Flash Reports on Labour Law
December 2019
Summary and country reports

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

Working time

In Austria, the Supreme Court ruled on prerequisites for in-work rest breaks and found that these had been fulfilled in a case where employees could time them within a specified period and were able to dispose of them at their discretion. Although this was limited by the production steps as well as by the need to coordinate with their colleagues the leeway provided was considered sufficient as the employee could take shorter breaks of 20 to 30 minutes as well as longer ones of 45 minutes up to one hour. In Hungary, the Supreme Court examined the level of work stress as the key criterion for considering a job to be a ‘standby job’. In Ireland, the Workplace Relations Commission has again ruled that a firefighter’s on-call time is not working time. In Spain, a new resolution elaborates the obligation of employers to record working time.

Atypical work

In Austria, following the CJEU’s judgment in C-274/18, Schuch-Ghannadan on repeated fixed-term contracts at Austrian universities, there is an understanding that the current legal provisions should be amended, and that better career opportunities for young academics and researchers should be created. In Denmark, the Supreme Court continued its line of reasoning of fixed-term workers, meeting the criteria for performing comparable work to permanently employed workers. The fact that some job functions between permanently employed and fixed-term workers with the same title differ is sufficient to not meet the criteria of being comparable work. In France, the Supreme Court reclassified a rugby player’s fixed-term contract as an employment contract of indefinite duration, considering that the employer had not produced any concrete and precise evidence that the employee's employment was temporary in nature. In Sweden, the Labour Court decided that the calculation of the two-year qualifying period for the conversion of fixed-term employment to permanent employment should be based on the understanding of a year as a period of 365 days.

Posting of workers

In Austria, following the CJEU’s judgment in C-64/18, Maksimovic, the government programme aims to evaluate the current legal situation and proposes reaching administrative agreements with neighbouring Member States. In Denmark, industrial arbitration has reiterated the principle that a posting situation can be assessed as a genuine posting or workers hired in Denmark on the basis of the evidence, including contracts and the factual circumstances and that this determines the right to remuneration and a potential breach of contract by the receiving entity. In Estonia, the Ministry of Social Affairs has prepared amendments to the Posted Workers Act to transpose the requirements of Directive 2018/957 (EU).

Restructuring

In Austria, the Supreme Court referred to the decision of the CJEU in C-425/02, Delahaye, ruling that Directive 77/187/EEC (now Directive 2001/23/EC) must be interpreted as not precluding, in principle, in the event of a transfer of undertaking from a legal person governed by private law to the State, the latter, as a new employer, from reducing the amount of remuneration of the employees concerned for the purpose of complying with the national rules in force for public employees. In Greece, the Supreme Court ruled with reference to CJEU case...
law that an event constituting redundancy consists of the declaration by an employer of its intention to terminate the contract of employment upon the expiry of the notice period related to redundancy. In Romania, the courts dealt with the issue of distinguishing between a transfer of undertaking and the outsourcing of the activity by leasing machinery and equipment.

Third-Country Nationals

In Ireland, changes to the employment permit regime will allow more chefs, nurses and construction workers from outside the EU/EEA to work in the country, thereby implementing Article 11 of the Annex to Council Directive 2017/159/EU implementing the Agreement concerning the implementation of the ILO’s Work in Fishing Convention 2007. In Romania, a quota of newly admitted foreign workers on the labour market in 2020 was set by the government. In Spain, legislation on the permitted forms of employment of foreigners has been amended.

Implications of CJEU or EFTA Court Rulings and ECHR

Annual leave

This FR analyses the implications of the Grand Chamber decision in CJEU case C-254/18, 11 April 2019, Syndicat des cadres de la sécurité intérieure, for national law in the Member States.

In this judgment, the Court found that neither Article 7(1) of Directive 2003/88/EC nor Article 31(2) of the Charter of Fundamental Rights preclude national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.

In this respect, numerous countries (AT, BG, CY, CZ, EE, ES, HR, HU, IT, LT, PL, SI, and SK) provide for stricter rules, mandating that all annual leave (whether it is granted by law, collective agreement or individual contract) must be carried over if it cannot be taken due to illness. This also applies to France, where explicit derogations are possible, though.

Other countries generally restrict the mandatory carry-over period to the minimum granted by national law. This means stronger protection than the minimum envisaged by EU law in those countries that have a longer statutory minimum period (like AT, MT or the UK). Countries that only protect the four-week minimum include Belgium, Denmark, Finland and Sweden.

The practical relevance of the possibility to exclude the extension of leave that exceeds the national legal minimum is highly diverse. Specifically, collective agreements that grant longer leave but do not mandate its extension in case of illness are reported to be very frequent in Belgium, Denmark, Finland and Sweden, but virtually absent in Greece, Latvia, Lithuania and Luxembourg.

Finally, in several countries (IE, IS, LU, LV, MT, RO) it is not entirely clear whether such periods could be forfeited in case of illness, as explicit regulations or case law on this issue is missing.

Individual reports refer to doubts about the sufficient transferability of the European minimum of four weeks in case of illness. E.g. the report for Cyprus points out that there is a necessity to agree with the employer and a maximum period of two years. The Dutch report refers to academic literature debating whether the period of limitation of five years (‘safety pin’ for situations in which the employee could reasonably take annual leave) is in line with the Directive.

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

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Austria

Summary

(I) On 02 January 2020, the publication of the government programme was published, pronouncing an increased involvement of the social partners, in particular.

(II) Two decisions of the Supreme Court deal with the quality of in-work rest breaks and the transfer of undertaking to the State (insourcing).

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 In-work rest breaks

Supreme Court, No. 8 ObA 56/19x, 25 October 2019

§ 11 of the Working Time Act (Arbeitszeitgesetz, hereinafter AZG) provides: “If the total daily working time exceeds six hours, the working time shall be interrupted by a break of at least half an hour” (unofficial translation by the author). Jurisprudence holds that such a break must fulfil certain qualitative criteria to be recognised as such within the meaning of the cited provision. It must be predictable in terms of its timing (i.e. it must take place at a predefined time period within the framework of the working time schedule) or can be freely chosen by the employee within a specified period. Moreover, it must be real free time; the employee must be able to dispose of this time at her discretion.

The law does not specify the timing of the rest break, but it follows from the wording and purpose of the rest break that it should not take place at the beginning or end of the employee’s working time. An employee must be allowed to take a rest break after a 6-hour maximum work period. The courts have ruled that if a works agreement allows the employee the right to time her break individually, it is a regulation in favour of the employee, because it enables her to take a break of half an hour in accordance with her respective needs.

In the present case, the shift schedule did not specify fixed breaks but provided that the employees were required to take breaks of at least 30 minutes during their shift, whereby they were free to choose their break times in accordance with the respective production steps. Due to the precisely timed production sequence, employees could estimate by reading the status of the machines at the beginning of their shift when taking a break would be possible. The employee could then select one or more of these time windows to take a break. The only requirement was that the employees had to coordinate their breaks in such a way as to ensure the mandatory presence of employees in the department, for example, with regard to the four-eye principle that applies to certain steps in the production process.

The Supreme Court ruled that the prerequisites for in-work rest breaks had been fulfilled in the present case, as the employees could time their breaks within a specified period and were able to use them at their own discretion. Although this was limited by the steps in the production process as well as by the need to coordinate rest breaks with colleagues, the leeway provided by the employer was considered sufficient, as the employees could take shorter breaks of between 20 to 30 minutes as well as longer ones of between 45 minutes to one hour.
The Working Time Directive 2003/88/EC provides in Article 4 that Member States shall take the necessary measures to ensure that where the working day is longer than six hours, the worker is entitled to a rest break, the details of which, including the duration and terms under which rest breaks are provided, shall be specified in collective agreements or agreements between the social partners or, failing that, in national legislation. In its interpretative communication (2017/C 165/01), the European Commission states that a rest break in terms of timing should effectively allow workers to rest during their working day where it is longer than six hours. The timing of the rest break should therefore be adapted to the worker’s schedule and should take place at the latest after six hours of work.

The Austrian Supreme Court’s ruling follows this understanding considering that according to the provision, the rest breaks were not only adapted to the workers’ schedules but they also allowed the workers to time their break (or even breaks) according to their individual needs and preferences. The existing limitations to the employees’ freedom as to when to take breaks were not excessively restrictive and left sufficient autonomy to achieve the Directive’s objective.

2.2 Transfer of undertaking (insourcing of the State)

Supreme Court, No. 8 ObA 51/19m, 25 October 2019

In the course of the national patent authority’s insourcing, the employees that were formerly employed by that authority under ‘regular’ employment contracts had the option to be taken over as State employees. Their employment conditions were governed by the Act on Contractual State Employees (Vertragsbedienstetengesetz, hereinafter VBG), which includes all employment conditions and leaves only very limited leeway for additional contractual arrangements. Any additional arrangements are only permitted in exceptional cases in the form of ‘special contracts’ and justifications must be provided why the working conditions deviate from the mandatory ones in the Act.

In the present case, a former employee of the patent authority opted to become a State employee but was dissatisfied with his classification in the remuneration scheme of the Act on Contractual Employees. The classification took into account his entire working time at the patent authority but resulted in a reduction of his pay in line with that of other State employees with the same qualification and years of service. He claimed direct application of Directive 2001/23/EC and the wages he earned prior to opting to become a State employee.

The Supreme Court as well as the lower courts decided against the employee, referring to the decision of the CJEU C-425/02, Delahaye, which also dealt with a case of insourcing to the State. The CJEU ruled that Directive 77/187/EEC (now Directive 2001/23/EC) must be interpreted as not, in principle, precluding the State as a new employer in the event of a transfer of undertaking to the State, involving a legal person initially governed by private law, from reducing the amount of remuneration of the employee concerned for the purpose of complying with the national regulations in force for public employees.

The Supreme Court also pointed out that in this ruling, the CJEU required the competent authorities responsible for applying and interpreting the relevant rules to do so in view of the purpose of that Directive, taking into account the employee’s length of service, in particular, in so far as the national rules governing the position of State employees take a State employee’s length of service into consideration for calculating his remuneration. As the years of service with the former employer (the patent authority) were taken into account as if the employee had worked for the State, the approach taken in the present case was deemed to be in line with EU law. The Supreme Court additionally discussed the possibility of a ‘special contract’ providing for higher pay of the employee to maintain his higher wages but rejected this option as the present case.
was not to be considered an exceptional one, since the employee was being treated like any other State employee who has the same qualification and years of service.

The Supreme Court also referred to the CJEU cases C-108/10, Scattalon, and C-317/18, Moreira, but determined that they were not applicable, as the employee was being treated as though he had been employed as a State employee from the beginning and was not being treated in a discriminatory way, i.e. all of his years of service were duly taken into account.

The Supreme Court’s ruling is based on the leeway available to the State as established in the decision of the CJEU C-425/02, Delahaye, as regards the application of State employee regulations, which may result in a reduction in pay. In the present case, it found that the regulations for State employees were applied in a non-discriminatory way, treating the transferred employee as though he had been employed by the State from the beginning and taking all of his years of service into consideration.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

§ 2 of the Annual Leave Act (Urlaubsgesetz, hereinafter UrlG) reads as follows:

“The employee is entitled to uninterrupted paid annual leave for each year of work. If the employee has been in service for less than 25 years, the amount of annual leave shall be 30 working days and shall increase to 36 working days after completing the 25th year.”

Employees in Austria are therefore entitled to five or—after 25 years of service—to even six weeks of annual leave. This amount exceeds the minimum of four weeks stipulated in Article 7 (1) of the Working Time Directive 2003/88/EC (hereinafter WTD). The ruling therefore has potential implications for Austrian law. In practice, however, there are no implications as Austrian law does not distinguish between minimum periods of annual leave in accordance with the WTD and those exceeding these four weeks.

As regards carrying over of leave, § 4 (5) UrlG provides as follows:

“Entitlement to annual leave shall lapse after two years from the end of the annual leave year in which it arose.”

This means that all annual leave days can be carried over without justification or limitation for two consecutive years after the reference period (the so-called annual leave year). This compares to the CJEU’s ruling in C-2014/10, KHS, which established a limitation of the carry-over period to 15 months upon which the right to paid annual leave lapses in case of long lasting illness.

§ 2 (2) UrlG should also be mentioned, which provides that annual leave also accrues during periods in which there is no entitlement to remuneration: “Entitlement to annual leave shall not be reduced by periods during which there is no entitlement to remuneration, unless expressly provided otherwise by law.” This applies in particular to periods of sick leave during which the period of sick pay has been exceeded and therefore no remuneration is due. Nonetheless, the entitlement to annual leave is not reduced and this not only includes the mandatory four weeks stipulated in the WTD but also to the additional one/two weeks of annual leave under Austrian law.

To conclude: although Austrian law provides for annual leave that exceeds four weeks, it does not differentiate between the mandatory four weeks stipulated in the WTC and the additional entitlement to leave under Austrian law. Therefore, the ruling does not currently have any implications but might open possibilities for the lawmaker to differentiate between the different entitlements to annual leave.
4 Other Relevant Information

4.1 New government

The conservative Austrian People’s Party (ÖVP, Österreichische Volkspartei) and the Green Party (die Grünen) have agreed to form a coalition government and announced their government programme on 02 January 2020, pending the internal approval of the federal party congress of the Green Party on 04 January 2020. The government programme remains vague on the issue of labour law. Only one and a half of the more than 300 pages are dedicated to the ‘modernisation of labour law’, and only an evaluation procedure is envisioned, not concrete legislative projects. The main issues—the change in the labour market due to digitalization and the need to combine workers’ care and work obligations—are to be subject (only) to a broad public debate involving all stakeholders, including the social partners. Topics such as platform work, mobile working, vulnerable self-employed persons or the right to disconnect are not mentioned at all.

Wages: the government programme explicitly addresses wages that are below the minimum standard in collective bargaining agreements (that cover roughly 98 per cent of the Austrian workforce), and minimum wages in collective agreements that have not been raised for a number of years. These issues shall primarily be addressed by the social partners, with the option of involving a public authority, the tripartite Federal Conciliation Commission (Bundeseinigungsamt).

Working time: the government programme does not intend to amend recent changes in working time flexibility. It mentions that the social partners should introduce the option of saving time credits for a longer time, so workers can use these time credits for longer periods of absence. Also, incentives related to working time models should be introduced in which both parents decrease their working time to share care duties. Sabbaticals leading to later retirement shall also be evaluated.

Financing the continuation of pay: the government programme mentions that the issue of financing the continuation of pay for pregnant workers unable to work or sick pay during long and repeated periods of sick leave should be evaluated and, if necessary, amended.

Wage and social dumping: following the CJEU’s judgment in C-64/18, Maksimovic, the government programme plans to evaluate the current legal situation and proposes reaching administrative agreements with neighbouring Member States. The government programme remains silent on the content of these agreements. In the chapter on the future administration of the State (p. 14), a reform of the so-called ‘accumulation principle’ (i.e. each breach will result in one administrative fine) criticised in the mentioned judgment is envisaged.

Repeated fixed-term contracts of academics: Austrian law includes a specific legal ground for repeated fixed term contracts at Austrian universities. Following the CJEU’s judgment in C-274/18, Schuch-Ghannadan, there is an understanding that the current legal provisions should be amended, and that better career opportunities for young academics and researchers should be created.

Sources:
The government programme is available [here](#).
A press article of ‘Der Standard’ from 02 January is available [here](#).
Belgium

Summary

(I) To join a derogating scheme of unemployment benefits with a company supplement at the age of 59 years, a sectoral collective bargaining agreement is necessary, in addition to the collective agreements concluded in the National Labour Council (hereinafter NLC).

(II) Wages have been indexed for 2020.

1 National Legislation

1.1 Collective bargaining

The federal government has resigned and Parliament members have not been very active, leading to no legislative activity in the month of December 2019. There is no new federal government yet. The social partners have concluded some important intersectoral collective bargaining agreements for the entire branch of private industry.

A number of collective bargaining agreements (CBAs) were concluded in the National Labour Council (hereinafter NLC) at the meeting on 17 December 2019 regarding the scheme of unemployment benefits with an employer top up. The two CBAs relate to the Belgian ‘pre-pension’ scheme after a long professional career, which is in fact a special unemployment benefits scheme:

- Collective Bargaining Agreement of 17 December 2019 No. 144 establishing for 2019 and 2020 the procedure for implementation and the conditions for granting a company supplement under the unemployment scheme for certain older workers with long careers who are made redundant and who are employed in an industry that is not part of an established joint committee;

- Collective Labour Agreement of 17 December 2019 No. 145 laying down for 2021 and 2022 the procedure for implementing and specifying the conditions for granting a company supplement under the unemployment benefit scheme for certain older workers with long careers who are made redundant and are employed in a sector not covered by an established joint committee.

The standard requirements for benefitting from this unemployment benefits scheme with a company allowance is that the employee must be 62 years and must have had a professional career of 40 years. Employees who have been dismissed and who have had a career of at least 40 years can join an unemployment benefits scheme with a company allowance from the age of 59 until 30 June 2021. This so-called derogatory unemployment benefits scheme with a company allowance for long-career workers is, in principle, provided for in the Royal Decree of 03 May 2007 on unemployment benefits schemes with a company allowance. The Royal Decree covers the years 2019-2020 and the first six months of 2021 and is elaborated in collective bargaining agreements concluded in the National Labour Council, which were declared universally binding by the royal decree.

For an employee to be able to join a derogating scheme at the age of 59, a sectoral collective bargaining agreement is required in addition to the collective bargaining agreements concluded in the National Labour Council. The Royal Decree of 03 May 2007 on the unemployment benefits scheme with a company allowance prescribes that the age of 59 years only applies if a collective bargaining agreement has been concluded in the joint committee covering the employee, and that it has been declared universally binding by royal decree, explicitly provides that the general collective bargaining
agreement adopted in the National Labour Council must be applied to the collective bargaining.

This means that workers employed in an industry that is not subject to an established joint committee cannot enter the so-called derogatory unemployment benefits scheme with a company allowance system at the age of 59 because the required sectoral collective bargaining agreement cannot be concluded.

