Flash Reports on Labour Law August 2020

Summary and country reports

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

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Table of Contents

Executive Summary 9

Austria 14
1 National Legislation 14
2 Court Rulings 14
3 Implications of CJEU Rulings 16
4 Other Relevant Information 16

Belgium 17
1 National Legislation 17
2 Court Rulings 17
3 Implications of CJEU Rulings 17
4 Other Relevant Information 18

Bulgaria 19
1 National Legislation 19
2 Court Rulings 19
3 Implications of CJEU Rulings 19
4 Other Relevant Information 19

Croatia 20
1 National Legislation 20
2 Court Rulings 20
3 Implications of CJEU Rulings 20
4 Other Relevant Information 20

Cyprus 22
1 National Legislation 22
2 Court Rulings 22
3 Implications of CJEU Rulings 22
4 Other Relevant Information 24

Czech Republic 25
1 National Legislation 25
2 Court Rulings 29
3 Implications of CJEU Rulings 31
4 Other Relevant Information 31

Denmark 32
1 National Legislation 32
2 Court Rulings 33
3 Implications of CJEU Rulings 35
4 Other Relevant Information 35

Estonia 36
1 National Legislation 36
2 Court Rulings 36

3 Implications of CJEU Rulings 36
4 Other Relevant Information 36

Finland 38
1 National Legislation 38
2 Court Rulings 38
3 Implications of CJEU Rulings and ECHR 39
4 Other Relevant Information 39

France 40
1 National Legislation 40
2 Court Rulings 41
3 Implications of CJEU Rulings 41
4 Other Relevant Information 42

Germany 43
1 National Legislation 43
2 Court Rulings 43
43
3 Implications of CJEU Rulings 45
4 Other Relevant Information 46

Greece 47
1 National Legislation 47
2 Court Rulings 47
3 Implications of CJEU Ruling 47
4 Other Relevant Information 47

Hungary 48
1 National Legislation 48
2 Court Rulings 48
3 Implications of CJEU Rulings 48
4 Other Relevant Information 49

Iceland 50
1 National Legislation 50
2 Court Rulings 50
3 Implications of CJEU Rulings 50
4 Other Relevant Information 50

Ireland 51
1 National Legislation 51
2 Court Rulings 52
3 Implications of CJEU Rulings 52
4 Other Relevant Information 52

Italy 53
1 National Legislation 53
2 Court Rulings 54

3 Implications of CJEU Rulings and ECHR 54
4 Other Relevant Information 54

Latvia 55
1 National Legislation 55
2 Court Rulings 55
3 Implications of CJEU Rulings and ECHR 55
4 Other Relevant Information 55

Liechtenstein 56
1 National Legislation 56
2 Court Rulings 56
3 Implications of CJEU Rulings and ECHR 57
4 Other Relevant Information 59

Lithuania 60
1 National Legislation 60
2 Court Rulings 60
3 Implications of CJEU Rulings 60
4 Other Relevant Information 60

Luxembourg 61
1 National Legislation 61
2 Court Rulings 63
3 Implications of CJEU Rulings and ECHR 67
4 Other Relevant Information 67

Malta 68
1 National Legislation 68
2 Court Rulings 68
3 Implications of CJEU Rulings and ECHR 68
4 Other Relevant Information 68

Netherlands 69
1 National Legislation 69
2 Court Rulings 70
3 Implications of CJEU Rulings and ECHR 70
4 Other Relevant Information 71

Norway 72
1 National Legislation 72
2 Court Rulings 72
3 Implications of CJEU Rulings and ECHR 72
4 Other Relevant Information 73

Poland 74
1 National Legislation 74
2 Court Rulings 75
3 Implications of CJEU Rulings and ECHR 75

4 Other Relevant Information 75

Portugal 77
1 National Legislation 77
2 Court Rulings 79
3 Implications of CJEU Rulings 80
4 Other Relevant Information 81

Romania 82
1 National Legislation 82
2 Court Rulings 83
3 Implications of CJEU Rulings and ECHR 83
4 Other Relevant Information 84

Slovakia 85
1 National Legislation 85
2 Court Rulings 86
3 Implications of CJEU Rulings and ECHR 86
4 Other Relevant Information 86

Slovenia 87
1 National Legislation 87
2 Court Rulings 88
3 Implications of CJEU Rulings 88
4 Other Relevant Information 89

Spain 90
1 National Legislation 90
2 Court Rulings 90
3 Implications of CJEU Rulings 91
4 Other Relevant Information 92

Sweden 93
1 National Legislation 93
2 Court rulings 93
3 Implications of CJEU Rulings 95
4 Other Relevant Information 96

United Kingdom 97
1 National Legislation 97
2 Court Rulings 104
3 Implications of CJEU Rulings 104
4 Other Relevant Information 105

Executive Summary

National level developments

In August 2020, **extraordinary measures triggered by the COVID-19 crisis** still dominated the development of labour law in many Member States and European Economic Area (EEA) countries.

This Summary is therefore again divided into an overview of developments relating to the crisis measures, and a second part summing up other labour law developments with particular relevance for the transposition of EU labour law.

Developments related to the COVID-19 crisis

Measures to diminish the risk of infection in the workplace

All countries still have measures in place to prevent the spread of the virus in workplaces. By now, the state of emergency, danger or lockdown has expired in many countries. It was, however, extended in countries such as **Portugal** and **Romania.** Several reports mention a new surge in infections, which has interrupted the gradual re-opening of societal and economic life, e.g. in **Denmark**.

Free movement restrictions have been amended in many countries in accordance with recent developments. Notably, the **Czech** report mentions that restrictions have been tightened, while they were generally eased in **Norway**.

Measures to facilitate (employer-imposed) work from home have been temporarily extended in **Poland,** and an obligation to introduce telework in certain work settings has been introduced in **Greece**. Preparations to enact a legal framework for work from home have been initiated in social partner negotiations in **Austria. Romania** now grants subsidies for acquiring the necessary equipment for teleworking.

New health and safety standards for workplaces have been (re-)enacted in **Croatia**, the **Czech Republic, Denmark** and **Germany**, and the application of previously introduced measures has been temporarily extended e.g. in **Greece**. By contrast, restrictive measures have generally been eased in **Cyprus**.

Measures to alleviate the financial consequences for businesses and workers

State-supported short-time work, temporary layoffs or equivalent schemes remain in place in many countries, and have been recently introduced in **Romania**. A new "distribution-of-work scheme" was introduced by a tripartite agreement in **Denmark**, and a new short-time work scheme is being deliberated by the government in the **Czech Republic**. Previously enacted temporary schemes have been provisionally extended in **Austria** (for six months, by agreement of the social partners), **Belgium, Hungary** and **Romania**, and amended in **Italy.** The **UK** job retention scheme will continue with reduced grant levels and is due to expire at the end of October.

Programmes providing financial benefits for workers and/or self-employed persons have been temporarily extended until July 2021 in the **Netherlands**, introduced in the **Czech Republic** (for zero-hours workers), **Denmark** (early pay-out of holiday funds) and amended in **Ireland** and **Portugal** (and partly in the **Netherlands**).

Subsidies for employers have been temporarily extended in **Croatia** (for hiring disabled workers in sheltered employment) and the **Czech Republic,** and the previous system was expanded in **Finland**. Wage subsidies for employing young and unemployed persons have been enacted in **Portugal**, as have subsidies for hiring day labourers in **Romania.** In **Portugal,** employers benefitting from deferred tax and contribution payments

are required to communicate the payment terms they have opted for.

Leave entitlements and social security

Special rules on entitlements to family- and care-related leave and sick leave continue to apply in many countries. In August, leave entitlements and benefits for vulnerable groups have been amended in **Portugal**. Measures to increase the generosity of unemployment benefit schemes have been introduced in **Luxembourg** and **Slovakia**, and the same applies to social assistance for the self-employed in the **Netherlands**.

Table 1: Main developments related to measures to address the COVID-19 crisis

Topic	Countries
Short-time work and similar	AT BE CZ DK HU IT RO UK
Health and safety measures	CY CZ DE DK EL HR
Benefits for workers / self-employed prevented from working	CZ DK IE NL PT
Free movement	CZ NO
Employer subsidies	CZ HR PT RO
Social security	LU NL PT SK
Telework / work from home	AT EL PL RO

Other developments

The following developments in August 2020 were particularly relevant from an **EU law perspective:**

Conflict of laws and posting of workers

In **France, Poland** and **Romania,** legislation transposing Directive 2018/957/EU has been issued. Transposition in **Finland** has been delayed by Parliament.

The **Swedish** Labour Court concluded based on the Rome 1 Regulation that the reference to a Swedish collective agreement, among other things, indicated the application of Swedish law to an employment contract covering the performance of work-related tasks in another country. In another decision, the Labour Court saw no ground to set state immunity aside to grant an employee of an embassy protection against unfair dismissal.

Fixed-term work

In **Austria**, a ruling of the Supreme Court disregarded the question whether the general permission of fixed term contracts for journalistic employees and those responsible for the programme of the Austrian Broadcasting Corporation is compatible with EU labour law (which is debated in academia). In the **Czech Republic**, a ruling of the Supreme Court requires a transformation of fixed-term employment into indefinite employment if the employee continues to perform work with the employer's knowledge after the end of a fixed-term contract. In **Spain**, a Supreme Court ruling concerned the question of severance pay for fixed-term workers, which has been subject to numerous disputes before the CJEU. Referring to the Montero Mateos doctrine, the Supreme Court refused to grant entitlement to severance pay. In **Sweden**, the contractual relationship between a municipality and a "horn blower" working on an intermittent basis for several hours per night repeatedly was reclassified by the Labour Court as a permanent employment contract.

Working time

In **Denmark**, an *Industrial Arbitration ruling* referred to CJEU cases such as the ruling of 19 May 1999 in case C225/97, Commission vs France, and of 30 January 1985 in case C145/83, Commission vs Denmark, to reinforce the requirement of implementing Article 8 of the Working Time Directive in a collective agreement. In **Germany**, the State Labour Court awarded a nurse who provided comprehensive care for an elderly person at home the required minimum wage on the basis of a daily working time of 21 hours per day.

Part-time and temporary agency work

In the **Czech Republic**, a Supreme Administrative Court ruling which seems to find the temporariness of the performance of work by a temporary agency worker in itself to constitute a reason justifying unequal treatment, raises questions in terms of the equal treatment principle set forth in Article 5 of Directive 2008/104/EC

In **Spain**, two rulings of the Constitutional Court considered CJEU case law when finding that the wage reduction in case of a transfer to part-time work must be strictly proportional to the reduction of working hours.

Other

In **Germany**, the Federal Labour Court has submitted a request for a preliminary ruling on co-determination when establishing a Societas Europaea.

In **Hungary**, leave rights in case of child adoption have been introduced.

In **Ireland**, measures to implement Council Directive 2017/159/EU on the implementation of the ILO Work in Fishing Convention 2007 came into force.

In **Liechtenstein**, the government has issued a Decision according to which OSH Directives (EU) 2019/130 and 2019/983 are to be incorporated into the EEA Agreement.

In **Luxembourg**, an Appeal Court decision saw no unfavourable substantial change for an employee in the event that a transfer of undertaking resulted in the employee's position in the hierarchy to be lower than in the previous undertaking.

Table 2: Other main developments

Topic	Countries
Wages	EE ES HR LU SI SK
Fixed-term work	AT CZ ES SE
Working time	DE DK LI
Posting of workers	FR PL RO
Health and safety	DE LI
Part-time work	CZ
Collective action	DE
Societas Europaea	DE
Care leave	ES
Temporary agency work	ES
Parental leave	HU
Fisheries	IE
Young workers	LI
Dismissal	LU
Flexibility clauses	LU
Nullity of employment contract	LU
Occupational reintegration	LU
Payslips	LU
Public holidays	LU
Resignation by employee	LU
Sick leave	LU
transfer of undertaking	LU
Conflict of laws	SE

Implications of CJEU Rulings

Fixed-term employment / annual leave

This FR analyses the implications of a CJEU ruling on fixed-term employment and annual leave rights.

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The CJEU's findings in this case concerned the personal scope of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time and Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, and the resulting right of a particular category of judges appointed for a fixed term to equal treatment regarding annual leave entitlements.

In this regard, the **majority of national reports** indicate that national law does not provide for differences between different categories of judges, or that there are no categories comparable to the *juges de paix*. In some countries (e.g. **Greece**, **Iceland** or **Luxembourg**), the appointment of judges for fixed-term contracts is not envisaged by law at all. The reports also confirm that working time regulations applicable to all categories of judges respect the annual leave standards of the Working Time Directive. The **UK** report recalls parallels to the O'Brien ruling, which resulted in amendments of national law to ensure the equal treatment of part-time judges.

A handful of reports refers to categories of judges for whom the criteria used in the CJEU's ruling might indicate that they need to be considered workers under EU law. For **Belgium**, reference is made to the exceptional temporary appointment of substitute magistrates for a fixed term, to replace professional magistrates on a long-term and structural basis, for instance, during a long period of sickness. Those deputies then, in principle, receive half of a normal salary. For **Cyprus**, lay or associate judges appointed in Labour Dispute Tribunals and in Rent Tribunals would likely qualify as workers for the purposes of EU labour law under the criteria set out by the CJEU in its judgment. For **France**, it is considered relevant for "temporary magistrates" and "honorary magistrates exercising jurisdictional functions".

By contrast, several reports (e.g. **Denmark**) mention the role of unpaid judges, who might fall outside the notion of employee for lack of remuneration and/or the marginal or ancillary nature of their activities. The **Liechtenstein** report indicates that it is very unlikely that part-time and ad hoc judges, who are not considered employees under national law, could fall under the concept of employee within the meaning of EU/EEA law – as their rare involvement on an ad hoc basis might not meet the CJEU's standard of real and genuine services which are neither purely marginal nor ancillary.

The situation in **Spain** stands out as it is described to be very similar to the Italian one. The so-called *jueces de paz* can be appointed in municipalities where there are no ordinary courts. There are over 7 000 *jueces de paz* in Spain. They are not considered workers/employees nor civil servants, but have a special administrative relationship ruled by a regulation of the General Council of the Judiciary. Therefore, they were not considered to be included within the scope of application of EU Labour Law Directives so far. The report asserts that this will need to change following this ruling, but also stresses that there are no differences between the categories of judges in terms of annual leave in Spain. Wages, however, are not same, because the wage of *jueces de paz* is set in the Budget Law every year and depends on the population size in the municipality.

Austria

Summary

(I) No new legislation has been passed, but the social partners are finalising negotiations on the new short-time work scheme for the sectors most affected by the Covid-19 pandemic for October 2020 onwards, and are set to start negotiations on a legislative framework/regulation/guidelines on telework (home-office).

(II) A decision of the Austrian Supreme Court deals with the admissibility of consecutive fixed term contracts.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Consecutive fixed-term contracts

Supreme Court, Case 9 Ob 25/20x, 25 May 2020

The Austrian Supreme Court (*Oberster Gerichtshof*) in its decision of 25 May 2020, 9 Ob A 25/20x, reviewed the admissibility of consecutive fixed-term contracts with the Austrian National Broadcasting Corporation (Österreichischer Rundfunk – ORF). The special act that establishes this company, the National Broadcasting Act (ORF-Gesetz) includes a provision on fixed-term contracts in its § 32 (5) (unofficial translation by the author):

> *"The following provisions shall also apply to journalistic employees and those involved in the programme of the Austrian Broadcasting Corporation, even if they have concluded an employment relationship with the Austrian Broadcasting Corporation, provided that the agreed or actually performed working hours over a period of six months do not exceed four-fifths of 4.3 times the regular weekly working hours provided for by law or collective agreement on a monthly average:*
>
> *1. Fixed-term employment relationships may be concluded without any numerical limitation and immediately successively, without an employment relationship of indefinite duration having been concluded.*
>
> *2. If the employer intends to refrain from concluding a successive fixed-term employment relationship, the employer must be informed of the employee's intention in writing. Notification must be made four weeks prior to the end of the current employment relationship, if a period of no more than three years has elapsed from the beginning of the first employment relationship, with or without interruptions. If this period exceeds three years from the start of the first employment relationship, notification must be given eight weeks before the end of the current employment relationship, and if the period exceeds five years, notification must be given twelve weeks before the end of the current employment relationship. If no notification is given or not given in time, a claim for compensation is due. This compensation shall amount to 8.33% of the remuneration received from the Austrian Broadcasting Corporation in the previous year, if the notification period is four weeks, 16.66% if the notification period is eight weeks, and 24.99% if the notification period is twelve weeks."*

In addition, the applicable collective bargaining agreement also includes a provision on fixed-term contracts in its § 4 (unofficial translation by the author):

> *"The employee is hired by management for the given activity to be performed and the time foreseen*
>
> *1. for an indefinite period of time for activities according to the job category scheme pursuant to § 23 following an advertisement for a position for this purpose, whereby at the start of the employment relationship a fixed-term of a maximum of 12 months may be agreed upon;*
>
> *2. limited to a maximum of 5 years for activities in job categories 8 and 9 in accordance with the job category scheme pursuant to § 23 following an advertisement for a position for this purpose;*
>
> *3. limited in time for activities in the job category scheme pursuant to § 23 for the duration of the absence of an employee pursuant to subparagraphs 1 and 2 or for temporary additional requirements for a specific project;*
>
> *4. limited in time for creative-artistic or production-related activities listed in the catalogue of fees (Annex 3) for the duration of production or, in accordance with the provisions of § 32 para. 5 ORF-G, also for a longer contract period, which, taking into account the requirements of the programme, shall normally be one calendar year."*

In the present case, a journalist was hired for consecutive fixed-term periods with reference to § 4 (3) of the collective bargaining agreement, i.e. to replace an absent employee. In fact, the journalist never took over the work of those absent employees but worked continuously in another field. She then claimed that—as justification for the consecutive fixed-term contracts, i.e. the replacement of an absent employee, was not fulfilled—she was working under an open-ended contract.

The Court of First Instance rejected the claim referring to § 32 ORF-G and § 4 (4) of the collective bargaining agreement. The Court of Appeals decided in favour of the employee referring to Directive 1999/70/EC and applied it directly. As the national law does not foresee any appropriate measures to prevent abuse arising from the use of successive fixed-term employment contracts (clause 5 of the Framework Agreement), it cannot be the basis for justifying them.

The Supreme Court avoided the tricky question whether § 32 (5) ORF-G is in line with Directive 1999/70/EC and only based its ruling on the collective agreement, as the fixed-term contracts explicitly referred to its § 4 (4) (replacement of an absent employee). It interpreted the exemption clause narrowly and considered it necessary for the replacement worker to at least take over some of the absent worker's duties. As this had not been the case, the fixed term was not considered justified and as a result, the contract was an open-ended one.

The Austrian Supreme Court avoided the question whether the general permission of fixed-term contracts for journalistic employees and those responsible for the programme of the Austrian Broadcasting Corporation is compatible with EU labour law.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The judgment—despite its interesting aspects—does not have any implications for national law. There is no professional group/scheme that is comparable to the magistrates in question and whose members are generally and by law not considered to fall under the definition of "worker".

The Austrian legislator regulates entitlement to paid annual leave for all workers who have concluded an employment contract with a private employer (Act on Paid Annual

Leave, Urlaubsgesetz), regardless whether the worker is employed on a permanent or a fixed-term contract. In a similar fashion, legislation for civil servants/workers with a private contract with the state regulates an entitlement to paid annual leave, regardless whether the person is employed under a permanent or a fixed-term contract.

4 Other Relevant Information

4.1 New Short Time Work Scheme from October 2020 onwards

The current Austrian short-time work scheme has been extended until September 2020. The social partners have in principle agreed on a new short-time work scheme for the six months following September 2020, applicable to those sectors most affected by the Covid-19 pandemic.

The general principles have been agreed upon: employees working under the short-time work scheme will continue to be paid 80/85/90 per cent of their net wages for full employment, employers will continue paying the pro rata costs for the performance of work (remuneration). As previously, the Austrian Labour Market Services (AMS) will continue to compensate the employers for the costs of hours not worked, including all ancillary wage costs and sick leave. Furthermore, a standardised procedure for the verification of economic effects on the respective company (a precondition for short-time work funding) will be introduced. During hours not worked due to short-time work, employees are required to undergo training, which shall be partly (60 per cent) funded by the Labour Market Services (AMS). Working hours can be reduced to a minimum of 30 per cent (currently: 10 per cent) and to a maximum of 80 per cent (currently: 90 per cent). In severely affected sectors (such as the hotel industry), a reduction below 30 per cent may be possible. Sources can be found here and here.

4.2 Home-office and mobile work

The government has announced plans to commission the social partners to agree on proposals for a legislative framework on telework—or 'home-office', as it is now called—in Austria. Various issues were mentioned, such as the use of operating resources, working time records, rest periods or tax benefits for commuters (the so called "Pendlerpauschale"). The social partners are expected to take up negotiations in September to address the above-mentioned issues. Sources (in German) can be found here and here.

Belgium

Summary

The system of temporary unemployment benefits resulting from the economic crisis caused by the corona pandemic has been extended until 31 December 2020.

1 National Legislation

1.1 COVID-19 measures

The system of temporary unemployment benefits resulting from the economic crisis caused by the corona pandemic has been extended until 31 December 2020.

From 1 September 2020, a few new rules on temporary unemployment will enter into force.

Companies and sectors that are substantially affected by the COVID-19 crisis can continue to apply the current and simplified COVID-19 *force majeure* temporary unemployment regime until 31 December 2020. The list of sectors that fall within that scope has yet to be determined by the Minister of Labour. In-scope companies are companies that registered unemployment for economic reasons or COVID-19 *force majeure* in the second quarter of 2020, totalling at least 20 per cent of the total number of working days.

