

Employment Policy and the Regulation of Part-time Work in the European Union

A Comparative Analysis



Edited by Silvana Sciarra, Paul Davies
and Mark Freedland

CAMBRIDGE

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CAMBRIDGE
UNIVERSITY PRESS

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE

The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS

The Edinburgh Building, Cambridge, CB2 2RU, UK

40 West 20th Street, New York, NY 10011-4211, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

Ruiz de Alarcón 13, 28014 Madrid, Spain

Dock House, The Waterfront, Cape Town 8001, South Africa

<http://www.cambridge.org>

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First published 2004

Printed in the United Kingdom at the University Press, Cambridge

Typeface Adobe Minion 10.75/12.75 pt. *System* L^AT_EX 2_ε [TB]

A catalogue record for this book is available from the British Library

Library of Congress Cataloguing in Publication data

Employment policy and the regulation of part-time work in the European Union:
a comparative analysis / Silvana Sciarra, Paul Davies, Mark Freedland (eds.).

p. cm.

Includes bibliographical references and index.

ISBN 0 521 84002 3

1. Part-time employment – European Union countries. 2. Labour policy – European Union countries. 3. Part-time employment – Law and legislation – European Union countries.

I. Sciarra, Silvana. II. Davis, P. L. (Paul Lyndon) III. Freedland, M. R. (Mark Robert)

HD5110.2.E85E46 2004

331.25'727'094 – dc22 2003069694

ISBN 0 521 84002 3 hardback

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EMPLOYMENT POLICY AND THE REGULATION OF PART-TIME WORK IN THE EUROPEAN UNION

Part-time work has been the fastest-growing of all forms of 'non-standard' work. All Member States of the European Union have given increasing attention to its regulation over the past quarter century. This book examines the influence of European Community rules and procedures on the development by Member States of their policies towards part-time working. It originates from the research project 'New Discourses in Labour Law' hosted by the European University Institute, and presents a detailed analysis of part-time work regulation for seven European countries.

The book consists of an examination of the relevant European Community rules, a consideration of the national policies and the impact upon them of the European-level provisions, and a suggested framework for the identification of these influences. The impact of European employment policies is considered in parallel with the implementation of the Directive on Part-time Work, thus providing a complete overview of both soft and hard law mechanisms available to national policy-makers.

In this original work, the interaction between law and policy emerges as a dynamic and constantly changing process of exchange between national and supranational actors, through the use of concrete examples of law-making. Labour law is put forward as being central in the current evolution of European law, and this centrality is presented as a confirmation of innovation and continuity in regulatory techniques.

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SILVANA SCIARRA, former Professor of European Labour and Social Law at the European University Institute (1994–2003), is now Professor of Labour Law at the University of Florence Law School. She worked and taught in several universities, notably UCLA, Harvard Law School (Harkness Fellow and Fulbright Fellow), Warwick University (UK) (Leverhulme Professor) and Columbia Law School (BNL Professor). She has been an active member in some Groups of Experts for European Commission projects looking at comparative and European labour law issues. She co-edits *Giornale di diritto del lavoro e di relazioni industriali* and is a member of the editorial board of *European Law Journal* and *Comparative Labor Law and Policy Journal*.

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PREFACE

This book originates in the research project 'New discourses in labour law', funded by the Research Council of the European University Institute and co-ordinated by Silvana Sciarra. This research project is concerned with the interaction between the employment law and policy of the European Union and the employment laws and policies of the Member States of the Union. (Limits upon resources and opportunities have required us to be somewhat selective between member states and to decide upon which ones to focus most profitably.) The project takes as its starting point the idea that formulations of law and policy amounting to new discourses in labour law might be emerging from this interaction between law and policy created at the federal level of the Community as a whole and the laws and policies of individual Member States.

These discourses might be new ones in two distinct though inter-related senses: a procedural sense and a substantive sense. They might be new in the procedural sense that they emerge from a novel institutional process, namely that of increasingly intense interaction between law- and policy-makers at the two levels, the trans-national and the national ones. They might also be new in the substantive sense that the particular normative approaches which emerge from that process of interaction might be significantly different in their content from those taken by Member States in the absence of EU intervention.

Of course, this assertion, that 'new discourses in labour law' might be emerging from a European normative process, postulates the existence of an earlier state of affairs, a previously accepted set of discourses in labour law, or perhaps an absence of such discourses, with which a significant contrast may be drawn. We did not, in formulating this project, have in mind any one date, treaty, or event in the history of the EU as a hinge upon which a door between the old discourses and the new discourses might swing. However, we did incline to see the development, at EU level in particular, of a special concern with employment policy during the 1990s as a centrally significant phenomenon; so the formulation of the EU Employment Guidelines and the procedural steps culminating in the introduction of the

Open Method of Co-ordination are critical events, from the point of view of this research project, in distinguishing between the old and the new.

