



# Flash Reports on Labour Law December 2018

Summary and country reports

Written by The European Centre of Expertise (ECE), based on reports submitted by the Network of Labour Law Experts

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## Executive Summary

### 1 National level developments

In December 2018, 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 focused specifically on the following issues:

#### Minimum wage

In **Bulgaria**, using the new Article 244.1 of the Labour Code, the Council of Ministers have set the national minimum wage for 2019 by Decree at BGN 560 (EUR 280) per month and BGN 3.37 (EUR 1.45) per hour. In **Croatia**, the Minimum Wage Act has been adopted (Official Gazette No. 118/2018). The legislator's objective is to gradually increase the minimum wage relative to the average salary. In **Estonia**, the Estonian Transport and Road Workers Trade Union and the Union of Estonian Automobile Enterprises have published a draft collective agreement, the aim of which is to increase the monthly minimum wage in the transport sector. This agreement mainly concerns lorry drivers. According to the draft, the monthly minimum wage starting from May 2019 will be EUR 950. In 2020, the minimum monthly wage will be increased by EUR 50, and by EUR 100 per month in 2021. In **Luxembourg**, on the basis of the biannual general review of the social minimum wage—the tradition being to adapt it to the general development of salaries—it will increase by 1.1 per cent after 01 January 2019. In **Portugal**, Decree Law No. 117/2018, of 27 December, establishes that from 01 January 2019, the national minimum monthly wage will be EUR 600. In **Romania**, the minimum wage will increase from 01 January 2019 at two levels: a general minimum wage and a special minimum wage for certain categories of employees. The general minimum gross wage will be RON 2 080 (about EUR 450). There are two exceptions: higher education graduates with at least one year of seniority in the

field of their studies will be entitled to a minimum gross wage of RON 2 350 per month, and construction will be RON 3 000. In **Slovenia**, the Act on Amendments to the Minimum Wage Act was ratified on 13 December 2018. Some changes/additional provisions have been introduced: the introduction of a calculation of the amount of minimum wage based on a new formula has been postponed from 01 January 2019 to 01 January 2020. The proposed statutory provisions have been complemented by provisions on fines.

#### Working time

In **France**, Act No. 2018-771 of 05 September 2018 provides the possibility of derogating from the maximum working time of 35 hours a week and 8 hours a day for individuals under the age of 18 years for certain activities. Where the organisation of work warrants, it will be possible, after notifying the Regional Directorate for Companies, Fair Trading, Consumer Affairs, Labour and Employment, to increase the maximum weekly working time by 5 hours and the maximum daily working time by 2 hours. In **Hungary**, there have been important reforms on working time. On the one hand, the maximum possible reference period to calculate working time that can be determined by collective agreement has been increased to 36 months 'if justified by technical reasons or reasons related to work organisation'. On the other hand, the maximum amount of overtime hours has been extended substantially, allowing the employer to request a worker to work 250 hours of overtime per year, and an agreement between the employer and employee can add up to an additional 150 hours or 'non-imposed' overtime work per year. In **Ireland**, the Employment Act 2018 has been enacted. Among the most important changes are the prohibition of zero-hours contracts in most circumstances and the introduction of a banded hours provision so that employees are entitled to be placed on a band of hours that better reflects the reality of the hours they work. In **Latvia**, the Parliament adopted amendments to the Medical



Treatment Law. The amendments assert that overtime work for medical staff within a 7-day period may not exceed 16 hours in total. In **Poland**, a draft amendment to the Labour Code on reducing the working time of employees with parental duties was rejected by Parliament, as well as was the draft amendment to the Labour Code concerning on-call time as well as the remuneration of employees managing the establishment in the name of the employer. The Supreme Court issued a ruling interpreting the law on prohibition of work on Sundays. In **Iceland**, an amendment was made to Act No. 46/1980 on the working environment, health and safety at work allowing the social partners to make agreements for workers who offer user-managed personal assistance to disabled persons, derogating from daily rest time and night work regulations.

### Third country nationals

In **Belgium**, in order to transpose the Directive on European Single Permit Directive 2011/98/EU of 13 December 2011, the Law of 15 December 1980 on the entry, residence, and removal of foreign nationals has been amended by a Law of 22 July 2018. In **Croatia**, the annual quota for employment of Aliens for 2019 is considerably higher compared to previous years. Last year, it amounted to 38 769 and in 2019, it will amount to 65 100. In **Spain**, the Order of 2018 aims to expand the possibilities of hiring foreigners for their contribution both to covering jobs difficult to fill and to the demographic situation, within the objectives of the 2030 Agenda and the Global Migration Pact.

### Persons with disabilities

In **Bulgaria**, a new Act on Persons with Disabilities regulating obligations of both the State and employers has been adopted. It regulates issues such as disabled persons' right to assistance by the Employment Agency and employers' obligation to keep a certain number of jobs available for persons with disabilities. In **Italy**, the Fund for Disabled Workers will be increased to EUR 10 million for 2019,

and employers become entitled to a 60 per cent wage subsidy for employing disabled workers who are participating in an occupational rehabilitation project certified by INAIL.

### Dismissal law

In **Belgium**, the mandatory offer of an outplacement scheme in case of dismissal after age was extended to previously excluded cases such as workers with a weekly working time less than half of full-time. In **Finland**, pre-existing case law is expected to be inserted into legislation according to a government proposal, which confirms that both circumstances of the employer and of the employee have to be taken into account. In **France**, the Labour Division of the Court of Cassation ruled that the dismissal of an employee hired under an 'employment initiative contract' (EIC) after an accident at work was null and void because, despite the formal expiry of the contract, the rule that dismissal must have a real and serious cause applies. In **Germany**, a provision stating that periods of employment prior to an employee's 25th birthday need not be taken into account to calculate the relevant period of notice was repealed. The provision had already been disapplied in practice after the CJEU's judgment in case C-555/07, 19 January 2010, *Küçükdeveci*. In **Luxembourg**, the Constitutional Court found that the dismissal of a pregnant woman working under an insertion contract is unconstitutional, as she is in a similar situation to other pregnant women, to whom dismissal protection applies. This decision is no longer of relevance, as the law has been amended in the meantime. In **Spain**, the Constitutional Court decided that the dismissal of a worker for the reason that she had to attend meetings as a city councillor during working time was null and void, thereby referring to CJEU case C-270/16, 18 January 2018, *Ruiz Conejero*. According to that case, the list of reasons for absence from work that must be excused cannot be seen as exhaustive because EU law requires reasons related to disability to be taken into account.

## 2 Implications of CJEU and EFTA Court rulings

### CJEU case C-385/17, 13 December 2018, *Hein*

In this case the CJEU ruled that Article 7(1) of Directive 2003/88/EC and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation which, for the purpose of calculating remuneration for annual leave, allows collective agreements to provide that reductions in earnings resulting from the fact that during the reference period there were days when no work was actually performed owing to short-time working, should be taken into account, with the consequence that the worker – for the duration of the minimum period of annual leave to which she is entitled under Article 7(1) of the Directive – receives remuneration for annual leave that is lower than the normal remuneration she receives during periods of work.

Under **Croatian** law, this means that current legislation, which provides that remuneration during annual leave may not be less than the employee's average monthly remuneration over the previous three months (including any benefits in cash or in kind representing compensation for work), will have to be read in line with the ruling. A similar approach has in fact been used before in case law. Notably, a ruling by the Constitutional Court has found in 2005 with regard to severance pay that if the employee does not work over a certain period for legitimate reasons in the relevant three-month period, this must not influence the calculation of the benefit negatively. In **Latvia**, a situation like the one dealt with in *Hein* could not arise for lack of a provision for short-time work under national law. However, when it comes to calculating annual leave benefits, the current law stipulates a calculation based on the average wage during the six month preceding the leave. This regulation ensures that only periods of actual work are taken into account, but if there were changes in the employee's wage level it does not prevent the benefit from being lower than the wage over the total period

when the right to annual leave was acquired. **Spanish** labour law does not contain a specific rule on this issue, so that courts are expected to follow the CJEU's ruling in relevant cases. **Swedish** law is already providing explicitly for cases of vacation, short-term work, sickness or parental leave during the relevant calculation period, so that a situation in which the ruling would be relevant is not likely to arise.

Table 1. Main developments (excluding implications of CJEU or EFTA-Court rulings)

Topic	Countries
Minimum wage	BG, CZ, HR, EE, LU, PT, RO, SI
Working time	FR, HU, IE, LV, PL, IS
Dismissal law	BE, DE, ES, FI, FR, LU
Third country nationals	BE, HR, ES
Persons with disabilities	BG, HR, IT
Part-time work	AT, DE
Labour Inspectorate	BE, HR
Employment contracts	FI, FR
Data protection	FR, ES
Temporary Agency Work	HU, IS
Parental leave	IT, PL
Works Councils	AT
Older employees	BE
Career break	BE
Social Criminal Code	BE
Holidays	BG
Strike law	HR
Collective agreements	HR
Work accidents	CZ
Apprenticeship	FR
Retirement pension	FR
Transfer of Undertakings	FR
Freedom of association	DE
Night work	IS
Zero-hours contracts	IE
Employer's insolvency	IS
Employment policies	IT
Smart work	IT
Annual leave	MT
Concept of employer	NO
Pre-retirement age work	PL
Public employment	ES
Posting of workers	SE
Concept of worker	UK
Brexit	UK

# Austria

## Summary

(I) The Act on Civil Servants has been amended to include the right to 'part-time reintegration'.

(II) The Austrian Supreme Court has issued a ruling on the question of different forms of continuation of payment for part-time and full-time employees while performing works council activities.

## 1 National Legislation

### 1.1 'Part-time reintegration' scheme for civil servants

The government proposal on the [amendment of the legislation on civil servants](#) ('2. Dienstrechts-Novelle' 2018, BGBl I, 102/18; see also November 2018 Flash Report) has been [passed](#). The part-time reintegration scheme for civil servants entered into force on 01 January 2019. The scheme aims to facilitate and partially fund the reintegration of employees in their work place, who have suffered severe illness (see § 50f Act on Appointed Civil Servants – 'Beamten-Dienstrechtsgesetz').

This legislation neither transposes nor touches upon European Union law.

## 2 Court Rulings

### 2.1 Continuation of payment of part-time employees for works council activities

*Supreme Court, No. 9 ObA 72/18f, 30 October 2018*

§ 116 [Works Constitution Act](#) ('Arbeitsverfassungsgesetz') provides as follows (unofficial translation by the author):

*"The members of the works council shall be granted the necessary time off to fulfil their duties, with continued payment of their remuneration (...) ."*

An employee worked part-time (30 hours per week) as a nursing assistant and was able to flexibly allocate her working hours. She was also a member of the works council and claimed 27 hours of additional payment, arguing that she performed works council activities during her working hours. Otherwise this would constitute a discrimination of part-time workers and indirect gender discrimination pursuant to the decision of the CJEU in case C-360/90, *Bötel*.

The employer rejected her demand, pointing out that the worker was able to allocate her working hours flexibly and that she obviously performed her works council activities outside her working hours.

The labour court of first instance rejected the employee's claim, arguing that being a works council member is an unpaid honorary position and that this justifies differentiated treatment between full-time and part-time workers.

The court of appeal decided in favour of the employee, arguing that the honorary position does not justify differentiated treatment between full-time and part-time workers. Works council activities that are carried out by full-time employees during working time must be paid to the same extent to part-time workers as well. The court referred the case back to the labour court to establish whether the times the part-time

worker claimed to have dedicated to the performance of works council activities would have been considered working time for full-time workers.

The [Supreme Court](#) rejected the claim, again citing the honorary nature of the position of works council member. Such activity is unpaid, but pursuant to § 116 of the Labour Constitution Act, time off must be granted to the extent necessary in order to fulfil the duties of a works council member. In this regard, a difference does exist between full-time and part-time workers.

The court also pointed out the different legal situations in Germany and Austria. In Germany, the (German) Works Constitution Act (*'Betriebsverfassungsgesetz'*) grants works council members additional time off for activities performed in their spare time (so-called 'leisure time compensation' – *'Freizeitausgleich'*). Therefore, the legal situation differs considerably from Austria's, where the principle of the unpaid and honorary position of works council members is developed much further. The CJEU stated in the case C-457/93, *Lewark* (para 38) that the social policy aim of the unpaid and honorary nature of the functions of works council members may justify differentiated treatment if it is suitable and necessary for achieving that aim. It is for the national court to ascertain whether this is the case. The German Federal Labour Court (*'Bundesarbeitsgericht'*) on 05 March 1997, 7 AZR 581/92, in fact [ruled](#) that this is the case.

The Austrian Supreme Court did not follow the arguments of the German Federal Labour Court, and cut off the plaintiff rather briefly:

*"In the present case, in support of her claim, the plaintiff, in addition to § 116 Labour Constitution Act, also cited the Bötzel decision of the CJEU nominally, but in addition did not even allude to why her situation was comparable to the one in that case. As explained, the Austrian legal situation does not provide for a claim to compensatory leisure time for works council activities carried out during the works council member's leisure time comparable to § 37 (3) of the German Works Constitution Act. Irrespective of this, the plaintiff also did not claim that her works council activities, for which she seeks remuneration, would have entailed continued payment of wages in the case of a full-time works council member. This is also not certain. The general assertion of the plaintiff of indirect discrimination will not be dealt with further by the Court. Other legal grounds were not asserted by her."* (translation by the author)

This decision deals with an issue that has been discussed in the Austrian legal literature since the decision of the CJEU in the *Bötzel* case. The Supreme Court does not resolve the dispute despite taking the case law of the CJEU into account, in particular the *Lewark* decision, but only issued a decision based on the fact that the appeal was not well argued. The German Federal Labour Court argued in 7 AZR 581/92 that the differentiation between full-time and part-time workers who are also works council members ensures that the works council member cannot use her time off to perform works council tasks to increase her remuneration and to thereby attain an advantage that other workers could not achieve. For full-time workers, it is impossible to use their free time to perform work without the employer's consent and to thus earn higher remuneration. The same also applies to the Austrian situation where the unpaid and honorary nature of the position of works council members is even further developed as the Supreme Court has pointed out.

### 3 Implications of CJEU rulings and ECHR rulings

Nothing to report.



#### 4 Other relevant information

Nothing to report.

# Belgium

## Summary

(I) The EU-single permit authorising third-country nationals to reside and work in Belgium was made operational by various legislative measures because of the federal state structure.

(II) A new law of 14 December 2018 exempts the employer from the obligation to provide outplacement assistance to an older employee who, at the end of her period of notice or the period covered by her dismissal compensation, need no longer be available for the general labour market.

(III) The exemption from social security contributions on supplementary allowances paid by the employer as a compensation for the reduction of the working time of older employees becomes legally possible with a new royal decree not only if the compensation is determined by a collective bargaining agreement or by an amendment to the work regulations at company level but also when the compensation is regulated in an individual written agreement between the employee and the employer.

(IV) According to the Cour de cassation the simple refusal of the employer to provide social documents to the labour inspectors, without opposing the tracing of those documents, does not constitute the criminal offence of obstruction to supervision in the meaning of the Social Criminal Code.

