Flash Reports on Labour Law
September 2019
Summary and country reports

Written by The European Centre of Expertise (ECE), based on reports submitted by the Network of Labour Law Experts
September 2019
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This publication has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014-2020). For further information please consult: http://ec.europa.eu/social/easi.


Luxembourg: Publications Office of the European Union, 2019
ISBN ABC 12345678
DOI 987654321
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Executive Summary

National level developments

In September 2019, important developments in labour law took place in several Member States and European Economic Area (EEA) countries (see Table 1). EU law was particularly relevant for the following legislative initiatives and judicial decisions:

Free movement and posting of workers

In the Czech Republic, a regulation determines limits on the number of residence permits issued annually. In Croatia, an amendment to the Regulations on Issuance of the European Professional Card has been published in the Official Gazette. In Liechtenstein, legislative changes to implement Regulation (EU) 2016/589 on a European network of employment services (EURES Regulation) have been drafted. In Slovakia, the legislator has adopted amendments to transpose Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers for the provision of services. In the UK, the government has announced revised immigration arrangements that will apply to EU citizens in the event of a no-deal Brexit (including citizens of Iceland, Liechtenstein, Norway and Switzerland, but excluding Irish citizens) and their family members living in the UK before Brexit, and to those arriving after Brexit.

Work-life balance

In Austria, a new scheme for part-time care leave in accordance with the EU Directive on Work Life Balance for Working Parents and Carers will enter into force in January 2020. In Belgium, the right to leave for recognised family caregivers, passed in May 2019, entered into force. In Germany, the Federal Minister of Labour and Social Affairs has announced plans to establish a right to time accounts as well as a right to mobile work. In Portugal, legal amendments to the regime of parental leave will provide more extensive rights for parents.

Atypical work

In Austria, a decision by the Supreme Court re-qualified a successive fixed-term contract into an open-ended contract in line with Directive 1999/70/EC. In the Czech Republic, a new act on the employment of foreign nationals contains restrictions that are potentially at variance with Directive 2008/104/EC on temporary agency work. In Portugal, several amendments to the fixed-term work regime concern, among others, justifiable grounds, maximum duration, reporting obligations and financial rights and duties of the employer.

Transfer of undertaking

In the Czech Republic, the Supreme Administrative Court has found that the concept of transfers of undertakings is
broader under national law than under EU law. In Ireland, the High Court has upheld the Labour Court decision that the consolidation of social welfare delivery services constitutes a transfer of undertaking.

**Implications of CJEU or EFTA-Court rulings and ECHR**

Nothing to report.
**Table 1. Main developments (excluding implications of CJEU or EFTA-Court rulings)**

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Austria

Summary

(I) The Austrian Parliament has passed legislation entitling employees to take (part-time) care leave under certain circumstances as of January 2020.

(II) Two decisions of the Austrian Supreme Court deal with consecutive fixed-term contracts and the qualification of on-call duties as working time.

1 National Legislation

1.1 (Part-Time) Care Leave

A new law (244/BNR XXVI. GP) entitles employees in Austria to agree with their employer to take either part-time or full-time care leave to assist a close relative who is entitled to nursing allowance. As of 1 January 2020, employees employed in establishments with more than five employees are now entitled to take such care leave; up to now, the employer's consent to take such leave/reduction of working time was necessary.

Care leave may initially be claimed (and unilaterally taken) for two weeks, and if the employee and employer do not reach an agreement on further care leave during that period, the employee may unilaterally extend his/her care leave for another two weeks. The employer may request proof for the family relationship as well as for the necessity for care within the first week of care leave. The employer and employee may agree on further care leave for up to three months.

While on care leave, employees are entitled to a so-called nursing allowance in the amount of the fictitious unemployment benefit allocated by the Social Ministry Service.

Sources:
The aforementioned legislation is available here and here.
Information by the Social Ministry Service on care leave is available here.

2 Court Rulings

2.1 Consecutive fixed-term contracts

Supreme Court, No. 9 ObA 1/19s, 27. August 2019

Factual Part

The plaintiff in the present case was a music school teacher in the federal state of Styria employed by a city. Their contracts are governed by the Styrian Music Teachers Act (Steiermärkisches Musiklehrergesetz) that provides in § 4 (3) (all translations are unofficial and by the author):

“If employment as a contractual teacher is established for the first time, it shall be under a fixed-term contract of at least three months and at most one year. If an applicant has already worked as a contractual teacher in an open-ended employment relationship with another employer, this limitation may be waived when a new employment relationship is established for the first time.”

The Act remains silent on consecutive fixed-term contracts but refers to the State Act on Contractual Teachers (Landesvertragslehrergesetz), which in turn refers to the Federal Act on Contractual Public Employees (Vertragsbedienstetengesetz). § 4 (4) of the Federal Act on Contractual Public Employees provides as follows:

“An employment relationship concluded for a specified period may be extended once for a specified period; such an extension may not exceed three months. If
the employment relationship continues beyond that period, it shall from that point on be considered to have been entered into from the outset for an indefinite period.”

The relevant version of § 38 (3) of the Federal Act on Contractual Public Employees includes an exemption, however:

“If the contractual teacher is only hired as a substitute or for temporary employment, the provision in § 4 (4) shall not apply to the employment relationship.”

In the present case, a music school teacher had been employed since 2008 – initially, the employee had been employed on three separate occasions under a fixed-term contract as a substitute for other music teachers until 2013, and then became pregnant. In March 2014, she was employed under another fixed-term contract until 12 March 2016, which was extended from 12 February 2016 to 8 July 2016. The extension was justified by the fact that the music school’s director did not want to change teachers during the course of the school year. The teacher claimed that she was entitled to an open-ended employment contract as the last extension had not been in line with § 4 (4) of the Federal Act on Contractual Public Employees. The employer argued that the teacher was only employed temporarily and that the consecutive fixed-term contract by way of extension was in line with the law and the employment relationship had therefore ended on 8 July 2016.

The Supreme Court—as opposed to the lower courts—did not accept this line of reasoning. It ruled that exemptions to the prohibition of fixed-term contracts are to be interpreted restrictively. A “temporary employment contract”, therefore, is to be understood as a contract for helping out the music school due to temporary circumstances on the part of the employer, which does not exceed a foreseeable time frame. The aim of avoiding a change of teachers during the school year cannot be subsumed under the concept of “temporary employment”. The music teacher had therefore been employed under an open-ended contract.

Analytical Part

This decision is very much in line with Council Directive 1999/70/EC on the framework agreement on fixed-term work. Pursuant to clause 5 of the framework agreement shall introduce measures to prevent the abuse of fixed-term contracts and a restrictive interpretation of exemption from national measures limiting the number of such contracts follows.

Sources:
Supreme Court decision No. 9 ObA 1/19s, 27. August 2019, is available here.
The Styrian Music Teachers Act is available here.
The Federal Act on Contractual Public Employees (in the relevant version) is available here.

2.2 On-call work

Supreme Court, No. 8 ObA 44/18f, 29 August 2019

Factual Part

The case concerned compensation for on-call work and touches upon the question of the qualification of such times as working time, at least indirectly. The applicable §17b of the Act on Compensation for Public Servants (Gehaltsgesetz) distinguishes between different forms of on-call duty:
“(1) A public servant who is required to remain in his workplace or at another specified place outside his working hours determined in the shift plan so he can take up his job immediately, if necessary, shall be entitled (...) to compensation for standby duty, the calculation of which shall take the duration of the employee’s standby duty into account.

(2) A public servant who, outside his working hours determined in the shift plan, is required to be available at his place of residence and to take up his duties on his own initiative in the event of circumstances to be observed by him, shall be entitled to standby reimbursement (…), the calculation of which shall take the duration of the employee’s standby duty and their frequency.

(3) A public servant who must be available outside his working hours determined in the shift plan (on-call duty) shall be entitled to compensation for on-call duty (…), the amount of which shall correspond with the duration of the employee’s on-call duty.”

The plaintiff was a military helicopter pilot who was subject to the so called "Readiness Status 180", meaning that the helicopter had to be in the air within 180 minutes. The on-site preparations take about 90 minutes, i.e. the pilot must be at the airbase within 90 minutes. As the pilot lived fairly far away from the airbase and had to drive around 90 minutes to get there, he claimed higher compensation for standby duty, not for on-call duty. He argued that due to his long commute to work, he had no choice but to remain at home during his "Readiness Status 180".

The Supreme Court as opposed to the lower courts did not agree with his argument and stated that the choice of place of residence is a private decision that cannot result in preferential treatment compared to pilots who live closer to the airbase. It also cannot be said that an obligation to be at the workplace within 90 minutes constitutes a duty to take up work immediately when called. There is also no obligation to be available at "another specified place" and one of the essential criteria was thus not fulfilled for the time to be qualified as standby duty.

Analytical Part

Although the decision does not relate to the qualification of the time a pilot spends on "Readiness Status 180", it can be deducted that the time to be spent at the place of choice and the obligation to be at the workplace within 90 minutes does not constitute working time. This is in line with the interpretation of the CJEU in the Matzak case, where the standby time a worker spends at home with the duty to respond to calls from his/her employer within 8 minutes, significantly restricting the employee’s opportunities to pursue other activities, must be considered ‘working time’. On the other hand, the CJEU has stated that the situation differs where the worker performs stand-by duty according to a stand-by system which requires the worker to be permanently accessible without being required to be present at his/her workplace. Even if s/he is at the disposal of his/her employer—since it must be possible to contact him/her—the worker can manage his/her time with fewer constraints and pursue his/her own interests. Under those circumstances, only time linked to the actual provision of services must be considered ‘working time’ within the meaning of Directive 2003/88 (CJEU Jaeger, C-151/02, paragraph 65). In the present case, the constraints on the worker were not comparable with those of the Matzak case and the time spent as part of the "Readiness Status 180" does not constitute working time but on-call time, which under Austrian law does not qualify as working time.

Sources:

Supreme Court decision No. 8 ObA 44/18f, 29 August 2019, is available here.

The Act on Compensation for Public Servants is available here.
3 Implications of CJEU rulings and ECHR rulings
Nothing to report.

4 Other relevant information
Nothing to report.
Belgium

Summary

(I) Under certain conditions, employees in the private sector are entitled to Flemish training leave, during which they continue being entitled to their wages. Following the training, the employer may be reimbursed a lump sum as compensation.

(II) From 1 October 2019, employees who are recognised as family caregivers of a person in need of intensive care, can apply for a new specific leave for 1 or 2 months and are entitled to the payment of an allowance from the National Employment Office.

(III) The Court of Cassation found that in case of unduly paid salary, the employee must return the withheld income tax but not the withheld personal social security contributions deducted from his/her salary.

1 National Legislation

The federal government has resigned and there has been no legislative activity in September 2019. No new federal government has formed yet, though the new Flemish and Walloon governments have been established.

