

EVERSHEDS SUTHERLAND



Avoiding disruption

European guide to strikes
and other industrial action

This European guide to strikes and other industrial action has been created to provide you with a quick and easy reference when responding to threats of industrial action in 15 European countries.

Avoiding disruption

European guide to strikes and other industrial action

Introduction

Industrial action taken by workers against employers has always had the potential for severe disruption. However, employers need to be aware of new and emerging trends in industrial action (“IA”) which have already taken some employers by surprise, including:

- disputes involving international, not just national, issues
- trade unions and workers collaborating across borders, including cross-border secondary (solidarity) action
- unwelcome, and sometimes unexpected, shifts in the law regulating IA – reflecting the creeping influence of regional and international treaty obligations on national laws (see “recent developments” on page six)

In the current economic climate, IA is a key reputational and economic risk for many employers and typically demands a rapid response. This guide is for senior HR professionals and in-house lawyers with

pan-European labour law responsibilities and aims to provide a quick and easy reference when responding to threats of IA in 15 European countries.

The guide:

- summarises recent national and international developments in IA law
- provides a comparative overview, by country, of how IA is regulated in different European countries.
- summarises their key similarities and differences
- considers how employers can respond, including legal interventions and the right to reduce the pay of those involved in IA

Avoiding disruption

European guide to strikes and other industrial action

This guide is prepared by Eversheds Sutherland's specialist labour law team who have a strong track record of advising clients on global labour law. Our continuous exposure to national and international industrial relations issues gives us a knowledge of strategy and tactical options which we deploy for the benefit of our clients. The close working relationships we have across our global network of offices ensure a streamlined cross-jurisdictional service which draws on exceptional local legal knowledge.

If you have any questions, or need specific advice, please do not hesitate to contact me or the lawyers listed in this guide. Please note that this guide is a summary only and should not be regarded as a substitute for taking legal advice.



Martin Warren

Head of Labour Relations

+44 20 7919 4745

martinwarren@eversheds

-sutherland.com

Avoiding disruption

European guide to strikes and other industrial action

Contents

Recent national and international developments in industrial action law 6

Law and practice: key differences continue to exist between countries 8

Country guide to industrial action law and practice:

 AUSTRIA	10
 BELGIUM	12
 CZECH REPUBLIC	14
 DENMARK	16
 FRANCE	18
 GERMANY	20
 HUNGARY	22
 IRELAND	24
 ITALY	26
 NETHERLANDS	28
 POLAND	30
 ROMANIA	32
 SPAIN	34
 SWITZERLAND	36
 UNITED KINGDOM	38

Avoiding disruption

European guide to strikes and other industrial action

Recent national and international developments in industrial action law

The right of trade unions and workers to take IA has historically been regulated by the law and practice of each individual country. For example, in the UK a combination of trade union, tort and criminal legislation and case law sets the boundaries for lawful and unlawful IA.

However, over recent years the growing number and influence of regional and international IA legal standards, for example, deriving from European Union law and the European Convention on Human Rights, has forced changes to some national laws to bring about compliance. In addition, new rights and obligations have been defined by the courts in relation to European cross-border IA.

Example 1: The changing face of national industrial action laws

In the Netherlands the right to take IA is governed by the European Social Charter, The EU Charter of Fundamental Rights as well as ILO (International Labour

Organisation) commitments and national case law and tort doctrines. Dutch national strike legislation as such is non-existent. It is notable that both Charters are relatively new arrivals, while ILO Conventions have only recently started to exert influence reflecting their increasing relevance in an era of globalisation.

Example 2: Developments relating to cross-border industrial action and the law

The 2007 Viking EU Court of Justice judgment decided that, while the right to take IA was a fundamental EU right, if it breached another EU fundamental freedom (such as freedom of establishment), it would be unlawful unless justified and proportionate. The ripples caused by this decision are still being felt with critics arguing that it places social rights secondary to business and economic rights.

Avoiding disruption

European guide to strikes and other industrial action

The right to strike in each country is impacted by regional and international law



* ILO: International Labour Organisation

Conclusion

The Dutch and Viking examples illustrate how IA law is developing and becoming more complex, requiring expertise in relation to national and international laws. This trend is set to continue as trade unions seek to reverse the impact of Viking as well as harness European Convention and ILO obligations to liberalise national IA laws.

At the same time, the EU begins accession to the European Convention of Human Rights, with the potential for tensions between a human rights led approach to IA (the Convention) and one which also champions free trade and economic freedoms (the EU).

Avoiding disruption

European guide to strikes and other industrial action

Law and practice: key differences continue to exist between countries

Unlike some areas of employment law, membership of the EU has not resulted in a degree of harmonisation in the regulation of IA. This is because, although the EU recognises the fundamental right to strike, introducing legislation prescribing how and when the right is exercised is outside the EU's legal competence. As a result, there are considerable differences between European countries and their regulation of IA, reflecting the mixture of legal systems and social policy heritage.

In all 15 countries, IA is permitted: because there is an express right to strike, or, in the absence of an express right, a freedom to strike. Of more interest to employers is how the right to take IA is restricted, for example, whether advance warning must be given, whether peace-keeping (no strike) obligations apply and how employers can respond to the threat of action. These issues are considered, by country, in this guide. A summary comparison, considering some key themes, is set out on the following page.



