



# Flash Reports on Labour Law February 2021

Summary and country reports

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## Executive Summary

### National level developments

In February 2021, extraordinary measures associated with 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 the COVID-19 crisis measures, while the second part sums up other labour law developments with particular relevance for the transposition of EU labour law.

### Developments related to the COVID-19 crisis

#### Measures to lower the risk of infection in the workplace

All countries still have measures in place to prevent the spread of the virus in the workplace. States of emergency and lockdowns have been extended in several countries, including **Croatia**, **Czech Republic**, **Denmark**, **France**, **Ireland**, **Norway**, **Portugal** and **Slovenia**. Restrictions in connection with traveling, as well as with regard to the operation of businesses and other establishments remain in force in many countries, such as **Croatia**, **Czech Republic**, **France** and **Slovenia**. Lockdown measures have been loosened in **Austria**, where the preventive measures regarding the workplace are still in place, and in **Cyprus**, where international travel restrictions remain in effect.

In **Portugal**, the measures mandating the adoption of the teleworking regime when compatible with the activity to be performed have been upheld. Similarly, the measure allowing the application of teleworking even in the absence of individual agreements was extended until the end of April in **Italy**. In **Slovakia**, an employee with a disability can now exceptionally perform work from home, if the type of work allows for it. Furthermore,

a proposal on home office legislation has been presented to Parliament in **Austria**, but only the legislation on taxation was passed, while in the **Netherlands**, the government is developing additional measures to promote teleworking.

Specific health and safety measures for workplaces to reduce the risk of contagion are in place in many states. In **Czech Republic**, the provisions regarding occupational medical services have been re-adopted. In **Denmark**, additional testing and self-isolation requirements have been imposed for mobile workers. Furthermore, new legislation to prevent the spread of infection in employee accommodations has also been adopted. In **France**, to prevent the spread of COVID-19, employees may now exceptionally be allowed to eat in the areas assigned for the performance of work. Finally, **Italy** has extended the measures regulating the health surveillance of fragile workers until 30 April 2021.

In **Austria**, the government is involving employers in the testing scheme and is funding tests. Similarly, in the **Czech Republic**, the government will approve mandatory employee testing for large employers. Finally, in **Bulgaria**, new rules regulating the distribution of the costs connected to the COVID-19 testing of seconded workers were imposed.

#### 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 **Ireland**, the existing support measures for workers and employers were extended until the end of June 2021. Similarly, the right of entrepreneurs and self-employed people to labour market support will be extended until the end of June in **Finland**. At the same time, in the **Netherlands**, a new regulation on support for independent entrepreneurs, including self-employed



persons, has been enacted. The **Estonian** government introduced a salary grant for employers in two regions hit particularly hard by COVID-19. In **Slovenia**, the eighth anti-corona package of measures entered into force, introducing new relief measures or extending existing ones: a minimum wage subsidy for employers was introduced as a follow-up to the adjustment of the minimum wage in January. Also, the temporary suspension of employees' right to claim redundancy following a lay-off will continue until the end of June. Similarly, in **Sweden**, the measures including financial support for crisis-related working time reductions and the special provisions related to social insurance for the self-employed have been extended until the end of April.

In **Romania**, the procedure for recovering outstanding wages if the employer is insolvent has been simplified to support

insolvent employers and their employees in the context of the pandemic.

### Leave entitlements and social security

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

In **Portugal**, amendments to the exceptional and temporary regime of justified absence from work due to the suspension of educational activities have been approved.

In **Slovenia**, the possibility of short-term absence from work due to health reasons (sick leave of up to three consecutive days) without a medical certificate of a personal physician has been reintroduced.

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

Topic	Countries
<b>Restriction of business activity due to lockdown measures</b>	AT HR CY CZ DK FR PT SI
<b>Benefits for workers / self-employed prevented from working</b>	FI IE NL NO SI SE
<b>Health and safety measures</b>	AT BG CZ DK FR IT
<b>Employer subsidies</b>	EE FI NL SI SE
<b>Restrictions of free movement/ travel ban</b>	HR CY CZ PT
<b>State of emergency</b>	CZ FR PT
<b>Insolvency claims</b>	RO
<b>Special care leave / parental leave</b>	PT
<b>Other leave entitlements</b>	SI

### Other developments

The following developments in February 2021 were particularly relevant from an EU law perspective:

#### Platform work

In the **Netherlands**, the Court of Appeal in Amsterdam ruled that Deliveroo riders are to be considered employees under the applicable Dutch legislation. Similarly, in the **United Kingdom**, the Supreme Court decided that under UK employment law, Uber drivers are classified as 'workers'.

In **Spain**, the government and social partners have reached an agreement to regulate platform work, with the aim of including riders in the scope of labour law.

In **Italy**, the Prosecutor's Office of Milan required the four largest food delivery companies to regularise their riders as employees and to pay consistent fines for workplace safety violations. Food delivery services are also under scrutiny in **Malta** because of allegations that their workers are illegally employed.

The **Swedish** branch of the food delivery company Foodora has concluded a collective agreement with the Transportation Workers' Union.

#### Working Time

In **Belgium**, the Supreme Court considered that the time spent in the cabin by a lorry driver accompanying a co-driver must be considered working time.

In **Denmark**, the Supreme Court found that the definition of working time in the Working Time Directive was not relevant for interpreting the Occupational Injuries Act.

A reform in **Slovakia** concerns flexible working time arrangements in which the employee may reject flexible working time following an agreement with the employee representatives that flexible working time shall not be implemented.

#### Fixed-term and part-time work

In **Austria**, the Supreme Court applied the *pro rata temporis* principle in a case concerning previous periods of part-time work with another employer, differentiating between amounts of working hours and the effect they have on professional experience.

In **Lithuania**, the Vilnius Regional Court dismissed the case of a fixed-term university lecturer who claimed that national legislation is in breach of Directive 1990/70/EC, as fixed-term contracts are allowed without restrictions in Lithuania.

In **Spain**, the Supreme Court declared that the practice of not paying fixed-term workers the salary that corresponds to the category of worker they are replacing is against the principle of equal pay.

#### Temporary agency work

In **Austria**, the Supreme Court upheld its case law on the differentiation between temporary agency work and service contracts following the decision of the CJEU in case C-586/13, *Martin Mead*.

In **Iceland**, the District Court of Reykjavík held certain deductions on the salary of several workers made by a temporary agency to be legitimate and dismissed the claims of the workers that their accommodations were of such poor quality as to warrant damages on behalf of the agency.

In **Slovakia**, temporary assignments of an employee to a user company can now be contracted even in the absence of an objective reason.

#### Other aspects

In **Croatia**, The Plan for Approximation of Croatian Legislation with the *acquis communautaire* for 2021 has been issued.



In **Hungary**, a new act on labour inspection will enter into force on 01 March 2021.

In **France**, the Court of Appeal of Pau ruled on the whistleblower status of an employee.

The duty to provide information about employees posted on the national territory, regardless of the jurisdiction of the company posting the workers, has been imposed on **Lithuanian** companies.

In **Slovakia**, a new reform aims to modernise the legislation on teleworking.

In **Slovenia**, the Maritime Code has been amended, transposing the

provisions of Council Directive 2009/13/EC into the legal order.

In **Spain**, the Supreme Court stated that additional parental leave rights included in collective agreements cannot be claimed following the recent legislative reform that has removed any distinction between maternity and paternity leave.

The **Swedish** government has issued a new Occupational Health and Safety strategy. Also, it has published an inquiry with proposals for the reform of the legislation concerning third-country labour migration.

Table 2: Other major developments

Topic	Countries
<b>Platform Work</b>	IT MT NL ES SE UK
<b>Temporary agency work</b>	AT IS SK
<b>Seafarers</b>	HR DE SI
<b>Working Time</b>	BE DK SK
<b>Brexit</b>	BE UK
<b>Fixed-term work</b>	LT ES
<b>Part-time work</b>	AT
<b>Whistleblower</b>	FR
<b>Labour inspection</b>	HU
<b>Posting of workers</b>	LT
<b>Parental leave</b>	ES
<b>Teleworking</b>	SK
<b>Labour migration</b>	SE
<b>Occupational health and safety</b>	SE

# Implications of CJEU Rulings

## Fixed-term work

This Flash Report analyses the implications of a CJEU ruling on fixed-term work.

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

In this case, the CJEU ruled that the notion of 'successive fixed-term employment contracts' contained in the Framework Agreement on Fixed-term Work annexed to Directive 1999/70/EC also covers the automatic extension of contracts by law. Even when national constitutional provisions impose an absolute prohibition in the public sector on the conversion of fixed-term contracts into ones of indefinite duration, national courts must interpret and apply the provisions of domestic legislation in conformity with EU law.

A large majority of national reports indicates that national legislation is compatible with the judgment.

In fact, in most countries, the extension of a fixed-term contract is subject to the same rules and limitation as its renewal, with violations resulting in the conversion of the fixed-term contract into one of indefinite duration, also in the public sector. In this regard, the judgment is similarly relevant in **Belgium** and **Estonia**, clarifying that the legal provisions regulating the succession of fixed-term contracts are also applicable in

case of automatic extensions of fixed-term contracts.

In other countries, such as **Croatia**, the conversion into an open-ended contract is prohibited in the public sector, but limitations to the renewal of fixed-term contracts are explicitly specified. This is also the case in **Italy**, where the remedial mechanism of compensation has already been deemed to be compatible with the Directive by the CJEU. While fixed-term employment in the public sector is a debated issue in **Spain**, this ruling is unlikely to have direct implications.

The situation is less clear in countries such as **Lithuania**, the **Netherlands** and **Slovakia**, regarding certain professions that are exempted from the rules on the succession of fixed-term contracts. Whether the **Swedish** fixed-term provisions and the possibility to deviate *in peius* from statutory law in collective agreements adequately address abuse under the meaning of Directive 1999/70/EC, has yet to be scrutinised by case law.

The judgment, which examined the interpretation of Greek law, has implications for **Greece**, where Courts have, however, stated that the measures provided by the law already provide effective and equivalent guarantees for the protection of workers. Similarly, this ruling adds to the already controversial situation of temporary public employees in **Cyprus**.



# Austria

## Summary

(I) The lockdown measures have been loosened. A proposal on home office legislation has been presented to Parliament, but to date only the legislation on taxation has been passed. The government is increasingly involving employers in the testing scheme.

(II) Two rulings of the Austrian Supreme Court and two of the Austrian Supreme Administrative Court deal with the Austrian concept of agency work in the light of the CJEU ruling *Martin Mead*, taking into account service times with other employers and transnational mobility as well as the penalties for non-compliance following the CJEU ruling *Maksimovic*.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Lockdown measures

On 08 February 2021, Austria loosened its lockdown restrictions. All shops have opened, FFP2 masks are mandatory in shops, in public transport and in so-called 'body-related services' (such as hairdressers), which have opened again for those who can present a negative COVID-19 test result that is no older than 48 hours (testing-in scheme, for all measures, see the January 2021 Flash Report).

Based on the amended [Austrian Federal Act on Provisional Measures to Prevent the Spread of COVID-19 \(COVID-19 Measures Act\)](#) (first enacted at the beginning of the COVID-19 crisis on 15 March 2020), now the [4<sup>th</sup> COVID-19 Emergency Measures Ordinance \(4. COVID-19-Notmaßnahmenverordnung, BGBl. II Nr. 58/2021\)](#) was issued on 05 February 2021. The preventive measures regarding the workplace as regulated in the [3<sup>rd</sup> COVID-19 Emergency Measures Ordinance](#) (see January 2021 Flash Report) have not been amended.

#### 1.1.2 Teleworking

As announced in the January 2021 Flash Report, the social partners and government have reached an agreement on legislation on working from home. The legislative proposal was discussed in Parliament on 24 February 2021 following a very short review period of a little more than three days. It did not pass Parliament but was referred to the [Committee for Labour and Social Affairs](#) and is expected to pass following further amendments and to enter into force by 01 April 2021, the latest.

However, the proposal on tax issues has passed Parliament as part of the [2<sup>nd</sup> COVID-19 Tax Measures Act \(2. COVID-19-Steuermaßnahmengesetz – 2. COVID-19-StMG, 237/BNR\)](#). Now, employees who work from home for at least 26 days a year can claim up to EUR 300 per year for ergonomic furniture such as chairs, work desks and lighting as income-related expenses on their income tax return, whereby a partial amount can already be claimed retroactively for the year 2020.

Additionally, starting in 2021, up to EUR 300 in home office allowance (EUR 3 per day for a maximum of 100 home office days) granted by the employer can be claimed tax-free. This regulation is in force until 31 December 2021.

[See here](#) for a press article in 'Der Standard' on the parliamentary procedure, main points and criticism.

[See here](#) for a press article in 'Der Standard' on the main points and criticism.

[See here](#) for a press article of the ORF on main points and criticism.

### 1.1.3 Employee testing

Government is increasingly involving employers in the testing scheme. Operational testing is equivalent to official testing when performed by authorised staff, and now, a subsidy of EUR 10 per test has been agreed to enhance testing on an operational level. To provide a legal basis for this funding, [legislation allowing for the funding of SARS COVID-19 tests](#) on an operational level passed the National Assembly on 24 February 2021.

The Act on Operational Testing (*Betriebliches Testungs-Gesetz – BTG*, 238/BNR) will enter into force retroactively on 15 February 2021 and remain in force until 31 December 2022.

[See here](#) for information provided by the Chamber of Commerce on the Organisation of Operational Testing.

[See here](#) for a press article in 'Salzburger Nachrichten'.

## 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

### 2.1 Temporary agency work

*Austrian Supreme Court, 9 ObA 60/20v, 17 December 2020*

Austrian law includes a test to distinguish between temporary agency work and the mere fulfilment of a service contract. The Temporary Agency Work Act (*Arbeitskräfteüberlassungsgesetz - AÜG*) in § 4 (1) first establishes the principle of the primacy of facts over form, stating that the true economic content and not the outer appearance shall be decisive for the assessment of whether this is a case of temporary agency work or not. It also includes a detailed list of indicators for agency work in § 4 (2) AÜG if workers perform their services in the business of the purchaser of the service, namely if (1) they do not produce or participate in the production of any product or service that differs from the products, services and intermediate results of the party ordering the service, that is distinguishable and attributable to the service provider employing the worker; (2) they do not perform the work primarily with materials and tools of the service provider; (3) are integrated into the operation of the party ordering the service and are subject to his/her supervision, or (4) if the service provider is not liable for the success of the work performance. The longstanding jurisprudence of the Supreme Administrative Court (*Verwaltungsgerichtshof*) (starting with Supreme Administrative Court of 22 October 1996, 94/08/0178, ASoK 1997, 193) holds that if only one of the criteria is fulfilled, the relationship is deemed to involve temporary agency work. This line of ruling is also followed by the Supreme Court (the latest decision being issued on 23 October 2020, [8 ObA 63/20b](#)).

The question in appeal was whether the Supreme Court would uphold this case law on § 4 AÜG on the differentiation between temporary agency work and the fulfilment of a service contract following the decision of the European Court of Justice in case C-586/13, [Martin Meat](#), in domestic cases as well, especially due to the principle of equal treatment in the Austrian Constitution.

The Supreme Court stated that, in principle, there was no reason to deviate from the previous case law on § 4 (2) AÜG. The wording of the provision was unambiguous. From the word 'or' in connection with the phrase that agency work 'also exists in particular if ...', it is clear that each of the four circumstances (indicators) listed below by the legislator leads to the assumption of agency work. This understanding is—as is evident from the legislative materials—also that of the historical legislator. § 4 (2) AÜG concretises the economic approach to prevent circumvention. The fact that in each of these cases this factor must be 'economically' (Sec. 4 (1) AÜG) relevant to justify equal treatment does not yet require overall consideration, but also does not exclude it. Even if this interpretation is not in line with the CJEU's approach in *Martin Mead*, the Supreme Court is not in a position to interpret the existing provisions in line with EU law or constitutional law due to the strict wording of § 4 (2) AÜG. An interpretation in conformity with the Directive or constitutional law may not give a deviating or even contrary meaning to a national provision that is unambiguous in terms of wording and meaning, which cannot be achieved by the national rules of interpretation.

However, nothing would be gained for the plaintiff in the present case on the basis of the concrete circumstances of the given case. The concurring assessment of the lower courts that neither one of the indicators in § 4 (2) was fulfilled nor, according to an overall assessment of the facts, a contractual relationship existed between the employer and client and could not be assessed as agency work, but rather as a 'genuine' contract for services.

Based on the CJEU's ruling in *Martin Mead*, the Administrative Court modified its case law in its ruling of 22 August 2017, [Ra 2017/11/0068](#), in cross-border cases, and thus cases covered by the Posting of Workers Directive (instead of many other rulings, cf. most recently Administrative Court [Ra 2018/11/0111](#) and [Ra 2020/11/0099](#)). It follows from the CJEU's judgment that for the assessment of whether a situation is to be classified as cross-border agency work, 'every indication' must be taken into account from the perspective of EU law and must thus be examined from several perspectives (according to the 'true economic content'). In particular, in accordance with the CJEU's ruling, the question whether remuneration also depends on the quality of the service rendered or who bears the consequences of non-contractual performance of the contractually agreed service, i.e. whether the success essential for a contract for services has been agreed, who determines the number of employees specifically deployed for the production of the work in each case and from whom the employees receive the precise and individual instructions for the performance of their activities, are of decisive importance.

It was then disputed in the literature whether the judgment of the CJEU in *Martin Mead*, also requires a change in case law in domestic cases. It is generally accepted as the starting point of the discussion that neither the European fundamental freedoms nor the Accession Treaties nor the Posting of Workers Directive are directly relevant in purely domestic cases and that the Temporary Agency Work Directive does not stand in the way of a further national definition of temporary employment (e.g. Th. Dullinger/Schörghofer, *Dienstleistung versus Arbeitskräfteüberlassung*, GRAU 2020/7, pp. 22 et seq.).

According to the prevailing view, if the previous national case law were to be maintained in the case of domestic situations and thus—depending on whether a foreign or a domestic situation existed—a different interpretation would result in the case that according to the wording of § 4 AÜG, agency work existed whereas according to the CJEU's criteria, it did not, this would lead to objectively unjustified discrimination against nationals, because Austrian entrepreneurs would be treated more strictly than entrepreneurs domiciled abroad. An objective justification of the discrimination was not evident and could not be seen in particular in a higher protection of employees, which could also be undermined by a cross-border activity. To prevent discrimination against nationals, a transfer of labour may also be assumed in domestic cases only if a transfer

of labour exists on the basis of an overall consideration within the meaning of the judgment of the CJEU in the *Martin Meat* case, i.e. not merely because one of the indicators of § 4 (2) AÜG is fulfilled (see, e.g. Laback in Schratlbauer, AÜG [2020] § 4 recital 31 and Niksova, in Schratlbauer AÜG, §§ 16, 16a recital 60).

In its previous ruling *8 ObA 63/20b*, the Supreme Court stated that it was not possible to interpret the provision of § 4 (2) AÜG differently due to its operation and intent. It also ruled that there was no discrimination of nationals in genuine national cases, either. The Supreme Court now upheld this ruling and, again, argued that even an interpretation taking into account additional indicators and an overall assessment would not change anything in the present case.

## 2.2 Part-time work

*Austrian Supreme Court, 8 ObA 97/20b, 18 December 2020*

According to Austrian legislation for public servants, previous service times with other employers must be taken into account to a certain extent. The disputed provision was § 26 (3) Act on Contractual Public Servants (*Vertragsbedienstetengesetz*, VBG):

*"In addition to the periods specified in para. 2, periods of relevant professional activity or a relevant administrative internship may be credited as periods of prior service up to a maximum of ten years in total. A professional activity or an administrative traineeship shall be deemed relevant if it provides professional experience which*

- 1. training for the new position is not necessary to a large extent, or*
- 2. a significantly higher level of successful working can be expected due to the existing experience."*

It was disputed whether years of part-time work of a teacher spent in Germany must be taken into account as full years or only partly applying the *pro-rata-temporis* principle.

The Supreme Court ruled that the wording of § 26 (3) VBG provides for the crediting of periods of professional activity 'insofar as' these provide professional experience. It can be deduced from this that in the case of reduced hours (in relation to normal working hours), only the corresponding previous periods of service can be taken into account. According to normal life experience, it is to be assumed that less experience is acquired within the same period of time with a lower extent of employment (see also *Fellner*, BDG [2020] § 26 VBG recital VI D 6). In this sense, the Supreme Administrative Court has also repeatedly stated with regard to the parallel provision of § 12 (3) 2 of the Act on the Remuneration of Public Servants (*Gehaltsgesetz*, GehG) that, in order to answer the question of whether there is a significantly higher level of successful work as a result of the civil servant's previous employment, it must be determined, among other things, to what extent the actual tasks were performed during the previous employment (VwGH Ra 2018/12/0002; Ra 2019/12/0045).

A crediting of prior service periods applying the *pro rata temporis* principle is in any case also justified if—as is the case with § 26 (3) VBG—only relevant periods are credited, which specifically result in relevant professional experience and, moreover, an activity exists for which a higher level of employment generally leads to an increase in competences or skills. Especially in the case of teaching at a school, it is obvious that with an increasing extent of teaching duties it becomes more likely that the teacher is confronted with special constellations—e.g. problematic pupils—and consequently, his or her experience and competence in dealing with such constellations also increases.

However, according to normal life experience, it can also be assumed that from a certain number of hours onwards, no significant gain in experience can be achieved by an even higher level of employment. Therefore, full creditability can typically be assumed if the previous activity was performed to an extent of at least 80 per cent (converted to a normal five-day week: on at least four days) (cf. Fellner, BDG [2020] § 26 VBG recital VI D 6). On this basis, the lower courts correctly credited the plaintiff in full for the school year in which her teaching duties exceeded the limit of 80 per cent, but otherwise made a *pro rata temporis* allocation according to the respective extent of employment.

This decision appears to be a good decision, with the courts appropriately applying the principle of *pro rata temporis* as provided for in Clause 4 (2) of [Council Directive 97/81/EC](#) concerning the Framework Agreement on Part-time Work. It does not apply the principle across-the-board, but differentiates between different amounts of working hours and the effect they have on the experience of a teacher.

## 2.3 Administrative fines

*Austrian Supreme Administrative Court, Ra 2020/11/0170, 10 December 2020, and Ra 2020/11/0192, 22 December 2020*

The CJEU has ruled in case C-64/18 et al., *Maksimovic and others* that Article 56 TFEU must be interpreted as precluding national legislation which provides, in respect of non-compliance with labour law obligations in relation to obtaining administrative permits and keeping records on wages, for fines to be imposed: which may not be lower than a predefined minimum amount; which apply cumulatively in respect of each worker concerned and without an upper limit; to which is added a contribution to court costs of 20 per cent of the amount of the fines if the appeal against the decision imposing those fines is dismissed, and which are replaced by custodial sentences in the event of non-payment. Up to now, the legal provisions in the Act to Fight Wage and Social Dumping (*Lohn- und Sozialdumpingbekämpfungsgesetz*, LSD-BG) as well as in the Administrative Criminal Act (*Verwaltungsstrafgesetz*) have not yet been amended and it is questionable how to apply (or not apply) the legislation so it does not conflict with EU law.

