



Executive Summary

I. Key points

- New forms of employment are becoming increasingly important in Europe. This development also raises serious challenges for policymakers, social partners and researchers. In 2014, the **seventh annual legal seminar** of the European Labour Network (ELLN) held on 27 and 28 November in the Hague addressed this issue. The **main findings** reached by the seminar are as follows.
 - (1) A legal analysis is useful in developing a typology of new forms of employment and identifying more closely their specific features.
 - (2) An examination of the standard employment relationship and non-standard forms of employment makes it easier to identify and understand these new forms of employment.
 - (3) A legal analysis results in a greater differentiation of the problem areas and helps identify options for action, in particular at the European level.
- In its Flash Reports, the ELLN provided some 2,084 pages of information and analysis on labour law developments in the 31 States of the European Union (EU) and European Economic Area (EEA). Over this period the **European Court of Justice** handed down important **rulings** on the **Charter of Fundamental Rights of the European Union, the definition of a worker, working time, fixed-term work, part-time work and parental leave**. Other important rulings dealt with the **posting of workers, the rights of workers on their employer's insolvency, procurement law and information and consultation of workers and their representatives**.
- The most important **changes to national law in the areas influenced by EU law** concerned the **law on fixed-term work** (Italy and France), **part-time work** (France), **temporary agency work** (Denmark, Greece, Liechtenstein and Portugal), **working time** (Norway and Austria), **posting of workers** (Finland), **transfers of undertakings** (United Kingdom) and the **obligation to inform the employee of the applicable employment conditions** (Lithuania). In Croatia, Latvia and Romania national authorities were particularly active introducing new measures **to improve the implementation of EU labour law**. In Poland the legislative authorities are planning a major reform of the law on **fixed-term work**.
- Substantial **amendments to the parts of national labour law not derived from EU law** were made in Germany, France, Italy, Croatia, Netherlands, Portugal, Czech Republic and Cyprus. **Protection for whistleblowers** was an important focus for new legislation (Ireland, Sweden and Hungary). A further key area was the **combating of undeclared work** (Austria, Estonia, Italy, Lithuania and Slovenia), thus carrying forward the focus of the ELLN's activities in 2013.
- In terms of extra-legislative activities, the most important development to report is a **framework agreement** established by the social partners in Italy.



II. Activities of the European Labour Law Network

1. Tasks and objectives

The European Labour Law Network (ELLN) is comprised of **(non-governmental) legal experts on labour law**, working primarily in the university sector. The network has representatives covering all **28 Member States of the European Union** and the **EEA States** of Iceland, Liechtenstein and Norway. **The coordinator of the network is Professor Bernd Waas** (Goethe University Frankfurt). He is assisted by Professor *Guus Heerma van Voss* (University of Leiden) and a Scientific Committee comprising six experts.

Article 17(1) TEU specifies that the Commission shall **ensure the application of the Treaties and of measures adopted by the institutions pursuant to them**. The European Labour Law Network assists the Commission in this important task by **monitoring the implementation of labour law directives** in national law, **evaluating existing legislation, assessing the likely impact** of proposed legislation, encouraging **cooperation between the Member States and social partners** and **improving the information available to citizens**, workers and companies concerning their rights and duties resulting from EU labour law. The primary task of the European Labour Law Network is to provide **regular independent advice, analysis and information** to the **European Commission**. The Network produces **monthly Flash Reports** with the latest national information. In addition, the experts from the Network occasionally produce **Flash Notes** on particularly important developments in the Member States. A further task of the European Labour Law Network is to respond to **Information Requests** from the European Commission.

The Network is also responsible for the **planning and organisation of an annual legal seminar for 200 participants**. Attendance at the seminars is by invitation only. Invitations are regularly issued to the **Network's** own experts, **European Commission** staff, civil servants working in the **Ministries of Labour and Social Affairs** in the EU Member States and EEA States and in the **permanent representations** of these States, representatives from **academia, judicial bodies and legal practice**, representatives of the **social partners** and representatives of organisations such as the **International Labour Organization (ILO)** and the **European Foundation for the Improvement of Living and Working Conditions (Eurofound)** in Dublin.¹

Finally, the network also has the important task of **improving public information**. Its objective is to inform citizens, workers and companies of their rights and obligations resulting from EU labour law. This is intended also to encourage public debates on labour law issues. ELLN seeks to achieve this, in particular, by making available on its public website the latest news on European labour law and the information included in its monthly Flash Reports.

