deadline for bringing a case concerning unequal pay was extended from one to three months from finding out about the unequal situation (Article 60(3) Labour Law).
- Further, an obligation to conclude an **employment contract before the beginning of employment relationship** was introduced to avoid situations where the contracts are concluded retroactively after breaches found by the Labour Inspectorate (Article 40(1) Labour Law). In cases, where no employment contract has been concluded in writing and it is impossible to prove the employment relationship, a **presumption** was introduced that the employee is presumed to have worked for the employer from three months, with normal working time and for minimum wage (Article 41(3) Labour Law).
- The amendments introduced an option to conclude **short-term contract** for work of students in professional and academic education institutions, if the work is connected with preparing for future work in a certain profession or academic area (Article 44(8) Labour Law).
- The **obligation to maintain the pay** for workers who have been sent on an **assignment or work-related mission** was introduced in Article 53(4) Labour Law.
- An obligation to pay **supplement for high-risk-related work** was introduced (before, there was an option to pay such a supplement but it was not mandatory) (Article 71 Labour law).

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<sup>13</sup> "Latvijas Vēstnesis", 24.03.2010., Nr. 47 (4239).

- A new ground for **unilaterally ending employment relationship** was added to the existing list; the employer has the right to terminate the employment relationship in cases where the employee due to temporary incapacity does not work for more than 6 months, in case of continuous incapacity, or one year per three year period where there have been breaks in the period of incapacity. However, pregnancy, maternity leave or periods of incapacity due to accident at work or an occupational disease, cannot be calculated as part of such periods (Article 101(11) Labour Law).

A large part of the amendments concerned various aspects of **working time**. The legislator introduced a possibility to “**move**” a **working day** of a following or pre-ceeding week to a Saturday in cases where there is only one working day between the weekend and a public holiday (Article 133(4) Labour Law). This is done in order to allow the employees to enjoy a continuous longer set of holidays. Concerning the **part-time work** a possibility was introduced to employ the worker above the determined part-time rate, in cases of written agreement between the employer and employee (Article 134(7) Labour Law).

Concerning **summarized working time**, the legislator introduced an obligation to inform the worker and to limit such working time, so that it does not exceed the maximum working time in the reference period as agreed upon by the employer and employee (Article 140(1) Labour Law). If the employment contract does not foresee differently, then the reference period is one month (Article 140(2) Labour Law). The maximum limits for the summarized working time were also changed from 56 hours per week and 160 hours per four week period to 24 hours in a row and 56 hours per week. Further, to comply with the Working Time Directive, as interpreted by the CJEU, **the rest period** cannot anymore be given according to the work schedule, but has to follow immediately after periods of work (Article 140(5) Labour Law). Finally, the worker in certain situations (e.g for preparing for exams or preparing a thesis) has the right to request **educational leave** (20 working days). Before the amendments, such leave always had to be paid; however, the legislator introduced an option of giving such leave without maintaining pay a leave in Article 157(2) Labour Law. This aspect accordingly could be seen as reducing the employee protection and giving incentive not to use his/her right to educational leave.

### **2.3. Labour Law reform 2011**

In February 2011, the 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 *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.

First, in Article 4(2) Labour Law it was provided that in cases where the employment contract is concluded with a **temporary agency for a fixed time**, then the employer is the agency rather than the company where the employee provides his/her services. The legislator also implemented the **non-discrimination obligation** regarding temporary agency workers in comparison to company’s “own” workers (see changes in Article 7 of the Labour Law). The employee representatives’ **rights to information** were broadened to include also information about temporary agency workers (Article 11(1)). The cross-border temporary agency work as one ‘type’ of posting of workers was also recognised by the legislator (changes in Article 14). The responsibility from the temporary agency worker and the company s/he provides services to was aligned with that of ‘normal’ employee and employer (Article 28 Labour Law). In Article 74 of the Labour law the legislator stipulated that even “in-between” jobs the temporary

agency has an obligation to pay **at least the minimum pay rate** to the worker (Article 74(7)). The amendments also introduced an **obligation for the recipient of the temporary agency service to inform** the temporary agency worker of all the vacancies opening in the company. Further, the worker has the right to use all the facilities, transport services and other amenities on the same rules as the permanent employees (except where differentiation is objectively justified). Finally, any agreements on limiting the right of the temporary agency worker to start working directly for the temporary agency work service recipient are invalid (Article 96.<sup>1</sup> Labour Law).

