Flash Reports on Labour Law October 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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Executive Summary

National level developments

In October 2020, **extraordinary measures triggered by the COVID-19 crisis** continued to play an important role in 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 COVID-19 crisis measures, and the second part sums up other labour law developments with particular relevance for the transposition of EU labour law

Developments related to the COVID-19 crisis

Measures to lower the risk of infection in the workplace

All countries still have measures in place to prevent the spread of the virus in the workplace. Several reports mention a deterioration of the epidemic situation, and states of emergency and lockdowns have been extended or reintroduced in several countries, such as **Belgium**, **Czech Republic**, **Italy**, **Portugal, Romania**, **Slovenia** and the **United Kingdom**. Consequently, many measures have been reintroduced, such as the travel ban, restriction on freedom of movement, and the obligation to wear a face mask. Restrictions to the operation of businesses and other establishments vary. Conversely, a draft to abolish the ban on Sunday trade activities during the pandemic is under discussion in **Poland**.

Teleworking has been mandated in **Belgium** and **Portugal**, wherever possible. Amendments to the regulation of telework are being discussed in **Poland.**

In case teleworking is not possible, specific health and safety measures for workplaces have been specified in **Belgium** and **Portugal**, which have also adopted a temporary regime for reorganisation of work schedules to minimise the risk of contagion.

Finally, there are ongoing negotiations on establishing a legal basis for employers to require employees to undergo COVID-19 testing, including access to their test results in **Denmark**.

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. Previously enacted temporary schemes and wage guarantee funds have been provisionally extended in **Ireland**, **Italy**, **Portugal** and the **United Kingdom**. Additionally, the temporary short-time work schemes may be extended until 31 June 2021 in **Slovenia**, provided that the EU Temporary Framework for State Aid Measures is extended as well.

Programmes providing financial support for workers who have temporarily been laid off due to the epidemic crisis have been implemented in **Slovenia**. A new collective agreement introduces relief schemes for temporarily unemployed white collar employees whose contracts have been suspended for economic reasons as a result of the pandemic in **Belgium**.

Financial benefits for self-employed workers have been extended in the **Netherlands** and the **United Kingdom**.

Relief measures for employers have been amended and extended until 31 December 2020 in **Bulgaria** and the **Czech Republic**. A comprehensive package of measures, including relief measures for businesses, has been implemented in the **Netherlands**. A second temporary scheme for subsidies and relief measures for employers that have hired employees who were laid off has been adopted in **Norway**. Special rules aimed at protecting workers and undertakings against the effects of the COVID-19 crisis, with the suspension of

dismissals in favour of less detrimental measures and wage compensation schemes, have been extended in **Italy** until 31 January 2021.

Leave entitlements and social security

Special rules on entitlements to family- and care-related leave and sick leave continue to apply in many countries. The scheme for the provision of carers' allowance to employees who cannot work because they have to take care of a dependent child due to school closures was extended again in **Czech Republic**.

Measures providing wage compensation during quarantine have been introduced in **Romania**.

Measures to ensure the performance of essential work

In **Luxembourg**, a law allows for an extraordinary exception to the limitation of working hours in the health sector, care assistant sector and for staff supervising accommodation facilities for minors placed under a custodial measure, to address possible labour shortages in the health sector.

Table 1. Main developments related to measures addressing the COVID-19 crisis

Topic	Countries
Restriction of business activity by lockdown measures	BE CZ IT PT RO SI UK
Short-time work and similar	IE IT PT SI UK
Benefits for workers / self-employed prevented from working	BE NL SI UK
Employer subsidies	BG CZ NL NO
Teleworking / working from home	BE PL PT
Health and safety measures	BE PT
Wage compensation during quarantine	RO
Special care leave / parental leave	CZ
Suspension of dismissal	IT
Right to require employees to undergo COVID-19 testing	NL
Temporary exception to working time regulation in the health sector	LU
Temporary exception to the ban on Sunday trade	PL

Other developments

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

Telework

A new agreement on teleworking, also covering occasional teleworking, has been concluded and will soon enter into force in **Luxembourg.** This agreement provides for equal treatment between teleworkers and other employees as regards the right to disconnect. Discussions on introducing general provisions on remote working into the Labour Code are also underway in **Poland**. Conversely, in **Germany**, the Federal Chancellery has rejected a draft of a Mobile Work Act, which was intended to promote remote working for all employees.

Working time

In **Slovenia**, the working time regulation for state prosecutors has been amended with regard to stand-by and on-call duty

in **Ireland,** the working time regulation for workers on board seagoing fishing vessels has been adopted.

Atypical Work

In **Spain**, the Supreme Court stated that food delivery riders are employees, not self-employed workers.

In **Germany,** a Federal Labour Court judgment confirmed that the non-exhaustive, exemplary list of objective reasons that justify a fixed-term contract is in line with EU law.

In **Italy**, a judgment on temporary agency work in case of invalidity of the temporary agency relationship established that the user undertaking can treat the employment relationship in accordance with its own working conditions.

In **Liechtenstein**, a legislative proposal on fixed-term employment contracts in the public school system has been presented with the aim of adapting the legal framework to EU law.

In **Germany**, a proposal on extending occupation safety and health measures to entrepreneurs without employees has been presented.

Other aspects

In **France**, an increase in the duration of paternity leave from 11 to 28 days has been announced and will be discussed in Parliament in coming months.

In **Finland**, the amended Posted Workers Directive has been transposed, and the amendments to the Posted Workers Act will enter into force beginning of December 2020**.**

In **Spain**, a regulation on the work of railway personnel has been issued, implementing Directive (EU) 2016/798 on railway safety and Directive (EU) 2016/797 on the interoperability of the railway system within the European Union.

In **Spain**, a Special Coordination Unit for the Fight against Fraud in Transnational Labour was created within the labour inspectorate, pursuant to the establishment of the European Labour Authority (Regulation (EU) 2019/1149).

Table 2: Other major developments

Topic	Countries
Minimum wage	HR DE IE SK
Teleworking	DE LU PL
Working time	SI IE
Fixed-term work	DE LI
Platform work	ES
Temporary agency work	IT
Posted workers	FI
Health and safety	DE
Paternity leave	FR
Railway personnel	ES
Labour authority	ES
Collective agreements	EE
Ban on Sunday trade	SI

Implications of CJEU Rulings

Temporary agency work

This FR analyses the implications of a CJEU ruling on temporary agency work.

CJEU case C-681/18, 14 October 2020, KG (Missions successives dans le cadre du travail intérimaire)

The CJEU's findings in this case concerned the limits on successive assignments of temporary agency workers to the same user company. Interpreting Article 5(5) of **Directive 2008/104/EC**, the Court held that national legislation must provide measures to preserve the temporary nature of agency work, as well as measures to prevent successive assignments of the temporary worker to the same user undertaking to circumvent the provisions of the Directive.

In this regard, **the majority of national reports** indicate that national legislation is already in line with the judgment.

Several countries (e.g. **BE**, **BG**, **ES**, **FI**) require objective reasons—either technical, productive, organisational or substitution—for successive assignments of the same agency worker to the same user undertaking to be lawful. Other countries (e.g. **EL**, **HU**, **LT**) set a limit to the period during which a temporary agency worker can be lawfully employed by a user undertaking, or a maximum number of successive assignments to the same user company (e.g. **NL**). Some countries (e.g. **IS**) set a minimum waiting period between assignments to the same user undertaking.

However, most of the compliant countries (e.g. **EE**, **FR**, **LI**, **LU**, **NO**, **PL**, **PT**, **SK**, **SE**) have adopted a combination of the requirement of objective reasons and a maximum number of renewals or a time limit to avoid abuse of successive agreements.

Other reports instead signal that the CJEU ruling may be of relevance with regard to the national implementation of Directive 2008/104/EC.

In **Denmark**, the judgment is important for an EU-conform interpretation of the anti-abuse rules. Similarly, legislation in **Germany** is in need of further CJEU interpretation (case in progress C-232/20, *Daimler*) to further clarify the extent of its anti-abuse provisions.

Other than the case of **Italy**, several reports (e.g. **HR**, **CZ**, **MT**, **RO**) raise concerns about the suitability of the anti-abuse provisions, which may not be sufficient to prevent successive assignments of the same agency worker to the same user undertaking to circumvent Directive 2008/104/EC.

Lastly, it appears that some countries (e.g. **AT**, **IE**, **LV**, **SI**, **RO**, **UK**) do not have any specific measures to maintain the temporary nature of temporary agency work and lack any limit to prevent successive assignments of the same agency worker to the same user undertaking.

Austria

Summary

Renewed COVID-19 protective measures leading to a lockdown 'light' in November 2020 have led to the social partners to announce that the Short Time Work Phase III regulations (scheme from October 2020 onwards) will be amended.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Short-time work scheme

Following the recent rise in COVID-19 infections, the Minister of Health issued an amendment to the latest COVID-19 protective measures regulation (COVID-19-*Schutzmaßnahmenverordnung*). The amendments do not directly concern employment law but are expected to have a strong impact on the economy and the labour market: from 03 November 2020 until 12 November, a curfew from 20:00 to 6:00 will be introduced. Severe restrictions in the hospitality sector have been introduced until 30 November: people may not enter any type of gastronomic business, although take away and the delivery of food continues to be possible. Hotels will shut down and events of all types (cultural and sport events) will be allowed without spectators.

The amendment was presented in—and passed—Parliament on 01 November 2020 and will enter into force on 03 November, 0:00.

Following these amendments, the social partners have announced an amendment to the recently introduced Phase III of the short-time work scheme. They have agreed on the following amendments:

- Businesses directly affected by the lockdown (regulatory closure) may apply for short-time work in urgent proceedings and need not supply a confirmation from a tax advisor on their economic situation/outlook;
- Retroactive application as of 01 November 2020 is possible until 20 November 2020;
- Minimum workload may retroactively be reduced below 30 per cent for all companies for the duration of the lockdown; 0 per cent work performance in affected businesses is permissible;
- During the lockdown period, the training obligation for apprentices in short-time work will be lifted;
- Employees in businesses directly affected by the lockdown and whose income depends (in part) on tips are entitled to a bonus for November 2020/ for the duration of the lockdown of EUR 100 net per month (paid by the company, remunerated by the Labour Market Service (AMS)).

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The Austrian Act on Temporary Agency Work (*Arbeitskräfteüberlassungsgesetz*, AÜG) does not contain any specific measures to maintain the temporary nature of temporary agency work: Austrian law neither limits the duration of a temporary work agency assignment, nor does it limit or prevent successive assignments of the same temporary agency worker to the same user undertaking.

The Austrian Supreme Court has in the past dealt with long-term temporary agency work. It initially stated (in ruling OGH 9 ObA 113/03p) that nine years of temporary agency work of one temporary agency worker with one user undertaking qualify as "*atypical temporary agency work*" and granted the temporary agency worker severance pay beyond what was provided for in the AÜG. However, the High Court has not used the basis of atypical temporary agency work again, even in cases where the temporary agency work went on continuously for six (OGH ruling 8 ObA 54/11s) and five years (OGH ruling 9 ObA 158/07m and ruling 8 ObA 6/10f), respectively.

According to commentators (see *Schörghofer*, Grenzfälle der Arbeitskräfteüberlassung (2015) 80f), this is due to the fact that the Austrian legislator implicitly accepts long-term temporary agency assignments: if temporary agency workers are transferred for *more than four years* to an employer who offers company pensions to his/her employees, these agency workers are to be included in the company pension scheme. § 10 para 1 a AÜG, introduced in 2012, BGBl. I. 2012/98, reads as follows (unofficial translation by the authors):

> *"If temporary agency workers are transferred for more than four years to a user undertaking that has introduced a benefits scheme for its employees within the meaning of § 2 No. 1 of the Company Pension Act (BPG), Federal Law Gazette No. 282/1990, the user undertaking shall be deemed the employer of the temporary agency workers within the meaning of the BPG for the further duration of the agency work following the expiry of the fourth year from this date onwards, unless an equivalent agreement of the temporary agency work exists for the temporary agency workers."*

As Austrian law does not offer any measures to prevent successive and/or permanent temporary agency work (but instead introduced supportive legislative measures for those working under a long-term temporary agency assignment, see § 10 Abs 1a AÜG above), the Austrian implementation of Directive 2008/104/EC therefore does not seem to be in compliance with the CJEU's judgment in C-681/18, JH v KG.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) Belgium has adopted stricter lockdown measures, including limitation of economic activities. Consequently, telework is compulsory wherever possible.

(II) A new collective agreement introduces relief schemes for temporarily unemployed white collar employees whose contracts have been suspended for economic reasons as a result of the pandemic.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Emergency measures

The Ministerial Decree of 01 November 2020, amending the Ministerial Decree of 28 October 2020 on urgent measures to limit the spread of the coronavirus COVID-19, imposes stricter lockdown measures in Belgium.

According to Johns Hopkins University, Belgium has the highest number of COVID-19 infections per 100 000 inhabitants, i.e. 911 infections per 100 000 inhabitants over the last seven days, making it the hardest hit European Member State. The Czech Republic (797), Luxembourg (686), Slovenia (634) and France (448) are also registering many new cases and are still recording an acceleration in the rise of COVID-19 cases. Government intervention was therefore urgently required, but decision-making in federal Belgium was difficult because the decision had to be taken together with the three regional governments.

Non-essential shops have been closed. Essential shops will be allowed to remain open for the next six weeks, offering only essential goods:

- food shops (including night shops);
- shops for care and hygiene products;
- pet food shops;
- pharmacies;
- newspapers- and bookshops;
- service stations and fuel suppliers;
- telecom shops (except shops that only sell accessories);
- shops for medical devices;
- do-it-yourself shops;
- flower and plant shops;
- wholesalers intended for professionals;
- specialised retail outlets selling clothing materials;
- specialised retailers selling knitting yarns, handicrafts and haberdashery;
- shops for writing- and paper materials.

To avoid unfair competition, certain items cannot be sold in the next six weeks. These include furniture, garden furniture, BBQ appliances, large kitchen utensils, mobile heating appliances, decorative items (excluding candles), multimedia, electrical

equipment, toys, clothing, footwear, telecom accessories, jewellery, leather goods, sports goods, etc. These products may not be offered physically in shops but can be offered for sale online.

The ministerial decision also contains a number of services that are considered essential. For example, car garages and bicycle shops may continue to offer their repair services during the lockdown. Taxis will continue to operate and lawyers, notaries and banks will also be allowed to continue providing their services physically. These activities must be carried out in accordance with hygiene rules, such as keeping a distance.

Education does not fall within the federal competence and measures are taken by the three different Communities separately. For primary and secondary education in the Flemish Community, for instance, the autumn holidays have been extended from 01 November to 15 November 2020. Subsequently, primary education will reopen normally, but higher years of secondary education will partly switch to distance learning. In higher education, there will only be distance learning.

1.1.2 Telework

The new decree asserts that teleworking is compulsory wherever possible and that where it is not possible, face masks and ventilation are compulsory. The borders are not closed. Non-essential shops will be closed. The Ministerial Decree will be in force until 13 December 2020.

Teleworking is compulsory in all companies, associations and services for all staff members, unless this is impossible due to the nature of the function or the continuity of the business, activities or services.

If teleworking cannot be applied, the companies, associations and services shall take specific safety measures, in particular ensuring maximum compliance with the rules on social distancing of 1.5 metres between each person and the wearing of face masks. Employer must provide staff members who are unable to telework with a certificate or any other evidence confirming the need for their presence at the workplace.

These preventive measures are health and safety regulations of a material, technical and/or organisational nature as defined in the 'Generic Guide to prevent the spread of COVID-19 at work', which is available on the website of the Federal Ministry of Labour.

1.1.3 Temporary unemployment

Collective Bargaining Agreement (CBA) No. 148 of 07 October 2020, concluded in the National Labour Council, establishes a scheme for the suspension of the performance of the employment contract and/or a scheme of partial employment for lack of work due to economic causes for white collar employees as a result of the coronavirus crisis .

The coronavirus crisis poses many problems for employers, including a decline in their activities. The National Labour Council therefore concluded CBA No. 148, which enables employers to introduce temporary unemployment for white collar employees more easily and more quickly for economic reasons.

One of the possibilities to avoid dismissal is for employers to make use of the 'general scheme' of temporary unemployment due to economic causes provided for in the Employment Contracts Law of 03 July 1978. The conditions for instituting temporary unemployment for economic reasons differ for blue collar and white collar employees.

An employer who can no longer rely on the force majeure temporary unemployment scheme and who wishes to introduce a scheme of temporary unemployment for

economic reasons for white collar employees can only do so if it is provided for in a sectoral CBA or a CBA at company level.

Concluding a CBA takes time, which may act as a brake to the introduction of temporary unemployment for white collar employees. The social partners concluded CBA No 148 to prevent employers faced with a lack of work as a result of the coronavirus crisis from making redundancies instead of setting up a temporary unemployment scheme,. CBA No. 148 'replaces' the required CBA so employers no longer have to wait until a CBA has been concluded.

CBA No. 148 is of a supplementary nature. Existing CBAs continue to apply. The sectors and companies retain the possibility to modify their own CBA in accordance with the rules laid down in the Employment Contracts Law of 03 July 1978.

CBA No. 148 shall apply from 01 July 2020 to 31 December 2021. The start and end date of temporary unemployment due to economic causes must fall within that period.

An employee who is subject to a scheme of complete suspension of the execution of the employment contract and/or a scheme of partial employment due to lack of work for economic reasons, will receive unemployment benefits if he/she fulfils the relevant conditions to this end. The employer must pay a supplement to the unemployment benefit for each day of unemployment.

For white collar employees, the amount of the said supplement must be specified in the CBA on the basis of which temporary unemployment for economic reasons is applied. The supplement must have a minimum value. If temporary unemployment for economic reasons is applied on the ground of CBA No. 148, the amount of the supplement shall be set at EUR 5.63 per day. In addition, the supplement must be at least equal to the supplement blue collar workers receive from the employer**.**

This Belgian scheme is part of a widespread system of temporary unemployment with unemployment benefits to limit redundancies for economic reasons. This scheme also exists for blue collar workers. It has been in place for blue collar workers for a long time, many of who have sectoral specificities. The requirement for white collar employees was that a collective bargaining agreement had to be negotiated and agreed upon, which hampered recourse to the system. This is important because for a long transitional period, the notice periods to be observed by employers were longer for white collar than for blue collar workers who can be dismissed more easily.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The Italian legislation on temporary agency work does not limit the permissible number of successive assignments of temporary agency workers to the same user undertaking. The legislation also does not make the lawfulness of the use of temporary agency work subject to the prerequisite that it must be justified by

technical, production, organisation or replacement-related reasons. The Italian legislation moreover does not require a statement of reasons for taking recourse to temporary agency work in the contract of the workers and the temporary work agencies.

This breaches Article 5(5) of the Temporary Agency Work Directive 2008/104, which states:

> "(…) 5. *Member States shall take appropriate measures, in accordance with national law and/or practice, with a view to preventing misuse in the application of this Article and, in particular, to preventing successive assignments designed to circumvent the provisions of this Directive. They shall inform the Commission about such measures*".

In Belgium, the Law of 24 July 1987 on temporary employment and temporary agency work limits temporary agency work to six legally permitted cases of temporary employment. Temporary work is only possible in the following cases: to substitute a permanent employee; to provide support during a temporary increase in work; to perform exceptional work; to provide artistic services; employment within the scope of an employment scheme recognised by the Regions for long-term unemployed persons and those entitled to financial social security benefits assistance; and placing a temporary agency worker at the disposal of a user undertaking during the recruitment for a vacant post, with a view to filling it at the end of the temporary work period by permanently employing him/her in that post (Article 7 *juncto* 1 of the Law). The written employment contract for temporary agency work must contain the legal reason for the recourse to temporary agency work (Article 9).

A temporary employee's employment contract with the temporary work agency is, in principle, a fixed-term employment contract. Where the parties conclude successive employment contracts for temporary agency work in accordance with the applicable rules, they shall not be deemed to have been concluded for an indefinite duration (Article 3). Even successive daily contracts for temporary agency work for the same user undertaking are permitted, but only to the extent that flexibility is required for the use of successive daily contracts (Article 8bis). As in Italian legislation, Belgian law does not limit the permitted number of successive assignments of temporary agency workers to the same user undertaking.

Since 2017, however, it has also been possible to conclude an employment contract with a temporary agency worker for an indefinite period (Article 8ter of the Law). The new measure does not imply that a temporary agency work assignment at the same user undertaking can henceforth be executed for an indefinite period of time. Every temporary agency work assignment remains subject to all the rules and regulations on temporary work.

According to the CJEU, provision 5(5) of Directive 2008/104 does not require Member States to limit the number of successive assignments of the same temporary agency worker to the same user undertaking (point 42 of the ruling).

Belgian legislation on temporary agency work does not conflict with the doctrine of the CJEU's judgment on this point, i.e. the judgment does not have any significant implications for that part of Belgian labour law.

