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April 2021

Summary and country reports

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

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Executive Summary

National level developments

In April 2021, extraordinary measures associated with the COVID-19 crisis continued to play a role in the development of labour law in many Member States and European Economic Area (EEA) countries.

This summary is therefore again divided into an overview of developments relating to COVID-19 crisis measures, while the second part sums up other labour law developments that are of particular relevance for the transposition of EU labour law.

Developments related to the COVID-19 crisis

States of emergency and lockdowns are still in force in several countries, including the **Czech Republic**, **Slovakia** and **Slovenia**. After a partial reopening, a third lockdown was declared in **Cyprus.**

Travel bans and restrictions in connection with the operation of businesses and other establishments are still in force in many countries. However, such measures are gradually being reduced in several countries such as **Austria**, **Denmark**, **Italy**, **Norway**, **Portugal**, **United Kingdom**, which have announced comprehensive reopening plans.

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.

Measures mandating the adoption of a teleworking regime for part of the workforce have been extended in **Cyprus**, **Germany**, **Greece**, **Italy** and **Slovakia.** Moreover, due to the increased prevalence of teleworking, legislation on teleworking has been amended in **Romania**.

Specific health and safety measures for the workplace to reduce the risk of contagion remain in place in many states. In a number of countries, such as **Austria** and **Cyprus**, the obligation for employers to regularly test their employees for COVID-19 remains in force. In **Italy**, the public health rules, which have been applicable in the workplace since April 2020, have been extended, and new rules have been adopted to organise the deployment of vaccination campaigns in the workplace.

Finally, in the context of the ongoing COVID-19 vaccination plans, public debate on the right to refuse mandatory testing or vaccination against COVID-19 is on the rise. In **Cyprus**, teachers have contested the disciplinary sanctions imposed for refusing to undertake mandatory testing or to be vaccinated before the courts. The obligation for healthcare workers to be vaccinated against COVID-19 has been introduced in **Italy**.

Measures to alleviate the financial consequences for businesses and workers

In light of the continuing COVID-19 crisis, state-supported short-time work, temporary layoffs or equivalent wage guarantee schemes have been extended and remain in place in many countries, such as in **Cyprus**, **Romania**, **Slovenia**, and the **United Kingdom.** In **Belgium**, temporary unemployment benefits have been extended for employees who are working on the basis of service vouchers and for those whose main job involves transport to and from educational institutions. In **Denmark**, the government has adjusted the rules on relief measures, allowing recipients of wage compensation to prepare the reopening of their businesses.

State financial aid for employers and companies have been extended in the **Czech Republic** until 30 June 2021. Moreover, in **Belgium**, reductions in

social security contributions have been granted for employers in the entertainment, accommodation and travel sectors. In the **United Kingdom**, relief measures for the self-employed have been extended until 30 April 2021.

A few countries have enacted measures for certain workers who are struggling to enter the labour market, such as young workers. In **Denmark**, the government has extended the scope of 'company internships' for graduates. In **Luxembourg**, minor measures were introduced to extend entitlement to training programmes for persons on short-time work and to temporarily adapt the rules on apprenticeships. In **Belgium**, the working hour limits for student work in the care and education sectors has been lifted. In **Norway**, the government has introduced a compensation scheme for employers engaging young people for short-term jobs during the summer.

Finally, in **Norway**, the government has introduced a new compensation scheme for foreign workers who are prevented from coming to work while the borders are closed.

Leave entitlements and social security

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

In the **Czech Republic,** the government has extended the extraordinary payment for employees in quarantine and amended the conditions for the provision of carer's allowance. In **Luxembourg**, family-related leave has been extended until 17 July 2021, and a bill aims to extend special family support leave until 25 November 2021.

In **Belgium**, the right of employees to be absent from work without pay due to the closure of schools and other educational facilities has been extended until 30 June 2021. Moreover, a new type of paid leave has been introduced for employees to receive their vaccine against COVID-19.

Measures to ensure the performance of essential work

In **Belgium**, a recent temporary law enables employers in essential sectors to continue increasing the number of voluntary overtime hours until 30 June 2021.

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

Topic	Countries
Lockdown measures	CY CZ SK SI
Easing of COVID-19 restrictions	AT DK IT NO PT UK
Benefits for workers / self-employed prevented from working	BE CY DK RO SI UK
Teleworking	CY DE EL IT SK RO
Measures to ease traineeships and student work scheme	BE DK LU NO
Special care leave / parental leave	CZ LU BE
Health and safety measures	AT CY IT
Mandatory vaccination against COVID-19	CY IT
Employer subsidies	BE CZ
Overtime in essential sectors	BE
Other leave entitlements	BE

Other developments

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

Working time and Work-life Balance

In **Finland**, the Labour Court has established that the stand-by time of firemen, who are required to be available to work within 5 minutes from the request, is to be considered working time.

In **Greece**, a bill regulating teleworking for civil servants has been submitted for consultation.

In **Ireland**, a statutory Code of Practice on the right to disconnect has been introduced.

In the **Netherlands**, the draft bill implementing Directive EU 2019/1158 on Work-Life Balance has been adopted.

Atypical employment

In **Germany**, the government has proposed a draft amendment that would tighten the rules on fixed-term contracts.

In **Hungary**, the Supreme Court ruled that the unilateral termination by the user company of an assignment of a temporary agency worker represented a valid reason for terminating the employment relationship.

In **Estonia**, legislation on employment contracts will be amended to introduce variable hours contracts in the retail sector.

Platform work

In **France**, a new Ordinance regulates the representation of self-employed workers using platforms and organises the election of representatives.

In **Italy**, a judge stated that the termination of a rider's contract by a platform company for refusing to accept the applicable collective agreement is discriminatory.

In the **Netherlands**, the Supreme Court has issued a decision in an important case on platform companies, ruling that Booking.com is not a tech company but rather an 'intermediary' in the conclusion of contracts relating to travel.

Posting of workers

In **Austria**, a draft on the implementation of Directive (EU) 2018/957 on posting of workers has been introduced. The Directive has also been transposed in **Spain,** where rules on the posting of workers have been amended to include postings through a temporary employment agency.

Protection of whistleblowers

In **Denmark** and **Sweden**, legislative proposals for the implementation of Directive EU 2019/1937 on the protection of whistleblowers have been put forth.

In **Germany**, where the bill proposed to implement the EU Directive would also apply to persons reporting violations of national law, the transposition is being delayed by ongoing political negotiations.

Third-country nationals

Rules regulating the employment of third-country nationals have been amended in **Croatia** and in **Slovenia**. In **Finland**, the government has amended the legislation on seasonal work in the agriculture and tourism sectors.

Other aspects

In **Estonia**, the government has approved a draft law to amend regulations on the extension of collective agreements.

In **Germany**, the Federal Labour Court submitted a reference for a preliminary ruling before the CJEU to clarify the question whether German law on the dismissal of a company data protection officer is in line with EU law.

In **Hungary**, the government has issued a decree providing detailed rules on inspections of minimum labour law provisions and sanctions in case of violations.

In **Ireland**, two decisions of the Supreme Court have ruled on the constitutionality of the labour dispute resolution process.

Italy has transposed Directive (EU) 2019/1159 on Seafarers. The **Italian** Constitutional Court has rendered an important judgment, declaring that in case of 'manifest' non-existence of economic reasons for a dismissal, the judge must order the reinstatement of the worker who was unlawfully terminated.

In **Portugal**, the legal framework of transfers of undertakings has been amended to explicitly include situations of transfers arising from public procurement.

In **Romania**, the government has adopted a series of measures aimed at making labour relations more flexible, especially for micro-enterprises.

With the aim of improving labour intermediation services, the government in **Romania** has supplemented the protection norms for Romanian citizens working abroad through contracts coordinated by employment agencies.

In **Slovenia**, the ILO Home Work Convention, 1996 (No. 177) has been ratified, which will be binding as of 14 April 2022.

In **Sweden**, the Labour Court has issued a judgment on the definition of employee in the case of an actor engaged with a theatre that had to cancel its operations due to the pandemic restrictions

Table 2: Other major developments

Topic	Countries
Platform work	FR IT NL
Fixed-term work	DE
Temporary agency work	HU
Posting of workers	AT ES
Whistleblowers	AT DE SE
Teleworking	EL IE
Stand-by duty	FI
Work-life balance	EL
Employment of third-country national	HR SI
Seasonal workers	FI
Collective agreements	EE FR IT
Flexible work	EE RO
Termination of employment	DE IT
Labour inspections	HU
Labour disputes	IE
Employment agencies	RO
Transfer of undertakings	PT
Home work	SI
Seafarers	IT

Austria

Summary

(I) As Austria is gradually preparing to ease its lockdown, the government has passed legislation that allows for ordinances to treat vaccinated persons as persons who have tested negatively for COVID-19 or who have recovered from COVID-19 ('green passport'), or to order employers to regularly test their workforce.

(II) A draft on the implementation of the renewed Directive on posting of workers has been introduced.

(III) One decision of the Supreme Court dealing with a purely internal situation was greatly influenced by EU legislation on the free movement of workers.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Vaccination against COVID-19

Austria is still on lockdown but has adapted its lockdown regulations to the local number of COVID-19 cases. Regulation on workplace safety, and the government's recommendation to working from home has remained unchanged across Austria, but changes with regard to workplace safety are expected in May.

The National Assembly—in an urgent procedure— has passed legislation that permits the Minister of Health to enact an ordinance that gives fully vaccinated people the same status as people who test negative for COVID-19 or who have recovered from a COVID-19 infection. This is a first step towards the establishment of a 'green passport'. According to the Health Minister, vaccination certificates could be valid for six months for the time being, but details have not yet been specified.

Employers are to become part of the national vaccination strategy, as the implementation of the national vaccination plan enters its third phase, i.e. the phase in which all interested persons can receive a vaccination. Companies with state participation and some large(r) companies operating throughout Austria are expected to receive vaccines for their staff (and relatives of their staff) directly from the federal government, see Press on Vaccinations at the Work Site.

Austria has not introduced a general obligation for a COVID-19 vaccine, and no other legislation specifically addresses vaccines and the workplace. The Act on Epidemics (§ 17 para 3 EpidG) permits the Minister to enact an ordinance with a vaccine requirement for medical professions (as well as persons working at funeral homes, and midwives), though such an ordinance has not yet been enacted. The current debate in employment law circles around whether employers can ask employees about their vaccination status, and/or for employees to face consequences if they choose to not get vaccinated, even though it would be possible for them. A key issue in the debate is a medical one, namely whether vaccination protects not only from the disease but prevents/decreases the risk of spreading the disease, see Press on Vaccination Status and Employment Law, Press on Testing and Vaccination Requests by Employers, Press on Vaccination and the Workplace.

1.1.2 Obligation to test employees against COVID-19

The National Assembly also passed legislation allowing the introduction by ordinance of an extended obligation to test at workplaces. The employer must allow the tests to be carried out on-site or off-site, e.g. in test lanes. Details regarding the type of tests or

the period of validity, etc. are to be laid down in a regulation, see Press on Test Obligations.

1.2 Other legislative developments

1.2.1 Posting of workers

Following the CJEU rulings in C-33/17, *Čepelnik*, and C-64/18, *Maksimovic*, and the necessity to transpose the amended Directive on Posted Workers, a draft to amend the Act Against Wage and Social Dumping is being evaluated by stakeholders.

A key point in the draft is that—in compliance with the Directive—posted foreign and domestic workers are to be treated fully equally after one year. Also, exceptions from the application of the Act have been redefined. Most significantly, and in response to the CJEU judgment in *Maksimovic*, fines for violations against the Act have been amended: instead of the accumulation principle regarding fines (meaning that fines per violation per employee concerned are accumulated, without a maximum limit), fines ranging between EUR 0 and EUR 20 000 for reported violations in connection with the posting and for thwarting responsibilities in connection with wage inspection are proposed. Also, fines ranging between EUR 0 and EUR 30 000 are proposed for failure to keep and submit wage documents, and in case of underpayment of wages, a graduated penalty system is planned, depending on the amount of damage, with a maximum penalty of EUR 400 000.

More information can be found in this press release.

2 Court Rulings

2.1 Free movement of workers

Austrian Supreme Court, 9 ObA 111/20v, 24 February 2021

This national court ruling concerned a dispute raised by a medical nurse working for the Federal State of Styria (*Steiermark*), who claimed that all of her relevant periods of prior service with other employers should be taken into account when classifying her in the relevant salary scheme that is very much based on seniority, invoking Article 45 TFEU. The employer rejected the claim, stating that there was no cross-border situation in the case at hand.

Both lower courts granted the claim based on the argument that EU law prohibits unjustified differentiated treatment of service times abroad and in Austria, as well as differentiated treatment of relevant service times with the present employer and others. Although EU law did not apply, it was of relevance in this case, as a differentiation between transnational cases and merely national ones would contravene the principle of equal treatment in the Austrian Constitution.

