

July 2013



EU Supplement

This supplement covers the significant EU developments from March 2013 to mid-June 2013 in the broad areas of social policy, consumer policy and citizens' rights.

There is further information about almost all the issues mentioned on the Europa website: europa.eu. In some cases, we give the extended website address. The Official Journal of the EU may be accessed at eur-lex.europa.eu

Employment and social policy

Occupational pensions and employers' insolvency

The Court of Justice of the EU has ruled, in Case C 398/11, that the rights of workers to certain occupational pensions must be protected under the EU employer insolvency Directive.

The first Directive on the protection of employees in the event of the employer's insolvency was Directive 80/987/EEC. This was amended on a number of occasions and the current directive is Directive 2008/94/EC. The Directive requires that member states take the necessary measures to ensure that employees are able to claim some outstanding payments due to them from their employment contract if the employer is unable to pay because of insolvency. The outstanding claims could include, for example, arrears of pay, pay in lieu of notice, awards under employee protective legislation and unpaid contributions to pension schemes. Member states may impose limits on the amount of some of these payments.

The Directives are implemented in Ireland by the Protection of Employees (Employers' Insolvency) Acts, 1984–2004. Outstanding payments covered by this legislation are made by the Department of Social Protection.

This case involved former Waterford Crystal workers who took legal action to establish that their entitlements under a defined benefit pension scheme came within the terms of the directive. The Court of Justice has now ruled that the Directive must be interpreted as meaning that it applies to the entitlement of former employees to old age benefits under a supplementary pension scheme set up by their employer (occupational pension schemes are usually referred to as *supplementary* pensions in EU legislation). It also ruled that

the State Pension may not be taken into account in assessing whether a member state has complied with its obligations under the Directive.

The court ruled that the Directive applies if the pension scheme is underfunded at the date of the insolvency and, because of the insolvency, the employer is not able to contribute enough money to the pension scheme to enable the employees' pension benefits to be paid. It also ruled that the measures taken by Ireland to implement the Directive do not fulfil the obligations imposed on a member state by the Directive. It further ruled that the economic situation in a member state cannot be used as a justification for a lower level of protection than that imposed by the Directive.

In an earlier case, (Case C 278/05, *Robins and Others*, which was decided in 2007) the Court of Justice had held that the member states had considerable latitude in deciding what level of protection should be provided for entitlement to occupational pensions and how that should be achieved. In that case, it ruled that a provision in member state legislation that limited the benefit to less than half of what the employee was entitled to could not be regarded as protecting the employee. The effect of this ruling was that the failure by a member state to ensure that employees received more than 49% of the value of their pension benefits constituted a breach of the Directive.

Irish law implementing the Directive provides that any pension contribution deducted by an employer or due to be paid by an employer, in the 12 months preceding insolvency, is to be paid into the occupational pension scheme. The current law does not provide for the protection of employees' pension benefits.

This case is being processed in the usual way of cases where the interpretation of EU law is concerned. The case was started in the Irish courts and the issues were then referred to the Court of Justice of the EU. The court issues what is called a *preliminary ruling*. The case is now back in the Irish courts so that the Irish court can apply the preliminary ruling and set out what must be done.

EU funding

Negotiations are going on between the Council and the European Parliament about the EU's Budget for the period 2014–2020. The Council agreed a budget in February 2013 but this has to be agreed with the Parliament. The outcome of these negotiations will determine what funding is available for all EU activities over the next six years.

The EU is funded largely by the member states. Each member state pays a proportion of its VAT revenue to the EU. Various attempts are being made to find alternative sources of funding. For example, the proposed financial transactions tax was seen as a means of getting direct funding for the EU.

Even though final agreement has not yet been reached on funding, the Commission has already started the process of proposing new programmes for the period 2014–2020. Some of these proposals in the general areas covered in this publication were outlined in *EU Supplement January 2012*.