2. Activities in 2014

a) Monthly Flash Reports

In 2014 the network provided the Commission with 12 monthly Flash Reports with a total volume of 2,084 pages. Each Flash Report sets out the **major developments in national labour law** taking place in the previous month.

In several of the areas influenced by **EU labour law**, States have undertaken legislative reform. Particularly noteworthy are the extensive legislative measures adopted in Croatia, Latvia and Romania intended to improve the implementation of EU labour law directives. Austria, too, has undertaken

¹ See the tender specifications - call for tender VT/2011/065, p. 5.

legislative amendments to ensure that national rules are compatible with EU labour law. The law on paid leave was amended similarly in Denmark and Norway. A further focus for Member State legislative activities has been the **protection of whistleblowers**. Comprehensive legislation was adopted in Ireland and Hungary in this regard and in Sweden the matter is receiving close government attention. Another key issue for national authorities has been the **combating of undeclared work**. Austria, Estonia, Italy, Lithuania and Slovenia all adopted legislative measures in this area. Notably, the Italian reforms are particularly far-reaching. In the Netherlands, the relationship between flexibility and security was fundamentally redefined. Meanwhile, Germany adopted legislation introducing a universal statutory minimum wage and, in Poland, preparations are underway for a reform of the law on fixed-term work.

The ECJ handed down rulings in 2014 on the interpretation of Directive 2003/88/EC concerning certain aspects of the organisation of **working time**, Directive 1999/70/EC concerning fixed-term work, Directive 97/81/EC concerning part-time work, Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer, Directive **96/71/EC concerning the posting of workers in the framework of the provision of services** and **Directive 2002/14/EC establishing a general framework for informing and consulting employees**. The increasing importance of the Charter of Fundamental Rights of the European Union could be seen in many of these rulings. Many national court decisions concerned the interpretation and application of national provisions intended to implement EU labour law. Important court decisions were handed down in other areas too. Particularly significant were certain decisions of national constitutional courts, especially in Spain, in relation to matters of labour law.

In addition to the monthly Flash Reports, the network produced 27 Flash Notes for the European Commission concerning developments in twelve countries.

b) Information Requests

The European Commission's Directorate-General for Employment, Social Affairs and Inclusion directed eight Information Requests to the national experts in 2014. Some concerned only a single country. Others related to several or all the countries in the network.

c) Annual legal seminar

The **annual legal seminar** of the European Labour Law Network took place on 27 and 28 November 2014 in the Hague and addressed the legal issues arising in connection with new forms of employment.

The aim of the legal seminar on new forms of employment was to make a **specific contribution from a legal perspective** in relation to this current topic. The starting point for the discussions was a presentation by *Irene Mandl* (Eurofound) setting out initial findings from a comprehensive empirical study of new forms of employment and introducing a typology of new forms of employment derived from the study. *Jan-Marco Leimeister* followed this with a closer examination of crowdsourcing, highlighting the increasing practical significance of this form of employment. He identified the different forms in which crowdsourcing is encountered in practice, setting out the characteristic features of each form. *Simon Deakin* began by examining from a historical perspective the development of the standard employment relationship (SER) and, in that connection, also the development of non-standard forms of employment. He indicated that although, initially, these non-standard forms appeared in the shape of 'atypical' working (part-time, fixed-term and temporary agency work), more recently, increasing recourse has been made to 'new forms of employment'. He discussed various ways in which labour law could respond to this change. Possibilities included an extension to the scope of the SER by extending the notion of an employee or reducing the thresholds required for employment protection, establishment of a comprehensive principle of equal treatment between employees in an SER and atypical workers and re-regulating to take account of flexible forms of employment. He also highlighted