## 1 National Legislation

### 1.1 Single permit

The European Member States are obliged by the European Single Permit Directive 2011/98/EU of 13 December 2011 to introduce a procedure for issuing a single permit for work and residence to non-EU nationals. To transpose the Directive, the Law of 15 December 1980 on the entry, residence, and removal of foreign nationals was amended by a Law of 22 July 2018 (see '*Moniteur belge*' of 24 December 2018, p. 102082). This implementation has been complemented by the following legal acts:

- Law of 12 November 2018 approving the Cooperation Agreement between the Federal State, the Walloon Region, the Flemish Region, the Brussels-Capital Region and the German-speaking Community on the coordination between the policy on admission to work and the policy on residence permits and on the standards on the employment and residence of foreign workers (see '*Moniteur belge*' of 24 December 2018, p. 102087).
- Royal Decree of 12 November 2018 amending the Royal Decree of 08 October 1981 on access to the territory, stay, establishment and removal of foreign nationals for the purpose of issuing a single permit authorising third-country nationals to reside and work on the territory of the Belgium (see '*Moniteur belge*' of 24 December 2018, p. 102087);
- Decree of the Flemish Government of 07 December 2018 implementing the Law of 30 April 1999 on the employment of foreign workers (see '*Moniteur belge*' of 21 December 2018, p. 101748).

The main objective of this Directive is to simplify the admission procedure for third-country nationals wishing to work in the Member States and to harmonise the rules currently applicable in the Member States. The application for work counts as an application for a residence permit.

For Belgium, this is a complex matter because the competences with regard to the employment of foreign workers are divided between the federal government on the one hand, and the regional authorities, i.e. the Flemish Region, the Walloon Region, the Brussels-Capital Region and the German-speaking Community on the other hand. For this reason, a Cooperation Agreement was already concluded on 02 February 2018 between the federal government and the regional authorities on the single permit for work and residence. An Implementing Cooperation Agreement was recently concluded on 06 December 2018.

As from 03 January 2019, a third-country national who wishes to work more than 90 days in Belgium must submit to the competent Region, via her employer, a combined application, valid as an application for a work permit and as an application for a residence permit. If the work permit and the residence permit are granted, respectively, by the Region and by the Immigration Department, the third-country national receives a single document proving that she can stay in Belgium for more than 90 days to work ('Single Permit').

All residence permits issued by Belgium must contain one of the following three entries on access to the labour market as from 03 January 2019:

- 'Labour market: limited';
- 'Labour market: unlimited';
- 'Labour market: no'.

The Federal Immigration Office and the Regions process applications jointly, each authority for the matter falling within its competence. The Federal Immigration Office handles applications for residence. The Regions process applications for work.

But the old system of work permits does not disappear completely. For instance, regulations on the employment of foreign employees (work permit B or exemption) remain applicable to the following third-country nationals: employees coming to Belgium to work less than 90 days, young au pair people, researchers with a hosting agreement, highly qualified workers (EU 'Blue Card'), intra-corporate transferees (Directive 2014/66/EU of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer) and seasonal workers.

As far as the Flemish Region is concerned, the amendments go beyond what is necessary for the introduction of a single application procedure and the issue of a 'single permit'. In addition to changes to the procedures and documents, the Flemish Region has also made substantive changes to the economic migration regime. On the one hand, the attraction of foreign talent to support the growth of our innovative knowledge economy and the filling of labour supply gaps in structural bottleneck professions are the main features. A dynamic list of bottleneck professions has been drawn up. In this way, middle-skilled people gain access to the labour market without labour market research being required. So far, the other Regions and the German-speaking Community have not yet done so.

## 1.2 Outplacement

A new Law of 14 December 2018 contains various provisions relating to work (see '*Moniteur belge*' of 21 December 2018, p. 101652). The novelty in this context is a change in the outplacement of workers aged 45 and more. When an employee aged at least 45 is dismissed, and her period of notice does not reach 30 weeks, the employer must offer her the special outplacement scheme provided for in Collective Agreement n°82 concluded in the National Labour Council of 10 July 2002, in accordance with the provisions of the Law of 05 September 2001 aimed at improving the employment rate of employees.



However, the employer is exempt from this obligation for:

- an employee whose employment status includes an average weekly working time that is less than half the working time of a full-time worker in the company;
- an employee who, at the end of her period of notice or the period covered by her dismissal compensation, need no longer be available for the general labour market.

Until now, however, an employee falling into one of these two categories had the right to request an outplacement procedure from her employer.

The scope of this right is restricted by the new Law of 14 December 2018. Indeed, it is only to employees in the first category (employed for less than half a full-time job) that the employer will be required to grant an outplacement if they so request. However, the employees concerned will lose this right if, at the end of their notice period or the period covered by severance pay, they need no longer be available for the general labour market.

### 1.3 Time credit (part time career break) for older employees

A Royal Decree of 12 December 2018 adopted an amendment to Article 19, §2, 22° of the Royal Decree of 28 November 1969 implementing the Law of 27 June 1969 on the social security for employees (see *'Moniteur belge'* of 21 December 2018).

This measure is aimed at older employees who want to decrease their working time at the end of their career. From the age of 55 (age 50 for employees doing a heavy work, having a long career or in a company in difficulty or in restructuring), employees who meet the conditions can work 4/5 or half time until retirement by taking a runway in time credit. In order to obtain the right to benefits, the right to time credit must first have been obtained from the employer in accordance with the provisions of the Collective Bargaining Agreement (hereinafter: CBA) No. 103 on time credit and career breaks, concluded in the National Labour Council on 27 June 2012. The employee must comply with the following conditions: at least 25 years of professional career as an employee and 24 months of seniority with the employer from whom the time credit is requested. The employer may provide a partial compensation for the loss of salary. For such compensation payments by the employer, Royal Decree of 28 November 1969 provides in its Article 19 (As amended by Royal Decree of 09 January 2018; see Advice National labour Council No. 2067 of 19 December 2017) an exemption from social security contributions (See CBA No. 104 of 27 June 2012, concluded in the National Labour Council on the implementation of an employment plan for older workers in the undertaking).

So far, part-time credit for older workers has not been a success. This is due, inter alia, to the fact that compensation must in principle be determined by a CBA or by an amendment to the work regulations at company level. This condition has now been dropped in the new Royal Decree of 12 December 2018. As from 01 January 2019, the granting of a compensation with exemption of the employer's obligation to pay social security contributions may also be regulated at the by an individual written agreement between employer and employee.

The webpage of the National Labour Council is available [here](#).

## 2 Court Rulings

### 2.1 Labour inspection

*Cour de cassation, No. P.18.0339.N, 06 November 2018*

Article 209 of the Social Criminal Code punishes the obstruction of the supervision by the Labour Inspectorate. Within the meaning of that provision, it is punishable to knowingly and intentionally impede the supervision organised or regulated by the law by persons designated by the law to be criminally liable.

Article 28 of the Social Criminal Code empowers Labour inspectors to search or examine social data carriers if the nature of the search or examination so requires where there is a risk that such media or the data they contain will disappear or be altered as a result of the check. If the employer or her proxy opposes such detection or investigation, a report shall be drawn up on the grounds of obstruction of surveillance.

According to the [ruling of the Cour de cassation](#), it follows from this legal provision 28 and its parliamentary preparation that simply refusing to provide social documents to the labour inspectors, without opposing the tracing of those documents, does not constitute the criminal offence of obstruction to supervision within the meaning of Article 209 of the Social Criminal Code.

This judgment is important because, through parliamentary history, it takes into account the case law of the ECtHR in relation to Article 6.1 ECHR and more specifically the right to remain silent and the right not to cooperate in self-incrimination, the so-called *nemo tenetur* principle (For example ECtHR 11 July 2006, No. 54810/00, *Jalloh v. Germany*).

As early as the previous Law of 20 July 2006 – and the Social Criminal Code has adopted this regulation – authoritative commentators pointed out that the fact that the investigative powers of the labour inspectorate were extended necessarily limited the criminal offence of obstructing supervision in terms of content (see Van Eeckhoutte/Bouzoumita 2010; De Nauw 2009; Clesse 2013). From the moment that the social inspectors have an active right to investigate the social data and the data prescribed by the law, for which the employer's consent is not required, there can only be an impediment of supervision in the event of opposition.

References:

E. Van Eeckhoutte and S. Bouzoumita (2010), "Opsporing van sociaalrechtelijke misdrijven", in *Sociaal handhavingsrecht*, G. Van Limberghen (ed.), Antwerp, Maklu, p. 197-199.

A. De Nauw (2009), "Het misdrijf van verhindering van toezicht, de wettelijke verplichting bepaalde documenten op te maken, bij te houden en te bewaren in het sociaal strafrecht en het gebruik ervan in een strafvervolgning", in *Liber Amicorum Henri-D. Bosly*, Bruges, Die Keure, p. 137-140.

C.E. Clesse (2013), *Droit pénal social*, in *Répertoire pratique du droit belge*, Brussel Bruylant, p.150.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Bulgaria

## Summary

Several minor changes in Bulgarian labour legislation have been introduced on the regular adaptation of the minimum wage and religious holidays as well as a new law on persons with disabilities.

## 1 National Legislation

### 1.1 Minimum wage

Article 244, point 1 of the Labour Code provides that the Council of Ministers sets the national minimum wage. [Decree No. 320 of 20 December 2018](#) (promulgated in State Gazette No. 107 of 28 December 2018) set the minimum wage for 2019 at BGN 560 (EUR 280) per month and BGN 3.37 (EUR 1.45) per hour.

### 1.2 Persons with disabilities

The National Assembly (Parliament) adopted a new Act on Persons with Disabilities (promulgated in State Gazette No. 105 of 18 December 2018). Articles 35—52 of this Act regulate the obligations of the State and of the employers for the employment of persons with disabilities. They provide that the Ministry for Labour and Social Policy and the Employment Agency are responsible for the organisation of policy in this field. Persons with disabilities may make use of the assistance of the Employment Agency to find suitable work, to be informed about opportunities for employment or professional training, etc. Employers are required to keep a certain number of jobs available for persons with reduced ability for work and to take into account the needs of such persons in the work place.

### 1.3 Religious holidays

Article 193, para 2 of the Labour Code provides that the employer is required to allow workers, who belong to a religion other than Eastern Orthodox Christianity, at the request of the worker, to use part of her paid annual leave or grant her unpaid leave for the religious holidays of her respective religion, but not more than the total number in days of the Eastern Orthodox Christian holidays. The Council of Ministers announces the holidays for religions other than Eastern Orthodox Christianity every year. Decree No. 946 of 27 December 2018 (promulgated in State Gazette No. 29 of 2018) announced these holidays for 2019.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Croatia

## Summary

- (I) The following acts were recently adopted: the State Inspectorate Act, the Minimum Wage Act and the Labour Market Act.
- (II) The Constitutional Court has decided that the judgment of the Supreme Court of the Republic of Croatia on the unlawfulness of the strike of Croatia Airlines employees is in line with the Constitution.
- (III) When calculating salary compensation during annual leave, employers need to take into account the judgment of the CJEU ruling in case C-385/17, 13 December 2018, *Hein*.
- (IV) The annual quota for the employment of aliens for 2019 as well as the decision on the lowest amount of daily wage of seasonal workers in agriculture for 2019 have been published in the Official Gazette.
- (V) The National Collective Agreement for Croatian Seafarers on Ships in International Navigation (2019-2010) as well as the Collective Agreement for Science and Higher Education have been concluded.
- (VI) The amendment to the regulations on employment incentives for persons with disabilities has been issued.

## 1 National Legislation

### 1.1 State Inspectorate Act

The [State Inspectorate Act](#) has been adopted (Official Gazette No. 115/2018). It has replaced, among others, the Labour Inspectorate Act of 2014. The labour inspectorate is no longer an administrative body within the Ministry of Labour and Pension System but is now part of the State Inspectorate.

### 1.2 Minimum Wage Act

The [Minimum Wage Act](#) has been adopted (Official Gazette No. 118/2018). The legislator's objective is to gradually increase the minimum wage relative to the average salary.

The Amendment to the Minimum Wage Act of 2017 had introduced the right for certain employers to a 50 per cent reduced base for the payment of social security contributions. This right has been abolished by the new Minimum Wage Act but a transitional period until the end of 2020 has been introduced for such employers (in 2019, the 50 per cent reduced base will apply, but in 2020, that base will only be 25 per cent).

The novelty is the exclusion of employees who are also members of the board of directors or executive directors, liquidators, etc. from the right to minimum wage (Article 4(2)). The purpose of this provision is to reduce the burden of so-called micro employers, who now no longer have to pay minimum wage.

The Minister of Labour needs to take more parameters into account than before when determining the amount of minimum wage (Article 6(3)). A new advisory body (Commission of Experts) is introduced (Article 7). Its task is to monitor and analyse minimum wages.

A precise deadline for the government to define the amount of minimum wage has been introduced (Article 5).

### 1.3 Labour Market Act

The [Labour Market Act](#) (Official Gazette No. 118/2018) has replaced the Act on Employment Mediation and Unemployment Rights of 2017. According to Article 2, it implements the following Directives: 97/81/EC, 2006/123/EC and 2014/54/EU. The Labour Market Act regulates the labour market through employment mediation, vocational guidance, training to increase employability, unemployment insurance, active employment policy measures, other activities aimed at promoting the spatial and professional mobility of the workforce, new employment and self-employment, employment in temporary or occasional jobs in agriculture and the organisation, management and performance of the Croatian Employment Service (Article 1).

### 1.4 Act on Employment Incentives

The Act on Employment Incentives of 2012 (as amended in 2017) will [cease to be applied](#) (Official Gazette No. 118/2018).

## 2 Court Rulings

### 2.1 Right to strike

*Constitutional Court, No. U-III-3468/2018, 08 November 2018*

The trade union representing employees of Croatia Airlines (hereinafter: ORCA) organised a strike in line with the provisions of the Labour Act following completion of the compulsory mediation procedure, and announced that a strike would be called on 09 July 2018, but postponed it and later called a strike for 08 August 2018.

The issue raised before the regular courts was whether the postponed strike was organised against the law because no mediation procedure had taken place before the second call for the strike but only before the first call for the strike which was postponed.

The Supreme Court of the Republic of Croatia ruled that the strike breached the law because a postponement of the strike to an undefined period without completing a mediation procedure before calling for a strike means that the employer is continuously in a volatile situation and faces the potential crisis caused by the possibility of a strike called for but postponed to an indefinite time. The [Constitutional Court of the Republic of Croatia](#) found this ruling to be in line with the Constitution because such interference in the right to strike is proportionate to the legitimate goal.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-385/17, 13 December 2018, Hein*

The CJEU ruled in the *Hein* case that Article 7(1) of Directive 2003/88/EC and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation which, for the purpose of calculating remuneration for annual leave, allows collective agreements to provide that reductions in earnings resulting from the fact that during the reference period there were days when no work was actually performed owing to short-time working, should be taken into account, with the consequence that the worker—for the duration of the minimum period of annual

leave to which she is entitled under Article 7(1) of the Directive—receives remuneration for annual leave that is lower than the normal remuneration she receives during periods of work. When analysing the implication of this ruling for Croatian law, Article 81 of the Labour Act needs to be taken into consideration, which regulates remuneration during annual leave. During annual leave, the employee is entitled to remuneration in the amount defined by the collective agreement, working regulations or employment contract, which may not be less than the employee's average monthly remuneration over the previous three months (including any benefits in cash or in kind representing compensation for work). Similarly, a three months' reference period is applied when calculating severance pay (Article 126 of the Labour Act). This provision, according to the Constitutional Court of the Republic of Croatia (U-III-3228/2004, Official Gazette No. 29/2005), needs to be read in line with the 'favor laboratoris' standard. Namely, in the case before the Constitutional Court of the Republic of Croatia, the employee did not work for legitimate reasons and in the relevant three-month period, the employee received compensation lower than the amount of his salary. According to the Constitutional Court of the Republic of Croatia, when calculating severance pay, the employer must consider this period as a period in which the employee received a full salary. Analogously, one could expect Article 81 of the Labour Act, which regulates remuneration during annual leave, to be read in the same manner and consequently, there is no need to amend the provision. It must be read in line with the ruling in the *Hein* case.

