

# EU Policy Review

Analysis of recent EU legislation and policy for local and regional government

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## LEGISLATION

### New EU Directive on Agency Workers

New provisions governing the entitlements of temporary staff employed by agencies were agreed by Employment Ministers from EU countries in June. There are over 8 million agency workers across the EU, including some 30,000 in Ireland, and the number of agency workers has increased considerably in recent years.

Under the new Directive, minimum entitlements are set out for agency workers as follows:

- Equal treatment from day one for temporary agency workers as a general rule in terms of pay, maternity leave and leave entitlements;
- Temporary agency workers to be informed about permanent employment opportunities in the organisation;

- Equal access to collective facilities, such as canteens, childcare facilities, transport services;
- National governments to ensure penalties for non-compliance by temporary agencies and employers.

Countries with a social partnership model like Ireland can agree their own arrangements for a phase-in period for the new entitlements, as required in different sectors, through collective agreements. For example, in the UK an agreement already exists where agency workers are given equal entitlements after 12 weeks of employment. In the Netherlands, workers must currently work for 6 months before obtaining equal treatment. In Ireland the issue is currently under discussion in the context of the social partnership talks. However, in the absence of an agreement between social partners, the default position under the new Directive for agency workers would be full rights from day one of an agency worker starting work.

Some employers have criticized the new Directive, arguing that the new provisions will reduce flexibility and could lead to knock-on pay claims by permanent staff.

The agreement reached by Ministers on the new Directive must now be approved by MEPs in the European Parliament.

### Ministers Agree on New Definition of Working Time for 'On-Call' Workers

Employment Ministers at the same meeting in June also agreed a new way of calculating working hours for employees that are available on-call, such as those working in healthcare or in the fire services. The question raised is how to treat employees who are on-call or on standby. Importantly for local authorities, this includes fire fighters, ambulance personnel, staff engaged in residential care activities, security staff, technical support staff and others providing services requiring 24 hour coverage.

The need for legislation has arisen following a number of European Court rulings where the Court found that working time includes active on-call time, as well as inactive on-call time, such as time spent resting or sleeping while in the workplace. The ruling concerned on-call doctors, but if the same principle were applied to other professions, such as fire fighters, ambulance personnel, etc., this could dramatically alter the flexibility afforded to local authorities responsible for such services.

Under the new Directive, Ministers have agreed that:

- On-call time will be divided into two categories – active and inactive on-call time. Inactive on-call time is defined as the period during which a worker has the obligation to be available at the workplace but is not required by his employer to effectively carry out his activity or duties;
- Active on-call time continues to be counted as working time;
- Inactive on-call time does not have to be regarded as working time, unless national legislation or collective agreements by the social partners so provide;
- The standard maximum working week remains at 48 hours, including any overtime or active on-call time;
- Individual workers can choose to opt-out of the maximum 48-hour week entitlement – however the working week should not generally extend beyond 60 hours unless the social partners agree otherwise;
- If inactive on-call time is counted as working time, the maximum working week for workers who choose to opt-out is 65 hours.

Again, these provisions agreed by Ministers must be approved by MEPs before coming into effect.

## Planning Laws on Retention to Change on Foot of European Court Ruling

The Minister for the Environment, John Gormley TD, has announced that he would be bringing forward proposals to amend the Planning Acts, after Ireland lost a case in the European Court of Justice involving the 2003 landslide in Derrybrien in Galway. The Minister made the comments when announcing some of the provisions to be included in the new Planning and Development (Amendment) Bill to be published shortly.

The European Court ruled in July that Ireland had failed to ensure compliance with the EU Environmental Impact Assessment (EIA) Directive during the planning and construction phases of a windfarm project and associated works at Derrybrien. The construction of the windfarm was responsible for a major landslide in 2003, which killed 50,000 fish in the Owendalulleagh river and scarred a peat landscape. In its ruling, the Court also addressed some of the specific limitations it found in current Irish planning legislation, particularly with regard to retention planning permission in the case of applications involving an EIA.