The Austrian Supreme Court stalled the proceedings and initiated a procedure before the Austrian Constitutional Court to revise the constitutionality of some parts of the Styrian legislation dealing with crediting previous service times for the purpose of classifying an employee in the seniority salary scheme. The doubts on the conformity of these provisions with the Austrian Constitution (principle of equal treatment) were mostly based on arguments concerning the transnational mobility of workers as a preliminary question. These parts of the ruling are of interest from an EU labour law perspective and are briefly discussed in the following.

The Supreme Court pointed out that according to CJEU case law, a rule according to which periods of prior service completed with Austrian regional authorities are fully credited, but relevant periods of prior service completed with other employers are excluded, is likely to deter migrant workers who have acquired or are in the process of acquiring relevant professional experience with other employers from exercising their

right to freedom of movement (CJEU case C-514/12, *Salzburger Landeskliniken*, paras 28, 35; case C-24/17, *Österreichischer Gewerkschaftsbund*, paras 82, 92).

According to the provisions applicable in the present case, the periods of prior service completed in an employment relationship with a regional authority or with the Styrian Hospital Ltd are to be accredited fully, but periods of service spent with other employers shall only be taken into account as half the time, provided that they do not exceed a total of three years. These restrictions also apply if the employees have similar or identical (and not merely 'simply useful') previous periods of service. They may therefore prevent migrant workers from exercising their right to freedom of movement. Since there is also no factual justification for this, they are violating Article 45 TFEU and Article 7(1) of Regulation (EU) No. 492/2011 (CJEU case C-514/12, *Salk*; case C-703/17, *Adelheid Krah/Universität Wien*; case C-24/17, *Österreichischer Gewerkschaftsbund*; cf. also Supreme Court of 20 September 2020, 9 ObA 40/20b).

Due to the direct application of EU law, these mentioned restrictions that contravene EU law are therefore not applicable, so that similar or identical periods of prior service are to be credited in full to migrant workers in any case, regardless of the employers for whom these periods of prior service were completed.

This direct application of EU law was not possible, however, in the given case as it was a purely national one. However, the fact that an Austrian national cannot directly invoke Article 45 TFEU does not preclude that the possible infringement of national legislation against primary EU law is to be examined in this case as a preliminary question to be assessed according to national (constitutional) law - whether an Austrian national may be more adversely treated by the application of such national legislation than a foreigner who can invoke inapplicability due to the direct application of EU law.

The ruling is in line with the CJEU's case law that deals with indirect restrictions to transnational mobility, quoting the relevant cases that have actually dealt with Austrian legislation.

This ruling of the Supreme Court is also a very good example of how EU legislation restricted by transnational situations can only also have an effect on merely national situations in Austria. Namely, the constitutional principle of equal treatment prohibits the detrimental treatment of nationals vis-à-vis foreigners without justification. This would be the case if only foreigners could rely on EU law but Austrian nationals could not. The mechanism for the elimination of such discriminatory legislation is more complicated though, as there is no principle on the primacy of constitutional law or similar in Austria. A formal procedure before the Austrian Constitutional Court is necessary to nullify it. Such a procedure can also be initiated by the Supreme Court if it has to apply legislation it considers unconstitutional – and this was the case here.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) Since 09 April 2021, employees have had the right to be absent from work, with normal pay, to receive a vaccine against COVID-19.

(II) A recent temporary law provides that employers that belong to essential sectors may continue to increase the number of voluntary overtime hours until 30 June 2021, and introduces special measures to facilitate student work in the care and education sectors.

(III) Reductions in social security contributions have been granted for employers in the entertainment, the accommodation and in the travel sector. Likewise, temporary unemployment benefits have been extended to employees working on the basis of service vouchers and employees whose main job is transportation to and from educational institutions.

(IV) The right of employees to be absent from work without pay due to the closure of schools and other educational facilities has been extended until 30 June 2021.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Vaccination leave

The Law of 28 March 2021 (*Moniteur belge,* 08 April 2021) provides for a right to leave for employees for the purpose of receiving a vaccine to protect themselves against the coronavirus COVID-19. Starting from 09 April 2021, employees are entitled to the right to be absent from work, with normal pay, to receive a vaccine against COVID-19. This right only applies for the time required to get the vaccine. To exercise his or her right, the employee must notify the employer as soon as possible once the employee receives his or her time slot. The employer may ask for proof of when the vaccination took place in order to organise the work and to ensure proper payroll administration. The employer must register these absences as minor absences without recording the reason for them.

In principle, the law will expire on 31 December 2021. The King can postpone this date until 30 June 2022, at the latest.

1.1.2 Essential work

The Law of 02 April 2021 (*Moniteur belge,* 13 April 2021) contains temporary support measures as a result of the COVID-19 pandemic. This law provides, among other things, that employers that belong to essential sectors may continue to increase the number of voluntary overtime hours until 30 June 2021, as provided for in the Law of 20 December 2020 on temporary support measures (see December 2020 Flash Report).

Likewise, it provides for exceptional rules for student work performed in the care and education sectors. Student work performed in the care and education sectors during the second quarter of 2021 is not eligible for the calculation of the maximum annual quota of 475 hours a student is allowed to work to enjoy the favourable status of student employee.

1.1.3 Relief measures

The above-mentioned Law of 02 April 2021 reduces the target group's social security contributions for certain categories of employers in the entertainment and

accommodation sectors. A reduction in social security contributions is also granted for certain categories of employers in the travel sector.

Moreover, as of 13 April 2021, temporary unemployment is granted to employees with employment contracts based on service vouchers and employees whose main job is transportation to and from educational institutions. When those employees cannot work as a direct result of the pandemic, they are entitled to temporary unemployment benefits for half a day, and their employer does not have to pay a guaranteed daily wage for half a day, in derogation of Art. 27(1)(2) of the Employment Contracts Law. This measure will expire on 30 June 2021.

Finally, the law also provides the possibility for employees who have reduced their working hours or are taking a career break to agree with their employer to temporarily suspend this situation. At the end of the suspension, the original interruption or reduction of work performance continues under the original conditions for the remaining duration. The temporary suspension may take place from 01 April 2021 to 30 June 2021.

1.1.4 Special care leave

The above-mentioned Law of 02 April 2021 extends the right to be absent from work without pay due to the closure of schools, childcare centres or facilities for persons with disabilities until 30 June 2021.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Minimum wage

In Belgium, compulsory wages to be paid in enterprises are not determined by law but by collective bargaining agreements. Collective bargaining agreements also provide that minimum wages increase automatically with inflation by linking minimum wages to the rise in the consumer price index. Moreover, in the context of safeguarding competitiveness and employment, the legislator has linked the development of wage costs to the development of wages in Germany, France and the Netherlands in the framework Law of 20 July 1996. Taking this into account, the maximum margin of wage increase is set annually by the social partners. But the law provides an alternative mechanism in case the employer organisations and the trade unions do not reach an agreement. In that case, the federal government itself must set the maximum wage growth margin.

After the interprofessional negotiations between the social partners on possible wage increases in the period 2021–2022 broke down, the government determined the maximum growth margin of wages on 06 May 2021. The main principles of the government's wage decision are as follows:

- the maintenance of the automatic indexation in the period 2021–2022 of 2.8 per cent and the so called 'baremic increases';
- the maximum margin for the development of wage costs is 0.4 per cent for the period 2021–2022 (cf. the technical report of the Central Social-Economic Council);
- companies with good results during the crisis are exceptionally given the opportunity in 2021 to grant a one-off increase in addition to the maximum margin of 0.4 + 2.8 = 3.2 per cent in the form of a 'corona premium' of up to EUR 500 net per employee for the year 2021. The premium may be issued no later than 31 December 2021. No social security contributions will be due for employee on the premium, but the employer will have to pay a social security contribution of 16.5 per cent.

Croatia

Summary

The Minister of Labour has amended the ordinance regulating the employment of third-country nationals.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Employment of third-country nationals

The Minister of Labour has issued Amendments to the Ordinance on Records of the Croatian Employment Service (see Official Gazette No 34/2021).

According to the new model, to protect the domestic labour force, a labour market test is conducted under the auspices of the Croatian Employment Service, which review the situation on the domestic labour market and allows the employer to employ third-country nationals depending on the test result. The labour market test includes reviewing the situation in the register of unemployed persons and the mediation procedure to employ workers from the national labour market. If the labour market test indicates that there are unemployed persons in the records of the Croatian Employment Service who can meet employers' needs, the Service issues a notice to the employer stating the reasons why the employer does not meet the conditions to employ third-country nationals. Furthermore, for the first time, an employer seeking to employ foreign workers is required to meet certain conditions as a guarantee for orderly business in the Republic of Croatia (among others, it is determined whether the employer pays income tax and compulsory insurance contributions, has not been convicted of criminal offences related to labour relations and social security contributions, etc.).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Cyprus

Summary

(I) The government has introduced a third lockdown.

(II) The government has extended special health and safety measures at work, indicating a minimum share of workers who should be requested to telework and mandatory testing of COVID-19 at work.

(III) Relief measures to support workers and businesses have been extended.

(IV) Public debate is rising on the right to refuse mandatory testing or vaccination against COVID-19. There have been media reports about teachers who have refused to take rapid tests and about doctors and nurses who have refused to be vaccinated; some of the teachers, doctors and nurses are contesting the disciplinary measures in court.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 New lockdown and restrictions to economic activities

April 2021 witnessed a serious spike in COVID-19 infections following the relaxation of pandemic-related restrictions, which has been attributed to three factors: the opening of schools, the opening of churches, and the detection of new, more contagious variants of the virus (see more here).

Consequently, the third lockdown was announced from 26 April 2021 until 09 May 2021. Several measures were announced by the government on 23 April 2021, including a curfew, prohibition of meetings and restrictions to the freedom of movement, with some exceptions to enable celebrations of the Orthodox Easter.

The operations of various economic activities, such as restaurants and bars, theatres and cinemas, gyms, retailers of non-essential items, and many others, have been suspended.

1.1.2 Health and safety measures at work

The announcement by the government also includes measures to limit the spread of the virus in the workplace:

- Remote work in public service is compulsory for at least 20 per cent of the staff, with the exception of essential and other services, which will be defined by a decree;
- For private service providers, the simultaneous physical presence of 20 per cent of staff is allowed, with a minimum number of three employees and a maximum of 25 employees per professional practice/legal entity;
- Increase in the mandatory rate of rapid testing on a weekly basis to 50 per cent of employees. Testing will be mandatory for all five persons in businesses/services with a physical presence of up to five (5) persons.

1.1.3 Relief measures

The Ministry of Labour, Welfare and Social Insurance has decided to extend the support measures for businesses and workers affected by the measures to contain the virus.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Debate on the right to refuse testing and/or vaccination against COVID-19

A number of cases has been reported in the media involving various workers and professionals who refuse to abide by the measures imposed by the government to contain the virus. The Ministry of Education has decreed that rapid testing is mandatory for all teachers and school staff (for a press release, see here). However, some teachers are contesting this and are consequently facing disciplinary action.

The contract of a technical education teacher was terminated by the Educational Service Committee. He is one amongst other teachers who refuses to take a rapid test before entering their respective schools and has initiated legal proceedings against the Education and Health Ministries. According to the teachers who refuse to perform rapid tests, the provisions of the Decrees (on compulsory weekly tests) issued by the ministries violate their fundamental constitutional rights (for a press release, see here). It was announced that numerous teachers and parents are taking legal action against the Ministry of Education. The case is still pending before the court. Legal opinion on the matter is divided.

Numerous media reports discuss cases of doctors and nurses who have refused to be vaccinated; some of the teachers, doctors and nurses are contesting this in court. The Ministry of Health of Cyprus is apparently concerned about data published by the State Health Services Organisation, which show that a large share of nurses and doctors in public hospitals have refused to be vaccinated with the coronavirus vaccine. The Ministry of Health considers such refusal by hospital staff to be vaccinated to be a major concern, as there is a risk that hospitals will be left without sufficient staff in case doctors and nurses become ill *en masse.* See here for a press release.

Last January, when this issue was considered by the Cypriot Bioethics Committee, it did not take a clear position on the matter, considering that it was premature to make vaccination compulsory for medical professionals and staff, but it also did not rule it out altogether. The Bioethics Committee concluded that *"at this stage, based on the available scientific data and the examination of the ethical principles as set out above, the imposition of mandatory vaccination of the entire population against COVID-19 is not a measure compatible with them, and it is at least early. Therefore, any measures that directly or indirectly force citizens to be vaccinated should be avoided."*

Another relevant development pertaining to workers' rights is the decision of the Data Protection Commissioner, which considers that citizens are not required to present their receipt or certificates or attestations that they have been vaccinated or have a negative rapid or PCR test, or that he or she has been infected with and has recovered from COVID-19. She reasoned that such certificates are health data, and according to the General Data Protection Regulation, and as such, should be subject to increased protection. Employees who have the obligation to present a negative rapid test or PCR

certificate within the framework of the COVID-19 decrees for workplaces, have no obligation to present them or show them to their employers, but must inform them about the result. At this stage, an employee who has been vaccinated and is exempt from the obligation to undergo a rapid test or PCR test, shall inform his or her employer, but is not required to provide any certificate. In any case, the responsibility for proof lies with the person who is required to hold such a certificate. Citizens who hold such certificates, if requested, have the obligation to present them to competent inspectors or police in the context of checks of compliance with applicable decrees. Except for the competent inspector or police, no person has the right to ask a citizen to present any certificate, neither to be allowed to enter a place, nor for any other purpose.