## 4 Other relevant information

### 4.1 Annual quota for employment of aliens for 2019

The [Annual Quota for Employment of Aliens for 2019](#) (Official Gazette No. 116/2018) is considerably higher compared to previous years. Last year, it amounted to 38 769 and in 2019, it will amount to 65 100.

### 4.2 Decision on the lowest daily wage of seasonal workers in agriculture for 2019 (Official Gazette No. 116/2018)

The minimum daily net wage paid to a seasonal worker who carries out temporary or seasonal work in agriculture for 2019 shall amount to HRK 90.11 (about EUR 12.14) compared to HRK 83.19 (about EUR 11.21) in 2018.

The decision is available [here](#).

### 4.3 National Collective Agreement for Croatian Seafarers on Ships in International Navigation (2019-2020)

The [National Collective Agreement for Croatian Seafarers on Ships in International Navigation](#) (Official Gazette No. 119/2018) has been concluded for a two-year period, but will continue to be applied, even after the two-year period expires if it is not terminated by the parties to the collective agreement and a new collective agreement is not concluded (Article 39).

### 4.4 Collective Agreement for Science and Higher Education

The [Collective Agreement for Science and High Education](#) as well as the Annex related to special working conditions were concluded on 27 December 2018. It has been concluded on a fixed-term period and will expire on 01 December 2022.



### **4.5 Amendment to the regulations on employment incentives for persons with disabilities**

The Minister of Labour and Pension System has issued an [Amendment](#) (Official Gazette No. 120/2018) to the regulations on employment incentives (Official Gazette No. 75/2018) for persons with disabilities. The amendment was necessary to bring the regulations in line with recent changes related to social security contributions. Contributions for unemployment insurance and for occupational health and safety will now no longer have to be paid.

# Czech Republic

## Summary

- (I) Compensation for accidents at work and occupational disease has been adjusted.
- (II) The average monthly salary for the first to third quarters of 2018 (calculation basis for various benefits) has been announced.
- (III) Wages of state authorities, judges and European Parliament representatives have decreased.

## 1 National Legislation

### 1.1 Annual valorisation of compensation for accidents at work and occupational disease

Government Regulation No. 321/2018 Coll., on the Adjustment of Compensation Provided for the Loss of Earnings after the End of a Period of Temporary Incapacity for Work Caused by a Work Accident and/or Occupational Disease and on the Adjustment of Compensation of Survivors Pursuant to Labour Law Regulations has been published.

The regulation is available on the [webpage of the Czech Government](#).

It regulates the calculation of the following types of compensation:

- 'compensation for loss of earnings' after the end of a period of temporary incapacity for work caused by a work accident and/or by an occupational disease;
- 'compensation of beneficiaries' (provided to eligible beneficiaries of employees).

The amount of compensation is calculated based on the amount of the employee's average earnings. For the purposes of the calculation, the rate of valorisation of average earnings is adjusted at the end of each year – the amount of average earnings is now to be increased by 3.4 per cent.

The regulation was published on 20 December 2018 and comes into effect on 01 January 2019.

The regulation sets out a valorisation policy of employees' and their beneficiaries' compensation with the aim of countering the negative effects of inflation on compensation claims.

### 1.2 Amount of average monthly salary for the 1st to 3rd quarters of 2018

Announcement No. 311/2018 Coll. of the Ministry of Labour and Social Affairs of 12 December 2018 announcing the average salary in the national economy for the first to third quarters of 2018 for the purposes of the Act on Employment is available on the [webpage of the Czech Government](#).

The Ministry of Labour and Social Affairs regularly publishes the national economy's average salary for the respective quarters for the purposes of Act No. 435/2004 Coll. on employment. The national economy's average salary for the first to third quarters of 2018 was CZK 31 225 (in 2017, it was CZK 28 761). The average salary for the first to third quarters determines the calculation of

- the maximum amount of unemployment benefits;





- the amount of compensation payment for not fulfilling the mandatory share of disabled employees.

The Announcement was published on 20 December 2018 and came into effect on the same day.

### **1.3 Decrease of the wage base of state authorities, certain state bodies, judges, European Parliament representatives**

Act No. 316/2018 Coll., which amends Act No. 236/1995 Coll., on the Wage and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives is available on the [webpage of the Czech government](#).

The Act decelerates the planned growth of wages and other benefits of state authorities, certain state bodies and judges and European Parliament Deputies. The wages of State representatives is calculated as the product of the wage base and the salary coefficient determined in accordance with the responsibility and importance of the function performed by the employee. As of 01 January, the wage base should be 2.75 times the average nominal monthly salary of individuals in the public sector published by the Czech Statistical Office for the period of the year before last.

In recent years, the salary base has increased dramatically, particularly in comparison with other groups of employees remunerated from the public budget. Thus, this Act decreases the wage base to 2.5 times the average nominal monthly salary of employees in the public sector published by the Czech Statistical Office for the period of the year before last. The Act was published on 20 December 2018 and comes into effect on 01 January 2019.

## **2 Court Rulings**

Nothing to report.

## **3 Implications of CJEU Rulings and ECHR**

Nothing to report.

## **4 Other relevant information**

Nothing to report.

# Estonia

## Summary

Trade unions and employers have agreed on a new monthly minimum wage for the transport sector.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

### 4.1 New minimum wage for transport sector

The Estonian Transport and Road Workers Trade Union and the Union of Estonian Automobile Enterprises have published a draft collective agreement, the aim of which is to increase the monthly minimum wage in the transport sector.

This agreement mainly concerns lorry drivers. According to the draft, the monthly minimum wage starting from May 2019 will be EUR 950. In 2020, the minimum monthly wage will be increased by EUR 50, and by EUR 100 per month in 2021.

The increase in the monthly minimum wage for the transport sector is necessary, as the valid monthly minimum wage did not take the changes in the economy into account. The currently applicable monthly minimum wage is EUR 620, whereas the monthly minimum wage in the Czech Republic will generally be EUR 540 starting from 01 January 2019.

Sources:

A press release from the Union of Estonian Automobile Enterprises is available [here](#).

A press release from the Estonian Trade Union Confederation is available [here](#).

# Finland

## Summary

- (I) Government has brought a Proposal for Amending the Employment Contracts Act before the Parliament.
- (II) The Labour Court has issued a judgement concerning dismissal protection.

## 1 National Legislation

### 1.1 Dismissal protection

The government has published [Proposal](#) (227/2018) for Amending Employment Contracts Act Chapter 7 Section 2 (55/2001, hereinafter ECA) and Employment Security Act Chapter 2 a, Section 1 (1290/2002). The amendment concerns individual grounds for terminating employment contract. According to ECA 7:1 there must always be a proper and important reason for a termination. The interpretation of this requirement is specified in the amendment: when evaluating the grounds, the number of employees as well as the overall circumstances of the employer and the employee are to be taken into account.

The purpose of the amendment is to ensure that the special circumstances of small employer units are sufficiently taken into account when evaluating the individual grounds of termination. Actually, the only change in the regulation is that the number of employees is specified now. The circumstances of the employer and the employee have been included into ECA 7:2 already, and in the legal praxis the size of the employer (relevant facts such as the number of employees, financial circumstances etc.) have been taken into account for decades.

The main reason for drafting the proposal were huge political strikes in Finland. The main reason for the strikes was that the original idea of the government was to abolish all grounds for individually-based termination of employment contracts in undertakings with less than 20 employees. After the strikes taking place, the proposal was supplemented by two words, number of employees, which, as mentioned, had been taken into account when evaluating individual (ECA 7:2) and financial (ECA 7:3) grounds of termination as long as case law on dismissal protection has existed. As a further result of these events, the waiting period for receiving unemployment benefits after an employee-based termination was shortened from three months to two months.

The Amendment is meant to come into force 01 July 2019.



## 2 Court Rulings

### 2.1 Dismissal

*Labour Court, No. TT 2018: 112, 17 December 2018*

A company had realized work force reductions and had co-operation negotiations as regulated in the Act on Co-operation within Undertakings (334/2007). Just before the start of the reduction procedure the company had hired a storage worker. The Labour Court found that a dismissed employee could have been offered this position. Therefore there were no legal grounds for the termination. The company was judged to pay EUR 11 226.76 to the employee.

*Labour Court, No. TT 2018: 113, 17 December 2018*

Another company had realized work force reductions and held co-operation negotiations as regulated in the Act on Co-operation within Undertakings (334/2007). The trade union of a dismissed employee claimed that the order of the workforce reductions, agreed in the relevant collective agreement had been violated. (There is no regulation on the order of workforce reductions in the Finnish legislation. The only regulation is contained in collective agreements, and even if the order is not obeyed, this does not make the dismissal illegal. The sanction for a violation is a compensatory fine for the relevant trade union). The two employees in question had very long employment relationships and very high professional competences. According to the reduction order they should not have been chosen to be dismissed.

The Labour Court found that the order of work force reductions had not been violated, since the employees which had not been dismissed also had long employment relationships and high professional competences.

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

### 4.1 Social security and health care reform

A fundamental reform plan concerning social security and health care (in Finnish 'Sosiaali- ja terveydenhuollon uudistus, Sote') is still in the making (see also June 2018 Flash Report). The government is running out of time, since the parliamentary election taking place on April 2019 will replace the current government.

## France

### Summary

(I) Decrees have been adopted to implement laws on working time and apprenticeships.

(II) An ordinance on the protection of personal data facilitates the implementation of the General Data Protection Regulation.

(III) The Court of Cassation has rendered judgments on retirement pension entitlements, unilateral modification of employment conditions, the employment status of bicycle deliverers, transfers of undertakings and dismissals after an accident at work.

## 1 National Legislation

### 1.1 Working time

Basically, individuals under the age of 18 years may not work more than 35 hours a week and 8 hours a day (Labour Code, [Art. L. 3162-1](#)). Act No. 2018-771 of 05 September 2018 provides the possibility of derogating from this maximum working time for certain activities. [Decree No. 2018-1139](#) of 13 December 2018 now defines the sectors of activity for which the maximum working hours of young workers may be adjusted where justified by the collective organisation of work. It covers employees, trainees and apprentices under the age of 18 years ([Art. L. 3161-1](#) and [L. 6222-25](#) of the Labour Code). Where the organisation of work warrants, it will be possible, after notifying the Regional Directorate for Companies, Fair Trading, Consumer Affairs, Labour and Employment, to increase the maximum weekly working time by 5 hours and the maximum daily working time by 2 hours.

According to the new Article R. 3162-1 of the Labour Code, the activities covered are as follows:

- Activities carried out on building sites;
- Activities carried out on public works sites;
- Creation, development and maintenance activities on landscape space sites.

In other sectors not covered by the decree, it will also be possible to derogate from working time, but with a more restrictive procedure. Derogations must be granted by the labour inspector and with the consent of the occupational physician (Labour Code, [Art. L. 3162-1](#)). However, the working time of young workers may not exceed the normal daily and weekly working time of adults employed in the establishment (Labour Code, [Art. L. 3162-1](#)).

These new provisions apply to all contracts concluded after 01 January 2019.

### 1.2 Professional competence required of an apprentice's supervisor

[Act No. 2018-771](#) of 05 September 2018 enshrined the legal principle that the supervisor of an apprentice must be an employee of the company, voluntary, of full age and characterised by moral integrity. The employer may also perform this function (Art. L. 6223-8-1 of the Labour Code). A novelty of the law is that it is up to the branch negotiation to define the conditions of the professional competence required of the

training supervisor. In the absence of an industry agreement, [Decree No. 2018-1138](#) of 13 December 2018 loosens the required minimum competences and experiences.

Thus, in the absence of a branch agreement, the following are deemed to meet the competences required to be a training supervisor:

- Persons holding a diploma or title in the professional field in which the apprentice seeks to obtain a diploma or title, with one year of experience in the professional activity (previously, two years of experience were required);
- Persons with two years of experience in a professional activity related to the qualifications the apprentice seeks to obtain (previously, three years of experience were required).

### 1.3 Publication of instructions and circulars

[Law No. 2018-727](#) of 10 August 2018 provides that instructions and circulars are deemed to have been repealed if they have not been published under conditions and in accordance with the procedures laid down by decree (CRPA, [Art. L. 312-2](#)). [Decree No. 2018-1047](#) of 28 November 2018 specifies that instructions or circulars that have not been published in one of the listed media (14 publicly accessible websites) are not applicable and their authors cannot take them for granted. For lack of publication on one of these websites, circulars and instructions issued before 01 January 2019 are deemed repealed on 01 May 2019; for new acts publication is due within 4 months of their signature.

### 1.4 Protection of personal data

[Act No. 2018-493](#) of 20 June 2018 amended Act No. 78-17 of 06 January 1978 on Information Technology, Files and Freedoms to bring it into line with the General Data Protection Regulation, which came into force on 25 May 2018. This authorised the government to take measures by issuing an ordinance within 6 months of the promulgation of the law to make the formal corrections and adaptations necessary for the simplification and consistency of the implementation of the provisions of the law of 20 June 2018. It also aimed to bring all legislation in line with the changes introduced by the Regulation, ensure compliance with the hierarchy of standards and the consistency of drafting, remedy any errors and omissions and repeal provisions that had become obsolete.

Ordinance No. 2018-1125 of 12 December 2018 amends provisions on the principles relating to the protection of personal data. It also reviews the provisions relating to the National Commission on Informatics and Liberty CNIL (missions, composition, authorisations, obligation of professional secrecy of agents, etc.), specific legal remedies, prior formalities, overseas France, etc. Finally, it streamlines the provisions' semantic consistency with European law in various legal acts and removes provisions that have become obsolete, in particular by removing certain prior formalities. A ratification bill must now be submitted within 6 months of the publication of the Ordinance.

The provisions of this Ordinance shall enter into force at the same time as the decree amending [Decree No. 2005-1309](#) of 20 October 2005 implementing Act No. 78-17 of 6 January 1978 on information technology, i.e. by 01 June 2019 at the latest.

## 2 Court Rulings

### 2.1 Retirement pension

*Second chamber of the Court of Cassation, No. 17-22.807, 08 November 2018*

A company established before 01 January 1999 decided to keep the distribution scheme applied on 31 December 1998 for the contribution to the compulsory retirement pension.

Even today, the distribution of ARRCO ('Association for Employees' Supplementary Pension Schemes') retirement pension contributions may not correspond to the 60 percent payable by the employer and 40 percent payable by the employee provided for in the [national inter-professional agreement \(ANI\) of 08 December 1961](#) (Art. 15). Several derogations are included in the ANI of 08 December 1961 and the [ANI of 17 November 2017](#) (Articles 38 and 39). These derogations concern:

- undertakings covered by a branch agreement prior to 25 April 1996 providing for a different distribution scheme;
- those that have maintained the distribution scheme in place on 31 December 1998;
- those resulting from a restructuring.