1.2 New Flemish training leave

From 1 September 2019, the so-called Flemish training leave will come into effect. As a result of the state reform of 2015, the Flemish and French communities were given the opportunity to present a regional interpretation to paid educational leave, which has existed at the federal level since 1985. The legislation can be found in the federal Recovery Law of 22 January 1985 containing social provisions, as amended by a Decree of the Flemish Parliament of 12 October 2018 (Moniteur belge 13 November 2018), and in the implementing Decree of the Flemish Government of 21 December 2018 (Moniteur belge 4 March 2019).

The purpose of the Flemish training leave is to encourage employees to participate in work-oriented and career-oriented training courses. This new regulation fits within the employment policy of the Flemish government.

Flemish training leave applies to all employers and employees who fall under the scope of the private sector’s Collective Bargaining Law of 5 December 1968. The Flemish scheme applies to employers who have an establishment in the Flemish Region and who employ employees in one of the following ways: full-time employment, 4/5th employment, half-time employment with a variable working time arrangement, half-time employment with a fixed timetable during which training takes place.

The Flemish training leave applies to two types of training: employment-oriented training and career-oriented training. The former is defined as training aimed at sustainably strengthening the employee’s career or facilitating employment-oriented transitions with a view to the challenges and bottlenecks of the current and future labour market (training courses organised or subsidised by the Flemish community). Employment-oriented training courses are digitally registered in the training database, which is part of the digital platform for Flemish training incentives. Career-oriented training courses are training courses under the scope of career guidance and are set down in a personal development plan. This type of training is also subject to certain conditions.

The employee has the right to be absent from work. A full-time employee is entitled to a maximum of 125 hours of Flemish training leave per year. For part-time employees, this maximum is calculated pro rata, as specified in the Dimona electronic social security...
declaration in the month of September of the training year. The precise number of absence hours is determined in accordance with the type of training or the exam to be taken.

If regular attendance is required for the training, the employee may be absent from work during the number of contact hours within the scope of the training. The employee may not be unjustifiably absent for more than 10 per cent of the contact hours and must participate in the final assessment. If regular attendance is not required, the employee has the right to be absent from work for a fixed number of hours, depending on the programme (e.g. taking exams before the examination board entitles the employee to 8 hours of Flemish training leave per exam). The employee must participate in the final assessment.

During the absence hours due to Flemish training leave, the employee retains the right to his/her salary to be regularly paid. However, this wage is limited: for the 2018-2019 school year, the gross salary limit is EUR 2,928.

The employee is protected against dismissal during this time. The employer may not dismiss the employee from the time s/he submits his/her application to take Flemish training leave until the end of the training programme (this is also the case for paid education leave). The employee can only be dismissed for reasons unrelated to the employee's application for training leave. If the reasons for dismissal are related to the employee's application or if no reasons for dismissal have been provided, the employer must pay the employee compensation that equals to 3 months' salary, without prejudice to the compensation payable to the employee in the event of termination of the employment contract.

The employee loses the right to Flemish training leave if it is established that s/he is not following the training and has taken more hours of leave than those to which s/he was entitled. The Flemish Department of Work will automatically reduce the employee's next entitlement to the maximum number of hours of Flemish training leave by 25 per cent. An administrative fine between EUR 50 and EUR 500 may also be imposed on the employee.

Flemish training leave is not granted to an employee who is engaged in a gainful activity as a self-employed person or as an employee (this is also the case for paid education leave) over 12-month period during which the facts are established. If the employee fails the same training more than twice, Flemish training leave will no longer be granted, unless s/he failed due to force majeure.

The employer receives a refund for the employee’s wages and social security contributions under the scope of the Flemish training leave scheme if (i) registration for the training programme has been approved, (ii) the training hours have been approved by the Flemish authorities, and (iii) the hours of the training have been paid by the employer.

1.2 Thematic leave for family caregivers

To date, only three forms of career breaks or thematic leaves existed in Belgian labour law:

- parental leave,
- palliative leave,
- leave to provide assistance or care for a family member or a family member suffering from a serious illness, i.e. leave for medical assistance.

As of 1 October 2019, a fourth thematic leave, created by the Federal Law of 17 May 2019 on the recognition of family caregivers (Moniteur belge, 2 July 2019), has been
added: the right to leave of recognised family caregivers. This right is an additional leave option to those already available. The Law of 17 May 2019 amends the Federal Recovery Law of 22 January 1985 containing social provisions, more precisely Articles 100ter, 101, 102ter, 103, and 104 of this law.

An employee who is a recognised family caregiver within the meaning of the Law of 12 May 2014 and who is assisting someone who is in great need is entitled to family caregiver leave. A number of conditions must be met to be recognised as the family caregiver. For example, the caregiver must have a relationship of trust or a close, affective or geographical relationship with the person s/he is assisting. Assistance should not be provided on a professional basis and must be provided free of charge. The individual being assisted by the caregiver does not have to be a family member.

There are two forms of care leave. A full-time employee who is a recognised family caregiver is entitled to fully suspend his/her employment contract or to reduce his/her working time by 1/5 or 1/2. In principle, a caregiver who works part-time only has the possibility of fully suspending his/her employment contract. A royal decree may determine the conditions under which part-time workers are entitled to reduce their working hours by 1/5 or 1/2.

The period during which the employee can suspend the execution of his/her employment contract is set at one month per person in need of care. The period during which the work performance of a part-time worker can be reduced is set at two months per person in need of care. The law provides for the possibility of extending the period of paid leave by royal decree, but this has not yet been the case.

In addition to the maximum duration per person in need of care, there is also a maximum duration over the employee’s entire professional career: maximum 6 months’ full suspension of the employment contract, and maximum 12 months’ reduction in work performance.

An employee who wishes to make use of the right to leave as a recognised family caregiver must notify his/her employer in writing. In the letter, the employee must state the period for which s/he plans to suspend the performance of his/her employment contract. The document must be accompanied by proof of recognition as the family caregiver.

An allowance is granted to employees who take informal care leave (EUR 1.035 for a single person and EUR 750 for domestic partners to compensate the loss of salary to some degree. This allowance is paid by the National Employment Office (NEO).

An employee who uses the right to leave as a recognised family caregiver is protected against dismissal, as is the case in other thematic leave schemes. The employer may not unilaterally terminate the employment contract, except for gross misconduct or for a sufficient reason. A sufficient reason is a reason whose nature and origin are not related to the suspension of the employment contract or to the reduction of work time due to leave as a recognised family caregiver. Protection against dismissal starts on the day of the written notification to the employer and ends three months after the end of the suspension of the employment contract or of the reduction in work performance. An employer who violates the protection against dismissal must pay the employee dismissal compensation equal to the salary of six months.
2 Court Rulings

2.1 Salary repayment


Factual part

An employee may be paid too much wage or unjustified wage. According to Articles 1235, 1376 and 1377 of the Civil Code, any unduly paid salary must be repaid, i.e. the employee must reimburse the employer.

The Cour de Cassation dealt with a case concerning the question whether the employee had to repay the gross or the net amount of the unduly paid salary and based its decision on the analysis of the applicable income tax code and the legal social security provisions on social security contributions.

The Cour de Cassation concluded that any income tax withheld on wages had to be repaid by the employee but the personal social security contributions deducted from his salary, as a rule 13,07 per cent, did not have to be repaid.

Analytical part

This ruling of the Cour de Cassation is of high practical and legal importance because the problem of unduly paid salary occurs often and the legal uncertainties on the amount the employee had to repay were substantial. The difference between the withheld income tax and the withheld social security contributions is based on the difference in the applicable legal provisions, more precisely Articles 249, 270, 272, 273, 296 and 304 of the Income Tax Code 1992 and Articles 5, 9, 23, 26 and 42 of the Social Security Law of 27 June 1969.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.
Croatia

Summary

(I) An Amendment to the Regulations on Issuance of the European Professional Card has been published in the Official Gazette.

(II) The government has established a Committee for the fulfilment of International Labour Organization obligations.

1 National Legislation

1.1 European Professional Card

The Minister of Labour and Pension System has passed Regulations on Issuance of the European Professional Card in accordance with Regulation (EU) 2015/983 (Official Gazette No. 90/2019). Article 6 (2) has been amended. What was once left to the discretion of the competent body, it is now mandatory, i.e. the competent body has the obligation to check with the entity that issued the document or ask the applicant to deliver the certified copies of the document, when there are justified doubts about the applicant’s establishment in the Republic of Croatia and whether the documents issued are credible and valid.

The decision is available here.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Committee for fulfilment of ILO obligations

The Government of the Republic of Croatia has established a Committee to fulfil International Labour Organization obligations (Official Gazette No. 84/2019). The members of the Committee (representatives of different ministries, the Office for Gender Equality, the State Inspectorate and the Croatian Bureau of Statistics) are appointed by the government. Its role, among others, is to submit information on the adopted ILO instrument to the relevant committees of the Croatian Parliament; to monitor the implementation and preparation of reports on the application of ratified and non-ratified international labour standards and other ILO instruments at national level and prepares replies to complaints from the ILO’s supervisory bodies and to monitor and analyse the compliance of national legislation with ratified and non-ratified international labour standards and other ILO instruments.

The decision is available here.
Czech Republic

Summary

(I) A decree sets forth meal allowance rates for business trips.

(II) An amendment of provisions on the employment of foreign nationals contains restrictions for temporary work agencies.

(II) A regulation determines limits on the number of residence permits issued annually.

(II) The Supreme Administrative Court has provided an extensive interpretation of transfers of undertakings.

(II) The Constitutional Court has ruled on equal treatment in relation to modes of termination of employment.

1 National Legislation

1.1 Meal allowance rates abroad

Factual part

A Draft Ministerial Decree on meal allowance rates abroad for 2020 has entered the legislative procedure (at the government level – the comment procedure has ended). The draft is available here. The Decree sets rates for meal allowances for 2020 (provided to employees when travelling abroad) for individual countries. The Draft Ministerial Decree is being deliberated at government level. The preliminary effective date is set to 1 January 2020.

Analytical part

There are no likely implications for the EU acquis.

1.2 Employment of foreign nationals

Factual part

Act No. 176/2019 Coll., amending Act No. 326/1999 Sb., on the Residence of Foreign Nationals in the Czech Republic and related acts has been published. The Act is available here. This act has been previously discussed in Flash Reports Nos. 4/2018, 5/2019, 6/2019, and 7/2019. As already mentioned in those Flash Reports, the act also amends Act No. 435/2004 Coll., the Act on Employment (the “Act on Employment”).

The Act on Employment allows employment card holders (an employment card is a type of long-term residence permit) to change employers, jobs, or to take up an additional job (the Ministry of the Interior must be informed in advance and give its consent) under certain circumstances. The Act introduces new specific restrictions, one of them being that such change cannot take place should the new employer be a temporary work agency.

Act No. 176/2019 Coll. was published on 16 July 2019 and entered into effect on 31 July 2019 (with exceptions).

Analytical part

This restriction is problematic and potentially at variance with Directive 2008/104/EC on temporary agency work, in particular Article 4.1. according to which...
"[...] prohibitions or restrictions on the use of temporary agency work shall only be justified on grounds of general interest relating in particular to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented".

