

Summary Minutes

Meeting of Directors General for Industrial Relations

23 November 2018
Crowne Plaza
Bucharest, Romania

1. INTRODUCTION AND ADOPTION OF THE AGENDA.

Mr Adam POKORNY (Chair, Head of Unit 'Working Conditions', DG EMPL) opened the meeting and welcomed all participants. He conveyed apologies from Stefan Olsson who could not travel to Bucharest.

The Draft Agenda was adopted.

The Chair and the participants also wished Susanne PIFFL-PAVELEC, from the Austrian delegation, a happy retirement.

2. MINUTES OF THE MEETING OF DIRECTORS GENERAL HELD ON 18 MAY 2018 IN VIENNA, AUSTRIA.

The summary minutes were adopted without amendment.

3. PRESENTATION OF THE ROMANIAN PRESIDENCY'S PRIORITIES IN THE SOCIAL AFFAIRS FIELD.

Mr Adrian Marius RÎNDUNICĂ (State Secretary coordinating social dialogue and labour legislation, Romania) and Ms Angelica SABIESCU (Adviser, Social Dialogue, Ministry of Labour and Social Justice, Romania) introduced their presentation by underlining the overarching priority of the upcoming Romanian Presidency, which is "Cohesion, a common European value". This slogan recalls the principle of unity of the Member States and outlines the importance of cohesion policy and its key pole in attaining the objective of reducing economic, social and territorial disparities among the Member States, regions and citizens of the European Union.

As far as employment and social affairs are concerned, they presented three priority themes, under each of which a series of Commission's initiatives will be treated:

- Promoting the principle of labour mobility as a factor generating growth and competitiveness in the internal market

This is a key priority for which the Romanian Presidency will seek to straighten access of mobile workers to rights conferred to them by the Treaty on the Functioning of the European Union.

- Preventing risks and promoting safer and healthier workplace conditions

The Romanian Presidency devoted the main Labour Inspectors Committee (SLIC) Plenary to the early awareness of youth on health and safety at work.

- Ensuring equal opportunities for women and men in the labour market, as well as diminishing the pay gap between these categories

The Romanian presidency intends to focus on measures, which reduce the gender pay gap and fight poverty. Work life balance will be promoted.

4. OVERALL UPDATE BY THE COMMISSION ON THE SOCIAL PILLAR AND FOLLOW-UP INITIATIVES

Mr Adam POKORNY and Ms Marie LAGARRIGUE (Deputy Head of Unit ‘Working Conditions’, DG EMPL) presented the state of play of the various initiatives taken by the Commission to implement the principles and rights recognised by the European Pillar of Social Rights.

As regards the work-life balance initiative, Mr POKORNY indicated that substantial progress was achieved since the previous DGIR meeting (Vienna, 18 May 2018) in the negotiation of the Directive on Work-Life Balance for Parents and Carers. Following the adoption of a general approach, i.e. a negotiation mandate, by the EPSCO Council in June 2018, the trilogues between Commission, Council and European Parliament started in September, the target for concluding them being the end of 2018. The Parliament favours more generous provisions than the Council, notably on pay levels during different types of leave.

Concerning the revision of the Written Statement Directive, the Commission proposed in December 2017 a Directive on Transparent and Predictable Working Conditions that would repeal the current directive. The future directive will set new rights for all workers, particularly addressing insufficient protection for workers in more precarious jobs. The EPSCO Council agreed on a general approach in June 2018 and the European Parliament adopted its negotiation mandate on 15 November 2018 by a large majority¹. The trilogues subsequently started and will continue under the Romanian Presidency, with the aim of concluding them in February 2019.

Ms LAGARRIGUE provided an update on the state of play of the March 2018 proposal for a Council Recommendation on access to social protection for workers and the self-employed, which had been extensively presented at the Vienna meeting. Its objective is to support people in non-standard forms of employment and in self-employment who are not sufficiently covered by social security schemes. The Recommendation would notably encourage Member States to provide for the mandatory coverage of those workers by social security schemes and to facilitate the transfer of social security benefits between jobs and periods of employment/unemployment. The discussions in Council made significant progress in recent months, on the basis of a compromise text of the Austrian Presidency. An agreement is expected in principle by the end of 2018, and the final adoption in 2019 after the vote of several national parliaments on the text.