To remedy this problem, two collective bargaining agreements were concluded in the National Labour Council allowing workers and employers from such sectors to join such derogatory schemes from the age of 59.

However, both collective bargaining agreements have no direct effect. The employers concerned must implement the collective bargaining agreements by way of accession to the collective bargaining agreement. Accession may take the form of a collective bargaining agreement, an act of accession or an amendment to the labour regulations at company level. The collective agreements specify in Chapter III how accession is to take place.

It is noteworthy that the two collective bargaining agreements only apply to employers and employees in a sector of activity that is not covered by an established joint committee and do not apply if the established joint committee does not function. This is the case in Collective Bargaining Agreements No. 130 and No 138, which contain a similar supplementary unemployment scheme for night workers and construction workers who are unable to work.

1.2 Wages

An adjustment was introduced as of 1 January 2020 of the amounts of wages determined by the Law of 03 July 1978 on employment contracts to the general index of conventional salaries for white-collar workers according Article 131 of this Law ('Moniteur belge' 27 November 2019).

On 01 January 2020, the conventional wage provided for in the Employment Contracts Act for white collar workers will be indexed as follows:

- EUR 16 100 will become EUR 35 761 in 2020 (compared to EUR 34 819 in 2019);
- EUR 32 200 will become EUR 71 523 in 2020 (compared to EUR 69 639 in 2019).

The annual wage limits are relevant for the regulation of the training clause (Article 22a Employment Contracts Law), the non-competition clause (Articles 65 and 104) and the arbitration clause (Article 69).

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU, joined cases C-609/17 and C-610/17, 19 November 2019, TSN

This CJEU ruling was already commentated on in the previous Flash Report of November 2019.
4 Other Relevant Information

Nothing to report.
Bulgaria

Summary
The legal acts raising the minimum wage and regulating religious holidays have been amended.

1 National Legislation
1.1 Minimum wage
The Council of Ministers adopted Ordinance No. 350 of 19 December 2019 on Determination the Minimum Wage for the Country (State Gazette No. 101 of 27 December 2019). Since 01 January 2020, the minimum monthly wage is BGN 610 (EUR 305).

1.2 Religious holidays
The Council of Ministers adopted Decision No. 798 of 27 December 2019 on Determination of Religious Holidays of the Religions other than Eastern Orthodox Christianity (State Gazette No. 102 of 31 December 2019).

2 Court Rulings
Nothing to report.

3 Implications of CJEU Rulings and ECHR
3.1 Annual leave
CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN
Pursuant to Article 155 (4) of the Labour Code, the amount of basic paid annual leave shall be no less than 20 working days. Certain categories of employees, depending on the special nature of work, are entitled to extended, paid annual leave, which includes the leave covered by Paragraph (4). The categories of such employees and the minimum amount of such leave shall be specified in an ordinance of the Council of Ministers (Article 155 (6)). Under Article 156a of the Labour Code, longer leaves may be agreed in a collective agreement, as well as between the parties to an employment relationship. In both cases, the legal regulation of paid annual leave is equal.

In particular, under Article 175 of the Labour Code, where the employee is granted another type of paid or unpaid leave while she is on paid annual leave, the use of that paid annual leave shall, upon the worker’s request, be deemed to have been interrupted and the balance can be used at a later point agreed between the worker and the employer.

Interruption of Use of Leave:

Article 175
( amended and supplemented, SG No. 100/1992)
(1) (2) Beyond the cases under the foregoing paragraph, the leave of the worker or employee may be interrupted by mutual consent of the parties expressed in writing.
Postponement of Use of Leave:

**Article 176**


(1) The use of paid annual leave may be postponed for the following calendar year by:

1. the employer - for important production reasons under the condition of Article 173(5), sentence three;
2. the worker or employee - by using an alternative type of leave or upon his request with the consent of the employer.

(2) If the leave was postponed or was not used by the end of the calendar year to which it refers, the employer must ensure it is used in the next calendar year, but no later than six months from the end of that calendar year in which the leave is due.

(3) In case the employer has not authorised the use of leave in the cases and within the terms under Paragraph 2, the worker or employee would be entitled to determine the time of its use by notifying the employer thereof in writing at least 14 days in advance.

Expiry of the entitlement to use leave:

**Article 176a**

(New, SG No. 18/2011)

(1) If the paid annual leave or any part thereof was not used within two years from the end of the year in which it was used, irrespective of the reason, the right of the use thereof shall expire with the lapse of time.

(2) (Amended, SG No. 54/2015, effective 17 July 2015) If the paid annual leave was postponed under the terms and procedure of Article 176(1), the right of the worker or employee to use it shall expire with the lapse of time upon the expiry of two years as of the end of the year in which the reason to not use it would have ceased to exist.

4 **Other relevant information**

Nothing to report.
Croatia

Summary
(I) The new Firefighting Act contains a number of provisions related to the employment protection of firefighters as well as their social security protection.

(II) Based on the Occupational Health and Safety Act, the Minister of Labour and Pension System has issued new regulations on the performance of occupational health and safety activities.

(III) The Minister of Labour and Pension System has issued the Decision on Minimum Daily Wage for Seasonal Workers in Agriculture for 2020. The social partners have agreed on a gradual raise of the salaries of civil servants and employees in the state administration.

(IV) The strike of teachers employed in public elementary and high schools that lasted more than a month has ended. Their salaries have been raised.

1 National Legislation

1.1 The Firefighting Act
The new Firefighting Act has been adopted (Official Gazette No. 125/2019). It replaces the previous Firefighting Act (Official Gazette Nos. 106/1999, 117/2001, 36/2002, 96/2003, 139/2004, 174/2004, 38/2009, 80/2010). Due to the number of amendments to the Firefighting Act of 1999 and its complexity, a new Act had to be adopted. The new Firefighting Act contains a number of provisions related to the employment protection of firefighters as well as their social security protection (health care and pension insurance). Apart from their employment conditions, it regulates the organisation of their work, the termination of their employment contract, the rights of the family members in case of death, the firefighter's rights in case of injury, annual leave, strikes, trade union membership, classification of jobs, damages, salaries, occupation health and safety, etc. (Articles 51-86).

1.2 Amendment to the Government Regulation on job titles and levels of complexity of jobs in the public sector
The amendment to the Government Regulation on Job Titles and Levels of Complexity of Jobs in the Public Sector is the result of the strike of teachers in public elementary and high schools. One of their demands was a wage raise based on the level of complexity of their jobs. For more details, see section 4.1. below.

1.3 Regulations on performing occupational health and safety activities
Based on the Occupational Health and Safety Act, the Minister of Labour and Pension System has issued new regulations on performing occupational health and safety activities (Official Gazette No. 126/2019). They regulate the obligations of employers towards health and safety experts, which differ depending on the number of employees employed by the employer and the risks involved in the performance of work-related tasks. The regulations replace the previous regulations on performing occupational health and safety activities (Official Gazette Nos. 112/2014, 43/2015, 72/2015, 140/2015). Two novelties have been introduced in the new regulations on performing occupational health and safety activities:
When, in case of justified reasons, an employer uses the services of the expert on occupational health and safety, there is no longer any obligation to retain the records and deliver them to the Institute for the Improvement of Occupational Health and Safety;

If the employer employs up to 49 employees, the occupational health and safety tasks can be performed by the employer or by the person (s)he authorises instead of an expert (however, the authorised person needs to fulfil the conditions established in Article 4 of the regulations on performing occupational health and safety activities).

1.4. Daily wage for seasonal workers in agriculture
The Minister of Labour and Pension System has issued the Decision on the Minimum Daily Wage for Seasonal Workers in agriculture in 2020 (Official Gazette No. 129/2019). It amounts to HRK 93.25 (EUR 12.53). This is a net wage. There is no requirement to pay social security contributions, as they are already paid in advance by purchasing a voucher.

2 Court Rulings
Nothing to report.

3 Implications of CJEU Rulings and ECHR
3.1 Annual leave
CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN
In the joined cases C-609/17 and C-610/17, the CJEU ruled that the Finnish law was in line with Article 7(1) of the Directive 2003/88/EC. The collective agreements provided for days of paid annual leave which exceeded the minimum period of 4 weeks but excluded the carrying over of those days of leave in case of illness. Since the social partners are entitled to negotiate and provide workers with rights to additional days of paid annual leave that exceed the minimum period of 4 weeks, it is up to the national law to lay down the conditions for carrying over such additional right in the event of illness.

In Croatia, the minimum duration of annual leave is regulated in Article 77 of the Labour Act of 2014 (as amended in 2017 and 2019). The employee is entitled to annual leave of at least four weeks per calendar year: minors and employees engaged in work involving exposure to harmful materials despite the implementation of health and safety at work protection measures is entitled to at least five weeks of annual leave. A longer period may be defined by collective agreement, agreements between the works council and the employer, work regulations or employment contracts.

According to Article 84(4) of the Labour Act, the employee is entitled to use her annual leave or a share thereof that was either interrupted or unused in the year it was acquired due to illness or maternity leave, parental or adoption leave, or leave to take care of a child with serious developmental disabilities, upon returning to work, and by 30 June of the following calendar year, at the latest.

The national law does not provide for any exceptions to the rule on carrying over unused days of annual leave and does not differentiate in this regard between days of annual leave guaranteed by the law or additional days provided for by other sources of law (such as collective agreements). It can be concluded that Croatian law in this context is more favourable for employees than the EU law.
4 Other relevant information

4.1 The strike of teachers in public elementary and high schools has ended

The strike of teachers employed in public elementary and high schools that lasted more than a month has ended. Their salaries have been raised. The Government of the Republic of Croatia and respective trade unions have agreed on a gradual raise of teachers’ wages by concluding the agreement, which is annexed to the collective agreements already concluded for employees employed in elementary schools, high schools and in science and higher education (Official Gazette No. 122/2019).

4.2 Collective agreement in the private health care sector

The collective agreement in the private health care sector has been concluded between the social partners for a period of five years.

4.3 Raise of salaries in the public sector

The social partners have agreed on gradual pay raise of civil servants and employees in the state administration by issuing Annex II to the collective agreement for civil servants and employees in the state administration (Official Gazette No. 119/2019).
Cyprus

Summary
Nothing to report.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Annual leave

CJEU, joined cases C-609/17 and C-610/17, 19 November 2019

This is a case of a reference for a preliminary ruling to the Grand Chamber to rule on social policy in accordance with Article 153 TFEU on the minimum safety and health requirements for the organisation of working time and Directive 2003/88/EC on the right to paid annual leave of at least 4 weeks (Article 7) and on the provisions of national legislation and collective agreements that are more favourable to the protection of the safety and health of workers (Article 15). Article 31(2) of the Charter of Fundamental Rights of the European Union and Article 51(1) of the Charter of Fundamental Rights are also of relevance, where the Charter does not apply and where there is no implementation of EU law for the purposes of EU law. The issue specifically in question related to workers that became incapacitated for work during a period of paid annual leave due to illness and the refusal of the employer to carry over that leave, where such carrying over does not reduce the actual duration of the employee’s paid annual leave below four weeks. In cases C-609/17 and C-610/17, the referring court, in essence, asked whether Article 7(1) of Directive 2003/88 is to be interpreted as precluding national rules or collective agreements which provide for the granting of days of paid annual leave that exceed the minimum period of four weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness. The Court found that firstly, Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave that exceed the minimum period of four weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness. Secondly, Article 31(2) of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 51(1) thereof, must be interpreted as meaning that it is not intended to apply where such national rules or collective agreements exist.

This case may have some implications for Cypriot law. Annual leave is regulated by the Organisation Working Time Law (hereinafter OWTL) of 2002, Law 63(Ι)/2002, Article 8.2 repeats the wording of Article 7 of Directive 2003/88/EC on paid annual leave. On the webpages of the Social Security Services and of law firms, an “Annual Holidays with Pay Law of 1967” (No. 8/1967) is mentioned. The 1967 Law as amended is still the main law in force and regulates workers’ right to paid annual leave (the last legislative amendment 42(I)/2011 was introduced in 2011). It must be interpreted in the light of

Paid annual leave of 20 days for a five-day work week and 24 for a six-day work week is acquired when the employee has worked for a total of 48 weeks (section 5.1 of the 1967 Act); for the first year of employment, the employee will be entitled to pro rata paid leave for the period she has worked (section 5.3, 8/1967). However, the right to paid leave is only acquired after 13 weeks of employment (s. 5.3, 8/1967).

The employee acquires annual leave during a period of sick leave or other periods of temporary incapacity for work or absence. Annual leave may be transferred to a later period than that for which the leave was obtained only if agreed with the employer in accordance with section 7.2 of Law, 8/1967. The carry-over period in case the worker cannot use his annual leave in the reference year has a two-year maximum (section 7.2 of Law 8/1967). It is questionable whether the right to accumulate and transfer paid annual leave is compatible with EU law where the employee is prevented from taking leave due to sick leave with a long-term illness (see Yiannakourou, 2016, p. 198-199, citing the CJEU cases of Francisco Vicente Pereda v Madrid Movilidad SA, C-277/08 and the joined cases of Gerhard Schultz-Hoff (C-350/06) v Deutsche Rentenversicherung Bund, and Mrs C. Stringer and Others (C-520/06) v Her Majesty’s Revenue and Customs.); however, the ruling in the joined cases C 609/17 and C 610/17 may be construed as leaving such matters to be settled at national level.

4 Other relevant information

Nothing to report.
Czech Republic

Summary

(I) The government regulation on the adjustment of compensation in cases of loss of earnings following the end of a period of temporary incapacity for work caused by a work accident and/or occupational disease and on the adjustment of compensation for survivors pursuant to labour law regulations has been adopted.

(II) The government regulation amending Government Decree No. 567/2006 Coll., on minimum wage, the lowest levels of guaranteed wage, the determination of precarious working conditions and, on the amount of allowance for the performance of work under precarious working conditions, has been issued.

(III) The Ministerial Decree on the adjustment of basic allowance rates for the use of motor vehicles as well as for meals, and for determining the average price of fuel for the purpose of providing travel expenses, has been passed.

(IV) The Ministry of Labour and Social Affairs has published an announcement on the average salary in the national economy for the 1st to the 3rd quarters of 2019 for the purposes of the act on employment.

1 National Legislation

1.1 Compensation for work accidents

Government Regulation No. 321/2019 Coll., on the adjustment of compensation provided in case of loss of earnings following the end of a period of temporary incapacity for work caused by a work accident and/or occupational disease and on the adjustment of compensation for heirs pursuant to labour law regulations, has been published.

The Regulation governs the calculation of the following types of compensation:

- compensation for loss of earnings following the end of a period of temporary incapacity for work caused by a work accident and/or an occupational disease;
- compensation for heirs (provided they are eligible heirs of employees).

The amount of compensation is calculated based on the amount of average earnings. For the purposes of the calculation, the rate of valorisation of the employee's average earnings is adjusted at the end of each year – the amount of average earnings shall now be increased by 5.2 per cent and by CZK 151.

The Regulation was published on 06 December 2019 and comes into effect on 01 January 2020.

1.2 Minimum Wage

The Government Regulation amending Government Regulation No. 567/2006 Coll., on minimum wage, the lowest levels of guaranteed wage, the determination of precarious working conditions, and on the amount of allowance for the performance of work under precarious working conditions.

As of 01 January 2020, the minimum wage will be increased. The Government Regulation has already been approved. It sets the monthly minimum wage at CZK 14 600 and the hourly minimum wage at CZK 87.30 (it was CZK 13 350 and CZK 79.80 in 2019).

The minimum wage applies to employees who carry out work both on the basis of an
employment contract as well as agreements to perform work and to complete a project.

In addition to the basic minimum wage, there are eight categories of higher guaranteed wages which are set depending on the specific type of work. The guaranteed wage applies to employees who only perform work on the basis of an employment contract. The guaranteed wage is determined by taking into account the complexity, level of responsibility and arduousness of the work being performed so that a maximum increase equals at least twice the lowest level of guaranteed wage. Naturally, the lowest level of guaranteed wage cannot be lower than the amount determined as the basic minimum wage. As of 01 January 2020, the amount of guaranteed wages are adjusted by the same Government Regulation in this way:

<table>
<thead>
<tr>
<th>Work category</th>
<th>Guaranteed hourly minimum wage in CZK (based on the 40 regular weekly working hours)</th>
<th>Guaranteed monthly minimum wage in CZK</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. (e.g.: washing dishes, needlework)</td>
<td>79.80</td>
<td>13 350</td>
</tr>
<tr>
<td>2. (e.g.: digging, animal care, medical orderly, garbage collecting, driving a vehicle under 3.5 metric tonnes)</td>
<td>88.10</td>
<td>14 740</td>
</tr>
<tr>
<td>3. (e.g.: driving a vehicle over 3.5 metric tonnes, cashier, walling partitions, preparing difficult meals as a chef)</td>
<td>97.30</td>
<td>16 280</td>
</tr>
<tr>
<td>4. (e.g.: independent accounting, professional hairdresser)</td>
<td>107.40</td>
<td>17 970</td>
</tr>
<tr>
<td>5. (e.g.: wage and personnel agenda)</td>
<td>118.60</td>
<td>19 850</td>
</tr>
<tr>
<td>6. (e.g.: preparation of the accounting methodology)</td>
<td>130.90</td>
<td>21 900</td>
</tr>
<tr>
<td>7. (e.g.: independent solution of research problems)</td>
<td>144.50</td>
<td>24 180</td>
</tr>
<tr>
<td>8. (e.g.: setting a strategy of a firm)</td>
<td>159.60</td>
<td>26 700</td>
</tr>
</tbody>
</table>

The Government Regulation was published on 20 December 2019 and comes into effect on 01 January 2020.
1.3 Travel allowances

Ministerial Decree No. 358/2019 Coll., on the adjustment of rates of the basic allowance for using motor vehicles and meal allowances, and on determining the average price of fuel for the purpose of providing travel expenses, has been published.

The Ministerial Decree has amended the rates for fuel compensation and the amount of domestic catering fee compensation. Furthermore, it added a new fuel type to be compensated, which is electricity.