**Law on Support of Unemployed and Jobseekers** was also amended in 2011 and parts of the amendments were intended to implement the Temporary Agency Work Directive. Article 17(4) of the Law requires temporary work agencies registered in another EU Member State to notify the Latvian State Employment Agency prior to the commencement of the provision of recruitment services in Latvia and to submit a copy of a document issued by a competent institution in the Member State of origin, verifying the right to provide such services in the Member State of origin. Such a provision may create an obstacle to the free movement of services, as Directive 2008/104/EC does not require the introduction of a national system of licensing of temporary work agencies, hence, it is very likely that not all Member States have such a system. Consequently, a temporary work agency registered in another Member State might not be in possession of such a special license from the country of origin. If this is the case, the temporary work agency will have to register an enterprise under Latvian law, because according to the Cabinet of Ministers Regulation No.458 '*Licensing and supervision of merchants – providers of recruitment services*, only undertakings registered under Latvian law may apply for a license from the State Employment Agency to acquire the right to provide recruitment services.

This requirement was introduced **to protect temporary agency workers**, because the national licensing system was established following a number of cases of fraudulent activities of recruitment undertakings in Latvia. Further Article 17(8) of Law on Support of Unemployed and Jobseekers provides that a temporary work agency and a user undertaking may agree on reasonable compensation to a temporary work agency for costs incurred for the assignment, recruitment and training of a temporary agency worker, whereas Article 17(9) precludes a temporary work agency from charging temporary agency workers and jobseekers any fees for the provision of recruitment services.

In addition, in 2011, concerning **hiring of third country nationals**, the legislator introduced an obligation for the employer to check whether the person has an appropriate visa and work permit when preparing the employment contract (Article 35(3) Labour Law). A **general prohibition** was introduced to employ persons who do not have a right to residence in Latvia and administrative liability was determined for employer who breaches this prohibition (Article 37 Labour Law). Also an obligation to keep at the employer's premises **the copies and record of the employment contract and other documents** used for concluding the contract (e.g. copy of visa or work permit in case of hiring a third country national) was introduced in Article 38(2). However, to protect the interests of the illegally employed it was stipulated that in cases where a person without right to residence has been in fact employed, the employer has to pay all the salary due to this person (Article 75.<sup>1</sup>(1)).

In addition, the legislator implemented the **liability in sub-contracting chains** and joint and several liability of the contractor and subcontractor when it comes to pay claims (Article 75.<sup>1</sup>(2) and (3) Labour Law). Such liability does not apply only if the subcontractor can prove that it has carried out all the precautionary measures possible to make sure that all the employees working to fulfil the contract have the right to reside and work in the Latvian

territory (Article 75.<sup>1</sup>(4) Labour Law). This is an option foreseen by the **Posted Workers Enforcement Directive** and Latvia is among those few countries that decided to implement this option in order to better protect the interests of workers in precarious situations.

#### ***2.4. Access to the labour market***

In 2009-2011 (at the peak of the financial crisis), the legislator implemented a **subsidised public employment programme**, ‘Workplaces with Stipends’, which was replaced by the ‘Temporary Public Works Programme’ in 2011-2014. This programme provided fixed-term, paid (114 EUR per month) non-commercial work in municipalities to people who are ineligible for unemployment benefits. Both programmes were very popular and, it has been argued that despite the lack of a formal selection process, the labour-intensive nature of the work and relatively low remuneration arguably ensured that only those most in need applied.<sup>14</sup> Since 2015 the state has continued the initiative of subsidised workplaces, targeting disadvantaged groups such as people with disabilities, older workers and the long-term unemployed. The objective is to subsidise the employment of around 7,000 unemployed people between 2015 and 2023. The available data from 2014 show that registered unemployment was at 9.5%, of which 35% were long-term unemployed; of this latter figure, 50.2% were older than 50, 16.1% had a disability and 3.3% were aged 15-24.