The proposal for a Regulation establishing a European Labour Authority (ELA) was presented in detail at the previous DGIR meeting. It follows up on President Juncker’s commitment expressed in his State of the Union Address of September 2017. Its general objectives are to facilitate access to information on labour rights and obligations and labour mobility services; to strengthen cooperation between national authorities in the cross-border enforcement of Union law, including by facilitating joint inspections; and to mediate between national authorities or in case of labour market disruptions. Discussions

¹ 398 votes in favour and 208 against.

on the ELA proposal are progressing well in Council; a general approach may be adopted at the EPSCO Council of December 2018. The outstanding issues relate to joint inspections, mediation, and the future role of EURES. The Commission set up an ELA Advisory Group including EU social partners that will provide further expertise.

In relation to working time, the Commission initiatives linked to the Social Pillar included the Interpretative Communication of May 2017 on the Working Time Directive (2003/88/EC), which provides legal guidance.

Ms LAGARRIGUE then explained that the Company Law Package put forward by the Commission in April 2018 had triggered overall positive reactions from Member States and other stakeholders. Significant progress was achieved in the negotiation of the two proposed Directives in recent months, the aim being to reach an agreement before the European Parliament elections of May 2019.

As to the issue of whistleblowing, the Commission proposed a Directive on the protection of persons reporting on breaches of Union law in April 2018. The proposal aims at ensuring a high level of protection for whistle-blowers who report breaches of EU law, in particular by providing for the setting-up of clear reporting channels and the prohibition of all forms of retaliation against whistle-blowers, and has an extensive personal and material scope. The European Parliament's plenary vote is planned for 12 December 2018. The objective of the Austrian Presidency is to reach a general approach by the end of 2018.

Mr POKORNY then indicated that an agreement had been reached under the Austrian Presidency on 5 out of 13 legislative files linked to the Social Pillar, namely:

- the European Accessibility Act;
- the revision of Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens and mutagens;
- the revision of the founding Regulations for the three EU agencies Eurofound, CEDEFOP and EU-OSHA (European Agency for Safety and Health at Work).

In relation to the implementation of the Social Pillar, Mr POKORNY also explained that, while in the post-2008 crisis years the European Semester strongly focussed on socio-economic issues, the analysis and recommendations in the Semester reflect and promote the principles enshrined in the Social Pillar by assessing, monitoring and comparing the progress made towards their implementation. Monitoring of progress is supported by the Social Scoreboard published in March 2018.

Information was also provided by Mr POKORNY on:

- The possible use of “passerelle” or “bridging” clauses in the area of social policy: In his State of the Union Address of September 2017, President Juncker called for the use of such clauses, which allow the Council to unanimously move from unanimity to qualified majority voting in certain areas. A general provision in the TEU² (Article 48(7)) opens up such a possibility upon authorisation of the European Council, with the consent of the European and national Parliaments. Similarly, according to Article 153(2) TFEU³, the Council, on a Commission proposal and after consulting the European Parliament, may decide to render the ordinary legislative procedure applicable to paragraph 1(d) (protection of workers where their employment contract

² Treaty on European Union.

³ Treaty on the Functioning of the European Union.

is terminated), (f) (representation and collective defence of the interests of workers and employers, including co-determination), and (g) (conditions of employment for third-country nationals legally residing in Union territory). Before the Sibiu Summit of 9 May 2019 the Commission will report, probably by way of a Communication, on the possible use of the “passerelle” clause(s) notably in the social policy field.