Companies that do not fall into these categories are not prohibited from providing for a distribution other than 60/40, provided that this distribution is more favourable for the employees. However, in the latter case, the share of the contribution paid by the employer constitutes a cash benefit subject to social security contributions (CSS, [Art. L. 242-1, para. 5](#)).

As regards companies that either unilaterally or by means of a collective agreement, by 31 December 1998 at the latest, agreed on a more favourable distribution scheme for employees, it was questionable whether the additional share should be reinstated, given the wording of paragraph 5 of Article L. 242-1 of the Social Security Code. The text defines 'contributions charged to employers in accordance with a national inter-professional agreement' as being excluded from the contribution base.

The Court of Cassation was asked whether this exclusion from the contribution base also extended to the derogations provided for in the agreement. The Court found that since the company had been established before 01 January 1999, it could decide to keep the distribution scheme it had been applying since 31 December 1998. No reinstatement in the social security contribution base could therefore be pronounced on this basis.

### 2.2 Unilateral modification of employment conditions

*Labour Division of the Court of Cassation, No. 17-11.757, 17 November 2018*

[In this case](#), the employment contracts provided that the production requirements may lead the company to assign different working hours among the company's employees. Some employees working night shifts had been assigned a daytime schedule. They asked the Labour Court for judicial termination of their employment contract. According to the Court of Appeal, since the work schedules were not fixed in the contract, the employer was free to modify them in accordance with its managerial power.

The Court of Cassation has already asserted in case law that the change from night shift to day shift work constitutes a modification of the employment contract ([Cass. soc., 7 Dec. 2010, No. 09-67.652](#)), even in the absence of a contractual clause on working hours in the employment contract. This is confirmed by the Court in the present case: the absence of a contractual clause on working hours does not allow the employer to unilaterally modify the contract by requiring a change from a day shift to a night shift schedule or vice versa.

The Court of Cassation recalls that a clause in the employment contract cannot allow the employer to unilaterally modify the employment contract. The employer should have proposed a change to the employment contract and requested the employee's agreement to move the employees to a day shift schedule.

To impose a transition from a day to a night shift schedule, the employer now has the option to negotiate a collective performance agreement (Labour Code, [Art. L. 2254-2](#)). These special collective agreements created by the ordinances of 22 September 2017 may make it possible to adjust, in particular, the distribution of working time. If the employee refuses to apply this agreement to her employment contract, she may be dismissed on a specific ground representing a real and serious cause for dismissal.

## 2.3 Employment status

*Labour Division of the Court of Cassation, No. 17-20.079, 11 November 2018*

[In this case](#), a bicycle messenger working for the 'Take eat easy' company requested his service contract to be reclassified as an employment contract. This platform brought together restaurants and bicycle messengers working as self-employed workers. In its explanatory note, the Court of Cassation recalled that the Labour Act of 08 August 2016 outlines the recognition of platform workers' entitlement to legal protection by requiring platforms to provide minimum protection and guarantees. It does not, however, rule on the legal status of such workers and had not raised any presumption on salaried employment. The Court of Appeal rejected the request for reclassification on the grounds that the courier had no exclusive or non-competitive relationship and that he remained free to determine his own working hours. In its view, he did not have a subordinate relationship with the platform.

The Court of Cassation reverses this reasoning and points out that the existence of a contractual relationship does not depend either on the will expressed by the parties to the contract or on the denomination they have given to their contractual relationship, but rather on the factual conditions under which the activity is carried out. It then presents a group of indicators for and adopts two criteria characterizing relationships of subordination:

- the application is equipped with a geolocation system allowing the real-time monitoring of the courier's position and recording the total number of kilometres covered, so there is more than just a simple connection;
- the company has the power to sanction the courier: delays in deliveries result in a loss of bonus and can even lead to the deactivation of the courier's account if several delays occur.

The platform in question has been liquidated since 30 August 2016, but similar platforms continue to exist and are based on the same relationship model. In a judgment of 09 November 2017, the Paris Court of Appeal ruled that Deliveroo's bicycle messenger staff did not have employee status. This dispute will soon be heard by the Court of Cassation.

The draft law on mobility, presented on Monday 26 November in the Council of Ministers, provides a framework for digital platforms in Article 20 by supplementing [Article L. 7342-1](#) of the Labour Code. The platform will be able to establish 'a charter determining the terms and conditions of its social responsibility, defining its rights and obligations as well as those of the workers with whom it is in contact'. This charter should specify 'the conditions under which workers carry out their professional activity', 'the non-exclusive nature of the relationship between workers and the platform', 'the procedures for enabling workers to obtain a decent price for their services', measures to improve working conditions, guarantees of complementary social protection, etc.



## 2.4 Transfer of undertakings

*Labour Division of the Court of Cassation, No. 17-16.766, 21 November 2018*

When this case was initially submitted to the Social Chamber, an association was the subject of a transfer of undertaking plan involving the transfer of 320 contracts and the dismissal of employees not included in the plan. The liquidator had prepared a unilateral document setting out the content of the PSE (*'Plan de sauvegarde de l'emploi'*), approved by the Directorate and not contested before the administrative judge. In addition, with regard to the measures to assist reclassification in the other companies of the group the indicated the intention to limit the number of redundancies, since as the employer was an association, no internal reclassification could be envisaged.

Two dismissed employees applied to the labour court to have their dismissal for economic reasons declared null due to lack of any real and serious cause for dismissal and for the employer's failure to fulfil its obligation to reclassify the employees.

Act No. 213-504 of 14 June 2013, known as the Employment Security Act, reformed the procedure applicable to collective redundancies by entrusting the administration with the task of validating or approving the employment protection plan, involving a transfer from the administrative judge to the judicial judge in charge of litigation regarding its validity or relevance (art. L. 1233-58 of the labour code).

Thus, under the terms of Article L. 1235-7-1 of the Labour Code, any dispute concerning the collective agreement or unilateral document drawn up by the employer, the content of the PSE, or the regularity of the procedure for informing and consulting employee representatives cannot be the subject of a dispute separate from that relating to the decision to approve the administration. Such disputes must be brought, in the first instance, before the administrative court, and be excluded from any other administrative appeal or litigation.

With reference to the PSE, the legislator must therefore introduce a block of powers for the benefit of the administrative judge, which nevertheless leaves some of the powers of the labour court judge in place.

The latter remains competent to hear disputes on individual aspects of dismissals relating to the economic reason for the dismissal, the application of the criteria relating to the order of dismissals, the application of the measures provided for by the PSE at the individual level, or the compensation of the employee in the event of the annulment of a decision to approve the PSE.

Such a distribution of competences inevitably leaves room for uncertainties and demarcation problems, as this judgment demonstrates.

According to the Court of Cassation, while the judicial judge remains competent to assess the employer's compliance with the previously determined reclassification obligation, this assessment cannot disregard the authority of the administrative body that approved the content of the reclassification plan integrated into the PSE. It cannot, therefore, declare an economic dismissal without real and serious cause on the basis of what it considers to be an insufficiency in the reclassification measures contained in a PSE approved by the DIRECCTE (*'Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi'*).

The Court of Cassation recalls in the explanatory note attached to the judgment that even in the absence of a reclassification solution identified in the PSE, the employer must intensively search for reclassification solutions in the company or companies whose activities, organisation, workplace or line of work could retain all or part of the staff if they belong to a group (Art. L. 1233-4 of the Labour Code). It is respect for this obligation that remains subject to the assessment of the judicial judge.

### 2.5 Dismissal after an accident at work

*Labour Division of the Court of Cassation, No. 17-18.891, 14 November 2018*

The case concerned an employee hired under an 'employment initiative contract' (EIC). His contract had expired while he was on leave following an accident at work. He asked for his contract to be reclassified into a permanent contract, considering that he had not received any training. The judges evaluating the merits granted his request and deemed that the termination was a dismissal without real and serious cause and not a dismissal that was null.

The Labour Code provides for protection against dismissal for employees who are on leave following an accident at work or an occupational disease. However, these rules differ depending on whether the employee is hired on a permanent or fixed-term contract. Thus, during the period of work suspension, an employee with an indefinite contract of employment may only be terminated in two cases: serious misconduct on the part of the employee or inability to maintain the contract for reasons unrelated to the accident or illness. Otherwise, the termination is null and void ([Art L. 1226-9](#) and [L. 1226-13](#) of the Labour Code).

If the employee has a fixed-term contract, the situation differs significantly. [Article L.1226-19](#) specifies that the suspension of the contract does not prevent the expiry of the fixed-term contract. If the term of the fixed-term contract ends during the period of suspension of the contract, the contract ends on the agreed date of expiry. However, in case of a fixed-term contract with a renewal clause, the employer may, during the period of suspension of work, refuse to renew the contract only if there is a real and serious reason unrelated to the illness.

The Court of Cassation's view differs from that of the lower instance decisions. The Court deemed it a null dismissal because the termination had occurred during the period of suspension outside the scope of cases allowed by the Labour Code. It reversed the judgment and referred the case back to the Court of Appeal.

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

## Germany

### Summary

(I) The decision of the CJEU in case C-555/07, 19 January 2010, *Kücükdeveci* has finally been transposed by the legislator.

(II) According to the Federal Constitutional Court, a difference in treatment between unionised and non-unionised workers in a collective agreement is generally in line with the Constitution.

(III) According to the Federal Labour Court, a provision in a collective agreement can be interpreted as meaning that overtime bonuses for part-time employees must be paid for working time that exceeds the part-time quota but does not exceed the working time of a full-time post.

(IV) The Federal Labour Court has held that section 41 sentence 3 of the Social Code VI, which allows the parties to the employment contract to postpone the date of termination by agreement in the event of the employee reaching the standard retirement age, is in line with EU law.

## 1 National Legislation

### 1.1 Modification of dismissal protection

As of 01 January 2019, Section 622(2) sentence 2 of the Civil Code (*'Bürgerliches Gesetzbuch'*) will be repealed. Section 29(4) sentence 2 of the Act on Homeworkers (*'Heimarbeitsgesetz'*) which has an identical wording, will be repealed as well. According to these provisions, periods of employment prior to the employee's (or homeworker's) 25<sup>th</sup> birthday were not taken into account to calculate the relevant period of notice.

622(2) sentence 2 of the Civil Code has not been applicable for some time. On 19 January 2010, the CJEU decided in case C-555/07, 19 January 2010, *Kücükdeveci* that this provision violates EU law, which prohibits discrimination on grounds of age. With the repeal of 622(2) sentence 2, this decision will finally be transposed.

A press release from the Federal Ministry of Labour and Social Affairs is available [here](#).

## 2 Court Rulings

### 2.1 Freedom of association

*Federal Constitutional Court, No. 1 BvR 1278/16, 14 November 2018*

According to the judgment of the Federal Constitution Court in case 1 BvR 1278/16, 14 November 2018, a difference in treatment between unionised and non-unionised workers in a collective agreement is generally in line with the Constitution. Specifically, such differentiation does not breach the so-called negative freedom of association, which is part of the freedom of association as guaranteed in Article 9(3) of the Constitution.

In the present case, the complainant challenged provisions on bridging and severance payments in a collective agreement. According to this agreement, certain benefits were only to be paid to employees who were members of the union that had concluded the collective agreement on an agreed date. The complainant as not entitled to the benefits because he did not belong to a trade union. The Federal Constitutional Court rejected the claim. In the view of the Court, Article 9(3) of the Constitution also protects the freedom to not join a trade union. Therefore, no compulsion or pressure to join may be

exerted. However, the fact that organised workers are treated differently from non-organised workers does not mean that Article 9(3) is being violated as long as this only results in a factual incentive to join, but does not lead to compulsion or pressure.

The decision of the Federal Constitutional Court confirms an earlier ruling of the Federal Labour Court (case 4 AZR 441/14, 27 January 2016).

The press release on the judgment of the Federal Constitutional Court is available [here](#).

## 2.2 Part-time Work

*Federal Labour Court, No. 10 AZR 231/18, 19 December 2018*

According to the judgment of the Federal Labour Court in case 10 AZR 231/18, 19 December 2018, a provision in a collective agreement can be interpreted in accordance with section 4(1) of the Act on Part-time and Fixed-term Contracts (*Teilzeit- und Befristungsgesetz*) as meaning that overtime bonuses for part-time employees must be paid for working time that exceeds the part-time quota but does not exceed the working time of a full-time post.

In the present case, the plaintiff worked part-time for the defendant. Her employment relationship was governed by the collective agreement for system catering. This collective agreement determined, inter alia, overtime bonuses and allowed an annual working time to be determined. The defendant paid basic remuneration for any overtime that existed after the expiry of the 12-month period. The defendant did not, however, pay any overtime bonuses on the ground that the plaintiff's working time did not exceed that of a full-time worker. In light of this, the plaintiff demanded overtime bonuses for the working time that exceeded the agreed working time.

In the Court's view, part-time workers with an agreed annual working time are entitled to overtime bonuses for working time in excess of their individually determined working time under the collective agreement. According to the Court, this interpretation corresponds to higher-ranking law and, in particular, is in line with section 4(1) of the Act on Part-time and Fixed-term Contracts. The Court based its ruling on the view that what must be compared in cases like this are the individual remuneration components rather than total remuneration. Part-time employees would be disadvantaged if the number of working hours from which a claim to overtime pay arises were not reduced in proportion to the agreed working time. In this respect, the Tenth Senate of the Court has abandoned its earlier position (see judgment of the Federal Labour Court in case 10 AZR 589/15, 26 April 2017) and endorsed the position of the Sixth Senate.

Section 4(1) of the Act on Part-time and Fixed-term Contracts reads as follows:

*"A part-time worker shall not be treated less favourably than a comparable full-time worker on account of part-time work, unless there are objective reasons for treating her differently. A part-time worker shall be entitled to remuneration or other divisible non-cash benefits at least equal to the ratio of his working time to the working time of a comparable full-time worker."*

The judgment is available [here](#) as a press release.

## 2.3 Fixed-term contract after reaching retirement age

*Federal Labour Court, No. 7 AZR 70/17, 19 December 2018*

According to the Federal Labour Court, section 41 sentence 3 of the Social Code VI (*Sozialgesetzbuch VI*), which allows the parties to the employment contract to postpone the agreed termination of the employment relationship once the employee reaches the standard retirement age, is compatible with higher-ranking law as it meets



both the constitutional requirements and, according to the decision of the CJEU in case C-46/17, 28 February 2018, *John*, EU law.

Section 41 of the Social Code VI reads as follows:

*“The insured person’s entitlement to an old-age pension shall not be regarded as a reason for the employer to terminate an employment relationship in accordance with the Dismissal Protection Act. An agreement that provides for the termination of the employment of an employee without notice at a point in time at which the employee can apply for old-age pension before reaching the standard retirement age shall be deemed to have been concluded with respect to reaching the standard retirement age, unless the agreement was concluded within the last three years before that date or confirmed by the employee within the last three years before that date. Where an agreement provides for termination of the employment relationship upon reaching the standard retirement age, the parties to the employment contract may, by agreement during the employment relationship, postpone the date of termination, or more than once, if necessary.”*

The judgment is available [here](#) as a press release.

### **3 Implications of CJEU Rulings and ECHR**

Nothing to report.

### **4 Other relevant information**

Nothing to report.

# Hungary

## Summary

(I) The maximum possible reference period for flexible working time has been significantly increased.

(II) The maximum possible hours of overtime per year have been significantly extended.

(III) The government has been authorised to determine a minimum fee for temporary agency work.

