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# **The country-specific recommendations (CSRs) and their implementation by Member States**

**in the field of**

## **Health and Safety at Work and Labour Inspection Services**

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### **An overview**

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Stefan Clauwaert

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Stefan Clauwaert is a Senior Researcher at the European Trade Union Institute (ETUI) in Brussels. Contact: [sclauwaert@etui.org](mailto:sclauwaert@etui.org)

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## Introduction<sup>1</sup>

In 2010, the European Commission presented and adopted, as a successor to its earlier Lisbon strategy, the so-called “Europe 2020 strategy”. The main objective of the new strategy is to deliver more growth that is simultaneously “smart” (by investing more in education, research and innovation), “sustainable” (by, among other things, moving in the direction of a low-carbon economy) and “inclusive” (by boosting job creation and reducing poverty). In order to achieve this overall objective, the EU has set itself five – possibly over-ambitious – goals/targets to be achieved by 2020 in the areas of employment (75% of 20-64 year-olds to be employed), innovation (3% of the EU's GDP to be invested in R&D), education (reducing the rates of early school leaving below 10% and ensuring that at least 40% of 30-34-year-olds have completed third-level education), poverty reduction (at least 20 million fewer people in or at risk of poverty and social exclusion by 2020) and climate/energy (greenhouse gas emissions should be 20% – or even 30%, given the right conditions – lower than 1990; 20% of energy should come from renewables and energy efficiency).<sup>2</sup> To ensure that the Europe 2020 strategy delivers on these goals and, in particular, that the Member States, which committed themselves to achieve the above-mentioned objectives and targets, do in fact draw up and implement the requisite policies, a system of economic governance has been put in place to coordinate policy actions between the EU and national levels.<sup>3</sup> One of the main pillars of this new economic governance is the so-called European Semester, a six-month period each year during which Member States' budgetary, macro-economic and structural policies are coordinated so as to allow states to take EU considerations into account at an early stage of their national budgetary processes and in other aspects of their (economic) policymaking. Within the framework of this European Semester, five key stages are established. Following the adoption in January of each year of the Commission's Annual Growth Survey, which sets out EU priorities for the coming year to boost growth and job creation, in March the EU Heads of State and Government issue EU guidance for national policies on the basis of the Annual Growth Survey. One month later, in April, Member States have to submit their plans for sound public finances (by means of so-called Stability or Convergence Programmes), as well as plans for reforms and measures intended to achieve progress towards smart, sustainable and inclusive growth (via so-called National Reform Programmes, hereafter NRPs). Following assessment of these programmes and NRPs, the Commission, in the course of June, puts forward the country-specific recommendations (hereafter CSRs) that it considers appropriate; these, finally, are endorsed and adopted by the European Council by the end of June or early July.<sup>4</sup>

Accordingly, since 2011, the European Council has, on an annual basis, adopted such CSRs based on proposals drawn up by the European Commission. These ‘package’ recommendations (so called because they often contain several sub-recommendations) delivered to Member States are related to public finance, the regulation of the financial sector, structural reforms in areas such as R&D or energy

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<sup>1</sup> The author would like to thank, in particular, his ETUI colleagues, Philippe Pochet, Aïda Ponce and Laurent Vogel for their very valuable and constructive remarks on this paper.

<sup>2</sup> For more information on the objectives, targets and process of the Europe 2020 Strategy, see: [http://ec.europa.eu/europe2020/index\\_en.htm](http://ec.europa.eu/europe2020/index_en.htm); for some critical views on the EU 2020 strategy, see, among others, Pochet (2010a), Pochet (2010b) and Barbier (2011).

<sup>3</sup> For more information on this new European economic governance, see also Degryse (2012).

<sup>4</sup> For more information on the process of the European Semester, see [http://ec.europa.eu/europe2020/making-it-happen/index\\_en.htm](http://ec.europa.eu/europe2020/making-it-happen/index_en.htm).

efficiency and employment and social policies (such as ALMPs, labour market participation or wage setting mechanisms). Previous ETUI research shows indeed that each year, a fairly high percentage of package recommendations are related to the social domain in the broad sense (Clauwaert 2013).

This paper provides an overview of CSRs and identifies how those adopted in 2011, 2012 and 2013 impact directly or indirectly on measures and/or policies in health and safety at work and labour inspection services.

In Section 1, an overview of the main findings is provided, while Section 2 provides major examples of reforms and measures taken by Member States in certain subfields of the regulation of health and safety at work. Section 3 provides a similar overview of reforms and measures in certain subfields relating to labour inspection services.

## **1. Main findings**

For this analysis, all relevant documents submitted and prepared within the framework of the adoption of these CSRs (such as the National Reform Plans), the eventual contributions of the social partners to these NRPs, the Commission In-depth reviews and the Commission Staff Working Documents), as well as the CSRs themselves have been screened for a number of key words, including ‘health’, ‘safety’, ‘working conditions’, ‘inspection’ and ‘inspectorate’.<sup>5</sup> Although these key words may not give the complete picture of possible measures and policies in the researched domains, their use certainly allows us to obtain a comprehensive overview of the main affected (sub)issues in the field of health and safety at work and labour inspection services. Providing such an exhaustive overview is also not possible mainly because in their NRPs Member States do not necessarily list all the measures and reforms taken, but limit themselves to the most appropriate or most ‘positive/sexy’ in order to convince the European Commission and European Council of their commitment to implement their CSRs. In addition, certain issues in the field of employment protection legislation that clearly have a ‘health and safety’ dimension to them, such as working time arrangements (in the sense of excessively long, in other words, unhealthy working hours) or atypical contracts (in the sense that research has shown that, for instance, temporary agency workers or fixed-term contract workers are, for various reasons, more susceptible to accidents at work), have been deliberately left out of this analysis as the reforms in these areas are described in other ETUI research (for example, Clauwaert et al. 2012).

A first observation, after having screened the texts of the CSRs on the basis of the abovementioned key words, is that none of the almost 400 CSRs adopted over the period 2011–2013, mentions or refers explicitly to health and safety at work or labour inspection services. Nevertheless, Sections 2 and 3 show clearly that manifold measures are being implemented and policies developed in different fields, as well as their impact.

Indeed, the measures taken and policies developed in the two researched domains came about in the shadow of what could be called ‘hidden’ CSRs.

For the domain of health and safety at work, this relates mainly to CSRs requiring measures or reforms in relation to (i) increasing the health (care) of citizens in general (in the sense of improving the health of all citizens implicitly also means improving the health of the active population, thus leading to a healthier workforce); (ii) public budget reforms in particular in health care, but also other fields, such as unemployment benefits (for example, reform of disability pensions); (iii) reforms in relation to (early) retirement (for example, keeping or reintegrating older workers into the labour market might require measures that take into account adjusted working conditions and environment); or (iv) reforms to increase the labour market participation of other vulnerable groups (for example, health impaired/disabled persons). This leads to the observation that the main CSR implementation measures in the field of health and safety at work are concentrated along the following three axes:

- (i) general measures and policies (including changes in health insurance/benefit systems) (see section 2.1);
- (ii) measures/policies to increase the labour market participation of older workers (see section 2.2);

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<sup>5</sup> It should hereby be noted that some documents, albeit a limited number, could not be screened because they are not available in English or French, for example, the NRPs 2012 and 2013 for Portugal are available only in Portuguese and the NRP 2012 for Spain only in Spanish.

- (iii) measures/policies to increase the labour market participation of disabled/health impaired persons (see section 2.3).<sup>6</sup>

For the domain of labour inspection services, a similar picture emerges. Here, the 'hidden' CSRs that trigger(ed) reforms are CSRs, which require measures in relation to (i) public budget spending, (ii) tax evasion and (iii) increasing the labour market participation of women. The three main axes around which the measures and policies in this domain are concentrated are:

- (i) general measures and policies (see section 3.1);
- (ii) fighting undeclared work (see section 3.2);<sup>7</sup>
- (iii) fighting the gender pay gap (see section 3.3).

It is also in this domain – and in particular in relation to the adoption of general measures and policies and the fight against undeclared work – that it becomes clear that an exhaustive overview of all measures is impossible. Whereas other sources clearly demonstrate that during the crisis period, several Member States have taken measures to cut spending and human resources in public services, including labour inspection services (EPSU 2012), none of the NRPs refers to these 'unsexy' measures. On the contrary, almost all (planned) reforms in relation to these labour inspection services are put in a 'rosy and positive' sense, using terminology such as 'increasing the number of inspectors and inspections and allocating more budget to step up the fight against undeclared work and to eradicate the gender pay gap'.

As already mentioned, a more detailed overview of measures taken by Member States along the different axes is provided in Sections 2 and 3. In particular, it concerns the following countries:

<b>Health and safety at work</b>	
General measures and policies (section 2.1)	Cyprus, Denmark, Estonia, France, Greece, Hungary, The Netherlands, Spain and Sweden
Measures/policies to increase the labour market participation of older workers (section 2.2)	Austria, Denmark, Finland, France, Germany, Hungary, Luxembourg, Poland, Slovenia and Sweden
Measures/policies to increase the labour market participation of disabled/health impaired persons (section 2.3)	Estonia, Hungary and Luxembourg,

<sup>66</sup> For a more general assessment of the impact of European governments' austerity plans on the rights of people with disabilities, see the recent study of the European Foundation Centre (EFC) which shows that the economic crisis, as well as the political and social decisions taken as a result of it, is undermining the fundamental civil, political, social and economic rights of people with disabilities as laid down in the UN Convention on the Rights of People with Disability (UNCRPD), whereby the crisis is even preventing signatories from adopting the necessary measures to advance the commitments made upon signing the Convention. (European Foundation Centre 2012)

<sup>7</sup> For a more detailed overview of measures taken and policies developed in the fight against undeclared work reference should also be made to the recent study by the European Foundation for Living and Working Conditions, which has three main parts: (i) measures taken in the EU member states and Norway, (ii) measures taken in Croatia and four EU candidate countries and (iii) a database in which, based on different criteria, these measures and policies are catalogued.

<b>Labour inspection services</b>	
General measures and policies (section 3.1)	Greece, Hungary and Latvia
Fighting undeclared work (section 3.2)	Bulgaria, Cyprus, Greece, Italy, Malta, Portugal, Romania, Slovenia and Spain
Fighting the gender pay gap (section 3.3)	Cyprus, France and Spain

## **2. Health and safety at work**

### **2.1 General measures and policies**

In this area, the main policies foreseen range from changes in (occupational) health insurance and benefit systems (e.g. **Denmark, Estonia, Greece, Hungary**), to the introduction of (new) national workplace health plans (e.g. **France**) or piecemeal/targeted measures to improve health and safety institutions (including health and safety committees) (e.g. **Cyprus**), enhancing the establishment and implementation of health and safety policies and related training programmes (e.g. **Cyprus, The Netherlands**), legislative changes in the regulation of temporary agency workers having a potential impact on their health and safety at work (e.g. **Spain**) or legislative changes simplifying the administrative burden for small businesses (e.g. **Sweden**).

