



Flash Reports on Labour Law May 2021

Summary and country reports

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

May 2021



EUROPEAN COMMISSION

Directorate DG Employment, Social Affairs and Inclusion

Unit B.2 – Working Conditions

Contact: Marie LAGARRIGUE

E-mail: Marie.LAGARRIGUE@ec.europa.eu

European Commission

B-1049 Brussels

Flash Report 05/2021 on Labour Law

Manuscript completed in June 2021

This document has been prepared for the European Commission however it reflects the views only of the authors, and the European Commission is not liable for any consequence stemming from the reuse of this publication. More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, 2021

© European Union, 2021



The reuse policy of European Commission documents is implemented based on Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents (OJ L 330, 14.12.2011, p. 39). Except otherwise noted, the reuse of this document is authorised under a Creative Commons Attribution 4.0 International (CC-BY 4.0) licence (<https://creativecommons.org/licenses/by/4.0/>). This means that reuse is allowed provided appropriate credit is given and any changes are indicated.

Flash Report 05/2021 on Labour Law

Country	Labour Law Experts
Austria	Martin Gruber-Risak Daniela Kroemer
Belgium	Wilfried Rauws
Bulgaria	Krassimira Sredkova Albena Velikova
Croatia	Ivana Grgurev
Cyprus	Nicos Trimikliniotis
Czech Republic	Nataša Randlová
Denmark	Natalie Videbaek Munkholm Mette Soested
Estonia	Gaabriel Tavits Elina Soomets
Finland	Ulla Liukkunen
France	Francis Kessler
Germany	Bernd Waas
Greece	Costas Papadimitriou
Hungary	Tamás Gyulavári
Iceland	Leifur Gunnarsson
Ireland	Anthony Kerr
Italy	Edoardo Ales
Latvia	Kristīne Dupate
Liechtenstein	Wolfgang Portmann
Lithuania	Tomas Davulis
Luxemburg	Jean-Luc Putz
Malta	Lorna Mifsud Cachia
Netherlands	Hanneke Bennaars Suzanne Kali
Norway	Marianne Jenum Hotvedt Alexander Næss Skjønberg
Poland	Leszek Mitrus
Portugal	José João Abrantes Isabel Valente Dias
Romania	Raluca Dimitriu
Slovakia	Robert Schronk
Slovenia	Barbara Kresal
Spain	Joaquín García Murcia Iván Antonio Rodríguez Cardo
Sweden	Andreas Inghammar Erik Sinander
United Kingdom	Catherine Barnard

Table of Contents

Executive Summary	1
Austria	6
1 National Legislation	6
2 Court Rulings	8
3 Implications of CJEU Rulings	10
4 Other Relevant Information	10
Belgium	11
1 National Legislation	11
2 Court Rulings	11
3 Implications of CJEU Rulings	12
4 Other Relevant Information	12
Croatia	13
1 National Legislation	13
2 Court Rulings	13
3 Implications of CJEU Rulings	13
4 Other Relevant Information	13
Cyprus	14
1 National Legislation	14
2 Court Rulings	16
3 Implications of CJEU Rulings	16
4 Other Relevant Information	17
Czech Republic	18
1 National Legislation	18
2 Court Rulings	21
3 Implications of CJEU Rulings	21
4 Other Relevant Information	21
Denmark	22
1 National Legislation	22
2 Court Rulings	22
3 Implications of CJEU Rulings	24
4 Other Relevant Information	24
Estonia	25
1 National Legislation	25
2 Court Rulings	26
3 Implications of CJEU Rulings	26
4 Other Relevant Information	26
Finland	27

Flash Report 05/2021 on Labour Law

1	National Legislation	27
2	Court Rulings	27
3	Implications of CJEU Rulings	28
4	Other Relevant Information	28
France		29
1	National Legislation	29
2	Court Rulings	30
3	Implications of CJEU Rulings	32
4	Other Relevant Information	33
Germany		34
1	National Legislation	34
2	Court Rulings	35
3	Implications of CJEU Rulings	35
4	Other Relevant Information	35
Greece		36
1	National Legislation	36
2	Court Rulings	36
3	Implications of CJEU Rulings	36
4	Other Relevant Information	36
Hungary		38
1	National Legislation	38
2	Court Rulings	38
3	Implications of CJEU Rulings	39
4	Other Relevant Information	39
Iceland		40
1	National Legislation	40
2	Court Rulings	40
3	Implications of CJEU Rulings	41
4	Other Relevant Information	41
Ireland		42
1	National Legislation	42
2	Court Rulings	42
3	Implications of CJEU Rulings	42
4	Other Relevant Information	42
Italy		43
1	National Legislation	43
2	Court Rulings	43
3	Implications of CJEU Rulings	43
4	Other Relevant Information	44
Lithuania		45
1	National Legislation	45

