



**FedEE**  
Federation of European Employers  
Fédération des Employeurs Européens

# Mettre à jour

## Latest News from the Federation of European Employers (FedEE)

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### European Union: More scrutiny over executive pay

The European Commission has proposed a revision of the Shareholder Rights Directive to give shareholders new powers over executive pay.

Under the proposal, the pay of directors and managers in EU publicly traded companies would be analysed and capped subject to a vote by the companies' shareholders. Companies would be obliged to submit their remuneration policy for shareholders to review every three years.

In addition, companies would have to make public information on their pay policy and how they implement it. They would have to justify the ratio between the average director pay and the average pay of a regular full-time worker and establish the maximum level of executive pay at the company.

Currently, only 15 EU member states make companies reveal their remuneration policy and only 11 require disclosure of the pay of individual directors. The proposal remains subject to

approval by EU member state governments and the European Parliament.

### European Union: Statistics on education across member states

According to data from the European Union's statistical office, Eurostat, the proportion of 30 to 34 year olds in the EU who have completed tertiary education has been steadily increasing — from 24% in 2002 to 37% in 2013. The target of the Europe 2020 strategy is to reach 40% by 2020.

In 2013, the highest proportions of those aged 30 to 34 who had completed tertiary education were recorded in Ireland (52.6%), Luxembourg (52.5%), Lithuania (51.3%), Sweden (48.3%), Cyprus (47.8%) and the United Kingdom (47.6%). The lowest proportions were recorded in Italy (22.4%), Romania (22.8%), Croatia (25.9%) and Malta (26.0%).

The proportion of early school leavers from among individuals aged 18-24 in the EU has also been steadily decreasing — from 17% in 2002 to



12% in 2013. The lowest levels in 2013 were noted in Croatia (3.7%), Slovenia (3.9%), the Czech Republic (5.4%) and Poland (5.6%) whilst the highest levels were recorded in Spain (23.5%), Malta (20.9%) and Portugal (19.2%).

This data does not, however, take into consideration the quality of education and training in the different EU member states.

## **Germany: Significant ruling for shift workers**

The rights of shift workers in Germany have been significantly strengthened following a landmark judgment of the Federal Labour Court (BAG) on April 9th 2014. The BAG ruled that if, for health reasons, an employee is no longer able to work night shifts, they should not simply be declared unfit for work if it is possible for them to work day shifts instead — even if their employment contract specifically states that their job involves working night shifts.

In this case, a nurse who had undertaken shift work for over 30 years was sent home by her employer after a medical examination found her unsuitable to carry out night work. The employee's contract obliged her to work on Sundays, holidays and at night where operational reasons required it. The employee was still able to perform all the activities of a nurse, however, and offered her services with the exception of night work. This was not taken up by the employer. After a period of paid leave the employee began to receive unemployment benefits, suggesting that her employment had been terminated.

The BAG ruled that, as work performance was not impossible, the employer had to take the employee's health problems into consideration. The employer's work should be organised, as far as possible, so that the employee in question only has to work in the day. This was considered possible in the circumstances given that the

employer in question had approximately 2,000 employees and day shifts were available. [Ref. 10 AZR 637/13]

## **Italy: Criminal liability of employer for death of an employee**

The Italian Supreme Court has recently ruled that an employer was not criminally liable for the death of an employee who died of severe burns after an incident at work.

The employee in question was not wearing the required fire-proof clothing and did not follow the appropriate safety procedures. Both the regional court and Court of Appeal had found the employer responsible for the death for failing to effectively monitor and ensure the observance of preventative measures by the worker. On appeal, however, the Supreme Court found that the lower courts had not taken into consideration a number of factors including the presence of an employee in charge of the task being undertaken by the victim.

The Court ruled that an employer cannot be expected to personally carry out surveillance nor oversee the work of its employees on a continuous basis. Furthermore, an employer cannot be considered negligent if the size of the company does not legally require the appointment of a person to specifically supervise the health and safety activities in the workplace. [Decision n.15490 of April 7th 2014]

## **Poland: Non-compete obligations under civil law**

In a recent decision, Poland's Supreme Court has held that a post-termination non-compete clause agreed under a civil contract was not in breach of the law — despite the fact that it did not provide for compensation to be paid in return for the refraining of competitive activity. The decision goes against a previous ruling made in 2003.