Czech Republic

Summary

(I) The state of emergency has ended. On the basis of the Pandemic Act, restrictions on businesses have been readopted and extended. The travel ban has been amended and extended to cover certain high-risk countries.

(II) The government has extended the extraordinary payment for employees in quarantine and amended the conditions for the provision of carer's allowance.

(III) The government extended the state financial aid for employers until 30 June 2021.

(IV) The Supreme Court and the Constitutional Court ruled on two cases of discrimination.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 State of emergency

The state of emergency has ended. All measures adopted by the competent authorities have been now implemented on the basis of the Pandemic Act (see also February 2021 Flash Report).

1.1.2 Travel ban

With effect as of 27 April 2021, the government retained and amended the travel ban (Protective measure of the Ministry of Health No. MZDR 20599/2020-73/MIN/KAN).

Moreover, the government adopted an additional travel ban in connection with the spread of the new variant of COVID-19. With effect as of 27 April 2021 until 31 May 2021, Czech citizens as well as foreign nationals with residence in the territory of the Czech Republic may not travel to specific countries, namely: Botswana, Brazil, Eswatini, India, South Africa, Kenya, Colombia, Lesotho, Malawi, Mozambique, Peru, Tanzania, Zambia and Zimbabwe – due to the increased COVID-19 risk in these countries (Protective measure of the Ministry of Health No. MZDR 20599/2020-74/MIN/KAN of 26 April 2021).

1.1.3 Restrictions on businesses

With effect as of 03 May 2021, the government readopted and amended restrictions on certain businesses (Protective measure of the Ministry of Health No. MZDR 14601/2021-7/MIN/KAN of 29 April 2021)

1.1.4 Extraordinary payment for employees in quarantine

An extraordinary payment provided to employees during quarantine has recently been introduced (see March 2021 Flash Report). The payment was initially to be provided until the end of April 2021, however, with Act No. 182/2021 Coll., the payment is now being extended until the end of June 2021.

1.1.5 Carer's allowance

With Act No. 183/2021 Coll. of 30 April 2021, the conditions of the scheme of providing the carer's allowance (see October and November 2020 Flash Reports) have been amended to alleviate the situation of persons caring for a dependent.

1.1.6 State financial aid for employers – the 'Antivirus' programme

Through Resolution No. 392 of 19 April 2021, the government has amended and extended the 'Antivirus' programme (see, lastly, March 2021 Flash Report) to ease employers' situation in connection with the COVID-19 pandemic and the related measures adopted by the authorities until 31 May 2021.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Discrimination on disability grounds

Supreme Court, No. 21 Cdo 1844/2020, 08 December 2020

In this decision, the Supreme Court ruled that if the employee does not inform the employer about his or her health condition, and if, at the same time, the condition is not (and does not need to be) apparent to the employer on the basis of information acquired over the course of the duration of the employment relationship, the employer is not able to discriminate against the employee.

The employee-plaintiff demanded an apology and financial compensation from his employer-defendant. According to the employee, the employer discriminated against him by not adopting sufficient measures to enable him to effectively perform work for the employer, as the employee suffered from several mental disorders (e.g. a problematic attitude towards superiors, inclination to narcissism, mood changes, sensitivity to criticism) – the employee argued that the employer should have provided him with professional mediation, coaching, home office or fewer working hours; by not adopting such measures, the employer had indirectly discriminated against him.

The employee had not informed the employer about his condition at any point during the recruitment process or the course of the employment relationship. Furthermore, at the entry medical exam, the employee was found fit to perform work for the employer.

On the other hand, the employee's stay at the employer was not without problems – he often refused to perform tasks assigned to him the way he had been instructed and conflicts arose many times between him and his colleagues – for instance, the employee complained that his co-workers talked too much and too loudly. The employee provided the employer's accountant with the Prague Social Security Administration's ruling recognising the employee as a disadvantaged person (however, with no additional information). Lastly, he informed his superiors (during one of their many meetings about the aforementioned conflicts) that he regularly visits a psychotherapist.

The Supreme Court, similarly to the lower courts, ruled that an employer can only discriminate against an employee based on a disability when he or she is aware of the particular disability. The employee not informing the employer about his disability does not necessarily mean that the employer could not have become aware of the disability; however, an employer can only be blamed for not realising an employee is disabled when such a disability is apparent. In the present case, the employee hade not informed the employer about his disability (consisting of a mental disorder), and no other

information provided or factual element was sufficient for the employer to become aware of the particular disability.

2.2 Gender discrimination

Constitutional Court, No. II.ÚS 1148/20, 02 February 2021

In this decision, the Constitutional Court ruled that the constitutional right of a free choice of occupation does not constitute an obligation for the employer to conclude an employment contract with a person as reprieve from the consequences of discrimination against that person.

The case concerned an employee who took part in a tender for a different position. Upon rejection, she claimed she was discriminated against on the basis of her gender, and demanded an apology to be published, financial compensation and an employment relationship for the given position.

The lower courts eventually granted the apology to the employee; however, they dismissed the claim for financial compensation and for the establishment of an employment relationship. The Supreme Court ruled that forcing an employment contract on the employer and therefore substituting the will of the employer is not reasonable, even in case of discrimination.

Since the plaintiff filed a constitutional complaint against the Supreme Court's decision on the conclusion of the employment contract, the Constitutional Court assessed it and rejected the complaint for not being severe enough to actually breach constitutional rights. The Constitutional Court ruled that the constitutional right to freely choose an occupation does not constitute an obligation for the employer to conclude an employment contract with the person as reprieve for the consequences of discrimination against that person, and that in this case, forcing the conclusion of an employment contract was not an adequate measure. The Constitutional Court described this solution to be problematic and cited European case law (i.e. cases C-14/83, *Von Colson and Kamann v Land Nordrhein-Westfalen*; C-177/88, *Dekker*; C-81/12, *Asociaţia Accept*), which mentioned several issues connected to forcing the conclusion of an employment contract.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Draft act on minimum wage and working time

A Draft Act amending the Labour Code has been proposed in Parliament and is currently in the legislative process. The proposed changes are as follows:

- To bind the annual determination of the minimum wage to 50 per cent of the average gross monthly salary in the national economy 2 years earlier;
- To shorten the weekly standard working hours by 2.5 hours (i.e. from 40 to 37.5 hours per week);
- To extend the minimum entitlement to annual paid leave from 4 to 5 weeks per calendar year.

The Draft Act would introduce significant changes to the Czech Labour Code. However, it is uncertain whether the Draft Act will be adopted.

Denmark

Summary

(I) COVID-19 related restrictions are gradually being lifted in Denmark according to a new comprehensive reopening plan (with use of a digital COVID-19 passport). The reopening has been accelerated due to stabilised infection rates. Travel restrictions are slowly and gradually being lifted.

(II) The government has extended the scope of 'company internships' for graduates, who are struggling to enter the labour market

(III) The government has adjusted the rules on relief measures, allowing recipients of wage compensation to prepare the reopening of their businesses.

(III) The legislative proposal for a new Act on the Protection of Whistleblowers has been put forth. The Danish Act intends to cover breaches of both EU and national law and will thus go beyond the scope of Directive EU 2019/1937.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Reopening plan

Denmark is gradually lifting its COVID-19 restrictions. In April 2021, a political majority favoured the opening of society more generously than initially expected. Infection rates have remained relatively stable during the first phase of the reopening. As of 21 April 2021, reopening covers, *inter alia*, large shopping malls, restaurants, bars, cafes (indoor service requires a COVID-19 passport and reservations), indoor sport activities for children below the age of 18 (without a COVID-19 passport), museums and libraries (with a COVID-19 passport), outdoor football matches (subject to specific restrictions) and increased physical attendance in schools. The prohibition of large gatherings is slowly being phased out and is expected to cease entirely on 01 August 2021.

See here for the initial Reopening Plan and here for the revised Reopening Plan of 15 April 2021.

In April 2021, a political majority also reached an agreement on travel in light of the COVID-19 situation. The agreement plans to lift some restrictions during spring in four different phases. Phase 1 (21 April 2021) entails, in short, that the risk assessment will be differentiated based on the infection situation in a given country/region (occurrence, positive percentage and test frequency). More lenient rules have been introduced for business travel. Phase 1 has been implemented. Phase 2 (01 May 2021) entails, in short, that fully vaccinated citizens (Danish and foreign), including tourists, from yellow and orange EU and Schengen countries may travel in and out of Denmark without any Danish test or isolation requirements. For incoming travellers, there will be documentation requirements and a negative COVID-19 test must be presented upon entry (not more than 48 hours old). Countries that are marked red will continue to be subject to travel restrictions. Phase 2 has also been implemented as expected.

See here for the agreement on the gradual reopening of travel activities of 13 April 2021.

1.1.2 Internships

Graduates are struggling to find employment after completing their education, and the COVID-19 crisis has not made this any easier. In response, the existing company internship scheme has been expanded from 4 to 8 weeks for graduates. Company internships are one of a range of public social policy schemes included in the Active

Labour Market Act, L 548 of 07 May 2019, aiming to help persons outside the labour market to enter it under normal working terms and conditions.

Within the scope of a company internship, an unemployed person temporarily works in a specified position for a company, while receiving unemployment benefits. The unemployed person does not become an employee of the company, and is not entitled to a salary, pension, etc. However, the scheme brings the unemployed person closer to the employment market.

The expansion of the scheme is one of 22 recommendations originating from the work of the cross-sectoral committee on 'Partnership for graduates in employment' (*Partnerskabet for dimittender i arbejde*). The committee, a government initiative, consisted of representatives from a number of stakeholders across society, including social partners, education, state and municipalities, companies and students. The committee recently published its report on how to increase the employment of graduates.

The expansion of the company internship scheme will last for 1.5 years.

1.1.3 Employees receiving wage compensation may prepare the reopening of their businesses

The state-funded wage compensation scheme remains in force in Denmark during the gradual reopening of society. It is a precondition for receiving wage compensation that employees, who are sent home, do not perform work while receiving compensation. This requirement has now been adjusted.

In the seven days preceding the re-opening of a company, employees may perform work in order to prepare the business for the reopening, while receiving full wage compensation for those days of work. The adjustment is recognition of the work necessary to comply with distance requirements, cleaning and other preparatory activities for COVID-19 guidelines at the employer's premises.

The wage compensation scheme will be in effect until 30 June 2021. The scheme will apply until the restrictions have been lifted in full for companies restricted from opening by law.

See here for the press release of the Ministry of Employment.

1.2 Other legislative developments

1.2.1 Protection of whistleblowers

The Danish Ministry of Justice has proposed a new Act on the Protection of Whistleblowers to the Danish Parliament, L 213 of 14 April 2021. In short, the Act is an implementation of Directive 2019/1937/EU of 23 October 2019 with an additional scope.

The scope is extended to include disclosures, which in addition to the scope of the Directive concern serious transgressions of national law or other serious transgressions. Thus, the Act includes breaches of EU law as well as national law.

The proposal includes a duty to establish an internal whistleblower scheme for employers with 50 employees or more. Moreover, it provides for the establishment of a supplementing external whistleblower scheme that will be instituted at the Danish Data Protection Agency.

The proposal is at the beginning of the legislative process. The Act with any adjustments is suggested to enter into force on 17 December 2021 – with the duty to establish internal whistleblower schemes by 17 December 2023.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

(I) Estonia will amend its legislation on employment contracts to introduce variable hours contracts. This possibility allows employers to offer flexible labour conditions in the retail sector.

(II) The government has approved a draft law to amend regulations on the extension of collective agreements.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Draft act on flexible working hours

On 07 April 2021, the Ministry of Social Affairs entered into a goodwill agreement with the social partners to pilot the use of variable hour contracts in the retail sector. Such a practice is new in Estonia. On the basis of this agreement, a draft amendment to the Employment Contracts Act has been prepared, which adds the possibility to section 43(1) of a special agreement for variable hours in retail. According to the current draft, the amendment will enter into force on 01 July 2021.

The aim of the draft is to allow employers to engage part-time and flexible workers, thus employing more people and providing them with greater protection under an employment contract than a contract for the provision of services (especially authorisation agreements). However, both parties to the employment relationship must agree to this special agreement.

Until now, it has not been possible to enter into a legal variable hours contract in Estonia. However, the draft has been developed cautiously and various restrictions are in place. For example:

- the employment contract bilaterally sets a minimum workload, which may not be less than 0.3 of full-time hours, i.e. 12 hours per seven-day period;
- possible additional variable hours can be agreed, up to one-fifth of full-time hours, i.e. 8 hours per seven-day period;
- the employer shall retain separate records of employees' variable hours;
- the agreement may not be concluded with more than 17.5 per cent of the employer's employees;
- the employee has the right to refuse to work hours that exceed the fixed minimum workload. The employee must confirm the variable hours offered in a form that can be reproduced in writing (if he/she agrees);
- the employer must request any off-schedule variable hours work at least 24 hours in advance;
- variable hourly contracts can only be concluded with employees whose salary is at least 1.2 times the minimum wage (as the minimum wage for 2021 is EUR 584, this salary in 2021 must be at least EUR 700).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Extension of collective agreements

The government has proposed amendments to the law establishing new conditions for the extension of collective agreements. Remuneration and working and rest time conditions can be extended to include the entire sector in the future, if agreed by employees and employers who meet certain representation criteria. The amendments bring the extension of the collective agreement into line with the constitutional freedom of the enterprise.

