



# **EU–Serbia Explanatory screening meeting 10 February 2014**

## **Overview of EU labour law directives**



# Overview

- *General principles governing EU Labour Law*
- *Working time*
- *Working conditions*
- *Information and consultation of employees*



# General principles governing EU competences

- Article 5 TEU:
  - "The limits of Union competences are governed by the **principle of conferral**. The use of Union competences is governed by the principles of subsidiarity and proportionality."
- Article 2 TFEU:
  - "When the Treaties confer on the Union **exclusive competence** in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts."
  - When the Treaties confer on the Union a **competence shared** with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. [...]
  - In certain areas and under the conditions laid down in the Treaties, the Union shall have **competence to carry out actions to support, coordinate or supplement** the actions of the Member States, without thereby superseding their competence in these areas. Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States' laws or regulations."



# EU Competence in Labour Law

- **Title X on Social Policy:**

**Article 153 TFEU**, the Union can act in the following fields:

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
- (g) conditions of employment for third-country nationals legally residing in Union territory;
- (h) the integration of persons excluded from the labour market, without prejudice to Article 166;
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).



# EU Competence in Labour Law

- in all fields: may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States. (open method of coordination)
- in the fields referred to in (a) to (i), the EU may adopt **by means of directives, minimum requirements for gradual implementation.**
- the measures "**shall not prevent any Member State from maintaining or introducing more stringent protective measures** compatible with the Treaties".
- The provisions of this Article shall **not apply to pay, the right of association, the right to strike or the right to impose lock-outs.**



# Social Dialogue

- Article 152 TFEU: "The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy."
- Article 154 TFEU: "The Commission shall have the task of promoting the consultation of management and labour at Union level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action."
- Article 155 TFEU: "Should management and labour so desire, **the dialogue between them at Union level may lead to contractual relations, including agreements.** Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, **in matters covered by Article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.** The European Parliament shall be informed."



## The main topics covered by EU labour law directives

- Working time (general Directive and several specialised directives)
- Other working conditions: written contract, rights of part-time and fixed-term workers, young workers, agency workers, posted workers
- Protection of workers during restructuring or insolvency
- Collective rights to information and consultation



## Some issues not covered by EU labour law

- Pay (see Article 153.5 TFEU – excluded)
- Minimum wages
- Individual dismissals
- Differences of treatment between public sector and private sector workers



# Issues covered by other areas of EU law

- Specialised health and safety directives
- Free movement of workers between MS
- Coordination of social security between MS
- Discrimination between workers from different MS
- Discrimination based on gender, pregnancy, race, ethnic origin, religion/belief, disability, age, sexual orientation



# Working Time

## Directive 2003/88/EC (general)

- Replaced the original Working Time Directive 93/104/EC
- Sets out minimum health and safety requirements for the organisation of working time
- MAIN OBJECTIVE:
  - Improving the working environment to protect workers' health and safety
- PERSONAL SCOPE:
  - Workers in all sectors, both public and private, that are not self-employed or under sector-specific regulation
- EXCLUDED:
  - Pay (NB: No EU competence on pay – Article 153(5) TFEU)



# Working Time

## Directive 2003/88/EC (general)

- KEY PROVISIONS:

- Rights:

- **Daily Rest** (Article 3): 11hrs consecutive
    - **Breaks** (Article 4): 1 break when working > 6hrs
    - **Weekly Rest** (Article 5): 24hrs (+11hrs daily rest)
    - **Maximum Weekly Working Time** (Article 6): 48 hours
    - **Maximum Daily Working Time for Night Workers** (Article 8): 8hrs per 24hrs
    - **Minimum Paid Annual Leave** (Article 7): 20 days

**NB: Article 31(2) of the Charter of Fundamental Rights of the EU (same value as Treaties):**  
"Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave".

