



Flash Reports on Labour Law April 2019

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 April 2019, 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:

Dismissal protection

In **Belgium**, the right to outplacement assistance in the amount of EUR 1 800 has been established for employees whose employment contract ends because the employer invokes medical force majeure. Moreover, the legal regime for severance pay and notice has been amended, and lower severance pay for certain fixed-term workers has been introduced. In **Greece**, a Draft Law on amendments to dismissal protection regulation was recently presented to the Greek Parliament. In **France**, a decree regulating the consequences of unlawful dismissal has been passed. In the **Netherlands**, a labour court has ruled that an employer has the duty to dismiss a long-term disabled worker who becomes eligible for compensation upon termination of the contract.

Working time

In **Denmark**, an industrial arbitration ruling confirmed the employer's right to place breaks during the employee's working hours with the aim of optimising economic development and ensuring smooth business operations. In **France**, the Court of Cassation rejected an employee's application to have his lump sum agreement, which envisages 131 days of work per year, reclassified as a full-time contract. In **Iceland**, a case on daily resting time was decided in the employee's favour in the Court of Appeal. In **Luxembourg**, a law implementing time-savings accounts for private law contracts, as well as a law implementing an additional public holiday have been adopted.

Data protection

In the **Czech Republic**, two new acts that deal with personal data processing have been published. The legislator referred to Article 83 (7) of Regulation (EU) 2016/679 to establish an exception for public authorities. In **Germany**, the Business Secrets Act implementing Directive 2016/963 has entered into force. In **Hungary**, amendments to the Labour Code have transposed EU data protection regulation. In **Norway**, legislation on amending whistleblowing provisions has been proposed.

Posting of workers

In **Austria**, the Supreme Court found the Austrian system for annual leave funds in the construction sector to be in line with EU law and the CJEU's jurisprudence on the posting of workers. In **Denmark**, several industrial arbitration rulings took a rigid approach to the duty to document payments for pensions in the home Member State. A public debate is currently underway on an Italian court's refusal to implement a penalty imposed by a Danish court on a posting entity. In **Lithuania**, a regional court has disregarded national legislation and based its ruling that Lithuanian companies are to pay Lithuanian employees, who are posted abroad the foreign minimum wage, directly on EU law.

Collective labour relations

In **Finland**, the Supreme Court determined that an employer is not required to offer an employee work for a few hours per day if that employee's tasks have been reduced due to industrial action. In **France**, the Court of Cassation confirmed an employee the right—subject to having been a trade union delegate for at least 12 months—to protection for an additional twelve months from the date of the judgment cancelling the mandate. The same Court granted a works council's application to nullify the relocation of



regular works council meetings that had had a significant impact on attendance.

Brexit

In **Luxembourg**, two bills on Brexit have been passed. In the **UK**, Brexit preparations concerning the continuation of the Rome I and II Regulations have been adopted.

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

Topic	Countries
Dismissal protection	BE EL FR NL
Working time	DK FR IS LU
Posting of workers	AT DK LT
Brexit	LU UK
Minimum wage	BE LT
Persons with disabilities	BE BG
Privacy	CZ HU
Social security	BE IT
Third country nationals	CZ IR
Employment information	BE
Employment status	FR
Fixed-term employment	IR
Free movement of workers	LI
Holiday/Sunday work	LU
Outplacement	BE
Pilots	BG
Retirement	BE
Self-employment	IR
SMEs	FR
Strike	FI
Subcontracting	DE
Temporary Agency Work	UK
Trade secrets	DE
Trade union activity	FR
Trainees	FI
Transfer of Undertakings	NL
Whistle-blowers	NO
Works Councils	FR
Young workers	BE

Austria

Summary

The Supreme Court found the Austrian system for annual leave funds in the construction sector in line with EU law and the CJEU's jurisprudence on the posting of workers.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Posting of workers

Supreme Court, No. 9 ObA 111/18s, 28 March 2019

With regard to annual leave, foreign employers have been subject to the Austrian Construction Workers Leave and Severance Pay Act (*'Bauarbeiter-Urlaubs- und Abfertigungsgesetz'* – hereinafter BUAG) since 1 September 2005, if the employer posts or leases workers to Austria or hires employees to work for employers whose habitual place of residence is in Austria. For the duration of the posting or leasing, the posting enterprise or temporary work agency must pay wage supplements as stipulated in the [Construction Workers Leave and Severance Pay Fund](#) (*'Bauarbeiter-Urlaubs- und Abfertigungskasse'* – hereinafter BUAK) for every employee who performs construction work under the terms of the BUAG.

Annual leave entitlement accrues for the entire period for which the employer has made payments. BUAK pays employees' leaves directly. This applies to leave taken during the posting or within a six-month period after employment in Austria ends, if the employee continues to be employed by the posting enterprise.

To avoid a double burden for the employer, the Austrian Construction Workers Leave and Severance Pay Act was amended in 2012 and now includes the following provision in § 33h (1a) (unofficial translation by the author):

"If the employer has granted the employee leave in the current calendar year prior to the commencement of employment in Austria in the current calendar year and if annual leave days that would have accrued during the period of employment in Austria were also compensated for in this way, the leave pay actually paid to the employee for these days of annual leave shall be offset against the wage supplements to be paid during employment in Austria for the respective period. The days of leave compensated in accordance with the first sentence shall be credited against the employee's entitlement to annual leave that arises during the period of employment in Austria in accordance with § 33e and § 33f."

The legislator explained the amendment as follows (unofficial translation by the author):

"In this respect, the Supreme Court has identified a gap in the BUAG. The new regulation closes this gap by providing a credit if the employer has made payments to the BUAK, the law of the country of origin provides for more favourable provisions [concerning the amount and date of accrual of leave entitlement] and the employee has already taken leave in Austria prior to the assignment, which would fall within the period of assignment."



A foreign employer claimed that he had already satisfied all claims based on the law of the country of origin and therefore refused to pay. The [Supreme Court](#), referring to the decisions of the CJEU in *Finalarte* ([C-49/98](#)) and *Commission vs. Germany* ([C-490/04](#)) concerning similar German legislation on contributions to an annual leave fund in the construction industry, pointed out that the Austrian legislation is in line with the CJEU's jurisprudence: in para 46, the CJEU ruled that the national court must also consider whether the German law relating to paid leave confers real additional protection to workers posted by service providers established outside Germany, and whether the application of that law is proportionate to the attainment of the objective of the social protection of those workers. The Austrian Supreme Court considers that the BUAG provides additional protection and that it is proportionate as it prevents a 'double burden' for the employer. It is therefore considered to be in line with EU law and—as the legal situation is considered unambiguous—the Supreme Court did not ask the CJEU for a preliminary ruling.

3 Implications of CJEU rulings and ECHR rulings

Nothing to report.

4 Other relevant information

Nothing to report.

Belgium

Summary

- (I) A reduced minimum wage for young employees has been introduced.
- (II) The right to outplacement assistance of EUR 1 800 has been established for employees whose employment contract ends because the employer invokes medical force majeure.
- (III) The training clause for 'bottleneck professions' was extended.
- (IV) The legal regime for severance pay and notice has been amended.
- (V) The unemployment benefit schemes was amended, introducing more favourable provisions for vulnerable groups of workers.
- (III) A series of intersectoral collective bargaining agreements deal most notably with minimum and maximum wage increases. The maximum margin for the development of labour costs has been determined in a royal decree for the period 2019-2020.
- (V) A lower severance pay for certain fixed-term workers has been introduced.

1 National Legislation

1.1 Jobs Deal Law

In April 2019, a large number of normative documents were published implementing the jobs deal of the summer of 2018 and the draft interprofessional agreement for the period 2019-2020. One of these is the [Law of 07 April 2019 on the social provisions of the jobs deal](#) (published in 'Moniteur belge' on 19 April 2019 – hereinafter: the Jobs Deal Law). This new law is remarkable because it is implemented by a parliamentary majority of the former majority parties which now form a minority government.

First, a short summary of the content of the Jobs Deal Law is provided, followed by a detailed description of the individual parts.

- In the case of starter jobs, the employer is allowed to reduce the minimum gross salary of young employees aged 20, 19 and 18 years by 6 per cent, 12 per cent or 18 per cent, respectively. Compensatory allowance exempt from tax and social contributions compensates for the loss of income of young employees. This compensatory allowance is no longer taxed on a flat-rate basis.
- A right to outplacement assistance in the amount of EUR 1 800 is established for employees whose employment contract comes to an end because the employer invokes medical force majeure. This is a special scheme for outplacement, whereby a set of accompanying services and advice tailored to the needs of a worker with a health problem is provided by a service provider to enable that worker to find a job with a new employer or become self-employed within the shortest possible period of time. This is provided on behalf of the former employer.
- Article 37/12 of the Employment Contracts Law of 03 July 1978 requires the employer, when she decides to exempt the employee from performing work during the period of notice in agreement with the employee, to inform the employee in writing of the obligation to register with the regional employment agency of his place of residence within one month after the exemption has been granted.

- The training clause has been amended. To this end, Article 22bis of the Employment Contracts Law provides that the training clause is deemed non-existent if (a) the training given to the employee results from a legal or regulatory provision to exercise the profession for which the employee was hired; or (b) insofar as the training does not reach a duration of 80 hours or a value equal to double the average minimum monthly income. For trainings relating to bottleneck occupations or to difficult to fill functions of the Regions, the minimum annual income conditions and condition (a) do not apply.
- For employees who have reached the statutory retirement age yet choose to continue working, entitlement to disability benefits is extended to the first six months. The benefit no longer ends on the first day of the second month following the month in which the incapacity for work started.
- Employees who are dismissed after 01 January 2022 with a compensatory dismissal indemnity in lieu of notice can choose to spend up to one-third of the indemnity in lieu of notice on training. The employer is informed in writing of the amount the employee wishes to spend on such training. This training budget must be spent on training and at the latest by the end of the sixtieth month following the day on which the employment contract was terminated. A decree of the Council of Ministers may move the date of 01 January 2022 forward.

1.1.1 Starter jobs

The Law of 26 March 2018 on the strengthening of economic growth and social cohesion provides for a system of starter jobs that allows the employer to reduce the gross salary of young employees between the ages of 18 and 20 by a certain percentage. However, the employer must pay the young person a lump sum allowance. The young employee may not suffer any loss of income as a result of this measure. The law also stipulates that the lump sum allowance is exempt from tax and social security legislation. It is not possible to stipulate adequate compensation for the young employee's loss of earnings on the basis of a single table, as currently provided for by law. The supplement will from now on be determined on the basis of the legislative amendment based on the difference between the net salary calculated on the basis of the reduced gross salary and the net salary on the basis of the non-diminished gross salary.

1.1.2 Outplacement

Outplacement for workers whose employment contract come to an end as a result of the employer invoking medical force majeure

The purpose of this legislation is to grant employees the right to outplacement when their employment contract has been terminated by the employer on the basis of medical force majeure. Since such terminations of the employment contract do not legally constitute dismissal, they cannot benefit from the existing outplacement schemes.