The purpose of the draft is to enable collective agreements to be extended again by providing for certain representation criteria: an extension of the terms of a collective agreement may be agreed unilaterally by a trade union that represents at least 40 per cent of the workforce. It is also possible for employers who are not members of an employers' association or union to join an expandable collective agreement. Before extending the terms of a collective agreement, the parties to the negotiations have an obligation to publicly inform and consult all employees and employers in respect of whom the terms are to be extended.

In Estonia, the extension of the collective agreement is used in the medical and transport sectors. The Estonian Employers' Confederation and the Estonian Trade Union Confederation also agree annually on a minimum wage, which will be extended to all Estonian employees.

The amendment of the Act was prompted by the judgment of the Supreme Court, in which the Court found that the current mechanism for extending collective agreements disproportionately restricts the freedom of the enterprise and that it is therefore necessary to establish preconditions and application criteria to extend collective agreements.

In addition, the draft also increases the protection of employee representatives and more vulnerable target groups in the employment relationship. The Employment Contracts Act has been amended and the rate of compensation is increased if a court or labour dispute committee finds the termination of an employment contract to be invalid with a worker entitled to pregnancy, maternity leave or is an employee representative. The benefit is increased from six months to 12 months. It is also proposed to amend the Trade Unions Act and the Employees' Trustee Act, which requires an employer with several trustees in the company to give them more free time to perform the tasks associated with the role of trustee.

4.2 Statistics on gender pay gap

According to Statistics Estonia, the gross hourly wage of women in 2020 was 15.6 per cent lower than that of men. The gender pay gap has narrowed by 1.5 percentage points over the last year.

In 2020, the average gross hourly wage for women was EUR 7.70 and EUR 9.13 for men. The largest differences between men's and women's wages were in the financial and insurance sector (29.4 per cent), mining and quarrying (26.1 per cent) and

information and communication (24.1 per cent). As was the case in 2019, the transport and storage industry was the only one where women earned more than men in 2020.

According to Estonian Statistics, the wage gap in Estonia has decreased by 9.2 percentage points since 2013. Never before has the pay gap between men and women in Estonia been so small.

Finland

Summary

(I) The government has amended the legislation on seasonal work in the agriculture and tourism sectors.

(II) The Labour Court has established that the stand-by time of firemen, required to be available to work within 5 minutes from the request, is to 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 Seasonal work

The legislative amendments to the Seasonal Workers Act will enter into force on 17 June 2021.

The amendments relate to seasonal work carried out under an employment relationship in the agriculture or tourism sectors. With such amendments, it will become easier for third-country national seasonal workers to change employers. Moreover, employers will be able to notify the Finnish Immigration Service of more than one employee at a time.

2 Court Rulings

2.1 Stand-by time

Labour Court, TT 2021:33 and TT 2021:34, 23 April 2021

The interlocutory judgments on the qualification of the stand-by time of the chief fireman and of the other firemen determined that this was to be considered working time.

During stand-by time, the chief fireman and the other firemen had the obligation to arrive at the fire station within five minutes, on average, after the alarm. On the basis of an overall assessment of the circumstances and in particular taking into account the short stand-by period, it was considered that the obligations of the chief fireman and of the other firemen had influenced in an objective manner and very considerably their opportunity to freely use the time between these periods when they were not required to perform their duties and could use the time for their own private interests.

The stand-by period was thus to be considered working time.

2.2 Collective action

Labour Court, TT 2021:36 and TT 2021:37, 26 April 2021

The judgments concerned similar cases in which collective action was taken in a company following the decision of another company belonging to the group of undertakings to reduce its staff. The employees of the companies belonged to the same union branch.

The collective action thus targeted the provision on management power in the collective agreement in force. The branch admitted it had breached the labour peace obligation.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Local collective bargaining

The tripartite sub-group on local collective bargaining, which works under the Ministerial Working Group on Promotion of Employment, has examined the conditions for expanding local collective bargaining. The Ministerial Working Group received a progress report on the promotion of local collective bargaining on 14 April 2021. The discussion was based on a memorandum published on the project page of the sub-group on local collective bargaining. The government will discuss the issue of local collective bargaining in the mid-term policy review.

The sub-group on local collective bargaining includes representatives of employer and employee organisations and the Ministry of Economic Affairs and Employment as well as the Prime Minister's Office. According to the working group, it is not possible to submit joint proposals on further measures in the current situation. However, the working group consider it important for discussions on the promotion of local collective bargaining and the development of the collective agreement system to continue.

According to the Government Programme, local collective bargaining will be developed by providing employees with adequate information and opportunities to influence it. Local bargaining will be advanced through the system of collective agreements. The objective is to find solutions that balance flexibility with security.

4.2 Draft on wage guarantee

The maximum amount of wage guarantee for an employee on the grounds of work performed for the same employer is EUR 15 200. According to a draft legislative proposal, the amount should be increased to EUR 19 000. This would mean that the maximum amount would better correspond to the wage level of employees. It is to be expected that due to the COVID-19 pandemic, financial difficulties among companies will increase and that the amount of employees seeking wage guarantees as well as receivables that are applied as wage guarantees will increase. The draft legislative proposal has been circulated for comments by the Ministry of Economic Affairs and Employment.

France

Summary

(I) A new Ordinance regulates the representation of self-employed workers using platforms and organises the election of representatives.

(II) The Labour Division of the Court of Cassation ruled that the dismissal of an employee wearing a headscarf was discriminatory.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Collective rights of digital platform workers

Article 48 of Law No. 2019-1428 of 24 December 2019 on the orientation of mobilities authorised the government to take necessary measures by way of ordinance to determine the terms and conditions of the representation of self-employed workers (identified in Article L. 7341-1 of the Labour Code as those who use the platforms mentioned in Article L. 7342-1 of the same Code for their activity), and the terms and conditions for the exercise of such representation.

Ordinance No. 2021-484 of 21 April 2021 regulates the representation of self-employed workers using platforms for their activity and the conditions for exercising such representation. This Ordinance organises the election of representatives for the following two sectors of activity:

- Driving of a transport vehicle with a driver, and
- Delivery of goods by means of a two- or three-wheeled vehicle, whether motorised or not.

Other platform workers, such as personal services or digital professions, are not affected by the Ordinance's provisions.

The terms of election are also specified by the Ordinance: employees vote for a trade union organisation, which will then appoint representatives. The election is open to any trade union or union whose social purpose is to defend the interests of these employees, but also to associations whose purpose is to represent these employees and to negotiate agreements applicable to them (Article L. 7343-2 of the Labour Code).

Candidate trade unions must be registered with a new Independent Administrative Authority, the Employment Platforms Social Relations Authority (Article L. 7343-6 of the Labour Code).

This Authority must organise a ballot to determine the organisations' addressees in each of the two sectors every four years (Article L. 7343-5 of the Labour Code). To be representative, trade unions must receive at least 8 per cent of the votes cast.

Employees who use an electronic contact platform and who have been working in the economic sector in question for three months are eligible to vote. The vote will take place by electronic voting and will be carried out in a single round. Each worker has one vote (Article L. 7343-9 of the Labour Code).

The representative unions must then appoint their representatives. These representatives are protected in their jobs. Their commercial contract can only be terminated at the initiative of the platform after authorisation by the Employment

Platforms Social Relations Authority. This authorisation is given when the proposed termination is not related to the representative functions performed by the worker (Article L. 7343-13 of the Labour Code).

In addition, the termination of a commercial contract with a representative of workers using platforms in disregard of the provisions relating to the administrative authorisation procedure may be sanctioned with imprisonment of one year and a fine of EUR 3 750 (Article L. 7343-16 of the Labour Code).

2 Court Rulings

2.1 Equal treatment in employment

Labour Division of the Court of Cassation, No. 19-24.079, 14 April 2021

In the present case, an employee, a salesperson in a clothing shop, returned to work after parental leave. She came back to work wearing a Muslim headscarf, which the employer asked her to remove. Upon her refusal, she was dismissed. Claiming to be the victim of discrimination on the grounds of her religious beliefs, she applied to the court for the dismissal to be declared null and void.

Under French law, the employer may restrict the rights and freedoms of employees by means of internal regulations, provided that these restrictions are justified by the nature of the task to be performed and proportionate to the aim being sought (Article L. 1321-3 of the Labour Code). Concerning more specifically religious freedom, the employer may insert a neutrality clause in its internal regulations or a staff notice under the same rules (Articles L. 1321-2-1 and L. 1321-5 of the Labour Code). However, this clause is only valid if it is general and undifferentiated, and is only applicable to employees who have direct contact with customers (Labour Division of the Court of Cassation, No. 13-19.855, 29 November 2017).

In the present case, there was no neutrality clause in the company's internal regulations or in a staff notice. The employer argued that the neutrality policy had been consistently applied within the company and did not need to be based on a formal source. His argument was not followed by the Court of Appeal, which ruled that the dismissal was invalid. The Court of Appeal's analysis was approved by the Court of Cassation.

The employer also relied on the company's image to invoke an occupational requirement within the meaning of Article 4(1) of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. However, this concept, which refers to a requirement objectively dictated by the nature or conditions of the exercise of the professional activity in question, cannot cover subjective considerations, such as the employer's desire to take into account the customers' particular wishes (CJEU, Case No. 157/15, Achbita).

The employer was therefore not referring to complaints expressed by customers, but to their presumed expectations, as well as to a potential commercial prejudice. The lower courts, with the approval of the Court of Cassation, rejected the employer's arguments and declared the dismissal null and void and as discriminatory.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Draft law on work in detention

On 14 April 2021, the French government presented a bill 'for confidence in the judiciary' to the Council of Ministers, which provides for a reform of the regime of employment in detention. Specifically, a prison employment contract would be created between the detainee and his or her employer, replacing the unilateral contract between the detainee and the prison administration provided for in the Prison Act No. 2009-1436 of 24 November 2009. In addition, the government would be empowered to take several measures by ordinance aimed at granting social rights to detained workers to facilitate their reintegration.

In practice, a prisoner wishing to work in detention for a client would have to apply to the prison administration for a work permit. The decision would be taken by the head of the institution based on the opinion of a multidisciplinary committee. Reasons should be provided in case of refusal and an appeal should be possible.

In the event of work classification, the prison administration would organise professional interviews between the prisoner and the employer. Based on the results of these interviews, the head of the institution would decide on the assignment to a work position.

Various grounds for declassification, disaffection or suspension of classification or assignment would be provided.

A prisoner classified as a worker and assigned to a job would enter into a prison employment contract with the employer. This contract would be a public law contract and not an employment contract under ordinary law. The employment relationship between the prisoner and the employer would continue to be governed by the provisions of the Code of Criminal Procedure and those of the Labour Code, to which the former expressly refers.

The contract would specify the duration, indefinite or fixed term, depending on the duration of the assignment or service entrusted to the prisoner, as well as a trial period of a maximum of two weeks when the duration of the contract is equal to or less than six months, or one month, which may be extended by a maximum of two months if the technical nature of the position justifies it, when the duration of the contract is greater than six months or one of indefinite duration. A decree would specify the additional content of the contract.

In accordance with this bill, the government could take measures by ordinance within ten months of the publication of the future law in order to:

- open or facilitate the establishment of welfare rights to prisoners holding a prison employment contract in order to promote their reintegration: minimum contribution base for old-age insurance, affiliation to the Agirc-Arrco compulsory complementary pension scheme, entitlement to unemployment insurance, opening of rights to cash benefits under maternity insurance, disability insurance, death insurance and health insurance at the end of the detention;
- open the right to daily allowances during detention under the occupational injury and disease insurance scheme;
- promote access of women prisoners to activities in detention by generalising the diversity of these activities;
- fight against discrimination and harassment at work in the prison environment;
- promote access to vocational training on release from detention and enhance the value of voluntary activities in which detainees participate in detention:
    - opening of a personal activity account (CPA) in detention

  - opening of a personal training account (CPF) for holders of a prison employment contract,
  - opening of a civic commitment account (CEC) for detainees,
  - creation of a civic reserve;
- determine the persons and services responsible for preventing any deterioration in the health of detainees as a result of their work in detention, as well as the terms of their intervention, including those relating to the assessment of the aptitude of detainees and the monitoring of their state of health;
- give labour inspectors prerogatives and means of intervention within prisons to ensure the application of the provisions governing work in detention;
- allow the implementation of establishments and services for assistance through work (Esat) in detention on the premises of the prison administration.

Germany

Summary

(I) According to new regulations, the obligation of workers to telework has been strengthened.

(II) The government has proposed a draft amendment that would tighten the rules on fixed-term contracts.