In this case, under the service contract, the contractor had a duty not to enter into competitive activity for the duration of the contract and one year following termination. No compensation was provided for upholding these obligations, but the company could seek liquidated damages if the contractor violated their non-compete obligations. The individual breached their obligation before the year had passed and the company asked for liquidated damages.

The Supreme Court awarded the liquidated damages and held that not offering compensation for the non-compete obligation was not in breach of the law on civil contracts. The Court stated that the will of the Polish legislature is to allow freedom of contract and permit parties to agree on the best terms to fit the business and individual interests. Each case will, however, be assessed individually and factors such as the nature and length of the parties' agreement could be taken into consideration. Under employment agreements, workers must receive compensation for upholding obligations under a post-termination non-compete clause. [V CSK 30/13]

## **Russian Federation: New industry agreement for oil and gas sector**

The Ministry of Labour of Russia has made a formal proposal to companies in the oil and gas sector to join the Federal Agreement on the Oil and Gas Industry for 2014-2016.

The agreement requires employers to make extra payments relating to retirement and annual leave and give employees more paid time off for family reasons. Under the agreement, employers also have to pay employees who carry out night work an extra 40% of their salary, pay compensation of up to 350 times the minimum wage for any injuries sustained or illness acquired at work, and pay a surcharge on maternity and temporary disability benefits. In addition, employers should consider the opinion of an elected trade union when

making decisions and ensure that trade unions take part in any reorganisation of the company. If a relevant company does not wish to participate in the agreement, they should opt out by providing a reasoned written refusal before May 13th 2014. Failure to do so will leave them subject to the terms of the agreement.

## **UK: Decision on detrimental treatment of a whistleblower**

The UK's Employment Appeals Tribunal (EAT) has recently established that for a claim of detrimental treatment linked to whistleblowing to succeed, it must be clear that the employer made a "conscious decision" to treat the employee in a detrimental way.

In the case in question, an employee made a claim for unfair dismissal and detrimental treatment when she was dismissed only 18 days after starting her job on the grounds of "mutual unsuitability". During her employment she had sent two emails to her employer raising a total of 17 concerns which she considered amounted to "protected disclosures" (whistleblowing). She claimed she suffered a detriment as she had to continue working knowing her employer was not complying with important statutory and regulatory duties.

Although the Employment Tribunal upheld both the employee's claims, the EAT disagreed with the tribunal's decision regarding the claim of detrimental treatment. Particularly, the EAT failed to see what detriment the employee could have suffered in the very short time between the emails being sent and her dismissal.

The EAT stated that for such a claim to succeed, it must be demonstrated that the employer made a "conscious decision" to treat an employee in such way that causes them detriment. This can only arise if the employer had deliberately acted or failed to act. In this case, there was no



evidence that the employer had made conscious decision to not act upon the employee's health and safety complaints. [UKEAT 0449\_12\_2703 (27th March 2014)]

## Pay, Tax and Benefit Trends

**ALAND ISLANDS:** One of the biggest beneficiaries of EU free movement policies is the Aland Islands — a Swedish-speaking community in the Baltic Sea which, although formally part of Finland enjoys almost complete political autonomy and has its own parliament. Half of all recent population growth has been due to the influx of foreign workers — mainly from the Baltic states. Unemployment is around 2% and average earnings are 17.67 euros an hour, which is high for a small island state. There is no statutory minimum wage, but the effective minimum is 13.20 euros an hour — the going rate in the hospitality sector.

**BELGIUM/TURKEY:** Belgium and Turkey have entered into a new social security agreement covering healthcare and pensions. The agreement modernises the 46-year old bilateral agreement between the countries and gives workers of Turkish origin the same rights in Belgium as workers from EU member states.

**DENMARK:** The Confederation of Danish Employers and the Danish Confederation of Trade Unions have signed a three-year deal that will affect 550,000 private sector workers. Under the new agreement, employees will receive overall pay increases of about 6% between 2015 and 2018. This is their highest pay increase since 2007. Employees will also be entitled to two hours' paid time off to seek guidance from the trade union or unemployment insurance fund in the case of termination.