Structural funds

The Council's budget provided for an allocation of structural funds to Ireland of €979 million for the period 2014–2020. This is an increase on the 2007–2013 allocation of €901 million. In the 2007–2014 period, the Border, Midland and Western (BMW) Region was regarded as a *transition region* and got a higher proportion of the funding. For the period 2014–20, the BMW region is a *more developed region* as its GDP per head in the period 2007–2009 was more than 90% of the EU average. This means that its allocation from the structural funds will be reduced. The region will, however, get additional funds under the PEACE IV programme and the Youth Employment Initiative.

The Department of Public Expenditure and Reform is working with the Regional Assemblies on Operational Programmes for the spending of the funds.

PEACE IV programme

The Council's budget provides for €150 million for a new PEACE programme. The Irish and Northern Ireland governments, through the Special EU Programmes Body (SEUPB) are working on plans for the programme.

Local development

The Government has published its *Putting People First: Action Programme for Effective Local Government*. This, among other things, sets out plans to give local authorities greater capacity to promote local economic and social development. This would involve a greater alignment between local development and local government. This could mean changes for rural development programmes such as Leader and other local development programmes.

EU Citizenship Report

The Commission has published the 2013 *EU Citizenship Report*. The last such report was issued in 2010 and this report assesses progress since then.

The 2013 report sets out a range of actions which it is proposed to take to reinforce the rights of EU citizens.

One proposal is to extend the period during which jobseekers may receive benefits from their home country while looking for a job in another country. At present, this is generally three months. The period to which it may be extended is not specified in the report.

Other proposed actions include:

- Measures to reduce the problems associated with exercising the right to free movement, for example, the identity and residence document requirements in the different countries and the problems associated with recognition of roadworthiness certificates for cars
- Development of an EU disability card which would be recognised throughout the EU and enable people with disabilities travelling to other countries to avail of services such as transport
- Improved rules for the settlement of cross-border disputes in order to facilitate shopping across borders
- Improved and accessible information about the EU

Website: ec.europa.eu/justice/newsroom/citizen/news/130508_en.htm

Free movement rights

The Commission has published a proposal for a directive to improve the application of workers' rights to free movement within the EU. Under the proposed directive, member states would be required to:

- Create national contact points providing information, assistance and advice so that EU migrant workers, and employers, are better informed about their rights
- Provide appropriate means of redress at national level
- Allow trade unions, NGOs and other organisations to launch administrative or judicial procedures on behalf of individual workers in cases of discrimination

- Give better information for EU migrant workers and employers in general

The right of free movement derives from the EU treaties. The details are set out in Regulation 492/2011. The proposed directive must now be discussed by the Council and the European Parliament.

Youth Guarantee

The Youth Guarantee was described in the April 2013 issue of *EU Supplement*. It has been formally agreed by the Council.

The Commission is funding some preparatory actions in relation to this Guarantee. The Department of Social

Protection and local groups have applied for funding to pilot a Youth Guarantee Scheme in Ballymun. The plan is to guarantee access to career guidance and assistance leading to identification of an individual career plan for the young unemployed person with follow through to training, education, work experience or full-time employment. The scheme also proposes to involve local employers.

It is expected that the project will last for a year and will involve about 90 young people aged between 18 and 24 coming into the scheme each month. They will include young people coming onto the Live Register in the area and some who are already on the Register.

Justice and home affairs

Insolvency proceedings in the EU

An EU regulation on the mutual recognition of insolvency proceedings came into effect in 2002 – Regulation 1346/2000. It provides that a court must decide where the debtor's "centre of main interest" is before it accepts jurisdiction in cases where the debtor has assets or creditors in more than one member state. The date on which proceedings are taken is the relevant date for deciding where the centre of main interest is and not the date when the debts were incurred. The regulation also provides that orders made in insolvency proceedings in other EU member states, including orders of discharge from bankruptcy, are enforceable against creditors throughout the EU.