This chapter therefore introduces a new special scheme of outplacement for such workers in the Law of 05 September 2001 on the improvement of the employment rate of workers. Even if the employer terminates the employment contract on the grounds of medical force majeure, she will henceforth also provide the employee with the necessary information to make an outplacement offer.

Force majeure for medical reasons can only end an employment contract after termination of the reintegration process as specified in the Codex on Welfare at Work (Article I.4-72 and following) which makes it clear that the worker is definitively incapacitated to carry out the agreed work. The aim of the reintegration programme is to determine whether the own employer can offer other or adapted work to workers

who are incapacitated for work due to health problems. However, if the employer cannot offer adapted or other work, such employees must be offered job opportunities elsewhere. She might have knowledge and skills that are relevant and interesting for another employer.

1.1.3 Exemption from the obligation to perform work during the notice period

The government decided that the employee is required to register early with the regional employment services if the employer and the employee agree that the employee will be exempt from performing work during the notice period. In this case, the worker must register with the regional employment services within one month following the conclusion of the agreement on the exemption of the performance of work during the notice period. Thereby, an unnecessary loss of time is avoided to look for new job opportunities. To ensure that the employee does not lose sight of this obligation, the employer must provide the employee with the necessary information. The employee must be informed of this obligation in writing when she concludes the agreement with the employer on the exemption from working during the notice period.

1.1.4 Training clause for bottleneck professions

The Law of 14 October 2018 amended the Employment Contracts Law 03 July 1978 with a view to making the training clause more flexible and introducing a training clause for bottleneck professions. If the training relates to a bottleneck profession, the training clause now also applies if the employee has received a salary of less than EUR 34 180 (amount applicable in 2018). Within the framework of the government's job deal, it was decided to make these changes more comprehensive. Thereby, the government aims to encourage investments in the training of workers. There are currently a number of vacancies, but they remain vacant due to the lack of suitable profiles of the job seekers.

1.1.5 Entitlement to disability benefits after reaching statutory retirement age

An employee who continues to work after he reaches statutory retirement age only has a very limited right to disability benefits. The incapacity for work benefits are denied to such employees from the first day of the second month following the month in which the incapacity for work started (cf. Article 108, 2 of the Law on Compulsory Insurance for Medical Care and Benefits of 14 July 1994). As part of the government's policy of encouraging longer working years, it is appropriate to extend this time-limited right to disability benefits to the first six months of the period of primary incapacity for those beneficiaries who have not yet actually received their retirement pension.

The current legislation on retirement pensions also determines a complete prohibition of cumulation between retirement pension and disability benefits (cf. for example, Article 25 of Royal Decree No. 50 of 24 October 1967 on the retirement pension for employees). Having regard to the above mentioned objective of the extension of the entitlement to incapacity for work benefits after reaching the statutory retirement age, it is appropriate to provide benefits to beneficiaries who, after reaching statutory retirement age, are already receiving their pension and are simultaneously engaged in a professional activity, the enjoyment of retirement pension will always be a priority. This means that the granting of incapacity benefits will not take precedent.

1.1.6 Measure to improve the employability of workers in the labour market

Within the framework of the Job Deal (Amendment, *Parliamentary Documents*, Chamber of Representatives, 201-2019, Ni. 54-3464/005), it was also agreed to give an employee, who was dismissed with the payment of a dismissal indemnity in lieu of notice, the opportunity to request that a maximum of one-third of this indemnity be paid out in the form of a budget that she can spend on training within 60 months of her dismissal with a view to increasing her employability.

Further information on the Jobs Deal Law is available [here](#).

1.2 Unemployment benefits with a company supplement

On 23 April 2019, 13 national intersectoral collective bargaining agreements (hereinafter: CBA) were concluded in the National Labour Council that allow a dismissed employee who are at least 62 years old to join the system of unemployment benefits with a company supplement.

This system of unemployment benefits with a company supplement is in principle open to dismissed workers who are at least 62 years and older at the time of termination of their employment contract (Article 3 of CBA No. 17 of 19 December 1974, as lastly amended on 27 April 2015).

Of the 13 CBAs, seven specify the unemployment benefits scheme with a company supplement for the period 2019-2020. The remaining six CBAs cover the period 01 January 2021 to 30 June 2021 or 31 December 2022, as the case may be.

In addition, most deviating schemes of unemployment benefits with a company supplement scheme require two intersectoral collective bargaining agreements to initiate it:

- on the one hand, a CBA regulating the payment of the company supplement in addition to unemployment benefits;
- on the other hand, a CBA that specifies the lower admission age.

In addition to these CBAs, a CBA at sector or company level is sometimes required as well to introduce the right to this deviating scheme in the sector or company.

What will change compared to the situation in 2018?

For employees who are dismissed from a company not recognised as one in difficulty or undergoing restructuring, nothing will change in 2019 and 2020 compared to 2018. In addition to the general system that provides for the possibility to enter an unemployment benefit scheme with a company supplement from the age of 62 and with a career of 40 years, there will continue to be four different systems in 2019 and 2020 under which such a system is possible from the age of 59 (58 years for disabled workers). Also, in the first half of 2021, the access age for these special schemes will not be increased. The access age will only increase after 01 July 2021. From that date onwards, the access age for the majority of special schemes will be 60 years.

For workers dismissed in a company recognised as being in difficulty or undergoing restructuring, the absolute minimum age from which a SWT can be granted has been increased from 56 years in the period 2017-2018 to 58 years:

- 58 years for the period 1 January 2019 to 30 December 2019;
- 59 years for the period 31 December 2019 to 30 December 2020;
- 60 years from 31 December 2020.

Analytical part

An implementation of the federal coalition agreement of 09 October 2014 and a political agreement between the leaders of the trade unions and the employers' organisations, it was decided as a matter of principle to gradually increase the age and employees' effective working life to further delay an exit from the labour market.

To implement the aforementioned agreement between the leaders of the representative trade unions and the employers' organisations, exceptions must be provided for with regard to the raising of the age limit for employees with a long career, a hazardous profession or who are employed in a company in difficulty or undergoing restructuring. This is all the more relevant considering that the report of the mediators 'Soete & De Callatay' of 03 December 2018 on the reform of the statutory pension system states that, as far as hazardous professions are concerned, it is best to introduce some flexibility in the tightening of the criteria for access to the system of unemployment benefits with a company's supplement for older people (see [Advice No. 1230 of 23 April 2019 on the schemes of unemployment benefits with a company supplement for older employees](#)).

1.3 Implementation of the February intersectoral agreement

As mentioned earlier (see February 2019 Flash Report, point 4.1), the social partners concluded an intersectoral agreement on certain principles. These principles include, inter alia, that the set amounts in intersectoral CBA No. 19 octies concluded in the National Labour Council on 20 February 2009 on the financial contribution by employers to the costs of transport of workers, will be increased to 70 per cent from 01 July 2020. Another agreed point was that the number of voluntary overtime hours will be increased from 100 to 120 hours.

The increased financial contribution by employers to the costs of transport of employees has become mandatory with the conclusion of [CBA No 19/9 of 23 April 2019](#).

CBA No. 129 of 23 April 2019 regulates voluntary overtime. Article 25bis of the Labour Code of 16 March 1919, on the initiative of the employee and with his agreement, allows a maximum of 100 hours of overtime work to be performed per calendar year. The number of hours may be increased to 360 hours by means of a universally binding collective bargaining agreement. The CBA, in accordance with the intersectoral agreement, now increases the number of voluntary overtime hours to a maximum of 120 hour per calendar year.

1.4 Maximum wage increase for 2019-2020

The Royal Decree of 19 April 2019 implementing Article 7(1) of the Law of 26 July 1996 on the promotion of employment and preventive safeguarding of competitiveness (published in 'Moniteur belge' on 24 April 2019) sets the maximum margin for the development of labour costs in addition to the automatic wage indexation due to the rise of consumer prices and the so-called 'barema' or scale wage increases at 1.1 per cent for the period 2019-2020 (the law defines a barema (or scale) of salary increases as the "existing pay increases due to seniority of service, age, normal promotions or individual category changes, established by CBAs").

2 Court Rulings

Nothing to report.



3 Implications of CJEU rulings and ECHR

3.1 Fixed-term work

CJEU joined cases C-29/18, C 30-18 and C-44/18, 11 April 2019, Cobra Servicios Auxiliares

Cobra signed an agreement with 'Unión Fenosa', an electricity and gas company, for electricity meter readings, the installation and replacement of meters and their maintenance. Subsequently, Cobra concluded fixed-term employment contracts, for specific work or services, with a number of employees linked to the duration of the service contract, in particular for the recording of meter readings of 'Unión Fenosa's' customers.

When 'Unión Fenosa' terminated the service contract a few years later, Cobra decided, on the one hand, not to continue the fixed-term contracts and, on the other hand, to dismiss 72 permanent workers. Cobra was required to pay compensation for collective redundancies for its permanent employees. The question was raised whether Cobra had to pay the same compensation to employees with fixed-term employment contracts.

The CJEU ruled that from a legal point of view, the payment of compensation for employment contracts concluded to carry out a particular assignment and that come to an end upon the completion of the work for which they were concluded, takes place in a substantially different context from cases in which an employment contract of a comparable permanent worker is terminated, even if those two events arise under the same circumstances, in this case, the termination of the service contract.

Consequently, where the termination of the service contract between the employer and one of his customers leads to the termination of contracts of employment for a particular assignment or service between the employer and certain employees and, on the other hand, to the collective dismissal of that employer's permanent employees, the severance pay paid to the former may be lower than that paid to the permanent employees.

With reference to the present case, Belgian dismissal law on early termination of fixed-term employment contracts and on collective redundancies is comparable to the Spanish law, as well as dismissal regulations applicable to the early termination of fixed-term employment contracts and collective redundancies. Therefore the CJEU ruling is also of relevance for the Belgian legal order.

4 Other relevant information

Nothing to report.

Bulgaria

Summary

New legislative regulations were passed regarding obligations of the Agency for Persons with Disabilities and the rules and organisation of pilot activities.

1 National Legislation

1.1 Persons with disabilities

In [Regulation No. 79 of 15 April 2019](#) (State Gazette No. 33 of 2019), the Council of Ministers changed and amended the Organisational Rules of the Agency for Persons with Disabilities. Article 11 stipulates equal inclusion of persons with disabilities and includes, among others, the maintenance of a register of specialised enterprises and cooperatives for persons with disabilities, refunding of employers, enterprises and cooperatives for organising work of persons with disabilities, the financing of such programmes, etc.

1.2 Pilot activity

The Minister of Transport, Information Technologies and Communications issued [Ordinance No. 1 of 03 April 2019 on pilot activity in the Republic of Bulgaria](#) (State Gazette No. 31 of 17 April 2019). It regulates conditions and procedures for the performance of pilot activities in Bulgaria's Black Sea region to ensure the safety of shipping and prevention of environmental pollution; the conditions and procedure for the completion and election of a pilots' organisation; and the organisation of activities of pilots' organisations.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Czech Republic

Summary

(I) Two new acts that deal with personal data processing have been published. The legislator referred to Article 83 (7) of Regulation (EU) 2016/679 to establish an exception for public authorities.

(II) A draft regulation amending the residence of third country nationals in the Czech Republic envisages the introduction of a new long-term residence for the purpose of seeking employment and amends the notification and registration duty of third-country employees.