The average fuel prices for the purposes of providing travel allowances in 2020 are now as follows:

- Gasoline (95 oct.) – CZK 32.00 per litre;
- Gasoline (98 oct.) – CZK 36.00 per litre;
- Diesel fuel – CZK 31.80 per litre;
- Electricity – CZK 4.80 per 1 kWh.

The basic compensation rates for the use of motor vehicles is now as follows:

- for cars - CZK 4.20 per kilometre;
- for one-track vehicles and three-wheelers – CZK 1.10 per kilometre.

The minimum rates of domestic catering fees provided to employees for every calendar day of a domestic business trip have slightly increased and are as follows:

- business trip lasting from 5 to 12 hours – CZK 87;
- business trip lasting from 12 up to 18 hours – CZK 131;
- business trip lasting for more than 18 hours – CZK 206.

The Ministerial Decree was published on 31 December 2019 and comes into effect on 01 January 2020.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Annual leave

CJEU joined Cases C-609/17 and C-610/17, 19 November 2019, TSN

The CJEU ruled that

"Directive 2003/88 must be interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness."

The CJEU stated that Directive 2003/88/EC only applies to the minimum annual leave period of 4 weeks and that the extended period of annual leave falls under the scope of national legislation.

The issues addressed by the CJEU ruling are regulated in Sec 218 of Act No. 262/2006 Coll. the Labour Code (hereinafter the Labour Code). This Section provides that any annual leave (that exceeds the statutory minimum) may be carried over if it cannot be taken in the reference calendar year due to serious operational reasons on the part of
the employer or impediments to work on the part of the employee. In such a case, the employer is required to order the employee to take the remaining old annual leave until the end of the following calendar year, unless the employee cannot due to a temporary incapacity for work of the employee (illness) or maternity/parental leave. In that case, the remaining leave must be taken on a date following the end of the temporary incapacity for work/maternity/parental leave.

The CJEU ruling has no implications within the context of national legislation since it allows the carrying over of extended annual leave.

4 Other relevant information

4.1 Average monthly salary

Announcement No. 346/2019 Coll. of the Ministry of Labour and Social Affairs of 16 December 2019, announcing the average salary in the national economy for the 1st to 3rd quarters of 2019 for the purposes of the Act on Employment, has been published. The Ministry of Labour and Social Affairs regularly publishes the average salary in the national economy for respective quarters for the purposes of Act No. 435/2004 Coll. on employment. The average salary in the national economy for the 1st to 3rd quarters of 2019 was CZK 33 429 (in 2018, it was CZK 31 225).

The average salary in the national economy for the 1st to 3rd quarters of 2019 has been important for the calculation of:

- The maximum amount of unemployment benefits;
- The amount of payment to meet the mandatory share of disabled employees;
- The contribution on the establishment of one socially beneficial job, etc.

The Announcement was published on 20 December 2019 and came into effect on the same day.
Denmark

Summary

(I) Industrial arbitration repeats the principle that a posting of undertaking can be assessed as a genuine posting or as workers hired in Denmark on the basis of the evidence, including contracts and the factual circumstances, and that this determines the right to remuneration and a potential breach of contract by the receiving entity.

(II) The Supreme Court clarified that it is the prerogative of the Labour Court and not the ordinary courts, to assess whether a collective agreement fulfills the criteria for derogating from the principle of equal treatment of temporary agency workers, including any requirements under EU law.

(III) The Supreme Court upholds its line of reasoning relating to fixed-term workers that meet the criteria of performing comparable work to permanently employed workers. The fact that some job functions between permanently employed and fixed-term workers who hold the same title differ, is sufficient to not meet the criteria of being comparable work.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Location of employment

*Industrial Arbitration, No. FV 2019.0100, 03 December 2019*

Latvian workers worked at a Danish construction site. The question was whether the Latvian workers had genuinely been posted by a Latvian posting entity, or were working as hired workers under the instruction of the Danish hiring entity, and in this respect, whether the workers had received proper salaries under the collective agreement applicable to the Danish receiving entity.

Based on the evidence, including the correspondence between the posting and the receiving entity, a lack of subcontracting contracts and the testimonials of the workers and supervisor at the Danish receiving plant, the arbitrator determined that the Latvian workers were actually hired by the receiving entity. The workers had performed work under the instruction and supervision of the Danish receiving company, and no subcontractor contracts had been presented to document the relationship between the receiving and the Latvian entity. Therefore, the receiving entity was considered to have hired the Latvian workers, and the receiving entity was required to remunerate the Latvian workers in accordance with their collective agreements for construction work. The receiving entity was fined for breach of agreement (underpayment). The fine was calculated on the basis of the difference between the actually paid salaries and the remuneration level established in the collective agreement. The fine was set at DKK 700 000 (about EUR 95 000).

The ruling is in line with earlier case law on the status of mobile workers performing work in Denmark and the topic of underpayment of mobile workers according to the collective agreement in force at the receiving entity.
2.2 Temporary Agency Work

Supreme Court, No. BS-13514/2019-HJR, 17 December 2019

The material question of the case concerned the principle of equal treatment of temporary agency workers, in particular the right to full salaries during sick leave as provided for in a collective agreement for salaried employees, the requirements for derogation by collective agreement to the detriment of the worker and in particular whether the state of law, including the collective agreement in question, was in line with the requirements of EU law.

The formal question reviewed by the Court was whether it was a prerogative of the Labour Court, or whether it should be reviewed by ordinary courts.

The Temporary Agency Work Act, section 3 (5) provides that the principle of equal treatment can be derogated from by collective agreement, if certain conditions are met. The parties to the agreement must be the most representative, and the agreement must apply nationwide. In addition, the agreement must provide, that the general protection of temporary agency workers is respected. The material disagreement concerned whether this last criteria had been met by the collective agreement in question, including whether this protection corresponds to the requirements at EU level, the Directive on Temporary Agency Work.

According to the Act on Temporary Agency Work, section 3 (7) and the Act on a Labour Court, section 9 (1) No. 9, the Labour Court has sole competence to decide whether all criteria in section 3(5) of the Act on Temporary Agency Work have been met. Although not expressly stated, this delegation of competency was found to also include general questions of derogation of the Temporary Agency Act by collective agreement, including the question of interpreting the protection in light of EU law and the Directive on Temporary Agency Work.

For this reason, the Supreme Court ruled that the Labour Court has sole competence to review whether the collective agreement on salaried employees fulfills the protection of temporary agency workers as provided for in EU law.

The ruling is in line with a number of earlier rulings, where ordinary courts have dismissed cases on matters concerning the interpretation of collective agreements, as this has been deemed the prerogative of the Labour Court in accordance with statutory act. This includes cases whether collective agreements provide a level of protection that is in line with EU law.

2.3 Fixed-term work

Supreme Court, No. BS-39382/2018-HJR, 17 December 2019

The case examined whether fixed-term workers had been treated unfavourably compared to permanent employees, and in particular whether the permanent employees were ‘comparable’, as the fixed-term employees were not entitled to paid sick leave or to additional paid annual leave.

The Act on Fixed-term Work, section 3(4) provides that a comparable worker is a permanently employed worker in the same entity providing the same or similar work, taking into consideration her qualifications and skills.

The fixed-term workers were employed as assistants to surveyors (measuring technicians). The assistants did not provide the same or similar work as the permanently employed special workers working as janitors in the entity. The assistants also did not provide the same or similar work as the permanently employed assistants in the entity, as the permanently employed assistants had a number of responsibilities and tasks in addition to the tasks being carried out by the fixed-term assistants. That is, the fixed-
term assistants did not perform the same or similar work as the permanent employees in the entity, and the principle of equal treatment had not been breached.

The fact that the fixed-term assistants and the permanent employees were covered by the same collective agreement was not sufficient to conclude that the work performed was of the same or similar nature.

The ruling is in line with earlier case law in Denmark on the working conditions of fixed-term employees and the assessment of the ‘same or similar work’. This involved teaching and academic positions, where it was quite evident that the fixed-term and the permanent workers did not perform the same or similar work with a view to their skills and qualifications, including education. See Supreme Court ruling U 2013.448 H (teaching positions), and Supreme Court ruling U 2018.2268 H (academic positions).

The new ruling continues along this line of reasoning for positions outside academia and education as well, and adheres to the same principles provided in earlier case law. It suffices for work to be deemed not comparable if the job functions of the permanent employees differ only to some degree from those being performed by the fixed-term workers. The Supreme Court in this ruling did not lower the threshold for the comparison, but continued along the lines that the work being performed must be very similar for both groups of workers to be deemed comparable.

3 Implications of CJEU Rulings and ECHR

3.1 Annual leave

*CJEU ruling joined cases C-609/17 and C-610/17*

Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave that exceed the minimum period of four weeks as laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.

The Finnish regulation on annual leave provides employees with paid days of annual leave that exceed the minimum period of four weeks laid down in the Working Time Directive 2003/88 Article 7(1). The days exceeding four weeks of paid annual leave cannot be replaced with new paid leave days in case of illness during annual leave.

The CJEU found that the Working Time Directive did not preclude national laws that reject the replacement of annual leave days exceeding the mandatory four weeks of paid leave that are interrupted by sick leave.

The Danish Holiday Act gives employees a right to 5 weeks of paid annual leave. Until 2012, employees who became ill after the commencement of their annual leave period, i.e. during their holidays, were not entitled to replace those days of paid leave, cf. then section 13 of the Holiday Act. The act was amended in 1 May 2012, cf. Amendment Act no 377 of 28 April 2012, with a view to bringing the Danish law in line with the EU acquis following the CJEU *Pereda* ruling.

The amendment act in 2012 stipulated in the new subsections 2-5 of section 13 of the Holiday Act that employees who became ill after the commencement of their annual leave period were entitled to replacement days of paid leave. As the Danish state of law gives employees paid leave in excess of the minimum four weeks of paid annual leave as provided in the Working Time Directive, Parliament chose a solution aligning the right of employees with the minimum rights of the Working time Directive. Employees are entitled to the replacement of paid annual leave days up to four weeks per year in case of interruption, but not for the 5th week of paid annual leave that follows from the Danish
legislation. The Parliament Committee considered this solution to be in line with the EU minimum rights to employees, cf. preliminary works to section 1.4 of Amendment Act 377 of 28 April 2012.

In 2018, the Holiday Act underwent a major change, resulting in a new Act on Holidays, Act No. 60 of 30 January 2018, which entered into force on 1 September 2020. In the new Holiday Act, section 12 upholds the right to the replacement of leave days in a verbatim version of the 2012 amendment. The reasoning and explanations were repeated in the preliminary works to the new Holiday Act.

The current Danish state of law is thus similar to that of the Finnish legislation reviewed by the CJEU. The CJEU ruling confirms that it is in line with EU law, i.e. that a right to replacement days of paid annual leave must be in line with the minimum requirements of the Working Time Directive to fulfill the requirements of EU law, and the right to the replacement of annual leave days does not have to be applied to the excess days of paid national leave provided by national regulation.

4 Other relevant information

Nothing to report.
Estonia

Summary
The Ministry of Social Affairs has prepared amendments to the Posted Workers Act to transpose the requirements of Directive 2018/957 (EU).

1 National Legislation
1.1 Posting of workers
The working conditions of posted workers in Estonia are regulated in the Working Conditions of Employees Posted to Estonia Act (hereinafter, the Posted Workers Act). This Act has been amended several times to ensure implementation of the EU directives on the working conditions of posted workers. The Estonian Ministry of Social Affairs has prepared a draft to amend the Posted Workers Act to ensure implementation of the Directive 2018/957 (EU). The possible amendments will come into force on 30 July 2020.

The amendments to the Posted Workers Act define the notion of posting in more detail. Among others, agency workers sent to Estonia should be considered posted workers. The draft also amends the applicable employment conditions. Rather than guaranteeing minimum wage a just wage must be guaranteed. There is an obligation to compensate all costs related to the posting. The draft foresees the possibility of all Estonian labour legislation to become applicable after 12 to 18 months of posting.

The amendments clarify which data must be forwarded to the labour inspectorate. Moreover, the fines for violating the requirements of the law will be unified.

2 Court Rulings
Nothing to report.

3 Implications of CJEU Rulings and ECHR
3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

The two cases concerned the application of Directive 2003/88/EC and the Fundamental Rights Charter of the EU. The main question concerned the minimum requirements of the annual paid leave and cases in which the employee is not in a position to use her annual paid leave. According to the CJEU, the directive only stipulates the minimum requirements for paid annual leave. Any aspect that is not included within the scope of the directive (e.g. more favourable conditions) shall be determined by national legislation and are not regulated in the directive. The implications of the cases in Estonian are modest. The Estonian Employment Contracts Act envisions a minimum duration of paid annual leave, which cannot be less than 28 calendar days per year. There is no specific period of time during which the leave must be taken. There is only a requirement that at least 14 calendar days of leave must be taken together.

In case an employee cannot use her paid annual leave, e.g. due to the illness, she can cancel the leave for the period of illness and has the right to continue her leave immediately following the end of her illness or during another period agreed with the employee. The same principle also applies when the employee’s total annual leave is
longer than 28 calendar days or when additional annual leave days are agreed in an employment contract or collective agreement.

4 Other relevant information

4.1 Negotiations on monthly minimum wage

The minimum wage negotiations are still ongoing.
Flash Report 12/2019

Finland

Summary
Transportation benefits for night workers have been regulated.

1 National Legislation

1.1 Working time

The new Working Hours Act, which came into force on 1.1.2020, has been amended even before it entered into force. The amendment (government proposal 86/2019) concerns the transportation of night workers.

The employer is required to offer and organise the transportation for night workers if:

- the employee needs transportation, and the daily commute is ordinary
- no public transport is available,
- the employee has no possibility to use a car or relevant transport.

The employer can collect a fee equal to the public transport fee from the employer.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Annual leave

CJEU, Joined Cases C-609/17 and C-610/17, 19. November 2019

The two cases are from Finland. According to the ruling of the ECJ Great Chamber, Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave that exceed the minimum period of four weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.

Article 31(2) of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 51(1) thereof, must be interpreted as meaning that it is not intended to apply where such national rules or collective agreements exist.

The ruling clarifies the interpretation of the Finnish legal situation. A number of collective agreements offer employees more than four weeks of paid annual leave, and the Annual Holidays Act also offers more than the mandatory four weeks.

There were different interpretations on whether these “extra” annual leave days must be transferred or carried over, if the employee falls ill when taking these “extra” days of annual leave. The ruling determines that no such obligation follows from the directive.

4 Other relevant information

Nothing to report.
France

Summary

(I) A decree has been adopted raising the minimum wage (SMIC) and the guaranteed minimum wage (MG).

(II) The Court of Cassation has ruled on fixed-term work, harassment, economic dismissal, employee monitoring and part-time work.

1 National Legislation

1.1 Minimum wage

Decree No. 2019-1387 of 18 December 2019 (JO 19 December) raises the hourly minimum wage from EUR 10.03 to EUR 10.15 (gross) from 01 January 2020 (i.e. EUR 1,539.42 monthly gross on a 35-hour week) and the guaranteed minimum wage from EUR 3.62 to EUR 3.65.

2 Court Rulings

2.1 Fixed-term contract

Labour Division (Chambre sociale) of the Court of Cassation, No. 18-11.989, 04 December 2019

As a reminder, ‘customary posts’ are among the grounds for resorting to fixed-term contracts: in certain sectors of activity (the list of which is laid down by decree or by an extended collective agreement), it is possible to resort to fixed-term contracts to fill posts for which it is customary to not conclude a permanent contract due to the nature of the activity and the temporary nature of the posts (Articles L. 1242-2 and D. 1242-1 of the Labour Code). This list includes professional sports, which was at the heart of the dispute submitted to the Court of Cassation.

In Case No. 18-11.989, a rugby player had been hired by a club under successive fixed-term contracts that were renewed by amendment, the last one expiring on 30 June 2013. The claimant’s employer informed him that he did not intend to continue the employment relationship beyond that date, so the employee filed a claim before the Labour Court for reclassification of his fixed-term contract into one of indefinite duration and for payment of various sums associated with his termination. According to the employer, the employment by its nature was temporary, since professional rugby clubs only employ professional players under contracts based on the duration of the sports season.

Following the position of the Court of Appeal, the Court of Cassation pointed out that:

"In the sectors of activity defined by decree or by means of an extended collective agreement, some of the jobs in question may be filled by fixed-term contracts when it is customary not to use a permanent contract because of the nature of the activity being carried out and the temporary nature of these jobs, and that successive fixed-term contracts may, in this case, be concluded with the same employee. The framework agreement on fixed-term work concluded on 18 March 1999, implemented by Directive 1999/70/EC of 28 June 1999, in its clauses 1 and 5, which is intended to prevent abuse resulting from the use of successive fixed-term contracts, requires verification that the use of successive fixed-term contracts is justified by objective reasons, that is, the existence of concrete elements establishing the temporary nature of the employment".
However, the employer merely stated that it was customary not to use fixed-term contracts in the professional sports sector, but did not produce any concrete and precise evidence that the employee’s employment was temporary in nature. Consequently, the employment relationship was reclassified as a permanent contract.

This solution is in line with the case law of the Court of Cassation which, on 24 January 2008, reversed its case law on this point, stating that in the case of successive fixed-term contracts, it is necessary to verify that such recourse is justified by objective reasons, i.e. by concrete and precise elements establishing the temporary nature of the employment (Cass. Soc, No. 06-43.040, 23 January 2008; Cass. Soc., No. 06-44.197, 23 January 2008).

Thus, the fact that the job held by the employee appears in the list in Article D. 1242-1 of the Labour Code is not sufficient to justify recourse to a fixed-term contract in the event of a succession of contracts with the same employee. It is also necessary, and will be up to the employer to demonstrate that the employee occupies a position that is temporary in nature.

It should be noted that this case concerned facts prior to the introduction of Law No. 2015-1541 of 27 November 2015, which amended Article L. 222-2-3 of the Sport Code by enshrining the principle that "in order to guarantee the fairness of competition, any contract by which a sports association or a company mentioned in Articles L. 122-2 and L. 122-12 ensures, in return for remuneration, the assistance of one of these employees, is a fixed-term contract".