various legislative solutions adopted at national level that could serve as models for labour law reform. *Claire Toumieux* focused on Directive 91/533/EEC, identifying the areas in which reform is needed and the options available in this regard. She stressed that the options differ depending on the objective of the reform pursued. *Catherine Barnard* examined the possibilities and limits for legislation at EU level in response to new forms of employment. For these purposes, she differentiated between the position of migrant workers and non-migrant workers. As regards the latter group, she examined various possibilities for regulation. These include the establishment of a presumption of employee status, extension of the personal scope of existing EU labour law directives, establishment of a right to a contract of employment with the 'principal employer' (where the role of employer is shared between several parties) and specific amendments to the existing directives on working time, fixed-term work, temporary agency work and pregnant workers. *Tamás Gyulavári* used the example of Hungarian law to illustrate the difficulties involved in distinguishing employment relationships from general civil law contracts. In particular he focused on how improved protection could be given to individuals who do not satisfy the criteria of personal subordination but who are economically dependent on a client. In the discussion session, *Christiane Benner* and *Guillaume Cairou* advanced some of the relevant positions of trade unions and employer federations.

The seminar's 174 **participants** included 33 representatives from Ministries of Labour and Social Affairs in the Member States, 50 individuals from academia and legal practice and 32 representatives from the social partners. Representatives also attended from the European Commission (4), the European Parliament (1), the ILO (2) and Eurofound (1). All remaining participants were either members of the network or invited speakers. The legal seminar in the Hague had the highest number of registrations (192) and participants for the ELLN annual legal seminar since 2008.

A **seminar report** with all the keynote speeches, presentations and working group discussion reports is available online:

http://www.labourlawnetwork.eu/events/annual_legal_seminar/prm/205/0/index.html

d) Website

The network has its **own website** (<http://www.labourlawnetwork.eu>), offering a wide range of information for interested members of the public. Information is regularly posted on the website concerning **developments at European level** (in particular, new legislation, ECJ case-law, and references pending from national courts) and important **developments in the legal orders of the Member States** (in particular, new legislation and rulings of national courts). This information is intended to be of use for anyone interested in labour law whether in the public administration, industry, legal practice, research, or amongst the public at large. The aim is to improve people's understanding of current issues facing labour law and more generally of the regulatory framework and regulatory possibilities. As a further initiative in this area, the **ELLN Working Paper Series** was established in 2013. These papers provide an in-depth analysis on a specific aspect of national or EU labour law. The aim of the series is to contribute to the academic debates on labour law. ELLN also publishes a regular **newsletter** linked to the website containing news of the latest developments in labour law.

Website visitors can register for the ELLN newsletter using the following link.

http://www.labourlawnetwork.eu/newsletter_subscription/newsletterregistration/prm/81/0/index.html

III. Impact on relevant stakeholders

The European Labour Law Network's legal seminar on new forms of employment provided a **platform for an exchange of views** on the legal issues arising in this connection. The increased number of participants from Ministries of Labour and Social Affairs proved particularly helpful here. In bringing together representatives from different stakeholders and providing an opportunity to meet, the seminar makes an important long-term contribution to broadening and deepening the debates in this area.

As regards a wider public, the ELLN's website is certainly its most influential tool. It has become an important and well-used portal for European labour law. It now has users in **117 countries**. The traffic data suggests that the website reaches many different types of user. Government bodies, educational establishments, international organisations and companies all access the website's content. To make the website easier for users, a number of technical and design improvements, e.g. a simpler structure for the home page, were implemented in 2014. In comparison with 2013, the number of users has risen by 13.7%. On average there are now **3,753 users every month**. In 2014 they visited a total of 92,500 pages. In December 2014 the monthly newsletter had 1,004 subscribers, this is almost 400 more than at the same point in 2013. To complete the information service, in 2013, ELLN launched **Facebook** and **Twitter** accounts. On Facebook ELLN now has 270 followers, with a total reach of 650 individuals, and on Twitter ELLN has 100 followers.