The authors are of the opinion that such a restriction is not based on any legitimate grounds and is effectively discriminatory against temporary work agencies, which cannot acquire foreign employees through such means, nor employees to be posted or "permanent" (core) employees. The lawmakers have not provided any rationale for this measure.

The act introduces changes that aim to disadvantage temporary work agencies in a way that seems disproportionate and unjustified.

1.3 Residence permits

Factual part

Government Regulation No. 220/2019 Coll., on maximum limits on the number of applications for visas for stays exceeding 90 days for business purposes, applications for long-term residence permits for the purpose of investment, and applications for employee cards that can be lodged with Czech embassies, has been published. The regulation is available here. It was published on 30 August 2019 and entered into effect on 1 September 2019.

Analytical part

Act No. 176/2019 Coll. (mentioned above) introduced the possibility to introduce laws or government regulations setting quota limits on the number of different types of residence permits issued annually. The government adopted the Regulation to set limits on, among others, the number of employee cards issued annually for listed countries. It seems to be in line with the EU aquis.

2 Court Rulings

2.1 Transfer of undertaking

Factual part

The Supreme Administrative Court has ruled that “according to Czech law, for a transfer of undertaking to occur, it is sufficient that activities or tasks (or part thereof) of one employer are transferred to another employer”. The decision was issued on 16 August 2019 under file no. 3 Ads 328/2017. The decision is available here.

A catering services provider concluded a service provision agreement with a company, thereby replacing a previous service provider of similar services (whose agreement had been terminated by the company). The two service providers had no contractual relationship with each other. No tangible assets were transferred. Not all of the activities of the transferor were taken over by the new provider (only those relating to one specific establishment run by the company). Subsequently, employees of the previous provider claimed that a transfer of undertaking had taken place (within the meaning of national law and Directive 2001/23/EC), and that they had become employees of the transferee and requested to be assigned work by the new provider. The new provider refused and was eventually fined for not paying these employees their salaries.

The Supreme Administrative Court concluded that the circumstances of the case constituted a transfer of undertaking. It pointed out that a transfer of undertaking is
defined more extensively in Czech law than in EU law. Under Directive 2001/23/EC, it is necessary for the transferee “to retain the transferor’s identity” (within the interpretation of the CJEU in Spijkers, C-24/85). Czech law, on the other hand, does not require the given economic entity to retain the transferor’s identity (and fulfil the “Spijkers criteria”). For a transfer to take place, it suffices for the transferor’s activities or tasks (or part thereof) to be transferred to another employer.

Analytical part
The decision seems to be in line with the EU aquis.

2.2 Discrimination in dismissal compensation

Factual part
The Constitutional Court has ruled that a “unilateral notice of termination of employment and an agreement on the termination of employment are two distinct modes of termination of employment and as such cannot be compared with regard to the rights and obligations that arise from them”. The decision was issued on 16 July 2019 under File No. I. ÚS 3387/17. The decision is available here.

The employer unilaterally terminated the employee’s employment contract by notice of termination. The employee alleged unequal treatment, as other comparable employees had (on several occasions) received a lump sum of 18 times their average earnings upon termination, whereas he had not. The courts found that the employment relationships of said comparable employees had been terminated by agreement (as opposed to the employee’s employment relationship, which had been unilaterally terminated by the employer).

The Constitutional Court stated that unilateral notices of termination of employment contracts and agreements on termination of employment are two distinct modes of termination of employment, one being unilateral and the other being consensual, and as such cannot be compared with regard to the rights and obligations that arise from them. Where the employer makes use of a legal licence to select between different modes of termination, selecting one over the other cannot (on its own) constitute unequal treatment or discrimination.

Analytical part
There are no likely implications for the EU aquis.

3 Implications of CJEU Rulings and ECHR
Nothing to report.

4 Other relevant information
Nothing to report.
Estonia

Summary
The Estonian Trade Union Confederation and the Employers’ Association have started negotiations on the new monthly minimum wage.

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 Negotiations on new monthly minimum wage have started
The Estonian Trade Union Confederation and the Estonian Employers' Association have started negotiations on the new monthly minimum wage. According to the preliminary agreement, the new monthly minimum wage will be increased by EUR 38 to a total of EUR 578 per month and EUR 3.44 per hour. According to the Trade Union Confederation, the increase in the monthly minimum wage by 7 per cent brings the monthly minimum wage closer to the average wage. The aim is to raise the monthly minimum wage to a level equal to 40 per cent of the monthly average wage.

Although the employer and trade unions have agreed to increase the monthly minimum wage, the board of the Estonian Trade Union Confederation did not approve the increase in the monthly minimum wage (see press release from Estonian Trade Union Confederation here). The board of the Estonian Trade Union Confederation stated that the increase of around 7 per cent is not enough, and the new monthly minimum wage should be not less than EUR 600 per month (gross). Currently, it is not clear how and if at all the negotiations will continue. In case no agreement is reached by the end of the year, the monthly minimum wage will remain at the same level as it is this year, namely EUR 540 per month.

The monthly minimum wage will be agreed between the employers’ and the employees’ central organisations. In case an agreement is reached, the monthly minimum wage will also be officially determined by governmental decree. According to the Estonian Employment Contracts Act, an employer cannot pay a wage that is below the monthly minimum wage.

The monthly minimum gross wage is EUR 540 in 2019, the average gross wage in the second quarter of 2019 was EUR 1,419.
Finland

Summary
The Supreme Court has issued a judgment on the nullity of a termination agreement.

1 National Legislation
Nothing to report.

2 Court Rulings

2.1 Termination of employment

Supreme Court, No. 2019:76, S2018/137, 10 September 2019
On the initiative of the employer, the employer and the employee had concluded an agreement according to which the employee had given notice, and the details of the termination of the employment contract were specified. Before the signing of the contract, 2-hour negotiations had taken place.

The Supreme Court stated that the contract was null and void. The reasons for this were:

- Prior to the negotiations, the employee had not been informed that the meeting was being held to terminate her employment contract.
- The employee had not been given a reasonable amount of time to reflect on the issue.
- The employee had not been granted legal or other assistance during the negotiations.

The decision is available here.

3 Implications of CJEU Rulings and ECHR
Nothing to report.

4 Other relevant information
Nothing to report.
France

Summary
(I) An ordinance on the right to employee evaluation interviews has been published. Contributions to unemployment insurance are now risk-based.

(II) The Court of Cassation has ruled in cases on annual leave, overtime pay, and sexual harassment.

1 National Legislation

1.1 Employee evaluation interview

Ordinance No. 2019-861 of 21 August 2019 on ensuring the consistency of various legislative provisions with Act No. 2018-771 of 5 September 2018 on the freedom to choose one's professional future (available here) entitles every employee to an evaluation interview every two years to discuss his/her career development prospects. Every six years, a summary of the employee's professional background is discussed in the evaluation interview. The proceedings of this meeting, the outcome of which is a document, a copy of which shall be given to the employee, makes it possible to verify that the employee has had evaluation interviews over the last six years and to assess whether the employee has:

- participated in at least one training;
- acquired certification through training or validation of acquired experience;
- benefited from a raise or promotion.

In companies with at least 50 employees, the employee’s personal training account is replenished when the employer has not fulfilled his/her obligations to conduct evaluation interviews. The procedure to determine the employer’s non-compliance with these obligations were amended by the “Professional Future” law of 5 September 2018 (Law No. 2018-771).

According to the wording of Articles L. 6315-1 and L. 6323-13 of the Labour Code, applicable since 1 January 2019, the employee’s personal training account shall be increased if the employer did not arrange for an evaluation interview after six years and at least one course other than “compulsory” training.

According to the previous wording of these articles of the Labour Code, the employee’s personal training account was to be increased if, during these six years, the employer had not arranged for an evaluation interview and at least two of the three measures mentioned above (training, acquisition of certification and a raise or promotion).

The Ordinance of 21 August 2019 introduces a transitional period and specifies that until 31 December 2020, the employer can prove that s/he has fulfilled the obligations provided for in II of Article L. 6315-1 and the first paragraph of Article L. 6323-13 of the Labour Code in the version that was in force on 31 December 2018.

Up to 31 December 2020, the employer can prove that s/he has met his/her obligations relating to the evaluation interview and the employee’s summary statement in two different ways:

- either by applying the rule established by the Law of 5 March 2014 and by demonstrating that an evaluation interview has taken place every two years and that at least two of the following three measures have been implemented: training, acquisition of certification and a raise or promotion;
or by applying the rule resulting from the Law of 5 September 2018 and by demonstrating that s/he has arranged for an evaluation interview with the employee every two years and at least one training course other than “compulsory” training.

This option is applicable until 2020. As of 1 January 2021, employers will have to comply with the rules of the Labour Code introduced in the Law of 5 September 2018.

**Analytical part**

It should be recalled that since 1 January 2019, the corrective contribution to the employee’s personal training account for failing to arrange for an evaluation interview has been set at EUR 3 000. No difference is made between full-time and part-time employees.

### 1.2 Unemployment insurance

**Factual part**

A decree mandates an adjustment of the unemployment contribution paid by the employer, generally amounting to 4.05 per cent of the employee’s gross wages in accordance with the rate of terminations of employment contracts in the company during a given period compared to the median termination rate in the company’s sector of activity. These rules are set out in Articles 50-1 to 50-15 of Appendix A of Decree No. 2019-797 of 26 July 2019 on the unemployment insurance scheme. It is only in 2021 that the bonus-malus will come into effect. However, even though the decrees on unemployment insurance have been published, a number of details on the scope of the measure, such as the given sectors of activity, are missing.

The modulation of the unemployment insurance contribution will apply to:

- companies with 11 or more employees. The number of employees is calculated in accordance with the rules set out in Article L. 130-1 of the Social Security Code;
- that belong to sectors of activity that are specified in a subsequent decree.
- employers whose median separation rate (rate assessing the number of contract breaches attributable to the employer in the given sector of activity) are higher than a threshold that will be set by an order for a period of three years. The threshold will be set according to the difference between the median separation rates of the different sectors of activity.

The reduction or increase in the contribution will be determined by the employer on the basis of a comparison between the company’s separation rate and the median separation rate calculated for the company’s sector of activity. The company’s contribution rate adjusted by the reduction or increase will be determined within the lower and upper bounds of the sector of activity, established by decree as follows: Rate = company ratio x 1.46 + 2.59. The company ratio is the ratio of the company’s separation rate to the median sector separation rate. These upper and lower bounds may not raise the contribution rate to a level higher than 5.05 per cent or lower than 3.0 per cent.

The reduced or increased contribution rate will be applicable to remuneration due for periods of employment from 1 March of a calendar year to 28 February or 29 February of the following calendar year. The bonus-malus will apply for the first time on 1 March 2021. It will be applicable to all remuneration paid by the company, except for certain fixed-term contracts for which the ordinary legal rate (4.05 per cent) will remain applicable.
Each employer will be notified of the separation rate and the related contribution rate under conditions to be determined by an order. Until the employers have been notified, they shall pay the contributions on the basis of the previously applicable rate. Upon notification of the rate, the new rate shall apply.