In both rulings, the Supreme Administrative Court stated that the imposition of substitute custodial sentences is unlawful against the background of Union law, especially the ruling of the CJEU in the *Maksimovic* case. Rulings on administrative fines including such sentencing therefore must be nullified.

These are two examples of how the Austrian Administrative Courts now deal with the conflict of Austrian legislation and EU law when it comes to the imposition of fines for non-compliance with labour law obligations in relation to obtaining administrative permits and keeping records on wages in cases of the posting of workers. As a result, it seems that such breaches will not be persecuted beyond a ruling of the breach itself, but without a fine as there is a lack of a provision to be applied in line with EU law. In the government programme 2020–2024 of the present government, one of the projects included is the amendment of the administrative penal code and to adapt it to the CJEU jurisprudence – but up to now without any results.

## 3 Implications of CJEU Rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

The CJEU ruled that the expression ‘successive fixed-term employment contracts’ in the Fixed Term Work-Directive 1999/70/EU also covers the automatic extension of fixed-





term employment contracts of workers, which has occurred in accordance with explicit provisions in national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded. In Austrian general labour law, a fixed term does not have to be agreed in writing and therefore, any extension of a fixed term is seen as a consecutive fixed-term contract and must be justified. According to long standing court practice, a succession of several fixed-term employment contracts is *prima vista* to be regarded as a circumvention of the mandatory provisions of the law on protection against dismissal and only permissible if justified by objective reasons. Without such justification, fixed-term agreements of the chain employment contract are null and void, the legal relationships are to be qualified as a coherent employment relationship of indefinite duration (see Reissner in Neumayr/Reissner, ZellKomm § 19 AngG recital 27).

In the public sector, there is even an explicit provision (§ 4 (4) Act on Contractual Public Servants – *Vertragsbedienstetengesetz*, VBG): An employment relationship entered into for a fixed term may be extended once for a definite period; this extension may not exceed three months. If the employment relationship is continued beyond this period, it shall from then on be regarded as if it had been entered into for an indefinite duration from the beginning.

Therefore, the result of an unjustified extension of a fixed-term contract or a similar succession of fixed-term contracts in Austria results in the conversion into one employment contract of indefinite duration. The interpretation and application of the relevant provisions of Austrian domestic law will duly penalise an abuse of consecutive fixed-term contracts and nullify the consequences of the breach of EU law.

#### 4 Other relevant information

Nothing to report.

# Belgium

## Summary

(I) Employers who are facing economic difficulties as a result of Brexit will be offered several temporary crisis measures that promote job retention.

(II) The Belgian Supreme Court has ruled that the time a lorry driver spends in the cabin accompanying a co-driver must be considered working time.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

### 1.2 Other legislative developments

#### 1.2.1 Relief measures for employers affected by Brexit

The Royal Decree of 15 February 2021 establishing the date of entry into force of the Law of 06 March 2020 on employment retention following the withdrawal of the United Kingdom from the European Union (*Moniteur belge*, 15 February 2021).

The Royal Decree of 15 February 2021 establishing the date of entry into force of the Law of 06 March 2020 made the Law of 06 March 2020 on employment retention temporarily applicable following the withdrawal of the United Kingdom from the European Union.

In the period from 22 March 2021 to 21 March 2022, employers who are officially recognised as facing economic difficulties as a result of Brexit will be offered three temporary crisis measures to promote job retention.

These are a special form of:

- economic unemployment;
- time credit;
- collective working time reduction with a reduction of social security contributions for the target group.

These three crisis measures should allow employers to reduce the volume of work, thereby lowering labour costs, while at the same time limiting wage losses for the 42 000 employees that may potentially be affected. The temporary crisis measures are intended to prevent redundancies as a result of Brexit. They only apply to employers who are officially recognised to be facing economic difficulties. The recognition period ends on 21 March 2022, at the latest (see Memorandum of Understanding, *Parliamentary Documents*, Chamber of Representatives 2019-2020, No. 55-0880/001, p. 3).

Employers who have experienced a loss of revenue of at least 5 per cent due to a decrease in production or orders as a result of the United Kingdom's withdrawal from the European Union may apply for the relief measures (Article 2 of the Law of 6 March 2020).

If the employer makes use of the system of temporary unemployment, the employer pays a supplement of at least EUR 5.63 per working day on top of the employee's unemployment benefits (Articles 3, 7 and 8 of the Law).

The employer may conclude an agreement with the employee to reduce his/her working time by one-fifth or to half of full-time work. In that case, the employee whose working hours have been reduced receives an interruption benefit from the National Employment Office to partially compensate for his/her loss of income. The amount of this benefit is the same as the amount stipulated for ordinary time credit.

Thirdly, the employer can temporarily reduce working hours. The reduction of working hours is a means for companies to cope with a decrease in work, which reduces the employer's labour costs, without the employer having to resort to mass redundancies. The reduction of working time must be introduced collectively for all staff, or for a specific category of staff. The introduction of the four-day work week can only be introduced through a collective bargaining agreement. The employer will benefit from a flat-rate reduction in social security contributions.

If the temporary reduction of working hours is combined with the temporary introduction of the four-day work week, a higher flat-rate reduction in social security contributions is granted.

The lump-sum reduction per employee and per quarter amounts to:

- EUR 600 in case of reduction of working hours by one-fifth;
- EUR 750 in case of reduction of working hours by 25 per cent.

In the event of a combination with the introduction of a four-day work week, these flat-rate reductions are increased to EUR 1 000 and EUR 1 150, respectively.

## 2 National Court Rulings

### 2.1 Working time

*Cour de cassation, No. P.20.1040.N, 16 February 2021*

The Court referred to the provisions of the Working Time Directive 2002/15, the Belgian Labour Law of 16 March 1971 and the collective bargaining agreement of 27 January 2005, concluded in the Joint Committee No. 140.03 for road transport. These sources of law stipulate that the time spent sitting next to the co-driver or in the sleeper cabin during the journey is to be considered availability time. Also, the CBA of 27 January 2005 specifies that the time the employee can freely dispose of should not be considered availability time. On the basis of these provisions, the Court considered that the time spent by the accompanying driver during the journey and next to the driver or in the sleeper cabin is not time that the accompanying driver is free to dispose of. The driver is thus available at any time to take over the wheel of the lorry, provided that he/she complies with the compulsory rest periods. The time he/she spends during these rest periods and alongside the driver is also time which the co-driver cannot dispose of him-/herself. Finally, the Court argues that the haulier cannot rely on the fact that certain social inspectors have in the past accepted that (only) one-third of this time is considered availability time. This does not create a right for the carrier to permanently rely on this practice. The Court of Cassation ruled that the time spent in the cabin by a lorry driver accompanying his/her co-driver must be regarded as working time.



### 3 Implications of CJEU Rulings

#### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

The ECJ has ruled as follows:

*"1. Clause 1 and Clause 5(2) of the Framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to the Directive 1999/70 of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that the expression 'successive fixed-term employment contracts' therein also covers the automatic extension of the fixed-term employment contracts of workers in the cleansing sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded.*

*2. Clause 5(1) of the Framework agreement on fixed-term work must be interpreted as meaning that, where abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, to the fullest extent possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse and of nullifying the consequences of the breach of EU law extends to an assessment of whether the provisions of earlier national legislation, which remain in force, and which permit the conversion of a succession of fixed-term contracts to one employment contract of indefinite duration, may, where appropriate, be applied for the purposes of that interpretation in conformity with EU law, even though national constitutional provisions impose an absolute prohibition, in the public sector, on such conversion".*

(i) The answers to Questions 2 and 3 of the ruling in point 2 of the dictum (see above factual part) have minor implications for the Belgian legal order. Belgian case law complies with the obligation to interpret national law in conformity with EU law. The legal conversion of a succession of fixed-term contracts into an employment contract of indefinite duration is not blocked by national constitutional provisions imposing an absolute prohibition to such conversions in the public sector.

(ii) No national law seems to exist in Belgium that explicitly stipulates that fixed-term employment contracts of workers in the cleaning sector of local and regional authorities are automatically extended, notwithstanding the fact that the generally prescribed formal requirement for successive contracts to be concluded in writing has been disregarded (cf. point 35 and 52 of the ruling).

This ruling is very important because the case law of the Court of Justice on successive fixed-term employment contracts more generally also applies to the extension or renewal of fixed-term employment contracts, without any formal conclusion in writing of one or more new fixed-term employment contracts (points 44, 47 and 49 of the ruling). Such an extension or renewal of a fixed-term employment contract without formally concluding a new written employment contract can, under Belgian law, be organised on the basis of an initial employment contract with an extension or renewal clause that may give the employer the power to modify the original end date of the fixed-term employment contract.

The change in the date of the fixed-term employment contract accordingly represents a change in the essence of that contract, which may legitimately be treated as equivalent to the conclusion of a new fixed-term employment relationship that succeeds the



preceding one, and accordingly falls within the scope of Clause 5 of the Framework Agreement (points 47 and 49 of the ruling).

The judgment is of substantial importance for the Belgian legal order because there is disagreement in the legal literature and in case law as to whether a fixed-term employment contract with an extension clause or with a renewal clause falls within the legal provisions of Articles 10 and 10a of the Law on Employment Contracts of 03 July 1978 in case of an extension or renewal. These provisions regulate the admissibility of successive fixed-term employment contracts (see W. Van Eeckhoutte, *Sociaal Compendium Arbeidsrecht*, Mechelen, Kluwer 2019, No. 1294). To settle this dispute, the judgment discussed here is of substantial importance.

## **4 Other relevant information**

### **4.1 Collective bargaining**

The negotiations between the trade unions and employers' organisations on a global wage deal for the private sector have stalled.

# Bulgaria

## Summary

New rules regulating the distribution of the costs connected to the COVID-19 testing of seconded workers have been imposed.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Testing of seconded workers

Decree No. 39 of 04 February 2021 of the Council of Ministers on Supplement of the Ordinance on Business Trips and Specialisations Abroad (promulgated – State Gazette No. 11 of 09 February 2021) established a new Art. 8 of the Transitional and Final Provisions. Pursuant to this provision, the costs of medical testing of seconded persons using the COVID-19 polymerase chain reaction method required for entry into the territory of the State to which the person has been seconded, shall be borne by the department or enterprise which has seconded the person, or of the department or the enterprise, which bears the expenses under Article 4.

### 1.2 Other legislative developments

Nothing to report.

## 2 National Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

Bulgarian labour legislation explicitly specifies the cases in which a fixed-term employment contract may be concluded (Articles 68 and 114a of the Labour Code). A fixed-term contract may be concluded:

- for a fixed period which may not exceed three years in total, insofar as a law or act of the Council of Ministers does not provide otherwise;
- for completion of a specific assignment;
- for the temporary replacement of a worker who is absent from work;
- for work in a position which is to be filled through a competitive examination, i.e. for the time until the position is filled on the basis of a competitive examination;
- for a specific term of office, where such has been specified for the respective body;
- for short-term farm activities.



A fixed-term employment contract for a fixed period shall only be concluded for the performance of casual, seasonal or short-term work and activities, as well as with newly hired workers in enterprises that have been declared bankrupt or put into liquidation. As an exception, such a contract may be concluded for a period of not less than one year and for work and activities that are not of a casual, seasonal or short-term nature. Such employment contracts may also be concluded for a shorter period upon request by the worker in writing. Exceptions to the conclusion of such fixed-term contracts are provided in Art. 1, item 1 of the Additional Provisions of the Labour Code – specific economic, technological, financial, market and other objective reasons of such a nature that must exist at the time of conclusion of the employment contract, are specified therein, and justify the conclusion of a fixed-term contract. In such cases, the fixed-term employment contract with the same worker for the same type of work can only be extended once for a period of at least one year. Any fixed-term employment contract concluded in violation of the said requirements shall be treated as a contract of indefinite duration. According to the Supreme Court of Cassation, the necessity for a greater number of workers for specific activities for a certain period of time is an objective reason to conclude a fixed-term employment contract, as is the necessity to increase production rapidly within a favourable economic structure.

In every labour dispute, the Court may interpret and implement all relevant provisions of national legislation and to declare the correspondent provision of the contract null and void. Proclaiming an employment contract or some of its provisions null and void can be announced in a separate case, as well as in an open lawsuit.

#### **4 Other relevant information**

Nothing to report.

# Croatia

## Summary

(I) Most lockdown measures have been extended until mid-March.

(II) The Plan for Approximation of Croatian legislation with the *acquis communautaire* for 2021 has been issued.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Lockdown measures

Most measures have been extended until mid-March.

See here for the decisions:

- On the temporary prohibition and restriction of the crossing of the border of the Republic of Croatia;
- On the organisation of public passenger transport to prevent the spread of the COVID-19 disease;
- On the establishment of a special work organisation for the activities of traders in shops and shopping centres;
- On necessary epidemiological measures to restrict gatherings and introduce other necessary epidemiological measures and recommendations to prevent transmission of COVID-19 disease through gatherings.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

### 2.1 Right to remuneration

*Constitutional Court, U-III-3526/2019, 15 December 2020*

In the present case, a physician and a hospital concluded a fixed-term contract of employment during the period of his education (specialisation). Later, they concluded another contract on specialisation with an agreement that the physician would have to work for the hospital for 96 months upon completing the specialisation, and if he did not comply with the agreement, he would be required to pay the costs of his specialisation in the amount of HRK 500 000.00. When he finished his specialisation, passed the exam, and became a gynaecologist, he assumed that his contract was no longer valid and that he would be offered another contract of employment for the post of gynaecologist. He therefore informed the hospital that he considered his initial employment contract had been terminated. The hospital consequently dismissed him and claimed the costs of specialisation in the amount of HRK 798 661.26, i.e. the hospital not only claimed the costs of his specialisation but the salaries and all material rights paid to the physician during his work. The first and second instance courts ruled that the hospital did not have the right to claim back the cost of salaries and other material rights paid to the physician because it represented the monetary equivalent of the work performed by the physician for the hospital. However, the Supreme Court of

the Republic of Croatia upheld the following legal opinion established in the session of its Civil Department:

*"... a specialist doctor who terminates the employment contract before the expiration of the specialisation contract is obligated to pay back the gross salaries paid to him (as part of the costs of specialisation) to the health institution with which he concluded the contract for specialisation and when this is included in the agreed contract for specialisation ...".*

Consequently, the Supreme Court ruled that the physician had to pay back all salaries paid to him during the period of specialisation.

However, according to the Constitutional Court of the Republic Croatia, the Supreme Court failed to consider all the factual and legal elements objectively relevant to the decision, i.e. that the contested decision did not cover all important aspects of the case under consideration that could have influenced its final decision. Therefore, it repealed the judgment of the Supreme Court and returned the case to the Supreme Court for retrial.

The Constitutional Court found that the impugned judgment of the Supreme Court violated the applicant's right to remuneration as guaranteed by Article 55(1) in conjunction with Article 3 of the Constitution.

### 3 Implications of CJEU Rulings

#### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

The Act on Public Servants and Employees in Local and Regional Self-Government (Official Gazette Nos. 86/2008, 61/2011, 4/2018, 96/2018, 112/2019) is relevant in Croatia in the context of regulations on fixed-term contracts of employees in municipalities. This Act stipulates that the fixed-term service of public servants and employees in local and regional self-government units cannot be converted into contracts of indefinite duration, except for apprentices who have passed the state exam when vacant posts are available, and they meet the requirements for such posts (Article 28(6) read together with Articles 91 and 116(1)). However, according to Article 28(2), the fixed-term service for temporary work or work whose scope has been temporarily increased may last for a maximum of six months and may be extended for another six months. Therefore, the long duration of successive fixed-term contracts as described in the case *M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*, would not arise in Croatia. Since, there must be an objective reason for concluding a fixed-term contract with an employee in a municipality (Article 28(1) read together with Article 116(1) of the Act on Public Servants and Employees in Local and Regional Self-Government) and there can only be two successive fixed-term contracts and their duration is limited (six months, plus an additional six months), the provisions of this Act are in line with Clauses 1 and 5(2) of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP. One can conclude that the ruling of the CJEU in this case has no implications for Croatian law.



## 4 Other relevant information

### 4.1 Seafarers work

National Collective Agreement on Seafarers for Third-Country Nationals on Croatian Boats in International Navigation has been concluded for a period until the end of 2022 (Official Gazette No. 16/2021). However, the contracting parties have agreed that if after the expiration of the period for which the collective agreement has been concluded, neither contracting party terminates the collective agreement, its validity extends until the termination or conclusion of a new collective agreement.

### 4.2 Approximation of the legislation with the *acquis communautaire*

The Croatian Parliament has issued the [Plan for Approximation of the legislation of the Republic of Croatia with the \*acquis communautaire\* for 2021](#) (Official Gazette No. 20/2021). Among others, the Croatian Parliament is planning to adopt the Amendment to the Act on working time, mandatory rest periods and recording devices in road transport.

### 4.3 National Programme for Suppression of Undeclared Work

The Government of the Republic of Croatia has adopted the [National Programme for Suppression of Undeclared Work in the Republic of Croatia 2021-2024](#) and the Action Plan for implementation of the National Programme. They have been published on the official website of the Ministry of Labour, Pension System, Family and Social Policy.

### 4.4 Average gross and net salary

The Croatian Bureau of Statistics has published the [data on average gross and net salary in 2020](#). The average gross salary amounted to HRK 9 216.00, and the average net salary amounted to HRK 6 763.00.



# Cyprus

## Summary

The lockdown measures to contain the COVID-19 virus are gradually being eased. International travel restrictions remain in effect.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Lockdown measures

In February, the lockdown restrictions, which have affected labour relationships following the outbreak of the coronavirus pandemic, have gradually been eased. Most malls and many shops have reopened.

Cyprus has established a system of extensive mandatory rapid testing sites for those who work, whilst the vaccination campaign is slowly ramping up. From 01 February 2021, Cyprus entered a first phase of an easing of restrictions and from 08 February, a second phase followed. Some coronavirus measures in sports and culture (theatres and cinemas) have been eased. However, restrictions on gatherings and curfews continued to apply throughout the month. Primary schools were opened but the opening of secondary schools was postponed until mid-March, in the anticipation that the epidemiological situation will improve. The situation seems to have been improving, with the government claiming that its programme 'with the triptych test-surveillance-vaccinations' was effective, making it possible for the country to 'enter the new phase of strategic lifting of measures' (see [here](#) for the press release of 01 March 2021):

- 229 743 rapid tests in the week 22–28 February;
- 1 160 businesses and 4 531 employees were tested in the week of 22–28 February. No fines were issued;
- 78 642 vaccinations have been administered so far, out of which 20 152 were administered in the period 22–28 February.

However, the end of February saw another spike in positive COVID-19 cases. On 28 February, there were 302 new cases (38 001 tests), a 0.79 per cent positivity rate; only one day earlier, on 27 February, there were 283 new cases based on 45 231 tests at a 0.63 per cent positivity rate.

The COVID-19 restrictions have been eased. Should the epidemiological situation improve, the government plans to reopen all schools in March. Indoor sport facilities, including gyms and swimming pools, will also be allowed to reopen in that case. In addition, authorities will open access to nature trails.

The following existing measures will remain in place until at least 16 March 2021:

- Many retail stores and shopping malls will remain closed;
- A curfew from 2100 – 0500 will remain in place nationwide; essential workers and residents seeking emergency medical attention are exempt. Residents are only permitted to leave their homes twice per day after informing the health authorities via text message;
- Household gatherings continue to be limited to a maximum of 10 people;
- Weddings, baptisms and funerals may take place in places of worship, but may only include a maximum of 10 attendees;



- Restaurants, cafes, and bars can offer carryout services only;
- Public gatherings are restricted to no more than two persons, excluding children;
- Facemasks are mandatory on public transport and in all outdoor public spaces, except while exercising, and in all indoor public spaces.

### 1.1.2 Travel restrictions

International entry restrictions continue to apply. A number of international travel restrictions remain in effect as of 25 February. Authorities have classified each foreign country into one of three categories—A, B, and C—based on COVID-19 transmission risk. Travelers from countries in Category A must self-isolate for 72 hours upon arrival and take a polymerase chain reaction (PCR) test within 72 hours after completing the quarantine period. Travelers who have visited a Category B country in the previous 14 days must produce a negative result from a COVID-19 test taken no more than 72 hours prior to their departure for Cyprus, in addition to meeting the requirements for Category A travellers. Direct travel from Category C countries is permitted for Cypriot nationals only, with few exceptions. Travellers who have visited a Category C country in the previous 14 days must comply with the same testing requirements as those arriving from Category B countries, but must also quarantine for 14 days in government-assigned accommodation; individuals may be released from quarantine after 10 days if they present a negative result in a second PCR test. According to the most recent review on 17 February 2021, the countries in the three categories are as follows:

- Category A: Australia, New Zealand, and Singapore;
- Category B: China (including Hong Kong, and Macau), Finland, Germany, Greece, Iceland, Norway, South Korea and Thailand;
- Category C: All other countries.

All international arrivals must register online through the official Cyprus Flight Pass website within 24 hours of departure from their point of origin.

Authorities can reimpose, extend, further ease, or otherwise amend the restrictions with little-to-no notice, depending on the developments in the coming weeks.

## 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implication of CJEU Rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

This case may have some implications for the Republic of Cyprus and how it deals with public sector workers on fixed-term contracts. The present case examined the meaning of the expression 'successive fixed-term employment contracts', which also covers the automatic extension of fixed-term employment contracts of workers in the cleaning sector of local and regional authorities, which took place in accordance with express

provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing was disregarded. Also, the CJEU concluded that Clause 5(1) of the Framework Agreement on Fixed-term Work must be interpreted as meaning that, where an abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court is to undertake, to the fullest extent possible, an interpretation and application of all relevant provisions of domestic law to duly penalise that abuse and nullify the consequences of the breach of EU law, which extends to an assessment of whether the provisions of earlier national legislation, which remain in force and which permit the conversion of a succession of fixed-term contracts to one employment contract of indefinite duration, may, where appropriate, be applied for the purposes of that interpretation in conformity with EU law, even though national constitutional provisions impose an absolute prohibition in the public sector of such a conversion.

Similar to the Greek situation, the Constitution of the Republic of Cyprus also prohibits granting the same civil servant or public sector employee status to those employed under a temporary fixed-term contract. In Cyprus, the employment of workers under fixed-term contracts is regulated by the law (FT Law) (Law 98(I)2003, 25 July 2003, *Ο Περί Εργοδοτούμενων με Εργασία Ορισμένου Χρόνου (Απαγόρευση Δυσμενούς Μεταχείρισης*, Νόμος του 2003) purporting to transpose Directive 1999/70/EC on Fixed-term Employees (Prohibition of Less Favourable Treatment) of 2003, herein referred to as the 'Framework Agreement'. The law entered into force a year prior to EU accession, explicitly stipulating its purpose to harmonise Cypriot law (Law 70(I)2002 (07 June 2002), amending the Law on Termination of Employment, published in Cyprus Official Gazette 3610 on 07 June 2002, effective 01 January 2003) with the Directive.