Also critical in this respect is the gradual transition in labour law from the late 1980s or early 1990s onwards, not least at EU level, towards a central concern with the situation of the actual or potential member of the labour force who is marginalised within the labour market or excluded from it. It therefore seemed appropriate to choose, as the location in which to explore our hypothesis about new discourses in labour law, the area of law- and policy-making which has been created by and around what is probably the most significant EU intervention to date in the pursuit of that concern. This meant concentrating upon the Framework Agreement and Directive on Part-time Work of 1997, and placing its reception and implementation by member states in the larger context of inter-action about employment policy between the central Community and Member States.

The participants in the project have been:

Diamond Ashiagbor – European University Institute, Florence, and
University of Oxford

Ronald Beltzer – HSI-Hugo Sinzheimer Instituut, University of
Amsterdam

Paul Davies – London School of Economics and Political Science

Ronnie Eklund – University of Stockholm

Mark Freedland – University of Oxford

Maximilian Fuchs – Katholische Universität Eichstaett

Claire Kilpatrick – University of Cambridge

Sylvaine Laulom – University of Saint-Etienne

Antonio Lo Faro – University of Catania

Silvana Sciarra – European University Institute, Florence, and University
of Florence

Fernando Valdés Dal-Ré – University of Madrid

Esther Koot-van der Putte – HIS-Hugo Sinzheimer Instituut, University
of Amsterdam

Jelle Visser – AIAS-Amsterdam Institute for Advanced Labour Studies,
University of Amsterdam

Ton Wilthagen – OSA-Institute for Labour Market Studies, Tilburg
University.

All meetings of the group took place in Florence, with the exception of two. One of these was held in London, on the occasion of the launching of a previous project in which most participants in the current one were involved (S. Sciarra (ed.) *Labour Law in the Courts. National Judges and the ECJ*, Oxford, Hart, 2001). For the organisation of that meeting held

at Queen Mary College in June 2001 the group is very grateful to Claire Kilpatrick. The second was held in November 2001 at the University of Catania Law School, where Bruno Caruso and Antonio Lo Faro provided equally warm and efficient surroundings for the work of the group. Early versions of the seven country reports were published in Italian in a special issue of the *Giornale di Diritto del lavoro e di relazioni industriali* (*La regolamentazione del part-time in Europa*, with an Introduction by Stefano Giubboni and Silvana Sciarra, issue no. 4/2000).

Translations and language revisions are due to the multi-linguistic skills of Rita Inston. To her we are indebted for useful comments on early drafts of the manuscripts and for rendering clear difficult concepts through her unique style of 'interpretative' translation.

In the early stage of the project Stefano Giubboni and Sabrina Regent worked as research assistants, providing the group with valuable academic support. Diamond Ashiagbor then continued this task with equal dedication and competence. Latterly, from her base in the Oxford Institute of European and Comparative Law where she is currently a Career Development Fellow, Diamond has had a crucial role, both scholarly and practical, in the completion of the editorial and production process of this work. To all of them we express gratitude for sharing with us the enthusiasm for comparative research and their own knowledge and experience as researchers at the EUI Law Department.

Efficient, competent and good-humoured help was provided throughout the project by Susan Garvin, Secretary in the Law Department of the EUI. Her responsibilities included the organisation of workshops and general co-ordination of the group, tasks which she undertook in an enthusiastic and intelligent manner.

This book is the result of joint and collegial work. Although each author took responsibility for his or her own chapter, the broad scheme to be followed was agreed in one of the initial workshops held in Florence. The intention was to gather similar and comparable information. We are satisfied with such a choice and at the same time we value very much the distinctive and characteristic style that each author maintains, thus enriching a comparative exercise with the many different flavours of national legal cultures.