Analytical part

It should be noted that the union of the plastics processing industry appealed against this article of the decree before the Council of State on behalf of the general interest of the companies in the sector.

2 Court Rulings

2.1 Annual leave

Labour Division of the Court of Cassation, No. 18-18.300, of 4 September 2019

Factual part

In the present case, a school had set up a system in which the employee worked 24 hours during the opening weeks of the school and 0 hours during the entire school holiday. When his contract was terminated, the employee claimed that the modulation of working time deprived him of the compensation due for the closure of the establishment and brought an action before the labour court for the remainder of his salary as unpaid hours.

Analytical part

The Court of Cassation agreed with the claimant. The compensation paid to employees in the event of the company’s closure beyond the legal duration of the holidays was due even if it was motivated by external circumstances such as the pace of school activity (Cass. soc., 17 Dec. 1997, No. 94-43.718). In addition, the modulation of working time could not have the effect of depriving the employee of said allowance.

The Labour Division of the Court of Cassation, No. 18-18.300, of 4 September 2019 is available here.

2.2 Overtime pay

Labour Division of the Court of Cassation, No. 18-10.541, of 4 September 2019

Factual part

The employee must provide the judge elements likely to support his request for payment of overtime in advance, and which must be sufficiently precise to enable the employer to respond. The employer, for its part, must provide the elements to the judge that are likely to justify the hours actually worked by the employee. The judge forms an opinion based on these elements after having ordered, if necessary, all investigative measures s/he considers useful (C. trav., art. L. 3171-4).

The nature of the elements the employee can provide to support his/her request is generally accepted by the Court of Cassation insofar as the information relating to the calculation of working time is generally in the employer’s possession.

Thus, a simple handwritten statement of working hours (Cass. soc., 24 Nov. 2010, No. 09-40.928) or a statement and certificates (Cass. soc., 16 May 2012, No. 11-14.268) provided by the employee suffice to support his/her request.
In the present case, a court of appeal that had dismissed the employee’s request for compensation for overtime on the grounds that he had not produced a weekly statement in support of his request was called to order.

Analytical part

For the Court of Cassation, if it is up to the employee to support his/her request by producing information that is sufficiently precise to allow the employer to reply “s/he did not require him/her to produce a weekly statement to satisfy this requirement”.

The employee’s service sheets and pay slips, which showed that he was sometimes paid for 12 hours of daily work without being paid for overtime although his employment contract provided for 9-hour working days and a wage increase from the 10th hour onwards.

Sources:
The Labour Division of the Court of Cassation, No. 18-10.541, of 4 September 2019 is available here.

2.3 Sexual harassment

Criminal division of the Court of Cassation, No. 18-83.480, 4 September 2019

Factual part

Two employees working in the youth department of a municipality in the Nord department filed a complaint against their supervisor for having been subjected to sexual harassment. The latter was sentenced to one year of imprisonment by the criminal court on a charge of sexual harassment and to pay damages to the two employees and to the municipality that employed them. The Public Prosecutor’s Office appealed against this decision, as did the defendant, who claimed that the municipality could not bring a civil action in this case and, consequently, should not be paid damages.

Analytical part

The Douai Court of Appeal, which disagreed with this view, confirmed the decision rendered in first instance. It recalled that according to Article 2 of the Code of Criminal Procedure, civil proceedings for compensation for damage associated with a crime or misdemeanour are reserved for those who were personally affected by the damage caused by that offence. This applied to the case of the municipality insofar as the accused was part of its management staff in his capacity as head of the youth service, and that the acts for which he was convicted had been committed in the exercise of his functions, “undoubtedly brought the services of town hall into disrepute”. The Court of Appeal therefore upheld the defendant’s payment of damages to the municipality, which could have been a civil party.

However, this reasoning was overturned by the Court of Cassation, which held that “the offence of sexual harassment falls within the category of offences against the human person, the punishment of which is exclusively intended to protect the individual”. Consequently, the offence could not cause personal and direct harm to the municipality, which could therefore not bring civil action against the defendant and be paid damages. This decision of the Court of Cassation is in line with its former position that the employer of a person who is a victim of sexual harassment can only claim indirect damage (Cass. crim., 7 Nov. 2000, No. 00-82.469).

The Criminal Division of the Court of Cassation, No. 18-83.480, 4 September 2019 is available here.
3 Implications of CJEU Rulings and ECHR

3.1 Discrimination on grounds of disability

CJUE case C-397/18, 11 September 2019

As for any employee, a disabled employee declared incapacitated for work by the occupational physician shall benefit from a special procedure in the event of dismissal. Article L. 1133-3 of the Labour Code recognises the lawfulness of differences in treatment based on incapacity established by the occupational physician on the grounds of disability, provided that such differences are objective, necessary and appropriate. In the event of dismissal for economic reasons, the employer must take the disability of the employee(s) into account when contemplating dismissal (Labour Code, Art. L. 1233-5/ Cass. soc., 11 Oct. 2006, No. 04-47.168, No. 2267 F - P + B). An employee who has been designated the status of a disabled worker, while a collective economic dismissal procedure is being implemented in his/her company, is not required to inform his/her employer of his/her status. Nevertheless, this designation allows him to benefit from additional severance pay in accordance with the company agreement as well as additional compensation in lieu of notice provided for in Article L. 1234-1 of the Labour Code.

However, the mere fact that the dismissal of a disabled employee has the effect of reducing the number of beneficiaries of the employment obligation below the legal threshold of 6 per cent does not make the dismissal abusive (Cass. soc., 10 June 1998, No. 96-42.973). The decision to modify the classification of a disabled worker previously employed in a sheltered company, as well as his/her probationary placement in an Esat constitutes a real and serious cause for dismissal (Cass. soc., 20 Sept. 2006, No. 05-41.501, No. 2078 FS - P + B).

In the present case, a disabled employee was employed in a protected workshop in accordance with Cotorep’s guidance notice. Cotorep classified the employee as “a category C disabled worker”, but maintained her placement in a sheltered workshop. Ten years later, a new Cotorep decision classified the employee as being 100 per cent disabled, confirming her status as a category C disabled worker and recommended a six-month probation period in a work assistance centre. The employee was dismissed because of this new classification.

The Court of Cassation considered that pursuant to Article L. 323-30 of the Labour Code (Labour Code, Article L. 5213-20), Cotorep must give its opinion by a reasoned decision, taking into account the employee’s capacity for work and the real possibilities of integration when recruiting or admitting a disabled worker either in a protected workshop or in an Esat. This decision is binding for any establishment or service within the limit of the domain for which it is authorised or approved. The High Court concluded that Cotorep’s decision to modify the invalidity of the classification of a disabled worker employed by a sheltered workshop and to propose a probation period in a work assistance centre for the category C worker, constituted a real and serious cause for dismissal, as the employer could not keep him in his establishment which was no longer entitled to retain him.

The Court of Cassation had already admitted that the change in the classification of a disabled worker constituted a real and serious cause for dismissal. In this judgment, Cotorep classified an employee, who was previously classified as a category C disabled worker and employed in a protected workshop, as a category A disabled worker who could work in an ordinary environment (Cass. soc., 2 June 2004, No. 02-44.015, No. 1229 FS - P + B + R + I).

These solutions rendered under the legislation prior to the reform of 11 February 2005 still seem applicable, even though the Law of 11 February 2005 abolished the classification of persons recognised as disabled workers into three categories A, B or C.
The vocational guidance of disabled workers, which is now the responsibility of the CDAPHs, can be provided either in an ordinary environment, which adapted companies (former protected workshops) are part of, or in a protected environment in Esat (ex-CAT). Thus, a decision to redirect a disabled worker from the mainstream to a protected environment, and vice versa, is a real and serious cause for dismissal.

4 Other relevant information

Nothing to report.
Summary

(I) The Federal Minister of Labour and Social Affairs has announced plans to establish a right to time accounts as well as a right to mobile work.

(II) A draft law on subcontractor liability for parcel service providers has been presented.

(III) The Federal Government has presented a bill for better nursing salaries.

(IV) The Social Court Munich ruled that using the toilet in the home office is not covered by statutory accident insurance.

1 National Legislation

1.1 Time accounts and mobile work

The Federal Minister of Labour and Social Affairs has announced a number of far-reaching reforms in labour and social law that go beyond what had initially been agreed when the government was formed. The Minister intends to present a bill by the end of October. Specifically, the Ministry is considering introducing a legal right to set up personal time accounts and to work from home. According to the Ministry’s plans, employees would be able to ‘pay’ overtime or unused leave days into personal time accounts. They would be able to use the saved time for care and nursing tasks, for further training measures or for voluntary work. The Ministry is also considering introducing a legal right to mobile work. Employers should, however, have the option to reject applications from employees to work from home for operational reasons.

1.2 Results of Future Dialogue “New Work – New Security”

In September 2018, the Federal Ministry of Labour and Social Affairs launched the so-called Future Dialogue “New Work – New Security”. Together with citizens, stakeholders and experts from science and practice, the key challenges of the labour market and social policy were discussed and proposals for solutions for the future that will shape the world of work and the welfare state were developed. The Ministry has now published the results as well as policy recommendations.

The chapter “Securing employees’ benefits and rights” presents proposals aimed at strengthening employees’ rights in times of digital transformation. The Ministry advocates the expansion of personal time accounts and proposes time-outs for certain purposes to be promoted by the state. An individual legal entitlement to the establishment of a personal long-term account should be explored. Furthermore, the Ministry addressed the right to mobile work, as far as no operational reasons contradict it.

In the chapter “Strengthening social partnership, collective bargaining and codetermination”, the Ministry proposes a package on collective bargaining “in order to renew the social partnership in the face of declining collective bargaining”. The Ministry will examine how a federal regulation on loyalty to collective bargaining can obligate companies to apply for federal public contracts and pay salaries according to collective bargaining agreements and to comply with the provisions of the collective bargaining agreement. The Ministry also advocates for membership fees to trade unions to be reduced from taxes in the future, for example, by allowing such fees to be claimed as special expenses. A digital right of access for trade unions is intended to support them in promoting themselves in new business models and in organising people in the digital
sector. Furthermore, the Ministry is of the opinion that the generally binding declaration according to the Collective Agreement Act must be more widely applied to increase the effect of collective agreements.

1.3 Subcontractor liability for parcel service providers

The draft law on subcontractor liability for parcel service providers intends to improve the working conditions of parcel carriers by requiring general contractors to pay social security contributions for defaulting subcontractors. The draft bill is to be viewed against the background that some of the major parcel service providers employ subcontractors to a considerable extent. These subcontractors often commit violations such as undeclared work or social security fraud.

Subcontractor liability for courier, express and parcel services is now being introduced to counteract such conduct. Under the new law, anyone who accepts an order and passes it on to a subcontractor is liable, like an absolute guarantor for the social security contributions his/her subcontractor has to pay. Subcontractor liability has existed in the construction industry in Germany since 2002 as well as in the meat industry since 2017. According to the existing subcontractor liability in the meat and construction industries, there is also a liability privilege for general contractors within the meaning of section 28e(3b) sentence 1 of the Social Code (Sozialgesetzbuch) IV: if the main contractor can demonstrate that a subcontractor has previously proven his/her expertise, reliability and efficiency in an aptitude test, s/he may assume that the subcontractor has fulfilled his/her payment obligation and shall be released from liability.