#### ***2.5 Compliance with the CSRs***

The national reform programme which the Latvian government submitted to the Commission in view of the elaboration of the Country-specific recommendations adopted in March 2012 mentioned in a chapter entitled “Improving regulation basis for employment legal relations, labour protection and their application”, that a main aim of the government was to ensure pre-conditions for high quality jobs by amongst others “**Strengthening the flexicurity principles in labour legal relationships**”. Indeed, in June 2011, the Amendments to the Labour Law came into force envisaging that, in case of reducing the number of employees, the employer no longer has to inform the State Employment Agency (SEA) on the number and professions of the employees to be dismissed at least one month prior to redundancy. For 2012, and “in cooperation with social partners”, the provisions of the Labour Law regarding fixed-term employment contracts, the amount of extra payment for overtime work, etc. were up for revision.

#### ***2.6 Protection of workers in case of insolvency***

On 14 June 2012 the Parliament adopted amendments to the Act on Protection of Workers in Case of Insolvency of an Employer. The amendments provide the right for ex-employees **to claim outstanding payments** from the Guarantee Fund if a national court decision was issued obliging the employer to reimburse unpaid salaries under the condition that (1) the said national court decision was adopted within the twelve months prior to the court decision on the employer’s insolvency, and (2) the employment relationship with the ex-employee was terminated more than twelve months before the court decision on the employer’s insolvency. The annotation to draft

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<sup>14</sup> Anna Zasova, Labour Market Measures in Latvia 2008-13, ILO, 2015, p. 5.

amendment described situations in which national court decisions were issued obliging the employer to reimburse ex-employees' unpaid salary, but the employer did not have the financial resources to comply with the court's decision, which in turn resulted in the insolvency of the employer. Until the amendments were introduced, only outstanding claims on unpaid salaries of current employees which arose within the twelve-month period before the decision on the employer's insolvency could be filed. However, ex-employees with identical claims did not enjoy the right of privileged claimants in insolvency procedures and were often not able to recover unpaid salaries despite court decisions in their favour.

## **2.7. Mediation Law**

On 18 September 2012, the Cabinet of Ministers submitted a legislative proposal - **the Mediation Law** - to the Parliament. This legislative proposal was elaborated for the purpose of implementing Directive 2008/52/EC as well for developing Latvia's legal system, including finding instruments to ease the excessive workload of national courts. Even though the Directive allows excluding "*rights and obligations on which the parties are not free to decide themselves under the relevant applicable law' and which are particularly frequent in employment law*", the Latvian legislative proposal envisaged applicability of the Mediation Law to all civil law disputes, including disputes in the field of labour law. In that context, Article 8 of the proposed Mediation Law foresaw that the initiation of the mediation procedure eliminates any periods of prescription. This measure was inserted upon the request of the Ministry of Welfare, which is in charge of implementing labour law, because unlike in other civil law disputes which usually have a 10-year period of prescription, these periods are much shorter in labour law, ranging from a general 2-year period of prescription to a 1-month period of prescription to contest a notice of dismissal.

Although several **alternative dispute resolution mechanisms** already existed under the labour law and the labour dispute law, they were used very rarely due to the lack of respective tradition and it was hoped that this new system would boost the use of mediation.

## **2.8 Key court cases**

While there were no massive demonstrations and strikes taking place in Latvia aimed particularly at fighting against the austerity measures, between 2009 and 2012 there were quite few legal challenges brought before the Constitutional Court questioning the constitutionality of the austerity measures adopted by the Government and the Parliament. The most important cases<sup>15</sup> were:

- Case No 2009-08-01 concerning the **refusal to index pensions** in 2009. In this case 20 MPs challenged changes in the Law on State Pensions which cancelled the indexation of pensions on 1<sup>st</sup> April 2009 and 1<sup>st</sup> October 2009. The applicants argued that these changes were not compatible with the principles of legitimate expectations and proportionality, which are covered by Art 1 of the Constitution, as well as with the principle of a socially responsible state and the right to social guarantees as provided by Art 109 of the Constitution. While the Court found a restriction, it ruled that it had been justified by the need to balance

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<sup>15</sup> See also the summary by Zane Rasnača, *Constitutional Change through Eurocrisis law: Latvia*. Available under: <http://eurocrisislaw.eu.eu/latvia/> (accessed on 13 Feb 2017).