Silvana Sciarra

Paul Davies

Mark Freedland

S. Domenico di Fiesole, London and Oxford

Spring 2003

ABBREVIATIONS

AB	General Conditions (collective agreement covering local government employment)
AD	Swedish Labour Court, or Labour Court judgment
AKU	Swedish Labour Force Survey
ALFA	General Agreement on Pay and Benefits (Swedish collective agreement covering central government employment)
ATW	<i>Arbeidstijdenwet</i> (Working Hours Act)
BAG	German Federal Labour Court
BAGE	Official Report of the German Federal Labour Court
BAT	National agreement for German public sector white-collar workers
BDA	Confederation of German Employers' Associations
BEPGs	Broad Economic Policy Guidelines
BeschFG	Promotion of Employment Act (Germany)
CA	Collective agreement
CBS	<i>Centraal Bureau voor de Statistiek</i> (Dutch Central Statistical Office)
CC.OO	<i>Confederación Sindical de Comisiones Obreras</i> (Spanish Trade Union Confederation of Workers' Commissions)
CDA	<i>Christen-Democratische Appèl</i> (Dutch Christian-Democratic Party)
CEEP	<i>Centre européen des entreprises à participation publique et des entreprises d'intérêt économique général</i> (European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest)
CEOE	<i>Confederación Española de Organizaciones Empresariales</i> (Spanish Confederation of Employers' Organisations)
CEPYME	<i>Confederación Española de Pequeñas y Medianas Empresas</i> (Spanish Confederation of Small and Medium-Sized Enterprises)

CPB	<i>Centraal Planbureau</i> (Netherlands Institute for Economic Forecasting and Research)
D'66	<i>Democraten '66</i> (Netherlands Social-Liberal Party)
DGB	German Federation of Trade Unions
Ds	Swedish Ministry Report Series
EC	European Community or European Community Treaty
ECJ	European Court of Justice
ECT	EC Treaty
EES	European Employment Strategy
EMU	Economic and Monetary Union
ESC	Economic and Social Committee
ET	<i>Estatuto de los Trabajadores</i> (Spanish Workers' Statute)
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EU	European Union
EUTI	European Trade Union Institute
FNV	<i>Federatie Nederlandse Vakbeweging</i> (Federation of Dutch Trade Unions)
FTE	Full-time Equivalent
GL	<i>Groenlinks</i> (Dutch Green Left Party)
IAB	Labour Market Research Institute of the German Federal Labour Office
ILO	International Labour Organisation
IRLR	<i>Industrial Relations Law Reports</i>
ISO	German Institute for Research into Social Equality
ITP	Supplementary pension plan for white-collar workers in Swedish private industry and commerce
JÄMO	Swedish Equal Opportunities Ombudsman
LO	Swedish Trade Union Confederation
MS	Member State
NAP	National Action Plan for Employment
OMC	open method of co-ordination
OSA	<i>Organisatie voor Strategisch Arbeidsmarktbeleid</i> (Dutch Institute for Labour Market Studies)
PA	Pension plan for Swedish central government employees
PA-KL	Collective agreement on pensions for Swedish local government employees
PFA	Collective agreement on pension and insurance agreements for Swedish local government employees
PvdA	<i>Partij van de Arbeid</i> (Dutch Labour Party)

RALS	Framework Agreement on pay, etc. for Swedish state employees
RCO	<i>Raad van Centrale Ondernemingsorganisaties</i> (Dutch Council of Central Employers' Federations)
SACO	Swedish Confederation of Professional Associations
SAF	Confederation of Swedish Employers (now <i>Svenskt Näringsliv</i> : Confederation of Swedish Enterprise)
SCB	Swedish National Bureau of Statistics
SCP	<i>Sociaal-Cultureel Planbureau</i> (Netherlands Institute for Social and Cultural Forecasting and Research)
SEK	Swedish kronor
SFS	<i>Swedish Official Gazette</i>
SOU	Swedish Government Official Reports
StAr	<i>Stichting van de Arbeid</i> (Dutch Labour Foundation)
SZW	<i>Ministerie van Sociale Zaken en Werkgelegenheid</i> (Dutch Ministry of Social Affairs and Employment)
TCO	Swedish Confederation of Professional Employees
TEU	Treaty on European Union
TGL-S	Swedish agreement on state employee collective insurance scheme
TzBfG	Part-time Work and Fixed-Term Contracts Act (Germany)
UGT	<i>Unión General de Trabajadores</i> (Spanish General Workers' Confederation)
UNICE	<i>Union des Confédérations de l'Industrie et des Employeurs d'Europe</i> (Union of Industrial and Employers' Federations of Europe)
VVD	<i>Volkspartij voor Vrijheid en Democratie</i> (Dutch Liberal Party)
WAA	<i>Wet Aanpassing Arbeidsduur</i> (Adjustment of Working Hours Act, Netherlands)
WAZ	<i>Wet Arbeid en Zorg</i> (Work and Care Framework Act, Netherlands)
WVOA	<i>Wet Verbod onderscheid arbeidsduur</i> (Prohibition of Discrimination by Working Hours Act, Netherlands)

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