1 National Legislation

1.1 Personal data processing

Act No. 110/2019 Coll., on Personal Data Processing and Act No. 111/2019 Coll., Amending Certain Acts in Relation to the Adoption of the Act on Personal Data Processing [were published](#) on 24 April 2019, with the effective date set to be the date of publication.

For further information on these Acts, see also October 2017, March 2018, January and March 2019 Flash Reports.

During the final stage of the legislative procedure, the legislators adopted an exception for public authorities pursuant to Article 83 (7) of Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR).

In accordance with these Acts, the supervisory authority (Office for Personal Data Protection) may not impose any fine on public authorities, i.e. the supervisory authority shall exempt public authorities pursuant to Article 83 (7) of the GDPR from fines in case of breach of their duties as prescribed by the GDPR and/or these Acts.

The Member States may lay down regulations on whether and to what extent administrative fines may be imposed on public authorities and bodies. The Acts adopted by Czech legislators state that the supervisory authority may not impose any fines for breaches of the GDPR.

1.2 Employment of third-country nationals

The Draft Act amending Act No. 326/1999 Sb., on the Residence of Foreign Nationals in the Czech Republic and related Acts, [has been introduced in the legislative procedure](#) (the Draft Act was approved by Parliament and submitted to the Senate).

The Draft Act envisages the introduction of long-term residence for the purpose of seeking employment or setting up a business. Students graduating from university and researchers finishing their research projects are allowed to stay in the country for 9 months. This permission does not necessarily include the right to be employed or to set up a business, as the general requirements need to be met as well. Moreover, foreign nationals will need to participate in an integration/ adaptation course. The main objectives of the course are to initiate the integration of third-country nationals, make them familiar with their new environment, the local customs and traditions and most importantly, with their rights and obligations. These courses must be completed within one year from the date their residence permit is issued. A certain level of knowledge of Czech is required as well. A given quota on the number of such third-country nationals will apply.



During the discussions on the Draft Act in the Chamber of Deputies, some amendments were passed to prevent situations in which a third-country national does not commence work with the employer that issued her the employee card. In such situations, the third-country national typically uses the employee card she has received to either perform work for another employer or to abuse it for other purposes (e.g. to legally enter the Czech Republic but to then subsequently work illegally). Therefore, any third-country national applying for an employee card should submit a certificate issued by his employer to the Ministry of the Interior confirming that she has actually commenced in the post for which the employee card was issued. Another change introduced by the amendment is that it will no longer be necessary to request permission of the Ministry of the Interior to change employers or posts; any changes would only need to be announced in advance. At the same time, however, the option of an employee card holder to move to another employer within the first six months from the issuance of the employee card would be limited.

Another adopted amendment modifies Act No. 435/2004, Employment Act, as amended. Under the current wording, natural or legal persons who entered into a contract with a foreign employer for the purpose of performing work in the Czech Republic arising from that contract have the obligation to notify the Labour Office and register as employees. According to the new wording, this obligation falls on the foreign employer. At present, natural or legal persons have the obligation to notify and register with the Labour Office, even if they only order a service to be carried out by a foreign company that posts employees to the Czech Republic for this purpose. In practice, however, it is often difficult for these individuals to obtain the necessary information about the foreign employees, especially because the foreign company often provides the services through other subcontractors.

The Draft Act has entered the legislative procedure. The preliminary effective date is set to be the 15th day following its publication (with exceptions).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Denmark

Summary

(I) An Industrial arbitration ruling ruled on contributions to pensions and holiday schemes for posted workers.

(II) Industrial arbitration rulings have taken a rigid approach to the duty to document payments for pensions in the home Member State.

(III) An Italian court has refused to implement a penalty imposed by a Danish court on a posting entity.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working time and breaks

Industrial arbitration ruling, No. FV 2017.0106, 20 February 2019

The [ruling](#) concerned the right of the employer to order employees to take two breaks of 30 minutes each during long working days (ten to twelve hours) on board a ferry route. The question arose whether the instruction to take such breaks without pay was a breach of the collective agreement.

In earlier versions of the collective agreement, one break of 30 minutes had been agreed. In June 2013, employees with long shifts (ten to twelve hours) were notified that they were to take two daily breaks of 30 minutes in the future. The issue was discussed in a number of meetings between the employer and the worker representatives/trade unions.

The worker representatives argued that unilateral amendments to the working hours resulting in a reduction of paid working hours is a breach of agreement.

The employers' representatives argued that a change in working time is part of the employer's prerogative to organise working time, and the specific change was not a breach of the agreement. They also argued that it is in the workers' interests to have two breaks of 30 minutes each when working twelve hour shifts, partly taking the working environment into consideration.

The arbitrator stated that before 2013, workers had a right to two paid breaks of 30 minutes each, with one of the breaks being paid while the other was not. This changed after 2013, with none of the breaks being paid. This implied that the remunerated working time was reduced by 30 minutes for long work shifts. This change was duly notified. The wording of the agreement establishes a duty of the employer to give employees 30-minute breaks every four hours of work, unless an agreement states otherwise. This provision establishes the minimum duty of the employer to place the employee's breaks, but does not concern the right of the employer to establish additional breaks. There is no general duty of the employer to pay for meal breaks. Breaks are generally not mentioned as working time that should be remunerated. Against this background, the arbitrator found that the provision could not be interpreted as restricting the employer from placing additional breaks upon agreement. The

provision does not prevent the implementation of a unilateral decision to place two unpaid 30-minute breaks on working days of ten hours or more.

2.2 Posting of workers, remuneration and penalty

Industrial Arbitration Ruling, No. FV 2018.0060, 01 February 2019

The [ruling](#) concerned the appropriate remuneration to posted Czech workers to Denmark, who were not members of the trade union that was party to the agreement. Under Danish law, an employer is required to apply the provisions of a collective agreement to all employees who perform work covered by the agreement, regardless of the membership status of the employees. The question concerned hourly payments, accrual of holiday pay and documentation for pension payments in the workers' home Member State.

The ruling stated that established case law stipulates that a trade union can allege underpayment, and that the penalty for underpayment amounts to the difference in accrued underpayments. The question became one of calculating payments and assessing facts. The employer had documented the pension payments for the posted workers in their home Member State by way of documenting established pension agreements as well as payments made to the pension scheme. Refraining from making pension payments in Denmark was not a breach of agreement. Further, the employer had documented payments to a number of workers, which were not subject to review. The employer had paid the workers annual leave supplements in addition to the monthly pay instead of paying the annual leave supplements to the Holiday Fund, which would later pay out the holiday payments when the worker takes her annual leave. Payments as part of the employee's monthly remuneration did not fulfil the purpose of making payments to the holiday fund, which ensures that the workers can actually take annual leave. The employer was found to be in breach of agreement by not paying annual leave payments to the Holiday Fund. In addition, the annual leave payments were a little less than the amount calculated by the Labour Court. The employer was ordered to pay the difference of DKK 200 000 (approx. EUR 28 000).

2.3 Posting of workers, remuneration and pension payments

Industrial Arbitration ruling, No. FV 2018.0075, 05 February 2019

The ruling concerned the understanding of the term 'arbejdsmarkedspension' – labour market pension in the collective agreement on remuneration to posted workers covered by the [Industrial Agreement 2017-2020](#). The section states:

"the company's documented contributions to a labour market pension in the home Member State can be included in the pension contribution scheme, which the company must pay according to the collective agreement in Denmark".

The claimant argued on behalf of the trade union that the term must be understood as a labour market-based pension scheme which is a supplement to the public mandatory pension scheme subject to Directive 98/49/EC. Pension payments, which can be deducted from pension payments in Denmark, must as such be a supplement to the public pension scheme.

The defendant argued on behalf of the employer that the term must be interpreted as covering all of the employer's mandatory contribution duties in the home Member State that relate to the employee's right to receive an old-age pension.

The arbitrator interpreted the term on the basis of two fundamental principles agreed to by the parties regulating the adjustment of the level of remuneration of posted workers. These principles state that the calculation and comparison of the level of

remuneration must be based on the posting entity's relevant cumulated employee costs, i.e. mandatory duties established in statutory acts and in collective agreements, regardless of whether they relate to the home Member State or to Denmark, and that the posting entity must not be placed in a disadvantaged or better position than a Danish company. The comparison is made with a Danish company's employee costs in the same situation.

These principles are found to be in line with the preliminary works of section 6a in the Posting of Workers Act, as amended after the Laval- and Viking rulings, and in line with earlier Danish case law, in particular, [industrial arbitration ruling No. FV 2009.0093 of 26 February 2010](#).

The arbitrator found that the posting entity was entitled to deduct all mandatory pension payments made in the home Member state.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Enforcement of penalties in another Member State

A municipal court in Syracuse refused to acknowledge and enforce a ruling of the Danish Labour Court. The Labour Court found an Italian construction company, Solesi, to be in breach of a collective agreement by underpaying a number of workers whilst being posted to a Danish construction site. The Labour Court ordered Solesi to pay a penalty set at its discretion to EUR 3 million, calculated on the basis of the difference between the payments that should have been made and the payments that were made. The Municipal Court in Syracuse found that the ruling violated the public order and should not be enforced. The municipal judge of the Court of Syracuse determined that the penalty for breach of agreement was similar to a criminal penalty and as such, should have been subject to a second judicial review. The lack of a second review was a breach of the principle of legality and the public order.

The municipal court found that the purpose of a penalty is to dissuade parties from breaching the 'law', and with a view to the amount of the penalty, cf. ECHR and ECtHR case law on the character of criminal penalties.

The Danish Trade Union has now appealed the ruling. Within the framework of the Danish collective system, penalties for breach of agreement can be agreed, like in any other contractual relation, and in case no agreement has been made, the Labour Court can set a penalty taking all aspects into consideration, such as the savings to the employer for breaching the agreement. The size of the penalty is high because the employer benefits when breaching the agreement.

As such, the Syracuse ruling may potentially undermine the free movement of services and the underlying mutual recognition of court rulings necessary to support this.

The issue is a very hot political topic in Denmark. The trade union has appealed the ruling. Everybody is waiting for further developments.

Estonia

Summary

Academic trade unions are preparing a sector-wide collective agreement for universities and research institutions.

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 Sectorial employment conditions

Academic trade unions are preparing a sectorial collective agreement. The idea is to regulate the employment conditions in Estonian universities. The main issues are university salaries and the financing of research activities. The academic trade unions aim to secure a raise in salaries of around 30 per cent.

To date, collective agreements with individual universities have been concluded, but there is no sector-wide collective agreement for higher education. This will be the first major collective agreement to cover all universities and to determine the minimum requirements for universities.

Further information is available [here](#).

Finland

Summary

The Supreme Court has issued a ruling on discrimination and industrial action.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Discrimination on grounds of industrial action and trade union activity

Supreme Court, No. KKO: 2019: 35, 12 April 2019

A trade union took industrial action, including refusal of employees to introduce and train temporary agency workers. An employee, a member of the union, informed the employer within two days that she was willing to perform other tasks, but not the introduction and training of temporary agency workers. The employer sent the employee home, and did not pay her wages for those two days.