Avoiding disruption

European guide to strikes and other industrial action

A summary comparison of industrial action (IA) across 15 European countries

SIMILARITIES	DIFFERENCES
Wages are ordinarily reduced for workers engaged in IA	What is lawful IA varies: in some countries only a work stoppage is lawful and go-slows, overtime bans and similar actions are not permitted
Some form of secondary/solidarity action is permitted in most countries	Who can take IA differs: it may be the exclusive right of unions or a combination of unions/workers/others
There is a ban on temporary agency workers backfilling workers engaged in IA in nearly all countries	Some countries prescribe narrower grounds for taking lawful IA, such as pay, benefits and conditions, while others permit IA on more general grounds, such as the economic and social interests of workers, and allow political strikes
Workers engaged in lawful IA are protected from dismissal and other retaliation	Some countries operate a peace-keeping (no strike) obligation over the terms of a collective agreement while it remains in force
Many, but not all countries, exclude some workers from the right to take IA on national interest grounds, including some workers in public or essential services	Conditions before taking lawful IA, including advance notice and holding elections to test the support of workers, vary with some countries not requiring any advance notice and not setting other pre-conditions
	The role of alternative dispute resolution differs, including whether it is mandatory
	Each country has a different approach to when/whether a court may stop unlawful IA: many provide for the possibility of a court order to stop unlawful action, however, in some countries litigation is rare
	The effect of IA on the worker's contract of employment differs. In many countries IA suspends the contract, in some, it is a breach of contract

Avoiding disruption

European guide to strikes and other industrial action



AUSTRIA

The legal status of industrial action – a summary

- there is no constitutional or federal right to take industrial action (IA) in Austria and no established case law clearly setting out general rules for taking IA
- IA is very rare in Austria. When it happens, it involves typically a cessation of work and can be about a range of issues, including disputes over pay, business closures and transfers and changes to collective agreements
- IA is generally organised by the Austrian Trade Union Federation, with its constituent trade unions focussing instead on negotiating and concluding collective agreements
- there is no peace-keeping obligation in Austria in relation to collective agreements

Pre-conditions before industrial action is taken

- there are no pre-conditions, such as a requirement for advance warning, before taking IA

Employer response – legal interventions and stopping workers' pay

- given the absence of legislation regulating IA, an employer facing threatened or actual IA has limited legal options. In theory, remedies could be sought in contract and tort law, including an interim injunction and damages. The few court cases initiated have all been settled. In practice, the overwhelming majority of disputes are not litigated but are settled, for example, following negotiations involving the Austrian Chamber of Commerce, employers, trade unions or works councils. Given the absence of case law it is, however, worth noting that academics in Austria argue that the right to strike in Article 28 of the Charter of Fundamental Rights of the

Avoiding disruption

European guide to strikes and other industrial action

European Union does not allow the employer to dismiss the employee during IA

- an employer is not required to pay employees taking IA. Instead, the trade union will usually pay their wages

The use of temporary agency workers

- temporary agency workers are not permitted to cover workers engaged in IA

The risk of sympathy (solidarity) action

- in the absence of laws on IA, it is unclear whether sympathy or solidarity action is lawful in Austria. In practice, it rarely happens

For more information on industrial action procedures in Austria please contact:

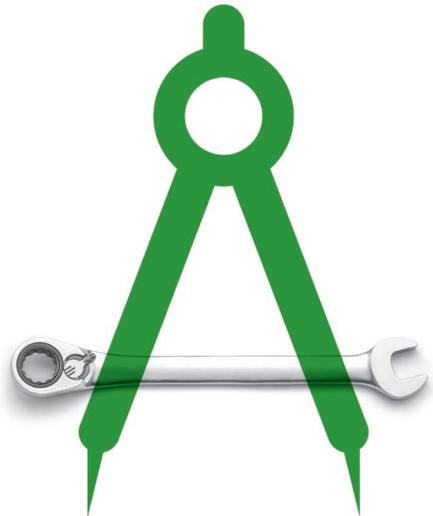


Silva Palzer

Partner

+43 (0)1 516 20 125

s.palzer@eversheds-sutherland.at



Avoiding disruption

European guide to strikes and other industrial action



BELGIUM

The legal status of industrial action – a summary

- industrial action (IA) is not clearly regulated in Belgium given the absence of statute law governing the right to strike. However, the European Social Charter is a binding source of Belgian law (the Charter contains a right to strike and some lower courts have made reference to this right) and case law from the courts on IA provides some guidance on what is or is not lawful
- given the absence of statutory regulation, the purpose and type of IA is potentially unlimited, providing there is no breach of general laws such as criminal, tort or European free trade laws. As such, IA may include a cessation of work, overtime bans, go-slows and more and may be about a range of issues

- there is no general peace obligation which stops trade unions taking IA over the terms of a collective bargaining agreement (CBA) while it remains in force. Therefore, IA during the term of a CBA is permitted

