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Summary and country reports

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Executive Summary

In January 2017, important developments in labour law took place in many Member States and European Economic Area (EEA) countries (see Table 1). Legislative initiatives and case law specifically focused on the following issues:

- Minimum wage
- Working time
- Transfer of undertakings
- Collective redundancies
- Employment in the public sector
- Dismissal law.

Minimum wage

In **Austria**, the Supreme Court issued a judgement in a case where the applicability of the German minimum wage was at issue. The driver of an airport shuttle service based in Salzburg, Austria, occasionally drove customers to the airport in Munich, Germany. He was paid according to the Austrian collective agreement which is below the German statutory minimum wage. The question before the court was the application of the German statutory minimum wage for the times he worked in Germany. The Supreme Court based its argument on Article 8 para 2 Rome I Regulation holding that, as Austria is the driver's general place of work, the Austrian minimum wage applies. In **Bulgaria**, Regulation No. 22 of the Council of Ministers of 26 January 2017 established a new monthly minimum wage of BGN 460 (EUR 230) and an hourly minimum wage of BGN 2.78 (EUR 1.39), applicable as of 1 January 2017. In **Estonia**, a new monthly minimum wage, which amounts to EUR 470, has been applicable since 1 January 2017. In **Poland**, the new regulations on minimum wage took effect on 1 January 2017. The major change is that the minimum wage currently applies not only to employees, but also to certain categories of civil law contractors. Moreover, the minimum wage has been raised to PLN 2.000 (around EUR 480). In **Romania**, Government Decision No. 1/2017 increased the national minimum wage by about 16%, amounting to LEI 1,450 gross per month as of 1 February 2017. Analysts claim that raising the minimum wage by LEI 200 entails an increase in employers' costs by LEI 245, the difference being in the contributions due to the State.

Working time

In the **Czech Republic**, the new Act amending Act No. 373/2011 Coll., on Specific Health Services, has entered the legislative process and is now in the second reading. The Act aims to transpose the Working Time Directive (2003/88/EC) and the Safety and Health of Workers Directive (89/391/EEC) and eliminate the current shortcomings of the regulation of employment-related health services. In **Estonia**, Parliament has started discussing the amendments to the Employment Contracts Act with particular regard the working time and rest periods of minors and IT workers. As regards minors, the purpose of the amendments is to reduce the limitations for their employment and to give employers more opportunities to hire minors. As for IT workers, the amendments concern the calculation of working time and the application of on-call employment provisions to them. In **Hungary**, Section 104 of the Labour Code, as amended by Act LXVII of 2016 on the Establishment of the Hungarian Central Budget in 2017 by adding the new Subsection 4, grants a longer compensatory rest period for shortened daily rest. However, the new provision does

not apply to health care workers. In **Romania**, the Court of Appeal submitted a request for a preliminary ruling to the Court of Justice of the European Union (CJEU) (Case C-12/17 *Dicu*) asking whether Article 7 of the Working Time Directive (Directive 2003/88/EC) applies to a national provision which excludes, when determining the length of annual leave, the period the worker was on child rearing leave.

Transfer of undertakings

In **Austria**, the Supreme Court held that the passing of minor resources to another undertaking is insufficient to constitute a transfer of undertaking. In the present case, the employees were not taken over but material assets were transferred. However, these successively used assets did not reach the necessity grade and intensity sufficient to argue that a transfer had taken place. In **Denmark**, a municipality continued a bus service formerly provided by a private undertaking. In order to do so, it bought 22 buses. It turned out that 15 of the 22 buses had formerly been leased by the private company. The Labour Court held that substantial physical elements had been transferred, thus supplying the same operational assets to be used by the local municipality. It further stated that it has no relevance whether the person representing the local municipality was aware that the purchase included 15 out of the 22 minibuses used by the private undertaking. The Court also confirmed that no direct contract between the local municipality and the private undertaking is needed for the Transfer of Undertaking Directive to apply. In **France**, the Court of Cassation held that if a transfer takes place from a private to a public company, the public company has to offer the employees employment contracts comparable to those they had with the private company. It further held that if the employees reject these contracts, the public company then has to apply the legal and contractual dispositions relating to the notice of resignation. If the latter are neglected, compensation has to be paid.

Collective redundancies

In **Belgium**, the CJEU case C-201/15, *AGET Iraklis*, in which the Court rejected that national authorities can refuse to authorise collective redundancies on the basis of the 'interest of the national economy', will have limited implications since the Belgian labour authorities can only delay projected collective redundancies but cannot refuse to authorise them. In **Germany**, the Federal Court delivered a judgement according to which the specific provisions on mass redundancies must also apply to persons who are on parental leave during the time of dismissal. In **Spain**, the Supreme Court delivered a judgement in which it establishes that the employers' obligation to act in good faith in case of collective redundancies implies the obligation to inform the workers' representatives on projected collective redundancies, the grounds for dismissal, and, more generally on any action taken.

Employment in the public sector

In **Austria**, the Supreme Court has halted the reform of wage schemes of public servants following the CJEU ruling in the *Hütter*-case, C- 88/08 to ask the CJEU for a preliminary ruling whether the transitory system, according to which periods of service before the age of 18 are not taken into account when calculating salaries, is to be considered age discriminatory. In **Cyprus**, a bill is currently being compiled to regulate the hiring of employees in the public sector. The bill pursued by the Minister of Finance seeks to extend the freezing of recruitments beyond 2017. The bill will provide that any vacancy for new persons to be recruited as civil servants must be

approved by Parliament. In **Slovenia**, the Supreme Court dismissed the claim of a public institution (the employer) alleging that employees who had received higher wages due to the collocation to an erroneous wage grade, had to return the overpaid amount. The Court held that an appointment to a higher wage grade was illegal, the illegality having an *ex nunc* effect.

Dismissal law

In **Germany**, the Constitutional Court held that pursuant to section 9(1) sentence 2 of the Dismissal Protection Act, the Court shall, upon the employer's petition, dissolve the employment relationship if there are factors making it unlikely that a continued working relationship between the employer and employee would be beneficial to the company's business interests. The dissolution at the request of the employer can, in principle, also be based on the behaviour of the employee in the current process. However, judgmental statements are covered by the fundamental right to freedom of expression. In **Hungary**, the Supreme Court established that the dismissal of a permanent worker due to the merging of different posts was not unlawful. The Court held that the employer is not obliged to offer another job to the dismissed employee if there is no job available for the employee which matches the skills, education and/or experience as required for his/her previous job. However, the employer is not required to give reasons for terminating a permanent employment relationship if the worker affected is within the five-year period before reaching the age limit for old-age pension. In **Italy**, the Constitutional Court decided against admitting a question on restoring reinstatement according to the original text of Article 18 Workers Statute, as this would have resulted in a replacement of current rules with other substantive rules, which is not allowed to be included in a referendum.

Table 1. Main developments

Topic	Countries
Minimum wage	AT; BG; EE; PL; RO
Working time	CZ; EE; HU; RO
Transfer of undertakings	AT; DK; FR
Collective redundancies	BE; DE; ES
Employment in the public sector	AT; CY; SL
Dismissal law	DE; HU; IT
Posting of workers	BG; NO
Temporary agency work	CZ; PL
Holiday leave	DK; SK
Occupational health and safety (OHS)	CZ; FR
Unemployment	BE; NL
Youth employment	EE; ES
Anti-discrimination law	AT; SE
Social security contributions	BE; PT
Parental leave	CZ; ES
Worker classification	UK
Works council	AT
Temporary assignments	CZ
Voucher work	IT
Subcontracting liability	IT
Minimum social income	LU
Collective bargaining	ES
Recognition of qualifications	CY
Retirement age	CY
Whistleblowing	SE
Public procurement	SE
Active labour market policies (ALMP)	AT
Brexit	UK
Labour Law reforms under creditors	EL

Austria

Keywords: Active labour market policies; works councils; updated working agreement of the government; sectorial labour market examination; transfer of undertakings; Directive 2001/23/EC; pay scheme for public servants; minimum wage; age discrimination; applicable law in cross-border transportation cases

Summary: (I) Only minor legislation was passed in January concerning the introduction of part-time work for long-term sick employees, and the extension of the term of office for works councils. The update of the working agreement of the governing coalition that includes, among others, sectorial labour market examinations for migrants to combat unemployment is of major significance. (II) Three Supreme Court decisions were issued dealing with questions of transfer of undertaking, the request for a preliminary ruling on the pay scheme for public servants, and the application of the German Minimum Wage Act to cross-border airport transfer drives.

1 National Legislation

1.1 Act on Part-Time-Work to Reintegrate Employees after Long-Term Sickness Leave

The Act on Part-Time-Work to Reintegrate Employees after Long-Term Sickness Leave (*Wiedereingliederungsteilzeitgesetz*) was published in the Federal Gazette (BGBl. 30/2017):

- Persons in employment who have been suffering long periods of illness usually have a difficult time adjusting to work as they are either sick or unable to work full-time.
- The new legislation introduces labour law and social security law measures to enable employers and employees to agree on part-time work (re-integration part-time work - *Wiedereingliederungsteilzeit*) and flanks this with funding from health insurance (re-integration part-time funding – *Wiedereingliederungsteilzeitgeld*) in the amount of maximum half the amount of the dependent sickness pay the employee would be entitled to. The sickness pay itself amounts to 60% of the insured income. The exact amount of the funding depends on the amount of working time the parties agree on and can be paid for a maximum of nine months.
- Timeframe: the measure will enter into force on 1 July 2017.

Sources:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2017_I_30/BGBLA_2017_I_30.pdf

https://www.parlament.gv.at/PAKT/VHG/XXV/I/I_01362/index.shtml

1.2 Extension of the term of office for work councils

- Over the last 30 years, the term of office of works councils – and therefore also of the European works council – has been four years. To strengthen the continuity of works councils and harmonise the terms of these institutions with those of the national assembly, which is elected for five years, the term of office of works councils has thus been extended.

- This applies to the central works council, the group-wide representation, the European works council, and the works council in a *Societas Europea*.
- The original text of the legal initiative also proposed to extend educational leave of works council members from three to five weeks per term of office. Ultimately, educational leave was only extended pro-rata for the longer term of office to three weeks and three days.
- Timeframe: the amendment will enter into force on 1 January 2017 and apply to works councils constituted after 31 December 2017.

Source:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2017_I_12/BGBLA_2017_I_12.pdf

1.3 New work programme of the Austrian coalition government

- The so-called 'Plan A' of the Social Democratic Party (*Sozialdemokratische Partei Österreichs* – SPÖ, see para 4 below) triggered negotiations in the governing coalition between the SPÖ and the conservative Peoples' Party (*Volkspartei* – ÖVP), resulting in a new 35-page working programme for the federal government from 2017 to 2018, when regular elections will take place again.
- The new work programme includes a number of measures that are part of the above-mentioned Plan A (e.g., public jobs for 20,000 job-seekers aged 50+ for two years; and the streamlining of workplace health and safety regulations). However, the social partners have been asked to negotiate agreements introducing increased working time flexibility as well as a minimum wage of EUR 1,500 - if they cannot reach an agreement the issues will be regulated by statute.
- The working programme also includes the introduction of a sectorial labour market examination: only if a position cannot be filled with an unemployed person residing in Austria, it may be offered to new migrants. The paper itself refers to the necessity to change secondary EU law and the willingness of the government to work towards this goal at the European level. The government plans to submit a proposal to the European Commission on how to undertake the necessary changes in EU secondary law and on how such a labour market examination would work.
- The second topic that directly refers to EU law is the indexation of the Austrian family allowance (*Familienbeihilfe*), a direct cash transfer to taxable Austrian residents with children, if the children live abroad in countries with different costs of living.
- Timeframe: the measures shall be implemented within the next 18 months before the end of the governmental term in mid-2018.
- The planned measures, which directly touch upon EU law, are deemed by the Austrian government as necessitating change at secondary EU law level as they might be seen as breaching the freedom of movement of workers.

Source:

http://archiv.bundeskanzleramt.at/DocView.axd?CobId=65201

2 Court Rulings

Supreme Court of 19 December 2016, 9 Ob A 136/16i

- Sec. 3 para. 1 of the Employment Contract Law Adjustment Act (*Arbeitsvertragsrechtsanpassungsgesetz* – AVRAG) transposing Directive 2001/23/EC provides the following: '*If an enterprise, a business or a part of a business is transferred to another owner (business transfer), the latter takes over as an employer all the rights and obligations deriving from the employment relationships existing at the time of the transfer*.' The law does not, however, include any definition of what is to be considered a business transfer.
- In the present ruling, the business providing technical infrastructure management to the owner of an eighteen storey building was replaced after a tender procedure. The new service provider did not take over any of the six employees working for the former service provider. Although the material assets (software, video system, wireless sets and so on) were transferred, the lower courts considered the necessary grade and intensity of successively used resources insufficient to argue that a transfer of undertaking had taken place as was the case in CJEU C-340/01, *Abler*.

Source:

https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20161219_OGH0002_009OBA00136_16I0000_000/JJT_20161219_OGH0002_009OBA00136_16I0000_000.html

Supreme Court of 19 December 2016, 9 Ob A 141/15y

- As repeatedly reported (see November 2016 Flash Report), the reform of the wage scheme of public servants following the CJEU ruling in the *Hütter*-case, C-88/08, seems to be a never ending story. The core of the latest reform – the establishment of a new, discrimination-free system and the transition to the new system following the CJEU ruling in the *Schmitzer*-case, C-530/13, is intended to meet the requirements the CJEU set out in the Specht-case. The Supreme Court now has to rule on a larger number of cases concerning the issue that the new system is based on the payment of the month of February 2015 and thereby the old age discrimination (i.e. not taking into account periods of service before the age of 18) is likely to continue.
- The Supreme Court has halted the procedure and asked the CJEU for a preliminary ruling concerning the question whether this transition is to be considered age discriminatory and – if so – how this has to be compensated. If answered negatively, the question of challenging the calculation of the transitory wage is posed as well as the question of differentiating when taking into account the service time between those spent in public service and with other employers.

