Flash Reports on Labour Law
February 2020
Summary and country reports

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February 2020
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Executive Summary

National level developments

In February 2020, important developments in labour law took place in several Member States and European Economic Area (EEA) countries (see Table 1). EU law was particularly relevant for the following legislative initiatives and judicial decisions:

Free movement and labour migration

In Austria, the Supreme Court ruled on a follow-up case to the one decided by the CJEU of 10 October 2019 C-703/17, Adelheid Krah vs Universität. It referred the case to the Constitutional Court to annul the provision that is currently only disapplied in cases with a cross-border element due to the direct application of EU law. In Croatia, an amendment to the Act on Student Jobs now allows students who study in the Republic of Croatia at colleges/universities to perform student jobs, regardless of their citizenship. In Germany, the Federal Cabinet has adopted a draft law for the implementation of the revised European Posting of Workers Directive. In the Netherlands, a district court ruled that Dutch dismissal law does not contravene the freedom of establishment or the freedom to conduct a business. In the UK, a new points-based immigration system assimilates the treatment of EU/EEA nationals to that of TCNs.

Atypical work

In Finland, the Labour Court confirmed that an air force officer had a right to get a full flying bonus (based on the relevant collective agreement), even though he was working part-time while receiving partial disability pension. In the Netherlands, a major new piece of legislation introduced several changes to the law on ‘flexible contracts (fixed-term contracts, temporary agency work, staffing contracts, on-call contracts). Among others, it changes the maximum total duration and number of successive fixed-term contracts and provisions to curb the abuse of ‘payrolling’ (a type of temporary agency work where the agency is the employer, but does not assume the role of recruiting the worker).

Working time

In Austria, the Supreme Court referred to CJEU cases C-684/16, Max-Planck-Gesellschaft, C-214/10, KHS, and C-619/16, Kreuzinger, to rule on the permissibility of a forfeiture of annual leave entitlements. In Latvia, the Supreme Court referred to CJEU case C-385/17 to find that the right to compensation of unused paid annual leave must be applied with retroactive effect. In the light of this, it reversed its former case law on the temporary scope of application of this right. In Luxembourg, the Court of Appeal ruled that a standby duty qualified as "reserve standby" by a collective agreement, which only requires pilots to be contactable by telephone for 2.5 hours a day, with the start of the activity to be performed no earlier than 24 hours after the call, does not qualify as working time. In Sweden, the Labour Court found that time spent travelling does not constitute working time if, unlike the workers in the CJEU’s judgment Tyco, did not lose any previous opportunity to freely decide the distance between their home and the place where the working day started.

Health and safety and maternity protection

In France, the Court of Cassation ruled for the first time that an employee whose dismissal is void due to her pregnancy must receive a lump-sum exclusion indemnity. In Luxembourg, a decree was adopted to transpose Directive (EU) 2017/2398. The Luxembourg Court of Appeal ruled that the eight-day time limit imposed on pregnant women to produce a pregnancy certificate in the event of dismissal is not contrary to the European principle of an effective remedy if the dismissal was forwarded to the employee's
former address, since the employee was negligent in not informing her employer of the change of address and in not forwarding her postal mail.

Restructuring of enterprise

In **Germany**, the Federal Labour Court held that Air Berlin’s stations were undertakings within the meaning of Directive 98/59/EC and had failed to notify the competent authority properly about planned collective redundancies. In the **Netherlands**, the Amsterdam Appeals Court referred to CJEU case law (C-209/91 Watson/Rask, C-324/86 Daddy’s Dance Hall, and C-4/01 Martin/SBU) to find that an employee cannot waive his/her rights under Directive 2001/23/EC, not even when the disadvantages of such a waiver are compensated by other benefits.

Implications of CJEU or EFTA Court Rulings and ECHR

Fixed-term work

This FR analyses the implications of the judgment in **CJEU case C-177/18 – Baldonedo Martín, 22 January 2020**, for national law in the Member States. Legislation that establishes a distinction comparable to the Spanish one dealt with in this case does not exist in the majority of countries, hence the judgment bears little relevance for national law. By exception, the clarification about the permissibility of the regulation with regard to the non-discrimination of fixed-term workers is important for Greek and Lithuanian law, where a similar rule exists. As for France, the principle of non-discrimination under national law would prohibit a distinction of this kind.
**Table 1. Main developments (excluding implications of CJEU or EFTA-Court rulings)**

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Summary

(I) Two decisions of the Supreme Court deal with the freedom of movement of workers as well as with paid annual leave.

(II) Negotiations for a new collective bargaining agreement in the care, health and social services sector are still ongoing.

(III) CJEU case C-177/18 is of little relevance for Austria.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Annual leave

Supreme Court, ObA 37/19b, 16 December 2019

In the present case, a public employee of the City of Graz had been on sick leave since 15 September 2011 and then from 01 August 2012 until the end of his employment relationship. Upon his request, he was on unpaid leave during which he was paid a temporary invalidity pension from the public pension insurance. Pursuant to § 28 (1) of the Act of Municipal Contractual Public Servants of the City of Graz, unpaid leave can be granted to public employees upon request, unless important official interests demand otherwise. The employee had unused annual leave at the time his sick leave commenced and did not use it during his unpaid leave. When the employment relationship was terminated upon his request, he claimed compensation for unused annual leave for the years 2010 to 2012. His employer argued that annual leave was time banned and would therefore not to be compensated.

The court of first instance decided in favour of the employee, whereas the court of appeals rejected the claim. The Supreme Court upheld the latter court’s decision. It argued that on the basis of the Act itself:

"§ 28 – Annual Leave

(1) A contractual public servant shall be entitled to annual leave. The first entitlement to such leave shall arise after an uninterrupted period of six months of service.

...

(8) As far as the service permits, such leave shall, as far as possible, be granted on an undivided basis during the period from 1 May to 30 September, with due regard being made to the personal circumstances of the contractual public servant. Unless there are overriding service-related reasons for not doing so, a member of the contract staff shall be entitled to use half of the leave without interruption. The right to annual leave shall be forfeited if the contractual public servant has not used up the remainder by 31 December of the calendar year following the leave year. If, for reasons connected with the service, it is not possible to use up the leave by that date, it shall not be forfeited until the end of the following calendar year. If the contract staff member has taken an unpaid leave of absence pursuant to the Styrian Act on the Protection of Mothers, State
Gazette No. 52/2002, as amended, the expiry date shall be postponed by the period of such leave. Compensation for the holiday is not permitted.”

As this regulation only provides for an extension of the limitation period in case of maternity or parental leave (‘unpaid leave of absence pursuant to the Styrian Act on the Protection of Mothers’), the Supreme Court concluded e contrario that this is not the case with other forms of unpaid leave. The Court had decided a similar case for Viennese contractual public servants in 2009 (8 ObA 24/09a) and had applied the two-year limitation period.

In the present case, the Supreme Court reviewed arguments based on the Working Time Directive 2003/88/EC and the CJEU cases C-684/16, Max-Planck-Gesellschaft, and C-619/16, Kreuzinger. Accordingly, annual leave can only be forfeited if the employer made it possible for the employee, in particular through the provision of sufficient information, to exercise his/her right to leave prior to the termination of that relationship. The Court considered the present case to be different as the employee had not been prevented from applying for leave due to the lack of cooperation on the part of his employer or by a failure to inform him of the impending limitation period, but rather by the unpaid leave of absence requested by him and which was in his interest. The Court also referred to the CJEU’s ruling in C-214/10, KHS, where in the case of employees who are unfit for work—with regard to the carry-over period after which the entitlement to paid annual leave may expire—it must be assessed in the light of Article 7 of Directive 2003/88/EC, whether this period can reasonably be classified as a period beyond which the paid annual leave no longer has any positive effect on the employee as a period of rest. In the KHS ruling, 15 months were considered sufficient; in the present case, the law provided for a two-year period.

The Supreme Court also pointed out that if the plaintiff's employment relationship had been terminated as of 01 August 2012, when the temporary invalidity pension commenced, or if it had ended ex lege by 15 September 2012, due to continued sick leave, the plaintiff would also have been entitled to compensation for unused leave upon the termination. It was solely as a result of the unpaid leave of absence agreed upon at the request and in the interest of the employee instead of termination that neither the statutory requirements for the compensatory payment were met at that time nor was it possible to use the leave in subsequent years. The Court then concluded that it was the employee himself who, by structuring his legal relationship as he wished, had waived the immediate accrual of a compensation claim for the unused leave and had thus accepted the possible forfeiture of claims in the event of a longer period of leave. It therefore rejected the claim.

The Supreme Court distinguished the present case from the CJEU’s recent annual leave cases that deal with the forfeiture of annual leave. It pointed out correctly that the limitation of the carry-over of annual leave after two years in case of sickness is in line with the CJEU’s KHS ruling.

It also clarified that the case of unpaid leave upon the employee’s request is to be treated differently from an ongoing employment relationship in which the employee does not use up his/her accrued annual leave – a case of unpaid leave resembles a case of sick leave far more, to which the KHS ruling applies and the annual leave can therefore be forfeited.

2.2 Freedom of movement of workers

Supreme Court, 9 ObA 64/19f, 17 December 2019

The present case resembles a follow-up to the CJEU’s case of 10 October 2019 C-703/17, Adelheid Krah vs Universität Wien. According to the provisions applicable in the present case, previous periods of service completed with a territorial authority are fully
creditable (§ 14 (1) 1 Service Regulation of the City of Vienna 1994 as amended by Vienna State Gazette 2014/34). By contrast, previous periods of service with other employers are only credited 50 per cent up to a maximum of three years (§ 14 (2) Service Regulation of the City of Vienna 1994); even if relevant, a crediting in full can only be made up to five years in this case and only under the additional condition of approval of the municipal staff commission (§ 14 (3) Service Regulation of the City of Vienna 1994). These restrictions also apply if the employees—as in this case—have similar or identical (and not merely "simply useful") previous periods of service. The Supreme Court pointed out that they may therefore discourage migrant workers from exercising their right to freedom of movement. Since there is no objective justification for this, either, they are violating Article 45 TFEU and Article 7(1) of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers.

Given the primacy in the application of EU law, these restrictions are therefore not applicable, with the result that migrant workers must in any event be credited in full for similar or identical periods of prior service, irrespective of the employer with whom they were previously employed.

The primacy in the application of EU law, however, presupposes that the worker concerned may rely on Union law. In the absence of a cross-border situation, the scope of application of Union law is not touched upon if it concerns the crediting of previous periods of service completed by domestic employees in Austria (as decided by the Austrian Supreme Court 8 ObA 34/17h, 8 ObA 8/17k and the Supreme Administrative Court of 27 May 2019, Ra 2017/12/0047). Such employees—like the plaintiff in the present case—therefore cannot invoke the primacy of application of Union law.

The Supreme Court did not stop here though and went on to look into the issue of possible discrimination against nationals. The fact that a national cannot directly invoke Article 45 TFEU does not, however, preclude the possibility that a possible infringement of primary law by a national provision in this case must be examined as a preliminary question for the question to be assessed under national (constitutional) law whether a national may, in fact, be treated less favourably by the application of the national provision than an EU foreigner who can invoke non-applicability (Supreme Court 4 Ob 145/14y; 4 Ob 200/14m Pkt 4.4.). In the present case, the primacy of the application of EU law means that in cases involving (migrant) workers with a cross-border element, all relevant previous periods of service are credited in full and without any quantitative or formal restrictions, whereas domestic workers are subject to the aforementioned restrictions. For this reason, the relevant sections of the Service Regulation of the City of Vienna 1994 as amended by Viennese State Gazette 2014/34 seem to discriminate against situations without a Union connection in relation to those with such a connection. The Supreme Court therefore abated legal proceedings and asked the Constitutional Court to nullify the incremented sections of the Service Regulation of the City of Vienna 1994 as amended by Viennese State Gazette 2014/34 as being in breach of the equal treatment provision of the Austrian Constitution.

This decision shows that even in cases without a cross-border element, EU regulations on the freedom of movement of workers can have significant effects on cases that do not involve any cross-border elements and that are therefore purely national situations. The legal approach used by the courts is the equal treatment provision of the Austrian Constitution and the resulting prohibition to treat nationals less favourable than non-nationals. The same applies to cross-border and domestic situations, which may not be treated differently without justification.

Laws that contravene the Austrian Constitution, however, have to be applied until formally nullified by the Constitutional Court. For purely national situations, the primacy in the application of EU law does not apply and the avenue to be taken by the courts
which deal with such cases of discrimination of nationals is therefore the initiation of proceedings before the Constitutional Court in order to nullify such provisions.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldonedo Martín

The Baldonedo case will not have any implications for Austrian legislation and jurisprudence for two reasons:

- In Austrian federal law as well as in the laws of the Austrian states and municipalities that deal with public employees’ employment conditions, there is no such concept as an ‘interim civil servant’. The status ‘civil servant’ is per se considered a permanent one. Fixed-term contracts are not the norm and subject to severe restrictions: generally, only one fixed term is permitted, and afterwards, only one renewal is possible for a limited period. This means that after the second renewal, the contract is considered a permanent one, unless the second fixed-term contract is concluded for objective reasons specified by law. The exemptions mentioned refer in particular to employment related to political functions (e.g. §§ 4, 4a para 1 VBG, Contractual Civil Servants’ Act) or to the replacement of temporarily absent employees.

The Act states:

"§ 4 (4): A contract of employment for a fixed period of time may be renewed once for a fixed period; this renewal may not exceed three months. If the employment relationship is continued beyond this period, it shall be regarded from then on as if it had been entered into from the outset for an indefinite period.

§ 4a Fixed-term employment contracts in special cases

(1) In the event of a fixed-term employment relationship which is

1. activities within the cabinet of a Federal Minister […]

2. an allocation under Article 30(5) B-VG after 1 May 1995 [=certain parliamentary workers], or

3. an entrustment with the function of a secretary general according to § 7 (11) BMG by employment contract or

4. an entrustment with the function of the spokesperson of the Federal Government […]

a fixed-term continuation of the employment relationship shall not be deemed an extension of the employment relationship pursuant to § 4 (4) or similar legal provisions.

(2) Furthermore, § 4 (4) shall not apply if

1. the contract staff member has been engaged solely for replacement purposes, or

2. the employment relationship of the contract staff member is extended for replacement purposes following a contract of employment concluded for the purpose of the further use of apprentices

3. the employment relationship is extended for a limited period under § 62(2), § 70(2) or § 76(2) of the Tender Act 1989, Federal Law Gazette No. 85, or
4. a person in a fixed-term federal employment relationship is again taken over into a fixed-term employment relationship pursuant to § 86 of the 1989 Tendering Act.

[...]

(4): If the total period of service of one or more fixed-term contracts entered into with a member of the contract staff for the purpose of substitution exceeds five years, the last contract entered into shall be considered as a contract of indefinite duration from that date.”

A situation in which an interim civil servant is subject to differentiated treatment compared to a permanently employed contractual public servant cannot arise, as such a special status does not exist in Austria.

- The termination of permanent contracts is permitted if a notice period and termination dates are respected. Generally, there is no additional legal requirement for compensation payments. In employment relationships concluded before 1 January 2003, contract public employees were entitled to severance payments at the end of their employment contract if certain conditions that differed for workers with open-ended and fixed-term contracts were met. Since there is a maximum limit for fixed-term contracts, this law does not have any practical effect on fixed-term contracts today.

Since there is no general legal requirement for a compensation payment for permanent contractual civil servants, nor for fixed-term workers, again, there is no difference in treatment in that regard.

4 Other Relevant Information

4.1 Collective bargaining

Negotiations for a new collective bargaining agreement in the care, health and social services are still ongoing. Employers are rejecting the trade unions’ demand to reduce normal working hours from 38.5 to 35 hours/per week. While (partly) expressing sympathy for the trade unions’ demand, they argue that they—due to the (limited) public subsidies they receive for their services—have no financial resources to meet them. Warning strikes will continue.
Belgium

Summary

(I) The Constitutional Court has annulled the mobility allowance introduced in 2018.

(II) The Cour de Cassation ruled that the malicious blockade of roads in the context of collective action by a trade union may constitute a criminal offence.

(III) The Cour de Cassation ruled on the employer’s burden of proof when dismissing an employee who submitted a request for a psychosocial intervention in case of harassment at work.

(IV) CJEU case C-177/18 is of little relevance for Belgium.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Mobility allowance

Constitutional Court, No. 11/2020, 23 January 2020

Factual part

The Constitutional Court has annulled the mobility allowance introduced in the Law of 30 March 2018 “concerning the introduction of a mobility allowance”, also known as the ‘cash for cars’ scheme. The mobility allowance was created to encourage employees to exchange their company car for a cash-for-cash allowance with a view to reducing the number of company cars on Belgian roads in order to fight congestion, air pollution and mitigate climate change. The mobility allowance consists of an amount that corresponds to the catalogue value on an annual basis of the user benefit of the returned company car. The mobility allowance was excluded from the official salary, so that no social security contributions had to be paid on it.

The main reason for the annulment of the 'cash for cars' law is that it leads to unequal tax and social security contributions and is thus discriminatory. The cash benefit that replaces the car is much less heavily taxed than an employee’s ordinary gross salary. As only employees with a company car could benefit from this particular tax and social security regime, the law discriminates employees who do not have a company car.

Another reason is the lack of guarantee that the law’s environmental objective, i.e. fewer cars, will be achieved. Those who receive the cash compensation can use it to buy their own (second-hand) car.

To prevent the retroactive effect of the annulment of the law which might give rise to major difficulties, the Constitutional Court maintained the effects of the law until, where appropriate, new legal provisions enter into force no later than 31 December 2020.

The Constitutional Court refers extensively to the negative opinion of the Council of State, Legislation Section, which states that, for various reasons, the mobility allowance is discriminatory and is not relevant for achieving the intended objective to reduce the number of cars on the road (Parliamentary Documents, Chamber of Representatives, 2017-2018, No. 54-2838/001, p. 69-77).
2.2 Road blockade due to trade union strikes

*Cour de Cassation, No. P.19.0804.N, 7 January 2020*

As part of a general strike on 24 June 2016, trade union activists blocked five roads in the vicinity of Antwerp’s port area, including one at the intersection of Scheldelaan and Oosterweelsteenweg. The road blockade at that intersection, which included the burning of car tyres and heavy smoke, meant that no cars could pass and led to major traffic jams. Contrary to the other strike stations, the demonstrators, even after the fire had been extinguished and the picket had been removed by the police, continued to enter the roadway to block it at the instigation of the Antwerp chairman of the socialist trade union.

The Antwerp Court of Appeal ruled that a dangerous situation had been created in which accidents could have occurred due to the occupation of an intersection with heavy lorry traffic in the morning hours, while the formation of smoke had led to a sharp reduction in visibility. The Court concluded that the trade union chairman had deliberately organised and maintained the strikers’ post. In a judgment dated 26 June 2019, the trade union chairman was consequently convicted of violation of Section 406(1) of the Penal Code (“he who maliciously obstructs traffic on the road by any act that could make traffic dangerous or cause accidents”).

The trade union chairman turned to the Cour de Cassation because he felt that his right to strike had been violated. The trade union chairman argued that the moral component of the crime of malice was absent: he wanted to organise a roadblock, but was not aware that this would create a dangerous traffic situation. In addition, the trade union chairman argued that the Court of Appeal could not lawfully establish that he was acting maliciously within the meaning of Section 406(1) of the Penal Code, because the road obstruction had been set up in the context of the strike action and was thus part of a broader objective. Subsequently, the trade union chairman argued that this constituted a violation of Articles 10 and 11 ECHR (right to freedom of expression and freedom of association, including the right to take collective action), because the Court of Appeal had not investigated whether there was an imperative social need to limit his right to strike.

The Cour de Cassation ruled that the Court of Appeal had correctly applied Article 406(1) of the Penal Code. The Cour de Cassation ruled that malicious intent must be exclusively related to the obstruction of traffic and that the offender must not be aware that his/her actions might cause a dangerous situation or accidents. Moreover, the Cour de Cassation confirmed that the fact that a roadblock had been organised to support trade union demands does not necessarily mean that it loses its malicious character. The Cour de Cassation therefore decided that the court of appeal judge had correctly determined that Article 406 of the Penal Code had been violated.

The Court ruled that the right to strike or to demonstrate is not an absolute right and that its exercise may be restricted for reasons of public interest. Statutory criminal provisions, which affect the security and freedom of all citizens, cannot simply be set aside for certain fundamental rights, however valuable they may be. The right to strike or collective action can also be exercised without impediment to movement. The prevention of accidents or traffic hazards is necessary for a democratic society. The Cour de Cassation thus concluded that the Court of Appeal had correctly held that the condemnation of the trade union chairman did not have the effect of making his right to strike subject to restrictions other than those set out in Articles 10 and 11 of the European Convention of Human Rights, all the more so since that condemnation did not prevent the right to strike from being exercised in a normal way.

According to the Cour de Cassation, it follows from the assessment of the case that there is also no infringement of Article 6, §4 of the European Social Charter on the right to take collective action.
This judgment confirms the right to strike as a fundamental right. At the same time, this judgment shows that the right to strike or collective action does not tower on a pedestal above the other fundamental rights. The Court does recognise the reflex effect of Articles 10 and 11 of the European Convention of Human Rights and of Article 6 §4 of the European Social Charter. Yet, the fundamental right, like most other fundamental rights, can also be restricted under certain conditions.

The judgment of the Cour de Cassation that does not call into question the right to strike as such, but at the same time makes it clear that it is subject to a number of conditions. The right to strike or collective action is not an excuse for criminal road blocks. The trade union action was not a purely demonstrative short-term action but a far-reaching long-term blockade of central roads in the port (compare with the Dutch Cour de Cassation ‘Hoge Raad’, 23 April 2013, Nederlandse Jurisprudentie 2013/576 , case note P. Mevis).

2.3 Dismissal protection

_Cour de Cassation, 20 January 2020, No. 19.0019.F_

An employee who believes he is being harassed at work can take a number of steps on the basis of the Workers Safety and Health Law of 8 August 1996. For example, the employee can submit a request for a formal psychosocial intervention at company level or submit a complaint to the labour inspectorate.

An employee who has submitted a request for a formal psychosocial intervention or a complaint is protected against dismissal. The employer may not terminate that employee’s employment relationship, except for reasons that are not related to the request for formal psychosocial intervention or the complaint (Article 32tredecies, § 1 of the Workers Safety and Health Law of 8 August 1996).

If the employer, nevertheless, terminates the employment contract within 12 months following the submission of a request for intervention or a complaint, it is up to the employer to prove that the reasons for dismissal do not relate to the request for a formal psychosocial intervention or the complaint. An employer who fails to provide such proof must pay a dismissal compensation to the employee which, at the employee’s choice, shall either be equal to a lump sum corresponding to six months’ salary or the actual damage suffered and proven by the employee.