1.4 Working conditions in the parcel and logistics sector

The Bündnis 90/Die Grünen parliamentary group also aims to improve the working conditions in the parcel and logistics sector. To this end, it has submitted a motion (19/13390) calling, among other things, for the ‘immediate’ introduction of subcontractor liability. In addition, the Greens are demanding for documentation of working time to be modified in such a way that it takes place on the day the work is performed. The Greens are also calling for stronger measures to fight bogus self-employment in the sector and for the right of associations to take legal action in the event of abuse of contracts for work and services.

1.5 Nursing salaries

The Federal Government has presented a bill for higher salaries for nurses. To attain better wages in the nursing sector, especially as regards the care of the elderly, the bill proposes two options: the first is a generally binding collective agreement. The second proposition is for a minimum wage to be set by a commission established for that purpose. For both options, corresponding provisions of the Act on Posting of Workers (Arbeitnehmerentsendegesetz) would have to be amended.

As regards the first option, the parties to the agreement would conclude a comprehensive collective agreement, which the Federal Ministry of Labour and Social Affairs (BMAS) would declare generally binding on the basis of the Act on Posting of Workers. Since many church institutions are active in the nursing sector, one controversial issue was how their right to self-determination should be safeguarded. This is to be ensured by the requirement that prior to concluding a collective agreement, the clerical care wage commissions must be heard. At least two commissions of representative religious communities must agree for the collective bargaining partners to be able to apply for an extension of the collective agreement to the entire industry. With regard to the second option, a long-term nursing commission with equal
representation would be established to draw up proposals. The Ministry could then determine these minimum wages as being generally binding for the entire sector.

1.6 Demands to make working time law more flexible

A motion by the Free State of Bavaria “Making working hours family-friendly and unbureaucratic – using digitisation in the interests of employees and companies” was referred to the relevant committees in the Federal Council (Bundesrat).

Bavaria demands that within the scope of the EU Working Time Directive, greater use is made of a possible leeway to better reconcile family and work life. The State is of the opinion that rigid working time regulations, in particular on uninterrupted rest periods of eleven hours or maximum daily working hours, often contradict the workers’ wish to interrupt work for a few hours due to family reasons. It also demands solutions to be feasible for small and medium-sized enterprises and enterprises that are not subject to collective agreements.

2 Court Rulings

2.1 The scope of statutory accident insurance

Social Court Munich, No. S 40 U 227/18, 04 July 2019

In its judgment, the Social Court Munich clearly stated that using the toilet in the home office is not in the employer’s immediate interest and is therefore not subject to protection under the statutory accident insurance.

With its decision, the Court took up a ruling of the Federal Social Court of 5 July 2016 (B 2 U 5/15 R). For some time now, the Federal Social Court has pointed out that when it comes to statutory accident insurance, it distinguishes between employees working in a home office or in a permanent establishment.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Number of temporary agency workers

In June 2018, there were 1.02 million temporary agency workers in Germany. The Federal Government provided this figure in its answer to a question submitted by the parliamentary group Die Linke, which contains comprehensive information on recent developments in the area of temporary agency work. In relation to the total number of employees, the share of temporary agency workers was 2.7 per cent. In 2013, the share was 2.5 per cent. Of the 1.02 million temporary agency workers in 2018, 951,000 were subject to social insurance contributions (798,000 full-time and 142,000 part-time) and 67,000 were employed only marginally. The government’s answer also shows that the median wage for temporary workers in the core group who are subject to social insurance contributions was EUR 1,928 per month in 2018. By comparison, the median wage for all employees subject to social insurance contributions in the core group was EUR 3,304 per month.
4.2 Scope of low age sector

As of 31 December 2018, 4.14 million or 19.3 per cent of full-time employees in the core group (excluding trainees) were paid low wages. The nationwide threshold for this is currently EUR 2,203 gross per month. This figure was provided by the Federal Government to a question by the parliamentary group Die Linke. The answer further states that at the end of 2018, there were just under 4.8 million people exclusively employed on a part-time basis in Germany and that in December 2018, the median wage for full-time employees subject to social insurance contributions was EUR 3.304 gross.

4.3 Development of wages

According to the Federal Government, the average gross wage (median) of full-time employees subject to social insurance contributions was EUR 3,304 in 2018, an increase of 3.0 per cent compared to the previous year. The government referred to figures from the employment statistics of the Federal Employment Agency. According to the data, the median wage of full-time temporary agency workers has also risen by 3.2 per cent compared to 2017 to EUR 1.928.
Greece

Summary
A new government bill submitted for public debate proposes a series of changes to laws pertaining to labour unions and to collective labour agreements.

1 National Legislation
1.1 Collective agreements and strike

A new government bill for growth was submitted for public debate aiming to achieve greater flexibility of the labour market. A series of amendments to laws pertaining to labour unions and collective labour agreements are being promoted.

According to the currently applicable provisions, sector and occupational collective agreements are binding on all signatories and their members. Company-level agreements and local sector collective agreements may not set down less advantageous terms than those established in sector collective agreements at national level.

According to the submitted bill, sector collective agreements can exclude workers employed in some companies that are facing economic difficulties from the scope of their application. Company-level agreements will also be able to set down less advantageous terms than the relevant sector collective agreements, considering the company’s financial situation. Finally, local branch agreements can set down less advantageous terms than sector collective agreements at national level.

On the other hand, for a decision to strike to be considered legal, it must be taken by secret ballot by the general assembly of the union’s members. The submitted bill provides electronic balloting (e-balloting) for decisions on industrial action for the first time.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
Nothing to report.

4 Other relevant information
Nothing to report.
Hungary

Summary
The Supreme Court (Curia) stated that the employer cannot rely on exemption from liability.

1 National Legislation
Nothing to report.

2 Court Rulings
2.1 Employer’s liability

Supreme Court Ruling No. Mfv.I.10.442/2018, 20/2019

The employee transported animals to Uzbekistan and accepted the client’s invitation to have dinner, which is customary in Uzbekistan. It would have been offensive according to the employee, to refuse this invitation, which could have had negative consequences for the employer. The employee got sick from eating the local cheese consumed at the business dinner. The employer requested exemption of liability for damages in connection with this sickness. The employer referred to Article 166(2) of the Labour Code:

"2) The employer shall be released from liability if able to prove:
   a) that the damage occurred in consequence of unforeseen circumstances beyond his control, and there had been no reasonable cause to take action for preventing or mitigating the damage."

The Supreme Court (Curia) stated that the employer could not rely on this exemption clause, since the damage had not occurred as a consequence of circumstances beyond the employer’s control.

3 Implications of CJEU rulings and ECHR
Nothing to report.

4 Other relevant information
Nothing to report.
Iceland

Summary
The Supreme Court deemed an employee to have organised his own working time, resulting in an exemption from working time regulations.

1 National Legislation
Nothing to report.

2 Court Rulings
2.1 Working time

Supreme Court, No. 27/2019, 20 September 2019

Factual part

On 30 September, a ruling was issued in Supreme Court case No. 27/2019. A former head chef of a canteen demanded that his former employers pay him for free time he was entitled to within the scope of the minimum 11-hour rest period on certain occasions as stipulated by the Working Time Directive. The former head chef was paid the same monthly amount regardless of his specific working hours on the condition that he serve meals at specific times. Additionally, it was not contested that he was free to organise his own working time. The former head chef argued that with regard to Art. 53 of Act No. 46/1980, on occupational health, safety and health at work, which, inter alia, states that an employee shall receive a minimum of 11 consecutive hours of rest and that an employee shall be entitled to this rest period later if it is reduced for some reason. However, Article 52 a (3) of the Act also states that the provision does not apply to managers or others who organise their own working time. The same rule was adopted in an agreement of 30 December 1996 between the Icelandic Confederation of Labour and Employers’ Confederation of Iceland (now Business Iceland) on certain aspects regarding working time. In accordance with those rules, the majority of the Supreme Court ruled that the provisions on minimum rest periods did not apply to employees who are in the same situation as the former head chef, who were paid a fixed monthly salary and who organised their own working time and other aspects of their work. Therefore, the former employers were acquitted.

The majority of the Court of Appeal in its ruling of 12 April 2019 in Court of Appeal case No. 602/2018 and the minority of the Supreme Court came to a different conclusion, however. The majority of the Court of Appeal stressed that the former head chef had no control over or could not organise his working time and when the meals would be served. The minority opinion of the Supreme Court also stressed, inter alia, that it could not be claimed that the former head chef did not have authority to employ additional staff to assist him in performing his tasks. In light of the extent of the work, namely feeding up to 70 people at a time, cleaning, purchasing food, etc., as well as having to follow a strict schedule on when to prepare the meals, the minority argued that the former head chef could not be considered to have had autonomy to organise his own working time.

Analytical part

This ruling comes against the backdrop of the Icelandic Confederation of Labour’s appeal to the EFTA Supervisory Authority with regard to CJEU case C-55/18 on working time, specifically with reference to the duty to register working time, and the Icelandic precedence on the principle of indifference. The debate on working time and its
components such as registration of working time can potentially lead to deeper discussions about the scope of such rules, the degree to which an employee has autonomy to determine his/her own working time and cannot be considered as being covered by the working time rules and what components of the employment relationship play a role in that context. In the majority opinion of the Supreme Court, a decisive factor seems to have been that the employee had considerable autonomy in determining his working time and therefore fell under the said derogation in Article 17 of the Working Time Directive, even though he had no autonomy over when the meals were to be served. However, the strength of the potential precedence is weakened by the fact that the majority of the Court of Appeal arrived at a different conclusion as did the minority of the Supreme Court.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.
Ireland

Summary
The High Court upheld the Labour Court decision that consolidation of social welfare delivery services constitutes a transfer of an undertaking.

1 National Legislation
Nothing to report.

2 Court Rulings
2.1 Transfer of undertaking
In December 2015, the manager of a social welfare branch office of the Department of Employment Affairs and Social Protection in County Offaly retired and the services previously provided by that office were transferred to, and subsumed into, a greater range of services provided by the Department at its main office in Edenderry. The Department advised the manager that the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 did not apply to her staff.

Ms Dunne was an employee of the branch office and when her employment ended on the manager’s retirement, she was neither paid redundancy nor afforded the opportunity to transfer her employment to Edenderry.

Both a WRC adjudication officer and the Labour Court ruled that a transfer of undertaking had occurred on the consolidation of the social delivery services and ordered Ms Dunne’s reinstatement. Those decisions have now been upheld on appeal by the High Court: Minister for Employment Affairs and Social Protection v. Labour Court and Mary Dunne [2019] IEHC 634. The High Court judge noted that the Labour Court had acknowledged that the decisive criterion for a transfer was whether the entity had retained its economic identity and, in doing so, the Labour Court placed emphasis on CJEU decisions such as Case C-24/85, Spijkers and Case C-29/91, Sophie Redmond Stichting.