(III) The Federal Labour Court submitted a reference for a preliminary ruling before the CJEU to clarify the question whether German law on the dismissal of a company data protection officer is in line with EU law.

(IV) Ongoing negotiations are delaying the transposition of the EU Directive on the protection of whistleblowers.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Teleworking

The so-called Fourth Population Protection Act (*4. Bevölkerungsschutzgesetz*) and the Third Ordinance Amending the Corona Protection Ordinance (*Dritte Verordnung zur Änderung der SARS-CoV-2-Arbeitsschutzverordnung*) will extend the existing coronavirus protection measures in the workplace in terms of time and, in some cases, make them more stringent. According to the new regulations, not only must employers, if possible, provide the possibility for workers to work remotely, but employees must also accept it in principle. For those not exclusively working from home, the employer must now request the worker to take a corona test no only once, but twice a week.

Section 28b(7) of the new Infection Protection Act (*Infektionsschutzgesetz*) now reads as follows:

> *"In case of office work or comparable activities, the employer shall offer the employees the opportunity to carry out these activities in their home if there are no compelling operational reasons to the contrary. The employees shall accept this offer unless there are compelling reasons for them not to do so. The competent authorities for the implementation of sentences 1 and 2 shall be determined by the Länder (…)".*

1.2 Other legislative developments

1.2.1 Draft amendment to the law on fixed-term contracts

On 14 April 2021, the competent Ministry presented a draft amendment to the law on fixed-term contracts. One of the aims of the draft is to strengthen the rules applying to contracts that do not require a reason for a fixed term of the contract to be set. Moreover, there will be stricter rules on successive fixed-term contracts. In future, the duration of a fixed-term contract will be limited to a maximum of 18 months instead of two years. In addition, companies with more than 75 employees will be allowed to conclude fixed-term employment contracts with a maximum of 2.5 per cent of their employees only.

2 Court Rulings

2.1 Dismissal of a data protection officer

Federal Labour Court, 9 AZR 383/19 (A), 27 April 2021

The Federal Labour Court has submitted a reference for a preliminary ruling to the CJEU to clarify the question whether the requirements of the German Federal Data Protection Act (*Bundesdatenschutzgesetz*, BDSG) regarding the dismissal of a company data protection officer are in line with the European General Data Protection Regulation (GDPR).

The plaintiff was the chair of the works council established at the defendant's undertaking, and who was partially released from work. In 2015, he was additionally appointed the company data protection officer. In 2017, the defendant dismissed the plaintiff as data protection officer. The plaintiff, however, claimed that his legal position as data protection officer continued to exist unchanged.

National data protection law regulates in section 38(2) in conjunction with section 6(4) sentence 1 of the BDSG, that there must be good cause within the meaning of section 626 of the Civil Code for the dismissal of a company data protection officer. In doing so, it ties the dismissal of a data protection officer to stricter requirements than Union law, as Article 38(3) sentence 2 of the GDPR does not require the existence of an important reason for dismissal.

Based on previous case law, the Court did not find that an important reason for dismissal existed in the present case. Therefore, it has turned to the CJEU pursuant to Article 267 TFEU with the question whether, in addition to the provision in Article 38 (3) sentence 2 GDPR, Member States' standards are applicable which, such as section 38(2) in conjunction with section 6 (4) sentence 1 of the BDSG, restrict the possibility of dismissing a data protection officer compared to the Union law provisions.

See here for a press release by the court.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Protection of whistleblowers

Negotiations between the CDU/CSU and SPD on better protection for whistleblowers have failed for the time being. In December 2020, the German Federal Ministry of Justice had presented a draft bill to transpose Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. The Ministry, however, wants the protection to apply not only when reporting violations of EU law, but also in case of violations of German law. If the dispute is not resolved quickly, transposition of the Directive will hardly be possible before the Bundestag elections in September.

See here for a press article providing further information.

4.2 Collective bargaining coverage continues to fall

The share of companies covered by collective agreements continues to decline. According to the government, while in 2011, about 69 per cent of all companies no longer had a collective agreement, this number had already increased to 73 per cent in 2019. The sectors with the lowest collective agreement coverage were information and

communication (94 per cent), followed by transport and storage and business-related services (84 per cent) and retail (80 per cent).

4.3 Demands to strengthen collective bargaining

In a recent motion, the *Bündnis 90/die Grünen* parliamentary group called for a strengthening of collective bargaining. Specifically, the parliamentary group called on the Federal Government to simplify and further develop the regulations on the declaration of general applicability of collective agreements. The continued validity of collective agreements in the case of transfers of undertakings should be improved and the extent to which existing collective agreement law could be made more attractive for persons similar to employees should be examined. Furthermore, in the view of *Bündnis 90/die Grünen*, the law should provide for trade unions to have digital access to companies in an increasingly digital world of work. The Federal Government should also use its possibilities to strengthen collective bargaining through public procurement by immediately introducing a Federal Procurement and Tariff Compliance Act. In accordance with European law, only companies bound by collective agreements or that pay at least the collectively agreed wages should be awarded public contracts.

Greece

Summary

(I) The government has extended the emergency measures for mandatory teleworking, requiring companies to use teleworking for at least 50 per cent of their employees until 31 May 2021.

(II) A bill regulating teleworking for civil servants has been submitted for consultation.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Teleworking

A joint ministerial decision of the Finance, Labour, Development and Health ministries extends the temporary emergency measures for mandatory teleworking quotas and staggered working times, designed to protect public health and limit the spread of COVID-19, until 31 May 2021 (No. 23182, Official Gazette B 1733 of 27 April 2021).

The rules require all companies to use teleworking for at least 50 per cent of their employees wherever possible. They are also required to stagger the arrival and departure times of staff over a two-hour window at the beginning and end of the shifts.

For the period in question, the employer's obligation to report any changes or modifications to working hours through the electronic system of the Ministry of Labour (*Ergani*) as regards staggered arrival and departure times will be suspended, and other requirements (overtime, changes in shifts) will continue to apply.

A second joint decision extends the right of employers to decide that an employee can work remotely via a teleworking system rather than at the workplace (No. 23180, Official Gazette B 1733 of 27 April 2021).

1.2 Other legislative developments

1.2.1 Draft act on teleworking in the public sector

A bill to institutionalise teleworking for civil servants was submitted for consultation by the Ministry of the Interior.

The bill defines the framework for public sector employees who work remotely, both during emergencies such as pandemics and in 'normal' times, if the nature of their duties allows it. Teleworking is voluntary for employees, and mandatory in case public health is at risk.

Employees who work remotely have the same rights and obligations as those who are physically present at the workplace. The percentage of employees of a service with teleworking status may not exceed 50 per cent, while their personal data will also be protected.

Teleworking will be allowed on specified days per week and month, and may not exceed 40 working days per calendar year within a period of three months.

The service must provide the appropriate equipment and IT support, while carrying the cost of maintenance and upgrades.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

(I) The government has issued a decree providing detailed rules on labour inspections and on sanctions in case of violations.

(II) The Supreme Court ruled that the unilateral termination of the user company of an assignment of a temporary agency worker represented a valid reason for terminating the employment relationship.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Government Decree on Labour Inspection

Act 135 of 2020 on services, assistance and inspection of employment repeals, starting from 01 March 2021, Act 75 of 1996 on Labour Inspection.

Government Decree No. 115/2021 was issued on 10 March 2021, according to Article 12 of Act No. 135 of 2020 authorising the government to issue a decree on most of the relevant regulatory issues of inspection. The Decree contains the detailed rules on inspections of minimum labour law provisions and sanctions in case of violations.

2 Court Rulings

2.1 Temporary agency work

Supreme Court, BH 2021.4.111, 14 January 2021

This decision of the Supreme Court interprets the provisions of the Labour Code on terminations of temporary agency workers. According to Article 220(1) of the Labour Code:

> *"In the application of Subsection (2) of Section 66, a termination of the assignment shall be construed as a reason in connection with the temporary work agency's operations."*

The general rules of the Labour Code on terminations of employment relationships are applicable to temporary agency workers, however, Article 220(1) contains an alternate rule. Therefore, the Court stated that the unilateral termination of the user company of the assignment of the temporary agency worker provides a valid reason for terminating the employment relationship.

See here for the press release.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

(I) A statutory Code of Practice on the Right to Disconnect has been introduced.

(II) Two decisions of the Supreme Court have ruled on the constitutionality of the labour dispute resolution process.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Working time

The Workplace Relations Commission (WRC) has published a Code of Practice on the Right to Disconnect, which has been put on a statutory footing by the Workplace Relations Act 2015 (Workplace Relations Commission Code of Practice on the Right to Disconnect) Order 2021 (S.I. No. 159 of 2021). The Code states that the right to disconnect refers to an employee's right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails and telephone calls, outside normal working hours. Although failure by an employer to follow the Code is not an offence in itself, the Code is admissible in evidence in proceedings before the WRC, the Labour Court and civil courts: see section 20 of the Workplace Relations Act 2015.

The Code states that the right to disconnect consists of three main elements:

- the right of an employee to not routinely perform work outside of normal working hours;
- the right to not be penalised for refusing to attend to work matters outside of working hours; and
- the duty to respect another person's right to disconnect.

Employers are expected to take a number of steps to meet their obligations under the relevant legislation such as the Organisation of Working Time Act 1997 and the Safety, Health and Welfare at Work Act 2005, namely:

- providing detailed information to employees on their working time;
- ensuring that employees are informed of what their normal working hours are reasonably expected to be;
- ensuring that employees take rest periods;
- ensuring a safe workplace; and
- not penalising an employee for acting in compliance with any relevant legislative provision.

The Code states that employers should proactively engage with employees and/or their trade union to develop a 'Right to Disconnect Policy' that takes account of the specific needs of the business and its workforce. Although such a policy should emphasise that there is an expectation that employees will disconnect from work emails or other messages outside of their normal working hours, it should also allow for occasional

legitimate situations where it may be necessary to contact employees outside of those hours.

2 Court Rulings

2.1 Labour dispute resolution process

Supreme Court, [2021] IESC 24, 06 April 2021 and [2021] IESC 29, 15 April 2021

In *Zalewski v An Adjudication Officer* [2021] IESC 24 and [2021] IESC 29, the Supreme Court unanimously ruled that the dispute resolution process established by the Workplace Relations Act 2015 involves 'the administration of justice' but, by a bare 4-3 majority, went on to rule that the process itself was not unconstitutional because the Workplace Relations Commission (WRC) and the Labour Court were exercising 'limited powers and functions of a judicial nature' within the meaning of Article 37 of the Irish Constitution. The majority rejected, in particular, the contention that such bodies must be staffed by 'people with formal legal training and sufficient legal experience to be appointed judges'.

Two specific aspects of the process, however, were considered to be unconstitutional: the blanket ban on public hearings and the lack of a statutory basis for WRC Adjudication Officers to take evidence on oath.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Recipients of COVID-19 relief measures

As of 27 April 2021, 403 095 persons (46.9 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 (101 637), wholesale and retail trade (65 984) and construction (42 333). In terms of the recipients' age profile, 24.7 per cent were under 25. Additionally, 1 653 persons were in receipt of the COVID-19 Enhanced Illness Benefit. See here for further information.

4.2 Living wage

Following a request from the Minister for Enterprise, Trade and Employment, the Low Pay Commission (LPC) has formally begun work on examining how Ireland can move towards a 'living wage', which the LPC understands as meaning "*the minimum income necessary for a single adult worker in full-time employment, with no dependants, to meet his or her basic needs and afford a minimum acceptable standard of living*". The LPC will commission a study on the policy, social and economic implications of moving to a living wage, which will involve reviewing international experience and research; examining how such a wage could be calculated; and outlining the process by which Ireland could progress towards achieving a living wage.

Italy

Summary

(I) The government has announced a partial reopening of economic activities.

(II) To allow the full implementation of the Italian vaccination plan and limit the spread of COVID-19 infections, the Italian legislator has introduced the obligation for healthcare workers to be vaccinated against COVID-19, and has started organising vaccinations in workplaces.

(III) A new protocol provides measures, such as the continuation of teleworking, to limit the spread of COVID-19 infections.

(IV) The European Delegation Act (Legge Comunitaria) 2019-2020 has been approved, transposing Directive (EU) 2019/1159 on Seafarers.

(V) The Constitutional Court has declared that in case of 'manifest' non-existence of economic reasons for a dismissal, the judge must order the reinstatement of the worker who was unlawfully terminated.

(VI) A judge stated that the termination of the contract of a rider by a platform company, who had refused to accept the collective agreement, is discriminatory.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Gradual reopening of economic activities

Law Decree No. 52 of 22 April 2021 provides for a gradual reopening of economic activities (bars, restaurants, cinemas, theatres, swimming pools, gyms and so on), if they take place outdoors.

1.1.2 Mandatory COVID-19 vaccination for workers in the healthcare sector

Law Decree 1 April 2021 No. 44 provides urgent measures on Sars-Cov2 vaccinations. According to Art. 4, the vaccine against COVID-19 is 'essential' for health professionals and workers in the healthcare sector to exercise their work and they must be vaccinated. Vaccination is not mandatory in case vaccination poses a health hazard, and the worker has a specific documented clinical condition.