The fixed-term contract is therefore the guiding principle in sports law, contrary to labour law where it must remain the exception.

«Mais attendu que s’il résulte de la combinaison des articles L. 122-1, L. 122-1-1 et D. 121-2 du code du travail, devenus articles L. 1242-1, L. 1242-2 et D. 1242-1 du même code, que dans les secteurs d’activité définis par décret ou par voie de convention ou d’accord collectif étendu, certains des emplois en relevant peuvent être pourvus par des contrats à durée déterminée lorsqu’il est d’usage constant de ne pas recourir à un contrat à durée indéterminée en raison de la nature de l’activité exercée et du caractère par nature temporaire de ces emplois, et que des contrats à durée déterminée successifs peuvent, en ce cas, être conclus avec le même salarié, l’accord-cadre sur le travail à durée déterminée conclu le 18 mars 1999, mis en œuvre par la directive n° 1999/70/CE du 28 juin 1999, en ses clauses 1 et 5, qui a pour objet de prévenir les abus résultant de l’utilisation de contrats à durée déterminée successifs, impose de vérifier que le recours à l’utilisation de contrats à durée déterminée successifs est justifié par des raisons objectives qui s’entendent de l’existence d’éléments concrets établissant le caractère par nature temporaire de l’emploi ;

Et attendu qu’ayant relevé que l’employeur se bornait à affirmer qu’il était d’usage de ne pas recourir au contrat à durée indéterminée dans le secteur du sport professionnel et ne produisait aux débats aucun élément concret et précis de nature à établir que le salarié exerçait un emploi par nature temporaire, la cour d’appel a pu en déduire que la requalification de la relation de travail en contrat à durée indéterminée devait être prononcée;»

2.2 Harassment

Labour Division (Chambre sociale) of the Court of Cassation, No. 18-10.551, 27 November 2019

An employee was dismissed by her employer for professional incompetence after having condemned the perpetration of acts of psychological harassment. In the present case,
the employee claimed that her employer had not conducted an internal investigation after she reported the harassment, thus depriving her of a procedure designed to shed light on the harassment.

As a reminder, an employer fails in its legal obligation to protect the health of its employees if the employer cannot prove that it has taken all preventive measures provided for by the Labour Code and all the immediate measures likely to put an end to the harassment as soon as the employer has been informed of the existence of facts likely to constitute psychological harassment (Cass. Soc., No. 14-19.702, 01 June 2016).

The Court of Appeal considered that since no harassment had been established by the employer, "the employer cannot be reproached for not having conducted an investigation and thus for having failed in its duty of security".

The Court of Cassation censured the judges on this point building on Articles L. 4121-1 and L. 4121-2 of the Labour Code, which require the employer to prevent occupational risks. According to the Court of Cassation, this obligation "is distinct from the prohibition of acts of psychological harassment instituted by Article L. 1152-1 of the Labour Code and is not to be confused with it".

The obligation to prevent harassment and the prohibition of acts of harassment are two separate obligations on the employer, which give rise to two distinct prejudices.

Consequently, failure to initiate an investigation following the disclosure of harassment by an employee is a breach of the employer’s obligation to prevent occupational risks that cause harm to the employee concerned, even in the absence of harassment.

In this case, the Court of Cassation moved further away from its case law. Prior to this decision, the employer failed in its obligation of security when an employee was a victim of harassment at the workplace, regardless of the measures taken by the company (Cass. Soc., No. 08-44.019, 03 February 2010).

«Sur le deuxième moyen:

Vu l'article L. 4121-1 du code du travail dans sa rédaction antérieure à l'ordonnance n° 2017-1389 du 22 septembre 2017 et l'article L. 4121-2 du même code dans sa rédaction antérieure à la loi n° 2016-1088 du 8 août 2016 ;

Attendu que l'obligation de prévention des risques professionnels, qui résulte des textes susvisés, est distincte de la prohibition des agissements de harcèlement moral instituée par l'article L. 1152-1 du code du travail et ne se confond pas avec elle ;

Attendu que pour débouter la salariée de sa demande de dommages-intérêts pour manquement à l'obligation de sécurité, l'arrêt retient qu'aucun agissement répété de harcèlement moral n'étant établi, il ne peut être reproché à l'employeur de ne pas avoir diligenté une enquête et par là-même d'avoir manqué à son obligation de sécurité ;

Qu'en statuant ainsi, la cour d'appel a violé les textes susvisés;»

2.3 Economic dismissal

Civil division (First Chamber) of the Court of Cassation, No. 18-17.874 18-17.875, 11 December 2019

In the present case, the turnover of a company had decreased by 7 per cent in 2013, the year of two disputed economic dismissals, but then increased again by 21 per cent in 2014. The two dismissed employees contested the grounds for dismissal.
As a reminder, economic difficulties shall be assessed on the date of termination of the contract and, more specifically, on the date of notification of the dismissal (Cass. Soc., No. 94-41.765, 12 December 1995). However, there is nothing to prevent the judges from relying on facts subsequent to the termination to assess the real and serious nature of the dismissal, which was the case in the present decision.

After noting that the letter of dismissal referred to a reorganisation linked to economic difficulties aggravated by the loss of two clients, which would result in a significant drop in turnover, the Court of Appeal noted that while the turnover had fallen in 2013 by approximately 7 per cent compared to the previous year, it then increased again by 21 per cent in 2014, that the company’s two main clients had continued to use its services and that the company’s losses had been particularly significant in 2013 due to a significant increase in payroll.

The Court of Cassation agreed with the Court of Appeal’s decision which verified the adequacy between the company’s economic situation and the measures affecting the employment envisaged by the employer and the rules that subsequent elements may be taken into account to assess the real and serious cause of an economic dismissal.

«Mais attendu que si le motif économique du licenciement doit s'apprécier à la date du licenciement, il peut être tenu compte d'éléments postérieurs pour cette appréciation;
Et attendu qu’après avoir relevé que la lettre de licenciement faisait état d'une réorganisation liée à des difficultés économiques aggravées par la perte de deux clients qui aura pour conséquence une chute significative du chiffre d'affaires, la cour d'appel a constaté que, si celui-ci avait fléchi en 2013 d'environ 7% par rapport à l'exercice précédent, il avait ensuite augmenté de 21% en 2014, que les deux principaux clients de la société avaient continué à recourir à ses prestations et que les pertes de la société avaient été particulièrement importantes en 2013 en raison d'un accroissement conséquent de la masse salariale ; qu'elle a ainsi vérifié l'adéquation entre la situation économique de l'entreprise et les mesures affectant l'emploi envisagées par l'employeur sans se substituer à ce dernier;»

2.4 Employee monitoring

2.4.1 Labour Division (Chambre sociale) of the Court of Cassation, No. 17-24.179, 11 December 2019

In the present case, an employee was dismissed for serious misconduct for allegedly breaking a cupboard located in the basement reserved for parking two-wheelers during a shift at a client company’s site.

In accordance with Article L.1222-4 of the Labour Code, “no information concerning an employee may be collected by a system that has not been brought to the employee's prior knowledge.”

By issuing a dismissal without real and serious cause, the Court of Appeal held that if an employer cannot implement a system for monitoring the employees' professional activity, which has not been brought to the prior knowledge of the employees, he may rely on evidence gathered by the system for monitoring the premises authorised by the competent authorities for reasons of safety and security of persons and property, the existence of which has been brought to the knowledge of all persons frequenting the site, including the employees themselves.

In deciding so, the Court of Cassation ruled that without finding whether the video surveillance system had been used to monitor the employee in the performance of his duties, the Court of Appeal deprived its decision of a legal basis.
«Vu l’article L.1224-4 du code du travail

(…)

Qu’en se déterminant ainsi, sans constater que le système de vidéo-surveillance avait été utilisé pour contrôler le salarié dans l’exercice de ses fonctions, la cour d’appel a privé sa décision de base légale ; »

2.4.2 Labour Division (Chambre sociale) of the Court of Cassation, No. 18-11.792, 11 December 2019

The employer, a credit institution, was using a traceability tool intended to control internal operations and procedures.

According to Article L.2312-38 of the Labour Code, the works council is informed and consulted, prior to the decision of implementation in the company, about the means or technology monitoring the activity of the employees.

In the present case, the Court of Cassation ruled that since the traceability tool intended for the monitoring of internal operations and procedures was also used to check whether the employee carried out consultations other than those of the customers in his portfolio, the employer should have informed and consulted the works council on the use of this device for this purpose. Otherwise, the documents resulting from this illicit means of evidence must be excluded from the claim.

«Mais attendu que selon l’article L. 2323-32 du code du travail, antérieur à la loi n° 2015-994 du 17 août 2015, le comité d’entreprise est informé et consulté, préalablement à la décision de mise en oeuvre dans l’entreprise, sur les moyens ou les techniques permettant un contrôle de l’activité des salariés ;

Et attendu qu’ayant constaté que l’outil de traçabilité GC45, destiné au contrôle des opérations et procédures internes, à la surveillance et la maîtrise des risques, permettait également de restituer l’ensemble des consultations effectuées par un employé et était utilisé par l’employeur afin de vérifier si le salarié procédait à des consultations autres que celles des clients de son portefeuille, la cour d’appel en a exactement déduit que l’employeur aurait dû informer et consulter le comité d’entreprise sur l’utilisation de ce dispositif à cette fin et qu’à défaut, il convenait d’écarter des débats les documents résultant de ce moyen de preuve illicite ;»

2.5 Part-time work

Labour Division (Chambre sociale) of the Court of Cassation, No. 18-12.643, 18 December 2019

A part-time employee brought an action before the Labour Court for the reclassification of the employment relationship as a full-time contract on the ground that no mention of the employee’s working hours was made in the employment contract.

As a reminder, in accordance with Article L. 3123-6 of the Labour Code, written contracts of part-time employees must mention the duration and distribution of working time between the days of the week or the weeks of the month. It follows from settled case law that the absence of a written record of working time and its distribution gives rise to a presumption of full-time employment (Cass. Soc., No. 97-44418, 02 February 2000) and that it is the responsibility of the employer who disputes this presumption to prove, on the one hand, the exact weekly or monthly duration of working time agreed upon and, on the other hand, that the employee was not placed in the position of being unable to foresee the pace at which he was to work and that he did not have to be at the employer’s disposal permanently (Cass. Soc., No. 13-20.627, 17 December 2014).
After noting that the employee’s part-time employment contract did not mention either the working hours or their distribution, the Court of Appeal, underpinned by the Court of Cassation, set aside the resulting presumption of full-time employment by finding that the employer had provided evidence of the precise working hours agreed upon and established that a highly flexible work organisation had been put in place, taking into account the employee’s family needs, so that the employee did not have to be at the employer’s disposal permanently.

«Mais attendu qu'après avoir relevé que le contrat de travail du 1er juillet 2009 ne mentionnait ni la durée du travail ni sa répartition, la cour d'appel a pu écarter la présomption d'emploi à temps complet qui en résultait en constatant, sans commettre la dénaturation alléguée et sans avoir à effectuer une recherche que ses constatations rendaient inopérante, que l'employeur rapportait la preuve de la durée exacte de travail convenue et établissait qu'avait été mise en place une organisation du travail d'une grande souplesse, tenant compte des impératifs familiaux de la salariée, de sorte que celle-ci n'avait pas à se tenir en permanence à sa disposition ; qu'elle a légalement justifié sa décision;»

3 Implications of CJEU Rulings and ECHR

3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

The organisation of paid leave in France lies within the employer's management prerogative. It is the employer's responsibility to ensure that employees actually take their leave before the end of the leave period, taking into account any absences and postponements. The period for taking paid leave must always include the period from 01 May to 31 October of each year, even when it is fixed by a collective agreement (c. trav. Articles L. 3141-13 and L. 3141-15). The paid annual leave that is covered by this 'period of taking leave' is the four weeks of main leave.

An employee who falls ill during annual leave is considered to be absent due to illness. She is subject to the latter's regime during her stoppage of work (maintenance of wages by the undertaking, etc.) (c. trav. Articles L. 1226-1 and D. 1226-1 to D. 1226-8).

Previously, leave not taken was simply accumulated (Cass. Soc., No. 93-44907, BC V No. 420, 04 December 1996). If the employee is unable to take paid annual leave during the year provided for by the Labour Code or a collective agreement (c. trav. Articles L. 3141-13 and L. 3141-15). The paid annual leave that is covered by this 'period of taking leave' is the four weeks of main leave.

An employee who falls ill during annual leave is considered to be absent due to illness. She is subject to the latter's regime during her stoppage of work (maintenance of wages by the undertaking, etc.) (c. trav. Articles L. 1226-1 and D. 1226-1 to D. 1226-8).

Previously, leave not taken was simply accumulated (Cass. Soc., No. 93-44907, BC V No. 420, 04 December 1996). If the employee is unable to take paid annual leave during the year provided for by the Labour Code or a collective agreement due to absence related to illness, an accident at work or an occupational disease, the paid leave acquired must be postponed until after the date on which the employee resumes work or, in the event of a break, be compensated (Cass. Soc., No. 17-23,650, 10 October 2018).

National legislation, a collective agreement or company practice may limit the carrying-over of paid leave. To be valid, this period must be 'substantially' longer than the reference period for which it is granted, for example, 15 months (CJEU case C-214/10, 22 November 2011), but not 9 months (CJEU case C-337/10, 03 May 2012).

The Labour Code does not provide for any maximum deferral period. In the absence of a valid period fixed in the undertaking, the judges do not have the power to fix one (Cass. Soc., No. 16-24022 FSPBRI, 21 September 2017).

However, the instruction of an undertaking fixing a deferral period of one year after which the right to leave is lost, does not establish a sufficient deferral period (Cass. Soc., No. 16-24022 FSPBRI, 21 September 2017).

In the event of a dispute, the judges require the employer to prove that he has done everything possible to ensure that the employee takes her leave (Cass. Soc. 13 June 2012, No. 11-10929, BC V No. 187). It is not up to the employee to prove that the employer made it impossible for him to take leave (Cass. Soc., No. 11-10929, BC V No.
187, 13 June 2012). The employer cannot limit itself to claiming that the employee ‘was not prevented’ from taking leave (Cass. Soc., No. 13-15467 D, 21 October 2014).

The Court of Cassation added that in France, the regulation also applies to legal (including the 5th week) or contractual leave, which is added to the four weeks guaranteed by European Union law, unless otherwise provided (Cass. Soc., No. 16-18898 FSPB, 21 September 2017).

Failing to prove diligence, the employer may be required to pay the employee an indemnity as compensation for leave not taken (Cass. Soc., No. 12-26155, BC V No. 289, 27 November 2013; Cass. Soc., No. 12-29324 D, 26 March 2014).

4 Other relevant information

Nothing to report.
Germany

Summary


(II) In a case that was decided by the State Labour Court Munich, a crowdworker did not qualify as an employee of the platform operator.

(III) According to the Higher Administrative Court Münster, an exceptional permit to employ workers on Sundays was illegal.

(IV) According to the Federal Labour Court, a worker whose dismissal protection lawsuit was rejected with final and binding effect is, in principle, not entitled to compensation for loss of earnings, even if a judgment of the ECtHR classified the termination as a breach of the European Convention on Human Rights.

(V) The Federal Government has set up an interdepartmental project group to develop approaches for good work in the platform economy.

(VI) The Federal Government is currently not planning any legal regulations for the industry beyond the Parcel Courier Protection Act.

1 National Legislation

1.1 Law on the Modernisation of Vocational Education and Training

The Act on the Modernisation of Vocational Education and Training passed the 'Bundesrat' on 29 November 2019 and entered into force on 01 January 2020. Minimum remuneration for trainees, internationally comparable designations of professional qualifications and more opportunities to complete part-time training are the corners of the new law.

2 Court Rulings

2.1 Status of crowdworkers

State Labour Court Munich Court, No. 8 Sa 146/19, 04 December 2019

According to the State Labour Court Munich, a crowdworker does not qualify as an employee of an internet platform that mediates individual orders, because there is no obligation to provide services on the part of the platform operator. In the underlying case, the defendant was an internet platform that carried out monitoring of the presentation of goods in retail or petrol stations for brand manufacturers, among others.

The Court held that an employment contract is deemed to exist if the contract provides for the obligation to perform work in personal dependence. This is generally expressed in the fact that the employee must observe work instructions relating to time, place and content of the service owed and is integrated into the employer's work organisation. In the Court’s view, the basic agreement between the plaintiff and defendant in the underlying case did not meet the requirements of an employment relationship, if only because it did not contain any obligation to provide regular services. The fact that the plaintiff actually earned a considerable part of his livelihood from the orders and felt pressured to accept future orders did not signify work in personal dependence.

A press article of ‘tagesschau’ from 04 December is available here.
2.2 Work on Sundays

*Higher Administrative Court Münster, No. 4 A 738/18, 11 December 2019*

An exceptional permit issued by the Düsseldorf district government to employ 800 workers at Amazon on each of the last two Sundays in Advent in 2015 was illegal. In the Court’s view, a pre-Christmas increase in order volume does not, in principle, constitute a reason for an exceptional permit, especially if the company itself intensified delivery bottlenecks by promising shorter delivery times.

The Court further stated that the plaintiff trade union could invoke the violation of the relevant provisions of the Working Hours Act, which serve to prevent Sunday work since the provisions were also in favour of a trade union affected in its area of activity. Due to the high number of affected employees and due to the fact that according to the information provided by the invited parties, the company had also applied for exemptions for other German sites of the group of companies, it was possible that the overall trade union activities could be impaired.

According to section 9(1) of the Working Hours Act (‘Arbeitszeitgesetz’), “employees may not be employed on Sundays and public holidays from 0 to 24 hours”. According to section 13(3) No. 2b of the Act, the supervisory agency can in derogation from section 9, authorise the employment of employees “on up to five Sundays and public holidays per year, if special circumstances make this necessary to prevent disproportionate damage”.