According to the CJEU, Directive 2008/104 also requests Member States to ensure that a temporary agency work assignment at the same user undertaking does not become a permanent situation for a temporary agency worker (point 60 of the ruling).

The possibility under Belgian legislation to conclude an employment contract for an indefinite period with a temporary agency worker does not prevent the statutory

requirement that temporary agency work must be temporary work that continues to apply in the case of the same permanent situation.

Article 5(5) of the Directive implies that the Member State must take measures to preserve the temporary nature of temporary agency work (point 63 of the ruling).

As the Belgian Law of 24 July 1987 on temporary agency work always requires that it entails certain forms of temporary work, the annotated judgment of the CJEU does not represent any problem for the Belgian legislator in this respect.

4 Other Relevant Information

Nothing to report.

Bulgaria

Summary

To protect employment, a new decree extends relief measures for employers until 31 December 2020.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Relief measures for employers extended

The Council of Ministers adopted Decree No 278 of 12 October 2020 on Amendments and Supplements to Decree No 151 of 03 July 2020 of the Council of Ministers of 2020 on Determining the Conditions and Procedure of Compensation to Retain the Employment of Employees after the Extraordinary Situation, announced in a Decision by the National Assembly of 13 March 2020 and the Extraordinary Epidemic Situation announced by Decision No. 325 and extended by Decision No. 378 of the Council of Ministers of 2020 (promulgated in State Gazette No. 60 of 07.07.20) (see July 2020 Flash Report).

The Decree, promulgated in State Gazette No. 89 of 16 October 2020, provides compensation for employers during the period from 1 October until 31 December 2020 under the 60/40 scheme (60 per cent of wages and 40 per cent of social security contributions). The type of employers that can apply for funding has been extended.

Pursuant to the amendments, the amount of funds received under the scheme as well as the amount of remuneration employers are obligated to pay to employees for whom funding is received will be determined on the basis of the employees' social security contributory income for August 2020.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

This ruling is of minor relevance for Bulgarian law.

There is no provision in Bulgarian labour legislation that limits the number of successive assignments the same temporary agency worker can carry out at the same user undertaking. Assignments by temporary work agencies are not very widespread in Bulgaria. Under Article 107p, para. 4 of the Labour Code, an employment contract with a temporary work agency can be concluded in only two cases: 1. for the completion of a specific assignment; 2. to substitute a worker who is absent from work. This means that even if the subsequent assignment is with the same user

undertaking, it must be concluded for different work. The employment contract with the temporary work agency may not stipulate any terms prohibiting or preventing the establishment of an employment relationship between the user undertaking and the worker while that worker is performing an assignment at the user undertaking or upon completion of the assignment. The temporary work agency may not charge the worker a fee for appointing him/her to a user undertaking nor may the agency take a fee from the worker upon conclusion of an employment contract or the establishment of an employment relationship with the user undertaking, neither before, during or after the assignment. This is provided for in Article 107p, paras. 5 and 6 of the Labour Code.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

(I) A new ordinance regulating residence permits for EEA citizens has been issued.

(II) The Government has adopted a Regulation on the amount of minimum wage for 2021.

(III) The collective agreement for the construction sector has been extended.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Residence permits for EEA citizens

The Ordinance on entry and residence in the Republic of Croatia of citizens of the member states of the European Economic Area and their family members has been issued by the Minister of Internal Affairs with the consent of the Minister of European Affairs (Official Gazette No. 107/2020). It regulates, among others, the certificate of application for temporary residence of EEA member states for the purpose of work. It abolishes the previous Ordinance on entry and residence in the Republic of Croatia of citizens of the member states of the European Economic Area and their family members of 2012 (last amended in 2018).

1.2.2 Minimum wage

The Government of the Republic of Croatia has adopted the Regulation on the amount of minimum wage for 2021 (Official Gazette No. 119/2020). A gross amount of HRK 4 250.00 (EUR 560.00) has been determine. It has been increased compared to the amount for 2020, which is HRK 4 062.51 (EUR 535.00).

1.2.3 Ordinances in the firefighting sector

Four Ordinances have been issued by the Chief Fire Commander: first, the Ordinance on the programme and manner of taking the professional exam for firefighters with special authorities and responsibilities (Official Gazette No. 110/2020); second, the Ordinance on information to be included in the report of the Firefighting Inspector in the event of the death of a worker; third, the Ordinance on minimum work and protective equipment, clothing and footwear of firefighting inspectors; and fourth, the Ordinance on the content, form and manner of keeping records on inspection supervisions and measures taken by firefighting inspectors of the Croatian Firefighting Community (Official Gazette No. 111/2020).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The Croatian Labour Act of 2014 (as amended in 2017 and 2019) in Article 48 stipulates restrictions to worker assignment periods. According to this provision, the user undertaking may not use the services of the assigned worker for the same work for an uninterrupted period exceeding three years, unless he/she is replacing a temporarily absent worker or where it is permissible by collective agreement on the grounds of another objective reason. An interruption of less than two months is not considered an interruption of the three-year period. However, the security of workers is not sufficiently guaranteed because the restrictions addressed above refer solely to the assignment for the performance of the same work. Therefore, there is no restriction to successive assignments of the same temporary agency worker at the same user undertaking for different work (different tasks/positions). It can thus be concluded that the Labour Act introduces a measure to prevent successive assignment of the same temporary agency worker to the same user undertaking, but it is not formulated in a manner to guarantee that temporary agency worker's protection.

4 Other Relevant Information

4.1 Collective agreement for the construction sector

The Amendment to the Collective Agreement for the Construction Sector has been extended by ministerial decree (Official Gazette No. 115/2020) to all employers and employees in Croatia's construction sector.

4.2 Average salary in Croatia

The average gross and net salary in Croatia in the period January to August 2020 has been published. The average gross salary amounted to HRK 9 181.00 (EUR 1 208.00) and the average net salary amounted to HRK 6 724.00 (EUR 885.00).

Cyprus

Summary

Nothing to report.

1 National legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The case concerned Article 5(5) of Directive 2008/104/EC on temporary agency work, which requires Member States to take appropriate measures with a view to preventing successive assignments designed to circumvent the Directive's provisions.

This case is of some relevance to Cypriot law. The Cypriot law purporting to transpose the Directive on Temporary Work Agencies is *Ο Περί της Εργασίας μέσω Επιχείρησης Προσωρινής Απασχόλησης Νόμος του* 2012 (174(I)/2012), see here. The wording of 5.1 of the Directive is copied verbatim in 18(1) of the Cypriot TWA law.

The Greek text reads as follows:

> *"18.-(1) Οι βασικοί όροι εργασίας και απασχόλησης των προσωρινά απασχολούμενων, κατά την περίοδο της παραχώρησής τους σε έμμεσο εργοδότη, είναι τουλάχιστον αυτοί που θα εφαρμόζονταν αν οι εργοδοτούμενοι είχαν προσληφθεί απευθείας από τον εργοδότη αυτόν για να καταλάβουν την ίδια θέση."*

There is no Cypriot case law on the subject. There are no derogations in the TWA law. The Cypriot TWA law to a large extent replicates the wording of the TWAD introduces the following conditions for granting a permit to operate a temporary work agency. The Cypriot TWA law provides for observance of the principle of equal treatment; access of temporary workers to information about vacancies in the undertaking of their indirect employment; representation of temporary workers, as foreseen in collective agreements; and for a maximum of four months for an assignment to a user undertaking (Art. 15(1) of the TAW law).

The user undertaking and the temporary work agency are jointly liable for the payment of emoluments or earnings to the temporary agency worker, including social insurance contributions (Art. 16(1) of the TAW law). The user undertaking is responsible for all other (legal, conventional, administrative) rules on employment conditions and protection (Art. 18(2) of the TAW law). The terms of the employment contract or of the leasing contract that prevent the user undertaking from hiring the temporary agency worker once the employment relationship with the temporary work agency is terminated are considered void.

The temporary work agency has all the rights and obligations of an employer (Art. 13 of the TAW law). The TAW law stipulates that the principle of equal treatment applies. The basic working and employment conditions of temporary agency workers shall, for the duration of their assignment at the user undertaking, be at least those that would apply if they had been recruited directly by that undertaking to occupy the same job, as per Article 5 of the TAW Directive (Art. 18 of the TAW law). Temporary agency workers also enjoy the same level of protection in terms of occupational health and safety conditions (Art. 18(2) of the TAW law). Temporary agency workers are entitled to equal treatment like workers hired directly by the employer (Article 18(1) of the TAW law). The relevant section of the law in Greek reads as follows: *"18.-(1) Οι βασικοί όροι εργασίας και απασχόλησης των προσωρινά απασχολούμενων, κατά την περίοδο της παραχώρησής τους σε έμμεσο εργοδότη, είναι τουλάχιστον αυτοί που θα εφαρμόζονταν αν οι εργοδοτούμενοι είχαν προσληφθεί απευθείας από τον εργοδότη αυτόν για να καταλάβουν την ίδια θέση."*), including health and safety standards (as per Art. 18(2) of the TAW law) the rights derived from statutes, subsidiary legislation and administrative provisions, collective agreements and practices, see Art. 18(3) of the TAW law. The relevant section of the law in Greek reads as follows:

> " (3) *Οι κανόνες που ισχύουν στην επιχείρηση του έμμεσου εργοδότη, όπως προνοούνται από τη νομοθεσία, τις κανονιστικές και διοικητικές διατάξεις, τις τυχόν εφαρμοστέες συλλογικές συμβάσεις και πρακτική πρέπει να τηρούνται με τους ίδιους όρους και ως προς τους προσωρινά απασχολούμενους και κυρίως σε σχέση με: (α) την προστασία των εγκύων και γαλουχουσών γυναικών και την προστασία των παιδιών και των νέων·και β) την ίση μεταχείριση ανδρών και γυναικών και κάθε δράση για την καταπολέμηση κάθε διάκρισης λόγω φύλου, φυλής ή εθνοτικής καταγωγής, θρησκείας ή πεποιθήσεων, ειδικών αναγκών ή αναπηρίας, ηλικίας ή γενετήσιου προσανατολισμού*."

Moreover, the TAW law stipulates that the TWA is required to refrain from any discrimination in accordance with the Law on Discrimination in Employment (Law 58(I)/2004, *Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος του* 2004. This law transposes EU Directive 43/2000 on employment and 78/2000 on employment matters), the law on equal pay between men and women (Law 205(I)/2002, *περί της Ίσης Μεταχείρισης Ανδρών και Γυναικών στην Απασχόληση και Επαγγελματική Εκπαίδευση*. This law transposes the EU gender equality directives 76/207/EEC and 97/80/EC) and disability law (Law 207/2000 as amended, *Περί των Ατόμων με Αναπηρίες Νόμος*).

The measures preventing successive assignments designed to circumvent the Directive's provisions appear to be adequate.

4 Other Relevant Information

4.1 Infringement procedure on professional qualification

The Republic of Cyprus was addressed by the Commission regarding its national rules implementing EU rules on the recognition of professional qualifications in EU countries (Directive 2005/36/EC as amended by Directive 2013/55/EU as well as Articles 45 and 49 TFEU). According to the Commission press release, an additional letter of formal notice was sent to Cyprus, in which the Commission raises the non-conformity of certain national provisions of national legislation with Directive 2005/36/EC and with Article 49 TFEU with regard to engineering professions, and in particular, architects. The Commission may decide to send a reasoned opinion. The matter has received some public media attention in the national media.

Czech Republic

Summary

A state of emergency has been declared for the country. Several COVID-19 related measures have been re-adopted or amended.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 State of emergency

Resolution of the Government No. 957 of 30 September 2020 has been adopted and published as Resolution No. 391/2020 Coll. and entered into effect on 05 October 2020.

With effect from 05 October 2020 until 03 November 2020, the government has declared a state of emergency in connection with the COVID-19 crisis – under the state of emergency, the government is authorised to issue extraordinary measures (some of these measures are described below).

On 30 October 2020, the Chamber of Deputies of the Parliament of the Czech Republic approved the extension of the state of emergency until 20 November 2020.

A further extension of the state of emergency is subject to approval by the Chamber of Deputies of the Parliament of the Czech Republic.

1.1.2 Travel ban

The protective measure of the Ministry of Health No. MZDR 20599/2020-32/MIN/KAN of 02 October 2020 has been adopted with effect as of 05 October 2020.

The text of the extraordinary measure is available here. The list of low-risk countries is available here.

The government has retained and amended the travel ban. With effect as of 05 October 2020, the restrictions regarding the entry of persons into the territory of the Czech Republic have been re-adopted (see also September 2020 Flash Report) with certain minor amendments.

1.1.3 Restrictions on freedom of movement

The restrictions on freedom of movement have been readopted and amended in response to the deterioration of the epidemiological situation in the Czech Republic.

Resolution of the Government No. 1102 of 26 October 2020 has been adopted and published as Resolution No. 431/2020 Coll. and entered into effect on 05 October 2020.

With effect from 28 October 2020 (0:00) until 03 November 2020 (23:59), the free movement of persons in the territory of the Czech Republic is prohibited – with certain exceptions.

The prohibition has two regimes – each with its own list of exceptions – as follows:

- prohibition of free movement of persons between 5:00 and 20:59; and

- prohibition of free movement of persons between 21:00 and 4:59 (this regime is more strict).

Notable exceptions from this prohibition include travel for the purposes of work or business, and for the purpose of satisfying one's basic needs.

All persons' movements in public places are restricted for a specific period of time and the must to remain in their place of residence, restrict contacts with other persons, and to restrict the number of persons in public places to no more than two persons (with exceptions).

Employers are now mandated to employ remote work – employees should work from their place of residence if possible with regard to their performance of work, as well as with regard to the employer's operational needs.

Employers are further recommended to support the taking of leave and the taking of paid leave or similar instruments, as well as to restrict non-essential activities to a minimum.

The right to assembly is restricted – assemblies may not exceed 100 persons and individual groups may not exceed 20 persons, whilst distances of at least 2 metres must be kept between persons.

1.1.4 Obligation to wear respiratory protective equipment

The obligation to wear respiratory protective equipment has been re-adopted and extended due to the deterioration of the epidemiological situation in the Czech Republic.

Extraordinary measure of the Ministry of Health No. MZDR 15757/2020-37/MIN/KAN of 19 October 2020 has been adopted with effect as of 21 October 2020.

With effect as of 21 October 2020 until further notice, the Ministry of Health has re-issued an order by which movement and stay is banned for all people not wearing protective face equipment (such as respirators, drapes, face masks, headscarves, etc.) in the following spaces:

- all indoor spaces of buildings (outside of place of residence);
- inside public transportation;
- public transport stops and stations;
- inside motor vehicles (unless only members of one household are in the vehicle);
- all other publicly accessible places in the built-up area of the municipality, where at least 2 persons less than 2 meters apart, are present at the same place and at the same time, unless they are exclusively household members.

The extraordinary measure continues to list a number of exceptions form the above rule – e.g. employees working statically in one area (if maintaining a distance of 2 metres from other persons).

1.1.5 Restrictions to business operations

The government has reintroduced and amended specific rules for businesses in the face of the deteriorating COVID-19 epidemiological situation.

Resolution of the Government No. 1103 of 26 October 2020 has been adopted and published as Resolution No. 432/2020 Coll. and entered into effect on 28 October 2020.

With effect from 28 October 2020 until 03 November 2020, the operation of businesses, as well as other establishments has been restricted or banned.

1.1.6 Occupational medical services

Certain aspects of the provision of occupational medical services have been modified in response to the epidemiological developments.

Resolution of the Government No. 1049 of 16 October 2020 has been adopted and published as Resolution No. 418/2020 Coll. and entered into effect on 19 October 2020.

Under normal circumstances, employee must undertake an entry medical examination before commencing work. However, in case of employees whose employment began or will begin between 16 October 2020 and the end of the state of emergency (i.e. 20 November 2020, unless the state of emergency is extended), and who have not yet undertaken the entry medical examination, the certificate of medical fitness may be replaced by an affidavit – only with regard to work in the two lowest risk groups. Such an affidavit will be valid for 90 days after the end of the state of emergency.

Employees performing epidemiologically significant activities need to have been issued a so-called health card – this health card may also be replaced by an affidavit, if the employee's employment began or will begin between 16 October 2020 and the end of the state of emergency.

The validity of medical certificates issued in connection with entry, periodical and extraordinary medical examinations will be extended for 90 additional days following the day after the end of the state of emergency (if the validity of such certificates end during the state of emergency) – with certain exceptions.

Providers of occupational medical services must issue new medical certificates within the above-stated time periods upon the employer's request.

1.1.7 State financial aid for employers

The government has extended and amended the 'antivirus' programme to ease the situation of employers in connection with the COVID-19 pandemic and the related measures adopted by the authorities.

Resolution of the Government No. 1039 of 14 October 2020 and Resolution of the Government No. 1098 of 26 October 2020 have been adopted.

We have previously reported about the 'antivirus' programme in the March, April, May, June and August 2020 Flash Reports.

Under the 'antivirus' programme, employers who provide salary compensation to employees to whom they cannot allocate work due to various obstacles to work (i.e. where employees are not working but continue to remain on the employer's payroll) may be eligible for state support (as a full or partial reimbursement of the relevant payroll costs). The reason behind the programme's adoption is the prevention and limitation of dismissals.

Following the recent changes, the programme now consists of the following:

Regime A

Under Regime A, employers can apply for state support to partially be reimbursed for providing salary compensation to employees for the duration of their quarantine (ordered by a physician or public health authority) in connection with the COVID-19 disease (where the employer provides the employee with salary compensation in the

amount of 60 per cent of his/her reduced average earnings for the first 14 days of quarantine).

The state support provided under Regime A covers 80 per cent of salary compensation paid by the employer to employees who are quarantined (including health and social security contributions). The upper limit per month per employee is CZK 39 000 (i.e. approx. EUR 1 427).

Regime A Plus

Under Regime A Plus, employers can apply for state support to be reimbursed for providing salary compensation to employees if the employer's operations close or are significantly restricted by official measures in connection with the COVID-19 crisis (where the employer provides employees with salary compensation in the amount of 100 per cent of their average earnings).

The state support provided under Regime A Plus covers 100 per cent of the salary compensation paid by the employer to employees (including health and social security contributions). The upper limit per month per employee is CZK 50 000 (i.e. approx. EUR 1 831).

Regime B

Under Regime B, employers can apply for state support to partially be reimbursed for providing salary compensation to employees for the duration of the following obstacles to work:

- absence of a significant number of employees due to obstacles to work on their part (where the employer provides employees with 100 per cent of their average earnings);
- decrease in availability of inputs (where the employer provides employees with 80 per cent of their average earnings);
- decrease in demand for the employer's products and services (where the employer provides employees with 60 per cent of their average earnings).

The state support provided under Regime B covers 60 per cent of salary compensation paid by the employer to employees due to obstacles to work (including health and social security contributions). The upper limit for such support per month for one employee is CZK 29 000 (i.e. approximately EUR 1 061).

All of the above are approved until 31 December 2020.

1.1.8 Carers' allowance

The scheme for the provision of carers' allowance was extended again to alleviate the adverse effects of the COVID-19 crisis and of the measures adopted by the government.

The Draft Act on the regulation of the provision of a carers' allowance in connection with the extraordinary measures against the epidemic and on the amendment of Act No. 187/2006 Sb. on Sickness Insurance, as amended, is currently in the legislative process – it was signed by the President on 30 October 2020 and will be published in the course of the following week. It will enter into effect on the day following its publication in the Collection of Laws.

If an employee does not have care for his or her child or other dependent person and has to stay home with them, this situation constitutes an obstacle to work on the part of the employee – employees are not entitled to any compensation of salary by the employer in such cases. They may, however, be entitled to so-called carers' allowance.

Under normal circumstances, carers' allowance is provided by the state to employees who cannot perform work due to having to take care of a child under the age of 10 years as a result of:

- schools and other similar facilities being closed based on a decision of competent authority;
- the child is quarantined;
- a person that previously took care of the child is incapable of taking care due to injury, illness, etc.

The Draft Act extends the entitlement to carers' allowance to employees who cannot work because they have to take care of:

- a dependent child with a level of dependency of at least I (light dependency) if school has been closed as a result of extraordinary measures;
- a dependent that is above the age of 10 years who is placed in a facility that provides special care to persons with a level of dependency of at least I (light dependency), if that facility is closed due to extraordinary measures.

Extraordinary measures include the following:

- quarantine ordered for the relevant person in connection with the COVID-19 disease;
- the presence of persons is banned in certain facilities by the authorities in connection with the COVID-19 disease;
- relevant facilities are closed in connection with the COVID-19 disease.

The condition of sharing a common household must be fulfilled – the carer and the person receiving care must live together and meet the costs of their needs together. Fulfilment of this condition is not required for parents and their children.

Two carers can rotate and make use of the carers' allowance in accordance with their needs (rotation cannot, however, occur within the same calendar day).