The employee claimed compensation for her wages for those days, and compensation based on the Discrimination Act, because the employer had discriminated her because of her involvement in the industrial action and her trade union activity.

The [Supreme Court determined](#) that the employer was not required to offer the employee work for a few hours per day if the employee's tasks have been reduced due to industrial action. The loss of the employee's wages related to the industrial action, not the employer's action. Thus, the employer had not discriminated the employee. The employer was neither ordered to pay the employee's wages, nor to pay compensation.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Parliamentary elections

The Social Democrats gained 17.73 per cent of the votes in the last parliamentary election. The Chair of the Social Democrats, Mr. Antti Rinne, is currently forming a new government and is expected to be completed around 15 May.

The second biggest party is the True Finns (populists) with 17.48 per cent of the vote, but will most likely not enter the government due to their peculiar ideas that no other party would accept.

Coalition (conservatives) got 17.00 per cent of the votes, the Central Party got 13.76 per cent, the Greens 11.49 per cent and the Left Wing 8.17 per cent of the votes.

France

Summary

- (I) The PACTE law has amended thresholds for the application of SME-related regulation, with consequences also for labour law.
- (II) A Decree regulating the consequences of unlawful dismissal has been passed.
- (III) The Court of Cassation has ruled in cases related to trade union and works council activities, working time and employee status.

1 National Legislation

1.1 Draft law on the growth and transformation of companies

The law '*Plan d'Action pour la Croissance et la Transformation des Entreprises*' (hereinafter PACTE – Action Plan for Business Growth and Transformation) was adopted by the National Assembly on 11 April 2019. On 16 April, it was referred to the Constitutional Council.

The objectives of this law are:

- rethinking the role companies play in society;
- setting up a company 100 per cent online at less cost;
- facilitating entrepreneur's recovery;
- bringing public research closer to the business world;
- facilitating business transfers;
- supporting SMEs' export initiatives;
- protecting strategic companies.

In the field of labour law, the most important modifications will be:

- Simplifying the thresholds applicable to SMEs. This implies that only three levels of initially 139 thresholds will remain (11.50 and 250 employees). The 20-employee threshold will be eliminated, except for the obligation to employ workers with disabilities. Thresholds of 10, 25, 100, 150 and 200 employees will also be eliminated. A five-year compliance period applies. The obligations will only be enforceable if a company passes a given threshold for five consecutive years. A harmonised method for counting the total number of employees will be introduced. To make it easier for companies to calculate that total, the calculation method specified in the Social Security Code will become the standard calculation method;
- Corporate contributions to employee incentive schemes and profit-sharing have been abolished. The mandatory employer contribution has been eliminated. The employer's contribution will be eliminated in profit-sharing schemes for SMEs. Implementing profit-sharing agreements as well as employee savings schemes at sector level will encourage more frequent use of these schemes, particularly for SMEs. SMEs will have online access to standardised agreements and will be able to implement them immediately;
- The portability of pension savings products shall be guaranteed and simplified. The portability of retirement savings and a harmonised tax policy has been introduced. Savings will be fully transferable from one scheme to another, and thus more in line with people's career paths. Savers will now have the right to

deduct voluntary contributions from their taxable income (within existing limits). The freedom to withdraw lump sums and competition between schemes will be fostered. Lump sum withdrawals of voluntary payments and payments derived from employee savings plans will be permitted. Savers will be able to change the provider more easily.

1.2 Consequences of unlawful dismissal

[Decree No. 2019-252](#) of 27 March 2019 on the conditions for the issuance of a constraint by 'Pôle emploi' for the reimbursement of unemployment benefits by the employer following a labour court judgment has been issued.

If the judge finds that the dismissal was without real and serious cause, two types of sanctions may apply:

- The reinstatement of the employee, or in the absence of an agreement between the two parties, the payment of an indemnity ([Article L. 1235-3](#) of the Labour Code);
- The reimbursement to Pôle emploi of unemployment benefits received by the dismissed worker within six months of the pay-out of those benefits ([Article L. 1235-4](#) of the Labour Code).

1.2.1 Prior formal notice

When the judge automatically orders the reimbursement of unemployment benefits, she must submit a certified copy of the labour court's judgment or the appeal judgment to Pôle emploi. If the judgment ordering the reimbursement of unemployment benefits is enforceable, 'Pôle emploi' may give notice to the employer to pay them. The formal notice shall include:

- the name and address of Pôle emploi;
- the name and address of the employer and, where applicable, of the body legally representing him, mentioned in the judgment automatically ordering reimbursement by the offending employer of all or part of the unemployment benefits;
- the reason, nature and sum of the amounts ordered to be reimbursed;
- the periods covered by the payments giving rise to recovery;
- a copy of the judgment automatically ordering the reimbursement by the offending employer of all or part of the unemployment benefits.

1.2.2 The issuance of a constraint

One month after the notification, if the formal notice remains without effect, the 'Director General of Pôle emploi' may issue a constraint. The debtor is notified of the constraint by any means stating the date of receipt, or is served to the debtor by a bailiff act.

Under penalty of nullity, this notification shall include:

- the reference of the constraint;
- the reference of the judgment automatically ordering reimbursement by the offending employer of all or part of the unemployment benefits;
- proof of receipt of the notification of the formal notice referred to in [Article R. 1235-2](#);
- the reason, nature and amount of the sums claimed and the periods covered by the payments giving rise to recovery;
- the time limit within which an appeal must be filed;
- the address of the court competent to rule on the appeal and the forms required for its referral;
- the fact that in the absence of an appeal within the time limit indicated in [Article R. 1235-4](#), the debtor may no longer contest the claim and may be required to pay it by any legal means.

The bailiff must notify the creditor organisation within eight days of the date of service.

1.2.3 Possibility of filing an opposition

The Decree of 27 March 2019 entitles the employer to file an appeal with the registry of the court in whose jurisdiction his registered office is located in the case of a legal person, or himself in the case of a natural person:

- by declaration;
- by any means stating the date of receipt of the appeal.

The appeal must be justified and a copy of the contested constraint must be attached. The appeal suspends the implementation of the constraint.

2 Court Rulings

2.1 Collective Labour Relations

Labour Division of the Court of Cassation, No. 17-28.880, 03 April 2019

An employee was appointed as a CFTC union delegate in October 2009. Two days later, the company was placed in receivership and then sold to the Moulin Rouge mill company. At the same time as this economic operation, the Moulin Rouge contested the validity of the mandate and requested authorisation to dismiss the union delegate, which was rejected by the labour inspector. The employment contract was then transferred to a subsidiary of the Moulin Rouge, which informed the employee that it has 'acknowledged this transfer'.

Eighteen months later, on 04 November 2011, the District Court annulled the union designation. The sanction was not long in coming: on the same day as this court decision, the employer wrote to the CFTC activist that he 'acknowledged the termination of their contractual relations'. The employee immediately demanded that the dismissal be cancelled and reinstated.

The Court of Cassation had to rule whether despite the cancellation of the trade union mandate by the magistrate, the employer was still required to obtain prior authorisation from the labour inspectorate to dismiss the employee.

[The High Court responded positively](#) and ruled in favour of the employee. According to [Article L.2411-3](#) of the Labour Code, 'the authorisation of the labour inspector is required for the dismissal of the former trade union delegate during the twelve months following the date of termination of his functions, if he has exercised them for one year'. In other words, when the union mandate is cancelled, it is not as if it has never been exercised. This gives the employee the right—subject to having been a trade union delegate for at least 12 months—to protection for an additional twelve months from the date of the judgment cancelling the mandate.

"Attendu que, selon ce texte, l'autorisation de l'inspecteur du travail est requise pour le licenciement de l'ancien délégué syndical, durant les douze mois suivant la date de cessation de ses fonctions, s'il a exercé ces dernières pendant au moins un an ;

Attendu que pour rejeter la demande de réintégration du salarié, l'arrêt retient que M. Z n'avait plus la qualité de salarié protégé depuis l'annulation de sa désignation par le jugement du tribunal d'instance du 4 novembre 2011, date à laquelle lui a été notifiée la rupture des relations contractuelles ;

Qu'en statuant ainsi, alors que c'est à la date du jugement d'annulation que le mandat du salarié cessait et que la protection due au titre de ce mandat continuait à courir pendant une durée de douze mois, la cour d'appel a violé le texte susvisé ;"

2.2 Social and Economic Council

Labour Division of the Court of Cassation, No. 17-31.304, 03 April 2019

[In this case](#), a major group with its head office in Paris acquired two clinics located in Haute-Savoie. The place of the works council meetings, previously located on the Haut-Savoyard site of the Plateau d'Assy, has been relocated to Puteaux, in the Paris region.

After several meetings, one of which could not take place, the others having been held with a few attendees, the works council referred the matter to the president of the TGI, who ordered the employer to resume meetings on the Plateau d'Assy site from the first day of the month following the publication of the judgment under a penalty payment of EUR 20 000 per month of delay. In addition, EUR 500 in damages were awarded to the works council.

The Court of Appeal fully confirms this decision, as does the Court of Cassation.

The Court of Cassation begins by reiterating the principle:

"Mais attendu que la fixation du lieu des réunions du comité d'entreprise relève des prérogatives de l'employeur, sauf pour celui-ci à répondre d'un éventuel abus dans leur exercice ;

Et attendu qu'ayant constaté que, malgré l'opposition des élus, les réunions du comité d'entreprise étaient, depuis le rachat de la société par le groupe Orpea, organisées en région parisienne alors qu'aucun salarié de la société n'y travaille,

que le temps de transport pour s'y rendre est particulièrement élevé et de nature à décourager les vocations des candidats à l'élection, que ce choix est de nature à avoir des incidences sur la qualité des délibérations à prendre par le comité d'entreprise alors que les enjeux sont particulièrement importants, notamment en termes de conditions de travail, dans le domaine médico-social, et que des solutions alternatives n'avaient pas été véritablement recherchées, la cour d'appel, qui a estimé que l'employeur avait commis un abus dans le choix du lieu des réunions, a pu fixer le lieu de ces réunions sur l'ancien site dans l'attente d'une meilleure décision ;"

The Court reviewed the arguments justifying the existence of such abuse. She explained that the relocation of meetings had taken place despite opposition from elected officials while no employee of the company works in Paris. It was emphasised that the travel time to get there is particularly high and likely to discourage the vocations of candidates for election. It was determined that the selection of the Paris region is likely to have an impact on the quality of the works council's deliberations, whereas the stakes are very high in the medical-social field, particularly in terms of working conditions. Finally, the employer's attitude towards the situation was called into question since 'alternative solutions had not really been sought' (alternating sessions between Puteaux and the Assy plateau, videoconferencing, etc.).

The senior judges deduced an abuse in the choice of venue and confirm in every respect the decision of the TGI and the Court of Appeal. The location of the meetings must therefore be organised at the old site pending a better decision.

2.3 Working time

Labour division of the Court of Cassation, No. 16-23.800, 27 March 2019

[In the present case](#), an employee hired under a lump sum providing 131 days of work per year requested the reclassification of his contract into a full-time contract. According to him, he was unable to predict how soon he would have to work and was at the employer's disposal continuously.