Case law and legal doctrine discuss the exact scope of the protection measure. According to the majority opinion, the employer is not only prohibited from dismissing the employee for reasons related to the request for a formal psychosocial intervention or the complaint, but is also prohibited from dismissing the employee for reasons derived from the facts contained in the request for intervention or in the complaint (Appeal Labour Court Mons, 26 January 2018, Jurisprudence de Liège, Mons et Bruxelles, 2018, 1847; Appeal Labour Court Liège, 9 August 2017, Jurisprudence de Liège, Mons et Bruxelles, 2017, 744).

It was deemed, for example, that protection against dismissal had been violated with regard to an employee who had filed a complaint because, among other things, she had been shouted at and humiliated and was dismissed after filing a complaint for "incompatibility of characters".

According to the minority view, a condition is thus added to the law (see H. Funck, “La protection en raison d’un dépôt de plainte pour harcèlement”, Sociaalrechtelijke Kronieken, 2017, 81). In this decision of 20 January 2020, the Cour de Cassation decided in favour of the minority view.
The cassation judgment refers to an older version of Article 32tredecies, § 1 of the Workers Safety and Health Law of 8 August 1996, which does not refer to an "application for a formal psychosocial intervention" but to "a reasoned complaint". Although the judgment in cassation does not deal with the currently applicable version of Article 32tredecies, this does not detract from the importance of the judgment.

According to a parliamentary Memorandum of Understanding, the protection afforded to the complainant worker by Article 32tredecies benefits him/her in that he/she "has taken certain steps and initiated certain procedures in the context of protection against violence or harassment in the workplace" (Parliamentary Documents, Chamber of Representatives, 2005-2006, No. 51-2686/001-2687/001, 31). The very fact that the steps were taken, i.e. the procedural aspect of the complaint, is therefore more relevant than the actual content of the facts relied on in the complaint.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldonedo Martín

Factual part

(I) On 24 November 2005, the City of Madrid appointed Mrs Baldonedo Martín as an interim civil servant with the task of maintaining green spaces. The appointment decision specified that Ms Baldonedo Martín would be employed to cover a vacant post until the post was filled by a civil servant with a permanent appointment. The decision also stated that the post would be abolished if the civil servant being replaced lost the right to have his/her post retained, or if the authority determined that the urgent grounds for appointing an interim civil servant to cover the post no longer existed. On 15 April 2013, Baldonedo Martín was informed that her post had been filled on that day by a permanent civil servant and that her employment was therefore terminated without entitlement to any termination-of-service allowance.

Since Spanish law does not provide for a termination allowance for civil servants with a permanent appointment, officials or interim civil servants, Ms Baldonedo Martín could not invoke the principle of equal treatment for fixed-term contracts to claim a termination allowance. There is no discrimination in the termination of temporary employment as a civil servant when a temporary worker with a fixed-term employment contract or a civil servant with a permanent appointment does not receive a termination allowance when their employment relationship is terminated, whereas a staff member with an employment contract of indefinite duration does receive such a termination allowance when, according to Spanish law, the contract of this staff member is terminated based on an objective ground.

Nor was there any abuse of successive fixed-term employment contracts or relationships, since she had only been appointed once, even if the period covered was more than seven years. Mrs Baldenedo Martín was therefore not entitled to severance pay.

(II) The civil servant invoked Articles 20 and 21 of the Charter of Fundamental Rights in relation to Clause 4 (1) of the Framework Agreement on fixed-term work of 18 March 1999 on the principle of non-discrimination of fixed-term employment contracts. The Charter is only applicable to EU Member States when they implement European Union law.

The severance allowance envisaged for a temporary civil servant is not covered by the penalization of the abuse of successive fixed-term employment contracts provided for by the Framework Agreement and therefore does not fall within the scope of European law.
This ruling is of little relevance for Belgium, since Belgian labour law does not provide for a legal provision such as Article 52 of the Spanish Workers Statute regarding objective grounds for termination of an employment contract of indefinite duration.

4 Other Relevant Information

Nothing to report.
Bulgaria

Summary
CJEU case C-177/18 is of little relevance for Bulgaria.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU Rulings and ECHR
3.1 Fixed-term contracts
CJEU case C-177/18, 22 January 2020, Baldonedo Martín
The Civil Servants Act regulates compensation in case of termination of the employment relationship in Bulgaria. This act does not contain provisions on different rates of compensation based on the term of the civil servant relationship. The conditions and amounts of compensation are equal in both cases.

4 Other relevant information
Nothing to report.
Croatia

Summary
(I) An Amendment to the Act on Student Jobs has been adopted.
(II) There are no implications of the judgment in case C-177/18 for Croatian law.
(III) The Collective Bargaining Agreement for Non-EU Seafarers serving on board of vessels under the Croatia flag in international shipping trade (2020) has been concluded.

1 National Legislation
1.1 Amendment to the Act on Student Jobs
The Amendment to the Act on Student Jobs has been adopted (Official Gazette No. 16/2020). It broadens the personal scope of the Act's application. It allows students who study at colleges/universities in the Republic of Croatia to perform student jobs, regardless of their nationality.

2 Court Rulings
Nothing to report.

3 Implications of CJEU Rulings and ECHR
3.1 Fixed-term employment contracts

CJEU case C-177/18, 22 January 2020, Baldonado Martín
In the present case, Ms Martin was employed as a fixed-term civil servant to cover a vacant post. When the post was filled by an established civil servant, her employment was terminated. She claimed payment of compensation for the termination of her employment. According to the Spanish law, civil servants are not entitled to compensation upon termination of their employment. The Administrative Court in Madrid referred the question to the CJEU whether the Spanish law in this context is in line with Articles 151 and 153 of the TFEU and Clause 4(1) of the Framework Agreement on Fixed-Term Work set out in the Annex to Council Directive 1999/70/EC. The CJEU did not find any incompatibility with EU law.

In Croatia, fixed-term civil service, the termination of employment of civil servants and their rights in this regard are regulated by the Civil Servants Act of 2005 (last amended in 2019). The Civil Servants Act, as a rule, does not provide for compensation (severance pay) in case of termination of employment of civil servants (neither for civil servants employed indefinitely nor for fixed-term civil servants). However, in some cases, civil servants may be entitled to severance pay. According to Article 131 of the Civil Servants Act, a civil servant is entitled to severance pay when the state body in which s/he was employed is abolished and when the statutory period of disposal of civil servant expires. In the private sector, according to the Labour Act, fixed-term employees are entitled to severance pay when fulfilling certain conditions (in case of business-related dismissal or dismissal due to personal reasons and after the 2-year period of service), but only when the ordinary dismissal (dismissal that requires the terminating party to respect the notice period) is agreed by the contract of employment. Otherwise, if ordinary dismissal is not agreed, the fixed-term employment contract terminates when the defined time expires and, in such a situation, the fixed-term
employee is not entitled to severance pay (derived from Articles 112(3), 115 and 118 of the Labour Act).

Since EU law does not preclude national law that does not provide for payment of any compensation to fixed-term civil servants upon the termination of their employment, there are no implications of the judgment in this case for Croatian law.

4 Other relevant information

4.1 Collective Bargaining Agreement for Non-EU Seafarers

The Collective Bargaining Agreement for Non-EU Seafarers serving on board vessels under the Croatia flag in international shipping trade (2020) has been agreed between the Croatian Shipowners’ Association – Mare Nostrum and Seafarers’ Union of Croatia for a period from 03 February 2020 until 31 December 2020 (Official Gazette No. 20/2020).
Cyprus

Summary
CJEU case C-177/18 is of little relevance to the Cypriot context. Related problems regarding the rights of 'temporary employees of indefinite duration' are discussed.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU Rulings and ECHR
3.1 Fixed-term contracts

*CJEU case C-177/18 – Baldonedo Martín, 22 January 2020*

The court ruled that Clause 4(1) of the Framework Agreement on Fixed-term Work concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment, whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contract of employment on an objective ground. Articles 151 and 153 of the TFEU and Clause 4(1) of the Framework Agreement on Fixed-term Work set out in the annex to Directive 1999/70/EC must be interpreted as not precluding a national law that does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment, whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment.

The case is of little relevance for Cyprus given that as far as compensation for fixed-term workers in the public sector is concerned, it is regulated by the law (FT Law; Law 98(I)2003, 25 July 2003. Greek title: Ο Περί Εργοδοτουμένων με Εργασία Ορισμένου Χρόνου (Απαγόρευση Δυσμενούς Μεταχείρισης) Νόμος του 2003) purporting to transpose Directive 1999/70/EC on Employees with Fixed-term Work Contracts (Prohibition of Less Favourable Treatment) of 2003, herein referred to as the 'Framework Agreement'. The law entered into force one year prior to EU accession, explicitly stipulating its purpose to harmonise Cypriot law with the Directive (Law 70(I)2002 (07 June 2002), amending the law on Termination of Employment, published in Cyprus Official Gazette 3610 on 07 June 2002 effective 01 January 2003). Transposition issues as well as the implementation of FT Law in Cyprus have been raised (N Trimikliniotis and C Demetriou, National Expert Report on Directive 1999/70/EC concerning the Framework Agreement on fixed-term work concluded by UNICE, CEEP and ETUC, Studies on the implementation of Labour Law Directives in the enlarged European Union’, 2006, on behalf of human European consultancy, Hooghiemstraiplein 155, 3514 AZ Utrecht, the Netherlands, funded by the EU Commission http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/cyrep05_en.p
Fixed-term employees do not have a right to compensation for dismissal if the employment was terminated because the term stipulated in the employment agreement has expired (Article 5(d) of the Law on Termination of Employment No. 24 of 1967). Successive fixed-term contracts for a cumulative period of 30 months will have the effect of converting the contract into one of indefinite duration. If the employee is dismissed before the date of expiry, the employer must justify that the employee was dismissed for just cause under the rules of the termination of employment law. Otherwise, the employee is entitled to compensation for unlawful termination of employment. There is no specific regulation of the matter.

Article 7(1) of the FT Law provides that where an employer employs an employee under a fixed-term contract, either following a renewal of the contract or otherwise, and the employee had previously worked for a total period of 30 months or more under a fixed-term contract, irrespective of the order of successive fixed-term contracts, then the contract shall, for all intents and purposes, be considered a contract of indefinite duration and any provision in this contract restricting its duration will be void, unless the employer proves that the employment of the said fixed-term worker can be justified on objective grounds. With regard to fixed-term workers or workers with successive fixed-term contracts, any period of employment before the enactment of the FT Law shall not be taken into account for the purpose of calculating the 30-month period (Article 7(3) of the FT Law).

Article 5(3) of the FT Law copies the text of Clause 4.4 of the Framework Agreement verbatim; ‘objective grounds’ is defined in Article 7(2) of the FT Law (transposing Directive Clause 5 of the Framework Agreement with reference to the measures preventing abuse). Article 7(2) provides that objective grounds exist especially where:

- The needs of the undertaking with regard to the execution of a particular task are temporary;
- The employee is replacing another employee;
- The special nature of the work that must be carried out justifies the fixed-term duration of the contract;
- The employee is employed on probation (the concept of ‘probation’ is found in the Termination of Employment Law);
- The employment on the basis of a fixed-term contract is in pursuance of a court decision;
- The employment on the basis of a fixed-term contract concerns employment in the National Guard of the Republic of Cyprus, volunteers with a five-year obligation. The employment of National Guard volunteers (the precise term used is ‘volunteers of a five-year service’) is covered by a special scheme regulating the service of these individuals in the Army for a period of five years, because conscription to the Cypriot Army is otherwise obligatory for a term of two years (approximately), with the exception of a few permanent posts. These persons are highly qualified professionals and have been trained in operating advanced technology weapons, which is why they are given a five-year contract of service, presumably in an effort to allow flexibility for the government to review the situation every five years and decide according to the circumstances as to whether their service is needed or not. There were media reports in early 2006 about these employees protesting against abuse of their position by the government).
The use of the word ‘especially’ in the opening section of this Article implies that the above list is not exhaustive.

Fixed-term workers under private law in the public sector work in the public sector but their rights are regulated by private law. One such worker claimed that she should be entitled to the same rights as public sector employees to preclude the possibility of discrimination. However, the Supreme Court rejected an appeal against the first instance decision of the Labour Disputes Court on the termination of her employment (Christina Laouta v The Republic of Cyprus through the Attorney General, Supreme Court of Cyprus, Appeal jurisdiction, Civil appeal No. 60/2010, 14 October 2014). The appellant had initially been hired by the government as a legal officer in May 2004, on the basis of a contract ending in December 2004. Thereafter, successive contracts with 15-day durations were signed, lasting until 23 April 2005, upon which a new contract was signed lasting until 31 December 2006. On 04 December 2006, the government informed the appellant that her employment contract would be converted into one of indefinite duration as of 01 December 2006, because she had completed 30 months of employment as foreseen under the FT Law. In May 2007, the government informed the appellant that her services were being terminated because the Public Service Commission had appointed another person in the permanent post of legal officer, a position the appellant had unsuccessfully applied for. The appellant rejected the amount offered to her as compensation for the termination of her contract and applied to the Labour Disputes Tribunal claiming both higher compensation and reinstatement in her position. The Labour Disputes Court decided that the termination of the appellant’s services was unlawful under the Law on Termination of Employment (Law 24/1967) and ruled in her favour for compensation in the amount of EUR 3,610. Through this appeal, the appellant sought to challenge the Labour Disputes Court’s decision for having established her dismissal as unlawful without accepting that there was bad faith on the part of the employer, as she was dismissed whilst being pregnant. At the same time, she appealed against the Labour Disputes Court’s failure to consider her a government employee, arguing that the FT law required a restrictive interpretation of the terms ‘indefinite duration’ and ‘permanent’ so as to safeguard equal treatment between fixed-term employees and permanent employees. The Appeal Court rejected this argument, stating that the differentiation between a permanent public employee and a temporary employee with a fixed-term contract or a contract of indefinite duration cannot be abolished, since the employment of the latter is not based on the Constitution or on the Public Service Law of 1/90. The Supreme Court rejected the allegation of bad faith on the part of the employer, which could have justified the appellant’s reinstatement to her prior position on the ground that the employment contract that had been repeatedly signed between the parties explicitly provided that the appellant’s employment would continue until her permanent appointment to the specific position, and that the appellant herself had recognised the legitimacy of this procedure by filing an application for the permanent position of her post. The appellant’s argument that the compensation awarded to her by the Labour Disputes Court was too low was also rejected by the Supreme Court, which found the compensation to be adequate, given that the aggravating circumstances invoked by the appellant had not been proven.

In another case (Maria Syrimi V Cyprus Republic, Nicosia Labour Disputes Court, Case No. 338/2012, 30 June 2015), the Labour Disputes Court decided that the contract of a research assistant in the Statistics Services, who had been employed on successive fixed-term contracts since 2007, was automatically converted into a contract of indefinite duration based on the Cypriot law transposing the FT Law. Whilst the decisions of the Labour Disputes Court are not binding on superior courts, it is noteworthy that the government decided to not appeal against the decision, which confirms the basic principle that transposes the Fixed-term Directive. This is a practice extensively used both in the public and the private sector. This issue was taken up by the Pancyprian Union of Nurses (hereinafter: PA.SY.NO), which held a one-day warning strike and raised, inter alia, demands related to the fact that the practice of renewing consecutive
fixed-term contracts continues in the public sector without these contracts being converted into contracts of indefinite duration.

General protection against unfair dismissal (Law on Termination of Employment No. 24 of 1967 as amended) in domestic law is afforded to fixed-term employees when they are dismissed during their term. However, the same law, i.e. the Law on Termination of Employment (Article 5(4), Part II of Law on Termination of Employment No 24 of 1967 as amended), provides that a valid reason for dismissal is the expiration of a fixed-term contract. No measures that may stop the abuse of (or encourage the use of) fixed-term employment contracts or relationships were discussed prior to the enactment of the FT Law transposing the Fixed-term Directive, nor has any prohibition been included in the national legislation against discrimination of fixed-term workers or against successive renewals of fixed-term contracts. However, even prior to the passage of the FT Law, the IDT had the power to treat fixed-term contracts as contracts of indefinite duration and thus ensure the worker received compensation (Servos V Attorney General, 1977, 1 CLR 154).

Protection under the Law on Termination of Employment requires a 26-week probation period; otherwise no compensation will be paid. The law provides that it is permissible for employment contracts to stipulate a probation period for the employee during which he/she can be dismissed without notice and without becoming entitled to any other remedies foreseen by the said law, but the probation period may not exceed six months from the date of commencement of employment. The only measure against abuse is the fact that upon completion of the six-month period (or shorter, if provided by the employment contract), the employee’s probation is considered automatically completed and thereafter, all rights granted to the employee by legislation and by contract apply.

In terms of measures introduced to prevent abuse, Article 7(1) of the FT Law provides that where an employer employs an employee under a fixed-term contract, either following a renewal of the contract or otherwise, and the employee had previously worked under a fixed-term contract for a total period of 30 months or more, irrespective of the order of successive fixed-term contracts, the contract shall, for all intents and purposes, be deemed a contract of indefinite duration and any provision in this contract restricting its duration will be void, unless the employer proves that the fixed-term employment of the said worker can be justified on objective grounds.

With regard to fixed-term workers or workers with a successive series of fixed-term contracts, any period of employment before the enactment of the Cypriot Law shall not be taken into account for the purposes of calculating the 30-month period referred to above (Article 7(3) of the Cypriot Law). As explained earlier, only objective reasons justify renewals of fixed-term employment contracts or relationships. The maximum total duration of successive fixed-term employment contracts or relationships is 30 months, irrespective of how many successive terms this is divided into. As stated above, any period worked prior to the enactment of the Cypriot Law is not to be taken into account when calculating the aforementioned 30 months. The Law on Termination of Employment gives the court discretion to decide based on the facts of the case, which constitutes the maximum permitted period between contracts to ensure continuity. The Supreme Court has ruled that in case of an employee who claims rights derived from the fixed-term law which are in fact private law rights, the employee will be required to claim such rights under the IDC, even if the claim is against a body operating under public law (Avraam v Republic 2008, 3 CLR 49; Burston v University of Cyprus, case 847/2012, 04 June 2015; Venizelou v Republic of Cyprus, administrative appeal 67/100, 21 May 2015).

Equal treatment in Cypriot employment law is not only a general principle derived from Article 28 of the Cypriot Constitution, the ECHR and EU law, such as the Charter, it is also enshrined in the legislation on termination of employment. However, the mechanism that effectively implements the principle of non-discrimination is implied by
law into contracts of employment, particularly following the enactment of a comprehensive set of legislation in 2004, transposing the anti-discrimination directives 2000/78/EC and 2000/43/EC.

Fixed-term employees have the right to be treated equally like regular permanent employees. The principle of non-discrimination as enshrined in the law (Article 5(1) of the Cypriot Law copies verbatim the text of cl 4.1 of the Framework Agreement) provides that with reference to employment conditions, fixed-term workers shall not be treated less favourably than comparable permanent workers solely because they have a fixed-term contract or relationship, unless differentiated treatment is justified on objective grounds. There is no definition of ‘employment conditions’ in the FT Law.

A ceiling of 30 months is set, irrespective of how many successive terms this is divided into. As stated above, any period worked prior to the enactment of the Cypriot Law is not to be taken into account when calculating the aforementioned 30 months. The Law on Termination of Employment gives the court discretion to decide, based on the facts of the case, what constitutes the maximum period between contracts permitted to ensure continuity.

Article 2 of the FT Law defines the term ‘comparable employee with a contract of indefinite duration’ as a worker with an employment contract or relationship of indefinite duration, who works in the same establishment, is engaged in the same or similar work/occupation, due regard being given to qualifications/skills. In other words, the wording of Clause 3.2 of the Framework Agreement is copied verbatim. There is an issue as to the meaning of ‘comparable permanent worker’, a term that has created uncertainty: the Industrial Relations Unit of the Ministry of Labour has apparently failed to properly compare fixed-term workers with permanent public or semi-public employees, given that the term falls within the criteria set by Clause 3 of the Framework Agreement: they work ‘in the same establishment, are engaged in the same or similar work/occupation, due regard being given to qualifications/skills’. Failing such a comparison, the Industrial Relations Unit could have relied on the alternative provided by the Directive that where there is no comparable permanent worker in the same establishment, the comparison shall be made with reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.

Article 2 of the FT Law repeats the phrase of the Directive ‘due regard being given to qualifications/skills’, but does not provide any clarifications.

The dispute over the rights of ‘temporary employees of indefinite duration’ has been a major issue in the public sector: the dismissal of temporary public employees, some of who are temporary employees with a contract of indefinite duration, is a common labour dispute. At the same time, temporary public employees with fixed-term contracts work in the public sector based on Law 108(I)/1995 (Law on the Procedure of Hiring Temporary Employees in the Public and in the Educational Sector (Ο περί Διαδικασίας Πρόσληψης Έκτακτων Υπαλλήλων στη Δημόσια και την Εκπαιδευτική Υπηρεσία Νόμος)), which regulates the procedure for hiring public employees and setting the maximum duration of employment of temporary staff in the public sector at two years. There has been a long dispute over the rights of temporary public employees. However, this issue became even more controversial in September 2006, when the President of the Republic of Cyprus, acting on the advice of the Attorney General, decided to exercise his right to refer a law back to the House of Representatives under Article 48 of the Constitution on the grounds that the law was unconstitutional. The President argued that the law that would equalise the rights of temporary employees with a contract of indefinite duration in terms of pension rights and retirement age and secure permanent employment would (a) violate the principle of separation of powers and the laws that leave issues related to the appointment of public employees to the executive, and (b) it would involve an increase in budgetary expenditure (Article 80.2 of the Cypriot Constitution. E Soumeli

In 2011, an amendment (Amendment 26(I)/2011) was introduced. The definition reads as follows: „εργοδοτούμενος αορίστου χρόνου’ σημαίνει τον εργοδοτούμενο που έχει σύμβαση εργασίας αορίστου χρόνου στη Δημόσια Υπηρεσία δυνάμει του εδαφίου 1 του άρθρου 7 του περί Εργοδοτουμένων με Εργασία Ορισμένου Χρόνου (Απαγόρευση Δυσμενούς Μεταχείρισης) Νόμου και έχει προσληφθεί με σύμβαση εργασίας ιδιωτικού δικαίου ορισμένου χρόνου δυνάμει των περί της Διαδικασίας Πρόσληψης Έκτακτων Υπαλλήλων στη Δημόσια και Εκπαιδευτική Υπηρεσία Νόμων του 1995 έως (Αρ. 3) του 2004 και δυνάμει των περί Προσλήψεως Εκτάκτων Υπαλλήλων (Δημόσια και Εκπαιδευτική Υπηρεσία) Νόμων του 1985 έως 1991") to the public service law introduced 'employees with contracts of indefinite duration' as a distinct category (The definition reads as follows: „εργοδοτούμενος αορίστου χρόνου’ σημαίνει τον εργοδοτούμενο που έχει σύμβαση εργασίας αορίστου χρόνου στη Δημόσια Υπηρεσία δυνάμει του εδαφίου 1 του άρθρου 7 του περί Εργοδοτουμένων με Εργασία Ορισμένου Χρόνου (Απαγόρευση Δυσμενούς Μεταχείρισης) Νόμου και έχει προσληφθεί με σύμβαση εργασίας ιδιωτικού δικαίου ορισμένου χρόνου δυνάμει των περί της Διαδικασίας Πρόσληψης Έκτακτων Υπαλλήλων στη Δημόσια και Εκπαιδευτική Υπηρεσία Νόμων του 1995 έως (Αρ. 3) του 2004 και δυνάμει των περί Προσλήψεως Εκτάκτων Υπαλλήλων (Δημόσια και Εκπαιδευτική Υπηρεσία) Νόμων του 1985 έως 1991”). In 2016, another amendment aimed to regulate the employment of fixed-term employment and employment with contracts of indefinite duration in the public service (Cyprus, Law regulating the employment of fixed-term and indefinite duration employees in the public service of 2016 (Ο περί ρύθμισης της απασχόλησης εργοδοτουμένων αορίστου και εργοδοτουμένων ορισμένου χρόνου στη δημόσια υπηρεσία νόμος του 2016) No. 70(Ι)/2016, 28 April 2016). The law provides that the hiring of persons on fixed-term contracts is allowed in the following cases (Article 4.2 of the law regulating the employment of fixed-term and employees with contracts of indefinite duration in the public service of 2016.):

- To cover temporary needs;
- To cover additional needs or needs arising as a result of vacancies;
- To replace employees who are absent on long-term leave;
- To carry out a project of a fixed duration, for as long as the project lasts;
- As a result of the annulment by the court of the appointment of a person in a permanent position
- For the employment of persons who have been awarded scholarships and have acquired a degree in civil aviation and for the employment of graduates of the Forestry College.