Flash Report 05/2021 on Labour Law

2	Court Rulings	45
3	Implications of CJEU Rulings	45
4	Other Relevant Information	45
Luxembourg		47
1	National Legislation	47
2	Court Rulings	47
3	Implications of CJEU Rulings	49
4	Other Relevant Information	49
Netherlands		51
1	National Legislation	51
2	Court Rulings	51
3	Implications of CJEU Rulings	51
4	Other Relevant Information	51
Norway		52
1	National Legislation	52
2	Court Rulings	53
3	Implications of CJEU Rulings	53
4	Other Relevant Information	53
Poland		54
1	National Legislation	54
2	Court Rulings	55
3	Implications of CJEU Rulings	56
4	Other Relevant Information	56
Portugal		57
1	National Legislation	57
2	Court Rulings	58
3	Implications of CJEU Rulings	58
4	Other Relevant Information	58
Romania		59
1	National Legislation	59
2	Court Rulings	60
3	Implications of CJEU Rulings	60
4	Other Relevant Information	61
Slovakia		62
1	National Legislation	62
2	Court Rulings	63
3	Implications of CJEU Rulings	63
4	Other Relevant Information	64
Slovenia		65
1	National Legislation	65
2	Court Rulings	66

Flash Report 05/2021 on Labour Law

3	Implications of CJEU Rulings	66
4	Other Relevant Information	66
Spain		68
1	National Legislation	68
2	Court Rulings	69
3	Implications of CJEU Rulings	69
4	Other Relevant Information	69
Sweden		70
1	National Legislation	70
2	Court Rulings	70
3	Implications of CJEU Rulings	71
4	Other Relevant Information	71
United Kingdom		72
1	National Legislation	72
2	Court Rulings	72
3	Implications of CJEU Rulings	72
4	Other Relevant Information	73

Executive Summary

National level developments

In May 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 are still in force and have been extended in several countries, including **Portugal** and **Slovenia**. In **France**, the measures implemented to deal with the consequences of the pandemic have been extended until September 2021.

At the same time, in other countries, such as **Slovakia**, the state of emergency has been lifted. Pandemic-related restrictions are gradually being lifted in several countries including **Austria**, **Cyprus**, **Denmark**, **Italy**, the **Netherlands**, **Portugal** and **Slovenia**, which have initiated a gradual reopening of some activities that had been closed or whose exercise had been limited due to the COVID-19 emergency.

Travel bans and restrictions in connection with the operation of businesses and other establishments are still in force in many countries.

In the **Czech Republic**, the travel ban has been amended and extended, as well as the additional travel ban preventing citizens and residents from travelling to certain high-risk countries. Also, restrictions on businesses and obligations, i.e. the wearing of respiratory protective equipment, have been reintroduced and amended.

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 **Greece** and **Portugal**. Moreover, due to the increased prevalence of teleworking, the **Italian** government has established a right to disconnect for public servants who are teleworking, while in **Lithuania**, a draft to clarify the duties of the employer to compensate for the expenses of the employee to prepare himself/herself to distance work is being discussed by Parliament.

Specific health and safety measures for the workplace to reduce the risk of contagion remain in place in many states. In **Austria**, although the lockdown is officially over, rules for workplaces remain the same. In the **Czech Republic**, the notification obligation for employees to notify the employer about a positive COVID-19 test has been reintroduced. By contrast, in **Belgium**, the competence of occupational doctors to monitor whether an employee's travel was for purely professional reasons has been abolished.

In **Croatia**, the Civil Protection Headquarters has issued a Decision which contains epidemiological measures related to the prevention of the spread of COVID-19 in the workplace. Also, in the **United Kingdom**, new health protection regulations relating to COVID-19 entered into force.

In the **Netherlands**, free COVID-19 tests have been made available for teachers and students.