For sectors and companies that have *not* been substantially affected by the COVID-19 crisis, the current COVID-19 *force majeure* regime will no longer apply after 1 September 2020. Such companies can either use the classic system of temporary unemployment for economic reasons or use a new light version thereof, which was introduced by the government as a transitory measure for the period from 1 September 2020 to 31 December 2020.

For white collar workers to be able to benefit from this transitional scheme, employers must demonstrate a substantial reduction of at least 10 per cent of their turnover or production. Moreover, employers must provide two training days per month to affected white collar workers. They must conclude a collective bargaining agreement (Royal Decree No. 46 of 26 June 2020, implementing Article 5, § 1, 5° of the Law of 27 March 2020 authorising the King to introduce measures to fight the spread of COVID-19 (II) to support employers and employees (*Moniteur belge*, 1 July 2020).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

(I) The case concerns Italian justices of peace and whether they are entitled to paid annual leave in accordance with the Working Time Directive 2003/88. The function of the Italian justices of peace is considered 'honorary' by the national legislation and they receive compensation of EUR 35 or EUR 55 for the services carried out by them. It seems that the office of the Italian justices of peace is limited to a four-year renewable period. In this particular case, the Italian magistrate handed down around 500 judgements in her capacity as a judge in criminal cases and made around 1 300

orders for no further action in the criminal procedure during the period from 1 July 2017 to June 2018. The applicant earned significant amounts, for instance, EUR 3 000 in July 2018. This excludes the fact that the financial benefits can be considered mere reimbursements of costs, when in reality they are remuneration.

(II) The Italian situation of the justices of peace is hardly comparable to that of the Belgian judges (see link). The CJEU ruling is important because it asserts that judges must be considered 'workers' in the meaning of the Working Time Directive.

- In general, judges, including peace magistrates, are appointed in Belgium on a full-time and lifelong basis (until retirement), and the magistracy is their main profession. Other ancillary jobs are very limited and there is a strict system of incompatibilities. All judges in Belgium, without exception, are appointed by the King on the proposal of the Minister of Justice. Judges are independent but must follow the instructions of the president of the court, with the exception of the Justices of Peace judges who do not have a president.

- A specific regulation applies in part to the labour courts and company courts. Belgium has a system of professional judges in chambers of three judges for the labour courts and corporate courts. The presidents are professional magistrates, as described above. They are flanked by two temporarily appointed lay judges from the business world and, for the labour courts, from the trade unions or representative professional organisations (see Articles 81 and 84 of the Judicial Code). Their main professional activity is outside the judiciary or they are retired. They receive modest attendance fees per session in which they participated. The amount is approximately EUR 40 per session.

- Belgium also has a system of ad hoc substitute judges who, in principle, occasionally replace a magistrate. In practice, these are lawyers. They may also be retired magistrates who are continuing their duties after retirement. They do not receive any compensation or reimbursement of expenses (see Articles 156bis and 383 Judicial Code). Their function is therefore truly honorary.

Exceptionally, however, substitute magistrates may be temporarily appointed for a fixed term, replace magistrates who have to be replaced for a longer term, for instance, during a long period of sickness. These deputies then, in principle, receive half of a normal salary (see Articles 378 and 379 of the Judicial Code). Only in the latter case can a useful comparison be made with the legal status of the Italian justices of peace.

4 Other Relevant Information

Nothing to report.

Bulgaria

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The CJEU ruling case C-658/18 does not have any implications for Bulgarian law.

The legal status of judges in Bulgaria is not that of employee under the labour legislation, judges have a special status, regulated by the Judiciary System Act. Article 330 of this Act provides that:

> *"(1) a judge, prosecutor, investigating magistrate, public enforcement agent and recording magistrate shall be entitled to regular paid annual leave of 30 working days and to additional leave of one working day for every two years of the length of practice of law. (2) The aggregate amount of leave under Paragraph (1) may not exceed 60 calendar days."*

This rule is applicable to all judges.

Pursuant to Article 229 of Judiciary System Act, the Labour Code shall apply to any matters not regulated in the section on employment rights of employees of the judiciary. This means that during the period of paid annual leave, judges shall receive remuneration calculated on the basis of the average daily gross remuneration for the last calendar month preceding the use of the leave, during which he/she has worked at least ten working days. In case the judge has not worked for at least ten working days during any month, the remuneration referred to shall be determined on the basis of the basic and supplementary remuneration of a permanent nature in accordance with Article 218 of the Judiciary System Act (arg. Article 177 of the Labour Code).

4 Other Relevant Information

Nothing to report.

Croatia

Summary

(I) HRK 20,000,000 will be invested as an active employment policy measure for sheltered employment of persons with disabilities in activities affected by COVID-19.

(II) The Amendment to the Collective Agreement in Construction has been concluded.

1 National Legislation

1.1 COVID-19 measures

The Minister of Labour and Pension System has issued a Decision on the use of funds for failure to fulfil the obligation of quota employment of persons with disabilities (Official Gazette No 90/2020). For the purpose of retaining jobs and keeping workers in employment, funds in the amount of HRK 20,000,000 will be invested to implement an active employment policy measure for sheltered employment of persons with disabilities in activities affected by COVID-19.

Although it is not directly related to employment, it is worth mentioning that the opening hours of bars has been limited (they can stay open until midnight), and the number of guests at wedding ceremonies is limited, i.e. in certain counties with a higher number of COVID-19 cases, a maximum of 50 persons may be present at the wedding ceremonies. Sources can be found here and here.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The ruling of the CJEU in this case will not have any implications for Croatian law. There are no judges analogous to the Italian *giudice di pace* in Croatia. There are only regular court judges (including lower court judges, such as, for instance, administrative court judges) and conciliators/mediators elected by the conflicting parties to the contract. Regular court judges are entitled to paid annual leave. Article 87(1) of the Act on Courts of 2013 (last amended in 2019) does not explicitly state that they are entitled to paid annual leave. It states that the judges are entitled, among others, to 30 working days of annual leave, but it is read as their right to paid annual leave. On the other hand, conciliators/mediators are elected by conflicting parties to resolve their dispute peacefully and they do not need to have a legal education. although some of them do and work as attorneys or judges. However, their work, as it is stated above is not analogous to the work of Italian *giudice di pace*.

4 Other Relevant Information

4.1 Collective agreement in construction

The Amendment to the Collective Agreement in Construction has been concluded (Official Gazette No 93/2020). It prescribes, among others, the possibility of reductions in basic salary for the simplest jobs in case of deterioration of the economic situation in the construction sector, which is defined by a decrease in the volume of construction projects in the Republic of Croatia compared to the previous quarter, and according to the Central Bureau of Statistics, or other justified reasons. However, the reduced salary may not be less than 95 per cent of the amount of minimum wage.

Cyprus

Summary

The restrictions of the lockdown have been eased further.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

The restrictive emergency measures to contain the spread of COVID-19 have been eased. August witnessed a further easing of the restrictions of the lockdown, which affected employment relationships.

Travel restrictions have been eased, and depend on how a country is ranked with regard to its coronavirus infection rate.

In August, there was a new spike in coronavirus infections, but the numbers quickly subsided.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The judgment is likely to have some implications for Cypriot law. The most relevant aspect for Cypriot labour law relates to the clarification of the concept of 'worker' within the meaning of Directive 2003/88 and to the principle of non-discrimination set out in the Framework Agreement, which were reviewed by the Court to determine whether they apply to Italian magistrates (*giudice di pace)*. There are no magistrates in the Cypriot judicial system. However, in the case of Labour Dispute Tribunals and Rent Tribunals, two laypersons are appointed as associates or lay judges (πάρεδρος) to sit next to the professional judge who is the president of the tribunal. They play a determining role as 'arbitrators' of facts.

The CJEU decided that

- Article 267 TFEU must be interpreted as meaning that the giudice di pace (magistrate, Italy) falls within the concept of 'court or tribunal of a Member State' within the meaning of that Article.
- Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that a magistrate who, in the

context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, may fall within the concept of 'worker' within the meaning of those provisions, which it is for the referring court to verify.

- Clause 2(1) of the Framework Agreement on fixed-term work concluded on 18 March 1999, which is annexed 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 meaning that the concept of 'fixed-term worker' in that provision may encompass a magistrate appointed for a limited period, who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, which it is for the referring court to verify.
- Clause 4(1) of the Framework Agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation which does not provide for an entitlement on the part of magistrates to 30 days' paid annual leave, such as that provided for ordinary judges, where those magistrates fall within the concept of 'fixed-term workers' within the meaning of Clause 2(1) of that Framework Agreement, and are in a situation comparable to that of ordinary judges, unless such a difference in treatment is justified by the differences in the qualifications required and the nature of the duties undertaken by those judges, which it is for the referring court to verify.

In the case of Cyprus, the comparable groups of judges are lay or associate judges appointed in Labour Dispute Tribunals (Section 12 of the law establishing the court *Ο περί Ετησίων Αδειών μετ' Απολαβών Νόμος του 1967 (8/1967))*, and in Rent Tribunals (Section 4 of the Rent Law, *Ο περί Ενοικιοστασίου Νόμος του 1983 (23/1983)*), which provide for the establishment and composition of such courts.

No such case has gone before a Cypriot court.

The question that must be answered is whether the Cypriot associate judges perform tasks that are purely marginal and ancillary.

In the case of the Italian magistrate who took the matter to court, it was obviously not a marginal and ancillary task: from 1 July 2017 to 30 June 2018, in her capacity as a judge in criminal cases, she handed down 478 judgments and made 1 326 orders, and, secondly, she conducted hearings twice per week. As regards remuneration, the question was whether the sums received by the applicant were paid to her in return for her professional activity: in the case of the Italian magistrate, the compensation was EUR 35 or EUR 55 for the services carried out by them, that compensation being subject to the same taxation as that levied on the remuneration of ordinary workers.

It is highly unlikely that the function of a judge, who issues judgments on labour law and settles rent disputes, can be considered as 'marginal and auxiliary'. The associate judges represent employees and employers and are appointed by the Supreme Court for a term of two years. They are selected from a list submitted to the Ministry of Justice. The term of office of each lay judge is two years from the date of appointment, but he/she may be reappointed at the end of his/her term. The Supreme Judicial Council may, upon the proposal of the President, terminate the appointment of a lay judge at any time in case of misconduct, repeated absence from office for the performance of which he/she has been duly appointed by the President. Lay or associate judges are entitled to resign at any time during their term by letter addressed to the President of the Supreme Judicial Council. In case of termination of a lay judge's term of office, the legal composition of the Court is not affected and the member whose term of office has expired continues to participate until the trial of the specific case for which he/she has been appointed and which has already begun is decided. The law also provides that associate judges are paid representation expenses

determined by decision of the Minister (Section 8(b) of Law 8/1967). They may not, while their appointment is pending, appear or conduct cases before the Labour Dispute Tribunal, either for the applicant or for the defendant (Section 8(c) of Law 8/1967).

Similar provisions exist for the Rent Court. Section 4 of the Rent Law provides that the President of the Rent Tribunal shall appoint two members for each case before the Court from a list of members approved by the Supreme Judicial Council for each province. To this end, the Minister of Justice submits a list of 30 suitable persons of the highest moral character to each district, from which the Supreme Judicial Council selects 20 persons, who make up the list for the district which the President shall refer to to appoint members of the Court in each specific case. A person who has been appointed as a member of the Court in a specific case, the trial of which has begun but has not yet been completed, continues to participate as a member of this Court, even after the expiration of the two years of training by the Supreme Judicial Council. The member will remain a member until the trial of the given case is completed. Any person whose name has been included in the list drawn up by the Supreme Judicial Council may resign by letter addressed to the President of the Supreme Judicial Council, in which case the same procedure shall be followed to replace the resigned person. The Law provides that in compilation of the lists and in the appointment of the members of the Court, care is taken that the interests of the landlords and tenants are equally represented.

In one case before the Supreme Court, it was ruled that the associate judges play a serious role in the hearing of a case:

> *"The associate judges, although not legally trained, should be aware that they have the right, but also the duty, to freely express their disagreement during the consultation stage with the President for a decision. If they do not persist in their disagreements until the end, these will be recorded by the President in the decision. Ex-post disagreement is unacceptable and can only be discounted."* (ΓΙΩΡΓΟΣ ΑΡΙΣΤΕΙΔΟΥ, v. R.K. SUPER BETON LTD, case No. 502/95 ΚΑΙ 503/95, 1999 1 ΑΑΔ 114, 27 January 1999).

It is likely that Cypriot lay or associate judges would be classified as workers like the Italian magistrates.

4 Other Relevant Information

Nothing to report.

Czech Republic

Summary

(I) Travel restrictions, restrictions of mass events, and rules on obligatory protective equipment have been amended. The Act on Compensation for employees on zero-hours contracts has been published and entered into effect. Financial assistance for employers has been extended until the end of October. Support for employees who cannot work during the crisis ("kurzarbeit") is under deliberation.

(II) The Supreme Court has ruled on the conditions of transforming a fixed-term contract into one of indefinite duration. The Supreme Administrative Court has ruled on the equal treatment of temporary agency workers and permanent employees of a user undertaking.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

1.1.1 Travel ban

The extraordinary measure of the Ministry of Health No. MZDR 20599/2020-25/MIN/KAN of 24 August 2020 has been adopted with effect from 25 August 2020.

The text of the extraordinary measure is available here.

The list of low-risk countries is available here.

With effect from 25 August 2020, all persons entering the territory of the Czech Republic who exhibit any symptoms indicating COVID-19 have the obligation to report to a physician (general practitioner). They will also have to submit to inspections for any symptoms when crossing the border (and to cooperate with medical personnel, if any symptoms are detected).

All persons entering the Czech Republic who visited a country not listed as a low-risk country for more than 12 hours within the past 14 days have the obligation to immediately report to a competent hygiene station and get tested for COVID-19 at their own expense (unless public health authorities adopt other measures). If the result of the COVID-19 test is not submitted to the hygiene station within 72 hours from entry into the Czech Republic, it will decide on appropriate quarantine measures.

Third-country (non-EU) citizens from countries not listed as low-risk countries are prohibited from entering the Czech Republic, unless they fall under one of the exceptions exhaustively listed in the Protective Measure, i.e.:

- foreign nationals with long-term or permanent residence permits in a low-risk country;
- holders of valid long-term visas, or long-term, temporary or permanent residence permits in the Czech Republic issued by the Czech Republic;
- foreigners who were issued a short-term visa by the Czech Republic after 11 May 2020;
- foreign nationals with long-term or permanent residence permits in the EU transiting through the Czech Republic (for no more than 12 hours);
- family members of Czech or EU citizens residing in the Czech Republic;
- other exceptional situations (public interest, workers in international transport, etc.).

Entities (such as user undertakings) to which a third-country (non-EU) national (worker) is assigned to perform work in the territory of the Czech Republic must:

- ensure that the worker has accommodation in the Czech Republic (for the duration of his or her stay, including the duration of potential quarantine measure) – unless the worker's accommodation is ensured otherwise;
- provide medical care to the worker (for the duration of his or her stay) – if the medical care is not covered by insurance and is not paid by the worker, the user undertaking is required to pay the costs;
- ensure the return of the worker to his or her country of origin (if the purpose of the worker's stay ends).

The above obligations do not necessarily need to be applied by the receiving entity itself (e.g. the worker can find and pay for his or her own accommodation) – the receiving entity is only liable in case said obligations are not fulfilled.

Employers and user undertakings must ensure that the following persons do not enter their workplaces (establishments) without presenting a negative COVID-19 test result:

- citizens from countries not listed as low-risk countries;
- citizens from low-risk countries who visited the territory of a country not listed as a low-risk country for more than 12 hours within the past 14 days.

Citizens from countries not listed as low-risk countries and citizens from low-risk countries who visited the territory of a country not listed as a low-risk country for more than 12 hours within the past 14 days have the obligation to submit to a second COVID-19 test 14 days after their entry into the territory of the Czech Republic (unless public health authorities decide otherwise).

All persons who visited the territory of a country not listed as a low-risk country for more than 12 hours in the 14 days preceding their entry into the territory of the Czech Republic have the obligation to wear protective respiratory equipment (facemasks, scarfs, respirators, etc.) until they receive the results of the second COVID-19 test (if they have the obligation to submit to a second test – otherwise until the first test is presented to the hygiene station or until the end of potential relevant quarantine measures) – unless public health authorities decide otherwise.

All persons who visited the territory of a country not listed as a low-risk country for more than 12 hours within the past 14 days are prohibited from moving freely in the territory of the Czech Republic and must quarantine in their place of residence in the Czech Republic – with the following exceptions:

- commuting to work and movement within the scope of performance of work (and similar activities) – this exception does not apply to non-EU citizens from countries not listed as low risk;
- essential errands (to fulfil basic needs);
- visits to medical and social services facilities;
- official administrative errands;
- travels back to the place of residence;
- attendance at funerals.

The above restrictions on free movement apply until the persons concerned receive the results of the second COVID-19 test (if they have the obligation to submit to the second test– otherwise until the first test is presented to the hygiene station or until the end of potential quarantine measures).

Applications for visa and stay permits are not being accepted at embassies in countries that are not listed as low-risk countries, fulfilling the criterion of reciprocity (with exceptions). Certain administrative proceedings on residence permits from certain states are stayed.

Due to the developments of the epidemiological situation in the world, the government continues to change the parameters of the travel ban to reflect the said developments. These changes often occur quite rapidly. Some of the rules above prove problematic in practice – in certain sectors of the economy, there is a labour force shortage that

could be addressed by allowing foreign workers to enter the territory of the Czech Republic based on short-term visas; however, if a non-EU worker who is a citizen of a country not listed as a low-risk country enters the Czech Republic based on a short-term visa, he or she cannot perform work for the first 14 days of his or her stay in the Czech Republic (as opposed to other foreign nationals entering the country).

1.1.2 Restrictions of mass events

The Extraordinary Measure of the Ministry of Health No. MZDR 20588/2020-14/MIN/KAN of 24 August 2020 has been adopted with effect as of 1 September 2020.

The text of the Extraordinary Measure is available here.

With effect as of 1 September 2020 until further notice, theatre, music, film, and other art events, sporting, cultural, religious, dancing, tradition or similar events, or other assemblies, public and private alike, where outside attendance exceeds 1 000 persons or where inside attendance exceeds 500 persons, are prohibited – with certain exhaustively listed exceptions.

Movement and stay without protective respiratory equipment (such as respirators, drapes, face masks, headscarves, etc.) is prohibited at events with attendance exceeding 100 persons, which take place in inside spaces of buildings (with certain exceptions – children under 2, athletes during training, competitions, or matches, persons with certain mental disorders, etc.).

Mass events remain restricted, however, and the number of exceptions from generally formulated restrictions keep increasing.

1.1.3 Obligation to wear respiratory protective equipment

The Extraordinary Measure of the Ministry of Health No. MZDR 15757/2020-31/MIN/KAN of 24 August 2020 has been adopted with effect as of 1 September 2020.

The text of the Extraordinary Measure is available here.

With effect as of 1 September 2020 until further notice, the Ministry of Health has re-issued an order according to which movement and stay is prohibited for all people not wearing protective face equipment (such as respirators, drapes, face masks, headscarves, etc.) in the following indoor spaces:

- public administration spaces accessible to the public;
- medical facilities;
- social services facilities;
- polling places; and
- public transport.

The Extraordinary Measure continues to list a number of exceptions from the above rule.

The obligation to wear respiratory protective equipment remains largely lifted. Certain government representatives initially indicated that from 1 September 2020 onwards, the obligation to wear respiratory protective equipment would be far more extensive (including schools and spaces in private businesses accessible to customers), however, following a push from certain sections of the public, these plans were not implemented in practice.

1.1.4 Compensation bonus for employees on zero-hours contracts

Act No. 331/2020 Coll. amending Act No. 159/2020 Coll. on compensation bonuses related to the crisis measures adopted in connection with the SARS CoV-2 coronavirus, as amended, has been published and entered into effect on 7 August 2020.

The text of the Act is available here.

The Act introduces a compensation bonus to be provided to employees employed under a zero-hours contract – i.e. either based on an "agreement on work performance" (DPP) or on an "agreement on working activity" (DPČ) – who could not (partially or at all) perform work during the COVID-19 crisis.

For more detailed information, see Flash Report 07/2020.

State assistance will also be provided to persons employed under a zero-hours contract who relied on the income from this arrangement prior to the COVID-19 crises and who have since lost that income.

1.1.5 State financial assistance for employers – the "Antivirus" programme

The Resolution of the Government of the Czech Republic of 24 August 2020 No. 876 has been adopted.

The text of the Resolution is available here.

As already discussed in Flash Report 03/2020, Flash Report 04/2020, and Flash Report 05/2020, the government has adopted a targeted programme to support employment and to help employers deal with the COVID-19 crisis, i.e. so-called "„Antivirus" programme.

Under the Antivirus programme, the state (the Labour Office) provides employers a monetary compensation of costs incurred during the COVID-19 crisis (employers having to pay salaries to employees who could not perform work due to various reasons, especially furloughed and quarantined employees) – with the aim of preventing and limiting dismissals.

The state contribution will be provided under two schemes, i.e. Scheme A and Scheme B. Both schemes have been extended repeatedly and were supposed to expire on 31 August 2020.

By adopting the Resolution, the government extended both Scheme A and Scheme B until 31 October 2020.

The extension of Schemes A and B of the Antivirus programme is intended to alleviate the adverse effects of the COVID-19 crisis for employers and potentially prevent or limit the dismissals of employees. The extension should help bridge a period prior to the adoption and implementation of universal "kurzarbeit" (which is currently under deliberation – see below).

1.1.6 Kurzarbeit – State support for employees during economic crises

The Draft Act amending Act No. 435/2004 Coll. on Employment, as amended, and other related legislation, is currently being deliberated at the level of the government (comment procedure).