Source:

https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20161219_OGH0002_009OBA00141_15Y0000_000/JJT_20161219_OGH0002_009OBA00141_15Y0000_000.html

Supreme Court of 29 November 2016, 9 Ob A 53/16h

- A driver of an airport shuttle service based in Salzburg, Austria, occasionally drove customers to the airport in Munich, Germany. He was paid according to the Austrian collective agreement which is below the German statutory minimum wage. The question before the court is the application of the German

statutory minimum wage for the times working in Germany because the German Minimum Wage Act (*Mindestlohngesetz*) also applies to employers in Austria if the work is delivered in Germany. The defendant, the employer, argued that this would be in breach with the freedom to deliver services as the transit rides could not be considered to affect the labour market and the competition in Germany in a manner serious enough to be considered an overriding mandatory provision according to Article 9 of the Rome I Regulation.

- The Supreme Court rejected the claim based on Article 9 of the Rome I Regulation. It interpreted the German Minimum Wage Act based on its intention (*telos*) in order to establish that the lawmakers actually wanted it to apply to situations like the one at hand. The telos of the Act is to protect employees against inadequately low remuneration and shall therefore primarily apply to permanent or long-term work in Germany. It is also intended to ensure fair competition between market participants. As the claimant was only working in Germany for limited periods of time and the wage difference only amounted to 36 cents per hour, it appeared justified to not grant the German Minimum Wage Act the qualification of overriding mandatory provisions according to Article 9 of the Rome I Regulation and apply only Article 8 para 2 Rome I Regulation. As Austria is the general place of work, only the Austrian minimum wage applies.

Source:

https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20161129_OGH0002_009OBA00053_16H0000_000/JJT_20161129_OGH0002_009OBA00053_16H0000_000.html

3 Implication of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

In January, the presentation of a comprehensive 145-pages political paper in which the chancellor of the Republic of Austria and head of the Social Democratic Party (SPÖ), Christian Kern, outlined his ideas for the future direction of his politics set in motion a discussion that resulted in an update of the working agreement of the coalition government.

In this so-called 'Plan A', the focus is on job creation and kick starting the economy in manifold ways with a number of measures affecting labour law: A job guarantee for unemployed persons aged 50+, a minimum wage of EUR 1,500 per month, a Crowd Work Act, and the flexibilisation of working time, to only name a few. From a European law perspective, the most disputed issue might be a measure to protect the Austrian labour market in certain sectors with high unemployment against new migrants. It is intended to (re)introduce a labour market examination i.e. that only if a position cannot be filled with an unemployed person residing in Austria may it be offered to new migrants.

Source:

http://www.meinplana.at/magazin_herunterladen

Belgium

Keywords: Recovery of arrears of social security contributions; increasing social security contributions; unemployment benefits paid to elderly employees; additional compensation paid to workers below the minimum legal age; collective agreements; freedom of establishment; free movement of capital; national legislation conferring upon an administrative authority the power to oppose collective redundancies

Summary: (I) The Law of 1 December 2016, amending the Law of 27 June 1969 on social security contributions for employees, generalises the recovery of social security contributions in arrears via an executive administrative order of the National Social Security Office. (II) The Programme Act of 25 December 2016 increases the amount of social security contributions for company-paid supplements in addition to unemployment benefits for specific old-age unemployed employees in case of old-age unemployment below the legal standards of retirement age. (III) The implications of CJEU case C-201/15 *AGET Iraklis* are limited in Belgium since the competent Belgian labour authorities can only delay projected collective redundancies but cannot refuse to authorise them.

1 National Legislation

The National Social Security Office (NSSO) has several options to recover arrears of social security contributions:

- Judicial recovery by citation before the labour courts;
- Recovery through an executive administrative order of the NSSO;
- Amicable recovery with an amicable instalments plan; and
- Recovery through joint liability of the transferee in respect of the transferor in the event of the transfer of goodwill.

(i) Law of 1 December 2016, amending the Law of 27 June 1969 on social security contributions of employees,[1] generalises the recovery of social security contributions in arrears via an executive administrative order of the National Social Security Office (subpoena). The new law generalises a cheaper, direct way of an executive administrative order by the NSSO itself. This way of recovering social security contributions will diminish the case load of the labour courts.

(ii) Royal Decree of 1 December 2016, amending the Royal Decree of 28 November 1969 implementing the Law of 27 June 1969,[2] changes the amicable recovery with an amicable instalment plan for employers with payment difficulties, who want to avoid the recovery through subpoena or a judicial recovery of arrears. The starting point is that the National Social Security Office may grant one or more payment plans that include amicable instalments.

(iii) Programme Act of 25 December 2016[3] increases the amount of social security contributions for company-paid supplements in addition to unemployment benefits for specific old-age unemployed workers below the age of 55 years (previously also referred to as 'prépension').

The same increase regards the employer's social security contributions on payments made in addition to unemployment benefits paid to other employees outside the legal

[1] *Moniteur belge*, 29 December 2016.
[2] *Moniteur belge*, 6 January 2017.
[3] *Moniteur belge*, 29 December 2016.

system of unemployment for old-aged employees below the age of 52 years. Employers persuade elderly employees to take unemployment and pay them substantial compensation to diminish the difference between their earlier salary and unemployment benefits (the so-called 'Canada dry- prépension').

2 National Court Rulings

Nothing to report.

3 Implication of ECJ Rulings and ECHR

Court of Justice, 21 December 2016, C-201/15, AGET Iraklis/Ypourgos Ergasias

In case C-201/15, *AGET Iraklis/Ypourgos Ergasias*, the CJEU affirmed that rules on collective redundancies make the market, protected by the freedom of establishment and the free movement of capital, less attractive for entrepreneurs. Restrictions to these freedoms based on strict rules on collective redundancies should therefore be justified as overriding requirements in the public interest.

The Court of Justice rejects that the national Greek authorities, on the basis of the criterion of 'interest of the national economy', can refuse collective redundancies. The other two criteria used in the national legislation at issue, in particular the 'situation of the undertaking' and the 'conditions of the labour market', can be a factor in the legitimate objective of general interest. However, these criteria were formulated in a very general and imprecise way in the specific case. Considering they were not based on objective and verifiable conditions, they went beyond what is necessary to achieve the given objectives and therefore do not satisfy the requirements of proportionality (para. 100).

The national Greek measure cannot be justified by the existence of serious social reasons, such as an acute economic crisis and very high unemployment. The Member State is not allowed to deprive Directive 98/59 of its practical effect. Regarding the freedom of establishment in Article 49 TFEU, restrictions can be justified in the light of certain overriding reasons in the public interest, but the Treaty does not, however, provide that that provision of primary law may be derogated from outside those situations or that, as the referring court seems to suggest by its second question, that provision may purely and simply be disregarded, on account of a national context such as described in the Greek judgement.

CJEU case C-201/15 has no implications on Belgian law. In Belgium, the competent labour authorities can only delay projected collective redundancies, in principle for 30 days. They cannot refuse to authorise collective redundancies, and, a fortiori, not on such vague criteria such as 'the conditions of the labour market', 'the, situation of the undertaking' or 'the interests of the national economy' (see Royal Decree of 24 May 1976 regarding collective redundancies).

The Belgian law is in compliance with CJEU case C-201/15.

4 Other relevant information

Nothing to report.

Bulgaria

Keywords: Directive 96/71/EC; Directive 2014/67/EC; posting; minimum wage; reimbursement of expenditures of teachers

Summary: (I) A new Ordinance transposing and implementing some of the requirements of Directive 96/71/EC, Directive 2014/67/EC and Regulation 1024/2012 was published in the State Gazette on 6 January 2017. (II) A new minimum wage has been introduced and has been in force since 1 January 2017. (III) A new Ordinance on the compensation of travel and rent expenditures of pedagogical specialists working in villages far from their place of residence has been issued.

1 National Legislation

1.1 Directives 96/71/EC and 2014/67/EC

The Council of Ministers issued an Ordinance on the Conditions and Procedure for Posting of Employees within the Framework of Provision of Services. The Ordinance transposes and implements some of the requirements of Directive 96/71/EC; Directive 2014/67/EC and Regulation 1024/2012.

The Ordinance regulates the working conditions of Bulgarian workers posted to a Member State of the EU, to a country of the EEA, and to the Confederation of Switzerland as well as the working conditions of workers posted to Bulgaria.

The Ordinance establishes that the posting of Bulgarian workers is based on an agreement between the worker and his/her employer and provides for the obligatory content of this agreement – the type and place of work, the duration of posting, basic and additional labour remuneration, etc. (Art. 2—6). The working conditions may not be less favourable than those applicable in the country where the workers are posted (Article 6).

The basic working conditions of workers posted to Bulgaria must be the same as those applicable to Bulgarian workers — length of working time and conditions for night and overtime work, minimum wage, health and safety at work, special protection of minors, pregnant women, women who are nursing and persons with reduced working capacity, and protection against discrimination. These requirements are not applicable in the construction industry.

Article 8 of the Ordinance envisages the creation of a single national website in Bulgarian and English. The website will be created and maintained by the General Labour Inspectorate, and will contain information on the terms and conditions of employment, obligations, liabilities of subcontracting chains, contact persons at the liaison office in charge of dealing with requests for information, etc. Pursuant to § 2 of the 'transitional and final provisions' of the Ordinance, undertakings providing temporary workers shall deliver their declarations to the territorial directorate of the Labour Inspectorate in hard copy until the construction of the website is completed.

Pursuant to Article 11 of the Ordinance, the competent authority for the provision of information on applicable national law and practice will be the General Labour Inspectorate Executive Agency.

The Ordinance was published in State Gazette No. 2 of 6 January 2017. No text of the Ordinance is available in English.

1.2 Minimum wage

Regulation No. 22 of the Council of Ministers of 26 January 2017 defined a new minimum wage. It is BGN 460 (EUR 230) per month and BGN 2.78 (EUR 1.39) per hour. This wage is for full-time work with an 8-hour working day and a 5-day working week.

The regulation was published in State Gazette No. 11 of 31 January 2017 and has been in force as of 1 January 2017.

No text of this regulation is available in English.

1.3 Reimbursement of expenditures

The Minister of Education and Science issued Ordinance No. 1 on the conditions and procedure for the reimbursement of transport expenditures or rent expenditures of pedagogical specialists in preschool and school education working in small villages far from their place of residence.

This Ordinance was published in State Gazette No. 10 of 27 January 2017 and has been in force since 1 January 2017.

No text of the Ordinance is available in English.

2 Court Rulings

Nothing to report.

3 Implication of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Cyprus

Keywords: Recognition of qualifications, Directive 2013/55/EU, Directive 2005/36/EC, Regulation (EU) No. 1024/2012; Cost of Living Allowance (COLA); retirement age; freezing of recruitments in the public sector

Summary: A new bill to amend Cypriot legislation on the recognition of qualifications aimed at transposing Directive 2013/55/EU to implement Directive 2013/55/EU has been submitted to the Parliamentary Committee on Labour and Social Security. (II) A framework agreement to regulate the renewal of collective agreements in the wider public sector, which envisages the re-introduction of the Cost of Living Allowance (COLA) system was signed on 4 January 2017. (III) With the aim of implementing a condition in the memorandum of understanding with the Troika, the retirement age will be linked to life expectancy and therefore raised as of 2018. (IV) A bill is currently being compiled to regulate the hiring of employees in the public sector. The bill pursued by the Minister of Finance seeks to extend the freezing of recruitments beyond 2017. The bill will provide that any vacancy for new persons to be recruited as civil servants must be approved by Parliament.

1 National Legislation

1.1 The Act on the Recognition of Qualifications (Amendment) Law of 2017 transposing Directive 2013/55/EU

- The new Act on the Recognition of Qualifications (Amendment) Law of 2017 (23.01.058.005-2017)[1] aimed at amending the basic Law on the Recognition of Qualifications and transposing Directive 2013/55/EU[2] has been submitted to the Parliamentary Committee on Labour and Social Security.
- The Act establishes a system for improved recognition of professional qualifications to make labour markets more flexible, further liberalise services, encourage automatic recognition of qualifications and simplify the related administrative procedures. The European Professional Card allows citizens to gain recognition of those professions regulated in Cyprus simpler and faster through a single electronic process. This identity is based on the use of the IMI system and the electronic certificate form. The Act also aims at facilitating the exercise of professional activities of European citizens, which include a large number of professions, with around 120 scientific, medical, paramedical and techniques regulated by law.
- The main changes the proposed bill introduces are the following:
  - Introduction of a European Professional Card to be used by the competent authorities of the Member State of establishment and the host Member State, which will simplify the registration and authorisation process of the mobile professional.
  - Partial access to a profession.
  - Recognition of professional activity in another Member State.

[1] Ο περί Αναγνώρισης των Επαγγελματικών Προσόντων (Τροποποιητικός) Νόμος του 2017 (23.01.058.005-2017).
[2] VE 2013/55/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').

- Warning mechanisms in case of sanctions for professionals in the health and education of minors.
- Transparency between the competent authorities in matters related to access to regulated professions.

– The Labour Department shall be the contact point for law enforcement purposes. It shall also provide the government with the authority to appoint the National Coordinator of the competent authorities who will ensure improved implementation of the law and represent the Republic in the relevant EU bodies.

– Member States were obliged to transpose Directive 2013/55/EU by 18 January 2016. The Ministry of Labour officials noted that the proposed legislation was submitted to Parliament on 20 January 2017. Due to the delay in the transposition, the European Commission issued a warning for breach (Reasoned Opinion). The Republic of Cyprus expects the matter to go before the Court. However, the MPs were told that due to the complexity of the act, only 13 Member States have so far transposed the directive.

– In order to transpose the directive, MPs must vote on the framework agreement amending all existing laws governing the exercise of sectoral professions.

The representative of the legal service has stated that the technical legal control of six of the seven bills on sectoral professions has almost been completed. The representative of the Ministry said that seven modifying bills will soon be tabled in Parliament. The discussion on the proposed bill will continue.