Numerous transposition issues and implementation of FT Law have been raised (see N. Trimikliniotis and C. Demetriou, National Expert Report on Directive 1999/70/EC concerning the Framework Agreement on Fixed-term Work concluded by UNICE, CEEP and ETUC, Studies on the implementation of Labour Law Directives in the enlarged European Union, 2006, on behalf of human European consultancy, Hooghiemstraplein 155, 3514 AZ Utrecht, the Netherlands, funded by the EU Commission; P. Polyviou, Η Σύμβαση Εργασίας (Chysafinis & Polyviou 2016, Nicosia), pp. 509-521; A. Emilianides and C. Ioannou, Labour Law in Cyprus (Wolters Kluwer International publications, 2016), pp. 59-64; S. Yiannakourou, Κυπριακό Εργατικό Δίκαιο, (Nomiki Bibliothiki, 2016), pp. 144-153).

Fixed-term workers who work in the public sector do not enjoy the same rights as civil servants or employees covered by public law; instead, their rights are regulated by private law. One such worker claimed that she should be entitled to the same rights as public sector employees to preclude the possibility of discrimination. However, the Supreme Court rejected an appeal against the first instance decision of the Labour Disputes Court regarding the termination of her employment relationship (see [here](#) for Supreme Court of Cyprus, Appeal jurisdiction, Civil appeal No 60/2010, 14 October 2014, *Christina Laouta v The Republic of Cyprus through the Attorney General*). The appellant was initially hired by the government as a legal officer in May 2004, on the basis of a contract which ended in December 2004. Thereafter, successive contracts of 15-day durations were signed, lasting until 23 April 2005, upon which a new contract was signed lasting until 31 December 2006. On 04 December 2006, the government informed the appellant that her employment contract would be converted into one of indefinite duration as of 01 December 2006, because she had completed 30 months of employment as foreseen under the FT Law. In May 2007, the government informed the appellant that her services were being terminated because the Public Service Commission had appointed another person in the permanent post of legal officer, a position the appellant had unsuccessfully applied for. The appellant rejected the amount offered to her as compensation for the termination of her contract and applied to the

Labour Disputes Tribunal, claiming both higher compensation and reinstatement in her position.

The Labour Disputes Court decided that the termination of the appellant's services was unlawful under the Law on Termination of Employment (Law 24/1967) and ruled in her favour for compensation in the amount of EUR 3 610. Through this appeal, the appellant sought to challenge the decision of the Labour Disputes Court for having established her dismissal as unlawful without accepting that there was bad faith on the part of the employer, as she had been dismissed whilst pregnant. At the same time, she appealed against the Labour Disputes Court's failure to consider her a government employee, arguing that the FT law required a restrictive interpretation of the terms 'indefinite duration' and 'permanent' so as to safeguard equal treatment between employees of indefinite duration and permanent employees. The Appeal Court rejected this argument, stating that the differentiation between a permanent public employee and a temporary employee with a fixed-term contract or a contract of indefinite duration cannot be abolished, since the employment of the latter is not based on the Constitution or on the Public Service Law of 1/90. The Supreme Court rejected the allegation of bad faith on the part of the employer, which could have justified the reinstatement of the appellant to her prior position on the ground that the employment contract repeatedly signed between the parties explicitly provided that the appellant's employment would continue until her permanent appointment in the specific position, and that the appellant herself had recognised the legitimacy of this procedure by filing an application for the permanent position of her post. The appellant's argument that the compensation awarded to her by the Labour Disputes Court was too low was also rejected by the Supreme Court, which found the compensation to be adequate, given that the aggravating circumstances invoked by the appellant had not been proven.

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

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

With regard to fixed-term workers or workers with a successive series of fixed-term contracts, any period of employment prior to the enactment of the Cypriot law shall not be taken into account for the purposes of calculating the 30-month period referred to above (Art. 7(3) of the Cypriot Law.). Only objective reasons justify renewals of fixed-term employment contracts or relationships. The maximum total duration of successive fixed-term employment contracts or relationships is 30 months, irrespective of how many successive terms this is divided into. As stated above, any period worked prior to the enactment of the Cypriot law is not to be taken into account when calculating the

aforementioned 30 months. The Law on Termination of Employment gives the court discretion to decide based on the facts of the case, which constitutes the maximum permitted period between contracts to ensure continuity. The Supreme Court has ruled that in case of an employee who claims rights derived from the fixed-term law, which are in fact private law rights, the employee will be required to claim such rights under the IDC, even if the claim is against a body operating under public law (3 CLR 49, *Avraam v Republic* 2008; case 847/2012, 04 June 2015, *Burston v University of Cyprus*; administrative appeal 67/100, 21 May 2015, *Venizelou v Republic of Cyprus*).

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

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

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

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

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

The dispute over the rights of 'temporary employees of indefinite duration' has been a major issue in the public sector: the dismissal of temporary public employees, some of whom are temporary employees with a contract of indefinite duration, is a common labour dispute. At the same time, temporary public employees with fixed-term contracts work in the public sector based on Law 108(I)/1995 (Law on the Procedure of Hiring Temporary Employees in the Public and in the Educational Sector (*Ο περί Διαδικασίας Πρόσληψης Έκτακτων Υπαλλήλων στη Δημόσια και την Εκπαιδευτική Υπηρεσία Νόμος*)),



which regulates the procedure for hiring public employees and setting the maximum duration of employment of temporary staff in the public sector at two years. There is a long dispute over the rights of temporary public employees. However, this issue became even more controversial in September 2006, when the President of the Republic of Cyprus, acting on the advice of the Attorney General, decided to exercise his right to refer a law back to the House of Representatives under Article 48 of the Constitution on the grounds that the law was unconstitutional. The President argued that the law that would equalise the rights of temporary employees with a contract of indefinite duration in terms of pension rights and retirement age and secure permanent employment (a) violates the principle of separation of powers and the laws that leave issues related to the appointment of public employees to the executive, and (b) involves an increase in budgetary expenditure (Art. 80.2 of the Cypriot Constitution. See E. Soumeli 'Temporary public employees threaten strike action', EurWork, European Observatory of Working Life).

#### **4 Other relevant information**

Nothing to report.

# Czech Republic

## Summary

The state of emergency has been re-declared; the Pandemic Act has been adopted and entered into effect. Several restrictive measures have been re-adopted and amended. Mandatory employee testing for COVID-19 is being considered.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 State of emergency

Government Resolution No. 196 of 26 February 2021 has been adopted and published as Resolution No. 96/2021 Coll. and entered into effect on 27 February 2021.

The text of the resolution is available [here](#).

With effect from 27 February 2021, the government re-declared the state of emergency in connection with the COVID-19 crisis. The state of emergency will last for 30 days, i.e. until 28 March 2021. Under the state of emergency, the government is authorised to issue extraordinary measures (see some of these measures described below).

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

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, as well as on the adoption of the Pandemic Act (see below).

The state of emergency has been in force without interruption since autumn (see previous Flash Reports). It might have not always been (re)declared in accordance with the applicable rules, with some experts having commented that the state of emergency has been re-declared unconstitutionally.

#### 1.1.2 Pandemic Act

Act No. 94/2021 Coll., on extraordinary measures during the COVID-19 pandemic and on the amendment of certain related acts (the 'Pandemic Act') was adopted and entered into effect on 26 February 2021.

The text of the resolution is available [here](#).

The Act introduces a 'state of pandemic emergency'. During the state of pandemic emergency, the Ministry of Health and the regional hygiene authorities will be authorised to introduce extraordinary measures to fight the COVID-19 epidemic or to eliminate the threat of its recurrence. These measures may either impose obligations to perform certain activities for a specified purpose or prohibit or restrict certain activities or services. Such measures include restricting public transportation, business restrictions, bans on certain public or private events, an order to use protection, hygiene, disinfectant or other products, or other anti-epidemic measures.

These measures may only be issued for the necessary period and to the necessary extent only (if reasons for issuing a given measure ceases to exist, the measure must be cancelled – a review should be carried out at least every 2 weeks). An assessment containing an up-to-date analysis of the epidemiologic situation, a particular level of risk of the given activity/service/etc. and of the proportionality of the restriction must be



added to each measure. With the end of the state of emergency, the measures will end as well.

The Ministry of Health may only introduce extraordinary measures with prior approval of the government (exceptionally, subsequent approval within 48 hours is sufficient).

The state of emergency will be automatically declared when the Act enters into effect. Subsequently, the state of emergency may be ended or re-declared by resolution of the Chamber of Deputies of the Parliament of the Czech Republic adopted based on the proposal submitted by the government or if proposed by at least 1/5 of the Chamber of Deputies.

Notably, the Act explicitly introduces the obligation of the State to compensate the affected (both natural and juridical) persons who have suffered (actual) damage due to the extraordinary measures adopted during the state of emergency.

As the state of emergency, which gives significant powers to the government, cannot be (politically) maintained (in particular as the Chamber of Deputies no longer supports the state of emergency), a need has arisen for different but efficient arrangements to fight the COVID-19 pandemic. The Pandemic Act is the result of a political compromise. It allows for extraordinary measures to be introduced by the executive, but within limits and under the conditions set forth in the Pandemic Act.

### 1.1.3 Travel ban

The government has retained and amended the travel ban. The protective measure of the Ministry of Health No. MZDR 20599/2020-60/MIN/KAN of 26 February 2021 has been adopted with effect from 01 March 2021.

The text of the extraordinary measure is available [here](#). The list of low-risk countries is available [here](#). With effect from 01 March 2021, the restrictions on the entry of persons into the territory of the Czech Republic have been re-adopted – with certain amendments.

The government has also adopted an additional travel ban in connection with the spread of the new variants of COVID-19: the protective measure of the Ministry of Health No. MZDR 7790/2021-1/MIN/KAN of 25 February 2021 has been adopted with effect from 26 February 2021.

The text of the extraordinary measure is available [here](#).

With effect from 26 February 2021, Czech citizens as well as foreign nationals with a residence in the territory of the Czech Republic may not travel to specific countries, namely: Botswana, Brazil, Eswatini, South Africa, Kenya, Lesotho, Malawi, Mozambique, Tanzania, Zambia, and Zimbabwe due to the increased COVID-19 risk in these countries.

### 1.1.4 Restrictions on freedom of movement

The restrictions on the freedom of movement have been re-adopted and amended.

Government Resolution No. 216 of 26 February 2021 has been adopted and published as Resolution No. 104/2021 Coll. and entered into effect on 01 March 2021.

The text of the resolution is available [here](#).

With effect from 01 March 2021 (00:00h) until 21 March 2021 (23:59), the restrictions on free movement of persons in the territory of the Czech Republic are re-adopted.

The freedom of movement is now restricted between all districts within the Czech Republic (with certain exceptions, such as Prague). All persons must remain within the

district they reside in. Persons may only travel between districts for purposes exhaustively stated in the resolution, i.e.:

- travel for work, business or other similar activities;
- necessary travels to take care of relatives, close persons and other persons, as well as to take care of children, animals, or to dispose of waste;
- necessary travels to medical and social facilities, including accompanying relatives and close persons; visits to veterinarians;
- travels to deal with urgent official matters;
- performance of certain special professions (ensuring security, protection of health and public order, certain religious services, public transportation, veterinary services, etc.)
- funeral attendance;
- education purposes;
- visiting of certain significant events;
- election and meetings of bodies of juridical persons (corporations) under certain conditions;
- traveling back to one's place of residence;
- to leave the Czech Republic.

There are certain other exceptions as well, such as transportation workers.

Persons traveling between districts (aged 15 and above) must prove that they fall under one of the permissible exceptions – depending on the exception, either by an employment contract or similar document, written confirmation (e.g. of an employer), by written affidavit, etc.

Travel within districts is restricted as well – with exceptions. Restrictions are stricter between 21:00h and 04:59h.

The right of assembly has likewise been restricted.

It is recommended that persons remain in their place of residence, exclusively with the members of their own household.

Movement in public places with more than one other person is prohibited – again with certain restrictions (household members, employees of the same employer).

### **1.1.5 Mandatory respiratory protective equipment**

The obligation to wear respiratory protective equipment has been reintroduced and amended.

The protective measure of the Ministry of Health No. MZDR 15757/2020-45/MIN/KAN of 26 February 2021 has been adopted with effect from 01 March 2021.

The text of the extraordinary measure is available [here](#).

With effect from 01 March 2021 (00:00h) until further notice, all persons must wear specified respiratory protective equipment (respirators, medical facemasks or similar equipment adhering to referenced technical norms) in the following places:

- all building interiors (with the exception of the place of residence or accommodation);
- all publicly accessible places in the built-up area of the municipality;



- all other publicly accessible places outside the built-up area of the municipality, where at least 2 persons within a distance of less than 2 metres are present at the same place and at the same time, unless they are exclusively household members.

Further, with effect from 01 March 2021 (00:00h) until further notice, all persons must wear specified respiratory protective equipment (respirators or similar equipment adhering to referenced technical norms – stricter than the above, medical facemasks and similar are not sufficient) in the following places:

- all building interiors that serve as shops, medical facilities, etc.;
- in public transportation;
- near public transportation stops;
- inside personal motor vehicles when driving with other persons, unless these are exclusively household members.

There are, of course, exceptions from the above.

### 1.1.6 Quarantine measures

Certain rules on isolation and other quarantine measures have been adopted.

The protective measure of the Ministry of Health No. MZDR 40555/2020-3/MIN/KAN of 26 February 2021 has been adopted with effect from 01 March 2021.

The text of the extraordinary measure is available [here](#).

With effect from 01 March 2021 (00:00h) until further notice, the measure states that mandatory isolation of at least 14 days is to be ordered to persons who test positive for COVID-19 based on the RT-PCR method or who test positive based on the antigen method and exhibit symptoms of COVID-19.

Further, with effect from 01 March 2021 (00:00h) until further notice, the measure states that mandatory quarantine measures of at least 14 days are to be ordered for all persons who have had a close contact with a person who tested positive for COVID-19.

Isolation or other quarantine measures may be terminated sooner (or later) than the 14-day period stated above, depending on the circumstances (i.e. exceptions listed in the measure).

Persons who have had COVID-19 in the past or have already been vaccinated will have an advantage – some of the rules will not apply to them

There are, of course, exceptions from the above.

### 1.1.7 Restrictions on the operation of businesses and other establishments

The government has reintroduced and amended specific rules for businesses in connection with the COVID-19 crisis.

Government Resolution No. 217 of 26 February 2021 has been adopted and published as Resolution No. 114/2021 Coll.

The text of the resolution is available [here](#).

With effect from 01 March 2021 (00:00h) until 21 March 2021 (23:59h), the operation of businesses as well as other establishments continues to be restricted or banned. The restrictions will be more severe than in the past month. Some of the businesses that are allowed to operate will need to adhere to certain requirements.

### 1.1.8 Occupational medical services

Government Resolution No. 206 of 26 February 2021 has been adopted and published as Resolution No. 106/2021 Coll. and entered into effect on 27 February 2021.

The text of the resolution is available [here](#).

The measure (setting certain exceptions from the provision of occupational medical service) reported in the October 2020 and January 2021 Flash Reports has been re-adopted.

Certain aspects of the provision of occupational medical services have been modified in response to the epidemiological developments in the Czech Republic. The measure is essentially identical to the measure reported in the October 2020 and January 2021 Flash Reports.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

As regards fixed-term employment, Section 39 of the Labour Code states that fixed-term employment relationships between the same contracting parties may not exceed 3 years from the day of commencement of employment, and may not be repeated more than twice (unless a special regulation states otherwise). If it is justified by serious operational reasons or reasons consisting in the specific nature of the work being performed due to which it is not possible to justly require the employer to conclude an employment of indefinite duration with the employee, the previously stated rules do not apply (if certain formal procedures are followed). If the employer concludes a fixed-term employment contract with an employee contrary to the rules set forth in Section 39 of the Labour Code, and if the employee informs the employer that he/she wishes to extend the employment relationship prior to the expiration of the agreed fixed-term period, the (illegally agreed) fixed-term employment transforms into an employment relationship of indefinite duration (automatically, by operation of the law). Exceptions apply with regard to temporary agency work. The conclusion of fixed-term employment contracts in breach of the law may also be sanctioned by the authorities. Automatic (or retrospective) extensions of fixed-term employment contracts do not occur in Czech labour law.

As regards the obligation to interpret and apply all the relevant provisions of domestic law capable of duly penalising the abuse of successive fixed-term employment contracts and nullifying the consequences of the breach of EU law (including the assessment of whether the provisions of earlier national legislation, which remain in force and which permit the conversion of a succession of fixed-term contracts to one employment contract of indefinite duration, may, where appropriate, be applied for the purposes of



that interpretation in conformity with EU law, even though national constitutional provisions impose an absolute prohibition in the public sector, on such conversion), there have not been cases where this obligation would have to be applied.

The present CJEU judgement has no major implications in the context of national labour law.

## 4 Other relevant information

### 4.1 Employee testing

Based on the information communicated by the Prime Minister, the government should approve mandatory employee testing as of Friday, 05 March 2021 – it should apply with respect to employers with more than 250 employees.

A contribution to purchase up to 4 tests per month in the amount of CZK 240 (i.e. approx. EUR 9.2), i.e. CZK 60 per test (i.e. approx. EUR 2.3), should be covered by insurance.

The government has issued a list of admissible (self-administered) tests [here](#).

# Denmark

## Summary

(I) A lockdown and restrictions are currently in force until 28 February 2021. Additional testing and self-isolation requirements have been imposed for mobile workers. The Danish Parliament has also adopted new legislation to prevent the spread of infection in employee accommodations.

(II) In a Supreme Court ruling on occupational injuries, the Supreme Court found that the definition of working time in the Working Time Directive was not relevant for interpreting the Occupational Injuries Act.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Lockdown measures

During December 2020, there was an increase in the COVID-19 infection rate in Denmark, which led to a new partial shutdown of society. Due to concerns about the highly contagious British COVID-19 mutation, the partial lockdown of society has currently been extended until at least 28 February 2021.

The restrictions include the closure of all regular shops, hairdressers, shopping malls, restaurants, cafes, cinemas, cultural and athletic activities. Supermarkets, bakeries and pharmacies remain open. Day care facilities for small children (0-6 years) remain open. Physical attendance in schools is possible for younger children (6-10 years). For older children in public schools, high schools, universities, etc. teaching has been moved online. All private employers are encouraged to allow employees to work from home. All public employees, who do not perform critical functions, shall work from home.

Maximum five people may gather in a group, and people are required to wear a face mask when entering shops, supermarkets, buildings with public access, etc. These restrictions have been extended until at least 28 February 2021.

Since January 2021, travellers are required to present a negative COVID-19 test upon arrival in Denmark, which is no older than 24 hours. Employers must now be able to demonstrate that mobile workers have been tested (again) for COVID-19 shortly after their entry into the country.

#### 1.1.2 Test requirements for mobile workers

Since the beginning of February 2021, mobile workers traveling to Denmark are required to take two COVID-19 tests after entering Denmark. The workers must self-isolate for ten days, but may interrupt this period of self-isolation to perform their work duties.

The first COVID-19 test must be performed no later than 24 hours upon arrival. The second test (PCR test) must be taken no earlier than 48 hours and no later than 96 hours after the COVID-19 test for entry into Denmark was taken.

The employer must ensure that the employees are tested in accordance with the new rules and must prepare a written plan for the workers' third COVID-19 test. The Danish Working Environment Authority carries out inspections to ensure that employers are complying with the rules.

[See here](#) for the Ministry's press release.

[See here](#) for further information on the testing plan and PCR test requirements.

The enforced testing requirement is yet another step towards containing the spread of COVID-19. Especially as new mutations of COVID-19 have appeared in Denmark due to incoming travellers, the government has adopted a travel ban and has now enforced new testing requirements for workers.

### 1.1.3 Employee accommodation

In Denmark, there has been a number of examples of outbreaks of infections among workers at, e.g. slaughterhouses and construction sites, where foreign workers often live in shared accommodation provided by their employers. Against that background, and to minimise the risk of outbreaks of COVID-19, Parliament has adopted a new statutory act on the prevention of infection in employee accommodations ([Act L 159](#) of 02 February 2021).

The new rules establish stricter minimum requirements for employee accommodations provided by the employer. The employer is required to 'draft a plan for preventing COVID-19 infections among the residents'. The plan must include information on accommodation size, the number of residents, as well as instructions on disinfection. Section 2 of the Act presents a list of specific requirements that must be met. The Danish Working Environment Authority inspects the employer's accommodation plan as part of its ordinary workplace inspections. If an employer has not drafted a plan, or if the plan is inadequate, the Danish Working Environment Authority may order the employer to draft a plan immediately, and may alert the local municipality, which can then carry out inspections of the actual accommodations. If necessary, the local municipality may order the employer to improve the standard of accommodation, to ensure it corresponds to the requirements in the Act. And, as a last resort, the local municipality may order the employees to be temporarily relocated to another suitable accommodation at the employer's cost ( sections 9 and 10).

Employers have 14 days to adapt to the new requirements. Failure to comply may result in fines, cf. section 12.

The Act is a temporary measure that will remain in force until 30 June 2021.

[See here](#) for the Ministry's press release.

[See here](#) for further information on the requirements for the plan on residential conditions.

## 1.2. Other legislative developments

Nothing to report.

## 2 Court Rulings

### 2.1 Occupational injury and working time

*Supreme Court, No. 50886/2019, 10 February 2021*

The case concerned a temporary agency worker, who in 2009 was involved in a car accident when she was on her way to work at a hospital. She drove to work in her own car. The question was whether the injuries she sustained could be considered an occupational injury according to the Occupational Injury Act.

In essence, [the Supreme Court found](#) that the travel time was covered by the existing rules, which govern occupational injury during travel to/from work. The employee had not been called to come to work by the employer on that day, and the employee could have chosen any means of transport to work that day. The fact that owning a car was

a general requirement was not in itself sufficient to establish that the employer's interest had had an impact on the employee's mode of transport on that particular day.

The employee argued that she was performing work during her travel time to work with reference to [CJEU ruling in C-266-14](#), 10 September 2015, *Tyco*. The Supreme Court found that the Working Time Directive does not regulate issues related to occupational injury insurance. There were no indications in the [Occupational Injuries Act](#), preparatory works or the Ministerial Order that the right to compensation for occupational injury, if it occurred under the circumstances that, according to the Working Time Directive, could be defined as working time, is of relevance. The CJEU ruling could thus not lead to another interpretation of the rules on occupational injury.