The contracts must be of the shortest minimum duration and only be used as long as necessary to complete the fixed-term project for which they are hired. In case a fixed-term employee is hired to fill a position as a result of annulment of an appointment, the duration of the fixed-term contract may not exceed six months, but can be renewed for additional six-month periods until the vacant position is filled. In all other cases, the duration of fixed-term contracts may not exceed 12 months, though the term is renewable. Fixed-term contracts may be terminated prior to their expiry where the specific need for which they were concluded no longer exists, or where the fixed-term contract for which the employee was hired is completed, or where the re-examination of the procedure of an annulled appointment is completed or the performance of the employee is assessed as insufficient or the employee has committed a serious offence involving dishonesty or indecency.
Employees hired under this law are remunerated at a lower scale for the first 24 months. After the first 24 months, the employee is remunerated in accordance with the scale at which he/she was initially hired.

The draft amendment of the law aiming to allow transfers of fixed-term workers whose contract was transformed into a contract of indefinite duration in the public service is also of relevance (the draft law, namely Ο περί Μετατάξεως Εργοδοτουμένων Αορίστου Χρόνου στη Δημόσια Υπηρεσία Νόμος του 2019, was discussed at the meeting of the Parliamentary Committee on Finance on 24 February 2020). The Attorney General’s office (hereinafter: AG) has advised that the draft law is contrary to constitutional provisions and the EU acquis as follows:

1. Some provisions (the combined effect of Articles 7(1) and 8(3) of the draft legislation) carry a budgetary burden and as such, they violate the separation of powers, as Parliament does not have power to impose measures that have budgetary implications without executive consent.

2. The draft law provisions on posts that restrict the recruitment for these posts exclusively from a specified catalogue (the catalogue is drafted by the Director of the Department of Public Administration and Personnel) of workers with fixed-term contracts converted into contracts of indefinite duration (Article 8(1)(c) of the draft law) violates the equality principle, as provided in Article 28 of the Constitution as construed by Cypriot case law (the Supreme Court cases 1002/90 (30 September 1998) and 1546/06 (21 January 2008), which require a public notice to fill any post to the civil service.

3. Also, the AG considered that the draft law violates the freedom of establishment provided for in Article 49 TFEU, since (non-Cypriot) European citizens will not be eligible to apply for positions simply because they are not indefinite-term employees who fall within the catalogue’s scope. According to Article 51 TFEU, only those public positions involving the exercise of public authority are excluded from the scope of Article 49 TFEU.

4. Finally, the AG considers that the provision (Article 8(3) of the draft law) that requires the Public Service Commission (in charge of the appointment of civil servants) to provide an appointment to an employee of indefinite duration, providing that such an appointment shall be made retroactively by 01 January 2020, is unconstitutional. The AG deems that this amounts to a violation of the principle of the separation of powers (a number of Supreme Court decisions has ruled on the subject, the most relevant of which is Reference 1/93), by intervening inappropriately and usurping the exclusive jurisdiction of the Public Service Commission on public sector appointments of civil servants (cases 1002/90 (30 September 1998) and 1546/06 (21 January 2008), which ruled that the Public Service Commission has exclusive jurisdiction to appoint civil/public servants).

There is, however, a second tier of arguments that construes the EU acquis in Directive 1999/70/EC, as developed in CJEU jurisprudence. The AG considers that the draft amending law of the Public Service Law (Ο περί Δημόσιας Υπηρεσίας (Τροποποιητικός) Νόμος του 2019) contravenes Directive 1999/70/EC for not adequately equating civil servants with temporary staff on a fixed-term contract. The Directive lays down legal rules in its annex, which inter alia in principle equate the conditions of employment of workers on fixed-term contracts to equivalent workers on contracts of indefinite duration (as the terms are construed in Clause 3 of the Annex), and incorporated in Cypriot Law 98(1)/2003 as amended (as the preamble notes). However, the failure of Parliament to repeal earlier national provisions contained in the Public Service Law, which do not treat workers on temporary contracts equally as civil servants contravenes the Directive. Clause 2 of the Annex clarifies that the Directive is generally applicable to all fixed-term workers, thus the Directive covers all employees, both in the private and public sectors.
The AG notes that indicatively, the CJEU rules that the Directive and Annex, Clause 4.1, applies to a regular civil servant as to the evaluation of his/her working hours as a fixed-term worker in the public sector, in accordance with paragraphs 35-36 of C-302/11 dated 18 October 2012).

To the extent that the Directive applies to the Cypriot public sector, the corresponding indefinite employees are permanent civil servants, while temporary workers (as designated in the law) are all types of temporary civil servants. The AG notes that Clause 4.1 concerns the comparison between fixed-term workers and workers with contracts of indefinite duration, not a comparison between different categories of fixed-term staff (case C-245/17, paragraph 512, dated 01 January 2018). Clause 4.1 provides that in respect of working conditions which cover the rights and obligations, they specify specific employment relationships and include financial benefits and career development (Decision 20 December 2017 in case C-158/16, paragraph 31), fixed-term workers may not be treated less favourably than comparable permanent workers, unless justified for objective reasons, such as different tasks performed by the two categories (case C-177/14, para. 50-51, dated 09 July 2015). It is noted that the temporary nature of the service of fixed-term workers does not in itself constitute an 'objective reason' for discrimination against them vis-à-vis comparable permanent workers in terms of employment (case C-596/14, para. 47, dated 14 September 2016). Therefore, such discrimination is prohibited (WEU judgment of 14 September 2016 in case C-596/14, paragraph 46). Any such national legal provisions incompatible with EU law should remain unenforceable, as per case C-378/17, para 38-39, dated 04 December 2018 and it is obligatory that they are amended by national legislature (case C-290/94, para. 29, dated 02 July 1996).

4 Other relevant information

Nothing to report.
Czech Republic

Summary
(I) An amendment of the Civil Procedure Code concerns wage payments for indebted employees.
(II) CJEU case C-177/18 is of little relevance for the Czech Republic.

1 National Legislation
1.1 Civil procedure and enforcement code
A bill of an amendment to Act No. 99/1963 Coll., the Civil Procedure Code, has been adopted.

The bill proposes a new type of compensation in relation to employment. Since it is the employer in case of an indebted employee (whose debt is under official execution) who calculates deductions from the employee’s salary and other necessary steps to ensure proper cooperation with a bailiff, the bill proposes compensation for the aforementioned actions. Specifically, it is the indebted person who should, according to the bill, compensate the employer.

Furthermore, the bill proposes changes to deductions from severance pay. Severance pay may either be one month’s salary or more. So far, even in the latter case, severance pay has been treated as one sum, thus, it consisted of a single deduction. The bill proposes deducting an amount from each component of severance pay, e.g. severance pay consisting of a three months’ salary will be deducted three times.

Moreover, the bill introduces major changes to the assignment of bailiffs. Currently, it is possible (and very common) for multiple bailiffs to be assigned to one insolvent person. This approach is very confusing, not only for the insolvent person, but to the employer as well (among others). The bill proposes a “one-on-one” system in which only one bailiff would be assigned to one insolvent person (naturally, one bailiff can be assigned to numerous insolvent persons).

The bill is currently being deliberated on Parliament. The preliminary effective date is set to the first day of the eighteenth calendar month following its publication.

This is a substantial development in the Czech Republic. The bill establishes a new type of compensation in employment relationships. Moreover, the “one-on-one” system carries the potential to simplify the enforcement of claims in the Czech Republic. The new legislation does not depart from previous lines of reasoning and it has no likely implications in the legal / political area. It is in line with the EU aquis.

2 Court Rulings
Nothing to report.

3 Implications of CJEU Rulings and ECHR
3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldonedo Martín

The CJEU ruled that "Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work..."
concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment, whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contract of employment on an objective ground”.

The CJEU further ruled that “Articles 151 and 153 of the TFEU and Clause 4(1) of the framework agreement on fixed-term work set out in the annex to Directive 1999/70 must be interpreted as not precluding a national law that does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment, whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment”.

The payment of compensation for terminations of employment (severance pay) is only provided in cases set forth by law.

All legal relationships within which dependent work is performed (i.e. relationships between employees and employers) are governed by Act No. 262/2006 Coll. the Labour Code (the “Labour Code”), unless such is regulated by special legislation. Pursuant to Sec 67 et seq. of the Labour Code, severance pay is provided when employment is terminated (unilaterally or by agreement) due to organisational reasons (i.e. due to the dissolution or relocation of the employer or other organisational changes that make the employee redundant), due to health reasons, or in cases where the so-called “account of working hours” (specific method of uneven distribution of working hours) applies to employee at the time of termination. Such severance pay is provided in case of terminations of both fixed-term and permanent employment – but only due to the reasons stated above. The expiration of fixed-term employment alone is not grounds for the provision of severance pay.

Specific rules apply to certain groups of employees covered by special legislation, particularly employees in public administration, i.e. officials of territorial self-governing units, civil servants, members of security forces and professional soldiers.

- Pursuant to Sec 13 of Act No. 312/2002 Coll. on Officials of Territorial Self-Governing Units, officials of territorial self-governing units are entitled to severance pay on grounds stated in law (when employment is terminated due to organisational or health reasons, or when certain periods of employment duration are reached), irrespective of whether their employment is fixed-term or permanent.

- Pursuant to Sec 72 of Act No. 234/2014 Coll. on Civil Service, severance pay is provided to civil servants in limited cases only specified by law, and is only provided when permanent (not fixed-term) service contracts are terminated for organisational reasons.

- Pursuant to Sec 155 et seq. of Act No. 361/2003 Coll. on Service of Members of Security Forces, members of the security forces (e.g. police, fire rescue service, customs administration, prison service, etc.) are provided with different forms of severance pay based on rules set forth by law. Such rules apply equally, regardless whether the service is of a fixed-term or permanent nature (fixed-term service is exceptional). The expiration of a fixed-term service contract alone does not constitute grounds for the provision of severance pay.

- Pursuant to Sec 138 et seq. of Act No. 221/1999 Coll. on Professional Soldiers, professional soldiers are entitled to different forms of severance pay on grounds set forth by law. The same rules apply to both fixed-term and permanent service contracts (although fixed-term service is exceptional). One of the grounds upon
which an entitlement to severance pay may arise is the expiration of a fixed-term contract.

National legislation as described above is in line with the conclusions of the CJEU expressed in the above judgment. Severance pay is only provided in cases provided for by law where the normal continuation of the employment relationship was disrupted (i.e. in cases where termination was of an unforeseen nature). The expiration of fixed-term employment / service contracts alone does not (generally) constitute a ground for the provision of severance pay (with the exception of severance pay provided to professional soldiers – see above). Differences in the provision of severance pay between employees in the private sector generally and employees in the public sector are not prohibited by Directive 1999/70/EC.

The CJEU ruling has no significant implications for national law and national law is in compliance with the CJEU ruling.

4 Other relevant information

Nothing to report.
Denmark

Summary

CJEU C-177/18 has no implications for Danish law.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term employment contracts

CJEU case C-177/18, 22 January 2020, Baldonedo Martín

Ms Baldonedo Martín was employed as a fixed-term civil servant (interim position) as a gardener with the Municipality of Madrid for nearly eight years. Her employment was terminated on the ground that the position had been filled with an established civil servant.

At the employer’s discretion, the post as gardener with the municipality could be filled with contract workers or civil servants. Spanish law does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment contract, whereas compensation is, however, granted to fixed-term contract workers upon the expiry of their contract of employment.

The terminated fixed-term civil servant thus claimed compensation for termination of her employment with reference to the principle of equal treatment enshrined in the Framework Agreement on Fixed-term Work, as well as in primary EU law sources.

The CJEU found that Spanish law does not conflict with the Framework Agreement on Fixed-term Work Art 4(1). Even though fixed-term and permanent workers could, in this case, be comparable, considering that they carry out the same duties, the termination of a fixed-term employment relationship falls within a context, which from both a factual and legal perspective differs significantly from that of the termination of a permanent worker. For this reason, the difference in compensation between fixed-term and permanent workers was not a breach of the principle established in the Framework Agreement on Fixed-term Work.

The CJEU determined that Spanish law did not conflict with Clause 4(1) of the Framework Agreement on Fixed-term Work, as the difference in treatment between the two categories of fixed-term workers in question in the main proceedings was not based on whether the employment relationship is a fixed-term or indefinite one, but whether it is a statutory or contractual one. This distinction is not covered by Clause 4(1) of the Framework Agreement on Fixed-term Work.

The CJEU found that a right to equal treatment cannot be deduced from Articles 151 and 153, which set out the general objectives and measures of the EU’s social policy.

The CJEU also determined that Spanish law was not in conflict with the principle of equal treatment set out in Articles 20 and 21 of the EU Charter of Fundamental Rights, as a result of the vertical direct application on public employers. The Charter’s area of
application for Member States is when Member States implement European Union law. ‘Implementing Union law’, as referred to in Article 51(1) of the Charter, presupposes a degree of connection between the measure of EU law and the national measure at issue, which goes beyond the matters covered, inter alia, whether that national legislation is intended to implement a provision of EU law; the nature of the legislation at issue and whether it pursues objectives other than those covered by EU law, even if it is capable of indirectly affecting EU law; and also whether there are specific rules of EU law on the given matter or rules that are capable of affecting it. Since payment of compensation is made without any consideration to the legitimacy or misuse of fixed-term contracts, it does not penalise the misuse of successive fixed-term employment contracts, therefore, it does not appear to be a measure that deters the misuse of fixed-term contracts, and as such, is not a measure that is taken to ensure that the framework agreement is fully effective. The national provision pursues a different objective from that of Clause 5 of the framework agreement and cannot, therefore, be regarded as ‘implementing EU law’ within the meaning of Article 51(1) of the Charter. Consequently, the difference in treatment at issue cannot be assessed in light of the Charter’s guarantees and, in particular, of Articles 20 and 21 thereof.

The difference in treatment between fixed-term civil servants and fixed-term contractors was not in breach of EU law.

The ruling does not have any implications for Danish law.

First, on the material issue, employment as a civil servant by statutory act is declining in Denmark, as the majority of public employees are employed under working conditions regulated by collective agreement. However, there may be types of work in which employment may be performed both as a civil servant and a contract worker. One example is officers in the Danish military.

The right to severance payments varies significantly across types of employee groups. There is no general statutory act on working conditions, including severance payments, in Denmark. To name a few examples:

Civil servants are regulated by the Civil Servants Act. The Act does not entitle civil servants to severance pay, but civil servants enjoy particularly advantageous termination rights (salaries for up to three years) and pension rights. They are not covered by the Salaried Employees’ Act.

Public employees who are not civil servants are covered by the Salaried Employees Act. The Salaried Employees Act regulates salaried employees. A salaried employee, regardless whether his/her workplace is in the public or private sector, is entitled to severance pay after 12 years / 17 years of service with the employer, cf. Salaried Employees Act, Art 2a(1).

Collective agreements may provide similar rights to severance payments for employees covered by the agreement, and such rights are often earned after a certain seniority.

The difference in the right to severance payment across all different groups of employees regulated by different legal foundations has not given rise to legal disputes based on a general principle of equality in labour law.

For public employees, a general principle of equality and equal treatment applies to all employees, meaning that objective reasons and differences in the employment must be present to assign different groups different rights. Such differences follow from the scope of application of the various statutory acts and collective agreements. The CJEU ruling confirms that this approach is in line with the Framework Agreement of Fixed-term Work as the difference does not refer to distinctions between fixed-term work or permanent work. It may be added that the Danish transposition of Directive 1999/70/EC is the Act on Fixed-term Work. The Act applies to both public and private sector employees, and both civil servants and contract workers.
Second, on the issue of a general principle of equal treatment deduced from Articles 151 and 153 of the TFEU, this is fully in line with the Danish understanding of the legal standing of these TFEU provisions.

Third, as regards the issue of the Member States’ obligations (in the case of public employers) to give direct effect to the principle of equal treatment with the purpose of providing substantial rights for their employees with reference to the principle of equal treatment in the EU Charter of Fundamental Rights, the test for Member States’ obligations performed by the CJEU on ‘implementation’ has not yet been the subject of a legal dispute before a Danish court. The ruling, therefore, provides more substantial guidance to the national courts when assessing whether a principle in the EU Charter of Fundamental Rights must be given direct effect in a vertical relationship between a public employer and its employees. As the principle in question, however, is the principle of equal treatment, which already applies to public employers in Denmark as a general principle of public administrative law, the ruling with regard to a duty of equal treatment of public employers does not challenge the Danish state of law.

However, the CJEU guidelines for the test of whether a national provision ‘implements’ EU law in the understanding of Article 5(1) of the EU Charter of Fundamental Rights are more novel in Danish labour law. The threshold for qualifying as ‘implementation’ requires a degree of connection to EU law, and when assessing this, whether the national provision intends to implement, the nature of the national provision, whether it pursues objectives other than those covered by EU law, even if it is capable of indirectly affecting EU law; and also whether there are specific rules of EU law on the matter. These elements of the assessment provide Danish courts and lawyers with substantial assistance in questions relating to the duties of the Member States in relation to the Charter, in particular, duties for public employers. The duty of public employers to give direct effect to the rights of employees provided by the EU Charter has not yet been assessed by higher courts in Denmark. The case of Ajos rejected the notion that provisions in the Charter could create duties for private employers as a result of direct horizontal effect. It should be noted that the majority of rights in the EU Charter already apply to public employers in Denmark as a result of public administrative law in statutory acts and general principles. This includes, as mentioned, a general duty of equal treatment.

### 4 Other relevant information

Nothing to report.
Estonia

Summary

(I) CJEU case C-177/18 is of little relevance for the Estonian legal system.
(II) The average monthly wage in 2019 was EUR 1,407 (gross).

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term contracts

*CJEU case C-177/18, 22 January 2020, Baldonedo Martín*

The case concerned the equal treatment of fixed-term employees as well as the legal position of public sector employees.

In Estonia, there is a difference between civil servants and employees working under the employment contract.

The public sector is regulated in the Civil Service Act (*avaliku teenistuse seadus*). According to the Civil Service Act, civil service consists of officials and employees. The officials will be appointed by an administrative act and will not be employed under an employment contract. It is also possible to appoint officials for a fixed term. The Civil Service Act does not stipulate the possibility of automatically extending fixed-term relationships in the civil service.

It is not possible to replace an official with an employee (person employed under an employment contract). There is thus no possibility in Estonia to raise the question of equal treatment between officials and employees. These are two different categories of workers.

The termination of employment relationships of officials is based on the Civil Service Act while that of regular employment contracts on the Employment Contracts Act (*töölepingu sedus*). There are differences in the dismissal procedure.

There is no difference in treatment of fixed-term and officials with a contract of indefinite duration. The same applies to fixed-term and permanent employees.

Taking into account the legal position of employees and officials in Estonia, case C-177/18 is of little relevance.

4 Other relevant information

4.1 New monthly average wage in Estonia

The monthly average wage in Estonia in 2019 was EUR 1,407 gross. Compared to 2018, there was an increase in the average wage by 7.4 per cent. In the public sector, the monthly average wage was EUR 1,525 and in the private sector it was EUR 1,368 per
month. The highest monthly average wages were earned in the information- and communication sector (EUR 2,342) and in the finance and insurance sector (EUR 2,321). The lowest monthly average wage was registered in the hospitality and catering sector (EUR 905).

In the last quarter of 2019, the monthly average wage was EUR 1,472. The average wage per hour was EUR 8.40 gross.

In 2020, the monthly minimum wage is EUR 584 gross. Trade unions and employers have agreed that by 2021, the monthly minimum wage should be at least 40 per cent of the monthly average wage.

Detailed information is available here.
Finland

Summary

(I) The Labour Court has issued a ruling on non-discrimination of part-time employees who receive a disability pension.

(II) CJEU case C-177/18 is of no relevance for Finnish law.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Part-time work

Labour Court, No. R 121/18, 31 January 2020

The Labour Court has confirmed that an air force officer had the right to obtain a full flying bonus (based on a relevant collective agreement), even though he received a partial disability pension.

According to the collective agreement, air force officers had a right to a flying bonus if they flew at least 2 hours a month. The employer argued that the air force officer had a right to only half of that bonus because he only worked part time.

The Labour Court ruled that the part-time officer was not to be treated unequally compared to full-time officers. After all, he had flown at least 2 hours per month. The Labour Court confirmed that the collective agreement should be interpreted in a way that the flying bonus is based entirely on the 2-hour monthly flying, which the officer had in fact performed.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldonado Martín

The case is of no relevance for Finland because the Finnish legal system does not have a severance pay system similar to the one the case dealt with.

4 Other relevant information

Nothing to report.
France

Summary
(I) The Court of Cassation has ruled on discrimination, surveillance and termination.
(II) A situation such as in case C-177/18 of 22 January 2020 would be considered a violation of the principle of equal pay for equal work in France.

1 National Legislation
Nothing to report.

2 Court Rulings
2.1 Discrimination based on health status
Labour Division (Chambre sociale) of the Court of Cassation, No. 18-21.862, 29 January 2020

In the present case, an employee was dismissed for real and serious reasons due to professional incompetence and failure to fulfil her professional obligations. Her professional difficulties started when she returned from maternity leave, and she considered herself the victim of discrimination related to her pregnancy.