- Exceptions (under conditions):

- Reference periods (Article 16)
    - Specific situations (Article 17) derogating from all except Article 6
    - Opt-out from Article 6 (Article 22)



# Working Time

## Sector-specific Directives

- Directive 1999/63/EC (seafarers)
- Directive 2000/79/EC (civil aviation)
- Directive 2005/47/EC (railways, cross-border workers)



# Protection of young people at work (94/33/EC)

## OBJECTIVES

- *Prohibit work by children*
- *Strictly regulate and protect young people at work*
- *Ensure that employers guarantee young people working conditions suitable to their age*
- *Protection against economic exploitation and work harmful to safety and health, development or education*



# Directive 91/533/EEC (written statement)

## OBJECTIVES:

- *establishes the employer's obligation to **inform employees** of the conditions applicable to the contract or employment relationship.*
- *To this end, every employee must be **provided with a document** containing information on the essential elements of his contract or employment relationship.*



## Directive 91/533/EEC (written statement)

- **Main elements** include: *the parties, the place of work, the work tasks, the initial basic pay, other remuneration, working times, leave entitlements, arrangement for either side to give notice, collective agreements in force, arrangements for either side to give notice.*
- *Employees required to work in **other countries** must be given the document before their departure.*



## Directive 91/533/EEC (written statement)

- ***Deadline:*** *if information is not given through a written contract of employment nor a letter of engagement, a written declaration is needed within 2 months*
- Any ***changes*** *must be the subject of a written document to be given to the employee at the earliest opportunity and not later than one month after the date of entry into effect of the changes.*



# Directive 91/533/EEC (written statement)

*Article 6 (on form and proof of the existence of a contract or employment relationship and procedural rules), provides that "this Directive shall be without prejudice to **national law and practice** concerning:*

- *the form of the contract or employment relationship,*
- *proof as regards the existence and content of a contract or employment relationship,*
- *the relevant procedural rules."*



# Fixed-Term Work Directive 1999/70/EC

- Implements the Framework Agreement on Fixed-Term work concluded between the Social Partners (management and labour)
- Sets out the general principles and minimum requirements relating to fixed-term work
- MAIN OBJECTIVES:
  - No discrimination against fixed-term workers
  - Prevent abuse of successive fixed-term contracts
- PERSONAL SCOPE:
  - Fixed-term workers with an employment contract as defined under national law (with limited exemptions for training contracts)
  - Excluded: temporary agency workers (Directive 2008/104/EC)



# Fixed-Term Work Directive 1999/70/EC

- KEY PROVISIONS:
  - **Definitions (clause 3):** "fixed-term" = "where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event"
  - **Principle of non-discrimination (clause 4):** "In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds"
  - **Measures to prevent abuse (clause 5):** Member States are encouraged to adopt measures laying down: Objective reasons justifying the renewal of fixed-term employment, Maximum total duration of successive fixed-term employment, Number of renewals



# Part-Time Work Directive 97/81/EC

- Implements the Framework Agreement on Part-Time Work concluded between the Social Partners
- Sets out the general principles and minimum requirements relating to part-time work
- MAIN OBJECTIVES:
  - No discrimination against part-time workers
  - Improvement of quality of part-time work
  - Facilitation of development of part-time work
- PERSONAL SCOPE:
  - Part-time workers with an employment contract/relationship as defined under national law (with limited exemptions for casual workers)



# Part-Time Work Directive 97/81/EC

- KEY PROVISIONS:
  - **Definitions (clause 3):** "part-time worker" = "employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker"
  - **Principle of non-discrimination (clause 4):** "In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds"
  - **Promotion of part-time work (clause 5):** Request to work part-time in principle not a valid ground for dismissal, Requests to transfer from FT to PT and vice versa should be fairly considered by employer
- EXCLUDED: Statutory Social Security



# Health and Safety in fixed term and temporary employment (91/383/EEC)

- *OBJECTIVE: Ensure workers with fixed-term or temporary employment relationships the same level of protection as other workers in the same workplace*
- *Equal treatment as regards safety and health at work*
- *General Directive 89/391/EEC and the other individual Directives on Health and Safety at work continue to apply in full.*



# Posted Workers Directive 96/71/EC

- MAIN OBJECTIVES:
  - facilitation of the transnational provision of services by way of ensuring fair competition and respect of workers' rights (i.e. preventing 'social dumping')
- SCOPE:
  - undertakings established in a Member State which, in the framework of the transnational provision of services, post workers to the territory of a Member State



