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### Newsletter Jean Monnet Project EUSOCP – European Labour Law Perspectives – May/June 2019

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# Newsletter EUSOCP project Issues XVI & XVII – May/June 2019

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UNIVERSITY OF AMSTERDAM

Erasmus+ Jean Monnet Action

## *European Labour Law Perspectives - Enhancing the Social Pillar*

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Within the Jean Monnet action EUSOCP, the Labour Law Departments at the University of Amsterdam and the University Carlos III-Madrid are issuing a monthly newsletter summarizing the development of the EU Pillar of Social Rights and including comments on EU legislation and case law in the field of Labour and Social Security Law. The newsletter is available via the following links:

- <https://aias-hsi.uva.nl/en/projects-a-z/jean-monnet-eusocp/european-labour-law-perspectives.html>

The European Pillar of Social Rights is divided into three main categories in the field of employment and social policies. Each of these categories contains a number of policy domains, to which different principles are attached. The three categories are:

- Equal opportunities and access to the labour market;

- Fair working conditions (adequate and reliable balance of rights and obligations between workers and employers);
- And adequate and sustainable social protection.

For a further description of the pillar see:

EN: [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en)

NL: [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights\\_nl](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_nl)

ES: [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights\\_es](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_es)

## European Pillar of Social Rights

### European Labour Authority: Council adopts founding regulation

*June 13, 2019*

In June 2019, the Council adopted a Regulation establishing a European Labour Authority (ELA). The aim of this new body is to support compliance and coordination between member states in the enforcement of EU legal acts in the areas of labour mobility and social security coordination. It will also provide access to information for individuals and employers in cross-border labour mobility situations. EU Member States also decided to select Bratislava as the seat of the ELA.

Read on: <https://www.consilium.europa.eu/en/press/press-releases/2019/06/13/european-labour-authority-council-adopts-founding-regulation/>

### Gender Equality Index 2019 focuses on work-life balance

*June 11, 2019*

The EIGE is preparing an update on the state of gender equality in the EU. A new feature of this year's Gender Equality Index will be a special focus on work-life balance. The Index will explore the diverse ways women and men juggle work and personal commitments, especially when they have to care for young children, older relatives or family members with a disability.

The EIGE will look into who benefits most from flexible working arrangements and whether they help or hinder work-life balance. Parental leave will also be scrutinised. Are mothers and fathers equally eligible for it? What are the conditions in different EU countries?

The EIGE will also examine life-long learning as a dimension of work-life balance. The 2019 Index will assess if women and men have the same opportunities to continuously upskill and stay up-to-date with new developments and technologies over the course of their careers and it will show new scores for gender equality in the EU and all Member States.

The Index will continue to show the different realities that people in our society are facing. It will examine how elements, such as disability, age, level of education, country of birth and family type, intersect with gender to create different pathways in people's lives. For the first time, it will also highlight the situation of LGBT people, Roma women and Muslim women in areas where statistics are available.

Read on: <https://eige.europa.eu/news/gender-equality-index-2019-focuses-work-life-balance>

## **European Semester 2019 Spring Package: Commission issues recommendations for Member States**

*June 5, 2019*

The European Commission has presented the 2019 country-specific recommendations (CSRs), giving economic policy guidance to all EU Member States for the next 12 to 18 months. The Commission also recommends closing the Excessive Deficit Procedure for Spain and adopts a number of documents under the Stability and Growth Pact.

The European economy is growing for the seventh consecutive year and is set to continue expanding in 2020, with all Member States' economies growing despite less favourable conditions and global uncertainties. The number of people in employment is at a record high and unemployment at a record low.

At the same time, there are still significant differences between countries, regions and population groups. Against this backdrop, the Commission calls on Member States to build on the progress made in recent years. Effective reforms, accompanied by well-targeted investment strategies and responsible fiscal policies, continue to provide a successful compass for modernising the European economy.

Read on:

<https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9387&furtherNews=yes>

## **Trade Unions march for a fairer Europe for workers**

*April 29, 2019*

The European Trade Union Confederation (ETUC) organised a march for a 'fairer Europe for workers' in Brussels on 26 April 2019. With this march, in which some 8000 workers took part, the ETUC wanted to draw attention to the European elections, to call for a better and more social Europe, not less Europe – and for social progress, better pay and better working and living conditions. Over half the 8000 demonstrators came from Belgium and France, with delegations from many European countries including Germany, Italy, Spain, Hungary, Slovenia, Austria, Estonia and Switzerland.