## 1 National Legislation

### 1.1 Working time, temporary agency work

The Act on Organisation of Working Time and Minimal Fee for Leasing Temporary Agency Work (Act CXVI of 2018) was adopted by the Hungarian Parliament on 12 December 2018 and signed by the President of the Republic on 20 December. This act comes into force on 01 January 2019.

#### 1.1.1 Working time

The reference period for working time is regulated in the Hungarian Labour Code (LC) as a 'working time bank' in Section 94. The amendment has significantly increased the maximum possible reference period that can be determined by collective agreement to 36 months 'if justified by technical reasons or reasons related to work organisation'. However, the new provision of Section 99 Sub 7 provides that in case of an irregular work schedule, daily and weekly working time must, on average, be taken for a 12-month period if justified by objective or technical reasons or reasons concerning the organisation of work 'under provisions of collective agreement'. This implies that the collective agreement may not allow for a reference period of more than 12 months. However, if this interpretation holds true, the regulation of a 36-month reference period is meaningless. Section 99 Sub 2 increased the maximum daily working time to 12 hours and the maximum weekly working to 48 hours.

The general reasoning underlying the amendment is that the LC's original objective was the improvement of the market economy and containment of State intervention. The role of the collective agreements is to be strengthened and flexible solutions are to bolster the supply side of the labour market. The proposal refers to the 6-7 year old product cycle of enterprises, asserting that production should be adapted to demand.

Moreover, the maximum amount of overtime hours has been extended substantially. Section 109 LC now allows the employer to request a worker to work 250 hours of overtime per year, and an agreement between the employer and employee can add up to an additional 150 hours or 'non-imposed' overtime work per year. The agreement may be terminated by the employee at the end of the calendar year. Section 135 Sub 3 now provides that a collective agreement may allow for up to 300 hours of employer-imposed annual overtime and a further 100 hours of 'non-imposed' overtime work.

Taken together with the regulation of paid annual leave in Section 116 and 117 of the LC, the normal annual working hours based on a weekly work schedule of 40 hours are 1 920 hours in total. With the possibility of adding 400 hours of overtime per year thus increases the annual working time to potentially 2 300 hours.

Section 66 provides that an employee's withdrawal from an agreement on 'non-imposed' overtime may not in itself serve as a grounds for termination.



The reasoning of the amendment emphasises its objective to ensure the possibility to take on extra work for extra wages.

### **1.1.2 Temporary agency work**

As regards temporary agency work, Section 298 Sub 5 LC states that the government is authorised to pronounce detailed regulations on and the conditions under which temporary agency work can be carried out as well as on the registration of temporary work agencies, including the conditions for the public benefit of temporary work agencies and regulations relating to the benefits they must provide to temporary agency workers, including the conditions for entering into relationships for the performance of work and the corresponding provision of financial security. The amendment has added the government as an authority to determine the sum of the minimum fee for using temporary agency workers.

## **2 Court Rulings**

Nothing to report.

## **3 Implications of CJEU Rulings and ECHR**

Nothing to report.

## **4 Other relevant information**

Nothing to report.

# Iceland

## Summary

Derogation from the provisions on rest time and night work for certain workers is possible.

## 1 National Legislation

On 13 December 2018, an [amendment](#) was made to Act No. 46/1980 on the working environment, health and safety at work. The modification extends a temporary amendment due to expire on 31 December 2018 for an additional year. The temporary amendment allows the social partners to make agreements for workers who offer user-managed personal assistance to disabled persons, derogating from Articles 53 and 56 of the Act. The former article covers workers' daily rest time and corresponds to Article 3 of Directive 2003/88/EC, concerning certain aspects of the organisation of working time. The latter article covers night-time work and corresponds to Article 8 of the same Directive. The provision in question in Act No. 46/1980, Para 9 of the transitional provisions furthermore states that if a worker's daily rest time is shorter than the 11 hours provided for in Article 53, the worker shall at the very minimum and as soon as possible receive the corresponding rest time the worker would have enjoyed had it not been cut short. According to the preparatory report, the main purpose of the amendment is to ensure that the services guaranteed in Act No. 38/2018 on services for people with disabilities with long-term support needs can in fact be provided. In that context, the preparatory report points out that Act No. 38/2018 asserts that the nature of the services guaranteed in the Act are such that under certain circumstances, the working time of employees providing them cannot be accommodated within the general working time rules as stipulated in Act No. 46/1980.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.



# Ireland

## Summary

- (I) Legislation banning zero-hours contracts in most circumstances has been enacted by the Irish Parliament.
- (II) Ministerial regulations have been made exempting those involved in breeding or training of racehorses from provisions of the working time regulations.
- (III) The International Transport Workers Federation refused temporary injunction, restraining the operation of the Atypical Fishing Scheme for non-EEA crew.
- (IV) The Supreme Court rules that Ireland has failed to fully transpose Directive 2008/94/EC.

## 1 National Legislation

### 1.1 Working time, minimum wage

The [Employment \(Miscellaneous Provisions\) Act 2018](#) has been enacted and will come into operation in March 2019. The Act is designed to address the problems caused by the increased casualisation of work and to strengthen the regulation of precarious work. The key objective is to improve the security and predictability of working hours for employees on insecure contracts and those working variable and irregular hours.

The principal changes made by the Act to existing legislation such as the [Terms of Employment \(Information\) Act 1994](#) and the [Organisation of Working Time Act 1997](#) are:

- Employees to be better informed about the nature of their employment arrangements within five days of commencing their employment;
- Prohibition of zero-hours contracts in most circumstances; and
- Introduction of a banded hours provision so that employees are entitled to be placed on a band of hours that better reflects the reality of the hours they work.

Amendments have also been made to the [National Minimum Wage Act 2000](#) so as to *inter alia* abolish the subminimum rates for trainees.

The Minister for Employment Affairs and Social Protection has promulgated the [European Communities \(Organisation of Working Time\) \(General Exemptions\) \(Amendment\) Regulations 2018](#). These Regulations, which came into operation on 19 December 2018, provide that the term 'agriculture' in the Schedule to the [Organisation of Working Time \(General Exemptions\) Regulations 1998](#) includes 'the caring for or the rearing for or the breeding or the training of racehorses' and consequently, such activities are now exempted from the provisions of the [Organisation of Working Time Act 1997](#) regarding rest periods and breaks.

## 2 Court Rulings

### 2.1 Atypical Working Scheme for migrant fishermen

*High Court, No. 2018 5398 P, 07 December 2018, International Transport Workers' Federation v Minister for Justice and Equality*

The [High Court has rejected](#) an application by the International Transport Workers' Federation for a temporary injunction restraining the Minister for Justice and Equality

from granting and/or reviewing any further permissions under the Atypical Working Scheme for Non-EEA crew in the Irish Fishing Fleet (report available [here](#)), which are conditional on an employee remaining in the employment of a particular employer or being in employment on a particular vessel. The Federation contended that the scheme contributed to a 'real and immediate risk of trafficking and/or severe labour exploitation' of migrant fishermen. Affidavits in support of the application were sworn by four fishermen (three from Egypt and one from the Philippines) and by the Director of the Migrant Rights Centre Ireland.

The application for temporary relief pending the full trial of the action was opposed by the Minister on the basis that non-EEA fishermen would be in far greater danger and risk of exploitation and that they would be placed in a very uncertain situation were the injunction to be granted. This submission convinced the judge to refuse the relief sought but to require the parties to ready the claims for an early trial date.

## 2.2 Employers' Insolvency

*Supreme Court, No. 56/17, 20 December 2018, Glegola v Minister for Social Protection*

Directive 2008/94/EC is implemented in Ireland by the [Protection of Employees \(Employers' Insolvency\) Act 1984](#). Article 2 (1) of the Directive provides that an employer shall be deemed to be in a state of insolvency where a request has been made for the opening of collective proceedings based on insolvency of the employer and the competent authority has

- (a) either decided to open the proceedings; or
- (b) established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of proceedings.

Section 1 (3) of the 1984 Act, however, provides in relevant part that an employer, where it is a company, shall be taken to be insolvent if, but only if, a winding up order is made or a resolution for voluntary winding up is passed.

The [Supreme Court has now ruled](#) that the full or proper transposition of Article 2 has failed because section 1 (3) does not provide a procedure where, as part of the statutory scheme applicable to a High Court petition to wind up a company, an application could be made in the alternative for an order of a type envisaged by Article 2 (1) (b).

In this case, G had been awarded EUR 16 818.75 in respect of complaints under various employment rights statutes. The award was unpaid because the employer had ceased trading and had been struck off the Register of Companies for failing to file accounts. Because no winding up order had been made, the Minister refused to pay out the award from the Social Insurance Fund established under the 1984 Act. The Supreme Court held that, given the State's failure to correctly transpose Article 2, G was entitled to the sum claimed as *Francovich* damages against the State.

## 3 Implications of CJEU rulings and ECHR

### 3.1 Working time

CJEU case C-385/17, 12 December 2018, *Hein*

The Court of Justice ruled in this case (para 47) that, when the obligations arising from the employment contract require the worker to work overtime on a broadly regular and predictable basis, and the corresponding pay constitutes a significant element of the total remuneration that a worker receives, the pay for that overtime work should be



included in the normal remuneration due under the right to paid annual leave provided for by Article 7(1) of Directive 2003/88/EC.

This raises significant doubts as to the compatibility with EU law of regulation 3 of the [Organisation of Working Time \(Determination of Pay for Holidays\) Regulations 1997](#), which expressly excludes any pay for overtime from the calculation of holiday pay.

#### **4 Other relevant information**

Nothing to report.

# Italy

## Summary

The Italian Parliament has adopted the Budget Law for 2019. The contents of relevance for Labour Law are analysed.

## 1 National Legislation

### 1.1 Budget Law 2019

On 30 December 2018, the Italian Parliament adopted Act No. 145, Budget Law for 2019. It was published in the Italian Official Journal on 31 December 2018. It is a one-article provision divided into over 1 000 paragraphs. The most relevant paragraphs are presented below.

#### 1.1.1 Employment incentives

Para. 247 allows national and regional operational programmes to introduce—without prejudice to the EU State Aid Regulation—measures aimed at stimulating the hiring of individuals under the age of 35 years or of individuals aged 35 and up who have been unemployed for at least six months in Abruzzo, Molise, Campania, Basilicata, Sicilia, Puglia, Calabria and Sardinia under employment contracts of indefinite duration. These measures may include a reduction of the amount of social security contributions by up to 100 per cent.

#### 1.1.2 Paternity leave

Para. 278 extends the application of measures on mandatory paternity leave, which the working father is required to take within five months from the birth of the child, introduced by way of an experiment in Article 4 Act No. 92 of 2012 to 2019. For 2019, the leave will amount to five (also non-consecutive) days. Furthermore, a working father may take an additional day of leave in exchange for the mother during her mandatory leave period.

#### 1.1.3 Flexible work

Para. 486 introduces a new Article 3-*bis* into Act No. 81 of 2017, according to which employers shall give priority to the requests for flexible working hours from female workers returning from mandatory maternity leave and workers with severely disabled children.

#### 1.1.4 Fund for disabled workers

Para. 520 provides that the Fund for Disabled Workers, envisaged in Article 13 Act No. 68 of 1999, be increased to EUR 10 million for 2019.

#### 1.1.5 Wage subsidy for disabled workers

Para. 533 provides that INAIL (*Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro*) should, for one year, reimburse 60 per cent of wages paid by the employer to disabled workers who are participating in an occupational rehabilitation project

certified by INAIL and who at the end of a period of incapacity for work cannot resume work without the support of the measure established by that project. If the measures are not implemented due to an unfounded withdrawal of the employer from the project, the latter shall return the reimbursement paid to INAIL.

### 1.1.6 EU Disability Card

Para. 563 introduces measures and financial support for 2019, 2020 and 2021 to implement the EU Disability Card according to the operational instructions provided by the European Commission. Furthermore, para. 280 foresees EUR 400 000 for the '*Federazione italiana per il superamento dell'handicap*', the managing partner of the EU Disability Card project in Italy.

### 1.1.7 Incentive for employing young graduates

Para. 706 and 707 entitles private sectors employers who from 01 January 2019 to 31 December 2019 hire citizens (it is not specified whether this is restricted to nationals or includes EU national as well) under an open-ended contract who:

- hold a master degree cum laude with an average grade score of 108/110, with regard to the legal duration of the university programme, before the age of 30;
- or citizens who hold a PhD completed between 01 January 2018 and 30 June 2019 before the age of 34,

shall be exempt from paying full social security contributions (occupational accident and diseases excluded) for 12 months, the maximum amount adding up to EUR 8 000 for each such employee hired (so-called 'merit relief').

According to para. 708, merit relief is also granted when hiring part-time employees from the abovementioned group, albeit reduced proportionately to working time. Para. 709 states that merit relief can also be granted when a fixed-term contract is converted into an open-ended one between 01 January 2019 and 31 December 2019. Para. 710 excludes merit relief for contracts for domestic work and for employers who, within twelve months from hiring an employee, have dismissed individuals on economic grounds or collectively dismissed employees from the same department for which they intend to hire individuals from the abovementioned group. Para. 711 provides that the dismissal of an employee who was covered by the merit relief scheme on economic grounds or of another worker employed in the same department with the same qualification within 24 months from hiring her, will result in the revocation of the relief and the amount the employer was initially exempted from paying will have to be returned to INPS. Para. 712 states that if another employer hires a worker under an open-ended contract, who had initially been hired under the merit relief scheme, within the same reference period, that employer will benefit from the exemption for the remaining months. According to para. 713, merit relief can be cumulated with other national or regional hiring incentives, and according to para. 716, it is managed as falling under the EU '*de minimis*' State Aid regulation.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.



#### 4 Other relevant information

Nothing to report.

# Latvia

## Summary

(I) The shortage of medical staff and financial resources has decided the legislator to retain provisions on overtime work for medical staff, which exceeds the standard amount of overtime work permitted by law.

(II) The Supreme Court delivered a decision based on the CJEU's judgment in case C-266/14, 10 September 2015, '*Federación de Servicios Privados del sindicato Comisiones obreras*'.

(III) The decision of the CJEU in case C-385/17, 13 December 2018, *Hein* has no implications on Latvian law.

## 1 National Legislation

### 1.1 Overtime

On 20 December 2018, Parliament adopted amendments to the [Medical Treatment Law](#) ('*Ārstniecības likums*'). The [amendments](#) assert that overtime work for medical staff within a 7-day period may not exceed 16 hours in total.

The amendments entered into force on 01 January 2019. Initially, the Medical Treatment Law provided for 60 hours of a 'regular extension' of working time for medical staff. This regulation was adopted a decade ago, primarily in response to the shortage of medical staff, the economic crisis and insufficient funding in the health care sector (inability to pay 200 per cent for overtime work as is the case for all other employees in Latvia). After a considerable decline in medical staff (medical doctors, nurses) in the State health care sector, because they left to work either abroad (western Europe) or in the private health care sector, and following the decision of the Constitutional Court, which found that the non-payment of 200 per cent for overtime work (for working time exceeding the standard 40-hour week) was unconstitutional (the Court's judgment is available [here](#), see also May 2018 Flash Report), the legislator took initiative to restrict overtime work in the State health care sector. In 2017, Parliament decided to prohibit 'regular extensions' of working time in the State health care sector by 2020 with a transitional period – in 2018, 'regular extensions' of working time was not to exceed 50 hours per week; in 2019, it was to be reduced to 45 hours per week. However, it became evident in 2017 that there is a significant shortage of medical doctors and especially of nurses, and that the implementation of the previous reduction would not be possible. The adopted decision on a maximum of 16 hours of overtime per week is a compromise for the currently difficult situation of the State health care system.

