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.

These changes were hailed by certain circles, including the government and the employers, as they gave Slovakia the tenth most flexible Labour Code in the OECD (Harvan e.a. 2011).

However, following the April 2012 elections, Social Democrat and SMER-SD leader Robert Fico (again) became Prime Minister. He was quick to put forward new proposals in July 2012 for more than 90 changes to the Labour Code that had been negotiated with social partners. These included:

- the re-introduction of the option to take severance pay and to continue to work during the notice period;
- the size of redundancy payments would be determined by a worker's length of service. Employees who had not been with an employer for at least two years would not be entitled to any payment at all;
- the cancellation of external forms of employment by agreement (i.e. work performed outside the employment relationship);
- the shortening of the maximum period for fixed-term contracts
- new rules reducing the number of overtime hours an employer could request;
- a rule that notice periods could no longer be extended by agreement;
- reducing the previously agreed increase of night work by one hour;
- strengthening the role of trade unions.

Employers' demands to postpone the implementation of the amendments until 2014 were not accepted. Where the social partners could not reach agreement, the proposals of the Ministry of Labour, Social Affairs and Family (MPSVR SR) were adopted. These included *inter alia* the following: 1) trade unions no longer need to prove their representativeness; 2) working conditions less favourable than those stipulated in the Labour Code cannot be enforced through collective agreements; and 3) employers must give employee representatives paid leave of at least 15 minutes each month per employee they represent.

The draft law was approved by the government on 22 August 2012 and parliament began discussions on the amendments in September 2012. The amendments were adopted on 25 October and came into effect on 1 January 2013.

As of 1 January 2013, some of the important changes in force since September 2011 have now been overruled or abolished:

- the maximum period for a fixed-term contract is decreased from three to two years and they can only be extended twice within that period of two years;
- an employee is entitled to severance pay as well as to a notice period. The legal regulation differentiates employee entitlements dependent on the way the employment relationship was terminated (termination with notice, termination by agreement).
- if the employer terminates the employment relationship with notice for one of the reasons listed in Article 63/1 a) or b) – organisational changes, economic grounds – or because a medical opinion has determined that the employee's health condition has caused the long-term loss of his ability to perform the previous work, the employee is entitled to a severance payment as follows:
  - employment relationship > two years and < five years: one average monthly wage
  - employment relationship > five years and < ten years: two average monthly wages,
  - employment relationship > ten years and < twenty years: three average monthly wages,
  - employment relationship > twenty years: four average monthly wages.
- if the employer terminates the employment relationship by agreement for reasons stated in Article 63/1 a) or b) – organisational changes, economic grounds – or because a medical opinion has determined that the employee's health condition has caused the long-term loss of his ability to perform the previous work, the employee is entitled to a severance payment as follows:
  - employment relationship less than two years: one average monthly wage,
  - employment relationship > two years and < five years: two average monthly wages,
  - employment relationship > five years and < ten years: three average monthly wages,
  - employment relationship > ten years and < twenty years: four average monthly wages,
  - employment relationship > twenty years: five average monthly wages.
- The possibilities for extending the probationary periods up to six and even nine months (see above) are abolished.
- Whereas until 31 August 2011, if an employer gave invalid notice to an employee or immediately terminated the employment relationship in an invalid manner or during a probationary period, and if the employee informed the employer that he insisted on retaining the employment relationship with the employer, his employment relationship was not terminated (unless there was a court decision stating that the employer could not be reasonably required to further employ the employee). The employer was obliged to provide the employee with wage compensation and the employee was entitled to compensation amounting to average earnings from the day he announced to the employer that he insisted on retaining the employment relationship, until the day the employer agreed that he could continue working, or until a court ruled on the termination of the employment relationship (Article 79/1). If the total time for which the employee was to

receive wage compensation was greater than 12 months, a court could, at the request of the employer, make a proportionate reduction to the employer's obligation to pay wage compensation for a period exceeding 12 months, or could decide not to award wage compensation to the employee (Article 79/2).

Since the changes in force since 1 September 2011, the court was out of this process. Moreover, if the total time for which the employee was to receive wage compensation was greater than 9 months, the employee was only entitled to wage compensation for 9 months.

The changes in force since 1 January 2013 restore the pre-September 2011 situation with regard to wage compensation. Wage compensation may be awarded for no longer than 36 months.