Carers' allowance will be provided for the entire period the extraordinary measures adopted by the government remain in effect, however, until 30 June 2020 at the latest.

The carers' allowance is to be provided in the amount of 70 per cent of the so-called reduced daily basis (calculated based on the employee's salary). However, the minimum amount to be provided per calendar day is CZK 400 (i.e. approx. EUR 15).

Employees with zero-hour contracts (so-called 'DPP' an 'DPČ') are entitled to the carers' allowance as well if they participated in the sickness insurance scheme for the 3 months prior to the rise of the need for care.

Entitlement to carers' allowance terminates upon termination of employment.

Employees are not entitled to the carers' allowance for the duration of the summer holidays and days of rest.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The CJEU stated that

> *"the first sentence of Article 5(5) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work must be interpreted as not precluding national legislation which does not limit the number of successive assignments that the same temporary agency worker may fulfil at the same user undertaking and does not make the lawfulness of the use of temporary agency work subject to the prerequisite that it must be justified by technical, production, organisation or replacement-related reasons. On the other hand, that provision must be interpreted as precluding a Member State from taking no measures at all to preserve the temporary nature of temporary agency work and as precluding national legislation which does not lay down any measure to prevent successive assignments of the same temporary agency worker to the same user undertaking in order to circumvent the provisions of Directive 2008/104 as a whole."*

The current regulatory framework of temporary agency work in the Czech Republic seems to not sufficiently secure the fulfilment of the requirements above.

According to Section 39(6) of the Labour Code, the restrictions on repeated consecutive employment contracts do not apply with regard to temporary agency work.

According to Section 309(6) of the Labour Code, a temporary work agency may not temporarily assign the same employee for the performance of work with the same user for a term exceeding 12 consecutive months. This limitation shall not apply in those cases where this is requested from the employment agency by an employee of the employment agency or in respect of the performance of work for a period of replacing a female employee of the user who is on maternity leave or parental leave, or for a male employee of the user who is on parental leave. Therefore, if the temporarily assigned employee agrees to it, the duration of the assignment with the same user undertaking is virtually unlimited – we do not believe that this is in accordance with Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

It is true that–according to Section 279(3) of the Labour Code—the user undertaking is required to inform temporarily assigned agency employees of available jobs, however, such a measure seems insufficient with regard to the above – i.e. with regard to the fact that the number and duration of assignments with one user is not limited.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

(I) Due to the resurgence of COVID-19, the Danish government has adopted a number of measures to limit the COVID-19 infection rate in general and, in particular, for cross-border workers who work in Denmark.

(II) There are ongoing negotiations on establishing a legal basis for an employer to require employees to undergo COVID-19 testing, including access to their test results.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Lockdown light

Denmark saw a resurgence of COVID-19 cases at the beginning of August, and the infection rate has since increased. Consequently, new restrictions were introduced, and the further opening of society has been postponed. As of 26 October, the prohibition of large gatherings was changed from 50 to 10 people (exceptions apply to education, cultural activities, etc.). This restriction is set to preliminarily last for four weeks.

Restaurants, bars and cafés must close at 10 p.m., and the sale of alcohol after 10 p.m. is prohibited everywhere. As of 29 October, the mandatory use of face masks has been expanded. Face masks must now be used in all public transport, and all public indoor areas, such as supermarkets, shops, shopping malls, museums, gyms, education facilities, hospitals, dentists, etc., as well as when standing up and/or walking around in restaurants, bars or cafes. Both public and private employers are still encouraged to let employees work from home to the extent possible, and to cancel all social events. These new measures will preliminarily run until 02 January 2021.

Furthermore, cross-border workers must present a negative COVID-19 test before entering Denmark.

In connection with the ongoing expansion of restrictions, the Danish Parliament has (by majority vote) agreed to introduce new support packages. The new agreement covers a broad number of measures, including (continued) compensation to companies and self-employed workers who are affected by the government's restrictions. The agreement also entails an extension of workers' rights to daily sick leave and unemployment benefits.

1.1.2 Cross-border workers

The Danish government has adopted a number of measures to limit the spread of COVID-19 in general and in particular for cross-border workers working in Denmark. There has been some incidences of severe virus outbreaks in work places, where employees live close together, which may be the situation for cross-border workers who reside in Denmark.

As of 25 October 2020, people who travel to Denmark from a 'high risk country' with a legitimate purpose, including workers, must present a negative COVID-19 when crossing the border. The COVID-19 test may not be more than 72 hours old. Exceptions apply for commuters, who pass the border on a daily basis, as well as

freight transporters, in order to ensure supply. The government intends to propose legislation enabling authorities to demand subsequent testing 2-4 days after entry into Denmark. The press release on this issue is available here.

Furthermore, the Danish Working Environment Authority (Arbejdstilsynet) is carrying out intensive COVID-19 testing in work places with cross-border workers. The effort focusses e.g. on building and construction sites, agriculture and forestry as well as slaughter houses and restaurants, which were not subject to inspections in the previous weeks. Moreover, the inspections are expected to include the living conditions of workers who have been posted to Denmark to work. If necessary, the government intends to propose legislation to provide a legal basis for conducting inspections of their living quarters. Here the guidelines of the Danish Health Authority on preventing the spread of COVID-19 in residences for cross-border workers is available.

The government measure represents one of the numerous actions taken to minimise the risk of infection with COVID-19 in Denmark. The measure does not have any EU law aspects.

1.1.3 Negotiation on employer's right to demand employees to share COVID-19-related information

Under existing Danish law, an employer cannot request an employee to be tested for COVID-19, and is furthermore not entitled to demand information about any COVID-19 test result. There are, however, ongoing tri-partite negotiations to establish a legal basis for such employer rights. The negotiations are taking place between the government, the Danish Confederation of Trade Unions (FH) and the Danish Employers' Confederation (DA). It is expected that the negotiations will be completed soon, after which a legislative proposal is expected to be put forward by use of an emergency legislative procedure. The Government Fact Sheet of 24 October 2020 is available here.

The expected legislation represents one of the numerous measures to minimise the risk of infection with COVID-19 in Denmark. Whether such legislation will have any EU law-related effects is unclear at the moment until the final drafting of the legislative proposal is final.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The ruling may have implications for Danish law. The CJEU ruling clarifies that Article 5(5) of Directive 2008/104 precludes national legislation, which does not lay down *any measure* to prevent circumvention of the Directive by use of successive assignments to the same user company. Danish legislation does contain such a measure, i.e. the requirement for a legitimate reason for using temporary agency work, and the legal

position is not entirely clear. Thus, should it be relevant to conduct an EU-conform interpretation of Danish legislation, the recent CJEU ruling establishes an EU *acquis* that the Danish judiciary must adhere to with an EU-conform interpretation.

Contrary to Italian law, Danish Act No. 595 on Temporary Agency Work No. 595 of 12 June 2013 ('The Act'), which implements Directive 2008/104, *contains a measure* to prevent circumvention. Article 3(4) states: "*A temporary work agency may not successively assign a temporary agency worker without a legitimate reason*."

The wording suggests that a test of 'legitimate reasons' must be applied for every successive assignment to the same user company. Preparatory works to the Act state that the purpose of the provision is to prevent circumvention of the Directive. The preparatory works provide a non-exhaustive list of various examples of illegitimate use of successive assignments. The safeguarding of the temporary agency worker's seniority rights are emphasized in the preparatory works. The preparatory works might, however, also suggest that the existence of a legitimate reason is not required for each successive assignment.

Whether the test of the existence of 'legitimate reasons' for successive assignments of a temporary agency worker to the same user undertaking is to be conducted for each assignment has not yet been the subject of case law. The scope of Article 3(4) is thus not entirely clear on this issue.

The CJEU's ruling in C-681/18 establishes the duty for Member States to establish *some measure* to prevent circumvention of the Directive by use of successive assignments. The Danish courts will—in case of conflict with the obligations according to Directive 2008/104—be able to apply an EU-conform interpretation of the provision in the Act, as the wording contains a (general) measure to prevent circumvention of the Directive by implementing successive assignments to the same user company. Thus, the recent CJEU ruling is of relevance for an EU-conform interpretation of Danish legislation.

According to Article 3(5) of the Act, the principle of equality and/or the requirement of a legitimate reason for successive assignments may be derogated from by collective agreement. The conditions are that the collective agreement must have a nationwide scope, that it is entered into by the most representative labour market parties, and it must respect the general protection of temporary agency workers. The provision implements Article 5(3) of Directive 2008/104. In other words, collective agreements may not lay down the same requirement of 'legitimate reasons' for the use of successive assignments to the same undertaking that are already enshrined in the Act.

Notwithstanding the precise wording of collective agreements, case law of industrial arbitration suggests that, *in general*, whether a temporary agency worker's right to basic working and employment conditions is *circumvented* by the use of successive assignments to the same user undertaking will be tested on a case-by-case basis, cf. Industrial Arbitration rulings FV of 13 July 2015 and FV of 11 May 2016.

In FV of 13 July 2015, the arbitrator explicitly referred to Article 5(5) of the Directive. The arbitrator stated that the purpose of successive assignments to the same user undertaking cannot be the circumvention of the protection of a temporary agency worker in accordance with the collective agreement. Based on the specific circumstances, the arbitrator concluded that the successive assignments did not reflect the reality of the situation, and that the conclusion of contracts by the parties resulted in the circumvention of the employee's seniority-based rights, *in concreto*, the right to sick leave pay and the right to a notice period in case of termination. The Industrial Arbitration ruling of 13 July 2015 is available here.

In FV of 11 May 2016, the arbitrator concluded that the successive assignments of a temporary agency worker were connected to the user company's operational needs. There was nothing to suggest that the assignments did not reflect the reality of the

situation, and there was thus no circumvention of any rights. The Industrial Arbitration ruling of 11 May 2016 is available here.

Industrial dispute resolution case law is in line with the general labour law principle according to which situations that represent a (clear) misuse of a given set of rules are sanctioned.

Furthermore, legal proceedings examine whether a collective agreement adequately implements Directive 2008/104, cf. Danish Supreme Court ruling of 17 December 2019 (U 2020.845 H).

This is also the case of EU law directives in general, cf. Industrial arbitration ruling of 16 July 2020 (see also August 2020 Flash Report).

Should provisions in a collective bargaining agreement not live up to the derogation possibility laid down in the Act, an employee would be able to rely directly on the provisions in the Act, cf. the preparatory works to the Act.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

The Ministry of Social Affairs has prepared amendments to clarify the regulations on the extension of the applicability of collective agreements.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The case concerned temporary agency workers and the possibility of concluding successive fixed-term employment contracts with them. The CJEU stated that national legislation is not in line with European Union law if the Member State has not taken any necessary steps to avoid circumvention of the law, i.e. when fixed-term contracts are concluded and renewed to circumvent the necessary protection of temporary agency workers.

Fixed-term contracts in Estonia are regulated in the ECA (Employment Contracts Act, available here) §-s 9 and 10. According to the ECA, the conclusion of a fixed-term employment contract must be justified by the temporary nature of the work to be performed. The general rule is that there is no possibility to conclude a fixed-term contract more than twice or to extend the term of the contract more than once within five years for the same tasks. Once those options have been used, only an employment contract of indefinite duration can be concluded. In case of temporary agency work, the number of fixed-term employment contracts is calculated not by the employer, but by the user undertaking. This means that the number of fixed-term contracts concluded by the user undertaking is decisive.

Considering the regulation in the ECA, Estonia has taken steps to prevent any misuse of fixed-term employment contracts. The regulation of the ECA is thus in line with the requirements of the Directive on Temporary Agency Work and with the statements of the CJEU.

4 Other Relevant Information

4.1 Widening the application of collective agreements

The Estonian Supreme Court declared the rules on widening the application of collective agreements to be unconditional. The Collective Agreements Act did not include any criteria for representativeness when widening the application of collective agreements. The Ministry of Social Affairs has prepared the draft of law to amend the Collective Agreements Act.

According the proposed amendments, the right to widen the application of a collective agreement can be guaranteed for trade unions and employers' associations that represent at least 20 per cent of the employees in the given economic sector. Before signing the agreement, it is necessary to inform all employees and employers that will be affected by the planned widening of applicability of the collective agreement.

For more information, see here.

4.2 Increasing compensation for illegal termination of employment for certain employees

The Ministry of Social Affairs has proposed amendments to the ECA to increase compensation to be paid if it is ascertained that the termination of the employment contract with a worker entitled to pregnancy or maternity leave or with an employee representative was illegal. The benefit will increase from 6 months to 12 months' of salary.

Finland

Summary

(I) The temporary extension to foreign workers' right to work expired at the end of October 2020.

(II) The amended Posted Workers Directive has been transposed, and the amendments to the Posted Workers Act will enter into force at the beginning of December 2020.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Temporary extension of third-country nationals' right to work has expired

Due to the COVID-19 pandemic, legislative amendments were enacted in the spring to allow third-country nationals residing in Finland to be granted a residence permit or a permit based on the Seasonal Workers Act to change employers and the field of employment without applying for an extended residence permit. The amendments enabled foreigners to work in posts that were crucial to the security of supply and to the functioning of the labour market. The temporary provisions remained in force until 31 October 2020.

Because the situation was different at the time, there was no need to extend the period when the legislative amendments were in force. However, the situation will continue to be monitored.

1.2 Other legislative developments

1.2.1 Posted Workers Directive transposed

The amendments to the Posted Workers Act that implement the amended Posted Workers Directive will enter into force on 01 December 2020. However, a 12-month transition period will apply to agreements on postings that were concluded before the entry into force of the amendments.

The transition period of 12 months gives companies an opportunity to make adjustments to their agreements so they can take the amendments in the Posted Workers Act into account.

2 Court Rulings

2.1 Period of limitation

Supreme Court, KKO 2020:76, 05 October 2020

The Supreme Court judgment concerned a wage claim. The Supreme Court held that the demand for pay had expired because the claim had not been initiated within two years from the end of the employment relationship.

Supreme Court, KKO 2020:77, 07 October 2020

The Supreme Court judgment concerned an extraordinary appeal in which the letter of the claimant asserted that the Labour Court's judgment was based on an erroneous application of the law because its interpretation differed from the judgment of the Supreme Court, KKO 2018:10, 02 December 2018 concerning the period of limitation and the period for court proceedings as regards receivable claims related to working hours. The Supreme Court held that the claimant did not present grounds that demonstrated that the Labour Court's judgment should have been annulled.

2.2 Social benefit

Labour Court, TT 2020:84, 06 October 2020

A company had announced its plan to weaken the practice related to anniversary employment gifts when the collective agreement was in force. The Court held that the practice was a social benefit included in the collective agreement, which the employer could not reduce without approval from the employee's side. The collective agreement had been knowingly breached.

2.3 Additional payments

Labour Court, KTT 2020:85, 16 October 2020

The case dealt with the question whether certain persons were entitled to receive a higher additional payment on the basis of a civil servant collective agreement. The Court held that there was no evidence of the purpose of the parties to the agreement, so the case was to be resolved on the basis of the wording of the agreement. The defendant had not breached the collective agreement in question when it did not pay additional fees to the employees.

2.4 Pay system

Labour Court, TT 2020:87, 19 October 2020

The case dealt with the determination of pay and the question whether a job title alone determined the pay grade or whether the experience and level of skills of the employee could be taken into account to either raise or lower the pay grade. The Court held that the trade union had an established practice according to which the pay grade was determined only on the basis of the job title, so that certain job titles corresponded to certain pay grades and no deviations were made downwards.

2.5 Sick pay leave

Labour Court, TT 2020:89, 22 October 2020

An employer had refused to pay sick leave pay for the employee's burn out diagnosis stated in the medical certificate (doctor's certificate) and the employer had requested additional verification from the employee of the incapability for work. The Court held that the employer should have more precisely explained what kind of additional settlement was required. The Court held that the medical certificate showed in a sufficient manner the incapacity of the employee for work and the employee thus had a right to sick leave pay from the start of the period of incapacity for work specified in the medical certificate.

3 Implications of CJEU rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The constellation in the judgment, which relates to the interpretation of Directive 2008/104/EC, deviates from the Finnish regulatory framework of temporary agency work. According to the Employment Contracts Act, the temporary agency worker concludes an employment contract with the temporary work agency and is in an employment relationship with that agency instead of the user undertaking. Moreover, the use of fixed-term contracts must follow the provisions of the Employment Contracts Act according to which an employment contract is valid indefinitely, unless it has, for a justified reason, been made for a specific fixed term. Moreover, it is prohibited to use consecutive fixed-term contracts when the amount or total duration of the fixed term contracts or the totality of such contracts indicates a permanent need for labour.

4 Other relevant information

4.1 Collective bargaining

On 01 October 2020, the Finnish Forest Industries Federation (FFIF) decided on a working life reform, which is part of the industry's updated strategy. The Federation will discontinue collective bargaining in the Finnish labour market, which means a shift of bargaining to the local level. In the future, forest industry companies themselves can agree with their employees on the terms of employment.

France

Summary

(I) The French President has announced an increase in the duration of paternity leave from 11 to 28 days.

(II) The Court of Cassation ruled on a transfer of an employment agreement in accordance with Council Directive 2001/23/EC of 12 March 2001.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Paternity Leave

The French President announced on 28 September 2020 that the duration of paternity leave will be increased from 11 days to 28 days. Beyond this commitment, Parliament is expected to legislate on this subject by the end of the year.

This measure echoes European Parliament and Council Directive No. 2019/1158 of 20 June 2019 on work-life balance for parents and carers.

This increase in paternity leave would be a step forward in reconciling the private and professional life of an employee who becomes a father. At present, the first paragraph of Article L. 1225-35 of the French Labour Code states that

> "*after the birth of the child and within a period determined by decree, the employed father and, where applicable, the employed spouse of the mother or the employed person linked to her by a civil solidarity pact or living in a marital relationship with her, is entitled to paternity and childcare leave of eleven consecutive days or eighteen consecutive days in the case of multiple births*".

The same line of reasoning will be used for the increase in the duration of paternity leave. One difference, however, will be that only seven days will be mandatory for the new father. This increase in the duration of paternity leave is in line with European Parliament and Council Directive No. 2019/1158 as it encourages employed fathers to spend more time with their child after birth and improves equality between men and women.

2 Court Rulings

2.1 Transfer of an employment agreement

Labour Division of the Court of Cassation, No. 18-24.881, 30 September 2020

In the present case, an employee was notified of the transfer of her employment contract for 50 per cent of her working time in application of the provisions of Article L. 1224-1 of the Labour Code. This transfer of her employment contract was the result of a partial transfer of the transferor's activity.

The employee later notified her employer of her resignation and brought an action before the French Employment Tribunal (Conseil de prud'hommes).

This case involves the application of Council Directive 2001/23/EC of 12 March 2001 and in particular, Article 3 on the safeguarding of employees' rights in the event of a transfer.

The Court of Appeal held that the employee's legal cognisance of the termination of her employment agreement was based on sufficiently serious grounds to make it impossible to continue the employment relationship and declared that the termination of the employment agreement was to the employer's detriment by giving it the effects of a dismissal without real and serious cause.

The Court of Cassation rejected this reasoning by reading Article L. 1224-1 of the Labour Code in the light of Council Directive 2001/23/EC of 12 March 2001 and the interpretation made by the Court of Justice of the European Union in its ISS Facility Services NV judgment of 26 March 2020 (case C-344/18).

It should be recalled that the Court of Cassation had previously ruled, in particular in the case of a partial transfer of an undertaking, that pursuant to Article L. 1224-1 of the Labour Code, where an employee was partly employed within that entity, his/her contract of employment had to be transferred to the transferee for the part of the activity that he/she carried out (Labour Division of the Court of Cassation, 22 June 1993, No. 90-44.705).

However, to limit the hypotheses of a division of the employment contract, it also ruled that the employment contract must be transferred to the company that has taken over the activity when he/she performs the essential part of his/her duties in the sector of activity taken over by this new company (Labour Division of the Court of Cassation, 30 March 2010, No. 08-42.065).

This time, the Court of Cassation overturned and annulled part of the Court of Appeal's judgment and stated that

> *"it thus follows from Article L. 1224-1 of the Labour Code, interpreted in the light of Council Directive 2001/23/EC of 12 March 2001, that, when the employee is assigned both to the sector taken over, constituting an autonomous economic entity which retains its identity and whose activity is continued or taken over, and to a sector of activity not taken over, the employee's employment contract is transferred for the part of the activity that he or she devotes to the sector transferred, unless the splitting of the employment contract, in proportion to the functions performed by the employee, is impossible, leads to a deterioration in the employee's working conditions or affects the safeguarding of his or her rights guaranteed by the Directive."*

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire).

In the present case, a request for a preliminary ruling was made by a District Court in Italy. The request's subject was the interpretation of Article 5(5) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ 2008 L 327, p. 9).

French law regulates the use of temporary work. Articles L. 1251-5 to L. 1251-63 of the French Labour Code regulate the conditions of use of temporary agency work. Article L. 1251-5 of the Labour Code stipulates an absolute ban on the use of temporary work when its purpose or effect is to fill, on a permanent basis, a job related to the normal and permanent activity of the user undertaking.

