Flash Reports on Labour Law December 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 December 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, with the second part summing up other labour law developments with a 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. States of emergency and lockdowns have been extended in several countries, including the **Czech Republic**, **Italy**, **Portugal**, **Slovenia** and the **United Kingdom**, and specific restrictions for the Christmas period have been put in place in various countries. Restrictions in connection with travelling, as well as on the operation of businesses and other establishments remain in force in many countries, such as the **Czech Republic**, **Denmark**, **Italy** and **Portugal**.

Teleworking remains mandatory in areas with a high risk of contagion in **Portugal**. Specific health and safety measures for workplaces to reduce the risk of contagion are in place in many States. In several countries, such as **Spain**, **Portugal** and **Romania**, the list of biohazard risk groups in the working environment has been integrated with new biological risk factors, including the coronavirus SARS-CoV-2, in compliance with Directive (EU) 2019/1833 and Directive (EU) 2020/739. The possibility of providing for special occupational health and safety preventive measures by Royal Decree in the event of an epidemic or pandemic has been introduced in **Belgium**. Moreover, based on recent research on the COVID-19 risk among pregnant workers, a special maternity leave for pregnant workers has been introduced in **Austria**.

Finally, following the start of the COVID-19 vaccination campaign, the potential obligation to be vaccinated is being publicly debated in **Austria**.

Measures to alleviate the financial consequences for businesses and workers

To alleviate the adverse effects of the COVID-19 crisis, State-supported short-time work, temporary layoffs or equivalent wage guarantee schemes remain in place in many countries. In December 2020, previously enacted temporary schemes have been provisionally extended in **Hungary, Iceland, Norway, Romania** and **Slovenia.** In the **United Kingdom**, it has been announced that the Coronavirus Job Retention Scheme will be extended until 30 April 2021. In **Romania**, the Labour Code has been amended to include the temporary suspension of activities and/or its reduction as a result of the declaration of the state of emergency among the causes of suspension of employment contracts at the initiative of the employer that grant entitlement to unemployment benefits.

A special reward in addition to salaries for certain categories of employees and public servants in the healthcare and other essential sectors has been introduced in **Croatia**, and is being considered in **Portugal**. Financial benefits for the self-employed have been extended in **Slovenia**, while relief measures for the self-employed have been envisaged in the Budget Law for 2021 in both **Italy** and **Portugal**.

Subsidies for employers (incl. tax exemptions/reductions) were introduced or enhanced in **Belgium, Croatia,** the **Czech Republic, Italy, Luxembourg,** the **Netherlands, Norway, Portugal, Romania, Slovenia** and **Spain**. For example, in

Belgium, compensation has been provided for the increased cost of annual leave pay for employers whose employees are temporarily laid-off, and income tax exemption for overtime worked in essential sectors has been extended. In **Luxembourg,** extraordinary aid for sectors affected by the crisis has been adopted to compensate for the rise in minimum wage. In **Romania**, tax exemptions have been provided to cover employers' costs arising from teleworking. In **Spain**, new measures providing for a reduction in social security contributions for workers in the tourism, hospitality and commerce sectors have been introduced.

Special rules aimed at protecting workers against the effects of the COVID-19 crisis remain in place, such as the suspension of dismissals in favour of less detrimental measures in **Italy**, which has been extended until 31 March 2020, and the possibility of exemptions in the area of qualification requirements in the **Czech Republic**.

In **Belgium,** successive fixed-term employment contracts can be concluded with a temporarily unemployed person, without it being assumed that an employment contract has been concluded for an indefinite duration. Likewise, in **Italy**, the possibility to hire workers on a fixed-term contract without a justifying reason has been extended until 31 March 2021. In **Slovenia**, the possibility for employers to dismiss workers entitled to statutory old-age pension without justification has been introduced. By contrast, in **Finland**, temporary amendments to the labour legislation that provided flexibility came to an end on 31 December 2020.

Leave entitlements and social security

Special rules on entitlements to family- and care-related leave and sick leave continue to apply in many countries.

Exceptional care leave schemes have been amended or extended in **Luxembourg, Norway** and **Romania.** In **Belgium,** the temporary unemployment scheme for exceptional care leave has been extended until 31 March 2021**.**

Measures providing wage compensation during quarantine have been amended in **Belgium**, **Luxembourg** and **Norway**, with special provisions on the right to sickness benefits having been extended until 31 March 2021.

Measures to ensure the performance of essential work

In **Portugal**, the exceptional hiring of medical personnel under fixed-term contracts has been introduced. In **Belgium**, the posting of workers in the essential sectors of care, education and COVID-19 contact tracing is exceptionally permitted. In the same sectors, the voluntary overtime quota have been increased.

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

Topic	Countries
Employer subsidies	BE HR CZ IT LU NL NO PT RO SI ES
Restrictions to business activities by lockdown measures	CZ DK IT PT SI UK
Short-time work and similar	HU IS NO RO SI UK
Health and safety measures	AT BE PT RO ES
Special care leave / parental leave	BE LU NO RO
Wage compensation during quarantine	BE LU NO
Temporary exception to fixed-term work regulation	BE IT PT
Benefits for workers / self-employed prevented from working	IT PT SI
Benefits for workers in the healthcare sector	HR PT
Teleworking / working from home	PT RO
Temporary exception to work regulations in the health sector	PT BE
Suspension of dismissal	IT
Temporary exception to working time regulations in the health sector	BE
Work qualification	CZ
Dismissal of workers entitled to statutory pension	SI

Other developments

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

Work-life balance

In **Belgium**, **France** and **Italy**, the duration of paternity leave has been extended.

Likewise, in **Estonia**, a draft law to transpose Directive (EU) 2019/1158 on Work-Life Balance for Working Parents and Carers has been prepared.

In **Denmark**, an amendment to the law improves the financial conditions during maternity and parental leave for the self-employed.

In **Iceland**, a new Act on Maternity, Paternity and Parental Leave has been passed, extending their total duration to 12 months, which are to be equally divided between the parents.

Atypical employment

In **Austria**, a ruling of the Supreme Court confirmed that the Temporary Agency Work Directive is not applicable to workers exclusively assigned to support the judiciary, which exercises public powers.

In **Finland**, the Labour Court has decided two cases concerning justifying grounds for concluding fixed-term employment contracts with professors at universities.

In **Germany**, the Federal Labour Court submitted a request for preliminary rulings before the CJEU regarding the possibility of deviating from the principle of equal treatment of temporary agency workers and permanent employees by collective agreements.

In the **UK**, a judgment of the Employment Appeal Tribunal ruled that the Agency Work regulation does not confer the right for agency workers to apply for or to be considered for jobs on the same terms as workers who are directly employed by the hirer.

In **Spain**, an important judgment of the Supreme Court ruled that fixed-term employment contracts with sub-contracting companies that are extended could be considered permanent contracts.

In **Spain**, a new contract of employment regulates internships performed by university students.

Posting of workers

Directive 2018/957/EC on the posting of workers within the framework of the provision of services has been transposed in **Finland**, **Latvia**, **Luxembourg** and **Portugal**. Likewise, in **Bulgaria**, a provision on the posting of workers has been amended to implement the requirements of this Directive.

In **Austria**, a judgment of the Supreme Court confirmed that posted workers are included in the Austrian system of annual leave contributions within the construction industry.

In **Denmark**, an important Supreme Court judgment ruled that part of the previous posting of workers regulations imposed a disproportionate restriction on the free movement of services. The rules have already been amended, and correspond to the outcome of the case.

Working time

In **Bulgaria**, limitations to the calendar period to calculate aggregate working time have been abolished, and longer hours of overtime are now admissible.

In **Germany**, the Federal Labour Court submitted a request for preliminary rulings before the CJEU regarding the compatibility of a higher payment of irregular night work with the Working Time Directive.

In **Ireland**, regulations on implementing working time rights for share fishermen working on board fishing vessels has been implemented.

Likewise, in **Romania**, regulations on the working time of drivers have been

amended following the adoption of Regulation (EU) 2020/1054.

In **Malta,** a legislative proposal clarifies that public holidays that fall on a weekend are to be added to each employee's annual leave allowance.

Due to the COVID-19 crisis, in **Slovenia**, employees have been granted the possibility to transfer unused annual leave to the next calendar year.

Occupational Safety and Health

In **Spain**, regulations on the protection of workers to exposure to carcinogens or mutagens at work have been amended to transpose Directive (EU) 2017/2398.

In **Germany**, the Federal Constitutional Court rejected several applications for interim injunctions to prevent parts of the Occupational Safety and Health Control Act from entering into force in the meat industry.

In **France**, the social partners signed a national multi-industry agreement on occupational health.

Other aspects

In **Croatia**, **Denmark** and **Slovenia**, regulations amending the employment of third-country nationals have been introduced. Likewise, in **Spain**, a transitional regime regulating the relationships between Spain and the UK after Brexit has been established.

In **Bulgaria**, the scope of application of the Labour Code has been extended to also apply to employment relationships between Bulgarian employers and employees with a workplace outside Bulgaria.

In **Croatia**, the regulation on the employment of people with disabilities has been amended.

In **Estonia**, amendments to the resolution of individual labour disputes entered into force on 04 December 2020. Likewise, in **Spain**, a new agreement on an alternative dispute resolution mechanism was signed by the most representative unions and employer organisations.

In **France**, daily sickness benefits for self-employed persons have been introduced.

In **Germany**, the Federal Ministry of Labour has presented a Draft Act to promote works council elections and strengthen works councils.

In **Luxembourg**, four ILO instruments on employment policy, tripartite consultation, occupational safety and health and forced labour have been ratified.

In **Portugal**, Directives (EU) 2017/159 and 2018/131 on work on board fishing vessels and the activity of seafarers on board vessels have been transposed. Similarly, in **Finland,** the regulation of seafarers has been amended to take the 2018 amendments to the ILO Maritime Labour Convention into consideration.

In **Spain**, new situations are covered by the Salary Guarantee Fund, protecting employees in case of employer insolvency.

Table 2: Other major developments

Topic	Countries
Posting of workers	AT BG DK FI LV LU PT
Working time	BG DE EI RO MT SI
Health and safety	BE DE FR ES
Foreign workers	HR DK SI ES
Work-life balance	DK EE IS
Paternity leave	BE FR IT
Temporary agency work	AT DE UK
Labour disputes	EE ES
Seafarers	EI PT FI
Fixed-term work	FI ES
Sickness benefit	FR
Workers with disabilities	HR
Scope of labour law	BG
Works council	DE
Protection of employees in case of insolvency	ES
Employment status of interns	ES

Implications of CJEU Rulings

Posting of workers

This FR analyses the implications of a CJEU ruling on the posting of workers.

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The CJEU's findings in this case concerned the interpretation of various articles of Directive 96/71/EC on posting of workers. First, the Court held that the Directive applies to the transnational provision of services in the road transport sector. Second, the Court recalled that, in order for a driver to be regarded as being posted to the territory of a Member State, the performance of his or her work must have a 'sufficient connection' with that territory, determined in the context of an overall assessment of various factors. A driver carrying out cabotage operations, as a rule, meets this requirement, as cabotage operations take place entirely within the territory of the host Member State. Lastly, the Court specified that the definition of universally applicable collective agreement, in the sense of Article 3(1) and (8) of the Directive, also covers a collective labour agreement which has not been declared universally applicable, but compliance with which is a precondition for exemption from another collective labour agreement that has been declared universally applicable, and the provisions of which are essentially identical to those of that other collective labour agreement.

The majority of reports (e.g. **CZ**, **EL**, **HU**, **EI**, **LV**, **LI**, **LT**, **MT**, **PL**, **ES**) assert that there are no exceptions to the application of the posting of workers regulations to the road transport sector. In this regard, the judgment provides useful clarifications and can guide national interpretations on the implementation of the posting of workers regulation.

Indeed, it is not common for national legislation or case law to specifically regulate the posting of workers in the road transport sector. Only a few reports mention that international road transport, and especially cabotage operations, is regulated in national legislation on the posting of workers (e.g. **IT**, **NO**, **SE**), or that it has been treated in national case law (e.g. **DK**, **RO**, **SI**).

Conversely, a few country reports (e.g. **EE**, **PL**) mention that the international transport sector has been excluded from some or all of the posting of workers provisions. In **Lithuania**, various judgments have affirmed that drivers of international road transport are not entitled to the pay established by the provisions of the host Member State. In **Luxembourg**, the labour inspectorate has suspended the reporting obligations for postings and the verification of compliance with national rules on minimum wages in the case of the road transport sector. In **Croatia**, only the provisions on minimum wage apply to drivers in the road transport sector. It seems that these rules will be modified with the transposition of Directive (EU) 2020/1057 for the posting of drivers in the road transport sector.

Moreover, many country reports indicate that their legislation (e.g. **HU**, **IT**, **LI**, **MT**, **NL**, **PL**, **SK**) or case law (**DK**, **RO**, **SE**) is in line with the principle of "sufficient connection", which has been reaffirmed by the CJEU in this case. The **Austrian** report, on the contrary, asserts that Austrian legislation may provide for a broader and more comprehensive definition of posted workers than the CJEU.

It seems that the part of the judgment that clarifies the concept of 'universally applicable collective agreement' bears little relevance for many countries, since a situation comparable to the one decided in this case could not arise or is not common in the majority of countries.

Finally, it must be noted that the judgment will have no effect in the **United Kingdom**, since the free movement of services is no longer part of its legislation.

Austria

Summary

(I) Based on recent research on the COVID-19 risk of pregnant workers, Austria introduced a special maternity leave for pregnant workers who are not able to work in a safe environment.

(II) Two rulings of the Austrian Supreme Court confirm that the Temporary Agency Work Directive is not applicable to workers exclusively assigned to support the judiciary, and that posted workers are included in the Austrian system of annual leave contributions within the construction industry.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Special maternity leave during the COVID-19 pandemic

Pregnant workers from the 14th week of pregnancy onwards until the start of their maternity leave should not work in close physical proximity with others. A pregnant worker may only perform work that does not require physical contact and the legally required distance to others must be guaranteed. If that is not possible, she must be transferred to a workplace where these requirements can be met. Working from home should also be considered. In any event, the worker retains her entitlement to remuneration, i.e. her remuneration may not be reduced because she has started performing other work.

If no adequate workplace for the pregnant worker is, she is entitled to be released from her duty to work while keeping her full remuneration. The employer can request reimbursement from the state for the remuneration paid.

§ 3a Act on the Protection of Mothers (*Mutterschutzgesetz* - MSchG) reads as follows (unofficial translation by the author):

> *"(1) Until 31 March 2021, expectant mothers from the beginning of their 14th week of pregnancy until the start of their maternity leave, are prohibited from performing work that requires physical contact with other persons.*
>
> *(2) If an expectant mother is employed in such a post, the employer shall modify her working conditions so no physical contact to others is required and that the minimum distance to others is maintained. If this is not possible, the employee shall be transferred to a different workstation that requires no physical contact i and where the minimum distance can be maintained. The employer must also check whether the employee can carry out her work from home (home office). In both cases, the employee is entitled to her previous remuneration.*
>
> *(3) If a change in working conditions or transfer to another workplace is not possible for objective reasons, the employee shall be entitled to leave of absence and to her regular remuneration. However, employment prohibitions according to § 3 shall take precedence.*
>
> *(4) Employers, with the exception of the State as an employer, shall be entitled to reimbursement of remuneration, up to the maximum monthly contribution basis under the General Social Security Act, Federal Law Gazette No. 189/1955, in accordance with para. 3, the taxes and duties as well as the social security contributions to be paid for this period, unemployment insurance contributions and other contributions to the health insurance institution, irrespective of the body from which they are to be collected or to which they are to be paid. […]"*

The legislation passed the National Assembly on 11 December 2020 and the Federal Assembly on 16 December 2020, and entered into force the following day. The legislation shall expire on 31 March 2021, but shall continue to apply to special leave that commenced prior to that date.

This additional special leave was introduced to ensure protection of pregnant workers who are likely to be a risk group. The Austrian legislator applied the same approach as for workers who are from other risk groups. First, an entitlement to work 'differently', if possible from home, while keeping their remuneration, and second, if working in a safe environment cannot be provided, the worker is entitled to paid leave and the employer has the right to have her or his costs refunded.

Further information from the Ministry can be found here.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Temporary agency work

Austrian Supreme Court, 8 ObA 15/20v, 23 November 2020

The defendant, the Judiciary Support Services Agency (*Justizbetreuungsagentur Anstalt öffentlichen Rechts*), is a legal entity established by the Act on the Incorporation of a Judiciary Support Services Agency (*Justizbetreuungsagentur-Gesetz* – JBA-G). It operates exclusively as a personnel service provider for the Austrian judiciary, its only client is the Federal Ministry of Justice. The defendant recruits the employees, concludes the employment contracts and then assigns the employees to work in the Austrian justice system. The leased workers are doctors, social workers, psychologists, official interpreters and experts. These experts are used exclusively by the Economic and Corruption Prosecutor's Office.

The plaintiff was one of those experts claiming equal treatment with the employees directly employed by the State, in concreto, six weeks of annual leave as envisaged in the Act on Contractual Public Servants (*Vertragsbedienstetengesetz* – VBG). The plaintiff himself was subject to the general Annual Leave Act (*Urlaubsgesetz*), which provides for five weeks of annual leave. He could not base his claim on § 10 of the Agency Work Act (*Arbeitskräfteüberlassungsgesetz* – AÜG) though it transposes the Temporary Agency Work (TAW) Directive 2008/104/EC and provides for equal treatment of agency workers with workers who are directly employed by the user undertaking. This is due to the fact that pursuant to § 2 (7) JBA-G the §§ 10 to 14 of the AÜG are not applicable. He therefore claimed that this exemption is in breach of the TAW Directive and that it is therefore directly vertically applicable.

In its ruling, the Supreme Court did not follow this argument and rejected the claim based on the scope of application of the TAW Directive in Article 1 para 2. Hence, the Directive applies to public and private undertakings that are temporary work agencies or user undertakings engaged in economic activities, regardless whether or not they are operating for gain. The issue at hand was the lack of an economic activity as the Judiciary Support Services Agency does not operate on a given market but exclusively supports the judiciary, which exercises public powers. Such activities are excluded as a matter of principle from classification as an economic activity (CJEU C-416/16, *Ricardo*, para 34). This is also in line with the prevailing opinion in the German literature as cited by the Supreme Court.

The Supreme Court therefore concluded that, even if the defendant provides workers for payment on the basis of a framework agreement with the Federal Ministry of Justice,

these services are not offered by the defendant on a given market, but rather provides an outsourced pool of personnel intended to ensure the flexible deployment of workers within the justice system, whereby these workers are also exclusively available to the Federal Ministry of Justice for the performance of the tasks regulated by law.

Secondly, the deployment does not take place within the framework of an economic activity of the employer, the Republic of Austria. Experts such as the plaintiff are deployed within the scope of the investigative proceedings of the public prosecutor's offices, thus a genuine sovereign activity. In this respect, neither the defendant as the temporary work agency nor the federal government as the user undertaking was engaged in an 'economic activity' within the meaning of the TAW Directive 2008/104/EC. The assignment of the plaintiff is therefore not subject to the personal scope of application of the TAW Directive. Thus, the plaintiff cannot derive any claims from it, especially as regards equal treatment with workers directly employed by the State with reference to the sixth week of annual leave.

The ruling clarifies an important question for a relatively small number employees working in outsourced agencies created by law, assigned to work exclusively with the national administration that exercises public powers. It justifies the existing practice to exclude this group of workers from the equal treatment principle of the TAW Directive 2008/104/EC. It is therefore possible to create a second tier of workers, who enjoy a less advantageous status working for the state and are not directly employed by it. This segment of temporary agency workers may be treated less favourably than workers directly employed by the user undertaking, i.e. the State.

This ruling is in line with the jurisprudence of the CJEU and cites cases C-216/15, *Betriebsrat der Ruhrlandklinik*; C-35/96, *Commisssion v Italy*; C-108/10, *Scattalon*; C-179/14, *Commission v Hungary*; C-49/07, *Motoe*; C-185/14, *EasyPay and Finance Engineering*; C-35/96, *Commission v Italy*; C-416/16, *Ricardo*; as well as C298/94, *Henke*.

2.2 Posting of workers

Supreme Court, 9 ObA 72/20h, 25 November 2020

Foreign employers are subject to the Austrian Construction Workers Leave and Severance Pay Act (*Bauarbeiter-Urlaubs- und Abfertigungsgesetz* - BUAG) if the latter post or engage in cross-border leasing of employees to Austria. For the duration of the posting or leasing, the posting or leasing enterprise must pay supplements to the Construction Workers Leave and Severance Pay Fund (*Bauarbeiter-Urlaubs- und Abfertigungskasse* - BUAK) for each employee who performs construction work under the terms of BUAG. In return, the workers posted to Austria are included in the national system of annual leave and severance pay contributions for the construction industry for the time they work in Austria. Over and over again, posting companies claim that such an inclusion is in breach of EU law.

In this ruling, the Supreme Court referred to its previous rulings (in particular 8 ObA 2/11v, 25 October 2011), which reject this view. It also cited the ruling of the CJEU C-49/98, *Finalarte*, which considers that the comparable German system of an annual leave fund for the construction industry is in line with EU law. This view was upheld in C-490/04, *Commission v Germany*, according to which two prerequisites must be fulfilled for inclusion of posted workers in such a system to be consistent with EU law: the national law relating to paid leave must confer real additional protection on workers, posted by service providers established outside the respective country, and that the application of that law is proportionate to the attainment of the objective of social protection of those workers.

The Supreme Court then stated that in the state of origin (Portugal), no comparable system of annual leave funds exists. It also pointed out that, especially in the

construction industry, such a system results in increased protection for workers. In an industry with high fluctuation and frequent changes of employers, it provides the possibility of carrying over accrued leave to other employers and the possibility of longer uninterrupted periods of annual leave that are actually consumed in natura and not only compensated at the end of an employment relationship.

Therefore, the inclusion of construction workers posted from Portugal to Austria into the Austrian system of annual leave contributions is consistent with EU law.

The ruling is in line with previous national case law as well as with the case law of the CJEU (*Finalarte* and *Commission v Germany*) and reiterates that the Austrian system is in line with EU prerequisites.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

Austrian legislation on the posting of workers is set within a tight framework: the Act Against Wage and Social Dumping (*Lohn- und Sozialdumpingbekämpfungsgesetz* - LSD-BG) transposing Directive 96/71/EC, applies to all workers posted to Austria, including workers in the transport sector. Exceptions only apply to narrow circumstances, namely if the worker is posted to Austria to exclusively carry out smaller assignments and for a short duration that is expressly listed in the Act.

§ 1 para 5 LSD-BG reads as follows (unofficial translation by the author):

> *"This Federal Act shall not apply if the worker is posted to Austria exclusively to perform the following smaller assignments and for a short duration*
> *1. […]*
> *7. work as a mobile worker or as a crew member (§ 4 of the Ordinance on the Crew of Ships, Federal Law Gazette II No. 518/2004) in the cross-border carriage of goods and passengers (transport sector), provided that the work is performed exclusively in the context of transit traffic and the usual place of work is not in Austria, or*
> *8. […]"*

Cabotage operations are not listed as exemptions. As for transit in stages, the Act regulates that only mere transit through Austria does not fall under the LSD-BG. The legislative materials to the Act make it clear that cabotage operations during transit do not fall under the exemption (*'A transit movement interrupted by a cabotage operation (transit in stages) is not covered by the exception'*; *'Von der Ausnahme ist eine durch eine Kabotagetätigkeit unterbrochene Transitbewegung (Transit in Etappen) nicht erfasst.'*, see 1111 *Beilagen XXV. GP, Erläuternde Bemerkungen*, 5.), hence during cabotage operations, Austrian legislation on posted workers applies. In this regard, Austrian legislation is not affected by the CJEU's decision in C-815/18.

