

## 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 the 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.

On 16 June 2011, the Parliament (Saeima) adopted amendments to the Labour Law implementing the Temporary Agency Work Directive (2008/104/EC), which entered into force on 20 July 2011. Although existing legislation was largely in line with the requirements of the Directive, certain aspects required particular attention, namely possible problems in the enforcement of rights and obligations with regard to the direct liability of a user undertaking towards an employee and direct liability for loss and damages between a user undertaking and a temporary agency worker. In this context, the Confederation of Free Trade Unions of Latvia had also pointed out another important enforcement problem. Whereas Article 7(4) of the Labour Code implements Article 5(1) of the Directive relating to the obligation of temporary work agencies to provide temporary agency workers with the same basic working and employment conditions as those afforded to the regular employees of the user undertaking, there seemed to be problems in the enforcement of these rights in practice, in particular with regard to pay, mainly due to the fact that nearly all private undertakings declared their salaries to be confidential. In practice, this means that a temporary work agency does not have access to a user undertaking's information on pay. The law did not provide for any obligation of the user undertaking to provide this information for the purposes of enforcing the rights of temporary agency workers. It is unclear whether this problem has been remedied with the said amendments.

A few months later, on 2 December 2011, the Parliament also adopted amendments to the Law on the Support of Unemployed and Jobseekers, though parts of the amendments were also 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, and the national licensing system was established following a number of cases of fraudulent activities of recruitment undertakings in Latvia. Furthermore, Article 17(7) of the Law now stipulates that an agreement between a temporary work agency and a temporary agency worker which restricts the conclusion of a direct employment contract between a temporary agency worker and a user undertaking is null and void. Article 17(8) 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.*

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 through *inter alia* "strengthening the flexicurity principles in labour legal relationships". In June 2011, the amendments to the Labour Law came into force. These foresee that, in the case of reducing the number of employees, the employer no longer has to inform the State Employment Agency (SEA) of 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 pay for overtime work, etc. were up for revision. Furthermore, the reform programme foresees implementing public information and training measures regarding labour rights and protection issues in cooperation with social partners.

On 14 June 2012, Parliament adopted amendments to the Act on Protection of Workers in the 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 the Bill amending the Act describes situations in which national court decisions were issued obliging the employer to reimburse ex-employees' unpaid salaries, but where 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 proceedings and were often not able to recover unpaid salaries despite court decisions in their favour.

On 18 September 2012, the Cabinet of Ministers submitted a legislative proposal - the Mediation Law - to Parliament. This 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 for excluding applying mediation systems to "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 envisages the 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 stipulates 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 traditions. It is hoped that this new system will boost the use of mediation. The law has in the meantime been adopted.

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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)