During the case, the Commission argued that while a number of impact assessments were carried out for certain elements of the Derrybrien windfarm project at specific intervals, the assessments were deficient. In addition, no assessment was carried out for some stages of the project, on the destruction of large areas of forest to make way for the windfarm, or after the 2003 landslide but before resumption of construction in 2004.

The Irish government argued during the case that the landslide was caused by the poor construction methods used (for which the contractor was subsequently prosecuted and convicted), rather than difficulties that could have been anticipated by an EIA (however the EIA was conducted). It also argued that in order to ensure safe completion of the windfarm, construction work practices

were changed after work was suspended on the project and an investigation carried out.

In its ruling, the Court agreed with the Commission in finding that the EIAs supplied by the developer had certain deficiencies and did not examine the question of soil stability in particular.

However, apart from the specific Derrybrien incident, the Court also addressed the broader question of Ireland's current planning laws regarding EIAs and applying for retention permission. The Court agreed with the arguments made by the European Commission in the case that the provisions of the Planning and Development Act 2000 allowing an application for retention permission to be made after a development has started or been completed undermines the preventative nature of the EIA Directive, which states that the effects of a development on the environment must be taken into consideration at the earliest possible stage in the planning process.

During the case, the Irish authorities had argued that retention permission is an exception to the general rule, and a reasonable fall-back position where retention is found to be compatible with proper planning and sustainable development – however the Commission contested this point and argued that there was nothing to indicate that decisions to grant retention were limited to exceptional cases.

The Court in its judgement ruled against Ireland and found that the requirement under the EIA Directive (Directive 85/337 as amended by Directive 97/11) is unambiguous that applicants cannot commence works until they have applied for and obtained development consent and carried out the environmental impact assessment where this is required. In essence therefore, the provisions on retention permission are not compatible with the provisions of the EIA Directive.

The Commission had also argued that the enforcement regime established under Irish law does not guarantee the effective application of the EIA Directive. The Court in its judgement found that because the absence of an EIA can be remedied by obtaining retention permission, local authorities are under no obligation to undertake warning letters or enforcement notices in such instances under the Planning and Development Act 2000, and that this is a deficiency in the Irish legislation.

Following the European Court ruling, the Minister recognised the potential weakness in the implementation of the EIA Directive in Ireland, whereby it is possible to seek retention permission for an unauthorised development, including developments which would otherwise be subject to an EIA. As part of the upcoming Planning and Development (Amendment) Bill, he indicated that he would be examining the options for removing the possibility for retention for unauthorised development that would otherwise be subject to an EIA. Other national regulations recently signed by the Minister have already removed previous exemptions for demolition works and private roads, whereby these now fall within the scope of the EIA Directive.

## New EU Initiatives on Discrimination, Ethnic Minorities and Social Services

A package of proposed new EU initiatives on discrimination and social services was unveiled by the European Commission in July. The package, entitled the 'Renewed Social Agenda', includes a number of proposals relating to discrimination in the field of social services and housing, and access to employment, healthcare, and education.

Part of the package includes a proposed Directive to protect against discrimination on the grounds of religion, disability, age or sexual orientation. Existing EU legislation prohibits general discrimination on the grounds of gender and race. A separate Directive, adopted in 2000, prohibits discrimination on the basis of religion, disability, age or sexual orientation, although this Directive is specifically limited to discrimination in the context of employment and the workplace.

However, the new proposed Directive if adopted will provide protection against discrimination on these grounds beyond the workplace. For example, it would extend the anti-discrimination provisions to areas such as social welfare, healthcare, education, and access to social housing.

The Commission argues that equal access to services on the basis of age, religion, or sexual orientation, usually costs nothing. In the case of those with a disability, the proposed Directive states that measures necessary to ensure that the disabled have access to education, social housing and transport shall be taken. However, the Directive also cites the principle of 'reasonable accommodation', a principle already used in existing EU legislation. This means that such measures should not impose a disproportionate burden, nor require fundamental alteration of services. In assessing whether measures would impose a disproportionate burden, account would be taken of the size and characteristics of the service provider (for example, what might be appropriate for a public body might not be appropriate for a SME), the estimated cost, the life-cycle of services and the possible benefits of increased access for people with disabilities.