The proposed text of the Draft Act is available here.

The purpose of the Draft Act is to introduce a permanent version of the Antivirus programme that would be activated in periods of economic difficulty.

The Draft Act introduces so-called "support during partial unemployment" – the support essentially consists of monetary assistance provided by the state to

employees to whom their employer cannot assign work (i.e. furloughed employees) for various reasons (drop in demand for goods and services, lack of raw materials, etc.). The state monetary aid is provided instead of compensation of salary, which the employer would have to pay to furloughed employees under normal circumstances (i.e. without the scheme having been activated).

This support scheme during partial unemployment is to be activated in the following cases:

- if the number of unemployed rises beyond a certain level (15 per cent increase to at least 400 000 unemployed) for three consecutive months (compared to the previous year); or
- by government regulation when the economy is at risk (due to e.g. a pandemic, cyberattack, natural catastrophe, etc.).

The support shall only be provided to employees who are furloughed as a direct consequence of the reason for which the support scheme during partial unemployment is activated, if:

- the employer does not assign work to the employee in the extent of at least 20 per cent and at most 60 per cent of his or her weekly working hours (assessed in relation to all of the employer's employees); and at the same time
- the working hours of the employee are at least 40 per cent of the statutory weekly working hours.

The support scheme during partial unemployment is not provided in the following cases:

- if the employee has not been employed with the employer for at least 3 months;
- if the employee has an account of working hours (special working hours arrangement);
- if the employee is entitled to compensation of salary due to quarantine or temporary incapacity for work, or to sickness insurance benefits for the relevant period.

The Draft Act is supposed to enter into effect on 1 November 2020 (i.e. following the end of the Antivirus programme).

The support scheme during the period of partial unemployment will enable the state to flexibly support employers by paying their employees for a period during which they cannot assign work to the employee during an economic crisis (or risk of economic crisis).

2 Court Rulings

2.1 Transformation of fixed-term contracts into contracts of indefinite duration

Supreme Court, No. 21 Cdo 2866/2018, 15 April 2020

The Supreme Court has ruled on the conditions of transformation of fixed-term contracts into contracts of indefinite duration. The ruling was issued on 15 April 2020 under file No. 21 Cdo 2866/2018 and is available here.

According to Section 65(2) of the Labour Code, if the employee continues to perform work with the employer's knowledge after the end of a fixed-term employment contract, the employment relationship will be considered one of indefinite duration from that point on.

In the present case, an employee—a university professor—had been employed on consecutive fixed-term employment contracts. The last of these contracts was

supposed to terminate on 31 January 2011. The employee wanted the employment relationship to be extended, but the employer refused. The employee's supervisor reminded the employee to return all the equipment to the employer and empty the room provided to him. The employee promised to do so after he had finished all of his tasks (student examinations and attendance at thesis defences). On the date of termination of employment, the employee had still not complied with the request. The employee agreed with the employer that he would finish some of the remaining tasks in February (i.e. after the end of the fixed-term employment relationship). The employer kept reminding the employee to return all of the equipment and empty the room provided to him. Subsequently, the employee claimed that the above legal fiction applies and that his fixed-term employment had therefore transformed into a contract of indefinite duration.

The Supreme Court ruled that the legal fiction consisting in transformations of fixed-term employment relationships into ones of indefinite duration could not apply in cases where this would be contrary to the will expressed by the parties to the employment relationship. It is possible for the parties to agree that the employee will complete unfinished work after the end of the fixed-term employment without wanting the employment relationship to continue. The courts will always have to carefully assess the concrete circumstances of each individual case.

In the present case, the parties did not express their will to continue the employment relationship in their mutual communication. The parties only agreed on the performance of certain limited tasks after the date of the end of the employee's fixed-term employment relationship. The communication took place against the background of the employer reminding the employee to return equipment and empty the room provided to him, as well as confirmation about the end of employment. Under these circumstances, the Supreme Court concluded that the above legal fiction did not apply.

According Clause 5(2)(b) of the Annex to the Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP ("Directive 1999/70/EC"), the Member States shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships shall be deemed to be contracts or relationships of indefinite duration.

Section 65(2) of the Labour Code provides for such conditions – if the employee continues to perform work with the employer's knowledge after the end of the fixed-term employment relationship, such employment will be considered to be of indefinite duration.

2.2 Employment conditions of temporary agency workers and permanent workers

Supreme Administrative Court, No. 2 Ads 335/2018, 29 May 2020

The Supreme Administrative Court has ruled on the equal treatment of temporary agency workers and permanent employees of user undertakings. The ruling was issued on 29 May 2020 under file No. 2 Ads 335/2018 and is available here.

According to Section 309(5) of the Labour Code, a temporary work agency and the user undertaking have the obligation to ensure that the working conditions and remuneration of temporary agency workers assigned to perform work for the user undertaking are no worse than those of the permanent employees of said user undertaking.

In the present case, a temporary work agency failed to fulfil the above obligation and was fined. In the proceedings before the administrative authorities and before the courts, it claimed that the relevant temporary agency workers assigned to the user

undertaking were not comparable to the permanent employees of the user undertaking. The case ended up before the Supreme Administrative Court.

The Supreme Administrative Court ruled that the unequal treatment of temporary agency workers in comparison with the user undertaking's permanent employees is permissible—even if they perform work in the same position—given that there are economically rational and generally understandable reasons for such unequal treatment based on the varying benefits different categories of workers generate for their employer (user undertaking). Such reasons may include experience, performance, reliability, degree of connection with and loyalty to the user undertaking, as well as capacity to deal with non-standard situations.

The Supreme Administrative Court also expressed the opinion that temporary agency workers who frequently rotate (every few months) may generally be paid a lower salary compared with the permanent employees of the user undertaking, even though they perform work in the same position – as permanent employees provide the user undertaking with more benefits and pose lower risk.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The present CJEU ruling has no significant implications for national law – the national legislation is in line with the conclusion adopted by the CJEU.

In the Czech Republic, judges perform their function in an employment relationship – their employment begins on the day on which they take up their function and terminates on the day of the end of the performance of that function (end of appointment). All judges are appointed for a limited period—generally until they reach the age of 70 (with certain exceptions—in particular constitutional judges who are appointed for a period of 10 years).

The employment of all judges is governed by the Labour Code and other related legislation (with certain exceptions). Judges are entitled to 5 weeks of annual paid leave – no differentiation is made between the judges in this regard.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

(I) An early pay out of holiday funds that otherwise would be postponed until the time of retirement was approved due to COVID-19.

(II) A new tri-partite agreement on "distribution-of-work schemes" is intended to prevent dismissals in connection with the expiry of the state-financed salary compensation model.

(III) A recent industrial arbitration ruling concerns the interpretation of correct implementation of EU law directives in collective bargaining agreements.

1 National Legislation

1.1 COVID-19 update

Denmark saw a resurgence of COVID-19 cases at the beginning of August, which has delayed Phase 4 of the re-opening of society. In this connection, the Danish Parliament negotiated an agreement on the next phase of the re-opening of society (link here), which entails, inter alia, that the prohibition of large gatherings of over 100 persons has been extended until 31 October 2020, and that night clubs, dance halls, discos, etc. must remain closed until 31 October 2020. Finally, the use of face masks is now a general requirement in all public transport, cf. Ministerial Order No. 1221 of 20 August 2020.

In connection with many aid packages now being phased out, other measures are being introduced to mitigate the financial consequences of COVID-19, e.g. the new tripartite agreement on "distribution-of-work schemes", and an early pay out of holiday funds to employees, see below section 1.1.

The link to Ministerial Order No. 1221 of 20 August 2020 is available here.

1.2 Pay out of holiday allowance due to COVID-19

As of 1 September 2020, a new holiday model of "concurrent holiday" will be introduced in Denmark. Upon the transition to the new model of concurrent holiday, employees may have accrued holiday, but not yet taken it.

The transition could result in up to 10 weeks of untaken holiday in the first year. Thus, an interim arrangement has been introduced. This means that employees' earned holiday funds from 1 September 2019 to 31 August 2020 are put in a fund, and paid to the employee upon retirement.

Due to the extraordinary impact of COVID-19 on the economy, a political majority in the Danish Parliament has decided that the holiday funds can be paid out in part to the employee in October 2020. The pay-out is limited to a maximum of three weeks of holiday funds. The pay-out is contingent upon application by the employee, i.e. the pay-out is optional.

The link to Act No. 207 of 17 August 2020 is available here. The link to the Ministry of Employment's press release is available here.

The Act represents one of the many measures introduced to mitigate the financial consequences of COVID-19.

The Act does not incorporate any EU law aspects. The workers will have the full right to annual paid leave under the new Holiday Act in force on 1 September 2020, the pay-out relates to accrued holiday funds under the earlier Holiday Act.

1.3 Tripartite Agreement on "distribution-of-work schemes"

According to some collective agreements, companies can—during periods of little work—choose to distribute the available work between employees rather than dismiss employees ('distribution-of-work scheme'). This means that the working time (and salaries) of the employees are temporarily reduced. During the applicability of such a scheme, the affected employees can receive supplementary unemployment benefits for days without work.

In connection with the expiry of the state-financed salary compensation scheme, a Tripartite Agreement has been concluded between the government, the Danish Confederation of Trade Unions (FH) and the Danish Employers' Confederation (DA), which grants the use of 'distribution-of-work schemes' to all employers. Thus, an Act will be adopted, which will apply to all employers, irrespective of whether any collective bargaining agreement is in force at the workplace.

On the days e employees do not work, the agreement provides that they are entitled to a higher rate of unemployment benefits, which amounts to approximately 20 per cent above the regular maximum rate. This increase is primarily financed by employer contributions.

The Agreement is temporary and expires on 31 December 2020.

The link to the Tripartite Agreement on "distribution-of-work schemes", August 2020, is available here. The link to the Ministry of Employment's press release, 31 August 2020, is available here.

The Tripartite Agreement is one of the many measures introduced to mitigate the consequences of COVID-19 on the labour market. The use of Tripartite Agreements have proven to be a useful and valuable tool in establishing general assistance packages, which enjoy wide support by both employers and employees.

2 Court Rulings

2.1 Working time

Industrial arbitration ruling of 16 July 2020, FV 2020-348

The Construction, Earth and Environmental Workers' Union (*BJMF*) brought a case against the Danish Construction Association (*DCA*) claiming that Art 8 on night work in the Working Time Directive 2003/88 EC was not implemented in the parties' collective agreement (*Jord- og betonoverenskomsten*). DCA, on the other hand, claimed that the Working Time Directive as such had been implemented in the said collective agreement.

- First, the arbitrator stated the general EU law requirement to implement directives, e.g. that a legal basis must exist, which guarantees full adherence to the directive, and that affected private citizens must be able to have access to full knowledge about their rights established in the directives as well as access to enforcement.
- Second, the arbitrator addressed the specific requirements of the implementation of the Working Time Directive. The Working Time Directive contains multiple provisions that need specifications in national law in relation to national implementation, e.g. Article 2(4), litra b on the definition of night workers.
- Third, the arbitrator explained the Danish model of implementation of the Working Time Directive. This model entails, inter alia, that the social partners in various collective bargaining areas may implement the labour law provisions of the Directive, so that the specific implementation in one collective bargaining

area reflects the transposition of the Directive for employees in that given area. In the present case, an Agreement on the Implementation of the Working Time Directive between LO and DA of 7 January 2000 would apply to the employees, if the parties in their collective agreement (*Jord- og betonoverenskomsten*) had not agreed upon implementation that reflected the Directive's requirements and provided the intended security and information.

- The Danish model of implementation also entails that there is a residual Act, which applies to all employees not covered by collective agreements – the Act on Working Time.
- Fourth, the arbitrator considered whether the Working Time Directive had been implemented in the parties' collective agreement. It was undisputed that the parties had entered into an agreement on implementation and that the parties at that time agreed to implement the Directive in their collective agreement. Such declaration was, however, not relevant in the determination of whether the EU law requirements of implementation had been met.
- The arbitrator found that provision by provision had to be assessed, and not in general whether the Directive had been properly implemented according to EU law. The arbitrator then assessed the implementation of Article 8 on night work specifically.
- She found that the collective agreement did not contain provisions on those rights in Article 8. For example, the collective agreement did not state that in Article 21(17), which gives provides for agreements on distribution of working time in line with the specific conditions of the workplace, that this is subject to the limitations of Art 8 in the Working Time Directive.
- In conclusion, it was held that the parties' agreement did not constitute an implementation of Article 8 of the Working Time Directive that reflected the requirements set out in the jurisprudence of CJEU. The arbitrator ruled in favour of the Construction, Earth and Environmental Workers' Union.

The link to the industrial arbitration ruling of 16 July 2020 is available here. The link to the collective agreement between the Construction, Earth and Environmental Workers' Union (*BJMF*) and the Danish Construction Association (*DCA*), *Jord- og betonoverenskomsten* is not available. Only the 2017-version is publicly available (the agreement was renewed in 2020). The link to the Act on Working Time, No. 896 of 24 August 2004 is available here. The link to the Working Time Directive 2003/88/EC is available here. The link to the Agreement on Implementation of the Working Time Directive between LO and DA of 7 January 2000 is available here.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The judgment does not have implications for Danish law.

The case concerned the definition of and potential rights of Italian magistrates, which are a type of honorary judge appointed by presidential decree and appointed for a four-year term. Magistrates differ from ordinary judges by the way they are appointed, and magistrates principally deal with cases of lesser importance, whereas ordinary judges in higher courts deal with cases of greater significance and complexity.

In the Danish judicial system, this type of judge or magistrate does not exist. The courts employ ordinary judges, deputy judges (education position covered by terms in collective bargaining agreements), administrative employees and other personnel.

Thus, the facts of the Italian case are not comparable to any employment terms in the Danish context.

The link to the Danish Court's webpage is available here.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

Although the average wage in Estonia has increased, the increase in average wages has slowed.

1 National Legislation

Nothing to report

2 Court Rulings

Nothing to report

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The present case concerned different aspects of working time. The main issue focussed on the notion of "worker" and its applicability in the public sector. The question of differentiated treatment between honorary and ordinary judges was also dealt with.

The case is of relevance because of the interpretation of the notion of "worker" and because it clarifies whether and to what extent differentiated treatment is possible and how this can be analysed.

The case and its position will not have any far-reaching implications for Estonian labour law. There are no honorary judges in Estonia and such a case would therefore not arise.

There are two different possibilities for employment in Estonia: 1) employees who work under an employment contract; and 2) officials (civil servants), who do not work under an employment contract and are appointed under an administrative act. Judges belong to the category of officials and therefore do not qualify as employees.

The CJEU has stated that judges can be deemed employees under European Union law. According to the Estonian labour legislation, the general rules on working time established in the Civil Service Act are also applicable to judges, unless the law states otherwise. The Civil Service Act also takes the requirements of the Working Time Directive into account.

4 Other Relevant Information

4.1 Average wage in Estonia

The monthly average wage in Estonia in the second quarter was EUR 1 433 gross. The highest average wage was in the information and communications sector – EUR 2 564 per month. The second highest average wage was paid in the finance and insurance sector. The lowest average monthly wage was paid in the accommodation and catering sector – EUR 903 gross per month. Compared to last year, the increase of the monthly

average was just 1 per cent. This indicates that the increase in the monthly average wage has slowed.

More information on the growth in wages and salaries in Estonia is available here.

Finland

Summary

(I) The government has proposed to expand the local government's trials to boost employment.

(II) The implementation of the renewed Posted Workers Directive (EU) 2018/957 was delayed.

(III) According to the Supreme Court, an employer can simultaneously introduce two co-determination procedures to reduce staff if the employee representatives have received the relevant information and had an opportunity to propose alternative measures with regard to questions arising during other negotiations that related to both cooperation procedures.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

On 27 August 2020, a government proposal (Government Proposal No. 87/2020) was submitted to Parliament to supplement the Government Proposal on local government trials to boost employment. According to the proposal, six new regions would be added to the trial. In addition, one or more municipalities would be added to four trial regions already confirmed in the original proposal. The source is available here.

1.2 Posted workers

Parliament is still negotiating Government Proposal (Government Proposal No. 71/2020) for implementation of the renewed Posted Workers Directive (EU) 2018/957, It was submitted to Parliament in May. In the Proposal, the government had proposed the amendments to the Posted Workers Act to come into force on 30 July 2020. The source is available here.

2 Court Rulings

2.1 Co-determination in undertakings

Supreme Court, KKO:2020:58, 13 August 2020

An employer had simultaneously introduced two cooperation procedures to reduce staff in light of the need to reduce costs. These measures targeted different groups of staff. According to the Supreme Court, the employer was entitled to introduce the cooperation procedure so that two proceedings were being carried out separately and negotiations were carried out with the representatives of staff members whose jobs were in jeopardy due to the introduced measures. The employer had the obligation to submit the relevant information to the employee representatives and give them the opportunity to propose alternative measures in relation to questions that had arisen during the negotiations and were connected to both cooperation procedures. As such, the questions had been properly negotiated in both procedures simultaneously, and the employer was found to not have neglected his duties based on the Act on Cooperation within Undertakings. The decision is available here.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

According to the CJEU Article 7(1) of Directive 2003/88/EC and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that a magistrate who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, may fall within the concept of 'worker' within the meaning of those provisions, which it is for the referring court to verify. Clause 2(1) of the Framework agreement on fixed-term work concluded on 18 March 1999, which is annexed 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 meaning that the concept of 'fixed-term worker' in that provision may encompass a magistrate appointed for a limited period, who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, which it is for the referring court to verify.

In Finland, this kind of situation would fall within the scope of protection afforded to workers.

Clause 4 (1) of the Framework Agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation which does not provide for an entitlement on the part of magistrates to 30 days' paid annual leave, such as that provided for ordinary judges, where those magistrates fall within the concept of 'fixed-term workers' within the meaning of Clause 2(1) of that framework agreement, and are in a situation comparable to that of ordinary judges, unless such a difference in treatment is justified by the differences in the qualifications required and the nature of the duties undertaken by those judges, which it is for the referring court to verify.

It is not permitted in Finland to treat workers differently without a justified ground, which would contradict Clause 4 (1) of the Framework Agreement annexed to Directive 1999/70.

4 Other Relevant Information

4.1 Working group proposes measures to fight labour exploitation

On 20 August 2020, a working group established by the Ministry of Economic Affairs and Employment with the task of preparing measures to fight labour exploitation proposed a set of measures consisting of 14 proposals for legislative measures, measures related to the guidance provided by authorities, and measures designed to improve cooperation.

The working group proposes a more effective system for sanctioning employers found guilty of exploitation. It also proposes making more resources available to authorities and enhancing cooperation between them by improving the exchange of information and the use of surveillance as well as other data. Some of the proposals may be implemented in autumn 2020 and the working group will prepare further measures and continue its work until the end of 2021.

France

Summary

The French government published Decree No. 2020-916 of 28 July 2020 on posted workers and measures against unfair competition (1) completing Ordinance No. 2019-116 of 20 February 2019.

1 National Legislation

1.1 Posting of workers

The revised Posted Workers Directive (EU Directive 2018/957) has been transposed into French law by Ordinance No. 2019-116 of 20 February 2019, with the provisions entering into force on 30 July 2020.

Decree No. 2020-916 of 28 July 2020, published on 29 July, on posted workers and measures against unfair competition, also entered into force on 30 July 2020.

As a reminder, the French government had until 30 July to transpose EU Directive 2018/957of 28 June 2018 on the posting of workers into French law. Hence, after the entry into force of Ordinance No. 2019-116 of 20 February 2019, Decree No. 2020-916 of 28 July 2020 completed the implementation of the revised Posted Workers Directive.

The provisions resulting from Ordinance No. 2019-116 of 20 February 2019 and Decree No. 2020-916 of 28 July 2020 do not apply to road transport companies.

Employers who post employees must send a prior declaration of posting to the French labour inspectorate before the start of the posted employee's work in France, using the labour administration's SIPSI platform. This declaration must now include specific information detailed in the Decree in Articles R. 1263-3, R. 1263-4 and R. 1263-6 of the Labour Code. From 30 July 2020, employers will have to pay each posted worker the minimum or basic wage, as well as all other benefits and add-ons to be paid directly or indirectly, in cash or in kind, by the employer to the employee by reason of his/her employment relationship. Employers will have to treat each posted employee equally in terms of any form of employee compensation, regardless of its nature (i.e. fixed or variable, in cash or in kind, etc.).

The remuneration granted to posted workers must be equal to the amount an employee with an equivalent professional qualification, occupying the same job, would receive in the user undertaking.

Temporary work agencies and placement agencies must grant posted workers the terms and conditions of employment that apply in the user undertaking and to the workers employed by the undertaking in terms of:

- working hours;
- night work;
- weekly rest and public holidays;
- health and safety at work;
- work carried out by women, children and young workers.

The Decree extends the application to posted workers of provisions on specific employee breaks (such as a break to take care of a family member, caregiver leave, etc.) and employee Times Savings Accounts ("*Compte Epargne Temps*").

The Decree amends Article R. 1262-8 of the Labour Code by drawing heavily on the very terms of the Directive, thus providing that the professional expenses incurred by the posted employee concerning transport, meals and accommodation must be borne

by the (foreign) employer, and are thus excluded from the employee's remuneration under the following two conditions :

(i) the coverage of these costs is provided for by legal or contractual provisions, and

(ii) incurred by the posted worker where he or she is required to travel to and from his or her regular workplace in France, or where they are temporarily sent by their employer from that regular workplace to another place of work

The Decree further specifies that if the (foreign) employer cannot justify the payment of an allowance specific to the posting—as remuneration or reimbursement of expenses—this payment is presumed to be a reimbursement of expenses and is thus excluded from the worker's remuneration.

