

Editorial

One size fits all?

Both in a national and in an EU context, it is increasingly difficult to protect all workers by drafting general legislation. After all, quite often that legislation only applies to employees and therefore not to all workers. Moreover, employees and other workers come in a great variety and there is an awful lot of diversity among them. Legislation that is suitable for some may fall short for others. We see, as a result, often complex (initiatives for) legislation to close gaps. The goal usually is to protect all workers that need protection.

There are recent EU-level efforts to draft general legislation that protects many, such as Directive 2019/1152 on transparent and predictable working conditions in the European Union. This Directive advocates a broad EU definition of worker. Whether this will be useful for all workers remains to be seen. We also see specific EU-level initiatives to protect vulnerable groups of workers. For instance, we have the recent proposal for a Directive on digital platform workers, in order to protect these groups of workers, who may not be able to enjoy protection from general employment legislation. We furthermore see legislation that fills gaps in general employment legislation. We have, for example, the mobility package laying down specific rules for road transport also reinforcing the combatting of fraud and abuse. This package, amongst others, aims to overcome the shortcomings of the Posted Workers Directive for this specific sector. But other gaps may need filling as well, such as gaps for international aircrew. For problems in this sector and suggestions to overcome these difficulties, I gladly refer you to this edition's interesting contribution of G. Busschaert and P. Pecinovsky in that regard.

A problem remains that the protection of some may hurt others. We can witness such a debate in relation to seafarers and dock workers on shore. Pursuant to the so-called Non-Seafarers Work Clause, seafarers should as a rule not carry out cargo handling services in a port, at a terminal or on board of a vessel, where dock workers who are members of an ITF affiliated union are providing the cargo handling services. Arguably, this clause protects the group of dock workers to the detriment of

seafarers. Whether such a clause is permissible under EU law has been the subject of litigation and a summary of the first ruling in that regard can be found in this edition.

Employee protection, in summary, remains a thorny issue, but an issue we need to deal with nonetheless. Besides this important topic, this edition leaves ample room for the more usual and equally important topics, such as gender discrimination, paid leave and my personal favourite, transfer of undertaking. Enjoy!