This means that exemptions under Directive 2003/88/EC continue to apply to Latvia's State health care sector.

## 2 Court Rulings

### 2.1 Working time

On 12 December 2018, the Supreme Court adopted a decision based on CJEU case law on the concept of 'working time' (the ruling in case SKC-959/2018 is available [here](#)). The case involved an employee who provided services at clients' premises but not at the premises of the employer (at the office). The dispute was about the time the employee spent travelling from home to the first client and travelling back home from the last client. The first and second instance court misinterpreted the CJEU's decision in



case C-266/14, 10 September 2015, '*Federación de Servicios Privados del sindicato Comisiones obreras*' by finding that the travel time was not working time because the employee rented out his car to the employer in return for pay, thus the time spent travelling to and from clients was in the employee's own commercial interest (business – renting a car).

### 3 Implications of CJEU rulings and ECHR

#### 3.1 Annual leave

*CJEU case C-385/17, 13 December 2018, Hein*

This decision will not likely have an impact on Latvian labour law. First, pay for annual leave according to Article 75 of the Labour Law (the Latvian Labour Law '*Darba likums*' is available [here](#)) is calculated on the basis of daily or hourly pay for periods actually worked (including all bonuses and pay for overtime work), thus periods of non-work are excluded, which means that pay for annual leave cannot be lower than the employee's 'regular pay'. Second, Latvian law does not envisage any form of employment similar to short-time work, although there might be a similar situation in case an employee takes unpaid leave periods on his/her own initiative. The counter-argument, however, is that the pay for annual leave is not calculated on the basis of pay earned during a particular period, i.e. when the right to annual leave was acquired, but instead on the basis of pay received during the previous 6 months preceding the actual use of the right to paid annual leave. It follows that if the employee's pay has decreased before the actual use of annual leave, the amount of pay calculated on the basis of the Labour Law might be lower than the pay received during the period when the right to annual leave was acquired.

### 4 Other relevant information

Nothing to report.



# Luxembourg

## Summary

- (I) The social elections will take place on 12 March.
- (II) The social minimum wage will be increased by 1.1 per cent from 01 January onwards.
- (III) A judgment by the Constitutional Court on dismissal and two rulings by the Court of Appeal on payment and annual leave are analysed.
- (IV) The CJEU case C-619/16, *Kreuziger* is addressed.

## 1 National Legislation

### 1.1 Social elections

The social elections (employee delegates) have been postponed from their traditional period in autumn to the beginning of the year to prevent collision with legislative elections. Whereas this principle is defined in law, a decree has set the date for 12 March 2019 (see: '*Arrêté ministériel du 3 décembre 2018 portant fixation de la date pour le renouvellement des délégations du personnel pour la période de 2019 à 2024*').

### 1.2 Minimum wage

On the basis of the biannual general review of the social minimum wage—the tradition being to adapt it to the general development of salaries—it will increase by 1.1. per cent after 01 January 2019. The new government's coalition agreement contains a more general decision to raise the social minimum wage by EUR 100 (see: '*Loi du 21 décembre 2018 modifiant l'article L.222-9 du Code du travail*').

### 1.3 Pending bills

The State Council has issued opinions on Bill No. 7268 (concerning professional training) and No. 7324/02 (concerning time saving accounts in the private sector), but—aside from formal remarks—made no substantial observation as far as labour law is concerned.

## 2 Court Rulings

### 2.1 Dismissal law

*Constitutional Court, No. 00142, 14 December 2018*

In a recent case, the Constitutional Court ('*Cour Constitutionnelle*') dealt with dismissal protection of pregnant workers. A woman was working under a special 'initiation contract' ('*contrat d'initiation à l'emploi*'), which had been arranged by the job centre (ADEM) to provide her with theoretical and practical training. She was dismissed during pregnancy and filed a claim for nullity of her dismissal before the Labour Court.

The labour court of first instance decided that it did not have jurisdiction. Indeed, labour courts are only competent for employment contracts, and according to well-established case law, special integration contracts do not qualify as employment contracts. Furthermore, Article L. 331-1 of the Labour Code on pregnancy explicitly states that

protection only applies to employees under an employment contract (and two other specific types of contracts).

The Court of Appeal decided to submit a preliminary question to the Constitutional Court on the basis of the principle of equality before the law. The constitutional judges [decided](#) that a pregnant woman working under an insertion contract is in a similar situation as a pregnant women in an employment relationship. As there is no objective justification for this difference in treatment, the law was declared unconstitutional.

It is now up to the legislator to modify the law.

From the perspective of substantial law, protection of pregnant workers must be extended to all subordinated workers. This is not only required for constitutional reasons, but also to comply with Article 10 of Directive 92/85/EEC on the protection of pregnant workers.

From a procedural perspective, the legislator will have to decide whether access to labour courts will be opened to all types of subordinated contracts. Otherwise, pregnant workers hired under special contracts would have to submit claims for protection before ordinary civil courts.

More generally, the question of the legal qualification of these *sui generis* contracts should be clarified, especially with regard of the scope of application of EU law.

Another recent [decision](#) of the Constitutional Court (No. 00140, 07 December 2018) dealt with an employee who resigned because the employer failed to pay his salaries. He was not granted access to unemployment benefits, because the labour courts will only grant unemployment benefits to employees who resigned if they claim they were victims of sexual harassment.

This decision is no longer of relevance, as the law has been amended in the meantime, and any employee resigning due to gross negligence or misconduct of the employer can apply for provisional unemployment benefits. Thereafter, the employee will have to justify before court that her resignation was justified; if she fails to do so, she may be required to reimburse the unemployment benefits already received.

## 2.2 Payment

*Court of Appeal, No. 2018-00139, 06 December 2018*

The Court of Appeal decided that full-time employee delegates (*'délégués libérés'*) are only entitled to their basic pay and not to any supplements for night or overtime work that they were paid while working as ordinary employees. In this case, an assistant nurse used to get paid for work performed on weekends, public holidays and night shifts. After her election as an employee delegates, she performed her new tasks during her regular working hours (see: CSJ, 6 December 2018, No. 2018-00139).

## 2.3 Annual leave

*Court of Appeal, No. 44386, 25 October 2018*

The Court of Appeal has also decided that if an employer has agreed to a request for annual leave (*'demande de congé'*), it can no longer be withdrawn, unless the employee voluntarily and unambiguously agrees to it (see: CSJ, 25.10.2018, No. 44386).



### 3 Implications of CJEU rulings and ECHR

#### 3.1 Annual leave

*CJEU case C-619/16, 06 November 2018, Kreuziger*

CJEU case C-619/16, 06 November 2018, *Kreuziger* has no particular impact on national legislation, as an allowance in lieu of paid annual leave is always due if the worker has not taken the annual leave.

### 4 Other relevant information

Nothing to report.

# Malta

## Summary

A new provision to regulate annual leave in Malta has been approved.

## 1 National Legislation

### 1.1 Annual leave

01 January 2019 saw the entry into force of Subsidiary Legislation 452.115, the [Annual Leave National Standard Order](#). This National Standard Order (hereinafter: 'Order') regulates the minimum requirements for annual leave of employees and the extent to which annual leave can be controlled/limited by employers.

The salient provisions are the following:

- Leave with pay shall be taken on days agreed on between the employer and the employee (Regulation 3 (2));
- The employer may only use up to the equivalent hours of twelve working days from the employee's annual leave entitlement (as calculated in terms of the Subsidiary Legislation 452.87: [Organisation of Working Time Regulations](#)) for the purposes of any type of shutdown, including a temporary closure of the entire or part of the employer's premises for bridge holidays and/or any other short periods of shutdown;
- Any type of shutdown, including a temporary closure in full or in part of the premises by the employer for bridge holidays, shall be communicated to all employees by the end of January of each calendar year;
- Once leave is agreed on between the employer and the employee, it can only be cancelled by the employer if the employee agrees to said cancellation. Decisions on cancellations cannot be unilateral;
- Annual leave shall also be accrued during maternity leave, injury leave and sick leave, and shall be carried over to the following year if it was not possible for the employee to take annual leave in the same year as maternity leave, injury leave or sick leave;
- Any period of pre-arranged leave shall not be considered to have been used if it coincides with a period of maternity, sickness or injury leave and shall be available to the employee after her return to work or shall be carried over to the subsequent year, if such leave could not be taken during the year maternity, injury or sickness leave commenced;
- Upon 'termination of employment', in case of any outstanding leave, even in relation to the previous calendar year (due to impossibility of taking leave due to injury leave, sickness leave or maternity leave), the employee must be compensated for the outstanding leave as stipulated in the Organisation of Working Time Regulations;
- Any violation of the Order comes with a 'minimum' penalty of EUR 450 and the employer will be ordered by the court to grant any outstanding annual leave or (post-termination of the employment relationship) compensate the employee for outstanding leave.



This Order aims to clarify certain provisions in the Employment and Industrial Relations Act, 2002 (Chapter 452 of the Revised Edition of the Laws of Malta and the Organisation of Working Time Regulations (Subsidiary Legislation 452.87).

### **2 Court Rulings**

Nothing to report.

### **3 Implications of CJEU rulings and ECHR**

Nothing to report.

### **4 Other relevant information**

Nothing to report.

## Norway

### Summary

The Supreme Court has issued a ruling in a case on the concept of employer.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Concept of employer

*Supreme Court, No. HR-2018-2371-A, 12 December 2018*

On 12 December 2018, the Supreme Court ruled in a case involving several employees formally employed in subsidiaries of the airline company Norwegian Air Shuttle ASA (NAS), who claimed to be employees of the parent company NAS and the company Norwegian Air Norway AS (NAN). NAS had structured its business by employing pilots and cabin crew in subsidiaries and concluding agreements between the subsidiaries and NAS/NAR in which the subsidiaries provided staff to NAS/NAR.

The employees argued that the agreements between the subsidiaries and NAS/NAR were in reality agreements under which the employees were hired out from the subsidiary to NAS/NAR. Under Norwegian law, these employees would then be entitled to permanent employment with NAS/NAR because the legal hiring of personnel requires either that the work is of a temporary nature or that the employees are acting as temporary replacements, cf. Section 14-9 of the Working Environment Act. Neither was the case here. The Supreme Court, however, found that the agreements were not agreements to hire out employees, but instead agreements for the provision of a service. In its assessment, the Supreme Court considered a number of criteria, which have previously been drawn up by the Supreme Court in the determination of whether certain circumstances constitute the provision of a service or the hiring of manpower. With particular emphasis on the fact that the Supreme Court found that the subsidiaries managed the work and were thus liable for the results of the work, the conclusion was that the contract had been concluded for the provision of a service. Consequently, the employees were not entitled to employment with NAS/NAR on this ground.

The employees further argued that NAS was their employer on the grounds that NAS had *de facto* acted as their employer. The employees had originally been employed with NAS, and had been transferred to their current formal employers in reorganisation transfers. The employees argued that as the parent company, NAS continued to retain primary influence over the activities of the subsidiaries.

The Supreme Court has in previous cases found that a parent company may also be the actual employer of an employee on the grounds that the parent company has *de facto* acted as the employer, cf. Rt-1990-1126 (*Wärtsilä*). Contrary to previous cases in which the parent company had acted as the employer on a day-to-day operational basis, by *inter alia* determining the employee's salary, the Supreme Court did not find that NAS had held such functions. The Supreme Court further opined that the fact that a parent company has primary influence over the activities of a subsidiary due to the fact that it is the parent company cannot in itself imply that the parent company is the actual employer. In this assessment, the Supreme Court referred to a public evaluation carried out by a panel in 1996, in which a rule on the parent company becoming the employer



if it had primary influence over the activities of the subsidiaries had been proposed but was ultimately rejected.

### **3 Implications of CJEU rulings and ECHR**

Nothing to report.

### **4 Other relevant information**

Nothing to report.

## Poland

### Summary

(I) The draft amendments to the Labour Code on reducing the working time of employees with parental duties, as well as on on-call time and the remuneration of employees managing the establishment in the name of the employer have been rejected by Parliament.

(II) The Constitutional Tribunal delivered a ruling on claims of a dismissed employee of pre-retirement age.

(III) The Supreme Court delivered a ruling on the scope of exceptions to the ban on work on Sundays in commercial establishments.

## 1 National Legislation

### 1.1 Working time of employees with parental duties

On 06 December, the draft amendment to the Labour Code on reducing the working time of employees with parental duties was rejected by Parliament. The underlying idea was to reduce the daily working hours to seven (instead of currently eight hours) of employees who are parents or custodians of a child below the age of 15 years. Their remuneration would not have been reduced.

Sources:

Information relating to the legislative process is available [here](#).

The Labour Code of 26 June 1974 is available [here](#).

### 1.2 On-call time

On 06 December, the draft amendment to the Labour Code concerning on-call time as well as the remuneration of employees managing the establishment in the name of the employer was rejected by Parliament.

Information on the legislative process is available [here](#).

## 2 Court Rulings

### 2.1 Protection against dismissal of employees of pre-retirement age

*Constitutional Court, No. P 133/15, 11 December 2018*

On 11 December, the Constitutional Tribunal delivered a [ruling](#) (case P 133/15) on the incompatibility of the Labour Code (hereinafter: LC) provisions with the claims of a dismissed employee of pre-retirement age.

In Poland, several employee groups are covered by enhanced protection against dismissal, i.e. provisions on the prohibition of termination of an employment contract exist or specific requirements need to be fulfilled. Employees of pre-retirement age are covered by such special protection.

Under Article 39 LC, an employer may not serve a notice of termination to an employee who will reach retirement age within four years, if her further employment means she will receive an old-age pension upon reaching that age.



Any termination of an employment contract, even if it violates legal provisions, is effective, i.e. the contract ceases to exist. An employee can lodge a claim against the dismissal before a labour court. The type of claim an employee can bring depends on what type of employment contract she has. Employees employed under an employment contract of indefinite duration can claim invalidity of the termination or reinstatement to a previous job. Fixed-term employees can in principle only claim pecuniary compensation.

There are other provisions on employees who benefit from enhanced protection against dismissal. Article 50 § 3 LC provides that if the notice of termination of a fixed-term employment contract has been served in violation of the provisions on terminating such contracts, the employee is entitled to compensation only. Under Article 50 § 5 LC, the abovementioned provision does not apply in case of termination of a fixed-term contract of a pregnant employee, an employee who is benefiting from rights connected with parenthood, or a trade union representative. In such cases, Article 45 LC applies. The latter regulation provides that in case of termination of an employment contract of indefinite duration, the dismissed employee can claim invalidity of the termination, reinstatement or financial compensation.

In other words, if a fixed-term employee of pre-retirement age has been dismissed, she can claim financial compensation only. The amount is limited to three months' remuneration of the employee. By contrast, employees of pre-retirement age who have a contract of indefinite duration can claim invalidity of the termination or reinstatement.

The Constitutional Tribunal ruled that Article 50 § 3 LC, which does not entitle a fixed-term employee of pre-retirement age to demand reinstatement, breaches Article 32 item 1 of the [Constitution](#). The latter provision states that all persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.

Consequently, the legislature is required to amend the Labour Code regulations on claims of dismissed fixed-term employees of pre-retirement age. They should also be in a position to claim reinstatement, as is the case for employees who are employed under a contract of indefinite duration.