If the health worker refuses to get the COVID-19 vaccine, the local health authorities shall notify the employer and the professional association to which he/she belongs. The health authorities then again invite the worker to get vaccinated, notifying him/her when and how to fulfil the vaccination obligation. If the worker still refuses to fulfil this obligation, he/she is suspended from carrying out duties that involve 'interpersonal contacts or involve, in any other form, the risk of spreading infection from SARS-CoV-2'.

In this case, the employer must check whether it is possible to assign the worker to another task that does not involve exposure to risk, paying the worker the salary corresponding to the task being performed. If this is not possible, the employer can suspend the employee without pay. The suspension shall last "*until the vaccination obligation is fulfilled or, failing that, until the completion of the national vaccination plan and in any case no later than 31 December 2021*". If the vaccination is postponed for medical reasons, the employer must assign the worker to perform other tasks without reducing pay, or, if possible, assign him/her to perform flexible work.

1.1.3 COVID-19 vaccination in the workplace

On 12 April 2021, the Ministry of Labour and Social Policies and the Ministry of Health enacted a Circular providing the rules for Sars-Cov2 vaccinations in the workplace.

Employers can declare their availability to arrange corporate vaccination plans within the workplace, regardless of the number of their employees.

1.1.4 Other measures to limit the risk of contagion in the workplace

A new Protocol, adopted on 06 April 2021, updates the Protocol regulating measures to fight and contain the spread of the COVID-19 virus in the workplace, adopted on 24 April 2020.

The new Protocol confirms that teleworking should be used for all activities for which it is possible. The employer can authorise national and international business travel, depending on the epidemiological trend at the destination site. Face-to-face meetings can only take place if strictly necessary with a minimum number of participants, ensuring personal distances between participants and proper ventilation of the rooms. All training courses have been suspended, except those relating to health and safety.

The Protocol reaffirms the importance of the role of the company doctor in identifying and implementing all the necessary measures to prevent contagion in the workplace, including by promoting screening among workers.

1.2 Other legislative developments

1.2.1 Seafarers

Act No. 53 of 22 April 2021, delegating the government to transpose European Directives and to implement other European Union acts, have been adopted.

Among the Directives to be transposed is Directive (EU) 2019/1159 amending Directive 2008/106/EC on the minimum level of training of seafarers and the repeal of Directive 2005/45/EC on the mutual recognition of seafarers' certificates issued by the Member States.

2 Court Rulings

2.1 Reasons for dismissal

Corte costituzionale, No. 59/2021, 24 February - 01 April 2021

In case of 'manifest' non-existence of economic reasons for dismissal, the judge must order reinstatement of the worker.

In the present ruling, the Italian Constitutional Court declared the unconstitutionality of Art. 18, para. 7, of Act No. 300/1970 (so-called Workers' Statute), as amended by Act No. 92/ 2012, according to which the judge can order reinstatement of the worker in case of manifest non-existence of economic reasons for dismissal. According to the Court, Art. 18, para. 7, would grant the judge discretionary power to decide whether to grant (or not) the reinstatement of the worker who was unlawfully dismissed. Thereby, the Article contradicts the principle of equal treatment enshrined in Art. 3 of the Italian Constitution. Furthermore, the Court stated that such discretionary power also contradicts the rules sanctioning unlawful disciplinary dismissals, which require the judge to reinstate the worker (in the event that no justified reasons for dismissal exist).

2.2 Compensation for lack of notice

Corte di Cassazione, No. 9556, 12 April 2021

In this ruling, the Court stated that whether an employee is granted an incapacity pension because he/she is fully and permanently unable to perform any work activities, his/her employment relationship ends automatically. In this case, the employee does not have a right either to notice or to compensation due to lack of notice, since the employment relationship ends automatically if the employee is declared permanently incapacitated for work.

2.3 Public sector work - Incompatibility

Corte di Cassazione, No. 9660, 13 April 2021

In the present case, the Court stated that a civil servant may not practice the profession of attorney.

The Corte di Cassazione, reviewing all legislation from 1933 to 2012, confirmed that the only civil servants allowed to practice the profession of attorney are teachers and university professors of law.

2.4 Collective rights of gig-economy workers

Tribunale di Palermo, 12 April 2021

In the present case, the judge stated that the termination of a rider motivated by the fact that he rejected the application of a collective agreement is discriminatory.

In September 2020, the first collective agreement for riders was concluded, but was heavily criticised by the workers who did not consider that they had been adequately represented in the negotiations. Platforms often try to impose the application of the collective agreement as a condition to continue collaboration with the riders.

In this case, the court stated that the conduct of a platform that terminates the contract of a rider who refuses to accept the collective bargaining agreement is discriminatory, because it affects the worker's trade union freedom.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

The Liechtenstein government has submitted a draft law for consultation on measures to implement Directive (EU) 2018/957 on posting of workers.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

Nothing to report.

1.2 Other legislative measures

1.2.1 Posting of workers

A draft law (*Vernehmlassungsbericht der Regierung betreffend die Abänderung des Entsendegesetzes* (*Umsetzung Richtlinie* EU 2018/957)) has been presented to implement Directive (EU) 2018/957 concerning the posting of workers.

Some of the innovations introduced by the Directive have already been applied in Liechtenstein for some time. However, to achieve full compliance with the Directive, an amendment of the Posting of Workers Act is indispensable. The amendments are of considerable importance. This is to be achieved through three central points:

- Posted workers shall not only be granted the minimum wage applicable in the host Member State, but their entire remuneration derived from the law applicable in the host Member State;
- Postings that last longer than 12 or 18 months shall, in principle, be subject to all labour laws of the host Member State;
- The obligations of the parties involved in temporary agency work are to be clarified.

The amendment of this Act will also entail an adaptation of the Posting of Workers Ordinance.

The Liechtenstein government has submitted a draft law with an accompanying report, which was sent for consultation. The consultation will last until 23 June 2021, after which the government will evaluate the comments received and submit a report and motion to Parliament. The purpose of the consultation of municipalities, courts, businesses and employers' associations, the Liechtenstein Trade Union and other organisations is to give the government an idea of the likely implications in the legal and political area.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 EURES and National Employment Services

The government has adopted the necessary amendments to implement Regulation (EU) 2016/589, aiming at fundamentally redesigning the European Employment Services network (EURES).

Previous Flash Reports contained detailed reports on Liechtenstein's activities to implement this Regulation. On this occasion, it was pointed out, among other issues, that the implementation of that Regulation would also entail an adaptation of the Ordinance to the Act on Employment Services and Temporary Agency Work. The necessary adjustments to the Ordinance have now been made (see Liechtensteinisches Landesgesetzblatt 2021 No. 131 of 16 April 2021).

Luxembourg

Summary

(I) In the context of the COVID-19 crisis, minor measures were taken to extend the entitlement to training programmes for persons on short-time work and to temporarily adapt the rules on apprenticeships.

(II) A law extends family-related leave until 17 July 2021, and a bill aims to extend special family support leave until 25 November 2021.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Training programmes and apprenticeships

The Law of 16 April 2021 (available here) adapts the Labour Code and specifies that the Employment Fund (*Fonds pour l'emploi*) is entitled to finance training programmes for persons on short-time work (*chômage partiel*) to further develop their competences.

Moreover, a new bill (*Projet de loi no. 7816 portant dérogation temporaire à l'article L. 111-3 paragraphe 4 du Code du travail)* aims to temporarily suspend the rule that apprentices, whose contract was terminated, have to find a new position within 6 weeks.

1.1.2 Family-related leave

The Law of 02 April 2021 (available here) extends family leave (*congé pour raisons familiales)*, applicable especially in case of school closures, until 17 July 2021.

Moreover, a bill aims to extend special family support leave (*congé pour soutien familial*) for 6 months, until 25 November 2021 (*Projet de loi no. 7803 portant modification de la loi modifiée du 20 juin 2020 portant introduction d'un congé pour soutien familial dans le cadre de la lutte contre la pandémie COVID-19)*. The special family support leave, mentioned in the April 2020 Flash Report, was implemented because some institutions that take care of disabled or elderly persons had to close. Sixty-five persons benefitted from this leave and most institutions have been able to reopen in the meantime. However, as some institutions are still operating with reduced capacity, a bill aims to extend this special leave.

1.2 Other legislative measures

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

(I) The draft bill implementing Directive EU 2019/1158 on Work-Life Balance has been adopted by Parliament.

(II) The Supreme Court has issued a ruling in an important case on platform companies, ruling that Booking.com is not a tech company but rather an 'intermediary' in the conclusion of contracts relating to travel, and should thus be considered a travel agent.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Work-life balance

On 20 April 2021, the draft bill on parental leave implementing Directive EU 2019/1158 on Work-Life Balance (see November 2020 Flash Report) was adopted by Parliament and will now be dealt with in the Senate.

The envisaged date of the law's entry into effect is 02 August 2022.

For further information, see Parliamentary documentation 35613.

2 Court Rulings

2.1 Platform economy

Supreme Court, ECLI:NL:HR:2021:527, *09 April 2021*

The present decision concerns the qualification of Booking.com as an intermediary.

The Industrywide Pension Fund for the Travel Industry claimed that Booking.com falls within its scope. The pension fund based its claim on the decision of obligatory affiliation of the State Secretary for Social Affairs and Employment (Decision of 23 December 1996, as amended by the decision of 08 June 2015, Stcrt. 2015, 15992), which states that companies that operate as tour operators or travel agents are required to have their employees participate in the industrial pension fund. According to the pension fund, Booking.com must be considered a 'travel agent' within the meaning of said decision, as it is covered by the description contained therein, namely that in the course of its business, it 'acts as an intermediary in the conclusion of contracts relating to travel' (underlining HB/SK).

According to Booking.com, it cannot be said that it 'mediates' in the conclusion of contracts, as referred to in the State Secretary's decision. The company opined that it only provides an online reservation platform that customers can use to view the supply of hotels and vacation homes, make a selection and then book the accommodation themselves. According to Booking.com, the fact that bookings are made via its website does not mean that it is actively involved in the conclusion of the contract.

Both the Amsterdam District Court and the Amsterdam Court of Appeal upheld the position of Booking.com and thus rejected the pension fund's claim. The pension fund appealed against this decision in cassation to the Supreme Court.

In contrast to the former courts, and in accordance with the advice of the Advocate General, the Supreme Court ruled in favour of the pension fund. According to the Supreme Court, for 'intermediary services' it is sufficient that the activities of Booking.com contribute to the conclusion of an agreement between the customer and the accommodation provider. These activities do not have to be extensive and can also be performed by means of digital techniques. The Booking.com reservation platform is aimed at customers entering into agreements with accommodation owners using the facilities of that platform. The administrative processing of the booking is also carried out through the Booking.com website. Furthermore, it is of relevance that Booking.com receives compensation from the accommodation holder if the customer books and uses Booking.com. According to the Supreme Court, this business model implies that Booking.com 'mediates' in the conclusion of contracts in the field of travel and is therefore a 'travel agent' within the meaning of the decision for obligatory affiliation as referred to above. The Supreme Court overturned the judgment of the Amsterdam Court of Appeal and referred the case to the Court of Appeal of The Hague for further proceedings. That court must now decide whether Booking.com also meets the other requirements for compulsory participation in the Industrial Pension Fund for the Travel Industry, and if so, as of when.

This Supreme Court ruling is relevant in the wider debate on the classification of platform companies. It states that Booking.com is a travel agent because it can be considered to be an intermediary. Although the ruling concerns the meaning of the wording 'intermediary' in a specific legislative document (the decision for obligatory affiliation), it seems to correspond to the tendency of the CJEU's ruling that Uber is not a technology company but a transportation company (case C-320/16, *Uber France SAS*, and case C-434/15, *Uber Systems Spain*). Furthermore, it seems in line with CJEU case C-390/18, *Airbnb*, which ruled that Airbnb is an intermediary (although that decision did not entail for Airbnb to be excluded from the classification as an 'information society service' and therefore from the application of Directive 2000/31 to it).

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Negotiations on new National Social Agreement

Following the elections of 17 March 2021, the formation of a new government is underway, although the process has been extremely delayed due to several political issues, and no substantive negotiations have yet taken place. Labour market reforms will most likely be part of these substantive debates.

No public information is available yet.

Norway

Summary

(I) The government has presented a plan for a gradual reopening of society.

(II) The government has introduced a new compensation scheme for foreign workers who are prevented from coming to work while the borders are closed.

(III) The government has introduced a compensation scheme for employers engaging young people for short-term jobs during the summer.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Easing of restrictive measures

Strict national infection control measures continued to apply in April, and even stricter regulations were introduced in specific municipalities and regions. Infection rates decreased during April, and on 15 April 2021, the government presented a plan for the gradual reopening of society. This implies the easing of the strict national regulations introduced in March (see March 2021 Flash Report). However, this did not include parts of Eastern Norway with regional measures, i.e. Oslo.

There are still strict rules on foreign nationals who seek entry to Norway. Since January, the general rule is that only foreign nationals who reside in Norway are allowed to enter. The regulations on quarantine can be found here.