Nevertheless, the Labour Code allows for the conclusion of an indefinite temporary employment agreement with a temporary work agency to protection the situation of temporary workers. This contract is governed by Articles L. 1251-58-1 to L. 1251-58-8 of the Labour Code. It provides for different periods: working periods during which the employee caries out assignments at user undertakings (periods covered by an assignment agreement) and periods without an assignment which correspond to effective working time for the purpose of determining paid holiday entitlements and seniority. This contract must also provide for the payment of a guaranteed minimum monthly compensation. All guarantees associated with an employment contract of indefinite duration are also applicable to this type of contract (Article L. 1251-58-2 of the Labour Code).

Furthermore, Articles L. 1251-6 and L. 1251-7 provide for specific conditions for the use of temporary work. For example, an assignment agreement can only be concluded in the event of substitution of an absent employee or in the event of a temporary increase in the company's activity (Article L. 1251-6 of the Labour Code). In addition to these situations, Article L. 1251-7 of the Labour Code provides for very specific circumstances, in particular when the temporary assignment is intended to promote the recruitment of unemployed persons facing specific social and professional difficulties.

Hence, the French Labour Code only allows a temporary worker to be used to carry out a specific and temporary task referred to as a 'mission'.

French law also regulates the contract between the temporary agency and the user undertaking (Article L. 1251-43 of the Labour Code). It must contain the special reasons explaining why the user has to use a temporary worker, the term of the mission and the specific characteristics of the employee's position. The assignment contract must also include those stipulations (Article L. 1251-16 of the Labour Code). In addition, the assignment contract must include the statement that the hiring of the employee by the user undertaking at the end of the assignment is not prohibited.

With regard to possible renewals of the assignment contract, Article L. 1251-35-1 of the Labour Code provides that in the absence of any collective agreement that stipulates otherwise, the assignment contract may be renewed twice. It also states that the cumulative duration of the contracts may not exceed a period of 18 months (in the absence of any collective agreement that stipulates otherwise). In the case of an indefinite temporary work agreement, Article L. 1251-58-6 of the Labour Code authorises each assignment for a maximum duration of 36 months. The duration of the employee's work agreement remains indefinite.

French law limits the number of successive assignments the same temporary agency worker may conclude with the same user undertaking and states that the use of temporary agency work is subject to the prerequisite that it must be justified by technical, production, organisation or replacement-related reasons.

The French Labour Code preserves the temporary nature of temporary agency work and prevents successive assignments of the same temporary agency worker to the same user undertaking. In case of an indefinite temporary employment agreement, the Labour Code secures the employee's situation by requiring a guaranteed minimum monthly compensation from the contract.

4 Other Relevant Information

Nothing to report.

Germany

Summary

(I) The Federal Chancellery has rejected the draft of a 'Mobile Work Act'.

(II) The Federal State of Hesse has submitted a motion aiming to extend occupational health and safety to entrepreneurs without employees.

(III) According to the Federal Labour Court, the non-exhaustive, exemplary list of objective reasons that justify a fixed-term contract is in line with EU law.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Draft 'Mobile Work Act'

On 06 October 2020, the Federal Chancellery rejected the draft of a 'Mobile Work Act' presented by the Federal Ministry of Labour and Social Affairs.

Under current German law, employees are only entitled to work in a home office if a claim can be based either on the employer's duty of care (section 241(2) of the Civil Code) or on a collective or works agreement. However, the coalition agreement concluded between the parties supporting the Federal Government provides that a legal framework should be created to promote and facilitate mobile working. According to the draft, all full-time employees should be given a legal entitlement to at least 24 days per year for mobile work wherever possible (for further information, see here).

1.2.2 Health and safety of entrepreneurs without employees

On 09 October 2020, the Federal State of Hesse submitted a motion to the Federal Council (*Bundesrat*), which aims to extend occupational health and safety to entrepreneurs without employees, i.e. primarily to self-employed subcontractors.

The reason given in the motion is as follows:

> *"Entrepreneurs without employees are often not covered by occupational health and safety law on construction sites because this law protects (only) employees and is therefore primarily directed at the employer. This represents a considerable gap in the full exercise of the statutory mandate of the OSH authorities to monitor the safety and health of persons working on construction sites. For this reason, occupational health and safety law must be further developed with the aim of fully incorporating entrepreneurs without employees into the occupational health and safety regulations on construction sites"*
>
> (*Entwurf einer Verordnung zur Änderung der Verordnung über Sicherheit und Gesundheitsschutz auf Baustellen (Baustellen-verordnung – BaustellV)*, *Drucksache 520/20 (Beschluss)* of 09 October2020, for the full text, see here).

1.2.3 Minimum wage

On 28 October 2020, the Federal Cabinet adopted the Third Minimum Wage Adjustment Ordinance (*Dritte Mindestlohnanpassungsverordnung*). This means that the statutory minimum wage will rise to EUR 10.45 gross per hour by mid-2022 in four half-yearly steps. For further information, see here.

2 Court Rulings

2.1 Fixed-term work

Federal Labour Court, 7 AZR 398/18, 17 June 2020

On 17 June 2020, the Federal Labour Court decided on the admissibility of a condition subsequent that was contained in an employment contract of a managing director.

According to section 21 of the Part-Time and Fixed-Term Contract Act (*Teilzeit- und Befristungsgesetz*, *TzBfG*), the admissibility of such a condition is determined by the conditions under which a fixed term is permissible. Thus, section 14(1) TzBfG, in particular, is applicable. Section 14(1) sentence 1 provides that a fixed-term employment contract is permissible if it is justified by an objective reason. S 14(1) sentence 2 gives examples ('An objective reason exists in particular if ...') of a number of objective reasons.

In its written statement of reasons for its judgment, the Court addresses the question whether there are reservations under European law against the non-exhaustive, exemplary list of objective reasons. The Court has no doubts in this respect, however. The decision literally states:

> *"The list of objective reasons in section 14(1) sentence 2, Nos. 1-8 TzBfG is not exhaustive, as can be seen from the word 'in particular'. It is not intended to exclude other objective reasons recognised by the case law prior to the entry into force of the Part-Time and Fixed-Term Contract Act or other objective reasons (...). The Union law requirements of Directive 1999/70/EC and the incorporated ETUC-UNICE-CEEP Framework Agreement do not require a different assessment. It does not follow either from the Directive or from the framework agreement that the objective reasons must be exhaustively stated in the provisions of national law (...). However, other objective reasons not mentioned in section 14(1) sentence 2, Nos. 1-8 TzBfG can justify the limitation or subject condition of an employment contract only if they correspond to the assessment criteria expressed in section 14(1) TzBfG and are equivalent in weight to the objective reasons mentioned in the catalogue of objective reasons set out in section 14(1) sentence 2, Nos. 1-8 TzBfG (...)".*

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

According to the CJEU, the first sentence of Article 5(5) of Directive 2008/104/EC must be interpreted as not precluding national legislation which does not limit the number of successive assignments that the same temporary agency worker may fulfil at the same user undertaking, and does not make the lawfulness of the use of temporary agency work subject to the prerequisite that it must be justified by technical, production, organisation or replacement-related reasons. On the other hand, that provision must be interpreted as precluding a Member State from taking no

measures at all to preserve the temporary nature of temporary agency work and as precluding national legislation which does not lay down any measure to prevent successive assignments of the same temporary agency worker to the same user undertaking in order to circumvent the provisions of Directive 2008/104 as a whole.

With regard to German law, since the reform of the Act on Temporary Agency Work (*Arbeitnehmerüberlassungsgesetz*, *AÜG*) in 2017, the provisions of section 1 (1) sentence 4 AÜG and section 1 (1b) AÜG have gained relevance, in particular. Section 1 (1) sentence 4 AÜG reads as follows: "*The temporary hiring out of employees is permitted temporarily up to a maximum hiring period pursuant to paragraph 1b*". Section 1(1b) sentence 1 AÜG reads as follows: "*The temporary agency may not assign the same temporary worker to the same user for more than 18 consecutive months; the user may not assign the same temporary worker to work for more than 18 consecutive months*". It is disputed what significance is attached to the requirement 'temporary': on the one hand, it could be argued that the characteristic no longer has any significance because section 1 (1b) AÜG represents a final concretisation with the definition of maximum duration of temporary employment. On the other hand, it could be argued that the requirement 'temporary' is still relevant and that the maximum assignment period mentioned in paragraph 1b only represents an absolute limit. While the question of the meaning of the term 'temporary' is controversial, it is mostly assumed that the maximum duration of an assignment under section 1 (1b) AÜG is to be understood in relation to the employee (and not in relation to the workplace). This means that the temporary employment agency can exchange the temporary worker for another temporary worker after the expiry of the individually permissible period of employment. The German law's understanding is the subject of a request for a preliminary ruling by the State Labour Court Berlin-Brandenburg Regional Labour Court of 13 May 2020 – 15 Sa 1991/19 (reference number at the CJEU: Case C-232/20, *Daimler*).

In its request for a preliminary ruling, the Court states the following:

> *"It is also conceivable, however, that this requirement ('temporary') refers to the jobs to be filled and is understood to mean that temporary workers may not be used in the user enterprise for permanent jobs without the need for replacement. (...). Article 2 of the Directive could speak in favour of an interpretation relating to the workplace. The aim is to establish an appropriate framework for the use of temporary agency work in order to contribute effectively to the creation of jobs and the development of flexible forms of work. However, the use of temporary workers in permanent jobs in the user undertaking does not create additional jobs, but replaces permanent workers with temporary workers. In this respect, no need for flexibility is apparent there, either. Moreover, Article 6 of the Directive also states that a change to a permanent employment relationship is desirable. In Germany, the replacement of permanent employees by temporary workers is attractive for many companies, among other things, because the obligation to put temporary workers on an equal footing with permanent employees is in practice considerably delayed due to national regulations. In the event of economic difficulties, it is also easier for the user enterprise to terminate the supply of temporary workers. Financial follow-up costs are not expected to be regular, and at any rate are significantly reduced".*

4 Other Relevant Information

4.1 Fixed-term employment in Germany

According to the Federal Government, in 2019, around 2.9 million people in Germany were employed on fixed-term contracts. Some 425 000 fixed-term employees were

later taken on in permanent employment. The proportion of fixed-term contracts without a material reason was around 61 per cent of all fixed-term contracts. 557 000 of those employed on fixed-term contracts had not found permanent employment, and just under 140 000 had not actually sought permanent employment.

Greece

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Ruling

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The case is of considerable relevance for Greek legislation as it clarifies measures to prevent successive assignments in the context of temporary agency work. According to the CJEU, Directive 2008/104 does not make the lawfulness of the use of temporary agency work subject to the prerequisite that it must be justified by technical, production, organisation or replacement-related reasons. Appropriate measures must be taken to preserve the temporary nature of temporary agency work and to prevent successive assignments of the same temporary agency worker with the same user undertaking.

Greek legislation (Art. 117(2) of Law 4052/2012) stipulates that the period for which a temporary agency worker shall be employed by a user undertaking may not exceed 36 months, including renewals. If the above rule is not respected, the employee's employment contract with the temporary work agency automatically converts into an open-ended employment contract between the employee and the indirect employer (user undertaking).

If the same temporary agency worker is reemployed by the same user undertaking after the completion of the initial assignment or after its renewal (regardless whether it is for a new/ different assignment), prior to the lapse of a 23-day period between the end of the initial contract and the renewal, the temporary worker's employment contract with the temporary work agency automatically converts into an open-ended employment contract between the employee and the user undertaking (Art. 117(3) of Law 4052/2012).

Finally, in case the user undertaking continues employing the temporary agency worker following the expiration of his/her initial assignment, and in case of any renewal of the assignment prior to the lapse of 45 (calendar) days, it will be deemed that a contract of indefinite duration has been concluded between the temporary agency worker and the user undertaking. According to Greek case law on to the above provision, it is not contrary to the constitutionally protected freedom of the worker's person or to the freedom of business. (Areios Pagos (Supreme Court) 742/2009 Δικαιο Επιχειρήσεων και Εταιρειών (Law of Enterprises and of Companies) 2011, p 223).

Therefore, Greek law is in compliance with the CJEU ruling.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The Hungarian Labour Code does not limit the number of successive assignments that the same temporary agency worker may fulfil at the same user undertaking and does not make the lawfulness of the use of temporary agency work subject to the prerequisite that it must be justified by technical, production, organisation or replacement-related reasons. At the same time, the Hungarian Labour Code takes the following measures to preserve the temporary nature of temporary agency work and to prevent successive assignments of the same temporary agency worker to the same user undertaking in order to circumvent the provisions of Directive 2008/104:

- Agency work may not exceed five years at the same user:
  "Article 214(2) The duration of the assignment may not exceed five years, including any period of extended assignment and re-assignment within a period of six months from the time of termination of his/her previous employment, irrespective of whether the assignment was made by the same or by a different temporary work agency.";
- Agency work can be for an indefinite or a fixed term (Article 218), but the fixed term may not exceed 5 years (Article 192.2). A fixed term may be extended or renewed in accordance with the following legal restrictions:
  "Article 192(4) A fixed-term employment relationship may be extended between the same parties within a period of six months, or another fixed-term employment relationship may be concluded within six months from the date of termination of the previous one on objective grounds that have no bearing on work organisation, and may not infringe upon the employee's legitimate interest."

4 Other Relevant Information

Nothing to report.

Iceland

Summary

(I) Amendments to expand key legislation to counter the economic effects of COVID-19 have been made.

(II) A case on the freedom of expression, dismissal, and transfer of undertakings was decided.

(III) Nine cases on remuneration and payment of weekly rest day were concluded.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Extension of wage support scheme

On 21 October, the provision outlining the deadline for applications according to Art. 7(1) of Act No. 50/2020 on State Support for Payment of Part of Salaries during Notice Periods was amended permitting the Tax Authority to consider applications that arrive after the deadline, given that the undertaking meets other conditions laid out in the Act.

The reason for this amendment is discussed in the preparatory work of the bill. The legislative change comes as a result of employers otherwise meeting the requirements of the law not being able to submit applications in time due to the short deadline for submission of applications to benefit from this measure. These changes were made in view of the aim of Act No. 50/2020 to ensure financial support for employers who experienced a large-scale loss of income due to the COVID-19 epidemic.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Transfer of undertaking and freedom of expression

Court of Appeal, case No. 591/2019, 30 October 2020

On 30 October, a judgment was passed in Court of Appeal case No. 591/2019 on the dismissal of a lecturer from a private university. The lecturer had posted comments on social media regarding, *inter alia*, the position of women in the labour market, which were the grounds for his dismissal.

The judgment *firstly* concerned the transfer of an undertaking and whether the employee enjoyed dismissal protection of state employees or not; in Icelandic law, public sector employees enjoy stronger dismissal protection than employees in the private sector.

In 2005, a merging of the public Technical University of Iceland (*Tæknihaskóli Íslands)* with the private University of Reykjavík (*Háskólinn í Reykjavík)* took place. On 21 March, the lecturer received notification that Act No. 70/1996 on the Rights and Obligations of State Employees would not apply to the employees of the university but rather that the rules of the private sector labour market would apply. However, a

letter from 31 March of that same year stated that the provisions of Act No. 70/1996 applied to the transfer.

The latter was not deemed to be significant as the content of the employment contract and the information disclosed to him both suggested that he was considered a private sector employee. In addition, the employee had not stated during his meeting with the university that special dismissal protection should apply to him. He was therefore deemed a private sector employee.

Secondly, the case dealt with the question whether the university had violated his freedom of expression by dismissing him on the grounds of his comments on the position of women. The Court deemed that it was within the employer's right of management to dismiss the employee with notice as stipulated in his employment contract and the relevant collective agreement and did not violate his freedom of expression as provided for in Art. 73 of the Constitution of the Republic of Iceland No. 33/1944.

The university was therefore acquitted.

Although the Court of Appeal and previously the District Court agreed that a transfer of undertaking had taken place, the District Court concluded that the lecturer could not have overlooked the fact that he was being offered a new position that would be dictated by private sector labour market rules, not by the rules of the position he had previously held at a state university that was being closed down. The District Court added that the letters mentioned in the case could not be interpreted as a promise that he would enjoy a 'comparable legal status' as state employees. In its defence, the university referred to the judgment of the EFTA Court of 22 March 2002 in case E-3/01 - Alda Viggósdóttir and Íslandspóstur hf. Although that case is neither specified in the conclusion of the Court of Appeal nor that of the District Court, the two courts' conclusions seem to be consistent with the EFTA Court's in the aforementioned case, namely that Directive 77/187/EC (now Directive 2001/23/EC) does not "*preclude an agreement with the new employer to modify the employment relationship to the extent that such modification is permitted by the applicable national law in situations other than those involving the transfer of an undertaking*." The provisions of the relevant collective agreement and the lecturer's employment contract also seem to be important in this context.

2.2 Remuneration and weekly rest day

Court of Appeal, cases No. 383/2019, 396/2019, 649/2019, 654/2019, 655/2019, 656/2019, 657/2019, 658/2019 and 659/2019, 23 October 2020

Several judgments on remuneration and weekly rest against the same company were passed by the Court of Appeal (*Landsréttur*) on 23 October 2020 (see cases 383/2019, 396/2019, 649/2019, 654/2019, 655/2019, 656/2019, 657/2019, 658/2019 and 659/2019). The cases come partly as a consequence of the Supreme Court case of 14 June 2018 No. 594/2017, which concerned, *inter alia*, additional payment for work during the weekly rest period. These cases additionally concerned special payments which were laid out in the employment contracts, but not fully paid to the employees.

It should be pointed out that while the cases are comparable, the results differ with regard to the duration of employment as well as whether the employees took action to try to correct their salaries with regard to the special payment or showed inaction or indifference.

Whether it was proven or not that the employees had not been able to enjoy their weekly free day also had an effect on the case results. The Court seems to not have considered inaction or indifference regarding the claims for additional payment for work during the weekly day off, which had not expired according to Act No. 150/2007,

on the Expiration of Claims, as it is a minimum right stipulated in a collective agreement that is protected by law in Art. 1 of Act No. 55/1980 on Working Conditions of Employees and Compulsory Insurance of Pension Rights.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

Two provisions of Act No. 139/2005 on Temporary Work Agencies are meant to preserve the temporary nature of temporary agency work and lay down measures to prevent successive assignments of the same temporary agency worker to the same user undertaking in order to circumvent the provisions of Directive 2008/104.

Primarily, Art. 6(1) states that a temporary work agency that has hired an employee who has previously worked for a user undertaking in Iceland may not assign that employee to the same user undertaking until six months have elapsed since his/her assignment with that user undertaking ended.

It must also be mentioned that Art. 7 on employment with the user undertaking is also significant in this context. Art. 7(1) states that a temporary work agency may not limit an employee, who has been assigned to a user undertaking, to later establish an employment relationship with that user company. Furthermore, Art. 7(2) provides that an employee of a temporary work agency shall be provided with timely information on vacancies within a user undertaking, while he/she is assigned to that user undertaking. This includes part-time positions. This is to ensure that the employee of the temporary work agency has the same opportunity of being hired indefinitely as the employees of the user undertaking.

Provided that the stated provisions are considered measures that both preserve the temporary nature of temporary agency work and lay down measures to prevent successive assignments of the same temporary agency worker to the same user undertaking to circumvent the provisions of Directive 2008/104, there is no explicit suggestion that the judgment in question requires changes to Act No. 139/2005.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

(I) New measures have been announced to contain the economic fallout from the pandemic, such as a new support scheme for businesses, and the extension of the Temporary Wage Subsidy scheme through 2021.

(II) The Minister for Transport has issued new regulations revoking and replacing previous regulations to better implement Art. 21 of Directive 2003/88/EC on seafarers.

(III) The Minister for Employment Affairs and Social Protection has increased the minimum hourly rate of pay.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

In the context of *Budget 2021*, the Minister for Finance announced a package of spending measures, at an estimated cost of EUR 18bn, in an effort to contain the economic fallout from the pandemic. The measures include a new support scheme for businesses affected by the current restrictions worth up to EUR 5 000 per week if the business can demonstrate an 80 per cent reduction in turnover compared to last year. The COVID-19 Restrictions Support Scheme will operate until 31 March 2021. The Temporary Wage Subsidy Scheme, which was due to end on 30 April 2021, will be replaced by a similar scheme running through 2021.

Following the move to Level 5 restrictions, Employment Wage Subsidy Support Scheme payments were enhanced with effect from 16 October 2020 for at least the next three months. Instead of the two previous weekly rates of EUR 151.50 and EUR 203, the enhanced rates are EUR 203 for employees in the EUR 151 – EUR 203 gross weekly wage bracket; EUR 250 for those in the EUR 203 – EUR 300 bracket; EUR 300 for those in the EUR 300 – EUR 400 bracket; and EUR 350 for those in the EUR 400 – EUR 1.462 bracket. No subsidies are paid for employees who earn less than EUR 151 or more than EUR 1.462 per week. The government's intention in enhancing the rate is to keep employees on the payroll instead of putting them on lay off.