As only mere transit is exempt from the LSD-BG, the Act transposing Directive 96/71/EC, the general understanding is that any destination and source traffic (*Ziel- und Quellverkehr*) is considered a posting. Whenever a transportation worker picks up or delivers goods or people on Austrian territory, she or he is considered a posted worker. Following the CJEU's ruling, this may be too broad of an understanding of the notion of posting—unless, of course, the worker is involved in cabotage operations—as it may well be that in such a case, the driver's work is not sufficiently connected with the Austrian territory.

4 Other Relevant Information

4.1 Public debate on possible obligation to be vaccinated

Following the start of the COVID-19 vaccination, the potential obligation to be vaccinated is being publicly debated. According to the current legislation, both testing and vaccinations are voluntary, but academics argue that for some groups, a legal obligation to get vaccinated could be possible. As the legislator has not yet introduced any form of obligation to get vaccinated, the debate is now focused on whether employers may impose a duty to get vaccinated on their employees. When hiring new staff, the request to present a vaccination certificate is perceived as being acceptable by law if the vaccination can also provide protection to others. When it comes to workers who are already employed, the general notion currently is that this largely depends on whether the vaccination only protects the vaccinated person or also prevents the vaccinated person from spreading the disease. In the latter case, a duty to vaccinate may be imposed more easily by employers, as the vaccination protects the staff as a whole. Such a duty may very likely be imposed on key staff as well. Yet legal practitioners and academics argue that the legislator should present legislation on this matter.

For information on this matter, see here and here.

Belgium

Summary

(I) Belgium provides compensation for the increased cost of annual leave pay for employers whose employees are temporarily unemployed, and extends the income tax exemption for overtime worked in essential sectors.

(II) A law relaxes the ban on successive fixed-term employment contracts for workers who are temporarily unemployed. Moreover, the law encourages the posting of workers and increases the possibility of voluntary overtime in essential sectors.

(III) A law extends cases in which the employee has the right to use quarantine leave.

(IV) A law introduced the possibility of providing for special occupational health and safety preventive measures by Royal Decree in the event of an epidemic or pandemic.

(V) A law extends paternity leave for employees who have become fathers.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

The Law of 20 December 2020 on temporary support measures as a result of the COVID-19 pandemic has been promulgated. It contains several temporary socio-economic support measures. These measures will enter into force on 01 October 2020 and will end on 01 April 2021. The law essentially provides for an extension of the emergency measures associated with COVID-19 until 31 March 2021.

Based on a decision of the Federal Council of Ministers, this period may be extended by a maximum of three months if it becomes apparent that at the time of expiry of this period, the need to continue to contain COVID-19, which was the reason for the respective law's enactment, has not yet diminished. An overview of the most important measures is provided below.

1.1.1 Temporary employer benefits

Articles 34-38 of the Law of 20 December 2020 provides that for the period from 01 February 2020 to 31 August 2020, the days of temporary unemployment resulting from force majeure, i.e. related to the COVID-19 pandemic, shall be accumulated as days worked for entitlement to paid leave. The new law now also equates the period from 01 September 2020 to 31 December 2020 as days worked.

This accumulation represents a financial burden for employers as regard white collar employees and for the National Office for Annual Vacation as regards blue collar workers.

For the paid annual leave of white collar employees, the financial burden will be compensated via a global budget of EUR 93.582 that will be allocated to employers by the National Social Security Office. For paid annual leave of blue collar workers, the cost of accumulation is compensated by granting an allowance of EUR 93.582 to the National Office for Annual Vacation.

Moreover, Article 15 of the Law of 20 December 2020 extends the exemption of income tax payments for overtime in essential sectors, including overtime work by students.

1.1.2 Work organisation and voluntary overtime in essential sectors

Articles 40-50 of the Law of 20 December 2020 provides a number of measures for employers in the care sector, education and COVID-19 contact-tracing, with the aim of ensuring that the organisation of work runs more smoothly:

- successive employment contracts for a fixed period (at least seven days) can be concluded with a temporarily unemployed person, without it being assumed that an employment contract has been concluded for an indefinite duration;
- by way of derogation from the ban in principle, workers may be posted to an employer in the care sector, education and in COVID-19 contact tracing;
- an employee who is part of the time credit system may agree with his/her employer to temporarily suspend that time credit;
- an employee who is part of the time credit system can be temporarily employed by another employer in the care sector, education and COVID-19 contact tracing.

Moreover, Articles 51-52 of the Law of 20 December 2020 provide for an increase in the voluntary overtime quota for employers in key sectors (see Ministerial Decree of 28 October 2020 which is discussed in the October 2020 Flash Report). It amounts to 220 hours for the period from 01 October 2020 to 31 December 2020, and up to 220 hours for the period from 01 January 2021 to 31 March 2021.

However, any additional voluntary overtime hours already worked in the period from 01 April 2020 to 30 June 2020 shall be deducted from the additional quota for the period from 01 October 2020 to 31 December 2020.

1.1.3 Extraordinary care leave

Articles 55-56 of the Law of 20 December 2020 extend the force majeure-related temporary unemployment scheme for individuals caring for a child (see October 2020 Flash Report) until 31 March 2021. The scheme, which regulates the right of an employee to be absent from work without pay when a minor living in his/her household cannot attend the day-care centre or school due to closure because of COVID-19. When a disabled child cannot attend a centre for disabled persons for the same reason, the employee is entitled to absence when his or her child is in distance learning or has to quarantine or remain in isolation.

1.1.4 Special health and safety measures in the event of an epidemic or pandemic

Article 57 of the Law of 20 December 2020 has amended the Law of 04 August 1996 on the well-being of workers at work. The new law provides the possibility to take special preventive measures by Royal Decree in the event of an epidemic or pandemic, if these are necessary for the protection of the safety and health of workers in the performance of their work. These are specific material, technical and/or organisational preventive measures of a temporary and urgent nature, which only apply for the duration of the epidemic or pandemic and only as long as it has an impact on the workplace. These may, for example, include measures relating to hygiene at work, ventilation, keeping the necessary distance and limiting contact between people at work. The social partners will be involved in the development of these measures. Thereby, faster and more efficient action can be taken to fight the spread of an ubiquitous virus in the workplace and to ensure safe and healthy working conditions.

This amendment will apply from 01 October 2020 for an indefinite period.

1.1.5 Temporary social security measures

Articles 78-90 of the Programme Law of 20 December 2020 provides for an extension of the measures that ensure that workers in a situation of temporary unemployment due to force majeure or for economic reasons caused by the COVID-19 virus shall retain the accumulation of pension insurance and risk coverage for their professional activity set up by their employers and/or sectors of activity. The provision made for this retention until 30 September 2020 has now been extended until 31 March 2021.

The decision of the organisers, employers or legal entities at sectoral level to refuse coverage of the accumulation of pension insurance and risk coverage for the professional activity of the employees due to the suspension of their employment contract, a possibility provided for in the Law of 07 May 2020, has been extended until 31 March 2021, as has the obligation to maintain the coverage of death insurance until 31 March 2021.

1.2 Other legislative developments

1.2.1 Paternity leave

Article 63 of the Programme Law of 20 December 2020 amends Article 30 of the Employment Contracts Law of 03 July 1978. Due to the fact that paternity leave emancipates fathers and promotes equality between women and men, the Programme Law provides for a gradual increase of the 10 days of paternity leave for male employees who have become fathers to 20 days by 2023. For births from 01 January 2021 onwards, the 10-day paternity leave will increase by five days to a total of 15 days. For births from 01 January 2023 onwards, this number will increase by an additional 5 days, bringing the total to 20 days. These additional days of leave shall be freely chosen by the employee within four months from the date of the birth.

During the first three days of absence, the employee will retain his salary and for the following days, he will receive a social security allowance within the framework of sickness and invalidity insurance.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The CJEU's decision in the landmark case *Federatie Nederlandse Vakbeweging* is of major importance for the application of the Belgian law on cross-border posting of 05 March 2002, implementing the Posted Workers Directive (PWD) in the Belgian legal order. The personal scope of this law is established in Articles 2 and 3. These Articles were amended in 2016 and 2020. An employer who employs a posted worker in Belgium is required to pay the minimum wages laid down in a generally binding collective agreement (Articles 5 and 6/1 of the Law of 05 March 2002). As is the case in the Netherlands, there are transport companies in Belgium that use foreign sister companies to post lorry drivers from other EU countries in Belgium.

The CJEU's decision does not come as a surprise for Belgian labour law doctrine on the posting of lorry drivers in international transport (see, for example, T. Van de Calseyde, *Aanduiding van het toepasselijke wetgeving bij internationale tewerkstelling van werknemers in Europa*, Mechelen, Wolters Kluwer, 2017, 40-42), but provides important clarifications.

The CJEU has determined that the PWD applies to the road transport sector. As regards the specific circumstances to which the PWD applies, the CJEU acknowledges the merit in the principle of 'sufficient connection'. To apply the PWD to a specific case, there must be sufficient connection between the lorry driver (worker) and the country where the temporary work is being carried out. To perform such an assessment, the CJEU identifies several 'relevant factors', such as the characteristics of the provision of services, the nature of the work activities, the degree of connection between the work activities of a lorry driver and the territory of each Member State and the share of activities compared to the entire service provision in question.

The CJEU also judged that the mere fact that a lorry driver, who is posted to temporarily work in and from a Member State, receives instructions there and starts and finishes the assignment there is "*not sufficient in itself to consider that that driver is 'posted' to that territory, provided that the performance of that driver's work does not have a sufficient connection with that territory on the basis of other factors.*"

Finally, the Court provides guidelines on three types of transport operations, namely transit operations, bilateral operations and cabotage operations. According to the Court, the carrying out of cabotage operations on the territory of a Member State, irrespective of the duration of those operations, automatically indicates the existence of a sufficiently close connection to that State.

The ruling of the CJEU is in line with the recently adopted road transport Directive 2020/1057 of 15 July 2020 laying down specific rules with respect to Directive 96/71 and Directive 2014/67 for the posting of drivers in the road transport sector. This legislation takes the applicability of the PWD to road transport as a starting point, as can be read in recital 7 of Directive 2020/1057.

4 Other Relevant Information

Nothing to report.

Bulgaria

Summary

(I) Bulgaria adopted a law amending and supplementing the Labour Code, extending the Code's scope of application to also apply to employment relationships between Bulgarian employers and employees posted from abroad to Bulgaria.

(II) The Law on the posting of workers is amended following Directive (EU) 2018/957.

(III) Limitations to the calendar period to calculate aggregate working time have been abolished, and a longer duration of overtime is now permitted.

(IV) The promotion of social dialogue has been strengthened.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Scope of application of the Labour Code

The Law on Amendment and Supplements of the Labour Code (promulgated in State Gazette No. 107 of 18 December 2020) changed Article 10 on the applicable labour legislation in Bulgaria.

Pursuant to the amendments, the Bulgarian Labour Code shall apply to employment relationships between employers and employees posted from abroad to work in Bulgaria, unless otherwise provided by law or the international agreement in force for Bulgaria. It shall also apply to employment relationships between Bulgarian employers and employees with a workplace outside Bulgaria, unless otherwise provided by law or international agreement in force in Bulgaria. These rules shall not deprive employees of the protection afforded to them by the mandatory rules of the law of the State in the territory of which or from which the work is usually performed where they are more favourable for the employees.

1.2.2 Posting of workers

The said Law on Amendment and Supplements of the Labour Code created a new paragraph to Article 107t concerning the posting of workers by the user enterprise.

The new paragraph 4 of Article 107t provides that at the request of the user enterprise, the worker may be posted by the enterprise providing temporary work for performance of work outside the employee's usual workplace. The request shall be forwarded by the user enterprise to the temporary work agency five working days prior to the worker's posting. This rule implements the requirements of Directive (EU) 2018/957 (§ 37).

1.2.3 Working time

The said Law on Amendment and Supplements of the Labour Code amended some rules on aggregated working time.

According to Article 142, the limitations of the calendar periods for which the aggregated calculation may be established have been abolished. Conditions shall be established by an ordinance of the Council of Ministers.

Moreover, a new paragraph 2 of Article 146 allows a longer duration of overtime. In a collective labour agreement, the duration of additional overtime (150 hours) may be agreed, but may not exceed 300 hours per calendar year.

1.2.4 Social dialogue

The law amending and supplementing the Labour Code has established a new provision (Article 2a) on social dialogue and bilateral cooperation between trade unions and employers' organisations.

The new provision provides that the State shall promote social dialogue and bilateral cooperation between the trade unions and employers' organisations. The aims of this cooperation are, among others, to strengthen mutual trust and mutual respect of the interests and to raise the employees' awareness.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

Directive 96/71/EC is applicable to the transnational provision of services in the road transport sector in Bulgaria. Its provisions have been transposed into Bulgarian legislation by the provisions of Article 121a, Article 215, para 2 and Chapter XX of the Labour Code; Chapter IV of the Labour Mobility and Labour Migration Act; Ordinance of the Council of Ministers on the rules and procedures for the posting and secondment of workers within the framework of the provision of services.

The situations in which postings take place within the framework of the provision of services under Bulgarian national legislation do not differ from those covered under Article 1 of Directive 96/71/EC. There are no exceptions for the applicable working conditions (Article 3, para 3 of Directive 96/71/EC). Such exceptions are also not possible in collective agreements. The rules for posting are generally applicable, also for the activity of international transport, including cabotage operations under Article 2, issue 6 of Regulation 1072/2009.

Collective labour agreements at industry and branch levels must be registered in a register of the Executive Agency 'Main Labour Inspectorate' (Article 53, para 1, sent. 2 of the Labour Code). The register is public. Where the collective labour agreement at industry or branch level has been concluded between all representative organisations of both workers and employers in the industry or the branch, the Minister of Labour and Social Policy may, upon their joint request, extend the application of the agreement or of individual clauses to all enterprises of that industry or branch. The Order of the Minister shall be promulgated in the State Gazette and the extended collective agreement or individual clauses shall be published on the website of the main labour inspectorate.

In 2020, a collective labour agreement for the 'transport' sector was concluded between the representative employer's organisation 'Association National Transport Chamber' and the representative trade union association 'Union of Transport Trade Unions in Bulgaria' of the Confederation of Independent Trade Unions in Bulgaria and the Federation of Transport Workers 'Podkrepa' as well as a branch agreement for 'railway transport' sector. The provisions agreed on working conditions are only mandatory for employers who are members of the employers' organisations that concluded these

agreements. These collective agreements have not been declared universally applicable within the meaning of para 6 of Directive 96/71/EC. At the end of 2020, only one branch agreement—the branch collective agreement for the brewery branch (concluded on 31 January 2020)—has been extended for 24 months by an Order of the Minister of Labour and Social Policy by an Order of the Minister of Labour and Social Policy.

4 Other Relevant Information

4.1 Minimum wage

Decree No. 371 of 17 December 2020 of the Council of Ministers (promulgated State Gazette No. 108 of 22 December 2020) established the minimum wage for the lowest academic position in public universities. From 01 January 2021, the minimum wage for the lowest academic position (this is assistant professor) will be BGN 1 200 (approximately EUR 600).

Croatia

Summary

(I) Croatia introduces benefits for employers, who released from paying rent and fees, and special rewards for employees in essential sectors.

(II) A new act regulates the implementation of the Agreement on the withdrawal of the United Kingdom from the EU in Croatia.

(III) A set of Ordinances has amended the regulation of employment of people with disabilities.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Employers' benefits

Employers, who are tenants and users of business premises owned by the Republic of Croatia, have been released from the obligation to pay rent and fees for the use of such business premises for the period during which the tenants are suspended from work and from performing their activities according to the decisions of the Civil Protection Headquarters of the Republic of Croatia, issued after 01 November 2020. Such an exemption only applies to employers who have retained all of the employees that were employed with them on the last day of the month preceding the month for which the employer requested the exemption. More precisely, they are prohibited from dismissing their employees due to business reasons; however, dismissals due to other reasons (such as employee misconduct) are possible.

1.1.2 Benefits for employees

The special reward in the amount of 10 per cent of the employee's basic salary will be paid in addition to salaries of certain categories of employees and public servants (such as employees in the healthcare sector, who take care of COVID-19 patients, employees in the social assistance sector, who take care of COVID-19 patients and users of accommodation or organised housing services, etc.).

1.2 Other legislative developments

1.2.1 Work of third-country nationals

The new Aliens Act (Official Gazette No 133/2020) has been adopted. It repeals the previous Aliens Act (Official Gazette 130/2011, 74/2013, 69/2017, 46/2018 and 53/2020).

Amendments to the Ordinance on Residence and Work of Highly Qualified Third-Country Nationals in the Republic of Croatia and the Amendment to the Ordinance on Status and Work of Third-Country Nationals have been adopted (Official Gazette No. 146/2020). The purpose of these Amendments is to implement the Regulation (EU) 2017/1954 of the European Parliament and of the Council of 25 October 2017 amending Council Regulation (EC) No. 1030/2002 laying down a uniform format for residence permits for third-country nationals into Croatian legislation.

In contrast to the repealed Aliens Act, the new Aliens Act does not contain provisions relating to citizens of the European Economic Area and members of their families whose status is now regulated in the Act on Citizens of Member States of the European Economic Area and Members of Their Families (Official Gazette 66/2019).

The most important novelty in relation to the repealed Aliens Act is the new approach to the employment of foreigners. The new Aliens Act stipulates that a positive opinion of the Croatian Employment Service must be attached to the procedure for submitting applications for residence and work permits, since the Government of the Republic of Croatia will no longer prescribe an annual quota of employment permits for foreigners. Categories of jobs are also identified for which the Ministry of the Interior, through the competent police administration or station, issues residence and work permits without the opinion of the Croatian Employment Service, for example, for the EU Blue Card, investors and service providers. At the same time, due to the new approach to employment, closer connections between state bodies and institutions (police administrations / police stations, tax administration, pension insurance bodies, labour inspection) is stipulated in the section on conducting control as well as the protection of employees and their rights.

It is worth mentioning that for the first time, a notion of a 'digital nomad' has been introduced in the Croatian legislation. A digital nomad is a third-country national who is employed by or works using communication technology for a company or his/her own company that is not registered in the Republic of Croatia and does not work or provide services to employers in the territory of the Republic of Croatia.

1.2.2 Employment of UK citizens in Croatia

The Amendment to the Act on Citizens of Member States of the European Economic Area and Members of Their Families of 2019 has been adopted (Official Gazette No 144/2020). This Act prescribes the implementation of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community in the part relating to Part Two 'Rights of Citizens', Chapter 1, except for Article 18, paragraphs 1 to 3 of the Agreement, and Chapter 2 of the Agreement in the part relating to the right entry and issuance of a document establishing the rights of frontier workers.

Moreover, the Amendment to the Ordinance on Entry and Residence in Croatia of Third-Country Nationals (Official Gazette No 148/2020) has been adopted. It regulates, among others, how UK citizens who work in Croatia prove the status of the beneficiary of the rights from the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

1.2.3 Employment of people with disabilities

A set of Ordinances related to the employment of persons with disabilities has been adopted (Official Gazette No 145/2020): these are the 'Ordinance on the Incentives for Employment of Persons with Disability', the 'Amendment to the Ordinance on Vocational Rehabilitation and Centres for Vocational Rehabilitation for Persons with Disability' and the 'Ordinance on Quotas for Employment of Persons with Disability.'

Among other measures, these Ordinances exempt employers in the sector of production of textiles, clothing, leather, wood, and furniture from the obligation to adhere to the quota employment of persons with disabilities.

More information is available here and here.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

In this context, the relevant piece of legislation is the Act on Posting of Workers to the Republic of Croatia and Cross-Border Implementation of the Decisions on Financial Penalties (Official Gazette No. 128/2020).

However, certain provisions of the Act on Posting of Workers to the Republic of Croatia and Cross-Border Implementation of the Decisions on Financial Penalties do not apply to drivers in the road transport sector until the date of entry into force of a separate law transposing Directive (EU) 2020/1057 into Croatian law. Until then, the drivers in the road transport sector are entitled to the minimum wage, including higher wages for overtime work at the level of rights determined by Croatian legislation or an extended collective agreement, whichever is more favourable for the employee (the driver).

The national legislator does not provide details on the posting of drivers in the international road transport sector.

The judgment of the CJEU in the case *Federatie Nederlandse Vakbeweging* must be born in mind when applying Croatian national legislation.

4 Other Relevant Information

4.1 Minimum wage of seasonal workers in agriculture

According to the Decision of the Minister of Labour, Pension System, Family and Social Policy (Official Gazette No. 141/2020), the minimum daily amount of net pay the employer is required to pay a seasonal worker who performs temporary or occasional seasonal work in agriculture for 2021 is HRK 97.93 (EUR 13.00).

Cyprus

Summary

Nothing to report.

1 National legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

In the present case, the CJEU ruled on the posting of workers in the framework of the provision of services within the context of cabotage operations involving drivers who work in international road transport. The Court applied the test of a sufficient connection to the territory of the receiving country, which workers have to pass before they can benefit from protection of that state.

The posting of workers is regulated in Law No 63(I)/2017 (*Ο περί της Απόσπασης Εργαζομένων στο Πλαίσιο Παροχής Υπηρεσιών Νόμος του 2017*) which transposes Directive 2014/67/EU on the enforcement of Directive 96/71/EC on the posting of workers.

This decision is unlikely to have any implications for Cyprus, as it is a sea-locked island.

4 Other Relevant Information

Nothing to report.

Czech Republic

Summary

(I) The state of emergency has been extended. The governmental restrictions in connection with travelling have been amended. The restrictions to the operation of businesses and other establishments have been re-adopted and amended.

(II) An act extending the possibility of exemptions to fulfilling the qualification requirements due to the COVID-19 crisis has been adopted and published.

(III) An act extends the suspension of conditions requiring companies to not have arrears in taxes or other public administration payments in order to benefit from state contributions for 2021.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 State of emergency and related restrictive measures

The Resolution of the Government No. 1373 of 23 December 2020 has been adopted and published as Resolution No. 593/2020 Coll. and entered into effect on 23 December 2020.

The state of emergency in response to the COVID-19 crisis, first declared from 5 October 2020 until 3 November 2020, has been repeatedly extended (see previous Flash reports), most recently until 22 January 2021. Further extension of the state of emergency is subject to the approval by the Chamber of Deputies of the Parliament of the Czech Republic.

The state of emergency was declared at the start of the outbreak of the COVID-19 pandemic in March and lasted for several months. It is uncertain for how long the present state of emergency will last; this depends on the development of the epidemiological situation in the Czech Republic.

In this regard, various restrictive measures to free movement and freedom of business have been extended:

First, the government has retained and amended the travel ban. With the Protective Measure of the Ministry of Health No. MZDR 20599/2020-45/MIN/KAN of 20 December 2020, the restrictions on the entry of persons into the territory of the Czech Republic have been re-adopted with certain amendments.

Second, the restrictions to freedom of movement have been readopted and amended, especially in connection with the holidays. With the Resolution of the Government No. 1375 of 23 December 2020, adopted and published as Resolution No. 595/2020 Coll., the restrictions to the free movement of persons in the territory of the Czech Republic have been extended from 27 December 2020 until 10 January 2021.

Third, the obligation to wear respiratory protective equipment has been re-adopted. With effect from 8 December 2020 until further notice, the Ministry of Health has re-issued an order by which the movement and stay of individuals not wearing protective face equipment (such as respirators, drapes, face masks, headscarves, etc.) is prohibited.

Fourth, the government has reintroduced and amended specific rules for businesses in connection with the COVID-19 crisis. The Resolution of the Government No. 1376 of 23 December 2020 restricts or bans the operation of businesses as well as of other establishments from 27 December 2020 until 10 January 2021.