2 Court Rulings

Nothing to report.

3 Implication of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Collective agreements are renewed and COLA is back on the table

A framework agreement to regulate the renewal of collective agreements in the wider public sector was signed between the trade unions and the Ministry of Finance on 4 January 2017, signature of which had been pending since August 2015. The agreement provides that negotiations will commence on the re-introduction of the Cost of Living Allowance (COLA) system along terms to be agreed through social dialogue under the auspices of the Labour Minister. The trade unions recognise that given the negative inflation, the re-introduction of the COLA system would not bring any benefits to employees and therefore agreed for it to be frozen temporarily until the country returns to growth. The aim is to reach an agreement on COLA by mid-2017, which could enter into force at the beginning of 2018. The framework agreement also provides for the creation of a new Provident Fund for newly recruited employees and for those employees whose provident fund was dissolved in 2012.

4.2 Retirement age to rise in 2018

With the aim of implementing a condition in the memorandum of understanding with the Troika, the government will activate a regulation linking retirement to life expectancy in 2018, which is currently 79.4 for men and 83.6 for women. According to a survey carried out by the Social Insurance Department, life expectancy is expected to rise to 80.1 for men and 84.3 for women. Retirement age is currently at 65 whilst employees retain the right to retire at 63 on the condition that their pension is reduced. The new regulation aims to gradually increase retirement age to reach 67 in 2039.

4.3 Bill to indefinitely continue with the freezing of recruitments in the public sector

A bill is currently being compiled to regulate the hiring of employees in the public sector. The bill pursued by the Minister of Finance seeks to extend the freezing of recruitments beyond 2017, which was the deadline for the freezing initially introduced in an effort to reduce the public payroll. The bill will provide that in order for new persons to be recruited as civil servants, the vacancy must be approved by Parliament.

Czech Republic

Keywords: Directive 2003/88/EC; Directive 89/391/EE; employment-related health services; social security contributions; parental leave allowance; Directive 2008/104/EC; temporary agency work; temporary assignment; temporary worker

Summary: (I) The new Act amending Act No. 373/2011 Coll., on Specific Health Services and the draft act amending Act No. 117/1995 Coll., on State Social Support have entered the legislative process. If adopted, they will introduce important legislative developments in Czech labour law. (II) The draft act amending Acts No. 435/2004 Coll., on Employment, No. 262/2006 Coll., the Labour Code, and other related acts are waiting for their second reading in the Chamber of Deputies.

1 National Legislation

1.1 Transposition of Directive 2003/88/EC on certain aspects of the organisation of working time and Directive 89/391/EEC on measures to improve the safety and health of workers at work

The new Act amending Act No. 373/2011 Coll., on Specific Health Services is now in the second reading. The Act aims to eliminate the current shortcomings of the regulation of employment-related health services (ERMS) by introducing the following rules and specifications:

Payment of the initial medical examination is the employer's responsibility

In contrast to the first draft act, which allowed employers to reimburse employees for the cost of the initial medical examinations only after successful completion of the probation period, the current version of the draft act establishes that employers will have to reimburse the costs of the examination for every successful job seeker.

ERMS for agency employees

The draft act proposes the establishment of new rules for the provision of ERMS to employees temporarily assigned to the employer by employment agencies. Newly established agencies should be able to provide ERMS to their employees via:

- Their medical provider;
- The employer's general practitioner; or
- The provider of the user on the basis of the conditions stipulated in the agreement of the temporary assignment.

Outsourcing of ERMS

Any ERMS provider who has a contract with an employer on the provision of ERMS should now have the option to be able to provide the contracted services through another so-called 'authorised' provider, with the purpose of boosting the capacity of ERMS.

This will be possible under the condition that, first, the original provider and the employer conclude an agreement authorising this practice and, second, that the two providers sign a contract containing all the necessary legal formalities, such as the description of the ERMS services that the provider will provide, the place where these

services will be provided, the means by which information will be exchanged between the providers, etc.

Reassessing reports

The draft act is to explicitly establish the option of waiving, in writing, the right to reassess the report. This step should help accelerate the process of entering employment.

Further changes

Additional planned changes include repealing restrictions preventing general practitioners specialising in child and youth care from issuing employment-related reports. They will be allowed to do so when assessing the capacity for work of students who are not old enough to fall under general practitioners for adults.

The option for employers to ensure other occupational services, i.e. supervising and counselling, with a provider of ERMS on a one-time basis when needed, is also a new addition. This only applies to employers whose employees perform work of the first category (therefore, no significant negative effects of risk factors on the health of employees are expected) and the employees are sent for medical examinations to their authorising providers (general practitioners).

Other points introduced are the limitation of the obligation to bring an excerpt from medical reports to every examination, or the establishment of procedures for employees who are not registered with any practitioner.

Finally, an employer will be able to conclude an employment contract with the employee even before the completion of the initial medical examination, as the obligation to undergo the examination will be delayed to the actual commencement of the employment relationship, rather than before signing the employment contract, as is currently the case.

Source:

https://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=874&CT1=0

1.2 Amendments related to Parental Leave Allowance

The draft act amending Act No. 117/1995 Coll., on State Social Support, which has been in force since 1 October 1995, is waiting for its second reading in the Chamber of Deputies, which is to be held at the beginning of February 2017.

The draft act aims to introduce changes to improve conditions for reconciling work and family life. Although it is more of a social security issue, it is connected to labour law as the following measures are estimated to be supportive for employers.

The first of the proposed measures is to abolish the current upper limit for parental allowance in the amount of CZK 11,500 per calendar month, which will enable parents to take up an amount equivalent to 30 times of 70 percent of the daily assessment base. Therefore, the entire sum of the parental allowance, in the amount of CZK 220,000, shall be fully taken in less time (the minimum period is 6 months) and parents will be allowed to return to work earlier.

The amendment further provides for the complete abolition of the condition of monitoring a child's attendance in preschool facilities. Currently, attendance is only monitored for children under the age of two years, who can stay in preschool facilities for a maximum of 46 hours per calendar month. This condition will be completely abolished and the only consideration will be the proper care of the child in the family.

Source:

https://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=854&CT1=0

1.3 Transposition of Directive 2008/104/EC on temporary agency work

The draft act amending Act No. 435/2004 Coll., on Employment; Act No. 262/2006 Coll., the Labour Code; and other related acts is waiting for its second reading in the Chamber of Deputies. After passing the legislative procedure, the amendment shall come into effect 15 days after its publication.

Labour Code

The amendment introduces a brand new provision defining the obligation upon employment agencies and users to ensure that the agency worker is not temporarily assigned to work for the user either (A) by whom he/she is simultaneously employed in a basic employment relationship, or (B) for whom he/she performed/performs work in the same calendar month on the basis of a temporary assignment by another employment agency. Breaches of this provision shall be fined at CZK 1,000,000.

Act on Employment

The Act on Employment will undergo several changes. Firstly, the employment mediation permit shall be issued for a time period of three years and, in case of repetition, for an indefinite period (currently, it's always a three-year period).

Secondly, the employment mediation permit shall be withdrawn by the Directorate General of the Labour Office in case of non-assignment of an employee for two years.

The last point introduced is that every employment agency (both physical and legal persons) shall be obliged to pay a guarantee in the amount of CZK 500,000.

Act on labour inspection

A new ground of misdemeanour in the field of agency employment is introduced, through which the factual responsibility of the user for not adhering to the obligation to ensure equal work and wage conditions of temporarily assigned employees and a comparable employee will arise.

Sources:

http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1486052352235&uri=CELEX:32008L0104

https://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=911&CT1=0

2 Court Rulings

Nothing to report.

3 Implications of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Denmark

Keywords: Seafarers; sickness during holiday leave; replacement holiday; state liability for deficient implementation of EU law; transfer of undertakings; economic entity

Summary: (I) The Supreme Court ruled that the State can be liable for deficient implementation of EU law but that the State can take time to investigate before initiating amendments. The Labour Court acknowledged that a transfer of undertakings had taken place and placed a heavy investigation fee on the employer when purchasing assets. (II) The Labour Court ruled on the notion of 'economic entity' and transfer of undertaking in a case related to the continuation of the bus service by a local municipality which had previously contracted out this activity. The Court established that it has no relevance whether the local municipality was not aware that the busses purchased were used by the previous contractor and whether there was no direct agreement between the local municipality and the previous contractor. A direct contract between the transferor and the transferee is not a condition for applying the Transfer of Undertaking Directive. As a consequence, the Court places a requirement on the employer to investigate, at his own initiative, the history of the assets bought for performing services, if he wants to avoid the implications of a transfer of undertaking.

1 National Legislation

1.1 Draft Amendment Act for Certain Rights of Seafarers; first debate in Parliament

A proposal for amendment of the Act for Certain Rights of Seafarers, L112, implementing EU Directive 2015/1794 has been through a consultation process and has been put forward for parliamentary debate.

Source:

http://www.ft.dk/samling/20161/lovforslag/L112/index.htm

2 Court Rulings

2.1 Supreme Court Ruling of 19 January 2017, case 42/2016

The Supreme Court on 19 January 2017 ruled on the right of an employee to replacement holidays in case the employee falls ill during his/her holidays. cf. Court of Justice of the EU (CJEU) case C-277/08 (*Pereda*) – state liability for lack of implementation.

Facts

An employee became ill whilst on holiday in the summer of 2010. Due to inadequate implementation of the Working Time Directive, the employee did not have the right to a replacement holiday under Danish statutory law.

The Danish Holiday Act was amended on 1 May 2012.

The employee sued the Danish state for damages for the lost replacement holiday.

Summary of the major points of the ruling

The State can become liable when implementing EU law insufficiently, if the breach of EU law caused by the inadequate implementation is clear and qualified.

A breach of EU law is sufficiently qualified when this continues after a CJEU ruling, which makes clear that national legislation is insufficient.

The Supreme Court found that it is feasible to interpret case C-277/08 so as to apply to a situation where an employee becomes ill after the holiday has begun. It also found that case C-277/08 raised sufficient doubts as to the compliance of the Danish State with the Working Time Directive, and that the Danish State had a duty to investigate the conformity of the Danish Holiday Act with the Working Time Directive.

The Supreme Court determined that the Danish State had fulfilled this obligation by initiating investigations, consulting the social partners and establishing an implementation committee. These initiatives in September 2010 resulted in a report concluding that the Danish Holiday Act most likely was in breach of the Working Time Directive.

This then created an immediate duty upon the State to bring the Holiday Act in line with the Working Time Directive by 1 January 2011 at the latest. This duty applied despite the fact that the courts had not yet clarified whether it was possible to interpret the Danish Holiday Act in conformity with EU law.

The State only amended the Holiday Act on 1 May 2012. By delaying the amendment, the State breached EU law in a sufficiently qualified way, and thereby incurred liability for any damages.

The Supreme Court stated that at the time of the holiday in the summer of 2010, the State had not yet incurred liability for inadequate implementation, and the employee was not entitled to damages.

Source:

http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088

http://www.hoejesteret.dk/hoejesteret/nyheder/Afgorelser/Pages/Ikkerettilerstatningsferievedsygdomopstaaetunderferie.aspx

2.2 Labour Court Ruling of 12 January 2017, AR2015.035

Facts

A local municipality, Horsens, continued a bus service following the bankruptcy of the bus company, *Oestbirk Turist Ltd.*, with the same busses and the same bus drivers formerly employed by the bus company.

After the bankruptcy of the bus company, which had won the procurement of the bus service from the local municipality, the local municipality decided to continue the bus service itself and not enter into a contract with a new bus company.

The local municipality sought to lease busses for this purpose, but ended up buying 22 buses instead. The busses were delivered on 19 May 2014 by the drivers.
As it turned out, 15 of the 22 busses had formerly been leased and used by *Oestbirk Turist Ltd*. to run the bus service for the local municipality.

The 22 or 23 drivers who had been previously employed by *Oestbirk Turist Ltd.* were invited for job interviews by the local municipality to be employed as bus drivers. The interviews were all conducted on the same day, 19 May 2014. Twenty-two drivers were employed by the local municipality to start working the following day.

On 20 May 2014, *Oestbirk Turist Ltd*. went bankrupt.

Summary of the major points of the ruling

The fact that the entity is a public authority does not rule out the application of the Act of Transfer of Undertakings, cf. the Transfer of Undertaking Act section 1 subsection 2, and CJEU ruling C-463/09 (*Valor*).

The CJEU rulings establish that all circumstances must be taken into consideration when assessing whether an economic entity, which has retained its identity, has been transferred.

Regarding activities such as bus routes not primarily based on labour but on physical elements, the entity, as a main rule, does not retain its identity if the physical elements are not transferred, cf. Supreme Court Ruling UfR 2016.1990 referring to CJEU ruling C-172/99 (*Liikenne*), premise 39, 42, and 43.

In the case at issue, there was no evidence suggesting that the employment relationship of the bus drivers working for *Oestbirk Turist Ltd*. had been terminated on 20 May 2014. Thus, the drivers were still employed by *Oestbirk Turist Ltd*., when the local municipality took over the bus route.

The Labour Court assessed that *Oestbirk Turist Ltd*., which managed the bus route for the local municipality, was an economic entity. This unit consisted of 22 (possibly 23) bus drivers and 22 mini busses.

The Labour Court assessed that the busses were transferred to the local municipality in order to be used for the continuation of the bus route. The local municipality did not inspect the busses before purchasing them and did nothing to investigate whether the busses had been used by *Oestbirk Turist Ltd*. for their bus routes in the local municipality. The local municipality did not contact the seller of the busses for further information on prior use of the busses, even though the seller had provided the local municipality with a list of the busses and informed that all the buses had been in use until that date. The local municipality did not state as a condition for the purchase that the busses had not been used by *Oestbirk Turist Ltd.* in the local municipality. Further, when the local municipality found out that the busses had been used by *Oestbirk Turist Ltd*., the local municipality did not complain to the seller. Instead, the local municipality removed the logos from the busses, and just as before, the busses were used to transport disabled children and youth within the local municipality.