# Posted Workers

## Directive 96/71/EC

- KEY PROVISIONS:
  - **Definitions (Article 2):** "posted worker" = "a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works"
  - **Terms and conditions of employment (Article 3): core of mandatory rules regarding the terms and conditions of employment to be applied to posted worker: Host State laws apply as regards:** (a) maximum work periods and minimum rest periods (b) minimum paid annual holidays (c) the minimum rates of pay, including overtime rates (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings (e) health, safety and hygiene at work (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people (g) equality of treatment between men and women and other provisions on non-discrimination



# Collective redundancies (98/59/EC)

- *OBJECTIVE: Approximation of the different laws of the Member States in order to afford greater protection to workers in the event of collective redundancies.*
- *KEY PROVISIONS: Definitions and scope (article 1); Information and consultation with the workers' representatives (article 2); Procedure for collective redundancies (articles 3 and 4).*



## Collective redundancies (98/59/EC) (ctd.)

- *Article 1: Two criteria regarding the notion of "collective redundancies":*
  - *qualitative: dismissals for reason(s) not related to individual workers*
  - *quantitative: number of redundancies within a certain period of time, depending on the size of the establishment*



# Employer Insolvency Directive (2008/94/EC)

- **OBJECTIVE:**

*Provision of minimum protection for employees in the event of the insolvency of their employer*

- **KEY PROVISIONS:**

- *definitions (Article 2)*
- *establishment of an independent guarantee body (Article 5)*
- *guarantee for payment of employees' outstanding claims (Articles 3,4,7)*
- *transnational situations (Articles 9, 10)*



# Employer Insolvency Directive (2008/94/EC) (ctd.)

- *MS define detailed rules for the organisation, financing and operation of the guarantee institutions, complying with the following principles in particular:*

*(a) the assets of the institutions must be independent of the employers' operating capital and be inaccessible to proceedings for insolvency;*

*(b) employers must contribute to financing, unless it is fully covered by the public authorities;*

*(c) the institutions' liabilities must not depend on whether or not obligations to contribute to financing have been fulfilled.*



## Employer Insolvency Directive (2008/94/EC) (ctd.)

- *The guarantee institutions must ensure payment of employees' outstanding claims for a period determined by Member States.*
- *The EU minimum guarantee period must cover the remuneration for the last three months*
- *In transnational situations, the institution responsible is that of the MS where the worker habitually worked.*



# Transfer of undertakings (2001/23/EC)

- ***Objective: Protection of employees in the event of a change of employer.***

- *In particular, safeguarding of employees' rights arising from an employment relationship*
- *Information and consultation of employees' representatives*

- ***Key provisions:***

*Scope and definitions (Articles 1 and 2);  
Safeguarding of employees' rights (Articles 3-6);  
Information and consultation (Article 7)*



# Transfer of undertakings (2001/23/EC) (ctd.)

- *In particular Article 1 :*
- *Notion of "transfer": transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.*



## Transfer of undertakings (2001/23/EC) (ctd.)

- *The rights and obligations arising for the transferor from an employment contract or existing on the date of the transfer are, by reason of such transfer, transferred to the transferee, automatically.*
- *Transferee to continue to observe the terms and conditions agreed in any collective agreement*
- *The transfer does not in itself constitute grounds for dismissal*



## Transfer of undertakings (2001/23/EC) (ctd.)

- *The transferor and the transferee are required to provide certain items of information to the representatives of their respective employees.*
- *The obligation to report is general, the obligation concerning consultation is limited (where the transferor or the transferee envisages any measures in relation to the employees (for example, a reduction in the workforce)).*



# Temporary Agency Workers (Directive 2008/104/EC)

- ***Equal treatment in the user undertakings (Article 3(1)(f) and 5(1))***: from the first day of their assignment, the basic working and employment conditions (pay but also duration of working time, overtime, breaks, rest periods, night work, holidays) of agency workers have to be at least those that would apply if they were recruited directly by the user firm to occupy the same job.