The legislation is designed to create a level playing field across Europe in this area. This is an area where Ireland of course already has extensive national legislation. In particular the Equal Status Acts 2000 and 2004 already prohibit discrimination on the grounds mentioned in the proposed Directive, as well as a number of other grounds, including marital status, family status, and membership of the Traveller community.

The Renewed Social Agenda package also includes a report on the situation of Europe's Roma minority. The Commission argues that the Roma, within which it includes the Traveller community, are subject to persistent individual and institutional discrimination and far-reaching social exclusion. EU leaders meeting in December 2007 recognised the specific situation faced by the Roma and called on the European Commission to examine existing EU policies, and called on national governments to improve their inclusion in society.

The Commission notes that Roma are fully covered by EU legislation which prohibits discrimination on the grounds of ethnic origin in employment, social welfare, education and housing. A number of EU and national initiatives are

mentioned in terms of supporting the well-being of Roma and Travellers, including the Traveller Accommodation Programme in Ireland designed to reduce the number of Traveller families on unauthorised sites.

The Commission argues that the best results tend to come from integrated inter-agency programmes that focus on a range of problems facing Roma, rather than just one of them. It also finds that the most successful programmes were targeted at Roma, but did not exclude members of other ethnic minorities or majority groups who are also facing disadvantages.

Some of the other elements in the package include a new Directive on patients' rights in healthcare, making it easier for patients to access medical care and hospital surgery and treatments in other EU countries. Another proposal is designed to create more opportunities for young people to engage in voluntary activity in other EU countries. The Commission also reviews trends in modernising social services such as healthcare, childcare, and social housing in different countries. In separate reports, the Commission presents views on the types of schools that are needed for the 21<sup>st</sup> century, including the need to make high quality pre-school education the norm, and issues related to the education and social integration of migrant children.

Further information on the proposals and initiatives in the package is available at:

<http://ec.europa.eu/social/main.jsp?catId=553&langId=en>

## National Batteries Regulations Adopted

Following the publication of draft regulations and a consultation period, the Minister for the Environment has adopted the new regulations designed to implement the EU Batteries Directive (2006/66/EC) in Ireland (for details see *EU Policy Review* No. 1/08, December 2007 – January 2008). The new regulations apply to batteries circulating after 26<sup>th</sup> September 2008.

From that date, the public will be allowed return used batteries to authorised collection points free of charge, such as local civic amenity sites operated by or on behalf of a local authority. Local authorities may also designate workplaces or schools as collection points, subject to agreement with the management of companies or schools concerned.

Producers will be required to finance any net costs arising from the collection, storage, treatment, recovery or disposal of waste batteries and / or accumulators, as well as any public information campaigns on the issue.

Collection targets for portable batteries have been set, to be achieved in two stages:

- A collection target of 25% of average annual sales by 2012;
- A collection target of 45% of average annual sales by 2016.

The Directive also specifies a number of minimum recycling efficiencies that must be achieved by recycling facilities. Copies of the regulations are available at:

<http://www.environ.ie/en/Environment/Waste/ProducerResponsibilityObligations/Batteries/>

## Ireland and others Late in Transposing Environmental Liability Directive

Ireland, and 8 other EU countries, have been referred to the European Court of Justice by the European Commission over their failure to transpose the 2004 Environmental Liability Directive (2004/35/EC) into national law in good time.

The Directive gives specific legal effect to the polluter pays principle in EU law, and is intended to ensure that operators of facilities and those causing 'environmental damage' (for example to natural habitats, water, or contamination of land) will be held liable for that damage. The Directive covers both prevention of damage and restoration measures to be taken. National governments were expected to adopt national legislation to give effect to its provisions by April 2007.

After that deadline passed, the Commission wrote to 23 EU countries that were late transposing the Directive. Following various communications, 14 of these states transposed the Directive by adopting the necessary national legislation. However, Ireland is one of the countries that has still not adopted national legislation, and will therefore be brought before the European Court unless new laws are introduced before the case is heard.

Each national government will have to designate 'competent authorities' under the terms of the Directive. These public bodies will play a role under the proposed liability scheme in identifying liable polluters and ensuring that they undertake themselves, or finance, the necessary preventive or remedial measures, which the Directive details.