In support of his request, the employee claimed that the 218-day limit of the lump sum corresponded to the legal working time referred to in [Article L. 3123-1](#) of the Labour Code reported in days.

This reasoning was not accepted by the Nîmes Court of Appeal, nor by the Court of Cassation, which clearly stated that:

"Mais attendu, d'abord, qu'en application des dispositions de l'article L. 3123-1 du code du travail, dans sa rédaction applicable, les salariés ayant conclu une convention de forfait en jours sur l'année dont le nombre est inférieur à 218 jours, ne peuvent être considérés comme salariés à temps partiel ;

Attendu, ensuite, qu'ayant constaté que la convention de forfait du 1er avril 2007, à effet au 1er août 2005, était conclue sur une base annuelle de 131 jours travaillés pour la période du 1er avril au 31 mars de l'année suivante, la cour d'appel en a exactement déduit que le salarié n'était pas à temps partiel, de sorte qu'il ne pouvait prétendre à la requalification de son contrat de travail en contrat à temps plein en se prévalant de la méconnaissance de l'article L. 3123-14 du

code du travail, dans sa rédaction applicable ; que le moyen, inopérant en sa deuxième branche et qui manque en fait en sa troisième branche, n'est pas fondé ;

Et attendu qu'il n'y a pas lieu de statuer par une décision spécialement motivée sur les deuxième et troisième moyens, qui ne sont manifestement pas de nature à entraîner la cassation ;"

In a circular dated 06 December 2000, the DGEFP expressed the same opinion. Specifically, it held that the fixed price in days, which presupposes that working hours cannot be predetermined due to the degree of autonomy the employee enjoys in organising her working hours, is not compatible with part-time work, which in turn presupposes that the distribution of working hours and the procedures by which working hours are communicated in writing to the employee must be specified in the contract. According to the administration, *"we cannot therefore speak of a 'part-time employee' in terms of a fixed price in days, but rather of a specific quantum of working time that can be directly fixed by an agreement"*.

2.4 Contract

Labour Division of the Court of Cassation, No.16-20.490, 03 April 2019

[In the present case](#), a young girl born in Morocco and adopted by a couple residing in France for whom she worked brought a claim for damages before the labour court for economic damages linked to the absence of remuneration during the time she worked for the couple. The young victim, who was a minor at the time of the incident, was in charge of the vast majority of domestic tasks within the family, paid only meagre pocket money and was not in school or socially integrated.

This couple had already been convicted by the criminal court for non-existent or insufficient remuneration for the work performed by a vulnerable person and penalised in accordance with Articles 225-13 and 225-19 of the Criminal Code in their then current wording. The victim, who had filed a civil suit, was awarded a sum of EUR 10 000 in damages for her moral prejudice.

The victim brought an action before the labour court to claim compensation for economic loss. However, her request was rejected by the trial judges on the grounds that the sums requested related to the performance of an employment contract; however, proof of the existence of this contract was not provided. Indeed, settled case law establishes that it is for the person who avails himself of an employment contract to establish its existence (see [Cass. soc., 21 June 1984, No. 82-42.409](#)).

The Court of Cassation overturned this decision in a ruling widely published in several international texts, including Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention on the Rights of the Child and [Article 1240 of the Civil Code](#).

It dismissed the application of ordinary law from the burden of proof of an employment contract in the present case and thus deemed that the victim of the offence of forced labour or reduction in servitude does not have to provide proof of the existence of an employment contract in order to obtain compensation for economic damage caused by the absence of remuneration.

Indeed, the Court of Cassation lays down the principle that:

"Il résulte de ces textes que la victime d'une situation de travail forcé ou d'un état de servitude a droit à la réparation intégrale du préjudice tant moral qu'économique qui en découle, en application de l'article 1382 devenu 1240 du code civil, et que ce préjudice est aggravé lorsque la victime est mineure, celle-ci devant être protégée contre toute exploitation économique et le travail auquel elle est astreinte ne devant pas être susceptible de compromettre son éducation ou de nuire à son développement physique, mental, spirituel, moral ou social."

It added that this prejudice is aggravated when the victim is a minor since she must, as such, be protected against any economic exploitation and any work that would compromise her education or harm her physical, mental, spiritual, moral or social development.

However, it noted that the victim did not have a residence permit, having entered France using the passport of the daughter of the couple with whom she worked, which created a risk for her to be deported to her country of origin. She was responsible for the vast majority of domestic tasks within the family, which included responsibilities unrelated to her age. In addition, she was not in school and the couple had never taken any steps to integrate her socially.

Consequently, the victim was entitled to compensation for her economic loss, in addition to compensation for moral loss.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Germany

Summary

(I) The Business Secrets Act implementing Directive 2016/963 has entered into force.

(II) The Federal Council ('*Bundesrat*') has called on the Federal Government to introduce subcontractor liability for social security contributions in the delivery industry.

1 National Legislation

1.1 Adoption of Business Secrets Act

The Business Secrets Act (see also March 2019 Flash Report) was officially promulgated on 18 April 2019 and entered into force on 26 April 2019.

More information is available [here](#).

1.2 Subcontractor liability for social security contributions in the delivery industry

The Federal Council ('*Bundesrat*') has called on the Federal Government to improve the working conditions of workers of parcel delivery companies. In a resolution passed on 12 April 2019 ('*BR-Drs. 92/19 (B)*'), it called for the introduction of so-called subcontractor liability for social security contributions in the delivery industry. In the case of a supply chain, the actual customer would then be responsible for ensuring that subcontractors pay the contributions. In addition, the Federal Council criticises violations of the Working Time Act in the industry. Employers should therefore be required to document the start, duration and end of the working hours of parcel delivery staff.

The Federal Ministry of Labour and Social Affairs is planning a bill to this effect. This, however, is controversial within the government.

More information is available [here](#).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Greece

Summary

A Draft Law on amendments to dismissal protection regulation was recently presented to the Greek Parliament.

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 Draft of dismissal protection law

Under Greek labour law, the lawfulness of the dismissal of an employee with an open-ended contract does not hinge on the existence of justified grounds. An employer may unilaterally terminate an employment relationship without presenting justified reasons for the termination, unless the employee benefits from special protection from dismissal as provided either by law, a collective agreement or her individual employment contract. On the legislative basis of the general prohibition of abusive exercise of a right (Article 281 of Civil Code), significant restrictions to the freedom to dismiss have been imposed by the courts. The employee can challenge the dismissal if the employer has dismissed her for reasons that constitute an abuse of a right. Thereby, grounds for dismissal are indirectly controlled by the application of the above principle of the prohibition of abuse of rights. In the event of a trial, the competent court will evaluate the grounds for the dismissal to determine whether it is abusive, as claimed by the plaintiff (employee).

Therefore, the dismissal of a contract of indefinite duration does not depend on the existence of just cause only in theory. The court is entitled to examine a dismissal. However, the plaintiff (employee) carries the burden of proof that the dismissal is abusive. The burden of proof is thereby divided between the employer and the employee. The employer must prove that she has complied with the procedural requirements of the dismissal. If the employee invokes the invalidity of the dismissal, she must demonstrate that it is abusive. She must also prove that the purpose of the dismissal was not linked to the legitimate interests of the company, but to other reasons such as hate or prejudice on the part of the employer. She may also prove that the dismissal was not inevitable and did not constitute an *ultima ratio*.

On the other hand, as the revised European Social Charter of the Council of Europe (Article 24) has been ratified by Greece (Law 1426/1984, Law 4359/2016), a debate has been triggered whether the Greek legal system should adopt the regulation on the employer's obligation to justify dismissals. Some legal scholars argue that the employer must justify an employee's dismissal, while others argue that employers should not be required to do so, as Greek law provides for the payment of severance if an employee



with a contract of indefinite duration is dismissed. The Greek Supreme Court has stated that the ratification of the revised ESC does not require any legislative change.

A Draft Law was recently presented to the Greek Parliament which provides that employers must justify dismissals of employment contracts of indefinite duration. This Draft Law will be discussed in Parliament next month and if it is accepted, will constitute one of the most important changes of labour law in recent years.

Hungary

Summary

Amendments to the Labour Code have transposed EU data protection regulation.

1 National Legislation

1.1 Amendment of the Hungarian Labour Code

The Hungarian Labour Code [Act I of 2012 on the Labour Code – hereinafter LC] was amended by Act XXXIV of 2019 on the amendment of certain acts with regard to the enforcement of the reform of data protection in the European Union. The LC is complemented with a new title: 5/A Processing of Data.

This regulation correctly transposes Regulation 2016/679/EU.

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

A case on daily resting time was decided in the employee's favour in the Court of Appeal.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Resting time

Court of Appeal, No. 602/2018, 12 April 2019

The [Court of Appeal case of 12 April 2019 No. 602/2018](#) concerned an employee's daily resting time. A former kitchen employee had regularly worked over 13 hours a day and therefore rested less than 11 hours, as stipulated in Article 53(1) of Act No. 46/1980, on working environment, health and safety at work. The court deemed that the employee could not have been considered as being in control of his working time in the sense that it was up to him when to perform the work. The employer had a responsibility to ensure that the employee had an 11-hour rest period. In addition, the employee was not considered to have shown indifference to the vacation entitlement as stipulated in the applicable collective agreement as a consequence of an employee being asked to come to work before his or her 11-hours rest period is over. The employee was therefore awarded compensation in line with the collective agreement.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Ireland

Summary

(I) New Regulations have amended the employment permits system in the context of Brexit and the National Sports Policy.

(II) The Labour Court has ruled that there was objective justification for the rolling over of fixed-term contracts beyond an aggregate duration of four years in the case of a ministerial driver.

(III) The Minister for Employment Affairs and Social Protection has announced a four-pronged approach to the problem of bogus self-employment.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Employment Permits

The Employment Permits (Amendment) Regulations 2019 [S.I. No.138 of 2019](#) amend the principle regulations of 2017 [S.I. No. 95/2017](#).

With effect from 22 April 2019, the following occupations will qualify for a Critical Skills Employment Permit: civil, mechanical and electrical engineers, quantity surveyors, construction project managers, and high performance directors and coaches for high-level sports organisations. The following occupations will qualify for a General Employment Permit: sheet metal workers, welding trades, pipefitters, air conditioning and refrigeration engineers, shuttering carpenters, glaziers and window fabricators/fitters, scaffolders, staggers, and riggers, crane drivers, career guidance teachers, bricklayers (subject to a quota of 250), plasterers (subject to a quota of 250), and transport and distribution clerks/assistants (subject to a quota of 300). The Minister is also making allowances for an extra 300 workers to fill positions in the area of customs duties and controls because in the event of Brexit, 'managed or otherwise', there will be an increase in demand for these skills.

2.2 Fixed-term work

Labour Court, No. ADJ-00012221 CA-00016364-002, 04 April 2019, Department of Employment Affairs and Social Protection v Keirnan

In *Department of Employment Affairs and Social Protection v Keirnan* FTD194, the Labour Court considered the [case](#) of a civilian driver employed on a succession of fixed-term contracts with different government departments as a driver for various government ministers. The question arose whether he was entitled to a contract of indefinite duration, because the aggregate duration of those contracts exceeded four years, or whether the issuance of successive fixed term contracts was justified on objective grounds.