As of 27 October 2020, 295 860 persons were receiving Pandemic Unemployment Payment, an increase of 51 707 compared to the previous week. Of those, 147 761 were female and 142 590 were under the age of 34. The sectors most affected are accommodation and food services with 90 051 in receipt (down from 128 500 in May); wholesale and retail trades with 43 432 in receipt (down from 90 300 in May); and administration and support services with 25 656 in receipt (down from 45 800 in May).

For all the figures and information, see here.

1.2 Other legislative developments

1.2.1 Working time of seafarers

The European Union (Workers on Board Seagoing Fishing Vessels) (Organisation of Working Time) (No. 2) Regulations 2020 (S.I. No. 441 of 2020), which came into effect on 14 October 2020, better implement Art. 21 of Directive 2003/88/EC in relation to certain aspects of organisation of working time as they relate to workers on board seagoing fishing vessels registered in another Member State whilst in a port in

Ireland. The Regulations set out the maximum hours of work and minimum hours of rest for workers on board such seagoing fishing vessels, along with enforcement powers and requirements to notify the relevant flag state of any breaches.

1.2.2 National minimum wage

The National Minimum Wage Order (No. 2) 2020 (S.I. No. 427 of 2020) provides for an increase in the national minimum hourly rate of pay from EUR 10.10 to EUR 10.20, with effect from 01 January 2021.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

In the present case, the CJEU ruled that Article 5(5) of Directive 2008/104/EC precluded national legislation which does not lay down any measure to prevent successive assignments of the same worker to the same undertaking in order to circumvent the provisions of the Directive.

The Directive was implemented in Ireland by the Protection of Employees (Temporary Agency Work) Act 2012. The term 'agency worker' is defined in section 2 of that Act as an individual employed by an employment agency 'by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person other than the employment agency' [in the Act referred to as a 'hirer']. There is a similar definition in the provisions applicable in Northern Ireland, but with the addition of the word 'temporarily' after the word 'work': see the Agency Workers Regulations (NI) 2011 (SR 2011 No. 350).

Section 3 of the 2012 Act, however, provides that the Act applies to agency workers 'temporarily' assigned by an employment agency to work for, and under the direction and supervision of a hirer. The words 'temporary' and 'temporarily' are not defined in the 2012 Act, but are clearly used in contradistinction to 'permanent' and 'permanently'. So, if a worker is employed by an employment agency and is then placed for many years with a company, is that worker an agency worker if he/she is in reality working 'indefinitely' for that company?

The issue has not arisen under the 2012 Act, but were it to arise, the likely approach would be to look at the basis on which the worker is being supplied. Is the supply made on the basis that, having started the assignment, the worker will continue to work for the hirer indefinitely or on the basis that the work will cease to work for the hirer at the end of a fixed period or upon the completion of a particular task or on the occurrence of some other event? The difficulty is that the body charged with adjudicating disputes under the 2012 Act—the Workplace Relations Commission (WRC)—is not given any jurisdiction to determine whether a lengthy assignment is genuinely 'temporary'.

As with the Italian legislation, the 2012 Act does not require any technical, production or organisational reasons for using agency workers. Nor does the Act place any limit on the successive assignments of agency workers to the same hirer. There is a section (section 7) which is entitled 'Anti-Avoidance', but it merely provides that assignments

that form part of the same series of assignments shall, for the purposes of determining the basic working and employment conditions of an agency worker, be treated as a single assignment unless there is a break of three months or more between two assignments. As noted above, however, section 7 is not a section in respect of which the WRC has jurisdiction.

4 Other Relevant Information

Nothing to report.

Italy

Summary

(I) The Italian legislator has adopted new restrictive measures to fight the spread of COVID-19. At the same time, measures to support economic recovery have been issued.

(II) The *Corte di Cassazione* held that when a temporary agency work relationship is declared null and void, the user undertaking can treat the employment relationship in accordance with its own working conditions.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Emergency measures

The Law Decree of 7 October 2020 No. 125 extends the state of emergency due to COVID-19 until 31 January 2021.

The Decree of the President of the Council of Ministers of 13 October 2020 confirms the obligation to respect the Shared Protocol regulating measures to fight and contain the spread of the COVID-19 virus in the workplace, signed by the Italian government and social partners on 24 April 2020.

1.1.2 Limits to economic activities

The Decree of the President of the Council of Ministers 18 October 2020 reintroduces limits to economic activities:

- amateur sports competitions are prohibited;
- local fairs and festivals are prohibited;
- conferences can only take place online;
- teaching in high schools and universities must be a mix of face to face and online classes;
- bars, pub and restaurants can open from 5 a.m. to 12 p.m. with table service, from 5 a.m. to 6 p.m. with counter service. A maximum of 6 people can sit at a table. Takeaway is allowed until midnight and delivery has no time limits. These limits do not apply to restaurants inside hospitals, airports and highways.

The Decree of the President of the Council of Ministers of 24 October 2020 confirmed all of the restrictive measures already in force up to 24 November 2020.

In addition, the Decree establishes the closure of gyms, swimming pools, spas, arcades, betting rooms, casinos, theatres and cinemas. High school classes must mostly be conducted online (at least 75 per cent).

Bar, pubs and restaurants can open from 5 a.m. to 6 p.m. A maximum of 4 people can sit at a table. Takeaway is possible until midnight and delivery has no time limits. These limits do not apply to restaurants and bars inside hospitals, airports and highways.

1.1.3 Relief measures

The Act of 13 October No. 126 converts the Law Decree of 14 August 2020 No. 104 ('August Decree') into law. The Act confirms the provisions contained in the Law Decree and adds new ones.

In particular, it confirms:

- the extension of *Cassa Integrazione Guadagni* (COVID-19) until 31 December (Art. 1);
- the *Cassa Integrazione Guadagni* (COVID-19) for professional athletes (Art. 2);
- exemption of contributions for employers who do not use *Cassa Integrazione Guadagni* (COVID-19) (Art. 3);
- the extension of unemployment insurance (Art. 5);
- exemption of contributions for permanent employment (Art. 6) and fixed-term employment in the tourism sector Aart.7) for 6 months;
- the possibility of extension of fixed-term contracts (Art. 8);
- social allowances for seasonal tourism, entertainment workers and maritime workers who have lost their job (Art. 9-10-11);
- an allowance for workers of sports federations (Art. 12).

Art. 1-*bis* and 1-*ter* introduce compensation for employees in complex industrial areas in Sicily and Campania. Until 31 December 2020, employees employed in these areas, who are no longer eligible for unemployment insurance, are granted another insurance, including contributions.

Art. 8 (1-*bis*) modifies Art. 31 (1) Legislative Decree No. 81/2015. Until 31 December 2021, if there is a permanent contract between a temporary work agency and a worker, the assignment as a temporary agency worker to the user undertaking can last more than 24 months, even if not continuous. In this case, no employment relationship with the worker is established.

The Act modifies Art. 14 of the Law Decree. It confirms that employers, who have not used up all of the periods of *Cassa Integrazione Guadagni* (COVID-19) or are exempt from payment of social security contributions, cannot make collective dismissals. The collective dismissal procedures that were initiated after 23 February 2020 remain suspended. These employers cannot lay off employees for economic reasons and the procedures initiated after 23 February continue to be suspended. The prohibition of dismissal does not apply in the event of a definitive closure of the company or bankruptcy without continuing the business activity and in the event of a trade union agreement (only for those employees who joined this agreement).

The Act repeals para. 4, which allowed for a revocation of dismissals, in the *Cassa Integrazione Guadagni* (COVID-19). The employer can revoke dismissals without sanctions only within 15 days from the communication of the appeal.

The Law Decree of 28 October 2020 No. 137 provides some fiscal measures for companies.

It provides that a further period of *Cassa Integrazione Guadagni (COVID-19)* is granted for 6 weeks, between 16 November 2020 and 31 January 2021, to employers that have already made use of *Cassa Integrazione Guadagni (COVID-19),* introduced by Law Decree 14 August 2020 N. 104, converted into Act 13 October 2020 No. 126. This *Cassa Integrazione Guadagni (COVID-19)* can also be used by employers whose economic activities have come to a complete halt or limited by the Decree of the President of the Council of Ministers 24 October 2020.

1.2 Other legislate developments

Nothing to report.

2 Court Rulings

2.1 Temporary agency work

Corte di Cassazione, No. 22066, 13 October 2020

This ruling concerned employees' rights in case of nullity of their temporary agency work. When a temporary agency work relationship is declared null and void, the user undertaking can treat the employment relationship in accordance with its own working conditions. The user undertaking shall no longer apply the provisions on temporary agency work.

3 Implications of CJEU Rulings and ECHR

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

According to this ruling, which concerned Italian legislation, a Member State must take measures to preserve the temporary nature of temporary agency work and to prevent successive assignments of the same temporary agency worker to the same user undertaking from circumventing the provisions of Directive 2008/104.

Italian legislation on temporary agency work has been amended several times and more recent laws have changed the rules addressed in the judgment, namely: Legislative Decree 15 June 2015 No. 18 and Law Decree 12 July 2018 No. 87 (converted into Act 09 August 2018 No. 96).

A contract between a temporary work agency and the temporary agency worker can be permanent or fixed term.

If a worker is hired by an agency under a permanent contract, the provisions provided for permanent employment relationships apply.

If a worker is hired by a temporary work agency for a fixed term, the provisions of Legislative Decree 15 June 2015 N. 81 on fixed-term work apply - Articles 21(2), excluding 23 and 24. The contract between the agency and the worker cannot exceed a duration of 12 months. It may only have a duration of between 12 and 24 months in case at least one of the following conditions applies: a) temporary and objective needs unrelated to the company's ordinary activities or the necessity to substitute another worker; b) needs related to temporary, significant and unforeseeable increases in ordinary activity.

The maximum duration of temporary agency work is 24 months. There are no limits for successive assignments of workers to the same user undertaking, but the 24-month limit applies in any event.

According to the Court, Article 5(5) of Directive 2008/104 does not require Member States to limit the number of successive assignments of the same worker to the same user undertaking or to make use of fixed-term work subject to the prerequisite that the technical, production, organisational or replacement-related reasons are stated. Therefore, on this point, Italian legislation is compatible with European provisions.

On the other hand, the same Directive imposes on Member States to take appropriate measures to prevent that successive assignments of the same temporary agency worker to the same user undertaking circumvent the provisions of Directive 2008/104. That is, temporary agency work by the same user undertaking must not become a permanent situation for a temporary agency worker. Specifically, it precludes a Member State from taking no measures at all to preserve the temporary nature of temporary agency work.

For this purpose, we must determine whether successive assignments of the same temporary agency worker to the same user undertaking result in a period of service with that undertaking that is longer than what can reasonably be regarded as 'temporary', and whether it alters the balance between flexibility and security.

The Italian limit of 24 months does not appear long enough to be regarded as 'temporary' and ensures a good balance between flexibility and security. However, no specific rule prevents successive assignments of the same temporary agency worker to the same user undertaking which subsequently circumvents the provisions of Directive 2008/104.

Furthermore, it should be noted that now Art. 8 (1-*bis*) Law Decree of 14 August 2020 No. 104, converted into Act 13 October No. 126, establishes that if a permanent contract is concluded between a temporary work agency and a worker, the assignment as a temporary agency worker to the user undertaking can last more than 24 months, even if not continuous, until 31 December 2021. However, this rule is exceptional and linked to the COVID-19 emergency situation.

4 Other Relevant Information

Nothing to report.

Latvia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The CJEU's decision in case C-681/18, 14 October 2020, *KG* is a landmark decision as it provides an explanation of the very substance of temporary agency work, i.e., that this form of employment is of a temporary nature in itself. Latvian law (Labour Law) considers temporary agency work to be a form of permanent work as Article 74(7) of the Labour Law, for example, provides the obligation to pay a temporary agency worker, who is on 'stand-by' due to a lack of requests from user undertakings, the minimum statutory wage, at the very least (see here for *Darba likums*, OG No.105, 06 July 2001). The Labour Law contains no provision stating that if the same worker is continuously employed by the same undertaking, his/her assignment can no longer be considered 'temporary' work provided by temporary agency work.

This implies that the Latvian legislator will have to amend the legal regulations accordingly, however, some resistance to such an interpretation of Directive 2008/104 might arise, since public institutions themselves are among those who have 'optimised' their budget expenditure on account of 'outsourcing' such services such as cleaning, IT, etc.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

A present legislative project deals with fixed-term employment contracts in the public school system. An initial review of the draft law reveals that the government is seeking implementation in line with European law.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Legislative proposal on fixed-term employment contracts in the public school system

The government has presented a legislative project on the amendment of the Act on the Employment of Teachers with regard to fixed-term employment contracts in the public school system.

The Report and Motion on the Amendment of the Act on the Employment of Teachers (Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend die Abänderung des Lehrerdienstgesetzes) (BuA No. 93/2020) is available here.

The aim of the draft law is to adapt Liechtenstein's law on fixed-term employment contracts in the public school system to European law. Specifically, it seeks to meet the requirements of Directive 1999/70/EC and the CJEU's case law an improved manner. Indeed, the CJEU on several occasions has dealt with the question of the extent to which chain employment contracts are permissible in the public school system (see CJEU (Third Chamber), 26 November 2014, Joined Cases C-22/13, C-61/13 to C-63/13 and C-418/13).

This is to be achieved on the basis of four key factors:

- The Act on the Employment of Teachers shall be amended;
- According to Art. 14(1) of the Act on the Employment of Teachers, teachers who are employed at least 40 per cent and who fully meet the conditions of employment at the end of the provisional period and who have provided all the proof required under Art. 13, shall be employed on a permanent basis, provided that a permanent position is vacant and there is a need for a full-time employee. This provision shall continue to apply unchanged. However, paragraph 2 of the same Article is to be replaced by the following new version: Fixed-term employment contracts of teachers who meet the requirements of paragraph 1 may be concluded no more than three times up to a total duration of five years without interruption. The provisional arrangement is not counted towards the total duration (note on the provisional arrangement: all new teachers entering the teaching profession are initially hired on a provisional basis);
- Under the current Art. 15(2) of the Act on the Employment of Teachers, the employment relationship shall be limited to one year if the conditions of employment pursuant to Art. 10(1)(e) and (f) are not fulfilled (these two

requirements concern proof of the necessary training and mastery of the German language.) According to the draft law, Art. 15(2) is to be repealed;

- It is to be expressly stated that the Act on the Employment of Teachers aims to implement Directive 1999/70/EC.

The Liechtenstein government submitted a draft law with an accompanying report, which was submitted for consultation. The consultation lasted until 28 February 2020, after which the government evaluated the comments received.

Based on the consultation's results, the government has produced a report and motion for Parliament on the amendment of the Act on the Employment of Teachers, which contains a draft for the necessary legislative amendments.

The next steps will be its consultation in Parliament and the adoption of the relevant legislative amendment. It is not yet possible to project when the amendment will be passed.

The main purpose of the amendment is to improve the implementation of Directive 1999/70/EC. An initial review of the draft law reveals that the government is seeking implementation in line with the mentioned Directive.

The amendment is of medium importance. On the one hand, the prevention of misuse of fixed-term employment relationships is an important issue within the context of EU law. On the other hand, employment in the public school system is carried out by a state authority, which makes the risk of misuse of fixed-term employment relationships appear less pressing. Furthermore, a relatively small number of people are affected.

The amendment departs from previous lines of reasoning in various ways. Firstly, it does so because no new laws are being created, but the existing structures are being used to implement the changes. These provisions will simply be adapted. Secondly, and even more importantly, the planned new legislation will align with private labour law and state personnel law. For the private sector, Section 1173a Art. 44a(1) of the Civil Code provides that a fixed-term employment relationship can be extended for a maximum of three times, up to a total duration of five years. If it lasts longer, it is considered an employment relationship of indefinite duration. Within the framework of state personnel law, Art. 13 of the State Personnel Act provides that a fixed-term employment relationship shall be established for a maximum period of three years. In justified cases, the government may extend a fixed-term employment relationship for a maximum of two additional years.

The purpose of the consultation of municipalities, municipal school boards, teacher associations and other organisations was precisely to give the government an idea of the likely implications in the legal and political sphere. For this reason, the government adapts—depending on the outcome—the original draft law in accordance with the results of the consultation process, where necessary, before it is submitted to Parliament.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

In Liechtenstein, a collective employment agreement covers temporary agency work (*Gesamtarbeitsvertrag Personaldienstleister* (GAV Personalverleih)) concluded by the Liechtenstein Chamber of Commerce (Wirtschaftskammer Liechtenstein) and the Liechtenstein Trade Union (LANV *Liechtensteinischer ArbeitnehmerInnenverband*). According to Art. 9(3) (third sentence), chain employment contracts are inadmissible if they cannot be justified by objective grounds.

This provision was declared generally applicable by the Liechtenstein government in Art. 9(3) of the Annex to the Ordinance on the declaration of general applicability of the collective employment agreement for temporary agency work.

Furthermore, Art. 9(3) (first and second sentences) of the collective employment agreement for temporary agency work contains the following provisions: fixed-term employment relationships can be extended a maximum of three times up to a total duration of five years. If they last longer, they are considered permanent employment relationships.

This legal situation is identical with that in section 1173a Art. 44a(1) of the Civil Code, which generally applies to successive fixed-term employment relationships.

National legislation does not provide for an exception to this provision for temporary agency work. There is also a significant difference in this respect with Italian law, which was the subject of the main proceedings before the CJEU.

In addition, the following two provisions shall be referred to: according to Art. 19(4)(b) of the Act on Employment Services and Temporary Agency Work, agreements between the temporary work agency and the worker are null and void if they make it impossible or difficult for the worker to transfer to the user undertaking after the end of the assignment. In the same sense, Art. 22(2) of the same Act provides that agreements between the temporary work agency and the user undertaking are null and void if they make it difficult or impossible for the user undertaking to conclude an employment contract with the worker after the end of the assignment, or if they aim to circumvent the provisions of this Act.

For all these reasons, it can be concluded that Liechtenstein law, unlike Italian law, fulfils the requirements set by the CJEU for the implementation of Art. 5(5) of Directive 2008/104/EC.

4 Other Relevant Information

Nothing to report.

Lithuania

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

In accordance with Article 72 (5) of the Labour Code, in Lithuania, there is a maximum limitation of the duration of temporary employment, as is the case for the maximum duration of a fixed-term employment contract. As far as temporary employment is concerned, the maximum duration of such contracts and successive employment contracts concluded with the same user undertaking for the same job shall be three years. Successive temporary employment contracts are employment contracts awarded for a period not exceeding two weeks.

There are legal provisions in Lithuania that restrict the duration of temporary work contracts with no regard to the reason for the conclusion of the contract or an extension of the contract. This could be seen as a more favourable provision compared with the standard established by the Directive.

4 Other Relevant Information

4.1 General elections

The general elections of October 2020 will bring a new conservative-right-centre coalition to power, with its legislative mandate starting in mid-November. The coalition agreement concluded by the three parties does not indicate an immediate willingness of the governing parties to intervene in the existing employment regulatory framework.

Luxembourg

Summary

(I) According to new legislation, working time can be extended in some sectors to address the COVID-19 crisis.

(II) A new collective agreement on telework has been signed and will soon enter force.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Extension of working time

To address a possible labour shortage in the health sector due to the recent significant increase in COVID-19 cases, legislation has been passed to allow an exception to the limitation of working hours (see here for the *Loi du 29 octobre 2020 portant dérogation temporaire à l'article L. 211-12 du Code du travail*). The law applies to the health sector (including, in particular, hospitals and medical analysis laboratories), the care assistant sector and to staff supervising accommodation facilities for minors placed under a custodial measure.

Maximum working hours can be extended up to 12 hours per day and 60 hours per week. Interested companies must apply to the Ministry of Labour.

The law will be effective until 31 December 2020. A similar measure had already been taken during the state of emergency in spring.

1.2 Other legislative developments

1.2.1 Telework

Social partners at national level have signed a new agreement on telework. On the basis of the 2002 framework agreement on telework negotiated by European social partners, an implementation agreement had been signed at national level in 2002 and renewed without any changes in 2012 and 2016. These implementation agreements were closely based on the European framework. The 2020 agreement, however, implements substantial changes to the former agreements.

This agreement is the result of negotiations that took place in the Social and Economic Council (*Conseil économique et social*); the social partners issued a common position on telework and suggested changes to the existing legal framework (for the Social and Economic Council's statement, see here).

Initially, the Council only intended to address the specific issues of telework for cross-border commuters, but due to the explosion of telework during the pandemic, it expanded the discussions.

The new agreement has been signed under the suspensive condition that it will be declared generally applicable (*déclaration d'obligation générale;* i.e. applicable to all undertakings, whether they were represented by their employer's organisation or not), so it is currently not yet in force. It is to be expected that the Minister of Labour will declare it generally applicable within the next weeks.