The reintegration of an employee in the company is accompanied by an ‘expulsion’ allowance, which compensates the employee for the loss of wages between his/her expulsion from the company and his/her reintegration. The amount varies depending on the cause of the dismissal’s nullity:

- When the nullity of the dismissal is ordered as a consequence of violation of a fundamental freedom or a right guaranteed by the Constitution or if the protected employee whose dismissal must be authorised has been dismissed without prior authorisation, the compensation is a lump-sum and therefore not deductible. The employee receives the full amount of wages he/she was not paid between the date of dismissal and the date of reintegration;
- In other cases of nullity of the dismissal, the compensation is not a lump-sum: it is equal to the wages the employee would have received between expulsion from the company and his/her reintegration, less any replacement income received by the employee during this period (for instance, unemployment benefits).

In the present case, the Court of Cassation ruled for the first time that an employee whose dismissal is void due to pregnancy must receive a lump-sum expulsion indemnity. The Court ruled that such a dismissal constitutes an infringement of the principle of equal rights between men and women, guaranteed by paragraph 3 of the preamble to the Constitution of 27 October 1946. The expulsion compensation is therefore equal to the amount of remuneration she should have received between her expulsion from the company and her reintegration, without a deduction of any replacement income she may have received during that period.

The Court therefore applied the solution already adopted in the past with regard to constitutionally protected concepts to this situation, such as the right to strike, the exercise of trade union activity; the state of health.

"Vu l’alinéa 3 du préambule de la Constitution du 27 octobre 1946 et les articles L. 1132-1 et L. 1132-4 du code du travail;
Attendu, qu’en application des dispositions des articles L. 1132-1 et L. 1132-4 du code du travail, tout licenciement prononcé à l’égard d’une salariée en raison de son état de grossesse est nul ; que, dès lors qu’un tel licenciement caractérise une atteinte au principe d’égalité de droits entre l’homme et la femme, garanti par l’alinéa 3 du préambule de la Constitution du 27 octobre 1946, la salariée qui demande sa réintégration a droit au paiement d’une indemnité égale au montant de la rémunération qu’elle aurait dû percevoir entre son éviction de l’entreprise et sa réintégration, sans déduction des éventuels revenus de remplacement dont elle a pu bénéficier pendant cette période;

Attendu qu’après avoir prononcé la nullité du licenciement pour discrimination liée à l’état de grossesse de la salariée, l’arrêt ordonne que soit déduit du rappel de salaires dû entre la date du licenciement et la date effective de réintégration de la salariée dans l’entreprise, les sommes perçues à titre de revenus de remplacement;

Qu’en statuant ainsi, la cour d’appel a violé les textes susvisés;”

2.2 Discrimination based on health status

Labour Division (Chambre sociale) of the Court of Cassation, No. 18-14.394, 5 February 2020

An employee had been working part-time since 2009. The occupational physician had declared the employee fit to work part-time during a resumption visit following one of her sick leave periods in 2012. That same year, the employee was declared disabled and an amendment to her employment contract provided that she would work part-time. She was dismissed in January 2013 and considered herself the victim of discrimination for health-related reasons.

According to Article L.1132-1 of the Labour Code, no employee may be dismissed for health reasons. However, case law enables the employer—in the event of prolonged or repeated absences due to illness—to resort to dismissal based on the disruption of the company’s operation and the need to proceed with the definitive replacement of the employee. The conditions are very strict, however. The disruptions must affect the proper functioning of the entire company, not only the department to which the employee belongs (Cass. soc., 01 February 2017, n°15-17.101).

In addition, the Court of Cassation has ruled that the termination letter "must expressly state the disruption of the functioning of the company and the need to provide for the replacement of the absent employee" (Cass. soc., 09 October 2013, n°12-21.224).

In this case, the termination letter only mentioned the disorganisation in the department in which the employee worked. Nevertheless, the Court of Cassation agreed with the judges and considered that the dismissal was not void since they had found that the absences disrupted the company as a whole.

"Mais attendu que la cour d’appel, après avoir rappelé les termes de la lettre de licenciement selon laquelle les absences répétées de la salariée désorganisaient le service au sein duquel elle travaillait, a constaté que ces absences désorganisaient l’entreprise ; que le moyen n’est pas fondé;”

2.3 Sick leave

Labour Division (Chambre sociale) of the Court of Cassation, No. 18-22.399, 5 February 2020
In the present case, in a self-assessment completed before a sick leave, an employee requested a better balance between his private and professional life. Following an e-mail mentioning his burnout, his managers met with him for an informal meeting to discuss his health problems. Six days later, the employee was criticised for "not achieving the financial goals", "lack of communication" and the fact that he was "no longer there" according to his managers. He was then dismissed for professional incompetence.

The employee claimed that he was the victim of a discriminatory dismissal.

The employer argued that the reason for the dismissal was not related to the employee's state of health, but to his professional incompetence.

The employer is prohibited from punishing an employee for his/her state of health (Article L. 1132-1 of the Labour Code). If an employee believes that he/she is the victim of such discrimination, he/she must present the court with evidence for such a claim, the court being responsible for assessing whether those facts indicate the existence of discrimination. If this is the case, the employer must prove that the decisions challenged were justified by objective factors unrelated to any discrimination according to Article L. 1134-1 of the Labour Code.

In the present case, grievances based on alleged professional incompetence arose shortly after receipt of an e-mail sent by the employee.

The Court of Cassation ruled that the timing of the dismissal was dubious and ruled that the employer had initiated dismissal proceedings against the employee, who had 25 years of seniority, only a few days after he had sent out a warning e-mail about the deterioration of his health in connection with work. Moreover, none of the grievances invoked in support of the dismissal had been established by the employer.

The employee presented many facts suggesting the existence of discrimination because of his state of health. He was therefore entitled to seek annulment of his dismissal as well as damages to compensate the discrimination suffered by him.

"En statuant ainsi, alors qu'elle avait constaté que l'employeur avait engagé la procédure de licenciement huit jours après avoir reçu un courriel du salarié l'informant de ses difficultés de santé en relation avec ses conditions de travail et retenu par ailleurs que le licenciement pour insuffisance professionnelle était sans cause réelle et sérieuse, aucun des griefs invoqués n'étant établi, ce dont il résultait que le salarié présentait des éléments de fait laissant supposer l'existence d'une discrimination en raison de son état de santé, la cour d'appel a violé les textes susvisés."

2.4 Video surveillance

Labour Division (Chambre sociale) of the Court of Cassation, No. 19-10.154 5, February 2020

In the present case, an employee, a technician in charge of maintenance in a prison who had been employed since 01 February 2003, installed a recording camera in the prison's maintenance workshops without the knowledge of his colleagues and without authorisation from his superior. According to the letter of dismissal, the camera was "hidden on a shelf and placed between two files".

On 29 June and 10 July 2012, three employees discovered the camera. The employer then decided on 08 August 2012 to call the employee for a preliminary meeting, and then dismissed him for serious misconduct on 14 September 2012.

The employee contested his dismissal.
Article L. 1222-4 of the Labour Code prohibits the collection of information that involves an employee by means of a system that has not been brought to the employee’s prior attention.

For both the trial judges and the Court of Cassation, the fact that an employee, without the knowledge of his colleagues and without authorisation, set up a camera on the premises constituted serious misconduct.

Serious misconduct are acts that make it impossible for the employee to remain in the company (Cass. soc., 27 September 2007, n°06-43.867).

The Court of Cassation has ruled on the illegal nature of the use of video surveillance to monitor the activity of employees without the use of such a system having been brought to their knowledge on several occasions (Cass. soc, 10 January 2012, n°10-23.482).

In the present case, the Court ruled on the implementation of such a system by an employee.

"Appréciant souverainement les éléments de fait et de preuve qui lui étaient soumis et sans être tenue d’entrer dans le détail de l’argumentation des parties, la cour d’appel, écartant par là-même toute autre cause de licenciement, a relevé que le salarié avait mis en place, à l’insu de ses collègues de travail et sans autorisation, une caméra dans les locaux de l’administration pénitentiaire et a pu décider que ce fait était constitutif d’une faute grave."

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldonedo Martín

In the present case, Ms Baldonedo Martin was employed by the Municipality of Madrid as an interim civil servant to cover a vacant post until the post was filled by an established civil servant. In 2013, Ms Balonedo Martin was informed that her post had been filled by an established civil servant and her employment would be terminated. She requested payment of compensation due to that termination.

The Municipality of Madrid refused her request by a decision of 25 April 2017, in particular considering no discrimination by comparison with established civil servants had occurred, since, in accordance with the legal regime applicable to them, the latter do not receive compensation upon termination of their employment relationship.


"in respect of employment conditions, fixed-term workers shall not be treated in a less favorable manner than comparable permanent workers solely because they have a fixed term contract or relation unless different treatment is justified on objective grounds".

Does that provision preclude national legislation which does not provide for the payment of any allowance either to fixed-term workers employed as interim civil servants or to civil servants who are employed in the context of an employment relationship of indefinite duration, upon termination of their duties?

The CJEU considers that EU law does not preclude such national regulation. It stated that non-permanent staff are not treated less favourably than officials, since the latter also do not receive an allowance.
However, the Court pointed out that a contract worker under an employment contract of indefinite duration was engaged in the same post as the applicant during the same period. In the event of termination of the employment relationship, the latter who had been engaged in the same post would have received compensation. Consequently, their situations must, in principle, be regarded as comparable.

The CJEU’s examination then related to the existence of any objective reason justifying a difference in treatment between the interim civil servants with the contract workers employed by the Municipality of Madrid under an employment contract of indefinite duration during the same period.

In other words, an objective reason must exist justifying that the termination of the employment relationship of an interim civil servant does not give rise to the payment of compensation whereas a contract worker of indefinite duration is entitled to compensation when he/she is dismissed. According to the case law of the Court of Justice, the concept of 'objective reasons' requires that the unequal treatment must be justified by the existence of precise and concrete factors, characterising the condition of employment in question, in the particular context and on the basis of objective and transparent criteria to verify whether that inequality meets a genuine need, is suitable for achieving the objective pursued and is necessary for that purpose. Such factors may result from the particular nature of the tasks for the performance of which fixed-term contracts have been concluded and the inherent characteristics of those tasks or, where appropriate, from the pursuit of a legitimate social policy objective of a Member State (CJEU case No. C-307/05 of 13 September 2007, case No. C-444/09 and C-456/09 of 22 December 2020 and case No. C-574/16 of 5 June 2018).

In this case, the Court pointed out first of all that the specific purpose of the compensation for dismissal paid to workers under employment contracts of indefinite duration and the particular context in which the payment of that compensation is made constitute an objective reason justifying a difference in treatment.

The termination of an employment relationship for these two categories of workers "falls within a context that from both a factual and legal perspective is significantly different". The parties to a fixed-term employment relationship know as soon as the contract is concluded that a date or event will determine its termination; whereas in the context of the termination of an employment contract of indefinite duration at the initiative of the employer, the indemnity provided for in the Workers’ Statute is intended precisely to compensate for the unforeseen nature of the termination.

The CJEU found that the applicant’s employment relationship had been terminated as a result of the occurrence of a specific event, namely that the post that she occupied was filled by the appointment of an established civil servant.

Therefore, the Court ruled that

"Clause 4(1) of the Framework Agreement does not preclude such national law that does not provide for the payment of any compensation for termination of employment to fixed term workers employed as civil servants whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contract of employment on an objective ground."

A second question concerned the compatibility of Clause 4(1) of the Framework Agreement with the Spanish legislation, which does not provide for the payment of any allowance to fixed-term workers employed as temporary staff upon the termination of their employment, unlike fixed-term contract workers upon the expiry of their contract of employment. The CJEU pointed out that the difference in treatment between these two categories of staff is not based on the fixed or indefinite duration of the employment
relationship but on the statutory or contractual nature of their employment relationship. This difference in treatment therefore does not fall within the scope of Clause 4(1) of the Framework Agreement. Moreover, Articles 151 and 153 TFEU on social policy do not preclude such legislation.

In France, the principle of equal pay for equal work is codified in Article L.3221-1 of the Labour Code. This principle means that every employer is required to ensure equal pay for equal work or work of equal value (Cass. soc., 29 October 1996, n°92-43.680). This principle is intended to apply to all employees, but the employer may justify differences in remuneration between employees performing the same work or work of equal value based on objective and relevant reasons.

This difference in remuneration between employees placed in the same situation must be based on objective reasons, the reality and relevance of which the judge must be able to control (Cass. soc., 15 May 2007, n° 05-42.894).

In accordance with established case law, the Council of State (Conseil d'Etat) refuses to consider that contract workers are placed in a comparable situation as civil servants. Indeed, relying on the principle that different situations may give rise to different treatment, the Council of State considers that the civil servant is placed in a specific legal and regulatory situation, therefore, the situation is not comparable to that of a contract worker (Council of State of 23 October 1937).

Similarly, the Court of Cassation accepts differences in the main remuneration between permanent and contract workers. Case law dating back a few years has affirmed that the equal pay for equal work rule does not apply when, within the same company, employees of different status work side by side (in this case, private law employees and civil servants). According to this case law, private law employees (governed by private law contractual provisions) are not, in terms of remuneration, in an identical situation as civil servants (who are subject to public law rules) (Cass. soc., 11 October 2005, n°04-43.024). In that sense, the Court of Cassation validates the difference in principal remuneration when it "results from the application of rules of law" (Cass. soc., 16 Feb. 2012, n°10-21.864).

The Court of Cassation considers that the question of equal treatment arises not when it concerns the basic salary (which is admittedly the result of different legal standards), but a supplementary remuneration fixed by a decision of the employer and applicable to all staff members on the basis of the function or position occupied. The court holds that in the light of the principle of equal treatment, the mere difference in legal status does not justify a difference in remuneration between employees who perform the same work, so that a bonus granted to civil servants must also be granted to contract workers under private law (Cass. ass. plen, 27 Feb. 2009, n°08-40.059).

4 Other relevant information

Nothing to report.
Germany

Summary

(I) The Federal Cabinet has adopted a draft law for the implementation of the revised European Posting of Workers Directive.

(II) The Federal Labour Court has held that the airline AirBerlin failed to properly notify the competent authority.

(III) According to the Labour Court Lübeck, employees may request their employer to issue a qualified work certificate when they leave the company. This also applies to agile project teams that work according to the so-called Scrum method.

(IV) The CJEU ruling is unlikely to have much impact in Germany.

(V) According to the employment statistics of the Federal Employment Agency, there were around 23.86 million full-time employees in June 2019, who were subject to social insurance contributions.

1 National Legislation

1.1 Posting of workers

On 12 February 2020, the Federal Cabinet adopted a draft law for the implementation of the revised European Posting of Workers Directive.

In the future, posted workers will benefit to a greater extent from working conditions regulated by German laws, regulations and administrative provisions as well as by generally binding collective agreements. Changes will affect remuneration, in particular. While the mandatory application of binding regulations is currently limited to minimum rates of pay, the new law explicitly extends this obligation to all elements of remuneration. This means that in the future, all employees employed in Germany will have to comply with the entire wage system, including overtime bonuses or allowances and remuneration in kind paid by the employer. At the same time, however, the remuneration systems can also differentiate between groups of employees according to their activities, qualifications and professional experience. The draft law also contains a ban on offsetting expense allowances received by employees for their work abroad against their remuneration.

If working conditions are regulated in generally binding collective agreements at federal level, they will in the future apply to posted employees from all sectors. Previously, this only applied to the construction industry.

In addition, employees on long-term assignments of more than 12 months—with the possibility of extending this exemption to 18 months—will generally be able to benefit in the future from all working conditions applicable in Germany. This applies both to working conditions regulated by law and to the conditions laid down in generally binding collective agreements.

2 Court Rulings

2.1 Collective redundancies

Federal Labour Court, 8 AZR 215/19, 27 February 2020

The decision concerned the legality of terminations by the airline Air Berlin. According to the Court, the airline had failed to properly notify the competent authority. Accordingly, the dismissals in question were invalid.
Air Berlin maintained so-called stations at several airports. Staff for ground, cabin and cockpit areas were assigned to these stations. The plaintiff was employed by Air Berlin as a pilot in Düsseldorf. His employment relationship was terminated like that of all other pilots at the end of November 2017 following the opening of insolvency proceedings due to the discontinuation of flight operations. Air Berlin filed the mass dismissal notice for “cockpit operations” and thus in relation to cockpit staff employed nationwide. Due to the central control of flight operations, the notification was made to the Berlin-Nord Employment Agency responsible for Air Berlin’s headquarters.

According to section 17(1) of the Dismissal Protection Act (Kündigungsschutzgesetz), the employer must submit a so-called mass dismissal notification to the Employment Agency before dismissing a certain number of employees in a company within 30 calendar days. The German legislator thereby transposed Article 3 of Directive 98/59/EC.

In the Court’s view, in accordance with the concept of ‘undertaking’ as defined by Union law, Air Berlin’s stations were undertakings within the meaning of this standard. Consequently, the mass dismissal notification for the pilots assigned to the Düsseldorf station would have had to be submitted to the responsible employment agency in Düsseldorf.

The Court further held that the notifications should not have been limited to information on cockpit staff. Rather, the information should also have included the ground and cabin personnel assigned to the station. In the Court’s view, the fact that these groups of employees were embedded in other representative structures under collective law was irrelevant to the concept of ‘undertakings’.

A press release on this judgment is available here.

### 2.2 Claim for a work certificate by an employee working in accordance with the so-called ‘Scrum method’

**Labour Court Lübeck, 4 Ca 2222/19, 22 January 2020**

According to the Court, employees can request their employer to issue a qualified work certificate when they leave the company. This also applies to agile project teams that work according to the so-called Scrum method. However, they are not entitled to a given certificate wording including a certain evaluation simply because the employer has issued a corresponding certificate to another team member.

In the present case, the plaintiff was employed by the defendant as a test engineer in the area of product qualification according to the so-called Scrum method. After termination of the employment relationship, the defendant issued a job reference to the plaintiff and another member of the project team. The plaintiff considered himself to have a poorer rating than this employee, and requested his reference letter to be adjusted. The plaintiff stated that he was entitled to an identical testimonial because in the Scrum team, individual work performance only played a minor role due to the typical nature of this method where team goals have priority.

ArbG Lübeck dismissed the complaint. The judgment is not yet legally binding, as an appeal was allowed.

A press release on the ruling is available here.
3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term contracts

*CJEU case C-177/18, 22 January 2020, Baldoneda Martín*

The decision is unlikely to have much influence on the legal situation in Germany. On the one hand, in the event of inadmissibility of termination, there is no claim for compensation, as the termination is invalid. On the other hand and above all, a special feature applies to the remuneration of civil servants, namely the so-called alimentation principle. This principle is one of the traditional principles of the civil service in German civil service law (see Article 33(5) of the Constitution).

According to the alimentation principle, the employer is required to provide civil servants and their families with an appropriate lifelong income and to grant them an appropriate livelihood in accordance with their rank, the responsibility associated with their office and the importance of the civil service for the general public in line with the development of the general economic and financial circumstances and the general standard of living.

The principle is based on the official’s loyalty to the State and is intended to enable him/her to perform the duties of his/her office without economic difficulties that his/her office requires. Moreover, the civil servants’ activity is not based on an employment contract, but on an administrative act.

4 Other relevant information

4.1 Labour market statistics

According to the employment statistics of the Federal Employment Agency, there were around 23.86 million full-time employees in June 2019, who were subject to social insurance contributions. At the same time, there were around 9.55 million part-time employees subject to social security contributions, as further indicated in the Federal Government's answer (19/16824) to a question posed by the parliamentary group Die Linke. Accordingly, the share of full-time employees subject to social security contributions out of all employees (employees subject to social security contributions, plus only marginally employed persons) was 62.3 per cent, while the proportion of part-time employees subject to social security contributions was 24.9 per cent.

Detailed information on this issue is available here.
Greece

Summary
(I) The clarification provided by the judgment CJEU C-177/18 is of significance for Greek law.
(II) The Greek government plans to start the procedure to set the national minimum wage next week.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldoneda Martín

Greek law, like Spanish law, does not provide for the payment of any compensation, either for fixed-term workers employed by the State or for established civil servants upon the termination of their employment relationships, whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contracts of employment based on an objective ground. Therefore, the clarification provided by the judgment is of importance.

On the other hand, Greek law does not provide for payment of any compensation to fixed-term workers upon the expiry of their contracts of employment. There is no distinction in the public sector providing, on the one hand, for categories of fixed-term workers employed as interim civil servants, and on the other hand, for categories of fixed-term contract workers. Therefore, this judgment does not seem to have any implications for Greece in this regard.

Only if the worker performed work in the public sector under an invalid fixed-term contract, shall the employee, for the period during which he/she worked, be entitled to compensation equal to the sum to which an equivalent worker under a contract of indefinite duration would be entitled upon the termination of his/her contract.

4 Other relevant information
4.1 Minimum wage

The Greek government plans to initiate the procedure to set the national minimum wage next week. According to recent declarations, an increase of the minimum wage is expected.
Hungary

Summary
The CJEU case C-177/18 is of no relevance for Hungarian labour law.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

*CJEU case C-177/18, 22 January 2020, Baldonedo Martín*

Clause 4(1) of the Framework Agreement must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration upon the termination of their employment, whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contract of employment on an objective ground. Articles 151 and 153 of the TFEU and Clause 4(1) of the Framework Agreement must be interpreted as not precluding a national law that does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment, whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment.

The judgment is not relevant for Hungarian labour law. The difference between fixed-term and permanent employment contracts dealt with in the case does not exist between employees in Hungary, since the Labour Code provides for the same regulations for both fixed-term and permanent employees as regards compensation in case of termination (notice period, severance pay, Articles 69 and 77 of the Labour Code). The same is true for public employees according to Act 33 of 1992 with some special rules (Articles 33 and 37).

4 Other relevant information
Nothing to report.
Iceland

Summary

(I) The Court of Appeal issued a ruling on the lawfulness of a dismissal without notice on the grounds of breach of confidentiality.

(II) City workers in Reykjavík are striking.

(III) CJEU case C-177/18 will likely not have any implications for Iceland.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Termination of employment

Court of Appeal, 417/2019, 14 February 2019

On 14 February 2020, the Court of Appeal issued a ruling in Case No. 417/2019. The case concerned a dismissal without notice of an employee who had allegedly breached confidentiality in the workplace. The employee, along with other employees, had established an undertaking to compete against their employer and carried out targeted actions for that purpose while his employment contract was still in effect. With his actions, the employee was deemed to have lost his right to the payment of his salary during the notice period.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldenedo Martín

The case concerned the differentiation between civil servants, on the one hand, and contract workers, on the other, with Spanish law providing compensation to the latter in cases of termination of both contracts of indefinite duration as well as in cases of expiry of fixed-term contracts, but not to the former. The Court found that Clause 4(1) of the Framework Agreement on Fixed-term Work concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, does not preclude such legislation.