**EUROPE:** Companies that seek to pay the minimum wage, particularly in eastern Europe, should bear in mind that the statutory rate is often

placed very close to the poverty line — or even below it. In the state of Montenegro the minimum wage is 193 euros a month, whilst the official poverty line stands at 182.47 euros a month. In Bulgaria, the national minimum wage of 300 leva a month is significantly higher than the official poverty line, which lies at 214 leva a month. Yet still 20% of the population lives below the poverty line. The biggest disparity remains, however, in Greece, where the official poverty line was set in 2009 at 665 euros a month, although the minimum wage is now only 585.78 euros a month.

**EUROPE:** According to the European Union's statistical office, Eurostat, in 2013, 23% of the EU's 43.7 million part-time workers wished to, and were available to, work more hours. The proportion of these so-called "underemployed" part-time workers among all part-time workers varied considerably across the EU countries — with the highest proportions in Greece (72.0%), Cyprus (59.0%) and Spain (57.4%) and the lowest proportions in the Netherlands (4.2%), Luxembourg (10.3%) and the Czech Republic (11.4%). Eurostat also estimated that 11.5 million people in the EU could be potential additional labour.

**LITHUANIA:** Having obtained approval by the European Parliament on April 7th, Lithuania remains on course to join the eurozone. The Lithuanian government has also now approved the 2014 convergence programme for 2014–2017, which commits the country to complying with the Maastricht criteria and being ready to adopt the euro by the beginning of 2015. As part of this programme, the Ministry of Finance expects salaries to increase by 5.8-6.9% in 2014-2017 and the labour market to continue to improve at a rapid rate. It is also projected that the unemployment rate will fall to 10.5% in 2014 and will further decrease in subsequent years.

**NETHERLANDS:** In the Netherlands, the Cabinet has approved the introduction of a higher sickness



premium for medium-large employers who return to the state social security system (UWV) after a period of bearing their own risk. The premium would apply from January 1st 2015 to all medium-large employers who request to return after March 20th 2014. The decision will now be sent to the State Council for advice.

**PORTUGAL:** The Organization for Economic Cooperation and Development (OECD)'s report "Taxing Wages 2014" has named Portugal as the country among its members that saw the largest income tax increase in 2013. On average the tax burden on job incomes in OECD member countries rose by 0.2% in 2013, but in Portugal it increased by 3.5%. As a result, more than 40 cents in each euro earned by an employee in Portugal went towards paying taxes and social security. In 25 out of 34 OECD member countries, personal income tax has increased over the past three years. This is mostly because states are diminishing the value of tax-free allowances and credits meaning higher proportions of salaries are now subject to tax.

**SLOVAK REPUBLIC:** According to the Statistical Office of the Slovak Republic, wages increased in a number of sectors in February 2014 as compared with average nominal monthly wages in February 2013. Wages increased by 9.1% in the information and communication sector, by 7.2% in the transportation and storage sector, by 2.5% in the accommodation sector and by 1.6% in retail. Wages did, however, decrease in other sectors, including in food and beverage services (-2.7%) and construction (-2.1%).

**UK:** According to the UK's Office for National Statistics, weekly earnings, including bonuses, increased by 1.7% in the year to February — up from 1.4% in January. The Consumer Prices Index also grew by 1.7% in the year to February making it the first time since 2007 that wages have matched inflation for a sustained period.

## Other European HR News in Brief

**CZECH REPUBLIC:** Czech Ombudsman, Anna Šabatová, has presented to lawmakers a number of recommendations to strengthen the protection of workers in the Czech Republic. In particular, Šabatová wishes to see the law changed to make unauthorised online monitoring of employees punishable. Currently, penalties can only be imposed on employers for acts concerning the processing of personal data or in cases where employees are monitored with recording equipment. Generally, just over half of all recommendations made by Ombudsmen lead to a change in the law, and the average length of time for the law to come into force is almost four years.

**EUROPEAN UNION:** The European Council of Ministers has approved a new Directive to improve the enforcement of workers' rights to free movement. The Directive is a response to the practical difficulties faced by workers when they move from one state to another to work. The Directive aims to improve employers' awareness of EU rules and deter discrimination based on nationality. Amongst the provisions, member states are required to allow unions and non-governmental organisations to take administrative or judicial review action for individuals affected by discrimination. Member states will have two years to implement the Directive.

**EUROPEAN UNION:** The European Commission has commenced the final stage of its infringement procedure against Cyprus, Ireland, Italy, Luxembourg and Romania, for their failure to implement Directive 2013/25/EU. This Directive amended a number of other directives — including those concerning the recognition of professional qualifications and lawyers' freedom to provide services — in light of the accession of the Republic of Croatia to the EU. If the Commission does not receive satisfactory replies from these states within two months, it will be





entitled to refer them to the European Court of Justice.