1.1.2 Relief measures

The employment and labour law measures introduced in 2020 to mitigate the effect of the COVID-19 crisis have been described in previous Flash Reports in detail. In April 2021, some new regulations were passed, most importantly:

- A new compensation scheme for foreign workers from the EEA area who are prevented from coming to work while the borders are closed (LOV-2021-04-16-19 and FOR-2021-04-16-1179). The scheme provides affected employees with compensation in the amount of 70 per cent of the sickness benefit basis, limited to 70 per cent of 6 times the basic amount. The employer must advance the amount and apply for reimbursement from the authorities (NAV). The scheme applies retroactively to 29 January 2021. The employer is exempt from paying the employer's tax contribution (No: *arbeidsgiveravgift*) for that amount (FOR-2021-04-19-1188);
- A new compensation scheme has been introduced for employers engaging young people for short-term jobs during the summer, from 01 June until 31 August (FOR-2021-04-22-1229).

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Unemployment rate

The unemployment rate has been relatively stable since October 2020, but has been slightly rising since December. By the end of March, there were 211 705 unemployed people, which amounts to 7.5 per cent of the workforce, see the statistics here. Updated numbers for April have not yet been published.

4.2 Industrial relations

On 09 April 2021, Parliament passed an Act deciding that two industrial conflicts in private health care institutions shall be resolved by compulsory arbitration. The industrial conflicts were between Parat/YS and NHO and between Fagforbundet/LO and NHO. The government justified the intervention in the right to strike on the basis that the conflicts presented a risk to life and health. Fagforbundet has claimed that the interference is contrary to the right to strike as the government had not assessed the two industrial conflicts separately. It is likely that the case will have legal repercussions.

Portugal

Summary

(I) The government has proceeded with its plan to gradually lift the restriction measures in most of the national territory's municipalities, and restrictions to the operation of economic and social activities have progressively been reduced.

(II) The legal framework of the transfer of undertakings has been amended to explicitly include situations of transfers arising from public procurement.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Gradual reopening of economic activities

Following the renewal of the state of emergency by Decree of the President of the Republic No. 31-A/2021, of 25 March (referred to in the March 2021 Flash Report), the government has approved Decree No. 6/2021, of 03 April, which regulates the state of emergency declared for the period between 01 and 15 April 2021.

Concretely, the government has proceeded to lift the suspension of in-person learning in elementary and secondary education and activities in the retail sector. This Decree also permits the opening of gyms and of museums and similar, as well as of restaurants and similar, with seating in open spaces. This Decree entered into force on 05 April 2021.

By Decree No. 41-A/2021, of 14 April, the President of the Republic approved a renewal of the state of emergency for a period of 15 days, from 16 to 30 April 2021, which was authorised by the Portuguese Parliament (Resolution No. 114-A/2021, of 14 April).

The referred Decree authorises the adoption by the government of several restrictions to fundamental rights, namely on the freedom of movement, international travel, private, social and cooperative initiatives and workers' rights.

Considering that the state of emergency has not been renewed for the period after 30 April 2021, the Resolution of the Council of Ministers No. 45-C/2021, of 30 April declares that the state of emergency in the entire national territory will come to an end. In this regard, the civic duty (instead of the general duty) to stay at home will be implemented, meaning that it is recommended for citizens to refrain from traveling and mingling in public spaces. Depending on the incidence rate of the epidemiologic stage in each municipality, most of them (a total of 270 municipalities) will progress to the next level of lifting measures, such as expanding the opening hours of restaurants, cinemas and retail.

1.1.2 Teleworking

Teleworking remains mandatory in the entire national territory, provided that the tasks can be rendered under this regime. These measures apply as of 01 May 2021.

1.2 Other legislative developments

1.2.1 Transfer of undertakings

Law No. 18/2021 of 08 April 2021 amended the legal framework of the transfer of undertakings (TUPE regime) envisaged in Articles 285, 286 and 286-A of the Portuguese Labour Code, extending this regime to situations of transfers arising from public procurement. This Law entered into force on 09 April 2021.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Romania

Summary

(I) The government has amended the legislation on the short-time work scheme.

(II) In the context of increasing the number of teleworking contracts, the government has amended the legislation on teleworking.

(III) The government has adopted a series of measures aimed at making labour relations more flexible, especially in the case of micro-enterprises.

(IV) With the aim of improving labour intermediation services, the government has supplemented the protection norms for Romanian citizens working abroad through contracts coordinated by employment agencies.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Short-time work scheme

Emergency Ordinance No. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2, as well as to stimulate employment growth (published in the Official Gazette of Romania No. 720 of 10 August 2020 – see August 2020 Flash Report), regulates the short-time work scheme in Romanian law. The ordinance underwent several amendments in 2020, through the approval law (Law No. 282/2020 for the approval of Government Emergency Ordinance No. 132/2020, published in the Official Gazette of Romania No. 1201 of 09 December 2020), and its effects were extended. It will be applicable for a period of up to 3 months from the end of the last period in which the state of alert is established.

Law No. 58/2021 on the approval of Government Emergency Ordinance No. 211/2020 on the extension of the application of certain social protection measures adopted in the context of the spread of the SARS-CoV-2, as well as on the amendment of Government Emergency Ordinance No. 132/2020 (published in the Official Gazette of Romania No. 345 of 05 April 2021), again amended the legislation on reducing working time. Thus, starting from 08 April 2021, employers have the possibility to reduce the working time of employees by a maximum of 80 per cent (compared to 50 per cent, as previously provided). In addition, the employer can no longer take this decision unilaterally, but only with the consent of the representative trade union or, if such a trade union does not exist, with the consent of employee representatives. Employees will receive an indemnity of 75 per cent of the difference between their initial basic salary and their gross monthly basic salary from the unemployment insurance budget related to the hours actually worked. If the budget allows, the employer may supplement the allowance from its own funds.

1.1.2 Teleworking

Law No. 81/2018 on the regulation of teleworking (published in the Official Gazette of Romania No. 296 of 02 April 2018) has been amended by emergency ordinance (not yet published in the Official Gazette; it will be published in May).

Teleworking is now carried out 'regularly' remotely, through the use of ICTs (as opposed to 'at least one day a month' as provided for in the previous legislation). The place of work no longer needs to be specified in the contract.

At the same time, the teleworker has the obligation to respect and ensure the confidentiality of the information used during the activity. The employee's activity can be verified by the employer by using information and communication technology, under the conditions established by the employment contract, the internal regulations and/ or the applicable collective labour agreement.

This piece of legislation was adopted in the context of increasing the number of teleworking contracts (between March 2020 and March 2021, the number of teleworking contracts increased 7-fold, as shown here).

1.2 Other legislative developments

1.2.1 Labour relations of micro-enterprises

The government has adopted an emergency ordinance (not yet published in the Official Gazette; it will be published in May) amending the Labour Code, seeking to de-bureaucratise labour relations in the case of micro-enterprises with less than 9 employees (according to data provided by the labour inspectorate, there are currently 445 491 employers in Romania who have up to 9 employees, available here). Such employers will be able to keep track of the working hours performed by each employee daily under the conditions established with them in a written agreement. According to the explanatory memorandum, this change was intended to ease the burden on micro-enterprises, but the effect could be the opposite, as until now, the recording of working hours remained in the form established by the employer by a unilateral act.

The piece of legislation also eliminates the obligation of micro-enterprises to draw up internal regulations.

Micro-enterprises will be able to communicate the job description to workers verbally. Only at the request of the employee will the job description have to be provided in writing.

The largest trade union confederations have criticised this amendment, pointing out that it could lead to a lack of information for employees on their activities, hampering the process of transposing Directive (EU) 2019/1152 on transparent and predictable working conditions into Romanian law.

1.2.2 Coordination of work abroad

Emergency Government Ordinance No. 33/2021 on the amendment and completion of Law No. 156/2000 on the protection of Romanian citizens working abroad (published in the Official Gazette of Romania No. 459 of 29 April 2021), supplements the protection norms for Romanian citizens working abroad, through contracts coordinated by employment agencies. The purpose is to ensure the same degree of protection for Romanian citizens, regardless whether they use the services of a Romanian employment agency or the services of a placement service provider from another Member State of the European Union that carries out activities in Romania. The new piece of legislation provides obligations such as:

- independence of the mediation activity, without any commissions, tariffs or fees;
- conclusion of mediation contracts in writing and ensuring the conclusion of the employment contract or equivalent document from the destination Member State (also in the Romanian language);
- making the contract available to the Romanian worker before he or she leaves the country.

This piece of legislation also introduces a series of additional obligations and tightens the sanctions applied in case of non-compliance with the law.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Conclusion of employment contracts by electronic signature

The Emergency Ordinance on the use of the advanced electronic signature or qualified electronic signature accompanied by a timestamp and qualified electronic seal of the employer in the field of labour relations (not yet published in the Official Gazette; it will be published in May) provides the possibility of using advanced or qualified electronic signatures for concluding employment contracts. The parties will be able to use the e-signature when concluding and drawing up any other documents in the field of labour relations. The electronic signature will be accompanied by a qualified time stamp and the qualified electronic seal of the employer.

All documents concluded by using the e-signature must be archived by the employer and must be made available at the request of the competent control bodies.

The employer cannot force the employee to use the electronic signature. A hand-written signature can still be used.

Slovakia

Summary

(I) The duration of the state of emergency has been extended until May 2021.

(II) It is recommended for all employers to enable their employees to telework to the largest extent possible.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 State of emergency

On 01 April 2021, the National Council of the Slovak Republic (Parliament) adopted Resolution No. 696, in which, pursuant to Article 5 paragraph 2 of the Constitutional Act No. 227/2002 Coll. on the security of the state in times of war, states of war and states of emergency, as amended, expressed consent to the repeated extension of the state of emergency, declared due to threat to life and health of persons in causal connection with the emergence of a pandemic, approved by resolution of the Government of the Slovak Republic on 17 March 2021 No. 160 (see March 2021 Flash Report). It is published in the Collection of Laws – No. 123/2021 Coll.

On 26 April 2021, the government approved the Resolution of the Government No. 215 of 26 April 2021 on the proposal for a repeated extension of the duration of the state of emergency, pursuant to Article 5 paragraph 2 of Constitutional Act No. 227/2002 Coll.

By this resolution, the government has repeatedly extended the state of emergency for a period of 30 days with effect from 29 April 2021. It is published in the Collection of Laws – No. 160/2021 Coll.

1.1.2 Teleworking

In Point F.9. of the Resolution of the Government No. 215 of 26 April 2021, the government recommends all employers to enable their employees to telework to the largest extent possible.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) The government has extended the declaration of the COVID-19 epidemic for an additional 30 days, until 16 May 2021. The various measures aimed at mitigating the negative consequences of the COVID-19 crisis introduced by previous anti-coronavirus packages, the so-called PKPs, continue to remain in force.

(II) Slovenia has communicated the ratification of the ILO Home Work Convention, 1996 (No. 177), which will be binding as of 14 April 2022.

(III) The regulation on the employment of third-country nationals has been amended.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Declaration of the COVID-19 epidemic

The declaration of the COVID-19 epidemic in Slovenia has been extended by the government for an additional 30 days, from 17 April 2021 until 16 May 2021 (Ordinance on the declaration of the COVID-19 epidemic in the territory of the Republic of Slovenia, OJ RS No. 55/21, 09 April 2021, p. 3299). The previous extension, declared in March 2021, expired on 16 April 2021; the second-wave epidemic was declared/extended on 19 October 2020 (see previous Flash Reports).

Various measures aimed at mitigating the negative consequences of the COVID-19 crisis introduced by previous anti-coronavirus packages, the so-called PKPs, continue to remain in force. The measure of partial reimbursement of wage compensation for temporarily laid-off workers was extended until 31 May 2021.

Measures to contain the spread of COVID-19 virus infections continued to apply throughout April 2021 as well. They have been modified frequently, depending on the assessment of the epidemiological situation. The most recent ones were published in the OJ RS, No. 63/2021, of 22 April 2021 and OJ RS No. 66/2021, of 29 April 2021.

In general, a gradual, partial easing of measures has taken place in the second half of April 2021.

1.2 Other legislative developments

1.2.1 The ILO Home Work Convention (No. 177)

Following the ratification of the ILO Home Work Convention, 1996 (No. 177) by the National Assembly in February 2021 (see February 2021 Flash Report), the formal ratification was communicated to the Director-General of the ILO for registration (ratification was registered on 14 April 2021).

The Convention shall be binding upon Slovenia as of 14 April 2022.

1.2.2 Employment of third-country nationals

The Employment, Self-employment and Work of Foreigners Act was amended on 12 April 2021 to transpose Directive 2016/801/EU on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

2 Court Rulings

2.1 Transfer of undertakings

Higher Labour and Social Court, No. Pdp 605/2020, 12 January 2021

In this judgment, published on 07 April 2021, the Higher Labour and Social Court delivered an important decision on the transfer of undertakings, following the CJEU's preliminary ruling in case C-194/18, *Dodič*.

After the Supreme Court overturned the judgment of the Higher Labour and Social Court (No. VIII Ips 342/2017, of 10 September 2019), the Higher Labour and Social Court followed the guidance of the respective CJEU judgment in case C-194/18, *Dodič,* as regards the definition of transfers of undertakings.