Flash Report 05/2021 on Labour Law

Measures to mitigate 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 the **Czech Republic** and in **Slovakia**. In **Greece**, a ministerial decision has extended the work contract suspension mechanism.

The temporary wage subsidy for employers associated with COVID-19 has been extended in **Estonia** for May 2021. Moreover, in **Portugal**, incentives for companies that are no longer covered by the support measures provided by social security within the context of the COVID-19 crisis have been issued.

Several countries, such as the **Czech Republic**, continued to enact measures to protect employment to mitigate the effects of the pandemic: these have been extended until 30 September 2021 in **Spain**.

Social security

Several countries have introduced special entitlements to compensate the unemployment caused by the pandemic.

In **Estonia**, the government has also proposed an extension of the payment of unemployment insurance. Similarly, 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 and who are prevented from working due to COVID-19.

In **Norway**, a right to holiday pay for those who received unemployment benefits in 2020 has been introduced.

In **Finland**, the government has proposed raising the maximum amount of wage security to counteract increasing solvency problems for companies caused by the pandemic.

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

Topic	Countries
Easing of COVID-19 restrictions	AT CY DK IT NL PT SI
Health and safety measures	AT BE CZ HR NL UK
Teleworking	EL IT LT PT
Social security	BE EE NO
Employer subsidies	CZ EE PT
Benefits for workers / self-employed prevented from working	CZ ES
State of emergency	PT SI
Travel ban / restrictions to free movement	CZ
Employer insolvency	FI

Other developments

The following national developments in May 2021 were of particular relevance from an EU law perspective:

Working Time

In **Iceland**, legislation allows for derogations from working time legislation for employees who provide user-managed personal assistance.

In **Italy**, the Court of Cassation ruled that the time needed by operators of the transport service sector to travel from one site to another for delivery purposes and to return following the delivery must be paid.

In **Romania**, a record of working time in micro-enterprises shall be established and maintained on the basis of an agreement concluded between the employees and the employer. Also, the Craiova Court of Appeal has ruled that the 24-hour rest period after 12 hours of work does not necessarily have to be cumulated with the weekly rest period.

In the **Netherlands**, according to the Court of Rotterdam, the COVID-19 crisis is not a valid reason for deducting annual leave days.

In **Sweden**, the Labour Court held that employees are not entitled to an additional leave day if they fall sick on a holiday.

Atypical employment

In **Austria**, a decision of the Supreme Court recognised a limited period to raise a claim based on the inadmissibility of a succession of fixed-term contracts.

In **Denmark**, the Western High Court found that a temporary agency worker could direct his claim for compensation for the transgression of maximum weekly working time directly towards the user company.

In **Germany**, the Federal Council has approved a derogation extending the permissible duration of employment of

seasonal workers for a limited period of time.

Platform work

In **Luxembourg**, in the context of criminal proceedings against platforms, the labour inspectorate has qualified Deliveroo's couriers as self-employed persons.

In **Spain**, the government has approved the so-called 'Riders Law', establishing a presumption of employment for couriers.

Seafarers work

In **Ireland**, new regulations address the issue of night work for young persons in the fishing and shipping industries.

In **Norway**, the scope of the Working Environment Act now includes diving operations and the service of navigating ships through unfamiliar waters.

Occupational safety and health

In **Finland**, regulatory changes that would decrease the harm to health caused by work-related travel outside working hours and night work have been proposed.

In **Slovenia**, new rules on the protection of workers from risks related to the exposure to chemicals at work have been issued.

Work-life balance

In **Estonia**, the transposition of Directive (EU) 2019/1158 on work-life balance is being discussed by Parliament.

In **France**, a new Decree specifies the new conditions for taking paternity leave.

In **Greece**, the Labour Ministry has presented a bill providing for significant changes to individual and collective labour legislation, which will also

Flash Report 05/2021 on Labour Law

implement Directive EU 2019/1158 in Greek law.

Teleworking

In **Poland**, a new Draft Law on remote working intends to replace current regulations on teleworking. The new regulations include the requirement to reimburse employees for any costs related to remote working and imposes certain health and safety obligations on employees who work remotely.

In **Luxembourg**, the social partners have adopted an opinion on the right to disconnect and have proposed changes to labour legislation.

Professional qualifications

In **Portugal**, the rules on the recognition of professional qualifications of Member State nationals obtained abroad have been approved, transposing Directive 2005/36/EC, as amended by Directive 2013/55/EU.