➤ Brexit and workers’ rights: A draft Withdrawal Agreement setting out the conditions under which the UK would leave the EU was produced on 22 November 2018, while a draft political declaration on future relations between EU and UK was issued the week before. The draft Withdrawal Agreement was being examined by both parties. Mr POKORNY explained that the draft Withdrawal Agreement deals with workers’ rights in:

- Chapter 2 (Rights of workers and self-employed persons) under Article 24 (Rights of workers), which notably recognises the right to non-discrimination on grounds of nationality and to equal treatment in conditions of work and employment, and collective rights;
- Annex 4, part 3 (Labour and social standards), under Article 4 (Non-regression of labour and social standards), according to which *“the Union and the UK shall ensure that the level of protection (...) is not reduced below the level provided by the common standards applicable within the Union and the UK at the end of the transition period in the area of labour and social protection and as regards fundamental rights at work, occupational health and safety, fair working conditions and employment standards, information and consultation rights at company level, and restructuring”*.

After the presentation, the German delegation took the floor, thanking the Commission for its commitment to implement the principles of the Social Pillar and the Austrian Presidency for its work and compromise proposals on the ELA and access to social protection. Germany indicated that during its Presidency in the second half of 2020 it would promote the implementation of principles of the Social Pillar that have not yet given rise to Commission proposals.

5. PLATFORM WORK: IMPACT ON WORKING AND EMPLOYMENT CONDITIONS

Irene MANDL (Head of Research Unit Employment, Eurofound) reminded in an introduction that Eurofound started working on new forms of employment in a first study published in 2016. At the time, platform work (‘crowd employment’ at the time) was one of the types identified. In September 2018, Eurofound published a specific study on the matter (see here) in partnership with the Austrian Presidency:

<https://www.eurofound.europa.eu/publications/report/2018/employment-and-working-conditions-of-selected-types-of-platform-work>

The concept of ‘platform work’ is a challenging one, as nine different connotations were identified in the 18 Member States which were studied. For the purpose of the study, ‘platform work’ presents the following characteristics:

- Paid work
- 3 parties involved
- Break-down of jobs into tasks
- On demand services

The estimated size of this specific type of work has not been firmly determined. It may vary quite substantially depending on studies, due to the use of different methodologies. This being said, one may say that is a large-scale phenomenon (compared to e.g. the US shares). However, if the concept becomes more established, one can expect higher shares in the Member States in the future.

In the study at stake, a more nuanced typology has been established, based on five factors: scale of tasks, skills level required, format of service provision (on location vs. online), form of matching (who is making the decision?), selector (who decides, who makes the task). This resulted in 120 potential combinations, of which 10 types are the most salient, i.e. those having already a critical mass in the EU and covering a vast majority of workers and platforms. For the purpose of the study, three types were chosen:

- On-location platform determined routine work (type 1)
- On-location worker-initiated moderately skilled work (type 2)
- Online contestant specialist work (type 3).

The study could establish some comparison in between the three categories as to a number of key features, with quite diverse results, e.g.

- *Flexibility* especially true for type 3, less for type 2, much less for type 1.
- *Earnings* not necessarily as problematic as often assumed but unpredictability for some (type 3), while low but more predictable for type 1.
- *Work intensity / Working time quality*: Generally unsatisfactory, potentially long working hours, unsocial schedules.
- *Health and safety*: Physically demanding for type 2, same for online tasks (ergonomics), and stress emerging as a particular issue.
- *Employment conditions*: uncertainty prevails on status, with effects on working conditions. In practice, it is the platform (the most powerful actor) who decides in the terms and conditions. For a vast majority of platforms, self employment is the preferred status (versus a few only who treat their service providers as employees). This classification is being challenged in numerous national court cases with heterogeneous outcomes, with varied national contexts and jurisdictional practices.
- *Labour market access, employability and transitions*: low entry barriers in general but limited prospects in general
- *Representation*: not yet very structured but emerging, lower interest for type 2 and 3.

Based on this analysis, Eurofound has identified a series of policy pointers, in particular:

- A need for clarification as regards the employment status;
- A need to take account of heterogeneity in policy making on platform work;
- Most issues requiring policy-makers' attention may lie with type 1 while though, for type 3, another set of challenges may be identified (social protection, taxation, etc).

The study has also looked into the current policy responses that emerge in some Member States.