In its NRP 2011, **Cyprus** announced measures to improve health and safety at work and the attractiveness of work in general by investing 50,000 euros extra in the Human Resource Development Authority (HRDA). The HRDA financially supports a large number of training programmes delivered by training institutions and companies related to health and safety at work. The HRDA also implements an accelerated training scheme for newly recruits in the construction, quarrying and port sectors on this issue. It was hoped to reach around 500 persons with this additional investment in 2011.<sup>8</sup> The improvement of the working environment remained a priority in 2012, in particular by improving the operation of health and safety committees at the workplace. No extra investments were mentioned, however.<sup>9</sup>

In order to implement a country-specific recommendation in 2011 and 2012 to take steps to enhance long-term labour supply, **Denmark** announced in its NRP 2013, besides ongoing reforms of the retirement scheme, the disability pensions and so-called flex-job scheme (see Section 2.3 below), also a reform in the area of sickness benefits. The Government wishes to abolish the limited duration of sickness benefits in order to ensure that no one on sick leave risks finding themselves without maintenance. At the same time, those on sick leave must be assisted more swiftly and effectively. The reform would entail, among other things:

- that everyone on sick leave must have their case re-evaluated after six months. If the person on sick leave no longer fulfils the conditions for prolongation of the sickness benefits period, the person will be transferred to a resource clarification process.
- The efforts of the resource clarification process will be planned individually and take a holistic approach, with offers targeted at employment, education and social and health issues, and, if possible, at helping the individual re-enter employment.
- Throughout the process, the individual will receive a grant worth the same as cash benefits. The grant is independent of personal means or spouse's income.
- A new rule concerning prolongation for seriously ill citizens suffering from a life-threatening condition ensures sickness benefits during the entire course of an illness. Individuals on sick leave who meet the conditions for prolongation of their sickness benefits in accordance with the current prolongation rules will not be affected. They will continue to receive sickness benefits with no rate alterations.

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<sup>8</sup> NRP 2011, p. 74.

<sup>9</sup> NRP 2012, p. 88.

In the related Commission Staff Working Document, the Commission declares that the Danish policy responses to implement the country-specific recommendations to take further steps to enhance long-term labour supply have been adequate and that overall progress made has been significant and *'the disability pension reform, the reform of flex jobs and the cash benefit reform respond adequately to the recommendation, but the practical implementation and effects of the reforms will need to be closely monitored and followed up by further measures, if necessary in order to raise long-term labour supply and reduce the risk'*. As a result, the Commission dropped this CSR for 2013.

The **Estonian** government already announced in its NRP 2011 that 'in order to reduce on-the-job accidents and ensure a working environment supportive of good health, it would be necessary to continue efforts to establish an occupational accident and disease insurance system. Negotiations with organizations representing unions and employers were under way for many years, but the creation of a new type of insurance temporarily fell by the wayside due to the recession'.<sup>10</sup> In its NRP 2012 and again in its NRP 2013, however, the Government repeats this challenge, but does not announce any concrete measures to implement it.<sup>11</sup> The NRP 2013 only mentions that in order to improve the sustainability of social expenditure in the public sector in the face of decreasing working-age population and demographic ageing and in order to develop continuous financing of the social insurance system, 'it will be analysed further how to develop possible changes in health insurance, pension insurance and unemployment insurance, for instance the new scheme for work incapacity'.<sup>12</sup> The Commission Staff Working Document thus highlights this lack of action to implement the repeated recommendations in this regard and considers that progress in implementation is limited, in particular since *'discussions on the revision of the incapacity for work schemes have started, while plans for establishing the long awaited insurance scheme against accidents at work have been deferred by several months: submission of the scheme to parliament is now announced for winter 2013–14 and it is unlikely to enter into force before mid-2015.'* It also criticizes that these reform plans no longer involve the occupational disease part of the insurance scheme under consideration.<sup>13</sup> The Commission thus reiterates this recommendation for 2013.<sup>14</sup>

Also in **France**, the improvement of quality of jobs and working conditions is high on the agenda. The NRP 2011 highlights various actions taken to combat the main workplace hazards (muscular-skeletal disorders, carcinogenic, mutagenic and reprotoxic hazards, and psycho-social risks).<sup>15</sup> A three-year public information campaign on muscular-skeletal disorders was launched in 2008. The third part of this campaign was launched in 2010, with a view to supporting and accelerating measures undertaken by employers. The first two parts of the campaign had served to build awareness among the general public, employees and managers of the economic and human cost of muscular-skeletal disorders. Moreover, the pension reform act passed on 9 November 2010 stepped up the drive to promote prevention in the workplace by

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<sup>10</sup> NRP 2011, p. 17.

<sup>11</sup> NRP 2012, pp. 17–18; NRP 2013 p. 17.

<sup>12</sup> NRP 2013, p. 29.

<sup>13</sup> CSTWD 2013, p. 15 and footnote 16.

<sup>14</sup> CSR 2013, p.5: '2. Improve incentives to work by making the various existing social benefit systems more consistent and by increasing the flexibility and targeting of benefit allocation. Improve the delivery of social services, including childcare, while increasing the efficiency and cost-effectiveness of family policy. Strengthen activation measures to facilitate the return to the labour market of the long-term unemployed and people receiving disability benefits and incapacity for work benefits. Establish a coordinated strategy for fostering economic development in regions affected by high unemployment.'

<sup>15</sup> NRP 2011, pp. 48–49.

placing new obligations on employers to prevent physically demanding or stressful work, thus improving working conditions. Between now and 2012, employers will be required to put in writing, for each person concerned, the worker's exposure to workplace risk factors, and the corresponding preventive measures taken. They will also be required to be covered by an agreement or action plan to prevent physically demanding or stressful work. In the absence of either an agreement or a plan, a financial penalty of up to 1 per cent of the company's total wage bill will be applied, with effect from 1 January 2012. The pension reform also encourages sectors of industry to negotiate over physically demanding or stressful jobs. On an experimental basis until the end of 2013, agreement in a given sector can lead to the creation of a mechanism to alleviate (part-time working or mentoring and so on) or compensate (via bonuses or rest days and so on) physically demanding or stressful work, to be jointly financed by companies within the industry sector. A three-year national support fund has been set up for this purpose, co-financed by the government and the occupational accidents and occupational diseases sector of the social security system, as a financial inducement to undertake this kind of scheme (see also Section 2.3).

Furthermore, a second Health in the Workplace Plan, for 2010–2014, was launched on 12 July 2010, as a follow up to the 2005–2009 Plan. Funding to the tune of 31.5 million euros a year has been provided for the period 2010–2013. This Workplace Plan provides for measures to prevent occupational hazards and discomfort in the workplace, reduce occupational accidents and diseases, and prevent physically demanding or stressful work and their consequences in terms of absenteeism. This plan has four main points. The first is to develop research and expertise on health in the workplace. A mapping of research centres, programmes and teams was carried out in the second half of 2011 to identify resources and avenues for improvement. The second consists of a more targeted hazard-prevention policy. This will focus in particular on priority hazards, accident-prone sectors such as building and public works, and vulnerable persons, including those subject to specific working conditions (such as new recruits or seasonal workers). After that, the aim is to provide greater support for employers in their preventive campaigns, complementing those contained in the first plan. The last point seeks to strengthen coordination between and mobilise the different partners at the national and regional levels. The French NRP 2012 states that, as part of the second Occupational Health Plan 2010–2014, nearly all of France's regions adopted a Regional Occupational Health Plan focusing on prevention.<sup>16</sup>

Due to a series of labour market reforms in 2012 in **Greece** aimed at increasing economic competitiveness and boosting growth prospects, collective bargaining systems were also made flexible. Firm-level agreements take precedence over any other more favourable collective (sectoral or professional) agreement, as long as the firm-level agreement is at least as favourable to the employee as the statutory minimum wage. Collective agreements can last for a maximum of three years and thereafter their terms can remain valid (after effect) only for a period up to three months (compared to six months before) and only for wage issues (Law 4046/2012). The after effect of collective agreements, if no new one has been concluded, has been reduced to only four benefits (maturity benefit, educational allowance, children allowances and occupational hazard allowance) and the provisions related to the minimum salary or wage.<sup>17</sup>

In **Hungary**, in order to implement CSR No. 4 of 2011 to strengthen the capacity of the Public Employment Service, the Government reinforced its active labour market measures delivering positive results co-financed by the European Social Fund through

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<sup>16</sup> NRP 2012, p. 28.

<sup>17</sup> NRP 2013, p. 37.

the reallocation of further funding for this purpose in the course of 2011–2012. Decentralised programmes aimed at promoting the employment of the disadvantaged serve to improve the chances of long-term employment of groups disadvantaged from a labour market point of view and to help them to return to the open labour market by arranging labour market services, aid and training in complex, tailor-made packages. These programmes primarily target low-skilled people and individuals with outdated qualifications, young people and school-leavers, people over the age of 50, parents returning to the labour market after maternity leave/child care leave, individuals eligible for employment substitute benefit and disadvantaged job-seekers living in regions with high rates of long-term unemployment. The programme, co-financed by the European Social Fund, is implemented under the auspices of the Public Employment Service, within the framework of which a variety of benefits and labour market services are available to the target groups (including training benefit, employment support, aid for setting up private businesses, benefits related to the use of labour market services, reimbursement of the costs of occupational health screening tests, reimbursement of costs of physical fitness tests related to training, provision of labour market and employment information, work, career, job search, rehabilitation, psychological and local employment advice and consulting, labour market mentoring activities).<sup>18</sup> Also by July 2011 the existing sick-pay system was to be reviewed with the purpose of narrowing the room for sick-pay abuses. In this context, the Hungarian Parliament decided in March 2011 to lower the ceiling of sick-pay (from four times to twice the minimum wage). Further planned measures in relation to sick-pay are aimed at strengthening the insurance principle, channelling those on sick-pay (as justified in terms of their health condition) to early rehabilitation, as well as at eliminating the so-called ‘passive’ sick-pay due on earning incapacity immediately after the termination of statutory insurance. Furthermore, the Government will in the first six months review criminal law sanctions on sick-pay abuses.<sup>19</sup>

In their joint contribution annexed to NRPs 2012 and 2013 for the **Netherlands**, the Dutch national social partners elaborate, among other things, on how they will promote companies’ implementation of a responsible health and safety policy, including by encouraging companies and industries to assemble health and safety catalogues. Following the amendment of the Dutch Working Conditions Act in 2007, which enables employers and employees to prepare such catalogues, a four-year project (2007–2010), funded by the Ministry of Social Affairs and Work, was carried out encouraging industries and sectors to prepare, implement and maintain the catalogues, expanding them where necessary when a priority risk is discovered to have been omitted. At a large closing meeting on 17 February 2011, results of the project were presented which showed that at that time 150 out of 250 industries in the Netherlands had prepared such a catalogue. Given the success, the same ministry in 2012 allocated the necessary funding for a follow-up project focusing on the actual implementation of the prepared catalogues, as well as the elaboration of new catalogues for industries not yet covered. The social partners’ report also refers to the Risk Inventory and Evaluation (RI&E) which requires employers by law to outline for employees the risks entailed by the work they perform, which needs to be approved by an employment counsellor. However, since 1 April 2011, companies employing no more than 25 employees no longer need to obtain this approval as long as the employer uses an RI&E instrument that has been registered with the RI&E Centre managed by Labour Foundation.<sup>20</sup> Furthermore, in December 2012 the Social and Economic Council (SER) submitted a report to the Dutch Minister of Social Affairs and Employment (SZW) offering a response to a 20 April 2012 request for advice concerning the Government’s approach

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<sup>18</sup> NRP 2012, p. 54.