Pre-conditions before industrial action is taken

- there are no statutory pre-conditions before taking IA, such as a requirement for advance warning, although some CBAs do provide for advance warnings as well as for mandatory mediation between the parties

Avoiding disruption

European guide to strikes and other industrial action

Employer response – legal interventions and stopping workers' pay

- an employer can stop or deter IA on legal grounds by seeking an injunction where the IA involves "voie de faits": these are assaults such as nuisance, conspiracy and harassment. In assessing whether the IA is lawful, a court will apply the EU test of proportionality (the IA must not go beyond what is necessary, and is suitable to achieve a legitimate objective)
- the employer can stop paying employees for the duration of their IA, regardless of whether the IA is lawful or not

The use of temporary agency workers

- temporary agency workers are not permitted to cover workers engaged in IA

The risk of sympathy (solidarity) action

- in the absence of statutory regulation of IA, sympathy or solidarity action is permitted providing it does not involve the aforementioned "voie de faits"

For more information on industrial action procedures in Belgium please contact:



Stefan Corbanie

Partner

+32 27 37 93 51

stefancorbanie@eversheds-
sutherland.be

Avoiding disruption

European guide to strikes and other industrial action



CZECH REPUBLIC

The legal status of industrial action – a summary

- industrial action (IA) is a constitutionally guaranteed right
- there are two types of IA: a partial or full interruption of work relating to a collective bargaining agreement (CBA) dispute; other IA not involving a CBA which relates to the economic and social interests (ESI) of the employees
- CBA-related IA is regulated by the Collective Bargaining Act (Act), can only involve disputes over negotiating and agreeing a CBA and is organised by trade unions. IA can be commenced during the term of a CBA in relation to negotiations over concluding a subsequent CBA

- ESI-related IA is not regulated by legislation, although some case law guidance exists. It may include a wider form of action beyond an interruption of work, for example, workplace occupations and blockades, and may be organised by workers, as well as trade unions

Pre-conditions before industrial action is taken

- before CBA-related IA can commence, at least half of all employees covered by the proposed CBA must vote in a strike ballot with at least two-thirds voting in favour of IA. The trade union must notify the employer in writing at least three days in advance stating: the time the action will start, the reason and objectives, the number of employees involved and the list of affected workplaces

Avoiding disruption

European guide to strikes and other industrial action

- there is no formal advance notice procedure for ESI-related IA. However, reasonable advance notice should be given

Employer response – legal interventions and stopping workers' pay

- an employer may seek a declaration that CBA-related IA is unlawful, for example, where there is a failure to serve the required notice or another breach of the Act's conditions
- with ESI-related IA, an employer may seek a court declaration of unlawful conduct where the IA involves a breach of the law, for example, damage to property or where the purpose of the IA is personal and is unrelated to the economic or social interests of the employees
- employees are not entitled to be paid their salary during either forms of IA

The use of temporary agency workers

- temporary agency workers are not permitted to cover workers engaged in either forms of IA

The risk of sympathy (solidarity) action

- sympathy or solidarity IA is permitted and is expressly regulated in relation to CBA-related IA

For more information on industrial action procedures in the Czech Republic please contact:



Radek Matous

+420 255 706 500

radek.matous@dhplegal.com

Avoiding disruption

European guide to strikes and other industrial action



DENMARK

The legal status of industrial action – a summary

- Denmark has a peace-keeping rule during the period of a collective bargaining agreement (CBA). Industrial action (IA) to gain improvements to the CBA during its term is unlawful
- in general, IA is only lawful where there is no CBA covering a specific area of work, or it is in relation to the renewal of a CBA or to the terms of “new work” (work not covered by the CBA) occurring in a CBA period
- IA includes collective steps taken with the aim of putting pressure on another party, for example, not working, a work to rule, overtime bans, go-slows and workplace occupations, lock-outs or boycotts
- workers acting collectively and trade unions can organise IA

- employees with civil servant status, for example, in the judiciary, police and defence, are not permitted as a general rule to participate in IA

Pre-conditions before industrial action is taken

- lawful IA requires certain procedural steps to be taken in advance. It must have the qualified majority approval of a competent assembly, for example, the trade union’s executive committee, and warning notices must be served. Depending on the CBA, this may typically involve two advance notices, for example, fourteen days and seven days prior to the IA. In the public sector, the general rule is one month’s advance notice

Avoiding disruption

European guide to strikes and other industrial action

Employer response – legal interventions and stopping workers' pay

- lawful IA must pursue a fair and legal aim and it must be proportionate to achieve the justified aim. The union or association involved in the IA must have the necessary and sufficient legal, fair and reasonable interest in obtaining a CBA
- where IA is unlawful, and there is a resulting breach of a CBA, the Labour Court may impose a financial penalty (currently DKK 35/40 per hour for unskilled/skilled workers) and instruct employees to stop the IA. If the IA continues, the penalty increases to DKK 65/70 per hour
- illegal IA involving boycotts, occupations, violence etc. risks breaching criminal laws and involving the police
- employees are not entitled to their salary during unlawful IA

The use of temporary workers

- temporary workers are not permitted to cover workers engaged in lawful IA, but are permitted if the action is unlawful