As of 30 July 2020, as indicated in the July Flash Report, the posting will be based on a different legal regime depending on whether its duration is maximum 12 months or if it exceeds 12 months. The specific regime for posting, with its rules derogating from the Labour Code, will only apply to postings for a period of 12 months at most. If a posted worker is replaced by another posted employee in the same position, the 12-month period referred to above shall be reached when the cumulative period of posting of successive employees in the same position is equal to 12 months, Article L. 1262-4, (II) of the Labour Code.

Where justified by the performance of the service, the employer may extend the posting to 18 months after a substantiated declaration addressed to the administrative authority before the expiry of the 12-month period. The Decree in Article R. 8115-5 of the Labour Code specifies that failure to comply with this obligation may be sanctioned with an administrative fine in the event of inspection by the labour inspector.

A notification of the extension of the initial period of 12 months to 18 months must be submitted via the SIPSI online platform: the duration (with a maximum of six months) and the reason for the extension. The rules derogating from the posting then continue to apply until the end of the extended period.

If the duration of the posting has reached 12 months before the entry into force of the Decree (30 July 2020) or reaches this duration within 15 days following the entry into force of the Decree, , the notification of extension shall be submitted within one month of the latter date. During that period, the employer shall be deemed to have benefitted from an extension.

In that case, the foreign employer is obligated to respect the legal provisions considered "core principles" from the 13th (or 19th) month, applicable to all postings, but also to respect the other provisions of French employment law, with the exceptions of those provisions relating to the conclusion and termination of employment contracts and company retirement plans.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

In France, there is no case law on this matter. The CJEU's decision has no direct implications for French legislation.

In France, the local court ("*jurisdiction de proximité*"), comparable to that involved in the present case, is responsible for settling small disputes in both civil and criminal matters, and was created in 2002 by Law No. 2002-1138 of 9 September 2002. The Law on the Modernization of Justice for the 21st Century has 'curbed' these local courts. "Temporary magistrates" and "honorary magistrates exercising jurisdictional functions" are subject to the General Statute of the Magistracy of 22 December 1958. They are compensated in accordance with the conditions established by decree in the Council of State. Articles 41-14 (temporary magistrate) and 41-29 (honorary magistrate exercising jurisdictional functions) of the General Statute provide that these magistrates "*may exercise a professional activity concomitantly with their judicial functions, provided that this activity is not of such a nature as to impair the dignity of the office and its independence*." The judges temporarily integrated into part-time judiciary, i.e. judges working on a temporary basis and honorary judges, may not form the majority of the members of a collegial formation of the court to which they are appointed or assigned. In addition, temporary magistrates may not exercise more than one-third of the service of the court or local chamber to which they are assigned.

The definition of a worker as provided by the CJEU is similar to the definition of a worker in France. The CJEU defines the concept of 'worker' in accordance with objective criteria, which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship is that a person performs services for and under the direction of another person for a given period in exchange for remuneration.

In France, the definition of worker is provided in case law, as French law does not define the notion of worker. According to the Court of Cassation, an employment contract exists when a person undertakes to work in the name and under the supervision of another in exchange for remuneration. With regard to the criterion of salaried employment, the case law of the Labour Chamber of the Court of Cassation has been established since the Société Générale ruling of 13 November 1996 according to which: "*The relationship of subordination is characterised by the performance of a job under the authority of an employer who has the power to give orders and instructions, to oversee performance thereof, and to sanction the subordinate for any breaches; Working within an organised service may indicate a relationship of subordination when the employer unilaterally determines the terms and conditions for performing the job*". Three elements are required to prove the existence of an employment contract, and emerge from this definition (i) the performance of an activity; (ii) in exchange for remuneration; and (iii) the existence of powers of direction, control and sanction. Among these three criteria, the third is the most decisive.

4 Other Relevant Information

Nothing to report.

Germany

Summary

(I) The Federal Ministry of Labour and Social Affairs has released the new SARS CoV-2 occupational health and safety regulation.

(II) The Federal Government presented the draft of a law to improve enforcement of the Occupational Safety and Health Control.

(III) The State Labour Court Berlin awarded a nurse the required minimum wage on the basis of a daily working time of 21 hours per day.

(IV) The Federal Labour Court has submitted a request for a preliminary ruling regarding co-determination when establishing a Societas Europaea.

(V) The Federal Constitutional Court delivered two important judgments on strike law. According to the State Labour Court Nuremberg, the employer is not required to make use of German only when dealing with the works council.

(VII) The government has made it clear that the recent easing of the Working Time Act rules is not meant to be permanent.

(VIII) Around four million full-time employees will have earned a monthly gross wage in the low-wage sector.

1 National Legislation

1.1 Occupational health and safety

The Federal Ministry of Labour and Social Affairs has released the new SARS-CoV-2 occupational health and safety regulation for publication in the Joint Ministerial Gazette. It comes into force in August 2020. For the period of the corona pandemic, the occupational safety regulation specifies additional occupational safety measures required for the protection of workers at the workplace against infection and the general measures already described in the SARS-CoV-2 occupational safety standard.

1.2 Health and safety at work

On 31 August 2020, the Federal Government presented the draft of a law to improve enforcement of the Occupational Safety and Health Control Act (see also July 2020 Flash Report).

2 Court Rulings

2.1 Working time

State Labour Court Berlin-Brandenburg, No. 21 Sa 1900/19, 17 August 2020

The plaintiff, a Bulgarian national, was sent to Germany by a German agency to care for a 96-year old lady in need of assistance. The plaintiff's employment contract provided for a working time of 30 hours per week. The care contract for provided for the provision of comprehensive care, including personal hygiene, assistance with meals, housekeeping and social services. The plaintiff was required to live and stay overnight in the flat of the lady she cared for. The applicant requested remuneration for 24 hours a day. The State Labour Court Berlin (of 17 August 2020 – 21 Sa 1900/19) awarded the plaintiff the required minimum wage on the basis of a daily working time of 21 hours. The Court found that the employer's recourse to the agreed limitation of working time to 30 hours per week was contrary to good faith, as

comprehensive care was provided and the responsibility for both the care and compliance with the working time was transferred to the plaintiff. It was the employer's responsibility to organise compliance with working hours, which in this case did not happen. The amount of paid time awarded was based on the fact that in addition to the plaintiff's working time, paid on-call time had to be assumed to apply for the night. However, since it was also reasonable to assume that the applicant had the possibility to take a limited break, estimated at three hours per day, her working time was to be remunerated for 21 hours of work a day.

The decision is available only as a press release by the Court.

2.2 Co-determination at company level

The Federal Labour Court has submitted a request for a preliminary ruling to the CJEU with the aim of clarifying the requirements for corporate co-determination based on an agreement when establishing a Societas Europaea (SE) by converting a stock corporation with equal co-determination.

2.3 Right to strike

Federal Constitutional Court, No. 1 BvR 719/19, 1 BvR 720/19, 09 July 2020

Since 2014/2015, there have been strikes at two large commercial enterprises not covered by collective agreements. The union sought recognition of existing collective agreements for the relevant retail and mail order collective agreements by the employers. Union representatives therefore met with the striking workers on individual strike days in the company car park shortly before the start of the shift. The car park is very large and signs indicate that it is private property. It is located directly in front of the main entrance to the factory, which can only be reached via the car park, and is also used by nearly all employees due to its location outside the town. The Federal Constitutional Court (of 09 July 2020 – 1 BvR 719/19, 1 BvR 720/19) ruled that the complainants' fundamental rights to property and freedom of enterprise were not violated by the strike action in the company car park in front of the entrance to the factory, as the trade union had to be able to approach the workers to exercise its rights under Article 9(3) of the Basic Law (freedom of association).

As an employer in the entertainment industry, the complainant objected to the ban on strike breakers introduced in 2017 in section 11 (5) of the Temporary Employment Act (*Arbeitnehmerüberlassungsgesetz*). According to this law, the user company is not allowed to employ temporary workers to replace workers who are on strike if he/she is directly affected by a labour dispute. The Federal Constitutional Court (of 19 July 2020 – 1 BvR 842/17) declared the constitutional complaint to be unfounded. In the view of the Court, the provision challenged by the complainant was covered by the legislature´s scope for decision-making. In this regard, the Court stated the following:

> *"In particular, the provision is also proportionate in the narrower sense. This is demonstrated by the necessary weighing of all interests in consideration of the burdens imposed. These are indeed important. Employers are restricted in their decision to use temporary workers to defend themselves against a strike. However, the regulation does not prohibit the general use of temporary workers in the company, but only their direct or indirect use as strike breakers. The legislator thus pursues objectives of such considerable weight that they are in principle capable of justifying even weighty restrictions of fundamental rights. This applies to the objective of ensuring that temporary workers also have a socially appropriate employment relationship, as well as to the objective of safeguarding the functioning of the collective bargaining autonomy guaranteed by the fundamental rights, because the supply of temporary workers has been used to a greater extent in industrial disputes and this shifts*

the forces at the considerable expense of the trade unions. In this way, the regulation aims at the fundamental parity of the parties to the collective agreement. Contrary to the complainant's view, the unions do not already have stronger means of industrial action. It is precisely they are dependent on a balanced balance of power in industrial action in order to negotiate their positions on an equal footing. Thus the legislator is not violating the state's duty of neutrality. In particular, it is not prevented from changing the framework conditions in the law on collective agreements in order to restore parity".

2.4 Rights of works councils

State Labour Court Nuremburg, No. 1 TaBV 33/19, 18 June 2020

In the present case, the works council of a subsidiary of a Spanish clothing company requested that the employer be required to communicate with works council members and employees in German. The branch manager in the specific case initially hardly spoke any German. The works council argued that employees complained that staff interviews and staff meetings were conducted in English. At staff meetings, the content was not translated if the heads of departments found translating to be too difficult. Against this background, the works council wanted the employer to be required to communicate with works council members and employees in German in future. The State Labour Court Nuremburg (of 18 June 2020 – 1 TaBV 33/19) dismissed the complaint and in this respect stated, inter alia, the following:

> *"The works council cannot demand that the employer itself or the representative appointed by the employer only communicate with it in a way in which the representative of the employer sent to the meetings or negotiations himself/herself uses exclusively the German language. There are no significant impediments to the work of the works council (…) if it is ensured that all statements made by the branch manager can be communicated in an understandable form to the works council members and that the statements made by works council members to the branch management can also be received and perceived. This includes that statements in written or textual form in German at least be brought to the attention of the works council members or – via the works council chairperson – the works council body, if these works council members do not have a sufficient command of the foreign language, which must be assumed according to the presentation of the parties involved. It is irrelevant whether the employer or the representatives appointed by him or also the branch management personally write the texts in German. What is decisive is that the texts in German arrive at the works council and can be passed on by the works council members to the employer's representatives."*

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The concept of worker in the Working Time Directive is an autonomous concept of Union law which, moreover, is not to be interpreted narrowly. Whether a person is to be regarded as a civil servant under national law, for instance, is irrelevant (expressly Ulber, in: Preis/Sagan, Europäisches Arbeitsrecht, 2nd ed., 2019, p. 371). It is still occasionally claimed in legal literature that qualification as an employee requires work to be performed on the basis of a private-law contract and that the Working Hours Act therefore does not apply to civil servants, for example (e.g. Baeck/Deutsch/Winzer, Arbeitszeitgesetz, 4th edition 2020, § 2 ArbZG 88).

4 Other Relevant Information

4.1 Working time

In response to a parliamentary question, the German government has made it clear that the recent easing of the rules of the Working Time Act, which was introduced in response to the corona epidemic, is not permanent: the Federal Government states verbatim:

> *"The Working Time Act (ArbZG) already contains extensive possibilities to deviate from the basic standards by collective agreement or by way of official approval and opens up a broad framework for the design of innovative and flexible working time models. The deviations from the basic standards of the Working Hours Act for certain activities, which were made possible by the COVID 19 Working Hours Ordinance for a limited period of time, were used exclusively to cope with the exceptional situation of the COVID 19 pandemic. It should be noted that long working hours, shortened rest periods and the postponement of rest periods can have negative effects on the safety and health of employees. For this reason, a permanent extension of the possibilities of deviation from the basic standards of the ArbZG for reasons of occupational health and safety is not to be advocated".*

4.2 Low-wage sector

According to the Federal Employment Agency, in 2019, around four million full-time employees who were subject to social insurance contributions will have earned a monthly gross wage in the low-wage sector. This corresponds to a share of 18.8 per cent, writes the Federal Government in its answer to a question of the parliamentary group Die Linke. The threshold of the lower pay range in 2019 was EUR 2.267 and the median income was EUR 3.401.

Greece

Summary

New measures have been introduced in Greece to tackle the coronavirus crisis.

1 National Legislation

1.1 Continuation of the suspension of employment contract

Article 124 of Law 4714/2020 was replaced by a Legislative Act published on 22 August 2020 providing for the continuation of the suspension of employment contract mechanism in various fields of economic activity (tourism, transportation, cultural activities, etc.) for two more months (August and September, 2020) for workers who were hired before the publication of this Act.

Article 8 of the Legislative Act published on 22.8.2020, replaced para. 2 of Article 4 of the Legislative Act published on 11. March 2020 (ratified by Law 4682/2020). The new provisions specify employees who belong to vulnerable groups (with a medical certificate) and allows them to resort to telework. The employer has the obligation to accept such request if it is possible for the work to be provided remotely. In case this is not possible, the employer must take all necessary measures to protect the worker from performing any work that involves public contact or to suspend the employment contract. In case the employer fails to follow the above provisions, a fine of EUR 5 000 will be due.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Ruling

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

There are no honorary judges in Greece, and the judges are not hired under a fixed-term contract. All judges are ordinary judges and remain in their post provided they have not reached the mandatory retirement age. Therefore, there are no implications of the ruling for Greek labour law.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

(I) The government has been authorised by law to extend the period of application submission for the subsidy for reduced working time.

(II) Leave rights in case of child adoption have been introduced.

1 National Legislation

1.1 Extended support for reduced working hours

According to Government Decree 105/2020[1], the government will support employment (since 16 April) with reduced working hours over the next three months. The rules for this state subsidy have been amended by Government Decree 141/2020, which entered into force on 29 April. These rules have been analysed in previous Flash Reports.

Article 66 of Act 58 of 2020 on transitional measures authorises the government to extend the period of submitting applications for the subsidy by government decree. According to Government Decree No. 290/2020. (VI. 17.), the application must be submitted before 31 August 2020 for the period extending up to 31 December 2020.

1.2 Amendment of the Labour Code on exemption from work

Article 55 of the Labour Code has been supplemented by a new compulsory case of exemption from work obligations (in amended point j). In case of adoption of a child, the adopting parents are entitled to 10 days of exemption from work within 90 days of the issuance of the certificate by the organisation arranging the adoption. This period shall give the adopting parents and the child time to adapt to the new circumstances. The adopting parent is entitled to absentee pay for these days in accordance with amended Article 146(3)a) of the Labour Code.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

According to Article 3(1)a) of Act 125 of 2003 on Equal Treatment and Promotion of Equal Opportunities (ETA), the scope of the ETA covers service relationships of judges. Article 8 of ETA prohibits direct discrimination based on the fixed-term nature of employment.

Article 55 of Act 162 of 2011 on the legal status and pay of judges ensures paid leave for judges, irrespective of the nature of their service relationship (i.e. fixed term or permanent). Therefore, Hungarian law adequately regulates the legal issues dealt with by the CJEU judgment.

[1] Hungarian text: file:///C:/Users/aetgux/AppData/Local/Temp/MK_20_071.pdf

4 Other Relevant Information

Nothing to report.

Iceland

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The judgment will not have any implications on Icelandic law. Firstly, Icelandic law does not distinguish between judges and magistrates.

Additionally, Art. 1. of Act No. 30/1987, on Annual Holidays, states that anyone who works in the service of another in exchange for remuneration has a right to paid annual leave. This is reaffirmed in Art. 11(1) of Act No. 70/1996, on the Rights and Obligations of Civil Servants, which applies to judges; see Art. 2(1) and Art. 22(1)(3) of the Act.

However, according to Art. 1(2)(d) of Act No. 139/2003 on Fixed-Term Employment, it does not apply to judges, as they are appointed by Act No. 50/2016, on Courts. The principle of the Act is that judges are appointed up to the age of 70, see Art. 52(5).

4 Other Relevant Information

Nothing to report.

Ireland

Summary

(I) The Employment Wage Subsidy Scheme replaces the old subsidy scheme and is scheduled to last until 31 March 2021.

(II) Measures to implement Council Directive 2017/159/EU concerning the implementation of the ILO Work in Fishing Convention 2007 have come into force.

1 National Legislation

1.1 Measures to respond to Covid-19 crisis

1.1.1 Wage subsidy scheme

The cumulative cost of the Temporary Wage Subsidy Scheme (TWSS) up to 27 August 2020 was EUR 2.736 million, having assisted 659 500 workers since it was introduced in March 2020. The numbers of workers receiving the Pandemic Unemployment Payment (PUP) have declined to 230 400, a 61 per cent reduction from its peak figure in May 2020. More exits from the PUP have been to non-subsidised employment (168 800) than to subsidised employment (120 800).

The TWSS will come to an end on 31 August 2020 and will be replaced, with effect from 1 September 2020, by the Employment Wage Subsidy Scheme (EWSS). This new scheme is scheduled to last until 31 March 2021 and offers a flat rate subsidy for employees who earn between EUR 151.50 and EUR 202.99, of EUR 151.50 per week and for those who earn between EUR 203 and EUR 1,462, of EUR 203 per week. In addition, there will be a reduced employer social insurance rate of 0.5 per cent on wages paid which are eligible for the subsidy payment. Eligible employers must expect a 30 per cent reduction in turnover for the second half of 2020, which must be linked to COVID-19.

The PUP will continue until 31 March 2021, but new applications for this payment will not be accepted after 17 September 2020, on which date the rate will change to payments of either EUR 203, EUR 250 or EUR 300, depending on previous earnings; with further changes scheduled for 1 February 2021, on which date the EUR 300 payment will cease. As from 1 April 2021, those who still receive the PUP will have to apply for jobseeker's benefit/allowance.

1.2 Other legislative developments

1.2.1 Work in fishing

The first set of regulations, which came into effect on 1 August 2020, amend the Principal Regulations (S.I.No.506 of 1997) to make provision for Art. 28(b) of Council Directive 2017/159/EU concerning the implementation of the ILO Work in Fishing Convention 2007 and to ensure that the captain of a vessel, who is in charge of maintaining and using the medical equipment on board, undertakes a medical training course at least every five years.

The second set of regulations, which came into effect on 2 August 2020, implement the medical care provisions of Art. 6 of Council Directive 2017/159/EU concerning the implementation of the ILO Work in Fishing Convention 2007. The Regulations provide for consideration be given to the duration of the voyage and area of operation when making provision for medical supplies and equipment; the medical guide for the maintenance and use of medical supplies on board is in a format and language suitable for the person on board responsible for medical care; the owner of certain

new fishing vessels must provide the vessel with a separate sick bay; and dispute resolution procedures must be put in place.

The third set of regulations, which came into effect on 27 July 2020, implement the medical examination provisions set out in Arts.7, 8 and 9 of the Annex to Council Directive 2017/159/EU concerning the implementation of the ILO Work in Fishing Convention 2007 and require all fishermen (other than those on vessels which are less than 15m in length or remain at sea for 72 hours or less) to undergo a medical examination and hold a medical certificate attesting to his or her fitness to work.

The fourth set of regulations, which came into effect on 2 August 2020, implement the provisions of Arts. 3, 21, 22, 23,24 and 25 and Annex II of the Annex to Council Directive 2017/159/EU concerning the implementation of the ILO Work in Fishing Convention 2007. The regulations place an onus on the master of the vessel to ensure that the food and water carried and served on board is "suitable and sufficient" in terms of quality and quantity. An onus is also placed on the owner of the vessel to ensure that the standard of accommodation meets the requirements of these regulations.

The European Communities (Minimum Safety and Health Requirements for Improved Medical Treatment on Board Vessels) (Amendment) Regulations 2020 (S.I. No. 258 of 2020) is available here.

The European Union (International Labour Organization Work in Fishing Convention) (Health Protection and Medical Care on Board Fishing Vessels) Regulations 2020 (S.I. No. 259 of 2020) is available here.

The European Union (International Labour Organization Work in Fishing Convention) (Medical Examination)) Regulations 2020 (S.I. No. 266 of 2020) is available here.

The European Union (International Labour Organization Work in Fishing Convention) (Food and Accommodation) Regulations 2020 (S.I. No. 267 of 2020) is available here.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

There are no judicial positions in Ireland equivalent to *giudici di pace* (or magistrates). Their work is conducted by District Judges, who hold permanent appointments until retirement age (subject to removal for stated misbehaviour or incapacity), receiving a monthly salary and whose terms and conditions of appointment provide for paid annual leave, similar to professional judges in Italy.

4 Other Relevant Information

Nothing to report.

Italy

Summary

In August, legislation continued to focus on measures aimed at promoting economic recovery following the COVID-19 emergency.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

1.1.1 Economic support measures

Law Decree of 14 August 2020 No. 104 introduces urgent measures to support economic recovery following the COVID-19 emergency.

Art. 1: The *Cassa Integrazione Guadagni* (COVID-19) has been extended and will be granted for a maximum of 18 weeks, between 13 July 2020 and 31 December 2020.

Art. 2: Professional athletes, whose gross salary does not exceed EUR 50 000 annually, are entitled to the *Cassa Integrazione Guadagni* (COVID-19) for 9 weeks.

Art 3: Companies that have already used the *Cassa Integrazione Guadagni* (COVID-19), but do not require an additional grant, are exempt from payment of social security contributions. This exemption can last for a maximum of 4 months, until 31 December, within the limit of double the hours of the *Cassa Integrazione Covid* already used in May and June.