In the opinion of the Higher Administrative Court, it did not follow from the information provided by the logistics service provider that the conditions for an exception to the ban on Sunday work had been met. Under the Working Hours Act, such an exception could only be considered if special circumstances required it in order to prevent disproportionate damage. The term ‘special circumstances’ was to be understood only as such circumstances which had been caused externally and over which the applying company could not exercise any influence. However, according to the company itself, the special situation resulting from an increased order volume was at least also largely based on the business model of the company operating the website.

A press release on this ruling is available [here](#).

2.3 Implications of ECtHR ruling

*Federal Labour Court, No. 8 AZR 511/18, 19 December 2019*

A worker whose employment relationship was terminated and whose dismissal protection lawsuit was rejected with final and binding effect is, in principle, not entitled to compensation for loss of earnings or pension rights, even if a judgment of the ECHR has classified the termination as a breach of Article 8 of the European Convention on Human Rights. In exceptional cases, other factors can be considered in case of intentional immoral damage within the meaning of section 826 of the Civil Code by the person giving notice.

In the underlying case, the plaintiff had been employed by the defendant Catholic Church community as an organist, choir director and deanery cantor for many years. He separated from his wife and entered into a new partnership from which a child was born. Thereupon, the defendant duly terminated the plaintiff’s employment relationship on the grounds that he had violated the principle of the indissolubility of marriage. The plaintiff brought an action for dismissal protection against his employer. The proceedings, which were conducted through several instances, ended with a dismissal of the action. The Federal Constitutional Court did not accept the plaintiff’s constitutional complaint against this decision of rejection of the action. The plaintiff lodged an individual complaint against the Federal Republic of Germany with the European Court
of Human Rights. The ECHR (1620/03, 23 September 2010, Schüth/Deutschland) ruled that a violation of Article 8 of the European Convention on Human Rights had taken place and awarded the plaintiff a claim for compensation against the defendant. The plaintiff claimed payment of the remuneration he lost as a result of the dismissal and compensation for lost pension rights as damages.

A press release on this ruling is available [here](#).

3 Implications of CJEU Rulings and ECHR

3.1 Annual leave

*CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN*

The recent decision of the European Court of Justice will probably not have any far-reaching implications for German law: the Federal Labour Court has always distinguished between statutory leave, on the one hand, and additional individual or collectively agreed leave, on the other, and has assumed that contractual or collectively agreed additional leave entitlements in excess of the minimum leave do not fall within the scope of application of Union law. The position only differs if the interpretation of the contract or collective agreement shows that the parties wished to link the leave they had agreed to to the fate of statutory leave (see, for instance, Federal Labour Court, 9 AZR 321/16, 19 February 2019).

4 Other relevant information

4.1 Working in the platform economy

On 12 December 2019, the German government responded to an inquiry from the German ‘Bundestag’, which focused on questions of working in the platform economy, by stating the following:

“The Federal Ministry of Labour and Social Affairs has set up an interdepartmental project group to develop approaches for good work in the platform economy. The project group is examining to what extent the existing labour and social law regulations are also suitable for the business models of the platform economy and for the protection needs of employees, whether there is a need for adaptation and what this might look like. Within the scope of the work of this project group, external perspectives and relevant stakeholders were also included at an early stage, taking agile methods into account. The work of the project group continues”.

4.2 Employment conditions in postal, courier and express services

The number of business registrations in postal, courier and express services has fallen significantly since 2008, from just under 7 500 to around 5 400 last year. These figures are quoted by the Federal Government in its answer (19/15035) to a minor question (19/14018) of the parliamentary group ‘Die Linke’. In it, the federal government further states that it is currently not planning any legal regulations for the industry beyond the Parcel Courier Protection Act (see October 2019 Flash Report), but that it is monitoring the effects of the law. The government asserted that a high level of health and safety checks at work are an important factor in improving the health and safety at work in companies and preventing work-related illnesses. This requires adequate staffing levels. In this regard, the government affirmed that it is engaged in intensive bilateral talks with the Länder and the accident insurance institutions.
Greece

Summary
In case of redundancy, the employer must declare its intention of terminating contracts of employment upon the expiry of the period of notice of redundancy.

1 National Legislation
Nothing to report.

2 Court Rulings

2.1 Collective redundancies

Supreme Court, No. 116/2019, 29 January 2019

Greek legislation (Law 1387/1983) provides for a quantitative and temporal threshold in the case of collective dismissals. Collective redundancies refers to dismissals initiated by the employer for one or more reasons not related to the individual workers concerned. The number of these dismissals is at least 7 in establishments employing 20-150 employees (at the beginning of the month) or 5 per cent of the staff in firms employing more than 150 employees (at the beginning of the month).

For the purposes of that calculation, the point in time the redundancy occurs must be determined, i.e., the point in time at which the event necessitating redundancy takes place.

The Greek Supreme Court (judgment 116/2019) stated that the event necessitating redundancy consists of a declaration by the employer of its intention to terminate the contracts of employment upon the expiry of the period of the notice of redundancy. In other words, it is not the time of the expiry of the period of notice that shall be taken into account.

This position is in line with the case law of the European Court of Justice (Case C-188/03).

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

Greek Law (Article 2 para 6 Law 539/1945) provides that days of leave due to illness shall not be included in the number of days of annual leave. There is no case law on collective agreements that provide for additional days of paid annual leave exceeding the minimum period stipulated by law, yet exclude the carrying over of such days of leave on the grounds of illness. To our knowledge, there are no collective agreements that provide for additional days of paid annual leave exceeding the minimum number of annual leave days laid down by law, and yet exclude the carrying over of those days of leave on the grounds of illness.

4 Other relevant information
Nothing to report.
Hungary

Summary
(I) An amendment of the Labour Code provisions on maternity leave has been made providing entitlements to adopting parents.
(II) The minimum wage for 2020 has been set.
(III) The ability to conclude a collective agreement is an objective criteria and compliance with it does not depend on the performance of certain information obligations of the parties.
(IV) A low level of efforts related to work may indicate a ‘stand-by job’.

1 National Legislation

1.1 Amendment of the Labour Code

The amendment in Article 127(2) states:
"Maternity leave was only provided for women in case of adoption. The new text entitles both adopting parents to take maternity leave."

The amendment in Article 128:
"New Subsection (2) ensures, that adopting parents are entitled to unpaid leave up to the age of 3 of the adopted child and six months above the age of 3 of the child."

1.2 Minimum wage for 2020

Government Decree No. 367/2019 2020 specifies
a) The ‘minimum wage’: HUF 161 000, and
b) The guaranteed minimum pay (skilled worker’s minimum wage): HUF 210 600.

2 Court Rulings

2.1 Trade unions and collective agreements

Supreme Court, Mfv.II.10.414/2018, December 2019
The present case addressed the ability of a trade union to conclude a collective agreement. According to Article 276 of the Labour Code, a trade union shall be entitled to conclude a collective agreement if its membership reaches ten per cent of all workers employed by the employer. The other trade union and the employer concluded a collective agreement without the participation of a trade union alleging compliance with the 10 per cent threshold. The excluded trade union showed its ability (10 per cent membership) based on the entry declarations of 27 members.

According to the Supreme Court, the ability to conclude a collective agreement is an objective criteria and its compliance does not depend on the performance of certain information obligations of the parties. The trade union is capable of concluding a collective agreement, if it reached the 10 per cent threshold.
2.2 Stand-by jobs

Supreme Court, Mfv.III.10.565/2018, December 2019

The present case related to the meaning and definition of stand-by jobs. According to Article 91 of the Labour Code, ‘stand-by job’ shall imply:

"a) due to the nature of the job, no work is performed during at least one-third of the employee’s regular working time based on a longer period, during which, however, the employee is at the employer’s disposal; or

b) in light of the characteristics of the job and of the working conditions, the work performed is significantly less strenuous and less demanding than commonly required for a regular job."

In case of stand-by jobs, the maximum daily working time can be 12 hours per day and 60 hours per week (Article 92 of the Labour Code). In the present case, the labour inspector fined the employer for exceeding the daily and weekly limit of working time. The employer argued that the employees had worked in stand-by jobs, and that therefore, the working time could be up to 12/60 hours.

According to the Supreme Court, a low level of effort related to the work represents a precondition for deeming a job as a ‘stand-by job’. The employer did not prove that the employees’ work was characterised by lower physical or psychological strain and stress. Therefore, the employees could not be considered stand-by workers.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

The case is related to the interpretation of Article 7 of Directive 2003/88/EC. The employees concerned were provided by national law and collective agreement with annual leave days exceeding the minimum of four weeks ensured by the Directive. However, according to the national rules and collective agreements that provide for additional days of paid annual leave exceeding the minimum period of four weeks, excluded the carrying over of those days of leave on the grounds of illness.

According to the judgment, Article 7(1) of Directive 2003/88/EC must be interpreted as not precluding national rules or collective agreements that provide for additional days of paid annual leave exceeding the minimum period of four weeks specified in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness. Furthermore, Article 31(2) of the Charter, read in conjunction with Article 51(1) thereof, must be interpreted as meaning that it is not intended to apply where national rules or collective agreements exist that provide for additional days of paid annual leave that exceed the minimum period of four weeks laid down in Article 7(1) of Directive 2003/88, and yet exclude the carrying over of those days of leave on the grounds of illness.

According to Article 124 (1) of the Hungarian Labour Code:

"Annual leave shall be allocated in accordance with the working days stipulated in the work schedule.”

Consequently, paid leave must be allocated to working days. If the employee is sick, paid leave days shall not be allocated. In case of illness, the employee must be first on sick leave paid by the employer (maximum 15 days per year), and once those 15 days have been expended, the employee will be considered as being on statutory sick leave.
The Labour Code does not apply different rules for statutorily paid leave days beyond the minimum and paid leave days provided by a collective agreement. So the judgment is not relevant in the Hungarian context.

4 Other relevant information
Nothing to report.
Iceland

Summary
(I) Maternity and paternity leave have been extended.
(II) There was a court ruling on annual leave during the notice period.

1 National Legislation

1.1 Maternity and paternity leave
On 17 December 2019, maternity and paternity leave as provided for in Act No. 95/2000, on maternity, paternity and parental leave, was extended from a combined total of nine months (in which three months are allocated to each parent and three months may be shared by the parents) to ten months (whereby four months are allocated to each parent and two months can be shared) in Act No. 149/2019. The Act also stipulates that in 2021, total maternity and paternity leave will be extended to 12 months and that the Minister of Social Affairs shall, no later than in October 2020, propose a bill how the months will be divided between the parents. The original bill stipulated that the 12 months should be split so that both parents receive five months each and can share two months, but there are differing opinions on how the months should be split, with the most prominent opposing opinion being that each parent should receive four months and have four shared months. The extension of the leave from nine to 12 months was part of the government’s programme and part of the government’s contribution to the collective agreements that were signed by private sector unions and employers’ associations in the spring of 2019. Icelandic law now exceeds the maternity leave guaranteed in Art. 8 of Directive 92/85/EC.

2 Court Rulings

2.1 Annual leave
Court of Appeal, No. 912/2018, 13 December 2019
The judgment confirms the interpretation of rules on the allocation of annual leave and concerns Directive 2003/88/EC.

In a Court of Appeal case from 13 December 2019 No. 912/2018, a former employee was laid off. Although she had a six-month notice period, the employer did not want her to complete the six months of notice, ending her employment after about one and a half months but paying her during the remainder of her notice period. The former employee and the company disagreed on whether she had taken her 30 days of annual leave she was entitled to during her notice period or not. In the Court of Appeal’s ruling, the court pointed to the fact that annual leave had not been allocated at the time of the termination of employment, but in line with Art 5 of Act No. 30/1987, on Annual Leave, should have been allocated in consultation with the employee. The company had, therefore, not been permitted to dispose of the 30-day annual leave within her notice period without her consent.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave beyond the minimum of four weeks
CJEU, joined cases C-609/17 and C-610/17, 19. November 2019
The joined cases C-609/17 and C-610/17 concerned the granting of annual leave beyond the minimum four weeks and the carrying over of leave that exceeds the mandatory four weeks of annual leave.

Art. 4(1) of Act No. 30/1987, on Annual Leave (lög nr. 30/1987, um orlof) states that paid annual leave shall be provided in one piece within the period 2 May to 15 September each year. The provision provides for derogations in collective agreements, however, leave during the aforementioned period may not be shorter than 14 working days, unless special conditions do not make this possible. Finally, if the employee does not take the minimum 24 days of annual leave provided by the Act within the aforementioned period, the leave is extended by 25 per cent. Art. 4(3) then states, inter alia, that annual leave should be taken in its entirety before the end of the annual leave period, which is 1 May to 30 April. Art. 13 of the Act prohibits the carrying over of annual leave days not taken during the annual leave period. Therefore, the carrying over of annual leave days not taken, whether it exceeds 20 days or four weeks or not, is precluded in Icelandic law (see also Supreme Court Case No. 376/2011 and District Court Case No. E-3889/2016). Art. 6 guarantees that in case an employee becomes sick during her annual leave period, she can get an extension for those annual leave days that were interrupted by sick leave days, provided that the employee presents a certificate of sickness. Additionally, the conditions of annual leave are further stipulated in collective agreements as well as in employment contracts.

With regard to these provisions and case law, the question may be raised whether Icelandic law sufficiently guarantees the minimum four weeks of annualleave as provided for in Art. 7 of Directive 2003/88/EC.

4 Other relevant information

Nothing to report.
Ireland

Summary

(I) Changes to the employment permit regime will allow more chefs, nurses and construction workers from outside the EU/EEA to work in Ireland.

(II) Regulations to implement the provisions of Article 11 of the Annex to Council Directive 2017/159/EU have been issued.

(III) The Workplace Relations Commission has again ruled that a firefighter’s on-call time is not working time.

(IV) The Labour Court has ruled that the Workplace Relations Commission has no jurisdiction to hear complaints from migrant workers without a valid employment permit.

1 National Legislation

1.1 Work permit

The Minister for Business, Enterprise and Innovation has again amended the Employment Permits Regulations to address ‘immediate labour shortages’ in the hospitality, health and construction sectors: Employment Permits (Amendment) (No. 3) Regulations 2019 (S.I. No. 633 of 2019). With effect from 01 January 2020, all chef grades are now eligible for a permit and the occupation will no longer be subject to quotas. The Minister indicated that employment in the tourism sector is expected to reach 310 000 by 2025 and that chefs accounted for the highest number of vacancies in the sector. Previously, a commis chef could not be employed and there was a cap of 610 permits in the sector. The change was welcomed by ‘Fáilte Ireland’, saying that the measures would significantly help alleviate the skills shortage in the sector. All nurses, and most professional occupations in the construction sector, can now qualify for a Critical Skills Employment Permit, which allows for immediate family reunification with broad access to the labour market for family members. The quota of employment permits for meat processing operatives is also extended by a further 1 000.

The Minister for Transport, Tourism and Sport has issued regulations implementing the provisions of Article 11 of the Annex to Council Directive 2017/159/EU implementing the Agreement concerning the implementation of the ILO’s Work in Fishing Convention 2007, concluded between the General Confederation of Agricultural Cooperatives in the EU, the European Transport Workers’ Federation and the Association of National Organisations of Fishing Enterprises in the EU: European Union (International Labour Organisation Work in Fishing Convention) (Working Hours) Regulations 2019 (S.I. No. 672 of 2019). The Regulations, which came into operation on 19 December 2019, prescribe maximum hours of work and minimum hours of rest for workers on board seagoing vessels, require records to be kept of their hours of work or rest, and provide for enforcement measures.

2 Court Rulings

2.1 Working time

Five further decisions by three different Workplace Relations Commission adjudication officers have issued concerning complaints under the Organisation of Working Time Act 1997 by retained firefighters employed on a part-time basis by local authorities:

- ADJ-00018224;
Unlike full-time firefighters who are provided with a balanced working week of four days on and three days off rotating, retained firefighters are ‘on-call’ 168 hours per week for at least 26 weeks of the year. To accommodate this, retained firefighters must reside within a 2.5 km radius of the nearest fire station and must be readily available (5-8 minutes) at all times throughout the day and night. Retained firefighters receive a quarterly retainer for their services, with 50 per cent being deducted from those who do not attend for 75 per cent of all incidents for which they are called.

All five complainants submitted that the entirety of their on-call time was ‘working time’, relying on the CJEU decision in case C-518/15, Ville de Nivelles v Matzak. In each case, the adjudication officer noted that, during the period of time the complainant was required to be available on-call, there was no requirement that he had to be at home. Indeed, all of them could engage in social or sporting activities or be employed by other parties during this time. They also had the discretion to not attend up to 25 per cent of the alerts received.

Consequently, given the significant difference between the geographic and temporal constraints placed on the complainants and those placed on Matzak, the adjudication officers all ruled that the complainants’ periods of being on-call did not fall within the definition of ‘working time’ in section 2 of the 1997 Act.

The Labour Court has ruled that migrant workers without a valid employment permit cannot bring employment right complaints to the Workplace Relations Commission because their contracts were tainted by illegality and thus unenforceable: No. ADJ-00006898, TA Hotels Ltd v Khoosye RPD1916 & No. ADJ-000068961917, RPD1917. This applies even to complaints under legislation implementing EU Directives: see No. ADJ-00006896, DWT1929 & No. ADJ-00006898, DWT1930 & and No. ADJ-00006898, TED1928 & No. ADJ-00006896, TED1929.

### 3 Implications of CJEU rulings and ECHR

#### 3.1 Annual leave

*CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN*

Section 19 of the Organisation of Working Time Act 1997, as amended by section 86(1) of the Workplace Relations Act 2015, implements Article 7 of Directive 2003/88/EC and provides that employees are entitled to paid annual leave equal to four working weeks in a leave year. Section 20(1) of the 1997 Act, as amended by section 86(1) of the 2015 Act, provides that the leave must be granted within the leave year to which it relates; with the employee’s consent, within six months after the end of the leave year; or, where the employee due to illness is unable to take annual leave during either of those periods, within 15 months after the end of that leave year. Section 20(3) of the 1997 Act provides that nothing in the section shall prevent an employer and an employee from entering into arrangements that are more favourable to the employee with regard to the times of her annual leave.