The Court’s judgment does not seem likely to have any implications for Icelandic law. Firstly, Act No. 139/2003, on Fixed-term Employment of Employees, does not provide for special compensation to employees upon the expiry of their fixed-term employment contracts and neither does Act No. 70/1996, on the Rights and Obligations of State Employees. Both acts set a time limit to the duration of fixed-term employment, which may not last longer than two years (see Article 5(1) of the former and Article 41(2) of the latter). Secondly, collective agreements that cover nearly all public and private sector employees have provisions on notice periods, as well as Article 41(1) of Act No. 70/1996 and Article 1 of Act No. 19/1979, on the Right of Workers to Notice Periods and to Payment due to Sickness or Accident. Finally, special regulations apply to certain groups of civil servants (embættismenn) as listed in Article 22 of Act No. 70/1996, such as the chief-of-staff of Alþingi, the State Prosecutor, police officers and the State
Attorney. These special rules include specific dismissal procedures, rules on payments in case of temporary dismissal, maximum appointments for five years, etc. These regulations, however, only apply to a certain group of civil servants who are explicitly listed in the aforementioned act.

4 Other relevant information

4.1 Strike of city workers

Since the beginning of February, workers who are members of the Efling trade union for the City of Reykjavik have been on strike. In total, around 1,800 workers in the union who work for the city and work in areas of child and elderly care as well as garbage disposal.
Ireland

Summary
Irish law and case law is in line with CJEU case C-177/18.

1 National Legislation

1.1 General election
Following the general election, no party secured a sufficient majority to form a new government. The former government remains on in a ‘caretaker’ capacity and consequently, no new legislation can be processed until the new government is formed.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldonedo Martín

The Framework Agreement on Fixed-term Work annexed to Directive 1999/70/EC was implemented in Ireland by the Protection of Employees (Fixed-Term Work) Act 2003. That Act applies to both the private and public sectors. There are no equivalent provisions in Irish law to those Spanish provisions under consideration by the Court of Justice in this case.

As regards the Court’s general observation that differences in treatment between different categories of fixed-term workers are not covered by the non-discrimination principle in Clause 4 of the Framework Agreement, Irish law (see section 6 of the 2003 Act) provides that a fixed-term worker shall not, in respect of his/ her conditions of employment, be treated less favourably than a comparable permanent employee.

Similarly, as regards the observation that Clause 5 of the Framework Agreement only applies to the use of “successive” fixed-term contracts, the Labour Court has ruled that the requirement of having at least two successive fixed-term contracts was a “condition precedent” to the entitlement to a contract of indefinite duration pursuant to Section 9 of the 2003 Act, see case Department of Employment Affairs and Social Protection v Concarr FTD184.

4 Other relevant information
Nothing to report.
Italy

Summary

(I) A decree aims to reduce the tax burden on employees. It shall be confirmed by Parliament within 60 days from its entry into force.

(II) The laws adopted for the containment and management of COVID-19 have changed the methods of access to 'smart working', including telework.

(III) The CJEU’s judgment in Baldonedo Martin is of little relevance for Italian law.

1 National Legislation

1.1 Reduction of tax burdens

On 05 February 2020, the Italian government adopted Decree Law No. 3 on urgent measures to reduce the tax burden on employees.

The decree states that from 01 July 2020, employees will benefit from a tax reduction of up to EUR 100 per month. This amount decreases with increasing income.

The bonus will increase from EUR 80 (already planned since 2014) to EUR 100 for annual incomes of up to EUR 28,000; for incomes over EUR 28,000, the bonus will decrease as income increases up to no bonus for annual incomes of EUR 40,000.

The decree shall be confirmed by Parliament within 60 days from its entry into force.

1.2 Containment of COVID-19

Decree Law of 23 February 2020 No. 6, Urgent measures for the containment and management of the epidemiological emergency from COVID-19, and subsequent implementing decrees of the President of the Council of Ministers of 23 and 25 February 2020 have changed the approach to access to smart working.

Smart working was introduced in Italy by Law 81/2017. It is an approach to the performance of subordinate work partly inside and partly outside the company plant with the possible use of technological tools. It requires a written agreement between the employee and the employer. This agreement defines methods of the performance of work, methods of the exercise of managerial power by the employer and the use of any tools necessary to perform the work.

Due to the health emergency caused by the Covid 19 virus, the decrees provide that smart working is applicable, until 15 March 2020, for employers with registered or operational headquarters in Emilia-Romagna, Friuli Venezia Giulia, Lombardia, Piemonte, Veneto and Liguria, and for workers residing there, who carry out work outside these territories, under any subordinate employment relationship, in compliance with the principles established by Law 81/2017, even in the absence of individual agreements.

For public employment, the Directive of the Minister of Public Administration of 25 February 2020, No. 1, establishes that administrations must adopt smart working for all employment relationships. In addition, all meetings (including conferences and seminars) should preferably take place in web conferences. The administrations may only authorise indispensable business trips.
1.3 Financial aid on the occasion of the spreading of COVID-19

The Decree Law of 28 February 2020 introduces urgent measures to counteract the negative economic effects of the epidemiological emergency from COVID-19. It has not yet been published in the Italian Official Journal. Therefore, the numbering of the act is still unknown.

The Decree Law introduces aid for companies located in the towns indicated in the decree as centres of the epidemiological emergency and for workers residing there:

- access to ordinary Cassa Integrazione;
- the possibility of suspension of the extraordinary Cassa Integrazione for companies that started before the health emergency and replacement with the ordinary one;
- special Cassa Integrazione for the employers of the private sector, including agriculture, who cannot benefit from the current income support instruments, for the duration of the suspension of the employment relationship and in any case, for a maximum period of three months;
- an allowance of EUR 500 per month for a maximum of three months for workers who have coordinated and continuous collaborative relationships, for commercial agents, for professionals and for self-employed workers domiciled or performing their activity in the listed municipalities for the effective duration of the suspension of the activity.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldoneda Martín

According to Clause 4 of Council Directive 1999/70/EC of 28 June 1999, concerning the Framework Agreement on Fixed-term Work, “in respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment justified on objective grounds”.

The Court of Justice has stated that this clause allows for a national law to provide for the payment of any compensation to fixed-term workers employed as “funcionarios interinos”, or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment, whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment.

Under Spanish law, civil servants can be:

- funcionarios de carrera, with a permanent employment contract governed by administrative law;
- funcionarios interinos, who, for expressly justified reasons of necessity and urgency, are appointed to that status to perform the duties of funcionarios de carrera;
- personal laboral, hired on a fixed-term or permanent contract governed by private law.
According to Clause 4(1) of the Framework Agreement, the principle of non-discrimination concerns differences in treatment between fixed-term workers and permanent workers in a comparable situation. Any differences in treatment between specific categories of fixed-term staff are not covered by the principle of non-discrimination established by the Framework Agreement.

The difference in treatment between funcionarios interinos and personal laboral is not based on whether the employment relationship is fixed-term or permanent, but on whether it is statutory or contractual. Therefore, it is not covered by Clause 4(1) of the Framework Agreement.

The compensation provided by the Spanish Workers’ Statute does not fall within one of the categories of the measures set out in Clause 5(1)(a) to (c) of the Framework Agreement, because the payment of this compensation is made without any consideration of the legitimacy or misuse of the contracts. In fact, Clause 5(1) of the Framework Agreement only applies where there are successive fixed-term employment contracts or relationships.

In Italian public administration, according to Article 36 Legislative Decree No. 165 of 2001, fixed-term contracts can only be concluded for temporary or exceptional cases. The same rules provided for private employment by d.lgs. 81/2015 apply. According to Article 25 d.lgs. 81/2015, temporary workers must enjoy the same economic and regulatory treatment of comparable workers with an indefinite contract, in proportion to their working time, unless it is objectively incompatible with the nature of their contract. Specific rules apply to fixed-term contracts for managers and for the employees of the National Health Service, schools and research institutes.

4 Other relevant information

Nothing to report.
Latvia

Summary
(I) The Supreme Court has reapproved its interpretation on the application of the carry-over period for the right to annual leave according to CJEU case law.
(II) The decision of the CJEU in case C-298/18 has indirect implications for Latvian law as it provides for an interpretation of the concept of employee protection in the event of a transfer of undertakings.

1 National Legislation
Nothing to report.

2 Court Rulings
2.1 Annual leave
Supreme Court, SKC-96/2020, 06 February 2020
In a ruling adopted on 06 February 2020, the Senate of the Supreme Court reaffirmed the appropriate application of CJEU case law on the application of the carry-over period regarding the right to paid annual leave.

As already reported in previous Flash Reports, the application of the carry-over period for the right to use paid annual leave by the Supreme Court of Latvia was not in line with the CJEU's case law.

In particular, on 01 January 2015, the new regulation on the period for which an employee whose employment relationship has been terminated (Amendments to the Labour Law (Grozījumi Darba likumā), Official Gazette No. 225, 12 November 2014) is entitled to compensation for his/her unused paid annual leave entered into force. It provides that an employee has the right to compensation of unused paid annual leave for the entire period, i.e. the general carry-over period is not applicable as regards the right to paid annual leave.

On 30 November 2016, the Supreme Court ruled in case No. SKC-2009/2016 that the new legal regulation is applicable only to such cases where the employment relationship is terminated after 01 January 2015. Thus for cases where the employment relationship was terminated before 01 January 2015, the carry-over period of 2 years (as previously provided) was applicable. This raised two issues under EU law. The first issue was that the former legal regulation did not take the interpretation of the CJEU into account providing that the carry-over period for the right to annual leave or compensation in lieu could not be applicable in case the employee did not have the actual possibility to take such leave. The second issue concerned the temporal effect of the interpretation of the EU law provided by the CJEU. In particular, the CJEU in its decision in case C-385/17 ruled that the new interpretation of the right to paid annual leave must be applied with a retroactive effect. In the light of this, the Senate's decision to limit the application of the new regulation to employment relationships terminated after 01 January 2015 was contrary to the finding of the CJEU.

In its decision of 29 March 2019 in case SKC-62/2019, the Supreme Court ‘corrected’ this judicial ‘mistake’ and ruled that the carry-over period of the right to use paid annual leave in case an employer cannot prove that the employee actually had a real chance to use the leave is not applicable.
By the decision adopted on 06 February 2020 in case SKC-96/2020, the Supreme Court reaffirmed its approach. Consequently, the application of the carry-over period for the right to use paid annual leave is applied in conformity with the case law of the CJEU.

3 Implications of CJEU rulings and ECHR

3.1 Transfer of undertakings

CJEU case C-298/18 – Grafe and Pohle, 27 February 2020

The decision of the CJEU has no direct implications on Latvian labour law, however, it affects the interpretation of the concepts implemented in Latvian law under Directive 2001/23/EC.

The concepts, definitions and criteria relevant for establishing the applicability of the protection provided by Directive 2001/23/EC are implemented in Latvian law (the Labour Law) in very general terms without the provision of more extensive wording as follows from the interpretation of the respective concepts, definitions and criteria provided by the case law of the CJEU. Such national implementing measures are most likely not very effective for the enforcement of the rights under Directive 2001/23/EC since only a few cases so far have been brought before the national courts.

4 Other relevant information

Nothing to report.
Liechtenstein

Summary
CJEU case C-177/18 is of no relevance for Liechtenstein law.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldoneda Martín

In case C-177/18, the CJEU (Second Chamber) ruled as follows:

"Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment, whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contract of employment on an objective ground.

Articles 151 and 153 of the TFEU and Clause 4(1) of the framework agreement on fixed-term work set out in the annex to Directive 1999/70 must be interpreted as not precluding a national law that does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment, whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment."

The main issue in the present case was whether fixed-term workers employed as interim civil servants who do not receive compensation upon the termination of their employment are discriminated against in relation to contract workers employed for an indefinite duration who are entitled to compensation upon the termination of their contract of employment on an objective ground; contract workers employed under a fixed-term contract who receive compensation upon the termination of their contract of employment.

According to the CJEU ruling, there is no unjustified discrimination in the light of European law. The Spanish law making these distinctions is not contrary to European law.

The case has no relevance to Liechtenstein law in so far as Liechtenstein law does not provide for compensation for contract workers comparable to the relevant compensation under Spanish law.
Compensation in the case of termination of an indefinite employment relationship is only provided for if the termination is unfair (Section 1173a Article 47 of the Civil Code), but not in the case of termination on an objective ground.

Compensation for termination of a fixed-term employment relationship is not provided for at all (cf. Section 1173a Articles 44 et seq. of the Civil Code).

4 Other relevant information

Nothing to report.
Lithuania

Summary
The compatibility of Lithuanian law on fixed-term employment with EU law is confirmed by CJEU case C-177/18.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
3.1 Fixed-term contracts

CJEU case C-177/18 – Baldonedo Martín, 22 January 2020

The Court confirmed that EU law allows differentiated treatment of interim civil servants and employees, where employees *stricto sensu* may enjoy greater protection (compensation in case of termination of their temporary assignment) under national law.

There are no essential differences between Lithuanian regulations and Spanish ones. In Lithuania, there is a similar category of public servants, i.e. those engaged in the public administration of the state - interim public servants. An interim public servant (in Lithuanian – *pakaitinis valstybės tarnautojas*) is a public servant who works in the post of a career public servant until such a career public servant is employed, as well as a public servant who replaces a public servant who has been temporarily incapacitated for work (Article 2 (4) of the Law on Public Service) (State Gazette, 1999, No. 66-2130).

In accordance with Articles 49 and 51 of the Law on Public Service, severance pay (compensation) is not paid to the interim public servant upon the termination of the assignment. However, employees working on the basis of a contract of employment enjoy differentiated treatment. In case a fixed-term employment relationship continues for over two years, the employee shall be entitled to a severance pay in the amount of one average monthly wage upon the termination of the employment contract due to the expiry of its term (Article 69 (4) of the Labour Code).

4 Other relevant information
Nothing to report.
Luxembourg

Summary
(I) A decree was adopted to transpose Directive (EU) 2017/2398.
(II) The Court of Appeal has ruled on cases concerning exclusivity clauses, working time, annual leave, dismissal protection, protection of pregnant women, jurisdiction of labour courts and collective agreements.
(III) CJEU case C-177/18 is of no major relevance for Luxembourg.

1 National Legislation
1.1 Occupational health and safety
No new labour laws have been introduced.
As regards occupational health and safety, a grand-ducal decree was published to transpose the changes required by Directive (EU) 2017/2398 amending a directive on risks related to exposure to carcinogens or mutagens at work. The new Annex III on limit values has been textually reproduced, as well as the change in Annex I on exposure to respirable crystalline silica. To implement the new obligations resulting from Art. 14 (a), the labour inspectorate (Inspection du travail et des mines) and the Directorate for Health (Direction de la Santé) have been designated the competent authorities to coordinate the relevant health surveillance of workers.

2 Court Rulings
2.1 Exclusivity clauses
CSJ, 3e, CAL-2018-00698, 31 October 2019
The Court of Appeal had to decide a dispute concerning a tennis coach who had signed an exclusivity clause. He was dismissed for having violated this clause; the employer accused him of having coached at a tennis training camp during his annual leave. The judges recalled that an exclusivity clause is in principle lawful, but may not relate to the exercise of a voluntary activity for others.

The question was therefore whether or not the employee had performed these services on a voluntary basis. There was no evidence that he had received monetary remuneration; however, his son had been able to participate in the training camp free of charge. The Court concluded that it was therefore not a voluntary activity, since the employee derived a financial benefit from it. He had thus breached the exclusivity clause, and the dismissal was declared justified.

2.2 Working time
CSJ, 8e, CAL-2018-00512, 28 November 2019
The Court of Appeal ruled that a standby duty qualified as "reserve standby" by a collective agreement that only requires pilots to be contactable by telephone for 2.5 hours a day, with the start of the work to be performed no earlier than 24 hours after the call, does not qualify as working time.
2.3 Annual leave

CSJ, 3e, CAL-2018-00487, 10 October 2019

It was decided that an employer may in the internal regulations require a formal request for leave to organise it in the best possible way and to allow subsequent proof for both the employee and the employer that the leave was requested and, above all, granted.

If the employee has not complied with the internal procedure for requesting leave, he/she cannot prove using witnesses that he/she was otherwise granted leave.

2.4 Protection in the event of illness

CSJ, 3e, CAL-2019-00352, 21 November 2019

In the event of illness, the employee must submit a medical certificate to the employer no later than the third day of absence. Case law clearly states that the certificate must have reached its destination within this period, and that it is not sufficient that it was sent on time.

In a case in which the certificate arrived late so that the employee was dismissed without being able to invoke special protection, the post office acknowledged that the late delivery of the mail was the result of an error committed by its services.

The judges decided that while the slowness of the postal services was not the fault of either the employer or the employee, the employee must bear the consequences. Therefore, the employee was not specially protected at the time of the dismissal.

2.5 Collective leave

CSJ, 3e, CAL-2019-00481, 21 November 2019

Many decisions deal with the problem of charging the leave balance against the notice of termination of employees. Case law holds that, in principle, the employer may not require the employee to balance his/her leave during the notice period. A work dispensation normally has no impact on this balance. In such cases, the employer will therefore have to pay an indemnity for leave not taken at the end of the notice period.

The Court of Appeal dealt with the specific problem of a company operating under the collective leave scheme. It decided that the employer may charge the collective leave coinciding with a notice of dismissal against the leave balance, even if the employee was granted dispensation from work during the notice period. The Court reasoned as follows: "To admit the contrary would amount to giving an advantage to [the employee] over his colleagues solely because he was granted an exemption from work during his notice period. This interpretation is contrary to the spirit of the law".

2.6 Protection of pregnant women

CSJ, ordonnance, CAL-2019-01095, No. 127/19, 19 December 2019

The Labour Code allows pregnant women who are dismissed and who have not yet informed their employer of their pregnancy, to notify the employer with a medical certificate. If this notification is made within 8 days of the dismissal, the dismissal may be cancelled.

In the present case, a pregnant employee had been dismissed, but the letter of dismissal was sent to her former address. Therefore, she did not become aware of it until after the eight-day period had elapsed.
The judges recalled the principle of effectiveness governing the exercise of rights under European law (in particular, by reference to case C-63/08, Pontin). However, that principle would not apply if repeated negligence on the part of the employee made it difficult to exercise that right. Indeed, the employee had moved several months ago and had never informed her employer of the change of address.

Thus, the eight-day time limit imposed on pregnant women to produce a pregnancy certificate in the event of dismissal is not contrary to the European principle of an effective remedy if the dismissal was forwarded to the employee’s former address, since the employee was negligent in not informing her employer of the change of address and in not forwarding her postal mail.

The Court also pointed out that in order for the pregnant woman to be protected, the medical certificate must actually have been delivered to the employer within eight days. Posting within that period is insufficient.

2.7 Jurisdiction of labour courts

CSJ, 8e, 41734, 23 December 2019

It has been decided that labour courts do not have jurisdiction for recourse on warranty/guarantee (appel en garantie) against the State alleging to have transposed the Directive incorrectly. The plaintiff was of the opinion that Directive 2003/88/EC had been transposed inappropriately.

2.8 Collective agreements

CSJ, 8e, CAL-2018-00797, 12 December 2019

Normally, a collective agreement benefits all employees who work for a company, regardless of their function and union membership.

Some collective agreements, however, specifically list the categories of employees to which they apply. The Court confirmed that if the collective agreement only covers certain categories of staff, it is not applicable to employees who do not perform those functions. The latter, therefore, do not enjoy any contractual coverage; by virtue of the principle of uniqueness of the collective agreement (principe d’unicité), they do not have the possibility to benefit from their own agreement.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldonedo Martín

This decision does not seem to be of considerable importance in Luxembourg.

The Luxembourg Labour Code does not provide for any severance pay or precariousness bonus (prime de précarité) in favour of employees on fixed-term contracts.

First of all, civil servants have particularly stable and protected employment, which can only be terminated by the public authority through disciplinary action, in which case they are obviously not entitled to any compensation. Discrimination between the status of the civil servant and that of the employee on a fixed-term contract thus does not arise.

For employees with a permanent contract, compensation (severance pay, indemnité de départ) is due when they are dismissed with notice, whether or not it is justified (Art. L.124-7 (1) C.T.). It is also afforded to employees if they are the victims of a dismissal
with immediate effect that is deemed unfair. The amount of this indemnity increases with seniority; however, it is only due if the employee could avail him-/herself of a minimum seniority of 5 years.

In principle, a fixed-term contract cannot exceed 24 months (Art. L. 122-4 (1) C.T.). At the end of a fixed-term contract, the temporary employee cannot therefore have reached seniority, which would have allowed him/her to benefit from severance pay if he/she had been hired under an open-ended contract. Consequently, a "comparable situation" that would allow discrimination against employees on fixed-term contracts cannot arise.

Exceptionally, however, some fixed-term contracts may be concluded for up to 5 years (60 months) (Art. L. 122-4 (4) C.T.), in particular for certain contracts concluded by the university or public research centres. In this case, the employee under a fixed-term contract may just reach the seniority that would have enabled him/her to benefit from severance payment under a permanent contract.

As the European Court of Justice emphasises in paragraph 42ff, this would nonetheless not qualify as discrimination because of the difference in nature of open-ended and fixed-term contracts.

4 Other relevant information
Nothing to report.
Malta

**Summary**

CJEU Case C-177/18 has no implications for Maltese Law.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

*CJEU case C-177/18, 22 January 2020, Baldonedo Martín*

The CJEU stated that

“Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment, whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contract of employment on an objective ground.”

Additionally, he held that

“Articles 151 and 153 of the TFEU and Clause 4(1) of the framework agreement on fixed-term work set out in the annex to Directive 1999/70 must be interpreted as not precluding a national law that does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment, whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment.”

Under Maltese Law there is no Law authorising such compensation to any fixed-term worker upon the termination of his employment (as long as the termination is legal and lawful). So, this has no implications within the context of Maltese Law.

Furthermore, under Maltese there is no such concept of compensation to any interim workers. Indeed, Maltese Law does not make reference to ‘interim civil servants’ or any such concept.

4 Other relevant information

Nothing to report.
Netherlands

Summary

(I) Two important acts on dismissal law, flexible work and the legal position of public servants have entered into force.

(II) A district court has ruled that Dutch dismissal law does not contravene the freedom of establishment or the freedom to conduct business.

(III) CJEU case C-177/18 has no implications for Dutch law.

1 National Legislation

A number of labour law regulations have been amended following the adoption of the Balanced Labour Market Act (‘Wab’) in 2019 and the Civil Servants (Normalisation of Legal Status) Act (‘Wnra’) in 2017, which was amended by Act of 17 April 2019. Earlier Flash Reports have already dealt with these acts, but since they entered into force in 2020, a short overview is provided her.

1.1 WAB (Balanced Labour Market Act)

After the major reform of dismissal law after 01 July 2015 (Work and Security Act), this Balanced Labour Market Act aims to further diminish the differences in costs and risks between employment contracts of indefinite duration and more flexible contracts (fixed-term contracts, temporary agency work, staffing contracts, on-call contracts). Other than the aforementioned Work and Security Act, this new act is not based on a social agreement between the social partners, but on the coalition agreement of the current government dated October 2017.