The Directive obliges national governments to set up a regulatory framework for the taking of specific preventive measures when an imminent threat of environmental damage arises – this involves the designated competent authorities either requiring the operator concerned to take the necessary preventive measures, or the authority deciding to undertake such measures itself. Where an operator is aware or should be aware of an imminent threat, that operator should be obliged under law to act immediately without waiting for the relevant authority to require him to do so.

Where environmental damage has occurred, the competent authorities should require the operator concerned to take the necessary restorative measures, specified in the Directive. The competent authority can also undertake the necessary restoration measures itself. Where possible however, the competent authorities should ensure that the costs are recovered from the operator within 5 years of the measures being completed or the polluter being identified (whichever is later).

Each national government can decide whether or not public authorities need to take remedial action on a case-by-case basis where a polluter cannot be identified. Thus there is no requirement on national governments to remedy environmental damage if the polluter cannot be identified or is insolvent.

Further information on the Directive is available at:

<http://europa.eu/scadplus/leg/en/lvb/l28120.htm>

## POLICY INITIATIVES AND ANNOUNCEMENTS

### EU Target for Road Safety Likely to be Missed, but Ireland Makes Good Progress

Ireland has bucked the European trend by significantly reducing the number of deaths on Irish roads in 2007, while a large number of other European countries saw a rise in road deaths in 2007. The figures come from a report published by the European Transport Safety Council, an independent non-profit making organisation bringing together national transport safety bodies.

The report found that Ireland and Spain reduced road deaths by 7% between 2006 and 2007, the biggest reductions across the EU. Taking a longer term perspective, Ireland has reduced road deaths by 18% between 2001 and 2007. The report puts down the successes in Ireland to a number of measures in the road safety plan, the introduction of random breath testing and tougher penalties, an increase in full-time traffic corps police numbers, and a hard-hitting TV campaign aimed at generating a cultural shift against drink driving and speeding.

EU leaders in 2003 formally adopted a target to reduce the number of road deaths recorded in 2001 by 50% by 2010. Some countries such as France are expected to reach the 50% target by 2010 – France has already achieved a 43% reduction. However, a number of Central and Eastern European countries have made the slowest progress, and in some of these countries, road deaths have actually risen since 2001.

Further details on the report are available at:

<http://www.etsc.be/PIN-publications.php>

### EU Funding Programme for Local Authority Initiatives, Networking and Town Twinning

On 25<sup>th</sup> September 2008, the IPA will be running a free training day in Tullamore for local authorities, town twinning committees and NGOs on funding opportunities for international projects under the 'Europe for Citizens' programme.

The event includes a general overview, key factors for successful applications, common mistakes made by Irish applicants, and training in submitting online applications. John Atkins, of the European Commission's Executive Agency for Education and Culture, responsible for managing the programme and selecting projects for funding, will provide the training, and will be available to take questions on any area of the programme.

The Europe for Citizens programme aims to encourage active European citizenship and promote intercultural dialogue in Europe. Funding is available for cooperation projects with other organisations across Europe. It incorporates the former town twinning programme, but can

be used to provide funding for a broader range of local authority initiatives, including:

- Networking, conferences and workshops with other local authorities around Europe on policy issues of common interest;
- Pilot projects encouraging active citizen involvement in local decision-making; and
- Exchange visits between twinned towns, or visits to explore potential twinning opportunities.

The IPA provides support to potential applicants, including advice on the types of initiative that can be funded, technical support for local authorities submitting bids for funding, and help in finding suitable partners in other European countries

The training day is free of charge, and is an important opportunity for potential applicants to get first-hand insights into how to develop successful proposals for funding under the programme.

- For information on the training day on 25<sup>th</sup> September, or to book a place, please contact the Central Bookings Office in the IPA at 01 240 3666 or [training@ipa.ie](mailto:training@ipa.ie).
- For more general information about the Europe for Citizens programme, please contact Imogen Sudbery on 087 2547088 or [europeforcitizens@ipa.ie](mailto:europeforcitizens@ipa.ie)

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