The section does not, however, address the specific issue raised before the CJEU, namely whether the right to carry over annual leave that has not been taken applies only to the four weeks stipulated by the Directive or whether it extends to any additional period of annual leave to which the employee may be contractually entitled. The issue does not appear to have been considered either by the Workplace Relations Commission...
or the Labour Court or by academic commentators. The CJEU decision would suggest, however, that there is no impediment to an employer stipulating that any additional annual leave that has not been taken cannot be carried over into the following leave year. In the event of a dispute, factual difficulties might arise as to whether a particular period of taken annual leave was statutory or contractual, unless the contract specifies that statutory annual leave was to be taken first.

4 Other relevant information

Nothing to report.
**Italy**

**Summary**

(I) The Italian government has adopted Decree Law No. 137, on urgent measures to ensure the continuity of the provision of services by Alitalia – Società Aerea Italiana S.p.A. and Alitalia Cityliner S.p.A., as an extraordinary regulation.


(III) A Cassation Court ruling found a temporary agency worker and the user to be jointly liable for damage caused by the temporary worker.

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### 1 National Legislation

#### 1.1 Programme to ensure the continuation of services by Alitalia

On 2 December 2019, the Italian government adopted Decree Law No. 137, on urgent measures to ensure the continuity of the provision of services by Alitalia – Società Aerea Italiana S.p.A. and Alitalia Cityliner S.p.A., as an extraordinary regulation.

To support the business transfer of Alitalia – Società Aerea Italiana S.p.A. and Alitalia Cityliner S.p.A., the Decree Law provides that the extraordinary programme must be supplemented by a restructuring. This plan must be aimed at improving the efficiency of the companies and their business activities, in compliance with the principles of equal treatment, transparency and non-discrimination.

The Decree shall be confirmed by Parliament within 60 days from its approval.

#### 1.2 Approval of State budget for 2020

On 27 December 2019, the Italian Parliament approved the State budget for the financial year 2020 and the multi-year budget for the period 2020-2022. The Act contains some provisions on employment relationships.

The key points are highlighted here. A detailed report will follow next month.

Mandatory paternity leave has been extended from 5 to 7 days. The father shall take this leave in the first five months of the child’s life (or upon entering the family or when entering Italy in the event of a national / international adoption). This leave is an autonomous right and therefore is independent of the mother’s right to maternity leave.

Employers who employ up to nine employees receive a 100% subsidy when hiring apprentices.

Employers who hire workers under the age of 35 under an open-ended contract receive a subsidy of 50% of their contributions.

The Act provides for other cases of tax relief as well, for example, for hiring graduates *cum laude* and PhDs, unemployed persons who receive unemployment benefits (Naspi) and workers in “Cassa Integrazione”.
2 Court Rulings

2.1 Accident caused by temporary worker

Corte di Cassazione, No. 318896, December 2019

In the event of a car accident caused by a temporary worker, the user is jointly liable with the worker for the damages caused to third parties. There is no responsibility of the temporary work agency.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU, joined cases C-609/17 and C-610/17, 19 November 2019

According to the CJEU’s (Grand Chamber) decision in joined cases C-609/17 and C-610/17, if the law of a Member State or collective bargaining agreement provides for leave days in addition to the mandatory four weeks established in Art. 7 of Directive 2003/88/EC, it can also determine the methods for granting and deleting them. If a disease prevents the worker from taking her additional annual leave days, national law or collective bargaining agreements may establish that these days are lost, without prejudice to the right to at least four weeks of paid annual leave.

According to Italian law, collective bargaining can provide for days of additional leave. However, leave not taken due to illness (i.e. sick leave) are never lost. They shall be moved to another date. The additional leave, granted by collective bargaining agreements and not taken within the terms provided by law, can be financially reimbursed.

4 Other relevant information

Nothing to report.
Latvia

Summary
Nothing to report.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Insolvency

*CJEU case C-168/18, 19 December 2019, Pensions-Sicherungs-Verein*

Under Latvian law, a similar situation cannot arise, as the old-age pension system is based on the statutory social insurance system. Occupational old-age pensions are virtually non-existent in Latvia. Even when some have been established, the payment of occupational old-age pension is provided by the respective private pension fund, although nothing precludes the former employer from paying supplements. It follows that the decision in case C-168/18 has no implications for Latvian law.

3.2 Posting of workers

*CJEU case C-16/18, 19 December 2019, Dobersberger*

The decision of the CJEU in case C-16/18 is a landmark decision providing important clarifications with regard to the concept of ‘posting of workers’ as such. Only few international trains travel from Latvia to Russia, Byelorussia and Ukraine. All of these routes are operated by the Latvian state-owned company “Latvijas Dzelzceļš” and the employees are contracted in Latvia under Latvian law. There is no information, however, whether “Latvijas Dzelzceļš” uses any services provided by the companies registered in other Member State (for example, Lithuania). At the same time, there has been no case on the application of the administrative fine on account of the breach of the rules on posting in Latvia.

4 Other relevant information
Nothing to report.
Liechtenstein

Summary

(I) The Posting of Workers Act and the Act on Employment Services and the Hiring of Services were amended to transpose Directive 2014/67/EU.


1 National Legislation

1.1 Amendments of law to protect workers in cross-border services

To adequately enforce the protection of workers in cross-border services, it was decided at EU level to leave the European law on the posting of workers unchanged in substance, but to ensure that this law is enforced as effectively as possible. This is why the Enforcement Directive (Directive 2014/67/EU) was created. Liechtenstein has now adopted the necessary amendments to its laws to transpose this Directive.

Four key points should be mentioned:

(1) One of the main concerns is the fight against bogus posting and bogus self-employment. To facilitate the fight, key aspects in the law on posting are defined more clearly.

(2) The posted employees are given more precisely defined opportunities to assert their wage claims against their employer's client under certain circumstances. Care is taken to ensure that the liability rules are non-discriminatory. The foreign contractor may not be disadvantaged compared to a Liechtenstein contractor.

(3) The amendment aims to ensure close cooperation between Liechtenstein and the other EEA Member States. This includes, in particular, a rapid exchange of information, which is primarily intended to determine the facts of the case. Furthermore, it also includes the obligation to notify and enforce foreign decisions in the field of the law on the posting of workers. For example, if a Liechtenstein company has infringed the law on the posting of workers abroad and does not pay the imposed fine, Liechtenstein is required to collect the fine from its domestic company. Conversely, Liechtenstein can demand the same from the foreign authorities.

(4) In addition to the implementation of Directive 2014/67/EU, the amendment is also used to better formulate some existing provisions or introduce additional ones based on experience in enforcement.

Changes have been made to the following Acts: Posting of Workers Act (Gesetz über die Entsendung von Arbeitnehmern, Entsendegesetz, EntsG, LR 823.21) and Act on Employment Services and the Hiring of Services (Gesetz über die Arbeitsvermittlung und den Personalverleih, Arbeitsvermittlungsgesetz, AVG, LR 823.10).

On 8 November 2019, the Liechtenstein Parliament ("Landtag"), with approval of the Prince, enacted the amendment of the Posting of Workers Act (Gesetz über die Entsendung von Arbeitnehmern, Entsendegesetz, EntsG, LR 823.21) and enacted the amendment of the Act on Employment Services and the Hiring of Services (Gesetz über die Arbeitsvermittlung und den Personalverleih, Arbeitsvermittlungsgesetz, AVG, LR 823.10).
The amendment is definitive and entered into force on 1 January 2020.

The amendment is of considerable importance. It has been found that although there was worker protection for cross-border services, it could not be sufficiently enforced. This defect will be remedied with the amendment.

The amendment departs from previous lines of reasoning because the substantive law on the posting of workers has not been changed. As already stated above, the objective is to ensure more efficient enforcement. In addition, no new laws have been created, but the existing structures (Posting of Workers Act, Act on Employment Services and the Hiring of Services) have been used to implement the changes.

The purpose of the consultation of municipalities, the Court of First Instance, the bar association, business and employers' associations, the Liechtenstein trade union and other organisations is to give the government and Parliament an idea of the likely implications in the legal and political area. For this reason, the government adapted its original draft law based on the results of the consultation process before it was submitted to Parliament.

The main purpose of the amendment is to transpose Directive 2014/67/EU. An initial review of the law reveals that the government and Parliament were seeking transposition that is in line with the Directive.

The source for the explanations provided can be found here.

1.2 Amendment of Annex XVIII to the EEA Agreement


2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Reduction or withdrawal of the entitlement to annual leave

CJEU Joined Cases C-609/17 and C-610/17, 19. November 2019

Factual part

In the joined cases C-609/17 and C-610/17, the CJEU (Grand Chamber) ruled as follows:

(1) Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.
(2) Article 31(2) of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 51(1) thereof, must be interpreted as meaning that it is not intended to apply where such national rules or collective agreements exist.

Liechtenstein law regulates annual leave in the Civil Code (Allgemeines bürgerliches Gesetzbuch, ABGB, LR 210). According to Art. 30(1) of the Civil Code, the employer must grant the employee at least four weeks of leave during each year of service (and at least five weeks of leave after the employee has reached the age of 20).

If an impediment to work due to illness, accident or similar reason amounts to a total of more than one month during the given year of service, the employer may reduce the annual leave by one-twelfth from the second full month of the impediment, cf Art. 31(2) of the Civil Code.

Pursuant to Art. 34(1) of the Civil Code, a standard employment contract or collective agreement may provide for a provision that deviates from these regulations if it is at least equivalent for the employees as a whole. Apart from that, deviations to the disadvantage of the employees are not permitted, Art. 113(1) of the Civil Code.

It follows that Liechtenstein law allows a reduction of the entitlement to annual leave, provided that the core entitlement of at least four weeks is not affected. In other words, the entitlement of an employee to a fifth or sixth week of leave, for example, may be reduced or withdrawn in the event of illness.

4 Other relevant information

Nothing to report.
Lithuania

Summary
The Lithuanian Supreme Court has referred a case to the CJEU to interpret the principle of equal pay of temporary workers employed by the EIGE, which has a special European Union institution status.

1 National Legislation
Nothing to report.

2 Court Rulings

2.1 Temporary agency work

Supreme Court of Lithuania, No. e3K-3-392-684/2019, 30 December 2019

The applicant in the present case was a Lithuanian company, Manpower Lit UAB, which provides temporary employment services. The third person in this case, a user of temporary work, was the European Institute for Gender Equality (hereinafter 'EIGE'). A contract had been concluded between Manpower and EIGE on the supply of temporary workers. The technical specifications of the contract state that the needs of EIGE's temporary workers related to:

- assistance to EIGE's permanent staff; performance of additional tasks on a temporary basis;
- coping with heavy workloads during certain periods;
- support the EIGE staff in case of shortage for specific reasons.

The contract explicitly provided that temporary workers shall be considered non-permanent staff, and shall in no way be regarded as regular staff members of EIGE, which has around 40 staff members covered by the Staff Regulations and the Conditions of Employment of Other Servants of the European Union. Five temporary workers providing various work duties claimed that the principle of equal treatment of temporary workers shall also be applied in situations in which the user undertaking is a European Union agency. The Labour Dispute Commission, the district court and the regional court were of the same opinion, awarding employees the differences in salaries for the period of work at EIGE. However, the Supreme Court of Lithuania saw the need for an interpretation of several provisions of Directive 2008/104/EC and posed the following questions to the CJEU:

"1. What content should be given to the wording "public undertaking" in Article 1 (2) of Directive 2008/104? Do European Union agencies such as EIGE qualify as "public undertakings" within the meaning of the Directive?

2. Which entities (temporary work agency, temporary work user, at least one of them, and possibly both) are subject to the economic activity criteria under Article 1 (2) of Directive 2008/104; and whether the activities and functions of EIGE within the meaning of Articles 3 and 4 of Regulation No 1922/2006 to be regarded as economic activities within the meaning of Article 2 (2) of Directive 2008/104?

3. Can Article 1 (2) and (3) of Directive 2008/104 be interpreted as meaning that it excludes public and private temporary employment agencies or user
undertakings which do not participate in economic activities within the meaning of Article 1 (3) of the Directive?

4. Should the provisions of Article 5 (1) of Directive 2008/104 concerning the rights of temporary staff to basic terms and conditions of employment, in particular remuneration, apply in their entirety to European Union agencies subject to specific EU labour rules and Articles 335 and 336 TFEU?

5. Does the law of a Member State (Article 75 of the Labour Code) transposing Article 5 (1) of Directive 2008/104 to all members of the temporary staff (including EU institutions) infringe the principle of administrative autonomy of EU institutions under Articles 335 and 336 TFEU? payroll and pay rules in the Staff Regulations?

6. Given that all posts (job functions) directly recruited by EIGE include tasks that can only be performed by staff working in accordance with the Staff Regulations of Officials of the European Union or the corresponding posts (job functions) are considered to be "the same workplace" within the meaning of Article 5 (1) of Directive 2008/104?"

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

The ruling of the CJEU is not of relevance for Lithuanian law. In accordance with Article 129 (1) of the Labour Code, the annual leave shall be postponed for the duration of the employee’s sick leave. There are no collective bargaining agreements which contain different rules, even for the period of additional leave. There is also a general ban for the collective bargaining agreement to introduce the provisions in peius if certain conditions are not met (Article 193 (3) of the Labour Code).

4 Other relevant information

Nothing to report.
Luxembourg

Summary
The minimum wage will automatically rise by 2.5 per cent in accordance with inflation.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

For four decades, Luxembourg has provided for 25 days (five weeks) of paid annual leave, and since 2019, every employee is entitled to a minimum of 26 days of paid leave (Article L. 233-4 of the Labour Code). Thus, employees have at least 1 week and 1 day of leave exceeding the European minimum of four weeks, and many collective agreements or individual employment contracts extend this right even further.

There does not seem to be any collective agreement that explicitly refuses to carry over annual leave exceeding the European minimum of four weeks or the national minimum of 26 days. Collective agreements generally do not address this topic.

Carrying over annual leave is only mentioned in the Labour Code for specific cases, such as the first year of work (Article L. 233-9) or if the employer has denied an employee's request for annual leave (Article L. 233-10). There are no specific rules concerning annual leave that cannot be taken within the calendar year due to illness or maternity. However, the courts systematically apply European case law; annual leave can thus be carried over to the next year. Until now, the courts have not made any distinction between the first four weeks implemented by European law and the additional leave entitlement. On the other hand, as far as could be verified, this argument based on the limited impact of European law has never been raised.

Only one specific case can be mentioned in which an employee could not take his annual leave due to illness; the employer refused to give the employee leave the following year, as the collective agreement stated that for any cases of carrying over of annual leave, the employee must notify the employer before 1 December of the period during which she would like to benefit from this leave (between 01 January and 31 March). The Court of Appeal considered that such a clause was invalid and, referring to European case law (C-350/06), decided that the employee was entitled to an allowance in lieu of annual leave not taken by the end of the employment relationship; no differentiation was made between the first four weeks of leave and the additional entitlement (Court of Appeal, 28 May 2013, No. 38148).

It will thus be interesting to see how national case law will evolve. On the one hand, national legislation does not explicitly provide for a right to carry over annual leave in case of illness; on the other hand, there are no explicit provisions or clauses that justify splitting up the annual leave into two parts with two different legal regimes.
4 Other relevant information

4.1 Raise of salary and minimum wage

The cost of living index, reflecting monetary inflation, has increased by 2.5 per cent since August 2018; as provided in a mandatory legal mechanism, all salaries will increase by 2.5 per cent, including the minimum wage. Both the cost of living index and the minimum wage are an important reference for multiple other social parameters.
Malta

Summary
An assessment on the implications of CJEU ruling in joined cases C-609/17 and C-610/17 is provided.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
3.1 Annual leave

_CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN_

The CJEU ruled that:

“1. Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.

2. Article 31(2) of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 51(1) thereof, must be interpreted as meaning that it is not intended to apply where such national rules or collective agreements exist.”

The Organisation of Working Time Regulations state that 50 per cent of the annual leave entitlement may, by mutual agreement between the employer and employee, be carried over once to the following calendar year (see Regulation 8(3) of the Organisation of Working Time Regulations). Hence, the CJEU court ruling does not have any implications for Malta where the legislation is clearly in line with the provisions identified in the ruling. The Organisation of Working Time Regulations are also in line (inter alia) with Article 31(2) of the Charter of Fundamental Rights of the European Union read in conjunction with Article 51(1) thereof.

In the case of sickness and in accordance with the Annual Leave National Standard Order (S.L. 452.115), annual leave continues to be accrued by an employee who is on sick leave and any leave balance not taken is carried forward to the following calendar year if such annual leave allowance could not be availed of due to the sickness (see Article 6 of said National Standard Order, which also provides that the same applies in case of injury).

Currently, Maltese law has more generous provisions than those established in Directive 2003/88/EC in terms of the number of annual leave days an employee is entitled to because the number of annual leave days in the calendar year 2020 is 216 hours. However, Maltese law makes no distinction between the days that can be carried over and which ones cannot. Any annual leave days, even in excess of the minimum number...
of hours in the said directive can be carried over in case of sickness (and injury) and a 50 per centum maximum can be carried over by agreement between the employer and employee (unless the employer and employee agree to carry over more than just 50 per cent of annual leave days).

4 Other relevant information

Nothing to report.
Netherlands

Summary

(I) A draft bill on the implementation of Directive 2018/957/EU has been debated in Parliament.

(II) The government is considering measures to regulate “rogue temporary employment agencies”.

1 National Legislation

1.1 Posting of workers

After closing down the internet consultation phase, the draft legislation bill on the implementation of Directive 2018/957/EU was debated in Parliament on 13 December 2019 (see also June 2019 Flash Report, para. 1.2).

More information on the implementation is available here.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

Factual part

Both cases dealt with Finnish legislation on annual leave. Finnish legislation stipulates that days of paid annual leave that exceed the minimum period of four weeks cannot be carried over if the employee was incapacitated for work due to illness on those days. The question was whether this is in line with Article 7 (1) Directive 2003/88/EG and Article 31 (2) of the Charter of Fundamental Rights of the European Union.