It should be reiterated that Luxembourg faces some serious practical problems with regard to telework for the nearly 50 per cent of the working force that are cross-border commuters, especially concerning tax and social security. The Convention

evidently has no competence to address these issues, but only affects national labour law.

The main changes implemented by the new agreement are:

- Not only regular telework is covered, but so is occasional telework. Telework is considered regular if it represents more than 10 per cent of the employee's working time, on average;
- The required formalities have been diversified and simplified. Telework no longer requires a formal amendment to the employment contract. It can be implemented by a '*special framework*' introduced at company level, or by some other types of agreements;
- In case an individual agreement is signed, the number of mandatory clauses has been reduced compared to the former agreements on telework;
- The power of staff representatives has been increased to that of larger companies (>= employees), implementation of telework and changes of the applicable rules on telework have become subject of co-decision. Staff representatives (*délégués du personnel*) must thus give their consent;
- In the definition of telework, the reference to the employee's residence has been deleted. Furthermore, the use of telecommunication means is just an indication and no longer a constitutive element;
- Compensation must be provided to regular teleworkers if they lose a benefit in kind (*avantage en nature)* due to teleworking*;*
- The obligation of the employer to provide the required equipment is not applicable to occasional telework;
- The employer no longer has the right to conduct an inspection visit of the employee's home;
- As regards working time in general and overtime, in particular, teleworkers may not be treated differently than other employees. Furthermore, the right to disconnect (*droit à la déconnection*) must be the same for both regular workers and teleworkers;
- The mandatory '*période d'adaptation*' (adaptation/test period) during which a regular employee switches to telework has been eliminated.

Telework still remains a free choice for both parties. The question of the 'right to telework' has been addressed in public debates (especially a petition in the legislative chamber), but was rejected.

The Convention does not address the question whether the employer can impose telework on the basis of occupational health and safety considerations, especially during the pandemic.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

This decision has no major implications for Luxembourg's legislation because that Labour Code:

- limits the number of successive assignments the same temporary agency worker may carry out at the same user undertaking;
- makes the lawfulness of the use of temporary agency work subject to a justified objective reason;
- implements a very restrictive legal framework to prevent successive assignments of the same temporary agency worker.

This restrictive framework raises the opposite question, i.e. whether Luxembourg's legislation is too restrictive with regard to Article 4 of the Directive, namely the protection of the employer's interest.

The CJEU emphasizes that in para.45, the requirements for temporary agency work are not the same as those applicable to fixed-term contracts according to Directive 1999/70/EC. Nevertheless, Luxembourg decided to base its rules for temporary agency work on those restricting the use of fixed-term contracts:

- the total duration of a temporary assignment is limited to 12 months (24 for fixed-term work);
- within this limitation to the total duration, the contract can only be renewed twice (Art. L. 131-9);
- there must be an objective justification for the use of temporary agency work; the requirements are the same as for fixed-term contracts (Art. L. 131-4 referring to L. 122-1 of the Labour Code). It can only be used for the performance of specific tasks that are of a temporary nature. The law furthermore provides a list of examples;
- the same position cannot be occupied by another temporary worker (temporary agency or fixed-term worker) during a waiting period of 1/3 of the duration of the previous contract (Art. L. 131-11).

4 Other Relevant Information

Nothing to report.

Malta

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The first sentence of Article 5(5) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work must be interpreted as not precluding national legislation which does not limit the number of successive assignments that the same temporary agency worker may fulfil at the same user undertaking and does not make the lawfulness of the use of temporary agency work subject to the prerequisite that it must be justified by technical, production, organisation or replacement-related reasons.

No Maltese law limits the number of successive assignments the same temporary agency worker may fulfil at the same user undertaking. This first part of the ruling thus has no implications for Malta.

On the other hand, the provision must be interpreted as precluding a Member State from taking no measures at all to preserve the temporary nature of temporary agency work and precludes national legislation that does not specify any measure to prevent successive assignments of the same temporary agency worker to the same user undertaking in order to circumvent the provisions of Directive 2008/104.

The definition of 'temporary agency worker' in the Temporary Agency Workers Regulations of 2011 is as follows: 'temporary agency worker' means a worker who has entered into a contract of employment or an employment relationship with a temporary work agency and who is assigned, whether on a regular or on an irregular basis, to a user undertaking to work temporarily under its supervision and direction. Furthermore, the said regulations transpose almost verbatim the provisions of the Directive in question. These regulations do not, however, prevent successive assignments of the same temporary agency worker to the same user undertaking. Essentially, therefore, whilst on the one hand, full protection is afforded to workers according to the regulations as ensured by the Directive, but on the other hand, this judgment has shone a light on a clear and blatant lacuna which might exist in the present Maltese transposition. For this reason, it is submitted that an amendment to the regulations to reflect this pronouncement of the CJEU would be most advisable.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

The 'NOW 3.0' COVID-19 measures have been issued. Additional relief measures for heavily hit sectors have been put in place.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 'NOW 3.0' measures

As mentioned in the August 2020 Flash Report, on 28 August 2020 the government informed Parliament about a third round of support for the economy: 'Support and recovery package for the economy and labour market'. The announced measures follow up on the 'Emergency package jobs and economy' that was presented on 17 March 2020 (see March 2020 Flash Report) and the 'Emergency package 2.0', presented on 20 May 2020 (see May and June 2020 Flash Reports).

The 'NOW 3.0' has now been published and more details are available. The most important measures are outlined in the August 2020 Flash Report. Additionally, there will be a 5 per cent subsidy fine if a dismissal for economic reasons is initiated without first consulting the UWV about work-to-work supervision.

The UWV aims to open the application desk for the NOW 3.0 on 16 November 2020, for a period of four weeks until 13 December 2020. This period concerns the awarding of a subsidy for the period from 01 October to 31 December 2020 (the first of the three timeframes in NOW 3.0). Afterwards, similar application desks will be opened for the second and third timeframe of 'NOW 3.0' (from 15 February to 14 March 2021 and from 17 May to 13 June 2021, respectively).

Additionally, since 07 October 2020, employers can submit a request to have the 'NOW 1.0' subsidy they received finally determined.

1.1.2 Additional measures

The Dutch government has announced extra measures in addition to 'NOW 3.0'. These measures concern sectors that have been hit particularly hard by the current partial lockdown, such as the hospitality industry and events. Extra support will be given to affected companies. In total, about half a billion euros have been reserved. The main measures are:

- The Fixed Cost Allowance (TVL), intended to help entrepreneurs pay their fixed costs, such as rent, was limited in the past to specific sectors. The Dutch government has decided to temporarily open the TVL to all sectors;
- Hospitality businesses will receive a one-off subsidy to compensate for stock they can no longer use because of the temporary closure and investments made to stay open in the winter in a manner that is corona-proof such as covering their terrace. This subsidy will be provided in addition to the TVL and will cover approximately 2.75 per cent of the revenue loss;
- One-off additional compensation will be provided to companies and suppliers in the event industry, which are largely dependent on the summer months in terms of turnover.

- The so-called Time Out Arrangement (TOA) is taking further shape. The TOA helps businesses reach agreements with creditors to avoid unnecessary bankruptcy.
- The government is investigating whether (temporary) jobs for crisis support can provide relief to heavily impacted sectors, while at the same time helping people that have become unemployed ind temporary work.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

In the present case, the CJEU concluded that the first sentence of Article 5(5) of Directive 2008/104/EC must be interpreted as not precluding national legislation which does not limit the number of successive assignments that the same temporary agency worker may fulfil at the same user undertaking. Furthermore, this article does not make the lawfulness of the use of temporary agency work subject to the prerequisite that it must be justified by technical, production, organisation or replacement-related reasons. An important remark, however, is that this provision *does* preclude a Member State from taking no measures at all to preserve the temporary nature of temporary agency work. It also precludes national legislation which does not lay down any measure to prevent successive assignments of the same temporary agency worker to the same user undertaking in order to circumvent the provisions of Directive 2008/104.

Dutch legislation appears to be in line with this. There are legislative measures in place that aim to preserve the temporary nature of temporary agency work. In this context, Article 7:668a of the Dutch Civil Code and Article 7:691 of the Dutch Civil Code are of relevance, which together limit the amount of temporary employment agreements that may be used for the same temporary agency worker with the same user.

4 Other relevant information

4.1 Pregnancy leave and holiday leave

On 09 October 2020, the conclusion of Attorney General De Bock regarding a case on coinciding periods of holiday leave and pregnancy leave was published. This conclusion was drafted in response to the preliminary questions from the Court of The Hague. The collective labour agreement for secondary education stipulates that holiday leave can only be taken during school holidays and on five other designated days. These mandatory periods of holiday leave can coincide with pregnancy and maternity leave. If teachers take pregnancy and maternity leave during a school holiday, they are usually unable to take the holiday leave that was supposed to be taken during that

period. Attorney General De Bock concluded that this represents a prohibited distinction based on sex, and that the relevant provisions of the collective labour agreement are thus null and void. This conclusion is based on, amongst other things, the CJEU's Gómez judgment. This conclusion is important as it outlines that EU legislation on gender discrimination should be taken into account when drafting collective labour agreements.

4.2 Prevention of occupational diseases

As part of an EU-wide campaign on physical stress at work, the Dutch Ministry of Social Affairs and Employment and Focal Point Nederland launched a campaign on 28 October 2020 aimed at the prevention of occupational diseases due to physical strain. In addition to information activities, an online toolbox with free tools and instruments has been made available to employers and sector organisations.

Norway

Summary

Existing COVID-19 measures have been adapted and new ones have been issued, such as a second temporary scheme for subsidies to employers who take back employees that have been laid off.

1 National Legislation

1.1 Measures to respond to the 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 on society (see May 2020 Flash Report). The gradual reopening of society started in April, and by June, virtually all business activities had reopened (see June 2020 Flash Report).

The infection rates increased from August, and in October, the number of daily reported infections reached the same level as in March, and consequently, new measures were introduced. The municipalities of Oslo and Bergen introduced even stricter measures as the infection rates have increased considerably in these cities.

Due to increasing infection rates in other countries, the Ministry of Foreign Affairs has reintroduced a general recommendation against non-essential travel abroad. Almost no countries in the Schengen area/EEA15 now meet the criteria for infection levels set by the Norwegian Institute of Public Health. Quarantine has therefore once again been imposed on travellers from these countries and regions. Information on the travel restrictions can be found here.

The unemployment rate rose sharply during lockdown, but has been declining since the reopening started. Statistics on the development in October will be available on 02 November 2020 here.

In October, the government adapted the existing measures to the COVID-19 outbreak, most importantly:

- A second temporary scheme for subsidies to employers who take back workers who have been laid off. The first scheme is described in June 2020 Flash Report. The second scheme will apply to employees who were laid off after 31 August and who will return to work at the beginning of October, November or December (see the details here);
- From 26 October, the entry rules for work travellers were tightened. Quarantine (10 days) is also imposed on work travellers from EU/EEA countries defined as 'red' countries, see details here;
- The earlier announced decision to extend the lay off period from 26 to 52 weeks (August 2020 Flash Report) was implemented from 01 November 2020;
- Some special rules from the beginning of the COVID-19 period were abolished and others were extended, i.e. the temporary cancellation of the waiting time of three days for unemployment benefits was extended, see further here.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

Directive 2008/104/EF is implemented in Norwegian law in the Working Environment Act 2005 (WEA) Chapter 14. To hire workers from temporary work agencies is permitted to the same extent that the temporary appointment of employees may be agreed (with some exemptions), cf. WEA Section 14-12. Such an appointment may, among other things, be agreed for the temporary substitution of another person or persons. Employees who have been continuously temporarily employed for more than three years (or four years in other cases) shall be deemed to be permanently employed. A person may also be considered permanently employed before this time if the employment is not considered real temporary employment. These rules also apply to hired workers from a temporary work agency

Norway has consequently taken some measures to preserve the temporary nature of temporary agency work and to prevent successive assignments of the same temporary agency worker to the same user undertaking (cf. paragraph 72 of the ruling). The Court's conclusion on the interpretation of the Directive will probably have only limited practical implications.

4 Other Relevant Information

4.1 Collective bargaining

Earlier this year, the social partners postponed the negotiations of revision of collective wage agreements until fall due to COVID-19. Most negotiations have resulted in new agreements without the use of industrial action. Some groups have, however, been on strike (bus drivers, guards and doctors). On 01 November, the government intervened in the doctors' strike and decided that the conflict must be settled by compulsory arbitration. The government justified its interference on the grounds that the doctors' announced extension of the strike would endanger lives and health.

Poland

Summary

(I) Provisions on remote working under the 'anti-crisis shield' are subject to legislative proceedings, and the notion of regulating remote working in the Labour Code is under discussion.

(II) The Senate submitted the proposal of abolishing the ban on Sunday work in shops during the COVID-19 pandemic.

(III) The 'Solidarity' trade union has resigned from participating in the activities of the Social Dialogue Council.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Proposed amendment on remote working

On 28 October 2020, the Law on the amendment of some laws related to addressing the crisis situation related to COVID-19 was enacted by the *Sejm* (lower chamber of Parliament), and will be subject to further proceedings in the Senate. The abovementioned Law amended, i.a., the Law of 02 March 2020 on specific measures to prevent and fight COVID-19, other infectious diseases and crisis situations caused by them (so-called 'anti-crisis shield') – consolidated text Journal of Laws 2020, item 1842.

The amendment refers, i.a., to remote working. According to Art. 3 of the anti-crisis shield an employer with a view to fighting the COVID-19 pandemic can order employees to work remotely. The provisions on remote working were presented in March 2020 Flash Report (section 1.1.) and June 2020 Flash Report (section 1.1.).

The new Art. 4h of the anti-crisis shield, as enacted by the Law of 28 October 2020, provides that during the threat of pandemic or during the actual pandemic, employees and other employed persons, who are in a mandatory quarantine, may, upon the consent of their employer or employing entity, perform any work agreed in the employment contract remotely in return for remuneration. Article 3 items 3-8 of the anti-crisis shield apply accordingly. In case of remote working, employees or other persons do not have the right to sickness benefits.

Thus, the amendment stipulates that remote working can be performed by civil law contractors, not only by employees. Information on the legislative process can be found here.

In a next step, the Law will be reviewed by the Senate, therefore the legislative process has not yet been completed. So far, the legislative process has been very fast indeed (the draft was submitted by the group deputies on 19 October).

Discussions on introducing provisions on remote working into the Labour Code are underway. Such a regulation would not be COVID-related, but remote working would become a 'regular' labour law institution. Until now, no draft on this issue has been made public. Media information on the issue can be found here.

1.1.2 Proposal to eliminate ban on Sunday work

The Law of 10 January 2018 limiting the trade on Sundays, public holidays and some other days (consolidated text, Journal of Laws 2019, item 466) prohibits Sunday work in shops, supermarkets, etc. (see also January 2018 Flash Report of Poland).

On 27 October 2020, the Senate submitted a draft to the *Sejm* (lower chamber of Parliament) to amend the abovementioned law on limiting trade on Sundays. The purpose of the amendment (new Art. 15i of the 'anti-crisis shield') is to abolish the ban on trade activities on Sundays during the pandemic and for 90 days following the end of the pandemic. Each employee would have the right to at least two free Sundays within a 4-week period. The drafters intend to improve the financial situation of the commercial sector, as well as fight COVID-19 by strengthening social distancing (as it would be possible to shop not only on six, but seven days a week, the shops would be less crowded). Further information on the draft is available here.

The proposal has just been submitted and has not yet been subject to any legislative process. Therefore, it is unclear whether the amendment has chances of being enacted. The government, however, made it public that it did not intend to abolish or modify the ban on trade activities on Sundays.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

In Poland, Directive 2008/104 has been implemented by the Law of 09 July 2003 on the employment of temporary workers.

Article 1 determined that the Law sets out the principles for a temporary work agency (employer) to employ temporary agency workers, as well as the principles for assigning workers and individuals, who are not temporary agency workers, to perform work for a user undertaking. A temporary work agency can employ employees on the basis of a fixed-term employment contract, and can also hire non-employees on the basis of a civil law contract. Article 2 of the Law provides that the user undertaking is an employer or an entity that is not an employer within the meaning of the Labour Code and that assigns tasks to a temporary agency worker and supervises their performance. A temporary agency worker is a worker exclusively employed by a temporary work agency for the purpose of carrying out a temporary work assignment for and under the direction of the user undertaking. Temporary work means performing the following tasks for a specific user undertaking, for a term that does not exceed the duration specified in the Law: seasonal, periodic or casual work; or work that the user undertaking's employees would not be able to perform on time; or work that falls within the scope of duties of an absent employee at the user undertaking.

There are statutory restrictions on temporary work that concern the type of work to be performed and the applicable time limits. According to Art. 8 of the Law, a temporary worker may not be assigned certain activities, i.e. work that is particularly dangerous under the provisions of health and safety protection; in a position occupied by an

employee of the user undertaking who is participating in a strike; and in a position that, in the three months prior to hiring the temporary agency worker, was occupied by an employee who was dismissed within the scope of a collective redundancy. Moreover, it is prohibited to hire a temporary agency worker to work in a position that requires him/her to carry a gun. The latter limitation applies in practice to private security agencies. Article 20 of the Law imposes time limits on the recourse to temporary work. As a rule, over a period of 36 successive months, a temporary work agency may only assign a temporary agency worker to carry out temporary work for a particular user undertaking for a total period not exceeding 18 months.

Polish legislature regulates employment by a temporary work agency, and has introduced the abovementioned measures to fight abuse of this form of employment. In the present reporter's view, Poland has introduced sufficient measures to preserve the temporary nature of temporary agency work, as required by the CJEU in the ruling analysed. Therefore, there is no need to amend the national legislation on temporary work.

4 Other Relevant Information

4.1 Suspension of activities in the Social Dialogue Council by the 'Solidarity' trade union

On 22 October 2020, the representatives of 'Solidarity' in the Social Dialogue Council announced that they would no longer participate in the activities of the Council. The reason was the nomination of the new members of the Council by the President of Poland.

The trade union representatives indicated that the Law of 31 March 2020 on the amendment to the Law on specific measures to prevent and fight COVID-19, other infectious diseases and crisis situations caused by them, and some other laws *('Ustawa o o zmianie ustawy o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem I zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych oraz niektórych innych ustaw')* introduced an amendment to the Law of 24 July 2015 on Social Dialogue Council.

Under 'regular' provisions on the Social Dialogue Council, the President of Poland has the prerogative to appoint and dismiss Council members. According to the 'anti-crisis shield', however, it is the Prime Minister who has the right to dismiss members of the Social Dialogue Council (amended Art. 27 of the Law on Social Dialogue Council). For further analysis, see also the March 2020 Flash Report Poland, section 1.10.

In the opinion of the trade union representatives, the President did not have the prerogative to nominate new members of the Social Dialogue Council during the pandemic. Therefore, they suspended their activities in the Council. Further information is available here.

Portugal

Summary

(I) An exceptional regime of reorganisation of work has been introduced to minimise the risk of contagion.

(II) A new decree establishes support for the progressive resumption of activities of companies in a business crisis situation with a temporary reduction of the normal working time period.

(III) A new ordinance establishes the conditions and procedures for granting social protection support to unprotected employees and self-employed persons affected by the COVID-19 crisis.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Declaration of a state of emergency

The Resolution of the Council of Ministers No. 88-A/2020 of 14 October declares a state of emergency for the entire national mainland territory, until 11:59 p.m. on 31 October 2020, within the context of the COVID-19 epidemiological situation.

The most relevant employment-related measures applicable during the state of emergency are:

- Restrictive measures on opening times for shops and services;
- The employer must provide the employee with adequate safety and health conditions to prevent the risk of spread of COVID-19, and may, in particular, adopt a teleworking regime;
- Mandatory teleworking in specific situations;
- The alternation between the provision of work under a teleworking regime and the performance of work at the regular workplace;
- Establishment of differentiated start and end working times and differentiated break and meal times.

This Resolution entered into force on 15 October 2020.

Resolution of the Council of Ministers No. 88-B/2020 of 22 October defines special measures applicable to the municipalities of Felgueiras, Lousada and Paços de Ferreira in the context of the state of emergency.

The following measures are applicable in these municipalities:

- Restrictions to movement;
- Restrictions to business closing hours;
- Obligation to adopt a teleworking regime, regardless of the nature of the employment relationship, whenever possible.

This Resolution entered into force on 23 October 2020.

1.1.2 Reorganisation of work

On 01 October 2020, Decree-Law No. 79-A/2020 was published, establishing an exceptional and transitional regime of reorganisation of work, intended to minimise the risk of spread of COVID-19 in the context of labour relations.

The most relevant measures set forth in this Decree Law (applicable to companies with 50 or more employees, located in specific territorial areas, as defined by the government) are briefly described below:

Organisation of work schedules

The employer must organise the work schedules of employees who perform work at the company's premises to ensure differentiated schedules (with intervals between 30 and 60 minutes) for each group of employees, except in cases where such a change causes serious damage to the employees.