Read on: <https://www.etuc.org/en/pressrelease/8000-march-fairer-europe-workers>

## **European Reports/Studies**

### **Report: 'In-work poverty in Europe'**

*May 25, 2019*

The European Social Policy Network (ESPN) produced a new Synthesis Report that puts forward several recommendations and calls for more effective policy action at European and national levels to tackle in-work poverty. Preventing in-work poverty is seen by policymakers and stakeholders alike as part of the overall goal to reduce poverty in the EU. However, while working is generally considered as the best way to avoid poverty, this is not the case for a significant number of European workers. In 2017, 9.4% of all EU-28 workers lived in households that are at risk of poverty. In certain categories of the population (mostly young, low educated, non-standard workers, poor households with children including lone parents, workers and households with low work intensity) in-work poverty is much higher and has in some cases been increasing significantly in recent years.

Read on:

<https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=9378>

### **Eurofound's Yearbook 'Living and Working in Europe 2015-2018'**

*May 20, 2019*

The Yearbook 'Living and Working in Europe 2015–2018' brings together Eurofound's work on the quality of life, work and employment of EU citizens over the last four years of the outgoing European Parliament and Commission. It has been a period of economic expansion, growing employment and rising living standards. There have been challenges, such as the growth of populism and the migration crisis, as well as opportunity, such as that offered by digitalisation. Over this period, Eurofound has answered some key questions about the living standards, well-being and working conditions of Europeans, highlighting where policymaking needs to target its efforts if it is to be seen to deliver. This yearbook summarises the main themes where the Agency provided answers. It is arranged into two sections: the first addresses living conditions, while the second looks at employment and working conditions. The theme of convergence cross-cuts the chapters and key areas are selected to see whether Member States are making progress and disparities between them decreasing.

Read on: <https://www.eurofound.europa.eu/publications/annual-report/2019/living-and-working-in-europe-2015-2018>

### **ILO and Eurofound report on 'Working conditions in a global perspective'**

*May 6, 2019*

Job quality is increasingly recognised as a major policy concern. It is central to the ILO's Decent Work Agenda and to the European Union's Quality of Work policies. The ILO and Eurofound published a report together that offers a comparative overview of results from the most recent surveys on working conditions available across the world. In the report, that covers approximately 1.2 billion of the world's workers, seven dimensions of job quality are covered: the physical environment, work intensity, working time quality, the social environment, skills and development, prospects, and earnings, finding both important differences and similarities between countries.

Read on: <https://www.eurofound.europa.eu/publications/report/2019/working-conditions-in-a-global-perspective>

### **OECD Employment Outlook on the Future of Work**

*April 25, 2019*

This year's edition of the annual OECD Employment Outlook presents new evidence on changes in job stability, underemployment and the share of well-paid jobs. The report focusses i.e. on the implications of digitalisation, globalisation and ageing as well as on employment protection and social protection reforms. With regard to collective bargaining the reports shows that low levels of organisation among workers, in particular non-standard workers, pose a serious challenge. This partly reflects legal obstacles for workers classified as self-employed, for whom the right to bargain collectively may be seen as infringing competition law. In this context, some OECD countries have made tailored extensions of collective bargaining rights to some non-standard workers. However, practical difficulties remain. Employers' organisations are being put to the test by the emergence of new forms of business. Established

trade unions are developing strategies to reach non-standard workers, while new vehicles of workers' representation are also emerging.

Read on: [https://www.oecd-ilibrary.org/employment/oecd-employment-outlook-2019\\_9ee00155-en](https://www.oecd-ilibrary.org/employment/oecd-employment-outlook-2019_9ee00155-en)