1.1.2 Employee qualifications

Act No. 539/2020 Coll., on certain measures adopted to mitigate the effects of the coronavirus pandemic known as SARS-CoV-2 in the area of demonstrating compliance with qualification requirements for employment purposes, has been published and entered into effect on 19 December 2020 (see also May 2020 Flash Report).

The Act aims to mitigate problems that arise in connection with the COVID-19 crisis, as the employer cannot adhere to all requirements to ensure the qualifications of employees.

1.2 Other legislative developments

1.2.1 Easing of the conditions for access to state contributions

Act No. 586/2020 Coll., amending Act 161/2020 Coll. on certain adjustments to employment in connection with the extraordinary measures introduced during the 2020 pandemic (see April 2020 Flash Report), and an amendment of Act No. 435/2004 Coll. on Employment has been adopted and published.

The new Act extends the suspension of the requirement to not have arrears in taxes or other public administration payments in order to benefit from state contributions beyond 2020, making it easier for employers to claim state contributions after the end of 2020.

The Act will enter into effect on 1 January 2021.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The ruling has no implications for national law.

As regards the determination of whether a given situation constitutes a posting, the Czech Labour Code directly references Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. No exception with regard to the transnational provision of services in the road transport sector applies.

4 Other Relevant Information

4.1 Maximum number of residence applications

The maximum number of residence applications (including visa for stays exceeding 90 days for business purposes, long-term residence permits for investment purposes and employee cards) in relevant countries is reviewed on a regular basis (depending on the economic and immigration situation).

Government Regulation No. 556/2020 Coll., on the amendment of Government Regulation No. 220/2019 Coll., sets the maximum number of applications for visas for stays exceeding 90 days for business purposes, applications for long-term residence permits for investment purposes and applications for employee cards that may be filed with relevant embassies.

The Regulation will enter into effect on 1 January 2021.

4.2 Annual valorisation of compensation payments

The annual valorisation of the rate of compensation for loss of earnings after the end of period of temporary incapacity for work caused by a work accident and/or by an occupational disease as well as compensation of survivors, is changed on a regular basis.

Government Regulation No. 517/2020 Coll., adjusts these compensations. It will enter into effect on 1 January 2021, applying only to claims that arose before 1 January 2021.

The amount of compensation is calculated based on the amount of average earnings. For the purposes of the calculation, the rate of valorisation of the average earnings is adjusted regularly – the amount of average earnings is now to be increased by 7.1 per cent.

4.3 Average salary in the national economy (the Labour Code)

The Ministry of Labour and Social Affairs has communicated that the average salary in the national economy for the 1st and 3rd quarters of 2020 was CZK 34,611 (i.e. approx. EUR 1,316). This figure is used for the purposes of calculation pursuant to the Labour Code.

Denmark

Summary

(I) Denmark has introduced new restrictions to economic activities due to the increase in COVID-19 infection rates .

(II) New amendments to the Danish Aliens Act have been enacted on foreign workers' residence and work permits, introducing further requirements and enforcement mechanisms.

(III) An amendment to the law improves the financial conditions during maternity and parental leave for the self-employed.

(IV) An important Supreme Court judgment ruled that part of the then posting of workers regulation imposed a disproportionate restriction of the free movement of services. The rules have already been changed, and they correspond with the outcome of the case.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 New restrictions

December 2020 witnessed an increase in COVID-19 infection rates in Denmark. Over 900 people are currently hospitalised, which is the highest number since the outbreak of the pandemic. The rise in infections has led to further restrictions.

The new restrictions, in essence, impose a new partial shutdown of society, with all regular shops, hair salons, shopping malls, restaurants, cafes, cinemas, cultural and athletic activities closing. Supermarkets, bakeries and pharmacies remain open. Day care facilities for small children (0-6 years) remain open, while physical attendance in schools, high schools, universities, etc. have been replaced by online teaching. All private employers are encouraged to let employees work from home. All public employees, who do not perform critical functions, work from home. These restrictions are currently in force until 17 January 2021.

The prohibition of large gatherings is still in place, with gatherings limited to 10 individuals, and people are required to wear face masks when entering shops, supermarkets, buildings with public access, etc. These restrictions have been extended to at least until 28 February 2021.

An extension of unemployment reduction packages was adopted in October 2020 (see October 2020 Flash Report).

Tripartite cooperation between government and social partners is still the preferred tool in times of crisis. A total of 14 tripartite agreements were concluded in 2020 in response to COVID-19.

1.2 Other legislative developments

1.2.1 Residence and work permit

With a view to fighting social dumping, 'pro forma' employment and systematic circumvention of the existing regulations by underpaying foreign workers, new amendments have been made to the Danish Aliens Act, introducing further requirements and enforcement mechanisms in relation to foreign workers in Denmark. The amendments entered into force on 1 January 2021.

During the parliamentary procedure, the amendments were divided into two Amendment Acts (L 92A and L 92B).

The amendments do not affect the right to free movement of workers and services within the European Union, as workers posted from companies within the EU (EU citizens as well as posted third-country nationals), and EU citizens exercising their right to free movement are specifically exempt and the Danish Aliens Act must be interpreted in conformity with the free movement enshrined in EU legislation, cf. sections 2(4) and (5) of the Danish Aliens Act, and the Executive Order on Residency for Foreigners covered by EU rules on free movement, No. 1457 of 6 October 2020.

The new legislative amendments apply to third-country citizens applying for residency in Denmark for a specific job post, section 9a, or a trainee programme:

- The requirement for a foreign worker's salary to be paid into a Danish bank account has been extended in scope and covers nearly all employment schemes;
- Accompanying family members must in some situations apply for an individual work permit (when that family member wants to take up employment in the same or affiliated company as the foreign worker),
- The Danish Agency for International Recruitment and Integration (SIRI) at the Ministry of Integration and Foreigners may reject an application for a residence and work permit on the basis of an assumption that it is an attempt to circumvent the rules (as opposed to the current threshold of "specific grounds"),
- Enhanced inspections/control of companies employing foreign workers may be carried out, and

SIRI may order companies to daily and digitally register information on employed foreign workers, such as working hours, (*log book)*, e.g. in case of suspicion of unlawful unpaid overtime work.

The amendment to the Aliens Act may be characterised as another legislative step taken to fight social dumping and enforce compliance with the Danish rules in relation to foreign workers.

In relation to EU law, the issue of *stand still duties* towards Turkish citizens is addressed in the preliminary works with reference to the EEC-Turkey Association Agreement and more specifically, Decision No. 1/80 of the Association Council.

The *stand still duties* imply that some of the enhanced requirements to obtain a residence and work permit do not apply to Turkish citizens, who are financially active or are considering financial activity in Denmark. This exception applies to the new requirement of having a Danish bank account and for any accompanying family members to apply for an individual work permit.

The other provisions of the new Act are deemed to not conflict with neither EU law nor the stand still duties.

1.2.2 Maternity and parental leave for the self-employed

An amendment to the existing Act on Equalisation of Maternity Leave, applicable in the private sector, improves the financial conditions during maternity and parental leave for the self-employed.

Under the existing rules, self-employed persons were entitled to maternity/parental leave benefits during maternity/parental leave under the same model as employees, if the relevant conditions were met.

Self-employed persons are now also covered by the maternity equalisation model applicable to other private sector companies. This means that self-employed persons can be compensated for certain expenses such as rent, salaries to temporary agency

workers during the leave, insurance costs, etc. while on leave. At the same time, all self-employed (main occupation) are required to contribute to the Maternity Equalisation Fund just like other private companies. The annual contributions amount to DKK 1 225 DKK (approx. EUR 163 per year).

The rules came into force on 1 January 2021.

The adoption of the amendments is a step towards incentivising women to become self-employed and to improve the financial compensation model during maternity and parental leave for both men and women who are self-employed. The new Act gives more financial stability to self-employed persons who are considering having children.

The Act does not contain EU law aspects. Rather, it represents a political step towards equal treatment of men and women, as well as an improvement of working conditions for the self-employed – a group that has been growing in Denmark.

2 Court Rulings

2.1 Posting of workers

Supreme Court, 115/2019, 30 November 2020

The case concerned the question whether the then-existing Danish rules on the duty to register certain information in the Register of Foreign Service Providers (RUT register) was compliant with EU law. More specifically, the Court examined whether a Polish company could be fined for non-compliance with the duty to register in the RUT register.

The High Court Ruling on the same case was issued in May 2019. The High Court ruling was reported in Flash Report of May 2019,but was appealed to the Supreme Court.

The case is already of tremendous interest. While the case was still ongoing, the Ministry of Employment decided to amend the Ministerial Order on the Register of Foreign Service Providers (RUT register), hence there no longer is general public access to the information about where the foreign company works (place of delivery of services). Labour market parties will still have access to this information, cf. Ministerial Order, Article 12(6).

According to the then-existing Article 7 a (1) and (5) of the Danish Posted Workers Act, a foreign company was required to enter information on company name, business address and contact information (No. 1), date of commencement and end of service delivery (No. 2), place of delivery of services (No. 3), contact person in Denmark (No.4), the company's sector code (No. 5) and the identity of posted workers and the posting's duration (No. 6) in the RUT register. The registered information was subject to general public access.

The Polish company argued that the *duty to register*, as described above, resulted in a disproportionate administrative burden for foreign service providers contrary to TEUF Article 56(1). Furthermore, the *publication of registered information* on the company name, business address and contact information, place of delivery of services, contact person in Denmark and the company's sector code went beyond what was necessary to meet the purpose of the RUT register. The publication was thus also in conflict with TEUF Article 56(1).

The Prosecution Service argued that there was no breach of EU law and argued that the company was obliged to pay the issued fine.

The Supreme Court found—which was undisputed between the parties—*that* the then existing duty to register constituted a restriction of the free movement of services, *that* the restrictions were legitimated by overriding reasons in the public interest, and *that* the model was capable of ensuring efficient control over whether foreign service

providers live up to the Danish rules on the labour market. Reference was made to CJEU case C-315/13, 3 December 2014, *De Clercq*.

Specifically, regarding the *duty to register* certain information, the Supreme Court found that this obligation did not go beyond what was necessary to meet the purpose of the rules on the RUT register. This result was supported by the Commission Statement of 4 April 2006 (COM(2006) 159 Final).

However, regarding the *publication of the information on place of delivery of services*, the Supreme Court determined that the publication went beyond what is necessary to meet the need of the RUT register. The public availability of such information could, inter alia, entail a competition disadvantage for foreign service providers, as competitors would have had access to information on the identity of the foreign service providers' customers.

The Supreme Court ruled that due to the special Danish labour market model, where the labour market parties negotiate and control salary and employment terms, it was necessary for the *labour market parties* to have access to such information on the place of delivery, whereas no valid arguments had been put forth on the *public's* access to the information.

The Supreme Court ruling is available here.

Analytical part

The ruling is an example of the Supreme Court setting aside a part of national legislation on the basis of EU law, and the proportionality assessment was made individually for each piece of required information. The Supreme Court consisted of nine judges—as opposed to the usually seven judges—which illustrates the special character of the case.

As a consequence of the Supreme Court ruling, the Director of Public Prosecutions (*Rigsadvokaten*) has decided that a number of criminal cases from 1 January 2011 to 25 June 2019 must be resumed. This means that 1 600 fine penalties, which have been issued to primarily foreign employers for not properly registering properly with the RUT registry must be reopened.

The press release, Prosecution Service (*Anklagemyndigheden*), 21 December 2020 is available here.

2.2 Freedom of association

Eastern High Court, BS-52440/2019, 29 October 2020

The case examined whether the protection in the Danish Act on Freedom of Association on the Employment Market (Law No 424 of 8 May 2006) was observed in connection with the termination of an employee.

An employee was terminated with normal notice due to the closure of part of the company. The employer expressed his displeasure with the employee, both directly to the employee as well as on social media, and in addition delayed the payment of salaries. Due to this delay in payment, the employee repealed the employment contract with immediate effect (constructive dismissal with immediate effect) for the employer's severe breach of contract due to the delay in payment. The employee claimed that the employer's refusal to pay the outstanding salaries was entirely or in part due to the employee's membership in HK, a large Danish trade union for clerical and sales staff. Eventually, albeit with a delay, the employer paid the outstanding salaries before the expiry of the notice period, and the case thus only concerned the question whether a delay in payments, potentially caused by trade union membership, was a breach of the Act on Freedom of Association.

The High Court reiterated that the Act on Freedom of Association on the Employment Market does not require equal treatment *during* employment, but protects the right to

employment and against termination, regardless of the employee's membership status. As it was undisputed that the termination had been caused by the closure of part of the company and not by the employee's union membership, the delay in payment—even if related to union membership—was not a violation of the Act.

The case is fully in line with a former Supreme Court case, Supreme Court ruling of 4 June 2015, U 2015.3210, in which the Court stated that the Danish Act on Freedom of Association on the Employment Market does not apply to differential treatment *during* an employment relationship. The Act only covers decisions on employment and termination. The Supreme Court also found that this position was in accordance with ECHR Article 11.

No reference was made to ECHR in the present case, nor was any reference made to the EU Charter of Fundamental rights. In light of the Supreme Court ruling of 2015, it is doubtful whether any such reference by the claimant would have had any impact on the assessment of the Eastern High Court.

The Supreme Court ruling of 4 June 2015, U 2015.3210 is available here.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 1 December 2020, Federatie Nederlandse Vakbeweging

The ruling may have implications in Danish law. In essence, the ruling corresponds with Danish case law on international road transport, but clarifies various issues on the posting of workers that have not yet been addressed in Danish law and is therefore an important precedent should the same questions arise in the Danish context.

First, the ruling corresponds with the existing practice of the Danish Labour Court on international road transport in that a small amount of work in another Member State does not suffice to qualify as a posting. The performance of work must have a sufficient connection with the territory:

- In the *Mitropa* case (AR2000.455), German employees (train staff) travelled on trains in Denmark as part of the overall international transport of passengers. The Labour Court stated that when only a small part of an international transport takes place in Denmark, and it is a natural and insignificant part of the overall performance of transport, special circumstances would be necessary to establish a sufficiently strong and current interest of the trade union regarding this limited work performed in Denmark. The ruling has set a standard for the assessment of the amount and character of work temporarily performed in Denmark with a view to fulfilling the requirement under Danish collective labour law for a sufficiently strong interest of trade unions to conclude a collective agreement for the work being performed. In addition, the small amount of work did not suffice to constitute a situation of posting under EU law.
- In the *Kim Johanson OÜ* case (AR2014.0028), which concerned the international transport of goods by road, the truck drivers also carried out work in Denmark, which, however, amounted to less than 3 per cent of the total work performed. The case was the first one to test the lawfulness of conflicts with posting entities with a view to obtaining a collective agreement for the salaries of posted workers after the amendment to the Danish Posting of Workers Act following the CJEU's Laval ruling. The ruling reiterated the acquis from the *Mitropa* ruling on a minimum level of work performed in Denmark in order for a dispute to be lawful under Danish law as well as to constitute a situation of posting under EU law. The disputes were found to be unlawful on the basis that this diminutive amount of work did not suffice to constitute 1) a posting under EU law, nor 2) an interest

of sufficient significance to legitimate an industrial conflict under Danish collective labour law.

The new CJEU ruling supplements Danish case law in that the Court explicitly refers to some of the relevant factors in the overall assessment of whether the performance of work should be defined as a posting. More specifically, "… the nature of the activities carried out by the worker concerned in that territory, the degree of connection between the worker's activities and the territory of each Member State in which the worker operates, and the proportion represented by those activities in the entire transport service." (para. 51) These relevant factors seem to already be taken into account in existing Danish case law, but the CJEU ruling is more explicit in highlighting the individual, relevant factors in the overall assessment, which could potentially influence future Danish case law in this regard.

There is no case law on the definition of posting of workers specifically related to cabotage transport in Denmark. In this regard, the CJEU ruling clarifies that such transport operations must, as a main rule, be considered as postings within the meaning of Directive 96/71. The duration of cabotage operations is irrelevant when determining whether a posting has taken place, without prejudice to the possible application of Article 3(3) of that Directive. The CJEU ruling may be relevant in any future cases concerning cabotage transport before the Danish courts.

It should be noted, however, that the Danish legislature adopted new rules in 2020 specifically on cabotage transport in Denmark, which entail a duty to pay a representative salary to drivers performing such transport. The duty to pay a representative salary is as an extraordinary measure established in a statutory act and not in a collective agreement, in response to EU law developments in cabotage transport, in particular. Furthermore, foreign haulage contractors will be required to report to a new register, notifying Danish authorities on who is performing cabotage transport in Denmark and to control the payment of salaries to such drivers (see January 2020 Flash Report).

Finally, the CJEU ruling clarifies that a collective agreement may be considered 'universally applicable', if compliance with this collective agreement is a precondition for exemption for undertakings covered by it from another collective labour agreement which, for its part, has been declared universally applicable and the provisions of which are essentially identical to those of that other collective labour agreement. Denmark has no procedure for the universalisation of collective agreements, and only very rarely and under very specific circumstances is a collective agreement made generally applicable. The situation dealt with by the CJEU has thus not yet arisen in a Danish context, but the ruling will have implications should any such future case arise.

The Act on Posted Workers is available here.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

(I) Amendments to the resolution of individual labour disputes entered into force on 04 December 2020, with the aim of simplifying and specifying the procedure of litigation.

(II) A draft law to transpose Directive (EU) 2019/1158 on Work-Life Balance for Working Parents and Carers has been prepared.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Individual labour dispute resolution

The Amendment Act of Labour Dispute Resolution Act entered into force on 04 December 2020. The law clarifies the procedure, establishing some applicable rules in practice and clarifying the procedure for the parties. For example, the procedure, including recordings, shall be conducted in Estonian. A meeting of a labour dispute committee may be held in another language with the consent of the parties and of the members of the labour dispute committee.

The Amendments also specifies how many persons can apply to the labour dispute committee as a joint application and supplemented with the possibility of holding sessions via a video bridge (i.e. virtually). In addition, the remuneration of a lay assessor of the labour dispute committee is equated with the minimum hourly wage.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The impact of CJEU case C-815/18 has important implications for Estonia. It clarifies certain aspects of posted workers' legal position.

First, the judgment clarifies that the Posted Workers' Directive is also applicable to road transport services. The Estonian law on working conditions of posted workers currently excludes road transport services under certain conditions in accordance with Directive (EU) 2018/957.

Secondly, the judgment clarifies under what circumstances an employee is to be considered a posted worker. It does not suffice for a driver to simply pass through a Member State, rather it is the connection that driver has to the respective Member State(s) that must be taken into account.

Thirdly, the judgment clarifies that the applicable collective agreement will be determined by the national legislation. The question whether a collective agreement has

been declared universally applicable must be assessed with reference to the applicable national law.

According to Estonian law, it is not possible to declare a collective agreement universally applicable, because the Supreme Court ruled on 15 June 2020 by Decision 2-18-782 1 that the current Collective Agreement Act does not allow persons, who have entered into a collective agreement, to assume obligations under the same agreement for an employer who is not a party to the collective agreement or belongs to an association or union of employers. The draft to amend the Collective Agreement Act is currently underway.

4 Other Relevant Information

4.1 Draft Law transposing the EU Work-Life Balance Directive

The Ministry of Social Affairs has prepared a draft law for the transposition of Directive (EU) 2019/1158 on Work-Life Balance for Working Parents and Carers. The proposed draft amends the Employment Contracts Act and the Public Service Act. The draft directly transposes the Directive.

It also eliminates the 10 working day waiting period for registering a minor in Estonia's employment register upon concluding an employment contract with a minor aged 13–14 years. The corresponding obligation would continue to apply to the employment of minors aged 7-12 years.

According to the draft, the law will enter into force in April 2021. So far, the Estonian Parliament has not yet started discussing the draft yet.

Finland

Summary

(I) Temporary amendments to the labour legislation, which introduced flexibility to address the COVID-19 pandemic, have come to an end.

(II) The Posted Workers Act has been amended to implement Directive (EU) 2018/957.

(III) The regulation of seafarers has been amended to take the 2018 amendments to the ILO Maritime Labour Convention into account.

(III) The Labour Court dealt with cases concerning the grounds for fixed-term employment contracts of professors at universities.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 End of temporary amendments to labour legislation

In response to the COVID-19 pandemic, the notice period for layoffs was temporarily decreased to five days. This temporary amendment ended on 31 December 2020. From 01 January 2021, the period of notice will be 14 days. Similarly, the duration of negotiations on layoffs was temporarily reduced to five days, a temporary amendment that ended on 31 December 2020. From 01 January 2021, the negotiation period will be six weeks or 14 days. In addition, to address the COVID-19 crisis, employers have been entitled to lay off fixed-term employees under the same conditions as employees with employment contracts of indefinite duration. This amendments was in force until 31 December 2020.

Due to the COVID-19 pandemic, the obligation to re-hire employees was temporarily extended to nine months if the employee was laid off at a time when the temporary provisions were in force; this amendment was in force until 31 December 2020. From 01 January 2021, the re-employment obligation will be either four or six months.

Employers have also been able to terminate employment contracts during the trial period for financial or production-related reasons referred to in the Employment Contracts Act. This amendment was in force until 31 December 2020.

1.2 Other legislative developments

1.2.1 Posting of workers

The amendments to the Posted Workers Act that came into force on 01 December 2020 transposed Directive (EU) 2018/957, amending the Posted Workers Directive. A transition period of 12 months applies to posting agreements concluded before the entry into force of the amendments. This gives companies an opportunity to make adjustments to their agreements reflecting the legislative amendments.

1.2.2 Seafarers

Amendments to secure the status of employees in case of piracy or armed robbery against the ship entered into force on 26 December 2020. These amendments are based on the ILO regulation. Provisions have been added to the regulations of the ILO Maritime Labour Convention for situations in which a seafarer is detained as a result of piracy or an armed robbery against the ship. The purpose of the provisions is to ensure the continuity of seafarers' employment contracts and salary payments in such events.

2 Court Rulings

2.1 Fixed-term work

Labour Court, TT 2020:117 and TT 2020:116, 28 November 2020

The Labour Court dealt with two cases (TT 2020:117 and TT 2020:116) involving a fixed-term employment contract of a professor. The decisions were based on similar grounds.

The Court examined whether a university had a justified ground to conclude a fixed-term employment contract of approximately five years with a professor. According to the general collective agreement applicable to universities, a fixed-term agreement could be concluded on grounds mentioned in the Employment Contracts Act and legislation on universities. According to the judgments of the Labour Court, not even established practice in a certain field could set aside mandatory provisions in the legislation. A case-by-case review must be carried out to determine whether the requirements to conclude a fixed-term contract had been fulfilled. The nature of the field of work and the specific features of the work carried out in universities were to be taken into account when interpreting the provisions on fixed-term work. The nature of the teaching task as a concept was too unspecific to base an assessment of the temporary nature of the need for labour on. Moreover, the employer had to provide grounds in each individual case why a fixed-term contract was necessary in that specific case to achieve the aim of fulfilling the requirements in the field. When conducting such an assessment, it was necessary to take into account that the work carried out at universities involves the basic right to the freedom of research, art and education, which in and of itself supports permanent employment relationships instead of fixed-term ones.

According to the Court's judgments, the university had not provided sufficient evidence as to why the objectives related to the educational task required and justified the conclusion of a fixed-term over a permanent employment contract with the professor who had been nominated on scientific grounds. There was no agreement as to when the employment contract had been concluded, there were no concrete changes in the employer's operations that would have *de facto* influenced the professor's work-related tasks and determine when the fixed-term contract ended, thus indicating that the tasks were indeed only temporary. The fixed-term employment contracts had been concluded upon the employer's initiative without justified ground, and the contracts were thus to be considered permanent ones.