The employee argued, with reference to CJEU jurisprudence under the Working Time Directive, for a more precise definition of the scope of application of the Danish Occupational Injury Act. However, as there were no indications in the preparatory comments by the legislators that the Act on Occupational Injuries should be interpreted in light of the definition of working time applied in the Working Time Directive, the Supreme Court rejected this argument.

The Supreme Court was under no obligation to interpret the scope of application of the Occupational Injuries Act in accordance with CJEU case law on the Working Time Directive. Also, the legislator had made no indications that EU conform interpretation with another EU directive was intended for the Occupational Injury Act.

### 3 Implications of CJEU Rulings

#### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

The ruling does not have any implications for Danish law. In essence, the same situation would not arise in a Danish context due to different legislative and administrative practices.

First, the potential use of successive fixed-term employment contracts in the public sector in Denmark would always be the result of an individual decision of the relevant public authority acting as the employer of the individual employee. The public employer's decision to (again) employ the fixed-term worker falls within the definition of an administrative decision in the Public Administration Act and must correspond to general administrative law requirements, including the duty to choose the most suitable applicant, and the right of an individual to an individual assessment (a duty to not subject the individual assessment to general rules: *skøn under regel*).

Legislative measures are not used for the employment or potential extension of employment contracts in Danish law – neither in the public nor in the private sector.

It should be added that public employers, as a general rule, are also required to publicly advertise all available positions. Exceptions are made for positions connected to holiday replacements, and temporary or short-term positions expected to be unfilled for less than one year. The rules on public advertisement follow from [Ministerial Circular of 26 June 2013](#).

Furthermore, an employer would be required to state any essential changes to the employment contract in writing within four weeks after a change is introduced, cf. the [Employment Certificate Act](#), Art. 4.

Finally, under Danish law, there is no prohibition to convert a fixed-term employment contract into one of indefinite duration, neither in private nor in public employment law. On the contrary, it follows from the Danish [Act on Fixed-term Work](#) that a fixed-term



worker must be informed of any permanent positions available at the workplace to promote permanent employment opportunities, cf. Act on Fixed-term Work, Art. 6(1). This obligation applies similarly to private and public employers.

#### **4 Other relevant information**

Nothing to report.



# Estonia

## Summary

The Estonian government has introduced specific relief measures for employers in certain regions of Estonia that have been hit particularly hard by COVID-19.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Relief measures for employers

In January in two regions of Estonia (northern and eastern Estonia), more restrictive measures were introduced. To help employers in those regions, a salary allowance has been introduced

The Unemployment Insurance Fund reimbursed labour costs to those employers in the Harju County and Ida-Viru county whose activities were significantly disrupted in the period from 28 December 2020 to 31 January 2021 due to extraordinary circumstances.

The salary allowance was paid to companies, branches of a foreign company, non-profit associations, foundations or self-employed persons:

- who are registered in Estonia, in the commercial register or in the non-profit associations and foundations register;
- whose activities were significantly disrupted in the period from 28 December 2020 to 31 January 2021 due to the restrictions imposed to contain the spread of the COVID-19 virus;
- who are active in areas affected by restrictions, such as accommodation and catering establishments, sport facilities, recreational activities, training and culture;
- whose employees are employed in Harju county or Ida-Viru county according to the employment register from 22 December 2020;
- who do not have a state tax debt as of 01 August 2020, or have paid or deferred the state tax debt as of 22 December 2020.

A self-employed person could apply for the salary allowance for both his or her employees and for him- or herself. When applying for the salary allowance for oneself, the self-employed person must have been registered in Harju county or Ida-Viru county as of 22 December 2020. As of 22 December 2020, the activities of a self-employed person may not be suspended and seasonal activities may not have ended. As of 22 December 2020, the business income tax returns for the year 2019 must have been submitted.

The salary allowance is paid to the undertaking 1.5 times the amount of the November 2020 wage costs for employees in the Harju and Ida-Viru counties, but no more than EUR 180 000 per undertaking. The amount of the salary allowance is calculated on the basis of data submitted to the Tax and Customs Board.

The amount of the salary allowance for a self-employed persons is EUR 876, which is 1.5 times the amount of the minimum wage established for 2020 on the basis of subsection 29 (5) of the Employment Contracts Act.



Multiple subsidies cannot be made use of for the same period. The salary allowance is not paid to an undertaking that has received other state support due as a result of the restrictions in force in the period 28 December 2020 to 31 January 2021.

The salary allowance is transferred to the employer's bank account.

[See here](#) for further information.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

The case concerned legal issues related to fixed-term employment contracts. Two main issues were raised: the possibility to conclude consecutive fixed-term employment contracts; and what sanctions apply to prevent abuse of fixed-term employment contracts?

The case and arguments of the CJEU have implications for Estonian labour law.

In Estonia, there are restrictions in place to prevent abuse of fixed-term employment contracts. The Employment Contracts Act (hereinafter ECA) states the following:

*"§ 9. Conclusion of fixed-term employment contracts*

*(1) It is presumed that an employment contract is entered into for an indefinite term. An employment contract may be entered into for a fixed term of up to five years if it is justified by good reasons arising from the temporary fixed-term characteristics of the work, especially a temporary increase in work volume or for the performance of seasonal work. If duties are performed by way of temporary agency work, an employment contract may be entered into for a fixed term, also if it is justified by the temporary characteristics of the work in a user undertaking.*

*§ 10. Restriction of consecutive fixed-term employment contracts and their extension*

*(1) If an employee and employer have, on the basis of subsection 9(1) of this Act, on more than two consecutive occasions entered into a fixed-term employment contract for the performance of similar work or have extended the fixed-term contract more than once in five years, the employment relationship shall be deemed to have been entered into for a period of indefinite duration from the start. The conclusion of fixed-term employment contracts shall be deemed consecutive if the time between the expiry of one employment contract and the conclusion of a subsequent employment contract does not exceed two months."*



The ECA introduced these measures to avoid misuse of fixed-term employment contracts.

The ECA does not address situations in detail in which the term of the fixed-term employment contract is automatically extended. In this sense, the CJEU case provides the necessary clarification

In Estonian labour legislation, there are no specific sanctions in place to prevent the abuse of fixed-term employment contracts. The only consequence is that when the rules on the conclusion and extension of a fixed-term employment contract are violated, the fixed-term employment contract will be deemed an employment contract of indefinite duration from the first day it was concluded.

#### **4 Other relevant information**

Nothing to report.

# Finland

## Summary

(I) The government has proposed an extension of the right of entrepreneurs and self-employed persons to labour market support until 30 June 2021.

(II) The government has proposed to expand employers' right to check the criminal record of people who will be working with children.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Relief measures for businesses and the self-employed

Entrepreneurs and self-employed persons are entitled to labour market support as a result of the coronavirus pandemic according to a temporary amendment to the Unemployment Security Act in force until the end of March. The government has submitted a proposal to Parliament (Government Proposal 20/2021) to extend the right of entrepreneurs and self-employed persons to labour market support until 30 June 2021. The aim is to ensure the livelihood of entrepreneurs and self-employed persons during the pandemic.

### 1.2 Other legislative developments

#### 1.2.1 Background check of employees who will be working with children

The government has submitted a proposal to Parliament (Government Proposal 4/2021) according to which employers would have the right to conduct criminal record checks on people who will be working with children in short-term positions. Under the Act on checking the criminal background of persons working with children (504/2002), employers are only authorised to investigate the backgrounds of people who work with children for more than three months during a one-year period. The purpose of this Act is to protect the personal integrity of minors and to promote their personal security. The Act contains provisions on the procedure for checking the criminal background of persons appointed to work with minors.

The proposal would improve the protection of minors. According to the Government Proposal, employers would have the right to request an employee to provide an extract of his/her criminal record even for positions with a duration of less than three months. This would not constitute a new obligation. Instead, the request would be based on the employer's own judgment and risk assessment. Thereby, the legislative changes would take the different needs of employers and situations in which the work is carried out into consideration.

The right to conduct criminal record checks for short-term positions would apply to employers but also to authorities required to investigate criminal backgrounds, including the Centre for Non-Military Service, TE offices, licensing and supervisory authorities, municipalities and joint municipal authorities. In addition to employment relationships, people who work with minors as part of their non-military service or work trial would be required to provide an extract of their criminal record before the commencement of work. This requirement would also apply to commission agreements on family care. The legislative amendments would improve not only the protection of minors but also relate to the implementation of Finland's international obligations. Finland has adopted the Council of Europe's Convention to protect children against sexual exploitation and abuse, which includes provisions on the recruitment of persons working with children.

## 2 Court Rulings

### 2.1 Grounds for dismissal

*Supreme Court, 2021:9, 10 February 2021*

An employer had received information on grounds for dismissal related to the person of the employee on 13 May 2015. The employer informed the employee that dismissal was being considered and provided the employee with an opportunity to be heard on 01 June 2015. The employer dismissed the employee on 02 September 2015, after the employee moved the appointment for the hearing twice, and after the employee had informed the employer of not being able to participate in the hearing due to illness. The Supreme Court determined that the employer had terminated the employment contract within a reasonable period after the employee had been informed of the existence of grounds for dismissal related to the person of the employee.

### 2.2 Performance evaluation

*Labour Court, 2021:17, 24 February 2021*

The judgment concerned the personal level of performance of two teachers at a university training school. The case dealt with the question whether the level of performance of two teachers had been evaluated according to the collective agreement and what their actual levels of performance were. The Labour Court held that on the whole, the teachers' performance had fulfilled the requirements set and that their level of performance could be reasonably verified and there was no significant need for further development in terms of their level of performance. The Court stated that had the evaluation been carried out according to the evaluation criteria set out in the collective agreement, the wages they deserve would have been at a higher level. The employer had knowingly breached the provisions of the collective agreement and was fined. The employer organisation was fined for breaching the obligation to supervise.

## 3 Implications of CJEU rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

According to Chapter 1, Section 3.3 of the Finnish Employment Contracts Act (55/2001), an employment contract is valid indefinitely unless it has, for a justified reason, been concluded for a specific fixed term. Contracts concluded for a fixed term at the employer's initiative without a justified reason shall be considered contracts of indefinite duration. According to Chapter 1, Section 3a.1 of the Act, concluding a fixed-term employment contract does not require the justified reason referred to in Section 3, subsection 2 if, on the basis of notification from an Employment and Economic Development Office, the person to be employed has been an unemployed jobseeker during the preceding 12 months without interruption. According to Chapter 1, Section 3.2 of the Act, it is prohibited to use consecutive fixed-term contracts when the amount or total duration of the fixed-term contracts or the totality of such contracts indicates a permanent need for labour. Section 3.2 is based on Supreme Court decision 2010:11, in which the Court held that when the reason for concluding a fixed-term contract was not temporary, such as the non-established nature of the demand for services of the company in question or casual variation, the uncertainty of the continuity of the contractual relationship between the company and the city could not alone be deemed a justified reason for concluding several fixed-term contracts for the same work. On the

whole, the Finnish legislation can thus be considered to be in line with the CJEU judgment.

## 4 Other relevant information

### 4.1 Report on labour disputes

The Ministry of Economic Affairs and Employment has appointed the rapporteurs Minna Etu-Seppälä and Simo Zitting to produce a report on the mechanisms for resolving disputes that concern the determination of applicable collective agreements and on the functioning of the labour dispute mediation system. The purpose, among others, is to take stock of such disputes and their causes. Another goal is to identify ways and mechanisms to facilitate the resolution of disputes. The rapporteurs will also explore ways to prevent disruptions in industrial peace caused by disputes relating to the determination of the applicable collective agreement. Solutions to be proposed by the rapporteurs may concern practices or relate to legislation. The task of the rapporteurs also focuses on the conciliation system, especially in case of disputes concerning the determination of the applicable collective agreement. The rapporteurs are invited to propose measures to improve the existing system. They are also instructed to examine what role the other institutions that support the conciliation system have in the prevention or mediation of labour disputes. The report will be submitted to the Ministry of Economic Affairs and Employment by 31 August 2021.

The Ministry of Economic Affairs and Employment has published the report on the Finnish model for people with partial work capacity written by Hannu Mäkinen. The report, which was published 09 February 2021, includes a proposal to improve the opportunities of people with partial work capacity to find employment. According to the report, the proposed Finnish model would focus on those people with partial work capacity who are in the most difficult positions. The TE offices would select individuals who meet the proposed criteria. The operator would be a state enterprise or a state-owned company. The operations would be divided into services and business activities. A state enterprise would need a subsidiary for the business activities. Persons with partial work capacity would be received by a services unit that would ensure access to public services and supplementary needs. A business would hire a person with partial work capacity from the services unit. The person would either not have an employment relationship with the services unit, or the relationship would be a fixed-term relationship of no longer than one year. When the person with partial work capacity transfers to a business, he or she would conclude a permanent employment contract with a probationary period. Alternatively, if the person has a fixed-term contract with the services unit, this contract would first have to be completed. The business could refrain from concluding a permanent contract.

According to the report, Parliament would set the maximum number of persons joining the services and an annual person-year target for the business activities. The aim would be to promote employment of people with partial work capacity primarily elsewhere. Another aim would be the volume of sales. Performance bonuses would be staggered according to the importance of the aims and the role the person plays in meeting those aims. The appropriateness of pricing would be ensured by an advisory board and by limiting market shares. It would be decided in the budget how to compensate the business for the reduction in productivity caused by the partial work capacity. The maximum amount of compensation would be laid down in the Act similarly to the Swedish model.

# France

## Summary

(I) The state of health emergency has been extended until 01 June 2021.

(II) To prevent the spread of COVID-19, employees may now exceptionally be allowed to eat in the areas assigned for the performance of work.

(III) The Labour Division of the Court of Cassation ruled on the reinstatement of an employee whose dismissal had been declared null as well as on the freedom of movement of employee representatives during a strike. The Court of Appeal of Pau ruled on the whistleblower status of an employee.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 State of emergency

According to Article 2 of [Law No. 2021-160](#) of 15 February 2021, extending the state of health emergency (Official Journal 16 February 2021), which has been in force across the entire national territory since 17 October 2020, has been extended until 01 June 2021.

The state of health emergency authorises the Prime Minister to issue, by decree, general measures aimed, in particular, at restricting or prohibiting the movement of persons and vehicles, prohibiting persons from leaving their homes, authorising self-isolation or quarantine of persons infected or likely to be infected, closing establishments open to the public and meeting places, limiting or prohibiting gatherings, ordering the requisition of any goods or services needed to fight the epidemic, and introducing price controls for certain products (see Article L. 3131-15 et seq. of the Public Health Code).

The legal framework of the state of health emergency has also been extended to 31 December 2021 according to the first article of the Law of 15 February (Articles L. 3131-12 to L. 3131-20 of the Public Health Code governing the declaration and extension of the state of health emergency as well as the exceptional powers granted to the state authorities).

#### 1.1.2 Catering premises

Employers' obligations in terms of catering premises differ according to the size of the company's staff (see Articles R. 4228-22 and R. 4228-23 of the Labour Code). It is in principle prohibited to allow employees to consume their meals in the areas assigned for the performance of work (see Article R. 4228-19 of the Labour Code).

According to [Decree No. 2021-156](#) of 13 February 2021 on the temporary adjustment of the provisions of the Labour Code on catering premises (Official Journal of 14 February 2021), when the configuration of the area normally dedicated for catering does not guarantee respect for the rules on physical distancing defined within the framework of the fight against the COVID-19 epidemic, companies can dedicate one or several other locations for food intake, which do not have to include the equipment usually required. These locations may even, exceptionally, be located in the areas usually reserved for the performance of work.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

### 2.1 Whistleblower status

*Court of Appeal of Pau, No. 19/03322, 28 January 2021*

The Court of Appeal of Pau ruled on the good faith of a whistleblower employee who alerted the company's chairman and members of the board of directors.

In the present case, an employee had been dismissed for real and serious cause due to abusive exercise of her freedom of expression after having alerted the president of the company and the members of the board of directors of several financial and accounting anomalies (advances to an employee and excessive expense notes).

The Employment Tribunal rejected the employee's claims and ruled that her dismissal was indeed based on a real and serious cause. The employee then appealed against this decision.

The Court of Appeal noted that according to Article L. 1132-3-3 of the Labour Code, no person may be dismissed for having raised an alert in compliance with the provisions of Law No. 2016-1691 of 09 December 2016, known as the 'Sapin II' Law. Pursuant to Article L. 1132-4 of the Labour Code, any action taken against an employee in breach of these provisions is null and void.

Article 6 of the 'Sapin II' law sets out the conditions for benefitting from the whistleblower status:

*"A whistle-blower is a natural person who reveals or reports, in an impartial manner and in good faith, a crime or offence, a serious and manifest violation of an international commitment duly ratified or approved by France, a unilateral act of an international organisation taken on the basis of such a commitment, law or regulation, or a serious threat or harm to the general interest, of which he has personal knowledge."*

According to the appeal judges, the employee presented factual elements that allow to presume that she reported an alert in accordance with the provisions of the 'Sapin II' law. The employer then had to prove that his decision to dismiss the employee was justified for objective reasons unrelated to the employee's alert. However, according to the judges, the employee's dismissal was partly based on her criticism of the decisions taken by the company's president and its sports manager. Moreover, the employer did not prove the employee's bad faith in issuing the alert.

Consequently, the Court of Appeal overturned the judgment of the Employment Tribunal and declared the employee's dismissal null and void.

### 2.2 Employee reinstatement

*Labour Division of the Court of Cassation, No. 19-21.200, 27 January 2021*

In this ruling, the Labour Division ruled on the consequences of the recognition of the nullity of a dismissal, and in particular, on the request for reinstatement when the employee also requests the judicial termination of the employment contract.

In the present case, an employee applied to the Employment Tribunal for judicial termination of her employment contract on the grounds of harassment, discrimination and unequal treatment.



A few months later, she was dismissed for real and serious cause. She then contested her dismissal while maintaining her request for judicial termination of the employment contract.

The judges did not fulfil her request for judicial termination of the contract, but declared her dismissal null and void because it was based on accusations of harassment against the employee. They then ordered the employee's reinstatement in the company.

A main appeal was filed by the employee and a cross-appeal was submitted by the employer. The employer criticised the first judges for having reinstated the employee because, according to the employer, both parties had made it clear that they wanted to terminate the employment contract: the employer by dismissing the employee, and the employee by maintaining her request for judicial termination of the contract.

Citing Articles L. 1235-3 of the Labour Code and 1184 of the Civil Code (in the version applicable to the case), the Social Division overturned the Court of Appeal's decision, stating that *"when an employee applies for judicial termination of his employment contract and the nullity of his dismissal during the same proceedings, the judge who finds the dismissal null and void cannot allow the application for reinstatement"*.

The Court of Cassation therefore welcomed the employer's arguments. This decision can be compared to another ruling handed down on 03 October 2018 ([Labour Division of the Court of Cassation, No. 16-19.836, 03 October 2018](#)) in which the Court of Cassation had stated that a protected employee, who had obtained the judicial termination of his employment contract producing the effects of a null dismissal, could not at the same time request reinstatement in the company.

### 2.3 Employee reinstatement

*Labour Division of the Court of Cassation, No. 19-20.397, 10 February 2021*

In the present case, an employee of an airline company had been dismissed for personal reasons. He brought the case before the courts, asking for the dismissal to be declared null and void because, according to him, the dismissal was due to the moral harassment to which he had been subjected.

The appeal judges had recognised the dismissal as null and void and ordered the employee to be reinstated in the previously held job or in an equivalent job in the same geographical area. If the dismissal is declared null and void, the employee is automatically reinstated if he or she applies for it (see Article L. 1235-3-1 of the Labour Code). However, there is one exception, which is the material impossibility of reintegration.

The employer then appealed to the Court of Cassation, arguing that the fact that the employee was bound by an ongoing employment contract with another employer on the day the judge ruled on the reinstatement application made it materially impossible.

The Court of Cassation agreed with the Court of Appeal that *"the fact that the employee has joined the service of another employer is not a reason to deprive him of his right to reinstatement"*. Since the employer did not justify other elements establishing that it was materially impossible to reinstate the employee, the judges of appeal could therefore legitimately order the employee's reinstatement.



### 2.4 Freedom of movement of employee representatives during a strike

*Labour Division of the Court of Cassation, No. 19-14.021, 10 February 2021*

Several employees, staff and union representatives of an external service provider responsible for cleaning the rooms of a luxury hotel went on strike to protest their status and compensation. The employees used a megaphone and spread out at the hotel to question and intimidate non-striking employees. They also handed out brochures to guests, shouted and blew whistles, and forced their way into an occupied hotel room.

The hotel management had initially denied them access to the hotel. Several days later, it made access to the hotel subject to entry without whistles, megaphones or jackets, and a ban on entering the hotel rooms without authorisation.

Trade unions and several employees referred the matter to the judges, invoking the obstruction and infringements of the right to strike to which they had been subjected. The employer asked the judge to prohibit the striking employees, and any person acting in concert with them, from using sound instruments on the public streets within 200 meters of the hotel, and to authorise him, in case of breach, to use public force to enforce the prohibition. The Court of Appeal had ruled in his favour, but the Court of Cassation noted that according to the principle of the separation of powers, the judge is not competent to enforce public order in the public space and in this context, to provide for prohibition measures or the use of public force.

The legal provisions state that in order to carry out their duties, the elected representatives of the Economic and Social Committee and the trade union representatives may, both during delegation hours and outside their normal working hours, move freely within the company and establish all contacts necessary for accomplishing their mission, in particular with an employee at his or her workstation. However, this freedom of movement is subject to one reservation: that of not significantly interfering with the performance of employees' work (see Articles L. 2315-14 and L. 2143-20 of the Labour Code).

The Court of Cassation noted that only imperatives of health, hygiene or safety or cases of abuse, can limit this freedom of movement of staff representatives as it constitutes a principle of public order. In the specific context of this case, the Court of Cassation underlined that these rules also apply during a strike movement.

In the present case, the behaviour of the striking representatives was considered abusive. Under these circumstances, the employer could therefore legitimately impose certain restrictions on the freedom of movement of the striking representatives. The restrictions imposed were deemed justified and proportionate to the abuses observed.

## 3 Implications of CJEU Rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

In the present case, Greek nationals were recruited by a municipality in the cleaning service by means of fixed-term private law employment contracts, initially for a period of 8 months, but their contracts were renewed up to a period of 24 to 29 months. The municipality subsequently terminated the contracts. The nationals applied to a Greek court for their contracts to be reclassified as open-ended employment contracts and for the termination to be declared null and void.

Article 5 of Presidential Decree 164/2004 provides that such contracts may be concluded if justified by an objective reason and as long as they respect a maximum of three

renewals. Moreover, Article 103(8) of the Greek Constitution prohibits the conversion of fixed-term contracts of public sector staff into contracts of indefinite duration.

The Greek court then referred a question to the Court of Justice of the European Union for a preliminary ruling on the interpretation of national law with regard to the Framework Agreement on Fixed-term Work concluded on 18 March 1999.