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## EU Case Law

### **Working time Directive - systematic recording of working hours**

*May 14, 2019*

Judgment in Case C-55/18 Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE

#### **Facts**

In this case, the Spanish trade union, Federación de Servicios de Comisiones Obreras (CCOO), brought an action before the Audiencia Nacional (National High Court, Spain), seeking a judgment declaring Deutsche Bank SAE to be under an obligation to set up a system for recording the time worked each day by its members of staff. The union considered that such a system would make it possible to verify compliance with the stipulated working times and the obligation, laid down in national law, to provide union representatives with information on overtime worked each month. According to CCOO, the obligation to set up such a recording system is derived not only from national law but also from the Charter of Fundamental Rights of the European Union ('the Charter') and the Working Time Directive<sup>1</sup>. Deutsche Bank contends that it follows from the case-law of the Tribunal Supremo (Supreme Court, Spain) that Spanish law does not lay down such an obligation of general application. It argues that that case-law shows that Spanish law requires only, except where there is an agreement to the contrary, that a record be kept of overtime hours worked by workers and the communication, at the end of each month, to workers and their representatives of the number of hours overtime thus worked.

The National High Court had doubts as to whether the interpretation of Spanish law by the Supreme Court complies with EU law and referred questions on that matter to the Court of Justice. According to information provided by that court to the Court of Justice, 53.7% of overtime hours worked in Spain are not recorded. In addition, the Spanish Minister for Employment and Social Security considers that it is necessary, in order to determine whether overtime has been worked, to know precisely the number of normal hours worked. The National High Court notes that the interpretation of Spanish law given by the Supreme Court in practice, first, deprives workers of an item of evidence essential for demonstrating that they have worked in excess of maximum working time limits and, second, deprives their representatives of the necessary means for verifying whether the applicable rules on the matter were complied with. Consequently, according to that court, Spanish law is not able to ensure the effective compliance with the obligations laid down by the Working Time Directive (Directive 2003/88/EC) or the Directive on the health and safety of workers at work (Directive 89/391/EEC).

#### **Considerations of the European Court of Justice**

In this judgment, the Court declares that those directives, read in the light of the Charter, preclude a national law that, according to the interpretation given to it in national case-law, does not require employers to set up a system enabling the duration of time worked each day by each worker to be measured.

The Court notes, first of all, the importance of the fundamental right of every worker to a limitation on the maximum number of working hours and to daily and weekly rest periods, which is enshrined in the Charter and given specific detail in the Working Time Directive. Member States are required to ensure that workers actually benefit from the rights that are conferred on them, without the specific arrangements chosen to implement the directive being liable to render those rights meaningless. The Court recalls that the worker must be regarded as the weaker party in the employment relationship, such that it is necessary to prevent the employer from being in a position to impose a restriction of his rights on him. The Court holds that, in the absence of a system enabling the duration of time worked each day by each worker to be measured, it is not possible to determine, objectively and reliably, either the number of hours worked and when that work was done, or the number of hours of overtime worked, which makes it excessively difficult, if not impossible in practice, for workers to ensure that their rights are complied with.

The objective and reliable determination of the number of hours worked each day and each week is essential in order to establish whether the maximum weekly working time – including overtime – and minimum daily and weekly rest periods have been complied with. The Court considers therefore that a national law which does not provide for an obligation to have recourse to an instrument that enables that determination does not guarantee the effectiveness of the rights conferred by the Charter and the Working Time Directive, since it deprives both employers and workers of the possibility of verifying whether those rights are complied with. Such a law could also compromise the directive's objective of ensuring better protection of the safety and health of workers, which is the case irrespective of the duration of the maximum weekly working time laid down in national law. By contrast, a system enabling the time worked by workers each day to be measured offers those workers a particularly effective means of easily accessing objective and reliable data as regards the duration of time actually worked, which facilitates both the proof by those workers of a breach of their rights and also the verification by the competent authorities and national courts of the actual observance of those rights.

Consequently, in order to ensure the effectiveness of the rights provided for in the Working Time Directive and the Charter, the Member States must require employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured. It is for the Member States to define the specific arrangements for implementing such a system, in particular the form that it must take, having regard, as necessary, to the particular characteristics of each sector of activity concerned, or the specific characteristics of certain undertakings concerning, *inter alia*, their size.

### **Ruling**

“Articles 3, 5 and 6 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, and Article 4(1), Article 11(3) and Article 16(3) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, must be interpreted as precluding a law of a Member State that, according to the

interpretation given to it in national case-law, does not require employers to set up a system enabling the duration of time worked each day by each worker to be measured.”

### **Conclusion**

The European Court of Justice ruled on a complaint filed by the service workers union of the Spanish CC.OO. trade union confederation, who were requesting the installation of a system for recording the employees’ working hours at Deutsche Bank in Madrid. As in other European countries, employers in Spain were only obliged to record overtime.