2.2 Collective action

Labour Court, TT 2020:115, 22 December 2020

The case dealt with changes the employer introduced to work shifts in response to the COVID-19 pandemic. The changes were meant to be temporary. The collective action targeted provisions on the right to supervision and modifying the working hours established in the collective agreement in force. The employer and employee representatives had a diverse understanding as to whether the collective agreement allowed the employer's actions. The employee representatives could contest the employer's interpretation against the order set out by law, but not by initiating collective action while the collective agreement was in force.

Collective action was decided in a committee which consisted of shop stewards and occupational safety representatives of the workplace. The chief shop steward had participated in the strike. The trade union branch was responsible for the action of its representatives, hence the trade union branch had breached its peace obligation.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

In Finland, the scope of application of the Posted Workers Act does not exclude posted workers in the road transport sector.

As regards universally applicable collective agreements, the determination of such agreements is provided in the Employment Contracts Act and is applied when the terms of employment based on collective agreements apply to posted workers.

4 Other Relevant Information

Nothing to report.

France

Summary

(I) The law to accelerate and simplify public action modifies the rules applicable to employee profit-sharing programmes.

(II) The social security funding law modifies the duration of paternity leave and establishes daily sickness benefits for self-employed persons.

(III) The Court of Cassation has ruled on the definition of co-employment and on the nature of dismissal for refusal of the internal mobility agreement.

(IV) A Court of Appeal has ruled on the freedom of expression during a pre-dismissal meeting.

(V) The social partners signed a national multi-industry agreement on occupational health.

(VI) A report on the regulation of digital work platforms has been presented to the French government.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Employee profit-sharing programmes

The law to accelerate and simplify public action (Law No. 2020-1525 of 07 December 2020, see JORF 08 December 2020) seeks to simplify the formalities and procedures for individuals and companies. First, it modifies the duration of profit-sharing and participation agreements: whereas they used to, in principle, be concluded for a period of three years, the law now envisages a duration of between one and three years, regardless of the size of the company's workforce (see Article 121 of Law No. 2020-1525 modifying Article L. 3312-5 of the Labour Code).

Now, branch agreements establishing employee profit-sharing schemes must be approved by the administration before companies can actually apply them. The purpose of such an approval is to secure the agreements and unilateral membership documents concluded or signed within the framework of the branch agreement (see Article 118 of Law No. 2020-1525 modifying Article L. 3345-4 of the Labour Code). However, this approval procedure will have to be specified by decree.

1.2.2 Paternity leave

The social security funding law of 2021 (Law No. 2020-1576 of 14 December 2020), adopted on 14 December 2020, provides measures that extend the duration of paternity leave for employees and self-employed persons.

First, the use of childbirth leave and part of the paternity leave is compulsory for employees. At the time of the birth of the child, the law compels the employee to take 3 working days of leave (childbirth leave).

Second, while paternity and childcare leave is currently 11 consecutive days, and 18 days in the case of multiple births, it has been increased to 25 calendar days, or 32 in the case of multiple births.

Paternity leave is now divided into two periods under separate regimes. The first period of leave, which immediately follows childbirth leave and is compulsory, comprises 4 consecutive calendar days. This period is fixed and cannot be reduced. Paternity and childcare leave consists of a second period of 21 calendar days, which is increased to 28 days in the case of multiple births, and can be divided according to the procedures set forth in a decree to be published (see Article L. 1225-35 of the Labour Code).

1.2.3 Sickness benefits

The social security funding law of 2021 provides that self-employed persons will receive cash sickness benefits in exchange for the payment of a new contribution based on their professional income. According to the government, the health crisis linked to the COVID-19 pandemic has revealed the need to introduce daily sickness benefits for self-employed professionals. Self-employed professionals covered by the National Old-Age Insurance Fund for the Liberal Professions (Cnavpl) will be required to pay an additional contribution to finance their cash sickness benefits. This contribution will be calculated on the same basis as the other social security contributions payable by self-employed persons, subject to a ceiling (see Article L. 621-2 of the Social Security Code). From the entry into force of the measure, self-employed professionals affiliated to the Cnavpl will therefore receive permanent cash sickness benefits under the conditions laid down for self-employed persons, subject to adjustments determined by decree on the proposal of the board of directors of the National Fund. The maximum duration of payment of the daily allowance for the same incapacity for work will be laid down by another decree.

2 Court Rulings

2.1 Co-employment

Labour Division of the Court of Cassation, No. 18-13.769, 25 November 2020

A group working in the field of glass operated under the Japanese flag in 2010. Since then, a subsidiary of the group had lost a large part of its autonomy. The subsidiary was finally closed in 2012 and put into liquidation in 2013. The group then took over the subsidiary's assets under conditions considered unfavourable by the employees. Several staff members had contested the real and serious nature of their dismissal for economic reasons, while seeking to have the holding company recognised as a co-employer so that it could be ordered in solidum to pay damages.

The Caen Court of Appeal reviewed the various elements characterising the interference of the holding company in the economic and financial management of its subsidiary and concluded, in accordance with the established formula, that there was a confusion of interests, activity and management between the two entities and declared them to be a co-employer.

In the explanatory note appended to the judgment, the Court of Cassation emphasised that the three criteria characterising co-employment (confusion of interests, activity and management) *"no longer made it possible [...] to circumscribe with the necessary rigour the situations which must remain within the scope of the exception."*

The Court of Cassation decided that

> *"apart from the existence of a subordination link, a company belonging to a group can only be qualified as a co-employer of the staff employed by another company if there is, beyond the necessary coordination of economic actions between*

companies belonging to the same group and the state of economic domination that this affiliation can generate, a permanent interference of this company in the economic and social management of the employing company, leading to the total loss of autonomy of action of the latter."

This new definition maintains the principle of a three-fold confusion of interests, activities and management, but differs from the former one on two points: (1) The interference must now be 'permanent'; (2) The situation must lead to a 'total loss of autonomy of action' of the subsidiary, which is a new element in the definition of co-employment.

The Court of Cassation ultimately ruled that the Caen Court of Appeal had not identified the constituent elements of co-employment.

2.2 Compensation for protected employees due to loss of employment

Labour Division of the Court of Cassation, No. 18-13.771, 25 November 2020

The subsidiary of a group operating in the glass industry ceased all activity and dismissed its staff for economic reasons (supra). Some employees contested their dismissal and at the same time, tried to have the subsidiary and the holding company recognised as co-employers, so that the latter would be ordered in solidum to pay compensation for dismissal without real and serious cause. Two protected employees also invoked their status as co-employers of the holding company and the subsidiary to obtain payment of the supplementary compensation granted to 'ordinary' employees.

The fact that the employer committed mismanagement or demonstrated blameworthy lightness in the conduct of business may invalidate the dismissals for economic reasons, which were pronounced, of real and serious cause. However, in the case of protected employees, the principle of separation of powers prohibits the judicial judge (Employment Tribunal and Court of Appeal) from questioning dismissals that have been authorised by the labour inspector. To overcome this obstacle, the employees invoked a prejudice prior to the termination of the employment contract, insofar as 'the absence of fault and blameworthy lightness would have allowed the contractual commitment to be maintained.'

According to the Court of Appeal, the fault and blameworthy lightness of their employer, provided it was established, would not have caused any prejudice other than that resulting from the loss of employment. And due to the separation of powers, the judicial judge cannot assess this prejudice.

The Court of Cassation, nevertheless, struck down the approach taken by the Court of Appeal. According to the Court of Cassation, the Court of Appeal missed a fundamental point: when considering an application for authorisation for dismissal on economic grounds following the transfer of a business, the labour inspector does not investigate whether this situation is attributable to the fault of the employer.

Consequently, although the judicial judge is not in a position to question the real and serious nature of the dismissal, he/she has full legitimacy to assess the employer's responsibility in the cessation of activity and to evaluate the prejudice attributable to the employer, including any fault resulting from the loss of employment.

2.3 Internal mobility agreement

Labour Division of the Court of Cassation, No. 19-11.986, 02 December 2020

A number of employees were dismissed after refusing proposed job offers under an internal mobility agreement signed within the company. They submitted a claim for their dismissal to be declared null and void, or at least to declare a lack of real and serious cause for the dismissal. In particular, they invoked Article 4 of ILO Convention No. 158 on Termination of Employment, according to which *"the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."*

The employees were of the opinion that their dismissal fell within the scope of the legal provisions on economic dismissal and had to therefore be justified by one of the economic reasons provided for in the Labour Code (Article L. 1233-3 of the Labour Code).

They also claimed that the Court of Appeal had violated Article 4 of ILO Convention No. 158 because it had refused to assess the real and serious nature of their dismissal. The Court of Appeal had reviewed the validity of the internal mobility agreement and found that the dismissal of those employees who had refused it was based on the company's operational needs.

The Court of Cassation rejected the employees' arguments. It considered that the legal provisions on the internal mobility agreement instituted an autonomous ground for dismissal based on the economic grounds provided for in Article L. 1233-3 of the Labour Code. Consequently, the employer does not have to justify that the change in the employment contract proposed in application of the mobility agreement is the result of economic difficulties, technological changes, a reorganisation of the company necessary to safeguard its competitiveness or a complete cessation of activity.

In this ruling, the Court of Cassation specified the method to be followed by judges to examine the real and serious nature of the reason for dismissal. For the Court of Cassation, the review of the validity of the reason for dismissal following the refusal of an internal mobility agreement requires an assessment of the mobility agreement on two points:

- The judge must verify the agreement's conformity with the legal provisions governing it (the Court of Cassation applies its case law here on old agreements to reduce working time, see Labour Division of the Court of Cassation, 15 March 2006, No. 04-41.935);
- The judge must verify the justification of the agreement based on the existence of the necessities of the company's operation.

The question that arises is whether the solution enacted by the Court of Cassation on the former internal mobility agreements could apply to the new collective performance agreements that were put in place by the Ordinance of 22 September 2017 in Articles L. 2254-2 et seq. of the Labour Code.

2.4 Freedom of expression

Versailles Court of Appeal, No. 18/00619, 02 December 2020

In the present case, an employee was dismissed. The letter of dismissal contained a number of grievances, one of which related to the employee's refusal to apologise during the pre-dismissal meeting for what were considered acts of insubordination. The employee brought the matter before the court for her dismissal to be declared null and void and to reinstate her in the company.

The employee argued that her former employer had infringed her freedom of expression protected in Article 1 of the Preamble to the Constitution of 27 October 1946 and Article 2 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, by reproaching her in the letter of dismissal for remarks she had allegedly made during the pre-dismissal meeting, in particular, her refusal to make 'amends' for the acts of insubordination and inappropriate behaviour towards her seniors for which she had been reproached.

The Court of Appeal noted that

> *"the purpose of the pre-dismissal meeting is to allow the employee to defend himself, and is not intended to force him to make amends, and therefore, the employee may freely, in this context, refute the grievances put forward by the employer, whatever they may be, and these denials, which fall within the scope of freedom of expression, may not be held to be a fault on the part of the employer"*.

The Court of Appeal likened the grievance covered by the letter of dismissal to a retaliatory measure against the employee. It held that "*by reproaching her for the right to express herself freely during the preliminary interview and, consequently, to defend herself, the employer infringed a fundamental freedom, namely freedom of expression"*. The judges therefore declared the employee's dismissal null and void and declared her request for reinstatement in her previous position, or if this was impossible, in an equivalent job to be well-founded.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

In its ruling delivered on 01 December 2020, the CJEU retains the relevance of 'sufficient connection' with the territory of the host Member State. The following non-exhaustive criteria must be considered to determine whether a worker has a sufficient connection with the territory of a host Member State. According to the Court, however, the carrying out of cabotage activities on the territory of a Member State—irrespective of the duration of these activities—automatically indicates the existence of a sufficiently close link.

Directive (EU) 2020/1057 of 15 July 2020, which lays down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector, adopted as part of the 'mobility' package, must be transposed by Member States by 02 February 2022.

This Directive has not yet been transposed into French legislation.

According to a recent Parliamentary report, in 2017 there were 800 000 declarations of posting in the transport sector in France, although it is not known how many workers this figure corresponds to. Moreover, according to a Parliamentary debate of 2018, in 2017, 880 295 transport certificates were produced by foreign companies in France. They accounted for 81 per cent of secondment declarations. The companies that post the most are Polish—nearly 213 000 certificates—Spanish, with around 105 000 certificates, and Romanian, with around 99 000 certificates. Drivers are mainly Polish, with nearly 171 500, Romanian with 145 500 and Ukrainian with nearly 91 000.

4 Other Relevant Information

4.1 Occupational health

The social partners agreed during the night of 09-10 December to sign a national multi-industry agreement on occupational health by 08 January. The preamble to this national

multi-industry agreement states that primary prevention (concrete actions implemented in companies to combat occupational risks) must 'tackle the root causes of [occupational] risks before they produce their effects', and be 'focused on the reality of work in order to preserve health and fight professional exclusion'. The Single Occupational Risk Assessment Document remains the essential tool for assessing occupational risks and tracing exposures.

The national multi-industry agreement states that employers 'are encouraged [...] to develop preventive actions.' However, it points out that 'case law has accepted that an employer and its delegates may be considered to have fulfilled their obligations if they have implemented preventive actions.'

The quality of life at work, for which a national multi-industry agreement was signed in 2013, becomes the quality of life and working conditions, one of the topics for compulsory negotiations provided for in the Labour Code. Its objectives must relate to the articulation of areas of life, working conditions (management, resources, interpersonal and collective labour relations), the usefulness and meaning of work, its rapid transformation, the management of change, the mobilisation of work organisation methods such as teleworking, as well as the expression of employees and their participation in the field of health at work.

The national multi-industry agreement also targets the maintenance in employment of an employee whose health has deteriorated, which constitutes a large part of the daily activity of occupational doctors. It has set up 'dedicated cells' within the health services as well as a mid-career medical check-up.

4.2 Digital platform workers

A report on the regulation of digital work platforms has been presented to the French government by the former President of the Social Division of the Court of Cassation (Frouin, J.-Y., *Réguler les plateformes numériques de travail*, Report to the Prime Minister, 01 December 2020). With regard to the status of these workers, the report recommends that workers on delivery platforms, after six to 12 months of activity and a certain level of turnover, should be required to register with a third party in order to secure them. This third party, freely chosen between activity and employment cooperatives, umbrella companies or other forms, gives the workers employee status and all the protections of salaried employment, without jeopardising their autonomy.

Germany

Summary

(I) The Federal Ministry of Labour has presented a Draft Act to promote works council elections and strengthen works councils.

(II) The Federal Constitutional Court rejected several applications for interim injunctions to prevent parts of the Occupational Safety and Health Control Act from entering into force.

(III) The Federal Labour Court has submitted two requests for preliminary rulings before the CJEU regarding the possibility of deviating from the principle of equal treatment of temporary agency workers and permanent employees by collective agreements and the compatibility of a higher payment of irregular night work with the Working Time Directive.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Bill strengthening works councils

The Federal Ministry of Labour has presented a Draft Act to promote works council elections and strengthen works councils (*Betriebsräte-Stärkungsgesetz*). The key points are an extension of the so-called simplified election procedure and of the special protection against dismissal for initiators of a works council election, the stipulation that when personal data is processed by the works council, the employer is in principle the 'person responsible' within the meaning of data protection regulations, and a new right of co-determination in the structuring of mobile work. In addition to extending the simplified election procedure, further changes aim at facilitating and promoting the establishment of works councils in small and medium-sized enterprises and to ensure greater legal certainty in works council elections.

As regards the rights of works councils, section 87 of the Works Constitution Act (*Betriebsverfassungsgesetz*) will be amended by establishing a new right of co-determination for the organisation of mobile work. This right will include both regular and occasional mobile work. It includes, for example, provisions on the temporal scope of mobile work, on the start and end of daily working time in relation to mobile work or on the location from which mobile work can and may be performed. Provisions can be made on specific attendance obligations at the employer's premises, on accessibility, on the use of mobile work equipment and on safety aspects to be observed. The right of co-determination will represent a catch-all for all provisions based on which mobile work can be designed. Existing co-determination rights will not be affected.

Another interesting point relates to the use of artificial intelligence (AI) applications. The lawmaker acknowledges that AI can have a significant impact on work procedures and work processes and as a result, on employees. In light of this, section 90 of the Works Constitution Act will be amended to clarify that the employer's obligations and the works council's rights under this provision will also apply if the employer plans to use AI in the company. According to section 90(1) in its current version, the employer shall inform the works council about the planning 1) of new buildings, conversions and extensions of factory, administrative and other operational premises, 2) of technical installations, 3) of work procedures and work processes, or 4) of the workplaces in good time,

submitting the necessary documents. Under the new law, the words 'including the use of artificial intelligence' will be inserted after the words 'work processes'. Under section 95 of the Works Constitution Act, works councils have a say in the selection guidelines for hiring, transfers, regroupings and terminations. Under the new law, it will be clarified that the rights of works councils in setting up selection guidelines apply equally if AI is used to establish those guidelines. This may be the case, for example, if an AI application draws up selection guidelines independently or within a framework provided by a third party.

2 Court Rulings

2.1 Health and safety in the meat industry

Federal Constitutional Court, 1 BvQ 152/20 et al., 29 December 2020

The Federal Constitutional Court rejected several applications for interim injunctions to prevent parts of the Act to Improve Enforcement in Occupational Safety and Health (Occupational Safety and Health Control Act, *Arbeitsschutzkontrollgesetz*) from entering into force on 01 January 2021 (see October 2020 Flash Report).

Under the new law, as of 01 January 2021, companies in the meat industry are prevented from using external staff on the basis of civil law contracts (so-called contracts for work) in the areas of slaughtering, cutting and meat processing. Moreover, the employment of external staff in temporary work is only permitted under special conditions and until 01 April 2021 only; after that date, it will also be prohibited in this sector.

The applicants were of the view that they would suffer serious disadvantages which would be difficult or even impossible to remedy if the ban on external staff came into force on 01 January 2021. The Court disagreed. More detailed reasons will be given by the Court separately.

2.2 Temporary agency work

Federal Labour Court, 5 AZR 143/19 (A), 16 December 2020

The Federal Labour Court has requested the CJEU for a preliminary ruling relating to deviations from the principle of equal treatment of temporary workers and permanent employees by collective agreements.

Art. 5(1) of Directive 2008/104/EC provides that *"basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job."* However, Art. 5(3) of the above-mentioned Directive further provides that *"Member States may, after consulting the social partners, give them, at the appropriate level and subject to the conditions laid down by the Member States, the option of upholding or concluding collective agreements which, while respecting the overall protection of temporary agency workers, may establish arrangements concerning the working and employment conditions of temporary agency workers which may differ from those referred to in paragraph 1".* The Directive does not contain a definition of 'overall protection', and its content and the conditions for its 'respect' are disputed in the literature.

2.3 Night work

Federal Labour Court, 10 AZR 332/20 (A), 09 December 2020

Provisions in collective agreements that provide for higher compensation for irregular night work than for regular night work raise questions about the interpretation of EU law. For this reason, the Federal Labour Court has submitted a request for a preliminary ruling to the CJEU. The Court asks the CJEU to clarify whether provisions of collective agreements implementing the Working Time Directive 2003/88/EC within the meaning of the first sentence of Article 51(1) of the Charter of Fundamental Rights of the European Union if they contain different levels of bonuses for regular and irregular night work. Moreover, the Court wants to know whether a collective agreement provision breaches Article 20 of the Charter if it provides for a higher premium for irregular night work if, in addition to the adverse health effects of night work, it is also intended to compensate for burdens arising from the fact that it is more difficult to plan working time.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

This decision is undoubtedly of considerable practical importance. It seems to consistently develop the principles established in the earlier decision of the Court in the case *Dobersberger*. However, some authors expressed concern that the CJEU's decision provided an impetus to 'read an unwritten exception to the scope of application into the Posting of Workers Directive' (see Hlava/Höller/Klengel: *Verfahren vor dem EuGH*, in: *Neue Zeitschrift für Arbeitsrecht* (NZA) 2020, 432 (437)). In this respect, it was already argued in relation to the Opinion of Advocate General Bobek that lorry drivers, unlike train conductors, always had the possibility to leave their vehicle (Hlava/Höller/Klengel: *Verfahren vor dem EuGH*, in: *Neue Zeitschrift für Arbeitsrecht* (NZA) 2020, 1294(1296)). In any case, the ruling creates some clarity, as the application of the Directive to transit journeys has so far been controversial (see Heuschmied/Schierle, in: Sagan/Preis (eds.), *Europäisches Arbeitsrecht*, 2nd. ed. 2018, 16.109 with further references).

4 Other Relevant Information

4.1 Evaluation of the Minimum Wage Act

Section 23 of the Minimum Wage Act (*Mindestlohngesetz*) contains an obligation to evaluate the law in 2020. The responsible ministry submitted this overall report in December 2020.

Greece

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Ruling

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

Greek legislation does not include any specific regulation on the posting of workers in the road transport sector. Moreover, there is no relevant case law on this matter. Therefore, the judgment clarifying this issue is of particular significance for Greece.

As regards 'sufficient connection' of workers with the hosting Member State, Greek legislation does not contradict the requirements for determining 'sufficient connection' of workers with the Member States' territory. The Law (P.D. 219/2000) implementing Directive 96/71 has been transposed without any changes to the Directive's text on the issue of 'territory', i.e. it does not include any specifications. There is no relevant case law on this issue. Therefore, the judgment that clarifies this issue is of particular relevance for Greece.

As regards universally applicable collective agreements, Greek Law (Art. 11 of Law 1876/1990) provides that the Minister of Labour may, in consultation with the High Council of Labour, decide to extend a collective agreement and make it binding upon all the workers of a given economic sector or profession (occupation), provided that the agreement in question already binds employers employing 51 per cent of the workers in that sector or occupation.

The issue of a *"collective labour agreement which has not been declared universally applicable, but compliance with which is a precondition, for undertakings covered by it, for exemption from another collective labour agreement which, for its part, has been declared universally applicable and the provisions of which are essentially identical to those of that other collective labour agreement"*, is extremely rare and has not yet arisen in Greece. Therefore, the judgment on this issue is not of particular significance for Greece.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

A Government Decree extends the wage subsidy system up to the end of January 2021.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Extension of wage subsidy

In November, Government Decree No. 485/2020 introduced the rules of a new wage subsidy. The Decree designated the economic activities (catering, entertainment, cinema, theatres, sport, museum, fitness, amusement park, recreation) that can be subsidised. The employer is exempt from the payment of social security contributions and can get 50 per cent of the wages of the employee after the subsidised period, if:

- the employment relationship exists on the last day of the subsidised period (November 2020); and
- the employer pays the entire amount of pay to the employee (Article 14).

Government Decree No. 571/2020 extends the rules of this wage subsidy from November 2020 up to the end of January 2021.

1.2 Other Legislative Developments

1.2.1 Cessation of the Equal Treatment Authority

The Equal Treatment Authority was established by Act 125 of 2003 on equal treatment and the promotion of equal opportunities, and began operation in 2005. The amendment of the Equal Treatment Act and the Act on the Ombudsman in December 2020 subsumes the Equal Treatment Authority from 01 January 2021, and the Authority will continue its activities within the organisation of the Ombudsman's Office as a Department.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The Hungarian provisions on the posting of workers (Articles 295-297 of the Labour Code) shall apply to the transnational provision of services in the road transport sector. There is only one exclusion in Article 296(1): 'The provisions of Section 295 shall not apply to merchant navy enterprises as regards seagoing personnel'.