**FRANCE:** The French Labour Code has recently been modified to include place of residence as a ground of discrimination. According to the amended Article L1132-1, individuals may not be excluded from a recruitment process, or access to a course or in-company training, be sanctioned, dismissed or otherwise discriminated against — particularly in relation to remuneration, incentives or share distribution schemes, training, promotion and changing or renewal of a contract (amongst others) — on the basis of where they live. Measures taken in favour of individuals living in certain geographical areas with the aim of promoting equal treatment will not, however, be considered discriminatory (Article L1133-5).

**HUNGARY:** On March 15th 2014 a new Civil Code entered into force in Hungary. Under the new Code, executive officers will be jointly and severally liable, together with the company, to third parties who suffer damage in connection with the executive's position. The executive's liability towards the company in these circumstances has also been redefined in accordance with the rules of contractual damages, such that the executive is to be found strictly liable unless they can illustrate that the circumstances were outside of their control, unforeseeable and beyond their obligations.

**ITALY:** In order to attract more talent from abroad, Italy has recently modified its immigration laws. The new laws give scientific researchers more options regarding sponsorship for their

research and remove the requirement for them to take an Italian language test if applying for a long-term residence permit. They also no longer have to show proof of adequate housing in order to have their family join them in Italy. In addition, individuals with a university diploma gained abroad no longer need to have their diplomas recognised by the Ministry of Education in order to be issued an EU Blue Card — instead, it will be sufficient to obtain a "declaration of value" from the Italian consulate in the individual's country of residence.

**UK:** On April 6th 2014, regulations that prohibit the use of blacklists in respect to employees or potential employees came into effect in Northern Ireland. Under the regulations, current and former trade union members have the right to complain to a tribunal if they are refused employment or are unfairly dismissed by an employer for any reason relating to a blacklist. It is now illegal to compile, use, sell or supply a blacklist that identifies individuals who are trade union members or who are taking part in trade union activities where the list may be used to discriminate recruitment or treatment of workers. These regulations bring Northern Ireland into line with the rest of the UK.

**UK:** Northern Ireland's Minister for Employment, Stephen Farry, has announced that he will introduce new legislation in the Northern Ireland Assembly to give parents the right to share parental leave and pay. The proposed legislation will also extend the right to request flexible working to all employees. It is expected that the new rights will come into force in April 2015.

## FedEE News

**FEDEE GOING GLOBAL:** FedEE is going global and as such you will notice a number of changes occurring over the next few months. The most significant of these will be the change of our name to the Federation of International Employers. In order to bring you information and support for key jurisdictions around the world



we are joining forces with both Baker and McKenzie and the Multilaw network. We will be broadly expanding the geographical coverage of our HR knowledgebase and our law programme will be extended to cover a number of Latin American countries. In addition, we shall soon be offering a range of packages to help you keep up to date with developments in employment law — such as a periodic review of your employment policies to ensure on-going legal compliance. For news of the latest developments, please see announcements on our website and in the newswire.

**FELLOWSHIP MEETING:** The Spring 2014 Fellowship Meeting will take place on Friday, May 23rd 2014 at the Novotel London West, Hammersmith. The day will run from 9.30am (Registrations and Coffee/Tea & Pastries) for a 10am start and will finish at around 4.30pm, with refreshment breaks and a buffet lunch. If you are interested in becoming a Fellow please contact Angelika Rivero ([angelika.rivero@fedee.com](mailto:angelika.rivero@fedee.com)) for details.

**TRAINING FILM OFFER:** FedEE's professionally produced training film on workplace racial discrimination is now available on special offer at just £59.94 (+ VAT where applicable, free P&P). To purchase a copy while this offer lasts please follow the following link to our online [eShop](#).

**REFER A COLLEAGUE TO FEDEE AND WE WILL DISCOUNT YOUR MEMBERSHIP FEES:** Don't forget our 'refer a friend' scheme. If you refer a colleague from another company to FedEE we will discount your company's next-due membership fee by £100 for each new member that comes out of your referral. To refer a colleague contact Angelika Rivero, with their contact details on [memberships@fedee.com](mailto:memberships@fedee.com).

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