The national Court of Justice in Spain decided to escalate the issue to Luxembourg, where the ruling was in favor of the trade unions. All EU countries must now oblige employers, to install an objective, reliable and accessible system to record the effective daily working hours on an individual basis. In the opinion of the judges, the number of hours effectively worked and their distribution in time as well as any overtime, cannot be determined reliably without a systematic recording. It is only by these means that compliance to working hours’ regulations and safety requirements can be monitored and enforced. It would otherwise be very difficult or even impossible for employees to enforce their rights. There is now a controversial debate within the German Federal Government whether and which modifications to the law are now necessary.

Trade unions at European level (in particular, UNI Europa) have welcomed this landmark ruling which will protect workers across Europe from excessive and unhealthy working hours and ensure their right to daily and weekly rest periods and a proper work/life balance.

Read full text on:

<http://curia.europa.eu/juris/document/document.jsf?docid=214043&text=&dir=&doclang=E N&part=1&occ=first&mode=DOC&pageIndex=0&cid=4887377>

## **Events of the Project**

- **The seminar: *European Labour Law Perspectives – Enhancing the Social Pillar***, took place at the University Carlos III-Madrid on 18 & 19 January 2018, Madrid, Spain.

The recordings of the presentations at this Jean Monet Seminar are available at the following links:

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1. [https://arcamm.uc3m.es/arcamm\\_3/item/show/5fd5d75416103ff3185db4aab0b7c357](https://arcamm.uc3m.es/arcamm_3/item/show/5fd5d75416103ff3185db4aab0b7c357)
  2. [https://arcamm.uc3m.es/arcamm\\_3/item/show/a7262a469e9bff226605a8bc26a9b6b0](https://arcamm.uc3m.es/arcamm_3/item/show/a7262a469e9bff226605a8bc26a9b6b0)
  3. [https://arcamm.uc3m.es/arcamm\\_3/item/show/ea080356e304ed054ce60a231b0d7006](https://arcamm.uc3m.es/arcamm_3/item/show/ea080356e304ed054ce60a231b0d7006)
  4. [https://arcamm.uc3m.es/arcamm\\_3/item/show/fb3050d315154d8ffe923d28d8107e18](https://arcamm.uc3m.es/arcamm_3/item/show/fb3050d315154d8ffe923d28d8107e18)
  5. [https://arcamm.uc3m.es/arcamm\\_3/item/show/6220166b54f76e83283bdfd1985bdc04](https://arcamm.uc3m.es/arcamm_3/item/show/6220166b54f76e83283bdfd1985bdc04)
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- **The summer Course: *European Labour Law Perspectives – Enhancing the Social Pillar***, was held on 20-22 June 2018 at the Law Faculty - University of Amsterdam, the Netherlands. Venue: Nieuwe Achtergracht 166, 1018 WV, Amsterdam.

This course aimed at keeping employment specialists and labour law practitioners up -to - date by providing an overview of the latest policy developments, legislative initiatives and case law in the field of EU labour law.

**Key topics discussed**

The European Pillar of Social Rights  
Workers protection in insolvency proceedings  
Labour law and the on-demand economy  
EU social security law  
Update on the revision of the Posting of Workers legislation  
Temporary agency work and flexible employment  
Working time Directive  
Workers involvement in the undertaking  
EU Antidiscrimination Law and protection of atypical workers (fixed-term contracts, part-time workers), discrimination on grounds of gender, religion and age at work, etc.  
Other recent legislative and policy developments at EU level: work -life balance and proposal on a Directive on transparent and predictable working conditions.  
This conference was aimed at academics, lawyers specialised in employment and labour law, and other legal practitioners.

**Keynote speakers**

Prof. dr. Catherine Barnard  
Prof. dr. Anthony Kerr  
Prof. dr. Frank Hendrickx  
Prof. dr. Manfred Weiss  
Prof. dr. Jaap van Slooten  
Prof. dr. Evert Verhulp  
Prof. dr. Mies Westerveld  
Prof. dr. Auke van Hoek

The recordings of the presentations at this Jean Monnet Summer School are available at the following link: <https://aias-hsi.uva.nl/en/projects-a-z/jean-monnet-eusocp/multimedia/multimedia.html>

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