- An employer may, via a collective agreement or after agreement with employee representatives, distribute working time for individual weeks for a period longer than four months and at most for a period of 12 months, if the work involves activities requiring different forms of work at different times of the year. The agreement may not be substituted by a unilateral decision of the employer (new wording of Article 87/2). Hence, where there are no employee representatives and thus no consent, the employer may not unilaterally decide on/introduce an uneven distribution of working time. Under the previous rules introduced in 2011, an employer could, after reaching agreement with the employee representatives or, where there were no employee representatives at the workplace, after direct agreement with employees, distribute working time for individual weeks for a period longer than four months and at most for a period of 12 months, if the work involved activities requiring different forms of work at different times of the year. The average working time could not, however, exceed the established weekly working time.
- According to Article 97/7, an employee may be requested to work overtime for up to a maximum of 150 hours within a calendar year. A further provision stating that, where set forth in a collective agreement, an employee may be requested to work overtime for up to 250 hours within a calendar year (Article 97/12), is now deleted and an employee may only be requested to work overtime for up to a maximum of 150 hours within a calendar year.
- Under the 1 September 2011 amendment, night work referred to the period between 22:00 and 05:00. It is now restored to the previous period between 22:00 and 06:00.
- Also since 1 September 2011, it was possible under Article 231/2 to agree to working conditions in a collective agreement, including wages and conditions of employment, other than those stated in Article 231/1 of the LC on the basis and regarding the scope (extent) of Articles 45/5, 45/6, 62/9, 63/3, 97/12 and 141a/1 of the LC (this could also mean less favourable). This related for instance to longer probationary periods or shorter notice periods. As of 1 January 2013, paragraphs 2 and 3 of Article 231 are deleted. As was previously the case under Article 231/1 of the Labour Code, a trade union body may conclude a collective agreement with the employer, covering working conditions, wages and the conditions of employment, relations between employers and employees, and between employers or their organisation and one or more employee organisations in a more favourable way than this Act or any other labour law regulation does, provided such is not expressly prohibited pursuant to this Act or any other labour regulation, or if, pursuant to regulations therein, divergence from such is not impossible.

- Under Article 229/7, when both a trade union body and a works council operated in an employer's organisation, the trade union body had the right to participate in collective bargaining, to monitor the fulfilment of the obligations arising from the collective agreements, to monitor the health and safety conditions at work pursuant to Article 149 and was entitled to information. The works council had the right to joint decision-making, information and consultation, and to carry out monitoring activities. As of 1 January 2013, when both a trade union body and a works council operate in an employer's organisation, the trade union body will have the right to participate in collective bargaining, in joint decision-making, to carry out monitoring activities and will be entitled to information. The works council will have the right to information and consultation, if not otherwise stated in the Labour Code (Article 229/7).
- Article 230/3 is deleted. This article foresaw that a trade union organisation established in an employer's organisation and seeking to represent all employees had to prove that at least 30% of all employees were members of this trade union organisation, should the employer request such proof within 30 days of the trade union organisation informing the employer of its taking up of activities. If two or more trade union organisations operated alongside each other at one employer's organisation, they could jointly prove membership in their respective trade union.
- The Slovak Labour Code regulated not only the labour (employment) contract (and employment relationship), but also 'agreements on work performed outside the employment relationship' as well (work performance agreements, agreements on work activities and agreements on temporary jobs for students - Articles 223 – 228a). Though these agreements only have supplemental character, employers make frequent use of them, especially the agreement on work activities. With execution of such work very similar to the execution of work under the labour contract, such agreements are often 'misused' in practice. Labour relations based on such agreements are less well protected, e.g., unless otherwise agreed, the employee has no paid annual leave and no wage compensation when hindered from working. As of 1 January 2013, major changes in the legal regulation of these agreements will be introduced:

    - The social and health insurance contributions will practically be the same for the employer and the employee as under a regular employment contract. The only exceptions will be students (agreement on temporary job for students) and pensioners.
    - The adopted amendment of the Labour Code introduced considerable changes in the legal regulation of these agreements. As of 1 January 2013, employees with such agreements will have better protection. Under the new wording of Article 92/2, the following provisions will also apply to these employment relationships:
        - definition of working time and rest periods (Article 85/1,2)
        - time needed for personal hygiene upon completion of work, to be calculated as belonging to working time (Article 90/10)
        - breaks at work, uninterrupted daily rest, uninterrupted weekly rest, rest days (Articles 91-95)
        - night work (Article 98)
        - minimum wage (Article 119/1)
        - labour protection (Articles 146-150).

- The working time of an employee within a 24-hour consecutive period may not exceed 12 hours and may not exceed 8 hours for young employees. Employees may not perform on-call work and overtime work.
- 4. The employer shall also excuse the absence from work of an employee for periods determined in Article 141/1 and 2, a) - g) (e.g. employee's temporary incapacity to work due to disease or accident, periods of maternity leave and parental leave, quarantine, caring for a sick family member).

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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)