The CJEU ruling also concerns the scope of provisions on the posting of workers. According to Article 295(1) of the Labour Code, provisions on the posting of workers shall be applied, if:

- a foreign employer employs an employee in the territory of Hungary;
- under agreement with a third party;

- in an employment relationship that is not covered by this Act pursuant to Subsection (2) of Section 3. (See Article 3(2) of the Labour Code: 'Unless otherwise provided for, this Act shall apply to persons who normally work in Hungary.')

Finally, the CJEU ruling concerns the applicability of collective agreements. Hungarian collective agreements are universally applicable, and must be applied in case of posting as well:

Article 279(3) of the Labour Code: 'The effect of the provisions of the collective agreement governing employment relationships shall apply to all employees employed by the employer.'

Article 295(4) of the Labour Code: 'In terms of the requirements specified in Subsection (1) the provisions of the collective agreements covering the entire industry or an entire sector shall apply.'

Thus, the Hungarian provisions comply with the CJEU judgment in the case *Federatie Nederlandse Vakbeweging*.

4 Other Relevant Information

Nothing to report.

Iceland

Summary

(I) In relation to the COVID-19 crisis, Iceland extended partial unemployment insurance until 31 May 2021.

(II) A new Act on Maternity, Paternity and Parental Leave has been passed, extending their total duration to 12 months, which are to be equally divided between the parents. The Act provides for some flexibility to allow a partial transfer of leave between parents.

(III) Two acts on equality law that touch upon labour law-related issues have been adopted.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Partial unemployment benefits

Several acts were passed in relation to COVID-19. These include changes to Act No. 54/2006 on Unemployment Insurance, extending the possibility of partial unemployment benefits until 31 May 2021 and offering the possibility for those who have not made use of their income-related benefits before 01 June 2020 to do so for those additional months.

Earlier in the autumn, the period of income-related benefits was extended from three to six months.

1.2 Other legislative developments

1.2.1 Maternity, Paternity and Parental leave

On 18 December, a new Act on Maternity, Paternity and Parental Leave was passed. Among the major changes is an extension of maternity and paternity leave from a total of ten (extended from nine months in 2019) to 12 months, which are to be equally divided between the parents. Each parent may transfer a maximum of six weeks to the other, as provided for in Article 8. In addition, cases in which a parent can be granted the possibility to take all 12 months have been introduced in Article 9 of the Act, such as when a child cannot be fathered, a parent has a restraining order against the child, or a parent is in prison. Furthermore, Article 43 stipulates that a special grant may be paid to those who live far away from maternity services and therefore have reduced access to such services. This is mainly targeted at those who live in the countryside and must travel far from their homes to access such services.

The new law is the result of an agreement from 2017 between the government parties and the general collective agreements concluded in spring 2019, particularly with regard to extending the leave period. A key issue in the public discussion on the new Act was how the leave period should be divided between the parents. The Bill that was submitted for public consultation and a later version presented before Parliament stipulated that each parent should take six months of leave, with the possibility of transferring one month to the other parent. The social partners supported such an arrangement but after calls for more flexibility, the Bill was modified by Parliament to allow for parents to transfer six weeks to the other.

1.2.2 Equality law

On 17 December, two acts relating to the equality law were passed by Parliament: the Act on Equal Status and Equal Rights of the Sexes and the Act on Public Administration of Equality. While both acts primarily concern equality law, they touch upon some labour law-related subjects.

The former Act includes, *inter alia*, a general provision in Article 4 on equality in the labour market, which states that employers and trade unions shall work together systematically to equalise the position of women and men in the labour market. Employers shall work to equalise the position of women and men within their company or institution and to promote the non-classification of jobs into specific women's and men's jobs. Special emphasis shall be placed on equalising the role of women and men in management and positions of influence. Furthermore, employers and trade unions must take consideration of people who are registered as a neutral gender in the national register of the labour market. Article 5 states that workplaces with over 25 employees shall develop a gender equality plan or integrate gender equality perspectives into their employee policy. Article 6(1) provides that women, men, and people registered as a neutral gender shall be paid equal wages and enjoy the same terms for the same or equivalent work. This is a slight change from Article 19(1) of the older corresponding Act, which included the words 'who work for the same employer'. Article 6(2) further states that equal pay means that pay should be determined in the same way for people of different genders. The criteria on which a wage decision is based shall not include gender discrimination. Articles 7 to 11 of the Act include provisions on equal pay certifications and Articles 12-14, 18 and 19 include further rules regarding the labour market, for instance, on harmonisation of family and working life, gender-based violence, gender-based harassment and sexual harassment in the workplace.

The latter Act modifies, amongst other things, the legal provisions on the Equality Complaints Committee. Two committee members, including the chairman, shall possess expertise in the field of equality, and one of them should have expertise in gender equality and one in equality in a broader sense (see Article 7 of the Act).

The two acts were part of a general review of the equality law in Iceland, in part due to legal changes introduced in 2018 and to ensure proper oversight, to increase clarity, and to make the implementation of equality law more efficient.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996, concerning the posting of workers in the framework of the provision of services has been transposed into Icelandic law through Act No. 45/2007 on Posted Workers and the Obligations of Foreign Service Providers.

Article 1 of the Act defines the scope and goal of the Act, which is to ensure that salaries and other terms of employment of employees temporarily posted by foreign undertakings to Iceland to provide services in accordance with the provisions of laws, regulations and collective agreements that apply to the Icelandic labour market.

The Acts that must be followed are listed in Article 4, while Article 6 lists derogations.

The ruling will not require an overhaul of the applicable Act.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

Ireland has adopted regulations on implementing working time rights for share fishermen working on board fishing vessels.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Work on board fishing vessels

On 11 December 2020, the Regulations 'European Union (Workers on Board Seagoing Fishing Vessels) (Organisation of Working Time) (Share Fishermen) Regulations 2020 (S.I. No. 585 of 2020)' was adopted.

The regulations implement Article 21 of Directive 2003/88/EC in relation to certain aspects of organisation of working time as they relate to share fishermen working aboard Irish registered seagoing fishing vessels. In particular, they set out the maximum hours of work and minimum hours of rest and require the maintenance of records.

The Labour Court had previously decided in the case *Byrne v Burlayan (*DWT11143) that a person engaged in a share fishing arrangement was not an employee for the purposes of the Organisation of Working Time Act 1997.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

Directive 2014/67/EU was implemented in Ireland by the European Union (Posting of Workers) Regulations 2016 (S.I. No. 412 of 2016), which were amended by S.I. No. 374 of 2020 to transpose the provisions of Directive 2018/957/EU. The Regulations apply to drivers working in international road transport, but there are no universally applicable collective agreements or sectoral employment orders in that sector.

4 Other Relevant Information

4.1 Recipients of the Pandemic Unemployment Payment

As of 21 December 2020, 277 671 persons (46.3 per cent of whom are female) were in receipt of the Pandemic Unemployment Payment. The sectors with the highest number of recipients are accommodation and food services (74 101) and wholesale and retail trade (40 406), a decrease from 128 500 and 90 300, respectively, on 05 May 2020. In terms of the age profile of recipients, 24.3 per cent were under 25. The Minister for Social Protection has also announced that self-employed persons in receipt of the PUP,

who are looking to restart their business, can now earn up to EUR 960 over an eight-week period while retaining their full PUP entitlement. This announcement came following engagement with the Arts, Music and Entertainment sectors.

Italy

Summary

(I) In December, the Italian legislator continued efforts to contain the spread of COVID-19 and its effects on the Italian economy. Consequently, additional restrictions were adopted during the Christmas holidays, limiting economic activities.

(II) The Budget Law for 2021 has extended temporary relief measures until 31 March 2020.

(III) The ban on dismissal and the possibility to hire workers on a fixed-term contract without having to justify the need have been extended until 31 March 2020.

(IV) The Budget Law for 2021 introduces relief measures and tax exemptions to promote employment. An indemnity scheme for self-employed persons has been introduced on an experimental basis.

(V) Paternity leave has been extended from 7 to 10 days (in 2021).

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Limitations to economic activities

The Law Decree 18 December 2020 No. 172 introduces additional limitations to economic activities during the Christmas holidays. On holidays (Sunday, Christmas Day, New Year's Day, Epiphany) and on days before holidays (Saturday, Christmas Eve, 31 December), Italy was considered a 'red zone' and all the measures provided by the Decree of the President of the Council of Ministers 03 November 2020 applied. These were that all retail shops remain closed, except those selling essential goods; and that bars, pubs and restaurants could only offer takeaway and delivery.

1.1.2 Relief measures

Act 30 December 2020 No. 178 approves the State budget for the financial year 2021 and the multi-year budget for the period 2021–2023. The Act contains some provisions extending temporary measures to contain the negative economic impact of the COVID-19 pandemic:

- A further period of *Cassa Integrazione Guadagni (Covid-19)* has been approved for a maximum of 12 weeks between 01 January and 31 March, if it is an ordinary *Cassa Integrazione*, and between 01 January and 30 June, if it is an extraordinary *Cassa Integrazione*;
- A tax exemption for 8 weeks for employers who do not make use of the *Cassa Integrazione Guadagni (Covid-19)* is provided until 31 March 2021.

1.1.3 Ban of dismissals and fixed-term contracts

The Budget Law also extends the measures on protection of employment and on work organisation until 31 March 2021:

- The ban on dismissals has been extended until 31 March. The prohibition does not apply in the event of bankruptcy, company closure and in the event of a trade union agreement, only for those employees who join this agreement;
- Until 31 March 2021, the renewal and extension of fixed-term contracts will not require any justification.

1.2 Other legislative developments

1.2.1 Promotion of employment

Act 30 December 2020 No. 178, approving the State budget for the financial year 2021 and the multi-year budget for the period 2021–2023, provides the following measures:

- Employers who hire employees under the age of 35 years under a contract of indefinite duration are exempt from paying social security contributions in 2021 and 2022. This exemption also applies if a fixed-term contract is transformed into a permanent employment contract. The exemption applies for 4 years for companies located in southern Italy;
- The possibility to sign solidarity collective agreements has been extended to companies with more than 250 employees (previously, the threshold was at least 500 employees), which support the retirement of employees near retirement age in order to hire new employees;
- A fund has been created to guarantee the continuation of the *Cassa Integrazione* in areas facing complex industrial crises, identified by the Regions in 2020.
- An extraordinary indemnity scheme (I.S.C.R.O.) has been created for self-employed persons who have had a VAT number for at least 4 years. This benefit may last up to 6 months. This is an experimental measure for 2021-2023.

1.2.2 Paternity leave and family measures

According to the Budget Law for 2021, compulsory paternity leave will be extended from 7 to 10 days in 2021.

Moreover, the Law introduces an allowance for dependent children up to the age of 18 years, to be paid in July.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

According to the CJEU case *Federatie Nederlandse Vakbeweging,* Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services must be interpreted as applying to the transnational provision of services in the road transport sector.

In Italy, Directive 96/71/EC was transposed by the Legislative Decree 17 July 2016, No. 136, which applies to some methods of development of services in the road transport sector. Specifically, according to Art. 1, para. 4 of the Decree, its provisions must be applied to cabotage operations, which are the national carriage for hire or reward carried out on a temporary basis in a host Member State (the cabotage operations can last a maximum of 7 days and during this period, a maximum of 3 operations can be carried out).

According to the Italian National Labour Inspectorate, the Decree (and the Directive) must be applied to transnational drivers posted by temporary work agencies of another Member State to an Italian user undertaker.

The Decree does not apply to other transport operations that either start or finish in Italy, if they are not cabotage operations or does not involve a transnational posting.

Italian law is thus in line with the decision.

4 Other Relevant Information

4.1 Equal pay

The Budget Law for 2021 provides for the creation of a fund for gender pay equality. This fund will finance projects to support the social and economic value of equal pay and equal opportunities.

Latvia

Summary

Latvia has adopted measures to transpose Directive 2018/957/EC on the posting of workers within the framework of the provision of services.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Posting of workers

On 21 December 2020, Parliament has finally adopted implementing measures of Directive 2018/957/EC on the posting of workers within the framework of the provision of services. The respective amendments to the Labour Law have been adopted. New legal regulations will enter into force as of 05 January 2021, more than five months later than required by Directive 2018/957. The amendments implement all requirements under Directive 2018/957.

The Official Gazette No.247A, 22 December 2020 is available in Latvian here.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

There is no national legal regulation exempting workers (drivers) in the transport sector from applying the labour law's norms to the posting of the workers, thus all rights and obligations on posting are applicable to drivers posted to transport goods between Member States and/or within a single Member State.

There is no national legal regulation or case law providing more detailed regulations on the establishment or need to establish a 'sufficient connection with the territory of one Member State'. Thus, the CJEU's decision presents an important source for the interpretation and application of the respective element to identify postings.

It follows that the CJEU's ruling in the present case may have implications on the interpretation and application of requirements that a worker must have 'sufficient connection with the territory of one Member State' in order to determine whether he/she is a posted worker or not.

There is also no national case law on the issue whether a collective agreement is generally applicable, because labour law provides detailed national legal regulations on 'general agreements', which in substance are generally applicable collective agreements. Respective legal regulations define which agreements are 'general agreements'; the main precondition for such agreements to become 'general' is that they are published in an official newspaper.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The posting of Workers is regulated in Liechtenstein law in the Act on Posting of Workers in the Framework of the Cross-Border Provision of Services (*Gesetz über die Entsendung von Arbeitnehmern im Rahmen der grenzüberschreitenden Erbringung von Dienstleistungen, Entsendegesetz*).

This Act does not contain any special rules on posting in the field of international road transport or cabotage operations.

Furthermore, this Act refrains from its own definition of the term "posted worker", but explicitly refers to EU law. According to Article 2(1)(a) of the Act on Posting of Workers in the Framework of the Cross-Border Provision of Services, a posted worker refers to a worker within the meaning of Article 2(1) of Directive 96/71/EC in conjunction with Article 4 of Directive 2014/67/EU. This ensures the necessary flexibility to always adapt the interpretation of this term to the case law of the CJEU. In this sense, Liechtenstein law is in full compliance with the CJEU decision in this case.

In addition, reference can be made to Article 3a of the Act on Posting of Workers in the Framework of the Cross-Border Provision of Services, according to which the assessment of whether an employment relationship or a posting exists in the context of the cross-border provision of services is based on the true economic content and not on the external appearance of the facts.

The Liechtenstein Act on Posting of Workers is further elaborated in the Ordinance on Posting of Workers in the Framework of the Cross-Border Provision of Services (*Verordnung über die Entsendung von Arbeitnehmern im Rahmen der grenzüberschreitenden Erbringung von Dienstleistungen, Entsendeverordnung*). The provisions contained therein do not change the legal situation presented.

Liechtenstein law provides the possibility of declaring collective employment agreements to be universally applicable. This is regulated in the Universal Applicability Act (*Gesetz über die Allgemeinverbindlicherklärung von Gesamtarbeitsverträgen*).

In Liechtenstein, there is no collective employment agreement that specifically relates to the field of international road transport or cabotage operations. For this, see the overview on the page of the Liechtenstein trade union (*Liechtensteinischer ArbeitnehmerInnenverband*, LANV).

The relationship between the two collective employment agreements in the main proceedings has a singular character and is not known in this form in Liechtenstein law.

In summary, it can be stated that Liechtenstein law is in conformity with the CJEU's decision in case C-815/18, *Federatie Nederlandse Vakbeweging*. This judgment, therefore, does not have any implications for Liechtenstein law.

4 Other Relevant Information

Liechtenstein celebrated 25 years of membership in the European Economic Area. It is appreciated in Liechtenstein that the fundamental freedoms associated with participation in the single market enable the Liechtenstein population to live, work, study or invest in other Member States.

Lithuania

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court rulings

Nothing to report.

3 Implications of CJEU Ruling

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

There are no special rules in Lithuania that exclude mobile workers engaged in road transport from the scope of application of the national rules on posting. In addition, the option of the general applicability (*erga omnes*) of collective agreements was introduced in Lithuania in 2004, but has never been used in practice. The first sectoral collective agreement for mobile workers in the framework of the transnational provision of services in the road transport sector was concluded in September 2020, but contains no provisions on drivers' pay rates.

Case law does not, however, support the statement that mobile workers should be covered by posting legislation to the same extent as other workers. As concluded by the Kaunas Regional Court in several cases (see, e.g. Kaunas Regional Court, case No. 2A-1356-945/2019, 15 October 2019, and case No. 2A-1982-638/2018, 21 October 2018), the international road transport driver was found to not be entitled to the pay established by the provisions of the Member State in which he or she was posted, by virtue of the special conditions in the transport sector. The Court, quoting the European Commission's 2016 March 8 Proposal 2016/0070 (COD) amending Directive 96/71/EC (Point 10 of the Preamble) and Directive 2018/957 of the European Parliament and of the Council amending Directive 96/71/EC (Recital 15), which calls for a special regime for mobile workers, rejected the claim of the driver to be entitled to the pay applicable for drivers in the destination Member State.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

(I) Luxembourg has adopted some temporary laws in the context of the COVID-19 pandemic to extend exceptional care leave and to clarify employee protection in case of quarantine/isolation.

(II) Extraordinary aid for sectors affected by the crisis has been adopted to compensate the rise in minimum wage.

(III) Directive 2018/957 on the posting of workers has been implemented.

(IV) Four ILO instruments have been ratified.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Care leave

Since distance learning will be reintroduced at schools ('home-schooling') in the first week following the winter vacation, the measures that were introduced on family leave (*congé pour raisons familiales)* in the spring have, with some adaptations, been reactivated until 20 January 2021. In the meantime, an additional extension of home schooling seems increasingly likely.

According to the Law of 24 December 2020, parents of young children (born after 01 September 2016) and children that are younger than 13 years of age and whose school is closed are entitled to special leave fully paid by public funds.

1.1.2 Quarantine leave

Bill No. 7726, which introduces some clarifications about quarantine orders (see November 2020 Flash Report), is embodied in the Law of 19 December 2020. The initial draft was modified and two amendments were adopted:

- for regular sick leave, the employee must inform the employer on the first day of absence;
- the rules will not only be applicable to quarantine orders issued by Luxembourg authorities (*Direction de la Santé*), but also to those issued by foreign authorities; this change is important in light of the many cross-border commuters.

The law furthermore provides that the deadline to submit a quarantine order to the employer is set at 8 days (not 3 as is the case for medical certificates). Thus, if COVID-19 tracing falls behind again, this would not have any negative consequences for the employees and their protection.

During quarantine/isolation, the employee is protected against dismissal the same way he/she would be protected during sick leave.

This temporary legislation will last until 30 June 2021.

1.1.3 Employers' benefits

On 19 December 2020, the Law on employers' benefits to compensate for the rise in minimum wage has been adopted (see Bills Nos 7718 and 7719 in November 2020 Flash Report).

Special financial assistance for sectors impacted by the crisis has been adopted.

This assistance can only be granted to certain companies and on condition that they are encountering temporary financial difficulties that have a direct causal link with the COVID-19 pandemic. The assistance comes in the form of a one-time capital grant, the amount of which is calculated on the basis of the number of employees paid an average between the social minimum wage and the qualified social minimum wage, who are employed on a monthly basis between January and June 2021. The assistance can only be requested for a single month during the eligible period. It amounts to EUR 500 per eligible employee.

1.2 Other legislative developments

1.2.1 Posting of workers

Bill No. 7516, implementing Directive (EU) 2018/957 on the Posting of Workers (see January 2020 Flash Report), has been adopted. The law was enacted on 15 December 2020, i.e. half a year after the implementation deadline. During the legislative process, some changes were made to the initial bill. An analysis of the new Law is provided below:

Remuneration and terms of employment

First, one important modification concerns remuneration. Art. L.010-1 of the Labour Code now provides that the posted worker is granted the

> *"remuneration corresponding to the minimum wage rates as well as to all the components of the salary fixed by a legal, regulatory or administrative provision or by a collective bargaining agreement declared to be generally binding or by an agreement on inter-professional social dialogue declared to be generally binding…"*

It was thus clarified that this does not only apply to the legal minimum wage (*salaire social minimum*), but also to contractual minimum wages (*taux de salaires minimal)*.

The new rules on allowances specific to posting and on the reimbursement of expenditures have mostly been copied verbatim from the Directive.

In accordance with the Directive, the mandatory provisions also include: (1) the conditions of workers' accommodation, where provided by the employer to workers who work far from their regular workplace; and (2) allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers far from home for professional reasons.

Fundamental rights of posted workers

The Labour Code provides that the rules on positing *"shall not in any way affect the exercise of fundamental rights, especially the right or freedom to strike or to take other action concerning working conditions. It does not affect the right to negotiate, to conclude and enforce collective agreements, or to take collective action."*

Such very general statements are uncommon in Luxembourg's legislation and their practical usefulness is limited. However, the legislator wanted to implement the Directive as extensively as possible and 'avoid abuses' (according to the parliamentary documents). It remains unclear how posted workers are supposed to negotiate collective agreements in Luxembourg, as this seems very unlikely. It is also unclear which legislation is applicable to the right to strike; indeed, Luxembourg's legislation on strikes is quite restrictive.

Agency work

As regards temporary agency work, collective agreements of the user undertaking apply to posted agency workers, whether they are generally applicable or not (L. 141-1 (1) al. 2). To justify this specific exception, the parliamentary documents refer to the Commission's Practical Guide on Posting of Workers.

Duration of posting

In accordance with the Directive, the 'normal' duration of posting is limited to 12 months (Art. L. 141-2). The law also provides the possibility of an extension of the posting to 18 months. The initial bill stated that the extension is only granted upon 'request' (*requête*) and when it is 'justified by the nature of the service'. The latter condition has been omitted and the concept of 'request' has been replaced with 'notification' in adherence to the Directive. It is unclear what the consequences of these changes are. On one hand, it could be interpreted that the labour inspectorate cannot reject such a notification; the law does not contain any procedure for the labour inspectorate to issue such a refusal. On the other hand, it makes no sense to require a 'motivated' notification if there is no possibility to reject the extension.

Single official national website

When the enforcement Directive was implemented, the legislator felt that it was not necessary to explicitly lay down the single official national website in formal law. This has changed, as the bill states that the labour inspectorate will be responsible for publishing all necessary information on its website (Art. L. 141-3bis; Art. I 2. A) al. 4 of the Directive).

The bill also states that the circumstance that the website was incomplete or erroneous must be taken into account when determining penalties in order to ensure proportionality (L. 143-2 (1) al. 4).

Administrative obligations

To further protect posted employees and to more effectively fight social dumping, the information the posting employer must communicate to the labour inspectorate has been adapted and supplemented. It should be reminded that these administrative declarations and document uploads must be made on an electronic platform (*e-detachement*) to facilitate the labour inspectorate's mission to monitor the application of the law.

Temporary work agencies have the obligation to communicate the same information. In addition, they must provide the user company's identifying data.

Subcontracting liability

The responsibilities of clients (*donneur d'ordre/maître d'ouvrage*) for their subcontractors will be extended by two points:

- The client does not only have the obligation to check whether the subcontractor has properly declared the posted workers, but if the subcontractor has failed to do so, the client has the obligation to enter some of the required information on the electronic platform him-/herself within eight days prior to the posting (L. 142-2 (3));
- Inspired by an existing procedure that was introduced when the Enforcement Directive was implemented (Art. L. 281-1), a specific liability in subcontracting situations was introduced for accommodation. Clients can be contacted by the labour inspectorate if the workers are not properly housed and must enjoin the sub-contractor to comply with the relevant legislation. This procedure may lack effectiveness, however, as the client has a purely formal obligation to channel the inspectorate's injunction to the subcontractor.

In both cases, physical persons contracting workers for private purposes are exempt.

Workers away from home; conditions of accommodation

Luxembourg had no legal provisions on the accommodation of workers in place, who are far from their home. The new law now implements such provisions; although they are applicable to all employees, though in practice, they will likely only concern posted workers.