The risk of sympathy (solidarity) action

- solidarity or sympathy action is permitted in certain circumstances and is regularly used in Denmark, resulting in the high take up of CBAs by employers

For more information on industrial action procedures in Denmark please contact:



Anne Marie Abrahamson

+45 2154 9010

ama@lundgrens.dk

Avoiding disruption

European guide to strikes and other industrial action



FRANCE

The legal status of industrial action – a summary

- the description which follows applies to the private sector in France
- France recognises the right to take industrial action (IA) in both the Constitution and the Labour Code and case law has defined it as a collective and concerted stoppage of work, involving two or more employees from one or more employers aimed at supporting work related claims.
- the following are lawful forms of IA: total cessation of work for any period of time, a workplace occupation not involving a blockade and a rotating strike (consecutively involving, for example, different categories of employees)
- the following are unlawful forms of IA: go-slows, selective non-performance of duties under the employment contract, intentionally performing defective work,

blockades, overtime bans and workplace occupations if they obstruct the continued operation of the employer's business by non-striking employees

- workers or trade unions can organise IA but in practice IA is organised typically by trade unions. IA may be taken against a single employer or the French government

Pre-conditions before industrial action is taken

- there are no pre-conditions to be satisfied before taking IA in the private sector. The only requirement is for the employer to be informed of the reasons for the action when it commences

Employer response – legal interventions and stopping workers' pay

- an employer can seek an injunction to halt unlawful IA by applying to the courts, for example, where the IA does not meet

Avoiding disruption

European guide to strikes and other industrial action

the definition outlined above or on the grounds of unlawful action taken by the striking workers including violence, threats to property or a blockade which closes the workplace

- no remuneration or other benefits are payable by the employer for the duration of the IA

The use of temporary agency workers

- temporary agency workers are not permitted to cover workers engaged in IA

The risk of sympathy (solidarity) action

- sympathy or solidarity action is permitted on the same grounds as for other IA. It is common in certain sectors; employees in a sector take IA to pressurise other same-sector employers or a single employer in the sector

For more information on industrial action procedures in France please contact:



Philippe Despres

Partner

+33 (0) 15 57 34 06 4

philippedespres@eversheds-sutherland.com



Avoiding disruption

European guide to strikes and other industrial action



GERMANY

The legal status of industrial action – a summary

- there is a constitutional right to take industrial action (IA) in Germany, however, what amounts to IA is not clearly defined in law. A recent change in the law has complicated the right of smaller trade unions to take IA
- IA involves typically a cessation of work by trade union members. Alternative IA, such as blockades, workplace occupations, overtime bans and go-slows, is potentially unlawful as a breach of contract or for other reasons
- most IA involves disputes about terms and conditions of employment or of a social plan (during a closure, redundancies etc). IA is also used to pressure an employer to engage in a collective bargaining agreement (CBA) directly or by joining an employers' association. It may be directed against a single employer, or more usually, against the members of an employers' association
- there is a general peace obligation, without the need for an express peace clause, which prevents a trade union taking IA over the terms of the CBA while it remains in force
- employers or an employers' association may additionally choose to enter an express peace-keeping agreement with a trade union, for example, in respect of any issues not covered by a CBA or by making it clear that the CBA covers the whole relationship between the parties. However, this is extremely rare

Pre-conditions before industrial action is taken

- before taking unlimited strike action, the majority of trade union members must formally give their support in an election and the employer must be informed approximately one week in advance. This condition does not apply to more limited strike action. Wildcat strikes not organised by trade unions are illegal (although a union may adopt a wildcat

Avoiding disruption

European guide to strikes and other industrial action

strike if it subsequently organises the necessary ballot)

Employer response – legal interventions and stopping workers' pay

- an employer or employers' association may apply for an injunction to stop unlawful IA. For example, IA during peace-keeping periods or where the aim of the IA is unlawful
- an employer is entitled to stop salary payments during lawful or unlawful IA. Instead, those participating in IA are usually paid by their trade unions

The use of temporary agency workers

- from April 2017, the law prohibits the use of temporary agency workers as strike breakers

The risk of sympathy (solidarity) action

- sympathy or solidarity action is permitted

For more information on industrial action procedures in Germany please contact:



Bernd Pirpamer

Partner

+49 89 54 56 51 19

berndpirpamer@eversheds-
sutherland.com

Avoiding disruption

European guide to strikes and other industrial action



HUNGARY

The legal status of industrial action – a summary

- legislation contains general rules on the right to take industrial action (IA)
- IA may involve a range of collective action including a complete cessation of work, go-slows, overtime bans, workplace occupations, blockades and more and must entail issues relevant to the economic and social interests of the workers
- a peace obligation exists for the duration of a collective agreement so that no IA can take place over the terms of the agreement
- workers, trade unions and other worker representative bodies may organise IA and it is usually taken against employers, as opposed to employers' associations

Pre-conditions before industrial action is taken

- before taking IA, the workers or their representatives must have initiated a conciliation procedure and the procedure must have failed to resolve the dispute after seven days