Art 5: Unemployment grants (*Naspi* and *Dis-Coll*) expiring between 1 May and 30 June are extended for an additional 2 months.

Art 6-7: Employers who hire employees on an open-ended contract are exempt from the payment of social security contributions for 6 months up to a limit of EUR 8 060 per year. Agricultural and domestic workers are excluded. Employees who have signed fixed-term contracts with the same employer in the previous 6 months are excluded as well. The exemption also applies in the event of transformation of a fixed-term contract into an open-ended one.
An exemption from payment of contributions for 3 months has been established for the temporary employment of seasonal workers in the tourism sector.

Art 8: Until 31 December 2020, fixed-term employment contracts can be renewed or extended for 12 months, even without the ground required by the law. The maximum duration of the contract remains 24 months.

Art 9-10-12: Special allowances are provided for seasonal tourism and entertainment workers as well as maritime workers who lost their jobs between 1 January and 17 March 2020. Another allowance is provided for employees of the National Olympic Committee and sports federations who have lost or reduced their work due to the COVID-19 emergency.

Art 14: Employers who have not made full use of the periods of *Cassa Integrazione Covid* or the exemption from the payment of social security contributions, cannot make collective dismissals. Any collective dismissal procedures that started before 23 February 2020 remain suspended. Individual dismissals for economic reasons that were initiated before 23 February continue to be suspended.
The prohibition of dismissal does not apply in case of definitive closure of the undertaking and in the event of a collective agreement on severance pay for employees who join the agreement

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

CJEU, 16 July 2020, C-658/18, UX refers to an Italian case. The decision of the Italian Court will be reported once it is issued.

4 Other Relevant Information

Nothing to report.

Latvia

Summary

The CJEU decision in case C-658/19 has no direct implications for Latvian 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 / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The CJEU decision in case C-658/18 has no direct implications for Latvian law. Under the circumstances of the present case, the judges would have been considered 'workers' under Latvian labour law. The definition of worker as provided in national law, in particular Article 3 of the Labour Law, is similar to that provided by the CJEU, namely, there must be subordination and work must be performed in exchange for remuneration. In addition, Latvian law does not provide for exemptions of specific groups of workers from the applicability of regular employment (also in the public sector) and social security laws. There is also no practice of employing individuals in the public sector part time (unless the individual's personal circumstances require it). The number of part-time employees in Latvia is low in comparison to other EU countries, namely approximately 9 per cent of the working population (the source is available here).

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

(I) Two Ordinances on maximum working time and overtime of young workers have been issued.

(II) The government has published a Decision according to which Directives (EU) 2019/130 and 2019/983 are to be incorporated into the EEA Agreement.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

This Flash Report deals with two amendments which, although they relate more to European labour law, do not affect the implementation of EU labour law. These amendments are of minor importance and were not adopted by Parliament, only by the government. Therefore, they are only mentioned here, but not commented on.

1.2.1 Maximum weekly working time

As regards activities involving work absences due to weather conditions or in companies with considerable seasonal workload fluctuations, the maximum weekly working time of 40, 45 or 48 hours may be extended by a maximum of four hours, provided that the maximum working time on average is not exceeded over four months.

Art. 22(1) of Government Ordinance on the Amendment of Ordinance I to the Employment Act (*Verordnung der Regierung über die Abänderung der Verordnung I zum Arbeitsgesetz*, LR 822.101.1, Liechtenstein Landesgesetzblatt No. 249 of 21 August 2020).

The amendment establishes that 40 hours is the maximum weekly working time of young workers who are at least 15 but not yet 18 years old. This maximum weekly working time results from Art. 9(1)(c) of the Employment Act (Gesetz über die Arbeit in Industrie, Gewerbe und Handel, Arbeitsgesetz, LR 822.10). Thus, the Ordinance was merely adapted to the Employment Act.

1.2.2. Overtime work of young workers

Young workers who have finished school may only work overtime on business days between 6 a.m. and 10 p.m. and within the framework of the statutory provisions.

Art. 19 of the Government Ordinance on the Amendment of Ordinance V to the Employment Act (*Verordnung der Regierung über die Abänderung der Verordnung V zum Arbeitsgesetz,* LR 822.101.5, Liechtenstein Landesgesetzblatt no. 250 of 21 August 2020).

This is only a minor technical adjustment.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

In case C-658/18, the CJEU (Second Chamber) ruled as follows:

1. Article 267 TFEU must be interpreted as meaning that the giudice di pace (magistrate, Italy) falls within the concept of 'court or tribunal of a Member State' within the meaning of that Article).

2. Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that a magistrate who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, may fall within the concept of 'worker' within the meaning of those provisions, which it is for the referring court to verify.

   Clause 2(1) of the Framework Agreement on fixed-term work concluded on 18 March 1999, which is annexed 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 meaning that the concept of 'fixed-term worker' in that provision may encompass a magistrate appointed for a limited period, who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, which it is for the referring court to verify.

   Clause 4(1) of the Framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation which does not provide for an entitlement on the part of magistrates to 30 days' paid annual leave, such as that provided for ordinary judges, where those magistrates fall within the concept of 'fixed-term workers' within the meaning of Clause 2(1) of that Framework Agreement, and are in a situation comparable to that of ordinary judges, unless such a difference in treatment is justified by the differences in the qualifications required and the nature of the duties undertaken by those judges, which it is for the referring court to verify.

From the labour law perspective, the following two main points are therefore at issue:

(a) A magistrate, such as the Italian *giudice di pace*, may fall within the concept of 'worker' within the meaning of Art. 7(1) of Directive 2003/88/EC and Art. 31(2) of the Charter of Fundamental Rights of the European Union, provided that

- he or she performs, in the context of his or her duties, real and genuine services which are neither purely marginal nor ancillary,
- and for which he or she receives compensation representing remuneration.

If these requirements are met, the magistrate is entitled to paid annual leave of at least four weeks according to Art. 7(1) of Directive 2003/88/EC.

(b) Under the same conditions, a magistrate employed for a limited period may even be entitled to more than four weeks of annual leave, provided that the ordinary judges have such an extensive entitlement, because the concept of 'fixed-term worker' in Clause 2(1) of the Framework Agreement on fixed-term work may apply to a magistrate appointed for a limited period. The prerequisite is that the magistrate is in a situation comparable to that of ordinary judges, unless such a difference in

treatment is justified by the differences in the qualifications required and the nature of the duties undertaken by those judges.

It is for the national court to verify whether the aforementioned requirements are met.

Under Liechtenstein law, there are no judges directly comparable to the Italian *giudice di pace*. Nevertheless, there are substitute, part-time and ad hoc judges.

The Administrative Court and the Constitutional Court consist of five judges and five substitute judges. The term of office of the judges and the substitute judges of the Administrative Court is five years. If a judge is prevented from attending, he/she shall be represented by a substitute judge (Art. 102(1), (2), (4) and Art. 105 of the Constitution (*Verfassung des Fürstentums Liechtenstein, LR 101)* and Art. 3(1) of the Act on the Constitutional Court (*Gesetz über den Staatsgerichtshof,* StGHG, LR 173.10)).

There are part-time judges at the Court of First Instance (*Landgericht*), Criminal Court, Juvenile Court, High Court, and Supreme Court (Art. 4(1), Art. 18(1), and Art. 22 of the Act on Court Organisation (*Gesetz über die Organisation der ordentlichen Gerichte, Gerichtsorganisationsgesetz,* GOG, LR 173.30)).

Part-time judges are appointed for a term of five years. Their appointment is terminated by the expiration of their term of office, dismissal from service by the service court, disciplinary penalty of dismissal from service, loss of office under the Criminal Code, or loss of the required nationality.

Ad hoc judges are appointed at the Court of First Instance, High Court and Supreme Court. If a court is significantly impaired in its function, an ad hoc judge can be appointed at the request of the responsible court president. The appointment of ad hoc judges may be limited in time or for the completion of one or more cases. An ad hoc judge may be appointed if he or she meets the appointment requirements of the judge to be replaced.

The Judges Services Act contains regulations on paid annual leave and other types of paid and unpaid leave, but only for full-time judges (Art. 2(1), Art. 3, Art. 16(2), Art. 28, and Art. 32(2) of the Judges Services Act (Richterdienstgesetz, RDG, LR 173.02)).

Part-time and ad hoc judges are entitled to an attendance fee for attending a hearing and a lump sum for the settlement of a case (Art. 6a(1) of the Act on Remuneration of Members of the Government and Commissions as well as Part-time and Ad-hoc Judges (Gesetz über die Bezüge der Mitglieder der Regierung und der Kommissionen sowie der nebenamtlichen Richter und der Ad-hoc-Richter, LR 174.60)).

The general law on state personnel is not applicable to judges (Art. 1 of the State Personnel Act (Gesetz über das Dienstverhältnis des Staatspersonals, Staatspersonalgesetz, StPG, LR 174.11)).

There seems to only be the aforementioned statutory provision which provides for paid annual leave for full-time judges. Under national law, part-time and ad hoc judges are not employed under an employment relationship. Theoretically, it cannot be completely excluded that such a judge could fall under the broad concept of an employee within the meaning of the EU/EEA law concerned here. A general statement on this is not possible. This could only be assessed on the basis of a concrete individual case. Thus, the CJEU decided that it is for the national court to verify whether the aforementioned requirements are met. However, it can be assumed that in a specific case, not all the conditions mentioned by the CJEU would be fulfilled. One of these conditions is that the magistrate performs real and genuine services which are neither purely marginal nor ancillary. The part-time and ad hoc judges in Liechtenstein will, in principle, not meet this requirement. Since Liechtenstein is a relatively small country (38 650 inhabitants on 31 December 2019), there are relatively few contentious cases to be decided by the courts. These cases are primarily dealt with by ordinary judges.

4 Other Relevant Information

4.1 Decision No. 110/2020 of the EEA Joint Committee

The government has notified of Decision No 110/2020 of the EEA Joint Committee amending Annex XVIII to the EEA Agreement. According to this Decision, the following Directives are to be incorporated into the EEA Agreement: Directive (EU) 2019/130 of the European Parliament and of the Council of 16 January 2019 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, and Directive (EU) 2019/983 of the European Parliament and of the Council of 5 June 2019 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work. Entry into force for Liechtenstein: 15 July 2020.

Lithuania

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU, case C-658/18 UX, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The case has no relevance for Lithuania because only ordinary judges are competent to hear cases in the Lithuanian legal system. There are no categories such as 'honorary judges' or 'magistrates' which can perform the functions of judges or other similar functions.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

The bill reforming occupational reinsertion has been adopted. Several court decisions have been handed down that are worth mentioning.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

Noting to report.

1.2 Other legislative developments

1.2.1 Occupational reinsertion

Bill No. 7309 on occupational reinsertion has been adopted. It introduces substantial changes to the mechanism of occupational reinsertion (*reclassement professionnel*), applicable to persons who, due to health problems, are unable to continue performing their current tasks without, however, being completely unable to perform any job (disability).

The underlying idea of the legislation is to require medium and large undertakings (>=25 employees) to reassign such employees internally to suitable jobs (*reclasement interne*). The salary loss due to the change in position or reduction of working hours can be compensated by public funds. Smaller undertakings (<25 employees) are not required to reassign the employees; the latter will benefit from "external reinsertion" (*reclassement externe*), i.e. they will be paid unemployment benefits and thereafter a "waiting allowance" (*indemnité d'attente*), while the Job Administration (ADEM) tries to find a suitable job and can require them to do community work (*travail d'utilité publique*) or to participate in vocational training.

Employees are protected against unfair dismissal during the procedure and, in case of internal reassignment, for a duration of 12 years.

The purpose of the new bill is to "optimise procedures" and to improve the financial situation of persons affected by occupational reinsertion.

- ***Initiation of the procedure***. Under the former legislation, the procedure could be initiated as medical control by the social security institutions or during an exam by the occupational doctor (*médecin du travail*). In the second case, however, important restrictions applied (high-risk position and seniority of at least 10 years) and only an internal reinsertion could be considered. According to the new legislation, the occupational doctors can initiate the procedure, both for an internal or external reinsertion, under the condition that the employee has a certificate that on hiring, he/she was fit for the job, or that he/she has seniority of 3 months.

- ***Limitation of the obligation for internal reinsertion***. As already mentioned, medium and large undertakings (>= 25 employees) are by principle required to reassign the employee internally. They can avoid this obligation if they convince the competent commission that this would cause them "serious harm" (*prejudice grave*), which is a very restrictive concept. Although employer representatives called for this concept to be softened, the law does not introduce any change. The law reintroduce a limitation of the employer's obligation (which had been abolished during the previous reform) to a certain group. Internally reassigned workers are again taken into consideration to determine the quota of disabled workers

companies are required to hire. If this quota is reached, the undertaking is no longer obligated to implement internal reinsertion.

- ***Compensation payment by the employer (external reinsertion).*** An employer who does not implement an internal reinsertion is required to pay special compensation (*indemnité forfaitaire)* to the employee, depending on his/her seniority :

Seniority	Compensation
>= 5 years	1 month
>= 10 years	2 months
>= 15 years	3 months
>= 20 years	4 months

For smaller companies (<25 employees), the employer is reimbursed for this compensation by public funds, as they are not in principle required to implement internal reassignment.

- ***Compensation payment by public funds (internal reinsertion).*** In case of internal reassignment, the employee can benefit from various forms of compensation:
    - Compensation of his/her salary, taking the reduction of working time into consideration. According to the new law, the reduction of working time should not exceed 20 per cent; exceptionally, it may be 75 per cent (with a minimum of 10 weekly working hours).
    - Compensation of salary because the employee has been reassigned to a different, lower pay post.
    - Compensation of salary, taking the reduction in performance (*perte de rendement*) into consideration. This compensation may not exceed 75 per cent.

  According to the new bill, the fact that the employee's salary increases will no longer automatically lead to a corresponding decrease in the compensation. The compensation payment is calculated as a fixed sum, and employees can continue benefitting from salary increases.

  The employee's financial situation is reviewed annually. If the salary paid by the employer exceeds the employee's former salary, the compensation is reduced. If the total revenues exceeds 5 times the social minimum wage, the compensation is also reduced. If the employee has been paid compensation for overtime, night or shift work, his/her health status may be re-evaluated.

  The bill now clearly states that entitlement to the compensation payment is maintained in case of transfers of undertaking. Under certain conditions, entitlement can also be maintained if the employee changes his/her employer.

- ***Reassessment.*** The situation of a reassigned employee can be reviewed at any time. The employer must take an occupational doctor's examination results into account. This is a new component, as contractual changes can now be imposed on the parties. In case the reassessment concludes that the reduction of working time is no longer required, the employer must increase the employee's working hours

(but not beyond the hours set in the initial contract) within a deadline of 12 months.

- From an administrative point of view, the Job Administration (ADEM) will play a more important role in the procedure, as many decisions will fall within its jurisdiction.

The legislation on occupational reinsertion had to be introduced following a change in the Court of Cassation's case law, which defined "invalidity" (disability) as the inability to perform any work. Access to disability pension (*pension d'invalidité*) has thus become much more restricted, and no mechanism existed for persons who were not disabled but also not able to continue performing their current tasks. The first legislation was introduced in 2002. Since then, it has been subject to three major reforms; the 2020 law is thus the fourth amendment, i.e. the fifth attempt by the legislator to find appropriate suitable solution.

According to the parliamentary documents, the new law is the result of a compromise negotiated with the social partners. As is frequently the case, agreements between employers' organisations and trade unions partially rely on additional financial commitments by the state. The parliamentary documents furthermore clearly state that this compromise is only provisional so the most urgent changes can be implemented. There is consensus that the entire legislation on occupational reinsertion must be submitted to an in-depth reform, especially in terms of its relationship with the provisions on disability and the general framework of occupational health and safety.

Sources*: Loi du 24 juillet 2020 portant modification 1° du Code du travail ; 2° du Code de la sécurité sociale ; 3° de la loi du 23 juillet 2015 portant modification du Code du travail et du Code de la sécurité sociale concernant le dispositif du reclassement interne et externe* are available here.

2 Court Rulings

2.1 Hiring of third-country nationals

Supreme Court, No. 3e, CAL-2019-00553, 16 January 2020

According to traditional case law, the fact that an employee did not (or no longer) have a work permit made it possible to dismiss him/her, as it was no longer possible to legally continue the employment relationship. Strict verification obligations have been introduced in the Labour Code (Art. L. 572-3ff.) for hiring third-country nationals. The Court of Appeal concluded from this that an employer who has hired a person without a work permit in breach of his/her verification obligations cannot subsequently dismiss the employee on this ground; such a dismissal is deemed unfair.

2.2 Disciplinary power

Supreme Court, No. 3e, CAL-2018-01071, 30 January 2020

Some courts have ruled in the past that when several employees have committed a breach, the employer may decide to sanction only some of them, or to impose sanctions of different severity on each of them. In a recent decision, however, the judges considered that while the employer is in principle free to determine which employee to dismiss, dismissing only one employee in the event of a breach committed jointly by several employees constitutes an arbitrary and abusive act.

2.3 Obligation to reveal private information

Supreme Court, No. 3e, CAL-2019-00392, 5 March 2020

The question of the work-life balance is always a delicate one. In principle, an employee is not required to share information about his/her private life when being hired; for certain questions (e.g. children, pregnancy) it is even admitted that the applicant can lie without incurring sanctions. If an employee's private life has a major impact on the employer's interests, however, the employee may be obligated to disclose them. This was decided n the case of an employee recruited for a senior position, a member of the company's executive committee, who had failed to disclose that he was in a relationship with the manager of a competing company.

For the Court of Appeal, the reluctance or the withholding of information by the employee at the conclusion of the contract of employment, despite this information relating to his private life, but nonetheless having an impact on his professional activity, may constitute fraud, and is thus a cause for nullity of the contract. The contract was consequently annulled for lack of consent (*vice du consentement)*.

2.4 Transfer of undertaking and change of position

Supreme Court, No. 8e, CAL-2018-00033, 19 March 2020

In the event of a transfer of undertaking, the working conditions must, in principle, be maintained. In the context of a merger where the employee was integrated into a larger structure and whose position therefore changed in the hierarchy, the question arose whether this change was an unfavourable substantial change for the employee, which is not permitted following a transfer of undertaking. The Court answered this question in the negative. The judges asserted that in case of a transfer to a larger structure, a simple change in the position and name in the organisational chart of the company does not constitute a substantial change, since it is normal that titles and positions in a smaller structure are not comparable with those of a larger business structure.

2.5 Social minimum wage

Supreme Court, No. 8e, CAL-2018-00801, 12 March 2020

In Luxembourg, there is both a minimum social wage and a qualified minimum social wage (20 per cent higher) for qualified posts occupied by employees with certain diplomas or professional experience. Hitherto, case law has held that it was for the established employee to inform the employer at the time of recruitment of his/her qualifications and experience. In two recent judgments—perhaps isolated cases—the judges of the Court of Appeal took the opposite position, recalling that the rules on the minimum wage are mandatory (*ordre public*). According to this judgment, if the employer hires an employee for the minimum social wage, the employer must determine the employee's situation to determine the minimum rate of remuneration due; he/she must therefore ascertain whether the employee has a certificate of vocational training or professional experience.

Supreme Court, No. 3e, CAL-2019-00225, 16 March 2020

As regards the qualified minimum social wage, the Court claimed that if the employer recruits a person for a qualified function (in this case, a qualified cook), the employee can claim the qualified amount without having to verify that he/she holds a diploma or has professional experience. In line with established case law, the judges also recalled that pay slips constitute evidence against to the employer, since they were issued by the employer.

2.6 Flexibility clauses

Supreme Court, No. 8e, 12.3.2020, CAL-2018-00910, 12 March 2020

The Court recalled that flexibility clauses are valid and that the employer may rely on them even if they have not been implemented for several years. Thus, if the contract states that the workplace is flexible, and the employee was assigned to a fixed location for several years, he/she does not obtain an acquired right to maintain those working conditions.

2.7 Public holidays

Supreme Court, No. 3e, CAL-2019-00232, 28 May 2020

The Labour Code stipulates that alternative public holidays (*jour férié de rechange,* particularly those falling on a Sunday) must be taken within three months. The Court clarified that it is not necessarily up to the employee to claim them, but that the employer is obligated to ensure that they are taken within that period. Generally speaking, the employer has the obligation to ensure that the employee's right to statutory leave is respected. In the present case, although the employee had not taken his substitute day within the statutory period, he was nevertheless entitled to a compensatory allowance.

2.8 Sick leave

Supreme Court, No. cass., n° 88/2020, n° CAS-2019-00099 du registre, 8 June 2020

The Labour Code requires a sick employee to inform his/her employer about his/her absence on the first day of illness and to provide a medical certificate by the third day of sick leave, at the latest. A very large body of case law has been issued around these obligations. One of the questions raised is whether a late medical certificate (received after the 3rd day) guarantees protection against dismissal. The Court of Cassation has now settled this issue by specifying that such a delayed certificate no longer protects the sick employee against dismissal.

However, this ruling does not prejudice the established case law according to which sickness benefits are due to the employee who has a certified medical note from a doctor, even if the certificate was not forwarded to the employer within the legal time limit.

2.9 Compensation in case of unfair dismissal

Supreme Court, No. 8e, CAL-2019-00272 et CAL-2019-00484, 14 May 2020

In the event of unfair dismissal, the employee is usually compensated, in the form of material damage (*préjudice matériel)*, for the loss of income for the period necessary to find a new job. Case law requires serious job search efforts to be undertaken by the employee. The question arises, however, how to deal with employees who, instead of looking for a new job, seek to establish their own business as self-employed persons. While some decisions denied compensation for material damage in such cases, the Court ruled as follows: while the employee may become self-employed after being dismissed, it is not incumbent on the employer to bear the additional damage suffered by the employee if the establishment of his/her business takes longer than the search for salaried employment.