According to the Court of Justice, if it were to be held that there are no successive fixed-term employment relationships on the sole ground that the workers' first fixed-term employment contract in the cleaning sector of local and regional authorities had been automatically extended by means of legislative measures, without any formal conclusion in writing of one or more new fixed-term employment contracts that would be liable to jeopardise the object, the purpose and the effectiveness of the Framework Agreement. Thus, the notion of successive employment agreements also covers the automatic extension of contracts by law.

Under French law, certain civil servants can be recruited on a fixed-term contract. Indeed, according to the laws on statutory provisions relating to the State (Article 6 bis, Law No. 84-16 on statutory provisions relating to state civil servants, 11 January 1984), territorial servants (Article 3-3, Law No. 84-53 on statutory provisions relating to territorial public servants, 26 January 1984) and hospital public servants (Article 9, Law No. 86-33 on statutory provisions relating to hospital public servants, 09 January 1986), when fixed-term contracts are concluded, they are concluded for a period of 3 years, renewable once by express decision. If the worker has worked in the civil service for a period of 6 years, he or she can only be recruited on an indefinite term contract: it is therefore no longer possible for him or her to conclude a fixed-term contract.

Fixed-term contracts may also be concluded to provide temporary replacements for public servants or contractual agents (see Article 6 quater, Law No. 84-16 on statutory provisions relating to state civil servants, 11 January 1984; Article 3-1, Law No. 84-53 on statutory provisions relating to territorial public servants, 26 January 1984; Article 9-1, I, Law No. 86-33 on statutory provisions relating to hospital public servants, 09 January 1986). It may also be concluded to fill a temporary vacancy pending the recruitment of a public servant. In the latter case, the fixed-term contract can only be concluded for a period of one year and can only be renewed once (see Article 6 quinquies, Law No. 84-16 on statutory provisions relating to state civil servants, 11 January 1984; Article 3-2, Law No. 84-53 on statutory provisions relating to territorial public servants, 26 January 1984; Article 9-1, II, Law No. 86-33 on statutory provisions relating to hospital public servants, 09 January 1986).

Agents may also be recruited on fixed-term contracts to deal with a temporary or seasonal increase in activity where this cannot be covered by public servants (see Article 6 sexies, Law No. 84-16 on statutory provisions relating to state civil servants, 11 January 1984, Article 3, I, Law No. 84-53 on statutory provisions relating to territorial public servants, 26 January 1984 Article 9-1, III, Law No. 86-33 on statutory provisions relating to hospital public servants, 09 January 1986).

Finally, a fixed-term employment contract may also be concluded by state administrations and state public establishments other than those of an industrial and commercial nature to carry out an identified project or operation. In the present case, the contract could be concluded for a period of one to six years and could only be renewed in compliance with a maximum total duration of six years (Article 7 bis, Law No. 84-16 on statutory provisions relating to state civil servants, 11 January 1984; Article 3, II, Law No. 84-53 on statutory provisions relating to territorial public servants, 26 January 1984; Article 9-4, Law No. 86-33 on statutory provisions relating to hospital public servants, 09 January 1986).

Thus, French law, in accordance with the first paragraph of Article 5 of the Framework Agreement on Fixed-term Work concluded on 18 March 1999, provides for the maximum



total duration of successive fixed-term contracts as well as for the number of possible renewals (beyond a duration of 6 years, the worker may only be recruited under an open-ended contract). Renewals must also be objectively justified, as they are only possible if the purpose of the contract subsists (the absence of the civil servant or contract agent is extended or the temporary increase in activity continues).

Therefore, the French legislative provisions on fixed-term contracts in the public sector appear to be in line with Article 5 of the Framework Agreement on Fixed-term Work.

#### **4 Other relevant information**

Nothing to report.

# Germany

## Summary

The government presented a bill to address the increased need for care for seafarers.

## 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' work

The German government [has presented a bill](#) to address the increased need for care for seafarers on ships of the German merchant fleet abroad.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings

### 3.1 Fixed-term Work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

From a dogmatic point of view, it is interesting that the CJEU in its decision (once again) assumes that EU law takes precedence over national constitutional law. It is not entirely clear, however, how this would be dealt with by the Federal Constitutional Court (cfl. Federal Constitutional Court of 05 May 2020 – 2 BvR 859/15). In any event, it should be noted that national constitutional law is also to be interpreted in accordance with EU law. Moreover, the requirement to interpret national law in conformity with EU law might include all methods for determining the law, including so-called further development of the law under German law, insofar as this is permissible under national principles. However, there are limits to the further development of the law. The Federal Constitutional Court stated the following in this regard some time ago:

*"The Court equally controls compliance with these limits in the case of national law that serves to transpose a directive of the European Union (...). The obligation to realise the objective of the Directive by way of interpretation finds its limits at what is methodically permissible according to domestic legal tradition. Thus, the CJEU also only requires the national court, when applying domestic law, to interpret it as far as possible on the basis of the wording and the purpose of the directive in order to achieve the result laid down in it and thus to comply with Art. 288 TFEU. Likewise, the CJEU has recognised that the duty to interpret in conformity with Union law finds its limits in particular in the principle of legal certainty and may therefore not serve as a basis for an interpretation of national law contra legem (...). Whether and to what extent domestic law permits a corresponding interpretation in conformity with the directive is assessed by the domestic courts (...)."*



## 4 Other Relevant Information

### 4.1 Ratification of ILO Convention No. 169

The German government has presented a draft law on Convention No. 169 (Indigenous and Tribal Peoples Convention, 1989). The law is intended to create the constitutional prerequisites for ratification of the Convention.

## Greece

### Summary

Nothing to report.

### 1 National Legislation

Nothing to report.

### 2 Court Rulings

Nothing to report.

### 3 Implications of CJEU rulings

#### 3.1 Fixed-term Work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

The consequences in the event of a breach in the conclusion of a fixed-term employment contract differ in Greece between the private and the public sector. The existing legal framework on recruitment in the public sector establishes a distinct recruitment procedure and a special regime for civil servants. Although the conversion of a fixed-term contract into one of indefinite duration is the standard consequence for a breach in the conclusion of a fixed-term contract in the private sector, the solution provided for in the public sector is different. In the public sector, conversions of fixed-term contracts are in fact excluded.

The Greek Constitution (Article 103 paragraph 8) prohibits the conversion by law of staff into permanent civil servants or the conversion of their fixed-term contracts into contracts of indefinite duration.

Article 7 of Presidential Decree No. 164/2004 provides that any contract concluded in breach of the provisions of the decree concerning the duration of fixed-term contracts shall automatically be invalid. If all or part of the invalid contract has been performed, the worker shall be paid the amount of wages on the basis thereof and any money paid shall not be recovered. The worker shall be entitled to compensation for the period during which the invalid contract was performed, equal to the sum to which an equivalent worker, working under a contract of indefinite duration, would be entitled upon termination of his/her contract. If several invalid contracts were concluded, compensation shall be calculated on the basis of the total period of employment under the invalid contracts. The amount paid by the employer to the worker shall be charged to the culpable party. Persons in breach of the provisions of this decree shall be punished by a term of imprisonment. If the offence was committed as a result of negligence, the culpable party shall be punished by a term of imprisonment of up to one year. The same infringement shall also constitute evidence of a serious disciplinary offence.

These measures offer effective guarantees for the protection of workers and are applied to duly punish abuse of such contracts and to nullify the consequences of the breach of EU law (Council of State 1253/2006, Areios Pagos 1221/2019).

The Greek Supreme Court has stated (Areios Pagos 1618/2011 and 1221/2019) that Council Directive 1999/70/EC on fixed-term work does not impose the qualification of 'successive' fixed-term employment contracts as contracts of indefinite duration, even



in the event that objective reasons justifying the renewal of such contracts do not exist, the qualification of the 'successive' fixed-term employment contracts as contracts of indefinite duration is not obligatory after the end of the period of transposition.

This ruling will have implications for Greek labour law, taking into account that the judgment concerns Greek law. The expression 'successive fixed-term employment contracts' therein covers the (exceptional) automatic extension in 2015 of fixed-term employment contracts of workers in the cleaning sector of local and regional authorities, which took place in accordance with express provisions in Greek law.

On the other hand, Greek courts have previously stated that the measures provided by Greek law offer effective and equivalent guarantees for the protection of workers and can be applied to duly punish such abuse and nullify the consequences of the breach of EU law. However, we cannot exclude that Greek courts will modify their argumentation and insist on the fact that the measures provided in Greek law (PD 164/2004) offer effective and equivalent guarantees for the protection of workers and less on the fact that the Greek Constitution prohibits (Article 103 paragraph 8) the conversion of fixed-term contracts into contracts of indefinite duration.

#### **4 Other relevant information**

Nothing to report.



# Hungary

## Summary

A new act on services, assistance and inspection of employment will enter into force on 01 March 2021.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

### 1.2 Other legislative developments

#### 1.2.1 New Act on Labour Inspection

Act 75 of 1996 on Labour Inspection has been replaced by [Act 135 of 2020](#) on Services, Assistance and Inspection of Employment from 01 March 2021. Beyond this new Act, [Act 4 of 1991](#) on the promotion of employment and services for the unemployed remains in force, however, several provisions of Act 4 of 1991 have been replaced by certain articles of Act 135 of 2020. Articles 2-6 and 17 of Act 135 of 2020 repeal and also replace several articles of Act 4 of 1991.

Articles 7-12 of Act 135 of 2020 contain provisions on labour inspection. These new rules replace, but also mostly repeat the provisions of Act 75 of 1996. The most important change in the new law is that it only contains framework rules, which are supplemented by government decrees. Accordingly, Article 12 authorises the government to issue a decree on most of the relevant regulatory issues of inspection, such as the inspected labour law provisions, regulation of sanctions, etc. Many of the detailed provisions are no longer contained in the Act on Labour Inspection, but they are left for government decrees.

There is one more remarkable change regarding the sanctions of undeclared work in Article 10 of Act 135 of 2020. The Labour Inspector may state the existence of an (undeclared) employment relationship, if the employer did not report employment to the authorities. This employment relationship is declared by the inspector retrospectively 30 days from the inspector's decision, unless a different duration of employment is proven by the employer.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

Article 192 of the [Labour Code](#) contains the following provisions on the renewal and extension of fixed-term contracts:



*"(2) The duration of a fixed-term employment relationship may not exceed five years, including the duration of an extended relationship and that of another fixed-term employment relationship concluded within six months of the termination of the previous fixed-term employment relationship.*

*(4) A fixed-term employment relationship may be extended, or another fixed-term employment relationship may be concluded within six months from the time of termination of the previous one if the employer has legitimate grounds to conclude a fixed-term contract. The agreement may not infringe upon the employee's legitimate interest."*

Fixed-term contracts may be amended, or a new contract may be exclusively concluded with the mutual consent of the parties. The extension of fixed-term contracts is not covered by law. Hence, the above-mentioned Hungarian provisions comply with the CJEU judgment.

As for sanctions, Article 29 of the Labour Code contains the following provision:

*"(3) If any part of an agreement is deemed invalid, the relevant employment regulations shall be applied instead, unless the parties would otherwise not have concluded the agreement without the invalid part."*

If the fixed-term period in the employment contract is deemed invalid, it will be considered to have been concluded for an indefinite term. The applicable sanction complies with the requirements of the Directive and CJEU case law.

#### **4 Other relevant information**

Nothing to report.

# Iceland

## Summary

The District Court of Reykjavík has held that certain deductions to the salary of several workers made by a temporary work agency to be legitimate and dismissed the claims of the workers that their accommodation was of such poor quality to warrant damages on behalf of the temporary work agency.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Temporary Agency work

A case concerning *inter alia* temporary work agencies and the so-called 'chain responsibility', a mechanism whereby a user undertaking may be liable for the unpaid wages of an employee by the temporary work agency (see Article 4b(1) of [Act No. 139/2005, on Temporary Work Agencies, Lög nr. 139/2005, um starfsmannaleigur](#)), issued by the District Court of Reykjavík in the [case from 24 February 2021 No. 3209/2019](#).

The case examined whether certain deductions by a temporary work agency from the salaries of several workers had been legitimate and whether their accommodation was of such poor quality to warrant damages on behalf of the agency. During the proceedings, the agency filed for and completed bankruptcy proceedings, leading to the dismissal of the claim towards them. By way of the aforementioned chain responsibility, the user undertaking had also been summoned in line with Article 4b(7) of [Act No. 139/2005, on Temporary Work Agencies](#), but in light of the bankruptcy of the temporary work agency and the subsequent dismissal of the claim towards the agency, the judge considered a dismissal of the claims towards the user undertaking to be inevitable as well. The judge also acquitted three managers of the bankrupt temporary work agency of the employees' claims, as the judge considered the deductions to be in line with the employment contracts and the accommodation to not have been of such poor quality to warrant damages.

It should be noted that employee representatives intend to appeal the case to the Court of Appeals.

## 3 Implications of CJEU Rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

This ruling will not likely have implications for Icelandic labour law.

Article 5(1) of [Act No. 139/2003, on Fixed-Term Employment \(Lög nr. 139/2003, um tímabundna ráðningu starfsmanna\)](#) prohibits the extension or renewal of a fixed-term employment agreement for a period of more than two years, unless otherwise stipulated



in law. The same rule is found in Article 41(2) of Act No. 70/1996, on the Rights and Obligations of State Employees (*Lög nr. 70/1996, um réttindi og skyldur starfsmanna ríkisins*).

An extension or renewal of a fixed-term employment agreement is considered to have occurred if a new fixed-term agreement is concluded between the same parties within six weeks from the conclusion of the previous one, as stated in Article 5(2) of the Fixed-Term Employment Act.

Finally, Article 8 of the Fixed-Term Employment Act states that if an employer violates any provisions of the Act, the employer might become liable for damages.

In this context, it is also important to note the general principle of Icelandic labour law, that if employment continues after the term of a fixed-term employment agreement has ended without a new fixed-term agreement taking effect, an employment agreement of indefinite duration is considered to have commenced (see, for instance, Lára V. Júlísdóttir: *Ráðningarréttur*. Reykjavík 2013, pp. 217).

#### **4 Other relevant information**

Nothing to report.

# Ireland

## Summary

The government announced the continuation of lockdown restrictions until 05 April 2021 and the extension of COVID-19 income support to 30 June 2021.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Relief measures for businesses and workers

As of 23 February 2021, 473 413 persons (44.9 per cent of whom are female) were in receipt of the Pandemic Unemployment Payment (PUP). The sectors with the highest number of recipients are accommodation and food services (110 097), wholesale and retail trade (75 196) and construction (61 077). In terms of the age profile of recipients, 23.6 per cent were under the age of 25 years ([see here](#)).

The same day, the government unveiled a new plan, 'The Path Ahead', announcing a continuation of the Level 5 lockdown until 05 April 2021, and the extension of existing support for workers and employers to the end of June 2021. It is estimated that the cost of extending the COVID-19 income support to be EUR 1.3 billion for the Employment Wage Subsidy Scheme (EWSS) and EUR 1.6 billion for the PUP. The former has already cost EUR 4.85 billion, supporting over 36 500 employers linked to over 350 000 jobs, whereas the PUP has cost EUR 5.9 billion so far. Approximately 115 000 of the 473 413 individuals currently in receipt of the PUP have been in receipt for 42 weeks or more.

The temporary suspension of employees' right to claim redundancy following a lay-off will also continue until the end of June. The aim of the suspension is to keep employees connected to their employers, but the repeated extensions have been regularly criticised by the Irish Congress of Trade Unions as creating an imbalance between employer and employee rights. Congress has also called for the COVID-19 layoff period to be reckonable service for redundancy purposes as concerns have been raised that many of those long-term recipients of the PUP will not be returning to their job when payment of the PUP ceases ([see here](#)).

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

Nothing to report.



### 3 Implications of CJEU Rulings

#### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

Directive 1999/70/EC was transposed in Ireland by the [Protection of Employees \(Fixed-Term\) Work Act 2003](#), section 9, which implements Clause 5 of the Framework Agreement. The section provides that where a fixed-term employee is employed on two or more 'continuous fixed-term contracts', the aggregate duration of such contracts shall not exceed four years, unless there are 'objective grounds' justifying a renewal beyond four years. Where there is a breach of this provision, the contract automatically becomes one of 'indefinite duration'.

There is no equivalent legislative provision in Irish law comparable to that at issue in these proceedings, whereby fixed-term contracts may be automatically extended. An issue did arise, however, in [Waterford City Council v Kennedy FTD1235](#) as to whether the claimant's fixed-term contract was 'renewed' or merely 'continued'. The Labour Court determined that there was 'nothing magical' in the word 'renewed'. It was 'a plain and ordinary English word which can properly be used to describe the continuation of something that would otherwise come to an end'.

### 4 Other relevant information

Nothing to report.

# Italy

## Summary

(I) The measures regulating the health surveillance of 'fragile' workers and teleworking were extended until 30 April 2021.

(II) The Prosecutor's Office of Milan required the four largest food delivery companies to regularise their riders and to pay fines for workplace safety violations.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Emergency measures

Due to the government crisis, legislative activity has been severely reduced. The resigning government is limited to ordinary administration and Parliament has been preoccupied with the vote of confidence for the new government.

In February, the Law Decree of 31 December 2020 No. 183 ('*Milleproroghe*' Decree) was converted into law. It has not been published yet in the Italian Official Journal. Therefore, the numbering of the Act is still unknown.

The Act provides that the health surveillance of 'fragile' workers and the application of smart working, even in the absence of individual agreements, are extended until 30 April 2021.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

In Italy, fixed-term contracts are regulated in the Legislative Decree of 15 June 2015 No. 81, amended by the Law Decree of 12 July 2018 No. 87 (converted into Act 09 August 2018 No. 96).

A fixed-term contract can last a maximum of 12 months, which can be extended to 24 for one of the following justifiable reasons: temporary and objective needs that are unrelated to ordinary activities; replacement of absent workers; temporary, significant and non-programmable increases in ordinary activities. If the 24-month period is exceeded, the contract will be converted into a permanent contract from the date of exceedance. After the first 24 months, the employer and employee can conclude an additional 12-month fixed-term contract with approval from the Labour Inspectorate.



The contract can be extended up to four times. If this limit is exceeded, the contract will be converted into a contract of indefinite duration from the day of the fifth extension. Extensions must refer to the same work activity for which the fixed-term contract was concluded, and the indication of the reason is only necessary when the overall term exceeds 12 months.

If the contract is renewed, a period of time must pass between the former and the subsequent contract: 10 days, if the duration of the first contract is less than 6 months; 20 days in other cases. If this waiting period is not respected, the second contract will be converted into a permanent one.

A special regulation applies to public administrations, where a fixed-term contract can only be concluded if temporary or exceptional needs exist (Art. 36 (2), Legislative Decree 30 March 2001 No. 165). The contract can be extended a maximum of five times, only if the initial contract had a duration of less than 36 months. Specific rules are provided for managers, education and health personnel.

If the rules and limits for fixed-term contracts in public administration are violated, a conversion into a contract of indefinite duration is not possible, because Art. 97 of the Italian Constitution requires a public competition to take place for permanent posts. The employee is only entitled to compensation (Art. 36 (5), Legislative Decree 30 March 2001 No. 165), as confirmed by *Corte Costituzionale* 27 March 2003 No. 89, according to which this provision is adequate within the context of Directive 1999/70/CE, as it is suitable for preventing and sanctioning the abusive use of fixed-term contracts by the public administration. The Italian compensation mechanism has already been deemed by the Court of Justice to be compatible with Art. 5 of the Directive, provided that it guarantees an effective sanctioning model equivalent to the one established in the private sector (CJEU C-180/04, 07 September 2006 and CJEU C-494/16, 07 March 2018). Of course, effectiveness and equivalence must be guaranteed through an appropriate quantification of the damage suffered by the worker. The Grand Chamber of the *Corte di Cassazione* has decided that damage is always caused when the limits established by law are violated and compensation must be paid on the basis of the parameters of the first fixed-term contract in accordance with Art. 32 (5) Act 04 November 2010, No. 183 and now required by Art. 28 (2), Legislative Decree No. 81/2015: an indemnity between 2.5 and 12 months of the last salary earned by the worker. He/she can request further compensation if he/she proves that he/she has suffered additional damages, for example, from loss of opportunity.

In Italian law, the problem of transitional discipline does not arise, because the obligation for public competition has been established in the Italian Constitution since its entry into force in 1948.

## 4 Other relevant information

### 4.1 Platform work

The Prosecutor's Office of Milan said at a press conference that the four largest food delivery companies must regularise 60 000 riders by concluding a coordinated and continuous collaboration contract with them, and quantified workplace safety violations at a total of EUR 733 million in fines.

According to the Public Prosecutor, the classification of the riders as occasional collaborators does not correspond to the real methods used to carry out their performance of work, because the rider is 'inside the production cycle of the client who coordinates his/her work remotely' through an app, monitoring and evaluating him/her. Furthermore, although riders can choose the time slot of delivery, their performance is evaluated with a score and they are downgraded if they refuse an assignment or a time slot.

# Latvia

## Summary

Nothing to report.

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## 1 National Legislation

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

The Latvian legislator has adopted more restrictive legal regulations preventing abuse of fixed-term contracts. Specifically, Article 45(1) of the Labour Law (*Darba likums*, Official Gazette No.105, 06 July 2001) allows the conclusion of a fixed-term contract (single contract or renewal/-s) for a maximum of 5 years. Latvian law thus does not distinguish between single fixed-term contracts or renewed fixed-term contracts for protection against abuse. In both situations, Latvian law provides the same degree of protection.

It follows that the CJEU's decision in the present case has no implications for Latvian law.

## 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

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

In case C-760/18, the CJEU (Seventh Chamber) ruled as follows:

Clause 1 and Clause 5(2) of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that the expression 'successive fixed-term employment contracts' therein also covers the automatic extension of the fixed-term employment contracts of workers in the cleaning sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded.

Clause 5(1) of the Framework Agreement on Fixed-term Work must be interpreted as meaning that, where abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, to the fullest extent possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse and of nullifying the consequences of the breach of EU law extends to an assessment of whether the provisions of earlier national legislation, which remain in force, and which permit the conversion of a succession of fixed-term contracts to one employment contract of indefinite duration, may, where appropriate, be applied for the purposes of that interpretation in conformity with EU law, even though national constitutional provisions impose an absolute prohibition, in the public sector, of such conversion.

The present case, which is based on Greek law, has a strongly singular character. A comparable situation does not exist in Liechtenstein law. The following commentary is therefore limited to some general remarks from the perspective of Liechtenstein law.

For the private sector, the fixed-term employment contract is regulated in section 1173a Art. 44 and 44a of the *Civil Code (Allgemeines bürgerliches Gesetzbuch, ABGB, LR 210)*.

A fixed-term employment relationship ends without notice. It may be extended a maximum of three times up to a total duration of five years. In the event of a longer duration, it shall be deemed to be an employment relationship of indefinite duration.