At present, fixed-term employees of pre-retirement age do not enjoy effective protection against dismissal. An employer who violates the law and terminates such a contract only risks paying compensation, limited to three months' remuneration. Moreover, such employees do not have the right to decide which claim to pursue, i.e. they cannot claim reinstatement. The type of employment contract is the only constituting factor differentiating the status of employees of pre-retirement age.

The Constitutional Tribunal ruled that these regulations violate the principle of equality before the law. In the substantiation of the ruling, the Court also referred to Article 18<sup>3a</sup> § LC on the ban on discrimination in employment, inter alia, in relation to open-ended and fixed-term employment contracts. The Court also briefly referred to Directive 99/70/EC on fixed-term contracts (section 4.4 of the substantiation). The Tribunal was of the opinion that this was a case of discrimination of fixed-term employees of a certain age. Therefore, legislative amendments will be necessary, although there is no express deadline by when such changes should be introduced.

The Labour Code (consolidated text, Journal of Laws 2019, item 917) is available [here](#).

### 1.2 Limiting trade activities on Sundays

*Supreme Court, No. I KZP 13/18, 19 December 2018*

On 19 December, the Supreme Court delivered a [ruling](#) on the ban of trade activities on Sundays (case I KZP 13/18), as provided by [the Law of 10 January 2018 on limiting](#)

[trade on Sundays, public holidays and some other days](#) (see also January 2018 Flash Report, point. 1.2).

The abovementioned law introduces a ban to work on Sundays in commercial establishments. However, there are numerous exceptions to this principle. Work on Sundays is allowed, inter alia, in trading posts, where the majority of activities consist of selling newspapers, ground communication tickets, tobacco products or lottery tickets (Art. 6(1) point 6 of the Law). Article 10 of the Law provides that any violation is subject to a pecuniary fine between PLN 1 000 and PLN 100 000 (about EUR 250 to EUR 25 000).

The case concerned a pecuniary fine (PLN 3 000, around EUR 750) imposed on an employer who instructed workers to perform work on Sundays. The sale of tobacco products represented the major share of the shop's sales, while the other products mentioned in Article 6(1) point 6 of the Law were not sold. The question was whether the exception to the prohibition to work on Sundays covers shops in which all products indicated in Article 6(1) point 6 are sold, or whether it suffices that only one of the products indicated in the Law is sold by the shop.

The Supreme Court was of the opinion that Article 6(1) point 6 of the Law covers both situations, i.e. shops that sell all of the products indicated in the Law or only one of the products. In other words, a shop is allowed to open on Sundays if the sale of tobacco products represents the major share of the shop's sales. Therefore, the fine for violation of workers' rights was not legitimate.

The Court opted for a broad understanding of the exception to the ban on work on Sundays in shops and other establishments. It seems that the judgment may also indicate the direction of interpretations in other disputable cases on possible exceptions.

Last month, the draft to amend the abovementioned Law was submitted. It seems to specify the exceptions more clearly and to de facto broaden the ban to open commercial establishments on Sundays. It can be expected that the ban will cover those shops that only sell tobacco products. Thus, further amendments of the Law can be expected in the near future.

### **3 Implications of CJEU rulings and ECHR**

Nothing to report.

### **4 Other relevant information**

Nothing to report.

# Portugal

## Summary

The national minimum monthly wage was raised to EUR 600.

## 1 National Legislation

### 1.1 Minimum wage

[Decree Law No. 117/2018](#), of 27 December 2018, establishes that from 01 January 2019, the national minimum monthly wage will be EUR 600.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

## Romania

### Summary

- (I) The minimum wage will increase from 01 January 2019.
- (II) The possibility of using day labourers (workers without concluding a contract of employment, who are paid per day worked) has been limited.

## 1 National Legislation

### 1.1 Minimum wage

New normative acts have been adopted on employees' rights to remuneration and taxation. The minimum wage will increase from 01 January 2019 at two levels: a general minimum wage and a special minimum wage for certain categories of employees. According to [Government Decision No. 937/2018](#) (published in the Official Gazette of Romania, No. 1045 of 10 December 2018), the general minimum gross wage will be RON 2 080 (about EUR 450). There are two exceptions:

First, higher education graduates with at least one year of seniority in the field of their studies will be entitled to a minimum gross wage of RON 2 350 per month.

Second, as of 01 January 2019, the minimum gross wage in construction will be RON 3 000. Labour taxes have been eliminated from this sector. This exception was introduced by [Government Emergency Ordinance No. 114/2018](#) (published in the Official Gazette of Romania, No. 1116 of 29 December 2018), which introduced major taxation changes.

The first provision has generated controversy over posts for which the law does not require a higher education degree, but the employer imposes this condition. The minimum wage of RON 2 350 appears to only be mandatory for posts for which the law explicitly requires a higher education degree. Another problem is that there are jobs for which the law requires a higher education degree, which are extremely similar to positions for which this requirement does not exist.

According to [Government Emergency Ordinance No. 3/2018](#) (published in the Official Gazette of Romania, No. 125 of 08 February 2018; see also February 2018 Flash Report), part-time employees pay security and health insurance contributions on their income and employers must pay the difference in contributions to reach the level of minimum wage. From now on, as there will be two minimum wage levels, the one to be taken into account will be the one that corresponds to the employee's seniority and the level of education required for the job.

### 1.2 Legal regime of day labourers

[Government Emergency Ordinance No. 114/2018](#) introduced various changes in many normative acts. This includes the legal regime of day labourers, regulated in Law No. 52/2011 (republished in the Official Gazette of Romania No. 947 of 22 December 2015). Day labourers do not have a contract of employment but are subject to strict registration rules.

Day labourers cannot carry out activities for the same contractor of more than a total of 90 days within a calendar year. With some exceptions, an individual can now no longer perform activities as a day labourer for more than a total of 120 days within a calendar year, regardless of the number of different contractors. Those who do not comply with this restriction can be fined.



Moreover, the sectors in which day labourers can carry out activities have been limited to agriculture, hunting, forestry, fishing and aquaculture.

## **2 Court Rulings**

Nothing to report.

## **3 Implications of CJEU rulings and ECHR**

Nothing to report.

## **4 Other relevant information**

Nothing to report.

## Slovenia

### Summary

(I) Amendments to the Minimum Wage Act have been adopted by which the minimum wage has been raised.

(II) The government has undertaken measures to prevent a strike wave in the public sector to protest against low wages and other poor working conditions in public sector activities.

## 1 National Legislation

### 1.1 Minimum Wage Act

The Act on Amendments to [the Minimum Wage Act](#) was ratified on 13 December 2018. For information on the Draft Act see also November 2018 Flash Report. Some changes/additional provisions have been introduced. The introduction of a calculation of the amount of minimum wage based on a new formula has been postponed from 01 January 2019 to 01 January 2020. The proposed statutory provisions have been complemented by provisions on fines. The proposal to exclude additional payments from the minimum wage as well as the increase of the minimum wage on 01 January 2019 (to EUR 667.11 net – 886.63 gross and/or to EUR 700 net – 940.58 gross) was accepted.

### 1.2 Wages in the public sector

The collective bargaining procedure launched in spring 2018 and restored in October 2018 ended on 03 December 2018 with the [Agreement](#) on Wages and other Labour Costs in the Public Sector signed by the Government and the representative trade unions of public sector employees. In accordance with the Agreement, the wages of all public sector employees shall increase by 4 per cent from 01 January 2019 onwards. The Agreement also addresses other issues related to the working conditions in the public sector (e.g. promotions, payment of overtime, additional payments, severance pay, severance pay upon retirement, etc.).

As an increase in wages as well as improvements in the social and professional status of public sector employees were the main reasons for the call for strikes by several trade unions for the beginning of December, the signed Agreement resulted in:

- the adoption of Amendments to the Public Sector Salary System Act (which was published in the Official Gazette of the Republic of Slovenia, No. 84/18- ZPSJS-V, 27 December 2018);
- the conclusion of strike agreements between the government and trade unions representing individuals employed in educational, cultural, health and social protection, by which the strikes were called off (by the strike agreement concluded with the trade union of policemen, the strike of policemen, which lasted several months, ceased);
- the signature of annexes to the Collective Agreement for the Public Sector (published in the Official Gazette of the Republic of Slovenia, No. 80/2018) and the Collective Agreement for Non-commercial Activities in the Republic of Slovenia (published in the Official Gazette of the Republic of Slovenia, No.80/2018);
- the signature of annexes to the following sectoral collective agreements (published in the Official Gazette of the Republic of Slovenia, No. 80/18):



for the state administration, judicial authority administrations and local self-governing administrations-tariff schedule; for compulsory social security services-tariff schedule; for persons employed in the health care sector; for research activities; for the education sector in the Republic of Slovenia; for the cultural sector in the Republic of Slovenia; for the health care and social protection sector; for the environment and spatial planning sector; for professional fire-fighting activity-tariff schedule, for the Brdo State Protocol Services of the Republic of Slovenia.

## **2 Court Rulings**

Nothing to report.

## **3 Implications of CJEU rulings and ECHR**

Nothing to report.

## **4 Other relevant information**

Nothing to report.

# Spain

## Summary

The most relevant novelty this month is the approval of a Data Protection Law that complements Regulation (EU) 2016/679. The Law provides rules for so-called 'digital rights' for the first time in Spanish history. Among others, it recognises the workers' 'right to disconnect'.

## 1 National Legislation

### 1.1 Data protection law

The [Organic Law 3/2018](#) updates the Spanish regulation of personal data protection to adapt it to Regulation (EU) 2016/679, and repeals the previous Organic Law 15/1999, which had transposed Directive 95/46/EC. The Organic Law 3/2018 contains two different parts. On the one hand, the rules on personal data protection represent a national development of the EU Regulation. On the other, they guarantee so-called 'digital rights'. These rights connect with Article 18(4) of the Constitution, which limits the use of IT to guarantee the honour and personal and family privacy of individuals.

With regard to the protection of personal data, Organic Law 3/2018 closely follows the provisions of Regulation 2016/679, and to this end covers the following issues: principles of data protection, rights of persons in relation to their data, special processing of certain data (with particular reference to the processing of data for the purpose of video surveillance), faculties and obligations of the controller and the processor (with references to the data protection officer and the codes of conduct), international transfer of personal data, Spanish authorities on data protection (mainly the Spanish Agency for Data Protection), the procedures in relation to the processing of data and the remedies, liability and penalties (with a mandate of official publication of the sanctions imposed on a legal entity that exceed EUR 1 million).

As regards guarantees related to digital rights, the Law contains a general part, applicable to all citizens, and a special part, applicable to employment relationships (including civil servants). In the general part, the Law recognises that the rights and freedoms enshrined in the Constitution and in international treaties are fully applicable to internet use, so that service providers must contribute to respecting them. Users have the right to internet neutrality, so internet service providers must elaborate a transparent offer of services without discrimination for technical or economic reasons. It also recognises citizens the following rights: universal access to the internet, digital security, digital education, freedom of expression and rectification on the internet, updating of information in digital media, right to be removed from internet searches, right to be removed from social network services and the right to portability of data in social network services.

In the part dedicated to the employment relationship, Organic Law 3/2018 has introduced two measures. On the one hand, it has introduced a new article into the Labour Code (Article 20 bis), according to which workers have the right to privacy with regard to the digital devices they use at work, the right to digital disconnection and the right to privacy against the use of video surveillance and geolocation devices. An equivalent right has been recognised in particular for public employees (Article 14 of the Basic Statute for Public Employees).

Organic Law 3/2018 specifies the content of these rights:

- According to Article 87 of the Law, workers have the right to protection of their privacy in the use of digital devices provided by the employer, so that the



employer can only access the content of those devices to control the employee's compliance with labour obligations and to guarantee the integrity of said devices. In any case, the employer must establish criteria for the use of digital devices, with the participation of worker representatives, respecting in all cases the minimum standards of protection of privacy in accordance with social practices and the rights recognised by the Constitution and the law;

- In relation to video surveillance, Article 89 of the Organic Law allows the employer to use this method to control the workers, but requires the employer to inform the workers and their representatives. This information must be provided before the installation of the cameras and must be explicit, clear and precise. However, in the event that the cameras have captured a worker committing an unlawful act, the duty of information is considered to have been fulfilled when an information device is installed that is sufficiently visible under the terms of personal data protection legislation;
- Article 89 of the Law also refers to the recording of sounds in the workplace, which is only admitted when there are relevant risks for the safety of facilities, goods and persons. The installation of recording devices must respect the principle of proportionality, the principle of minimum intervention and the same guarantees as video surveillance. Recorded sounds must be erased within a month. The installation of sound recording and video surveillance systems is prohibited in places intended for rest or recreation of workers or public employees, such as changing rooms, toilets or dining rooms (Article 89(2));
- Article 90 of the Law allows the employer to use geolocation systems to control workers, but the employer must inform them and their representatives in advance, clearly and unequivocally, about the existence and characteristics of these devices and the possible exercise of the rights of access, rectification, erasure and restriction of processing;
- Workers have the right to digital disconnection as a guarantee of respect for their resting time and their personal and family privacy (Article 88 of Organic Law 3/2018), although the exercise of this right must be regulated in collective bargaining. The employer, after hearing the worker representatives, must in all cases define the modalities of the exercising of that right and must develop training activities and raise awareness on the reasonable use of technological tools that prevent the risk of 'IT fatigue', to preserve in particular the right to digital disconnection in cases of remote work.

Finally, Article 91 of Law 3/2018 allows collective agreements to establish additional guarantees for rights and freedoms related to the processing of workers' personal data and the safeguarding of digital rights in the workplace.

### 1.2 Wages of public employees

The fragmentation of Parliament has not yet made the approval of the Budget Law possible, which is traditionally passed in December every year. In substitution, the government has approved a [Royal Decree Law 24/2018](#) to set the remuneration of public sector employees (both workers and civil servants). This provision applies the wage increase agreed with the unions by the previous Spanish government.

This provision allows a 2.5 per cent salary increase in general, although it allows for additional increases depending on several circumstances, such as achievement of objectives, increase in productivity or modification of the systems of work organisation or professional classification. Collective bargaining must determine the specific salary increase in each department or administrative unit.

### 1.3 Employment

The Budget Law has not been approved. The government has reached an agreement with its supporters in Parliament to introduce some amendments in Labour Law to secure sufficient support for the approval of the Budget Law. [Royal Decree Law 28/2018](#) includes those measures, some of them related to Labour Law; one of the objectives of the agreement is to eliminate some of the employment measures approved by the previous government, in some cases pending the approval of new measures.

The main provisions in labour and employment regulations are the following: The Labour Code is amended to revoke a 2012 measure, i.e. collective agreements could again give employers authority to lawfully terminate the employment contract when the worker reaches the legal retirement age and is entitled to retirement benefits. This measure must be linked to coherent objectives of employment policy (improvement of employment stability of workers already hired, hiring of new workers, generational change or, in general, improvement of the quality of employment).

- Employment contracts to support entrepreneurs, characterised mainly by a one-year probation period imposed by law and introduced by the Labour Reform of 2012, are no longer permissible;
- Various measures to promote employment approved by the previous government in Law 11/2013, which consisted of the reduction of social security contributions, have been repealed: part-time hiring of unemployed young people with a commitment to providing training, permanent hiring of unemployed young people under the age of 30 years by micro-enterprises or self-employed workers, permanent hiring of unemployed people over the age of 45 by self-employed workers under the age of 30 years, temporary hiring of unemployed young people under the age of 30 years who have work experience of less than three months, or training contracts for young people under the age of 30 years;
- The rules of Law 6/2018 on financial support for young people enrolled in the National Youth Guarantee System under a training contract or conversion of such contract into a permanent contract have also been repealed. The reform of that system has been announced;
- All internships in companies or other entities, even those included in an educational programme, must make social security contributions just like for training contracts;
- Since 2017, a system to reduce social security contributions was in place for undertakings that have significantly reduced the number of work accidents. This system has been suspended pending the creation of a new one by the current government.