The change in work schedules requires previous consultations with the affected employees and the collective representation structures. In addition, a minimum prior notice of five days in relation to the start date of the new work schedule must be given to the employees.

Certain groups of employees (such as pregnant, puerperal or breastfeeding mothers, employees who are underage, employees who suffer from reduced work capacity and those affected by a disability or chronic disease, as well as employees caring for children under the age of 12 years) are protected against these changes and cannot be affected by them (against their will).

Other measures to protect employees in the work place

The employer must adopt technical and organisational measures to ensure the physical distance and protection of employees at the company's facilities, namely:

- organisation of permanent/stable work teams so that physical contact only occurs between employees of the same team or department;
- alternation of rest breaks, including meal times, between teams or departments, to safeguard social distancing between employees;
- preference for teleworking, whenever possible;
- the use of adequate personal protective equipment in situations in which physical distancing is clearly impracticable due to the nature of the activity.

The obligations referred to above also apply to temporary agency workers and service providers.

Decree Law No. 79-A/2020 entered into force on 02 October 2020 and will apply until 31 March 2021.

1.1.3 Organisation of work in the public administration

Resolution of the Council of Ministers No. 87/2020 of 14 October defines guidelines and recommendations on the organisation of work in the public administration in the context of the COVID-19 pandemic.

According to this Resolution, the public employer must provide employees with adequate safety and health conditions to prevent the risk of infection with COVID-19 and may, in particular, adopt a teleworking regime in accordance with the terms defined in the Portuguese Labour Code.

The Resolution also establishes measures for the reorganisation of work, such as *(i)* the possibility of establishing rotation schemes between teleworking and performing

work in the usual work place, and *(ii)* the adoption of adjustments to the work schedule up to one hour, except if that causes serious damage to the employees.

This Resolution entered into force on 15 October 2020.

1.1.4 Temporary reduction of the normal working period

Decree Law No. 90/2020 of 19 October amends Decree Law No. 46-A/2020 of 30 July 2020 (see July 2020 Flash Report), which establishes the extraordinary support measure for the progressive resumption of activities ('*apoio extraordinário à retoma progressiva*'), applicable to companies in a business crisis situations with a temporary reduction of the normal working period.

This Decree Law approves amendments to certain aspects of the regime of the said extraordinary support measure, namely:

- the concept of 'business crisis' is revised (and extended) to allow access to this measure by employers that have experienced a drop in turnover of at least 25 per cent, in which case the maximum limit for the reduction of the normal period of work shall be 33 per cent;
- for employers that have witnessed a drop in turnover of at least 75 per cent, the reduction of the normal period of work for each employee may reach 100 per cent in October, November and December 2020; the financial support granted by social security for such employers shall correspond to 100 per cent of the retributive compensation due to employees. In addition, if the reduction of the normal period of work is higher than 60 per cent, the amount of the retributive compensation due to employees is increased to the extent necessary to ensure that they receive an amount equivalent to 88 per cent of their regular gross remuneration, up to a maximum of three national minimum wages (EUR 1 905);
- possibility for this extraordinary support to be provided jointly with training plans approved by the Employment and Professional Training Institute (*Instituto de Emprego e Formação Profissional*) and Competitiveness and Internationalization Operational Programme (*Programa Operacional Competitividade e Internacionalização*); adoption of these training plans—which must comply with specific conditions—the employer is entitled to a scholarship in the amount of 70 per cent of the social support index (the current amount being EUR 438.81) for each covered employee.

This Decree Law entered into force on 20 October 2020.

1.1.5 Social protection support to certain employees

Ordinance No. 250-B/2020, which was published on 12 October 2020, establishes the conditions and procedures for granting extraordinary social protection to employees who are not protected economically and socially and have no access to any social protection instrument or mechanism.

This extraordinary support may be granted to residents in the national territory who are in one of the following situations:

- people who are in a situation without economic and social protection and who find themselves in a situation of termination of their activity as subordinated employees, including in domestic service, resulting from the COVID-19 pandemic;

- self-employed workers covered by the respective social security regime who are in a situation without economic and social protection and have had a break in the services usually provided of at least 40 per cent as a result of the stop, reduction or suspension of their activity due to the COVID-19 pandemic;
- self-employed workers who are in a situation without economic and social protection and who are beneficiaries of one of the support measures provided in Decree Law No. 10-A/2020 of 13 March 2020 (see March 2020 Flash Report), when the amount of this support measure is lower than the social support index (currently in the amount of EUR 438.81), and provided that they meet the conditions set out in this Ordinance.

The exceptional support measure envisaged in Ordinance No. 250-B/2020 corresponds to the monthly amount of one social support index (i.e. EUR 438.81), due from July to December 2020.

During the applicability of this support measure, self-employed workers only have to pay one-third of social security contributions that are due, with the payment of the remaining contributions to be made in the month following the end of this support measure (in this case, the contributions can be paid monthly and in equal instalments within a maximum period of 12 months).

This Ordinance entered into force on 24 October 2020.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The recent CJEU ruling, issued in case C-681/18, concerns the interpretation of Article 5 (5) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary work agency (Directive 2008/104), which stipulates that

> *"Member States shall take appropriate measures, in accordance with national law and/or practice, with a view to preventing misuse in the application of this Article and, in particular, to preventing successive assignments designed to circumvent the provisions of this Directive. They shall inform the Commission about such measures".*

Portuguese labour law on temporary agency work seems to comply with Article 5 (5) of Directive 2008/104, as interpreted by the CJEU in the present case.

According to Article 175 of the Portuguese Labour Code, the user undertaking may only enter into an agreement for the use of temporary agency work in the specific situations foreseen in the law (e.g. substitution of an absent employee; seasonal activity; vacant job position for which a recruitment process is underway; exceptional increase in the company's activity; intermittent need for additional manpower

determined by fluctuations in the company's activity; execution of a temporary project).

Pursuant to Portuguese law, agreements for the use of temporary agency work may only be executed for the specific period during which one of the situations referred to above is verified in the user undertaking. Temporary agency work may not exceed *(i)* 6 months for a vacant job position for which a recruitment process is underway, *(ii)* 12 months in case of an exceptional increase in the company's activity, or *(iii)* 2 years in all other cases (Portuguese Labour Code, Article 178 (2)).

It should be noted that if the temporary agency worker is still working for the user undertaking 10 days after the termination of the initial agreement for the performance of temporary agency work, he/she will be considered an employee of the user undertaking, hired for an indefinite duration (Portuguese Labour Code, Article 178 (4)).

Furthermore, if the maximum duration of an agreement for the use of temporary agency work permitted by law, as referred to above, has been reached, user companies are not allowed to hire another temporary agency worker or an employee hired for a fixed or unfixed term for that same position before a specific period corresponding to one-third of the duration of the said agreement for the use of temporary agency work, including renewals, except in case of *(i)* a new absence of an employee who needs to be substitute, if the original agreement was entered into on this ground, or *(ii)* in case an exceptional increase in manpower is needed in an activity that is considered seasonal (Portuguese Labour Code, Article 179).

Taking into account the legal framework described above, Portuguese legislation contains mechanisms that intend to preserve the temporary nature of temporary agency work and to prevent successive assignments of the same temporary agency worker to the same user undertaking, thus respecting the provisions of Directive 2008/104, in particular, Article 5 (5) of the said Directive.

4 Other Relevant Information

Nothing to report.

Romania

Summary

(I) The extension of the state of emergency implies that regulations on special quarantine and isolation leave are necessary.

(II) The Labour Code has been amended to allow parties to call on external consultants at different stages of the employment contract.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Isolation and quarantine medical leave

In Romania, the state of emergency has once again been extended by Government Decision No. 856/2020 starting on 15 October 2020, as well as the establishment of the measures applied to prevent and fight the effects of the COVID-19 pandemic, published in the Official Gazette No. 945 of 14 October 2020.

As a result, a new category of sick leave has been regulated in Government Emergency Ordinance No. 180/2020, published in the Official Gazette No. 982 of 23 October 2020. Thus, persons who have been ordered to quarantine, whether they have a confirmed case of COVID 19 or not, shall take medical leave issued by a general practitioner based on the document issued by the public health directorate. The leave is granted to persons who do not require isolation in a health facility, but who can quarantine at home or at another chosen location. During this leave, employees benefit from an allowance equal to their average income of the last 6 months, up to a limit of 12 national minimum gross monthly salaries, paid by the state (through the Social Health Insurance Fund).

1.2 Other legislative developments

1.2.1 External consultants

The Labour Code was recently amended by Law No. 213/2020, published in the Official Gazette No. 893 of 30 September 2020. According to the new law, at the beginning or during an employment contract, the parties may negotiate a clause establishing that any individual labour dispute shall be resolved amicably through the conciliation procedure.

Also, when negotiating, concluding or amending the employment contract or during the conciliation of an individual labour dispute, the parties may call on an external consultant. The external consultant may be a lawyer, labour law expert or, as the case may be, a mediator specializing in labour law.

The external consultant may:

- assist either party in negotiating, concluding or amending the employment contract;
- carry out the disciplinary investigation of an employee;
- assume the role of conciliator in individual disputes.

The new law introduces the possibility of conciliating individual labour disputes. It should be noted, however, that, according to Art. 38 of the Labour Code, employees cannot waive any of their rights, which can create difficulties regarding the effective conduct of conciliation, which, in principle, implies mutual concessions by the parties.

A number of controversies have arisen in public debate regarding the diminishing role of lawyers in favour of labour law experts. The Ombudsperson has been notified that the profession of 'labour law expert' referred to in Law No. 213/2020 is not regulated, but only appears as an occupation listed in the Classification of Occupations in Romania.

On the other hand, the law does not contain mandatory provisions, only allowing the participation of external consultants in the negotiation of employment contracts or in the conciliation of individual labour disputes. The parties are free to appoint or to not appoint such an external consultant.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The Romanian regulation on agency work is included in the Labour Code, republished in the Official Gazette No. 345 of 18 May 2011. It was amended by Law No. 40/2011, removing the limitations initially provided for using temporary work. Thus, prior to 2011, the Labour Code provided a limited list of reasons for using agency workers. This limitation has been dropped. Temporary agency work may now be used for any reason, except for the replacement of worker on strike.

An assignment may be extended for successive periods which, in addition to the initial one, may not exceed 36 months. The temporary agency work may be provided for several assignments. Indeed, although temporary agency contracts are most often in practice concluded for a fixed period for a single assignment, Art. 95 (2) of the Labour Code also allows for the conclusion of an open-ended contract between the temporary work agency and the temporary worker, in which case the temporary worker remains available to the temporary work agency between assignments.

The current regulation on temporary work agencies does not provide full guarantees to preserve the temporary nature of temporary agency work and to prevent any misuse of successive assignments to the same user undertaking. Only the duration of an assignment is limited, but the temporary agency worker can be sent on several assignments by the temporary work agency on the basis of an open-ended employment relationship. No distinction is made between assignments to the same user undertaking or to different users. Under these circumstances, it can be assumed that the decision of the Court of Justice of the European Union will be analysed by the Romanian legislator, who could add guarantees in the Labour Code to maintain the temporary nature of agency work and to limit successive assignments to the same user.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

Parliament has determined the amount of the minimum wage for 2021 and the following years.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Minimum wage

On 20 October 2020 the Slovak National Council (Slovak Parliament) adopted an amendment of Act No. 663/2007 Coll. on the minimum wage, as amended, and of Act No. 311/2001 Coll. Labour Code, as amended.

The aim of the new Act No. 294/2020 Coll. is to determine the amount of the minimum wage for 2021 and the following years due to the special unpredictable development in 2020, by adjusting the so-called automatic wage determining mechanism (see also the Flash Report for October 2019).

Article I of Act No. 294/2020 Coll. and in the new Article 9b of Act No. 663/2007 Coll. on minimum wage for the year 2021 determines:

- the amount of the monthly minimum wage as EUR 623;
- the amount of the hourly minimum wage as EUR 3 580.

The minimum wage in the year 2020 was:

- the gross monthly minimum wage - EUR 580.00;
- the gross hourly minimum wage - EUR 3 333.

Article II of Act No. 294/2020 Coll., which amends the Labour Code, amends the determination of the amount of minimum wage entitlement for the relevant scale of work and the determination of the 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 in the Act, but will be set at a fixed amount.

The provisions on the amount of minimum wage in 2021 in the Minimum Wage Act will be effective from 01 October 2020. The changes in the Labour Code will take effect on 01 January 2021.

The Act is published in the Collection of Laws – No. 294/2020 Coll. and is available here.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

Employment through a temporary work agency is widespread in Slovakia and has often been misused in practice. The amendment of the Labour Code (Act No. 311/2001 Collection of Laws – 'Coll.') adopted by Act No. 14/2015 Coll., in force since 01 March 2015, introduced some changes to prevent the misuse of this type of employment.

To prevent the misuse of this type of employment, an amendment of the Labour Code adopted by Act No. 14/2015 Coll. limited the maximum duration of the temporary assignment and the number of temporary successive assignments. Since 01 March 2015, according to Article 58 paragraph 6 of the Labour Code, temporary assignments can be agreed for a maximum of 24 months. Temporary assignments to the same user undertaking may be extended or repeated up to four times within the following 24 months; it also applies in case of temporary assignments of the same worker by a different temporary work agency for the same user undertaking. A repeat (agreed again) temporary assignment is an assignment by which a worker is temporarily assigned to the same user undertaking within six months after the end of the previous temporary assignment, and if it is a temporary assignment for one of the reasons stated in Article 48 paragraph 4 letters b/ or c/, before the expiry of four months after the end of the previous temporary assignment. The provisions of the first and second sentence shall not apply to temporary assignments for the reasons stated in Article 48 paragraph 4 letter a/.

Article 48 paragraph 4 letters b/ or c/ of the Labour Code:

> *"b) the performance of work during a period in which a significant increase in manpower is necessary for a temporary period not exceeding eight months within the calendar year,*
>
> *c) the performance of work that is linked to the seasonal cycle, which repeats every year and does not exceed eight months in the calendar year (seasonal work)."*

Article 48 paragraph 4 letter a/ of the Labour Code:

> *"a/ substitution of an employee during maternity leave, parental leave, leave immediately linked to maternity leave or parental leave, temporary incapacity for work or an employee who is on long-term leave to perform a public function or trade union function."*

According to Article 58 paragraph 7 of the Labour Code, if a worker is temporarily assigned in violation of Article 58 paragraph 6 (first or second sentence) of the Labour Code, the employment relationship between the worker and the temporary work agency is terminated and a new employment relationship of indefinite duration between the worker and the user undertaking is created. The user undertaking shall, within five working days from the date of the creation of the new employment under the first sentence, provide the worker a written notice of its creation; the working conditions of the worker shall be regulated, as appropriate, by the temporary assignment agreement or employment contract in accordance with Article 58 paragraph 5 of the Labour Code.

There is also a prohibition. According to Article 58 paragraph 1 (second sentence), no temporary assignment may be agreed for the performance of work which the competent public health authority has ranked as category 4 in accordance with Act No. 355/2007 Coll. on the protection, support and development of public health because of

the protection of the health of temporarily assigned workers as well as for the protection of the health of employees of the user undertaking.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) The fifth anti-corona package of measures (PKP5) entered into force on 24 October. Additional response measures have been issued.

(II) Changes in the regulation of working time for state prosecutors have been introduced.

(III) Amendments to the Trade Act have introduced a ban on Sunday trading.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 The fifth anti-corona package

The 'Act Determining Interim Measures to Mitigate and Remedy the Consequences of COVID-19', i.e. the so-called fifth anti-coronavirus package (PKP5), was passed by the National Assembly on 15 October 2020 ('*Zakon o začasnih ukrepih za omilitev in odpravo posledic COVID-19 (ZZUOOP)*', Official Journal No 152/2020, 23 October 2020) and entered into force on 24 October 2020, introducing or extending measures, such as subsidised short-time work schemes, partial reimbursement of wage compensation for temporarily laid off workers, basic income for self-employed workers, compensation during quarantine etc.

The most important measures in the field of labour law, introduced or extended by the fifth anti-corona package, were described in the September 2020 Flash Report on the basis of the Government Proposal of this Act (no major changes or amendments were added to the Government Proposal during the legislative procedure).

It is worth noting that the measure of subsidised short-time work schemes (regulated by Articles 11 to 23 of the Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic (ZIUOOPE), a detailed description of which is available in May 2020 Flash Report), initially foreseen to apply until the end of 2020, can now be extended by the government for a maximum of 6 months, but not more than until 31 June 2021, under the condition that the EU Temporary Framework for State Aid Measures to support the economy in the current COVID-19 outbreak is extended to 2021 as well.

1.1.2 Additional measures

Slovenia declared a state of emergency again as of 19 October 2020 (Government Decree, Official Journal No 146/2020, 18 October 2020, page 6293). In response to the deterioration of the epidemic situation in Slovenia, stricter measures have been introduced, especially during the second half of October (obligatory face masks outside, remote schooling, remote working where possible, partial lockdown, prohibition of gathering of more than 6 people, prohibition of crossing borders between municipalities, except in certain cases such as travelling to and from work, restrictions on movement from 9 pm to 6 am, etc.). All these measures have a significant impact on the working population. Home-/tele-working is again very widespread, many working parents are facing challenges reconciling work and family responsibilities (with children being at home), whereby women carry a disproportionate share of this burden, workers in healthcare and social institutions, especially those working with COVID-19 patients and in residential homes for the

elderly, are working under extreme pressure and are overburdened, also due to the shortage of qualified staff, etc.

1.2 Other legislative developments

1.2.1 Traineeship in social assistance

New regulations on traineeships in the field of social assistance (Official Journal No 145/20, 16 October 2020) and on professional examinations in the field of social assistance (Official Journal No 145/20, 16 October 2020) entered into force on 30 October 2020.

1.2.2 Regulation of working time for state prosecutors

The Amendments to the State Prosecution Service Act (Official Journal No 139/20, 9 October 2020, pages 5710 and subseq.) introduced, among others, certain changes to the regulation of 'stand-by duty' and 'on-call duty' of state prosecutors and of public employees in the State Prosecutor's Offices. According to Article 45 of the State Prosecution Service Act, 'on-call duty', i.e. the on-call time spent at home during which a state prosecutor may be called upon to start working if necessary is not considered working time if no actual work is performed during that time, whereas the 'stand-by duty' at the work premises is considered and calculated as working time. Similar rules on stand-by and on-call duty for public employees in the State Prosecutor's Offices are contained in Article 137.a of the State Prosecution Service Act.

1.2.3 Ban on Sunday trading

The Amendments to the Trade Act (Official Journal No 139/20, 09 October 2020, pages 5714 and subseq.), which entered into force on 24 October 2020, introduced the ban on Sunday trading (see Article 8, new paras. 3-7 of the Trade Act). Shops must be closed on Sundays and national holidays. There are certain exceptions, including shops of less than 200 square metres located at gas stations, border crossings, ports, airports, train and bus stations and hospitals. In addition, the ban does not apply to shops of less than 200 square metres under the condition that customers are only served by the shop owners and their representatives, whereby the occasional work of students and pensioners is permitted as well.

This initiative, supported by a strong majority in the National Assembly (72 to 13 votes), aims to improve the working conditions of approximately 115 000 employees in the retail sector, who are mainly women, and to contributing to a better work-life/family balance. Ban on Sunday trading has long been a demand of the trade unions in the retail sector. A proposal for a ban on Sunday trading was supported by 58 per cent of the votes in a referendum in 2003.

The Chamber of Commerce (*'Trgovinska zbornica')* already announced that it will challenge the constitutionality of the respective provisions before the Constitutional Court.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary Agency Work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The present case concerned temporary agency work. According to the CJEU, Directive 2008/104/EC, first sentence of Article 5(5) or any other provision of that Directive does not require national legislation to limit the number of successive assignments of the same temporary agency worker to the same user undertaking or make the lawfulness of the use of temporary agency work subject to the prerequisite that it must be justified by technical, production, organisation or replacement-related reasons. On the other hand, the said provision of Directive 2008/104 must be interpreted as precluding a Member State from taking no measures at all to preserve the temporary nature of temporary agency work and as precluding national legislation that does not lay down any measure to prevent successive assignments of the same temporary agency worker to the same user undertaking in order to circumvent the provisions of Directive 2008/104 as a whole.

This CJEU judgment is of relevance for Slovenian law.

Temporary agency work is regulated in the Employment Relationships Act ('*Zakon o delovnih razmerjih (ZDR-1)*', Official Journal No. 21/13 et subseq), in particular, in Articles 59 to 63. Slovenian law does not explicitly limit the number of successive assignments of the same temporary agency worker to the same user undertaking, nor does it make the lawfulness of the use of temporary agency work subject to the prerequisite that it must be justified by technical, production, organisation or replacement-related reasons. It does not limit the length of a (temporary) assignment of the worker to the user undertaking either. Nevertheless, there are certain measures that aim to prevent the misuse of temporary agency work and to strengthen the principle of equal treatment.