The Commission has now published a proposal to change aspects of this regulation. Ireland has decided to opt in to this proposal. The United Kingdom has also decided to opt in.

Neither the existing regulation nor the proposed changes have any effect on insolvency proceedings where the assets and the creditors are all based in one country.

The proposed changes are mainly concerned with dealing with new types of pre-insolvency proceedings and hybrid insolvency proceedings which were not covered by the 2000 Regulation. The current regulation deals mainly with the liquidation of companies and does not cover, for example, arrangements which provide protection for companies against

their creditors while they restructure. Although commercial insolvency is the main focus of the new proposals, they also apply to personal insolvency.

The proposed changes seek to clarify how the centre of main interest test is to be applied. While this test has been applied since the current regulation was introduced, it is recognised that greater clarity is needed. In particular, individual creditors have problems if the debtor changes residence before the application – this is known as *insolvency tourism*. (The free movement rules mean that debtors are legally entitled to change residence within the EU.)

The proposal also provides for greater cooperation between courts and liquidators or others dealing with insolvency.

At present, judges and creditors dealing with insolvency in one member state may be unaware that insolvency proceedings have started in another member state. The new proposals includes a requirement for member states to establish an insolvency register available to the public containing information on the debtor and the liquidator as well as information relating to the insolvency proceedings. These insolvency registers are to be interconnected. The Commission has been conducting a pilot project in this regard with certain member states.

The new proposals are being discussed by the Council and must also be agreed by the European Parliament.

Consumer affairs

Mortgages

The proposed mortgage credit directive which deals with the information to be provided to consumers who are taking out mortgages was described in *EU Supplement*, October 2011. This proposal has now been agreed by the Council and the European Parliament.

The proposed directive provides that mortgage providers must give consumers a European Standardised Information Sheet. This should help consumers to more easily identify the choices available from the various providers.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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Among other things, the proposed directive provides that:

- Mortgage providers are obliged to ensure that advertising is accurate and does not mislead consumers
- Mortgage providers are obliged to lend prudently and not to encourage risk
- The valuation of property for mortgage purposes is subject to specific rules
- Mortgage providers will be obliged to apply *reasonable forbearance* if a customer has difficulty in repaying
- There are tighter rules about the credit assessment of people applying for mortgages
- Mortgage intermediaries must be subject to the relevant supervisory authority
- There are improved knowledge and competence requirements for staff of banks and credit intermediaries providing mortgages
- There must be a cooling-off period for customers
- Consumers will be entitled to repay their loans early

Member states will be required to designate the national authorities empowered to ensure the application and enforcement of the proposed directive. They will also be required to ensure that these national authorities are granted investigating and enforcement powers and adequate resources necessary for the efficient and effective performance of their duties.

Consumer rights directive

Directive 2011/83/EU on consumer rights is due to be implemented in member states by 13 December 2013. The Minister for Jobs, Enterprise and Innovation had said that he intended to implement those elements of the Directive dealing with excessive payment charges and hidden charges earlier than the rest of the directive – see *EU Supplement*, January 2013. The Minister does not now intend to do this as it presented legal difficulties. It is intended that the entire Directive will be implemented by the due date.

General

European Parliament elections

The next European Parliament elections will take place from 22 to 25 May 2014. It was originally planned that they would take place two weeks later than this.

At present, Ireland has 12 members of the European Parliament (MEPs). Because Croatia is joining the EU, there needs to be a change in the allocation of members among the member states in order to keep the numbers at the total level agreed in the treaties – 750 plus the President of the Parliament. The European Parliament has agreed a proposed reallocation which, if agreed by the Council, will mean that the number of Irish MEPs will be 11 from the time of the 2014 elections. Eleven other member states will each lose one MEP. Germany will lose three seats but will still have the largest number (96); this is the largest number that the treaties now allow. Every member state must have at least six seats. The Council decision requires unanimity.

The allocation of seats will be looked at again after the 2014 elections and may result in further changes for the 2019 elections.

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