the revenue and expenditure of the special budget and the consequences were mitigated by the temporary character of the measure and accordingly the law was compatible with the Constitution.<sup>16</sup>

- Case No 2009-43-01 concerned the **reduction of all state pensions** by 10% and pensions of working pensioners still in the employment relationship after the retirement age by 70%.<sup>17</sup> The Court considered that the reduction of pensions carried out by the Parliament and the Government had a legitimate aim – to solve the problems faced by the social budget. The court further considered that the materials before it showed that the social budget has not been properly planned and several inconsiderate and rushed decisions had been made. Finally the Court found that because the legislator has not considered the alternatives and has not chosen the least restrictive measure, the challenged norms were not compatible with the Constitution.
- Cases No 2009-44-01 et al. concerned the **reduction of the child benefit** for working parents by 50% between 1 Jul 2009 and 2 May 2010. The Constitutional court considered the compatibility of the norms with the principles of legitimate expectations and proportionality (under Art 1 of the Constitution), principle of equality (Art 91 of the Constitution) and the obligation of the state to support family and children established by Art 110, but did not find any breach. The court decided that the contested provision maintains the balance between legitimate expectations of concrete persons and the right of society to a sustainable system of state social insurance and balanced state budget and is compatible with Art 1, 91 and 110 of the Constitution.<sup>18</sup>
- Case No 2009-76-01 concerning the **cuts to the retirement pensions for employees of the Ministry of Interior**. The court considered that the retirement pension is an additional social guarantee for people who in the interests of the state have carried out special functions under specific circumstances, but in principle it can be reduced under strenuous budgetary circumstances. However, in this situation the reduction had been very essential – it amounted to more than two thirds of previous pension and, additionally, the overall income of socially insured persons had not been taken into account. Therefore, the court ruled that the contested provision is not compatible with Art 1 (principles of legitimate expectations and proportionality) and Art 109 (the right to social guarantees).<sup>19</sup>

Other important cases concerned the retirement pension cuts for those military officials that had reached the retirement age (Case No 2009-88-01), the payment of benefits in cases of loss of the capability to work (Case No 2010-17-01), the changes in state funded pension schemes (No 2010-21-01), changes in the wage system for the judiciary (2009-111-01), and changes in the legal framework for the operation of credit institutions (No 2010-60-01).<sup>20</sup>

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<sup>16</sup> Judgment of Constitutional Court from 26 November 2009 in Case No 2009-08-01. Full judgment available under: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2009-08-01\\_Spriedums.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2009-08-01_Spriedums.pdf) (accessed 13 Feb 2017).

<sup>17</sup> Judgment of Constitutional Court from 21 December 2009 in case No 2009-43-01. Full judgment available under: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2009-43-01\\_Spriedums.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2009-43-01_Spriedums.pdf) (accessed 13 Feb 2017).

<sup>18</sup> Judgment of Constitutional Court from 15 March 2010 in case No 2009-44-01. Full text of the judgment is available under: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2009-44-01\\_Spriedums.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2009-44-01_Spriedums.pdf) (accessed 13 Feb 2017).

<sup>19</sup> Judgment of the Constitutional Court from 31 March 2010 in case No 2009-76-01. Full text of the judgment is available under: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2009-76-01\\_Spriedums.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2009-76-01_Spriedums.pdf) (accessed 13 Feb 2017).

<sup>20</sup> See more detailed analysis under: <http://eurocrisislaw.eu/latvia/> (accessed 13 Feb 2017).

## 2.9 Other measures

There have been also some other changes that affect the labour market and have an impact on the application of labour law:

- In 2003 a system had been agreed upon for **yearly increases in the minimum wage**. This agreement was adhered to until 2009. In 2011 the Tripartite Council agreed to a freeze of minimum wages. During the following years new rounds of consultations were carried out to design a new system for increases in the minimum wage. By the end of 2013 no agreement was reached, but in the meantime the social partners agreed on an ad-hoc increase in 2011 (to 285 EUR) and in 2014 (to 320 EUR).<sup>21</sup> More recently the minimum wage was increased to 360 EUR in 2015, 370 EUR in 2016, and 380 EUR in 2017.
- In order to **fight the “grey economy”** and to increase the tax revenues, in 2011 the legislator introduced a zero tax declaration amnesty scheme. The law allowed individuals with large volumes of undeclared income to declare this income and pay a reduced tax rate (15%).<sup>22</sup>
- From 2013 the **guaranteed minimum income (GMI)** was reduced from EUR 57 and 64 to EUR 50. The financing of the GMI was re-organized as it was before the crisis when the municipality paid such income fully from its own budget. This measure reduced social protection for the poor. The municipalities will however be free to increase the level of GMI up to 128 EUR for various groups (e.g. children, old-age or disability pension recipients)<sup>23</sup>
- In 2012 the **duration of unemployment benefit** was increased to nine months from the date of the granting the benefit, irrespective of the contribution period. The unemployment benefit shall be disbursed in the following amount depending on duration of the unemployment: 1) 100% of the calculated benefit for the first 3 months of unemployment; 2) at 75% of the benefit between 4<sup>th</sup> and 6<sup>th</sup> month of unemployment; 3) at 50% of the calculated benefit from 7<sup>th</sup> until the 9<sup>th</sup> month of unemployment.<sup>24</sup>
- On 19 May 2011, the Parliament adopted a new law on the **information and consultation of employees** at EU-scale undertakings and EU-scale groups of undertakings. It repealed the previous law on the information and consultation of employees at Community-scale undertakings and Community-scale groups of undertakings. The new law implemented the Recast of the European Works Council Directive (2009/38/EC) and the requirements of EU law on the information and consultation of employees at Community-scale undertakings and Community-scale groups of undertakings more completely. There was no information available whether any difficulties have been encountered in its practical application on account of the fact that only two Community-scale undertakings have been established in Latvia.
- Finally, in 2012 the Legislator also amended Labour Law to introduce a prohibition to request **knowledge of a foreign language** if not necessary for the position in question and the obligation to conclude the employment contract in Latvian language also with foreigners (the obligation to translate was put on the employer).<sup>25</sup>

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<sup>21</sup> LABREF (<https://webgate.ec.europa.eu/labref/public/>) (accessed 13 Feb 2017).

<sup>22</sup> "Latvijas Vēstnesis", 196 (4594), 14.12.2011.

<sup>23</sup> The Cabinet Regulations No 913 "Regulations on the guaranteed minimum income level" adopted on 18.12.2012.

<sup>24</sup> Amendments to the Law On Unemployment Insurance, adopted on 15.11.2012.

<sup>25</sup> Latvijas Vēstnesis, 11.07.2012., Nr. 108 (4711).

### 3. Labour law reforms: 2013-2014

In this period the key changes were one major amendment to the Labour Law consisting of various measures in 2014, significant amendments to how the working time was regulated, the adoption of the new Trade Union Act and some new initiatives fostering the access to the labour market.

#### **3.1 Labour Law reform 2014**

On 23 October 2014 the Parliament adopted a series of amendments to the Labour Law. The key changes concerned:

- The rules on employment of teenagers. The Labour Law was amended to provide that the provisions regulating **teen employment** continue to apply if the person is older than 15 years but still continues to acquire basic education (Article 37(2)).
- In Article 37(8) of the Labour Law the legislator introduced even stricter rules on **employment of third country nationals**. According to the new version of this article, the employer is allowed to employ a foreigner only if the visa or residence permit specifies that s/he has the right to work (Article 37(8)). An **obligation to immediately end the employment relationship** was introduced in cases where the employment of the person in question is forbidden and it is not possible to employ the person with his/her agreement in another position within the company (Article 115(5)).
- The rules on **calculating daily, hourly and monthly average pay** (the key factor for calculating the amount of the majority of social benefits, including childcare benefits) were amended by adding more detailed rules for situations where a person has not worked for full six months preceding the unemployment (the standard reference period used in calculations). In such cases, the average pay is calculated proportionally only to the months actually worked (Article 75 of Labour Law).
- Previously **deductions from wage** (in case of damages due to the employer) could not exceed 20% under the Labour law or 50% under the Act on the Civil procedure. The latter option, and thus higher deductions, was deleted and since then the maximum limit of 20% applies to all situations when deductions from wage are due (Article 80).
- Concerning agreements between employer and employee on **vocational training or retraining** the amendments introduced more detailed rules. If previously, the employer had the obligation to pay for the expenses in full and thus employers had been very reluctant to use this option, then after amendments in cases where the training only in part is related to fulfilling the employment tasks, the employer and employee can conclude a separate agreement and agree on more individually-tailored rules concerning such training and its effect on the employment relationship (Article 96)
- The period of **prior notice** concerning collective dismissal was reduced from 45 to 30 days (Article 106(4) and 107(1)).