<sup>19</sup> NRP 2011, pp. 11–12.

<sup>20</sup> Social partners’ contribution to NRP 2012 and NRP 2013, pp. 15–16 and 20–21, respectively.

to an occupational health and safety system. In this report the SER provides several recommendations, such as: (i) need to improve access to, autonomy of and shortage of occupational physicians; (ii) need to ensure timely reporting of occupational diseases to the authorities and sanctioning non-compliance; (iii) specialist courts dealing with compensation claims for work-related damage to health; and (iv) ensuring strict monitoring and enforcement by the Social Affairs and Employment Inspectorate, which the Council believes is currently understaffed and whose inspectors require more specialist sector- and industry-related expertise.<sup>21</sup>

In **Spain**, the legislation on temporary work agencies was amended in 2011 to enable them to provide services to the public administration (the Royal Decree to regulate the means and circumstances will be approved in the coming months) and in hazardous activities (excluded until now for reasons of occupational safety and health). Temporary work agencies have been allowed to supply workers for hazardous activities since 1 April, subject to the exceptions laid down in the collective agreements.<sup>22</sup>

The **Swedish** Government's efforts to ensure a robust business sector and simplify companies' administrative burden will continue. The simplification effort for the period 2011–2014 is focused on, among other things: reduced administrative costs, fewer and simplified disclosures of data for companies, a widening of the scope to encompass municipalities and county administrative boards and an intensification of work on impact assessments. The work within the EU to make things easier for companies is important in order to ensure an efficient internal market (see the section below on the internal market), but it is also a precondition for success in raising the standard of EU legislation and for national simplification work.

Issues particularly highlighted by Sweden include the general principle that new rules should always be developed with smaller companies in mind (the principle *Think Small First*), that any proposals for new legislation should be followed by an impact assessment that highlights the effects and costs of the proposal, and that the work on reducing the burden and bureaucracy caused by EU legislation should continue without reducing any occupational health and safety requirements applicable at the national level.<sup>23</sup> In the attached contribution of the social partners, reference is also made to two social partners' projects in the field of health and safety. First, the non-profit organization 'Prevent', headed by the Confederation of Swedish Enterprise, LO and the Council for Negotiation and Co-operation (PTK) which is tasked with spreading knowledge on work environment issues. Prevent publishes work and training materials and books, provides information and training and publishes the magazine *Arbetsliv*. Secondly, there is Alna, also a non-profit organization owned by the social partners, whose assignment is to prevent harmful exploitation at workplaces. For 50 years, Alna has worked on issues of harmful exploitation and dependency that have consequences in working life (alcohol, drugs, pharmaceuticals, gambling, food, shopping, sex and social media). Alna works to increase employers' awareness through counselling, management support and training. In autumn 2012, a project was concluded aimed at elaborating guidelines for reliable alcohol and drug testing in the workplace. The guidelines have been developed in cooperation with the central labour market organisations, representatives of the Data Inspection Board, the National Board of Health and Welfare, Swedac (the Swedish Board for Accreditation and Conformity Assessment) and researchers. Furthermore, in 2012, the central government parties

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<sup>21</sup> Social partners' contribution to NRP 2013, p. 21.

<sup>22</sup> NRP 2011, p. 18.

<sup>23</sup> NRP 2012, p. 66.

agreed to establish a working group to support local partners in their efforts to cooperate and to prevent and deal with threats and violence at work.<sup>24</sup>

## **2.2 Increasing the labour market participation of older workers**

Older workers, alongside other vulnerable groups like young workers, women and migrant workers, are particularly liable to be affected by the impact of the economic crisis in relation to their labour market participation. Therefore, almost all Member States have announced or have introduced measures and policies to enhance their labour market participation. Certain Member States have, in drawing up and implementing these measures and policies, duly taken into account the health and safety protection of these older workers (e.g. **Austria, Denmark, Finland, France, Germany, Hungary, Luxembourg, Poland, Slovenia and Sweden**).

Already in its NRP 2011, **Austria** acted, in order to further increase labour force participation in the context of an ageing population, to put the focus of its labour market policy on the preservation of employment capacities, as well as on the creation of the basic conditions enabling employees to stay longer in gainful employment. Valuable measures contributing to these targets included the reduction of and/or stricter requirements for access to pensions for unemployability owing to disability by mandatory rehabilitation (for example, projects such as occupational health screening, Fit2Work, streamlined occupational medical examination 'Gesundheitsstraße' ('Health road')).<sup>25</sup>

Also in its NRP 2012, Austria stressed that 'Quality of labour is the key to more and better jobs. Good jobs are defined via personal satisfaction, performance-based reward, but also a family-friendly working environment. Safeguarding continuous improvement of working conditions (safety and protection of health at the workplace – prevention of accidents at the workplace, work-related illnesses and occupational diseases, as well as working hours and protection against being removed to another job and greater awareness) is vital for the quality of work.'<sup>26</sup>

The main target groups have thus been older workers in general and individuals with impaired health or a disability. In order for these persons to stay longer in employment, or be reintegrated in the labour market, as well as to prevent health risks at the work place, numerous support measures and services were to be created. A so-called 'Stability Package 2011–2016' adopted in February 2012 provided for additional resources amounting to 750 million euros for that period with a view to keeping 195,000 health-impaired and older people in employment. The measures include:

- 'proFITNESS: healthy workforce – healthy enterprise': a project of the Chamber of Commerce, together with the social insurance funds, sports associations and other institutions to support SMEs in implementing measures for health promotion in enterprises, survey the existing opportunities and convince them of the advantages of health promotion activities in enterprises.
- Health-impaired individuals under 50 years of age, as from 2014, were to be included in occupational rehabilitation carried out by the labour market service

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<sup>24</sup> NRP 2013, p. 59.

<sup>25</sup> NRP 2011, p. 10.

<sup>26</sup> NRP 2012, p. 19.

AMS. Basically, occupational rehabilitation is to comprise occupational training corresponding to the respective current qualification level.

- Approximately 70,000 persons are to be counselled annually within the scheme 'fit2work',<sup>27</sup> older and health-impaired individuals are also to be included in assistance granted by the PES (Labour Market Service Austria, AMS), and 32,000 individuals impaired to a higher degree yet still able to work are to benefit from professional rehabilitation measures.
- The 'Road to Health' implemented since July 2010 throughout Austria aims at raising the employment rate of older individuals and reducing the number of pensions granted for people unemployable owing to disability. The project is being continuously evaluated.
- 'Check 4 Chances' is a pilot project instituted from September 2011 to August 2012, supporting individuals able to work after passing through the Road to Health to return to occupational integration. After assessment, the project may be further pursued.
- The research project prototype 'Hiking Map' for healthy occupational choices is to counteract any early withdrawal from the labour market by identifying occupational alternatives for individuals working in jobs with a limited occupational lifetime (following continuous high physical and psychological stress).
- By organising work that meets age(ing)-appropriate and preventive measures according to the Law on the Protection of Workers (ASchG) working conditions for older workers and employees will be improved. This measure is to support and maintain employability in terms of just and sustainable generation management. The prevention goals of the Austrian Health and Safety Strategy 2007–2012 (follow-up strategy until 2020) are to consider gender and age aspects. The labour inspectorate, moreover, has been conducting campaigns focussed on consulting and inspecting small and medium-sized enterprises, so as to motivate enterprises to 'analyse age structures', identify age-critical workflows and impacts, and create working environments adapting to an ageing workforce. The folder published by the labour inspection authority 'Working environments adapting to an ageing workforce – stay healthy working as you grow older' offers valuable information on the implementation of risk assessment with regard to safety and health protection of older employees. In order to carry out an age structure analysis for an evaluation, the labour inspection authorities have developed a tool to collect data to be made available for enterprises, which can be accessed, as can the folder, on the labour inspection authorities' website.<sup>28</sup> Qualification-counselling activities for enterprises and advice for flexible approaches are available free of charge for enterprises to support their human resource development, educational planning and restructuring. Since 2011, particular emphasis has been placed on age-appropriate design of workplaces.

In its NRP 2012, Austria announced further measures to increase the employability of these target groups. First, the amendment to the Occupational Health and Safety Act (ASchG) stipulates that undertakings' prevention efforts must take into account not only physical burdens, but also work-related psychological burdens. The amendment entered into effect as of 1 January 2013.

Secondly, with regard to early retirement due to illness, the 2012 stability package already noted that it was necessary to reform the rules on disability pensions in Austria. The disability pension reform effort (*Invalditätspension Neu, or 'IP Neu'*) aims to

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<sup>27</sup> The programme 'fit2work' provides, among other things, for counselling services for the prevention of secondary occupational diseases. It is designed to delay, on a large scale, early retirement owing to ill health by 2013.

<sup>28</sup> See <http://www.arbeitsinspektion.gv.at/Al/Gesundheit/Arbeitswelt/default.htm>

achieve a sustainable (re)integration of persons with health impairments into the labour market. Starting in 2014, the limited-term disability pension will be replaced by retraining benefits or rehabilitation benefits for all persons who have not reached the age of 50 as of 1 January 2014 (as stipulated in the Social Security Amendment Act of 2012 [SRÄG 2012]). In the future, only those individuals who have permanent disabilities will receive disability pensions. Those who require medical rehabilitation will be eligible for rehabilitation benefits. Whether retraining or rehabilitation benefits are granted will depend on whether measures for re-entry into the labour market are considered expedient and reasonable. The Austrian Public Employment Service (*Arbeitsmarktservice*, or AMS) will be responsible for occupational rehabilitation, while the social insurance institutions will assume responsibility for medical rehabilitation. The amount of rehabilitation benefits will be equal to sick-pay benefits and must not be lower than the standard rate for compensatory benefits for pensioners who receive benefits below the minimum level. For retraining benefits, unemployment benefits – with a supplement of 22 per cent – will serve as the basis for calculation, with the minimum subsistence level being the lower limit (2013: 977 euros per month). In order to ensure uniform standards for the assessment of whether persons with health impairments are able to work, an assessment competence centre will be set up for workers in dependent employment, as well as the self-employed and public servants. The assessment report should already mention specific prospects on the labour market so that the ensuing occupational rehabilitation measures (retraining) or other labour market interventions (for example, additional qualifications, on-the-job training, subsidized employment) can be taken in order to enhance the workers' employability gradually and in a targeted manner. Furthermore, in the Stability Package of February 2012, a Labour Market Initiative up to 2016 was launched for persons with health impairments, as well as older persons. The objective is to prolong the active employment of a total of 200,000 persons in this target group by 2016. In this initiative, incentives were created in order to encourage businesses to extend the employment of older workers. In addition, the labour market initiative also implemented measures in order to maintain employee health and to allow occupational rehabilitation for people who previously had to draw disability pensions. For this purpose, an additional 150 million euros per year (or a total of 750 million euros) will be invested from 2012 to 2016. Furthermore, the advisory services within the framework of the Fit2work prevention programme will be expanded, also with a view to implementing sustainable reductions in disability pensions, and will be introduced throughout Austria as of 1 January 2013. Fit2work offers free advice for people and businesses when jobs are in danger or job search is made more difficult due to health problems. Approximately 70,000 people will receive support under the Fit2work programme. In this area, planned investments will amount to around 44 million euros by 2016. Psychological diseases and psychological causes of health problems at the workplace have been rising steadily. In order to improve psychological support for clients of the programme 2 million euros in special grants will be made available each year. The Social Security Amendment Act 2012 stipulates that, from 2014 onward, the AMS will be required to initiate training or re-entry measures for persons with health impairments within eight weeks if those persons cannot be placed in suitable employment.