Employer response – legal interventions and stopping workers' pay

- where an employer believes the IA is unlawful, it can ask a Court to determine the issue. A decision is generally available within five working days of a hearing involving the parties
- IA will be unlawful if it fails to comply with the provisions of the IA legislation or Hungarian fundamental law, or if it concerns specific issues which are within the competence of the courts to decide. It will also be unlawful if the IA is over the terms of a collective agreement while the agreement remains in force

Avoiding disruption

European guide to strikes and other industrial action

- there are further restrictions on IA, for example, in the armed forces, where the IA would seriously endanger human life and health and where the employer performs essential public services, such as the energy and water utilities and the provision of public transport
- no employee remuneration or other benefits are payable for the working hours lost due to IA unless otherwise agreed – whether the IA is lawful or not

The use of temporary agency workers

- temporary agency workers are not permitted to cover workers engaged in IA

The risk of sympathy (solidarity) action

- sympathy or solidarity action is lawful in Hungary. It can only be initiated by trade unions and the requirement for mandatory conciliation, outlined above, is not applicable

For more information on industrial action procedures in Hungary please contact:



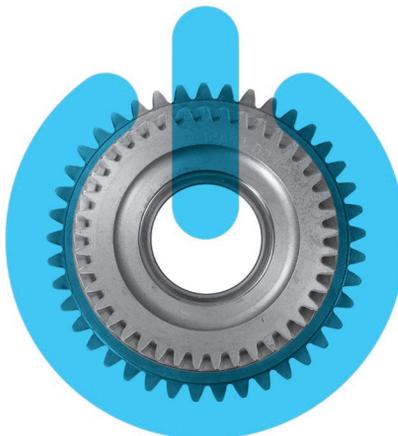
Dr Ágnes Szent-Ivány

Managing Partner

+36 13 94 31 21

szent-ivany@eversheds-

sutherland.hu



Avoiding disruption

European guide to strikes and other industrial action



IRELAND

The legal status of industrial action – a summary

- there is no positive right in Irish law for employees to organise or participate in industrial action (IA). However, legislation grants workers and their trade union legal immunity when they engage in IA in contemplation or furtherance of a trade dispute. A trade dispute concerns employment, non-employment or terms and conditions of employment of any person
- IA is concerted action aimed at pressuring the employer in relation to terms and conditions of employment and includes peaceful picketing, overtime bans, not working, go-slows and secondary picketing
- lawful IA can only be organised by authorised trade unions and is usually taken against a single employer
- where an employer and trade union have agreed a collective bargaining agreement

which is incorporated into employees' contracts of employment, there is usually a provision in the agreement requiring certain steps to be taken before any IA is commenced. Once such procedures are complied with, there is generally no peace obligation which stops unions taking IA over the terms of that collective agreement while it remains in force

Pre-conditions before industrial action is taken

- before taking IA, a majority of trade union members involved must vote in favour in a secret ballot and the employer must be given not less than one week's notice of the intention to take IA

Employer response – legal interventions and stopping workers' pay

- an employer may apply for an injunction to stop IA, however, it is difficult and costly. The grounds for a successful

Avoiding disruption

European guide to strikes and other industrial action

application are limited and include where:

- there is a failure to comply with the ballot and notice conditions
 - the IA is not in contemplation or furtherance of a trade dispute
 - there is a breach of the statutory picketing and secondary picketing provisions, or
 - the IA is not peaceful, for example, it involves unlawfully entering property, causing damage or causing injury or death
- deduction from wages are possible when employees are engaged in IA

The use of temporary agency workers

- there is currently no statutory prohibition from using agency workers to cover workers engaged in IA. In practice, picketing and negative publicity mean that this option is not attractive to employers

The risk of sympathy (solidarity) action

- sympathy or solidarity action is permitted in accordance with the statutory rules on secondary picketing, in particular, with the condition that it is reasonable to believe that the secondary employer has directly assisted the employer who is a party to the trade dispute, for the purpose of frustrating the IA

For more information on industrial action procedures in Ireland please contact:



Joanne Hyde

*Partner & Head of
Employment Law Unit*

+35 31 66 44 25 2

joannehyde@eversheds-
sutherland.ie

Avoiding disruption

European guide to strikes and other industrial action



ITALY

The legal status of industrial action – a summary

- the Italian Constitution and associated legislation recognise an entitlement to take industrial action (IA) and provide guiding principles
- IA is defined as a right for employees and trade unions to protest against employer decisions they regard as detrimental to workers' rights, such as redundancies, outsourcing and disputes over collective bargaining agreements (CBAs)
- typically, IA involves a cessation of work. While an overtime ban is considered to be a lawful form of IA, other forms are unlawful including go-slows, workplace occupations and blockades
- IA can be organised by workers, trade unions or works councils and may be taken against an employer or employers' association

- there is no peace-keeping obligation in Italy in relation to CBAs

Pre-conditions before industrial action is taken

- there are no advance warning or other pre-conditions before workers can take IA, with the exception of IA in essential public services which generally involves public sector employers

Employer response – legal interventions and stopping workers' pay

- as IA is a Constitutional entitlement, there are limited grounds for an employer to take legal action to stop it; for example, where the IA involves criminality or it damages the employer's assets. In practice, employers will instead focus on seeking to negotiate a resolution to the dispute