- More detailed rules were introduced concerning the **notice period** (see Article 112.<sup>1</sup> introduced by the amendments). The notice has to be delivered personally or via mail. The amendments introduced a new option for delivery - an email by using electronic signature. In cases where the notice is sent by mail, the receipt is presumed after 7 days and can be rebutted only with objective circumstances, independent from recipients will. The presumption concerning notice received electronically was determined to be 2 days and also can be rebutted only based on objective circumstances, independent from the recipient's will.
- According to an amendment to Article 128(1) of the Labour Law, the **wages due in case of termination** of the employment have to be paid no later than on the next day after dismissal, if it is not possible to do it on the day of the dismissal.
- Other changes concerned working time rules (see below).

### **3.2 Working time**

The amendments to the Labour Law adopted in 2014 introduced further changes to how **summarized working time** has to be organised. The rules were relaxed by opening possibilities of derogations. The legislator introduced a possibility not to apply the daily (24h) and weekly rest periods in cases of summarised working time if:

- a. the worker has to spend lengthy period of time travelling to work,
- b. the employee works in providing security services,
- c. the character of the work requires exceptions,
- d. the continuance of the work has to be ensured,
- e. the work is of seasonal nature,
- f. in short-term if there is foreseen an increase in work and production capacity (Article 140(2)).

Further changes stipulated that the employer now also has **no right to change the work schedule** during temporary incapacity of the employee or when the employee does not work due to other justifying circumstances (Article 140(7)). Also the deadline for providing the employee with **rest time** was introduced. The compensatory rest has to be awarded no later than within 14 days (143(4) Labour Law). This rule contradicts the CJEU's case law on the matter that requires (almost without any exception) that the compensatory rest is awarded immediately after the period for which it is due. Finally, rules on **short-term leave** were fleshed-out by introducing a possibility to use a short leave in cases where a child under 18 has fallen sick, and in order to participate in the health check of a child, when such check is not possible outside of the working hours. The employer has to be informed about short-term leave and it cannot serve as a reason to terminate the employment relationship (see changes in Article 147 of the Labour Law).

Further amendments were adopted in order to improve the Labour Law's compatibility with the Working Time Directive:

- First, the regulations on **overtime work** were amended to allow for a maximum of eight overtime hours over a seven-day period, with the average calculated over a reference period of four months. Previously,

overtime work could not exceed 144 hours over a four-month period (which exceeded the limits of the WTD as it did not take into account the right to annual leave).

- Second, the requirement of **prior consent to work overtime** for breastfeeding women was changed. Consent is now necessary only when the child is younger than two years.
- Third, specific restrictions were introduced to working time for those **night workers** whose work involves particular hazards (a maximum of eight hours within a 24-hour period). In breach of the WTD, such restrictions did not exist before. However, derogations are still possible, which calls into question the full compatibility of the Labour Law with the WTD.
- Finally, the provisions for **rest periods and annual leave** were amended. The weekly rest period was modified to require at least two weekly rest periods within a 14-day period, and the employee's right to annual leave was complemented by the right to compensation in cases where the leave has not been taken but the employment relationship is terminated.