The Balanced Labour Market Act entered into force on 01 January 2020 and aims to diminish the gap between fixed-term contracts and permanent contracts and aims to ameliorate the position of on-call workers and those employed on a payrolling basis. It relates to Directive 2008/104/EC on temporary agency work and Directive 1999/70 concerning the Framework Agreement on Fixed-term Work. The Act is in line with the ongoing efforts in the Netherlands on how to reduce the gap between those working under an employment contract of indefinite duration and those in more precarious flexible jobs.

Amendments of dismissal law:

Since 2015, statutory compensation is due in case of dismissal if the contract is terminated or not renewed at the initiative of the employer and if there is no imputable act of the employee. Until 2020, this compensation (also referred to as ‘transition allowance’) was only due if the employment agreement had lasted at least 24 months. As of 2020, compensation in case of such dismissal is due from the first day of employment, including the trial period. Furthermore, the calculation method has been changed into one-third of the monthly gross salary for each full year of service and pro rata for each month or day of service, regardless of the employee’s age or years of service. The previous method of calculation included a differentiation between the first 10 years of employment (one-third of the employee’s monthly salary) and the period thereafter (half of the employee’s monthly salary). In 2020, the compensation scheme for statutory dismissal compensation in the event of dismissal due to long-term incapacity for work will enter into force. This means that as of 1 April 2020, an employer can apply for compensation in respect of paid or to be paid compensation in such a case.
Since 2015, the Civil Code comprehensively enumerates the reasonable grounds for dismissal (‘a-h grounds’) that must be assessed by a court prior to the dismissal. The threshold to fulfil one of these eight grounds is perceived to be rather high. The WAB introduces one additional ground for dismissal: the i-ground, also known as the cumulation ground, which enables employers to combine different grounds for dismissal—for example, unsatisfactory performance (d-ground) and a damaged working relationship (g-ground). The purpose of this change is to alleviate the threshold for dismissal. If the court terminates the employment contract based on the i-ground, it may grant employees additional compensation in addition to the aforementioned statutory compensation up to a maximum of half of that statutory compensation.

Amendments of rules on flexible contracts:

The Act introduces the obligation for the employer to provide employees who work under an on-call employment contract at least four days' notice to call on the employee and the employer must pay on-call workers if the work is cancelled within these four days. The notification period may be reduced to 24 hours in a collective labour agreement. After one year, employers are required to offer the employee guaranteed working hours up to the average number of hours worked in the previous 12 months.

The Act furthermore amends the maximum total duration of successive fixed-term contracts. As of 1999, Dutch employment law has regulated the duration and number of successive fixed-term contracts. Initially, three contracts with a maximum duration of 36 months could be concluded and contracts that succeeded each other within three months were considered ‘successive’. The major revision of employment law in 2015 reduced the maximum duration to 24 months and extended the three-month period to six months. The WAB has now extended the 24-month period to 36 months again. That is, after 36 months or if a fourth contract is concluded, the contract is converted into an employment contract of indefinite duration.

Finally, the Act contains provisions on ‘payrolling’ [a type of temporary agency work where the agency is the employer, but does not assume the role of recruiting the worker, it simply operates as the formal employer whilst the worker is recruited by the user undertaking and the agency has no power to assign the worker to another user undertaking, also referred to as staffing]. Payrolling is widespread in the Netherlands and is considered an undesirable method of hiring workforce. Payroll employers make use of the more relaxed employment law that is applicable to temporary agency workers. The WAB introduces a definition of payrolling and substantially reduces the possibilities to profit from the more relaxed regime. Furthermore, payroll employees will be entitled to the same employment conditions as employees directly hired by the user undertaking, including an adequate pension plan.

Amendments on premiums for unemployment benefits:

The Act eliminates differentiations of unemployment insurance contributions according to sector. Instead, unemployment insurance contributions for employees with a permanent employment contract will be lower than those for employees with a fixed-term contract.

The entry into force of the Balanced Labour Market Act is considered important, especially for the day-to-day practice in dismissal law. Relaxing the rules on dismissal was advocated by employers, although the evaluation of the Work and Security Act 2015 has not yet been completed. The combination of pushing back payrolling reflects the continuous search for a balance between the insiders (indefinite employment contracts) and the outsiders (more flexible contracts). The new rules are in line with the EU aquis.
1.2 WNRA (Civil Servants (Normalisation of Legal Status) Act)

For decades, the position of civil servants has been debated. Civil servants traditionally work on the basis of a public law appointment and not on the basis of an employment agreement. The difference in legal status and legal protection between employees and civil servants was considered objectionable for a long time. The Act is the final step in an ongoing process in which the employment terms and conditions and labour relationships in the civil service are increasingly modelled in line with the market sector. The Act entered into force on 01 January 2020.

As a consequence of the Act, the legal position of civil servants will no longer be a unilateral appointment regulated by public law, but a civil law employment agreement regulated by the Civil Code. All existing public law appointments have been automatically transferred by operation of the law as of 01 January 2020 into an employment agreement. New hires will enter into an employment agreement from the start of their employment. All public service employees remain subject to the Central and Local Government Personnel Act (amended in 2017), which contains provisions regarding the oath of office, integrity policies, disclosure of other positions and financial interests, confidential positions and restrictions regarding some fundamental rights. Furthermore, some groups of civil servants are excluded from this operation and remain appointed under public law: political office holders, members of High Councils of State, members of advisory bodies and certain administrative bodies, the judiciary, the military (including civilians), police officers, notaries and bailiffs.

A temporary exception of the Act until 2021 has been introduced for security personnel, mainly fire brigade personnel.

The alignment of the legal position of civil servants and employees is not controversial, however, the transition is a major operation that is expected to lead to many different implementation issues. Although both legal systems have converged in the past decades, there are still differences or incompatibilities that might lead to disputes.

2 Court Rulings

2.1 Fixed-term work


Directive 1999/70 concerning the Framework Agreement on Fixed-term Work is implemented in the Netherlands by limiting the number and duration of successive fixed-term contracts. This statutory limitation was not only introduced to implement the directive, but was also a codification of Supreme Court case law from the early nineties (see Supreme Court, ECLI:NL:HR:1991:ZC0421, 2 November 1991), stipulating that using fixed-term contracts over a longer period including using different formal employing entities whilst the user undertaking remains the same, can be seen as misuse of rights depriving employees from the protection of an indefinite employment contract.

In the present case (the facts took place before 2015), three consecutive fixed-term contracts were concluded between a taxi company and a taxi driver. The fourth contract would have constituted a contract of indefinite duration. However, the taxi driver concluded a temporary agency work contract with another company (a payroll company, refer to paragraph 0 for a brief description of this phenomenon) and continued performing the exact same duties for the taxi company.

The Supreme Court ruled that the contract with the payroll company was nothing more than a paper construct to circumvent the protection of the employee (in line with the wording of the aforementioned ruling from the early nineties) and therefore, no real temporary agency work contract. Since there was no real contract with the payroll
company, the actual situation was that a fourth contract with the taxi company and therefore an employment contract of indefinite duration had been concluded.

The ruling does not diverge from earlier case law, but the Supreme Court has completely eliminated a contract with a different legal entity to effectuate employee protection against the misuse of rights by ruling that the taxi driver had an employment contract with the first hiring entity (the taxi company).

2.2 Transfer of undertaking

Court of Appeal Amsterdam, ECLI:NL:GHAMS:2020:28 – Albert Heijn 7 January 2020

Albert Heijn is a large Dutch supermarket chain that has its own supermarkets and acts as a franchisor. From time to time, Albert Heijn acquires a franchise supermarket to continue running it itself. In that case, the employees transfer by means of transfer of undertaking from the franchisee to Albert Heijn. If the terms and conditions of employment offered by the franchisee were more favourable than those offered by Albert Heijn, its personnel (based on a collective labour agreement) and Albert Heijn proceed as follows: the difference in the terms and conditions is added to the CLA salary by means of a ‘personal supplement’. Every time the CLA entails a salary increase, the salary is (of course) increased, but the personal supplement is decreased by that same amount. Hence, the transferred employees gradually see their income levelling down to the salary level of the transferee (Albert Heijn).

FNV, a Dutch trade union, initiated collective action, stating that this is not in line with Article 7:663 Dutch Civil Code which transposes Clause 3 of Directive 2001/23/EC safeguarding of employee rights in the event of transfers of undertaking.

The Court of Appeal fully upholds the decision of the District Court of North Holland of 12 April 2018. In that decision, the Court ruled that CJEU case law prescribes that an employee cannot waive his/her rights under Directive 2001/23/EC, not even when the disadvantages of such a waiver are compensated by benefits that would roughly keep him/her level. The Court refers more in particular to CJEU 12 November 1992, C-209/91 (Watson/Rask), CJEU 10 February 1988, C-324/86 (Daddy’s Dance Hall) and CJEU 6 November 2003, C-4/01 (Martin/SBU).

For the practice of the supermarket chain, the ruling is considered a sensitive setback.

2.3 Dismissal law

District Court Oost-Brabant , ECLI:NL:RBOBR:2019:5634 – Ryanair, 2 October 2019

Ryanair is based in Eindhoven. In the summer of 2018, negotiations on a collective labour agreement failed and ever since, there have been several proceedings between Ryanair and trade unions or individual employees. As a reaction to a strike, Ryanair decided to close down its facilities in Eindhoven as of November 2018. Eventually, Ryanair did not fully close down, but changed Eindhoven from a ‘base’ to a ‘destination’.

A request for collective redundancy based on business-related reasons has been filed and denied by the UWV (administrative body that is in charge of such requests). Subsequently, Ryanair introduced individual dismissals via the district court, also based on business-related reasons.

One of the reasonable grounds for dismissal stipulated in the Civil Code is ‘redundancy caused by discontinuation of the business or necessary redundancy due to measures increasing efficient operations caused by business-related reasons’. In a government decree, these business-related reasons are specified (non-exhaustively): weak financial position of the business, decrease in work, organisational reasons, technological changes, discontinuation of business, company relocation or a combination of these.
The employer has to make a plausible case and its decision is subject to a test of reasonableness, taking into account a large discretionary power of the employer. The implementation rules of the decree provide an extensive enumeration of data and documents that the employer must produce, making his plausible case.

Ryanair states that Dutch dismissal law (as described above) is in contravention of EU law, more specifically, Article 49 TFEU and Article 16 EU Charter of Fundamental Rights, referring to CJEU 21 December 2016 (C-201/15, AGET IraKlis). Ryanair asked the Court to request a preliminary ruling from the CJEU.

The District Court Oost-Brabant first established that it is not disputed between the parties that the statutory reasonable ground as described above aims to protect employees and that employee protection is acknowledged to be an important public interest. It cannot be derived from the AGET IraKlis case that assessing a dismissal in the light of this reasonable ground contravenes the freedom of establishment or to conducting a business. This assessment is allowed when it strives to achieve a balance between, on the one hand, the protection of employees against unjustified dismissal and, on the other hand, the protection of the freedom of establishment or to conduct a business (including the discontinuation of a business). The Court took into account that an employer only has to make a plausible case against a test of reasonableness.

Against this backdrop, the rules of Dutch dismissal law are sufficiently specific and not formulated too vaguely, as Ryanair has claimed. Employers have sufficient clarity and room to manoeuvre under the applicable dismissal laws, according to the Court.

The Court did not deem it necessary to request the CJEU for a preliminary ruling and judged that the regulations of Dutch dismissal law are not in contravention of European law.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldonedo Martín

Spanish national legislation stipulates that no compensation is due when a fixed-term contract ends (whether it concerns an employee or a civil servant) or when the employment of a civil servant who has an employment relationship of indefinite duration ends, whilst on the other hand, compensation is due if the employment contract of a permanent employee is terminated on an objective ground. The referring court asked whether this was in line with Directive 1999/77/EC and Articles 151 and 153 TFEU. The Court ruled that national law did not contravene EU law at this point because the difference as described above was not based on the duration of the contract (fixed-term or not), but on the contractual or statutory nature of the employment relationship. This is not a distinction that is protected by Directive 1999/77/EC or Articles 151 and 153 TFEU.

The CJEU ruling has no implications on national law since Dutch law does not make a distinction between the termination of an employment contract of indefinite duration or the non-renewal of a fixed-term contract. In both situations, statutory compensation is due. As of 01 January 2020, those who work in the public service and those who work in the private sector have the same legal position (an employment contract under civil law). National law is in compliance with the CJEU ruling. The ruling has received no attention so far in case notes or in academic literature, nor in societal debate.

4 Other relevant information

Nothing to report.
Norway

Summary
Nothing to report.

1 National Legislation
Nothing to report.
Extraordinary measures to be enacted today, lock down on hairdressers, dermatologists, schools, universities, kindergartens, sportsclubs, all sports and cultural activities, went into force as of 18.00 last night. This means that new legislative amendments to rules on lay-offs are expected today.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
3.1 Fixed-term contracts
CJEU case C-177/18, 22 January 2020, Baldonedo Martín
No amendments to Norwegian law will be necessary as a consequence of Case C-177/18.

4 Other relevant information
Nothing to report.
Poland

Summary
The CJEU ruling in case C-177/18 does not imply any need for amendments of Polish law.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

*CJEU case C-177/18, 22 January 2020, Baldoneda Martín*

In Poland, Clause 5 of the Framework Agreement on Fixed-term Employment (Directive 99/70) has been transposed by Article 25\(^1\) LC.

According to this provision, the period of employment under a fixed-term contract may not exceed 33 months, and the total number of such contracts cannot exceed three (§ 1). If the parties agree to a longer duration of the contract, it will be deemed that the parties have concluded a subsequent fixed-term contract (§ 2). When the period of employment exceeds 33 months or when the number of employment contracts is more than three, it is deemed that an employee has been employed under a contract of indefinite duration (§ 3).

Thus, after 33 months of fixed-term contracts, or after concluding the fourth fixed-term contract, such a contract will convert into a contract of indefinite duration (subject to several exceptions, indicated in § 4).

However, each employment contract, including fixed-term ones, can be terminated with notice (Article 32 § 1 LC). In case of termination of a fixed-term contract, no substantiation or consultation with the trade union representing the employee is required.

The Polish Labour Code does not provide for severance pay (or other compensation) in case of termination of an employment contract.

Employees employed in establishments with at least 20 employees, who are dismissed for reasons on the part of the employee, have the right to severance pay. The basis for this is Art. 8 of the so-called Law on Collective Redundancies (i.e. the Law of 13 March 2003 on specific rules of terminating employment relationships with employees for reasons not related to the employees). In case of termination of any employment contracts, both the employees employed for an indefinite duration and for a fixed term enjoy the right to severance pay. There is no right to severance pay for fixed-term employees upon the expiry of the period for which their contract was concluded.

The abovementioned regulations relate both to the public and the private sector. In other words, the same protection against abuse refers to where the public or private regime regulates a fixed-term employment relationship.
There is no differentiation between particular groups of fixed-term workers, e.g. interim civil servants and contract employees. In any case of termination of a fixed-term relationship before the agreed date, an employee has a right to financial compensation (i.e. severance pay). The amount of severance pay is always determined by the length of service with the particular employer.

As far as the issues raised in case C-177/18 are concerned, there is thus no discrimination of any category of fixed-term employees. There is no need to introduce any amendments to national law.

4 Other relevant information

Nothing to report.
Portugal

Summary
(I) An Ordinance creates a support system for employment and entrepreneurship.
(II) Case C-177/18 is of little significance for Portugal.
(III) The State Budget Proposal for 2020 has been approved.

1 National Legislation
1.1 Creation of a support system for employment and entrepreneurship

Ordinance No. 52/2020, of 28 February 2020, approves the creation of a support system for employment and entrepreneurship, including social entrepreneurship, called "+ CO3SO Emprego", and defines the rules applicable to the incentives granted within the scope of this measure.

This regulation entered into force on 29 February 2020.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldonedo Martín


The CJEU analysed whether Clause 4 (1) of the Framework Agreement—which prohibits, with regard to employment conditions, less favourable treatment of fixed-term workers compared with permanent workers, based on the sole ground that they are employed for a fixed term, unless different treatment is justified on objective grounds—must be interpreted as precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment.

According to the CJEU, the abovementioned provision aims to apply the principle of non-discrimination to fixed-term workers in order to prevent an employer from using a term employment relationship to deny those workers rights which are recognised for permanent workers.

In the situation analysed by the CJEU, the employee—who was appointed by the Municipality of Madrid as an interim civil servant for a period until a specific event occurred—may qualify as a ‘fixed-term worker’ for the purposes of Clause 3 (1) of the Framework Agreement and, therefore, it is covered by the abovementioned safeguard.
However, in this specific case, the CJEU understood that under Spanish law, interim civil servants—as the employee in the present case—are neither treated less favourably than established civil servants nor deprived of a right to which the latter are entitled, since neither interim civil servants nor established ones receive compensation due to the termination of their employment relationship.

It should be noted that the Spanish law, namely Articles 52 and 53 of the Estatuto de los Trabajadores, foresees that the termination of an employment contract based on objective grounds entitles the worker to compensation equivalent to 20 days of remuneration per year of service.

Nevertheless, the CJEU held that the termination of a fixed-term employment relationship falls within a context that significantly differs from that in which the employment contract of a permanent worker is terminated for one of the 'objective reasons' set out in Article 52 of the Estatuto de los Trabajadores.

As explained by the CJEU,

"the termination of a permanent employment contract on one of the grounds set out in Article 52 of the Workers’ Statute, on the initiative of the employer, is the result of circumstances arising that were not foreseen as at the date the contract was entered into and which disrupt the normal continuation of the employment relationship, the compensation provided for in Article 53 (1) (b) of that Statute seeks precisely to compensate for the unforeseen nature of the severance of the employment relationship for such a reason and, accordingly, the disappointment of the legitimate expectations that the worker might then have had as regards the stability of that relationship”. Differently, "the parties to a fixed-term employment relationship are aware, from the moment that it is entered into, of the date or event which determines its end. That term limits the duration of the employment relationship without the parties having to make their intentions known in that regard after entering into the contract”.

For these reasons, the CJEU ruled that Clause 4 (1) of the Framework Agreement

"must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment, whereas it provides for the payment of such compensation to contract workers employed for indefinite duration upon the termination of their contract of employment on an objective ground”.

In this case, the CJEU also analysed whether Articles 151 and 153 of the TFEU, Articles 20 and 21 of the Charter and Clause 4 (1) of the Framework Agreement must be interpreted as precluding a national law that does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment, whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment.

According to Article 49 (1) of the Estatuto de los Trabajadores, the fixed-term contract workers covered by this law receive compensation equivalent to twelve days’ remuneration for each year of service upon the expiry of their employment contract. Such a provision does not apply to fixed-term workers employed as interim civil servants, such as the employee in the present case.

Regarding this issue, the CJEU concluded that Articles 151 and 153 of the TFEU and Clause 4 (1) of the Framework Agreement “must be interpreted as not precluding a national law that does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment,
whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment”.

Please note that the Portuguese legal framework is different from that of the Spanish law regarding the payment of compensation in case of termination of a fixed-term employment contract.

Employees hired under a fixed-term employment contract covered by the Portuguese Labour Code, approved by Law No. 7/2009, of 12 February 2009 and recently amended by Law No. 93/2019, of 04 September 2019, are entitled to compensation in case of termination of their employment relationship under the following terms:

- In case of expiry of a fixed-term employment contract due to the occurrence of the respective term, the employee is entitled to compensation corresponding to 18 days of base remuneration and seniority premiums (diuturnidades) for each year of service, except if the expiry results from the declaration of the employee [Article 344 (2)];

- In case of expiry of an unfixed-term employment contract, the employee is entitled to compensation corresponding to the sum of the following amounts: (i) 18 days of base remuneration and seniority premiums (diuturnidades) for each year of service, regarding the first 3 years of the duration of the contract; and (ii) 12 days of base remuneration and seniority premiums (diuturnidades) per each year of service, regarding the following years [Article 345 (4)].

In the same terms, Law No. 35/2014, of 20 June 2014, as subsequently amended, which contains the legal framework applicable to civil servants (Lei Geral do Trabalho em Funções Públicas), foresees that the expiry of a fixed-term employment contract covered by this law entitled the employee to a compensation calculated under the terms set forth in the Labour Code [Article 293 (3)].

Therefore, there is no significant difference in treatment between the employees covered by the Labour Code and those subject to the legal framework applicable to civil servants regarding the compensation due in case of expiry of a fixed-term employment contract.

4 Other relevant information

4.1 Portugal State Budget Proposal for 2020

The State Budget Proposal for 2020 has already been approved by the Portuguese Parliament, but the respective law has not yet been published in the official gazette.
Romania

Summary

(I) Legislation on medical leave and allowances has entered into force.
(II) CJEU case C-177/18 is of little relevance for Romania.

1 National Legislation

1.1 Medical leave and allowances


According to the explanatory memorandum, the amending ordinance aims to apply the general and mandatory rules established by the European regulations, so that the employed workers, who have accumulated periods of social security contributions under the legislation of a Member State of the European Union, a Member State of the European Economic Area or of the Swiss Confederation, which falls within the scope of the provisions of the European legislation applicable in the field of social security, be able to benefit from medical leave and allowances paid from the budget of the Unitary National Health Insurance Fund.

According to the new provisions, the insurance periods attested by means of the European certificate regarding the aggregation of periods of insurance, employment and residence (form E104) are assimilated to the contribution period for leaves and allowances.

The basis for calculating the medical allowance will consist of the income insured in Romania in the month(s) prior to the month in which the medical leave certificate was issued. If the employee does not have insured income in the month(s) prior to the month in which the medical leave certificate was issued, the calculation basis will be constituted from the monthly income of the first month of activity in Romania.

As a result of these changes:

The income earned in other EU Member States will be taken into account when establishing the required contribution period (at least 6 months in the last 12 months) in order for the employee to benefit from medical leave;

Income earned in other EU Member States will not be taken into account when determining the amount of medical allowance.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldonedo Martín

In case C-177/18, the issue of compliance with the provisions of Council Directive 1999/70/EC concerning the Framework Agreement on Fixed-term Work of national legal
regulations was addressed. The national regulations established a different legal regime in terms of payment of allowances upon the termination of the employment relationship, distinct in the case of interim civil servants with a fixed-term employment contract. The case raised the question of the extent to which the Directive would be applicable not only in terms of differences in treatment between staff employed under an open-ended contract and those employed under a fixed-term contract, but also with regard to any differences in treatment between certain categories of fixed-term workers.

In Romanian law, there are no such differences in treatment. Both employees and civil servants can conclude fixed-term employment relationships only for the duration and for the objective reasons expressly provided for in the legislation. The Administrative Code, approved by Government Emergency Ordinance No. 57/2019, published in the Official Gazette No. 555 of 05 July 2019, stipulates in Article 375 the conditions under which interim civil servants may be appointed. They have the same rights and duties as civil servants appointed for an indefinite period (Article 376). The only exception is that interim civil servants, at the end of their work relationship, will not enter into the reserve body of civil servants. The right to compensation in case of termination of the employment relationship is not provided for any category of public servants.