Under these circumstances, the Labour Court assessed that substantial physical elements (15 out of 22 busses) were transferred from *Oestbirk Turist Ltd*. to the local municipality of Horsens and by this, the same operational assets were supplied to be used by the local municipality.

It has no relevance whether the person representing the local municipality was aware that the purchase included 15 out of 22 minibusses used by *Oestbirk Turist Ltd.*

Further, the fact that there was no direct agreement between the local municipality and *Oestbirk Turist Ltd*. had no relevance. A direct contract between the transferor and the transferee is not a condition for applying the Transfer of Undertaking Directive.

3 Implication of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Estonia

Keywords: Working time for minors and IT employees; minimum wage; minors' employment; support for employing minors

Summary: (I) Amendments to the Employment Contracts Act will give minors more opportunities to enter the labour market earlier and to acquire the necessary experience to have better access to the employment market. The amendments will also apply to on-call legislation for IT employees. (II) Since 1 January 2017, a new monthly minimum wage has been applicable. (III) The Estonian government has decided to give financial support to employers willing to employ minors on a short-term basis.

1 National Legislation

1.1 Amendments to the Employment Contracts' Act

The Estonian Parliament (*Riigikogu*) has started discussing the draft of amendments to the Employment Contracts Act. The draft of the amendments mainly concerns the working and rest periods of minors and IT service workers.

As regards minors, the idea of the amendments is to reduce the limitations for their employment and to give employers more opportunities to hire minors, especially during school vacations. The most significant changes are as follows:

- According to the new draft, minors aged 15-17 will no longer be obliged to attend school. Minors are currently under the obligation to attend school until they complete basic education (9th grade) or reach the age of 17.
- The draft also no longer requires the consent of the labour inspectorate when a minor aged 13 wants to conclude an employment contract. The consent of his or her parents is, however, still required. In case the minor is aged 7 - 12, the consent of both the labour inspectorate and the parents is needed.
- The working time of minors aged of 15-17, who are not under the obligation to attend school, will be the same as for adult employees, i.e., 40 hours during a seven-day period.

The first group of amendments concern the flexibilisation of working time of minors. The unemployment rate among youth in Estonia is high. This could help a minor enter the labour market earlier and acquire the necessary experience in order to have better access to the employment market later. In that sense, the amendments can be viewed as being positive.

As regards IT-employees, according to the ECA, there is a possibility to apply on-call employment provisions. On-call employment must be agreed and the provisions on rest periods apply (at least 48 hours of consecutive rest periods every week). According to the amendments, this rest period limitation will not need to be applied to IT employees who are responsible for the functioning of indispensable IT services. The proposal for amendment to on-call employment for the IT sector is currently questionable, because the Estonian Trade Union Confederation has stated that this kind of amendment is not only necessary for the IT sector, but should be applied to all possible economic activities. The Estonian Employers' Association is in favour of such an amendment.

The amendments to the Employment Contracts Act are related to the application of Directives: 94/33/EC and 2003/88/EC.

Sources:

https://m.riigikogu.ee/tegevus/eelnoud/eelnou/3c23a41e-7574-4fe3-9f72-96bc9d733e74/T%C3%B6%C3%B6lepingu%20seaduse%20ja%20teiste%20seaduste%20muutmise%20seaduse%20eeln%C3%B5u%20(356%20SE%20I)/

https://m.riigikogu.ee/tegevus/eelnoud/eelnou/3c23a41e-7574-4fe3-9f72-96bc9d733e74/T%C3%B6%C3%B6lepingu%20seaduse%20ja%20teiste%20seaduste%20muutmise%20seaduse%20eeln%C3%B5u%20(356%20SE%20I)/

https://www.employers.ee/uudised/tooandjad-ikt-sektor-vajab-valveaja-erisust/

2 Court Rulings

Nothing to report

3 Implication of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 New monthly minimum wage

Since 1 January 2017, a new monthly minimum wage has been applicable. The hourly minimum wage is EUR 2 and 78 cents (gross), the monthly minimum wage is EUR 470 (gross wage). The monthly minimum wage is the minimum payment that must be guaranteed under an employment contract. Employers can pay more than the monthly minimum wage, but are not allowed to pay less.

The monthly minimum wage is agreed between trade unions and the employers' central organisation. Once an agreement has been reached, the monthly minimum wage is officially determined by the Estonian government.

4.2 Support for employing minors

The Estonian government has decided to provide financial support to employers willing to employ minors on a short-term basis. The idea of this form of support is to encourage employers to employ minors under the age of 16 years to give them an opportunity to gain work experience. The amount of the financial support is 30 percent of the minor's wage, but not more than 50 percent of the official monthly minimum wage (for 2017, the maximum amount will be EUR 235).

Source:

http://www.tooelu.ee/et/uudised/1450/alaealistele-tookogemuse-andmise-toetamine-sai-valitsuse-heakskiidu

France

Keywords: Transfer of undertakings; equitable wage; health and safety of workers

Summary: (I) A number of decrees has been issued with regard to working time and electronic voting in elections of staff representatives and representatives in works councils. (II) Moreover, the Court of Cassation ruled on cases concerning the transfer of undertakings and health and safety in fixed-term and temporary employment.

1 National Legislation

1.1 Decree No. 2016-1551, 2016-1552, 2016-1553, 2016-1554 and 2016-1555 of 18 November 2016[1] relating to various measures on working time, rest periods and 'special' leaves

Factual part

A series of decrees has reorganised the regulations on working time, rest periods and leave to incorporate the new regulations resulting from the 'El Khomri' Law.[2]

The El Khomri Law amended rules relating to working time, rest periods and leave in the French Labour Code. The law distinguishes between public order, the scope of collective agreements and supplementary provisions in case of lack of agreement.

These decrees amend the Code on these three issues. Some of the provisions warrant particular attention.

Analytical part

The average weekly working time for a period of twelve weeks, including overtime, may not exceed 44 hours. This rule is contained in the part relating to supplementary provisions.

A collective agreement can specify that this average weekly working time may exceed 44 hours for a period of twelve weeks (Article L. 3121-23 of the French Labour Code).

Moreover, an administrative authorisation may equally allow a derogation from the 44 hours. To obtain such administrative authorisation, the employer must justify the existence of exceptional circumstances requiring an extraordinary temporary increase in work (Article L. 3121-24 of the French Labour Code).

The employer shall submit an application for authorisation to exceed the permissible weekly working time to the labour inspector, specifying the reasons and duration. The opinion of the works council is compulsory.

In its response, the administration shall specify that exceeding the weekly working time has been authorised (Article R. 3121-10 of the French Labour Code).

Adjustment of working time

An industry-wide agreement[3] (also called branch agreement) can authorise the adjustment of working time for a period exceeding one year, within a maximum of 3 years (Article L. 3121-41 et L. 3121-44 of the French Labour Code).

[1] JORF No. 0269 du 19 November 2016.
[2] Law No. 2016-1088 du 8 août 2016, JOF 9.
[3] It is a collective agreement between workers' trade unions and employer's associations for undertakings of the same industry.

Any employer making use of this option must keep all relevant documents at the disposal of the labour inspector, indicating the total number of working hours carried out throughout the duration of the reference period (Article D. 3171-16 of the French Labour Code).

'Special' leaves

'Special' leaves include leave for family events, leave for creative purposes, leave for family-related purposes, and sabbaticals.

The implementation of these leaves may be subject to a collective agreement, which sets the time limits for the employee, who intends to take such leave, to inform the employer (Article L. 3142-14 of the French Labour Code).

If no agreement can be reached, the employee has one month before the start of the leave to inform his employer (Article L. 3142-15 of the French Labour Code).

In the event of renewal of the leave, the employee must notify his employer at least 15 days before the initially scheduled term.

Sources:

https://www.legifrance.gouv.fr/eli/decret/2016/11/18/ETST1628309D/jo/texte

https://www.legifrance.gouv.fr/eli/decret/2016/11/18/ETST1629096D/jo/texte

https://www.legifrance.gouv.fr/eli/decret/2016/11/18/ETST1628312D/jo/texte

https://www.legifrance.gouv.fr/eli/decret/2016/11/18/ETST1629097D/jo/texte

https://www.legifrance.gouv.fr/eli/decret/2016/11/18/ETST1629098D/jo/texte

1.2 Decree No. 2016-1556 of 18 November 2016[4] relating to the procedure of transmission of collective agreement in undertakings to the 'permanent joint committees of bargaining and interpretation'

Factual part

Since the 'El Khomri Law' has been introduced, priority is given to collective agreements in terms of working time, rest periods, public holidays, paid leave and the work time saving account.

In return, these collective agreements must now be transmitted to the permanent joint committees of bargaining and interpretation, which must be set up by each branch (Article L. 2232-9 of the French Labour Code).

Analytical part

The modalities for transmitting the collective agreement to the committee are specified in this decree.

The employer, trade union or, in case of failure, the employee or staff representatives must transmit every collective agreement relating to provisions on working time, adjustment of working time, daily rest period, paid leave, special leave and the work time saving account to the committee (Article D. 2232-1-2 of the French Labour Code).

Source:

[4] JORF No. 0269 du 19 November 2016.

https://www.legifrance.gouv.fr/eli/decret/2016/11/18/ETST1630830D/jo/texte

1.3 Decree No. 2016-1676 of 5 December 2016[5] relating to electronic vote for the election of staff representatives and representatives of works councils

Factual part

Casting electronic votes is possible for the election of staff representatives and for the election of representatives of the works council.

The modalities to resort to vote by electronic means are specified in this decree.

Analytical part

The modalities of voting by electronic means can be specified by rules of a collective agreement (Article L. 2314-21, L. 2324-19, R. 2314-8 and R. 2324-4 of the French Labour Code).

In case of failure to agree, the 'El Khomri' Law permits the employer to decide whether the election will take place electronically (Article L. 2314-21 and L. 2324-19 of the French Labour Code).

However, the modalities unilaterally foreseen by the employer must respect the dispositions established in the French Labour Code. Every employee must also be able to consult the modalities fixed by the employer (Article R. 2314-8 et R. 2324-4 of the French Labour Code).

The employer must also transmit the modalities to trade union representatives in the undertaking (Article R. 2314-14 and R. 2324-10 of the French Labour Code).

The decision to conduct an electronic vote does not impede the possibility to resort equally to a vote by secret ballot. However, the counting of the ballots must take place after the electronic voting has ended (Article R. 2314-19 and R. 2314-15 of the French Labour Code).

Source:

https://www.legifrance.gouv.fr/eli/decret/2016/12/5/ETST1630799D/jo/texte

2 Court Rulings

2.1 Transfer of undertakings

Labour Division (Chambre sociale) of the Court of cassation, 10 January 2017, No. 15-14.775.

Factual part

Pursuant to the article L. 1224-3 of the French Labour Code:

'When the activity of a private company is transferred to a public company, the public company has the obligation to propose to the employees a public law employment contract, fixed-term or indefinite-term, according to the former employment contract of the employees transferred.

If employees refuse the public employment contract proposed, their former employment contract is terminated without transfer. In this case, the public company

[5] JORF No. 0283 du 6 décembre 2016.

has to apply the dispositions relating to dismissals of employees foreseen in the French Labour Code.'

In the present case, a transfer of undertaking from a private company to a public company had taken place. The public company thus had the obligation to propose a public law employment contract which was equivalent to the employees' former employment contract.

In case of refusal, the contract of the transferred employees was terminated.

On the one hand, an employee who is transferred and refuses the proposed public law employment contract can claim compensatory damages from the public company with regard to notice of resignation because the public company did not respect his/her entitlement to submit notice of resignation.

Indeed, pursuant to Article L. 1234-5 of the French Labour Code,

'If the employee does not submit the notice of resignation, he is entitled to compensatory damages, except if he has committed a serious misconduct.'

On the other hand, the public company argued that the contract had been terminated by fault of the employee who refused to conclude a public law employment contract. Thus, the public company should not be held to pay compensatory damages.

Analytical part

The Court of Appeal, pursuant to Article L. 1224-3 of the French Labour Code, interpreted the evidence in accordance with Article 4 of Directive 2001/23/CE relating to the maintenance of the employee's entitlements in cases of transfers of undertakings held that: if the employee who is transferred refuses to conclude a public law employment contract, the public company has to apply the legal and contractual dispositions relating to the notice of resignation. Moreover, the court observed that the impossibility to submit the notice of resignation was not the fault of the employee but the fault of the public company. Therefore, the public company was held to pay compensatory damages for the employee's resignation.

The Court of Cassation confirmed the Court of Appeal's statement. The employee who is transferred and refuses to conclude a public law employment contract must be dismissed in accordance with the regulations of the French Labour Code, including regulations on compensatory damages.