### **3.3 Trade Union Act**

In 2014 a new Trade Union Act was adopted. It introduced some substantial changes in the legal framework for organising trade unions in Latvia:

- The **definition of what is a trade union** was amended (Article 3). Previously, a trade union was defined as an independent, public organisation that expresses, represents and protects the employment and other social and economic interests of its members. The new definition states that a trade union is a voluntary association of individuals established to represent and defend the employment, social and professional rights and interests of workers.
- Now 'everyone', and not just those who work and study, has the right to establish and **join or** (with the introduction of negative rights) **not join a trade union** (Article 4(1)).
- Previously, the law set out the principles according to which trade unions could be established (in relation to profession, industry, etc.). However, this approach was abolished and the law now allows **complete freedom** in that regard and, in addition, states that the trade unions can also establish and join federations, including international ones (Article 5). The law also explicitly allows the regional or other organisational units of a trade union to be **independent legal entities** (Article 6). Trade unions have also been given the **right to engage in economic activities** if they are related to maintaining or using their property, or to achieving the union's objectives.
- The Trade Union Act now also explicitly **states that trade unions have equal standing and protects their freedom**. Any attempt to directly or indirectly deter trade unions or to subordinate them to the employers, their organisations and federations, the state, or the municipalities, as well as to interfere with the exercise of their legitimate functions or interests, has been prohibited (Article 6, especially 6(2)).
- The new law also **differentiates between company-based trade unions and those formed outside** of the company. While company-based trade unions must have a minimum of 15 founding

members (or one quarter of the total number of employees, but no less than five), the non-company unions must have at least 50 founding members (Article 7).

### **1.3 Access to the labour market**

In order **to facilitate parents' return to the labour market** after childbirth, the Law on Maternity and Sickness Insurance was amended to allow parents to continue receiving parental leave benefits even when employed (albeit at a reduced rate), and the Law on State Social Benefits was also amended to allow for parental leave and child care benefits to be combined. Further family-oriented measures have included the right to temporary absence for employees who are caring for a child who is sick, undergoing a health check or had an accident. In addition, supplementary annual leave (minimum of one working day) was granted to workers caring for less than three children under the age of 14 (previously it only applied to workers with at least three children under the age of 16).

The **support for the unemployed** was increased during this period. The State Employment Agency (SEA) was obliged to offer more appropriate and more targeted support for the unemployed. Each unemployed person will have the opportunity of a consultation with the SEA on what could be an appropriate job for the person, what the chances are of finding such job is and how it should be done. In addition, job seekers now are "profiled": they are divided into target groups like youth, long term unemployed, to facilitate matching with specific activation mechanisms.<sup>26</sup> Concerning **third country nationals** with temporary residence permits, the legal framework was amended to ensure that they are able to receive the status of unemployed and therefore entitled to participation in activation mechanisms and initiatives helping unemployed to find a job. This measure was in line with the Directive 2011/98/EC directive aiming to support third country residents with working activities.<sup>27</sup>

In 2013, criteria were adopted on what can be considered as "**suitable employment**". Previously, the law included only a vague definition. The new definition takes into account various and much more detailed criteria: the person's professional preparation (during the first three months, a suitable job takes into account the unemployed person's qualification level; thereafter a less skilled job may be offered; if the unemployed person does not have any prior work experience, a low-skilled job may be offered immediately); his health status; the distance to the offered job (max. 1 h commute in one direction in the first 3 months; max. 1h30 commute in one direction thereafter); the wage offered (min. the person's previous wage during first 6 months; min. 80% of his previous wage for the next 3 months; and min. the minimum wage after 9 months of unemployment); and the person's care responsibilities.<sup>28</sup>

Articles 37(2) and 132(2)(2) of the Labour Law were amended in order to introduce additional **restrictions for employing people under the age of 18** (e.g. concerning working time). These amendments transposed Directive 94/33/EC on the protection of young people at work.<sup>29</sup>

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<sup>26</sup> Amendment to the Unemployed and Job Seekers Support Law (Bezdarbnieku un darba meklētāju atbalsta likumā) of 13.06.2013. Published in "Latvijas Vēstnesis", 128 (4934), 04.07.2013.

<sup>27</sup> Ibid.

<sup>28</sup> Amendment of 10.12.2013 of the Regulations Regarding the Procedures for Organising and Financing of Active Employment Measures and Preventative Measures for Unemployment Reduction and Principles for Selection of Implementers of Measures (Article 141 of Cabinet Regulation No. 75 of 25 January 2011)

<sup>29</sup> Labour Code, Publication in Latvijas Vēstnesis, 225(5285) on 12.11.2014.