In application of section 1173a Art. 44 and 44a of the Civil Code, the conclusion reached would be fully in line with the judgment of the CJEU. This is to be concluded, on the one hand, from section 1173a Art. 44(2) of the Civil Code. According to this provision, if a fixed-term employment relationship is tacitly continued after the expiry of the agreed duration, it is considered to be an employment relationship of indefinite duration. This baseline corresponds to that in the main proceedings before the CJEU, because it was presumed that the contract had been extended automatically by means of legislative measures, without any formal conclusion in writing of one or more new fixed-term employment contracts (cf CJEU case C-760/18 No. 44).

On the other hand, one would have to assume an illegitimate circumvention of the law if an automatic extension were not equated with an expressly agreed extension of the fixed-term contract. In case of an illegitimate circumvention of the law, the circumvented legal consequence shall be applied. This would lead to the conversion of the fixed-term employment relationship into one of indefinite duration.

For the public sector, the fixed-term employment contract is regulated in the [State Personnel Act \(\*Gesetz über das Dienstverhältnis des Staatspersonals, Staatspersonalgesetz, StPG, LR 174.11\*\)](#).

According to Art. 13 of the State Personnel Act, a fixed-term employment relationship shall be established for a maximum period of three years. In justified cases, the government may extend a fixed-term employment relationship by a maximum of two additional years. Fixed-term employment contracts end without notice upon expiry of the term specified in the employment contract (Art. 19 of the State Personnel Act).

The State Personnel Act is further specified in the [State Personnel Ordinance \(\*Verordnung über das Dienstverhältnis des Staatspersonals, Staatspersonalverordnung, StPV, LR 174.111\*\)](#). This Ordinance does not contain any relevant provisions for the problem at issue.

Due to the lack of specific provisions in the State Personnel Law, the problem would have to be solved by analogy with the provisions of the Civil Code.

In summary, there are no indications that Liechtenstein law is not in conformity with CJEU C-760/18. This judgment is of minor relevance for Liechtenstein law.

## 4 Other relevant information

Nothing to report.

# Lithuania

## Summary

(I) The duty to provide information on employees who are posted to the territory of Lithuania, regardless of the jurisdiction of the company that is posting workers, has been imposed on Lithuanian companies.

(II) The Vilnius Regional Court ruled on fixed-term work.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

### 1.2 Other legislative developments

#### Posting of workers

The procedure for providing information on the employment and posting of foreigners to Lithuania has been modified (Order No V-26/EV-19/V-32 of 21 January 2021 of Amendments to Order No. V-401 / EV-281 / V-395 of 27 September 2019 'On Submission of Information on Foreigners Working in Lithuania', the Director of the Board of the State Social Insurance Fund under the Ministry of Social Security and Labour, Chief State Labour Inspector of the Republic of Lithuania and Director of the Employment Service under the Ministry of Social Security and Labour of the Republic of Lithuania of 2019. Registry of Legal Acts, 2021, No. 1068).

From 01 March, employers will be required to submit notifications to all foreigners employed and posted to Lithuania. Until now, such an obligation only applied to the reception of posted workers from third countries. Since March, this also applies to employed and admitted foreigners who are citizens of European Union countries or their family members.

Employers will also be required to submit a notification if a foreigner will work abroad on their behalf. A notification regarding employed foreigners will be required no later than one working day prior to the commencement of work of such a person and no later than one working day prior to the commencement of work of the posted employee in Lithuania.

The State Labour Inspectorate will use the information on workers posted to Lithuania to prevent violations of the posting rules and to monitor labour relations in Lithuania.

## 2 Court Rulings

### 2.1 Fixed-term work

*Vilnius Regional Court, case e2A-172-910/2021, 11 February 2021*

The Vilnius Regional Court has dismissed the case of a university lecturer who had been recruited on the basis of a competition, but after the end of the first 5-year term, the contract was not extended, because the university decided to not open a competition for the same position. The Labour Disputes Commission, the Vilnius District Court and now the Vilnius Regional Court have supported the argument of the university that the institution of higher education has full discretion to not open the competition for the

position, which the successful candidate was working in on the basis of a 5-year contract. The claimant asserted that Directive 1999/70 had been breached, because fixed-term contracts are allowed in Lithuania by national legislation without any restrictions. The legal provisions in Lithuania allow universities to misuse fixed-term contracts of employment, as there are no restrictions for extensions of the contracts and no other means for adequate protection against the full discretion of the universities. The claimant's aim was for the Court to submit the question to the CJEU, but his claim was dismissed.

### 3 Implications of CJEU rulings

#### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

In Lithuania, there is no general distinction between the provisions applicable to fixed-term contracts in the public sector and fixed-term workers in the private sector. Moreover, there are no special provisions for territorial entities or certain sectors of activity, with perhaps one exception related to pedagogical workers at universities (see above information provided in this Report under No. 2). The expression 'successive fixed-term employment contracts' has been introduced in the new Labour Code 2016 (Article 68 (1) of the Labour Code), but has not been interpreted in the context of extension. However, situations in which the parties orally or by implied action agree on an extension are regulated in a stricter way – in accordance with Article 69 (2) of the Labour Code, an employment contract shall be converted into one of indefinite duration if the employment relationship actually continues for at least one working day after the expiry of the term (Article 67 (3) of the Labour Code). In this regard, it is not necessary in the Lithuanian context to qualify the extension of the fixed-term contract as a successive fixed-term contract. However, the question remains open in areas where the legislator does allow (and consequently, perhaps prohibits extensions or conversions) an unlimited number of successive fixed-term contracts. In accordance with Article 66 (4) of the Labour Code, the possibility to conclude fixed-term contracts, the maximum term of which may not exceed five years, with employees who are elected to their posts or appointed by collegial elective bodies or with other employees for the protection of public interest, shall be established by other laws (e.g. universities, pedagogical and research personnel). Such contracts may be extended for an unlimited number of times on the grounds established by the law, and other restrictive provisions of the Labour Code (i.e. on the maximum duration of the fixed-term relationship – T.D.) shall not apply to them.

### 4 Other relevant information

Nothing to report.

# Luxembourg

## Summary

A new bill has modified the composition of the standing committee on labour and employment.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

### 1.2 Other legislative developments

#### 1.2.1 Standing committee on labour and employment

A bill has been deposited to change the composition of a tripartite committee referred to as the 'standing committee on labour and employment' (*comité permanent du travail et de l'emploi*). This committee is part of the so-called 'Luxembourg model' (*modèle luxembourgeois*) of social relationships, which is based on tripartite consultation and collaboration. Created in 2007, it forms part of the puzzle, together with other institutions such as the professional chambers (1924), the Social and Economic Council (1966) and the tripartite committee (1970s). It is an important institution in the regular exchanges between the government and social partners.

According to Article L. 651-1 of the Labour Code, the committee has consultative powers in issues of employment and unemployment, as well as working conditions and the safety and health of employees.

It is composed of (L. 651-2):

- 4 delegates from representative trade unions;
- 4 delegates from employers' organisations;
- 4 delegates from the government: the Minister of Labour and three Ministers of the Economy, the Middle Classes, National Education and Vocational Training, Social Security, Transport, Civil Service and Administrative Reform and Equal Opportunities.

The latter rule on government representatives was considered to be too rigid and ought to be more flexible, depending on the issues that have to be discussed in the committee.

The bill stipulates that the government shall be represented by the Minister of Labour and one or more ministers to be designated by the Government Council in relation to the issues on the agenda of the meeting in question.

## 2 Court Rulings

Nothing to report.





### 3 Implications of CJEU rulings

#### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

This decision has no implications for Luxembourg.

As regards the first point of the ruling, the automatic extension of fixed-term employment contracts is not established in law.

As regards the second point of the ruling, there is no constitutional or other rule prohibiting the conversion of fixed-term contracts in the public sector. Civil servants (*fonctionnaires d'Etat*) cannot be appointed for a limited duration. State employees (*employés d'Etat*) and workers (*salariés de l'Etat*) can be hired under a fixed-term contract. These must comply with the general rules of the Labour Code on fixed-term contracts, they will otherwise be re-classified as open-ended contracts.

### 4 Other relevant information

Nothing to report.

# Malta

## Summary

Food delivery services are under scrutiny because of allegations that their workers are illegally employed.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

The [Contracts of Service for a Fixed Term Regulations](#) 2007 (452.81) (hereinafter 'the Regulations') govern fixed-term employment relationships.

Clause 1 and Clause 5(2) of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that the expression 'successive fixed-term employment contracts' therein also covers the automatic extension of fixed-term employment contracts of workers in the cleaning sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded.

Maltese law stipulates that upon the expiry of four years of fixed-term contracts, the contract shall be converted into one of indefinite duration (Regulation 7 (1) of the Regulations). There are no exclusions for any workers except if the retention of the employee for over four years is justified by objective reasons based on precise and concrete circumstances characterising a given activity. Such circumstances may result, in particular, from the specific nature or from inherent characteristics of the tasks to be performed in the fixed-term contract (Regulation 7 (4) of the Regulations). Employees engaged in the cleaning sector would not and do not, generally speaking, fall within these categories. Furthermore, all tendering for cleaning services by public authorities request as part of the ESPD a declaration that the bidder is not in any manner violating any employment legislation (including precarious employment and employees working on successive fixed-term contracts).

Clause 5(1) of the Framework Agreement on Fixed-term Work must be interpreted as meaning that where abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, to the fullest extent possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse and of nullifying the consequences of the breach of EU law extends to an assessment of whether the provisions of earlier national legislation, which remain in force, and which



permit the conversion of a succession of fixed-term contracts into an employment contract of indefinite duration, may, where appropriate, be applied for the purposes of that interpretation in conformity with EU law, even though national constitutional provisions impose an absolute prohibition in the public sector of such conversion.

Under Maltese law, the Regulations also apply to the public sector (by means of Subsidiary Legislation 452.99, Extension of Applicability to Service with Government (Contracts of Service for a Fixed Term) Regulations 2007). Hence, there are no implications for the public sector because the public sector is already bound to the prohibition expressed in the Regulations on successive fixed-term employment contracts.

## 4 Other relevant information

### 4.1 Platform work

The employment contracts (or, even more precisely, the service agreements) of many food delivery services are under review because of a spate of articles in the media asserting that these workers are employed under illegal conditions. However, the problem continues to persist and there does not seem to have been any notable effort in this regard.

The two most recent articles are available [here](#) and [here](#).

# Netherlands

## Summary

- (I) A new regulation on COVID-19-related support for independent entrepreneurs, including self-employed persons, has been enacted.
- (II) The Dutch government is developing additional measures to promote teleworking.
- (III) According to the Amsterdam Court of Appeal, Deliveroo platform workers are to be considered employees.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Relief measures for businesses and the self-employed

On 05 February 2021, a new regulation on the 'Tozo 1' was [published](#). The Tozo 1 provides support for independent entrepreneurs, including self-employed persons, during the pandemic. Such entrepreneurs can apply for Tozo 1 support in their municipalities. Based on this new regulation, the Minister of Social Affairs and Employment announced how he will make use of his authority (through a hardship clause) to subsidise costs for applications submitted in the period from 01 March to 31 May 2020, in which the conditions for Tozo 1 benefit eligibility had not been met.

Municipalities have had to implement Tozo 1 under difficult circumstances. However, even under these difficult circumstances, they may be required to correctly and fully implement a limited set of fundamental basic criteria. In light of these considerations, a distinction is made between fundamental, important and formal legal requirements. This distinction is clarified in [Annex I to the regulation](#).

The regulation states that the hardship clause only applies to costs that are justified as being incorrect or uncertain with regard to 'important' regularity requirements. Costs that are justified as being incorrect or uncertain due to 'fundamental' regularity requirements are not eligible for reimbursement.

#### 1.1.2 Teleworking

In the Netherlands, working from home has been one of the most important measures applied since the outbreak of the pandemic. The government, together with the social partners, is trying to ensure that everyone who can work from home does so and is looking for [further measures](#) to stimulate this. A [letter](#) from Minister Koolmees of Social Affairs and Employment was published, which contains additional measures to boost working from home.

This letter focuses on supporting those who work from home with regard to both physical labour conditions and mental well-being. Loneliness in particular is a point of concern. To further stimulate and support remote working, EUR 5 million will be made available by the Dutch government. Additionally, an urgent amendment to the law will make it possible to shut down workplaces in case they are a source of contagion.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

### 2.1 Platform work

*Court of Appeal Amsterdam, ECLI:NL:GHAMS:2021:392, 16 February 2021*

As in other European countries, the legal status of platform workers has been an issue for some time now in the Netherlands. The Court of Appeal in Amsterdam ruled that Deliveroo riders are employees under the applicable Dutch legislation, [Article 7:610 Dutch Civil Code](#). According to the Court of Appeal, only the freedom given to the riders with regard to the performance of their work is a circumstance that indicates the absence rather than the presence of an employment contract. All other elements, including the method of payment of wages, the authority exercised, the given period of time, as well as the other circumstances mentioned, point to the presence of an employment contract rather than to an absence thereof. The freedom the riders have with regard to the performance of their work is not incompatible with the classification of their agreement as an employment contract.

## 3 Implications of CJEU rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

Clause 5 of the Framework Agreement on Fixed-term Work (Directive 1999/70 EG) has been transposed in [Art. 7:668a](#) of the Dutch Civil Code. To prevent the abuse of fixed-term contracts, a maximum total duration has been set for successive fixed-term contracts (3 years), and a maximum number of renewals (three contracts in total). If the maximum is exceeded, the contract converts into a contract of indefinite duration by operation of the law.

The Dutch legal system does not include any provisions similar to the Greek provisions dealt with in the CJEU case, entailing automatic extensions of fixed-term contracts of certain groups of employees/civil servants. In that respect, this CJEU case has no direct implications for the Netherlands.

The second aspect of the CJEU decision addresses the Greek constitutional provision that absolutely prohibits a conversion of successive fixed-term contracts into a contract of indefinite duration in the public sector. Dutch law does not include any similar provisions, hence in this respect, there are also no direct implications for Dutch law.

Having established this, it is noteworthy that the aforementioned [Art. 7:668a DCC](#) opens the possibility for the Minister of Social Affairs and Employment to declare the article inapplicable to certain positions in certain sectors. This has resulted in the [Regulation chain provisions on special positions and the higher compensation cantonal court](#). According to that regulation, certain positions in the professional football sector are exempt from [Art. 7:668a BW](#), as are certain positions in the cultural sector, T.V. presenters and teaching staff that are hired as replacements of regular staff members who fall ill. It is debatable whether these exemptions are fully in line with Directive 1999/70 EG. However, this is not directly related to CJEU case C-760/18.

## 4 Other relevant information

Nothing to report.

# Norway

## Summary

The government has proposed to extend a number of measures to mitigate the effects of the COVID-19 crisis.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Relief measures

Strict national infection control measures remained in place in February, and even stricter regulations were introduced locally, i.e. in Oslo and Bergen, as more contagious variations of the virus were discovered.

The government imposed stricter rules on foreign nationals who seek entry into Norway from 29 January 2021. In general, only foreign nationals who reside in Norway may enter, see [here](#).

The unemployment rate has been relatively stable since October 2020, but has been slightly rising since December. By the end of February, there were 207 900 unemployed people, amounting to 7.3 per cent of the workforce, see the statistics [here](#).

The employment and labour law measures introduced in 2020 to mitigate the effects of the COVID-19 crisis have been described in previous Flash Reports. In February 2021, there were only minor adaptations to existing regulations:

- A limited application-based scheme for exemptions from the entry restrictions for employees who are essential for ensuring ongoing operations in industry, see further [here](#);
- An exemption for day commuters from Sweden and Finland from the strict entry regulations. They may, from 01 March 2021, travel to work in Norway under a strict test and control regime. See further [here](#);
- The period of temporary lay-offs has been extended to 30 September 2021. See further [here](#);
- The requirements to receive unemployment benefits have been modified temporarily until 30 September 2021, see further [here](#).

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

Nothing to report.

### 3 Implications of CJEU rulings

#### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

There is no general legislation that 'automatically' extends fixed-term employment contracts in Norwegian law. Each fixed-term contract must be justified according to grounds stipulated in Section 14-9 (2) of the Working Environment Act 2005. A measure to prevent abuse of successive fixed-term employment contracts implemented in Norwegian law are rules that set a maximum total duration of fixed-term contracts, cf. Section 14-9 (7).

The maximum total duration of fixed-term contracts is 3 or 4 years (depending on the legal justification for the fixed-term contract). These rules cover not only a single fixed-term contract, but also successive contracts as long as the employee can be considered to have been employed for more than 3/4 'consecutive' years. Exceeding the time limit implies that the employee shall be deemed to be permanently employed.

An employee working under successive fixed-term contracts as a temporary replacement for another person, cf. WEA Section 14-9 (2) b, may also have the right to permanent employment before the abovementioned 3-year period lapses, if the employer's use of temporary replacement can be considered unlawful according to further criteria developed in case law, cf. Rt. 1989 p. 1116.

On the basis of this, the CJEU decision is not likely to have significant effects on Norwegian law.

### 4 Other relevant information

#### 4.1 Labour disputes

The government has intervened and ended two industrial conflicts in private health care institutions. The conflicts were between Parat/YS and NHO and between Fagforbundet/LO and NHO. The intervention in the strikes were justified as the strikes represented a danger to life and health.



# Poland

## Summary

Nothing to report.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

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

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

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

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

The Polish Labour Code envisages that the extension of a female employee's agreement on fixed-term employment until the date of childbirth (Article 177 §3 LC) shall not be considered as entering into a successive agreement, in the event that the woman becomes pregnant in the course of duration of this contract (Article 25 §4 LC).

The Labour Code of 26 June 1974 (consolidated text Journal of Laws 2019, item 1040) can be found [here](#).

The abovementioned regulations relate both to the public and the private sector. In other words, the same protection against abuse applies to the public and the private regime governing fixed-term employment relationships.

An extension of a contract of a woman who has become pregnant in the course of this contract does not infringe the provisions of the Directive – it does not lead to abuse arising from the use of successive, fixed-term employment contracts or relationships. This is because such an extension serves to protect the legal situation of women and to protect childbirth.



There is an absence of other regulations which would result in an extension of the fixed-term contract for a specified period by the force of law itself. Therefore, Polish law does not regulate how such situations should be treated. In the event of non-introduction of detailed solutions here and implementing the regulation on the extension of an agreement by virtue of law, the indications raised in case CJEU case C-760/18 should be applied.

#### **4 Other relevant information**

Nothing to report.

# Portugal

## Summary

(I) The state of emergency was extended for the period between 15 February and 16 March 2021. The previously adopted restrictions have been reiterated.

(II) Amendments to the exceptional and temporary regime of justified absence from work due to the suspension of educational activities have been approved.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 State of emergency

By [Decree No. 11-A/2021, of 11 February](#), the President of the Republic approved a renewal of the state of emergency for a period of 15 days, from 15 February to 01 March 2021, which was authorised by the Portuguese Parliament ([Resolution No. 63-A/2021, of 11 February](#)).

The referred Decree authorises the adoption by the Government of similar restrictions to those established in Decree No. 9-A/2021, of 28 January (for further information, see January 2021 Flash Report), namely regarding the freedom of movement, international travel, private, social and cooperative initiatives and workers' rights.

The implementing measures of the extension of the state of emergency were regulated by [Decree No. 3-E/2021, of 12 February](#). This decree generally upholds the measures already in place, established in Decree No. 3-A/2021, of 14 January, and Decree No. 3-D/2021, of 29 January (described in the January 2021 Flash Report), namely: (i) the mandatory adoption of the teleworking regime, when compatible with the activity to be performed, (ii) the imposition of a general duty to remain at home and the prohibition of travelling on public roads, except for the purposes expressly authorised by the law (such as performance of work when it cannot be carried out remotely), (iii) the imposition of the closure of commercial and service establishments, except those providing essential goods, (iv) suspension of all presential educational and teaching activities, and (v) prohibition of travel outside the continental territory, with some exceptions (one of them being the performance of professional activities or similar, duly documented, in the context of activities with an international dimension).

On 25 February 2021, [Decree of the President of the Republic No. 21-A/2021](#) was published, declaring the 12<sup>th</sup> state of emergency, applicable for a period of 15 days, from 02 March to 16 March 2021, which was approved by [Resolution of the Portuguese Parliament No. 69-A/2021, of 25 February](#). The referred Decree upholds the restrictions to the rights already specified in the previous Decree.

With [Decree No. 3-F/2021, of 26 February](#), the government renewed the implementing measures in place in the previous 15 days without any changes.

#### 1.1.2 Care leave

[Decree Law No. 14-B/2021, of 22 February](#) introduced some changes to the exceptional and temporary regime of justified absences from work motivated by the need to care for a child that is under the age of 12 years or, regardless of age, that has a disability or chronic disease as established in Decree Law No. 8-B/2021, of 22 January (refer to the January 2021 Flash Report), due to the continuation of the suspension of all presential educational activities.

According to this legislative amendment, employees who work under a teleworking regime may choose to interrupt their professional activity to provide care for a family member when *i)* the employee is a single parent; or *ii)* the employee's household includes a child or other dependent who attends nursery school, a pre-school or primary school facility, or a dependent with a disability that is equal to or greater than 60 per cent, regardless of the dependent's age. It should be noted that prior to this amendment, the referred regime of justified absences from work did not apply to workers covered by a teleworking regime.

This Decree Law entered into force on 23 February 2021.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

The CJEU's [case C-760/18](#) concerned the interpretation of Clauses 1 and 5 (2) of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999 (the 'Framework Agreement').

In this judgment, the CJEU examined whether these clauses must be interpreted as meaning that the expression 'successive fixed-term employment contracts' contained therein covers the automatic extension of the fixed-term employment contracts of workers in the cleaning sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirements that successive contracts be concluded in writing has been disregarded.

Clause 5 (1) of the Framework Agreement aims to place limits on successive recourse to fixed-term employment contracts or relationships, requiring the effective and binding adoption by Member States of at least one of the measures listed in that provision, with a view to preventing abuse to the detriment of workers.

In the present situation, there was not, *stricto sensu*, a succession of two or more employment contracts but only the automatic extension of an initial fixed-term contract as a result of legislative measures. The question raised in this case was whether this situation falls within the scope of the concept of 'successive fixed-term employment contracts or relationships' for the purpose of Clause 5 (1) of the Framework Agreement.

Under Clause 5 (2) of the Framework Agreement, Member States shall determine under what conditions fixed-term employment contracts or relationships are to be regarded as 'successive', although, according to the CJEU, this discretion cannot be exercised by national authorities in such a way as to lead to a situation liable to giving rise to abuse or to jeopardise the objective of the Framework Agreement.