Like Austria, **Denmark** proposed a number of reform proposals in its NRP 2012 aimed at increasing growth and employment, in particular in relation to older and health impaired workers, including reform of the disability pension scheme. In February 2012, the Government presented a proposal to reform the disability pension and flex-job schemes. The overall reform proposal is expected to increase the labour supply by 5,000 people in 2020 and approximately 12,500 people long-term, including 2,300 and 7,700 people, respectively, in non-subsidised employment. Equally, the proposal is expected to improve public finances by an estimated DKK 1.9 billion in 2020 and by as much as 3.5 billion long-term. The basic elements of the disability pension reform

are that vulnerable and exposed persons under 40 years of age will not, initially, have access to disability pension, but will participate in a resource clarification programme, adapted to the individual. Rehabilitation teams will be established in the municipalities with the purpose of coordinating efforts for individuals. As of 2014, a 'senior disability pension' will be introduced, resulting in quicker and easier access to early retirement pension for individuals not fully fit for work fewer than five years from the formal pension age.<sup>29</sup> The reform bill was adopted by Parliament on 23 December 2012 and came into effect from 1 January 2013. The Commission considered that the disability pension reform, as well as the reform of flex jobs and cash benefits respond adequately to the recommendation, but the practical implementation and effects of the reforms will need to be closely monitored and followed up by further measures if necessary.<sup>30</sup>

Also in **Finland**, and in relation to the implementation of CSR No. 4, concerning the need for measures to improve the employability of older workers, the NRP 2012 mentions that the employment rate of older people had developed favourably in recent years. This was achieved by raising the age limit for the unemployment pension, a flexible retirement age with incentives, investments in improving working life and the gradual abolition of the unemployment pension. Also important was the framework agreement concluded in autumn 2011 that supported the extension of working careers through flexible working hours and by increasing health checks and training. A reform under which working careers will be prolonged by addressing protracted incapacity for work at an early stage was to come into force in June 2012. An occupational health physician assesses the employee's working capacity together with the employer and the employee when sickness allowance has been paid for 90 days. Return to work is to be supported by working capacity counselling, which was launched at the beginning of 2012.<sup>31</sup> The Commission welcomed these developments in its Staff Working Document, but nevertheless reiterated in its CSRs for 2013 the need for Finland to take further steps to encourage the employment rate of older workers, including by reducing early exit pathways and to increase the statutory retirement age in line with the improved life expectancy.

**France's** NRP 2011 highlights the particularly low employment rate for older workers over 60.<sup>32</sup> While 60.4 per cent of those aged 55–59 were in work in 2010, only 17.9 per cent of those aged 60–64 were.<sup>33</sup> Several measures were introduced between 2003 and 2010, and a pension reform was adopted to increase the employability of older workers, such as progressively increasing the retirement age and virtually abolishing all early-retirement schemes. Alongside this wide-ranging reform are a series of industry-specific agreements aimed at encouraging employees to retain older workers. Seventy-nine industrial sectors signed an agreement on the employment of older workers on 31 March 2010.<sup>34</sup> Areas for action include boosting access to training

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<sup>29</sup> NRP 2012, pp. 12–13.

<sup>30</sup> CSWD 2013.

<sup>31</sup> NRP 2012, p. 30.

<sup>32</sup> NRP 2011, p. 43.

<sup>33</sup> *Enquête Emploi, Insee, traitement Dares, mars 2011* (Insee Labour Force Survey, March 2011).

<sup>34</sup> Among them, companies in the cleaning, dairy inspection, pharmaceuticals, chemicals, building and public works, 'open air hostelry' and domestic help branches. Furthermore, 75 economic branches have adopted the goal of retaining workers aged 55 and over in work, in three ways: keeping the share of the 55s and over at the same level as that recorded at the time of signing the agreement; increasing this share; or again by pushing back the average age of retirement beyond 55. Ten sectors have adopted the goal of recruiting employees aged 50 and over in three forms: earmarking a proportion of recruitments for those 50 years of age and over; expanding possibilities for combining work with retirement; and earmarking a proportion of professional training contracts for 50 year-olds and over.

for the over-45s, forward planning for career development, improving working conditions and preventing physically demanding or stressful working conditions.

As early as 2007, the Federal **German** Government voted to raise the standard retirement age for statutory pension insurance to 67. Starting in 2012, the standard retirement age will be gradually increased from the current 65 to 67 by 2029. For the labour market, it was expected that this means a relative increase in the labour force of approximately 2.6 million people, peaking around 2030. If the employment rate among people aged 55–64 is to be increased to 60 per cent by 2020, a top priority must be to promote preventive health care and appropriate working environments for older workers, in addition to measures to improve education and skills development. The social partners support these processes within the framework of collective agreements, the Joint German Occupational Safety and Health Strategy (GDA) and the New Quality of Work Initiative (INQA),<sup>35</sup> for example.<sup>36</sup> Further measures to raise the employment rate in general and of older workers in particular, thereby taking into account the health and safety dimension, were announced in the NRP 2012 and 2013. They involve mapping out a preventive health strategy by the Federal Government, which included the development of company health promotion programmes.<sup>37</sup> In its Commission Staff Working Document of 2012, the Commission welcomed all the initiatives taken over time by Germany to increase the employment rate of older workers and thus the CSRs for 2013 focus only on the need to increase the retirement age.

In **Hungary**, several pension reforms have taken place over the years. In 2011, one reform meant that a pension may only be awarded and disbursed on reaching retirement age. As a result, the option of early retirement has been removed, and as a general rule, those qualify as pensioners who have reached the old-age retirement age or, in the case of women, those who are eligible for a pension based on the completion of 40 years of work. The system was reformed with a view to acquired rights, the maintenance of services for those with already awarded and disbursed early retirement pensions and the fulfilment of the promises made to those preparing for early retirement in the near future. In continuation of the measures launched, the early retirement of workers in jobs posing a hazard to health was also to be revised in 2012. Furthermore, the disability pension scheme and the benefit systems set up for those previously classified as individuals with altered working capacity are also being reformed on the basis of a standard concept. The objective is to retain on the labour market individuals of active employment age who are at present inactive due to health deterioration but are capable of engaging in gainful employment. By reducing the previous number of benefits to two and more actively enforcing criteria of employability, the emphasis is being shifted from the earlier passive services and benefits to the rehabilitation for employment purposes of individuals with varied degrees of health deterioration by relying on their available skills, which consequently results in a more transparent and reasonable system that places a lesser burden on the budget. Review procedures will be conducted in a complex manner, based on medical, employment rehabilitation and social criteria. It will be determined as a result of the review procedure whether, based on the remaining working capacity, the given individual is fit for employment-related rehabilitation. During the term of rehabilitation, the individuals concerned will have access to rehabilitation benefits and services assisting

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<sup>35</sup> New Quality of Work Initiative (INQA) is a partnership between the Federal Government, social insurance partners, *Länder*, foundations and businesses. INQA unites the goal of promoting the health, professional skills and working capacity of employees with the objective of strengthening the competitiveness of businesses.

<sup>36</sup> NRP 2011, p. 24.

<sup>37</sup> NRP 2013, p. 41.

employment, while those eligible for a disability service will receive a monetary benefit and may also engage in employment within set boundaries. In the interest of facilitating re-entry into the labour market, the Government will further introduce a so-called Rehabilitation Card scheme. Rehabilitation cards may be requested by individuals experiencing a deterioration in health whose employers will be entitled to a tax concession at the rate of the (gross) wage not reduced by any of the public contributions and other deductions taken into account for the determination of the tax base, but a maximum 27 per cent of a sum double the minimum wage (in 2012, 2 x HUF 93,000 = HUF 186,000). These measures were introduced via the Parliament Act CXCI of 20 December 2011 on the provisions for persons with reduced ability to work and on the amendment of certain acts. The implementing regulations were to be prepared in the first half of 2012.<sup>38</sup>

**Luxembourg** announced in its NRP 2011 measures benefiting older workers that aim to increase employment rates while ensuring their well-being, health and safety at work. The Permanent Committee for Labour and Employment (CPTE) undertook discussions about the distinctive situation of older persons with relation to the labour market as part of the development of a national policy to promote employment among older persons. The review deals with the reasons for early retirement, at times differently, depending on economic sector, often related to changes in work processes because of economic pressure and with no assistance in the form of life-long learning. Next, the review concentrated, in a general, not an individual manner, on the issue as a whole, with a view to determining which subjects ought to be modified in order to keep workers targeted on extending their professional careers. This is accomplished through professional training and guidance for older workers. A varying and balanced working group will draw up an activation plan for older workers that includes recommendations containing examples of good practices, measures aimed at keeping people employed and re-insertion, as well as incentives for companies to carry out a policy that meets the requirements of older workers, including working conditions, working hours, training, skills audits and so on.<sup>39</sup> Against this backdrop, the Government set up a conference in November 2011 on managing the age pyramid in companies. The discussions contributed significantly to drawing up a draft project introducing a bundle of measures promoting an age policy in companies. This draft law should include an obligation for employers with over 150 staff to draw up an age management plan that focuses on recruiting older workers, anticipating career changes, improving working conditions, providing access to continuing education and passing on knowledge and skills to less experienced workers. Financial initiatives are being included for the companies in this group, as well as for those companies not required to draw up plans but who voluntarily apply an age management plan. Companies with more than 150 employees that are already covered by such a plan through a collective bargaining agreement or an inter-professional accord are not necessarily constrained by this obligation. Apart from this measure, a centre for analysing and promoting improved working conditions is being planned. The objective of this centre will be to improve working conditions in order to reduce occupational illnesses and to lower the number of reclassifications. In order to achieve this, working conditions experts would be available to companies who desire to implement a preventive plan in this area.<sup>40</sup> The Commission, however, considered that not enough progress had been made and repeated its recommendation on the need to increase the number of activities to increase the labour market participation of older workers.<sup>41</sup> In its NRP 2013 it largely repeated the abovementioned information and as the labour

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<sup>38</sup> NRP 2012, p. 25.