In the **United Kingdom**, the Professional Qualifications Bill was presented to Parliament. It will give UK regulators the power to make mutual recognition agreements with their counterparts in other countries around the world.

Other aspects

In **Austria**, a decision of the Supreme Court rejected a general right to object to the change of employer due to a transfer of an undertaking.

In **Germany**, the Federal Council has approved the Works Council Modernisation Act, which aims to counteract the decrease in the number of works council bodies.

In **Sweden**, the government has prepared a proposal for the implementation of the new Whistleblowers Directive.

Also, in **Sweden**, the Labour Court found that the GDPR is not an obstacle for an employer to submit copies of employment contracts to a trade union according to a collective agreement.

In **Romania**, in case of employer insolvency, liquidators and judicial administrators are now required to deliver the documents relating to the termination of the employment contract to the employee.

In **Spain**, a new information right to algorithmic management has been introduced for worker representatives.

Table 2: Other major developments

Topic	Countries
Working time	IS IT RO NL SE
Collective bargaining	FI LU NO SI
Work-life balance	EE FR EL

Flash Report 05/2021 on Labour Law

Platform work	LU ES
Professional qualifications	PT UK
Occupational safety and health	FI SI
Teleworking	PL LU
Seafarers work	IE NO
Right to strike	FR ES
Dismissal	BE SE
Fixed-term work	AT
Temporary agency work	DK
Seasonal workers	DE
Information rights	ES
Works councils	DE
GDPR	SE
Transfer of undertakings	AT
Whistleblowers	SE
Employer insolvency	RO
Ban on Sunday trade	SI

Austria

Summary

(I) Although the lockdown officially ended on 19 May, rules for workplaces remain the same.

(II) The approximation of notice periods for blue- and white collar workers will again be postponed for another three months. A possibility to deviate from statutory notice periods by collective agreement for temporary agency workers will be introduced.

(II) A decision of the Supreme Court has again rejected a general right to object to the change of employer due to a transfer of an undertaking, while another recognised a limited period to raise a claim based on the inadmissibility of a succession of fixed-term contracts.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Lifting of lockdown measures

The last lockdown officially ended on 19 May; the new Ministerial Decree, the COVID-19 Opening Decree and its first amendment ([BGBl II 214/2021](#)) provides, among other measures, for the following: schools as well as restaurants and cafés are open again with certain [restrictions](#); guests are required to show a negative COVID test or proof of vaccination/past infection (so-called 'entry tests') and need to register. They are required to wear an FFP2 mask when getting up from their table. The maximum group size is as follows: indoors – 4 adults plus children, outdoors – 10 people; minimum distance of 2 meters to people seated at other tables. Eating or drinking at the bar are not possible (which applies indoors and outdoors), i.e. eating and drinking are only possible when seated (applies indoors). Employees who are in direct contact with customers will be required to either wear mouth-nose protection and get tested once a week OR wear FFP2 masks. Restaurants have to close at 10 p.m.

According to the [Health Ministry](#), even more openings are planned starting from 10 June: closing time at midnight; reducing the distance of at least 2 metres to 1 metre; indoor: 8 people plus children at one table; outdoor: 16 persons; regular tests for employees as well. As of 1 July: no corona curfew at all, no spacing rules, no restrictions for tables and night-time gastronomy to open again sometime during the summer.

For the workplace, the new Ministerial Decree does not change too much. As previously, certain groups of employees (teachers, workers in direct contact with customers, persons in contact with parties in administration and courts) need to be tested once a week or have to wear an FFP2-mask continuously.

1.2 Other legislative developments

1.2.1 Notice periods

The approximation of notice periods for blue and white collar workers should have entered into force by 1 January 2021. This would have meant that the notice periods would have been increased significantly from two weeks for blue collar workers as foreseen up to then in the Trade Act 1859 (*Gewerbeordnung 1859 – GewO 1859*) to the same period provided for white collar workers in the White Collar Workers' Act (*Angestelltengesetz – AngG*): Notice periods would have then been at least six weeks, increasing to two months after the second year of service, to three months after the completion of the fifth year of service, to four months after the completion of the fifteenth year, and to five months after the completion of the twenty-fifth year of

Flash Report 05/2021 on Labour Law

service. The termination date is the end of each quarter, but the 15th or the last day of each month may be agreed as a termination date as well.