As a result, the CJEU ruled that the abovementioned Clauses 1 and 5 (2) of the Framework Agreement

*"must be interpreted as meaning that the expression 'successive fixed-term employment contracts' therein also covers the automatic extension of the fixed-term employment contracts of workers in the cleansing sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded".*

Furthermore, the CJEU stated that Clause 5(1) of the Framework Agreement requires Member States to adopt one or more of the measures listed in a manner that is effective and binding, where domestic law does not include equivalent legal measures to prevent the abuse of successive fixed-term employment contracts or relationships. Such measures are related to *i)* objective reasons justifying the renewal of such employment contracts or relationships, *ii)* the maximum total duration of those employment contracts or relationships, and *iii)* the number of renewals of such contracts or relationships. Member States have a certain discretion in this regard since they may adopt one of the measures listed in Clause 5 (1), referred to above, or maintain existing equivalent legal measures, while taking account of the needs of specific sectors and/or categories of workers. Moreover, this Clause does not lay down any specific measure to penalise the abuse of successive fixed-term employment contracts, although the CJEU considered that the measures adopted by national law must be sufficiently effective and adequate for that purpose, offering effective safeguards for the protection of workers.

As a result, the CJEU ruled that Clause 5 (1) of the Framework Agreement

*"must be interpreted as meaning that, where an abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, to the fullest extent possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse and of nullifying the consequences of the breach of EU law extends to an assessment of whether the provisions of earlier national legislation, which remain in force, and which permit the conversion of a succession of fixed-term contracts to one employment contract of indefinite duration, may, where appropriate, be applied for the purposes of that interpretation in conformity with EU law, even though national constitutional provisions impose an absolute prohibition, in the public sector, on such conversion".*

Portuguese labour law appears to be in line with the interpretation of Clauses 1 and 5 (1) and (2) of the Framework Agreement, issued by the CJEU in the present case.

On the one hand, the Portuguese legal framework on fixed-term employment contracts provides for adequate measures to avoid abuse of the recourse to successive renewals of such contracts.

The three measures foreseen in Clause 5 (1) were introduced by the [Portuguese Labour Code, approved by Law No. 7/2009, of 12 February, as subsequently amended](#) (hereinafter referred to as PLC) which states that:

- i)* a fixed-term employment contract can only be entered into and renewed if objective reasons exist (as a rule, related to the temporary needs of the employer) set forth in the law are verified ([Articles 140 and 149 \(3\) of PLC](#));
- ii)* fixed-term employment contracts, including renewals, are subject to a maximum duration of two years, which is relevant for calculating the duration of fixed-term employment contracts or temporary work contracts for the same job position, as well as the duration of service contracts for the same task, entered into between the worker and the same employer or companies that have a domain or group relation with the employer or maintain common organisational structures with the same ([Article 148 \(1\) and \(6\) of PLC](#));



- iii)* fixed-term employment contracts can only be renewed up to a total of three times, and the total duration of renewals cannot exceed the initial period of the contract (Article 149 (4) of PLC).

In addition, Article 143 of PLC imposes restrictions to the succession of fixed-term employment contracts. According to this provision, as a rule, the termination of a fixed-term contract, for reasons not attributable to the worker, prevents a new admission assignment of a worker under a fixed-term employment contract or temporary work contract for the same job or even of a service contract for the same purpose, entered into with the same employer or with a company which has a domain or group relation or common organisational structures with the employer, before a period of time equivalent to one-third of the duration of the contract, including renewals, has lapsed.

On the other hand, Portuguese labour law provides for adequate and effective penalties to be applied in case of non-compliance with the measures identified above, which aim to prevent abuses of the recourse to fixed-term contracts. Apart from the potential misdemeanour liability, a fixed-term contract is deemed to have been converted into a permanent employment contract if the contract whose renewal is not justified by grounds admitted by law as well as if the maximum duration or the maximum number of renewals has been exceeded, as foreseen in the law (Article 147 (2) of PLC). In addition, the employment contract entered into without respecting the limitation of the succession of fixed-term contracts stipulated in Article 143 is deemed to be without term (Article 147 (1) (d) of PLC).

For the reasons explained above, Portuguese labour law entails several rules that aim to protect fixed-term workers and ensure the effective enforcement of the regime and the penalisation of abuse, in such terms that Clauses 1 and 5 (1) and (2) of the Framework Agreement, as interpreted by the CJEU in case C-760/18, are being respected.

## 4 Other relevant information

Nothing to report.

# Romania

## Summary

The procedure for recovering outstanding wages if the employer is insolvent has been simplified.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Outstanding salary claims

Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer has been transposed in Romanian legislation by Labour Code, Law No. 200/2006 on the establishment and utilisation of a Guarantee Fund for outstanding salaries (published in the Official Gazette of Romania No. 453 of 25 May 2006, subsequently amended) and Law No. 85/2006 regarding the insolvency procedure (published in the Official Gazette of Romania No. 466 of 25 June 2014).

Recently, Emergency Ordinance No. 9/2021 for the amendment of Law No. 200/2006 (published in the Official Gazette of Romania No. 174 of 19 February 2021. [See here](#) for details in English) was adopted to support insolvent employers and their employees in the context determined by the effects of the COVID-19 pandemic. Among other changes, the new law simplifies the procedure for recovering outstanding salary claims. Previously, to recover outstanding wages, the employees had to prove not only the opening of the insolvency procedure, but also that the measure of total or partial withdrawal of the administration right had been ordered. As a result of this new piece of legislation, it will be sufficient for employees to submit an application for payment of salary claims and a copy of the final court decision to open insolvency proceedings.

The Guarantee Fund for outstanding salaries also paid the allowances for the leave days granted to employee parents for the supervision of children who study online in the situation of the limitation or suspension of teaching activities that involve the actual presence of children in school as a result of the spread of SARS-CoV-2 coronavirus.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

Romanian legislation and practice on fixed-term employment contracts are consistent with the provisions of the Framework Agreement on Fixed-term Work, as interpreted by the Court of Justice of the European Union, in case C-760/18. Indeed, according to Art. 82 (4) and (5) of the Romanian Labour Code, a maximum of three fixed-term





employment contracts may be concluded successively between the same parties. Successive contracts are those concluded within three months from the termination of a fixed-term employment contract.

The extension of the initial contract is considered to be the conclusion of a new contract, so that in case of extension, the rule of the maximum number of three successive contracts applies. For example, by Decision No. 309/2015, the Oradea Court of Appeal ruled that employers may not evade the obligations imposed by the legislator by concluding additional acts indefinitely, amending the duration of the initial contract and that, in reality, these extensions are successive fixed-term employment contracts within the meaning of the provisions of Art. 82 (4) of the Labour Code, so that their number cannot be higher than three (published in portal.just.ro on 02 February 2015).

As a result, fixed-term contracts may have a cumulative duration of maximum 36 months (first contract) and maximum 12 months (second contract) and maximum 12 months (third contract). As an exception, according to Art. 82 (3) of the Labour Code, the fixed-term employment contract may be extended even after the expiration of the initial term, with the written agreement of the parties, for the duration of a project, programme or work assignment. In this case, the duration of the contract is determined by the duration of the project or programme for which it is concluded.

As a result, fixed-term contracts cannot be concluded to meet permanent and long-term staffing needs, and the rules on the maximum number of successive contracts cannot be circumvented by extending the original contract.

#### **4 Other relevant information**

Nothing to report.

# Slovakia

## Summary

Parliament has approved an act that entails several amendments to the Labour Code and other related acts.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Workplace measures

Article VI of Act No. 76/2021 Coll. amends Act No. 5/2004 Coll. on Employment Services. During an extraordinary situation or state of emergency related to COVID-19, an employee with a disability can work from home instead of in a special workplace provided for such employees, if the type of work allows it. The employee's home office is then considered to be the workplace of the disabled employee established by the employer (Article 72r).

The government has approved several decrees and resolutions in connection with COVID-19. This includes, e.g. Resolution No. 123 on adopting the measures under Article 5, paragraph 4 Act No. 227/2002 Coll. on security of the state in times of war, state of war and state of emergency. Under this resolution, an employee who cannot perform his/her work from home must have a certificate from the employer stating the employee's workplace and his/her working hours. This is necessary for checks between 8 p.m. and 5 a.m.

### 1.2 Other legislative developments

#### 1.2.1 Labour Code reform

Act No. 76/2021 Coll. amending Act No. 311/2001 Coll. (the Labour Code) came into force on 01 March 2021. Act No. 76/2021 Coll., amends ten acts (in addition to the Labour Code):

- Act No. 2/1991 Coll. on Collective Bargaining as amended;
- Act No. 73/1998 Coll. on the Civil Service of the Police Force's Members, Slovak Information Service, the Prison and Judicial Guard Corps of the Slovak Republic and the Railway Police as amended;
- Act No. 395/2001 Coll. on the Fire and Rescue Service as amended;
- Act No. 595/2003 Coll on Income Tax as amended;
- Act No. 5/2004 Coll on Employment Services as amended;
- Act No. 82/2005 Coll. on Illegal Work and Illegal Employment as amended;
- Act No. 103/2007 Coll. on Tripartite Consultations at National Level as amended;
- Act No. 281/2015 Coll. on the Civil Service of Professional Soldiers as amended;
- Act No. 55/2017 Coll. on Civil Service as amended;
- Act No. 35/1919 Col on Financial Administration as amended.

### *Teleworking*

In addition, Act No. 76/2021 Coll. aims to modernise legislation on homeworking and teleworking and to differentiate it from work that is not regularly performed remotely at home (so-called home office). An employer who authorises homeworking or teleworking is required to pay any increases in the employee's expenses connected with the use of his/her utilities (e.g. electricity), his/her own equipment and other necessary expenditures for the performance of remote work (homeworking) or teleworking. Upon agreement between the employer and employee, homeworking or teleworking can be provided in full or in part in a place specified by the employee. They can agree on a minimum amount of working hours to be performed at the employer's premises (or another workplace determined by the employee) (Article 52, paragraphs 1 – 9). Another aim is to establish the right of the employee to be disconnected from homeworking and teleworking. This is possible during his/her continuous daily rest period, continuous weekly rest period, by not requiring the employee to provide overtime work or to work on standby, and during paid leave. An employer cannot punish an employee for not working outside the established working hours (Article 52, paragraph 10).

The employer must give the employee access to training as is the case of a comparable employee who performs his/her work at the employer's premises (Article 52, paragraph 11).

### *Underage work*

Parliament has amended Act No. 311/2001 Coll. (the Labour Code) through Article I of Act No. 76/2021 Coll. The aim of the amendment of Act No. 311/2001 Coll. is to allow youths who are older than 15 years to work until they finish their compulsory education. Youth labour is still prohibited, with the exception of certain simple tasks, but youths who are older than 15 years can now legally work, even if they are still in compulsory education. They do not conclude an employment contract, however. The labour inspectorate shall issue permission for the performance of such work (Section 11, paragraph 4, letter d/). The purpose of this amendment is to allow youths to work although they are still in compulsory education, particularly in case they do not complete their compulsory education.

### *Temporary assignments*

The Act also aims to make temporary employment more flexible. Temporary assignments of an employee between his/her employer (mother company) and the user (daughter company) can be concluded not only when objective reasons exist (as was previously the case), but also aside from these (Article 58a, paragraph 1).

### *Working time*

Another aim is to address cases in which the employee rejects flexible working time following an agreement with the employee representatives that flexible working time shall not be implemented. E.g., when a business trip or job training at work extends into flexible working hours (Article 89, paragraph 1, 2).

### *Employees' catering*

Up to now, the employer was required to provide catering services to employees, primarily in the form of a hot meal in its own catering facilities. If this is not possible, the employer must provide employees with meal vouchers. Only employees who cannot consume a hot meal or use the meal voucher due to the special circumstances of their health are eligible for compensation. Under the amendment, the employee can choose the type of catering service. His/her choice is binding for 12 months (Article 152,

paragraphs 1 and 2).

The Act allows an employee to choose between a meal voucher and financial compensation when his/her employer cannot provide adequate catering services for employees at the employer's premises.

### *Employee representation*

The Act aims to establish a competent trade union body that only represents individuals who are in an employment relationship with the employer (Article 230, paragraph 2).

The objective is also to settle disputes over the operation of a trade union by the employer when it is unclear whether any of the employees are trade union members. The dispute over the operation of a trade union is resolved by a referee selected by the parties to the dispute. If a selection of such a referee is not possible, the referee is assigned by the Ministry of Employment (Article 230a, paragraph 1). An employer is required to give the referee a list of employees employed by the employer. The trade union is required to give the referee a list of employees employed by the employer who are members of a trade union (Article 230a, paragraph 3). The referee shall announce his/her finding to the parties to the dispute within 30 days and inform whether any of the employees employed by the employer are also trade union members (Article 230a, paragraph 4). This trade union will not be considered as being operated by the employer in the 12 months from the referee's declaration (Article 230a, paragraph 6). A new assessment by the referee is only possible after a 12-month period from the referee's initial finding (Article 230a, paragraph 7). The referee is granted a financial reward.

Article II of Act No. 76/2021 Coll. amends Act No. 2/1991 Coll.: the aim of the amendment is to remove the procedure in case of a legal dispute on the decision of the arbitrator of the fulfilment of the obligations under the collective agreement, which is regulated by the Act of Collective Bargaining. The legal dispute will be resolved based on the rules of civil procedural law.

### *Economic and Social Council*

Article VII of Act No. 76/2021 Coll. amended Act No. 103/2007 Coll. on Tripartite Consultations at National Level. The aim of the Act is to enforce and operationalise the Economic and Social Council. Each side of the Council will deal with at least three issues – three issues on the part of the employees and three issues on the part of employers. This amendment of the Act is based on Convention No. 144 on tripartite consultations to promote the application of international labour standards.

The Act stipulates that representative employers' organisations are associations that represent employers from various sectors of the economy and operate in at least five regions. Its members are employers who jointly employ at least 100 000 employees under employment relationships or similar relationships (Article 3, paragraph 2, letter a/). If the number of representative employers' organisations is less than three, the association that represents employers from various sectors of the economy or that operates in at least five regions, and whose members (employers) jointly employ less than 100 000 employees under employment relationships or similar relationships, then the representative organisation is that which represents the majority of employers that have employment relationships or similar relationships. The total number of employees cannot be more than three, however (Article 3, paragraph 3, letter b/). If some employers do not fulfil the criteria of representativeness, the Council can be supplemented by another representative that wants to be its member. The same procedure shall apply by the representative organisation of employees (Article 3, paragraph 3).

The decision of the Council is adopted when the absolute majority of all members agree

with it, if at least one member represents the government, one member represents the employers' organisations and one member represents the employees' organisations (Article 9, paragraph 3).

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

The main legal source for fixed-term employment contracts is the Labour Code (Act No. 311/2001 Coll.) as amended. It is binding for all employers active in the private sector as well as those in the public sector. Fixed-term employment is regulated in the legal regulation of 'Fixed term employment relationship' (Article 48). A fixed-term employment relationship may be agreed for a maximum of two years and may be extended or renewed at most twice within a 2-year period. A further extension or renewal of the fixed-term employment relationship to two years or over two years may only be agreed for specific reasons.

The Labour Code distinguishes between the extension of a fixed-term employment relationship and renewals. A renewed fixed-term employment relationship is an employment relationship that begins less than six months after the end of the previous fixed-term employment relationship between the same parties (Article 48, paragraph 3).

A further extension or renewal of the fixed-term employment relationship to up to two years or more than two years may only be agreed for specific reasons defined in Article 48, paragraph 4, letters a/ - d/ (e.g. substitution of an employee during maternity leave, parental leave, substitution of an employee who performs a public function or trade union function, during increases of work for a temporary period not exceeding 8 months within a calendar year, during seasonal work not exceeding 8 months within the calendar year, the performance of work agreed in a collective agreement). The reason for an extension or renewal of a fixed-term employment relationship under paragraph 4 shall be stated in the employment contract.

A further extension or renewal of an employment relationship for a fixed term of up to two years or for more than two years can be agreed with a teacher in higher education or an employee engaged in science, research or development if there are objective reasons relating to the nature of the activities of the teacher in higher education or the employee engaged in science, research or development as stipulated in special regulations (Article 48, paragraph 6).

This issue is legislated by Act No. 131/2002 Coll. on Universities, as amended (Act on Universities). The employment relationship with university teachers can be agreed upon for a maximum of 5 years on the basis of a selection procedure and for a maximum of 10 years in medical and pharmaceutical fields. The limitation on the number of fixed-term employment relationships is still missing in the Slovak Act on Universities. The only exception is the appointment of associate professors and professors who, at the earliest after nine years of service and on condition that they have filled this post at least three times, have the right to conclude a fixed-term employment contract and to be assigned to that post until the age of 70. The maximum duration of fixed-term employment relationships of teachers in lower positions than professors and associate



professors cannot be limited, nor can a maximum number of renewals be determined (Article 77 of Act No. 131/2002 Coll. as amended). Slovak legislation does not allow teachers in higher education and their employees to conclude an employment contract of indefinite duration (except for the category of professor and associate professor after fulfilling the required conditions).

However, given the number and content of many similar judgments of the Court on this issue, the question is whether it might not be useful to amend Slovak legislation on the fixed-term employment relationship of teachers in higher education. The Fixed-term Work Directive provides a framework to prevent the unlawful use of recourse to fixed-term employment contracts and also aims to prevent discrimination. Doubts arise as to whether the Act on Universities fulfils the aims of Clause 5, point 2, letter a) and b) of the Directive, which requires the State to determine the conditions under which fixed-term contracts are to be regarded as being concluded and concluded for an indefinite period.

#### **4 Other relevant information**

Nothing to report.

# Slovenia

## Summary

(I) The eighth anti-corona package of measures (PKP8) entered into force, extending previous measures and providing additional ones.

(II) The Maritime Code was amended, transposing the provisions of the Council Directive 2009/13/EC into the Slovenian legal order.

(III) The Constitutional Court upheld the implementation of two provisions of the seventh anti-corona package (PKP7), which introduced the possibility for employers to dismiss a worker who has fulfilled the retirement conditions without a valid reason/without justification.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Eighth anti-corona package

The 'Act on Additional Measures for Mitigation of Consequences COVID-19', the so-called eighth anti-corona package (PKP 8), was passed by the National Assembly on 03 February 2021, published on 04 February 2021, and entered into force on 05 February 2021 ('*Zakon o dodatnih ukrepih za omilitve posledic Covid-19 (ZDUOP)*', *Official Journal of the Republic of Slovenia (OJ RS) No. 15/21*, 04 February 2021).

Various measures aimed at mitigating the negative economic and social consequences of the COVID-19 pandemic are regulated in the PKP8, either as newly introduced additional measures or the extension of existing ones (most of the measures have been extended until 30 June 2021 or 31 December 2021), including the (partial) reimbursement of wage compensation for temporarily laid-off workers and the short-time work scheme, partial reimbursement of fixed operational costs for businesses whose revenue has declined significantly due to the epidemic, wage compensation during quarantine, monthly basic income for the self-employed and for various other categories of persons, etc. (see also previous Flash Reports describing various anti-corona measures).

The minimum wage subsidy has been introduced *de novo* by ZDUOP (PKP 8) as one of the measures in the anti-corona package. According to Article 29 of ZDUOP, employers are entitled to a subsidy in the amount of 50 EUR per month for each worker whose monthly salary (for full-time work, whereby all supplements, regulated by law and collective agreements, as well as parts of the salary based on job performance and business performance are excluded) does not exceed the statutory minimum wage. In case of part-time work, the *pro rata* rule applies. There are certain conditions that must be met by the employer to be entitled to the minimum wage subsidy, among them is also a temporary prohibition to dismiss the workers on economic grounds (during these measures and in the following three months after receiving the subsidy) as well as a temporary prohibition of collective dismissals on economic grounds, etc. This measure has been introduced as a follow-up to the adjustment of the minimum wage in January 2021 (the minimum wage was raised from EUR 940.58 gross per month (valid in 2020) to EUR 1 024.24 gross per month (valid in 2021); see January 2021 Flash Report); the employers initially strongly opposed the raise of the minimum wage in 2021. The minimum wage subsidy is a temporary measure, applicable from 01 January to 30 June 2021. Afterwards, in the period July–December 2021, the lowering of the minimum basis for social security contributions is envisaged (Article 28 of ZDUOP).



One possibility of short-term absence from work due to health reasons (sick leave of up to three consecutive days) without a medical certificate from a general practitioner has been reintroduced; but only once a year (Article 31 of ZDUOP). This measure is applicable until 31 December 2021.

### 1.1.2 Lockdown measures

In response to the epidemic situation, various (temporary) measures to contain the spread of COVID-19 infections continued also during February 2021, such as the restriction of movement between 21:00 and 6:00, the prohibition of a group of more than 10 people gathering, the mandatory use of face masks with certain exceptions, mass mandatory testing, for example, for health and social service staff, teachers, taxi drivers and other categories of workers who directly work with people, restrictions in education (primary school children and children in the last year of secondary school have returned to school, the others are still using remote e-learning tools), and restrictions in the sale of goods and services and in public transport, etc. continue to apply. These measures are changing quite frequently, the most recently valid measures for February 2021 were published in [OJ RS No. 27/21](#), 25 February 2021.

## 1.2 Other legislative developments

### 1.2.1 ILO Home Work Convention

Slovenia has ratified the ILO Convention Concerning Home Work ('Act ratifying the Convention concerning Home Work', 1996 (ILO Convention 177), '*Zakon o ratifikaciji Konvencije o delu na domu*, 1996 (Konvencija MOD št. 177)', [OJ RS No. 21/21](#), International Treaties No. 3/21, 12 February 2021).

### 1.2.2 Minimum hourly rate for occasional work

Following the adjustment of the minimum wage in January 2021 (see January 2021 Flash Report) and on the basis of Article 27.c of the [Labour Market Regulation Act](#) (OJ RS No 80/10 et subseq.), the minimum hourly rate for occasional and temporary work of retired persons was adjusted by the Minister of Labour ('Order on the adjustment of the minimum hourly rate and maximum income for temporary or occasional work', '*Odredba o višini urne postavke in višini dohodka za opravljeno začasno ali občasno delo upokojencev*', [OJ RS No. 28/21](#), 26 February 2021). The minimum hourly rate for occasional and temporary work of retired persons amounts to EUR 5.50 (from 01 March 2021 until 28 February 2022).

The minimum hourly rate for occasional and temporary work of students was adjusted by the Minister of Labour as well ('Order on the adjustment of the minimum gross hourly pay for temporary and occasional work', '*Odredba o uskladitvi najnižje bruto urne postavke za opravljeno uro začasnih in občnih del*', [OJ RS No.24/21](#), 18 February 2021). The minimum hourly rate for occasional and temporary work of students amounts to EUR 5.89 gross (from 19 February 2021 onwards).

### 1.2.3 Seafarers' work

The Maritime Code ('*Pomorski zakonik (PZ)*', [OJ RS No. 26/01 et subseq.](#)) was amended ([OJ RS No. 18/21](#), 09 February 2021, p. 1207-1208).