<sup>39</sup> NRP 2011, pp. 23–24.

<sup>40</sup> NRP 2012, pp. 26–27.

<sup>41</sup> CSWD 2012, p. 15.

market participation of older workers in Luxembourg remained one of the lowest in the EU, the Commission called on the country again in 2013 to intensify its actions in this regard.<sup>42</sup>

The NRP 2013 of **Poland** refers to the programme 'Solidarity between generations. Measures to increase the economic activity of persons aged 50+', adopted by the Council of Ministers on 17 October 2008. A mid-term review of the Programme is planned for 2013 for the purpose of developing recommendations and guidelines on how to better prepare activities in the field of professional activation of persons 50+. Two new councils will be established: the 50+ Programme Council and the 50+ Social Council, responsible – among other things – for developing a catalogue of recommendations for the renewed 'Solidarity between generations' programme. Recommendations will cover the area of health and long-term care, lifelong learning, the labour market, women and social policy. Due to extension of the retirement age, the relevant activities will also include the preparation of recommendations for measures addressed to persons aged 60+.<sup>43</sup>

In accordance with the adopted Guidelines for the Implementation of Active Employment Policy Measures for the period 2012–2015, **Slovenia** announced in its NRP 2012 that special attention would be paid to young and older employment seekers. Incentives will also be targeted at adapting posts to the needs of older workers. New labour legislation will facilitate the employment of older workers by modifying notice periods and through the new regulation of severance payments. In this process, supporting and preventive measures involving the adaptation of posts and ensuring health at work, including the promotion of active ageing, will be important.<sup>44</sup> The Commission welcomed these steps but found that the NRP '*lacks specific measures going beyond modified severance pay and periods of notice. The policy agenda therefore appears incomplete and – where specific plans exist – insufficiently ambitious in terms of coverage*'.<sup>45</sup>

According to **Sweden's** NRP 2013, the Government has appointed a special investigator to review pension-related age limits and possibilities for a longer working life. The investigator shall prepare proposals and alternative strategies for how the age limits should be handled. A good working environment is important, both in preventing ill health and accidents, and for counteracting the exclusion of people from work or being forced to leave working life prematurely. In addition, the investigator shall submit proposals for measures in the area of working environment or other areas that afford better conditions to continue working until a later age. A final report on the assignment is to be presented in April 2013.<sup>46</sup>

### **2.3 Increasing the labour market participation of disabled/health impaired workers<sup>47</sup>**

Another frequently vulnerable group on the labour market consists of disabled or health impaired workers; in order to enhance the labour market participation of this group, Member States including **Estonia, Hungary and Luxembourg** have announced or introduced some specific and targeted measures.

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<sup>42</sup> CSWD 2013, p. 14.

<sup>43</sup> NRP 2013, pp. 17–18.

<sup>44</sup> NRP 2012, p. 17.

<sup>45</sup> CSTWD 2012, p. 15.

<sup>46</sup> NRP 2013, p. 19.

<sup>47</sup> For measures taken in Austria and Denmark in this area, see Section 2.3.

The Commission noted in its Staff Working Document for 2012 that in **Estonia** there is scope for bringing disabled people back into the labour market and keeping them there, in order to contain the rising take-up of disability benefits and incapacity-for-work pensions. Indeed, the labour market exits for long-term health-related absences in Estonia are 10 per cent higher than the EU average and the number of people receiving incapacity-for-work pensions has almost doubled in ten years. This, over and above considerations of well-being, put pressure on public finances.<sup>48</sup> Therefore, the Estonian government announced in its NRP 2012 that an important new target group consists of the unemployed and employed that have a long-term health disorder and who previously could use only the services meant for disabled people. In order to support the supplementary training or re-training of employees who are at risk of losing their job due to worsening health, the employers who provide training for employees having long-term health problems and a new job in the company receive compensation for up to 25 per cent of the training expenses. Further measures are also aimed at reforming the insurance scheme for incapacity for work and establishing an occupational and professional health insurance scheme (see also above on Estonia in Section 2.2). This aim was repeated in the NRP for 2013, where it is mentioned that *'another objective is the reform of the current disability system, which would ensure the sustainability of the system, thereby preserving and improving fitness for work among the working-age population, preventing unemployment and a decline in working ability and supporting people's return to the labour market. The reform brings into focus the best use of the working ability of working-age people who have health impairment, putting the emphasis on measures supporting access to employment and work aimed at people with reduced capacity and people with disabilities.'*<sup>49</sup>

In its NRP 2011, **Hungary** announced that by July 2011, the rules of disability benefits were to be reviewed. Some of those receiving benefits based on health impairment are still capable of wage-earning activity, possibly after a temporary period of rehabilitation. Therefore, the Government's goal is that those of working age with health impairment but working capacity remain in the labour market and thereby a transparent and more rational system has been set up with less burden on the public finances. In the context of the review, the number of entitlement categories should be reduced, transparency ensured and employment considerations made stronger.<sup>50</sup>

In **Luxembourg**, the NRP 2013 announced a draft law for modifications to the Labour Code and the Social Security Code seeks to change certain provisions in the area of reclassification. On 4 March 2008, the Inspectorate General for Social Security Administration (IGSS) issued an evaluation report analysing the repercussions of the legal provisions for the efficiency of guidance and orientation measures for persons with work disabilities.<sup>51</sup> The Government submitted its report to the Joint Parliamentary Commission for Health and Social Security, Labour and Employment on 29 May 2008 and on 10 July 2008. It was recognized that the record is mixed on this issue, inasmuch as the legislation has improved some conditions, while other expectations have not been met. Thus some procedures were abridged, while other timelines got longer, which underscores the need to accelerate reclassification procedures, as any additional extension only favours solutions that are alternatives to professional life. However, the staggering increase in the number of cases that could not be reclassified

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<sup>48</sup> CSWD 2012, p. 14.

<sup>49</sup> NRP 2013, p. 15.

<sup>50</sup> NRP 2011, pp. 11–12.

<sup>51</sup> See:

[http://www.bcl.lu/fr/publications/avis/Avis\\_de\\_la\\_BCL\\_sur\\_le\\_projet\\_de\\_Budget\\_2013\\_web1.pdf](http://www.bcl.lu/fr/publications/avis/Avis_de_la_BCL_sur_le_projet_de_Budget_2013_web1.pdf)

at the end of the procedure is a clear indicator that the system currently in place is far from perfect, despite improvements along the way, and that it must be revised. It was also highlighted that reclassification outside a worker's company is not an attractive option to persons who know that they will lose all their rights at the end of the employment contract. From this emerged the idea of creating a specific status for all persons undergoing professional reclassification externally, which would allow them to retain their rights as long as the disability from the previous job is in effect. It was also determined necessary to engage in better coordination among the various actors so that procedures and decisional processes insured parties undergo are more transparent and rapid, especially when medical opinions diverge. With regard to divergent medical views, the disability evaluation process should be made uniform.

In 2009, an inter-ministry working group was formed to make recommendations for improving the effectiveness of the legal provisions in this area in concert with all parties concerned regarding the application of legislation to work disabilities and professional reinsertion. The recommendations included:

- Access to professional retraining: a new way of access, parallel to current paths, is now available through medical examinations by occupational physicians. Reducing the size of companies and eliminating quotas introduces an internal work retraining programme that is compulsory for employers who legally employ at least 25 employees.
- Accelerating the procedure: Parallel access by the Occupational Health body and by the Joint Commission will provide analyses of conditions for opening a work retraining procedure by moving the Joint Commission decision forward.
- The Joint Commission decision: The Joint Commission can now submit occupational physicians' rulings concerning capacity or incapacity for work to a physician of the Department of Occupational Health. The Commission deals with internal or external reclassification decisions and decisions against reclassification, and is now empowered with regard to decisions on the status of persons to be retrained for work externally. All of these decisions are subject to a uniform appeals proceeding in the social courts.
- Internal reclassification is encouraged: the number of companies eligible for internal reclassification procedures has been increased with the elimination of quotas and the bolstering of the compensatory tax mechanism as a sanction against employers.
- Establishment of a specific employee status for external professional retraining. A specific status is attributed to employees who are undergoing an external reclassification procedure to afford them better protection. It guarantees employees that their rights in a work reclassification decision will be upheld and removes the risk currently attached to the interruption of a work contract. The status is attributed when an external work reclassification decision has been reached and lapses when needed work capacity has been recovered or if a pension, annuity or early retirement indemnity is awarded.
- Periodic re-evaluations by occupational physicians: occupational physicians are under obligation to periodically re-evaluate the health of reclassified employees, providing an assessment of their adjusted working time and their capacity for work. Such evaluations may affect compensatory indemnities, tide-over allowances, working times and specific status benefit. The same review procedures apply to persons receiving a tide-over allowance as of 31 December 2013.
- Simplification of the calculation of the compensatory indemnity: A simplification of the method for calculating the compensatory indemnity through its link with

- the contribution basis in the area of pension insurance is used to run calculations through the Joint Social Security Centre.
- Award of a tide-over allowance: a disability pension attributed as a specific benefit for workers without disabilities was always a source of problems, particularly on the international level. To replace the former tide-over allowance, a new tide-over allowance has been devised. A worker who has passed through the entire process without being reclassified, either by that person's former company or on the labour market, and who can certify at least ten years of fitness for work in the last job held, will receive a tide-over allowance when unemployment benefits expire, corresponding to 80 per cent of the former professional salary subject to contributions under the pension programme, with the same ceilings applicable as where unemployment benefits are extended. This benefit now falls under the professional reinsertion programme on the labour market. It is not an advance against future pension benefits, but rather replacement income under extended unemployment following loss of a job. This tide-over allowance is subject to social and tax charges as salary and will be considered as such when pension benefits are calculated. Financing for this programme is shared equally between the person's pension organization and the Employment Fund.

It is presumed that the law on professional reclassification will enter into effect on 1 January 2014. It is impossible to calculate the financial impact of the modifications on current law at this time. It is expected that doubling the access path, and consequently accelerating the procedures and emphasizing internal professional reclassification, will have the effect of keeping a greater number of persons in work and will combine to brake the worrisome trends in terms of numbers and costs of tide-over allowances, to include both the former and replacement allocations. Under this assumption, which consists of doing everything possible to reduce the number of failed reclassifications, should the mechanisms succeed, there will be a parallel increase in compensatory indemnities awarded for jobs that are resumed. This has two positive aspects, one for workers who keep their jobs without risk of financial loss and the other for the state, which grants a diminishing and temporary allowance to employed persons instead of replacement income at a higher rate for people who remain idle until retirement and are lost to the job market. Finally, the increased workload for occupational physicians, notably against the backdrop of the second access path involving periodic re-evaluations, can be managed only if the appropriate department increases personnel levels within the applicable time periods.<sup>52</sup>

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<sup>52</sup> NRP 2013, pp. 11–13.