The Labour Court had also taken the view that although no staff had been transferred, significant tangible assets had been, namely the data of the recipients of the relevant social welfare schemes. The fact that those assets did not belong to the branch manager was irrelevant, citing Case C-340/01, Abler.

On appeal, the Minister submitted that the Labour Court had ‘misapplied’ the CJEU decisions to the proposition that the branch office was an ‘autonomous economic entity’, but the High Court judge was not satisfied that the Minister had demonstrated that the Labour Court had come to a conclusion that was based either on an error of law or on unsustainable findings of fact. Consequently, the appeal was rejected.

3 Implications of CJEU rulings and ECHR
Nothing to report.

4 Other relevant information
Nothing to report.
Italy

Summary

(I) A new law introduces regulations on organised collaborations on platforms, social protection of coordinated self-employed persons and riders.

(II) A decree regulates the functioning of the register on undeclared work in agriculture. The register has planning, coordination and monitoring functions on the actions to be taken to fight undeclared work in agriculture.

1 National Legislation

1.1 Collective representation and social protection of self-employed persons

On 4 September 2019, No. 207, the Decree law of 3 September 2019, No. 101 was published, which provides new regulations for organised collaborations on platforms and social protection of coordinated self-employed persons and riders. It was drafted and presented by the old Lega – M5S government. It is unclear whether the new PD, Italia Viva and M5S government will support it. In any case, Parliament has 60 days to discuss and issue a decision on transforming the Decree law into an act. A detailed report on its provisions will be provided if it is transformed into an act.

1.2 Undeclared work

On 3 September 2019, No. 206, the Inter-Ministerial Decree of 4 July 2019 establishing and regulating the functioning of the register on undeclared work in agriculture was published. The register has planning, coordination and monitoring functions on the actions to be taken to fight undeclared work in agriculture.

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
Legislative changes to implement the EURES Regulation are to be introduced in the 
Act on Employment Services and Temporary Agency Work.

1 National Legislation

1.1 EURES

Factual part

Regulation (EU) 2016/589 aims to fundamentally redesign the European Employment Services network (EURES). EURES is a cooperation network between the European Commission and the public employment services of the EEA Member States and Switzerland, and has been implemented to facilitate the free movement of workers. Liechtenstein has been participating in EURES since 1 January 2007. The member states have the obligation to offer their employment services to everyone across the borders. The task of the EURES network is to provide information, advice and placement (job matching and job search) to workers, jobseekers and employers and, more generally, to all persons wishing to exercise their right to free movement. As an instrument of employment policy, the EURES network helps create a common European labour market and, in some border regions, an integrated regional labour market.

Liechtenstein has now created a draft for the amendment of national law to implement Regulation (EU) 2016/589. The aim of the draft law is to adapt Liechtenstein law in such a way as to ensure the enforcement of rights and obligations in connection with the EURES network. This is to be achieved through three central points:

(1) The existing provisions in the law on employment services are to be coordinated with the requirements of Regulation (EU) 2016/589.

(2) The competences of the public employment services are to be expanded.

(3) The central function in this context will be assigned to the Office of National Economy (Amt für Volkswirtschaft).

The changes are to be introduced in the Act on Employment Services and Temporary Agency Work (Gesetz über die Arbeitsvermittlung und den Personalverleih, Arbeitsvermittlungsgesetz, AVG, LR 823.10). The amendment of this Act will also entail an adaptation of the Ordinance to the Act on Employment Services and Temporary Agency Work (Verordnung zum Gesetz über die Arbeitsvermittlung und den Personalverleih, Arbeitsvermittlungsverordnung, AVV, LR 823.101). New additional regulations on public employment services can also be expected.

The Liechtenstein government has submitted a draft law with an accompanying report, which has been submitted for consultation. The consultation will last until 3 December 2019, after which the government will evaluate the comments received and submit a report and motion to Parliament.

Analytical part

The amendment is of medium importance. It is an important issue for the economy, the labour market, workers and employers. However, it is mainly a technical matter which does not fundamentally affect the rights and obligations of the parties to the employment contract. The amendment departs from previous lines of reasoning because public employment services are already regulated by Liechtenstein law (see Art. 24–29a of the Act on Employment Services and Temporary Agency Work). These provisions
will simply be adapted and expanded. The purpose of the consultation is to give the government an idea of the likely implications in the legal and political spheres. Depending on the outcome, the draft law may be adapted before it is submitted to Parliament.

The main purpose of the amendment is to implement Regulation (EU) 2016/589. An initial review of the draft law reveals that the government is seeking implementation in line with the mentioned Regulation.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
Nothing to report.

4 Other relevant information
Nothing to report.
Luxembourg

Summary
The Minister of Labour has presented plans for the upcoming months.

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
A recent speech of the Minister for Labour, presenting his plans and thoughts for the upcoming months, but all of these projects are at the level of political intent:

- The rules on temporary agency work should be strengthened to boost open-ended contracts for interim workers. The hiring of temporary workers should become more restrictive (for example, only two contracts with the same worker per undertaking); their access to professional training should be improved.
- The rules on occupational reclassification (reclassement professionnel) should be reviewed (once again).
- To prevent redundancy plans (plan social), job maintenance plans (plan de maintien dans l'emploi) should be expanded, for example, by implementing an obligation to reduce fixed-term and temporary work.
- In case of (individual) economic lay-offs, an obligation to pay an additional allowance could be introduced, for example, one month’s salary per year of seniority, potentially reimbursed by public funds if the dismissal was preceded by a job maintenance plan.
- In general, professional training on e-skills should be expanded.
- Solutions should also be found to the problem that 50 per cent of employees are not covered by a collective agreement.
- Potentially, a right for disconnection could be introduced.
- Despite all of the tax laws and social security issues applied to telework for cross-border commuters, this type of work should be promoted in the future.
Netherlands

Summary
In September, the government budget for 2020 was presented. The budget has been allocated with the aim of achieving a more inclusive labour market. The tax advantages for self-employed workers are being reduced.

1 National Legislation
No specific legislation has been issued. On 17 September 2019, the government presented its plans and budget for the coming year. We would like to point out the two most relevant measures for the labour market. First, a budget of EUR 53 Million has been designated to achieve a more inclusive labour market and to support those workers who have difficulties entering the labour market. The budget is for the period 2020-2021. Secondly, the government announced a reduction in tax advantages for self-employed workers. The goal of this measure is to decrease the difference in taxation between employees and self-employed persons.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
Nothing to report.

4 Other relevant information
Nothing to report.
Norway

Summary
There was a strike among employees of a food delivery service.

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
In Norway, employees of Foodora (a bicycle service for food delivery) went on strike for over a month to obtain a collective bargaining agreement. Over 250 employees participated in the strike. The strike ended when the employer offered to conclude a collective agreement, including a salary increase and compensation for bicycle clothes and cell phones.
Poland

Summary
The government has set the amount of minimum wage for work in 2020.

1 National Legislation
1.1 Minimum wage

Factual part
On 10 September, the Regulation of the Council of Ministers on the amount of minimum wage for work and the amount of the minimum hourly rate in 2020 was signed by the Prime Minister (Journal of Laws 2019, item 1778). In 2020, the minimum wage will amount to PLN 2.600 for those working under an employment contract (around EUR 610), and PLN 17 per hour for workers under a civil law contract.

In 2019, the minimum wage amounts to PLN 2.250 (monthly) and PLN 14.70 (hourly). The change brings a raise in the minimum wage of 15.6 per cent. The new regulation will take effect on 1 January 2020.

The legal basis for enacting the abovementioned regulation is the Law of 10 October 2002 on minimum wage for work (Journal of Laws 2018, item 2177).

The information on minimum wage in 2020 provided by the Ministry of Family, Labour and Social Policy is available here.

The minimum wage is one of the major topics of the election campaign (the parliamentary elections will take place on 13 October). The governing political party ‘Law and Justice’ announced its intention to raise the statutory minimum wage up to PLN 3.000 by the end of 2020, and up to PLN 4.000 by the end of 2023.

The Law on Minimum Wage for Work was amended in July to modify the composition of minimum wage. Since 2020, seniority allowance shall not be taken into account when calculating the amount of minimum wage for employees.

For further information and discussion, see also the July 2019 Flash Report.

Analytical part
The minimum wage has been continuously rising in recent years. The Social Dialogue Council did not reach an agreement on statutory minimum wage until June, as required by the Law on Minimum Wage. Consequently, the government determined the amount of minimum wage for 2020.

It should be noted that the trade unions demanded in June that the minimum wage in 2020 ought to amount to PLN 2.520 (employers’ organisations suggested PLN 2.387). Thus, the government’s final decision on minimum wage in 2020 is even more advantageous for workers than demanded by the trade unions.

As far as the parliamentary election campaign is concerned, it seems that the pledge to substantially raise the minimum wage up to PLN 4.000 by the end 2023 is not realistic. However, it can be expected that the minimum wage for work will continue to gradually increase in the future.

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) A law has introduced relevant amendments to the regime of parental leave.

(II) Several changes to the Labour Code include regulations on trial periods, fixed-term employment, collective bargaining, working time, professional training and collective bargaining.

(III) An ordinance provides financial support to the employer in case of conversion of fixed-term employment contracts into permanent ones.

1 National Legislation

1.1 Parental leave

Law No. 90/2019 of 4 September 2019

Law No. 90/2019, of 4 September, introduces relevant amendments to the regime of protection in the event of parenting, set forth in the Portuguese Labour Code and in Decree Law No. 89/2009, of 9 April (parenting regime of public employees covered by the convergent social protection scheme) and Decree law No. 91/2009, of 9 April (parenting protection under the social security regime).

This new law includes, among others, the following changes:

1.1.1 New types of leave, grounds for absences and absences:

Two new leaves have been created by this law:

(i) Leave to visit a hospital unit located outside the area of residence for childbirth purposes, for the period deemed necessary and without prejudice to the initial parental leave; such leave is considered effective work performance for all intents and purposes, with the exception of the element of remuneration.

(ii) Leave to assist children with cancer (up to 6 months, which can be extended by up to 4 years); this leave suspends the rights and duties that presuppose the effective performance of work, namely remuneration.

In addition, the following new grounds for absence from work are granted:

(i) Pregnant, post-delivery or lactating employees (including the partners of the employee), for reasons of health and safety protection in locations in the islands of the autonomous region;

(ii) For consultations on medically assisted reproduction (a maximum of 3 leave days for each cycle of treatment).

Such situations are considered effective work performance, except in terms of remuneration in the case referred to in (i) above. This new law also envisages a justified absence to accompany a pregnant woman who moves to a hospital unit located outside the area of residence to give childbirth. Such absence entails the loss of remuneration when it exceeds 30 days per year.

1.1.2 Amendments to parental leave

Initial parental leave is extended in the following cases:

(i) Post-delivery hospitalisation due to the child’s need for special care up to a maximum of 30 days;
(ii) Childbirth up to 33 weeks: for the period of 30 days or for the entire period of hospitalisation in case of the child’s need for special medical care.

