

Legal news in a word

- **Posting of workers in Luxembourg**
- **Judgment of the European Court of Justice**
- **The EU holds Luxembourg liable for its failure to fulfil its obligations**

The ECJ ruled on 19 June 2008, that certain provisions of the law of 20 December 2002 implementing Directive 96/71/CE relating to the posting of workers (integrated into the articles L.141-1 and following of the Labour Code) were contrary to European law, in particular to the principle of freedom to provide services.

The ECJ considered indeed that certain provisions of the law cannot be regarded as provisions of public order applicable to all workers posted on the Luxembourg territory. Luxembourg will therefore no longer be allowed:

- to require a written employment contract from the workers posted on the Luxembourg territory,
- to automatically adjust to the cost of living any wage paid to the posted workers (only the minimum wage foreseen by law or collective labour agreements is concerned by the indexation),
- to impose its rules relating to part-time and fixed-term work on companies, which post workers to its territory,
- to ask these companies to comply with collective labour agreements, which have not been declared of general application.

Besides, Luxembourg was condemned for not having transposed on time all the provisions relating to the rest of posted workers. However, the Grand Duchy passed a law on 19 May 2006 to adapt its legislation and is now in accordance with European law in this regard.

Finally, the ECJ considered that the obligation for an undertaking wishing to post workers to Luxembourg to notify the posting to the Luxembourg Labour Inspection prior to its start is contrary to the principle of freedom to provide services. Indeed, this procedure, regarded as indistinct and disproportionate by the ECJ, is likely to dissuade these undertakings from providing services in Luxembourg.

Also, according to the ECJ, the obligation for undertakings, which post workers to Luxembourg, to designate an ad hoc agent residing in Luxembourg to retain all the documents necessary for monitoring purposes constitutes a restriction on freedom to provide services.

Luxembourg Minister of Employment, François Biltgen, said, without other precision, that Luxembourg took good note of these criticisms and will adopt more proportionate measures and in accordance with European law. A bill modifying the current law should probably be drawn up in the next coming months.

Contact : Marielle Stevenot
 +352 26 48 42 35 13
 Stevenot@mnks.com