The Labour Code has been supplemented with a new title on the conditions of workers' accommodation (Art. L. 291-1ff). Any flat or room rented or provided to the employee must meet a set of rules on salubrity, hygiene, security and habitability as defined by a law of 2019 and a Grand-Ducal Decree. The costs must be fully covered by the employer. It is prohibited to accommodate employees in industrial, artisanal or commercial premises.

Where the safety or health of an employee is, or is likely to be, seriously compromised by his/her housing conditions, the Director of Labour Inspection may order the evacuation and closure of the flat or room. The employer is responsible for organising the relocation and must bear the costs.

If the employer does not comply with these obligations, he/she is liable for administrative fines provided for in the rules on positing (even for non-posted employees). The criminal sanction, including imprisonment of up to 6 months, projected by the bill has been omitted in the final law. Indeed, the State Council objected to such a double sanction in consideration of the 'non bis in idem' principle.

Monitoring and control

In accordance with the Directive, Art. L. 141-1 (5) al. 3 now provides that if, following an overall assessment, it is established that an undertaking improperly or fraudulently creates the impression that the worker has been posted, this worker is subject to all legislative, regulatory or administrative provisions as well as those resulting from collective agreements declared to be of general obligation or an agreement on inter-professional social dialogue declared to be of general obligation with respect to work and employment.

Some changes to the transnational cooperation of authorities have been implemented.

Penalties

The penalties remain the same (administrative sanctions between EUR 1 000 and EUR 5 000 per posted worker). However, the scope has been extended to the conditions of accommodation, the obligation to retain a register and when the user undertaking does not fulfil its obligation to communicate information to the temporary work agency. The new law adds that if the employer does not pay the fines, the Director of the Labour Inspectorate may order the work to be stopped. The labour inspector will inform the employees concerned about their rights, including their right to compensation and the possibility of taking legal action.

Furthermore, the law stipulates that administrative sanctions do not exempt the employer from guaranteeing the posted employee the working and remuneration conditions to which he/she is entitled. This rule should be obvious; the legislator, nevertheless, wanted to avoid the payment of an administrative fine being put forward by the employer for not properly recompensing the posted employee.

1.2.2 Tax rules for international employee relocation

A Grand-Ducal Decree of 19 December 2020 enshrines some specific rules on tax deductions applicable to foreign employees relocated to Luxembourg. The rules that were previously determined by an administrative circular are now primarily implemented in a formal text. It provides details on the deductibility of moving expenses, home improvements, travel expenses (initial trip and one annual trip),

housing expenses in Luxembourg (if residence abroad is maintained) and certain children's school fees.

1.2.3 Extension of derogatory rules for persons on early retirement

The Law of 19 December on derogatory rules for persons in early retirement (see Bill No. 7709 announced in the November 2020 Flash Report) has been adopted. As a temporary measure ending on 30 June 2021, persons in early retirement can earn an additional salary without losing their retirement benefits if they work in the healthcare sector (including medical analysis laboratories) or in the aid and care sector.

1.2.4 Ratification of ILO instruments

On 15 December 2020, Luxembourg ratified the following ILO instruments:

- ILO Convention No 122 on Employment Policy (1964);
- ILO Convention No 144 on Tripartite Consultation (1976);
- ILO Convention No C187 on a Promotional Framework for Occupational Safety and Health Convention (2006);
- ILO Protocol of 2014 to the Forced Labour Convention (2014).

The main purpose of these ratifications was the ILO Centenary Celebration (see the analysis of the four bills announced in the January 2020 Flash Report). No legal changes were implemented as the legislator has concluded that the national legislation complies with these international standards.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

In Luxembourg, there is very little case law on the posting of workers. There does not seem to be any decisions concerning specifically international transport or cabotage.

The competent authority for the posting of employees, the labour inspectorate, has so far considered that the rules on posting apply both to cross-border transport and to cabotage operations.

Nevertheless, it has decided to suspend the reporting obligations in terms of posting and the verification of compliance with national rules on minimum wages, pending future clarification through a European Directive (see here for the website of the labour inspectorate).

These clarifications have now been provided by Directive (EU) 2020/1057 of 15 July 2020. However, this Directive is not due to be transposed until February 2022, and for the time being, no implementation bill has been deposited in Luxembourg. There do not seem to be any changes in the administrative practice of the labour inspectorate as regards the Directive. The CJEU's decision in the case *Federatie Nederlandse Vakbeweging* provides clarifications that seem to be in line with the above-mentioned Directive.

It remains to be seen whether the labour inspectorate will change its practice on the basis of this case law or whether it will await the Directive's formal transposition. Finally, the small size of Luxembourg's territory means that, on the one hand, the time spent by a driver on the national territory is limited, and on the other, cabotage operations are difficult to organize.

4 Other Relevant Information

4.1 Minimum wage raise

The law concerning employee benefits and raising the minimum wage analysed above introduces an increase in the minimum wage. According to the usual procedure and practice, the social minimum wage has been adapted to the general development of salaries and thus increased by 2.8 per cent. The new minimum wage (for workers aged 18+) is currently:

	Monthly rate	Hourly rate
Unqualified work	EUR 2 201.93	EUR 12.7279
Qualified work (+ 20 per cent)	EUR 2 642.32	EUR 15.2735

Malta

Summary

A legislative proposal clarifies that public holidays that fall on a weekend are to be added to each employee's annual vacation leave allowance.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The Posting of Workers Regulations, 2016 (452.82) (hereinafter 'the Regulations') regulate the posting of workers.

First of all, nothing in the Regulations precludes them from applying to the transnational provision of services in the road transport sector.

Second, the definition of 'posted workers' in Regulation 2(1) of the Regulations stipulates that a posted employee *"means an employee of a foreign service provider who does not normally work in Malta but who, for a limited period of time, is sent by the foreign service provider to work in Malta"*. However, the Regulations (Regulations 4 (4) and (5)) also state that "in order to assess whether a posted worker is temporarily performing work in Malta, all factual elements characterising such work and the situation of the worker shall be examined by the competent authority in Malta." Such elements may include in particular:

> *"(a) the work is carried out for a limited period of time in Malta;*
>
> *(b) the date on which the posting starts;*
>
> *(c) the posting takes place in Malta as a Member State other than the one in or from which the posted worker habitually carries out his/her work according to Regulation(EC) No. 593/2008 (Rome I) and/ or the Rome Convention;*
>
> *(d) the posted worker returns to or is expected to resume working in the Member State from which he or she is posted upon completion of the work or the provision of services for which he or she was posted;*
>
> *(e) the nature of activities;*
>
> *(f) travel, board and lodging or accommodation is provided or reimbursed by the employer who posts the worker and, if so, how this is provided or the method of reimbursement;*
>
> *(g) any previous periods during which the post was filled by the same or by another worker."*

Consequently, to determine whether a worker has indeed been posted in Malta, the above needs to be taken into consideration. Hence, it is submitted that Maltese law

complies with the judgment in terms of the requirements to establish a 'sufficient connection' with the territory of the Member State.

The CJEU also ruled that the fact that a driver working in international road transport *"starts or finishes [his or her tasks] at the place of business of that second undertaking is not sufficient in itself to consider that that driver has been posted to the territory of that other Member State for the purposes of Directive 96/71".*

Under Maltese law, the worker must be posted to work in Malta by a foreign service provider. As Malta is an island, the concept of a transnational driver posted to Malta may have relevance for foreign drivers who are sent to Malta to work—but necessarily in Malta—using fast ferry services to the mainland. Indeed, if the drivers remain in Malta, then they are obviously posted to Malta, also in accordance with the definition of posted workers. However, if the drivers are sent to Malta but actually work, say, in Sicily on freight forwarding, then the situation changes considerably. The definition would, arguably, exclude such workers and hence, it seems that the Regulations will have to be amended to clarify such scenarios.

It is not very common for drivers employed with foreign undertakings to be posted to Malta to work for a Maltese undertaking to drive across the borders to Italy. Usually, it is the other way round – freight forwarding undertaking employees, for example, drive to Malta (using ferry services), conduct the delivery and (usually) return to Italy. The situation examined by the CJEU is not common in Malta. This fact, taken in conjunction with the provisions quoted in Question 2 above (i.e. Regulation 4(4) ff.), still does not fully address the points raised in the CJEU's reply. Consequently, the Regulations may have to be amended to reflect the Court's decision.

Third, the Regulations do not mention that the existence of a group affiliation between undertakings is relevant to determine whether a posting of workers has taken place.

Fourth, the definition of 'posted workers' is in line with the part of the CJEU judgment, stating that in the case of cabotage operations, the driver must be considered as having been posted to the territory of the Member State in which those operations are carried out.

Finally, under Maltese law, there are no universally applicable collective agreements. However, the Regulations stipulate equal treatment between posted workers and 'local workers' (as it were) (Article 5 of the Regulations).

4 Other Relevant Information

4.1 Annual leave

An amendment of the Organisation of Working Time Regulations (S.L. 452.87) has been proposed to provide that all public or national holidays that fall on a weekend shall be compensated for by adding an equivalent number of days to employee's annual vacation leave. This amendment has been proposed to provide legal clarity. Since 2004, the numbers of days have been added to annual leave every year to compensate for the public holidays that fall on weekends, but with no clear pattern and with no certainty given to employers.

The amendment has not been incorporated into Maltese statutes.

Netherlands

Summary

Existing relief measures (the NOW programme) have been extended, and new measures for heavily hit sectors have been announced due to the new lockdown. To counter unemployment, there is a government initiative aimed at creating so-called 'corona jobs'.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Relief measures

The Netherlands entered into a new lockdown on Tuesday, 15 December 2020. The existing temporary support scheme (NOW - see previous Flash Reports) has been developed further to take these circumstances into account. The government has chosen to not phase out NOW and TVL in the first quarter of 2021. This means that the compensation percentage in the second period of NOW 3.0 is equal to the compensation percentage of the first period of NOW 3.0 (the maximum compensation percentage is 80 per cent of the wage bill instead of 70 per cent). Additionally, the minimum revenue loss to qualify for NOW will not be increased to 30 per cent, but will remain at 20 per cent. Employers can reapply for the allowance for wage costs under the NOW 3.0 from 15 December to 27 December 2020.

In addition to the aforementioned measures, more NOW measures have been announced by the Dutch government to help entrepreneurs hit particularly hard by the lockdown, such as businesses in non-food retail sectors. These amendments consist of several smaller sector-specific measures, but a measure aimed specifically at the holiday season is the one-off stock allowance. Holiday stock is worth less when stores reopen or cannot be sold at all. The allowance reflects the retailer's loss of turnover and is granted in addition to the TVL. Following approval by the European Commission, the stock allowance will be paid from the second half of January. The inventory fee is exempt from corporate and income tax.

Temporary benefits will be made available to households that have suffered from income loss due to the corona crisis (the so-called TONK benefits).

A government initiative aimed at creating so-called 'corona jobs' has also been introduced. This initiative intends to help alleviate the pressure on some essential sectors, whilst providing employment to people who need work. It consists of strengthening and expanding existing matching initiatives to help people find available work and to explore impulses that can be given to recruitment, for example, through extra funding.

1.2 Other legislative developments

1.2.1 Transition pension system

A transitional phase to replace the former with a new pension system has been proposed from 2022 to 2026: the transition FTK. This transition phase, as well as the current situation with the corona outbreak, influences the minimum coverage ratio for pension funds under which pension cuts are necessary. The current situation makes it difficult for pension funds to meet the legal requirement of a coverage ratio of 104 per cent. Pension funds will therefore be given a longer time to comply with this requirement. A temporary minimum funding ratio of 90 per cent is proposed, whereby funds must grow to a funding ratio of at least 95 per cent. This will prevent participants and pensioners

from having to deal with pension cuts during the transition period that they would not have received under the new pension system.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

This case concerns international road transport and the posting of workers.

First, the judgment clarifies that Directive 96/71/EC applies to international road transport. In this regard, the Terms of Employment of Posted Workers in the European Union Act, which implements the provisions of Directive 96/71/EC, does not exclude international transport drivers from its scope as it does seagoing personnel.

Second, the judgment ruled that a driver, whose work under a charter contract between the undertaking employing that worker, established in one Member State, and an undertaking located in a Member State other than that in which the individual concerned normally works, is to be considered a posted worker if the performance of this work has a 'sufficient connection' with that territory for the limited period at issue. The Terms of Employment of Posted Workers in the European Union Act does not explicitly mention when a sufficiently close link exists, but does not appear to clash with the CJEU's findings on this subject matter, either.

Third, the ruling is relevant for determining whether collective labour agreements might apply to drivers in international road transport. Two collective labour agreements are mentioned that apply to the international transport sector: the 'Professional Goods Transport' CLA, which has been declared universally applicable, and the 'Goods Transport' CLA that the employer in this case is bound to by contract. This second collective labour agreement was exempt from the universally applicable collective labour agreement, meaning that the Goods Transport CLA is applicable in this case.

According to the CJEU, the question whether a collective agreement has been declared universally applicable (as stipulated in Article 3(1) and (8) of Directive 96/71/EC) must be assessed by reference to the applicable national law. A collective labour agreement such as the Goods Transport CLA, which has not been declared universally applicable, but which requires compliance as a precondition from undertakings covered by it in order to be exempt from another collective labour agreement which, for its part, has been declared universally applicable and the provisions of which are essentially identical to those of that other collective labour agreement, falls within the definition referred to in Article 3(1) and (8) of Directive 96/71/EC. Therefore, the basic labour conditions established in the Goods Transport CLA must be applied by the employer to drivers that fall within the scope of Directive 96/71/EC.

There do not appear to be conflicts with Dutch law that would prevent collective labour agreements from being applied to international transport drivers if necessary. Dutch law does not contain a provision that explicitly mentions that the basic provisions from collective labour agreements, used as an exemption such as the Goods Transport CLA, must also be applied to posted workers. Such an explicit provision, such as an addition to the existing provision about applying universally applicable collective labour agreements to posted workers (Article 2a), could be of value as a result of this CJEU ruling. In the present case, no problems should arise, as compliance with Directive 96/71/EC is prescribed in the Goods Transport CLA itself. The so called 'charter provisions' that are part of this collective labour agreement explicitly state that the basic

working conditions of the Goods Transport CLA will be granted to workers if Directive 96/71/EC requires it. A similar provision is part of the Professional Goods Transport CLA, which covers other international transport drivers.

4 Other relevant information

4.1 Proposal for new pension legislation

As a result of the previously published Pension Agreements between the government and social partners, a proposal for new pension legislation has been published. This proposal concerns the Dutch second pillar (occupational) pensions. Until 12 February 2021, all citizens have the possibility to respond to the proposal. Using the responses from the internet consultation, the proposed bill will be improved and adjusted. The proposal aims for the new pension legislation to take effect in 2022.

Norway

Summary

(I) In December 2020, the Norwegian government has extended the temporary scheme on pay advances on unemployment benefits, and has proposed a new temporary compensation scheme for businesses to cover the costs for employees in quarantine

(II) Special provisions on the right to sickness benefits have been extended until 31 March 2020, and the regulations on the right to care allowance have been modified again.

(III) The Norwegian Supreme Court has decided a case concerning the qualification of sexual harassment.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 General situation and restrictions

With the increase of the COVID-19 infection rate, stricter national measures were introduced this fall, and municipalities with particularly high infections rates have introduced even stricter local measures. For example, in Oslo, a 'social lockdown' has been in effect from 09 November 2020, and additional restrictions were added later this fall.

Due to increasing infection rates in other countries, the Ministry of Foreign Affairs reintroduced a general advice against non-essential travel abroad in September, and quarantine was once again imposed on travellers from almost all countries in the Schengen area/EEA15 (see September 2020 Flash Report). In November and December 2020, additional requirements related to testing and quarantine accommodation were introduced. Information on the travel restrictions can be found here.

The unemployment rate rose sharply during lockdown, but has been declining since the reopening started. However, the unemployment rate is once again rising. By the end of November, there were 196 300 unemployed persons, amounting to 6.9 per cent of the workforce. The number is 9 300 higher than at the end of October (see the statistics here). The numbers for December have not yet been published.

1.1.2 Relief measures

In December, the government made amendments to the existing measures related to the COVID-19 outbreak, namely the temporary scheme on pay advances on unemployment benefits has been continued (FOR-2020-12-18-2832).

Furthermore, the government is planning to adopt new measures to mitigate the economic effects of the COVID-19 outbreak. The most important proposal is a new temporary compensation scheme for businesses dealing with costs associated with quarantine when using labour from abroad. The temporary act can be found here (LOV-2020-12-21-175).

1.1.3 Sick leave and care leave

The government has extended the special provisions on the right to sickness benefits (see May 2020 Flash Report) until 31 March 2021. See also information from the Ministry of Labour and Social Affairs here.

Moreover, the regulations on the right to care allowance have been modified several times due to the COVID-19 crisis. The regulations (FOR-2020-12-18-2866) lay down, among other things, that the number of care days shall be doubled and that employees will in any case have the right to care allowance if kindergartens, schools, etc. are closed.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Sexual harassment

Supreme Court Judgment, HR-2020-2476-A, 22 December 2020

A young mechanic, who was the only female employee at a mechanical workshop with 15 employees, claimed that one of the workshop's customers placed his hands under her sweater on the lower part of her back on one occasion. On a later occasion, he pretended to touch her private parts. Later, another customer approached her and repeatedly tickled her and on one occasion patted her on the bottom outside of her trousers.

The Supreme Court concluded that the two customers had subjected the woman to sexual harassment according to the Gender Equality Act 2013 Section 8, which is included in the current Equality and Anti-Discrimination Act 2017 Section 13.

The Court interpreted the definition of sexual harassment in the Gender Equality Act 2013 Section 8. The provision states that 'harassment' refers to 'acts, omissions or statements that have the effect or purpose of being offensive, frightening, hostile, degrading or humiliating' and sexual harassment is 'unwanted sexual attention that is troublesome to the person receiving the attention'. The definition of sexual harassment has been adapted in the Equality and Anti-Discrimination Act 2017 Section 13, which defines it as 'any form of unwanted sexual attention that has the purpose or effect of being offensive, frightening, hostile, degrading, humiliating or troublesome'. The Supreme Court stated that this change of wording did not imply any material changes.

The Court stated that, according to the definition, there are two main conditions that must be fulfilled if an act is to be considered as sexual harassment. There must be 'sexual attention', and this must be 'unwanted'. Furthermore, the Court stated that not all unwanted sexual attention is covered by the Act. It is, the Court stated, a condition that entails 'troublesome' attention, and the latter implies that a certain threshold exists.

The Court referred to the definition of sexual harassment in Directive 2006/54/EC and stated that the similar definition in the Norwegian Act has a wider scope. CJEU case law is therefore, according to the Court, of less interest when assessing the threshold.

The Court asserted that the first main condition must be understood broadly, but that the attention must objectively be of a sexual nature. The Court further points out that the second condition, namely that the sexual attention must be unwanted, requires an individual and subjective assessment. The condition means that the person exercising the attention must be made aware that the attention is unwanted. However, this does not necessarily mean that the offended party must state this. Where the offended party does not make this clear, it is decisive for the assessment whether the actions are of such a nature that a person in general should have understood that the attention was unwanted. In this connection, the Supreme Court referred to the preparatory work, which, among other things, assumes that one should not base the assessment solely on objective criteria, but also a so-called 'female norm'. This norm means that women generally perceive far more situations as sexual harassment than men. The Supreme

Court maintained that the substance of the norm may be somewhat unclear, but that the aim is to provide the person exposed to unwanted sexual attention with sufficient effective protection in light of the law's purpose of preventing sexual harassment.

Following a concrete assessment, the Court concluded that the acts from both customers were sexually, unwanted and troublesome for the woman. She was awarded damages of NOK 15 000 and NOK 20 000 respectively.

The judgment provides important clarifications on the interpretation of the definition of sexual harassment in Norwegian law. The Appeal Court also concluded that the employer had not fulfilled its obligations to prevent harassment and to secure a fully suitable working environment, and was held liable for damages. The employer did not appeal this judgment.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

Directive 96/71/EC has been transposed in the Norwegian Employment and Working Environment Act of 2005 Section 1-7 and corresponding regulations on posted workers (FOR-12-16-1566). According to Section 2 of the latter regulation, an overall assessment of the work and the employee's situation shall be conducted when deciding whether an employee shall be considered posted. The provision lists several factors that must be taken into account, but the list is not exhaustive.

Collective agreements can be made universally applicable by the Tariff Board for certain sectors according to the General Application Act of 1993. Several conditions must be met. The main condition is that it must document that foreign employees perform or may perform work on terms that, based on a full assessment, are less favourable than those that apply pursuant to nationwide collective agreements for the respective trade or industry or what is otherwise normal for the place and occupation.

The Tariff Board has decided on such a general application within, among others, the road transport sector, cf. Regulations of general application of collective agreements on road transport of goods (FOR-2017-03-31-535). The regulations are based on the Collective Agreement on the transport of goods of 2016. The regulations apply to employees who transport goods by road with vehicles with a total weight of over 3.5 tonnes. The regulations expressly state that it also applies to cabotage, which is defined as 'transport assignments between places in Norway that follow a cross-border transport to Norway', cf. Section 2.

The CJEU's decision will be relevant for interpreting the scope of the regulations on posted workers in WEA Section 1-7 and the corresponding regulations. However, cabotage is already included in the regulation on posted workers.

4 Other Relevant Information

Nothing to report.

Poland

Summary

In December 2020, the law that authorises the President of Poland to ratify the 2018 amendments to the ILO Maritime Labour Convention took effect.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other Legislative Developments

1.2.1 Seafarers

The Law of 27 October 2020 on the ratification of the amendments to the Maritime Labour Convention (adopted in Geneva on 23 February 2006) and approved by the International Labour Conference in Geneva on 05 June 2018 was published in the Journal of Laws of 15 December 2020 (item 2241), and took effect on 30 December 2020. This Law authorises the President of Poland to ratify the amendments to the Maritime Labour Convention, as indicated in the title of the Law.

The substantiation of the draft and information on the legislative process can be found here.

In a further step, amendments to the Law on Work at Sea can be expected. In Poland, the Law of 05 August 2015 on work at sea (*ustawa o pracy na morzu*) covers the employment in the maritime sector. The text of the Law can be found here.

Amendments are likely to extend the binding force of a seafarer's labour relationship, if the seafarer is held captive as a result of piracy or armed robbery of the ship; the employer's duty to pay wages if a seafarer is held captive; and extending seafarers' right to free-of-charge repatriation.

It is not possible to predict the timeframe of potential legislative actions introducing amendments that will implement the 2018 requirements of the ILO Maritime Labour Convention.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The case addresses the concept of the posting of workers against the background of international road transport. The CJEU held that Directive 96/71 must be interpreted as applying to the transnational provision of services in the road transport sector. At the same time, the CJEU indicated the criteria to determine whether a mobile worker can be regarded as a posted worker in a given situation.

In Poland, Directive 96/71 (as amended by Directives 2014/68 and 2018/957) has been transposed by the Law of 10 June 2016 on the posting of workers in the framework of the provision of services (consolidated text Journal of Laws 2018, item 2206).

Article 1 of the Law determines its scope of application, i.e. the principles of the posting of workers in Poland within the framework of the provision of services.

Article 2 section 1 provides that the Law does not apply to: (1) merchant navy undertakings in relation to the crews of sea-going merchant ships, and to (2) international transport, except for cabotage transport operations. Moreover, Article 2 section 2 determines that Article 24 and 25 of the Law do not apply to cabotage transport operations. Two latter provisions refer to the duties of employers who post workers to Poland, i.e. the duty to appoint a person authorised to communicate with the State Labour Inspectorate (SLI), and to provide SLI with the relevant information, as well as the duty to store the relevant documents during the period of posting.