Since it is a very dynamic field, Eurofound has developed a specific tool, i.e. the *repository* on the platform economy in order to keep pace with the developments, with already hundreds of publications and initiatives collected.

Questions and comments were put forward by a number of delegations:

Luxembourg enquired about what seems to be a common feature: a predominantly male population found in platform economy. Why is that?

Spain emphasized the critical influence of the status determination on working conditions, while pointing to a possible need to revisit the classic way of approaching classification.

The UK representative informed about the imminent publication of a UK government policy paper, following the Taylor review, which will address this particular topic. She also enquired, as Luxembourg about the male predominance in the workforce: is it homogeneous across the EU?

Austria mentioned the question of the ratings, and how it influences to a great extent the activities of the workers. Therefore, is there a way for workers to react or correct the ratings?

On the gender issue raised by Luxembourg and UK, Irene Mandl explained that there is no clear explanation, data evidence being somewhat weak, with criticised methodologies. One sees some occupational segregations e.g. male dominated occupations (taxi drivers) vs. cleaners (female). One may also note a difference between those working on platform as a main job (mostly male) vs. those for whom it is a secondary job (here, female rate increases).

As regards the ratings, this indeed raises issues. Most of the time, there is a limited possibility to change it. They can be done by the algorithm too, and in such case, not everything may be factored in correctly.

Irene Mandl concluded by supporting a holistic approach to that phenomenon to address its particular complexity (working conditions but also, taxation, business law, competition, consumer protection, etc.).

6. PRESENTATION OF THE JOINT EC-OECD PROJECT ON ' POLICY RESPONSES TO NEW FORMS OF WORK'

Istvan VANYOLOS (Policy officer, Unit B.1 Employment Strategy) explained first the origins of this OECD-Commission joint project (which in November was still ongoing, report to be published early 2019). It is a follow up to the EU Pillar of Social Rights, with a view to better understand how policy responses to new of work are developed and implemented at national level. This should allow to detect possible gaps, share good practices, propose policy guidelines and assess the relevance of potential further EU action. Indeed new forms of work raise a series of challenges (working conditions, social protection, etc.). The project addresses 'non-standard forms of work' even if some of them tend to become 'standard' nowadays. The speaker also refers to the project called the 'COLLEEM survey' which addresses the specific issue of platform work, which appears to mostly amount to self-employment, according to its findings.

The aim was to screen national policies according to comprehensive approach, covering several dimensions and fields of policy actions. With such an approach, one could detect whether there were coordinated approaches to address those issues in some Member States. Concretely, 10 subtopics were being investigated: worker classification, access to social protection, regulating the use of new forms of work, improving working conditions, strengthening workers' voice, addressing incentives, approach to PES, skills and lifelong learning, data collection and measurement, coordinated policy efforts.

In November, all OECD countries contributed except Cyprus. The project allows to look at national experiences beyond the sole EU, and also to know more about policies developed in e.g. Canada, New Zealand, the US.

One of the findings of the project is that there is a need to better understand the scale of the implications for public finances. Indeed, one of the characteristics of non standard forms of work, is that social contributions are less important in volume, creating a gap in public finances. There is a need to reflect on the possible ways to bridge it, beyond labour-related taxation.

Istvan VANYOLOS also commented on the preliminary findings of the project as regards the following topics:

One common issue is often where to draw the line *between employment and self-employment*, and whether intermediary categories are a way forward. Initial discussions on the matter tends to indicate that even though some countries have third categories this actually may make it more complex and less effective in practice. Some countries have rather developed approaches to tackle misclassification through e.g. taxation, enforcement, and presumption of employee status.

This may also raise specific issues such as *representation and collective bargaining* of some specific categories of self-employed, with some attempts to fix it in some countries through different means (e.g. social partners/ legislation, for some specific sectors). The issue, which relates to competition law concretely, came up in the case of Ireland in 2017, and the Irish competition act was amended at the time with a view to introduce exemptions for certain self-employed workers.

Another challenge lies with *the access to adequate social protection*. The recommendation recently proposed by the Commission addresses these issues, since of these persons under ‘new forms of work’, which may be dependent self-employed or bogus self-employed, do not have the same access as the standard employees have.