Directive 99/70/EC was implemented in Ireland by the [Protection of Employees \(Fixed-Term Work\) Act 2003](#), section 9, which provides:

"(2) Subject to subsection (4), where after the passing of this Act a fixed-term employee is employed by his or her employer or associated employer on two or



more continuous fixed-term contracts and the date of the first such contract is subsequent to the date on which this Act is passed, the aggregate duration of such contracts shall not exceed 4 years.

(3) Where any term of a fixed-term contract purports to contravene subsection (2) that term shall have no effect and the contract concerned shall be deemed to be a contract of indefinite duration.

(4) Subsection (3) shall not apply to the renewal of a contract of employment for a fixed term where there are objective grounds justifying such a renewal."

Section 7 (1) of the 2003 Act provides that a ground shall not be regarded as objective unless it is based on considerations other than the status of the employee and the less favourable treatment is for the purpose of achieving 'a legitimate objective of the employer and such treatment is appropriate and necessary for that purpose'.

Having considered the CJEU decisions in case C-212/04, *Adeneler* and case C-378/07, *Angelidaki*, the Labour Court found that the issuance of a series of successive fixed-term contracts to a civilian driver personally chosen by the minister was a legitimate and proportionate means of achieving the aim of facilitating the conduct of government and political business.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Bogus self-employment

The Irish Congress of Trade Unions maintains that the practice of misclassifying workers as self-employed (bogus self-employment) can have very negative and serious consequences for workers and costs the State hundreds of millions of euro in lost revenue. The Minister for Employment Affairs and Social Protection [has announced](#) that she is seeking a four-pronged approach to curtail bogus self-employment:

- establish a dedicated team to deal with social insurance inspection work involved in large companies;
- provide for Deciding Officers in her SCOPE section to make determinations on the employment status of groups or classes of workers without having to process complaints individually;
- put the code of practice for determining employment status on a statutory footing;
- provide anti-victimisation measures for workers seeking a determination of their employment status.

Italy

Summary

The so-called citizenship income has been introduced as a new social security benefit.

1 National Legislation

1.1 Citizenship income

On 09 April 2019, OJ No. 84 (Supplement), the coordinated text of Act 28 March 2019 No. 26, was published, transposing Law Decree No. 4/2019 introducing and regulating, among others, the so-called citizenship income (*'Reddito di cittadinanza'* – Rdc) into law, an active labour market policy measure aimed at guaranteeing the right to work, fighting poverty and promoting the right to information, education, professional training and culture, through income support and social inclusion measures for those at risk of social exclusion.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Liechtenstein

Summary

A so-called package meeting between the EFTA Surveillance Authority (ESA) and representatives of the Liechtenstein government deal inter alia with is-sues of free movement of workers.

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 Free movement of workers

On 22 March 2019, a meeting of EU and EEA Heads of State and Government took place in Brussels to celebrate the 25th anniversary of the EEA Agreement. The Liechtenstein Head of Government stated that the EEA plays a central role in the economic success of Liechtenstein. Nearly half of all jobs in Liechtenstein are occupied by EU citizens. In addition, Liechtenstein companies employ thousands of employees in the European Union. Liechtenstein will continue to be committed to the European project in the future. To celebrate the same occasion, a scientific conference was also held on 04 and 05 April 2019, organised by the Liechtenstein government in cooperation with the University of Innsbruck.

On 26 and 27 March 2019, a so-called package meeting took place in Vaduz between the EFTA Surveillance Authority (ESA) and representatives of the Liechtenstein government. The ESA monitors and controls compliance with the EEA Agreement. Among other things, this year's discussions dealt with procedural issues in the area of the free movement of workers.

More information is available [here](#).

Lithuania

Summary

A regional court has disregarded national legislation and based its ruling that Lithuanian companies are to pay Lithuanian employees who are posted abroad the foreign minimum wage directly on EU law.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Posting of workers

Vilnius Regional Court, No. e2A-1424-852/2019, 11 April 2019

The Regional Court of Vilnius issued a ruling (*judgment of 11 April 2019 of the Vilnius Regional Court in case No e2A-1424-852/2019*) in a case involving a worker who was temporarily posted to Germany several times over a period of several years. The worker filed a claim for the difference between the salary paid (including the per diem allowances) and the German minimum wage for the work being performed. The pre-trial labour disputes commission, the district court and the regional court ruled that the Lithuanian welder was to be paid German minimum wage (the amount was indicated in the letter of the Communication Centre of the German Ministry of Labour and Social Affairs) for the periods of posting to Germany.

The former Law on Posting of Workers included provisions requiring Lithuanian enterprises to respect the minimum wage of the host Member State during the period of posting. This (wrongful?) interpretation of Directive 96/71 on the posting of workers was modified with the introduction of the new Labour Code (in force since 01 July 2017), which no longer contains such a provision. It was assumed that the right to minimum wage was to be claimed in the country of posting based on the rules of the posting country. The decision of the regional court confirms that case law has not yet adapted as the court derived the Lithuanian employer's duty to respect Germany's minimum wage regulations based solely on the Directive, without referring to national or foreign law. Needless to say, the court did not assess the legal possibility in the Directive on employment relationships involving a private employer.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Luxembourg

Summary

- (I) A law implementing time-saving accounts for private law contracts has been adopted.
- (II) A law implementing an additional public holiday has been adopted.
- (III) Two bills regarding Brexit have been passed.

1 National Legislation

1.1 Time-saving accounts

After the implementation of time-saving accounts in the public sector, a law has now been issued to implement these accounts in the private sector.

The law applies exclusively to employees (*'salarisés'*) with a standard employment contract and seniority of at least 2 years.

Time-saving accounts are not mandatory. They can be implemented by common agreement in two ways:

- Either, the collective agreements can implement them in an undertaking or an economic branch/sector. Without any detailed legal basis, such agreements have already existed, for example in the banking sector;
- Alternatively, the social partners should negotiate a national framework agreement (*'accord en matière de dialogue social interprofessionnel'*) for undertakings that are not covered by a collective agreement. Thereafter, a time-savings account can be implemented by common agreement between the employer and the employee representatives (*'délégation du personnel'*). These agreements must be approved by the Ministry for Labour.

Both in credit and in debit, the calculating unit are hours. No employee can be required to credit his account. The maximum that may be credited to the account is set to 1 800 hours (approximately one year of work).

These hours can be credited to the time savings account:

- Days off that are due within a flexible work scheme (see also December 2016 Flash Report);
- Positive balance of flexitime or work plans at the end of the reference period;
- Compensatory rest for overtime work;
- Compensatory rest for work on Sundays;
- Compensatory days for public holidays falling on Sundays;
- Annual leave exceeding the legal minimum of 26 days;
- A maximum of five days of the legal annual leave that could not be taken within the calendar year due to sickness, maternity leave or parental leave.

The saved hours can be taken upon the employee's request and the employer can object on the grounds of operational requirements or of other employee requests. The credit can be used for full-time or part-time leave (but the remaining weekly working time must be at least 10 hours). In case of sickness leave, extraordinary events entitling the employee to special leave (marriage, birth and death of relatives, etc.), leave is suspended, i.e. the time-saving account is not debited.



The employer is required to keep a detailed record of the accounts and to issue monthly statements. The employee representatives supervise the correct implementation of the time-saving account within the undertaking.

In case of insolvency, the balance of the time-saving account benefits from privileges and public guarantees similar to those that apply to salaries. The guarantee by public funds (*'Fonds pour l'emploi'*) is limited to twice the social minimum wage.

The law is available [here](#).

1.2 Public holiday on Europe Day

The law implementing an additional public holiday on Europe Day (*Journée de l'Europe*) has been adopted, just in time to apply on 09 May 2019. The total number of public holidays will thus increase from 10 to 11.

The law is available [here](#).

1.3 Other laws

The two bills mentioned in the March 2019 Flash Report in the context of Brexit and a no-deal scenario grants [residence permits to resident British nationals](#) and [protects those that are benefitting from a social inclusion income or a revenue for seriously disabled persons](#).

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Netherlands

Summary

(I) A labour court has ruled that an employer has the duty to dismiss a long-term disabled worker who becomes eligible for compensation upon termination of the contract.

(II) To determine who must be considered the employer in a case of a transfer of undertakings, the fact that the business is assets-based must be taken into account.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Sleeping employment contract

Cantonal Court, C/09/569762 / KG ZA 19/238, 28 March 2019

To avoid having to pay the so-called transition compensation upon termination of a contract of employment, quite a number of employers have not terminated the contracts of employment with long-term disabled workers. After two years of disability (sickness), employers are no longer required to pay the employee's wages to rehabilitate her and may seek permission to terminate the contract. However, in a few thousand cases since the introduction of the transition award in 2015, several employers have let the contract 'sleep'; they have not sought termination.

Some employees have tried (and failed) to convince the courts that an employer has an obligation to terminate a sleeping contract. That would make the dismissed employee eligible for compensation, whereby they would receive nothing if they were to terminate their contract themselves.

This was the approach in case law until very recently. In a [ruling of 28 March 2019](#), the Cantonal Judge in the Hague held that in the given circumstances of the case, the employer was required to terminate the employment contract to ensure that the employee receives a transition compensation. The employee was terminally ill and the judge reasoned that the employer, under legislation which will enter into force next year, will be compensated the transition compensation. Therefore, the employer has not shown reasonable cause to refuse the employee's dismissal.

In line with earlier case law, the Cantonal Judge Roermond denied the employee's claim of a sleeping employment contract case on [03 April 2019](#). In another case of [10 April 2019](#), the Cantonal Judge Roermond forwarded pre-judicial questions to the Supreme Court on the issue of termination/adaptation of contracts with long-term disabled workers and their right to transition compensation.

2.2 Transfer of undertakings

Cantonal Judge Amsterdam (Amsterdam District Court), case no. 7515912 EA Verz. 19-73, 29 March 2019.

The Cantonal Judge Amsterdam [held that](#) a child care (day care) institution is an assets-based business. The new owner of the facilities (buildings, furniture, etc.) can therefore be considered to be the employer, even though the contract of sale with the former



employer stated that he would not (be required to) take over the staff. It should be added that the new owner also ran (and runs) a child care business.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Norway

Summary

The Supreme Court ruled that a collective dismissal was invalid due to unlawful selection criteria.

1 National Legislation

1.1 Whistleblowing

In Proposal 74L (2018-2019), the Ministry of Labour has proposed amendments to several of the provisions in the Working Environment Act on whistleblowing. First, a provision to facilitate a good climate for the expression in the provision on the purpose of the act is included. Further, it is proposed to extend the scope of the provisions on whistleblowing to certain groups that are not employees. Moreover, the content of the terms 'censurable conditions', 'proceed responsibly' and 'retaliation' are to be legally defined in the Working Environment Act. Rules on the employer's processing of whistleblowing claims are proposed as well, as is the inclusion of an objective liability for economic loss after retaliation. Finally, the inclusion of an obligation for whistleblowing policies to establish how the employer will process the whistleblowing case is also proposed.

The proposal is available [here](#).