Supreme Court, No. 3e, CAL-2019-00879, 16 July 2020

An employee who is unfairly dismissed and requests compensation for his or her loss must undertake an intensive job search. So far, case law has held that this also

applies to dismissed persons of an advanced age and who are close to retirement. However, one decision has held that in view of the labour market situation, it would be unrealistic to require an employee who has been dismissed at the age of 60 to search for a new job.

2.10 Resignation by the employee

Supreme Court, No. 8e, CAL-2019-00801, 2 July 2020

As regards resignations (*démission du salarié)*, it was held that a letter of resignation is without effect if it is addressed to a company that is not the employee's employer, even if that company is established at the same address and has links with the employer's company.

Supreme Court, No. 3e, CAL-2019-00071, 23 April 2020

Some courts in the past have held that an employee who wants to resign is not entitled to impose a notice of resignation on the employer that is longer than that he/she is legally required to give. The employee cannot, therefore, unilaterally decide to extend the notice of resignation. This legal position has just been further nuanced by the Court of Appeal in two ways:

- On the one hand, an employee cannot be reproached for announcing a foreseeable resignation without being able at that time to set the definitive date, the only deadline to be respected being the legal resignation deadline.
- On the other hand, even if he/she has already decided to resign, the employee does not commit a breach by not informing the employer in advance of the foreseeable date of his/her departure, provided that he/she respects the legal notice period.

2.11 Access to documents, right of defence

Supreme Court, No. 8e, CAL-2019-00322 et CAL-2019-00657, 23 July 2020

An employee who was dismissed with immediate effect for having transferred an email containing confidential banking data to his private address. The Court considered that there was no serious misconduct, because the employee’s aim had not been to harm his employer, but to save some evidence since there were serious indications that his liability (civil, criminal) could be called into question because of files that were poorly managed by the bank.

In the past, some decisions have even admitted that an employee is not criminally liable when he or she steals documents with the intention of defending him-/herself in court.

Supreme Court, No. 8e, CAL-2019-00322 et CAL-2019-00657, 23 July 2020

It has been decided that the employee may request a copy of his/her personal file before the Labour Court on the basis of the European Regulation on Personal Data (GDPR).

Supreme Court, No. 8e, 45131, 19 March 2020

As regards access to documents, it has been decided that an employer may be forced to release a set of e-mails from the employee's e-mail box during the trial, provided that the subject of the requested e-mails is sufficiently precise. The judges relied in particular on the principle of equality of arms.

Supreme Court, No. 3e, CAL-2019-00105, 19 March 2020

However, such a request for access to e-mails is not justified if the employee generally requests for the employer to release all of the e-mails in his/her e-mail box, without specifying a date or subject, and without specifying the relevance of the request.

2.12 Monthly payslips

Labour Court, 101/2020, 10 January 2020

Every employer is required to submit monthly pay slips. It has been decided that a clause in a collective agreement is valid which provides that the employee has obtained his or her pay slip by logging on to a secure computer system. In addition, the employer has offered employees assistance in using the computer system and the possibility of printing the pay slips free of charge.

Thus, the judges of first instance (Labour Court; *Tribunal du travail*) considered that in view of the technological developments which are duly taken into account by case law in the interpretation of the rights and obligations provided for by the Labour Code, it should be considered that a limited active participation of the employee may be required at the level of receipt of his/her pay slips, and that the sending of pay slips by electronic means may, subject to compliance with certain conditions, be considered as satisfying the obligation of remittance, respectively of sending, imposed by Article L. 125-7 (1) of the Labour Code and by the collective agreement.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

This decision has no implications for Luxembourg. The «*juge de paix*» is an ordinary judge, appointed for a lifetime, fully paid over the entire year and entitled to the same paid leave as all other judges.

In general, the concept of "honorary judges" (*juges honoraires*) has been abolished. No judicial functions are exercised by temporary agents.

4 Other Relevant Information

Nothing to report

Malta

Summary

The CJEU decision in case C-658/19 has no direct implications for Maltese law.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

There is no law in Malta that excludes entitlement of judges and magistrates with a fixed-term agreement to the working conditions applicable to any other comparable judge and magistrate with a contract of indefinite duration. It is not possible to report on the actual working conditions of judges and magistrates because the information is not publicly available. At any rate, there is no category of fixed-term judges with legal entitlements that differ from other judges.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

The government has announced a third package of support measures.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

1.1.1 Economic support measures

On 28 August 2020, the government informed Parliament about a third round of economic support measures: The *support and recovery package for the economy and labour market*. The announced measures follow the '*Emergency package jobs and economy*' that was presented on 17 March 2020 (see FR March 2020) and the '*Emergency package 2.0*', presented on 20 May 2020 (see FR May and June 2020).

The current package consists of three pillars, but no specific regulations have been published yet.

(i) continuation of support – see below

(ii) stimulation and investments where possible – the third round of support also includes measures aiming at investments. Investments from the state itself, e.g. to accelerate planned infrastructure investments, encouraging private investments, strengthening the solvency position of companies and stimulating innovation.

(iii) support for adaption – the government is allocating additional funds to help people find new jobs together with the social partners. Furthermore, specific measures are introduced to deal with youth unemployment (no details have been specified yet). The government will also invest in training and retraining. Finally, there will be additional funds to cope with poverty and problematic debt situations. If and when possible funds from the 'Next Generation EU' package will be used is also addressed.

Continuation of support: Within this pillar, the temporary emergency bridging measure to preserve employment (NOW), the temporary benefits for self-employed persons (TOZO) and the reimbursement of SMEs' fixed costs (TVL) will be extended until 1 July 2021, with some of the conditions being adapted. Furthermore, the measures on training (NL leert door, see FR July 2020) will be extended as will the easing of certain credit provisions and tax obligations. Finally, specific schemes or support will be introduced for certain sectors: the cultural sector, public service broadcasting, zoological gardens, the event sector (festivals, etc), the travel sector and mink farms.

The most important new conditions of the temporary emergency bridging measure to preserve employment (NOW 3.0) are the following:

NOW is a subsidy scheme for wage costs open to all employers, provided they meet certain conditions (see FR March and April for a more detailed description of the previous schemes)

- NOW 3.0 will be divided into three timeframes of three months up to 1 July 2021. As of 1 January 2021, the condition to apply for the subsidy is a loss of turnover of 30 per cent (currently 20 per cent).
- Compensation of wage costs will gradually be reduced: from a maximum of 80 per cent in the first three months (October - December 2020), to a maximum of 70 per cent in the second period (January - March 2021), and a maximum of 60 per cent in the third period of three months (April - June 2021).
- There will be an option to gradually reduce the total wage sum by 10 per cent, 15 per cent and 20 per cent. Employers can decide, in consultation with

employees or employee representatives / trade unions how to reduce the wage sum: voluntary decrease of wage, dismissal or through natural attrition.
- In case of dismissal for economic reasons, there will no longer be a discount on the final subsidy as was the case under NOW 2.0
- Other conditions (such as continuation of full payment of salary to employees) remain in place.

The most important new conditions in the temporary benefits for self-employed persons (TOZO) are the following:

TOZO offers self-employed persons the possibility to apply for social assistance under more favourable conditions than the pre-existing general conditions of the Social Assistance for Self-Employed Persons Decree 2004. Successful application may result in income support or a business loan.

In the first edition of this scheme, the application procedure could be carried out with or without the usual asset test, partner income test or the condition that the business must be viable. Under the second edition, the partner income test was reintroduced. As of 1 October 2020, a restricted asset test will be introduced. Those self-employed that have over EUR 46,520 in direct available funds (such as cash, bank accounts, shares, etc) cannot apply for benefits under TOZO 3. Owner occupied property, pension and company property, amongst others, are not taken into account.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

In the present case, the CJEU ruled that Italian magistrates working as honorary judges and being paid compensation per hearing and a monthly sum for training costs, can be considered workers in the meaning of Directive 2003/88 and 1999/70, to be verified by national courts.

In the Netherlands, *deputy judges* can be appointed in courts of first instance or courts of appeal. This is possible for all areas of law (administrative law, civil law, penal law, tax law, etc.), regardless whether it involves a single judge or a multi-judge division. These deputy judges can be paid or unpaid. In both cases, the deputy judge is considered a public servant. The judiciary (including deputy judges) has been excluded from WNRA (Civil Servants Normalisation of Legal Status Act) of 9 March 2017, which entered into force on 1 January 2020 (see FR NL February 2020 for details).

A *paid deputy judge* is not appointed in the same way as a regular judge, but he/she is designated to work for an average number of working hours per week (Art. 5f, para. 3, Judicial Officers Legal Status Act). The designation is for a maximum period of 2 x 3 years. The remuneration and working conditions of these paid deputy judges are arranged in the same way as for regular judges, which are generally appointed for life (Art. 9, para. 1, Judicial Officers Legal Status Act). This includes the right to paid

annual leave (Art. 33b, para. 1, Judicial Officers Legal Status Act). For this group, the *UX*-decision is irrelevant, their position is covered by both Directives.

An *unpaid deputy judge* is appointed for life in the office of judge, but is not appointed in the same way as regular judges, nor are they assigned as paid deputy judges. The unpaid deputy judge works on call (Art. 5f, para. 2, Judicial Officers Legal Status Act) and is paid a fixed compensation per hearing (Art. 9, para. 2, Judicial Officers Legal Status Act j Art. 6a Judicial Officers Legal Status Decree). No annual paid leave is arranged for.

This might, at first glance, seem contradictory to the UX-decision. However, other than the honorary judges in the UX-case, unpaid deputy judges in the Netherlands never carry out their services as deputy judge as a principal activity. They usually have a (full-time) principal occupation in academia or as practising attorneys and the frequency of their judiciary activities is generally limited to one hearing per month or two months (or less), which might lead to the conclusion that the activities are to be considered marginal and ancillary. There have been no articles or comments on the UX-decision yet, but the authors' conservative estimate is that this decision will not affect the position of unpaid deputy judges.

4 Other Relevant Information

Nothing to report.

Norway

Summary

Norway continues to contain the COVID-19 outbreak. Some minor adaptions to the existing measures have been made.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

Norwegian society was partially locked down by the government in March 2020 due to the COVID-19 outbreak. A number of measures were introduced to prevent the virus from spreading and to mitigate the effects of the pandemic (see Flash Report 5/2020 for details). The gradual reopening of society began in April, and by June, virtually all business activities had been resumed (see Flash Report 6/2020).

From 15 July, the Ministry of Foreign Affairs' travel advice against non-essential travel no longer applies to countries in the Schengen area/EEA15 that meet certain criteria in terms of infection rates determined by the Norwegian Institute of Public Health. Exceptions for Nordic countries and regions were already introduced on 15 June. Quarantine is no longer imposed on travellers from these countries and regions.

The countries exempt from the obligation to quarantine change rapidly. Travellers from several countries that were exempt from the obligation to quarantine in July now no longer meet the criteria for infection rates. liechten

The unemployment rate rose sharply during the lockdown, but has been declining since the reopening began. By the end of August, there were 216 400 unemployed persons, i.e. 7.6 per cent of the total workforce. This is 16 300 fewer than at the end of July (statistics are available here).

In August, the government passed several regulations to continue and/or adapt existing measures to the COVID-19 outbreak, including:

- A general compensation scheme aimed at making it easier for foreign employees who have been laid off on Svalbard to return to their home countries.
- The government also *announced* that the total lay off period will be increased from 26 to 52 weeks from 1 November of this year.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The concept of employee has a wide scope in Norwegian law, and the CJEUs criteria and principles, as discussed in the present case, are relevant in the interpretation of EU/EEA-based legislation.

The Court's conclusion on the interpretation of Directive 2003/88 (and Article 31 (2) of the Charter) in relation to the magistrate the case focussed on will probably have limited practical implications for Norwegian law. The different categories of judges in Norway, including the category that is most similar to *giudice di pace*, are covered by labour law legislation, including the right to paid annual leave.

The Court's conclusion on the interpretation of the Framework Agreement on fixed-term work annexed to Directive 1999/70 will also not have any practical implications in this context.

4 Other Relevant Information

Nothing to report.

Poland

Summary

(I) The Law implementing Directive 2018/957 has been promulgated and will enter into force on 4 September.

(II) The binding force of anti-COVID provisions on remote work has been extended.

(III) The minimum wage for 2021 is being discussed by the government and social partners.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Posting of workers

The Law of 24 July on the amendment of the Law on Posting of Workers within the framework of the provision of services and amendments to several other laws, was published in the Journal of Laws 2018, item 1423. The Law can be found here.

The aim of the Law is to implement Directive 2018/957. The original Law of 10 June 2016 on the posting of workers within the framework of the provision of services (consolidated text Journal of Laws 2018, item 2206) can be found here.

The abovementioned amendment takes effect on 4 September.

1.2.2 Remote work

The abovementioned Law of 24 July implementing Directive 2018/957 (see previous section) also amended other regulations, including the "anti–crisis shield" provisions on remote working.

The anti–crisis shield, i.e. the Law of 2 March 2020 on specific measures to prevent, counter and fight COVID-19, other infectious diseases and crisis situations caused by them was amended (*Ustawa o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem I zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych*), Journal of Laws 2020, item 374, as amended, and can be found here.

The employer can instruct the employee to perform work remotely, i.e. the work agreed on in the employment contract, for a limited time, outside the usual workplace. This regulation was initially intended to remain in force until 4 September 2020. The Law of 24 July extends this time limit for the period of the pandemic or epidemic situation, announced due to COVID-19, and within three months after the situation has ended.

Remote working was analysed in Flash Reports 3/2020 (section 1) and 6/2020 (section 1)

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

In Poland, there is no office of magistrate, and there are no "honorary" judges who can be called upon to serve as magistrates. Therefore, magistrates cannot be compared with ordinary judges, whose status is regulated by law (and who are appointed by the President). No distinctions concerning the right to annual leave, as was the case in the present ruling, are made in Poland.

Therefore, the ruling in case C-568/18 is not relevant for the right to holiday leave under Polish law.

4 Other Relevant Information

4.1 Minimum wage for 2021

The minimum wage for 2021 was subject to a discussion within the framework of the Social Dialogue Council. At the end of July, the government suggested that the minimum wage in 2021 should be PLN 2 800 (around EUR 650) in comparison to PLN 2 600 (around EUR 605) in 2020. The suggested raise would amount to 7.7 per cent.

On 13 August, the Social Dialogue Council did not accept the government's proposal. Consequently, according to the Law of 10 October 2002 on minimum wage (consolidated text Journal of Laws 2018, item 2177), the government should issue an Ordinance on Minimum Wage by 15 September.

The Law on Minimum Wage can be found here.

The information provided by the Ministry for Family, Labour and Social Policy can be found here.

The information provided by the Social Dialogue Council can be found here.

Portugal

Summary

(I) A Decree Law amends the temporary regime applicable to the social security obligations in the context of COVID-19.

(II) The exceptional support scheme for self-employed workers was amended. Absence from work for patients suffering from hypertension and diabetes is justified in the context of the COVID-19 pandemic.

(III) A law clarifies the stabilisation supplement scheme introduced in June.

(IV) A resolution of the Council of Ministers extends the state of emergency in the Lisbon Metropolitan Area and a state of alert is in place in the remaining territory.

(V) Two ordinances create support measures for the hiring of young and unemployed people.

1 National Legislation

1.1 Exceptional measures related to the COVID-19 pandemic

Decree Law No. 52/2020, 7 August 2020

Decree Law No. 51/2020, of 7 August, English version here, follows the second amendment of Decree Law No. 10-F/2020, of 26 March (see reference to this Decree in the Flash Report of March 2020), which established an exceptional and temporary regime for compliance with tax and social security obligations in the context of the COVID-19 pandemic.

According to this legislation, employers that have requested deferred payment of social security contributions for March, April and May 2020 must inform the social security body on the payment terms they intend to opt for in accordance with Article 4 of Decree Law No. 10-F/2020, until August 2020. This decree entered into force on 8 August 2020.

Decree-law No 31/2020, 11 August 2020

Law No. 31/2020, of 11 August approves the first amendment, with parliamentary approval, to Decree Law No. 20/2020, of 1 May (subsequently rectified by Declaration of Rectification No. 18-C/2020, of 5 May, see references to both decrees in the May 2020 Flash Report), which established exceptional and temporary measures relating to the COVID-19 pandemic.

This decree envisages the following labour-related measures:

a) Extraordinary support for the reduction of economic activity of self-employed workers

This extraordinary support was initially created in March 2020 by Decree Law No. 10-A/2020, of 13 March (see reference to this decree in the March 2020 Flash Report) for self-employed workers who *(i)* are exclusively covered by the social scheme of self-employed workers (therefore excluding workers who do not exclusively perform independent activity); *(ii)* have been subject to contribution obligations for at least 3 consecutive months in the last 12 months, and *(iii)* whose economic activity has been affected by the COVID-19 pandemic.

Law No. 31/2020 amends the above referred scheme to allow for the extraordinary support in case of reduction of economic activity to also apply to self-employed workers who perform an independent activity under an employment contract, provided

that they do not receive remuneration higher than the Social Support Index (currently EUR 438,81) for the performance of those functions.

b) Justification of absence from work of patients with hypertension and diabetes

This decree also stipulates that patients suffering from hypertension and diabetes are considered at risk due to COVID-19 and their absence from work by means is justified based on a medical declaration, provided that they cannot perform their activity by teleworking. These measures take effect from 3 May 2020.

Decree/Law No. 58-A/2020, 14 August 2020

Decree Law No. 58-A/2020, of 14 August, English version here, clarifies the exceptional and temporary measures set forth within the context of the Economic and Social Stabilisation Programme (approved by the Resolution of the Council of Ministers No. 41/2020, of 6 June , referred to in the June 2020 Flash Report), namely the stabilisation supplement ("*complemento de estabilização*"), previously created by Decree Law No. 27-B/2020, of 19 June, for workers whose income decreased as a result of the pandemic (see reference to this decree in the June 2020 Flash Report).

This decree sets out that the stabilisation supplement is granted to workers who were covered by the support measure on the maintenance of the employment contract set forth in Decree Law No. 10-G/2020, of 26 March ("*simplified layoff",* see reference to this decree in the March 2020 Flash Report) for a period of 30 days or more, or by a measure temporarily reducing their normal working hours or suspending their employment contract, implemented in accordance with the terms specified in the Labour Code ("*regular" layoff*). This Decree Law entered into force on 15 August 2020.

1.2 Extension of the state of emergency and of alert

Resolution of the Council of Ministers No 63-A/2020, 14 August 2020

Resolution of the Council of Ministers No. 63-A/2020, of 14 August extends *(i)* the state of emergency in the Lisbon Metropolitan Area, and *(ii)* the state of alert for the rest of the national territory (with the exception of the Lisbon Metropolitan Area), declared by the Council of Ministers' Resolution No. 55-A/2020, of 31 July (see reference to this decree in the July 2020 Flash Report) within the context of the COVID-19 pandemic, until 11:59 p.m. of 31 August 2020.

The labour-related measures set out in Resolution No. 55-A/2020, such as those related to teleworking, remain applicable. The most relevant change relates to the possibility of the competent municipality adapting the opening hours of retail and service providers, subject to a favourable opinion of the health authorities and security services. This Resolution entered into force on 15 August 2020.

Resolution of the Council of Ministers No. 68-A/2020

Resolution of the Council of Ministers No. 68-A/2020, of 28 August extends *(i)* the state of emergency in the Lisbon Metropolitan Area and *(ii)* the state of alert in the rest of the national territory (with the exception of the Lisbon Metropolitan Area), declared by the Council of Ministers' Resolution No. 55-A/2020, of 31 July (see reference to this decree in the July 2020 Flash Report) within the context of the COVID-19 pandemic, until 11:59 p.m. of 14 September 2020.

All rules applicable during the state of emergency and alert in accordance with the Council of Ministers' Resolution No. 63-A/2020 remain the same. This Resolution entered into force on 1 September 2020.

1.3 Support measures for hiring young and unemployed people

Ordinance No. 206/2020, 27 August 2020

Ordinance No. 206/2020, of 27 August regulates the measure "Estágios ATIVAR.PT" which consists of supporting the insertion of young people in the labour market or the professional retraining of unemployed people. This support measure promotes the conclusion of internship agreements for a duration of 9 months or, in certain cases, 12 months.

During the internship, the trainee is entitled to receive a monthly internship allowance, the amount of which may vary between 1.2 and 2.4 of the value of the Social Support Index (*Indexante dos Apoios Sociais*), hereinafter referred to as "IAS" (currently, the value is EUR 438,81), depending on the trainee's qualification level, in addition to a meal allowance in the amount paid to the employees of the enterprise. In certain cases, the employer shall provide for the trainee's transport between their residence and their place of training (or, if not possible, to provide compensation to cover the transport costs).

The costs of the internship allowance are shared by the Institute of Employment and Professional Training (*Instituto de Emprego e Formação Profissional*), hereinafter referred to as "IEFP", in an amount of 80 per cent or 65 per cent, depending on the specificities of the situation. In addition, the Institute bears the costs of the meal allowance, the transport and the accident insurance.

Furthermore, the enterprise that eventually hires the trainee under a permanent employment contract within maximum 20 working days from the date of termination of the internship is granted an "employment bonus" in the amount equivalent to twice the monthly base remuneration agreed in the permanent contract, up to a limit of five times the value of IAS. This bonus may be higher in certain situations.

When this bonus is granted, the employer has the obligation to maintain the employment contract and the employment level verified at the date of conclusion of the contract for a period of 12 months. This Ordinance entered into force on 28 August 2020.

Ordinance No. 207/2020, 27 August 2020

Ordinance No. 207/2020, of 27 August regulates the incentive measure "ATIVAR.PT", which consists of granting employers financial support for concluding employment contracts with unemployed persons registered with IEFP. This decree describes the conditions that need to be fulfilled to receive this financial support as well as the application procedure.