As regards *platform work*, some targeted initiatives could be identified, to tackle issues of social protection, income security or taxation, which affect this category of workers (e.g. France).

As regards *temporary contracts*, different approaches emerge, restrictions on their use, more flexibility in open-ended contracts, financial disincentives to use them, financial incentives to convert them into permanent contracts. Rather than stepping stones, they often appear to be revolving doors.

In the discussions that followed the presentation, the Cypriot representative clarified that a reply was actually prepared and should be sent shortly.

The Netherlands mentioned a study carried out at national level on platform work, which shows some similar findings. One of the latter is notably the small size of it so far (344.000 persons employed). Platform work indeed provides new employment opportunities but the report at stake also identified challenges, notably in terms of enforcement of labour law. The issue of the application of the competition rules on cartels was also re-evoked, with as background information, the initiative of Professor Martin Risak who wrote a specific study on platform work and possible regulatory approaches at EU level (<http://library.fes.de/pdf-files/id/ipa/14055.pdf>), which notably covers this particular issue.

7. PRESENTATIONS AND INFORMATION BY DELEGATIONS ON THE RECENT DEVELOPMENTS REGARDING LABOUR LAW AND INDUSTRIAL RELATIONS IN THE MEMBER STATES

Mr Martin FLIER (Deputy Director General, Ministry of Social Affairs and Employment, The Netherlands), presented the challenges of the new forms of work relations for the national labour market and the corresponding policy responses of the Dutch Government. He first explained that, despite the low unemployment and high employment rate, since 2003 there is a steady decline of open-ended contracts in the Netherlands. This is followed by a steady rise in flexible jobs and self-employment. According to the Government, these developments are most likely due to the current institutional framework. Therefore, the Government prepared the four policy responses which include changes to the current taxation policy, social security and occupational pension schemes, labour law and employment protection, and strengthening of labour inspection and tax office.

- After the presentation, several delegations (FR, EST and IE) briefly explained similar challenges their national labour markets are facing. They also raised particular questions about the reform of the payroll contracts and the period for the increase of the number of inspectors. Mr Flier provided for the necessary clarifications.

Ms Sandra RIBEIRO (Director General for Employment and Industrial Relations, Portugal) presented the genesis and content of a Tripartite Agreement to combat precariousness in the labour market and promote collective bargaining, which was signed by the Portuguese Government and most social partner organisations on 18 June 2018. She explained that the strategic objectives of the Agreement are to reduce labour market segmentation and tackle precariousness, to promote collective bargaining and to reinforce the means and instruments of labour market regulation. The Agreement followed an extensive process of tripartite discussions that started in 2016 and included the conclusion of several other agreements, in particular to progressively increase the minimum wage, and the issuing in 2016 of a Green Paper on Labour Relations in Portugal.

The Agreement provides for a number of concrete measures, in particular:

- the extension of the probation period in case of first-time hires and the long-term unemployed from 90 to 180 days;
- the creation of penalties in the form of an extra social security contribution for companies using an excessive number of non-permanent contracts;
- the limitation of the number of renewals of contracts for temporary agency workers;
- the reduction of the maximum duration of fixed-term contracts from 3 to 2 years and a limitation of the justifications for using such contracts;
- the extension from 15 to 35 days of the maximum duration of very short term contracts for seasonal work in sectors such as agriculture and tourism, as a disincentive to undeclared work;
- the promotion of collective bargaining to replace individual agreement in the field of working time.

Ms RIBEIRO indicated that following the approval of Resolution No 72/2018 by the Portuguese Government on 18 June 2018, the Parliament was discussing the related Bill and would soon vote on the proposed legal changes.