Slovenian law prescribes the quota for the use of temporary agency work, but the 25 per cent rule has so many exceptions that it can hardly be considered effective. According to Article 59 of the Employment Relationship Act, the number of workers assigned to the user undertaking may not exceed 25 per cent of the number of workers employed with the user undertaking, except where otherwise provided by a sectoral collective agreement. This limitation does not include workers who are employed for an indefinite duration with the temporary work agency (TWA), nor does it apply to a user undertaking employing up to 10 workers.

According to Article 60 of the Employment Relationships Act, temporary agency worker may conclude a contract of employment with the TWA for an indefinite or definite period. A fixed-term employment contract may only be concluded if prescribed conditions for a fixed-term employment are met at the user undertaking (one of the listed reasons in Article 54 and the time limits in Article 55 of the Employment Relationships Act must be respected).

In addition, various provisions implement the principle of equal treatment of temporary agency workers (Articles 62 and 63 of the Employment Relationships Act).

However, there are serious doubts whether the existing measures are sufficient and efficient, in particular, in preventing that temporary agency work at the same user undertaking should not become a permanent situation for a temporary agency worker, or preventing successive assignments of temporary agency workers to the same post in the user undertaking to not actually transform permanent jobs into a series of temporary assignments, i.e. it is doubtful that the existing measures are effective and sufficient for preserving the 'temporary nature' of temporary agency work.

The CJEU judgment in case C-681/18 offers very useful guidance for the Slovenian legislator as well as for the courts when interpreting and applying the national law and must follow the principle of interpretation in conformity with EU law. The emphasis is on the 'temporary nature' of temporary agency work that must be respected. As the CJEU emphasised, it is apparent from the definitions in Article 3 (1) (b) to (e) of Directive 2008/104 that the temporary agency work with a user undertaking is, by its very nature, *temporary*. And, according to the CJEU, the Directive also aims to stimulate temporary agency workers' access to permanent employment at the user undertaking.

The following aspects of the CJEU's reasoning will be of a particular relevance for Slovenian courts when deciding cases concerning temporary agency work:

- If successive assignments of the same temporary agency worker to the same user undertaking result in a period of service with that undertaking that is longer than what can reasonably be regarded as 'temporary', it might be indicative of misuse of successive assignments for the purposes of the first sentence of Article 5(5) of Directive 2008/104 (para. 69);
- Successive assignments of the same temporary agency worker to the same user undertaking circumvent the very essence of the provisions of Directive 2008/104 and amount to misuse of that form of employment relationship, since they upset the balance struck by that Directive between flexibility for employers and security for workers by undermining the latter (para. 70);
- Where no objective explanation is given for the decision of the user undertaking concerned to have recourse to a series of successive temporary agency contracts, it is for the national court to examine—in the context of the national legislative framework and taking account of the circumstances of each case—whether any of the provisions of Directive 2008/104 has been circumvented, especially where the series of contracts in question have assigned the same temporary agency worker to the same user undertaking (para. 71).

4 Other Relevant Information

Nothing to report.

Spain

Summary

(I) A regulation on the work of railway personnel has been issued. It implements Directive (EU) 2016/798 on railway safety and Directive (EU) 2016/797 on the interoperability of the railway system within the European Union.

(II) A Special Coordination Unit for the Fight against Fraud in Transnational Labour was created within the labour inspectorate.

(II) The Supreme Court stated that food delivery riders are employees, and not self-employed workers.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Equality plan

In accordance with Organic Law 3/2007 and Royal Decree Law 6/2019, undertakings with at least 50 workers must have an 'equality plan' between women and men that must be registered in a public registry. Smaller companies can also draw up an equality plan but have no obligation to do so. This regulation allows a single equality plan for more than one undertaking if they belong to the same group.

This regulation provides more specific rules on how to quantify the number of workers of the undertaking, on the negotiation procedure, the contents of the plan, the duration (maximum of four years) and on the circumstances that require revision. In particular, equality plans must include an audit on wages to verify compliance with the principle of equality.

These rules on equality plans explicitly refer to Directive 2006/54/EC of the European Parliament and of the Council of 05 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

1.2.2 Equal pay

The principle of equal pay for work of equal value is included in Article 28 of the Labour Code. This regulation of 13 October 2020 determines the scope of this principle to allow for an adequate valuation of jobs and to give content to the principle of salary transparency, which is mandatory for undertakings and collective agreements.

Undertakings must create a salary registry that must detail the average salary, with a distinction between sexes, and this regulation specifies who can access that information as well as its content. When this registry, together with the aforementioned audit on wages, reveals breaches of the principle of equality, an appropriate action plan must be drawn up.

This regulation refers to Directive 2006/54/EC of the European Parliament and of the Council of 05 July 2006 on the implementation of the principle of equal opportunities

and equal treatment of men and women in matters of employment and occupation (recast), as well as to ILO Convention 102.

1.2.3 Railway personnel

In relation to the work of railway personnel, this regulation provides the following rules:

- Right of free and non-discriminatory access to the required training for the performance of work that must be provided by railway companies or those that manage railway infrastructure. The regulation provides the minimum and necessary content of the training activities for the personnel who perform security functions;
- Sufficient qualification of personnel performing functions in the railway sector (for reasons of safety and efficiency);
- Railway companies must plan working times and maximum driving times;
- The labour inspectorate must collaborate with the State Railway Safety Agency in monitoring and demanding compliance with railway safety regulations;
- Inclusion of specific tests to detect signs of consumption of alcohol, drugs or psychoactive substances in the evaluation processes for the granting or renewal of certificates of psychophysical aptitude;
- Conducting random tests on the consumption of undesirable substances in case of accidents or incidents;
- Designing the content of the analytical tests aimed at detecting the consumption of drugs and psychoactive substances;
- Railway personnel must report the consumption of drugs that may decrease or affect an individual's psychophysical faculties.

This regulation transposes Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety, and Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union.

1.2.4 Labour inspectorate

A Special Coordination Unit for the Fight against Fraud in Transnational Labour has been created within the Labour Inspectorate.

This provision is linked to Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344.

2 Court Rulings

2.1 Platform workers

Supreme Court, 805/2020, 25 September 2020

The Spanish Supreme Court ruled that food delivery riders are employees, not self-employed workers. The case involved Glovo, the most popular food delivery service in Spain. Glovo defines itself as a technology company whose main activity is the development and management of computer platforms to facilitate the offer of products

from shops to consumers through computer applications on mobile media or on their website. In the present case, the rider became ill and requested to not be assigned orders for some time. Glovo stopped assigning orders permanently to the worker who submitted a claim against dismissal, asserting that he was a salaried worker.

Riders sign a contract with Glovo as self-employed workers, i.e. they decide when to start and end the work day, they can reject orders, they have no obligation to complete a minimum number of deliveries and they can reject an order in the middle of executing it without a penalty. However, Glovo implements a scoring system and created a ranking based on customers' assessments and the time frame of deliveries, giving the highest-scoring riders preference. Riders use their own vehicles and mobile phones, but they need to use the company's APP and they contact Glovo through email. Glovo riders have the right to interrupt their activity for 18 business days a year, they are not required to justify absences, they do not have an exclusivity agreement, they assume responsibility for the good's delivery (upon which payment depends) and they can choose the route, but are permanently trackable via GPS.

The Supreme Court reminded that the 'independent contractor' agreement between the rider and Glovo does not prevent the classification of the worker as an employee, if his/her independence is merely notional, thereby disguising an employment relationship. The factual reality must prevail over the name given to the contract by the parties.

The Supreme Court stated that the rider's freedom to choose when to work does not exclude the existence of an employment contract, and considered the scoring system and GPS control as decisive elements to classify the rider as an employee under labour law. It also provided two additional arguments. Firstly, the main cost of the activity (the digital platform) is borne by Glovo, and it is not the rider, but Glovo that sets the commercial conditions of the service (price and payment method). Secondly, the riders do not run a true business, although they bear the costs of the delivery.

The Supreme Court explicitly mentioned the ruling in CJEU case C-692/19, 22 April 2020, *Yodel Delivery*, and reached the conclusion that although the worker was hired as an independent contractor, he acted under the direction of the employer because Glovo is not 'a mere intermediary' between restaurants and riders, but instead 'a business that determines the conditions for the provision of its services, and owns the assets essential to carrying out services'. After an overall assessment, the Supreme Court considered that in this case, labour law should apply.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

This ruling will have no implications in Spain, because Spanish law differs significantly from Italian law in this regard. Under Spanish law, even if the contract of employment between the worker and the temporary work agency could be permanent, the worker's assignment to the user undertaking must be temporary. If the worker has been hired under a fixed-term employment contract, its duration must be the same as that of the contract between the temporary work agency and the user undertaking for the employee's assignment.

The duration of the employment contract cannot exceed the limits determined by the general regulations on fixed-term employment contracts and is linked to the objective reasons that justify the conclusion of a fixed-term contract. Those limits are compulsory and cannot be modified by agreement between the parties or collective bargaining.

Contracts between the temporary work agency and the user undertaking for the assignment of workers must be temporary as well, hence assignments may not have a permanent character. Although these are commercial manpower supply contracts, they are concluded in accordance with the general regulation on fixed-term employment contracts (objective reasons, duration limits, etc). User undertakings may not permanently cover the same post with temporary employees. In fact, temporary agency work is only possible if the same objective reasons, required for any fixed-term employment contract under general rules, exist. Therefore, legal regulations on temporary work agencies refer to the general statutory provisions on fixed-term employment contracts.

The user undertaking is responsible for corroborating the existence of objective reasons justifying the conclusion of fixed-term and temporary work contracts, and thus the validity of the time limitation, though this will also directly affect the contract between the temporary agency work and the employee.

Therefore, Spanish law has taken measures to preserve the temporary nature of temporary agency work. Successive assignments of the same temporary agency worker to the same user undertaking are only allowed if an objective reason exists. These objective reasons are the same whether the user undertaking prefers a temporary agency work or hires the worker directly.

4 Other Relevant Information

4.1 Unemployment

Unemployment fell in September by 26 329 people. There are 3 776 485 unemployed people, about 530 000 more than before the pandemic caused by COVID-19.

Sweden

Summary

The Swedish Labour Court has decided a case on probationary work interrupted by parental leave and later discontinued because the employer could not assess the capacity of the probationary employee. The Labour Court, following a thorough review of EU and domestic law, concluded that the employee's rights under the Parental Leave Act and the Parental Leave Directive had been violated.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Parental leave

Labour Court, AD 2020 No. 53, 30 September 2020

In its judgment AD 2020 No. 53, the Swedish Labour Court addressed a variety of issues relating to parental leave, probationary work (fixed-term) and gender discrimination. The applicant, an administrative staff member on probation at the Swedish Social Insurance Agency (*Försäkringskassan)*, was on parental leave for the majority of the probation period, since his wife suffered from post-partum depression. Due to the substantial period of parental leave (he worked 30 out of a total of 126 working days during the probation period), the employer reached the conclusion that the employee's working capacity could not be properly assessed. The probationary employment was therefore terminated. The employee, supported by the Discrimination Ombudsman, sued the employer for gender discrimination since the decision was related to his parental leave, which in turn was related to his wife's post-partum depression, and furthermore, violations of the Act on Parental Leave.

The Labour Court, despite the applicant's explicit request, decided to not submit the case to the CJEU for a preliminary ruling.

The Labour Court, which referred to a significant number of CJEU cases, concluded that the employer's decision to end the probationary employment was not related to the medical conditions of the employee's wife (mother of the new-born) and that the termination of the contract lacked any relation to gender. The employer would have taken the same action, regardless of the reasons for the employee's long-term absence during his probation period.

While the Labour Court settled the discriminatory aspects of the case, the Court went on to conclude that the employer's decision violated the Parental Leave Act (*Föräldraledighetslagen*, 1995:584), as it is to be interpreted in relation to Directive 2010/18/EU implementing the revised Framework Agreement on Parental Leave. The Labour Court carried out a thorough review of applicable EU, national and case law, not least the case Land Berlin, C-174/16, EU:C:2017:637. In that case, the CJEU concluded, among other things, that the employee should '*at the end of parental leave, continue, in the post thus returned to or newly assigned, a probationary period under conditions that are in compliance with the requirements of Clause 5(2) of the revised Framework Agreement*'. The Swedish Labour Court arrived at the conclusion that para. 16 of the Swedish Parental Leave Act, read in the light of the preparatory works (prop. 2005/06:185 p. 125-126) that permitted the discontinuation of the probationary employment, differed from §5 of the Framework Agreement of the

Parental Leave Directive, which accepted no such exemption. Based on a close reading of the Directive, the Labour Court concluded that the employee's rights under the Directive as well as under para. 16 of the Swedish Act had been violated and ordered the employer to pay damages for this violation.

The case represents a very in-depth analysis of Swedish preparatory works, different areas of Swedish law and the understanding of these provisions from the perspective of the Parental Leave Directive.

2.2 Reasonable accommodations for persons with disabilities

UN Committee on the Rights of Persons with Disabilities, CRPD/C/23/D/45/2018, 15 October 2020

The UN Committee on the Rights of Persons with Disabilities issued a decision under the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities (CRPD) on 23 September 2020 based on the proceedings before the Swedish Labour Court. The Committee criticises the Swedish Labour Court's decision AD 2017 No. 51 on disability discrimination (reasonable accommodations) in a case between a deaf university teacher applying for a position as senior lecturer at a Swedish public university college.

In the case before the Labour Court, the court came to the conclusion that the employer did not discriminate against the applicant while rejecting his application, even though he was considered the most qualified applicant. The employer rejected the application since an investigation found that the additional costs for sign language interpretations were estimated at an annual cost of approximately EUR 50 000. The employer, and later the Labour Court, found that such an accommodation would have been unreasonable in the given case.

The UN Committee, however, concluded that the Labour Court should have allowed the applicant's appeal since the university college had not properly investigated other possibilities (such as an assignment of other duties other than teaching or interacting with students). The Committee recommends Sweden, as a signatory to the Convention, to compensate the applicant and educate public officials on the content of the Convention.

The case before the Committee (and prior to that before the Labour Court) addresses both the material discussion on reasonable accommodations for persons with disabilities (the Swedish Discrimination Act currents phrases this 'inadequate accessibility') and the role of the different bodies of the signatory State. The Committee does not state that a certain additional cost, or the actual cost of EUR 50 000 Euro annually in the present case, is reasonable. Instead, the Committee emphasises that the test of reasonable accommodation must be preceded by an investigation of possible accommodation adjustments of the tasks or assignments. In the specific case, it was not sufficient to only focus on the additional cost for sign language interpreters. A more thorough investigation of possible accommodations should have been carried out. The accommodations' reasonableness should be discussed with the applicant and assessed with the intent of finding the best balance between both parties' interests. Furthermore, the Committee is very vocal in its criticism of all actors involved organised by the Swedish state for not raising the question of possible accommodations other than sign language interpretation. These state actors include, interestingly, the Labour Court as well as the employer (a public university college) and the Discrimination Ombudsman who solicited the case on behalf of the applicant in the Labour Court.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

The CJEU ruled in an Italian case, C-618/18 on issues relating to the misuse of successive assignments of temporary agency work.

Temporary agency work in Sweden is regulated in the Act on Agency Work (*lagen 2012:854 om uthyrning av arbetskraft*). The Act transposes EU law.

The Swedish labour law only permitted agency work very late, namely in 1993, and the majority of temporary agency work is covered by collective agreements and consists of ordinary employment relationships, despite the misgivings aired at the time of the introduction of the 1993 legislation that allowed this form of work. The current Swedish legislation transposing EU law on temporary agency work, the Act on Agency Work (*lagen 2012:854 om uthyrning av arbetskraft*) does not contain any special provision on restrictions of successive assignments. On the contrary, the Swedish Act recognises temporary agency work as any other form of employment, but acknowledges the special arrangement between the employee, the employer and the user undertaking. The Act, which in parts can be supplemented or even replaced by collective agreements, provides for an immediate application of the equal treatment principle, and the government inquiry SOU 2011:5 *Bemanningsdirektivets genomförande i Sverige* (p. 174-175) preceding the passing of the Act concluded that a further regulation of the misuse of successive assignments would be unnecessary.

The first part of the Italian case before the CJEU raises no questions from a Swedish law perspective. There would be no possibility to claim the establishment of an employment contract with the user undertaking based on successive assignments, although the law stipulates the user's obligation to inform agency worker(s) about vacancies in their undertaking.

The second part, for which the CJEU seems to imply that legislation ought to contain provisions to fight against the misuse of successive agency assignments if the Directive's provisions are being jeopardised or circumvented 'as a whole', might be more difficult to digest. Since Swedish law does not allow a circumvention of the Directive 'as a whole', this would not contradict Swedish labour law. The only way to circumvent or avoid the Directive's provisions is through a collective agreement, a route that is clearly accepted by the Directive as such, and only parts of the Directive (and Swedish law) can be replaced by collective agreements. The CJEU's ruling does not appear to contradict the Swedish transposition of the Directive.

4 Other Relevant Information

4.1 Ongoing negotiations on employment protection legislation

The ongoing negotiations on reforming employment protection legislation between the major industrial partners have not reached a conclusion. The proposal for reform based on a government inquiry will not be presented to Parliament if the industrial partners reach an agreement on the outstanding issues. The parliamentary balance is being jeopardised by the current process, and most political parties—as well as the collective partners—would welcome a negotiated solution based on the long-term collaboration between the employers' federations and the major trade unions.

United Kingdom

Summary

Following the introduction of a four-week lockdown in England and of other temporary restrictions in Wales and Scotland, the Coronavirus Job Retention Scheme has been extended by one month, and income support for self-employed workers has been increased.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Job retention scheme extended

A two-week circuit breaker lockdown was announced in Wales from 6 pm on Friday 23 October to 09 November 2020.

Scotland has introduced a Strategic Framework, introducing 5 tiers of restrictions.

England has introduced a four-week lockdown from 05 November 2020. It is still possible to go to work if the individual cannot work from home; non-essential shops and sports facilities are closed. The furlough scheme has been extended by one month. As the government asserts:

> *"Coronavirus Job Retention Scheme (CJRS)—also known as the Furlough scheme—will remain open until December, with employees receiving 80% of their current salary for hours not worked, up to a maximum of £2,500. Under the extended scheme, the cost for employers of retaining workers will be reduced compared to the current scheme, which ends today. This means the extended furlough scheme is more generous for employers than it was in October.*
>
> *In addition, business premises forced to close in England are to receive grants worth up to £3,000 per month under the Local Restrictions Support Grant. Also, £1.1bn is being given to Local Authorities, distributed on the basis of £20 per head, for one-off payments to enable them to support businesses more broadly.*
>
> *To give homeowners peace of mind too, mortgage holidays will also no longer end today."*

1.1.2 Self-employment income support

There is also a new scheme for self-employed workers: the new enhanced scheme will open for applications from the end of November and cover 80 per cent of trading profits for that month. Including the new higher November grant, this means the November-January payment will be at 55 per cent of profits, up to a maximum of GBP 5 160.

For further information, see here and here.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU, 14 October 2020, C-681/18, KG (Missions successives dans le cadre du travail intérimaire)

In case C-681/18, *KG*, the Court recognised that the Temporary Agency Work Directive did not rule out successive assignments to the same user undertaking. However, the Court, adopting a purposive approach, did require Member States to introduce measures to circumvent abuse of temping arrangements.

Under UK law, the Fixed Term Work Regulations do rule out renewals of fixed-term contracts beyond four years, unless they are objectively justified:

> *"Successive fixed-term contracts*
>
> *8.—(1) This regulation applies where—*
>
> *(a) an employee is employed under a contract purporting to be a fixed-term contract, and*
>
> *(b) the contract mentioned in sub-paragraph (a) has previously been renewed, or the employee has previously been employed on a fixed-term contract before the start of the contract mentioned in sub-paragraph (a).*
>
> *(2) Where this regulation applies then, with effect from the date specified in paragraph (3), the provision of the contract mentioned in paragraph (1)(a) that restricts the duration of the contract shall be of no effect, and the employee shall be a permanent employee, if—*
>
> *(a) the employee has been continuously employed under the contract mentioned in paragraph 1(a), or under that contract taken with a previous fixed-term contract, for a period of four years or more, and*
>
> *(b) the employment of the employee under a fixed-term contract was not justified on objective grounds—*
>
> *(i) where the contract mentioned in paragraph (1)(a) has been renewed, at the time when it was last renewed;*
>
> *(ii)where that contract has not been renewed, at the time when it was entered into.*
>
> *(3) The date referred to in paragraph (2) is whichever is the later of—*
>
> *(a) the date on which the contract mentioned in paragraph (1)(a) was entered into or last renewed, and*
>
> *(b) the date on which the employee acquired four years' continuous employment."*

The Agency Workers Regulations make no provision for this.

4 Other Relevant Information

Nothing to report.

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