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Portugal

Summary

(I) Contingency measures for a 'no-deal' Brexit scenario were approved to safeguard some rights of UK nationals and their family members who reside in Portugal.

(II) A recommendation has been issued by Parliament on the adoption of measures to promote equal pay between men and women.

(III) Case C-437/17 has little relevance for national law.

(IV) Labour Code amendments are still under discussion in Parliament.

1 National Legislation

1.1 Incentives for hiring

[Ordinance No. 112-A/2019 of April 12, 2019](#) regulates the creation of the 'Contract-Generation' measure that consists of granting financial incentives for employers that hire young people searching for their first job who have been unemployed long term or very long term.

This measure is part of the Portuguese government's commitment to create active measures of employment intended to fight youth and long-term unemployment.

The incentives consist of the combination of the following benefits:

- financial support granted by IEFP (Institute for Employment and Vocational Training), in the amount of 9 times the value of IAS (Index of Social Support), which is EUR 435.76 for the year 2019;
- full or partial temporary exemption from payment of social security contributions (in part carried by the employer), with a duration of three to five years, depending on the specific case.

The granting of these benefits depends on the fulfilment, among others, of the following requirements:

- to have entered into at least two (full-time or part-time) permanent employment agreements with young people searching for their first job and who have been long or very long-term unemployed, this being considered a simultaneous hiring for the purpose of this rule, which must be implemented within a six-month period of two or more permanent employment agreements;
- to reach a total number of employees higher than the average number of employees registered as unemployed in the 12 months before registering the first job offer.

This Ordinance is effective from 13 April 2019 and applies to the employment agreements entered into since that date.

2 Court Rulings

2.1 Health insurance

Supreme Court, No. 18047/16.3T8LSB.L1.S1, 27 March 2019

In the present case, the Supreme Court analysed whether the employer's practice of contracting a health insurance policy for its employees for over ten years may be



considered a relevant labour practice, in such terms that the employees have a right to maintain such a benefit.

The Supreme Court [ruled](#) that "*the period of ten years and nine months is not enough to consolidate, as a relevant labour practice, the conduct of the employer of contracting, on an annual basis, a collective health insurance for the benefit of its employees*". The Court did not recognise the existence of an obligation by the employer to grant the employees health insurance.

2.2 Remuneration and other payments

Supreme Court, No. 721/17.9T8PNF.P1.S1, 21 March 2019

The Supreme Court [ruled](#) that, as the employer proved that the amounts paid to the employee in cost allowance, travel allowance and meal allowance were intended to cover the costs of accommodation, travel and meals, and as it was not proven to exceed the regular amount, the Supreme Court decided that the payment did not constitute part of the employee's remuneration, despite being paid regularly.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Labour Code amendments

With reference to previous Flash Reports, [Draft Law No. 136/XIII](#) and [1025/XIII](#) are still being discussed in Parliament.

Romania

Summary

(I) Changes have been introduced to the regime of day labourers.

(II) A new leave for employees undergoing an in vitro procedure has been regulated in the Labour Code.

1 National Legislation

1.1 Day labourers

The activity of day labourers is based on a contract that is not an employment contract per se and is not subject to the Labour Code. The purpose of the regulation initially was to simplify the hiring of persons for short-term activities. However, the regulation included in [Law No. 52/2011](#) (republished in the Official Gazette of Romania No. 947 of 22 December 2015, as amended) has been modified numerous times, an expression of the government's hesitation regarding the categories of persons who may be employed as day labourers, their rights and the areas where such work may be performed.

[Government Emergency Ordinance No. 26/2019](#) (published in the Official Gazette of Romania No. 303 of 19 April 2019) amended this legal regime again. Thus, while in December 2018 the jobs for which day labourers could be used were limited (by Government Emergency Ordinance No. 114/2018; see also December 2018 Flash Report) to agriculture, hunting, forestry, fishing and aquaculture, they have now been expanded again to include exhibitions, fairs and congresses, advertising, artistic interpretation activities, catering activities for events, restaurants and bars, etc. According to the explanatory memorandum to the ordinance, *"the amendment aims to fight the shortage of staff employers in the mentioned fields face, but especially the specificities of these activities, which involve the use of unskilled labour, seasonally, occasionally and for a relatively short period"*.

Also, as a result of the amendment, day labourers will have to pay social security contributions (for the pension fund) and will have the option to get insured in the public health system.

Beneficiaries of the work will be required to pay for the medical care of day labourers involved in work-related accidents or affected by occupational diseases.

The day labourers will be recorded in an electronic registry, replacing the current physical registry.

1.2 Rest leave

[Government Emergency Ordinance No. 26/2019](#) (published in the Official Gazette of Romania No. 303 of 19 April 2019) also introduced a new leave that benefits a special category of employees. Thus, Article 147¹ introduced in the [Labour Code](#) (Law No. 53/2003, republished in the Official Gazette of Romania No. 345 of 18 May 2011, as amended) provides that female employees who are undergoing an in vitro procedure benefit from an additional three days' of paid rest leave annually, granted as follows:

- 1 day at the time of ovarian puncture;
- 2 days from the date of the embryo transfer.

The application for this supplementary rest leave will be accompanied by a medical letter issued by the specialist.



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) Regulations regarding income tax and social security have been amended.
- (II) The conclusion of a General Collective Agreement for the Commercial Sector is being considered by the social partners.

1 National Legislation

1.1 Income Tax; Pension and Disability Insurance

Amendments to the Personal Income Tax Act (*'Zakon o dohodnini'* (Official Gazette of the Republic of Slovenia, No.109/06; 96/12-ZPIZ-2 13/11) and Pension and Disability Insurance Act (*'Zakon o pokojninsken in invalidskem zavarovanju'* (Official Gazette of the Republic of Slovenia, No.109/06, 96/12-ZPIZ-2) were adopted by Parliament on 25 April 2019. Amendments to both acts have not yet been published in the Official Gazette.

According to the amendments, holiday allowance (*'regres'*) paid out to workers up to the amount of the average wage in Slovenia ((currently EUR 1 750) shall be exempt from the payment of personal income tax, pension and disability insurance contribution.

The non-taxed holiday allowance should be understood as a measure that contributes to the increase of employees' net annual and/or monthly pay (at least for those with lower wages).

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Social dialogue

Attempts to revive the social dialogue are evident in Slovenia.

At the beginning of March 2019, a draft Social Agreement on the renewal of the wages system in the commercial sector and on the increase of wages in 2019-2025 has been presented by the Chamber of Commerce of Slovenia (the draft was supposed to be a confidential document). It was, however, made public that the amount of resources would not be raised, the so-called basic wages would be equalised with the minimum wage and that the wage structure would become comparable to wages in other countries by including the additional payments in the basic wage). The draft was prepared without the consultations with other employers' associations. For this reason, the negative reactions are understandable. The employers argued that the Agreement will have negative effects on the economy. The trade unions also criticised the proposal. Critical observers claimed that the proposed Social Agreement is not oriented towards increasing the wages but only to a limited extent. Despite the divergent opinions among the social partners, an agreement was adopted by the tripartite Economic and Social Council on 19 April 2019 to prepare new Social Agreement (not only limited to the issue



of wages). It was also decided that until the end of May 2019, the members of the bargaining body authorised to draft the Agreement are to be nominated.

The Association of Free Trade Unions of Slovenia (ZSSS) reacted to the Social Agreement proposed by the Chamber of Commerce by announcing the introduction of a process of collective bargaining to conclude a new General Collective Agreement for the Commercial Sector, which has not existed in Slovenia for ten years. The idea is to include certain issues into the Agreement that are not covered by the Social Agreement proposed by the Chamber of Commerce.

Spain

Summary

(I) New laws have been passed on:

- Gender equality and parental leave;
- the obligation to record working time;
- the employment of dock workers, particularly with regard to collective agreements;
- precautions for a 'no-deal' Brexit;
- employment conditions of research personnel in training; and
- employment services and vocational training.

(II) An Employment Plan for 2019 has been published.

(III) Case C-437/17 has little relevance for national law.

1 National Legislation

1.1 Stevedores

As mentioned in the March 2019 Flash Report, Royal Decree Law 8/2017 of 12 May 2017, adapted the Spanish regulations based on the CJEU ruling in case C-576/13, 11 December 2014, *Commission v Spain*. Royal Decree Law 9/2019 of 29 March 2019 concluded that the amendment of the regulation of this activity in line with that of temporary work agencies, which may also play a role in this sector.

[Royal Decree 257/2019](#) of 12 April 2019 provides financial support for those workers who, in accordance with the new regulatory conditions, decide to voluntarily terminate their employment contract and end their career. The assistance is provided for those who are close to retirement (with a maximum of 60 months before reaching retirement age) and, upon reaching that age, meet the relevant contribution requirements to be entitled to retirement benefits. The assistance consists of a monthly allowance of approximately 70 per cent of their previous salary, plus contributions to social security.

1.2 Vocational training

Law 30/2015 and Royal Decree 694/2017 regulate vocational training. Such vocational training can be provided by the competent labour administration or by undertakings, directly or via authorised centres. The [Order of 28 March 2019](#) regulates the features of the trainings that the competent labour administration can offer, either for unemployed workers or for employees. The training is financed from monthly training contributions paid by undertakings and workers.

This Order also allows companies to receive compensation for the organisation of training activities aimed at obtaining professional certification and at allowing youth to obtain internships. It provides financial support to allow workers with children under the age of 12 years to attend training activities. The government is seeking to boost vocational training.

1.3 Third-country nationals

The [Resolution of 08 April 2019](#) regulates the procedures third-country nationals working on Spanish-flagged fishing vessels operating outside the exclusive economic zone of Spain and the Mediterranean Sea without an international fisheries agreement must follow to obtain residence and work permits.

The procedure is different from the regular one, because these authorisations do not depend on the employment situation on the Spanish labour market. In addition, the performance of work can commence from the moment the employer notifies the relevant authorities that the worker has boarded the boat.

1.4 Employment of third-country nationals

In accordance with the provisions of the legislation on the employment of third-country nationals, the [Resolution of 27 March 2019](#) was published in the 'Catalogue of jobs difficult to fill' in Spain for the second quarter of 2019. As follows from its name, this catalogue lists the occupations or jobs every three months that do not usually get coverage through Spanish workers, and the recruitment of foreign workers is therefore permitted.

The Catalogue of 'jobs difficult to fill' must be approved by the government every quarter of the year. This is an implementation of the Law on Third-country Nationals. For several years (since the start of the economic crisis in 2008), these occupations have been very few, and are currently reduced to professional sports sectors (both for athletes and coaches) and to work at sea. There are no major implications for Spain or for the EU.

2 Court Rulings

2.1 Annual leave and temporary disability

Supreme Court, No. 220/2019, 14 March 2019

The [Supreme Court reiterates](#) that a worker who is temporarily incapacitated for work does not lose his right to annual leave. If the contract ends during the period of temporary incapacity, the worker is entitled to economic compensation for annual leave days not taken.

2.2 Transfer of undertakings

Supreme Court, No. 190/2019, 07 March 2019

The [Supreme Court has reiterated](#) its doctrine on the application of the rules of transfers of undertakings when the contractor completes the activity and it is replaced for a new contractor. This application is not automatic, but requires either a transfer of assets or a succession of staff. In this case, a transfer of assets has been produced with the peculiarity that these assets did not belong to the former contractor, but to the main undertaking, a public administration.