### 3.4 Other measures

In 2013 **wage caps** were introduced on the earnings of the board members of large state-owned companies and companies owned by municipalities. The total monthly rewards of the board members cannot exceed ten times the average national wage of the previous year. With the aim of improving transparency and increasing the trust of citizens in state institutions, a simplified procedure was introduced for the determination of salaries of state officials and employees. It involves an occupation-based salary scale, on which an employee's position depends on their performance evaluation and professional experience.

Some other smaller amendments concerned **the maximum duration of fixed-term contracts** (increased from three to five years), the introduction of the obligation for the employer not to allow the worker to work in cases of **incapacity to work** due to health reasons and the obligation for the employer to pay salary for such periods. Also introduced was the prohibition to request **knowledge of a foreign language** if not necessary for the position in question and the obligation to conclude the employment contract in Latvia.

## 4. Labour law reforms: 2015 onwards

First, in 2015 the parliament introduced **a united pension scheme for state security enforcement officials**. According to the amendments, the right to the special retirement pension for such officials begins at the age of 50 if the length of service has been at least 20 years, of which at least the last five have been served in the position of state official. This scheme covers the employees of the Constitution Protection Bureau, the Defence Intelligence and Security Service and the Security Police, and while the old regime was applicable only to some employees within these institutions, the new scheme covers all of them.

Second, in 2016 the parliament adopted **changes to the disability pension system** in order to remedy the situations where, due to delayed disability expertise, a person loses their pension for a period of time. The new law provides for an automatic extension of the pension for six months in cases the expertise is delayed. The legislator also aligned the disability pension with the old-age pension in situations where a person starts to receive the latter instead of the former. In such situations the new (old-age) pension cannot be lower than the disability pension which has been received up to retirement age. A similar adjustment was introduced in the summer of 2016 for state officials who have a right to the special early retirement pension (those working in security institutions, the police, etc.).

Third, in May 2016 the legislator introduced significant changes to the legal framework concerning **posting of workers** (amendments to Articles 14-14.<sup>2</sup> of the Labour Law, and newly introduced Article 75.<sup>2</sup>)<sup>30</sup>. These amendments were in part aimed at complying with the **Posted Workers Enforcement Directive** and both EU-level and national case law on the posting of workers. The most important changes were:

- An undertaking which posts employees to the Latvian territory has an **obligation to inform the Labour Inspectorate** about the designated and authorised representative within the Latvian territory and also to provide all relevant data about the employer (name or company name, registration number, address, etc.).

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<sup>30</sup> Latvijas Vēstnesis, 26.05.2016., Nr. 101 (5673).

Other information which has to be sent to the Labour Inspectorate includes the identification of the service receiver, the type of service, and the start date, intended length and end date of the posted work.

- The legislator introduced an obligation for the employer's representative within the Latvian territory **to keep ready for inspection by the state authorities all records** concerning the posting, including the employment contract, information about the salary calculation, the working time records and the proof of salary payments (alongside a Latvian translation if necessary). Such documents have to be kept for two years after the end of the posting.
- A further change made in order to alleviate the duties of the trade unions was the introduction of an obligation for the posting undertaking to designate a representative to engage in collective bargaining and conclude a **collective agreement**. Such an individual does not necessarily have to be in the Latvian territory but has to be accessible.
- It was also specified that in cases of posting, the Latvian undertaking has to comply with the **host country's administrative requirements** and comply with the instructions from their supervisory institutions. The amendments clarified that the rules on work assignments are applicable to posted workers and that their daily allowance has to be considered part of the minimum wage if so decreed by the host country's rules. Other compensation connected with covering the actual expenses of the posting cannot be considered part of the minimum pay.
- Liability in sub-contracting chains was introduced for the building sector (a measure that was left as optional in the PW Enforcement Directive). The employee (posted worker) can request payment of wages due not only from his/her direct employer, but also from the next person in the subcontracting chain (the general contractor).

Finally, in 2016 the **Law on Remuneration of Officials and Employees of State and Local Government Authorities** was amended to determine that the employee has the right to a yearly child benefit amount to 50% of monthly salary for every disabled child under his/her care (instead of the right to only one such benefit per year independently of the number of children).<sup>31</sup> In addition the salary rates were changed for the employees working within the Ministry of Interior and for the Prison Administration Officials.

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