Due to the COVID-19 pandemic and the strain on the economy, the entry into force of this amendment (which passed Parliament in 2017, [BGBl. I No. 153/2017](#)) was postponed by half a year in November 2020 (see [FR 11/2020](#)). The amendment was postponed to enter into force on 1 July 2021 and should apply to terminations issued after 30 June 2021. An initiative by the currently ruling conservative Peoples' Party (ÖVP) and the Greens to amend the General Civil Code (Allgemeines Bürgerliches Gesetzbuch – ABGB) was brought into Parliament ([1698/A XXVII. GP](#)). It was again argued that this is necessary due to the COVID-19 pandemic and the resulting economic crisis.

This measure was criticised by the unions and is very likely to pass Parliament within the next weeks as it is supported by the ruling parties (ÖVP and Greens) who have a majority there.

A raise of the so-called emergency assistance (*Notstandshilfe*), a benefit of the unemployment insurance that is paid when the unemployment benefit (*Arbeitslosengeld*) runs out, is also included in this initiative. This was already introduced in March 2021, and shall now be extended until September 2021. Usually, the emergency assistance is 92 per cent of the unemployment benefit, translating into a rise of 8 per cent for the persons concerned.

1.2.2 Temporary agency work

The approximation of notice periods would also mean that the notice periods for temporary agency (blue collar) workers would now be raised to a minimum of six weeks. Another parliamentary initiative ([1667/A](#)), supported not only by the ruling conservative ÖVP and Greens, but also by the Social Democrats, now wants to make it possible to deviate by collective agreement. This is justified by the special need for flexibility in this sector and that the relevant Act on Temporary Agency Work includes provisions to protect temporary agency workers. The Act, in principle, provides for a notice period of (only) 14 days. At the same time, it prohibits the conclusion of fixed-term contracts without an objective reason and requires the temporary work agency to inform the worker at least 14 days in advance of the end of the assignment. In addition, the collective agreement for blue collar workers provides for a period of one week between the end of the assignment and the issuance of a notice of termination.

Interestingly, this possibility would only be available to blue collar workers and not to white collar workers, where obviously such flexibility is not needed. The provision is designed on the basis of the provision in the General Civil Code (§ 1159 (2) ABGB), which allows for deviations by collective agreements in sectors where seasonal work prevails. The justification for the latter possibility does not seem convincing, as in this case it is clear when the season ends and it is possible to enter into a fixed-term agreement or to give notice in advance. For temporary agency work (and here only for blue collar workers), it seems that this possibility is also not justified as it provides workers in situations very much at risk of precarity with less protection compared to other workers.

Again, it is very likely that this initiative is passed before the summer break, as it is obviously supported by at least three parties, guaranteeing a vast majority.

2 Court Rulings

2.1 Transfer of undertaking

Austrian Supreme Court, 9 ObA 14/21f, 23 March 2021

Context of the national court ruling:

§ 3 of the Act on the Adaption of Contractual Labour Law (*Arbeitsvertragsrechtsanpassungsgesetz – AVRAG*) transposes Directive 2001/23/EC as follows:

- (1) *"If an enterprise, undertaking or part of an undertaking is transferred to another owner (transfer of business), the latter shall take over the employment relationships existing at the time of the transfer as employer, with all rights and duties.*
- (2) ...
- (3) ...
- (4) *The employee may object to the transfer of his employment relationship if the transferee does not take over the protection against dismissal in a collective agreement (section 4) or the occupational pension commitments (section 5). The objection must be made within one month of the rejection of the takeover or, if the acquirer did not make a statement at the time of the transfer of the undertaking, within one month of the expiry of a reasonable period set by the employee for making a statement. If the employee objects, his employment relationship with the transferor shall remain unchanged."*

Earlier there was a discussion whether a general right to object to the change of employer in case of a transfer of an undertaking exists. The Supreme Court, however, cleared this up in a ruling of 22 February 2011, 8 ObA 41/10b, which stated that there is no such right. This decision has been criticised by some in the literature (Firlej, DRdA 2012/42), but was upheld in a later decision (Supreme Court of 26.11.2012, 9 ObA 72/12).