Also, in the case of employees, the law does not provide such an allowance for ending the employment relationship. Sometimes, collective labour agreements include such allowances. Where provided, these allowances are granted in case of dismissal for reasons non-attributable to the employee, as well as in case of retirement. In granting such allowances, no distinction is made between fixed-term and open-ended contracts.

4 Other relevant information

Nothing to report.
Slovakia

Summary
CJEU Case C-177/18 is of little relevance for Slovakia.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldonedo Martín

The labour law of the Slovak Republic differentiates the provision of severance pay. In the private and public sector, it generally regulates the provision of severance pay only in case of termination of employment for a specified reason. The termination of a fixed-term employment relationship because the period for which it was concluded has elapsed is not among them. The legislation differentiates the amount of severance pay according to whether the employment relationship ended with notice issued by the employer or by agreement. This applies both to open-ended employment relationships and to fixed-term employment relationships. Article 48 paragraph 7 of the Labour Code (Act No. 311/2002 Collection of Laws - Coll.) states that an employee in a fixed-term employment relationship may not be treated more or less favourably than a comparable employee with regard to working conditions and terms of employment in accordance with this act, and safety and health conditions at work under a special regulation.

Different legislation applies to civil service. The main legal source is Act No. 55/2017 Coll. on civil service and amendments to certain acts, as amended. that the Act is, in principle, consistent with the judgment.

In the Labour Code, the legal regulation is unified regardless of whether the employee has an open-ended or a fixed-term employment relationship. The extent of the employee’s entitlement depends on whether he/she has received notice r or whether he/she has agreed to terminate the agreement.

According to Article 76 paragraph 1 of the Labour Code

"An employee whose employment relationship is terminated by notice for reasons stated in Article 63 paragraph 1 letter a) or letter b) or due to the fact that the employee, according to a medical assessment, has lost his/her capacity to perform his/her work for an extended period due to his/her medical condition, shall be entitled to severance pay at the end of the employment relationship in the amount of at least

a) his/her average monthly earnings, if the employee’s employment relationship lasted at least two years and less than five years,

b) two times his/her average monthly earnings, if the employee’s employment relationship lasted at least five years and less than ten years,
c) three times his/her average monthly earnings, if the employee’s employment relationship lasted at least ten years and less than twenty years,

d) four times his/her average monthly earnings, if the employee’s employment relationship lasted at least twenty years.”

According to Article 76 paragraph 2 of the Labour Code

“If the employment relationship is terminated by agreement for reasons set out in Article 63 paragraph 1 letter a) or letter b) or due to the fact that the employee, according to a medical assessment, has lost his/her capacity to perform his/her work for an extended period due to his/her medical condition, the employee shall be entitled to severance pay at the end of the employment relationship in the amount of at least

a) his/her average monthly earnings, if the employee’s employment relationship lasted less than two years,

b) two times his/her average monthly earnings, if the employee’s employment relationship lasted at least two years and less than five years,

c) three times his/her average monthly earnings, if the employee’s employment relationship lasted at least five years and less than ten years,

d) four times his/her average monthly earnings, if the employee’s employment relationship lasted at least ten years and less than twenty years,

e) five times his/her average monthly earnings, if the employee’s employment relationship lasted at least twenty years.”

Article 63 of the Labour Code states:

“(1) An employer may only give notice to an employee for the following reasons:

(a) the employer or part thereof
1. is being annulled; or
2. relocates and the employee does not agree to change the agreed place of work;

b) if an employee becomes redundant by virtue of the employer or competent body issuing a written resolution on changes in duties, technical equipment or a reduction in the number of employees with the aim of securing work efficiency, or due to other organisational changes, and an employer who is a temporary employment agency, even if the employee becomes redundant in view of the termination of the secondment pursuant to Article 58 before the expiry of the period for which the employment relationship was agreed for a certain period.”

What is interesting according to Article 76 paragraph 7 of the Labour Code is that “An employer may pay an employee severance pay also in other cases besides those laid down in paragraphs 1 and 2.”

Article 76 paragraph 3 of the Labour Code should also be mentioned:

“If an employer terminates an employee’s employment relationship by notice or by agreement because the employee can no longer perform his/her work as a result of an occupational accident, occupational disease or the risk of developing such a disease, or that the employee has already endured the maximum permitted level of exposure in the workplace as determined by a decision of a competent public health body, the employee shall be entitled to severance pay equal to at least ten times his/her monthly earnings; this shall not apply if an occupational accident was caused by the employee breaching, through his/her own fault, legal regulations or other regulations for ensuring occupational safety.
and health or instructions for ensuring occupational safety and health despite having been duly and demonstrably familiarised with them and knowledge of them and compliance with them which is systematically required and checked, or if an occupational accident was caused by the employee because he/she was under the influence of alcohol, narcotic substances or psychotropic substances and the employer could not prevent the occupational accident.”

As mentioned above, different legislation applies to civil service. The main legal source is Act No. 55/2017 Coll. on civil service and amendments to certain acts, as amended. that the Act is, in principle, consistent with the judgment.

Act No. 55/2017 Coll. on civil service regulates permanent and temporary civil service. Permanent civil service is civil service of indefinite duration (Article 34 of the Act). According to Article 36 paragraph 1 of the Act, temporary civil service is civil service for a certain period of time (fixed term).

According to Article 83 paragraph 4 of the Act, an expert who temporarily performed civil service tasks and is terminated by notice on grounds stated in Article 75 paragraph 1 letter a) or letter b) or by an agreement to terminate the civil service relationship for the same reasons before the end of the interim civil service shall be entitled to severance pay in accordance with paragraphs 1 and 2.

Article 75, the grounds of notice of service office, states:

"(1) The service office may give notice to the civil servant if:

(a) a civil servant in the light of his/her state of health according to the medical opinion, he/she has lost his/her capacity to perform civil service for an extended period in a particular civil servant post or if he/she is not allowed to perform the work for an extended period due to an accident at work, occupational disease or at risk thereof, or if the workplace has recorded the maximum permissible exposure to labour and work-related factors as determined by the decision of the competent public health authority and the service office does not have a suitable civil service post for him/her or the civil servant does not agree to be permanently transferred to a suitable civil service post and disagrees otherwise with the service office,

b) should be cancelled or a civil servant's post has been cancelled as a result of an organisational change according to Article 24 and the service office does not have a suitable civil service post for the civil servant or the civil servant does not agree to be permanently transferred to a suitable civil service post and disagrees otherwise with the service office”.

Article 83 paragraph 1 and 2 determines the amount of severance pay to a civil servant employed in permanent civil service.

An expert temporarily required for the performance of civil service tasks who has been dismissed from the post of senior employee pursuant to Article 61 paragraph 1, 3 or paragraph 4 letter a) or whose post as a managerial employee is terminated by law according to Article 62 paragraph 1 at the end of the state employment relationship by dismissal for reasons stated in Article 75 paragraph 1 letter c) or letter d) or by an agreement to terminate the civil service relationship for the same reasons before the end of the temporary civil service, is entitled to severance pay in the amount according to paragraphs 1 and 2 (Article 83 paragraph 5 of the Act).

Article 61:

Dismissal from the post of manager

(1) The Secretary-General shall recall a civil servant from the post of a senior employee if his/her temporary posting according to Article 64 paragraph 2 is ended.
(3) The Secretary-General may recall a senior employee from his/her post if:
(a) his/her results in the service evaluation for the calendar year are unsatisfactory; or
(b) a senior employee for more than six consecutive months cannot fulfil the duties of a senior employee on medical grounds.

(4) The Secretary-General shall recall a senior employee from his/her post if:
(a) he/she has been temporarily seconded to serve abroad for a period longer than six months.

Article 62
Termination of the performance of the function of a senior employee based on the law
(1) The performance of the post of senior employee, unless the civil servant has not been transferred to another senior employee post, shall end on the day
a) of change in the organisational structure of the service office, which abolished the organisational unit managed by the senior employee in the service office,

b) cancellation of the service office.

Article 75
Grounds of notice for the service office
“(1) The service office may give notice to the civil servant if:
c) a civil servant who has been called back from a senior employee post according to Article 61 paragraph 1 to 4, cannot be permanently transferred to a suitable civil service post for the performance of civil service, because the service office does not have one available or the civil servant does not agree with the permanent transfer to a suitable civil service post and does not agree otherwise with the service office,
d) a civil servant whose senior employee post is to be terminated or has been terminated by law according to Article 62 paragraph 1, cannot be permanently transferred to a suitable civil service post, because the service office does not have one available, or the civil servant disagrees with the permanent transfer to a suitable civil service post and does not agree otherwise with the service office.”

According to Article 83 paragraph 6 of the Act, unless otherwise provided in a separate regulation, civil servants in public functions and the director of the office of the Security Council, who are temporarily working in civil service shall be entitled to severance pay at the end of their civil service relationship by dismissal or expiry of their term of office:

a) twice his/her last functional salary, provided his/her civil service relationship lasted for at least one year and less than two years,
b) three times his/her last functional salary, provided his/her civil service relationship lasted at least two years.

The provisions of paragraph 6 shall also apply to a temporary civil service relationship in a statutory body appointed in accordance with a special regulation (Article 83 paragraph 7 of the Act).

4 Other relevant information
Nothing to report.
Slovenia

Summary
Case C-177/18 is of little relevance for Slovenian law.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
3.1 Fixed-term contracts

CJEU case C-177/18, 22 January 2020, Baldonedo Martín

The following provisions of the Employment Relationships Act (ERA-1) seem to be relevant from the perspective of the case under discussion and the questions raised in the request for the preliminary ruling by the Administrative Court of Madrid:

The ERA-1 expressly stipulates that the principle of non-discrimination applies to fixed-term workers in comparison to permanent workers. Article 57 provides that:

“During the fixed-term employment period, the contracting parties shall have the same rights and obligations as in the case of an employment relationship of indefinite duration, unless stipulated otherwise by this Act.”

The ERA-1 does not mention/define ‘comparable permanent workers’, which can be assessed as being a deficient transposition of Directive 1999/70/EC. The above statutory provision is nevertheless interpreted (see Nataša Belopavlovič et al., Zakon o delovnih razmerjih s komentarjem, GV Založba, Ljubljana 2003,233-235) as meaning that the comparison must be made with workers in an employment relationship of indefinite duration, who work in the same enterprise, are engaged in the same or similar work, due regard being given to the workers’ qualifications/skills.

The termination of fixed-term employment contracts is object of special provisions of the ERA-1 on modes of termination according to Slovenian labour law.

Article 79(1) specifies reasons for the termination of fixed-term contracts without a notice period. These are: expiry of the period for which the contract was initially concluded, completion of the agreed work or cessation of the reason for which the contract was concluded.

According to paragraph 2 of the same Article, a fixed-term employment contract may terminate if, prior to the expiration of the period for which the contract was concluded or the cessation of reasons for which it was concluded, this is agreed by the contracting parties or if other reasons arise for the termination of the employment contract pursuant to the provisions of the ERA-1. The last part of the paragraph is assessed as being rather problematic, especially in relation to regular terminations of the employment contract. The two contracts are actually equalised, though they differ considerably (for example, the assumption of circumstances such as business-related reasons for the regular termination of the contract is unpredictable). Some are of the opinion that only irregular
terminations of fixed-term contracts prior to the expiration of the period would be acceptable.

The right to severance pay for fixed-term workers whose employment contract has been terminated for reasons listed in para. 1 of Article 79 is included in the ERA-1. There shall be no such entitlement in the event of termination of fixed-term contracts concluded for the purpose of replacing a temporarily absent worker, for the purpose of performing seasonal work that lasts less than three months within a calendar year or for the purpose of integrating workers into active employment policy measures. A worker shall also not be entitled to severance pay if, after the termination of his/her fixed-term contract, he/she concludes an employment contract of indefinite duration or if he/she rejects an offer of a contract of indefinite duration for suitable work.

As regards the regulation of severance pay in the ERA-1, it might be worth mentioning that according to the legislator, the introduction of the right to severance pay was not intended to improve the legislation from the viewpoint of the principle of non-discrimination, but to decrease labour market segmentation and excessive fixed-term employment by making this mode of employment more expensive for employers (negative stimulation).

In relation to the described legal context and the system of civil servants laid down by the Civil Servants Act, it should be pointed out:

- Slovenian law does not differentiate between career and interim civil servants and civil servants working under an employment contract (open-ended, fixed-term). From this perspective, the case under discussion is not relevant;

- In the above cited legal context, reference has been made to the regulation of severance pay in case of termination of fixed-term contracts. The term ‘compensation’ used in the English version of the judgment is translated into Slovenian as ‘severance pay’ (odpravnina). It is unclear whether the Spanish ‘compensation’ and the Slovenian ‘severance pay’ have the same meaning. For this reason, there is no comment in this respect;

- The CJEU called attention to “the settled case law that questions the interpretation of EU law referred by a national court in the factual and the legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of the EU law that is sought bears no relation to the actual facts of the main action or its purpose, where problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.”

The CJEU’s warning bears significance in countries (like Slovenia), where national courts only start addressing requests for a preliminary ruling, but the issues raised are manifestly hypothetical and the questions must be held inadmissible.

4 Other relevant information

Nothing to report.
Spain

Summary
(I) Excused absences are no longer a legitimate ground for dismissal.
(II) The minimum wage has been increased to EUR 950.
(III) Case C-177/18 confirms that Spanish regulation on severance pay does not violate the principle of non-discrimination of fixed-term workers.

1 National Legislation
1.1 Dismissal due to absenteeism

Article 52, paragraph d), of the Labour Code allowed employers to dismiss workers who accumulate numerous absences from work, even if they were excused. This Royal Decree Law repeals that paragraph, i.e. excused absences no longer represent an objective ground for dismissal.

Prior to the labour reform of 2012, this very article required the employer to take the total absenteeism in the company into account, but since the reform, such a dismissal is exclusively based on individual absences.

The CJEU’s Ruiz Conejero ruling warns that absences from work due to sickness attributable to a disability should not be taken into account. This ruling affects the interpretation of that Article.

The purpose of this paragraph was to facilitate the dismissal of workers who are frequently absent from work, i.e. short-term absences that, however, are repeated or intermittent. These absences are primarily attributable to illnesses.

As reported in the November 2019 Flash Report, the Constitutional Court stated that this cause for dismissal did not contravene the Spanish Constitution. Although the law allows the employer to dismiss a worker for reasons of illness or for reasons related to the employee’s health, the measure was justified for reasons of safeguarding...
productivity and the proper functioning of the company, an objective the legislator must protect due to the requirements of Article 38 of the Constitution, which recognises the freedom of enterprise.

The government has decided to eliminate this ground for dismissal. A worker dismissed for objective grounds is entitled to compensation in an amount equivalent to 20 days of remuneration for each year of service. Following this reform, excused absences are no longer deemed objective grounds for dismissal. Therefore, the dismissal is considered unfair and compensation amounts to 33 days of remuneration for each year of service. In case of discrimination (for instance, in the Ruiz Conejero ruling), the dismissal is null and void, and the worker must be reinstated.

### 1.2 Minimum wage 2020

Article 27 of the Labour Code establishes that the amount of minimum wage must be updated every year, with the possibility of a semi-annual review, if necessary. The government has authority to set the minimum wage (the most representative trade unions and business organisations have a right of consultation). The minimum wage must be set according to various economic and social indicators, particularly the PCI, the general economic situation or the national average productivity.

For the year 2020, the minimum wage is set at the following amounts:

- EUR 31.66 for wages fixed by day;
- EUR 950 for wages fixed by month;
- EUR 7.43 per hour actually worked (for domestic workers).

The annual minimum wage is set at EUR 13 300, i.e. no full-time worker can receive less than that amount annually.

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

The minimum wage was either frozen or minimally increased during the years of economic crisis. For the last three years, it has been raised more generously due to the improvement of the economic situation. This year, the government decided to increase it by EUR 50, with the intention of increasing it to EUR 1 200 in the next three to four years.

### 1.3 Jobs in agriculture and rural areas

The government has approved various measures to improve the situation in the agricultural sector, because the increase in production costs has reduced profit margins and is making it difficult to continue the activity. Some of these measures have an impact on workers’ rights, such as reductions in the employer’s social security contributions or the conversion of fixed-term employment contracts into permanent ones or easier access to unemployment benefits.

The increasingly low prices of agricultural products, severe crop damages due to extreme weather events or the increase in energy costs have caused a crisis in the agricultural sector, which has led to intense protests. The government has approved several measures, invoking the Common Agricultural Policy (CAP) and Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.
2 Court Rulings

2.1 Seasonal workers and seniority

Supreme Court, 96/2019, 28 January 2020

The Supreme Court stated that the seniority of discontinuous permanent workers (seasonal workers) must be calculated according to the duration of their contract and not based on specific periods of activity. However, the seniority salary supplement is only paid during periods actually worked.

This ruling also states that seniority cannot accumulate again from scratch when more than 20 days have elapsed between the end of a fixed-term contract and the beginning of the subsequent one. The circumstances of the case must be analysed to assess whether there were two different employment relationships or whether it is the same relationship with a non-substantial interruption.


3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

CJEU case C-177/18 – Baldoneda Martín, 22 January 2020

According to the CJEU ruling Baldoneda Martín, Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment, whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contract of employment on an objective ground.

This ruling will have no implications for Spain, because it does not change the doctrine of previous judgments. As has been reported numerous times in the last three years, the first CJEU De Diego Porras ruling (14 September 2016, C-596/14) had a huge impact on the Spanish system. So far, the worker had the right to severance pay in the amount of 12 days of salary per year at the end of the fixed-term contract, except in cases of fixed-term replacement contracts (interim contracts) that do not include entitlement to severance pay, unless otherwise agreed. On the other hand, the termination of an employment contract (permanent or fixed-term) for objective reasons is a form of dismissal, and the worker has the right to a severance pay of 20 days of salary per year. The De Diego Porras ruling considered such differentiation to be prohibited under Article 4 of the Framework Agreement on fixed-term work.

The CJEU’s Montero Mateos and Grupo Norte Facility rulings rectified the De Diego Porras ruling, and states (paragraph 62) that “Spanish law does not treat fixed-term workers and comparable permanent workers differently, since Article 53(1)(b) of the Workers’ Statute provides for statutory compensation equivalent to twenty days’ remuneration
per year of service with the employer to be paid to a worker, irrespective of whether his employment contract is for a fixed-term or for an indefinite duration”. CJEU De Diego Porras II (21 November 2018, C-619/17) confirmed this new doctrine.

The Viejobueno Ibáñez and de la Vara González ruling (case C-245/17) already stated that differences in treatment between specific categories of fixed-term staff are not covered by the principle of non-discrimination established by the Framework Agreement.

4 Other relevant information

4.1 Unemployment

As reported in previous Flash Reports, the economy seems to be slowing down. Unemployment grew in February (3 279 people), the worst result since 2013. There are 3 289 040 unemployed people.
Sweden

Summary
(I) The Swedish Labour Court has decided a case on the interpretation of the Working Time Directive in relation to time spent travelling.
(II) CJEU case C-177/18 will not have any implications for Swedish law.

1 National Legislation
Nothing to report.

2 Court Rulings
2.1 Working time

Labour Court, AD 2020 No. 7, 27 February 2020

The Swedish Labour Court has issued a decision on the calculation of working time of house painters who travelled, every morning, from their homes to their work sites and back again every afternoon, without a regular start or end time at their employer’s premises. While the CJEU’s finding in case C-266/16 concluded that a similar travel time to the first site or client of the day and return time from the last one constituted working time, the Swedish Labour Court came to the opposite conclusion in the Swedish case AD 2020 No. 7.

The case concerned three different house painters, who were or had been employees at the company. The company was bound by the commonly applied collective agreement in the sector Riksavtal mellan Målarföretagen I Sverige och Svenska Målareförbundet. The collective agreement regulated working time as well as travel costs and travel allowance. The work was organised in such a way that the workers departed their home every day, usually using their own car, with a standard working time between 7.00-16.00 from Monday-Friday. Their working day took place at the sites or houses the painters had been instructed to go to. The house painters were reimbursed for their travel in accordance with the collective agreement.

The trade union, representing the three members, sued the employer for a symbolic sum (between EUR 30 and EUR 60 per worker, corresponding to two days of commuting) and EUR 3 000 (SEK 30 000) each for violation of the collective agreement, and argued before the Labour Court that the Tyco case had affected the previously applied common opinion between the collective parties to the collective agreement that the commuting time was not working time. After Tyco, the trade union argued, the situation had changed and the commuting time should be included in the working time.

The Labour Court, while revisiting the Tyco case, concluded that not all of the three criteria established in Tyco were found in the Swedish case, primarily since the workers in this case did not perform their activities or tasks during the commuting period. The Labour Court made an overall assessment that the disputed commuting time should not be considered working time under the Working Time Directive and, subsequently, that the applicable Swedish collective agreement had not been given another meaning after the CJEU decision in Tyco.

The Swedish Labour Court carried out a very thorough assessment of the criteria for working time established in the Tyco case and concluded that in any case, some traveling time from home to a workplace is always applicable for any worker or employee and does not, as such, constitute working time. The Court further concluded...
that the working time definition would not render all workers without a permanent workplace an entitlement to deem the commute to their workplace as working time. The situation in Tyco differed from the Swedish one in many regards. The Swedish court found that the work arrangement in Tyco had changed from a working time starting at the employer’s premises to a situation at the time of the dispute, at which the workers, since the employer’s premises had been closed, had to travel several hours to reach the work sites. The Court stated that its reading of the Tyco case did not include an interpretation that all employees who do not have a concrete, stationary workplace should be considered as performing their activities or duties while traveling to and from their workplace. The Swedish workers in the present case had not performed any of their activities while traveling to the work sites and had not been contacted by the employer during this period. The house painters had, according to the Labour Court, not been at the employer’s disposal during the time they travelled to and from their workplaces, and this time should therefore not be considered working time, also not under the Directive or the collective agreement.

The fact that the collective agreement, indisputably, did not consider the time the house painters travelled to their first and from their last work site might have had some influence on the decision, as the Court stated that the workers (unlike the workers in Tyco) had not lost any previous opportunity to freely decide the distance between their home and workplace, since they had never been provided that opportunity under the Swedish collective agreement.

3 Implications of CJEU rulings and ECHR

3.1 Fixed-term contracts

*CJEU case C-177/18 – Baldonedo Martín, 22 January 2020*

The CJEU delivered a judgment on the interpretation of the Fixed-Term Directive 1999/70/EC. The CJEU was asked three question by the national Spanish, court, and answered the questions as following:

"Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment, whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contract of employment on an objective ground. Articles 151 and 153 of the TFEU and Clause 4(1) of the framework agreement on fixed-term work set out in the annex to Directive 1999/70 must be interpreted as not precluding a national law that does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment, whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment."

The Swedish legislation on fixed-term employment contracts is established in paras 5-5a Employment Protection Act (*lagen 1982:80 om anställningsskydd*). The Swedish act, which is generally applicable to nearly all employment contracts, provides for different sets of notice periods related to the duration of the employment contract (if permanent), but no special allowance of payment for the lawful termination of an employment contract, regardless of that contract being permanent or fixed term. The CJEU’s decision is therefore very much in line with the regulations in the Swedish legislation. It should
be added that the paragraphs on fixed-term employment contracts are subject to multiple variations in collective agreements. Such agreements might also conclude provisions that are less favourable for the employee, such as the application of the longer standard of fixed-term contracts (usually in an entire sector). Such a disposal in collective agreements is, however, not likely to be affected by the Court’s decision in Martin.