The granting of this financial support specifies the obligation to maintain the employment contract and the employment level achieved with the help of this support for a period of at least *(i)* 24 months in case of a permanent employment contract, or *(ii)* the initial period of the term employment contract. In addition, the employer is required to provide professional training to the employee in accordance with the terms specified in this legislation.

The financial support granted to the employer corresponds to *(i)* 12 times the value of IAS in case of a permanent employment contract or *(ii)* 4 times the value of IAS, in case of a fixed-term employment contract (considering that the employee has been hired under a full-time contract). This support may be increased in certain situations.

The employer is granted a bonus for converting a fixed-term employment contract (entered into under this specific scheme) into a permanent contract, in the amount equivalent to twice the monthly base remuneration set forth therein, up to a limit of five times the value of IAS, provided that the following conditions are met: *i)* the retention of the contract and of the level of employment that existed at the start of the term employment contract, until the payment of the referred bonus; and *ii)* the maintenance of all other conditions required for being granted the financial support set forth in this Ordinance. This decree entered into force on 28 August 2020.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The recent CJEU ruling, issued in case C-658/18, of 16 July 2020, concerned the interpretation of *i)* Article 1 (3) and Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time ("the Directive 2003/88"), and *ii)* Clauses 2 and 4 of the Framework Agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP ("the Framework Agreement").

The CJEU analysed whether a *giudice di pace* (Judge of the Peace in Italy)—such as the applicant—is entitled to paid leave in accordance with EU law.

For this purpose, the CJEU interpreted the concept of "worker" within the meaning of Directive 2003/88, in which Article 7 sets forth that *"Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks (…)"*, in order to determine whether a *giudice di pace* falls within such concept and, as a result, is entitled to paid annual leave of at least 4 weeks.

Article 1 (3) of Directive 2003/88 defines the scope of that directive, as including all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, which stipulates that this directive shall not be applicable to certain public service activities, such as the armed forces or the police, or to certain activities in the civil protection services, which inevitably conflict with it.

According to the Court's case law, the criterion for excluding certain activities from the scope of Directive 89/391 and, indirectly, from that of Directive 2003/88, is not based on the fact that workers belong to one of the public service sectors referred to in that provision, but refers exclusively to the specific nature of particular tasks performed by workers in the sectors mentioned in that provision, which justify an exception to the rule on the protection of the safety and health of workers, on account of the absolute necessity to guarantee effective protection of the community at large.

In the specific case under analysis, the CJEU considered that the judicial activity of magistrates, as it is the case of the applicant, is not excluded from the application of Directive 2003/88.

The concept of "worker" within the meaning of Article 7 of Directive 2003/88 must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. According to the CJEU's case law, the essential feature of an employment relationship is that for a certain period of time, a person performs services for and under the direction of another person in return for which he or she receives remuneration.

Taking the above into account, the CJEU concluded that the referred Article 7 (1) of Directive 2003/88 must be interpreted as meaning that a magistrate who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, may fall within the concept of 'worker' within the meaning of the referred provision.

The CJEU also stated that a magistrate appointed for a limited period, who develops his or her activity in accordance with the terms described above, falls into the concept of "fixed-term worker" for the purpose of application of the Framework Agreement.

According to Clause 4 (1) of the Framework Agreement, as regards employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have concluded a fixed-term contract or relationship, unless differentiated treatment is justified on objective grounds (principle of non-discrimination). As explained by the CJEU, the mere temporary nature of the employment relationship does not constitute an objective ground for this purpose. For this reason, the CJEU ruled that Clause 4 (1) of the Framework Agreement must be interpreted as precluding national legislation which does not provide for an entitlement on the part of magistrates to 30 days' paid annual leave, such as that provided for ordinary judges, where those magistrates fall within the concept of "fixed-term workers" within the meaning of Clause 2 (1) of that agreement, and are in a situation comparable to that of ordinary judges, unless such a difference in treatment is justified by the differences in the qualifications required and the nature of the duties undertaken by those judges.

In Portugal, three essential elements are found in a contractual employment relationship: (1) the rendering of an activity, (2) in exchange for remuneration, and (3) under the authority and pursuant to the instructions of another person. These elements allow to distinguish the employment contract from other types of contracts, such as service agreements.

The first two elements are of limited effectiveness in terms of determining whether the nature of the relevant contractual relationship is one of employment. The rendering of subordinate services or subordination is, therefore, the fundamental element in determining the existence of an employment agreement. Under Portuguese law, *subordination* is understood as a legal situation of a person who is subject to the orders and instructions given by another with respect to the carrying out of a certain task.

According to Portuguese legal scholars and case law, the most relevant characteristics for determining the existence of a labour relationship are the following: *(i)* the determination of the working time by the beneficiary of the activity; *(ii)* the work being carried out at a place belonging to the beneficiary or determined by it; *(iii)* the payment of remuneration being made on a periodic and regular basis; *(iv)* the use of working tools provided by the beneficiary; *(v)* the carrying out of the activity under orders and indications of the beneficiary; *(vi)* the integration of the employee in the beneficiary's organisation; *(vii)* the fact that there is only one beneficiary of the provision of the services from which the provider's economic dependence derives; *(viii)* the non-existence of assistants in the performance of tasks and the impossibility of replacement of the person who carries out the relevant functions.

4 Other Relevant Information

Nothing to report.

Romania

Summary

(I) Romania has transposed Directive (EU) 2018/957 into national law, amending the Directive on Posting of Workers.

(II) With the extension of the state of emergency, new measures have been adopted to support employers and to retain employment.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

1.1.1 Posting of workers

Law No. 16/2017 on the posting of employees in the provision of transnational services, which transposed Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and Directive 2014/67/EU on the enforcement of Directive 96/71/EC and amending Regulation (EU) No. 1024/2012 was modified by Law No. 172/2020 amending and supplementing Law No. 16/2017, published in the Official Gazette No. 736 of 13 August 2020. The aim of the new law is to transpose Directive (EU) 2018/957, amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

The law also transposes Article 7 (2) and (4) of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.

Law No. 172/2020 sets down provisions that:

- regulate the working conditions and employment to be guaranteed by undertakings that post workers to the Romanian territory and clarifies the cooperation with the national authorities responsible for postings;

- clarify the elements that define the minimum wage applicable to the employee posted to the territory of Romania, administrative financial sanctions, user undertakings, administrative cooperation;

- define the remuneration applicable in the territory of Romania, remuneration applicable in the territory of an EU Member State, collective labour agreements with general applicability in the context of national legislation;

- supplement the provisions of Law No. 16/2017 on the activity of temporary work agencies in transnational postings and introduces new information obligations for user undertakings established in Romania that use temporary workers provided by temporary work agencies established in the territory of another Member State;

- regulate the working and employment conditions applicable to employees posted to the territory of Romania within the framework of long-term transnational posting and the method of calculating the duration of posting, including the case of a worker replacing another posted worker;

- provide the means of access to information on the terms and conditions of employment of employees posted to Romania, made available on the website of the labour inspectorate.

The explanatory statement of the new piece of legislation is available here.

1.1.2 Measures to support employers during the state of emergency

The state of emergency was extended in Romania by another 30 days, by Government Decision No. 668/2020 on the extension of the state of emergency on the Romanian territory starting on 16 August 2020, as well as the establishment of measures applied during the state of emergency to prevent and fight the effects of the COVID-19 pandemic, published in the Official Gazette No. 742 of 14 August 2020.

To retain and create jobs, Governmental Emergency Ordinance No. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of the SARS-CoV-2 coronavirus, as well as to stimulate employment growth, published in the Official Gazette, No. 720 of 10 August 2020, four support measures for employers have been adopted:

- the possibility of the employer to unilaterally reduce the working time, with the employee being paid for the actual hours worked. Seventy-five per cent of the wage difference is paid from the unemployment insurance budget.

Companies experiencing a turnover of less than at least 10 per cent compared to the same month in the previous year shall benefit from this version of Kurzarbeit. This entails that the reduction of working hours applies to at least 10 per cent of the unit's employees, for a minimum of 5 days. Companies can only hire employees for jobs that are not affected; in addition, part-timers must not be eligible to fill available vacancies. Collective redundancies are prohibited during the application of this measure;

- when hiring day labourers, the beneficiaries of the work can receive a 35 per cent compensation for remuneration due from the state budget;

- 41.5 per cent of the salary of seasonal employees, employed under a fixed-term employment contract of up to 3 months, is reimbursed by the unemployment insurance budget;

- private companies that are using telework during the COVID-19 crisis can receive financial support for each teleworker to purchase packages of technological goods and services necessary for teleworking.

Government Decision No. 719/2020, published in the Official Gazette, No. 794 din 31 August 2020, includes methodological details of applying this support measure and the amounts that can be reimbursed from the state budget.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

In Romania, magistrates are entitled to paid annual leave of 35 days annually in accordance with the Regulation on the leave of judges and prosecutors, published in the Official Gazette No. 815 of 8 September 2005. The paid leave is granted to all categories of magistrates, including trainee magistrates (the traineeship lasts one year). There are no categories of honorary magistrates who are only entitled to unpaid

leave. As a result, the decision of the Court of Justice of the European Union will presumably have no implications for the Romanian legal system.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

The government has approved a proposal to amend the Act on minimum wage.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 minimum wage

Discussions about the minimum wage for the year 2021 started in accordance with Act No. 663/2007 Coll. on minimum wage with negotiations between the social partners at the national level but did not end in an agreement (the situation has been the same for over ten years – see previous FRs).

At the meeting of the Economic and Social Council of the Slovak Republic on 24 August 2020, a fundamental rift opened between the employers' representatives and the trade unions.

On 16 October 2019, the National Council of the Slovak Republic adopted the proposal of the deputies of the National Council of the Slovak Republic Erik Tomáš and Robert Fico to amend Act No. 663/2007 Coll. on minimum wage and Act No. 311/2001 Coll. Labour Code. According to the adopted Act No. 375/2019 Coll. if no agreement under Article 7 is reached between the employers' and the employees' representatives, the amount of monthly minimum wage for the following calendar year is 60 per cent of the average monthly nominal wage of an employee in the economy of the Slovak Republic published by the Statistical Office of the Slovak Republic per calendar year, with two years preceding the calendar year based on which the monthly minimum wage is determined (Article 8 of the Act).

According to the cited Article 8 of the Act, the minimum wage in 2021 should therefore be 60 per cent of the average wage from two years ago, which is approximately EUR 656. Given the current economic situation, neither the employers nor the Slovak government agreed with such an increase of the minimum wage.

Therefore, at its meeting on 26 August 2020, the Government of the Slovak Republic approved the proposal to amend Act No. 663/2007 Coll. on the minimum wage, as amended, amending Act No. 311/2001 Coll. Labour Code as amended.

The aim of the proposed act is to address the setting of the amount of minimum wage for 2021 and for subsequent years due to the special circumstances and unpredictable developments in 2020, by adjusting the so-called automatic wage determination mechanism. Article II, which amends the Labour Code, modifies the determination of the amount of minimum wage entitlement for the relevant degree of work intensity and the determination of wage benefits linked to the minimum wage. Supplements for night work or weekend work will no longer be tied to the percentage of the minimum hourly wage, but will be set at a fixed amount.

The government's proposal will be discussed in the National Council of the Slovak Republic.

The minimum wage in the year 2020:

- the gross monthly minimum wage - EUR 580.00,

- the gross hourly minimum wage - EUR 3,333.

The proposed minimum wage for the year 2021:

- the gross monthly minimum wage - EUR 623.00,

- the gross hourly minimum wage - EUR 3,580.

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

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The acts governing the judicial system in the Slovak Republic do not regulate the position of "honorary" judges in the performance of all functions carried out by judges.

The status of judges, their rights and obligations, the creation and termination of the function of judge, the disciplinary liability of judges, their salaries and their claims after termination of performance of judicial functions are regulated in Act No. 385/2000 Coll. on Judges and Lay Judges.

Judges make decisions in the senate or individually, if provided by law. The Act stipulates that lay judges also participate in the decisions of the senate. Only a judge may be the president of the senate (Article 3, paragraph 1 of the Act).

Lay judges are not in an employment relationship or in any type of labour law relationship with the state or the court.

In addition to the compensation under paragraphs 1 to 3, they shall be entitled to a flat-rate compensation for the performance of their duties for each day of the court hearing (Article 146 paragraph 4of the Act).

As regards the EU Law (Directive 2003/88/EC – Article 7 - Paid annual leave, Directive 1999/70/EC - Clauses 2 and 3 - Concept of 'fixed-term worker', Clause 4 - Principle of non-discrimination) and the Law of the Slovak Republic's current statutory and case law is in line with the EU laws.

These issues are primarily regulated in the Labour Code (Act No. 311/2001 Coll. as amended) as the basic labour law act.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) The temporary partial reimbursement of wage compensation for temporarily laid-off workers due to the crisis has been extended until 30 September 2020.

(II) An Annex to the Collective Agreement of the Slovenian Electricity Industry has been concluded and the minimum basic wages for all nine tariff classes have been increased by 2 per cent in that sector.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Wage compensation for temporarily laid-off workers

On 27 August 2020, the government adopted the Decision on the extension of the measure of partial reimbursement of wage compensation for temporarily laid-off workers (*'Sklep o podaljšanju ukrepa delnega povračila nadomestila plače delavcem na začasnem čakanju na delo'*, Official Journal of the Republic of Slovenia No 115/2020, 27.8.2020) and extended this measure until 30 September 2020.

This is one of the measures that has been introduced in Slovenia in response to the COVID-19 crisis. Introduced by the so-called Second COVID-19 Mega Package ('ZIUZEOP', enacted in April 2020), the measure was initially envisaged to apply from the time of the outbreak in mid-March 2020 until the end of May 2020. The measure has been extended several times, each time for one month:

- until the end of June 2020 (by the Third COVID-19 Mega Package – 'ZIUOOPE', enacted at the end of May 2020),
- until the end of July 2020 (by the Fourth COVID-19 Mega Package – 'ZIUPDV', enacted at the beginning of July 2020), with the possibility for the Government to extend it twice,
- until the end of August 2020 (by Government Decision of 23 July 2020) and
- now until the end of September 2020 (by the above mentioned Government Decision of 27 August 2020).

For a detailed description of this measure, see Flash Report 05/2020.

1.1.2 Other measures

Various anti-corona measures continue to be in force, amended and/or replaced with updated ones, and may have direct or indirect implications in the field of labour law. For example, the newly amended rules, replacing the previous ones on bordercrossings have been adopted (*Ordinance* imposing and implementing measures to prevent the spread of the epidemic COVID-19 at the border crossing points at the external borders and inspection posts within the national borders of the Republic of Slovenia , *'Odlok o odrejanju in izvajanju ukrepov za preprečitev širjenja nalezljive bolezni COVID-19 na mejnih prehodih na zunanji meji, na kontrolnih točkah na notranjih mejah in v notranjosti Republike Slovenije',* Official Journal Nos 112/20, 20.8.2020, and 115/20, 27.8.2020). One of the neighbouring countries, i.e. Croatia (where many Slovenian citizens spend their annual leave) was added to the red list on 21 August 2020 due to the deterioration in their epidemiological situation. These rules can have serious implications for employees returning from abroad or migrating between the two countries, depending on the conditions under which quarantine may be ordered.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

This case concerned the status and thus the rights of a *giudice di pace* (a magistrate/honorary judge/peace judge in Italy) as compared with an ordinary judge, and the liability of the Member State for infringements of EU law. The Italian legislation does not provide for an entitlement of the *guidice di pace* to 30 days paid annual leave, as is provided for ordinary judges. The CJEU decided that

- a *giudice di pace* falls within the concept of 'court or tribunal of a Member State' within the meaning of Article 267 of the TFEU,
- a *giudice di pace* (who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration) may fall within the concept of 'worker' for the purposes of Directive 2003/88, but it is for the national court to verify that,
- the concept of 'fixed-term worker' in Directive 1999/70 may cover a *guidice di pace* (appointed for a limited period, who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, but again it is for the national court to verify that), and that
- Clause 4(1) of the Framework Agreement annexed to Directive 1999/70 (principle of equal treatment of fixed-term workers) precludes national legislation which does not provide for an entitlement on the part of magistrates to 30 days paid annual leave, such as that provided for ordinary judges, where those magistrates fall within the concept of 'fixed-term workers', and are in a situation comparable to that of ordinary judges, unless such a difference in treatment is justified by the differences in the qualifications required and the nature of the duties undertaken by those judges, which it is again for the national court to verify.

This case has no implications for Slovenian law, since in Slovenia, there no judges like the Italian *giudice di pace*.

According to Article 1(2) of the Judicial Service Act ('Zakon o sodniški službi', Official Journal of the Republic of Slovenia, No 94/07 et subseq.), all judges enter a service relationship with the Republic of Slovenia. According to Article 1a of the Judicial Service Act, the judicial service is carried out by: local court judges, district court judges, higher court judges, Supreme Court judges, local court counsellors, district court counsellors, higher court counsellors, Supreme Court counsellors. All judges are guaranteed the right to promotion, to education, to pay, and to other rights deriving from judicial service (Article 4 of the Judicial Service Act), one of them being the right to paid annual leave.

According to Article 58 of the Judicial Service Act, all judges have the right to annual leave for a period of up to 40 working days, but not less than 30 working days. Salary compensation for the period of annual leave is regulated by Article 53 of the Judicial

Service Act and it amounts to 100 per cent of the judge's salary in the preceding month.

Other rights of judges are regulated in the Judicial Service Act as well. With regard to the rights and obligations of judges with respect to their judicial service, which are not regulated by the Judicial Service Act, the provisions of the Act governing employment relationships, i.e. the Employment Relationships Act applies *mutatis mutandis* (Article 4a of the Judicial Service Act).

4 Other Relevant Information

4.1 Collective bargaining

Annex No.1 to the Collective Agreement for the Slovenian Electricity Industry ('Aneks št. 1 h Kolektivni pogodbi elektrogospodarstva Slovenije', Official Journal of the Republic of Slovenia No. 109/2020, 10.8.2020) has been concluded by the Energy Industry Chamber of Slovenia (*Energetska Zbornica Slovenije*) on the part of the employers and the Slovenian Energy Workers' Union (*Sindikat delavcev dejavnosti energetike Slovenije*) on the part of the workers. Minimum basic wages in the collective agreement for all nine tariff classes have been increased by 2 per cent for the period June 2020 – June 2021.

A Collective Agreement for the Forestry Sector – normative part ('Kolektivna pogodba za gozdarsko dejavnost – normativni del', Official Journal of the Republic of Slovenia No. 108/2020, 7.8.2020) was concluded in July 2020 and entered into force on 8 August 2020, after being published in the Official Journal.

Spain

Summary

Rulings of the Constitutional and Supreme Courts reiterate the doctrine on fundamental rights and fixed-term contracts and seem to be fully consistent with CJEU case law.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Equality and non-discrimination

Constitutional Court, 90/2020, 20 July 2020

A female doctor requested a 33 per cent reduction in working hours to take care of her children. The employer accepted her request, but the worker disagreed with the calculation made, because her salary had been reduced by more than 33 per cent. She claimed that the application of proportionality was incorrect and was unfavourable for her.

The Constitutional Court agreed with the worker, since the calculation made by the employer to determine the employee's reduced working day and salary violated her right to equality, especially in relation to on-call service. It also led to a pejorative treatment in the working conditions of a greater number of women than of men as a consequence of the exercise of a right associated with motherhood, such as the right to reduce one's working hours to take care of children.

It should be noted that another judgment of the Constitutional Court was handed down that same day involving a female doctor in the same hospital, who had requested a 50 per cent reduction in working hours. The underlying problem in the case was the same, and the Constitutional Court, based on the same arguments, reiterated that the employer had not applied proportionality correctly. Declaring the employer's calculation as void was deemed sufficient reparation, and the worker was not granted additional financial compensation.

2.2 Fixed-term employment contracts

Supreme Court, 2743/2020, 16 July 2020

The Supreme Court stated that workers with a temporary replacement contract have no right to severance pay when the contract expires.

The first CJEU De Diego Porras ruling (14.9.2016, C-596/14) had a significant impact on Spanish legislation. The worker had the right to a severance pay 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), which did not include a right 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 type of dismissal, and the worker has the right to a severance pay of 20 days of salary per year. The De Diego Porras ruling deemed that such a differentiation was 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 stated (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'.

The CJEU ruling of 21 November 2018 again dealt with De Diego Porras, and confirmed the doctrine of the Montero Mateos case.

Since then, the Spanish Supreme Court, referring to those CJEU case laws, has stated that a worker who concludes a temporary replacement contract has no right to severance pay when that contract expires, and does not consider this difference to be discriminatory for temporary workers.

2.3 Paid leave in case of hospitalisation of relatives

Supreme Court, 2615/2020, 15 July 2020

The Supreme Court specified what should be understood by 'hospitalisation' in relation to paid leave with the purpose of visiting a family member who is ill or had an accident and is being treated in a hospital. The Supreme Court concluded that 'hospitalisation' implies a true hospital stay (i.e. spending at least one night at the hospital). If a family member has a scheduled visit to a hospital, the worker is not entitled to this paid leave.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

The situation in Spain is very similar to the Italian one. The so-called *jueces de paz* can be appointed in municipalities where no ordinary courts have been established. There are over 7 000 *jueces de paz* in Spain. They are neither considered workers/employees nor civil servants. They have a special administrative relationship ruled by a regulation of the General Council of the Judiciary. Therefore, they are not considered as being included within the scope of application of the labour law directives. This will need to change after this ruling.