> *«Mais attendu d'abord que la Cour de justice de l'Union européenne a dit pour droit (27 novembre 2008, aff. C-396/07) que l'article 4, paragraphe 2, de la directive 2001/23/CE du Conseil, du 12 mars 2001, concernant le rapprochement des législations des États membres relatives au maintien des droits des travailleurs en cas de transfert d'entreprises, d'établissements ou de parties d'entreprises ou d'établissements, doit être interprété en ce sens que, dans l'hypothèse d'une résiliation du contrat de travail ou de la relation de travail dictée par la réunion des conditions d'application de cette disposition et indépendante d'un quelconque manquement du cessionnaire à ses obligations découlant de ladite directive, il n'oblige pas les États membres à garantir au travailleur un droit à une indemnité financière à la charge de ce cessionnaire dans des conditions identiques au droit dont un travailleur peut se prévaloir lorsque son employeur met illégalement fin à son contrat de travail ou à sa relation de travail ; que, cependant, la juridiction nationale est tenue, dans le cadre de ses compétences, de garantir que, à tout le moins, le cessionnaire supporte, en pareille hypothèse, les conséquences que le droit national applicable attache à la résiliation du contrat de travail ou de la relation de travail du fait de l'employeur, telles que le versement du salaire et des autres*

avantages correspondant, en vertu de ce droit, à la période de préavis que ledit employeur est tenu de respecter;

Attendu ensuite que, selon l'article L. 1224-3 du code du travail, lorsque l'activité d'une entité économique employant des salariés de droit privé est, par transfert de cette entité, reprise par une personne publique dans le cadre d'un service public administratif, cette personne doit proposer aux salariés un contrat de droit public et qu'en cas de refus des salariés d'accepter le contrat proposé, leur contrat prend fin de plein droit, et la personne publique applique les dispositions relatives aux agents licenciés prévues par le droit du travail et leur contrat ; qu'il résulte de ce texte, interprété à la lumière de l'article 4, paragraphe 2, de la directive 2001/23/CE que la personne publique, qui notifie au salarié ayant refusé le contrat de droit public qui lui était proposé la rupture de son contrat de travail, doit appliquer les dispositions légales et conventionnelles relatives au préavis;

Et attendu que la cour d'appel, qui a constaté que l'impossibilité d'exécuter le préavis n'était pas le fait du salarié, a exactement décidé que la commune était tenue au paiement de l'indemnité compensatrice de préavis» (Labour Division (Chambre sociale) of the Court of cassation, 10 January 2017, n° 15-14.775).

Source:

https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000033881571&fastReqId=586942869&fastPos=1

2.2 Health and safety in fixed-term and temporary employment

Labour Division (Chambre sociale) of the Court of Cassation, 7 December 2016, No. 15-16.769.

Factual part

In the present case, a company outsourced part of its activity to a service provider. It also outsourced a majority of employees to a subsidiary of the company.

Following a report by the Health, Safety and Working Conditions Committee (*Comité d'hygiène, de sécurité et des conditions de travail* - hereinafter the CHSCT) relating to the conditions of work in the subsidiary, the CHSCT argued for the suspension of work due to a risk for the health and safety of employees.

The CHSCT summoned both companies (the user company and the sending company) on the grounds of safety of employees.

According to both companies, the CHSCT of the user company was not competent to impose measures that apply to employees who are not subordinate to the employer of the user company.

Indeed, pursuant to Article L. 4111-5 of the French Labour Code, the part relating to health and safety at the workplace is applied to employees, temporary workers, trainees and every person placed under the subordination of the employer.

In fact, there is no employment contract between the outsourced employee and the user company.

Analytical part

In the Court of Appeal's view, the link of subordination between the user company and the outsourced employees was characterised by two elements:

- The goals in the subsidiary are fixed by the user company;

- The outsourced employees carried out work under the control of the user company's employees.

From then on, the CHSCT of the user company was judged as being able to summon both companies and thus to obtain the application of the health and safety legislation.

The Court of Cassation confirmed the Court of Appeal's statement.

It is noteworthy that the competence of the CHST and thus also its possibility to summon an employer or an employee, is merely subordinate to the reality of a link of authority. A link of subordination characterised by an employment contract is not required.

In agreement with Directive 89/391/CE relating to the improvement of health and safety of workers, the employees of the user company and the outsourced employees are set on an equal footing regarding the protection and prevention of professional risks.

> *«Mais attendu qu'il résulte des articles L. 4111-5, L. 4612-1, R. 4511-1 et R. 4511-5 du code du travail, interprétés à la lumière de la directive 89/391/CEE du Conseil, du 12 juin 1989, concernant la mise en oeuvre de mesures visant à promouvoir l'amélioration de la sécurité et de la santé des travailleurs au travail, que le CHSCT est compétent, pour exercer ses prérogatives, à l'égard de toute personne placée à quelque titre que ce soit sous l'autorité de l'employeur;*
>
> *Et attendu qu'ayant constaté que les objectifs à atteindre au sein du centre d'appels avaient été définis par la société Euriware et que les salariés de la société Proservia exerçaient largement sous le contrôle du personnel d'encadrement de la société Euriware présent sur le site, la cour d'appel en a exactement déduit que, les salariés de la société Proservia étant placés sous l'autorité tant de la société Euriware que de la société Proservia, le CHSCT de l'établissement Ouest de la société Euriware était recevable à agir à l'encontre de ces deux sociétés afin d'obtenir, au sein du site de Cherbourg relevant de son périmètre d'implantation, le respect de leurs obligations légales en matière de prévention des risques professionnels».*

Source:

https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000033565790&fastReqId=1361146968&fastPos=1

3 Implications of ECJ rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Germany

Keywords: Collective redundancies; dismissal law; parental leave

Summary: The Federal Labour Court, being bound to an earlier judgement of the Federal Constitutional Court, ruled in a case on the application of specific provisions on collective redundancies to persons who are on parental leave during the time of dismissal. The Federal Labour Court decided a case on the requirement of dissolving a contract of employment pursuant to the Dismissal Protection Act.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Federal Labour Court of 26 January 2017 – 6 AZR 442/16

On 08 June 2016, the Federal Constitutional Court delivered a judgement according to which the specific provisions on mass redundancies must also apply to persons who are on parental leave during the time of dismissal. The Federal Labour Court, which is bound to this judgement, decided the case in last instance accordingly on 26 January 2017.

Source:

http://juris.bundesarbeitsgericht.de/cgi-bin/rechtsprechung/document.py?Gericht=bag&Art=pm&Datum=2017&nr=19077&pos=3&anz=7&titel=Massenentlassungsschutz_-_Benachteiligung_von_Personen_in_Elternzeit

2.2 Federal Constitutional Court of 08 November 2016 – 1 BvR 988/15

Pursuant to section 9(1) sentence 1 of the Dismissal Protection Act (*Kündigungsschutzgesetz*), where the Court finds that an employment relationship was not dissolved by dismissal, but the employee cannot reasonably be expected to continue with the employment relationship, the Court shall, upon the employee's petition, dissolve the employment relationship and order the employer to make an appropriate severance payment. Pursuant to section 9(1) sentence 2 of the Act, the Court shall make the same decision upon petition of the employer, if there are factors making it unlikely that a continued working relationship between the employer and employee would be beneficial to the company's business interests.

According to the Federal Constitutional Court, a dissolution at the request of the employer can, in principle, also be based on the behaviour of the employee in the current process. However, judgmental statements are covered by the fundamental right to freedom of expression. As a result, workers may also use strong, disturbing expressions to emphasise their own legal position.

Source:

http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2016/11/rk20161108_1bvr098815.html

3 Implication of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Greece

Keywords: Economic crisis

Summary: The negotiations on labour law issues between the Greek government and the lenders' representatives are continuing.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implication of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

After the International Monetary Fund's insistence against any retreat of the labour reforms implemented in Greece as a result of the previous bailout agreements, one of Greece's European lenders, the European Central Bank (ECB), is now expressing the view that collective labour negotiations have contributed to the 'inflexibility' of salaries and may have led to the worsening of job losses during the recession.

Salary workers have been hit hard by the economic crisis, having seen their incomes shrink significantly from 2010 to 2016. A study published in the Bank of Greece's Economic Bulletin shows that households' nominal disposable income dropped by EUR 57 billion, or 32.8 percent, over those six years.

The negotiations between the Greek government and the lenders' representatives continued in January 2017. Labour law issues continue to be a priority in the discussion without final agreement having been reached yet.

Hungary

Keywords: Compensatory rest period; Directive 2008/103/EC; Section 104 of Hungarian Labour Code; termination of the employment relationship of a permanent worker in the five-year period before reaching the age limit for old-age pension

Summary: (I) Section 104 of the Labour Code on equivalent compensatory rest period, as amended by Act LXVII of 2016 on the Establishment of the Hungarian Central Budget in 2017, does not apply to workers in the health care service. (II) The Supreme Court established that the dismissal of a permanent worker due to the merging of different posts was not unlawful. The Court held that the employer is not obliged to offer another job to the dismissed employee and that he is not required to give reasons for terminating a permanent employment relationship if the worker affected is within the five-year period before reaching the age limit for old-age pension.

1 National Legislation

Factual part

The Hungarian Labour Code (hereinafter: LC) was amended by Act LXVII of 2016 on the Establishment of the Hungarian Central Budget in 2017. One of the key points of this amendment concerns the equivalent compensatory rest period. Section 104 of the LC, which provides for compensatory rest in respect of a shortened daily rest period, has been amended by adding Subsection 4. The new provision on compensatory rest reads as follows:

Section 104

(1) At least eleven hours of an uninterrupted rest period shall be provided after the conclusion of daily work and before the beginning of the following day's work (hereinafter referred to as "daily rest period").
(2) The daily rest period shall be at least eight hours for employees working:
a) Split shifts;
b) Continuous shifts;
c) Multiple shifts; or
d) In seasonal jobs.
(3) The daily rest period shall be at least ten hours if it falls on the date of switching to summer time, or at least seven hours in the cases under Subsection (2).
(4) Where Subsection (2) or Subsection (3) applies, the total duration of two consecutive daily rest periods shall be at least twenty-two hours.
(5) After an inactive stand-by period, the employee shall not be entitled to a rest period.

The new regulation came into force on 1 January 2017.

As regards health care workers, Section 12 G (1) of Act LXXXIV of 2003 on certain measures for health care workers establishes that for providers of uninterrupted health services, such uninterrupted rest periods may be reduced to a minimum of eight hours by agreement between the parties. Section 7 Sub 2 states that the activity of health care can be performed on the basis of the following different statuses:

- So-called professional services (individual entrepreneur or self-employed),
- member of a company,
- civil service relationship,
- public service relationship,

- employment relationship,
- military or police service relationship,
- member of a charity organisation or clergyman,
- voluntary helper.

It can be concluded that the new provision on compensatory rest, as amended by Act LXVII of 2016, has not been incorporated into Act LXXXIV of 2003 on Certain Measures for Health Care Workers.

2 Court Rulings

Judgement of Kúria (Supreme Court) EBH2016. M.29 (Kúria Mfv. I. 10.103/2016.)

Factual part

The plaintiff, an employee, was employed by the defendant (employer) under a permanent contract. The defendant terminated the employment relationship in June 2014. The reason for the termination was the merging of jobs. The defendant stressed that there was no other unfilled job in which the applicant could be employed.

The applicant claimed that this termination was unlawful by referring to Section 66 Sub 4 and 5. These read as follows:

Sub 4: The employer shall be permitted to terminate the employment relationship of workers, other than pensioners, concluded for an indefinite duration within the five-year period before the date when the employee reaches the age limit for old-age pension on the grounds of the workers' behaviour in relation to the employment relationship only for the reason defined in Subsection (1) of Section 78.

Sub 5: The employment relationship of workers referred to in Subsection 4 may be terminated in connection with the workers' ability or for reasons in connection with the employer's operations if the employer has no vacant position available at the workplace referred to in Subsection 3 of Section 45 suitable for the worker affected in terms of skills, education and/or experience required for his/her previous job, or if the worker refuses the offer made for his/her employment in that job.

The plaintiff claimed that the defendant had not offered him vacant jobs - when communicating the dismissal of the defendant, and thereafter – for which his skills and experience were more than suitable. In connection with this statement it is important to emphasise that the employee had worked as a technical leader. The plaintiff stated that Section 66 Sub 5 does not narrow the offered jobs to jobs similar to that specified in the former contract of employment. The defendant could employ the applicant as a janitor, administrative assistant, in jobs for network assembly or any other maintenance jobs.

The defendant emphasised the refusal of the plaintiff to accept another vacancy.

The Judgement of Court of First and Second Instance

In the opinion of the Court of First Instance, the defendant must have provided that there was no other unfilled job in which the applicant could be employed. The Court stated that the employer published a job advertisement for a janitor and administrative assistants. These options were not offered to the employee. The Court stated that as the employee would have been capable of filling these posts, they should have been offered to him. As a consequence, the Court decided that the termination of the employment relationship was unlawful. For this reason, the defendant was obliged to pay compensation.

The Court of Second Instance repealed the decision of the Court of First Instance. It stated that under Section 66 Sub 5, the employment relationship may be terminated if

there is no job available for the employee which matches the skills, education and/or experience as required for his/her previous job, or if the employee refuses the offer made by his/her employment. The Court held that the employer was not obliged to offer the employee another job.

The judgement of Court of Second Instance was confirmed by the *Kúria*.

3 Implications of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Iceland

Keywords: Unemployment; strikes; collective agreements; rise in salaries

Summary: (I) The Supreme Court has issued a ruling on the termination of an employment contract. (II) Unemployment was at 2.4% in November. (III) There has been a considerable rise in the salary index over the last twelve months. (IV) A strike by the fishermen's union has resumed.

1 National Legislation

In December, new legislation was passed by the Remuneration Board for Civil Servants of the State, which retracts collective bargaining rights. Salary increases for civil servants shall, as before, reflect changes in the Icelandic labour market, but a new provision allows the board to limit salary increases to correspond to prerequisite conditions in the social partners' collective agreements. At present, there is uncertainty as to the effect of high salary increases for civil servants in 2016, set by the previous Remuneration Board for Civil Servants, on the continued validity of the social partners' current collective agreements.

At the end of the year, the government's proposal for a new law on the State Employee Pension Fund aiming to harmonise the pension systems of the public and private sectors was passed against the opposition of the trade unions in the public sector (see also the October and November 2016 Flash Reports).

2 Court Rulings

The Supreme Court issued a ruling on labour law in Case No. 240/2016.

An employee´s employment contract was terminated without notice by the employer, alleging a substantial breach of contract by the employee. The claimed breach of contractual obligations by the employee was the sending of confidential information on the employer's operations via e-mail. The Court did not find this to be sufficient grounds for dismissal without notice in light of testimony given by witnesses, the nature of the documents sent and other facts of the case. The employee was entitled to compensation corresponding to the contractual notice period.

3 Implications of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Unemployment

The registered unemployment rate for November 2016 has been published and is at 2,4 percent. The salary index rose by 0,3 percent during November, the increase on a 12 month-basis amounting to 9,7 percent.