Ms Karin SÖDERBERG, Director, Division for Labour law and work environment, Ministry of Employment (Sweden) presented the new Act on contractor liability for wage

claims in the construction sector which will address the problems of subcontracting chains (non-payment of taxes and social security and lack of compliance with health and safety rules). The new Act aims to strengthen workers' rights, promote fair competition and prevent circumvention practices in subcontracting chains. The Act respects the role of social partners. It will cover both domestic and posted workers. A worker who does not receive their wages will be able to demand their pay from the company that hired their employer. Failing that, the main contractor will be liable. If contractor liability becomes applicable, the contractor that paid the employee's salary can retroactively demand compensation from the employer. It includes the right to be informed about the actors in the chain of contractors. A video presenting the initiative can be found here:

<https://www.government.se/press-releases/2018/04/government-bill-presented-contractor-liability-in-the-construction-industry/>

8. PRESENTATION BY THE COMMISSION ON EU ACTIVITIES IN THE FIELDS OF SOCIAL DIALOGUE (INTER-PROFESSIONAL AND SECTORAL) AND LABOUR LAW (INCLUDING RECENT RULINGS OF THE EU COURT OF JUSTICE)

Andrea GRGIĆ and Bertrand MULLER-SCHLEIDEN, European Commission, DG employment, Social Affairs and Inclusion; Legal officers - Unit B.2 Working Conditions, *Report from the meeting of the sub-group on Working Time held on 22 October 2018*,

Mr Bertrand MULLER-SCHLEIDEN (Legal officer, Unit B.2 Working Conditions) presented the recent developments on Directive 2003/88/EC on working time (Working Time Directive) since May 2018. He presented recent judgments of the EU Court of Justice. In C-12/17 Dicu (04/10/2018), the Court ruled that Member States are allowed to provide that time spent by a worker on parental leave is not considered as a period of actual work and thus does not count towards the entitlement to paid annual leave. In C-619/16 Kreuziger and C-684/16 Max-Planck-Gesellschaft (06/11/2018), the Court ruled that a worker who did not apply for paid annual leave cannot automatically lose his right to an allowance for untaken annual leave when his employment relationship ends. The entitlement to an allowance in lieu may be lost only if the employer is able to prove that the worker deliberately and knowingly refrained from taking his paid annual leave after having been given the opportunity, in particular through the provision of adequate information, to take his leave days in good time. In C-569/16 Bauer and C-570/16 Willmeroth (joined cases, 06/11/2018), the Court ruled that the right to an allowance in lieu of untaken paid annual leave cannot be lost when termination of the employment relationship comes about by a worker's death – consequently it must be transferable to the heirs of the deceased. Mr Muller-Schleiden highlighted the fact that Article 31(2) of the EU Charter of Fundamental Rights was given a horizontal direct effect since the Court ruled that the Charter can be relied on directly in a dispute between private parties in order to disapply national legislation that prevents a worker from receiving an allowance in lieu (C-684/16) or the transfer of a deceased worker's right to an allowance for untaken paid annual leave to his heirs respectively (C-570/16).

Andrea GRGIĆ (Legal officer, Unit B.2 Working Conditions) presented the recent ruling in C-147/17 Sindicatul Familia Constanța and Others (20/11/2018) in which the Court ruled that the work performed by a foster parent under an employment contract with a public authority, which consists in taking in a child, integrating that child into his or her household and ensuring, on a continuous basis, the harmonious upbringing and education of that child, does not come within the scope of Directive 2003/88/EC. According to the Court, the essential characteristic of the work of foster parenting distinguishes that work from the work of 'relief parents', which was at issue in the case giving rise to the

judgment C-175/16, Hälvä and Others. However, the Court recalled that the second subparagraph of Article 2(2) of Directive 89/391 still requires the competent authorities to ensure the safety and health of workers 'as far as possible'.

Ms Grgic drew attention to the pending cases C-385/17 Hein (remuneration for paid annual leave), C-55/18 CCOO (recording of working time), C-609&610/17 TSN (carry over of paid annual leave which exceeds 4 weeks), C-254/18 SCSJ (fixed or rolling/sliding reference periods) and C-588/18 FETICO (overlap between special leave and weekly rest or annual leave).