The CJEU confirmed its established case law that the Directive lays down minimum health and safety requirements for the organisation of working time and does not preclude national provisions granting a longer period of annual leave than four weeks. Days of annual leave exceeding the minimum of four weeks and the rules that govern these days (including carrying over or not) are not affected by the Directive (unless they are used to compensate for a possible infringement of the minimum protection guaranteed by EU law), and not by Article 31 of the Charter.

This ruling has no implications for national law on annual leave. However, since CJEU 29 November 2017 (C-214/16, Conley King), Dutch academic literature has debated whether the period of limitation of five years (Article 7:642 Dutch Civil Code) is in line with the Directive. The period of limitation has no 'safety pin' for situations in which the employee could reasonably take annual leave, which does not seem to be in line with the CJEU ruling in Conley King.
4 Other relevant information

4.1 Abuse of migrant workers

On 20 December 2019, the Ministry of Social Affairs and Employment informed Parliament on its activities regarding the abuse of migrant workers (EU and third-country workers). The letter is part of an ongoing process that envisages the improvement of working and housing conditions of migrant workers through a comprehensive approach by all stakeholders. This includes all relevant ministries, social partners, regional authorities, the temporary employment agency sector, the labour inspectorate (Inspectie SZW), etc.

From an EU law perspective, it is interesting that the government is considering several alternatives to create barriers for rogue temporary employment agencies. The government is not inclined to introduce a licensing requirement (such a requirement was in place until 1988 in the Netherlands), but will examine other options such as the obligation to pay a deposit when a temporary work agency is established. We will follow this initiative and report on it when more specific proposals are made.
Norway

Summary
Nothing to report.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

Under Norwegian law (Holiday Act, section 7, third paragraph), employees are entitled to transfer all annual leave days – i.e. four weeks and one day - that were not taken if the employee was fully incapacitated for work due to illness during her annual leave. Norwegian law on this point was amended in 2014 as a consequence of ECJ practice (C-277/08 (Pereda) and C-78/11 (ANGED)). Before 2014, section 7 of the Holiday Act a requirement for carrying over annual leave days was that the employee was fully incapacitated for work due to illness for at least six days.

No changes to Norwegian law are therefore necessary as a consequence of joined cases C 609/17 and C 610/17.

4 Other relevant information
Nothing to report.
Poland

Summary
The draft of the amendment to the Labour Code on employers’ obligation to indicate the amount of remuneration for jobs in job advertisements has been submitted to Parliament.

1 National Legislation

1.1 Amount of remuneration in job advertisements

On 12 December, the deputies of the Civic Coalition (Koalicja Obywatelska) submitted a draft of the amendment to the Labour Code to Parliament.

According to the new Article 183f § 1 LC, employers will be required to indicate the amount of remuneration of a given job in the job advertisement. According to Article 183f § 2 LC, it is admissible to indicate a minimum and maximum amount of remuneration, and the possibility to negotiate it. Non-compliance with this requirement is subject to a pecuniary fine (Article 281, point 8 LC).

The abovementioned regulation would impose a new obligation on employers, as it is not mandatory under current regulations to indicate the amount of remuneration in job advertisements. The amendment would take effect on 30 July 2020.

The new regulations aim to contribute to the transparency of the labour market and the protection of employee rights, and to fight pay discrimination between men and women in employment. However, the draft is in a very preliminary stage of the legislative process. It should also be emphasised that during Parliament’s previous term, a similar draft had been submitted by the “Nowoczesna” party (‘Modern one’) on 30 August 2018 (see September 2018 Flash Report, section 4. B). This amendment was not, however, introduced.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

Under Polish law, the right to annual leave is regulated in the Labour Code (hereinafter LC) (Section 7, Articles 152 ff).

Article 154 LC provides that the duration of leave amounts to 20 days, provided that the employee has been employed for less than 10 years; and 26 days, provided that the employee has been employed for at least 10 years. Periods of previous employment should be taken into account to determine the right to leave and its length (Article 154¹ LC).

It is admissible to extend the abovementioned statutory length of annual leave, e.g. by collective labour agreement or in an employment contract. There are also separate laws that provide for additional leave (i.e. additional days than established in the Labour Code provisions), e.g. for teachers or civil servants.
Article 165 LC provides that if an employee is not able to take her planned leave due to reasons that justify absence from work, in particular, in case of temporary incapacity for work due to illness, order of quarantine in relation to a contagious disease, participation in military exercises or training for a period of up to three months and maternity leave. The employer is then required to postpone the leave to a later date. According to Article 166 LC, if the leave is not used due to one of the abovementioned reasons, the employer is required to grant the leave on a later date. Moreover, Article 168 LC provides that leave not used in a given calendar year must be granted to an employee at the latest by 30 September of the following calendar year.

Thus, under Polish law, in case an employee falls sick, her annual leave can be carried over and used at a later point, including the following calendar year. The employer cannot reduce the length of annual leave in case the employee falls sick. The employee does not lose the right to annual leave in that case. The leave that has not been used due to illness should be automatically granted at a later point in time.

4 Other relevant information

Nothing to report.
Portugal

Summary
(I) The Portuguese Constitutional Court ruled that Article 398 (2) of the Portuguese Companies Code—which imposes the termination of an employment contract entered into less than one year prior to the appointment of the employee as a member of the Board of Directors of the employer—is unconstitutional.

(II) The Portuguese State Budget Proposal for 2020 contains some regulations that will have implications for employment matters.

1 National Legislation
Nothing to report.

2 Court Rulings
2.1 Dismissal protection
Constitutional Court, No. 774/2019, 17 December 2019
In the recent ruling No. 774/2019, handed down in case No. 276/2019, the Constitutional Court confirmed the understanding already expressed in three previous cases on unconstitutionality and declared unconstitutional, with general mandatory force, the rule of Article 398 (2) of the Portuguese Companies Code, which imposes the termination of the employment contract entered into less than one year prior to the appointment of the employee as a member of the Board of Directors of the employer, in the case it is a limited liability company by shares ("sociedade anónima").

Portuguese law establishes an incompatibility between the execution of an employment agreement and the exercise of the functions as a member of the Board of Directors of a limited liability company by shares. According to Article 398 (1) of the Portuguese Companies Code,

"During the period for which they are appointed, directors may not exercise, in the company or in any company with which it is in a controlling or group relationship, any temporary or permanent functions under the terms of an employment contract, on a subordinate or independent basis, nor are they permitted to enter into any such contracts aimed at the provision of services when they cease exercising their functions as director”.

Article 398 (2) of the Portuguese Companies Code envisages the effect of the appointment of an employee as a director of a limited liability company by shares in which she performs her functions as an employee, or which is in a controlling or group relationship with her employer. This rule stipulates the suspension or the termination of the employment contract, depending on whether it was entered into around one year prior to the appointment to the Board of Directors. It should be noted that the decision of the Constitutional Court only concerns the case of termination of employment contracts with less than one year of duration.

Although this rule is inserted in the Companies Code, it has direct implications on employment relationships because it establishes a cause for termination of the employment contract. The Constitutional Court has understood that such a rule, which imposes the termination of the employment contract, should be qualified as a labour legislation and, therefore, should comply with the requirements for approval of labour regulations (such as the consultation of workers’ representative organisations), as set
forth in Articles 55 (d) and 57 (2) (a) of the Portuguese Constitution in the version established by Constitutional Law No. 1/82.

Given that such requirements were not complied with, Article 398 (2) of the Portuguese Companies Code, which stipulates the termination of all employment contracts entered into less than one year before the appointment, was declared unconstitutional because it violates the above-mentioned rules of the Portuguese Constitution.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN


According to Article 7 (1) of Directive 2003/88, “Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice”. Furthermore, Article 7 (2) of the same Directive states that “The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated”.

According to settled case law of the CJEU, Directive 2003/88 does not preclude domestic provisions granting a right to a period of paid annual leave longer than the four weeks laid down in Article 7 (1) of the said directive. The purpose of Directive 2003/88 is to establish minimum safety and health requirements for the organisation of working time and, therefore, it does not affect the Member States’ right to apply provisions of national law that are more favourable to the protection of workers.

In the cases analysed by the CJEU, the employees were entitled to more than four weeks of annual leave as a result of a provision foreseen in the applicable collective agreement.

According to paragraph 25 of the Finnish Law on Annual Leave, “where a worker, on commencement of his or her annual leave, or a part thereof, is incapable of working owing to maternity, sickness or accident, the leave shall, upon application by the worker, be carried over to a later date (…)”. However,

“should the incapacity for work owing to maternity, sickness or accident commence during annual leave, or a part thereof, the worker shall, upon application, be entitled to carry over the days of incapacity for work falling within the annual leave, provided that they exceed 6 days of leave. The aforementioned days of absence may not reduce the worker’s entitlement to 4 weeks’ annual leave”.

The CJEU affirmed that the Member States may decide whether or not to provide workers with additional days of paid annual leave that exceed the minimum period of four weeks specified in Article 7 (1) of Directive 2003/88 and they can decide to exclude the right to carry over all or some of the days of paid annual leave that exceed that minimum period, where the worker has been incapacitated for work due to illness during all or part of a period of her paid annual leave.

As a result, the CJEU ruled that Article 7 (1) of Directive 2003/88

“must be interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the
minimum period of 4 weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness”.

According to Article 238 (1) of the Portuguese Labour Code, workers are entitled to paid annual leave of at least 22 working days.

It should be noted that under Portuguese labour law, the annual period of leave does not commence or is suspended when the worker is temporarily incapacitated for work due to illness or other facts not attributable to her, provided that this fact is communicated to the employer (Article 244 (1) of the Portuguese Labour Code). Portuguese law does not contain a similar rule to that foreseen in paragraph 25 of the Finnish Law on Annual Leave, which allows excluding the carrying over of days of annual leave that exceed the four weeks laid down in Article 7 (1) of Directive 2003/88. A similar provision may, however, be included in a collective agreement, providing workers an annual period of leave that exceeds the minimum period of four weeks.

4 Other relevant information

4.1 Portugal State Budget Proposal for 2020

The Portugal State Budget Proposal for 2020, delivered on 16 December 2019 to the Assembly of the Republic (Draft Law No. 5/XIV), contains some measures that have implications on employment issues, such as:

- adjustment of 3 per cent of the salary of public sector employees;
- partial exemption from income tax (IRS) for young people (until 26 years old) in the first two years of work.

The Draft Law will be discussed in Parliament during January 2020.
Romania

Summary

(I) The Government of Romania has adopted a new minimum wage level and has repealed certain provisions on the payment of contributions for part-time employees.

(II) The Romanian courts are facing the problem of distinguishing between transfers of undertaking and the outsourcing of activities by leasing machinery and equipment.

(III) A new collective labour agreement has been concluded in the health sector.

(IV) A quota of newly admitted foreign workers on the labour market in 2020 was set by the government.

1 National Legislation

1.1 Minimum wage

The government approved Decision No. 935/2019 on establishing the national minimum gross guaranteed wage (Official Gazette of Romania No. 1010 of 16 December 2019), which provides for an increase to RON 2,230 per month, which represents an increase of 7.2 per cent in the minimum wage compared to 2019.

According to the statement of the reasons for the government's decision, a formula was used to determine the minimum wage, taking the inflation rate and the real increase in labour productivity per person into account. The level of the minimum gross basic salary was established following discussions with the social partners, an aspect that is worth mentioning, considering that establishing a transparent mechanism for minimum wage-setting in consultation with the social partners is a recurring country-specific recommendation for Romania (Recommendation No. 2 CSR 2017; Recital 14, 18 and Recommendation No. 2 CSR 2018; Recommendation No. 3 and Recital 17 CSR 2019).

For persons employed in positions that require higher education, with a minimum of one year seniority in the area of specialisation, the minimum gross salary is maintained at RON 2,350 per month.

1.2 Part-time employees

As a result of a modification in the Fiscal Code at the beginning of 2018 (see also February 2018 Flash Report), part-time employees had to pay security and health insurance contributions related to the actual gross income they earned, and the difference to the level of the minimum wage contributions had to be paid by the employer. This provision has now been removed by Law No. 263/2019, amending Law No. 227/2015 on the Fiscal Code (Official Gazette of Romania No. 1054 of 30 December 2019). Consequently, part-time employees will now have to pay contributions that are calculated on the basis of the salary received, even if it is lower than the national minimum wage, without the employer having to supplement these contributions.

2 Court Rulings

2.1 Transfer of undertaking

Craiova Court of Appeal, No. 1141/2019, 17 April 2019

In Decision No. 1141/2019, the Craiova Court of Appeal ruled that no transfer of undertaking had taken place and the provisions of Articles 173-174 of the Labour Code,
respectively the provisions of Law No. 67/2006 (Official Gazette of Romania No. 276 of 28 March 2006), transposing Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, are not applicable in the event that the outsourcing of an activity has been carried out by leasing production equipment.

In the present case, four crane operators of the company were dismissed as a result of leasing machines to another company. The first court found that the machines (trucks equipped with the crane) were used at the Brădești site after the applicants’ dismissal, for the same activities; the difference was that the transport activity carried out by the employer company was no longer being performed by the latter, but by ATM Construct, which took over the machines under a rental contract. The Court considered that the typology of the agreement or act by which the transfer takes place was not relevant, and the transfer thus fell within the scope of the cession (sale) of assets. Considering that a transfer of parts of the undertaking took place, consisting of a takeover of a work site by another company, the court set aside the dismissal.

However, the Court of Appeal upheld the appeal, considering that the employer has the right to take all the measures considered necessary, including the termination of certain positions, provided that the termination is effective and is based on a real and serious cause. The real cause for the reorganisation and, as a consequence of the dismissal, was the outsourcing of the transport activity under the conditions of a rental contract. Therefore, the positions of the crane operators no longer existed in the company’s organisational chart, which was justified by the outsourcing of the transport services offered by the employer, even though the same machines, now rented, are still being used for the same activity. As a result, the Court of Appeal upheld the dismissal decision.

The distinction between the transfer of undertaking and the outsourcing of some activities has been analysed extensively in Romanian case law. The Romanian legislation defines transfers as a change in ownership from a transferor to a transferee. The reference to ‘ownership’ was regarded by the doctrine as restrictive in relation to the definition in the Directive, since the transfer of an undertaking to another employer does not necessarily mean a transfer of ownership (see also March 2019 Flash Report).

This case illustrates the practical consequences of the restrictive definition encountered in the Romanian legislation, which only refers to the transfer of ownership, not to leasing. This caused the Craiova Court of Appeal to state that,

"it is clear from the legal definition of the transfer of undertaking that it implies the transfer of ownership from the transferor to the transferee of the enterprise, unit or part thereof, in order to continue the activity taken over. In this case, the defendant company did nothing but outsource the transport service. The contractual relationship between the two companies is based on a rental contract".

Thus, the Court of Appeal ruled that the real and serious cause of the dismissal of the employees as a result of the outsourcing of the company’s activity (in this case, the transport activity) must be analysed. In the opinion of the Court of Appeal, no transfer of undertaking takes place if only an activity is outsourced based on a lease agreement with a specialised company to reduce costs; it is not about the transfer from the assignor’s property to the assignee’s property of possible assets, of the undertaking or parts thereof for the purpose of performing an economic activity. In the context of measures to improve the financial situation of the company, such as the outsourcing of the activity carried out by the former employee, the employer is entitled to order the dismissal of the employee.

As stated in the doctrine, by excluding from the scope of Law No. 67/2006 of the legal operations by which the change of employer occurs, but without a transfer of ownership
of the undertaking in a broad sense, the scope of the provisions of Article 1 (1) of the directive is in fact reduced in national legislation.

Sources:

### 3 Implications of CJEU rulings and ECHR

#### 3.1 Annual leave

*CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN*

The issue raised in joined cases C 609/17 and C 610/17 concerns the extent to which national provisions may exclude the days of leave on the grounds of illness in calculating that part of paid annual leave granted by national law or by collective agreements beyond the minimum leave period of four weeks prescribed in Article 7(1) of Directive 2003/88/EC.

In Romanian law, according to Article 145 (4) of the Labour Code, introduced in 2015, when establishing the duration of annual leave, the periods of temporary incapacity for work and maternity leave, maternal risk leave and leave to care for a sick child are considered periods of activity. It is noted that the provision concerns rest leave, without exceptions, and does not refer only to the minimum annual leave established by the Labour Code, which is 20 working days.

As a result, although the Romanian courts have not yet encountered this problem, any provision in a special law or collective labour agreement that provides for additional days of leave in addition to the legal minimum will apply by adapting the periods during which the employment contract was suspended for medical reasons and for which a medical certificate is available.

### 4 Other relevant information

#### 4.1 Collective labour agreement in the health sector

In December 2019, the collective labour agreement at the level of the Budgetary Health Sector for the years 2019-2021 entered into force. It is one of the rare collective labour agreements concluded at the sector level, following the adoption of the Law on Social Dialogue No. 62/2011, which made it particularly difficult to obtain the representativeness of the social partners at sector level.

The collective agreement stipulates a set of employee rights, stronger than the legal ones, and attempts to resolve some of the practical problems on working time of the medical staff. Thus, it is provided that the maximum number of extra hours of work during one month is 32 hours. The need to cover a longer period of time necessarily implies the employment of another person with an individual part-time employment contract.

#### 4.2 Annual quota work permits for aliens

By Government Decision No. 968/2019 regarding the establishment of the quota of newly admitted foreign workers on the labour market in 2020 (Official Gazette of Romania No. 1031 of 23 December 2019), a quota of 30 000 new foreign workers admitted to the Romanian labour market was established. The number is similar to that approved for 2019, when the initial quota of 20 000 foreign workers was supplemented by 10 000.
Slovakia

Summary
Nothing to report.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

The regulations on annual leave in the Slovak Republic are quite detailed and does not conflict with sick leave regulations.

The main legal source is the Labour Code (Act No. 311/2001 Collection of Laws – hereinafter Coll) as amended. The provisions of the Labour Code are binding for all employers in the private (business) and in the public sector.