Sources:

https://hagstofa.is/utgafur/frettasafn/vinnumarkadur/vinnumarkadur-i-november-2016/

http://px.hagstofa.is/pxis/pxweb/is/Samfelag/Samfelag__launogtekjur__1_launavisita

la__1_launavisitala/VIS04000.px/table/tableViewLayout1/?rxid=5f7db555-8819-4b65-95af-a82aeff60b2f

4.2 Labour Disputes

The fishermen's unions went on strike on 10 November 2016. Negotiations resulted in collective agreements with all unions during November, calling off the strike. However, these were not accepted by the union members. Strikes resumed before Christmas for the general fishermen´s unions. The unions of Marine Engineers and of Sea Captains and First Mates had called off their strikes.

A collective agreement was reached between the elementary school teachers union and the municipal governments.

Italy

Keywords: Referendum; voucher; subcontracting; individual dismissal

Summary: By Decision No. 7 of 11 January 2017, the Constitutional Court decided to admit to popular vote two out of the three questions proposed, among others, by CGIL. The two admitted questions refer to vouchers and to joint and several liability in cases of subcontracting.

1 National Legislation

By Decision No. 7 of 11 January 2017, the Constitutional Court decided to admit to popular vote (referendum) two out of three questions proposed, among others, by CGIL. The two admitted questions refer to vouchers and to joint and several liability in cases of subcontracting. The Court decided against admitting the question on restoring reinstatement according to the original text of Article 18 Workers Statute, because that would have resulted in an amendment (replacement of current rules with other substantive rules) of the existing legislative framework instead of a simple abrogation of an existing legislative provision.[1]

1.1 Vouchers

The people will be asked to decide on the withdrawal of Article 49 Legislative Decree No. 81 of 2015, which provides the rules for the use of accessory work, to be understood as any discontinuous and occasional activity performed by a worker not exceeding the annual total remuneration of EUR 7,000 (EUR 2,000 under the same employer), so-called 'vouchers'. The use of vouchers has to be communicated at the very latest within 60 minutes from the beginning of the performance of work to the competent Labour Inspectorate Office, by phone text message or certified e-mail message, containing the personal data and the tax ID number of the worker as well as the place, day and schedule of each performance. A fine between EUR 400 and EUR 2,400 per worker whose performance has not been communicated will have to be paid if that provision is violated.

1.2 Joint and several liability in case of subcontracting

The people will be asked to decide on the withdrawal of the first sentence of Article 29 para. 2 Legislative Decree No. 276 of 2003, according to which collective agreements signed by the comparatively most representative employers' organisations and trade unions may derogate from the principle of joint and several liability between the contractor and the subcontractor.

The date of the referendum has not yet been set, which is attributable to the fact that the government is considering certain legislative modifications that could make the referendum irrelevant.

2 Court Rulings

Nothing to report.

[1] According to the Italian Constitution, referenda may be called only in order to withdraw a specific existing legislative provision. It is not permitted to call a referendum to substitute an alternative legislative provision to the existing one.

3 Implication of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Liechtenstein

Keywords: Council conclusions; non-EU Western European Countries; EEA Agreement; implementation of EEA relevant EU acquis

Summary: According to the Council conclusions on a homogeneous extended single market and EU relations with non-EU Western European Countries, relations between the EU and Liechtenstein in the context of the EEA Agreement have further intensified. The Council appreciates Liechtenstein's continued excel-lent rate of implementation of the EEA-relevant EU acquis, as well as its efforts to bring about solutions to pending issues in the course of the past two years.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

According to the conclusions of the Council of the European Union on a homogeneous extended single market and EU relations with non-EU Western European Countries, relations between the EU and Liechtenstein in the context of the EEA Agreement have further intensified. The Council appreciates Liechtenstein's continued excellent rate of implementation of the EEA-relevant EU acquis, as well as its efforts to bring about solutions to pending issues in the course of the past two years.

The Council welcomes the solidarity shown by the people of Liechtenstein through their increased commitment to reducing social and economic disparities within the EEA in the period 2014–2021, by supporting innovation, research, education, competitiveness and youth employment in the European labour market. The Council acknowledges the rapid progress made by Liechtenstein in the process of incorporating the package of EU acts in the area of financial services necessary for its integration into the system of financial supervisory authorities.

Pursuant to the Council conclusions, Liechtenstein is a close and reliable partner in the area of justice and security.

Source:

http://data.consilium.europa.eu/doc/document/ST-15101-2016-INIT/en/pdf

Lithuania

Keywords: Labour Code; Tripartite Council; negotiation on future legislation

Summary: The social partners and government commenced negotiations on changes to the adopted (but suspended) Labour Code. Topics to be discussed include working time, the system of representation of employees, and collective bargaining structures.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

The Tripartite Council launched discussions on changes to the Labour Code. The Code was adopted in 2016 but its entry into force was postponed until 1 July 2017 by the new coalition because of 'negligence of social dialogue' during the adoption of the legislation. The government proposed to discuss working time regulations and collective representation issues. The government intends to complete the process in the Tripartite Council before 10 March 2017. The process will then continue in Parliament.

Luxembourg

Keywords: Minimum social income

Summary: There have been no substantial legislative developments with regard to labour law in January. However, conferences with regard to the practical implementation of the new rules on flexible working time have taken place and the final parliamentary report concerning the bill on posting of workers is expected to be published soon. Moreover, the Chamber of Employee has issued its official opinion regarding the so-called 'omnibus bill'.

1 National Legislation

There have not been any substantial developments concerning pending bills; some of the pending bills were voted on by the end of the year. Some conferences (or informative meetings) have already taken place with regard to the practical implementation of the new rules on flexible working time, concluding that the system is complex and costly to implement, i.e. it is possible that many companies might not take advantage of this flexibility.

The final parliamentary report on Bill No. 6989 (posting of workers) is expected to be published soon. Concerning the 'omnibus bill', namely fine-tuning numerous aspects of labour law, the Chamber of Employee (*Chambre des Salariés)* has issued its official opinion.

No new bills that directly relate to labour law have been deposited. It seems worth mentioning a new bill that seeks to reform the minimum social income (not the social minimum wage). The former '*Revenu minimum garanti*' (RMG) will be re-labelled '*Revenu d'inclusion sociale*' (RevIS). The purpose of the reform is to improve the system's performance and focus on children's needs and those of single parents. As far as labour law is concerned, it must be stressed that in order to avoid the 'inactivity trap', it should become financially more interesting to start or increase a salaried activity. Whereas any additional income would currently be deduced, it shall only be partially included (i.e. not taken into consideration for 25 percent of the additional income) to generate a financial incentive to seek employment. This new approach was inspired by critics from the OECD and by the Commission's Social Protection Committee guidelines.

Social and professional reinsertion shall also be better guided through the creation of a special office (*Office national d'inclusion*) with dedicated staff, who are mainly competent for reinsertion in public entities, and better collaboration with the Employment Office (mainly for reinsertion in the private sector). An 'activation agreement' (*contrat d'activation*) can be concluded, which will be partially subject to the Labour Code, especially concerning working conditions, working time as well as occupational health and safety.

Source:

Projet de loi No. 7113 du 27 janvier 2017 relatif au Revenu d'inclusion sociale

2 Court Rulings

Nothing to report.

3 Implications of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Netherlands

Keywords: Immunity of an international organisation; unemployment statistics

Summary: (I) The Supreme Court ruled that the European Patent Office enjoys immunity from jurisdiction of the Netherlands' courts. (II) The unemployment rate has decreased even faster than before.

1 National Legislation

Nothing to report.

2 Court Rulings

Supreme Court, 20 January 2017, ECLI:NL:HR:2017:57

On 20 January, the Hoge Raad (Supreme Court) in ECLI:NL:HR:2017:57 held that Article 11 of the European Convention on Human Rights does not entail the right for trade unions to access to an independent tribunal established by law when the employer invokes his immunity of jurisdiction under public international law. The case concerned the EPO (European Patent Office) and the trade union VEOB which sought to protect its rights to undertake activities at the EPO establishment in the Netherlands. EPO argued that the national courts lack jurisdiction. According to the Court of Appeals, the EPO could not invoke immunity of jurisdiction, because it would make the protection of the rights in the European Convention on Human Rights 'manifestly deficient'.

The Supreme Court decided differently. Accordingly, the fact that individual employees have an alternative internal complaint mechanism and the right to appeal at an ILO body, while trade unions do not, is sufficient to guarantee the rights of employees. The jurisdiction of the ECHR does not instantly provide access for trade unions (as implied in Article 11 ECHR) to a judge.

Sources:

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2017:57

http://www.ar-updates.nl/samenvatting/AR_2017_0066

3 Implications of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 The fastest decrease in the unemployment rate in ten years

The unemployment rate in the Netherlands continues to decrease. The Central Bureau of Statistics (CBS, the government's independent economic advisory institute) reported that the number of unemployed dropped to 482,000 people in December, 17,000 people less than the month before. This translates into an unemployment rate of 5.4 percent, while the unemployment rate one year ago was 6.6 percent. The decrease is occurring among all groups of employees, among men and women as well as among the young and old. The unemployment rate has not decreased this much over the past ten years. The decrease is the strongest among employees over the age

of 45. Among the younger workers, the unemployment rate decreased to the lowest unemployment rate in five years.

Sources:

http://vaan.ar-updates.nl/nieuws/2017-01-19/sterkste-daling-van-de-werkloosheid-in-tien-jaar

https://www.rijksoverheid.nl/actueel/nieuws/2017/01/19/grootste-daling-werkloosheid-in-10-jaar

Norway

Keywords: Posting of workers

Summary: The Ministry of Labour sent a letter to the ESA responding to the ESA's formal notice concerning the posting of workers.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Norway has informed the EFTA Surveillance Authority that it needs more time to respond to the Authority's letter of formal notice of 25 October 2016 concerning the posting of workers, in which the Authority claims that the Norwegian rules on the general application of coverage of costs incurred for travel, board and lodging are incompatible with the concept of minimum rates of pay in Directive 96/71/EC, and that hence no such requirement can be imposed on foreign service providers.

Source:

https://www.regjeringen.no/contentassets/01d0894ef2f640d1b7389ce99dac23dc/letter-of-formal-notice-to-norway-concerning-posting-of-workers.pdf

Poland

Keywords: Temporary agency work; Directive 2008/104; minimum wage

Summary: (I) The new regulations on the statutory minimum wage took effect on 1 January 2017. (II) The amendment to the Law on Temporary Agency Work is proceeding through the legislative process.

1 National Legislation

1.1 Temporary agency work

The amendment to the Law of 9 July 2003 on the employment of temporary workers (consolidated text: Journal of Laws 2016, item 360) is proceeding through the legislative process.

The process was initiated by the Ministry for Family, Labour and Social Policy on 12 July 2015.

On 24 January, the draft was approved by the government to proceed through the legislative process. On 2 February, it was submitted to Parliament for further discussion.

This form of employment is quite popular in Poland.

The major aim of the planned amendment is to strengthen the protection of temporary agency workers, as well as user undertakings that take recourse to this form of employment. To recall the amendments, the following points should be emphasised:

- The new mode to indicate in which cases employment of temporary workers is prohibited: It is inadmissible to employ a temporary worker to carry out the same type of work that had been performed by a 'regular' employee of a user undertaking dismissed within the last three months. Moreover, it is prohibited to employ a temporary worker in another establishment located on the territory of the same community (local territorial unit). It is also prohibited to assign a temporary worker work that requires him/her to carry guns (in practice, temporary workers would not be allowed to perform activities of security agents).
- In order to determine the remuneration of temporary workers, the user undertaking should inform the temporary agency about all workplace regulations on the determination of remuneration and grant access to these.
- The temporary work agency should share with the worker all contact details of the agency (address, phone number, hours of possible contact, etc.).
- The protection of pregnant female temporary workers shall be extended by introducing the principle that a fixed–term employment contract that comes to an end after the third month of pregnancy will automatically be extended till the day of delivery (such a rule applies to 'regular' fixed–term contracts under Article 177 § 3 LC).
- The remuneration for paid holidays would be determined on the basis of the remuneration paid within the last 90 days.
- Determining the maximum period of temporary work, taking into account all situations where the temporary worker is assigned to the particular user undertaking, even by different agencies, for subsequent periods: the maximum period of employment of a particular temporary agency worker shall amount to

18 months within a 36-month period. Time limits shall apply to both temporary workers employed under employment contracts and civil law contracts.

- The duty to initiate court proceedings before the competent court based on the location of the temporary work agency shall be removed. Thus, a temporary worker will have the choice to initiate proceedings at the competent court or a court close to where the work was actually performed (on equal footing with 'regular' employees).
- Temporary workers employed on the basis of civil law contracts will have the right to receive a written statement indicating the period of performance of temporary work. Moreover, it will be prohibited to stipulate a contractual clause that allows entering into a subsequent employment relationship between the worker and the user undertaking (currently, it is not possible to stipulate such a clause with a temporary worker employed on the basis of an employment contract).
- The list of offences against rights of temporary workers, subject to pecuniary fine, will be extended. The State Labour Inspectorate will be competent to punish a temporary work agency, the user undertaking, or both.

In addition, the amendment will introduce changes to the Law of 20 April 2004 on employment promotion and organisation of the labour market (consolidated text: Journal of Laws 2016, item 645, as amended), as far as the functioning of temporary work agencies is concerned.

The planned changes are:

- There will be two types of employment agencies – the first type shall provide outplacement services, personal and professional advice. The second type shall be an agency that deals with temporary work. They will receive a different certificate upon registration.
- This formal requirement will also apply to agencies that post foreign nationals to work at entities located in Poland. The agencies will be obliged to inform the relevant authorities about the posting of foreign nationals to polish undertakings.
- The Marshall of Voivodship (regional territorial unit) will be obliged to register agencies that post foreign temporary workers to Poland (as is the case with agencies dealing with Polish nationals).

It is expected that the amendment will take effect on 1 June 2017.