# Temporary Agency Workers (Directive 2008/104/EC)

- ***Derogations from the principle of equal treatment are allowed under conditions (Article 5(2) to 5(4)) :***
  - a) **Member States** may, after consulting the social partners, derogate from **equal pay** with regard to agency workers having a permanent contract and being paid between assignments,
  - b) most importantly, Member States may enable the **social partners** to conclude collective agreements derogating from equal treatment on a **variety of issues**, if the overall protection of agency workers is ensured.



# Temporary Agency Workers (Directive 2008/104/EC)

- ***Review of restrictions or prohibitions*** (Article 4): *during the transposition period, Member States must, after consulting the social partners, review any prohibitions or restrictions on the use of agency work to verify whether they are justified on grounds of general interest.*
- *The Commission must be informed by 5 December 2011 of the result of the review.*



# Temporary Agency Workers (Directive 2008/104/EC)

- *agency workers must be informed of **vacant posts** in the **user firm**; agencies are forbidden to prevent agency workers from being hired by the user company after their assignment (Article 6.1 to 6.3);*
- *in principle agency workers must be given **access to any collective facilities** in the user firm, in particular canteens, child-care facilities and transport services (Article 6.4);*



# Temporary Agency Workers (Directive 2008/104/EC)

- *Member States or the social partners shall improve agency workers' **access to training** in temporary-work agencies and in user undertakings (Article 6.5)*
- ***information of workers' representatives** (Article 8): bodies representing workers in the user firm must be provided with suitable information on the use of agency workers.*
- ***Representation of agency workers** (Article 7)*



# European works councils

**= *Bodies representing the European employees of a company:***

- Through them, workers are **informed** and **consulted** at transnational level by management on the progress of the business and any **significant decision** that could affect them
- First established through Directive 94/45/EC then through Recast Directive 2009/38/EC



## Competence of EWCs (1/2)

***The competence of EWCs is limited to transnational matters***

- Concerning the Community-scale undertaking or the group as a whole
- Or at least 2 undertakings or establishments situated in 2 Member States
- Wh. 16 Directive: includes matters that are "of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States"



## Competence of EWCs (2/2)

- ***Information and consultation of employees***
  - **Information:** at such time, in such fashion and with such content as to enable employees' representatives to undertake an in-depth assessment of the possible impact and prepare for consultation with the competent organ
  - **Consultation:** at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided
    - ***subsidiary requirement:*** *in such a way that employees' representatives can meet with management and obtain a response and the reasons for that response, to any opinion*



## Establishment of EWCs (1/2)

- *EWCs are established on the initiative of a **transnational large-scale employer** (+ 1000 workers) or upon the **request of 100 employees** from 2 countries*
- *The composition, competences and functioning of EWCs are to be defined by **agreement** between the central management and the "special negotiating body" representing the employees*
- ***Subsidiary requirements** apply only in the absence of such agreement*



## Establishment of EWCs (2/2)

- ***Special negotiating body:***
  - Representatives from all Member States;
  - Employer responsible for informations to start negotiations; covers expenses;
  - Possibility to appoint experts and to meet without the manager.

***If managers refuses to enter negotiations, or negotiations do not reach agreement within 3 years, automatic provisions apply.***



# The Information & Consultation Directive (2002/14/EC)

## *OBJECTIVE:*

- *to establish a general framework of **minimum I&C requirements***
- *Applies to all larger undertakings or establishments located within the territory of a Member State: either **establishments** with at least **20 employees** in the MS, or **undertakings** with at least **50 employees** in the MS*
- *Sets out general principles; **practical arrangements are to be defined by MS**, in such a way as to ensure their effectiveness (no regression)*



# The Information & Consultation Directive (2002/14/EC)

- *Management must provide employee representatives with **information and consultation on:***
  - recent and probable **development of business** and of its economic situation,
  - state and probable **development of employment** within the business, and any threat to employment, or anticipatory measures against such threat,
  - any decisions likely to lead to **substantial changes** in work organisation or contractual relations....