In the present judgment, the Court referred to Directive 2001/23/EC, in particular to the definition of transfers of undertakings in Article 1(b), and to the relevant CJEU case law. It emphasised, among others, that when assessing whether a transfer has taken place, the court must take into account Directive 2001/23 and the definition of transfers of undertakings in Article 1(b) as well as CJEU case law, and that the type and characteristics of the activity transferred must be taken into account (para. 12 of the reasoning).

The transfer concerned the investment services department of a bank. The Court underlined that the activity of the investment services department was based, in particular, on intangible assets which form part of the identity of the investment services business. Therefore, when assessing whether the transfer of an undertaking/business or part thereof has occurred or not, the transfer of intangible assets was essential. As intangible assets encompass financial instruments and other assets of the clients, the management of their accounts and other investments and ancillary investment services as well as the archive containing documentation related to investment services and transactions performed for the clients, the clients are a key factor for determining the activity of the business and its identity in the case of a transfer (in particular, paras. 13-15 of the reasoning).

The Court stated that the transfer as such does not constitute a valid ground which would justify a dismissal and that such dismissals were thus invalid (paras. 11 and 15).

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Collective Agreement for the Construction Industry

Amendments to the Collective Agreement for the Construction Industry *('Spremembe in dopolnitve Kolektivne pogodbe gradbenih dejavnosti'*) were concluded by the signatories on 20 April 2021 (entered into the Registry of Collective Agreements on 28 April 2021 and published in OJ RS No. 67/2021, of 30 April 2021, p. 4122-4123).

The amounts of minimum basic wages for all tariff groups were adjusted and the amount of annual leave benefits was increased by 10 per cent (to EUR 1 100 gross).

4.2 Unemployment benefits

The Labour Market Regulation Act (*Zakon o urejanju trga dela* – ZUTD) was amended on 09 April 2021.

More precisely, Article 62 of the ZUTD was amended, which regulates the amount of unemployment benefit. The maximum amount, i.e. the ceiling of the unemployment benefit, has been increased if the unemployed person was a migrant worker, commuting daily or weekly to another Member State of the EU or EEA or to the Swiss Federation, under the condition that the entire prescribed insurance period has been acquired in that country.

4.3 Agreement on Employment of the Family Members of Diplomatic and Consular Personnel between the UK and Slovenia

The government has concluded and ratified the Agreement of the Arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Slovenia on Employment of the Family Members of Diplomatic and Consular Personnel (published in the OJ RS No. 51/2021, of 02 April 2021, p. 15-22; corrigendum in OJ RS No. 57/2021, of 12 April 2021, p. 28-34).

The agreement was concluded with the exchange of diplomatic notes on 30 and 31 December 2020. The government adopted the instrument of ratification on 24 March 2021. The agreement entered into force on 03 April 2021.

Spain

Summary

(I) The Spanish rules on the posting of workers have been amended to include posting through a temporary employment agency. This amendment transposes Directive (EU) 2018/957.

(II) A decision of the Constitutional Court has ruled on that reasonable accommodation of workers with a disability must be provided.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Right to strike

Law No. 5/2021, of 22 April 2021, repealed Article 315(3) of the Spanish Criminal Code, which sanctioned those who coerced others to initiate or to continue a strike. The sanction consisted of a prison sentence from one year and nine months to three years. Such behaviour could continue being criminalised through general coercion, but a specific regulation on cases of strikes has been removed, because it was understood that the specific mention of 'strike' could be deemed a deterrent to the exercise of the right to strike and the freedom of association.

1.1.2 Posting of workers

Directive (EU) 2018/957 on the posting of workers has been transposed by Royal Decree No. 7/2021 of 27 April 2021. There has been a significant delay, because the deadline had been set for 30 July 2020. To implement this transposition, both Law 45/1999 of 29 November 1999—implementing Directive 96/71/EC—and the Law on Temporary Employment Agencies were amended. These new rules are not applicable to the road transport sector as defined in Regulation 561/2006, pending the transposition of Directive 2020/1057. In the meantime, the former rules on the posting of workers will continue to apply to that sector.

The following amendments have been introduced in the Law on Temporary Employment Agencies:

- User undertakings that post temporary agency workers to another Member State have new reporting obligations, and must include the estimated start and end dates of the posting in the contract with the temporary employment agency;
- User undertakings established in another Member State that send temporary agency workers to Spain have a duty to inform the temporary employment agency of the commencement of that posting, so it can notify the Spanish authorities;
- Temporary employment agencies must guarantee the application of the provisions of EU regulations and the Member State's regulations in the event that temporary agency workers are temporarily posted to a different Member State by the user company, without prejudice to the user company's responsibilities.

The amendments of the Law on Posting of Workers are as follows:

- The list of definitions includes specific references to temporary employment agencies;
- The information that must be provided to the posted worker includes the conditions of hiring-out of workers, in particular the supply of workers by temporary employment agencies, the conditions of workers' accommodation, where provided by the employer to workers working outside their regular workplace, as well as allowances or reimbursement of expenditures to cover travel, board and lodging expenses for workers who are working abroad for professional reasons;
- Both the temporary employment agency and the user undertaking must guarantee the legally established conditions for temporary postings. However, there are special rules in the case of posting of workers for more than 12 months, which reproduce the provisions of the Directive verbatim.
- As established in the Directive, Spanish law includes the following rule: "*where the terms and conditions of employment applicable to the employment relationship do not determine whether and, if so, which elements of the allowance specific to the posting are paid in reimbursement of expenditure actually incurred on account of the posting or which are part of remuneration, then the entire allowance shall be considered to be paid in reimbursement of expenditure*";
- Various paragraphs of the Directive have been transposed verbatim. For example, Article 8 bis.6 of the Law on Posting of Workers corresponds to four paragraphs of Article 5 of the Directive ("*where, following an overall assessment made pursuant to Article 4 of Directive 2014/67/EU by a Member State, it is established that an undertaking is improperly or fraudulently creating the impression that the situation of a worker falls within the scope of this Directive, that Member State shall ensure that the worker benefits from relevant law and practice"*).

The Law on Labour Infringements and Penalties is also amended to include infringements by temporary employment agencies. However, any conduct that has already been sanctioned in another Member State cannot again be sanctioned in Spain (*non bis in idem)*.

2 Court Rulings

2.1 Reasonable accommodation of employees with disabilities

Constitutional Court, 15 March 2021, BOE-A-2021-6597

A court clerk was sanctioned for non-compliance at work. During a disciplinary process, the worker proved that he had Asperger's syndrome and that certain changes would be necessary for him to be able to perform his job. However, the Public Administration instead imposed a penalty.

In its decision, the Constitutional Court required the employer to ensure reasonable accommodation of the conditions of work for workers with a disability to allow him or her to adequately perform his or her job to the best of his/her abilities given the circumstances. Otherwise, the worker would be discriminated on grounds of disability. This ruling explicitly refers to the CJEU's case law (e.g. case C-397, *DW*), and the ECHR case law.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Unemployment

Unemployment fell by 59 000 in March due to the Easter holiday. A new labour reform is expected during 2021, but the government continues to support a previous agreement of the social partners, and an amendment has not yet been agreed.

Sweden

Summary

(I) The Swedish government is processing a proposed new act on the implementation of Directive (EU) 2019/1937 on the protection of whistleblowers.

(II) The Labour Court has issued a judgment on the definition of employee in the case of an actor engaged with a theatre that had to cancel its operations due to the pandemic restrictions.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Protection of whistleblowers

The Swedish government aims to introduce a new act for the implementation of Directive EU 2019/1937 on the protection of whistleblowers. The proposed act is still being discussed, but, if adopted by Parliament, it is expected to enter into force on 17 December 2021.

The proposed act replaces previous legislation and expands the protection for whistleblowers, their organisations, and others who might support the whistleblowing in other capacities. Moreover, the proposed new act introduces internal and external reporting mechanisms established in the Directive.

2 Court Rulings

2.1 Notion of worker

Labour Court, AD 2021 No. 13, 31 March 2021

The Swedish Labour Court has issued a ruling on the definition of employee in case AD 2021 No. 13. The case involved a private theatre and an actor, who was engaged to work on a special production for a defined period of three months. Due to the COVID-19 restrictions, the theatre had to cancel a major part of the production and the contract was terminated and payment cancelled roughly three weeks before the end of the agreed period.

The Labour Court, given the overall assessment of the circumstances of the case, concluded that the actor had been an employee of the theatre and that he subsequently was entitled to a salary, including compensation for annual leave, covering the relevant period.

3 Implications of CJEU Rulings

3.1 Discrimination

CJEU case C-30/19, 15 April 2021, Braathens Regional Aviation

A very special and not exclusively labour law-related issue has emerged from the judgment in case C-30/19, *Braathens Regional Aviation*, brought before the CJEU by the Swedish Supreme Court. In the present case, a passenger of Chilean origin residing in

Sweden was ordered by the captain of a domestic airliner to undergo an additional security check. The passenger filed a complaint with the Discrimination Ombudsman who brought a case of discrimination against Braathens for treating the passenger differently based on ethnic origin in accordance with Directive 2000/43/EC. In the district court, the respondent agreed to pay the sum of SEK 10 000 (approx. EUR 1 000), but refused to admit that it had discriminated the applicant. Under Swedish law, in the event of the defendant's acquiescing to pay the compensation claimed by the claimant, without however recognising the discrimination alleged, the claimant is unable to obtain a ruling by a civil court on the existence of such discrimination. The Supreme Court of Sweden asked the CJEU for a preliminary ruling based on this question:

> *"In a case concerning an infringement of a prohibition laid down in [Directive 2000/43] where the person wronged claims compensation for discrimination, must a Member State, if so requested by the person wronged, always examine whether discrimination has occurred – and where appropriate conclude that that was the case – regardless of whether the person accused of discrimination has or has not admitted that discrimination has occurred, in order for the requirement in Article 15 [of that directive] for effective, proportionate and dissuasive sanctions to be regarded as satisfied?"*

The CJEU concluded that the Swedish procedural code, which in case the defendant acquiesces to the claimant's claim for compensation, does not recognise the right to have the existence of the alleged discrimination examined and, if appropriate, upheld by a court, is not in line with EU law, for it does not ensure effective legal protection of discrimination victims.

As many labour disputes, also those outside the realm of discrimination, are litigated or settled prior to a final judgment before a court of law (or arbitration), the question emerges to what extent this culture of settlements must be amended or repositioned to comply with the CJEU's ruling in this case. The case has resulted in a domestic debate on the importance of settlements in labour disputes.

4 Other Relevant Information

Nothing to report.

United Kingdom

Summary

(I) While the country is increasingly lifting COVID-19 restrictions, relief measures for workers and the self-employed have been extended until 30 September 2021 and 30 April 2021, respectively.

(II) The Employment Tribunal decided a COVID-19-related case concerning unfair dismissal, upholding the dismissal of a worker who did not come into work.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Measures to exit lockdown

The latest COVID guidance is available here. This is Step 2 of the roadmap for coming out of the lockdown. Non-essential shops are now allowed to be open, outdoor hospitality venues can reopen with table service only, most outdoor attractions including zoos, theme parks, and drive-in performances (such as cinemas and concerts) can reopen.

The government is currently consulting on 'a proposal to make COVID-19 vaccination a condition of deployment in older adult care homes'.

1.1.2 Relief measures

A further Treasury Direction was issued on 15 April 2021 extending the Coronavirus Job Retention Scheme (i.e. furlough scheme) from 01 May to 30 September 2021. The updated guidance can be found here.

A further Treasury direction has been issued to extend the Self-Employment Income Support Scheme (SEISS) for the period from 01 February to 30 April 2021.

2 Court Rulings

2.1 Unfair dismissal

Employment Tribunal, Mr D Rodgers v Leeds Laser Cutting Ltd, No. 1803829/2020, 12 March 2021

In the present case, the claimant, Mr Rodgers, brought a claim of automatic unfair dismissal against his former employer, Leeds Laser Cutting Limited, when he was dismissed for not coming into work. He had significant concerns about the effect of the virus and he had concerns for his family, specifically a young baby and a child with sickle-cell anaemia living with him. Under the statute, he claimed he enjoyed protection because he believed there were circumstances of serious and imminent danger and that this belief was reasonable. The tribunal denied his claim, finding that:

> *"the Claimant did not reasonably believe that the circumstances were of serious and imminent danger. Furthermore, I consider the steps he took in absenting himself entirely were not appropriate and that he did not take appropriate steps to communicate any belief that there were circumstances of serious and imminent danger to his employer. Therefore, s100(1)(e) is not engaged."*

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Dismissal and rehiring of workers

There is concern about the increasing number of employers who are firing and rehiring staff on inferior terms. A report published by the Trades Union Congress in January 2021 estimated that 9 per cent of workers had been told to re-apply for jobs on worse terms since March 2020, with higher rates among young and Black and Minority Ethnic workers.

Against this backdrop, the Advisory, Conciliation and Arbitration Service (ACAS) has issued advice.

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