Sources:

http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000360

http://orka.sejm.gov.pl/Druki8ka.nsf/Projekty/8-020-479-2017/$file/8-020-479-2017.pdf

http://www.mpips.gov.pl/aktualnosci-wszystkie/art,5536,8566,zmiany-w-zatrudnianiu-pracownikow-tymczasowych.html

http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000645

2 Court Rulings

Nothing to report.

3 Implications of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Statutory minimum remuneration

On 1 January 2017, the new regulations on minimum wage took effect.

The major change is that the minimum wage currently applies not only to employees, but to certain categories of civil law contractors.

Moreover, the minimum wage has been raised to PLN 2.000 (around EUR 480) as of 1 January 2017.

It should be emphasised that this is not a new development. Regulations already accepted in 2016 are now taking effect.

Sources:

http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160001265

http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160001456

Portugal

Keywords: National minimum wage; social security

Summary: The Portuguese government and the social partners have to re-negotiate the balancing of the increase of the national minimum wage by reducing the Social Security Rate.

1 National Legislation

1.1 The increase of the national minimum wage and the failed reduction of the Social Security Rate (SSR)

The Social Security Rate[1] is a tax related to labour income and charged to both employers (23.75% in 2016) and employees (11% in 2016). It is administered by the State and provides benefits in case of sickness, retirement, disability, death and old age, maternity, paternity or adoption. Thus, both employers and employees must register and pay contributions.

The reduction of the employers' SSR, from 23.75% to 22.5%, was part of the agreement concluded between the Portuguese Labour Ministry and the social partners. Employers would have to pay a higher national minimum wage (of EUR 557), but would have a 1.25 percentage point decrease on the SSR. The government approved this reduction through Decree Law No. 11-A/2017, of 17 January 2017.

However, on 25 January 2017, Parliament approved a resolution which terminated the effects of Decree Law 11-A/2017. This resolution was approved by the Left Block (BE – left wing), the Portuguese Communist Party (PCP) and the Social Democratic Party (PSD – liberal-conservative) – see Parliament Resolution No. 11/2017, of 27 January 2017.[2]

The Portuguese government is now negotiating other measures with the social partners to mitigate the costs associated with the increase of the national minimum wage.

2 Court Rulings

Nothing to report.

3 Implication of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

[1] Available at https://dre.pt/web/guest/home/-/dre/105770317/details/maximized.
[2] Available at https://dre.pt/web/guest/pesquisa/-/search/105820578/details/maximized.

Romania

Keywords: Minimum wage; income tax; Working Time Directive

Summary: (I) The minimum wage increased. (II) Certain income tax exemptions entered into force. (III) A Romanian court asked the CJEU to give a preliminary ruling on the interpretation of Article 7 of the Working Time Directive.

1 National Legislation

1.1 The minimum wage

Government Decision No. 1/2017 increased the national minimum wage by about 16 percent.[1] As of 1 February 2017, it will amount to LEI 1,450 gross per month.

The previous increase in minimum wage had been adopted on 1 May 2016 and was set at LEI 1,250 per month.

Sources:

http://www.euroavocatura.ro/legislatie/1263/HG_1_2017_pentru_stabilirea_salariului_de_baza_minim_brut_pe_tara_garantat_in_plata

http://www.avocatnet.ro/content/articles/id_44569/Salariul-minim-cre%C5%9Fte-de-la-1-februarie-Cat-vor-cheltui-firmele-in-plus-pentru-fiecare-angajat-pl%C4%83tit-cu-minimul-pe-economie.html

1.2 Exemptions from income tax

Emergency Ordinance No. 3/2017, amending Law No. 227/2015 on the Fiscal Code,[2] introduces a number of exemptions from income tax. These concern persons who carry out applied research and/or technological development activities. Seasonal workers, who are employed throughout the entire year (i.e. who have concluded a fixed-term employment contract of 12 months) and who work in hotels and catering services benefit from the exemption.

The explanatory memorandum of Emergency Ordinance No. 3/2017 states that through such income tax exemptions for seasonal workers, it aims to 'achieve stability of contractual labour relations, promote employee loyalty and create new jobs, with a significant social impact.' It also states that those exemptions would ensure 'the prerequisites of quality services by attracting qualified human capital.'

Source:

http://www.dreptonline.ro/legislatie/oug_3_2017_modificare_legea_227_2015_codul_fiscal_ordonanta_de_urgenta_3_2017.php

2 Court Rulings

Nothing to report.

[1] Published in the Official Gazette of Romania No. 15 of 6 January 2017.
[2] Published in the Official Gazette of Romania No. 16 of 6 January 2017.

3 Implication of ECJ Rulings and ECHR

The Cluj Court of Appeal submitted a request for a preliminary ruling to the Court of Justice of the European Union (Case C-12/17 *Dicu*). The question referred for a preliminary ruling regards the interpretation of Article 7 of the Working Time Directive (Directive 2003/88/EC) to determine whether it applies to a national provision which excludes – when determining the duration of annual leave – taking into account the period the worker was on child rearing leave until the age of two as activity performed.

Source:

http://iaduer.ro/?p=4571

4 Other relevant information

Nothing to report.

Slovakia

Keywords: Holidays; rest days

Summary: The Slovak Parliament in a first reading discussed a proposal by a group of members of Parliament to increase the number of holidays and rest days during which work is prohibited.

1 National Legislation

On 13 January 2017, a group of members of Parliament (from the government's political party *Smer*) proposed an amendment to the legal regulation of work performed during public holidays and rest days in Article 94, paragraph 5 of the Labour Code. (These days are determined by Act No. 241/1993 Coll. on Public Holidays, Rest Days and Memorial Days.)

In their proposal, they extend (increase) the number of days it is prohibited to perform work. They state in the explanatory memorandum: 'this requirement derives from the fact that many employees performing work in shops during the holiday season cannot properly devote time to their families, because when their children and other family members are at home, these employees have to work. Protection of marriage, parenthood, families, and especially children and adolescents are constitutional guarantees. Work performed during the holiday retail sales season is not more important than family, despite the fact that paid time off on public holidays is guaranteed by the legislation in force in the Slovak Republic (Article 122 paragraph 3 of the Labour Code).'

According to the current wording of Article 94, paragraph 5 of the Labour Code states: 'On the days of 1 January, Easter Day, 24 December after 12:00 and 25 December, an employer may not order or agree that an employee shall perform work involving the sale of goods to end consumers, including work related to it ('retail sale') with the exception of the forms of retail sale defined in Annex No. 1a; the provisions of paragraph (3) (f) and paragraph (4) shall not apply to such cases.'

(*Annex No. 1a to Act No. 311/2001 Coll.*

Types of retail sales whose performance may be assigned to employees or agreed with employees on the days stipulated in the law

1. retail sales at petrol stations with fuels and lubricants,

2. retail sales and the filling of prescriptions in pharmacies,

3. retail sales at airports, harbours, other public transport facilities and hospitals,

4. sale of travel tickets,

5. sale of souvenirs.)

The changes shall be as follows: 'On the days of 1 January, 6 January, on Good Friday, Easter Sunday, Easter Monday after 14.00 hours, on 1 May, 8 May, 5 July, 29 August, 1 September, 15 September, 1 November, 17 November, 24 December after 12.00 hours, on 25 December and 26 December, an employer may not order or agree that an employee shall perform work involving the sale of goods to end consumers, including work related to it ('retail sale'), with the exception of the forms of retail sale defined in Annex No. 1a; the provisions of paragraph (3) (f) and paragraph (4) shall not apply to such cases.'

(*1 January - Day of the Establishment of the Slovak Republic; 6 January 6 - Epiphany; 1 May - Labour Day; 8 May - Day of victory over fascism; 5 July - St*

Cyril and Methodius Day; 29 August - Slovak National Uprising anniversary; 1 September - Day of the Constitution of the Slovak Republic; 15 September - Day of Our Lady of Sorrows; 1 November - All Saints Day; 17 November - Struggle for Freedom and Democracy Day; 24 December - Christmas Eve; 25 December - Christmas Day; 26 December - St. Stephens Day, Second Christmas Holiday.)

The proposed amendment of the Labour Code is planned to be in force as of 1 May 2017.

The Slovak Parliament interrupted the discussion on the draft in the first reading. Relevant parliamentary committees have until 20 March 2017 to discuss the proposal.

2 Court Rulings

Nothing to report.

3 Implications of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Slovenia

Keywords: Public sector; return of over-paid wages

Summary: The Supreme Court of the RS has issued a judgement, which was made public at the beginning of January 2017, and by which earlier case law relating to the return of over-paid wages in the public sector has been significantly modified.

1 National Legislation

Nothing to report.

2 Court Rulings

Judgement of the Supreme Court of the RS VIII Ips 256/2016

The relevant judgement[1] was passed during the Supreme Court's session on 20 December 2016.

It relates to the reform of the wages/salary system in the public sector in 2008. In order to set new pay rates in accordance with the new Public Sector Salary System Act (PSSSA),[2] employers were in many cases obliged to prepare and propose annexes to their employees' employment contracts, by which new wages were stipulated. Many mistakes occurred on this occasion. Numerous workers were rated as being in wage grades that were too high, and according to the Act, were thus not entitled to these.

In the present case, the plaintiff (public institution as the employer) claimed that the defendant (the worker) had to return the amount of overpaid wages (wages set in the modified employment contract, which were not in compliance with the Act). The Labour Court of First Instance sustained the claim.

The Labour Court of Second Instance (Higher Labour and Social Court) agreed with the Labour Court of First Instance that the provisions of the Public Sector Salary System Act are of mandatory nature. The Act does not expressly provide that overpaid wages have to be returned. It has been laid down that regarding the return of wages, civil law rules apply. For this reason, the Court was of the opinion that in accordance with the Obligations Code, the annex to the employment contract was null. The worker was obliged to return all wages she had received on the basis of the null employment contract to the employer.

The Supreme Court of the RS admitted the revision of the second instance judgement. Contrary to the first and second instance judgement, it rejected the claim that the worker had to return the overpaid wages. The Court did not agree that the employment contract was null on the basis of the PSSSA. It maintained that the Act does not provide that a worker must return the amount of all wages that were not correctly fixed and were, in comparison to the wages fixed and/or limited by the Act, too high. It provides that in such cases, the employer and the worker are expected to agree on the return of wages for only a limited time period and only a limited amount. The Court also pointed out that the employer is liable for damages when he/she concludes an employment contract that is contrary to the law. The Court was of the view that the PSSSA indicates that it is impossible to speak about the nullity of the employment contract. Without doubt, the contract in question was illegal.

[1] For the time being, available at: http://sindikat-pergam.si/file_uploads/SODBA_Vračilo_VSRS.pdf.
[2] Official Gazette of the RS, No. 108/09-officially consolidated text, 13/10, 59/10, 86/10,107/10,35/11-ORZSPJS 49a, 17/12, 40/12-ZUJF, 46/13,25/14,50/14,95/14-ZUPPJS15, 82/15_ZSPJS-T.

Among other aspects, it was pointed out by the Supreme Court that it is necessary to consider the nature of the employment relationship when estimating /judging the nullity of the contract in cases when wages are not set in conformity with the statute. An employment relationship is a relationship of subordination. The Court also drew attention to the social component of returning the overpaid wages.

Further, the Court took into consideration that according to the legislation in force, public servants work on the basis of employment contracts. The Public Servants Act and the ERA-1 apply in this regard. According to Article 17/2 of the ERA-1, it is the employer who must prepare and provide the worker with a proposed written employment contract. This implies that the employer is responsible in the first place for the legality and conformity of the employment contract with binding legal provisions.

The Supreme Court therefore decided that the Courts of First and Second Instance's judgements were erroneous. It ruled that the appointment to a higher wage rate was illegal. The illegality has *ex nunc* effect. The defendant cannot be affected by the consequences of nullity as provided for by the Obligations Code. For this reason, the claim was unfounded.

3 Implications of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Spain

Keywords: Employment of foreigners; youth employment; paternity leave; collective dismissal; collective bargaining

Summary: (I) No relevant legislation has been passed this month due to the Christmas holidays and the difficulties of reaching agreements in a very fragmented Parliament. The main development is the extension of paternity leave from thirteen days to four weeks. (II) A number of court rulings have been issued on the expulsion of foreigners, collective dismissals, the ultra-activity of collective agreements, equality and non-discrimination, and the freedom of expression of trade unions. (III) Moreover, the Ministry of Labour, unions and employers' associations are meeting to analyse the consequences of the De Diego Porras ruling.

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1 National Legislation

1.1 Employment of foreigners

In accordance with the provisions of the legislation on the employment of foreigners, this resolution publishes the "catalogue of jobs difficult to fill" in Spain for the first quarter of 2017. As follows from its name, this catalogue lists the occupations or jobs every three months that do not usually get coverage through Spanish workers, and for that reason the recruitment of foreign workers is permitted.

https://www.boe.es/boe/dias/2017/01/20/pdfs/BOE-A-2017-619.pdf

1.2 Youth employment

The Digital Agenda for Spain is the government's strategy to develop the digital economy and society in Spain. This strategy is deemed the umbrella of all the government's actions in terms of the Information Society and Digital Agenda and has been designed following the priorities of the Digital Agenda for Europe. In addition, the Youth Guarantee Scheme was approved in 2013 within the framework of the agreement adopted by the European Council and is regulated by Royal Decree Law 8/2014. These initiatives are intended, directly or indirectly, to reduce youth unemployment.

Source:

https://www.boe.es/boe/dias/2017/01/19/pdfs/BOE-A-2017-579.pdf

1.3 Paternity leave

Paternity leave, which is separate from maternity leave, was created in Spain in 2007 with a duration of thirteen days. Act 9/2009 extended the duration to four weeks, but not immediately. That extension has been suspended every year since. The last suspension ended on 31 December 2016, and it has not been extended for the future. Thus, the duration of paternity leave is four weeks as of 1 January, 2017.