However, the regulation in Spain is far more generous than the Italian one, because *jueces de paz* are entitled to the same leaves as ordinary judges (Article 29 of the respective regulations), so there are no differences in terms of annual leave. The wages are not the same, because the wage of *jueces de paz* is set in the Budget Law every year and depends on the population of the municipality.

4 Other Relevant Information

4.1 Unemployment

Unemployment fell in July by 89 849 people and there are now 3 773 034 unemployed people. It is the first time that unemployment has decreased since February.

Sweden

Summary

The Swedish Labour Court has issued rulings on the application of the Rome 1 Regulation and concluded that the reference to a Swedish collective agreement, among other things, indicates the application of Swedish law to an employment contract that entails the performance of work-related tasks in another country. The Court also ruled in a case on state immunity and on fixed-term contracts.

1 National Legislation

Nothing to report.

2 Court rulings

During the summer 2020, the Swedish Labour Court delivered two interesting judgments on jurisdiction and the subsequent application of the Rome 1 Regulation and a corresponding case on state immunity, which are presented in this section.

2.1 Jurisdiction and Rome 1 Regulation

Labour Court, No. 34/20, 17 June 2020

In AD 2020 No. 34, Article 8 of the Rome I Regulation was applied to determine which law should apply to an employment contract performed in Norway. A Swedish company was hired to do welding installations at a water treatment plant for the Norwegian municipality Kristiansand. The Swedish company hired a Swedish employee on a fixed-term employment contract. The contract contained no choice of law clauses, but was written in Norwegian and the work was performed in Norway. The Swedish Labour Court found, however, that there was a closer connection to Swedish law. The motivation of this conclusion was that the contract had been written in line with Swedish law, made references to a Swedish collective agreement and that the employee used to work in Sweden for the employer.

Labour Court, No. 25/20, 17 June 2020

AD 2020 No. 35, like the abovementioned AD 2020 No. 34, dealt with private international law issues. In this case, an employee wanted to sue his English employer in Sweden but the employer company had dissolved. The Labour Court held, however, that Swedish jurisdiction was applicable in accordance with Article 21.1.b of the Brussels I Regulation. As regards choice of law, the Court held that Swedish law should be applied in the absence of the parties' express choice in accordance with Article 8 of the Rome I Regulation. In this case, all work was performed in Sweden and the only connection to England was that the employer company originated from there. The relevant legal issue whether the employer company was to be regarded as having been dissolved or not, was not, however, subject to Swedish law according to the Labour Court. The Court held that this was one of the exceptions to which the Rome I Regulation was not applicable and when EU Member States could choose which law to apply. Since the company was both registered and had its seat in England, Swedish private international law stated that English law was applicable. English law was thus to be applied for the question on whether the company had dissolved or not.

2.2 State immunity

Labour Court, No. 43/20, 08 July 2020

The Swedish Labour Court, in its decision AD 2020 No. 43, clarified the Swedish position on state immunity. An employee performing administrative tasks at the Sudanese Embassy in Sweden was dismissed by the employer. Together with her trade union, she filed a law suit claiming damages for unlawful dismissal. The trade union also claimed damages on the grounds that the Sudanese Embassy had not negotiated with the trade union in accordance with the Swedish Co-determination Act. When the Sudanese Embassy did not appear in the court of first instance, the employee and her trade union proposed that the court ought to deliver a default judgment. Instead of delivering a default judgment, the court of first instance *ex officio* decided that the case should be dismissed due to state immunity.

The employee and her trade union appealed to the Labour Court, which held that the decision of the first instance court was partly wrong and partly right. The Labour Court found that it was wrong to grant the Sudanese Embassy state immunity with regard to the employee's individual claim for damages, but correct with regard to the declaration of state immunity ex officio and the right to dismiss the claim for damages by the trade union.

The Labour Court based its decision on international customary law on state immunity as expressed albeit not yet in force in the United Nations Convention on Jurisdictional Immunities of States and Their Property of 2004. The Labour Court stated that the employee had not performed such a specific function in the exercise of governmental authority that justified the use of state immunity according to Article 11 p. 2 of the Convention. Nor was any other exception in the Article applicable in the case. The Labour Court also based its decision on the balance the ECtHR has struck between state immunity and the right to a fair trial according to Article 6 of the ECHR. The Swedish Labour Court noted in particular that according to the judgment of 8 November 2016 in the case of Naku v. Lithuania and Sweden (application No. 26126/07), a court must review the tasks of the employee. Further, the Labour Court noted that according to the judgment of 5 February 2019 in the case of Ndayegamiye-Mporamazina v. Switzerland (application No. 16874/12), the employee's connection to the forum state is crucial. In the ECtHR case, the employee's connection to the forum state was weak, despite the fact that she performed her work for that country. She did not live in Switzerland and she was not a Swiss citizen.

Regarding the issue of *ex officio* application of state immunity, the Labour Court relied fully on the 2004 Convention. According to Article 8.4 of the Convention, passivity from the defendant state shall not be interpreted as consent for the forum state to exercise jurisdiction. Therefore, the court of first instance was right when it examined state immunity *ex officio*.

As regards the claim from the trade union, the Labour Court held that there was no ground to set state immunity aside according to international customary law and that the right to a fair trial is not unconditional. The decision of the first instance court to grant the Sudanese Embassy state immunity was therefore right as regards the claim from the trade union.

The decision of the Labour Court is the first one that actually sets state immunity aside for employees at embassies. The last decision on this issue by the Labour Court was AD 2006 No. 47. In that case, a driver at the Moroccan Embassy in Sweden was dismissed, even though he did not perform tasks of a governmental nature. AD 2020 No. 43 indicates that the Swedish approach to state immunity in employment law cases has changed compared to AD 2006 No. 47.

2.3 Fixed-term employment contracts

Labour Court, No. 46/20, 19 August 2020

The Labour Court decision AD 2020 No. 46 dealt with intermittent work and the classification of permanent employees who worked as "horn blowers" in an ancient tower in a small city on the Swedish southern coast. The claimant, together with a colleague, shared the task of blowing the horns a few hours per night from a medieval tower, reminiscent of a past era in case of fire or another emergency. The work was not part of the city's fire and rescue operations, but was purely ceremonial. The employment was salaried and based on the number of activities performed each month, on a scheme agreed upon amongst the "horn blowers" themselves and accepted by the employer (the municipality). After the termination of the contract, one of the employees submitted a claim to the Labour Court, arguing that he had been permanently employed on a part-time basis for intermittent work as a horn blower. The employer argued that the work had been truly intermittent under a general agreement that he would be at the employer's disposal, but that each and every occasion constituted a separate employment contract. The Labour Court concluded that the contractual arrangement between the employer and the employee constituted a permanent employment relationship.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

Case C-658/18 *UX* involving part-time "peace judges" or "magistrates" in Italy addresses two major issues, firstly, whether this type of judicial institution should be at all considered a court under EU law and, secondly, whether the judges engaged as peace judges are subject to EU labour law, specifically the Working Time Directive and the Fixed-term Directive. The CJEU confirmed the application of EU law on all these issues.

Litigation before the peace judges and the public structure of these institutions (as they were presented in the case before the Court of Justice) is unlike anything that exists in Sweden, but would most likely, if a similar structure were to be introduced in Sweden, be organised under Swedish procedural law and as a public institution. One previous decision by the CJEU, case C-407/98 *Abrahamsson et al v. Fogelqvist,* ECLI:EU:C:2000:367 examined whether a Swedish legal institution, the Universities Appeals Board (Överklagandenämnden för Högskolan) was to be considered such a body (court, tribunal) that could make a reference for a preliminary hearing. The CJEU arrived at the conclusion that this body, which presiding members were engaged in on a part-time and non-permanent basis and were appointed by the government, constituted such an independent body as to be "treated as a court or tribunal within the meaning of Article 177 [now Article 267 FEUF] of the Treaty" (case C-407/98 *Abrahamsson et al v. Fogelqvist,* para 38).

The application of EU legislation on fixed-term work and working time also appears to be well founded. The Swedish Act on Non-discrimination of Part-time or Fixed-term Employees (*lagen 2002:293 om förbud mot diskriminering av deltidsarbetande arbetstagare och arbetstagare med tidsbegränsad anställning*) is applicable to both the private and the public sector and does not explicitly exclude any special forms of employees. Moreover, the Annual Vacation Act (Semesterlagen 1977:480) provides for a minimum of five weeks of annual leave (Section 4) but very short employment contracts might instead result in a separate financial compensation(Section 5).

Any part-time, fixed-term "peace judge" as in the Italian case, would be compensated under these provisions.

4 Other Relevant Information

Nothing to report.

United Kingdom

Summary

Further changes to the coronavirus legislation and policy have been made.

1 National Legislation

1.1 Measures to respond to Covid-19

The Coronavirus Job Retention Scheme is still ongoing, but the government is reducing its commitment from 80 per cent to 70 per cent from 1 September 2020. There is government guidance for employers and for employees, last updated on 3 and 7 August 2020.

The Coronavirus Job Retention Scheme will close on 31 October 2020.

From 1 July, employers can bring furloughed employees back to work for any amount of time and any shift pattern, while still being able to claim the CJRS grant for the hours not worked.

From 1 August 2020, the level of grant will be reduced each month. To be eligible for the grant, employers must pay furloughed employees 80 per cent of their wages, up to a cap of GBP 2 500 per month for the time they are being furloughed.

The timetable for changes to the scheme is set out below. Wage caps are proportional to the hours an employee is furloughed. For example, an employee is entitled to 60 per cent of the GBP 2 500 cap if they are placed on furlough for 60 per cent of their usual hours:

- there were no changes to grant levels in June;
- for June and July, the government paid 80 per cent of wages up to a cap of GBP 2,500 for the hours the employee was on furlough, as well as employer National Insurance Contributions (ER NICS) and pension contributions for the hours the employee was on furlough. Employers had to pay employees for the hours they worked;
- for August, the government paid 80 per cent of wages up to a cap of GBP 2 500 for the hours an employee was on furlough and employers paid ER NICs and pension contributions for the hours the employee was on furlough;
- for September, the government will pay 70 per cenz of wages up to a cap of GBP 2 187.50 for the hours the employee is on furlough. Employers will pay ER NICs and pension contributions and top up employees' wages to ensure they receive 80 per cent of their wages up to a cap of GBP 2 500, for time they are furloughed
- for October, the government will pay 60 per cent of wages up to a cap of GBP 1 875 for the hours the employee is on furlough. Employers will pay ER NICs and pension contributions and top up employees' wages to ensure they receive 80 per cent of their wages up to a cap of GBP 2 500, for the time they are furloughed.

Employers will continue to able to choose to top up employee wages above the 80 per cent total and GBP 2 500 cap for the hours not worked at their own expense if they wish. Employers will have to pay their employees for the hours worked.

The table shows the government contribution, the required employer contribution and the amount the employee receives where the employee is furloughed 100 per cent of the time.

Wage caps are proportional to the hours not worked.

	July	August	September	October
Government contribution: employer NICs and pension contributions	Yes	No	No	No
Government contribution: wages	80% up to £2,500	80% up to £2,500	70% up to £2,187.50	60% up to £1,875
Employer contribution: employer NICs and pension contributions	No	Yes	Yes	Yes
Employer contribution: wages	-	-	10% up to £312.50	20% up to £625
Employee receives	80% up to £2,500 per month	80% up to £2,500 per month	80% up to £2,500 per month	80% up to £2,500 per month

Self-employed who qualified are entitled to a second tranche of money.

The latest government guidance on all aspects related to the coronavirus is available here, with links to the guidance for Scotland, Wales and Northern Ireland. Employers are being encouraged to get their staff back to work.

With the revised Public Health England guidance increasing the minimum self-isolation period from 7 to 10 days if anyone in the household has, or is suspected to have COVID, on 5 August 2020, regulations amended the Statutory Sick Pay (General) Regulations 1982 (*SI 1982/894*) to enable them to claim sick pay. The law firm, Lewis Silkin, has produced a helpful table of all of the relevant rules and regulations which is reproduced below.

Type of absence	**Right to pay**	**Source**	**Best practice**
Sickness absence for coronavirus infection (suspected or diagnosed)	Entitled to usual sick leave and pay entitlements (including SSP) 3-day waiting period for SSP has been removed for incapacity related to coronavirus from 13 March onwards Government advice is that anyone showing symptoms should self-isolate for 10 days	Contractual terms S151 Social Security, Contributions and Benefits Act 1992 Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020 Statutory Sick Pay (General) (Coronavirus	Acas guidance: usual sick leave and pay entitlements apply. It may be necessary to relax requirements for evidence of illness. Inform employee of possible entitlement to additional payment through benefit system if in receipt of

		Amendment) (No.5) Regulations 2020	benefits and residing within pilot areas in north-west England.
Absence for self-isolation/quarantine under government or medical advice	Able to work remotely – entitled to usual pay	S151 Social Security, Contributions and Benefits Act 1992	Check contractual terms and any custom and practice.
	Unable to work remotely but following main guidance on self-isolation (10 days with symptoms, or 14 days if in the same household as someone showing symptoms) – entitled to SSP until end of period or confirmation of negative COVID test	Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020	Acas guidance: SSP where self-isolation due to symptoms, living in same household as someone with symptoms, or if advised by a doctor/NHS 111.
	Unable to work remotely and following medical advice to 'shield' because deemed by public health guidance to be 'extremely vulnerable' due to underlying health condition – entitled to SSP until end of period in their shielding notification. Shielding and SSP entitlement has been paused from 1 August, except where individuals are advised to shield in local lockdown areas	Statutory Sick Pay (General) (Coronavirus Amendment) (No. 5) Regulations 2020 Statutory Sick Pay (General) (Coronavirus Amendment) (No. 3) Regulations 2020 Statutory Sick Pay (General) (Coronavirus Amendment) (No. 4) Regulations 2020	Payment of full pay will ensure employees do not ignore advice and come to work, risking spreading the virus. Ensure employees are treated consistently. Inform employee of possible entitlement to additional payment through benefit system if in receipt of benefits and residing within pilot areas in north-west England.
	Unable to work remotely and self-isolating for 14 days in accordance with notification from NHS test and trace system – entitled to SSP	Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) (No.2) Regulations 2020	
	Unable to work remotely and self-isolating for 14 days after someone in their linked or extended household has developed symptoms or received a positive	Statutory Sick Pay (General) (Coronavirus Amendment) (No.6) Regulations 2020	

	test result 3-day waiting period for SSP has been removed for incapacity related to coronavirus from 13 March onwards Otherwise no right to SSP if not unfit to work - so if unable to work remotely, no entitlement to pay unless contractual right to pay in this situation Pay in all cases may be advisable (see best practice)		
Absence from work at employer request – whether enforcing an advised quarantine or under the employer's own policies.	Able to work remotely – entitled to usual pay Unable to work remotely but following main guidance on self-isolation (10 days with symptoms, 14 days if in the same household including extended or linked households) as someone showing symptoms or testing positive, 14 days after notification from NHS test and trace system) – entitled to SSP, as not "able" to work even if the employee attempts to come to work If absence is at employer request in other circumstances, entitled to usual pay unless contractual right not to pay	S151 Social Security, Contributions and Benefits Act 1992 Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020 Statutory Sick Pay (General) (Coronavirus Amendment) (No. 5) Regulations 2020	Acas guidance: SSP where self-isolating due to symptoms, living in same household as someone with symptoms, or if advised by a doctor/NHS 111. Inform employee of possible entitlement to additional payment through benefit system if in receipt of benefits and residing within pilot areas in north-west England.
Absence from work due to compulsory 14 day self-isolation after returning to the UK from abroad	If sick - entitled to usual sick leave and pay entitlements (including SSP) No right to SSP if not	S151 Social Security, Contributions and Benefits Act 1992	Talk to the employee and discuss the options, including whether it is possible to take

	unfit to work Able to work remotely – entitled to usual pay If not sick and unable to work remotely, no entitlement to pay - unless entitled under contract or policy (more likely if work-related travel)		extra paid holiday or unpaid leave. If travel was for work, employee may reasonably expect payment – so consider continuing full pay to avoid grievances. Ensure employees are treated consistently.
Absence from work due to being trapped abroad	If sick - entitled to usual sick leave and pay entitlements (including SSP) No right to SSP if not unfit to work Able to work remotely – entitled to usual pay If not sick and unable to work remotely, no entitlement to pay - unless entitled under contract or policy (more likely if work-related travel)	S151 Social Security, Contributions and Benefits Act 1992	Talk to the employee and discuss the options, including whether it is possible to take extra paid holiday or unpaid leave. If travel was for work, employee may reasonably expect payment – so consider continuing full pay to avoid grievances. Ensure employees are treated consistently.
Absence from work due to being scared of risk of infection – vulnerable employees	Vulnerable employees include those who are pregnant, over 70, have relevant health conditions or a weakened immune system Able to work remotely and employer agrees – entitled to usual pay If not able to work remotely, those 'shielding' under official medical advice	Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020 Statutory Sick Pay (General) (Coronavirus Amendment) (No. 3) Regulations 2020	Talk to employee to try and resolve their concerns and discuss the options - including whether it is possible to take extra paid holiday, unpaid leave or be placed on furlough.

	because public health guidance deems them 'clinically extremely vulnerable' are entitled to SSP until end of period specified in their latest shielding notification. Shielding and SSP entitlement has been paused from 1 August, except for individuals advised to shield in local lockdown areas. Anyone else is not entitled to SSP.		
Absence from work due to being scared of risk of infection – other employees	Able to work remotely and employer agrees – entitled to usual pay Generally no entitlement to pay if employer requires employee to come to work and they refuse Potentially entitled to full pay if employee leaves or refuses to return to the workplace due to a reasonable belief of 'serious and imminent danger' – employee cannot be subjected to a detriment or dismissed as a result (a section 44 claim) Entitled to SSP/company sick pay if serious anxiety means employee is too unwell to come to work	S44 Employment Rights Act 1996	Ensure employees are treated consistently - but consider the position of vulnerable employees (see above)
Temporary workplace closure at employer request	Entitled to usual pay Unless express contractual provisions for unpaid or reduced pay lay-off, or consent of employees to lay-off – rare in practice Employees can agree	S147-154 Employment Rights Act 1996	Pay full pay or agree furlough (or make redundancies if furlough is not appropriate or employees do not agree)

	to be placed on furlough under government's job retention scheme		
Temporary workplace closure ordered by government	Not entitled to SSP (unless sick or following main guidance about 7/14 day self-isolation (10 days with symptoms, 14 days if in the same household including extended or linked households as someone showing symptoms or testing positive, 14 days after notification from NHS test and trace system) Unlikely to have contractual entitlement to sick pay Able to work remotely – entitled to usual pay Not able to work remotely - entitled to usual pay unless express contractual provisions for unpaid or reduced pay lay-off, or consent of employees to lay-off – rare in practice Employees can agree to be placed on furlough under government's job retention scheme	Contractual terms Statutory Sick Pay (General) Regulations 1982 (as amended by Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020)	Pay full pay or agree furlough (or make redundancies if furlough is not appropriate or employees do not agree)
Reduced working hours at employer request	Entitled to usual pay Unless express contractual provisions for short-time working, or consent of employees – rare in practice	S147-154 Employment Rights Act 1996	
Absence for childcare	Emergency dependent leave gives right to reasonable amount of	S 57A-57B Employment Rights Act 1996	No limit to the amount of time an employee is

	time off work Covers assisting or arranging care for ill dependants (e.g. child has the virus), and with unexpected breakdown in care arrangements (e.g. child is quarantined or school is closed) This is unpaid - unless pay is provided in the employer's contract or policies	entitled to take off. Reasonable will depend on employee's own circumstances – case by case assessment needed. Disruption or inconvenience to employer's business should not be taken into account. Ensure employees are treated consistently.

Source is available here.

Details of the GBP 1 000 job retention bonus for those employees on furlough, taken back by employers and still in post on 31 January 2021, are available here.

More venues have opened in England as a result of SI 2020/863 The Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 3) Regulations 2020https://www.legislation.gov.uk/uksi/2020/863/contents/made including ice rinks, conference centres, exhibition halls.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term employment / annual leave

CJEU case C-658/18, 16 July 2020, Governo della Repubblica italiana (Statut des juges de paix italiens)

For our purposes the following is relevant.

First, the Court ruled that under Article 7(1) of the Working Time Directive 2003/88/EC 'a magistrate who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, may fall within the concept of 'worker' within the meaning of those provisions, which it is for the referring court to verify.'

Second, the Court ruled that Clause 2(1) of the Framework Agreement on fixed-term work annexed to Council Directive 1999/70/EC meant that the concept of 'fixed-term worker' could encompass a magistrate appointed for a limited period, who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, which it is for the referring court to verify.

Third, Clause 4(1) of the Framework Agreement on fixed-term work precluded national legislation which did not provide for an entitlement on the part of magistrates to 30 days paid annual leave.

In the UK, the question of the legal status of various aspects of the judiciary has long been a vexed question. This matter ultimately went to the Court of Justice and then back to the Supreme Court in O'Brien. The case raised questions of domestic law about the status and terms of service of part-time non-salaried judges in England and Wales. They included chairmen and members of tribunals and others exercising judicial functions for remuneration. O'Brien claimed entitlement to a pension in respect of his part-time non-salaried judicial work. The Supreme Court ruled that recorders were in an employment relationship within the meaning of the Framework Agreement on part-time work and the implementing Directive 97/81 had to be treated as "workers" for the purposes of the 2000 Regulations. Further, it found that no objective justification had been shown in this case for departing from the basic principle of paying a part-time worker the same as a full-time worker calculated on a pro rata temporis basis. The decision in *UX* therefore is very much in keeping with the approach taken in the *O'Brien* line of case law. It therefore appears that the decision in *O'Brien* in the UK would extend to the Fixed Term Work Directive as well. The Ministry of Justice accepted the ruling in *O'Brien* and amended UK law.

4 Other Relevant Information

Nothing to report.

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