Annual leave is regulated in the Third Section of the Labour Code (hereinafter LC) - Working time and rest periods (in Articles 100-117).

According to Article 100 of the LC under the conditions established by this Act, an employee shall have the right to

- paid holiday pertaining to a calendar year or a proportionate part thereof,
- paid holiday for days worked,
- supplementary paid holiday.

An employee who, performed work for at least 60 days in the calendar year throughout the continuous duration of an employment relationship with the same employer shall be entitled to annual paid leave, or a proportionate part thereof, unless the employment relationship lasted continuously throughout the entire calendar year. One day of work is considered a day on which the employee worked for the employer for the greater part of her shift; parts of shifts worked over various days shall not be summed up (Article 101 of the LC).

Under the current wording of Article 103 paragraph 1 of the LC, the basic length of paid annual leave shall be at least four weeks. The paid annual leave of an employee who at the end of the relevant calendar year turns at least 33 years of age has a claim to at least five weeks of paid annual leave (paragraph 2).

(On 01 January 2020, the amendment of the LC by Act No. 380/2019 Coll. will also increase the duration of basic annual leave to at least five weeks for employees who have not yet reached the age of 33 years, but who are permanently taking care of a child).

According to Article 103 paragraph 3 of the LC, paid annual leave shall be at least eight weeks within a calendar year for:
• teaching staff and professional employees according to a special regulation,

• university professors,

• researchers and artists in public higher education institutions or state higher education institutions;

• employees with at least a second degree of higher education who are carrying out research-teaching or scientific, research and development activities at a research institute of the Slovak Academy of Sciences, a public research institution or a state budget organisation or state contributory organisation established by the central state administration body.

Seven consecutive calendar days shall be understood as one week of paid annual leave (Article 110 paragraph 1 of the LC). The length of paid leave is referred to in the provisions cited as 'at least'. This means that the leave can also be longer if agreed in the collective agreement. The employer may also agree to longer leave periods with the employee in the employment contract.

The employer decides how to distribute of paid annual leave based on negotiations with the employee in accordance with the paid annual leave timetable produced with the employee representatives' prior consent in such a way that the employee can take her paid annual leave in full and by the end of the calendar year. When deciding when to take annual leave, the employer’s tasks and requirements as well as the justified interests of the employee must be taken into account. The employer must grant the employee at least four weeks of leave per calendar year if they have an entitlement to annual leave and if no obstacles on the part of the employee to work (e.g. illness) prevent the granting of such leave (Article 111 paragraph 1 of the LC).

Where paid leave is provided in several parts, one part must at least be taken for a minimum of two weeks, unless the employee and employer agree otherwise. The employer shall be required to announce the distribution of paid leave to employees at least 14 days in advance; exceptionally, this period may be reduced provided the employee grants his/her consent (Article 111 paragraph 5 of the LC).

According to Article 112 paragraph 2 of the Labour Code, an employer may not distribute paid leave for a period during which it is known that the employee is temporarily incapacitated for work due to disease or accident, or for a period during which the employee is on maternity or parental leave. For other periods of work that entail obstacles on the part of the employee to take leave, the employer may allocate paid leave to the employee at her request only.

If an employee is not able to use all her paid holiday in a given year because her employer did not distribute it, or because of obstacles to work on the part of the employee (e.g. illness), the employer shall be required to grant annual leave so that it is completed no later than by the end of the following calendar year. If the employer does not grant paid holiday by 30 June of the following calendar year such that the employee shall use the paid leave by the end of that calendar year, the employee may determine when to take the paid annual leave. The employee shall notify the employer in writing of when she wants to take paid annual leave at least 30 days in advance; this period can be reduced with the consent of the employer (Article 113 paragraph 2 of the LC).

According to Article 113 paragraph 4 of the LC, if an employee is unable to take all of her paid leave because she was deemed temporarily incapacitated for work by the end of the following calendar year as a result of disease or an accident, her employer shall grant her to take the paid annual leave after the end of the employee's temporary incapacity for work.

If an employee during the course of his paid leave takes up service in the armed forces, or if she was deemed to be temporarily incapacitated for work on the grounds of a
disease or accident, or if he is attending to a sick family member, the period of paid annual leave shall be deemed interrupted. This does not apply where the employer determines the distribution of paid annual leave for a period during which a sick family member is being attended to at the request of the employee. Paid leave shall also be deemed interrupted when maternity or parental leave is taken - § 166 paragraph 1 (Article 114 of the LC).

According to Article 116 paragraph 1 of the LC, an employee shall be entitled to wage compensation in the amount of his/her average earnings for the period of annual leave. The employee is entitled to wage compensation at the rate of his average earnings for paid leave in excess of the four weeks of basic paid leave that he is unable to take before the end of the following calendar year (paragraph 2). The employee shall not be paid wage compensation for leave that is not taken for the full four weeks of basic paid leave, except where he was unable to take such leave as a result of the termination of the employment relationship (paragraph 3).

4 Other relevant information
Nothing to report.
Slovenia

Summary
(I) A previously described Act regulating wages has been passed in the National Assembly.
(II) A minor amendment to the Employment Relationships Act regulates the right to paid leave with reference to personal circumstances.

1 National Legislation

1.1 Wages

After the National Assembly of the RS vetoed the Act Regulating Measures Relating to Wages and other Labour Costs for 2020 and 2021 and other Measures in the Public Sector and Extraordinary Adjustments of Pensions (see November 2019 Flash Report), the National Assembly in December repeated the vote and enacted the Act based on the necessary ¾ majority (not yet available in the Official Gazette).

1.2 Annual leave

The Employment Relationships Act (ERA-1) (Official Gazette of the RS, No. 21/13, 47/15- ZZSDT, 33/16-PZ-F, 52/16, 15/17-Odl. US RS, 22-19-ZPosS) was amended on 18 December 2019. The opposition party (left-leaning) proposed to complete Article 165 providing for the right of workers to paid leave for personal circumstances by introduced a new personal circumstance – absence due to escorting a child to school on the first school day. Article 165 provides that a worker shall have the right to paid leave from work of up to a maximum of seven working days within an individual calendar year due to personal circumstances listed in the said article. The amendment is based on the general conviction that the first school day is unique and an important event. It is a crucial turning point of every child which she should spend in the company of her parents. To date, in principle, only workers in the public sector were entitled to this right. The amendment abolishes the formal discrimination between workers in the private and in the public sector.

The text of the amended ERA-1 is not yet available in the Official Gazette.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

The right to paid annual leave is regulated in the Employment Relationships Act (ERA-1) (Official Gazette of the RS, No. 21/13, 78/13, 47/15-ZZSDT, 33/16-PZ-F, 52/16, 15/17 Odl. US; 22-19-PoS) (Articles 159-164). In comparison to previous ERAs, the ERA-1 has introduced some novelties which were influenced by CJEU case law (for example, the cases Schutz-Hoff and Stringer, KHS AG, Neidel, Dominguez) and the more recent case law of the Supreme Court of the RS.
ERA-1, inter alia, provides that:

- A worker shall have the right to annual leave in an individual calendar year which may not be shorter than four weeks, regardless whether he works full time or part time. The minimum number of annual leave days depends on the distribution of working days within the individual worker’s week (4-6 days). (Article 159(2)). That is, annual leave shall be determined in working days and used during working days (Article 160(4)).

- A worker is entitled to additional statutory days of annual leave for personal or social circumstances (age, disability, parenthood - Articles 159(3, 4), 197).

- A longer duration of annual leave than stipulated in Article 159 may be determined in a collective agreement or an employment contract (Article 160(1)).

- A worker obtains the right to annual leave by entering into an employment relationship (Article 159(1). While the principle of proportionality was limited in the previous legislation, the limitations have been abolished by the ERA-1. Article 161(1), for example, provides that a worker who enters into an employment relationship after the start of a calendar year or whose period of employment within a given calendar year is shorter than one year shall have the right to 1/12 of annual leave for each month of employment.

- As regards the use of annual leave, the ERA-1 has not introduced significant changes. Paras.1, 2 and 3 of Article 162 remain unchanged. In accordance with these paragraphs, annual leave may be taken in several parts, whereby one part shall consist of at least two weeks. The employer may request the worker to plan to use at least two weeks of annual leave for the current calendar year. The employer is required to grant the worker annual leave in the current calendar year, and the worker is required to take at least two weeks of annual leave in the current calendar year and the remaining part by 30 June of the following calendar year in agreement with the employer.

A significant change in the rules is contained in Article 162(4). It establishes the possibility to exceptionally carry over/use annual leave outside the reference period (30 June). According to Article 162(4), a worker shall have the right to use the entire annual leave not used in the current calendar year or by 30 June of the following year for reasons related to illness or injury, parental leave or childcare leave by 31 December of the following year. The legislator has assessed the extension of carrying over annual leave and found it to be acceptable when taking consideration of EU law and case law. Doctrine also supports an extension of the period for carrying over leave, particularly if it serves the underlying purpose of annual leave (rest, relaxation and entertainment).

Finally, the main issue raised in cases C-609/19 and C-610/19 need to be addressed: Does Article 7(1) preclude collective agreements from establishing additional days of paid annual leave exceeding the mandatory four weeks which excludes additional days of leave carried over on the grounds of illness (and of some other personal circumstances)? In Slovenia, such collective agreements and/or their provisions would be deemed unlawful. For this reason, the ruling in the two cases diminishes the relevance - at least from the viewpoint of Slovenian law and practice.

4 Other relevant information

Nothing to report.
Spain

Summary
(I) New general elections took place on 10 November, and a new government will be appointed soon.
(II) Legislation on the employment of foreigners has been amended.
(III) A new resolution concretises the obligation of employers to record working time.
(IV) The Constitutional Court has found that a law may limit or suppress salary supplements or social benefits established by collective agreement in the case of public employees.

1 National Legislation

1.1 Minimum wage
This regulation contains two relevant measures:
- The amount of minimum wage is provisionally maintained until the formation of a new government.
- People who lost their jobs before 2013 due to the economic crisis can continue to enjoy retirement benefits under the same conditions as before the reform of that year.

The formation of a new government, composed of the left-wing parties, will take place during the month of January 2020 and it has been announced that the minimum wage will be increased. Until then, the minimum wage of last year will apply.

The 2013 reform tightened the conditions for entitlement to retirement pension, introducing more rigorous calculation rules. The law in 2013 did, however, specify that those who had lost their jobs could, until 2019, retire according to the previous rules. That possibility has now been extended to 2020. The purpose is to avoid further damage for those workers who are close to retirement age and lost their jobs several years ago.

1.2 Work of foreigners
The collective management of contracts is provided for in Spanish legislation for the work of foreigners. The Ministry of Labour produces a forecast of jobs that can be covered by foreigners in an annual exercise based on the situation of the national labour market. With this forecast, employers can manage the hiring of people who do not reside or are in Spain. These forecasts also make it possible to obtain employment-seeking visas for children or grandchildren of individuals who were of Spanish origin or for certain activities.

This regulation is practically identical to last year's (see December 2018 Flash Report). However, this procedure no longer allows the coverage of permanent jobs (people who are already in Spain must be hired), and it is only available for fixed-term jobs, either seasonal jobs (especially agricultural) or jobs for specific work or service of a duration not longer than one year.

1.3 Working time in the transport sector
Royal Decree Law 8/2019 requires employers to record working time. Under a new resolution, companies have the obligation to make a daily record of working time,
indicating the start and end of each worker’s work day. The main purpose is to monitor compliance with the rules on overtime and to prevent abuse. The terms of compliance with this obligation can be specified through collective bargaining. This is relevant for the education sector.

As reported in previous flash reports, there are many collective agreements on the recording of working time to fulfil the new legal rule and CJEU case law.

2 Court Rulings

2.1 Collective bargaining in the public sector

Constitutional Court, No. 127/2019, 31 October 2019

The Constitutional Court admits that a law may limit or suppress salary supplements or social benefits established by collective agreement in the case of public employees.

The wages of public employees are set by law. Collective bargaining in the field of public sector employees frequently establishes complementary or other social benefits. The Constitutional Court has reiterated for years that the legislator is not bound by these agreements. In the specific case, the law abolished certain benefits included in collective agreements in the face of the economic crisis.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN

According to CJEU ruling Terveys- ja sosiaalialan neuvottelujärjestö (TSN) ry (19 November 2019, joined cases C-609/17 and C-610/17), Article 7(1) of Directive 2003/88/EC must be interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave that exceed the minimum period of four weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.

In Spain, according to Article 38.1 of the Labour Code, the duration of paid annual leave is agreed in collective agreements or the individual contract (with a minimum of 30 calendar days). There is no distinction between the four-week period (or 30-day period) and any possible additional duration. Article 38.4 provides that annual leave may be taken at a later time in case of a temporary disability and again no distinction is made between the minimum and the additional period of annual leave. Collective agreements may not reduce workers’ rights.

4 Other relevant information

4.1 Unemployment

Unemployment has decreased for the seventh consecutive year and stands at 3 163 605 unemployed persons. However, unemployment only dropped by 38 692 during 2019, the lowest figure since 2008. The economy seems to be slowing down.
4.2 Labour reform

General elections took place on 10 November, but there is no new government yet. Left-wing parties have reached an agreement and Parliament will probably appoint a Prime Minister on 07 January. This agreement includes a commitment to carry out a labour reform with the purpose of repealing the 2012 labour reform.
Sweden

Summary
The Swedish Labour Court decided that the calculation of the two-year qualifying period for the conversion of a fixed-term employment contract into one of indefinite duration should be based on the understanding of a year as a period of 365 days.

1 National Legislation
Nothing to report.

2 Court Rulings
2.1 Fixed-term work
Swedish Labour Court, Nr. 56/19, 04 December 2019
The Swedish Labour Court, in AD 2019 No. 56, issued a ruling on the calculation of cumulative fixed-term employment. A project assistant had been employed at a university in a number of successive, and sometimes intermittent, fixed-term contracts (ordinary fixed term or substitute work) between June 2014 and May 2018, and claimed that since his employment had been terminated, his periods of employment taken together had lasted for so long so as to constitute a permanent contract. The Swedish Employment Protection Act, (para 5, and 5a, lagen 1982:80 om anställningsskydd) states that a fixed-term contract can be converted into a permanent one after two years of (successive or intermittent) fixed-term work within a five-year period. The case in this regard also entailed the understanding of ‘year’ (also in relation to leap years) and the accumulation of working time. The Swedish provisions on fixed-term employment have previously been subject to some scrutiny from the EU Commission due to the fact that fixed-term contracts (in parallel to substitute contracts and other forms of non-permanent forms of employment) could, and still can, be applied successively for at least four years, even though some legislative changes have been introduced.

The Labour Court concluded that the calculation of “more than two years” should be based on a year as a period of 365 days, not taking into account the leap year nor a calculation based on standardised 30-day months (360 days of a year). As a result, the provision stating ‘more than two years’ is interpreted to be 731 days (730+1) and the outcome of the case was that the applicant did not have the right to obtain a permanent employment contract.

3 Implications of CJEU rulings and ECHR
3.1 Annual leave
CJEU joined cases C-609/17 and C-610/17, 19 November 2019, TSN
The CJEU has presented an interesting decision in the joined Finnish cases C-609/17 and C-610/17 (below TSN). The cases concerned the possibility of workers to carry over the entitlement to annual leave (vacation) to the next year if they could not take annual leave days due to sickness. The main issue for the Court to decide was whether EU law only applied to the balance between national provisions in statutory law or also to collective agreements that have extended annual leave beyond the mandatory four weeks established by law. Since the Finnish collective agreements provided additional days of leave, the Court had to decide whether those days are covered by EU law and
should be treated similarly to the ‘ordinary’ four weeks of leave provided for in the Working Time Directive (hereinafter WTD) as well as in the Finnish legislation referred to in the case and transposing the Directive.

The CJEU answered these questions:

1. “Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.

2. Article 31(2) of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 51(1) thereof, must be interpreted as meaning that it is not intended to apply where such national rules or collective agreements exist.”

The Swedish Vacation Act (Semesterlagen 1977:480) provides for a right to annual leave of 25 days per year (para 4), with the possibility to carry over five of those days to another year, leaving a minimum of 20 days for each year (para 18). Annual leave days are usually also accrued during sick leave (and parental leave, etc., para 17, para 17 and para 17 b). If the employee falls ill during her leave, she can request the annual leave to be interruption and replaced with days of sick leave (para 14). Numerous collective agreements add additional days of leave to the 25 days provided for by statutory law. Broadly applied collective agreements refer to the Vacation Act and the calculation of annual leave in this Act, also in relation to the additional days of annual leave ("Avtal om allmänna anställningsvillkor, Unionen, Ledarna – Kemiföretagen IKEM). The collective agreement for white collar employees in the public sector (civil servants employed by the state, para 13 Villkorsavtal-T mellan Arbetsgivarverket och Saco-S i lydelse från och med 2013-06-01 med ändringar och tillägg till och med 2018-11-28) allows for a maximum of 30 days to be carried over, once the 20 mandatory days of leave have been taken.

4 Other relevant information

Nothing to report.
United Kingdom

Summary
Nothing to report.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
3.1 TUPE
The most interesting case decided this month, although only a decision of the Employment Tribunal, is Dewhurst v. Revisecatch Ltd t/a Ecourier ET2201909/18 (26 November 2019), where in a carefully reasoned judgment, the ET said so called 'limb (b) workers under s.230(3)(b) ERA workers should also be covered by TUPE 2006 (Transfer of Undertakings (Protection of Employment) Regulations 2006). It will be recalled that Article 2(1)(d) of the Directive 2001/23 defines employee as ‘any person who, in the Member State concerned, is protected as an employee under national law. Article 3(2) makes reference to ‘employment relationship’. This persuaded the tribunal judge to say that the term includes those covered under the Equality Act 2010, which includes limb (b) workers. (see paras. 55-57). This judgment has not formal precedential value but is well reasoned and is widely reported. It is likely to be appealed.

4 Other relevant information
Nothing to report.
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