### **3. Reform of labour inspection services and activities**

#### **3.1 General measures and policies**

Labour inspection services are a key actor at national level in ensuring the protection and enforcement of social rights of workers in general and at the workplace in particular. Accordingly, several Member States, including **Greece, Hungary and Latvia**, have announced in their NRPs measures specifically intended to enhance the role of labour inspectorates.

In order to 'ensure wage and price adjustments to regain and sustain competitiveness, through wage moderation and productivity- and competition- enhancing reforms', the **Greek** government announced in its NRP a wave of labour law reforms, including the restructuring of the labour inspectorate (SEPE). The main elements will be the enhancement of its counselling role, the recruitment of qualified staff and the setting of quantitative targets regarding inspections. The Government has adapted legislation on tackling undeclared work to require the registration of new employees before they start working. A major battlefield for the SEPE over the years has been the fight against undeclared work<sup>53</sup> (see also Section 3.2). The increase of inspections led the SEPE also to evaluate the impact of legislative changes made earlier for instance on the conversion of employment contracts of full employment to part-time employment or rotation work and to what extent this has led to job retention and restraint of unemployment at the same time. Data from the Labour Inspectorate in the NRP 2012 confirm the increasing use of flexible forms of employment in the Greek labour market: in 2011, 58,962 full-time employment contracts were converted into part-time employment or rotation work. Compared to 2010, 73.25 per cent of these increases concerned part-time employment, 193.06% concerned rotation work with the consent of the employee, and 631.89% concerned rotation work imposed unilaterally by the employer. This shift towards flexible forms of employment can also be reflected in the share of full-time employment contracts in the labour market, which fell from 79 per cent in 2009 to 66.9 per cent in 2010 and to 58.92 per cent in 2011.<sup>54</sup> Similar figures are cited in the NRP 2013, whereby, according to 2012 Labour Inspectorate data, 84,490 full-time employment contracts have been converted into part-time employment or rotation work. Compared to 2011, there is an increase of 53.1 per cent concerning part-time employment, of 12.3 per cent concerning rotation work with the consent of the employee and of 80.4 per cent concerning rotation work after the unilateral decision of the employer. This shift towards flexible forms of employment is also reflected in the share of full-time employment contracts in the labour market, which fell from 66.9 per cent in 2010 to 59.7 per cent in 2011 and to 55.0 per cent in 2012. Moreover, in 2012, in order to ensure the proper functioning of the labour market, the Labour Inspectorate conducted 57,907 inspections (26,832 inspections regarding health and safety in workplace, 30,229 inspections regarding labour relations and 846 inspections by the Special Labour Inspector Unit). As far as inspections of labour relations are concerned, 10,791 sanctions were imposed (3,262 lawsuits, 1,736 complaint reports, 23 interruptions of business undertakings, 5,770 fines, totalling 21,452,613 euros). In the same period, 21,520 labour disputes were conducted, of which 10,125 were resolved and 20,259,925 euros were paid to the employees. Regarding inspections to combat undeclared work, it is mentioned that joint units of inspection from the Labour Inspectorate, the Special Insurance Inspection Service (EYPEA-IKA) and the Financial and Economic Crime Unit (SDOE) conducted 19,083 inspections in those sectors of

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<sup>53</sup> NRP 2011, pp. 29, 39.

<sup>54</sup> NRP 2012, p. 29.

economic activity in which high percentages of undeclared work have been documented (restaurants, retail, petrol stations and so on).<sup>55</sup>

The Greek NRP 2013, under the title 'cutting red tape' and involving the simplification of procedures for the implementation of labour legislation, adopts a series of measures concerning the announcement of overtime work, the submission of modified personnel tables and the electronic submission of forms (recruitment announcement, table of working hours). To this end, the interoperability of the IKA, SEPE and OAED information systems allows for the online completion of various procedures (submission of applications, payments and so on). In addition, within the framework of the measures agreed under the Memorandum of Understanding (November 2012) concerning the strengthening of institutions and, more specifically, towards strengthening transparency and implementation of labour law, an Expertise project is being drafted, entitled: 'Report on the structure of the new unified Labour Code'. The aim of the study is to collect the existing rules of labour law and its updated codification, as well as to simplify and facilitate their implementation by both employees and employers, and by the Labour Inspectorate, which is responsible for monitoring proper implementation of labour law. Also, a fully structured action plan has been developed in order to unify the procedures for collecting taxes and social contributions [October 2012]. This requirement is directly linked to the strategic objective of combating tax and social contribution evasion. During the last quarter of 2012, in compliance with the requirements stated in L. 4046/2012, the Greek Government invited the ILO to conduct a needs assessment for labour inspection in Greece. After a series of meetings, the ILO Mission produced a Technical Memorandum-Labour Inspection Needs Assessment, which contains 17 recommendations regarding the improvement of the labour inspectorate system. To this end, an Action Plan has been elaborated on the basis of the findings and recommendations of the ILO team. For each finding and recommendation an action is described that must be undertaken within a specific timeframe by the SEPE and the Ministry of Labour in order to enhance the overall performance and effectiveness of the SEPE. Also, the ILO indicates the actions for which technical support is provided either by the ILO or in cooperation with SLIC. Moreover, the operational plan 'ARTEMIS' has been launched by SEPE for inspection of labour law implementation, as well as of social security coverage and undeclared work. Also, the National Insurance Fund (IKA) has reinforced inspections for undeclared work, not only by conducting on-the-spot inspections, but also through enacting a specific software application to tackle social security evasion.<sup>56</sup>

As for **Hungary**, the 2013 NRP mentions, in view of further developing the National Employment Service and labour inspections, specific measures to improve the professional skills of HSE experts and supervisors working for the agencies of the county and metropolitan government offices specialised in HSE and labour, to offer technical assistance to them, to improve the organizational efficiency of the specialised bodies and to enhance the transparency of the operation and processes of specialised bodies. The National Labour Inspectorate intends to achieve these goals primarily with the development of the system and processes for official inspections, the improvement of its efficiency, the enhancement of the quality and depth of inspection and raising the awareness of employees, employers and social partners. The purchasing of the tools necessary for carrying out inspections and improving their effectiveness, and the training of experts working for the organization was to start in early 2013. A budget – including EU co-financing – of HUF 3.7 billion would be allocated.<sup>57</sup>

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<sup>55</sup> NRP 2013, pp. 42–43.

<sup>56</sup> NRP 2013, p. 38.

<sup>57</sup> NRP 2013, p. 69.

Already in its NRP 2011 **Latvia** announced that in order to ‘improve the normative regulation of labour relations and labour protection and its application’, it would optimize the daily work of the social and labour inspectorates and this would include for 2011–2013, among other things, (i) introducing e-services in the State Labour Inspectorate (SLI), thus improving its functioning, as well as strengthening its control functions concerning reduction of undeclared work with regard to inspections; and (ii) in cooperation with social partners carry out information campaigns, consultations and training measures targeted especially at employers, employees and young people on issues related to contractual working arrangements and safety and health at work. Public financing foreseen for this was estimated at LVL 3.7 million, including EU financing.<sup>58</sup> The NRP of 2012 announced that in 2011 the SLI had developed 8 e-service prototypes and hoped to have 16 e-services by 2012.<sup>59</sup> According to the NRP 2013, in 2012 only 14 e-services were established and the aim was to have 16 of them in 2013. Furthermore, the NRP 2013 announced draft legislation on undeclared work providing the controlling institutions with a possibility to instantly obtain information from employers about employment contracts during inspections, as well as action to improve the procedure for investigating an accident at work by stipulating specific and clear requirements for investigations of different types of accidents at work, thus simplifying the investigation process of accidents for both employers and the SLI and their understanding of it. Finally, it reported on amendments of so-called Cabinet of Ministers’ regulations in relation to the requirements for competent institutions and competent experts in labour security, as well as the procedure for competence assessment (that is, by improving the system of labour security services by simplifying the procedure for assessment of competent institutions, as well as specifying the requirements for the certification of competent experts) and amendments aimed at reducing the administrative burden in the field of labour security, thus reducing employers’ costs. These amendments addressed such issues as training procedures in labour security issues by reducing the volume of the education programme for labour security experts, as well as specifying and simplifying the requirements for the training of labour security experts in hazardous-industry companies. Moreover, amendments regarding reduced frequency of measuring noise at the workplace have been introduced.<sup>60</sup>

### **3.2 Fighting undeclared work**

In particular during times of crisis, when formal employment is decreasing or hard to find, informal employment and undeclared work are on the rise. For this reason, a large number of Member States make the fight against undeclared work one of their top priorities, employing to this end a diversified set of measures. The measures and policies announced and/or implemented via NPRSs in **Bulgaria, Cyprus, Greece, Italy, Malta, Portugal, Romania, Slovenia, and Spain**, are highlighted below.

In its NRP 2011 **Bulgaria** announced, in order to ensure better and more efficient utilization of the economy’s labour potential, the implementation of several reforms, including, in the short term (2011–2012), reducing the share of undeclared work. With a view to the latter, labour inspection will be improved, including the appointment of 110 inspection assistants and training 460 employees from the specialized administration of the General Labour Inspectorate Executive Agency (GLIEA). In this regard, significant support will also be provided for the activities of the social partners, including through the operations of the National Centre for Prevention of the Informal

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<sup>58</sup> NRP 2011, p. 54.

<sup>59</sup> NRP 2012, p. 29.

<sup>60</sup> NRP 2013, p. 32.

Economy; public campaigns for changing attitudes towards intolerance of all manifestations of the informal economy; promoting the introduction of corporate social responsibility at company and branch level.<sup>61</sup> In its NRP 2012, the Bulgarian government referred to further measures to indirectly implement CSRs to address the challenge of combating poverty and promoting social inclusion, including improving control over compliance with labour legislation. A total of 15,173 inspections concerning legal recruitment and labour remuneration were carried out in 2011 in accordance with the annual plan of the General Labour Inspectorate Executive Agency (GLIEA). Inspections of the legality of labour relationships, working hours and remuneration were also made. Furthermore, amendments to the Labour Code introduced a new measure for fighting undeclared employment by introducing sanctions for employees working without a labour contract. The sanction will be in the amount of three health and social security contributions, which are to be transferred to the State Social Security Fund and the National Health Insurance Fund.<sup>62</sup> New measures were to be introduced for 2012 to reduce undeclared work and introduce flexible forms of employment, which will ensure better utilisation of labour potential, including through measures for improving the health of the workforce. They included:

- Under the scheme ‘Increasing the efficiency of GLIEA control activities’, almost 3.3 million euros will be invested up to 2014. Part of the money will be used for basic and follow-up staff training in quality management of control activities for 400 GLIEA employees.
- For the scheme ‘Improving labour control’ about 1.3 million euros will be allocated for the period 2011–2013. The scheme will by 2015 enable the hiring of 110 assistant inspectors and training of 570 labour inspectors in order to strengthen GLIEA’s capacity. A further estimated impact is to reduce the frequency of occupational accidents and diseases by at least 10 per cent and to increase the number of inspections on the legal recruiting, working hours and remuneration of labour by 15 per cent as compared to 2010.
- Under the scheme ‘Developing services for a flexible labour market’, which was to be launched in 2012 with a budget of 3.1 million euros, 10 career centres will be established by 2014 by the Regional Employment Office and the Employment Agency headquarters. The centres will provide support for the occupational development of at least 10,000 employed and self-employed people.
- Under a public procurement procedure ‘Prevention for safety and health at work’ with a total budget of 7.7 million euros, the management systems for safety and health at work will be upgraded.
- Under a public procurement procedure ‘Safety at work’ with a budget of 35.8 million euros, 350 employers will receive financial assistance for upgrading the systems for safety and health at work in their enterprises.
- Under the scheme ‘Health information campaigns’ with a budget of 2.4 million euros, a national campaign against occupational injuries will be carried out. Its objective is to raise public awareness of the importance of the proper implementation of labour standards with regard to safety and health at work.