Article 3 introduces statutory definitions. According to section 6, 'a worker posted to Poland' is a worker employed in another Member State, temporarily posted to work in Poland by an employer posting workers to Poland; under section 7, 'a worker posted from Poland' is a worker within the meaning of the provisions of the Member State to which he/she is posted, working in Poland, posted temporarily to work in this State by an employer posting workers from Poland.

In 2020, amendments to the Law on Posting of Workers have been introduced (analysed in the June 2020, July 2020 and August 2020 Flash Reports).

From a practical point of view, it must be emphasised that Poland is a 'sending country', and in 'non-COVID times', Polish companies have been very active in the field of international road transport in the European Union.

The main outcome of the ruling is the clarification that Directive 96/71 applies to international road transport. As indicated above, Article 2 of the Law on Posting of Workers provides that it 'does not apply to international transport, except for cabotage operations'. It seems that as a consequence of the CJEU's ruling, the national regulations should be amended to extend its material scope of application to cover international road transport. It also seems that the amendments will be necessary to implement Directive 2020/1057 on specific rules by 02 February 2022 with respect to Directive 96/71 for posting drivers in the road transport sector.

The ruling may have practical implications for the duties of Polish companies that carry out international transport services in the European Union. Clearly, Polish companies must observe the national regulations of other Member States, including universally applicable collective labour agreements while exercising international road transport activities in those countries. Practical difficulties may arise to determine whether in a mobile worker can in a particular case be considered a posted worker, taking into account the criteria indicated by the CJEU. At the same time, it seems that there is no need to amend the definition of 'posted worker'.

4 Other Relevant Information

Nothing to report.

Portugal

Summary

(I) The state of emergency has been renewed for the period between 09 December 2020 and 07 January 2021.

(II) Portugal adopted a law that that envisages compensation to the employees of the National Health Service.

(III) The government extends several exceptional and temporary measures related to the COVID-19 pandemic, such as relief measures for businesses and companies, the exceptional hiring of medical personnel through fixed-term contracts, and teleworking remains mandatory in the areas with high, very high or extreme risk of COVID-19 contagion.

(IV) Directive (EU) 2018/957 on the posting of workers, Directives (EU) 2017/159 and 2018/131 on work on board fishing vessels and the activity of seafarers on board vessels, and Directives (EU) 2019/1833 and 2020/739 on the protection of the health and safety of employees against risks of exposure to biological agents at work have been transposed into Portuguese law.

(V) The State Budget Law for 2021 introduces and regulates a series of relief measures for employees, self-employed persons and companies in 2021.

1 National Legislation

1.1 Measures to respond to the COVID-19 pandemic

1.1.1 Renewal of the state of emergency

On 04 December 2020, the Decree of the President of the Republic No. 61-A/2020 was published, which renews the declaration of the state of emergency for an equal period of 15 days, from 09 December to 23 December 2020, without prejudice to any renewals, in accordance with the law. By Resolution No. 89-A/2020, of 4 December, the Portuguese Parliament authorised the renewal of the declaration of the state of emergency under the terms contained in the abovementioned Decree No. 61-A/2020.

The Decree provides for restrictions to the freedom of movement, with the aim of reducing the risk of contagion and to implement measures to contain and fight the pandemic in accordance with the level of risk in each municipality; introduces measures on private, social and cooperative initiatives, as the resources, means and healthcare establishments integrated in the private, social and cooperative sectors may be used by the competent public authorities, if necessary, to ensure the treatment of patients with COVID-19, subject to compensation; shops and establishments shall remain closed.

The Decree also provides that any employees of public, private, social or cooperative entities, regardless of their type of link or functions, may be mobilised to support health authorities and services, in particular to carry out epidemiological surveys, to track contacts and to engage in active surveillance of individuals. The termination of employment contracts of employees of the National Health Service is limited.

The implementing measures are regulated by Decree No. 11/2020 (a summary in plain English (without legal value) is available here), adopted by the government on 6 December 2020, which entered into force on 09 December 2020. It provides for the mandatory use of masks, mandatory confinement, and rules to ensure minimum distancing in public places.

Several other measures have been adopted in accordance with the four risk levels (i.e. moderate, high, very high and extreme) applicable to the municipalities. Decree No. 11/2020 also establishes stricter rules for the Christmas and New Year period.

These measures were renewed until 07 January by the Decree of the President of the Republic No. 66-A/2020, adopted on 17 December 2020, which entered into force on 24 December 2020. The implementing measures were renewed by Decree No. 11-A/2020 (a summary is available here), which entered into force on 24 December 2020.

1.1.2 Benefits to employees in the health sector

Decree-Law No. 101-B/2020, of 03 December lays down compensation for employees of the National Health Service involved in the fight against the COVID-19 pandemic.

This compensation applies to employees of the services and establishments of the National Health Service, bound by an employment contract in public functions or an employment contract entered into under the Portuguese Labour Code, who, during the first state of emergency, declared by the Decree of the President of the Republic No. 14-A/2020, of 18 March (see March 2020 Flash Report) and respective renewals (i.e. between 19 March and 02 May 2020), have carried out continuous and relevant care directly related to patients infected with SARS-CoV-2, either as direct care providers or as providers of support activities.

Specifically, the these employees are entitled to:

- an increase in the annual period of leave to be taken until the end of 2021 (i.e. one additional day of leave for each 80-hour period of regular work and one additional day of leave for each 48-hour period of overtime work rendered during the period indicated above);
- a performance bonus to be paid once in 2020, equivalent to 50 per cent of the employee's monthly base remuneration.

This Decree Law entered into force on 04 December 2020.

1.1.3 Relief measures

Ordinance No. 285/2020, of 11 December establishes the 'Measure of Exceptional Support for Artisans and Craft Producing Units'.

This measure aims to support artisans and artisan production units that, due to the pandemic crisis caused by COVID-19, have been faced with the suspension or reduction of their activity due to the inability to place their products in the market. The financial support is provided by the Institute for Employment and Vocational Training, I. P. ('IEFP') and corresponds to a maximum of four times the Social Support Index ('IAS'), currently set at EUR 438.81.

This Ordinance entered into force on 12 December 2020, and will apply until 28 February 2021.

The Resolution of the Council of Ministers No. 114/2020, of 30 December approves several measures addressed to companies and employment within the context of the COVID-19 pandemic.

Among other measures, this Resolution envisages the extension of extraordinary support for the progressive resumption of companies' activity ('*apoio extraordinário à retoma progressiva*'), set forth in Decree Law No. 46-A/2020, of 30 July (see July 2020 Flash Report), during the first half of 2021, establishing *i)* the payment of 100 per cent remuneration of the employees covered by this measure, up to the limit of three times the national minimum wage, *ii)* the maintenance of the exemption of 50 per cent of social security contributions over the retributive compensation in the case of micro, small and medium-sized companies, and *iii)* the application of this support to the members of the statutory bodies of the companies with a register of contributions to social security and employees at their service.

1.1.4 Work organisation and teleworking

On 30 December 2020, Decree Law No. 106-A/2020 was issued, which extends several exceptional and temporary measures related to the COVID-19 pandemic.

Below, the most relevant amendments to employment-related measures are highlighted:

- Until 30 June 2021, the member of the government responsible for the health sector may authorise the hiring of employees under fixed-term employment contracts to perform functions related to the COVID-19 pandemic, whenever such hiring is necessary to face the exceptional and temporary increase of the public service activity related to the COVID-19 pandemic.
- Teleworking is mandatory for companies established in territorial areas where the epidemiological situation justifies it, as well as for companies established in municipalities with high, very high or extreme risk of COVID-19 contagion, regardless of the number of employees of said companies, as well as to employees residing or working in such areas.

This Decree Law entered into force on 31 December 2020.

1.2 Other legislative developments

1.2.1 Working conditions

Ordinance No. 275/2020, of 04 December, introduces amendments to Ordinance No. 182/2018, of 22 June, which regulates the working conditions applicable to employees with administrative functions, who are not covered by a specific collective regulation.

This Ordinance reviews the table of minimum monthly wages and the amount of meal allowance applicable to the referred employees, which entered into force on 01 December 2020.

1.2.2 Posting of workers

On 07 December 2020, Decree Law No. 101-E/2020 was published, which transposes Directive (EU) 2018/957 on the posting of workers into Portuguese law in the context of the provision of services, amending Law No. 29/2017, of 30 May, which transposed Directive (EU) 2014/67, of the European Parliament and the Council, of 15 May 2014, related to the same matter. This Decree Law entered into force on 09 December 2020.

1.2.3 Seafarers and board fishing vessels

Decree Law No. 101-F/2020, of 07 December (a summary is available here) transposes Directives (EU) 2017/159 and 2018/131 into Portuguese law on work on board fishing vessels and the activity of seafarers on board vessels by proceeding to *i)* the third amendment to Law No. 15/97, of 31 May, *ii)* the second amendment to Law No. 146/2015, of 9 September, *iii)* the third amendment to Decree Law No. 116/97, of 12 May, and *iv)* the third amendment to Decree Law No. 61/2012, of 14 March.

This Decree Law entered into force on 08 December 2020.

1.2.4 Health and safety of employees

Decree Law No. 102-A/2020, of 09 December amends the minimum requirements for the protection of the health and safety of employees against risks of exposure to biological agents at work and transposes Directives (EU) 2019/1833 and 2020/739.

Many agents are now included in the list of classified 'biological agents', including the SARS-CoV-2 virus.

Among other measures, this decree sets forth that the employer must notify the Authority for Labour Conditions ('*Autoridade para as Condições do Trabalho*' – ACT) and the Directorate-General for Health ('*Direcção-Geral da Saúde*' – DGS) at least 30 days in advance of the commencement of an activity in which the following are used *i)* classified biological agents in groups 2, 3 and 4, or *ii)* any other biological agent in group 4 for the first time, as well as any new biological agent provisionally classified by the employer in group 3.

Furthermore, the employer's assessment of the risk of exposure of workers to biological agents must be renewed:

- Whenever there are changes in working conditions that affect such exposure;
- When applicable reference values are exceeded;
- When the results of health surveillance justify it;
- When scientific research in this area has been carried out.

The Authority for Labour Conditions and the inspection services of the Ministry of Health are responsible for monitoring compliance with the rules on the protection of workers' safety and health against the risk of exposure to biological agents at work.

This Decree Law will enter into force on 04 January 2021.

1.2.5 Relief measures for 2021

On 31 December 2020, Law No. 75-B/2020 was published, which approves the State budget for 2021. It entered into force on 01 January 2021.

The Law includes several measures that have an impact on labour, and envisages the introduction of support measures for employees. In 2021, the employees covered by the exceptional measures created within the context of COVID-19 are entitled to the payment of 100 per cent of their gross regular remuneration up to three times the minimum national wage. Moreover, an extraordinary support scheme is envisaged for employees, self-employed persons, members of the statutory bodies of companies and trainees.

Moreover, the amount of unemployment allowance has been increased by 25 per cent in some specific cases and the period for granting unemployment allowance, which terminates in 2021, have exceptionally been extended for 6 months.

As for companies, the granting of public support and tax incentives to large companies with positive net results in 2020 will depend on the retention of the level of employment as defined in the Budget Law.

1.2.6 Professionals in the cultural sector

The Budget Law for 2021 provides that the government is authorised to create the status of professionals in the cultural sector to regulate the framework for their employment and service contracts, and the social security regime applicable to these professionals.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The Portuguese Labour Code currently in force, approved by Law No. 7/2009 of 12 February, with subsequent amendments (hereinafter referred to as 'PLC'), transposed Directive 96/71 through its Articles 6 and 7.

According to Article 6 of the PLC, workers are considered posted in the Portuguese territory whenever the worker, employed by an employer established in another Member State, performs his/her work on Portuguese territory *i)* in execution of a contract entered into between the employer and the beneficiary of the activity, provided that the worker remains under the authority and supervision of his/her employer; or *ii)* in the employer's establishment or in the establishment of another company to which the employer has a corporate relationship in terms of group, control or reciprocal shareholdings; or *iii)* at the service of a user company to which he/she has been assigned by a temporary work agency.

This concept includes all sectors of activity, except merchant navy undertakings and seagoing personnel (Article 6 (3) of the PLC), which are also excluded from the scope of Directive 96/71 (Article 1 (2) of said Directive).

Portuguese labour law does not stipulate under what circumstances a worker is considered to be performing his/her work on Portuguese territory for the purpose of application of the posting of workers' legal framework. This aspect may be disputable, namely in the case of mobile workers, such as drivers working in international road transport, just like the worker concerned in case C-815/18, referred to above.

Article 3 (1) of Directive 96/71 was transposed into the Portuguese legal framework by Article 7 of the PLC, which establishes that, without prejudice to a more favourable regime resulting from the law or the employment contract, a posted worker is entitled to the working conditions set forth in the law and in the collective regulation with general effectiveness. Thus, if a posting of a worker to the Portuguese territory is determined in accordance with Article 6 of the PLC, the working conditions arising from the law and the collective regulation applicable in Portugal will apply to the posted worker, provided that they are more favourable than those resulting from the applicable law and the respective employment contract.

The CJEU's ruling issued in case C-815/18, analysed above, is relevant to interpreting Article 6 of the PLC, namely regarding the criteria for assessing whether there is sufficient connection to the Portuguese territory for the worker to be considered posted to the Portuguese territory and, as a result, whether the worker is covered by the guarantees foreseen in Article 7 of the PLC.

4 Other Relevant Information

4.1 Minimum wage for 2021

On 31 December 2020, Decree Law No. 109/2020, which defines the amount of the minimum national wage for 2021 (EUR 665).

This Decree Law entered into force on 01 January 2021.

Romania

Summary

(I) Romania has extended the applicability of the working time reduction scheme and the subsidy for teleworking for employees, and provides for tax exemptions in case of employers' cost that arise as a result of teleworking.

(II) Romania has amended the current legislation on exceptional care leave.

(III) Romania has adopted a series of national norms meant to ensure compliance with European norms on drivers' working time and the occupational safety and health of workers.

(IV) The Labour Code has been amended to take cases of temporary suspension of the activity into consideration and/or its reduction as a result of the decree of the state of emergency.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Relief measures

The adoption of Law No. 282/2020 to approve Government Emergency Ordinance No. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of the SARS-CoV-2 coronavirus, as well as to stimulate employment growth, published in the Official Gazette No. 1201 of 09 December 2020, brought with it a series of amendments to the applicable legislation in the context of the state of emergency.

The new law extends the applicability of the working time reduction scheme, or *Kurzarbeit* measure (see August 2020 Flash Report) by up to 3 months from the date of termination of the last period in which the state of emergency was established. The minimum period of working time reduction is still 5 days, but the law eliminates the condition that the 5 days must be consecutive.

The law also extends the granting of the subsidy for telework to employees who performed telework during the state of emergency for at least 15 working days, until 31 December 2020.

In addition, according to the amendment of the Fiscal Code by Law No. 296/2020 for the amendment and completion of Law No. 227/2015 of the Fiscal Code, published in the Official Gazette No. 1269 of 21 December 2020, employers shall benefit from certain tax exemptions if it incurs expenses related to the teleworking activity for those employees who perform this type of remote work, according to the law (electricity, heating, water and internet bills, to purchase office furniture and equipment, etc.).

1.1.2 Care leave

Government Emergency Ordinance No. 147/2020 on granting leave days to parents to care for their children in case educational facilities are limited or suspended which involve the actual presence of children in schools and early childhood education units, following the spread of SARS-CoV-2 coronavirus (see September 2020 Flash Report) was approved with amendments by Law No. 278/2020, published in the Official Gazette No. 1166 of 02 December 2020.

1.2 Other legislative developments

1.2.1 Working time of drivers

Following the entry into force of Regulation (EU) 2020/1054, amending Regulation (EC) No. 561/2006, on the minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods, and Regulation (EU) No. 165/2014 on positioning by means of tachographs, Government Ordinance No. 37/2007 on establishing the framework for the application of the rules on driving periods, breaks and rest periods for drivers and the use of devices to record their activity was amended by Emergency Ordinance No. 221/2020, published in the Official Gazette No. 1329 of 31 December 2020. The new law expands the scope of breaches of the working time of drivers, as well as the applicable sanctions.

1.2.2 Occupational safety and health

Government Decision No. 1075/2020 on the amendment of Government Decision No. 1092/2006 on the protection of workers against the risks related to exposure to biological agents at work, published in the Official Gazette No. 1295 of 28 December 2020, transposed Directive (EU) 2019/1833 and Directive (EU) 2020/739 on the inclusion of SARS-CoV- 2 in the list of biological agents known to infect humans.

The decision aims to protect workers against risks to their safety and health arising from or resulting from exposure to biological agents during work and the prevention of such risks. The 'SARS-CoV-2' virus, which causes COVID-19, has been included in the list of biological agents.

1.2.3 Labour regulations in case of a state of emergency

The Labour Code was amended by Law No. 298/2020 to complete Law No. 53/2003 of the Labour Code, published in the Official Gazette No. 1293 of 24 December 2020. The new law among the causes of suspension of the employment contract at the initiative of the employer includes temporary suspensions of the activity and/or its reduction as a result of the declaration of the state of emergency. In this case, the employees affected by the reduced or interrupted activity, whose employment contract is suspended, benefit from an indemnity paid from the unemployment insurance budget, amounting to 75 per cent of the basic salary corresponding to the relevant position, but not more than 75 per cent of average gross earnings. The law also establishes some tax exemptions.

If an employee has several employment contracts, of which at least one is a full-time contract and is active during the state of emergency, he or she is not entitled to compensation.

In case employers have received support from the unemployment insurance budget, they cannot terminate the jobs held by persons who have been in technical unemployment for a period at least equal to the period during which they received the payment of benefits for those employees from the social unemployment insurance budget. Otherwise, they must return the amounts received in compensation.

The new law was deemed inappropriate in terms of the legislative approach taken by the government, by the President of Romania, who submitted a request for reconsideration, as well as by the Legislative Council, in its opinion. Moreover, 75 deputies submitted a request to the Constitutional Court for a review of the law's constitutionality, claiming the existence of a legislative parallelism. Thus, the envisaged legislative measures overlap with those already in force, applicable by virtue of Government Emergency Ordinance No. 30/2020 (published in the Official Gazette of Romania No. 231 of 21 March 2020, with subsequent amendments, *see* March 2020 Flash Report).

By Decision No. 723/2020, published in the Official Gazette No. 1242 of 16 December 2020, the Constitutional Court rejected the exception of unconstitutionality. Thus, the Court held that the same legislative solution provided in the Government Emergency Ordinance No. 30/2020, but for a limited period of time (until 31 December 2020), acquires, within the framework of the law on the matter, the character of generality, universality and legal stability. In addition, it also contains new provisions, such as a ban on dismissals by the employer who has received support from the unemployment insurance budget. Likewise, the scope of the rules introduced in the Labour Code have general applicability: they do not only refer to the instance of the epidemiological situation caused by the spread of the SARS-CoV-2 coronavirus.

In conclusion, the claim of unconstitutionality was rejected and the law was declared constitutional.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

In case C-815/18, the Court of Justice of the European Union ruled, among others, that a worker carrying out the activity of a driver in the international road transport sector, is a posted worker only to the extent to which the performance of his/her work displays, for the limited period in question, 'sufficient connection' with the territory of another Member State. Therefore, the CJEU continued the line of reasoning expressed in Case C-16/18, *Dobersberger*.

In Romania, Directive 96/71/EC on the posting of workers in the framework of the provision of services and Directive 2014/67/EU on the enforcement of Directive 96/71/EC and amending Regulation (EU) No. 1024/2012 were transposed into national law by Law No. 16/2017 on the posting of employees in the provision of transnational services modified by Law No. 172/2020 amending and supplementing Law No. 16/2017, published in the Official Gazette No. 736 of 13 August 2020.

The Romanian courts have recently dealt with a situation on the applicability of the provisions of Law No. 16/2017 in the case of drivers performing international transport activities. A driver of a heavy truck, an employee of a Romanian company, was travelling on the route Romania – Spain, transiting and/or loading/unloading goods on the territory of several countries. The driver requested the payment of salary entitlements due under the individual employment contract, including additional remuneration corresponding to activities carried out in France and Germany, by applying the provisions of Law No. 16/2017. He argued that he should receive the remuneration applicable in the territory of those States as a posted worker, in accordance with the legislation applicable in the two States, which lays down the application of the minimum wage for posted workers in the territory of those countries.

By Decision No. 7000/2019 of 06 December 2019, however, the Bucharest Tribunal found that the existence of a sufficient connection with the territory of the two countries, respectively France or Germany, was not proven, the activity carried out by the driver on the territory of the two countries could not be deemed a posting. On the contrary, the employee carried out an activity that resembled that of a mobile worker. The Court ruled that even though Law No. 16/2017 is applicable to drivers in international road transport, the applicant's activity in France and Germany did not meet the conditions of a situation of posting, being only an activity falling within the parameters of the

applicant's profession, transiting various European countries, loading and unloading cargo with the final destination Romania or Spain.

In conclusion, it is presumed that the Romanian courts will follow the same logic of interpreting the scope of Article 1 (1) and (3) of Directive 96/71 just as the Court of Justice of the European Union, including as regards the specific case of cabotage operations.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

In the Slovak Republic, this subject matter is primarily regulated by:

- The Labour Code (Act No. 311/2001 Collection of Laws – 'Coll.'), which defines the basic terms related to the posting of employees and conditions for employees posted to work outside the territory of the Slovak Republic;
- Act No. 351/2015 Coll. on cross-border cooperation in the posting of employees to perform work in the provision of services, which not only defines the obligations for foreign employers posting workers to the Slovak Republic, but also determines the obligations for Slovak entities receiving their services.

These Acts do not regulate this matter in much detail– as in the CJEU decision. There is no ruling on this matter in published case law. The current legislation does not conflict with the Court's judgment, and its interpretation must be respected.

The posting of employees is regulated in Article 5 of the Labour Code. According to Article 5, paragraph 2 of the Labour Code, the employment relationships of employees posted to provide services on the territory of the Slovak Republic for employers located on the territory of another Member State of the European Union or a state that is party to the Agreement on the European Economic Area are governed by this Act.

The legislation on posting of employees also applies to the road transport sector. According to Article 2 paragraph 4 of Act No. 56/2012 Coll. on road transport, the provisions of this Act shall apply to international transport only if special regulations or international agreements that bind the Slovak Republic do not provide otherwise.

According to Article 56 paragraph 2 of the Act, international road transport in the Member States may be operated by a road transport operator who has been granted a Community license in accordance with special rules.

Unless a special regulation or an international agreement provides otherwise, a carrier with its registered office or place of business in another state may carry out transport between two places in the territory of the Slovak Republic only with the permission of the transport administrative authority. Unless a special regulation or an international agreement provides otherwise, cabotage transport on the territory of the Slovak Republic is excluded from regular transport (Article 33 paragraph 1 and 2 of the Act).

Act No. 351/2015 Coll. on cross-border cooperation in the posting of employees to perform work within the provision of services specifies the obligations of the posting

employer in more detail (e.g. the notification obligation of the posting employer to the National Labour Inspectorate). It mainly contains obligations for foreign employers who post employees to the territory of the Slovak Republic, as well as obligations for the domestic employer.

According to Article 3 paragraph 1 of the Act, in order to determine whether the posting is in compliance with the posting rules, an overall assessment of the relevant facts shall be made, in particular on the basis of paragraphs 2 and 3. The facts under paragraphs 2 and 3 may not be assessed in isolation but in relation to each other, taking into account the specificities of the situation under consideration.