This is a situation that is common practice in Spain. The Supreme Court follows CJEU doctrine, i.e. this ruling seems to be fully consistent with CJEU case law.

Supreme Court, No. 242/2019, 22 March 2019

The rules on transfers of undertakings apply in case of mergers or absorption of companies, even when the public administration is involved. The Supreme Court



cautioned that undertakings must be aware of their conduct prior to the merger or absorption. Dismissals with the purpose of circumventing the rules on transfers of undertakings may signify a breach of law. The Supreme Court referred to CJEU case law, which envisages a case-by-case assessment.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Collective agreement for the building sector

After Royal Decree Law 28/2018, collective agreements may give employers the power to lawfully terminate the employment contract when the worker reaches the legal retirement age and becomes entitled to retirement benefits. This measure must be linked to coherent objectives of employment policy (improvement of employment stability of workers already hired, the hiring of new workers, generational change or, in general, improvement of the quality of employment). Some collective agreements have been amended in this way, e.g. the [collective agreement for the construction industry](#), which also details the specific training activities for workers.

4.2 Unemployment rates

Unemployment has increased in the first quarter of 2019 (49 900 people). Total number of unemployed: 3 350 000 people.

Sweden

Summary

The Swedish government has proposed legislation to limit the possibilities to take industrial action against an employer already bound by a collective agreement, and, furthermore, to take industrial action in legal disputes which should instead be settled by courts of law.

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 Proposal on the amendment of the Swedish Co-Determination Act

The Swedish coalition government of Social Democrat and Green Party has proposed a legislative reform of the right to strike in specific situations, [Prop. 2018/19:105 'Utökad fredsplikt på arbetsplatser där det finns kollektivavtal och vid rättstvister'](#). The proposed legislation is the result of massive criticism following the (for now settled) industrial conflict involving the Harbour of Gothenburg. The proposed legislation enhances the obligation to maintain industrial peace and reduces the right to take industrial action (strike) in workplaces already covered by a collective agreement and to limit the opportunity to take industrial action on issues related to individual cases that are better litigated by courts of law. The background is a situation with a very low number of industrial conflicts and broad coverage of collective agreements. The strike and corresponding lockouts in Gothenburg Harbour, where the independent Harbour Workers' Union took industrial action despite an existing collective agreement, collapsed due to the structure generally established in the Swedish labour market and resulted in a massive disturbance in Scandinavia's largest port. The proposal, which is supposed to pass Parliament in May and will enter into force on 01 January 2020, prioritises the 'main' dependent trade unions which are usually members of large, nation-wide Union Federations (such as LO), for the benefit of industrial peace and well-functioning relations on the labour market.

The proposed limitation to engage in strikes and other industrial actions during legal disputes has already been adopted in most workplaces due to the broad coverage of collective agreements covering most employees. Trade unions that do not conclude collective agreements (independent unions that are not members of national federations) will be affected by the proposed legislation. However, the number of such disputes that has been subject to industrial action by these trade unions is very limited and there is only little case law involving such disputes (such as in Labour Court decision [AD 2006 No. 58](#)). The government's proposal, Prop. 2018/19:105 p. 54 concludes that



on average, 20 situations in which a trade union has threatened to organise a strike have arisen over the past 17 years.

The proposed changes of the Co-determination Act, primarily the introduction of a new section 41 d and 41 e, does not seem to violate Swedish obligations under international or EU law, but will further strengthen the 'main' Swedish trade unions.

The government has furthermore initiated a new [public enquiry](#) for the modernisation of Swedish employment law, most prominently employment protection law and the statutory provisions on selection for redundancies in section 22, Employment Protection Act. The enquiry will issue a report in May 2020.

United Kingdom

(I) New regulations on agency workers and employment agencies have come into force on April 2019.

(II) Brexit preparations concerning the continuation of the Rome I and II Regulations have been adopted.

1 National Legislation

1.1 Temporary agency work

SI 2019/724 [Agency Workers \(Amendment\) Regulations 2019](#) and SI 2019/725 [The Conduct of Employment Agencies and Employment Businesses \(Amendment\) Regulations 2019](#) were made on 28 March 2019 but come into force on 06 April 2020.

The Agency Workers Regulations 2019 remove the Swedish derogation provisions set out in Regulations 10 and 11 of SI 2010/93 Agency Worker Regulations 2010 (SI 2010/93). As the government puts it in the accompanying explanatory note:

"The 2010 Regulations provide certain rights for temporary agency workers including in relation to basic working and employment conditions. Regulation 5 of those regulations provides a right for the agency worker to the same basic working and employment conditions as the agency worker would have been entitled to if they had been recruited directly by the hirer. Regulation 10 of the 2010 Regulations disapplies regulation 5, insofar as it relates to pay, where a permanent contract of employment is entered into between a temporary work agency and the agency worker. It provides a number of conditions that must be fulfilled in relation to the form and terms of the permanent contract and for a minimum amount of pay to be paid to the agency worker between assignments. Regulation 11 of the 2010 Regulations sets out how that minimum amount of pay is to be calculated.

Regulation 3 amends the 2010 Regulations by omitting regulation 10 and 11 and other provisions consequential on those regulations. This means that it will no longer be possible for regulation 5 of the 2010 Regulations to be disapplied in relation to pay as described above.

Regulation 4 requires a temporary work agency to give a written statement to the agency worker where the temporary work agency and the agency worker have entered a permanent contract of employment which is in effect when these Regulations come into force and has the effect that the agency worker does not have any entitlement to the rights conferred by regulation 5 of the 2010 Regulations insofar as they relate to pay. The written statement must inform the agency worker that, with effect from 6th April 2020, the agency worker is entitled to the rights relating to pay which are conferred by regulation 5 of the 2010 Regulations. It must be given by 30th April 2020. Where there is a breach of the requirement to give a written statement, the agency worker may bring a complaint to an employment tribunal, where the remedies available include compensation."

The Conduct Regulations will require employment businesses to provide agency work-seekers with a key information document, before agreeing the terms by which the work-seeker will undertake work. The explanatory memorandum says:

"Employment businesses and employment agencies are defined in section 13 of the Employment Agencies Act 1973 and regulation 2 of the 2003 Regulations.

Regulation 3 inserts a new regulation 13A in the 2003 Regulations. This requires the employment business to give a key information document to a person seeking work through the business. The document must be given before the business reaches an agreement on terms with that person.

Paragraph (3) of regulation 13A sets out required contents of the statement, including information about pay, benefits, costs, deductions and fees and a representative example statement which illustrates the remuneration which the person seeking work can expect to receive.

One of the items also required by paragraph (3) is the contact details of the enforcement officers appointed or arranged by the Secretary of State under the Employment Agencies Act 1973. Employment businesses can obtain these contact details at <https://www.gov.uk/government/organisations/employment-agency-standards-inspectorate>, by emailing eas@beis.gov.uk or by writing to the Labour Market Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

In some cases the person seeking work through the employment business may be a different person from the individual who will ultimately provide the work to a hirer. For example, the person seeking work may be a company or other legal entity which then directly or indirectly provides the individual to the hirer. Where this is arranged by the employment business, or where (as is often a feature of these or similar arrangements) the individual worker is paid by a person other than the employment business, paragraph (6) of the new regulation 13A requires the key information document to include different information in place of the information required by paragraph (3)(c) and (d). This includes information about the employer of the individual worker and the person who will normally pay that worker, as well as information about pay, benefits, costs, deductions and fees. The information must explain any differences between the remuneration payable to the person seeking work through the employment business (before costs, deductions and fees) and the net remuneration payable to the individual. A representative example statement which illustrates the remuneration which the individual who will provide the work can expect to receive must be included.

Where paragraph (6) applies, the employment business must give the key information document to the individual who will provide the work to the hirer as well as to the person seeking work through the employment business (see paragraph (1) of the new regulation 13A). However, paragraph (6) does not apply where the person seeking work through the employment business is a company (sometimes referred to as a personal service company) controlled by the individual who will provide the work to the hirer, or by their spouse or civil partner (see paragraphs (4) and (5) of regulation 13A).

It is possible that some of the information required by paragraph (6) may not be immediately known to the employment business required to provide it, for example because it relates to a company which is seeking work for individuals which it will then provide to hirers. Where that is the case, the employment business may need (for example by contract) to obtain the information from another person such as the person seeking work through the employment business or the person who will employ or pay the individual worker. Paragraphs (7) and (8) provide for the employment business to be able to rely on such information.

Paragraphs (10) and (11) of the new regulation 13A provide for the way in which information is to be presented.

Paragraph (12) of the new regulation 13A allows, but does not require, the employment business to provide different key information documents while terms remain to be agreed with the person seeking work, provided that these are then updated if necessary. In any event however, and whether or not different key information documents have been provided under paragraph (12), a key information document must be provided once the terms and other details are finalised (paragraphs (13) and (14)).

Paragraphs (15) and (16) require the key information document to be updated where, after terms have been agreed, there are changes in the details included in the document. However, this obligation only applies where the employment business first provided services to the relevant person on or after 6th April 2020 and while it continues to provide those services (paragraph (17)).

Paragraph (18) provides that the new regulation 13A applies to persons seeking work which are companies, even if the person seeking work and the individual worker enter an agreement in accordance with regulation 32(9) of the 2003 Regulations, which disapplies other provisions of the 2003 Regulations. It is not possible to disapply (i.e. "opt out of") the requirements of the new regulation 13A.

Regulation 6 inserts in Schedule 4 of the 2003 Regulations an additional requirement for the employment business to keep records relating to any finalised key information document (but not any earlier versions provided before agreement is reached) and to any revised such document. Regulation 4 clarifies that this additional requirement applies where the person seeking work is a company and an agreement has been entered in accordance with regulation 32(9) of the 2003 Regulations.

Regulation 7 requires the Secretary of State to review the changes to the 2003 Regulations made by these Regulations at intervals not exceeding five years, as contemplated by section 28 of the Small Business, Enterprise and Employment Act 2015."

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Brexit

The [Law Applicable to Contractual Obligations and Non-Contractual Obligations \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(SI 2019/834\)](#), made under section 8 of the European Union Withdrawal Act 2018 (EUWA), were laid on 29 March 2019. They come into force on exit day. These provide that the rules in Rome I, Rome II and the Rome Convention will continue to apply in the UK to determine the law applicable to contractual and non-contractual obligations.



In addition, the government has published [Cross-border civil and commercial legal cases after Brexit: Guidance for legal professionals](#). The government says:

"This guidance is provided for the information of legal practitioners involved in cross-border civil and commercial cases in the event that the UK leaves the EU without a deal. It is not legal advice. It is not a complete statement of the law.

Practitioners should be aware that they may need to consider judgments from both the UK courts and judgments from the Court of Justice of the European Union (CJEU) where relevant, in line with the European Union (Withdrawal) Act 2018. The circumstances of UK exit from the EU are subject to change. The information below on what happens after UK exit is relevant to a 'no-deal' UK exit only."

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