In the fight against undeclared work, the Bulgarian NRP 2013 mentioned that in 2012 there were 56,431 inspections conducted in 40,347 enterprises, 97 per cent of which were SMEs. A total of 9,904 enterprises were inspected in 2012 for the first time, 35 per cent of them in the hotel & restaurant business; 85 per cent complied with the statutory requirements concerning work conditions. However, 258,546 breaches of labour law were detected and 252,338 compulsory administrative measures were imposed. Fines in the amount of BGN 18.7 million were imposed. Furthermore, 547

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<sup>61</sup> NRP 2011, p. 34ff.

<sup>62</sup> Promulgated in issue 7 of the State Gazette as of 24.01.2012; NRP 2012, p. 29.

GLIEA employees were trained and 44 courses were delivered. The targets for 2013 are to increase the number of enterprises inspected for the first time by 2 per cent; by 1 per cent the number of inspections carried out; by 2 per cent the enterprises showing improved quality of risk assessments; by 1 per cent the number of enterprises complying with the statutory requirements concerning the working conditions; by 1 per cent the workers working in conditions that meet hygiene standards and requirements; and by 1 per cent consultations for SMEs. The number of training courses will be increased by 3 per cent.<sup>63</sup>

Also in **Cyprus**, the great influx of legal and illegal migrants makes it necessary to improve the management of immigration and asylum issues, through a comprehensive immigration and asylum policy. In this respect, further measures to strengthen prevention and inspection mechanisms will be promoted in order to combat illegal and undeclared work, associated with the large inflows of third-country nationals and asylum seekers. The Cyprus Government proceeded in 2009 to create four groups of inspectors for duties regarding undeclared and illegal work. During the period 2009–2011 inspections were carried out at 7,500 employers, who employed 25,000 employees, out of which 11,286 (45 per cent) were EU nationals and 2,674 (11 per cent) were third-country nationals; 26 per cent of the 25,000 employees were undeclared. Out of the 11,286 EU nationals, 32 per cent were undeclared and out of the 2,674 third-country nationals 53 per cent were illegal. Given the extent of undeclared work, in particular construction sites for public works will be more thoroughly inspected. Furthermore, a modification to Social Insurance Law provided for the employer's obligation to inform the Ministry of Labour and Social Insurance about new recruitments before the beginning of employment. A nationwide complaints line has been established that allows citizens to report illegal work.<sup>64</sup> The Commission considered that 'while increased inspection of companies – as envisaged in the national reform programme – is a step in the right direction, its effectiveness and efficiency to encourage a move away from informal/undeclared work and tackle tax evasion has to be assessed.'<sup>65</sup>

As mentioned above, in 2011 the **Greek** government announced a restructuring of the labour inspectorate (SEPE) in Law 3996/2011 and announced the fight against undeclared work as one of its fundamental priorities. In this context, a series of measures have been initiated:

- A special voucher will be used as compensation for those professions in which undeclared work is extensive (for example, domestic workers such as housecleaners, care providers for elder people and so on).
- An electronic information system connecting the competent bodies – Ministry of Labour and Social Security, OAED, Labour Inspectorate and, at a later stage, IKA (the main social insurance organization in Greece) – will facilitate the cross-referencing of data and information.
- An electronic card for any employee in the aforementioned electronic information system will be used to record an employee's daily work timetable. The employers making use of this measure will benefit from a gradual reduction of social security contributions up to 25 per cent. The implementation of this action started in March 2012.<sup>66</sup>

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<sup>63</sup> NRP 2013, p. 81.

<sup>64</sup> NRP 2012, pp. 19, 92.

<sup>65</sup> CSWD 2012, p. 13.

<sup>66</sup> NRP 2011, pp. 39, 70 ; NRP 2012, p. 27.

Regarding inspections for combating undeclared work, the Greek NRP 2013 mentions that joint units of inspection from the Labour Inspectorate, the Special Insurance Inspection Service (EYPEA-IKA) and the Financial and Economic Crime Unit (SDOE) conducted 19,083 inspections in those sectors of economic activity where high percentages of undeclared work have been documented (restaurants, retail, petrol stations and so on).<sup>67</sup>

In **Italy**, in the Three Year Employment Programme adopted by the Government in July 2010 (Law 138/2010, bill '*Collegato Lavoro*'), one of the main priorities was the fight against undeclared work. Actions provided for included modifying the penalty system and intensifying inspection.<sup>68</sup> Both the Italian NRP 2012 and NRP 2013 announce new measures on combating undeclared work, among other things, by making the sanctions stiffer, but without providing details.

Also in **Malta** the fight against undeclared work is a priority. The number of inspections in 2010 by officials from the Employment and Training Corporation totalled 3,745, during which 1,754 persons were found working illegally. Employers are given the opportunity to regularise the position of those found working illegally or else face legal action. As a result, the employment of around 1,000 persons was regularised; in the other cases, legal action was initiated against the employers and almost 1,000 cases underwent court proceedings.<sup>69</sup> In 2011, the Maltese Public Employment Service intensified its efforts to ensure that persons registering for primary employment and employers engaging local and foreign employees abide by their legal obligations. In order to further enhance the effectiveness of the legal compliance system at the ETC, new working methods were introduced within the respective sections and desk investigations were initiated. Inspections carried out at workplaces are generally conducted following internal investigations and reports from other government entities and the general public. Most of the on-site surprise inspections are targeted inspections, in other words, the location of the abuse is known. Between January and December 2011, a total of 3,827 inspections were carried out, during which 2,349 law infringements were identified, and therefore had a success rate of 61.4 per cent. Most of the legal infringements related to Maltese workers found working at establishments without notifying ETC and hence they were deemed illegal employees. Since most of the inspections are targeted inspections, the success rate is high. This should not, however, be interpreted to mean that undeclared work or abuse is substantial. On the contrary, this should be viewed as an efficient and effective use of the limited resources available within the inspectorate arm of the ETC in curbing abuse or undeclared work.<sup>70</sup>

In **Portugal**, the NRP 2011 announced that labour inspection activities will be strengthened to improve the quality of jobs and decent work; this will include combating undeclared work and the fight to stop illegal work contracts. A mechanism will also be created to monitor the evolution of precarious employment, as well as the prohibition of unpaid work placements. Four main lines are foreseen orienting the fight to stop undeclared work and illegal precarious contracts. First, improvements to the system for data collection, processing and dissemination regarding statistical systems of the administrative sources reporting on the company's social activity, especially with reference to the type of work contracts and the characterisation of outsourcing services. Secondly, boosting and improving support for the exchange of information between labour inspection and social security systems that can identify risk areas with regard to failures to notify social security on the recruitment of an employee and of

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<sup>67</sup> NRP 2013, pp. 42–43.

<sup>68</sup> NRP 2011, pp. 4 and 53.

<sup>69</sup> NRP 2011, p. 52.

<sup>70</sup> NRP 2012, p. 101.

bogus self-employment; this will direct information and supervision activities appropriately and assist the subsequent monitoring of the detected situations. Thirdly, the development and involvement of social partners in information and awareness raising activities that help social actors integrate employees in accordance with contract law. And fourthly, identifying at least 25,000 companies or establishments as annual targets for inspection, where undeclared or illegal precarious contracts can be expected.<sup>71</sup>

Also, **Romania** declared war against undeclared work. In the context of flexible labour relations achieved by amending the Labour Code, particular attention will be paid to the fight against undeclared work. In this respect, in 2010, the National Action Plan to implement the National Strategy on reducing the incidence of undeclared work for 2010–2012 was approved by GD No. 1024/2010. In 2011, about 80,000 inspections were expected, aimed at reducing undeclared work. The total budget for implementing the action plan is RON 1.441 million. Also, in 2011, the Government intended to regulate this form of work by promoting the Law on activities provided occasionally by day labourers. The law was supposed to stipulate how day labourers – natural persons performing unskilled activities occasionally – might work exempt from the provisions of the Labour Code (agreements between day labourers and beneficiaries are concluded without a work contract), and lay down the areas in which day labourers may work, how to perform it (time, rights, duties, payment and records). The objective was that application of the law would lead to more flexible and simple employment procedures in the case of day labourers, but also would reduce the cases of illegal work.<sup>72</sup> The law was indeed adopted in 2011 in the form of Law No. 52/2011 on activities provided occasionally by day labourers. Law No. 40/2011 was also modified and the Labour Code introduced a certain balance between tightening up sanctions in the case of illegal work and employee protection, so that suitable conditions are provided for developing the business environment. Romania has also implemented the National Action Plan on reducing the incidence of the undeclared work for 2010–2012. Between 1 January 2011 and 15 March 2012, the Labour Inspection carried out 112,846 inspections, based on the plan. As a result, 9,976 labour contracts for persons found without a legal work form were registered.<sup>73</sup>

In **Slovenia**, in order to prevent illegal employment, it was announced in the NRP 2011 that labour inspection activities would be strengthened, not least through the elimination of certain administrative barriers that hinder the inspection's work. The amendments to labour legislation planned will also help to reduce the shadow economy by decreasing labour market rigidity and cutting labour costs.<sup>74</sup> According to the NRP 2013, however, the new law was to be adopted only by the end of the year. Higher fines for both workers and employers who engage in undeclared work are foreseen: those who report employers engaged in undeclared work will be exempt from paying a fine, while undeclared workers will be automatically employed by the employer. The effectiveness of supervision will be enhanced by expanding the powers and increasing the number of inspectors who carry out on-site supervision. At the same, fines for violations will be increased as a deterrent measure. By the end of 2013, amendments to the Labour Inspectorate, with the aim of increasing efficiency and establishing an appropriate legal basis to sanction the most common violations of labour laws and legislation in the field of safety and health at work will be adopted. In

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<sup>71</sup> NRP 2011, pp. 57–58; it could not be ascertained whether the measures were implemented and targets reached as the Portuguese NRPs for 2012 and 2013 are (still) only available in Portuguese on the Commission's website.

<sup>72</sup> NRP 2011, p. 68.

<sup>73</sup> Euro Plus Pact - Implementation Report 2012, p. 6.