The mandatory period of the father’s exclusive parental leave has been increased from 15 to 20 working days to be taken within six weeks following the child’s birth. The optional period has been reduced from 10 to 5 working days.

1.1.3 New parenting guarantees

This new law explicitly states that all legal references to the father or mother are considered to be made to the holders of parental rights, except those resulting from their biological condition. The pregnant or post-delivery employee enjoys exclusive parental leave rights, the father also being entitled to enjoy the exclusive right to leave. The new law explicitly prohibits any form of discrimination against employees who are exercising their parental rights, particularly in terms of remuneration, including attendance and productivity bonuses, and promotions.

1.1.4 Communication obligations

The new law stipulates that the employer must inform the Commission for Equality in Labour and Employment (“Comissão para a Igualdade no Trabalho e Emprego” - CITE) of terminations during the probation period of an employment contract with a pregnant, post-delivery or lactating employee or an employee on parental leave, within 5 working days after the date of termination. In addition, the non-renewal of a fixed-term employment contract entered into with a pregnant, post-delivery or lactating employee or an employee on parental leave shall be communicated by the employer to CITE at least 5 working days prior to the issuance of notice.

1.1.5 New subsidies granted by the social security system

Three new subsidies have been created under the social security regime: (i) subsidy in case of need of travel to a hospital unit located outside the area of residence to give childbirth corresponding to 100 per cent of the reference remuneration; (ii) subsidy for assistance to children with cancer, corresponding to 65 per cent of the reference remuneration, with a monthly threshold of twice the Index of Social Support (“IAS”); (iii) specific subsidy for hospitalisation of the new-born, corresponding to 100 per cent of the reference remuneration.

The new leaves and subsidies will become effective with the entry into force of the 2020 State Budget. The other amendments will enter into force on 4 October 2019.

1.2 Amendments to the Labour Code and other related legislation

Law No. 93/2019, which was published in the Official Gazette on 4 September 2019, contains several amendments to the Portuguese Labour Code, approved by Law No. 7/2009, of 12 February, and its regulation, as well as to the Code of Contributory Regimes of the Social Security System. The most relevant changes are highlighted below:

1.2.1 Trial period

In the case of permanent employment contracts entered into with (i) an employee who has started his/her first job or (ii) a long-term unemployed person, the trial period shall be 180 days (instead of the general rule of 90 days). Concerns have been raised about the constitutionality of this amendment. The request to examine the constitutionality of this rule was presented to the Portuguese Constitutional Court on 25 September. As regards the trial period, it must now be reduced or excluded in case of a previous professional traineeship carried out for the same activity and for the same company.
1.2.2 Fixed-term employment contract

Several relevant changes have been introduced for fixed-term employment contracts:

(i) Admissible grounds:
- The hiring of an employee who is starting his/her first job or a long-term unemployed person is no longer a valid ground for entering a fixed-term employment contract (only in case of hiring a very long-term unemployed person);
- Employers with over 250 employees may no longer hire employees based on the launch of a new activity of uncertain duration or the start-up of a company or establishment.

(ii) Duration:
- The maximum duration of fixed-term employment contracts, including renewals, is reduced from 3 to 2 years; the total duration of renewals may not exceed the contract’s initial duration;
- The maximum duration of the unfixed-term employment contracts is reduced from 6 to 4 years;

(iii) Excessive Turnover Additional Contribution:
- The Excessive Turnover Additional Contribution has been introduced, which will apply to employers that have a higher number of fixed-term contracts than the annual indicator applicable to the respective sector of activity;
- The additional contribution rate is progressively applied based on the difference between the annual number of fixed-term contracts and the sector’s average, up to a maximum of 2 per cent;
- The implementation of this measure depends on the previous regulation; this notwithstanding, the entry into force of this measure is expected on 1 January 2020.

1.2.3 Very short-term employment contracts

The maximum duration of such contracts has been increased from 15 to 35 days. In addition, the total duration of such contracts between the same employee and employer may not exceed 70 working days within a calendar year. These contracts are now admissible in other sectors aside from agriculture and tourism, provided that there is an exceptional and substantial increase in the company’s activity, whose annual cycle presents irregularities resulting from the market or of a structural nature that cannot be guaranteed by its permanent structure.

1.2.4 Account of working hours ("Banco de horas")

The account of working hours set up by individual agreements between the employer and the employee has been eliminated. The account of working hours which started before the entry into force of this law may continue to be applicable for one year from that date onwards. A new modality of group accounts of working hours, according to which a system of accounts of working hours may apply to the employees of a team, sector or economic unit, provided that it is approved in a referendum by at least 65 per cent of those employees.

1.2.5 Intermittent and temporary work

Intermittent work refers to a decrease in the minimum annual period of full-time work from 6 to 5 months per year, three of which should be consecutive. The employee must inform the employer whether s/he performs any other professional activity during his/her period of inactivity. The remuneration earned by the employee due to the exercise of another activity may be deducted from the compensation due to the employee during his/her period of inactivity. As regards temporary work, fixed-term temporary employment contracts are now, as a rule, subject to a maximum of six renewals.
1.2.6 Professional training and other rights of the employees

The right of employees to professional training has increased from 35 to 40 hours per year. The new law also reinforces the prevention of harassment at work by stating that the disciplinary sanction motivated by the fact that the employee has allegedly been a victim of harassment or a witness in judicial or administrative proceedings for harassment is an abusive sanction and constitutes a very serious misdemeanour. Harassment by the employer or other employees constitutes just cause for termination of the employment contract upon the employee’s initiative. Employees who suffer from cancer are considered equal to employees with disabilities or chronic diseases for working condition purposes.

1.2.7 Collective bargaining agreements

Collective bargaining agreements that are contrary to the mandatory rules of the Labour Code must be modified during the first review which takes place within 12 months after the entry into force of these amendments; otherwise, they will become invalid. Collective bargaining agreements may only regulate the remuneration for overtime work if they are more favourable to the employees, thus exceeding the amounts established in the law. As a rule, Law No. 93/2019 will enter into force on 1 October 2019.

1.3 Subsidies for permanent employment

Ordinance No. 323/2019, of 19 September, creates the measure “CONVERTE +” which consists of transitional support for the conversion of fixed-term employment contracts into permanent employment contracts by providing financial support to the employer. This measure will be in force between 20 September 2019 and 31 March 2020.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.
Slovakia

Summary

(I) Legislative proposals on minimum wage, recreational vouchers and annual leave have been published.

(II) The legislator has adopted an amendment of the Labour Code regarding voluntary contributions by employers.


1 National Legislation

1.1 Minimum wage

Factual part

Discussions about the minimum wage for the year 2020 started based on Act No. 663/2007 Coll. on minimum wage, with negotiations among the social partners taking place at the national level. The minimum wage was discussed at the meeting of the Economic and Social Council of the Slovak Republic on 19 August 2019. The social partners involved in the tripartite social dialogue could not reach an agreement. This has been the case in the previous ten years plus. In accordance with Article 7 paragraph 5 of Act. 663/2007 Coll. on the minimum wage, the Ministry of Labour, Social Affairs and Family of the Slovak Republic must submit a proposal for a Government Decree specifying the amount of minimum wage for 2020 pursuant to Article 8 paragraph 2 of the Act.

The proposal of the Government Decree establishing the amount of minimum wage for 2020 was discussed at the meeting of the Economic and Social Council of the Slovak Republic on 23 September 2019. The Ministry of Labour, Social Affairs and Family proposed an increase of the monthly minimum wage for the year 2020 from EUR 520,00 (in the year 2019) to EUR 580,00 (+60 EUR, + 11,54 per cent) and the hourly minimum wage from EUR 2,989 to EUR 3,333. The social partners again did not reach an agreement with the ministry on the new level of minimum wage.

The government will again decide the new level of minimum wage for the year 2020. The Ministry of Labour, Social Affairs and Family will prepare a proposal for a Government Decree [increase of the minimum wage to EUR 580,00 EUR (+11,54 per cent)]. The draft of the Government Decree will be discussed in the Legislative Council of the Government of the Slovak Republic and subsequently submitted to the Government of the Slovak Republic.

The draft is available here.

The Proposal of the Deputies of the National Council of the Slovak Republic, Erik Tomáš and Robert Fico, to revise the Act amending Act No. 663/2007 Coll. on minimum wage, as amended, and amending Act No. 311/2001 Coll. Labour Code, as amended (print 1624) was discussed in the first reading at the 49th session of the National Council of the Slovak Republic. A new wording of Act No. 663/2007 Coll is proposed. It gives employers' and employees' representatives autonomy to negotiate and agree on the amount of monthly minimum wage for the following calendar year. If the agreement between the employers' and the employees' representatives is reached by 15 July or at the meeting of the Economic and Social Council of the Slovak Republic by 31 August, the monthly minimum wage for the following calendar year is based on their agreement.
In the absence of such an agreement between the employers’ and employees’ representatives, the formula prescribed by law shall apply. It shall be based on the employee’s average monthly nominal wage in the economy of the Slovak Republic published by the Statistical Office of the Slovak Republic for the calendar year preceding the calendar year for which the amount of the monthly minimum wage is determined. The monthly minimum wage will be 60 per cent of this amount. The Labour Code in Article 119 paragraph 1 reads “established by a special regulation” and is replaced with “pursuant to a special regulation”.

The amendment is proposed to take effect from 1 January 2020. For the first time, the minimum wage will be set under the new rules for 2021. The proposal was discussed in the first reading at the 49th session of the National Council of the Slovak Republic (18 September 2019). The relevant committees of the Parliament are to discuss the proposal until 11/10/2019, respectively 14/10/2019.

The proposal is available here.

Analytical part

The subject matter is not covered by European Union law, nor by the case law of the Court of Justice of the European Union.

1.2 Recreational voucher

Flash Report 10/2018 reported that on 23 October 2018, the Slovak National Council adopted an amendment of Act No. 91/2010 Coll. on support for tourism as amended, and on amendments of certain acts. The Labour Code (Act No. 311/2001 Coll.) was also amended within the framework of this new Act.

The proposal was submitted by a group of members of the National Council. According to the explanatory memorandum, the aim of the act was to support domestic tourism through the introduction of new tourism development financing instruments. The proposed tourism financing instruments include a recreational voucher. According to the new Article 152a (Recreation of employees) of the Labour Code, an employer employing more than 49 employees shall, upon request, offer employees who have been working for the employer for a continuous period of at least 24 months, a recreational contribution amounting to 55 per cent of a reasonable expenditure, but not more than EUR 275 per calendar year. A group of deputies of the National Council of the Slovak Republic submitted a proposal to the National Council to adopt an Act amending Article 152a of the Labour Code.

The aim of the proposed Act is to extend the obligation to provide a contribution to the recreation of employees under Article 152a of the Labour Code to all employers, not only those who employ more than 49 employees. According to the proposal, the Act is in line with European Union law. It is proposed to take effect on 1 January 2021.