She presented the follow-up activities that the Commission is carrying out following the 2017 Interpretative Communication, in particular, the updating of the Working Time Directive website and the new subpage on the Interpretative Communication with updates on new case law. Finally, she reported on the DGIR subgroup meeting on working time last 22 October 2018 which covered the recent and upcoming case-law, the concepts of 'working time' and 'rest period' in the light of the judgment in C-518/15 Matzak, the working time in the context of the digital revolution and the recording, monitoring and control of working time. She reported that the satisfaction survey showed an overall support of the delegations to the subgroup meeting. She announced that the next meeting would be organized in autumn 2019 and kindly invited the delegations to send their proposals for topics for discussion to the functional mailbox of DG EMPL's Working Conditions Unit⁴.

Mr Adam POKORNY, (Head of Unit B.2 Working Conditions) presented the key developments on social issues in aviation 2015-2018: EU Aviation Strategy in 2015, the Practice guide on applicable labour law and competent courts in 2016 which compiled the relevant case-law of the EU Court of Justice, the Resolution of the European Parliament (16.2.2017) and the Joint declaration of 6 Member States on a social agenda in aviation (2.10.2018). He reported on the forthcoming Commission's report taking stock of the EU social agenda in aviation to be published by the end of 2018 along with a fact-finding social study in aviation which will analyse the work through intermediary companies, self-employment, pay-to-fly, posting of workers, applicable labour law and the employment of aircrews based in third countries. He also referred to the Evaluation of Air Services Regulation (EC) No 1008/2008 to be adopted early 2019. He recalled that Article 8 of the Rome I Regulation protects aircrews, irrespective of the law chosen by the parties, with the more favourable mandatory provisions of the law of their "habitual place of work". He highlighted the interpretation of the concept of "habitual place of work" for the purposes of determining the competent jurisdiction given by the Court in Joined cases C-168/16 and C-169/16. The Court ruled that the "home base" as defined in air safety rules is a significant indicium for determining the "habitual place of work". The same interpretation applies to the Rome I Regulation. He recalled that Member States are primarily responsible for the correct enforcement of the Regulation as interpreted by the Court.

He presented recent judgments of the EU Court of Justice in cases concerning fixed-term work (Dir. 1999/70/EC - C-331/17, Sciotto –the activity of operatic and orchestral foundations cannot be excluded from national legislation on misuse of successive fixed-term employment contracts or relationships; and C-677/16 Montero Mateos, C-574/16 Grupo Norte and C-619/17 De Diego Porrás II on compensation in case of termination of

⁴ empl-b2-unit@ec.europa.eu

certain types of fixed-term contracts) and part-time work (Dir. 97/81/EC, C-432/17 O'Brien II).

Marie LAGARRIGUE (Deputy Head of Unit, Unit B.2. Working Conditions) presented the most relevant cases of the EU Court of Justice concerning employer insolvency (Dir. 2008/94/EC, C-17/17 Grenville Hampshire -supplementary pension schemes), collective redundancies (Dir. 98/59/EC, C-61/17 Bichat –concept of controlling undertaking), transfer of undertakings (Dir. 2001/23/EC, cases C-472/16, Colino Sigüenza –concept of transfer of undertakings and prohibition of dismissal by reason of transfer for economic, technical or organisational reasons entailing changes in the workforce- and C-60/17 Somoza Hermo – the directive applies to a situation in which a contracting entity has terminated the contract for the provision of services relating to the security of buildings concluded with one undertaking and has, for the purposes of the provision of those services, concluded a new contract with another undertaking, which takes on, pursuant to a collective agreement, the majority, in terms of their number and skills, of the staff whom the first undertaking had assigned to the performance of those services, in so far as the operation is accompanied by the transfer of an economic entity between the two undertakings concerned). She drew attention to the upcoming cases concerning transfer of Undertakings (C-509/17 Plessers and C-644/17 Ellinika Nafpigiea).

9. INVITATION BY THE FINNISH DELEGATION TO THE NEXT MEETING IN HELSINKI

The Finnish delegation invited the members of the DGIR Group to the next DGIR meeting which shall take place on 24 May in Helsinki.

10. ANY OTHER BUSINESS

None.