<sup>74</sup> NRP 2011, p. 18.

order to prevent abuses in the form of establishing 'shell companies', a new act introduced joint and several liability for the employer/transferor of receivables in cases in which the transferor may sufficiently influence or could influence the business decisions of the acquirer. If the employer transferor is not the majority owner of the acquirer, in other words, he or she cannot influence business decisions of the acquirer, a subsidiary obligation of the transferor is introduced. In addition, the act stipulates that the years of employment with both employers are taken into account regarding all rights associated with years of employment. The act establishes a new legal basis for the extraordinary termination of an employment contract by a worker if an employer has not paid social security contributions for the worker for three consecutive months. In cases in which the employer does not pay a worker's salary or other income, the worker will be able to file an application for enforcement at the competent court, as the act defines a written pay slip as an authentic document. The act provides a worker with the opportunity to enforce the payment of wage compensation at the Health Insurance Institution if the employer is obliged to pay the worker wage compensation for health insurance, but fails to do so.<sup>75</sup>

On 29 April 2011, the **Spanish** Government launched via a Royal Decree an action plan specifically aimed at regularising undeclared employment, combined with an enhanced oversight system. This plan comprised two distinct phases of implementation. First, an initial period for voluntary regularisation (deadline: 31 July) in which employers can register employees who are currently in an irregular situation. A number of measures will be adopted to encourage employers to take this course. The second phase consisted of a much harsher system of penalties for undeclared employment applicable from 1 August 2011. Apart from an advertising campaign to make the plan more effective and raise social awareness about the need to prevent and control this type of labour fraud, the plan envisages institutional strengthening of the Labour and Social Security Inspectorate and increasing the efficacy of its oversight actions in this area, as well as enhancing the Plan for Prevention and Correction of Tax, Labour and Social Security Fraud.<sup>76</sup> In April 2012, the Plan to Combat Irregular Employment and Fraud against the Social Security System 2012–2013 was approved (AGS 1.4.7) to stop practices that represent an attack against the rights of workers, a drain on resources in a system of unemployment protection and Social Security and unfair competition between businesses. As a result of the Plan, a broad range of actions of different kinds have been carried out:

- Organisational and operational changes in the Labour and Social Security Inspectorate to adapt it better to combat fraud.
- Extension of human resources available to combat fraud. Since the approval of the Plan, 121 new officials have joined the Labour and Social Security Inspectorate.
- More intensive inspection campaigns in those sectors where a more extensive underground economy has been detected (for example, in hotels and catering and construction).
- Greater coordination between the Labour Inspectorate and other bodies (the General Treasury of the Social Security System, the Tax Authorities, the State law enforcement agencies and so on).
- Various legal reforms included in Law 13/2012, dated 26 December, to combat irregular employment and fraud against the Social Security system, including those aimed at providing the Labour Inspectorate and the Labour Administration of the Social Security System with more effective technical means for combating fraud.

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<sup>75</sup> NRP 2013, pp. 21–22.

<sup>76</sup> NRP 2011, pp. 19, 20 and 42.

- Changes have also been introduced into the Criminal Code with the aim of making it possible to impose adequate penalties for more serious fraudulent conduct with respect to workers and the Social Security system.

In 2012, the fight against labour and social security fraud had an impact worth around 2.6 billion euros. Some of the more important results may be summed up as follows:

- A total of 91,470 irregular jobs were detected, 12 per cent more than in the previous year. Voluntary registrations in the social security system have increased revenue by 95 million euros.
- A total of 1,559 infringements were detected related to fictitious companies (170 per cent more than in the previous year), which have led to the cancellation of 730 registrations in the social security system by fictitious companies and 44,262 fictitious registrations of workers whose aim was to obtain social security benefits or authorisations to work without being eligible.
- A total of 99,789 people were detected who had not complied with the requirements for receiving unemployment benefit (6 per cent more than in the previous year). The cancellation of benefits in these cases saved 1.53 billion euros and a total of 6,478 infringements by businesses were detected related to unemployment benefits (29 per cent more than in the previous year), in which a job was given to people receiving benefits or who were given access to benefits without meeting the eligibility requirements.

Given the success, the plan will continue until the end of 2013 and the organisational and collaborative measures between institutions will be further strengthened in order to combat fraud.<sup>77</sup>

### **3.3 Fighting the gender pay gap**

As already mentioned, women are among the more vulnerable groups of workers hardest hit by the crisis. Apart from general measures and policies to enhance the labour market participation of women, some Member States, including **Cyprus, France and Spain**, are envisaging, or have already taken, specific measures to overcome the (often longstanding and considerable) pay gap between men and women. Such measures are likely to entail a particular and/or enhanced role for labour inspection services.

In its NRP 2011, **Cyprus** announced it would improve the attractiveness of work, in particular in relation to gender equality. It wanted to reduce the gender pay gap by a broad mix of measures, including specialised training programmes for inspectors, with the purpose of establishing an effective inspection mechanism for the enforcement of equal pay legislation, the establishment of a gender equality certification body, as well as measures for eliminating occupational and sectoral segregation, such as interventions in education issues, campaigns for raising awareness on equal pay, training programmes for trade unions and employer associations, and development of manuals, guides and codes of practice for managers and human resource professionals. The implementation period runs until 2015 and was financed under an ESF Budget of 3,300,000 euros. A quantitative target was set of 1,000 inspections to reduce the gender pay gap to 18 per cent by 2015.

In **France**, a reform of the relevant legislation took place in 2012. To reinforce equality in enterprises, the penal sanctions on professional equality between men and women

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<sup>77</sup> NRP 2013, pp. 50–51.

as laid down in the law of 9 November 2010 regarding pension reforms was amended by a Decree of 19 December 2012. The Decree increases the number of themes that must be addressed in the negotiation of action plans. It makes it obligatory to talk about remuneration and equal pay between men and women. The labour inspectorate was charged with a large national campaign to verify the application of the Decree.<sup>78</sup>

As difficulties in employment and self-employment continue to affect women more severely in **Spain**, the Government already in 2011 announced the need to implement specific policies aimed at increasing the employability of women, including (i) support for the implementation of equality plans and policies in companies, (ii) promoting the presence of women in decision-making and in positions of responsibility and (iii) monitoring by the Labour and Social Security Inspectorate of effective equality between women and men in companies and specific oversight of wage discrimination.<sup>79</sup>

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<sup>78</sup> NRP 2013, pp. 61–62.

<sup>79</sup> NRP 2011, p. 20.

## **Preliminary conclusion**

As demonstrated above, the failure of the almost 400 CSRs adopted over the period 2011–2013 to refer explicitly to health and safety at work or labour inspection services has not prevented Member States from implementing or announcing numerous measures in that regard. This has been done mainly by implementing ‘hidden’ CSRs.

This analysis thus proves – perhaps surprisingly at first sight – that the European Semester process and in particular the CSRs have indeed had a considerable impact in the two researched domains.

Given the fact, first, that Member States will continue as in the past not to mention all reforms in these domains (or even only the ‘rosy’ and ‘sexy’ ones); secondly, that the European Semester process forms part and parcel of the ongoing monitoring of the implementation by Member States of achieving the Europe 2020 targets; and thirdly, that certain of the ‘hidden’ CSRs have been given very high priority over the period 2011–2013 (for example, CSRs in relation to (early) retirement age) or increased attention (for example, the number of CSRs in relation to increasing the labour market participation of older workers increased from 8 CSRs in 2011 to 12 CSRs in 2013) (Clauwaert 2013), it is recommended that the trade union movement in particular remain vigilant and continue to monitor the European Semester process and (implementation of) CSRs in particular.

For instance, the objective of Member States to get more people into work, in particular from vulnerable groups such as women, older workers and disabled workers, poses the question of the possibility of access for these people to existing jobs and the quality of these jobs from a health and safety perspective. Any policy choice by Member States in this regard will probably lead to very different results, depending on the criteria and objectives that underlie these policies. A lot, if not all, will depend on whether the quality of these jobs will be an objective pursued in an explicit way throughout a holistic strategy or whether it will rather be a partial and dispersed element of measures taken in different policy areas. Some of the reforms described above might indeed be described as rather anecdotal or piecemeal (for example, given the rather small financial resources allocated to them – see, for example, Cyprus), whereas others clearly seem to be more systematic or fitting into a larger health and safety at work strategy (for example, all measures taken by Austria to enhance the labour market participation of older workers).

In that sense there might thus be a risk of a perverse effect in the fact that the EU seems to be incapable for the moment to define coordinated objectives in relation to quality of work and rather adheres to other – however worthy – objectives (such as reducing the gender pay gap and enhancing older workers’ labour market participation) which have implications for the quality of work but do not allow us to construe a coherent strategy with regard to quality of work. Furthermore, not all reforms might be considered an improvement or step forward. Even though the underlying objectives of the reform might seem positive, the fact that they are pursued outside or without an overarching strategy might render the reform incoherent or less effective (for example, the measures in Spain to allow temporary agency work now also in relation to dangerous activities).

Vigilance thus remains necessary, certainly now in a period in which the EU, for various reasons, does not seem capable or even willing to establish a new EU Health and Safety Strategy. Arguing that a new strategy or at least parts of it risk being brought in via the backdoor of the European Semester and the CSRs might be too far-reaching (at least for the moment), but there are indications that the EU is clearly slicing up the

salami rather than serving it as a whole. On one hand, neither in the EU 2020 Strategy nor the CSRs is there anything explicit on health and safety (but they do have a hidden impact) and on the other hand, what should one think of the European Commission's 'TOP TEN' Consultation of SMEs on EU Regulations, which aims to identify the EU laws and areas of legislation that they consider most burdensome. Not surprisingly in that top ten there appear several EU health and safety Regulations and Directives (such as the Regulation on REACH, the framework Directive 89/391/EEC and the working time Directive 2003/88). In a recent follow-up report, the European Commission in any case makes a possible opening between this exercise and the European Semester and CSRs. In relation to Directive 2008/104/EC on temporary agency work, with regard to which SMEs consider that Member States have implemented too many administrative requirements, rendering it more difficult or at least less easy for companies to work across borders, the Commission as a policy response *'will consider including recommendations to Member States in the country-specific measures for 2014 if the assessment by the Commission of National Systems identifies specific regulatory aspects as obstacles to growth and competitiveness'* (European Commission 2013).

Even more, particularly as 'prevention' (compared to curative approaches) is or should be key in the elaboration of any general or particular health and safety policy, the European and national trade union movement should indeed – as called for already on several occasions – be better and more (timely) involved at both European and national level in the elaboration, monitoring and implementation of these CSRs in order to prevent further or future (collateral) damage in the field of health and safety at work, which has been and should remain of pivotal importance in (EU) social policy. This call of course goes hand in hand with the call to urgently re-launch, at EU level, a coordinated policy for improving the quality of work, which seems to be a condition sine qua non for a coherent long-term policy in relation to the other objectives described in the CSRs. As remarked by Gérard Dantin, member of the EESC, at a recent ETUI conference, 'in times of crisis, many human rights can be threatened, but health and safety is a fundamental right and is not a luxury we can do without'. This underlines the words of Laurent Vogel, former Director of the ETUI's Working Conditions, Health and Safety Department, that *'not adopting a strategy would be tantamount to announcing that health and safety are a superfluous luxury'* (ETUI 2013).

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