The proposal was discussed in the first reading at the 49th session of the National Council of the Slovak Republic (19 September 2019) and approved for a second reading. The relevant committees of the Parliament will discuss the proposal.

The Act is available here.

1.3 Annual leave

Two deputies of the National Council of the Slovak Republic submitted a proposal to the National Council to adopt an Act amending Article 103 of the Labour Code on the basic length of paid holiday leave. Under the current wording of Article 103 the Labour Code, the basic length of paid holiday leave shall be at least four weeks (paragraph 1). Paid holiday leave of an employee who at the end of the relevant calendar year will be at
least 33 years of age, shall be entitled to paid holiday leave of at least five weeks (paragraph 2).

This proposal to amend the Labour Code also aims to increase the length of the basic holiday allowance to five weeks for employees who have not yet reached the age of 33 years, but who are taking care of a child permanently.

The amendment is proposed to take effect on 1 January 2020. The proposal was discussed in the first reading at the 49th session of the National Council of the Slovak Republic (19 September 2019) and approved for a second reading. The relevant committees of the Parliament will discuss the proposal.

The Act is available [here](#).

### 1.4 Voluntary contribution by the employer

The Slovak National Council adopted an amendment of the Labour Code and amendments of other related acts on 18 September 2019. The aim of the adopted Act is to support sports among children and youth in the form of a voluntary contribution by the employer to a proportionate reimbursement of the employee’s expenses on a regular athletic activity of his/her child. The amount of this employer’s contribution is limited to 55 per cent of the employee’s eligible expenses and at the same time, the maximum amount of the contribution is EUR 275 per calendar year. The details are regulated by the new § 152b of the Labour Code.

The Act will enter into force on 1 January 2021. The act is available [here](#).

### 1.5 Posting of workers


The aim of the adopted Act is to transpose Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers within the scope of the provision of services in the Slovak legal order. This includes especially:

- supplementing the range of provisions of labour law of the Slovak Republic that are to be applied to the employment relationship of an employee posted to the territory of the Slovak Republic,
- ensuring comparable work and pay conditions for employees posted by a foreign temporary agency to a user employer,
- differentiation between ‘short-term posting’ (up to 12 or 18 months) to which the labour law of the Slovak Republic is only applied to a limited extent, and ‘long-term posting’ (over 12 or 18 months) to which the labour law of the Slovak Republic is fully applied with the exception of certain rules,
- establishment of rules on the calculation of the period of posting in relation to the so-called chaining of posted employees (if another posted employee replaces the posted employee in the same place and with the same type of work),
- adjustment of the information duty of the user employer to the temporary employer (temporary employment agency) when an employee posted to the territory of the Slovak Republic by a temporary employer (temporary employment agency) to the user employer is to be posted within the scope of
the provision of cross-border services by the user employer in another country to work in another country.

These changes are included in the amended Article 5 of the Labour Code. The Act will enter into force on 30 July 2020.

The Act is available [here](#).

## Court Rulings

Nothing to report.

## Implications of CJEU rulings and ECHR

Nothing to report.

## Other relevant information

Nothing to report.
**Summary**
The Minister of Public Affairs has presented its talking points on changes in the public sector wage system in the future. Members of the Economic and Social Council discussed and agreed on the draft amendments to the Pension and Invalidity Insurance Act and to the Labour Market Regulation Act.

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### 1 National Legislation
Nothing to report.

### 2 Court Rulings
Nothing to report.

### 3 Implications of CJEU rulings and ECHR
The implications of the CJEU’s ruling in case C-194/18 of 8 May 2019 are not yet clear. The Supreme Court of the RS has decided on the Dodič case in September 2019, but the Court’s decision has not yet been made public.

### 4 Other relevant information

#### 4.1 Recording of working time
The July Flash Report reported that special attention is being paid to issues related to working time. In this regard, the labour inspectorate carried out irregular inspections over the summer on the recording of working time in the construction and catering industries. It was ascertained that 90 per cent of employers keep records of working time, but that only 10 per cent of them maintain records in electronic form. Others keep handwritten records. This is the reason why the accuracy of data on working time is not always guaranteed.

#### 4.2 Public sector wage system
The Minister of Public Affairs has presented talking points to individual social partners on changes to the public sector wage system in the future. The main objective of these changes is to make the system more flexible and above all, more attractive for young people. It is impossible to predict when the new wage system will be introduced.

#### 4.3 Social dialogue
On 27 September 2019, members of the Economic and Social Council discussed and agreed on draft amendments to the Pension and Invalidity Insurance Act and to the Labour Market Regulation Act (see Flash Report 07/2019). Immediately after the agreement was adopted, the representative of the Association of the Employers of Slovenia resigned from the Council in protest against how the present social dialogue is being carried out. He drew attention to the fact that one of the non-coalition parliamentary parties has recently directly—without consulting the social partners—lodged several draft acts (related to minimum wage, the payment of student work,
introduction of the right of parents to absence from work on the first day of primary school, abolition of supplementary health care insurance). According to the representative, the government should prevent such practices. The chairperson of the Council, the trade unions’ representative, agreed that such practices endanger the future of social dialogue in the country. In support of the employers’ representative, she resigned from the position of chairperson. She pointed out that in principle, trade unions agree with the content of the draft acts, but disagree that draft acts, which are important from a social perspective, are submitted to the parliamentarian procedure without previous negotiation with the social partners.

The Prime Minister and the Minister of Labour have already confirmed that they will ensure that the social dialogue is not undermined.
Spain

Summary
General elections have been called for November 10. Unemployment is at its lowest level since 2008.

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 Political situation
After the general elections of April 2019, Congress had to appoint the Prime Minister. However, the investiture attempts have failed and no new government has been formed. New general elections will be held on 10 November.

4.2 Unemployment
Unemployment has been reduced to 3.065.804 people, the lowest number since 2008. However, most new contracts are fixed-term employment contracts and not permanent ones.
Sweden

Summary
A decision of the Court of Appeal found that collective action did not result in a liability to pay damages under Swedish law.

1 National Legislation
Nothing to report.

2 Court Rulings

2.1 Collective action
The Swedish Supreme Court has decided to not allow an appeal in a labour-related case of some European interest. The result of the decision was that the judgment of the Svea Court of Appeal (Svea Hovrätt, Stockholm) from 13 March 2019 is final. Case T 315-18 before the Court of Appeal concerned an industrial conflict that had already occurred over 12 years ago in which the appellant’s construction company had been subject to a blockade during 2006-2007, an action which aimed to compel the employer to conclude a collective agreement. The employer (later appellant) refused to enter into the construction workers’ union agreement, which, at the time stipulated monitoring fees to be paid to the union on behalf of non-unionised employees as well. The monitoring fees in the collective agreement were scrutinised during the blockade in the Evaldsson case of 13 February 2007 before the ECHR. Only after the monitoring fees had been deemed a violation of the European Convention of Human Rights (Art 1, Protocol No. 1 to the Convention) was the collective agreement in the Evaldsson case modified. The employer/appellant concluded such a new agreement on 14 June 2007, but eventually declared bankruptcy only days later, after half a year of blockade.

The present case, finally decided by the Court of Appeal since the Supreme Court did not hear the appeal, only related to liabilities for damages and legal fees associated with the case. The Court of Appeal, citing precedent from the Supreme Court, concluded that even if the industrial action (the blockade) violated the employer/appellant’s right under the European Convention, the claim for damages (loss of expected income) under Swedish law requires wrongful actions to have been ‘qualified improper’ (kvalificerat otillbörligt) or criminal. The Court of Appeal concluded that the blockade could not be qualified as improper and dismissed the appeal. In alignment with the Swedish principles for legal fees, the losing side is normally required to take over the winning side’s legal costs, which in this case amounted to a total exceeding EUR 250,000.

3 Implications of CJEU rulings and ECHR
Nothing to report.

4 Other relevant information
Nothing to report.
United Kingdom

Summary

(I) The Employment Appeal Tribunal found that an employee needs to explicitly refuse to comply with a requirement imposed in contravention of the Working Time Regulations to claim wrongful dismissal.

(II) The government has announced revised immigration arrangements that will apply to EU citizens in the event of a no-deal Brexit.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working Time

Employment Appeal Tribunal, UKEAT/0008/19/LA, 20 August 2019

In *Pazur v Lexington Catering Services Ltd*, the question was raised whether an employee needs to explicitly refuse to comply with a requirement imposed in contravention of the Working Time Regulations. The EAT said yes.

The claimant, who worked as a kitchen porter, had been denied his right to a rest break (contrary to Regulation 10 WTR and his contractual entitlement) when assigned to work for client L. When he subsequently refused to return to client L, he was first threatened with dismissal and then dismissed by the respondent. The claimant brought ET proceedings contending the threat of dismissal had amounted to an unlawful detriment, contrary to Section 45A ERA, and that he was then dismissed for an automatically unfair reason for the purposes of Section 101A ERA. He also complained that he had been wrongfully dismissed. The ET accepted that the claimant had previously left client L’s premises because he refused to comply with a requirement that was in breach of the WTR. The EAT said that for such claims to succeed, a tribunal must be satisfied that:

(a) the employer imposed or proposed to impose a requirement on the claimant;
(b) the requirement was in contravention of the WTR;
(c) the claimant refused to comply with that requirement;
(d) refusal was the reason for the detriment and/or dismissal.

The EAT stated that the key question was whether the claimant had explicitly refused to accept the requirement; this would have necessitated an explicit communication of the claimant’s refusal.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Brexit and free movement

The government has announced revised immigration arrangements that will apply to EU citizens in the event of a no-deal Brexit (including citizens of Iceland, Liechtenstein,
Norway and Switzerland, but excluding Irish citizens) and their family members living in the UK before Brexit, and to those arriving after Brexit. These arrangements replace those set out in the policy paper published on 28 January 2019. The key paragraphs are:

The government will introduce a new, Australian-style points-based immigration system from January 2021. The independent Migration Advisory Committee has been commissioned to review the Australian system and other international comparators, to advise what best practice can be used to strengthen the UK labour market. A new, fairer immigration system will be introduced that prioritises skills and what individuals can contribute to the UK rather than where they came from.

EU citizens who move to the UK after Brexit and who do not hold Euro TLR will need to apply under the new immigration system by 31 December 2020 if they wish to remain in the UK beyond that date.

Those who hold Euro TLR will have a bridge into the new immigration system: if they wish to remain in the UK, they will only be required to apply to the new points-based immigration system when their 36 months’ Euro TLR leave expires. They may apply for status under the new system earlier if they wish.

Where an individual who holds Euro TLR does not meet the requisite criteria under the new immigration system or otherwise has a right to remain in the UK, s/he will be expected to leave the UK when his/her Euro TLR expires. Euro TLR will therefore only provide a temporary stay in the UK for some EU citizens.

Where an EU citizen is granted permission to stay under the new, points-based immigration system in a route that leads to settlement (indefinite leave to remain) in the UK, his/her 36-month Euro TLR will count towards the qualifying residence period for settlement. The qualifying residence period is usually five years, but may vary according to route. Precise arrangements under the new, points-based immigration system will be confirmed in due course.
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