# The Information & Consultation Directive (2002/14/EC)

- **Information** *must be given with appropriate timing, manner and content to enable employee representatives to adequately prepare for consultation*
- **Consultation:**
  - must be **appropriate** as to timing, method & content
  - includes **dialogue**: meetings with relevant level of management, formulating an opinion, and obtaining reasons for management's reply
  - must be 'with a view to **reaching agreement**', on certain decisions



# The Information & Consultation Directive (2002/14/EC)

- ***Flexibility*** for alternative arrangements agreed between social partners
- ***Exemption*** for information which is objectively damaging to the business (MS to formulate)
- *Also: defence of rights, protection of confidentiality*



## **3 European Company - SE 2001/86/EC**

- *Only applies to businesses established as a 'European Company' (SE/Societas Europa) under Council Regulation EC 2157/2001*
- *Each MS is responsible for compliance by SEs with subsidiaries, participating companies or a registered office in its territory (Art 12).*
- *Only applies to transnational matters*
- *No employee request is needed: management must establish arrangements for informing and consulting employees (Special Negotiating Body). Similar procedure to Works Council Directive.*



## European Company - SE 2001/86/EC (ctd.)

- *Principle: agreement between companies and workers' representatives on employees' involvement (information, consultation, participation)*
- *Negotiation in a spirit of co-operation with a view to reaching written agreement on specified range of matters*
- *Where no agreement can be reached, automatic provisions apply. These are provided by MS, but must satisfy (at minimum) the provisions set out in Annex to the Directive.*



# European Company - SE

## 2001/86/EC (ctd.)

- *Standard rules:*
- *Right to be informed and consulted and to meet the competent organ of the SE at least once a year.*
- *In case of exceptional circumstances which significantly affect the employees' interests, right to meet and to be informed and consulted.*
- *Right to a further meeting if the competent organ does not follow the employees' opinion*
- *Right to participate in the management/supervisory organs of the SE, if such a right existed before the establishment of the SE*



# European Cooperative - SCE 2003/72/EC

- *Only applies to businesses established as a 'European Co-operative Society' (SCE) under Council Regulation EC 1435/2003*
- *Each MS is responsible for compliance by SCEs with a subsidiary, participating entity, or a registered office in its territory (Art. 14).*
- *Only applies to transnational matters (Art. 2)*
- *Two different situations regarding I&C of employees:*
  - a) SCEs established by transformation, or by at least 2 legal entities*



## **European Cooperative - SCE 2003/72/EC (ctd.)**

*b) SCEs established by natural persons, or by 1 legal entity and natural persons:*

*\* If employing 50/+ employees in 2/+ Member States, then the same rules apply as for group a).*

*\*If employing fewer than 50, or if more than 50 employees but in only 1 Member State, then subject to the national law of the MS where the SCE, or the relevant subsidiary, is located.*



## European Cooperative - SCE 2003/72/EC (ctd.)

- *Rules applicable to group a) from previous slide:*
- *No employee request is needed: management must establish arrangements for informing and consulting employees (Special Negotiating Body). Broadly similar procedure to Works Council Directive.*
- *Principle: agreement between management and workers' representatives on employees' involvement (information, consultation, participation)*
- *Negotiation in a spirit of co-operation, with a view to reaching written agreement on specified range of matters*



## European Cooperative - SCE 2003/72/EC (ctd.)

- *Employees may be entitled to participate in the ESC's General Meeting (Art 9)*
- *Where no agreement can be reached, automatic provisions come into effect. These are provided by the MS, but must satisfy (at minimum) the provisions set out in Annex to the Directive*
- *Provisions of Annex: similar to Works Council and SE Directives*



# Cross border mergers 2005/86/EC

- *Principle: applicability of the national law on employee participation (if any) governing the company resulting from the merger*
- *Exceptions:*
  - *A) Large companies (more than 500) with participation*
  - *B) National law providing for less participation rights*
  - *C) National law not allowing participation by employees' representatives from abroad*
- *In these cases basically the SE provisions for SE created by merger apply*



# EUROFOUND

*Council Regulation (EC) No 1111/2005 of 24 June 2005 amending Regulation (EEC) No 1365/75 on the creation of a European Foundation for the Improvement of Living and Working Conditions (OJ L 184 , 15.07.2005, p. 1-4)*



# EU LABOUR LAW

- *More information:*

<http://ec.europa.eu/social/main.jsp?langId=en&catId=82>