Avoiding disruption

European guide to strikes and other industrial action

- an employer may stop paying employees for the duration of their IA

The use of temporary agency workers

- temporary agency workers are not permitted to cover workers engaged in IA

The risk of sympathy (solidarity) action

- sympathy or solidarity action is permitted although is less common than in previous years

For more information on industrial action procedures in Italy please contact:



Marcello Floris

Partner

+39 02 892 871

marcellofloris@eversheds-sutherland.it



Valentina Pomares

Partner

+39 02 892 871

valentinapomares@eversheds-sutherland.it

Avoiding disruption

European guide to strikes and other industrial action



NETHERLANDS

The legal status of industrial action – a summary

- the right to take industrial action (IA) is derived from the European Social Charter which has direct effect in Dutch law
- IA includes a collective work stoppage, or other collective failure to carry out normal work duties, and may involve a range of actions such as go-slows, sit-ins and blockades
- IA is typically either 'organised' or 'wild'. Organised IA is planned and announced by the trade unions, whereas wild IA is initiated by workers, is unplanned, often unlawful and may not be supported by the unions, at least not initially. In practice, wild IA is often adopted at a later stage by employee organisations and becomes organised. Where this happens, the following legal conditions will apply

Pre-conditions before industrial action is taken

- there are two principle conditions for lawful IA: the collective action must meet the requirement of proportionality and it must comply with the generally accepted rules of procedure. These two conditions have four sub-conditions:
 - reasonable advance notice of IA must be given to the employer. There are no statutory conditions attached to the content of the notice. Typically, it defines the nature, location and timing of the IA
 - there must be a dispute between the employer(s) and the employees and/or employees' organisation(s) that cannot be solved by collective bargaining and/or legal proceedings

Avoiding disruption

European guide to strikes and other industrial action

- IA must be proportionate. Different interests, including third parties, have to be balanced with the reasonableness of the IA's purpose and its consequences
- any peace obligation must not be breached. For example, a collective bargaining agreement may provide for no IA during the term of the agreement
- in the case of an organised strike, an employer is entitled to stop salary payments during IA (whether lawful or not), potentially including the pay of non-strikers who are prevented from working by the IA

The use of temporary agency workers

- it is unlawful to use temporary agency workers to cover workers engaged in IA

Employer response – legal interventions and stopping workers' pay

- an employer can apply to a court to stop IA and/or declare it unlawful. If the IA breaches one of the previously mentioned conditions the court may find it unlawful, however, in practice the courts are reluctant to do so
- damages are not available to the employer where the IA is directed at the business itself, for example, because of a decision by the employer. They are potentially available if the IA is directed against a third party, such as the government, provided certain criteria are met

The risk of sympathy (solidarity) action

- sympathy or solidarity action is only permitted on narrow grounds; where the purpose of the IA is to ensure the effective exercise of the right to collective bargaining. Dutch courts tend not to favour sympathy action and often declare it unlawful

For more information on industrial action procedures in the Netherlands please contact:



Ingrid van Berkel

Managing Partner

+31 10 24 88 046

ingridvanberkel@eversheds-sutherland.nl

Avoiding disruption

European guide to strikes and other industrial action



POLAND

The legal status of industrial action – a summary

- the right to take industrial action (IA) is regulated under Polish law
- IA may involve a wide range of actions, including cessation of work, go-slows, workplace occupations and demonstrations. However, lawful IA may only be about certain issues such as pay, benefits, work conditions and freedom of association
- IA may only be organised by trade unions and is generally taken against single employers, not employers' associations. Even if there is no trade union at a workplace, employees can seek assistance from an outside trade union

Pre-conditions before industrial action is taken

- at least five days' notice must be given, setting out the trade union's demands, before IA can take place and, except in limited circumstances, it must be preceded by negotiations and mediation between the parties. In addition, IA must have the support of a majority of employees in a ballot, with a minimum 50 per cent turnout. No ballot is needed for more limited two hour warning strikes, which may take place where the prospects for agreement are low
- IA is not permitted to limit the managing director and non-striking employees from performing their duties and it must not threaten workplace property or operations in such a way as to endanger human life and health or public security

Avoiding disruption

European guide to strikes and other industrial action

Employer response – legal interventions and stopping workers' pay

- there are very limited occasions where an employer can take legal action to stop IA. In particular, IA can be declared unlawful by a court where it is for a reason not permitted under Polish law, it creates a danger to the public or it is disproportionate to the issues involved
- an employer can seek redress from those organising IA, including where the pre-conditions described previously are not met, and striking workers can be held liable for unlawful damage
- an employer is not required to pay employees taking IA

The use of temporary agency workers

- temporary agency workers are not permitted to cover workers engaged in IA

The risk of sympathy (solidarity) action

- sympathy or solidarity action not exceeding half a day is permitted to support those sectors where IA is limited by law, for example, the police and military

For more information on industrial action procedures in Poland please contact:



Ewa Lachowska-Brol

Partner

+48 22 50 50 797

ewa.lachowska-brol@eversheds-sutherland.pl

Avoiding disruption

European guide to strikes and other industrial action



ROMANIA

The legal status of industrial action – a summary

- the right to strike is guaranteed under the Romanian Constitution for the purpose of protecting employees' professional, economic and social interests. However, the decision to take industrial action (IA) may only be taken during a declared collective labour conflict
- such a conflict arises only in the context of collective bargaining agreement (CBA) disputes; typically over the initiation, conduct and conclusion of collective bargaining. Conflicts relating to how aspects of the CBA, once negotiated, apply in practice and whether, for example, the employer observes its provisions, are considered individual labour conflicts and subject to different regulation
- IA (in the restricted CBA context) involves a cessation of work and it generally takes the form of a warning strike, regular strike and solidarity strike
- employees, through their representatives or trade unions, may organise IA and it may be taken against a single employer or employers' associations

Pre-conditions before industrial action is taken

- regulation sets down a sequence of steps before IA may be taken; the union or employees' representatives must first notify the employer in writing setting out the claim, arguments and proposals for settlement; the employer/employers' association must respond within two working days; if there is no response, or a consensus is not reached, IA may be called and the Labour Inspectorate or the Ministry of Labour (depending on the dispute) notified
- before calling for IA, the parties must exhaust the alternative dispute settlement/conciliation procedures provided by law. Mediation and arbitration may also optionally be used by

Avoiding disruption

European guide to strikes and other industrial action

the parties and is mandatory if the parties previously committed to so doing

- any decision to go on strike has to be taken by at least half of the trade union members or, if no trade union exists, by a quarter of the employees, and a warning strike lasting no longer than two hours must take place two days before a regular, longer strike

Employer response – legal interventions and stopping workers' pay

- an employer may apply for an emergency decision of the court to stop unlawful IA and, if successful, may apply for damages against the participants and the organisers of the strike. An administrative fine may also be imposed on those obstructing the employer and non-striking workers from continued operation
- an employer is not required to pay employees taking IA. The employment relationship is suspended by law during IA, except for health insurance rights
- some public service employees are banned from striking and in certain essential sectors, such as health, transport and energy, a minimum service level must be maintained during a strike.

Other restrictions exist, for example, to protect the employer's property and to guard against endangering life where continuous operations are interrupted

The use of temporary agency workers

- temporary agency workers are not permitted to cover workers engaged in IA

The risk of sympathy (solidarity) action

- sympathy or solidarity action can only be organised by trade unions and is permitted subject to certain conditions relating to duration, notice and a close connection between the workers/trade unions involved

For more information on industrial action procedures in Romania please contact:



Mihai Guia

Managing Partner

+40 21 31 12 56 1

mihaiquia@eversheds-sutherland.ro

Avoiding disruption

European guide to strikes and other industrial action



SPAIN

The legal status of industrial action – a summary

- industrial action (IA) is defined as a collective dispute concerning collective rights or interests of a group of employees, taken as a whole
- IA can be about a broad range of issues and may be organised by trade unions, employees and works councils
- it involves typically a work stoppage, with alternative forms of IA, such as blockades or go-slows. Workplace occupations or sit-ins are generally unlawful in Spain
- the right to take IA can be waived on a temporary basis by trade unions and other employee representatives in collective bargaining agreements (CBAs) for the duration of the agreement. However, employees cannot individually waive their right to strike and such restrictions are void
- case law has decided that the right to strike extends beyond employees to

contractors in situations where the hirer (of the contractor) seeks to replace striking contractors. Such action may breach the contractors' right to strike, even though the hirer may have no control over the subject matter of the IA

Pre-conditions before industrial action is taken

- before taking IA, five days' advance notice must be given in writing (ten days for essential services) to the employer and the Labour Authority. A committee must also be appointed to represent the employees taking the IA with the aim of negotiating a resolution with the employer. A CBA may also provide for additional IA conditions, for example, compulsory mediation before any IA

Employer response – legal interventions and stopping workers' pay

- an employer may seek a declaratory judgment if it believes the IA is unlawful, for example, due to a failure to give

Avoiding disruption

European guide to strikes and other industrial action

notice, or, due to the type of action (work to rule, rotational strike, go-slow etc) or the reason for the action (political or sympathy grounds etc). However, in practice success is rare for employers and any judgment, coming some weeks after the IA, may be too late

- the employer does not have to pay wages or social security contributions for the duration of the IA. The contract of employment is considered suspended for the duration of the IA period

The use of temporary agency workers

- temporary agency workers, as well as new or existing employees, are not permitted to cover workers engaged in IA and their work cannot be sub-contracted. Some employees can be required to work during IA for safety purposes and to maintain machinery and tools

The risk of sympathy (solidarity) action

- political and sympathy strikes are unlawful, however, this is interpreted narrowly against employers such that, for example, a general strike against a proposed new law is considered lawful

For more information on industrial action procedures in Spain please contact:

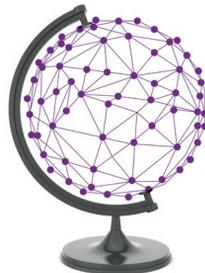


Jacobo Martinez

Partner

+34 91 42 94 33 3

jmartinez@evershedsnicea-sutherland.com



Avoiding disruption

European guide to strikes and other industrial action



SWITZERLAND

The legal status of industrial action – a summary

- industrial action (IA) is recognised in Switzerland and is defined by case law as a collective refusal to perform work in order to attain certain working conditions
- it involves primarily a cessation of work, however, other forms of IA may be lawful, including blockades and workplace occupations providing they do not breach any fiduciary duties owed by the employees
- only trade unions can organise IA, it is usually taken against a single employer (as opposed to employer associations) and may only involve disputes over collective bargaining agreements (CBAs), providing the right to take IA has not been excluded in the CBA

Pre-conditions before industrial action is taken

- before taking IA, the trade union must comply with any warning or other pre-conditions provided for in the CBA. Typically, CBAs will contain a requirement to ballot the members of the trade union in advance
- in addition, lawful IA must be proportionate and, to meet this requirement, trade unions are expected to warn the employer before taking any action

Employer response – legal interventions and stopping workers' pay

- an employer may apply to a court on the grounds that the IA is in breach of the terms of the CBA. Where the IA is in breach, the employer may dismiss participating employees

Avoiding disruption

European guide to strikes and other industrial action

- an employer is not required to pay employees taking lawful IA and the contract is suspended for the duration

The use of temporary agency workers

- temporary agency workers are permitted to cover workers engaged in IA

The risk of sympathy (solidarity) action

- sympathy or solidarity action is not generally permitted

For more information on industrial action procedures in Switzerland please contact:

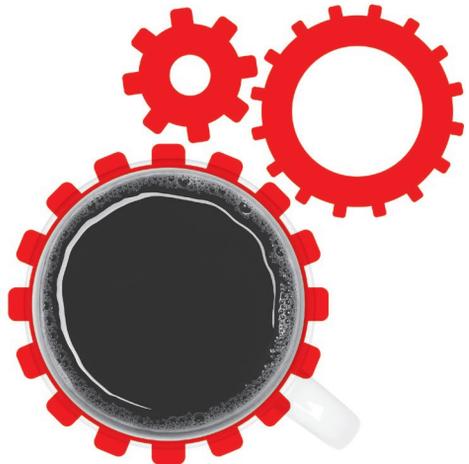


Monika McQuillen

Partner Mediator SBA

+41 44 204 90 90

monika.mcquillen@eversheds-sutherland.ch



Avoiding disruption

European guide to strikes and other industrial action



UNITED KINGDOM

The legal status of industrial action – a summary

- there is no positive right in UK law for employees to organise or participate in industrial action (IA). However, legislation grants workers certain protections and their trade union legal immunity when they engage in IA, if they have complied with certain prescribed conditions. In such circumstances, the IA will be lawful
- most cases of employees acting together to breach their contracts of employment or interfere with their employer's business amount to IA. This can range from a complete failure to work (strike) to a 'work-to-rule', a ban on certain types of work such as overtime or a withdrawal of co-operation
- lawful IA is almost always organised by independent trade unions and is typically taken against a single employer, but it is possible for several employers involved in the same dispute to be affected by concerted IA
- there is generally no peace obligation which prevents the taking of IA over the terms of a collective agreement while it remains in force
- collective agreements containing obligations on employers and trade unions to take disputes to mediation or arbitration before IA commences are usually unenforceable

Pre-conditions before industrial action is taken

- lawful IA must be taken in contemplation or furtherance of a trade dispute. A trade dispute must be between the worker and his/her employer and relate to certain topics defined by statute, including terms and conditions of employment, dismissals, allocation of work and physical working conditions
- other conditions must be satisfied if the IA is to be lawful. These include conducting a ballot and notifying the employer, before the commencement of the IA, in accordance with statutory criteria

Avoiding disruption

European guide to strikes and other industrial action

Employer response – legal interventions and stopping workers' pay

- unlawful IA may be stopped by a court injunction which is typically obtained by the employer. Trade unions are also at risk of claims for compensation and the employees taking part risk disciplinary action, including possible dismissal
- lawful IA resulting in a total non-performance of work gives the employer a right to reduce pay, but partial non-performance, such as a work to rule, is less straightforward. Employees are however protected from dismissal provided the IA is properly balloted and notified, not so if the action is unlawful (but the rules are complex)

The use of temporary agency workers

- temporary agency workers are not permitted to cover workers engaged in IA. However, the government may repeal this ban

The risk of sympathy (solidarity) action

- unions cannot induce employees of one employer not involved in a trade dispute to take IA in support of employees of another employer which is involved in that dispute. The exception to this is lawful picketing, where employees can induce employees of another employer not to cross a picket line outside their workplace
- picketing can only take place lawfully if certain conditions are met and it does not breach criminal or civil laws such as trespass and harassment. A Code of Practice provides further guidance

For more information on industrial action procedures in the UK please contact:



Marc Meryon

Partner

+44 20 7919 0900

marcmeryon@eversheds-
sutherland.com

eversheds-sutherland.com

Eversheds Sutherland (International) LLP is part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit www.eversheds-sutherland.com.

DT07119_01/17