According to the amended Article 3 of the Maritime Code, this Code transposes the provisions of Council Directive 2009/13/EC of 16 February 2009 into the Slovenian legal order, implementing the agreement concluded by the European Community Shipowners'

Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (OJ L 124, 20 May 2009, p. 30–50), as last amended by Council Directive (EU) 2018/131 of 23 January 2018, implementing the agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014 (OJ L 22, 26 January 2018, p. 28–33).

## 2 Court Rulings

### 2.1 Dismissal of workers fulfilling retirement conditions

*Constitutional Court, No. U-I-16/21, 18 February 2021*

The Constitutional Court has maintained the implementation of two provisions of the seventh anti-corona package (Articles 21 and 22 of the PKP7 – see December 2020 and January 2021 Flash Reports), which introduced the possibility for employers to dismiss workers who fulfil the prescribed conditions for statutory old-age pension without a valid reason/without justification. The decision of the Constitutional Court, No. U-I-16/21, 18 February 2021 (ECLI:SI:USRS:2021:U.I.16.21), OJ RS No. 28/21, 18 February 2021, can be found [here](#) and [here](#), p. 1791 et subsequ.

The constitutional review was initiated by the trade unions who allege that such a regulation on the termination of employment for older workers is discriminatory and unconstitutional. Until the final decision of the Constitutional Court, such dismissals can no longer take effect and older workers who already fulfil the retirement conditions can no longer be dismissed without a valid reason/without justification.

## 3 Implications of CJEU Rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Successive fixed-term employment contracts in the public sector)*

The case concerned successive fixed-term employment contracts in the public sector (workers in the cleaning sector of local and regional authorities in Greece) and the absolute (constitutional) prohibition on the conversion of such fixed-term employment contracts into contracts of indefinite duration.

This case is of no particular relevance for Slovenian law, since in Slovenia, there is no automatic extension of fixed-term employment contracts which would take place on the basis of express provisions of national law similar to the Greek situation, and the conversion of fixed-term employment contracts into employment contracts of indefinite duration in case of an abuse is possible (not prohibited) in the public sector.

According to Article 12, paragraph 2 of the Employment Relationships Act, '*Zakon o delovnih razmerjih (ZDR-1)*', OJ RS No. 21/13 et subsequ.,), if the duration of an employment relationship is not determined in writing in the contract of employment and/or if a fixed-term contract of employment is not concluded in writing upon the commencement of work, the contract of employment shall be assumed to be concluded for an indefinite period.

According to Article 56 of the ZDR-1, if a fixed-term employment contract is not concluded in accordance with the law or a collective agreement (for example, no justified reason as prescribed by the law exists or the maximum duration prescribed by the law has been exceeded, etc.), or if the worker continues to work after the period for which



he/she initially concluded the fixed-term employment contract has expired, it shall be assumed that the worker has concluded an employment contract of indefinite duration.

These rules governing the conversion of fixed-term employment contracts into an employment contract of indefinite duration also apply in the public sector, which has been clearly confirmed by case law (see, for example, [judgment of the Higher Labour and Social Court No. Pdp 96/2019](#), ECLI:SI:VDSS:2019:PDP.96.2019, 08 May 2019; [judgment of the Supreme Court No. VIII Ips 153/2016](#), ECLI:SI:VSRS:2016:VIII.IPS.153.2016, 06 December 2016, etc.).

#### **4 Other relevant information**

Nothing to report.

# Spain

## Summary

(I) The Supreme Court stated that the additional paternity leave rights included in collective agreements cannot be claimed following the recent legislative reform that has removed any distinction between maternity and paternity leave.

(II) The Supreme Court declared the practice of not paying interim workers the salary that corresponds to the category of worker they are replacing to contravene the principle of equal pay.

(III) The government and the social partners have reached an agreement to regulate platform work. The riders will be included in the scope of labour law.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Parental leave

*Supreme Court, STS 326/2021, 27 January 2021*

Royal Decree Law 6/2019, of 01 March, modified Organic Law 3/2007 on equality between women and men, and various provisions of labour and social security legislation. Specifically, the legal regime of maternity and paternity leave was modified (to grant equivalent rights to both parents). Hence, maternity and paternity leave were replaced with a parental leave of 16 weeks for each parent.

Some collective agreements already in force were negotiated prior to this legal reform and included improvements to the rights of men to paternity leave, and to approximate them to the rights of the mother. [The Supreme Court states](#) that these additional rights included in collective agreements cannot be claimed following the amendment, because the legal context has completely changed and there is now no distinction between maternity and paternity leave.

### 2.2 Fixed-term work

*Supreme Court, STS 399/2021, 09 February 2021*

The defendant company paid workers with an interim contract the lowest salary provided for in the collective agreement, and not the salary corresponding to the category of worker they were replacing. [The Supreme Court relied](#) on Directive 1999/70/EC to declare this business practice null and void and stated that if the interim worker performs the tasks of the replaced worker, s/he is entitled to equal pay.

### 3 Implications of CJEU Rulings

#### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

This ruling will have no direct implications for Spain, because the Spanish Constitution does not prohibit the conversion of the succession of fixed-term contracts into a contract of indefinite duration. However, fixed-term employment in public administration has a very difficult history in Spain, and the issue has only been inadequately addressed. Interim contracts (replacement contracts) are frequent, and can be used in two situations. First, when the employer needs to substitute workers who are entitled to keep their job. This contract ends when the replaced worker returns to work. Secondly, the employer can hire an interim worker while the selection process for a vacant job is underway. Labour law sets down a maximum duration for interim contracts in the latter case (three months), but only applies to private employers. Thus, this type of interim contract has no limit of duration in public administration and can last years.

It is true that the Basic Statute of the Public Employee provides that vacancies must be filled within three years. This is an indirect limitation for interim contracts, because if the vacancy must be filled within three years, the interim contract cannot, theoretically, continue for more than three years. The Supreme Court, however, asserts that the provision does not automatically imply that an interim contract should be redefined as a 'contract of indefinite duration' when it exceeds a period of three years. The judgment requires a case-by-case assessment. The Supreme Court referred to the ruling in case C-677/16, 05 June 2018, *Montero Mateos*. The Supreme Court also stated, however, that a contract should not simply be converted because its duration has been 'unusually' long. This ruling insists that the duration should be 'unreasonably' long and there is a difference between 'unusually' and 'unreasonably'.

In addition, it should also be borne in mind that a number of practical problems arise from the various interests involved. Firstly, interim workers who have held the job for a long time do not always want the selection process to be carried out because they are uncertain whether they will get the job, hence they could lose their temporary job and become unemployed. They might prefer to actually remain in the given situation. Secondly, to resolve this problem, unions occasionally pressure the public administration to give the interim worker the permanent job, but achieving this is not easy because according to the Spanish Constitution, the selection process must be governed by the principles of equality, merit and ability. In the absence of an agreement with the trade unions, some public administrations prefer to not open competition proceedings to maintain a good working environment.

On the other hand, as a general rule, an irregular (abusive) fixed-term contract results in its conversion into a permanent one. Therefore, a temporary contract without an objective reason does not automatically end on the date set in the contract, because it transforms into a permanent contract. If the employer terminates the contract on the grounds that it is a fixed-term employment contract, the worker can turn to the court, which will acknowledge that it is a permanent contract and will grant severance pay for unfair dismissal.

This rule is difficult to apply to public administrations, because access to a permanent job in public employment requires completion of a selection process that respects the principles of equality, merit and ability. Thus, the abusive use of fixed-term contracts in public administrations does not lead to a conversion into a permanent contract. Instead, the Supreme Court has created a classification called 'indefinite but not permanent worker' (*trabajador indefinido no fijo de plantilla*). This means that the abusive fixed-term contract does not end on the originally set date, but only once the job is filled by a permanent worker (a career civil servant). As a consequence, the initial worker could



be in this temporary job for years, but this is not a specific type of contract and there is no legal regulation, nor registration, because it is a type of relationship that only exists when a court declares that a fixed-term contract concluded by a public administration is abusive. This situation cannot arise when the employer is a private undertaking, because an abusive fixed-term contract converts into a permanent one in such a case. 'Indefinite but not permanent workers' are an own classification of workers somewhere between fixed-term and permanent workers, but under the Framework Agreement, they have to be considered fixed-term workers. They are similar to interim contracts, but without a fixed date of termination, hence the worker could spend years in this situation. There have also been problems with severance pay at the end of such contracts, but ultimately, the Supreme Court stated that such workers have the right to the same severance pay established for dismissals on objective grounds (20 days of salary for each year worked).

The CJEU has dealt with this issue (joined cases C-103/18 and C-429/18, 19 March 2020, *Sánchez Ruiz and others*), but did not provide a definitive answer. In the end, this ruling entrusts the national courts to assess whether this classification of 'indefinite but not permanent workers' and their severance at the end of the contract constitutes an adequate measure to prevent and, where appropriate, sanction abuses arising from the use of successive fixed-term contracts. The Supreme Court views this as an adequate remedy.

## 4 Other relevant information

### 4.1 Platform work

The government, trade union organisations and employers' organisations have reached an agreement to regulate digital platform work. Riders will be explicitly included in the scope of labour law. A law is expected to be enacted soon.

# Sweden

## Summary

(I) The COVID-related measures on compensation for reduced working time have been extended.

(II) The Swedish government has issued a new occupational health and safety strategy. It has also published an inquiry with proposals for the reform of the legislation concerning third-country labour migration.

(III) The Swedish branch of the food delivery company Foodora has concluded a collective agreement with the Transportation Workers' Union.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Relief measures

The Swedish government has proposed an extension of the labour market and business-related measures previously installed in response to the COVID-19 pandemic until the end of April 2021. These measures include financial support for crisis-related working time reductions and special provisions related to social insurance (for the self-employed).

### 1.2 Other legislative developments

#### 1.2.1 Occupational safety and health

The Swedish government has issued a new Occupational Health and Safety Strategy for the years 2021–2025 (*En god arbetsmiljö för framtiden – regeringens arbetsmiljöstrategi 2021-2025*). The Strategy, which highlights sustainable working life, connects to the European Pillar of Social Rights and the future EU Strategic Framework on Health and Safety at Work.

#### 1.2.2 Labour migration

The Public Inquiry on regular labour migration *SOU 2021:5 Ett förbättrat system för arbetskraftsinvandring* has been published (summary in English on pages 19-25). The inquiry includes a number of different recommendations such as a new ground for residence permits for highly qualified individuals. This proposed reform would require an applicant to show that he/she has completed his/her studies corresponding to a second cycle higher education qualification; sufficient funds to support themselves during the period of permit validity and funds to cover the costs for their return journey; and comprehensive health insurance. The permit would not provide the right to work or to bring family members to Sweden. Such rights have to be provided separately, through other applications.

The proposed reform reflects the very liberal Swedish labour migration policy and offers a much lower threshold than in the [EU Blue Card Directive](#) for highly qualified third-country migration. The parliamentary situation in Sweden is facing some challenges, with the minority Social Democrat – Green Party coalition in desperate need for support from left wing as well as liberal parties.



## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings

### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

This Greek case concerned successive fixed-term contracts in the public sector cleaning department and, subsequently, the extent to which national courts are required to interpret national labour law in conformity with EU law. For details, see the [case](#).

Swedish legislation on implementing the provisions on fixed-term and successive fixed-term contracts stipulated in Directive 1999/70/EC – Framework Agreement on Fixed-term Employment concluded by ETUC, UNICE and CEEP, is found in the Employment Protection Act ([lagen 1982:80 om anställningsskydd](#)). Section 5 of the Act concludes that fixed-term employment contracts can be applied in one of three situations:

- General fixed-term employment;
- Substitute employment;
- Seasonal employment.

Special statutory law (primarily for some forms of public employment such as doctoral students and tenured associate senior lecturers at public universities) and collective agreements might regulate additional variants of fixed-term contracts.

Section 5 a of the Act states that a fixed-term contract renewed with a total duration of more than 24 months will transform into a contract of indefinite duration. If the employee has been employed intermittently for more than 24 months over a five-year period, the same rules apply. For the assessment of intermittence, a period of maximum six months between each separate employment contract is used. There is no explicit regulation on the number of successive fixed-term contracts and no explicit legal requirement to specify any objective ground for renewals of fixed-term contracts (Clause 5 of the Framework Agreement).

Section 5 as well as section 5 a can be amended, also *in peius*, through collective agreements, a practice which is relatively common in Swedish collective agreements.

In parallel to the decision by the CJEU in [case C-780/18](#), the Swedish system's 'unlimited' opportunities for industrial partners to dispose of the fixed-term rights by changing the effects on the statutory rights *in peius* might represent a weakness. If a fixed-term employment contract under a collective agreement does not fulfil the requirements of Clause 5 (of the Directive), the Labour Court might have to rule 'against the collective agreement', even if that collective agreement does not contradict national law (the Employment Protection Act) as such. Some collective agreements allow for longer durations than 24 months in case of a reference to the special requirements of the work (*arbetets särskilda beskaffenhet*), but the distinctions might be subject to scrutiny and discussion. Eventually, this might stretch the relationship between the statutory provisions and the opportunities for adjustments under Clause 8 (of the Directive) which the national (or European) industrial partners are entitled to. Well-established trade unions, such as the Swedish one, who can balance the powers of the employers and the employer federations, should still be able to conclude collective agreements without jeopardising the prevention of abuse as expressed in Clause 5.

The Swedish fixed-term provisions, which allow for successive fixed-term contracts (if 'smartly' arranged over the course of at least four years) might not adequately address



abuse in accordance with the Directive, but this has yet to be addressed in case law. The same situation applies in relation to the possibility to deviate from the statutory law through collective agreements, *in peius*.

## 4 Other relevant information

### 4.1 Foodora collective agreement

The Swedish branch of the food delivery company Foodora has, after endless negotiations, concluded a [collective agreement with the Transportation Workers' Union](#) (Transport). The collective agreement reportedly provides for strengthened workers' conditions, including minimum wage (SEK 100/hour, approx. EUR 10), occupational pension rights, overtime pay and compensation for bicycle or other private equipment. Unlike other platform companies, Foodora already previously engaged 2 000 deliverers under employment contracts, but the conditions of these contracts have been under serious scrutiny in the last few months.

### 4.2 New Minister of Equality and Housing

Märta Stenevi (The Green Party) [is the new Minister](#) of Equality and Housing in the labour market department.

# United Kingdom

## Summary

(I) The furlough scheme was extended until 30 April 2021.

(II) The Supreme Court decided that under UK employment law, Uber drivers are classified as 'workers'.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Relief measures

The [sixth treasury direction](#) on coronavirus was published extending the CJRS from 31 March 2021 until 30 April 2021. Employers will continue to be able to claim 80 per cent of an eligible employee's salary, capped at GBP 2 500 per month, in respect of hours not worked. The Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) (Amendment) Regulations 2021 ([SI 2021/177](#)) were made to reflect the extension of the furlough scheme.

In EWHC 309, 17 February 2021, [EWHC 309, 17 February 2021, R \(Motherhood Plan and another\) v HM Treasury \[2021\]](#) a review of the Self-Employment Income Support Scheme (SEISS) on the basis that it was indirectly discriminatory on the grounds of sex was rejected by the High Court.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

### 2.1 Platform work

*Supreme Court, UKSC 2019/0029, 19 February 2021, Uber BV and others v Aslam and others*

There has been a huge volume of case law in recent years trying to ascertain precisely who is a 'worker'. The most recent ruling on this point comes from the Supreme Court in the *Uber case*. The striking feature about this case (which concerned both the NMW and working time) was the purposive approach given to the definition of worker and the reliance on case law from the Court of Justice. For example, Lord Leggatt stated:

"71. *The general purpose of the employment legislation invoked by the claimants in the Autoclenz case, and by the claimants in the present case, is not in doubt. It is to protect vulnerable workers from being paid too little for the work they do, required to work excessive hours or subjected to other forms of unfair treatment (such as being victimised for whistleblowing). ...*

72. *The Regulations referred to in this passage are the Working Time Regulations 1998 which implemented Directive 93/104/EC ('the Working Time Directive'); and a similar explanation of the concept of a worker has been given in EU law. Although there is no single definition of the term 'worker', which appears in a number of different contexts in the Treaties and EU legislation, there has been a degree of convergence in the approach adopted. In Allonby v*

*Accrington and Rossendale College (Case C-256/01) [2004] ICR 1328; [2004] ECR I-873 the European Court of Justice held, at para 67, that in the Treaty provision which guarantees male and female workers equal pay for equal work (at that time, article 141 of the EC Treaty):*

*'... there must be considered as a worker a person who, for a certain period of time, performs services for and under the direction of another person in return for which he receives remuneration ...'*

*The court added (at para 68) that the authors of the Treaty clearly did not intend that the term 'worker' should include 'independent providers of services who are not in a relationship of subordination with the person who receives the services'. ... As stated by the Court of Justice of the European Union (CJEU) in [Syndicatul Familia Constanta v Directia Generala de Asistenta Sociala si Protectia Copilului Constanta (Case C-147/17) EU:C:2018:926; [2019] ICR 211], '[i]t follows that an employment relationship [ie between employer and worker] implies the existence of a hierarchical relationship between the worker and his employer' (para 42)."*

The Supreme Court concluded that

*"76. Once this is recognised, it can immediately be seen that it would be inconsistent with the purpose of this legislation to treat the terms of a written contract as the starting point in determining whether an individual falls within the definition of a 'worker'. To do so would reinstate the mischief which the legislation was enacted to prevent. It is the very fact that an employer is often in a position to dictate such contract terms and that the individual performing the work has little or no ability to influence those terms that gives rise to the need for statutory protection in the first place. The efficacy of such protection would be seriously undermined if the putative employer could by the way in which the relationship is characterised in the written contract determine, even prima facie, whether or not the other party is to be classified as a worker. Laws such as the National Minimum Wage Act were manifestly enacted to protect those whom Parliament considers to be in need of protection and not just those who are designated by their employer as qualifying for it."*

The definition of workers in UK law is broad, draws on the case law of the Court of Justice, as required by Article 2 of the Draft Directive. Increasingly, UK law draws on the *Allonby/Lawrie Blum* definitions to define workers, as with s.54(3) NMWA. The *Allonby/Lawrie Blum* test even applies to those covered by equality legislation (which had been thought to cover a broader group of people).

Pulling the strands together, the Supreme Court stated:

*"87. In determining whether an individual is a 'worker', there can, as Baroness Hale said in the Bates van Winkelhof case at para 39, 'be no substitute for applying the words of the statute to the facts of the individual case.' At the same time, in applying the statutory language, it is necessary both to view the facts realistically and to keep in mind the purpose of the legislation. As noted earlier, the vulnerabilities of workers which create the need for statutory protection are subordination to and dependence upon another person in relation to the work done. As also discussed, a touchstone of such subordination and dependence is (as has long been recognised in employment law) the degree of control exercised by the putative employer over the work or services performed by the individual concerned. The greater the extent of such control, the stronger the case for classifying the individual as a 'worker' who is employed under a 'worker's contract'.*

88. *This approach is also consistent with the case law of the CJEU which, as noted at para 72 above, treats the essential feature of a contract between an employer and a worker as the existence of a hierarchical relationship. In a recent judgment the Grand Chamber of the CJEU has emphasised that, in determining whether such a relationship exists, it is necessary to take account of the objective situation of the individual concerned and all the circumstances of his or her work. The wording of the contractual documents, while relevant, is not conclusive. It is also necessary to have regard to how relevant obligations are performed in practice: see AFMB Ltd v Raad van bestuur van de Sociale verzekeringsbank (Case C-610/18) EU:C:2020:565; [2020] ICR 1432, paras 60-61.*

89. *Section 28(1) of the National Minimum Wage Act establishes a presumption that an individual qualifies for the national minimum wage unless the contrary is established. This is not a case, however, which turns on the burden of proof."*

It thus looks like the test focuses on subordination and dependence as well as on vulnerabilities. The contract is significantly less relevant now than it was before.

The Supreme Court also upheld the tribunal's decision that the drivers' working time under the WTR 1998 included any period when the driver was logged in to the Uber app, even if not driving passengers. This time also counted as 'unmeasured work' for national minimum wage purposes.

The case was discussed in [Parliament](#). The Minister stated:

*"The Supreme Court ruling is final. We recognise the concerns about employment status and the potential for exploitation. We want to make it easier for individuals and businesses to understand what rights and tax obligations apply to them, and we are currently considering options to improve clarity around employment status. I have previously talked about the fact that ACAS was charged with considering fire and rehire and gathering evidence, and it has done so. It reported back to BEIS, and we will consider what it found."*

### 3 Implications of CJEU rulings

#### 3.1 Fixed-term work

*CJEU case C-760/18, 11 February 2021, M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)*

The UK has implemented Directive 99/70 in the [Fixed Term Employees \(Prevention of Less Favourable Treatment\) Regulations](#). These Regulations apply to the public and private sector. There is no written Constitution and so no constitutional constraint on controlling abuse. The key provision, Reg 8, is set out below. In essence it provides that any renewal of a fixed-term contract beyond four years converts the contract into a permanent contract, unless there are objectively justifiable reasons not to. The *MV* case therefore does not affect UK law. Further, while there is an interesting point in the judgment about interpretation, this decreasingly applies to the UK since Brexit.

*"8.—(1) This regulation applies where—*

*(a) an employee is employed under a contract purporting to be a fixed-term contract, and*

*(b) the contract mentioned in sub-paragraph (a) has previously been renewed, or the employee has previously been employed on a fixed-term contract before the start of the contract mentioned in sub-paragraph (a).*

*(2) Where this regulation applies then, with effect from the date specified in paragraph (3), the provision of the contract mentioned in paragraph (1)(a) that*

*restricts the duration of the contract shall be of no effect, and the employee shall be a permanent employee, if—*

*(a) the employee has been continuously employed under the contract mentioned in paragraph 1(a), or under that contract taken with a previous fixed-term contract, for a period of four years or more, and*

*(b) the employment of the employee under a fixed-term contract was not justified on objective grounds—*

*(i) where the contract mentioned in paragraph (1)(a) has been renewed, at the time when it was last renewed;*

*(ii) where that contract has not been renewed, at the time when it was entered into.*

*(3) The date referred to in paragraph (2) is whichever is the later of—*

*(a) the date on which the contract mentioned in paragraph (1)(a) was entered into or last renewed, and*

*(b) the date on which the employee acquired four years' continuous employment.*

*(4) For the purposes of this regulation Chapter 1 of Part 14 of the 1996 Act shall apply in determining whether an employee has been continuously employed, and any period of continuous employment falling before the 10th July 2002 shall be disregarded."*

## 4 Other relevant information

### 4.1 4.1 COVID-19 updates

On 22 February, the Prime Minister published a four-step [timetable](#) to emerge from lockdown. All restrictions are expected to end by 21 June. The Scottish government also published its own [plan](#) for the relaxation of the rules.

### 4.2 Brexit issues

Under SSC.11 TCA, on social security and 'detached workers', all EU states opted into the detached worker rules before 01 February 2021 and hence UK employers sending an employee to temporarily work in the EU (and vice versa) should apply to HMRC for certification so that UK NICs can continue to be paid in the UK.

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