2 Court Rulings

2.1 Foreigners

Constitutional Court, 28 November 2016

The Spanish administration has agreed to the expulsion of a Moroccan citizen who had been sentenced to imprisonment for more than a year for committing an offence. This person had lived in Spain for more than twenty years, his close relatives were Spanish, he had a mental illness and was under the tutelage of his brother.

This ruling states that in accordance with Spanish legislation on entry and residence of foreigners and in accordance with Directive 2003/109/EC, the expulsion of a foreigner must always comply with specific motivational requirements, because of their effects on the rights of the person affected (particularly when the person subject to expulsion enjoys the right of long-term residence). This motivation must take into account the personal and family circumstances, which were particularly relevant in this case.

Source:

https://www.boe.es/diario_boe/txt.php?id=BOE-A-2017-260

2.2 Collective dismissal: information and consultation

Supreme Court, 21 December 2016

Spanish legislation on collective redundancies requires the employer to inform the workers' representatives about the grounds for dismissal and the situation of the company, and requires the parties to negotiate in good faith. If not, the dismissal will be null and void and all the workers must be reinstated.

This ruling refers to previous doctrine and to Directive 98/59/CE to recall that due to this duty of good faith, the employer has the obligation to provide the workers' representatives with the 'necessary information on the action taken and its grounds', not hide relevant information and not obstruct the smooth running of the negotiations.

Source:

http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=TS&reference=7914812&links=&optimize=20170123&publicinterface=true

2.3 Collective agreements: duration

Supreme Court, 20 December 2016

Spanish law allows a collective agreement, once it has reached its maximum, to remain in force until the parties have signed a new collective agreement (ultra-activity). Since the Labour Reform of 2012, there is a maximum period of one year for the 'ultra-activity' of the collective agreement, unless otherwise agreed. Once this deadline is reached, the collective agreement definitely ends. If there is no other collective agreement of higher scope, the law does not provide for any solution.

Following the Labour Reform of 2012, it seemed that at the end of the so-called ultra-activity period, the employer only had the obligation to comply with the minimum set in the law. That is, in case of the lack of a collective agreement, the employer could be entitled to change the salaries of the workers and lower these to the minimum wage. The Supreme Court rejected this interpretation in 2014. This ruling confirms this doctrine, which is based on the starting premise that the conditions agreed in the collective agreement are incorporated into the contract of the worker. Therefore, even if the collective agreement ends, the worker can continue to enjoy the same conditions regarding wages, worktime, etc. However, the new workers hired by the employer after the end of the collective agreement could not enjoy the same advantage.

Source:

http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=TS&reference=7914760&links=&optimize=20170123&publicinterface=true

2.4 Equality and non-discrimination on grounds of sex: wages

Supreme Court, 10 January 2017

The Spanish Constitution and the Labour Code recognise the principles of equality and non-discrimination on grounds of sex. Thus, no difference based on sex is allowed, unless it is not justified. This ruling underlines this fact in relation to a system of pay which adversely affected workers who had been absent on parental leave.

Source:

http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=TS&reference=7920557&links=&optimize=20170130&publicinterface=true

2.5 Freedom of expressions: unions

Supreme Court, 15 December 2016

Freedom of expression is a fundamental right according to the Spanish Constitution, and that right can be invoked by worker representatives in the exercise of their functions. This was the case in the present ruling, which has many peculiarities, since the claim was initiated by one union against another, because during union elections, a union had accused the other of certain irregularities. Specifically, after certain information was published in the press, a union spread leaflets among workers exaggerating the facts to harm the other union in the upcoming elections.

Source:

http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=TS&reference=7914792&links=%22287%2F2015%22&optimize=20170123&publicinterface=true

3 Implications of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Unemployment

The year 2016 ended with 541,700 unemployed less and the unemployment rate was reduced to 18.63 percent. Employment grew at 3.3 percent per year.

4.2 Fixed-term contracts

The *De Diego Porras* ruling (14.9.2016, C-596/14) has had considerable impact in Spain, because it is unclear how to implement it. To date, the worker has had the right to a severance pay of 12 days of salary per year at the end of a fixed-term contract, except in case of temporary replacement contracts, which do not entail the right to severance pay, unless otherwise agreed. On the other hand, the termination of a contract (permanent or fixed-term) for objective reasons is a form of dismissal, and the worker has the right to a severance pay of 20 days of salary per year. The *De Diego Porras* ruling considers this a prohibited differentiation under Article 4 of the

Framework Agreement on fixed-term work. The Ministry of Labour, unions and employers' associations are meeting to analyse the consequences of the ruling and reach an agreement, and it seems a report will be issued soon.

4.3 Work in fishing

Directive 2017/159 of 19 December 2016 incorporates into EU law the Agreement on the application of ILO Convention 188 on work in fishing. The deadline for transposition of the Directive is 15 November 2019. Spain has not ratified ILO Convention No. 188, so the transposition will require to adapt the entire legislation in this field, which is widely dispersed, since the Labour Code applies, but specific rules on working time and prevention of occupational risks have been adopted (with the express transposition of Directive 93/103).

Sweden

Keywords: Whistleblowing; Directive 2014/14/EU; public procurement; Directive 2000/43/EC; Directive 2000/78/EC; 2006/54/EC; discrimination

Summary: (I) A number of new pieces of legislation has been introduced as of 1 January 2017. The previous protection on reprisals against whistleblowers (at work) has been increased, primarily for private employees, while civil servants in public employment already had substantial protection. (II) The new legislation on public procurement, which aims to transpose EU Directive 2014/14/EU, does not include the proposed detailed provisions on labour law clauses. (III) The affirmative action chapter of the Discrimination Act has been altered to cover all grounds of discrimination.

1 National Legislation

1.1 Legislation on Whistleblowing

New legislation on whistleblowers entered into force on 1 January 2017, SFS (2016:749) *om särskilt skydd mot repressalier för arbetstagare som slår larm om allvarliga missförhållanden*. The new Act aims to strengthen the situation of employees who blow the whistle on serious abuses at the workplace.

The Act on special protection against reprisals against employees who raise the alarm about serious abuses at the workplace, lagen (2016:749) *om särskilt skydd mot repressalier för arbetstagare som slår larm om allvarliga missförhållanden*, states that any employee who has been subject to such reprisals is entitled to claim damages from the employer for injury to feelings as well as economic damages for loss of income (or the like). The new legislation covers both private and public employment and also provides protection for employees who are engaged as temporary agency workers. The act points to internal whistleblowing as the primary route, emphasising internal reports to the management or the trade union. If the alarm is raised externally, through media or to the authorities, the employee is only protected if he or she had reasons to believe the grounds for the allegations. The burden of proof is similar to the situation in discrimination cases, in which the employee must establish facts from which it may be presumed that there has been a violation of the protection of reprisals, upon which it is for the respondent (the employer) to prove that there has been no such violation.

Sources:

http://www.regeringen.se/contentassets/be858a9a8ef9492bbe276230f01311a4/prop.-201516128-ett-sarskilt-skydd-mot-repressalier-for-arbetstagare-som-slar-larm-om-allvarliga-missforhallanden.pdf

1.2 New provisions on public procurement

The Swedish minority government (Social Democrat – Green coalition) presented a legislative proposal in 2016 on new provisions regarding public procurement. The new legislation entered into force on 1 January 2017. Despite the explicit proposal by the government, Parliament did not accept the special provisions on labour law regulations in public procurement.

Sources:

http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0024&from=EN

http://www.riksdagen.se/sv/dokument-lagar/arende/betankande/nytt-regelverk-om-upphandling_H401FiU7/html#_Toc467670741

1.3 Anti-discrimination legislation

The Discrimination Act (2008:567) *Diskrimineringslagen*, was subject to a revision as per 1 January 2017. Chapter 3, on affirmative action, and was altered in order to increase the requirements to take affirmative action to cover all grounds of discrimination. The previous legislation only assured affirmative action to be compulsory in relation to gender and partly in relation to ethnicity.

Sources:

http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006L0054&from=SV

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML

2 Court Rulings

Nothing to report.

3 Implication of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

United Kingdom

Keywords: Worker classification; Brexit

Summary: (I) An employment tribunal has qualified a cycle courier, who had passed a two-day recruitment process and was then presented with a 'Confirmation of Tender to Supply Courier Services', as a worker under section 230(3)(b) of the Employment Rights Act 1996. (II) The Supreme Court issued its decision in the Miller case and the European Union (Notification of Withdrawal) Bill 2016-17 was introduced to Parliament by the Secretary of State for Exiting the European Union. The government has also published a White paper on what it would like from the Brexit negotiations.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Worker classification

It may be recalled that in a landmark ruling in October 2016, Uber drivers were found by an employment tribunal to be workers, not self-employed. Now, an ET has found that a cycle courier for Citysprint, who having passed a two-day recruitment process was presented with a 'Confirmation of Tender to Supply Courier Services' which treated her as a self-employed contractor, was a worker under section 230(3)(b) of the Employment Rights Act 1996. This enabled her to claim a two-day holiday under the Working Time Regulations.[1]

Source:

https://www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf

2.2 Brexit

On 24 January 2017, the majority of the Supreme Court upheld the High Court's decision in Miller that it was Parliament, not the executive, which should trigger Article 50 TEU. On 26 January 2017, the European Union (Notification of Withdrawal) Bill 2016-17 was introduced to Parliament by the Secretary of State for Exiting the European Union, David Davis. The Bill provides:

> A BILL TO
>
> Confer power on the Prime Minister to notify, under Article 50(2) of the Treaty on European Union, the United Kingdom's intention to withdraw from the EU.
>
> Be it enacted by the Queen's most Excellent Majesty, by and with the advice and
>
> consent of the Lords Spiritual and Temporal, and Commons, in this present
>
> Parliament assembled, and by the authority of the same, as follows:—
>
> *1 Power to notify withdrawal from the EU*

[1] http://www.bbc.co.uk/news/business-38534524.

(1) The Prime Minister may notify, under Article 50(2) of the Treaty on European Union, the United Kingdom's intention to withdraw from the EU.

(2) This section has effect despite any provision made by or under the European Communities Act 1972 or any other enactment.

2 Short title

This Act may be cited as the European Union (Notification of Withdrawal) Act 2017.

The Bill had its second reading before the House of Commons (HoC) on 31 January 2017 and passed by a substantial majority. A number of amendments have been proposed. Assuming, as is very likely, that it is approved by the Commons, it will then go to the House of Lords (the upper house). It is thought likely that the Lords will also approve the Bill, given the substantial majority in favour in the Commons. The government intends to trigger Article 50 before the end of March 2017.

The government has also published a White paper on what it would like from the Brexit negotiations. It contains a key section on employment law, which can be found below. Crucially, it says: The Great Repeal Bill will maintain the protections and standards that benefit workers. Moreover, this Government has committed not only to safeguard the rights of workers set out in European legislation, but to enhance them.

The White Paper states the following with regard to employment law (graphs have been removed):

UK employment law already goes further than many of the standards set out in EU legislation and this Government will protect and enhance the rights people have at work.

7.1 As we convert the body of EU law into our domestic legislation, we will ensure the continued protection of workers' rights. This will give certainty and continuity to employees and employers alike, creating stability in which the UK can grow and thrive.

7.2 Our labour market is a great strength of our economy: there are 31.8 million people in work in the UK and the employment rate is at a near-record high. The Great Repeal Bill will maintain the protections and standards that benefit workers. Moreover, this Government has committed not only to safeguard the rights of workers set out in European legislation, but to enhance them. The past few years have seen a number of independent actions by the Government to protect UK workers and ensure they are being treated fairly, and in many areas the UK Government has already extended workers' rights beyond those set out in EU law. For example, UK domestic law already provides for 5.6 weeks of statutory annual leave, compared to the four weeks set out in EU law. In the UK, women who have had a child can enjoy 52 weeks of statutory maternity leave and 39 weeks of pay, not just the 14 weeks under EU law.

The UK also provides greater flexibility around shared parental leave, where, subject to certain conditions, parental leave can be shared by the father of a child, giving families choice as to how they balance their home and work responsibilities. In addition, the UK offers 18 weeks' parental leave, and that provision goes beyond the EU directive because it is available until the child's 18th birthday.

7.3 These rights were the result of UK Government actions and do not depend on membership of the EU. The Government is committed to strengthening rights when it is the right choice for UK workers and will continue to seek out opportunities to enhance protections.

7.4 In April 2016 we introduced the National Living Wage and saw a 6.2 per cent pay increase for the lowest paid workers in our country over the previous year. We have complemented this measure with strong enforcement action, increasing the

enforcement budget for the National Minimum and Living Wage to £20 million for 2016/17, up from £13 million in 2015/16.

7.5 We have increased penalties for willfully non-compliant employers and have set up a dedicated team to tackle the more serious cases. Furthermore, we are appointing a statutory Director of Labour Market Enforcement and Exploitation. These actions demonstrate our commitment to ensuring that hard working people are entitled to a fair wage and that they receive the pay to which they are entitled.

7.6 We are committed to maintaining our status as a global leader on workers' rights and will make sure legal protection for workers keeps pace with the changing labour market. Specifically, an independent review of employment practices in the modern economy is now under way. The review will consider how employment rules need to change in order to keep pace with modern business models, such as: the rapid recent growth in self-employment; the shift in business practice from hiring to contracting; the rising use of non-standard contract forms and the emergence of new business models such as on-demand platforms.

7.7 Moreover, we will ensure that the voices of workers are heard by the boards of publicly-listed companies for the first time. We need business to be open, transparent and run for the benefit of all, not just a privileged few. It is for this reason that we launched a Green Paper on corporate governance in November 2016.

This paper seeks a wide range of views on our current corporate governance regime, and particularly on executive pay, employee and customer voice and corporate governance in large private businesses. It represents a decisive step towards corporate governance reform and is yet another example of this Government's commitment to building an economy that works for everyone, not just those at the top.

Sources:

https://www.supremecourt.uk/cases/uksc-2016-0196.html

http://services.parliament.uk/bills/2016-17/europeanunionnotificationofwithdrawal.html

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf

3 Implication of ECJ Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

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