According to Article 3 paragraph 3 of the Act, in order to determine whether an employee has been working in the Slovak Republic for a certain period of time and whether he or she usually works in another Member State, the overall assessment may, in particular, include:

- whether the employee performs work in the Slovak Republic for a limited period;
- the place the employee usually works in;
- starting date of the posting;
- whether, at the end of the posting, the staff member returns to the other Member State from which he/she was posted or continues to work in that other Member State;
- the nature of the activities carried out.

As far as collective agreements are concerned, they are regulated by the Labour Code (Article 231) and in particular in Act No. 2/1991 Coll. on collective bargaining.

Act No. 2/1991 Coll. on collective bargaining regulates company collective agreements and higher level collective agreements. The Act specifically regulates a representative higher level collective agreement (Articles 7 and 7a of the Act). A higher level collective agreement is representative in the sector or part of the sector in which it fulfils the conditions under paragraph 1 (Article 7 paragraph 2 of the Act). The conditions are clearly established.

As stated at the beginning, the current legislation does not conflict with the judgment of the Court.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) As Slovenia has extended the state of emergency for another month, the seventh anti-corona package of measures (PKP7) introduced new or has extended and amended the benefits for employees, self-employed persons, and employers, including short-time work schemes, wage compensation for temporarily laid-off workers, monthly basic income for self-employed persons, temporary unemployment benefits, exceptional care leave and solidarity allowances.

(II) The possibility for employers to dismiss workers entitled to statutory old-age pension without justification was introduced.

(III) Employees are granted the possibility to transfer unused annual leave to the next calendar year.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Restrictions due to the COVID-19 crisis

Slovenia has extended the state of emergency for an additional 30 days until 16 January 2021.

As a response to the pandemic, various (temporary) measures continued to be in place throughout December 2020. Schools remained closed and remote schooling continued. The border crossing regime has been amended several times, as have the measures related to the health care services, temporary prohibitions, restrictions and the manner of conducting public passenger transport, temporary suspensions of the sale of goods and services to consumers, temporary partial restrictions of the movement of people and the restriction or prohibition of the gathering of people to prevent the spread of COVID-19, etc. (measures are changing very quickly, often even on a daily basis, the most recent ones were adopted by the government on 26, 29, 30 and 31 December 2020).

The ban on travel between municipalities was temporarily lifted between 24–25 December and between 31 December and 01 January to allow limited Christmas and New Year's gatherings (private gatherings of up to six people, children under 15 not included, from two different households), whereby the 9 pm curfew remained in place as well as the complete prohibition of public gatherings. Aside from a short partial reopening of certain shops and services before Christmas, a fairly strict lockdown continued to apply in Slovenia in December 2020.

Many of these measures have a significant impact on the working population. Home/tele-working has become widespread, working parents are facing problems reconciling work and family responsibilities (with children being at home), workers in healthcare and social institutions are working under tremendous pressure, also due to the shortages of qualified personnel, etc.

1.1.2 Relief measures

The Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic, i.e. the so-called seventh anti-coronavirus package (PKP7) (*'Zakon o interventnih ukrepih za pomoč pri omilitvi posledic drugega vala epidemije COVID-19 - ZIUPOPDVE'*), was passed by the National Assembly on 29 December 2020, published on 30 December 2020, and entering into force on 31 December 2020.

The seventh anti-corona package (PKP7) is valued at around EUR 550 million. Various measures aimed at mitigating the negative economic and social consequences of the COVID-19 epidemic have been reintroduced or extended and amended (those already introduced by the previous anti-corona packages), either by this Act or by government decrees. The measures that are particularly relevant for workers include, *inter alia*:

- partial reimbursement of wage compensation for temporarily laid-off workers;
- short-time work scheme;
- partial compensation of fixed expenses for businesses whose revenue has declined significantly due to the pandemic, the amount depending on the number of employees;
- wage compensation during a quarantine period;
- monthly basic income for self-employed persons (in the amount of EUR 1 100 gross per month) and for various other categories of persons, including, for example, farmers and religious workers;
- special wage supplements for the most exposed workers;
- wage compensation for working parents who, due to the closure of schools and family responsibilities in connection with remote schooling, are unable to work;
- solidarity allowances for pensioners, students, allowances for families with three and more children, extraordinary financial assistance at childbirth;
- a crisis supplement (in the amount of EUR 200) for workers whose salary amounts up to the double minimum salary;
- temporary unemployment benefits (in the amount of EUR 513.64 gross per month) until the end of the pandemic for those who lost their job on economic grounds during the pandemic or as a result of the expiry of the employment contract and who do not meet the conditions for regular unemployment benefits.

1.1.3 Dismissal without justification

Articles 21 and 22 of the PKPT introduces the possibility for employers to dismiss without a valid reason/without justification a worker who has met the prescribed conditions for the statutory old-age pension according to Article 27, paras. 1 and 4 of the Pension and Disability Insurance Act (OJ RS No. 96/12 et subseq., available here), i.e. 65 years of age and an insurance period of at least 15 years (para 1) and 60 years of age and an insurance period of 40 years (para 4):

- Article 21 of the PKP7 has amended Article 89 of the Employment Relationships Act in this respect on valid reasons for dismissals;
- Article 22 of the PKP7 has introduced the new Article 156.a of the Public Servants Act.

This amendment has strongly been contested by trade unions, which have announced that they will challenge it before the Constitutional Court.

1.1.4 Annual leave

According to Article 54 of the PKP7, employees have the possibility to transfer unused annual leave to the next calendar year. Specifically:

- unused annual leave for the year 2019 that was not taken in 2020 due to COVID-19, can be used until 28 February 2021;
- the remaining annual leave for the year 2020 not used due to COVID-19 can be used until the end of 2021.

1.2 Other legislative developments

1.2.1 Employment of foreigners

On the basis of Article 17 of the Employment, Self-employment and Work of Foreigners Act, the Minister of Labour, Family, Social Affairs and Equal Opportunities issued the new Order determining the occupations in which the employment of foreigners is not linked to the labour market (*'Odredba o določitvi poklicev, v katerih zaposlitev tujca ni vezana na trg dela'*).

The Order concerns the employment of foreign nationals for whom a permit is required and defines the occupations for which the consent for a single permit or written authorisation for employment purposes shall be granted without verification of compliance with the condition that there are no suitable unemployed persons in the register of unemployed persons. According to the new Order, these occupations are the following: welder, heavy truck driver, toolmaker, electrician, carpenter, cook, electromechanical technician, bricklayer.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The case concerns the applicability of the Posted Workers Directive (the PWD) to the transnational provision of services in the road transport sector, in particular, the international goods transport, including cabotage operations.

There does not yet seem to be any relevant case law of the Slovenian courts that specifically address the issues raised in the *Federatie Nederlandse Vakbeweging* case. Therefore, the CJEU judgment delivered in this case is not particularly relevant for the Slovenian courts and for the future development of Slovenian case law on the posting of workers in the international road transport and cabotage sector. It is to be expected that the Slovenian labour courts in dealing with such or similar cases, will follow this CJEU judgment. Existing case law of the Slovenian labour courts on the posting of workers (concerning posted workers in the construction sector) refers to the relevant EU law as well as to the case law of the CJEU (see, for example, the judgment of the Higher Labour and Social Court, No. 293/2017, which explicitly refers to the PWD and to CJEU judgment No. C-396/13, *Sähköalojen ammattiliitto*).

However, it is worth noting that the Slovenian courts have already addressed the issue of the posting of workers in international road transport more generally, and have awarded the worker the wage difference between the Slovenian and the German minimum wage (judgment of the Higher Labour and Social Court, No. Pdp 62/2019).

Many parts of the CJEU judgment are therefore of particular significance for the future development of Slovenian case law in this area.

It is worth noting that Slovenia has not yet transposed Directive 2018/957 amending the PWD.

4 Other Relevant Information

4.1 Adjustment of minimum premiums in the supplementary pension scheme for civil servants

The minimum premiums in the supplementary pension scheme for civil servants, specified in the collective agreement on the establishment of the civil servants pension scheme (*'Kolektivna pogodba o oblikovanju pokojninskega načrta za javne uslužbence'*, OJ RS No. 11/2004 et subseq., available here), have been adjusted (increased by the coefficient 1,054); higher premium amounts apply as of 01 January 2021 (Decision on the adjustment of the minimum premium in the supplementary pension scheme for civil servants, *'Sklep o uskladitvi minimalne premije kolektivnega dodatnega pokojninskega zavarovanja za javne uslužbence'*, OJ RS No. 204/20, 31.12.2020, available here, p. 10565).

4.2 Sectoral collective bargaining

In December 2020, several sectoral collective agreements were concluded, for example, the collective agreement on road passenger transport in Slovenia (*'Kolektivna pogodba za cestni potniški promet Slovenije')* and the collective agreement on service operations in land transport (*'Kolektivna pogodba dejavnosti za storitvene dejavnosti v kopenskem prometu'*).

Spain

Summary

(I) Due to the COVID-19 crisis, Spain has introduced new measures providing for reductions in social security contributions for workers in the tourism, hospitality and commerce sectors.

(II) Spain has established a transitional regime regulating relationships between Spain and UK after Brexit.

(III) A new contract of employment regulates internships of university students.

(IV) New situations are covered by the Salary Guarantee Fund that protects employees in case of employer insolvency.

(V) Regulations on occupational safety and health have been amended to transpose Directive (EU) 2017/2398 and Directive (EU) 2020/739.

(VI) An important judgment of the Supreme Court determines that fixed-term employment contracts with sub-contracting companies that are extended can be considered permanent contracts.

(VII) A new agreement on an alternative dispute resolution mechanism was signed by the most representative unions and employer organisations.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Employers' benefits

The Government continues to approve measures to protect employment threatened by the COVID crisis. The measures are aimed at the tourism, hospitality and commerce sectors and consist of a reduction in social security contributions for workers who have been temporarily laid off (Article 7) and for seasonal workers (Additional Provision 3).

1.2 Other legislative measures

1.2.1 Relationship between Spain and UK after Brexit

A Brexit agreement has finally been concluded between the European Union and the United Kingdom. Law Decree 38/2000 of 29 December 2020 regulates the rights and duties of British citizens in Spain after Brexit, and contains transitory measures that are conditional on reciprocal treatment by the United Kingdom. Among those that have an impact on labour law, the following should be highlighted:

People who started studying in the United Kingdom before 1 January 2021 may request recognition in Spain of their professional qualifications or professional training titles for the next five years, in accordance with the regulations prior to 2021.

Citizens of the United Kingdom who, as of 31 December 2020, carry out research and innovation activities in Spain may continue to carry these out under the same terms.

Nationals of the United Kingdom permanently working in Spain (even civil servants) before 2021 can continue to work under the same conditions and without the need to carry out additional procedures, as long as they comply with the rest of the requirements of that activity, even if EU citizenship is necessary to access and exercise that activity.

In general terms, the legislation prior to 1 January 2021 will continue to apply to situations already in force. Two examples: Firstly, the European works councils that UK workers or companies participate in may continue operating until they are modified.

Secondly, UK nationals who are participating in a selection process for a job or who have a contract of employment that requires working in Spain temporarily or occasionally can benefit from it, even if they do not live in Spain in the latter case.

The posting of workers initiated before 2021 can continue under the same terms and in accordance with the regulations that were in place prior to Brexit. However, in the event that a temporary extension of the posting of workers was made before 31 December 2020, prior authorisation of residence and work was required in accordance with immigration regulations, although without a visa requirement and without regard to the national employment situation.

The posting of workers initiated after 1 January 2021 requires mandatory visas or residence and work authorisations in accordance with Spanish immigration regulations, unless otherwise agreed between the European Union and the United Kingdom.

1.2.2 Status of interns

The laws that approve the general State budget for a specific year are not labour law acts, but usually include some relevant measures in this field, related with the programming of public revenues and expenditures.

The Budget Law of the State for 2021 modifies the Labour Code to include a new modality of employment contract referred to as 'contract for dual university training'. This contract targets university students who carry out internships in undertakings as part of their college programme to gain a degree or a master's. The objective of this new contract type is to require social security contributions to be made during these practices.

1.2.3 Protection of employees in case of insolvency

The Budget Law of the State for 2021 provides that the Salary Guarantee Fund will also be liable in the event of employer insolvency for all compensation derived from the termination of the employment contract, including—and this is new—the termination of fixed-term contracts or dismissal as a result of bankruptcy, as well as the compensation rate the Labour Code establishes for situations such as the transfer of the worker to another workplace or the substantial modification of working conditions.

This measure is directly related to Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of insolvency of their employer (codified version).

1.2.4 Health and safety at work

The Occupational Health and Safety regulations have been amended to transpose Directive (EU) 2017/2398 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, and Directive (EU) 2020/739 on the inclusion of SARS-CoV-2 in the list of biological agents known to infect humans.

First, the Health and Safety regulation on carcinogen risks has been modified. The National Silicosis Institute must prepare a guide for the prevention of risk from exposure to respirable crystalline silica in the workplace in collaboration with the National Institute for Occupational Safety and Health, and more comprehensive protection rules have been introduced, such as the time workers must spend cleaning themselves and occupational exposure limit values.

Secondly, the health and safety regulation on risks on biological agents has been modified, with the main purpose of including SARS-CoV-2, which has caused the COVID-

19 outbreak, to ensure continuous and adequate protection of workers' health and safety.

2 Court Rulings

2.1 Fixed-term employment

The Supreme Court ruled that the fixed-term employment contract signed between a worker and a subcontractor company could be transformed into a permanent contract. In the present case, the worker signed a fixed-term contract in 2006 with a subcontractor company linked to the duration of the contract between the subcontractor and the main undertaking. This latter contract was extended, i.e. the employment contract did not terminate. In 2017, the worker claimed that she was not a temporary worker but a permanent one. The Supreme Court agrees.

So far, the Supreme Court had considered that the duration of the subcontracting agreement between a subcontractor and the main undertaking was a valid reason for concluding a fixed-term employment contract, hence the duration of these two contracts could be linked. However, this ruling changes that approach when the employment contract has lasted several years, has been renewed several times and, particularly, when the employer is not the same as the initial one.

This ruling seems to be consistent with the CJEU's doctrine, which considers that fixed-term contracts that are extended eventually become permanent ones, particularly if they are abusive (see, for instance, CJEU joined cases C-103/18 and C-429/18, *Sánchez Ruiz*).

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The impact of this ruling in Spain is uncertain, but it is not likely to be significant. Under Spanish law, the posting of workers is regulated in Article 40 of the Labour Code (Royal Legislative Decree 2/2015) and Act 45/1999, 29 November 2020.

Article 40 of the Labour Code was not designed with the international posting of workers in mind, and only applies to the posting (inside or outside of Spain) by a company based in Spain.

Directive 96/71/EC has been implemented by Act 45/1999, which establishes rules that complement the traditional regulations. Act 45/1999 addresses the international posting of workers and applies to both undertakings based in Spain that post workers to an EU Member State, as well as to EU undertakings or those located in the European Economic Area (or in other states, depending on international conventions) that post workers to Spain as part of a transnational provision of services, including temporary employment agencies.

Road transport activities are not, however, mentioned in this Act. That does not mean that they are excluded, but there is no explicit rule on transport activities.

It is worth noting that the posting of workers is not a major concern in Spain, because it is uncommon in practice or, at least, it is not a main source of conflicts. Therefore, there are not many occasions to apply Act 45/1999, and CJEU case law is valuable from a theoretical point of view, but not necessarily in practice. There is no case law of the Supreme Court on the posting of workers.

There is no known case in Spain similar to the one addressed by this ruling. A legal reform of Act 45/1999 to explicitly include a rule on road transport activities seems

unlikely and if a similar case were to arise in the Spanish courts, they would undoubtedly follow the guidelines provided by the CJEU.

4 Other Relevant Information

4.1 Alternative dispute resolution mechanism

On 26 November 2020, the Sixth Agreement on alternative dispute resolution (ASAC VI), was signed by the most representative unions and employer organisations (the first one was signed in 1996). As in previous versions, the ASAC intends to maintain an autonomous and non-judicial system for the settlement of labour disputes. This system does not preclude the parties form turning to courts, but tries to provide more speedy and more favourable resolutions to such disputes. It is a system designed primarily for disputes arising from the negotiation of collective agreements and to resolve conflicts of interpretation and application of collective agreements, conflicts arising between unions and employers (even strikes), but not for individual conflicts between a worker and an employer.

For the resolution of such conflicts, the ASAC envisages mediation and arbitration procedures that are launched at the initiative of the parties concerned. This system was established in 1996 and is updated periodically. The management is entrusted to the Interconfederal Service of Mediation and Arbitration (SIMA), an institution with equal representation of employers and employees and is supported by public funding.

The SIMA has now been entrusted with new functions, such as promoting collective bargaining, mediation to prevent conflicts, resolving conflicts that arise between public employees and the public administration, and resolving any discrepancies that arise from the professional interest agreements of economically dependent self-employed persons (those who receive at least 75 per cent of their income from a single employer and whose associations (not exactly unions) can enter into agreements similar to a collective agreement for workers).

4.2 Minimum wage

The minimum wage is usually approved in December and remains in effect for the following year. For now, the government has decided to extend the minimum wage for 2020 to 2021, waiting for the most representative business and union organisations to reach an agreement. An agreement does not seem likely any time soon.

4.3 Unemployment

Unemployment rose in November by 25 269 people. There are currently 3 851 312 unemployed people.

4.4 Employment of third-country nationals

The collective management of contracts is a procedure provided for in Spanish legislation for the work of foreigners. The Ministry of Labour issues a forecast of jobs that may be covered by foreigners in the corresponding year, in view of the situation on the national labour market. Based on this forecast, employers can hire workers who do not reside or are in Spain. These forecasts also make it possible to obtain employment-seeking visas for children or grandchildren of Spaniards of origin or for certain activities.

The rules for 2021 are very similar to those of previous years (see also December 2018 and December 2019 Flash Report), but with an important difference: rules on COVID-19 have been introduced, in line with the guidelines published by the European

Commission on 16 July 2020, with the guidelines for the prevention and control of SARS-CoV-2 in agricultural holdings coordinated by the Ministry of Health and with other guidelines adopted by different autonomous communities in Spain.

Specifically, the undertaking must prepare a special contingency plan that contains a risk assessment and documents the different organisational, technical and hygiene measures adopted in compliance with the prevention and hygiene measures to deal with the health crisis caused by SARS-CoV-2.

4.5 European funds

Royal Decree Law 36/2020 establishes the rules to carry out the programming, budgeting, management and execution of the actions that can be financed with European funds, especially those from the European Recovery Instrument, approved by the European Council on 21 July 2020 to promote economic growth and job creation, recovering and repairing the damages caused by the SARS-CoV-2 pandemic. It establishes a specific participation forum to promote social dialogue with business organisations and unions.

Sweden

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The CJEU judgment does not have any direct implication for Swedish labour law.

In *Federatie Nederlandse Vakbeweging,* the CJEU ruled on cross-border work and the posting of workers in the transport sector. The CJEU concluded that the posting of workers directive would, as such, be applicable to the transport sector, but that qualification as a posted worker requires 'sufficient connection' to the host country and that the existence of an employment relationship in one Member State to perform transport services in or by crossing another Member State dos not necessarily provide for such a connection, but that a multi-factor assessment should apply. Since cabotage operations per definition take place in a host country, the posting of workers directive might apply, subject to the multi-factor assessment under that directive.

The Swedish lawmaker has, on numerous occasions, been concerned with the interplay between (road) transport, cabotage and the posting of workers over the past years (see, for instance, Bill Prop. 2020/17:107 *Nya utstationeringsregler* and the Ministry of Labour Memorandum Ds 2017:22 *Utstationering och vägtransporter*), and the preparatory works have concluded, in line with the recent decision from the CJEU, that cabotage might result in a posting of workers situation, but that an overall assessment of the conditions and circumstances of each case must be considered.

The CJEU also discusses to what extent a collective agreement could be considered to have *erga omnes* effect. Since the Swedish legislation does not recognise any collective agreements as universally applicable, this discussion is of limited importance.

It is worth noting, however, that the most recent changes (2020) to the Swedish Posting of Workers Act (*lagen 1999;678 om utstationering av arbetstagare*) increases the rights of posted workers.

4 Other Relevant Information

Nothing to report.

United Kingdom

Summary

(I) England and Scotland entered a further national lockdown, following Wales and Northern Ireland. It has been announced that the Coronavirus Job Retention Scheme will be extended until 30 April 2021.

(II) A judgment of the Employment Appeal Tribunal ruled that the Agency Work regulation does not confer the right for agency workers to apply for or to be considered for jobs on the same terms as workers who are employed by the hirer;

(III) The Trade and Cooperation Agreement between the EU and the UK was adopted. The transitional period in the exiting of the European Union has ended.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Lockdown measures

A further lockdown was announced for England on 04 January 2020 and for Scotland. Wales and Northern Ireland are already two weeks into a national lockdown. The legislation for England has not been published, but the guidance has been.

This followed closely on the heels of large parts of England being put into 'tier 4' measures: On 20 December 2020, the Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020 (SI 2020/1611) (Amending Regulations) came into force.

The Chancellor announced that the furlough scheme, properly known as the Coronavirus Job Retention Scheme (CJRS), will be extended until 30 April 2021.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Temporary agency work

Employment Appeal Tribunal, UKEAT/0105/19 and UKEAT/0209/19, 11 December 2020, Angard Staffing Solutions Ltd and another v Kocur and another

In *Angard Staffing Solutions Ltd and another v Kocur and another UKEAT/0105/19 and UKEAT/0209/19,* the Employment Appeal Tribunal (EAT) ruled that regulation 13 of the Agency Workers Regulations (AWR) 2010 (SI 2010/93) does not confer a right to be informed of vacant posts (para. 66). In its interpretation, Article 6(1) of the Temporary Agency Work Directive 2008/104/EC was not intended to confer a right for agency workers to apply for or to be considered for jobs on the same terms as workers who are employed by the hirer (*para. 48).* Specifically, The EAT said (para. 57):

> *"The aim of the AWR is not to provide equal treatment in almost every respect between agency workers and comparable direct employees. In this respect, the AWR is different from the Fixed-Term Workers' Regulations, Directive 99/70/EC of 28 June 1999, implemented into domestic law by the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034). The principle of equal treatment in the AWR, set out in Article 5, does not even extend to all terms and conditions of employment: it extends only to basic*

working and employment conditions. Against that background, it would be surprising if the Directive granted a right to equal treatment in relation to applying for, and being considered for, vacant positions. Moreover, the right to be informed of any vacant posts is not in the part of the Directive which deals with the principle of equal treatment (Article 5), but in the part which deals with access to employment, collective facilities and vocational training."

3 Implications of CJEU Rulings

3.1 Posting of workers

CJEU case C-815/18, 01 December 2020, Federatie Nederlandse Vakbeweging

The CJEU judgment in case *Federatie Nederlandse Vakbeweging,* concerning the posting of workers in the framework of the transnational provision of services in the road transport sector, will have no effect in the UK since free movement of services is no longer part of UK law.

4 Other Relevant Information

4.1 Brexit

The Trade and Cooperation Agreement (TCA) was agreed on 24 December 2020. It was ratified through the UK parliamentary process via the EU (Future Relationship) Act 2020. The UK entered its new relationship with the EU on 01 January 2021.

On 21 December 2020, the government made the European Union (Withdrawal) Act 2018 and European Union (Withdrawal Agreement) Act 2020 (Commencement, Transitional and Savings Provisions) Regulations 2020 (SI 2020/1622), which bring into force key provisions of the European Union (Withdrawal) Act 2018 (EUWA) and the European Union (Withdrawal Agreement) Act 2020 (WAA) on 'IP completion day' (11.00 pm on 31 December 2020), thus bringing to an end the transition period.

The free movement is substituted by the UK's new Points Based Immigration system. For more information on the system, see here. EU nationals enjoy no preferential treatment.


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