### 1.4 Minimum wage for 2019

Article 27 of the Labour Code establishes that the amount of minimum wage must be approved each year, with the possibility of a semi-annual review, if necessary. The government has authority to set the minimum wage, after hearing the most representative trade unions and business organisations. The minimum wage must be set according to various economic and social indicators, specifically the price index, the general economic situation or the national average productivity.

For the year 2019, the minimum wage will increase by 22.3 per cent compared to 2018. As a result of this review, the minimum wage shall be set in the following amounts:



- EUR 30 for daily wages;
- EUR 900 for monthly wages;
- EUR 7.04 per hour actually worked for domestic servants.

The minimum salary is set at EUR 12 600 per year, so that no full-time worker can receive less than that amount annually.

As always, the minimum wage must be paid in full in cash (not in kind), and refers to the normal working day in each activity (proportional for part-time workers). Usually, the minimum wage is not the full salary, because the employee is entitled to allowances established by law or agreement, as well as two extra bonus payments.

During the years of economic crisis, the minimum wage was either frozen or subject to very minor increases. Over the last three years, the minimum wage has witnessed higher raises due to the improvement of the economic situation. This year, the government has decided to introduce a large increase. This is an exceptional measure, and therefore Royal Decree Law 28/2018 (mentioned in the previous section) has established some precautions to avoid a major impact on wages established by collective agreement. Accordingly, the new minimum wage does not apply to collective agreements already approved which use this amount to determine the base salary or salary supplements, unless the legitimate parties agree otherwise.

Royal Decree 1462/2018 is available [here](#).

### 1.5 Work of foreigners

The collective management of contracts at the source is a procedure provided for in Spanish legislation on the work of foreigners. The Ministry of Labour makes a forecast of the jobs that can be covered by foreigners in the corresponding annual exercise, based on the situation of the national labour market. With this forecast, employers can manage the hiring of people who do not reside in Spain. These forecasts also make it possible to obtain employment-seeking visas for children or grandchildren of persons who are of Spanish origin or for certain activities. This procedure had precedents, especially for the hiring of foreigners in seasonal jobs or in agriculture, but the Order of 2018 aims to expand the possibilities of hiring foreigners for their contribution both to covering jobs difficult to fill and to the demographic situation, within the objectives of the 2030 Agenda and the Global Migration Pact.

According to this new regulation, employers' job offers may be aimed at hiring workers not only for temporary activities but also for activities of a permanent nature, and may be formulated in a generic or nominative manner (i.e. with reference to a specific foreign worker) through the public employment services.

Job offers must contain a minimum number of ten jobs of homogeneous characteristics and can be sent directly by employers or channelled through business organisations. These offers must guarantee the contracted workers continuous activity during the validity of the corresponding work authorisation and compliance with the work conditions foreseen in the job offer. In case of temporary work, they must also guarantee the provision of adequate housing during the validity of the work contract and the arrangement of the travel both to Spain and back to the country of origin. The employer must also observe diligent action to guarantee the return of workers to their country of origin once the employment relationship has ended.

The collective management of contracting at the source is considered an effective procedure for the channelling and control of migratory flows. Therefore, it is oriented towards the countries with which Spain has agreements in this regard (currently, Colombia, Ecuador, Morocco, Mauritania, Ukraine and the Dominican Republic) or, alternatively, instruments of collaboration (Gambia, Guinea, Guinea Bissau, Cape Verde,

Senegal, Mali, Niger, Mexico, El Salvador, the Philippines, Honduras, Paraguay and Argentina).

Order TMS/1426/2018 is available [here](#).

## 2 Court Rulings

### 2.1 Dismissal

*Federal Constitutional Court, No. 125/2018, 26 November 2018*

A worker was fired for work absences. She was a city councillor and had to attend the corresponding meetings, so she did not attend work when a meeting was taking place at the same time. The [Constitutional Court considered](#) the dismissal null and void due to a violation of the fundamental right of political participation (Article 23 of Spanish Constitution).

According to Article 52 of the Labour Code, the employment contract may be terminated for absences from work, albeit justified but intermittent, which amount to 20 per cent of working hours in two consecutive months, provided that total absences in the previous 12 months amount to 5 per cent of working hours or 25 per cent of working hours in four non-consecutive months within a 12-month period.

There are several absences that cannot be counted, such as absences for medical treatment for cancer or serious illness, absence due to industrial action for the duration of that action, acting as a workers' representative, industrial accident, maternity, pregnancy and nursing, illnesses caused by pregnancy, birth or nursing, paternity, leave and holidays, non-industrial illness or accident where absence has been agreed by the official health services and is for more than 20 consecutive days or where absence is caused by the physical or psychological situation resulting from gender-based violence, certified by the social care services or health services, as appropriate.

CJEU case C-270/16, 18 January 2018, *Ruiz Conejero* ascertained that that list is incomplete, and stated that an employer cannot dismiss a worker on the grounds of intermittent absences from work, even if justified, in a situation where those absences are the consequence of sickness attributable to a disability suffered by that worker, unless that legislation, while pursuing the legitimate aim of combating absenteeism, does not go beyond what is necessary to achieve that aim, which is a matter for the referring court to assess.

Therefore, fundamental rights must be taken into account, highlighted by the Constitutional Court again in relation to the right of political participation. The absences justified for the exercise of a fundamental right cannot be counted, even if the wording of Article 52 of the Labour Code allows it.

## 3 Implications of CJEU rulings and ECHR

### 3.1 Annual leave

*CJEU case C-385/17, 13 December 2018, Hein*

According to the judgment in CJEU case C-385/17, 13 December 2018, *Hein*:

*“Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, for the purpose of calculating remuneration for annual leave, allows collective agreements to provide for*



*account to be taken of reductions in earnings resulting from the fact that during the reference period there were days when no work was actually performed owing to short-time working, with the consequence that the worker receives, for the duration of the minimum period of annual leave to which he is entitled under Article 7(1) of the directive, remuneration for annual leave that is lower than the normal remuneration which he receives during periods of work. It is for the referring court to interpret the national legislation, so far as possible, in the light of the wording and the purpose of Directive 2003/88, in such a way that the remuneration for annual leave paid to workers in respect of the minimum annual leave provided for in Article 7(1) is not less than the average of the normal remuneration received by those workers during periods of actual work”.*

Spanish labour law does not contain a specific rule on this issue, so this ruling does not cause a direct impact. However, such judgments of the CJEU are very relevant, because in cases that may arise in all Member States, the Court provides guidelines that aim to avoid future conflicts. Spanish courts will definitely follow these guidelines if similar issues arise. Annual leave provides many examples of this practice over the last ten years.

## 4 Other relevant information

### 4.1 Unemployment

Unemployment declined in Spain by 210 484 people in 2018. The total number of unemployed is 3 202 297, the lowest amount since 2008. The number of contributors to social security is 19 024 million, the highest since 2007.

## Sweden

### Summary

(I) The Swedish Labour Court issued a judgment on the application of Swedish-affiliated collective agreements in a posting of workers case involving a Latvian construction company. The Court found that the posting company had violated the collective agreement and was liable to pay damages to the Swedish trade union.

(II) The CJEU's judgment in case C-385/17, 13 December 2018, *Hein*, on rights to paid annual leave, is unlikely to impact Swedish legislation.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Posting of workers

*Swedish Labour Court, No. 78/18, 19 December 2018*

The Labour Court heard a [case](#) on the posting of workers involving a Latvian construction company and the application and potential breach of Swedish collective agreements.

The Latvian construction company BTK BUVE had signed an 'affiliated collective agreement' ('*hängavtal*') with the Swedish Construction Workers' Union ('*Byggnads*') for work at Swedish construction sites with the use of posted workers. The affiliated collective agreement stated that the vast majority of workers' rights under the standard collective agreement were applicable. The workers concerned were not members of the Swedish trade union, but, in most cases, Swedish collective agreements are applicable also to non-members of the trade union. The Swedish trade union sued the Latvian company for breach of the affiliated collective agreement, primarily in relation to payment and working time. The Labour Court, upon finding that the affiliated collective agreement was valid for the working situation of the workers and applicable to their salaries and working hours, concluded the company had violated the collective agreement in relation to numerous significant aspects (however, not to all of the trade union's claims) and ordered BTK BUVE to pay damages in the amount of SEK 820 000 (EUR 82 000) to the trade union (non-unionised workers do not have individual claims under the collective agreement), mainly related to the lower pay the workers had received due to the breach of the collective agreement.

The case represents a follow-up to the *Laval* case, with the significant difference that the posting company had signed an affiliated collective agreement and subsequently was not subject to any industrial action. The Swedish trade union made legal claims regarding the violation of this collective agreement and the judgment of the Labour Court offers a clear and thorough presentation of the effects of collective agreements (also affiliated agreements) on the parties to the agreement and non-unionised workers at workplaces covered by such agreements. The punitive parts of the damages are less significant than the 'compensatory' parts under which the trade union was 'compensated' for the difference in remuneration between the actual pay and the level agreed upon in the collective agreement.

### 3 Implications of CJEU rulings and ECHR

#### 3.1 Annual leave

*CJEU case C-385/17, 13 December 2018, Hein*

In this case, the CJEU concluded that Article 7(1) of Directive 2003/88/EC and Article 31(2) of the Charter of Fundamental Rights preclude national legislation which, for the purpose of calculating remuneration for annual leave, allows collective agreements to provide for account to be taken of reductions in earnings resulting from the fact that during the reference period there were days when no work was actually performed owing to short-time working.

The balancing of workers' interests and entitlements in Sweden is primarily settled in collective agreements, resulting from established, long-term collective bargaining mechanisms. It is useful to understand this structure as an overarching arrangement that provides for a general level of protection. The [Swedish Vacations Act](#) ('*Semesterlagen*' 1977:480), together with sectoral or local collective agreements, regulates the right to annual leave, paid or unpaid. Parts of the Act can be replaced by collective agreements, also to the detriment of the workers. The Swedish Act does, however, in relation to the principles discussed in case C-385/17, offer explicit provisions (in para 7, from which collective agreements cannot derogate). The number of paid annual days of leave is calculated based on the days the employee has been employed by the employer, minus the days he or she has been fully absent from work without pay. Moreover, absence due to vacation, short-term work, sickness or parental leave (and numerous other situations) still form the basis for the employee's annual paid leave (para 7, 17, 17a, 17b). A situation like the one presented in the German case would, therefore, most likely not arise in Sweden.

### 4 Other relevant information

#### 4.1 Transfer of undertakings

The Swedish trade union '*Unionen*' has submitted a request to the Supreme Court ('*Högsta Domstolen*') for a review ('*resning*') of the [decision](#) in case *Almega v. Unionen*, Labour Court decision AD 2018 No. 35. The trade union argues that the Labour Court misinterpreted the CJEU (case C-336/15, 06 April 2017, *Unionen*) and incorrectly applied the [Employment Protection Act](#) in a case of transfer of undertaking. The application of a judicial review ('*resning*') in labour cases is extremely rare and the likelihood of success has to be considered minimal.

A press release relating to the Swedish trade union's request is available [here](#).

## United Kingdom

- (I) The Court of Appeal upheld the findings of other tribunals on workers' status-related cases.
- (II) The government has published its response to the Taylor Review
- (III) The consequences of a no-deal Brexit for EU citizens' rights are analysed.

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### 1 National Legislation

Nothing to report.

### 2 Court Rulings

#### 2.1 Worker status

*Court of Appeal, No. A2/2017/3467, 19 December 2018*

It will be recalled that Uber drivers were found to be workers in a case brought before the Employment Tribunal last year. The company has now announced that it will pay its drivers sick pay and maternity and paternity payments. The Court of Appeal, by majority, upheld the Employment Tribunal's and Employment Appeal Tribunal's decision in the Uber case and found the individuals to be workers and thus entitled to the national minimum wage and holiday pay. There was a strong dissent from the respected employment judge, Underhill LJ. The Court of Appeal has given leave to appeal to the Supreme Court.

The decision of the London Court of Appeal is available [here](#).

### 3 Implications of CJEU rulings and ECHR

Nothing to report.

### 4 Other relevant information

#### 4.1 Taylor Review and the Good Work Plan

The [Taylor Review](#) which is the government's response to unfair working practices has been discussed in past Flash Reports. The Taylor Review of Modern Working Practices looked into issues of the UK labour market such as:

- the implications of new forms of work;
- the rise of digital platforms;
- impacts of new working models.

The government has now published the [Good Work Plan](#), which summarises how the government intends to respond to the Taylor Review. It also launched four consultations to seek stakeholder views on approaches to implementation:

- Employment status (see [here](#));
- Agency worker recommendations (see [here](#));
- Increasing transparency in the labour market (see [here](#));
- Enforcement of employment rights recommendations (see [here](#)).





The Good Work Plan draws on the feedback from these consultations.

The government has also introduced three new statutory instruments (SIs) which are secondary law.

First, The [Employment Rights \(Employment Particulars and Paid Annual Leave\) \(Amendment\) Regulations 2018](#) provides that the written statement of employment particulars must be given from day one of employment rather than after two months. It also changes the rules for calculating a week's pay for holiday pay purposes, increasing the reference period for variable pay from 12 weeks to 52 weeks. This comes into force on 06 April 2020.

Second, the [Agency Workers \(Amendment\) Regulations 2018](#) abolishes the Swedish Derogation for agency workers. This will come into force on 06 April 2020.

Third, the [Employment Rights \(Miscellaneous Amendments\) Regulations 2019](#) introduces the following:

- increases the maximum level of penalty available from GBP 5 000 to GBP 20 000 for aggravated breach of a worker's employment rights under Section 12A of the Employment Tribunals Act 1996 (c.17) (Part 2);
- confers the right to a written statement of particulars of employment and associated enforcement provisions upon all workers (currently, this right applies only to employees) by amending Part 1 of the Employment Rights Act 1996 (c.18) (Parts 3 and 5);
- lowers the percentage required for a valid employee request for the employer to negotiate an agreement on informing and consulting its employees. The threshold is lowered from 10 per cent to 2 per cent of the total number of employees employed by the employer. This is achieved by amending the Information and Consultation of Employees Regulations 2004 ('the 2004 Regulations'). The 2004 Regulations impose obligations in respect of information and consultation on an employer with at least 50 employees if a sufficient percentage of its employees submit a valid request (Part 4).

## 4.2 Brexit

### 4.2.1 No-deal Brexit

Preparations for a no-deal Brexit are proceeding apace. But what happens to EU nationals living in the UK in the event of a no-deal Brexit? The government has now confirmed what has long been expected, namely that it will protect the rights of EU citizens and their family members living in the UK after 29 March 2019. In other words, it will continue to run the EU Settlement Scheme but only for those EU nationals and their family members resident in the UK by 29 March 2019, and they would have until 31 December 2020 to register under the settled status scheme; close family members will be able to join EU nationals but only up until 29 March 2022.

The policy paper from the Department for Exiting the European Union is available [here](#).

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