4 Other relevant information

Nothing to report.
United Kingdom

Summary
(I) CJEU case C-177/18 is of little relevance for the UK.
(II) A new points-based immigration system assimilates the treatment of EU/EEA nationals to that of TCNs.

1 National Legislation
Nothing to report.

2 Court Rulings
Nothing to report.

3 Implications of CJEU rulings and ECHR
3.1 Fixed-term contracts
CJEU case C-177/18 – Baldonado Martín, 22 January 2020
In case C-117/18 Baldonado Martín, the Court ruled:

"Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment, whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contract of employment on an objective ground. Articles 151 and 153 of the TFEU and Clause 4(1) of the framework agreement on fixed-term work set out in the annex to Directive 1999/70 must be interpreted as not precluding a national law that does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment, whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment."

Specifically, the Court ruled interim civil servants, such as the person concerned in this case, were neither treated less favourably than established civil servants nor deprived of a right to which the latter are entitled, since neither those interim civil servants nor established civil servants received the compensation sought by claimant. It concluded that in those circumstances, ‘Clause 4(1) of the framework agreement must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment’.

This would be the position in the UK, too – if the two jobs, one fixed term and one permanent, are treated equally, there is no discrimination.
4 Other relevant information

4.1 Brexit: Immigration and Points-based system

On 19 February 2020, the government published a policy statement setting out details of the UK’s points-based immigration system. The key issue is that the government will not discriminate in favour or its treatment of EU/EEA nationals post-Brexit. The summary of the scheme is [here](#):

These new arrangements will take effect from 01 January 2021, once freedom of movement with the European Union (EU) has ended. They treat EU and non-EU citizens equally and aim to attract people who can contribute to the UK’s economy. Irish citizens will continue to be able to enter and live in the UK as they do now.

**What is a points-based immigration system?**

Under a points-based immigration system points are assigned for specific skills, qualifications, salaries or professions. Visas are then awarded to those who gain enough points.

**Will EU citizens need a visa to visit the UK?**

EU citizens and other non-visa nationals will not require a visa to enter the UK when visiting the UK for up to 6 months. All migrants looking to enter the UK for other reasons (such as work or study) will need to apply for a visa in advance.

EU citizens, along with citizens of Australia, Canada, Japan, New Zealand, the USA, Singapore and South Korea—with biometric passports—will continue to be able to use automatic eGates to cross the UK border.

**What is the new skilled worker route?**

A new skilled worker visa will prioritise migrants with the highest skill levels and the most experience. Someone will be able to apply for this visa if they have been offered a skilled job in the UK by an approved employer sponsor.

Following recommendations from the MAC, we have lowered the skills threshold for skilled workers to provide employers with added flexibility.

From January 2021, the job will need to be at a required skill level of RQF3 or above (equivalent to A level). They will also need to be able to speak English and pass criminality checks. The minimum salary threshold will be reduced to £25,600.

If a person earns less than this—but no less than £20,480—they may still be able to apply by ‘trading’ points on specific characteristics against their salary. For example, if they have a job offer in a shortage occupation or have a PhD relevant to the job.

**What about highly skilled workers?**

From January 2021, the [global talent route](#) will be opened up to EU citizens. The route has recently been reformed, removing the cap on numbers, increasing the
number of endorsing bodies and rebranded to maximise the attractiveness of this offer.

In addition, the route has been expanded to include a new fast-track scheme for top scientists and researchers to come to the UK without a job offer.

In line with the recommendations from the MAC, we will create a broader unsponsored route within the points-based system to run alongside the employer-led system. This will allow a smaller number of the most highly skilled workers to come to the UK without a job offer.

**Will there be a low-skilled worker route?**

The new immigration system will not include an immigration route specifically for low-skilled workers. This will shift the focus of the UK’s economy away from a reliance on cheap labour from Europe and instead concentrate on investment in technology and automation.

EU citizens resident in the UK by 31 December 2020 can still apply to settle in the UK through the EU Settlement Scheme until June 2021. The Seasonal Workers Pilot scheme will also be expanded from 2,500 to 10,000 places recognising the significant reliance the agricultural sector has on low-skilled temporary workers.

**What will change for international students and graduates?**

Student visa routes will be opened up to EU citizens. A person will be able to apply for a visa to study in the UK if they have been offered a place on a course, can speak, read, write and understand English and have enough money to support themselves and pay for their course.

A new graduate immigration route will be available to international students who have completed a degree in the UK. They will be able to work, or look for work, in the UK at any skill level for up to 2 years.

The UK’s points-based immigration system: [policy statement](#)

**Introduction**

The United Kingdom (UK) exited the European Union (EU) on 31 January 2020. This policy statement sets out how we will fulfil our commitment to the British public and take back control of our borders.

We are ending free movement and will introduce an Immigration Bill to bring in a firm and fair points-based system that will attract the high-skilled workers we need to contribute to our economy, our communities and our public services. We intend to create a high wage, high-skill, high productivity economy.

We will deliver a system that works in the interests of the whole of the UK and prioritises the skills a person has to offer, not where they come from.

For too long, distorted by European free movement rights, the immigration system has been failing to meet the needs of the British people. Failing to deliver benefits across
the UK and failing the highly-skilled migrants from around the world who want to come to the UK and make a contribution to our economy and society.

Our approach will change all of this. We are implementing a new system that will transform the way in which all migrants come to the UK to work, study, visit or join their family. It will also revolutionise the operation of the UK border, tighten security and deliver a better customer experience for those coming to the UK.

From 01 January 2021, EU and non-EU citizens will be treated equally. We will reduce overall levels of migration and give top priority to those with the highest skills and the greatest talents: scientists, engineers, academics and other highly-skilled workers. Importantly we remain committed to protecting individuals from exploitation by criminal traffickers and unscrupulous employers.

We will replace free movement with the UK’s points-based system to cater for the most highly skilled workers, skilled workers, students and a range of other specialist work routes including routes for global leaders and innovators.

We will not introduce a general low-skilled or temporary work route. We need to shift the focus of our economy away from a reliance on cheap labour from Europe and instead concentrate on investment in technology and automation. Employers will need to adjust.

However, the Settlement Scheme for EU citizens, which opened in March 2019, has already received 3.2 million applications from EU citizens who will be able to stay and work in the UK. This will provide employers with flexibility to meet labour market demands.

We recognise that these proposals represent significant change for employers in the UK and we will deliver a comprehensive programme of communication and engagement in the coming months. We will keep labour market data under careful scrutiny to monitor any pressures in key sectors.

Initiatives are also being brought forward for scientists, graduates, NHS workers and those in the agricultural sector, which will provide businesses with additional flexibility in the shorter term.

For the first time in decades the UK will have full control over who comes to this country and how our immigration system operates. This policy statement sets out how we will grasp this unique opportunity by introducing a new points-based system.

Alongside this policy statement we will shortly be publishing our response to the Law Commission Report on Simplification of the Immigration Rules which will set out how we propose to provide the foundations for a streamlined and simplified system.

**The UK’s points-based system**

1. From 01 January 2021, free movement will end, and we will introduce the UK’s points-based system. This is part of a wider multi-year programme of change, led by the Home Office, to transform the operation of the border and immigration system.

2. These changes will be followed by further improvements to the UK’s sponsorship system and the operation of the UK border, including, in the longer term, the introduction of Electronic Travel Authorities to ensure those coming to the UK have permission to do so in advance of travel. We are taking a phased approach to ensure
the smooth delivery of this new system and to allow sufficient time for everyone to adapt. This policy statement focuses on the first phase of changes being introduced in 2021.

**Salary and skills thresholds**

3. The Migration Advisory Committee (MAC) published its report on salary thresholds and points-based systems on 28 January. We are grateful for its considered work.

4. We accept the MAC’s recommendation on salary thresholds, including to lower the general salary threshold from £30,000 to £25,600. Migrants will still need to be paid the higher of the specific salary threshold for their occupation, known as the ‘going rate’, and the general salary threshold. However, as set out below, under the points-based system for skilled workers, applicants will be able to ‘trade’ characteristics such as their specific job offer and qualifications against a lower salary. There will continue to be different arrangements for a small number of occupations where the salary threshold will be based on published pay scales. We will set the requirements for new entrants 30% lower than the rate for experienced workers in any occupation and only use the base salary (and not the allowances or pension contributions) to determine whether the salary threshold is met. Additionally, in line with the MAC’s recommendations, we will not introduce regional salary thresholds or different arrangements for different parts of the UK.

5. We will implement the MAC’s recommendation to bring the skills threshold down from RQF6 to RQF3. We will suspend the cap on the number of people who can come on the skilled worker route and remove the resident labour market test. These changes will ensure that a wide pool of skilled workers will be able to come to the UK from anywhere in the world and the process will be made simpler and quicker for employers. These are important changes signalling that the UK is open for business.

**Skilled workers**

6. The points-based system will provide simple, effective and flexible arrangements for skilled workers from around the world to come to the UK through an employer-led system. All applicants, both EU and non-EU citizens, will need to demonstrate that they have a job offer from an approved sponsor, that the job offer is at the required skill level, and that they speak English. In addition to this, if the applicant earns more than the minimum salary threshold then the individual would be eligible to make an application. However, if they earn less than the required minimum salary threshold, but no less than £20,480, they may still be able to come if they can demonstrate that they have a job offer in a specific shortage occupation, as designated by the MAC, or that they have a PhD relevant to the job. In effect, applicants will be able to ‘trade’ characteristics such as their specific job offer and qualifications against a salary lower than the minimum salary or the ‘going rate’ in their field.

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Tradeable Points</th>
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<tbody>
<tr>
<td>Offer of job by approved sponsor</td>
<td>No</td>
</tr>
<tr>
<td>Job at appropriate skill level</td>
<td>No</td>
</tr>
<tr>
<td>Speaks English at required level</td>
<td>No</td>
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7. For example, a university researcher in a STEM (science, technology, engineering, and mathematics) subject wishing to come to the UK on a salary of £22,000, (which is below the general minimum salary threshold), may still be able to enter the UK if they have a relevant PhD in a STEM subject. Likewise, a nurse wishing to come to the UK on a salary of £22,000 would still be able to enter the UK on the basis that the individual would be working in a shortage occupation, provided it continues to be designated in shortage by the MAC.

8. The MAC will be commissioned to produce a shortage occupation list covering all jobs encompassed by the skilled worker route and to keep the list under regular review. Allocating extra points for occupations that the MAC determines to be in shortage in the UK will provide immediate temporary relief for shortage areas, making it easier to recruit migrants. However, we expect employers to take other measures to address shortages and the MAC will look at this when they review whether an occupation is still in shortage.

9. It is also important to recognise that in some higher paid occupations, the ‘going rate’ will be above the general salary threshold. Migrants will still be awarded points for holding a relevant PhD or if the occupation is in shortage, which they will be able to trade against a salary lower than the ‘going rate’: 10% lower if they have a relevant PhD in a non-STEM subject; 20% lower if they have a relevant PhD in a STEM subject; or 20% lower if the occupation is designated in shortage by the MAC. In line with the MAC’s advice, there will continue to be reduced salary requirements for new entrants to the labour market.

10. The Home Office will publish further detail on the points-based system in due course, including detailed guidance regarding the points tables, shortage occupations and qualifications. As now, skilled workers will be able to be accompanied by their dependants.

11. The scheme will be implemented from January 2021. This is just the first stage in our plans for a points-based system. The Home Office will continue to refine the system in the light of experience and will consider adding further flexibility into the system including additional attributes that can be ‘traded’ against a lower salary. For example, this might include a greater range of qualification levels or other factors such as age or experience studying in the UK. However, we need to guard against making the system too complex.
Highly-skilled workers

12. From January 2021, we will extend the current Global Talent route to EU citizens on the same basis as non-EU citizens. The most highly skilled, who can achieve the required level of points, will be able to enter the UK without a job offer if they are endorsed by a relevant and competent body. This scheme has recently been expanded to be more accessible to those with a background in STEM subjects who wish to come to the UK.

13. Additionally, in line with the recommendations from the MAC, we will create a broader unsponsored route within the points-based system to run alongside the employer-led system. This will allow a smaller number of the most highly-skilled workers to come to the UK without a job offer. We will explore proposals for this additional route to the points-based system with stakeholders in the coming year. Our starting point is that this route would be capped and would be carefully monitored during the implementation phase. Example characteristics for which points could be awarded include academic qualifications, age and relevant work experience. This route will take longer to implement; we want to learn from previous experience of similar schemes in the UK that have highlighted certain challenges. The scheme will need to be designed to make sure it adds value and does not undermine the skilled worker route or create opportunities for abuse.

Lower-skilled workers

14. As part of the significant changes we are making to the operation of the border and immigration system, we are delivering on our manifesto commitment to reduce overall migration numbers. We will therefore end free movement and not implement a route for lower-skilled workers. We have reached this conclusion based on a number of factors set out in this paper.

15. UK businesses will need to adapt and adjust to the end of free movement, and we will not seek to recreate the outcomes from free movement within the points-based system. As such, it is important that employers move away from a reliance on the UK’s immigration system as an alternative to investment in staff retention, productivity, and wider investment in technology and automation.

16. The points-based system will provide significantly greater flexibility for skilled workers wishing to come to the UK. The requisite salary thresholds and skill levels will provide employers with greater scope to employ skilled migrants from overseas.

17. The EU Settlement Scheme (EUSS) is operating effectively. As at the end of January, over 3.2 million applications have been made to the scheme. We have been clear that we want EU citizens already in the UK to stay and to continue to make important contributions to our economy and society. Both pre-settled and settled status under the EUSS allows unrestricted rights to work, providing employers with flexibility to meet labour market demands.

18. The MAC also noted that even in the current absence of a route for lower-skilled migration from outside the EU, there are estimated to be 170,000 recently arrived non-EU citizens in lower-skilled occupations. This supply, which includes people such as the dependants of skilled migrants, will continue to be available.

19. We have committed to expanding the pilot scheme for seasonal workers in agriculture which will be quadrupled in size to 10,000 places. The UK also enjoys youth mobility arrangements with eight countries and territories which results in around
20,000 young people coming to the UK each year. Both routes will provide employers with further ongoing flexibility in employing individuals into lower-skilled roles.

**Students and specialist occupations**

20. Students will be covered by the points-based system. They will achieve the required points if they can demonstrate that they have an offer from an approved educational institution, speak English and are able to support themselves during their studies in the UK.

21. Under the current immigration rules, there are a range of other immigration routes for specialist occupations, including innovators, ministers of religion, sportspeople and to support the arts. Our broad approach for January 2021 will be to open existing routes that already apply to non-EU citizens, to EU citizens (the current ‘Tier 5’).

**Other routes**

22. The rules for family reunion, asylum and border crossing checks are outside of the points-based system. However, they will remain integral to the transformation of the UK’s new immigration system programme.

23. In addition, we will continue our generous visitor provisions, but with simplified rules and guidance. We expect to treat EU citizens as non-visa nationals meaning they can come to the UK as visitors for six months without the need to obtain a visa. We will also unilaterally allow EU citizens to continue to use e-gates, but we will keep this policy under review. There will be no change to the arrangements for the Common Travel Area.

24. The future system will also deliver on ‘Mode 4’ commitments for temporary service suppliers, in line with existing and future trade agreements. 2 Individuals will achieve the required points if they meet the requirements for the specific routes.

25. We will not be creating a dedicated route for self-employed people. We recognise that there are several professions where there is a heavy reliance on freelance workers. They will continue to be able to enter the UK under the innovator route and will in due course be able to benefit from the proposed unsponsored route. The UK already attracts world class artists, entertainers and musicians and we will continue to do so in the future. The UK’s existing rules permit artists, entertainers and musicians to perform at events and take part in competitions and auditions for up to six months. They can receive payment for appearances at certain festivals or for up to a month for a specific engagement, without the need for formal sponsorship or a work visa.

**Criminality**

26. From the end of the transition period, we will introduce a single, consistent and firmer approach to criminality across the immigration system. We will apply this to everyone seeking to come to the UK, wherever they are from. Currently, EU citizens are subject to different thresholds for criminality than those from the rest of the world. Existing UK rules for non-EU citizens are both stricter and more specific. The application of the current EU public policy test is less certain and predictable in practice than we would like.
The visa process

27. People coming to the UK from any country in the world for the purpose of work or study, other than some short-term business visitors and short-term students, will need to obtain a visa for which they will pay a fee. We will levy the Immigration Skills Surcharge on employers and the Immigration Health Surcharge on the same basis as now. For employers sponsoring skilled migrants, the process will be streamlined to reduce the time it takes to bring a migrant into the UK by up to eight weeks. We intend to further reduce this through additional enhancements to the system.

28. Migrants will make their application online and most EU citizens will enrol facial biometrics using smartphone self-enrolment; fingerprints will not initially be required. Non-EU citizens will submit biometrics at a Visa Application Centre, as they do now. All migrants will need to comply with the UK’s strict criminality rules.

29. Most EU citizens will be issued with an e-visa which confirms their right to be in the UK. The online checking service will be used by EU citizens to demonstrate their immigration status and their rights and entitlements, where permitted, when accessing work and services. For many EU citizens, their status will automatically be available when seeking to access benefits or the NHS. Non-EU citizens, including those who are the family members of EU citizens will, for the time being, continue to be provided with physical evidence of their status. Access to income-related benefits will be the same for EU and non-EU citizens arriving after January 2021; it will only be permitted after indefinite leave to remain is granted, usually available after five years of continuous residence. There will be exceptions for those who arrive outside of the points-based system. Ensuring migrants can evidence their status is at the heart of our new system and underpins an approach to compliance that is fair and robust when responding to those that abuse our hospitality.

30. EU citizens living in the UK by 31 December 2020 are eligible to apply to the EU Settlement Scheme and will have until 30 June 2021 to make an application. As a transition measure, employers, landlords and public service providers will continue to accept the passports and national identity cards of EU citizens as evidence of permission during this period, up until 30 June 2021.

31. We intend to open key routes from Autumn 2020, so that migrants can start to apply ahead the system taking effect in January 2021. Employers not currently approved by the Home Office to be a sponsor should consider doing so now if they think they will want to sponsor skilled migrants, including from the EU, from early 2021.

32. Annex A sets out the typical user journey for a migrant entering the UK, regardless of whether they are an EU or non-EU citizen.

Crossing the border

33. Our vision for our border system is to both protect the public and enhance prosperity. We will continue to invest in biometrics and technology which will improve security and the passage of legitimate travellers through the border. This transformation will result in a fully digital end to end customer journey, requiring everyone (except Irish nationals) to seek permission in advance of travel.

34. We intend to phase out the use of insecure identity documents for newly arriving migrants and will set out further details on this shortly. This means most migrants will use a passport when arriving at the border. The citizens of Australia, Canada, Japan,
New Zealand, the United States of America, Singapore and South Korea, who possess biometric passports, will continue to be able to use e-gates to pass through the border on arrival. We will also unilaterally allow EU citizens to continue to use e-gates, but we will keep this policy under review.

**Engagement and outreach**

35. The government, in delivering on its manifesto commitments, has considered relevant views, evidence, and analysis in finalising this policy.

36. A programme of engagement will begin in March 2020 to raise awareness of the new system, ensuring those affected by the changes are fully aware of what it means for them and understand how the system will operate. We will also work closely with stakeholders to understand their views on the implementation of the points-based system.

37. Engagement will be via multiple methods, across the whole of the UK, and will focus upon those sectors most impacted including small and medium sized enterprises. We will build on the success and experience of implementing the EU Settlement Scheme with opportunities for face to face engagement with officials, who will go to every region of the UK, alongside traditional communication and media channels. We will work with key countries around the world, including EU Member States, to explain how the new system will operate.

**MAC analysis of a points-based system, and salary thresholds for immigration**

38. In its latest report, the MAC modelled the impact of salary and skills thresholds on the EEA migrant population. It estimated that, under their recommendations, around 70% of resident EEA citizens arriving in the UK since 2004 would be found ineligible for either a skilled-work, family or Tier 4 visa given their current (2016-18) characteristics. The MAC suggest that these changes could bring both costs and benefits to the UK, and highlight ‘estimated impacts at the macro level are small’.

39. Although the MAC modelling is based on the stock of migrants (and is a ‘backwards-looking’ approach) it is important to note that EEA citizens who came after 2004 will have a right to remain in the UK. Although the MAC expect an increase in non-EEA migration, given the difficulties in forecasting migration flows it did not attempt to predict future non-EEA migration flows. These will be affected by a wide range of factors including and beyond migration policy.

40. The MAC modelling gives a broad overview of impacts but does not include detailed eligibility rules within each route – for example the impact of any additional fees or changes to administration costs which will affect behaviour.

41. More detailed analysis on the points-based system and individual routes will be published shortly.
## Annex A: Migrant journey from January 2021

<table>
<thead>
<tr>
<th>Step</th>
<th>Journey stage</th>
<th>Migrant actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Planning to come</td>
<td>EU citizens and non-visa nationals will not require a visa to enter the country when visiting. All migrants looking to enter the UK for other reasons (such as work or study) will need to apply for permission in advance. Those who come to the UK as a visitor will need to leave the country before making an application to another route.</td>
</tr>
<tr>
<td>2</td>
<td>Getting permission</td>
<td>For those who need a visa, migrants will make their application online. Most EU citizens will complete their application online, while non-EU citizens will continue to go to Visa Application Centres (VACs) to enrol their biometrics. Citizens of Australia, Canada, Japan, New Zealand, Singapore, South Korea and the USA, who possess biometric passports, will continue to be able to use e-gates to pass through the UK border either as a visitor or with prior permission. We will also unilaterally allow EU citizens to continue to use e-gates, but we will keep this policy under review. Others will need to see a Border Force officer.</td>
</tr>
<tr>
<td>3</td>
<td>Crossing the UK border</td>
<td>EU citizens will use the online checking service to demonstrate their immigration status and their rights and entitlements, where permitted, when accessing work and services in the UK. For many EU citizens, their status will automatically be available when seeking to access benefits or the NHS. Non-EU citizens will continue to use their physical documentation.</td>
</tr>
<tr>
<td>4</td>
<td>Living in the UK</td>
<td>Leaving the UK after leave has expired, or not leaving at all when required to, will impact a migrant’s immigration status and will affect future interactions with UK immigration.</td>
</tr>
</tbody>
</table>

1. In most cases, references throughout this paper to citizens of the European Union also relate to citizens of the European Economic Area and Switzerland. ↩
2. Mode 4 refers to commitments that the UK takes in free trade agreements in respect of the temporary entry and stay of business persons. These commitments typically cover business visitors, intra-company transfers and contractual service suppliers and independent professionals. The UK implements its existing commitments through the Immigration Rules applied to non-EU citizens. ↩
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