The summary of the major points of the ruling are as follows:

In this ruling, the Supreme Court has again upheld this line of jurisprudence and underlines that according to its case law, there is no general right of the employee to object to the transfer of his or her employment relationship to the transferee. In its first decision 8 ObA 41/10b, the Supreme Court already dealt in detail with the principles of European law and the decisions of the ECJ on the Directive on the Transfer of Undertakings 77/187/EEC (now Directive 2001/23/EC). It stated that the extraordinary appeal does not present any new convincing arguments that could lead the Court to depart from its previous case law. Since the Austrian legislator, in regulating the transfer of undertakings, as far as relevant here, remains within the framework of the Directive's provisions on the transfer of undertakings, it was not necessary to obtain a preliminary ruling from the ECJ.

In its landmark decision 8 ObA 41/10b, the Austrian Supreme Court referred to the decision of the ECJ in the case *Katsikas* (16. 12. 1992, C-132/91, C-138/91 und C-139/91) and stated that the ECJ's statement that the Directive does not preclude the employee's right to 'object' to the transfer of the employment relationship and to waive protection (*Katsikas*, para. 33 et seq.), based on fundamental rights considerations alone. This cannot be understood as a requirement for the formulation of the right of objection under the Austrian AVRAG. On the one hand, this statement of the ECJ is not about the specification of a 'right of objection' by EU law, but only about the fact that European law does not oppose a 'right of objection' provided for in the national legal system. On the other hand, this statement does not refer to a right of objection with the same function as the 'right of objection' of the AVRAG (continuation of the employment relationship with the 'transferor'), but only to the fact that the employee should not be forced to work for the 'transferee', which can also be achieved by

Flash Report 05/2021 on Labour Law

terminating the employment relationship. In the event that the working conditions are significantly deteriorated by the transfer, the Directive also stipulates that the termination is to be attributed to the employer (Article 4(3)). This is provided for in Austria by § 3 (4) AVRAG. The decision and the entire line of jurisprudence is therefore in line with EU requirements.

2.2 Fixed-term work

Austrian Supreme Court, 9 ObA 45/20p, 24 March 2021

The context of the national [court ruling](#) was as follows: the plaintiff worked for a university where complicated provisions in § 109 University Act 2002 ([Universitätsgesetz 2002 – UG](#)) on the permissibility of consecutive fixed-term contracts apply. If the contracts have been renewed for a certain number and over a certain time period without any significant interruptions, an open-ended contract is deemed to exist. The UG, however, does not provide for any period within which such a claim has been raised. In the present case, the last contract formally expired on 31 March 2018, but the claim was only raised in a formal letter of 23 October 2018. As there is no deadline for raising such claims provided for in the statute, it was disputed whether such a period exists and how long it should be.

The summary of the major points of the ruling: the Supreme Court stated that the character of an employment relationship as a continuing bilateral obligation implies that the claim for continuation, which presupposes the employee's continued willingness to perform work, cannot be raised for an unlimited period of time. According to case law, the employer's interest in clarifying the existence or non-existence of the employment relationship implies an obligation on the part of the employee to assert his or her interest in the continuation of the employment relationship against the employer without delay. A reasonable period of time that is objectively sufficient to investigate and form an opinion is to be taken into account. In the absence of a statutory time limit, it has to be assessed by considering all circumstances of the case whether the employee's conduct is to be understood as tacit consent to the termination or as a waiver of the claim of the ongoing employment relationship. The mere failure to contest the termination for a longer period does not, as a rule, in itself constitute such a waiver. Rather, special circumstances must be added which make the later assertion appear inadmissible (Supreme Court 9 ObA 322/99i). However, it does not only depend on the duration of the inactivity, but also on whether the employee can provide valid reasons for his/her hesitation.

The Supreme Court has repeatedly stated that there are no fixed time limits (9 ObA 12/13z; 8 ObA 190/01a ua). The assumption of a maximum period of six months for the assertion of the claim for continuation, as is argued by some voices in the doctrine (cf. Pfeil in Neumayr/Reissner, *ZellKomm* 3rd ed. § 29 AngG Rz 17; Neumayr in Kletečka/Schauer, *ABGB-ON*^{1.02} § 1159c Rz 37 mwN), was rejected by the Supreme Court (8 ObA 190/01a). The extent of the time limit can rather be assessed according to the circumstances of the individual case, weighing the employer's interest in clarification and the difficulties for the employee to assert his or her claim (9 ObA 12/13z; cf. also RS0119727). And finally, the Supreme Court stated that even the inadmissibility of multiple fixed-term employment contracts must be raised with the employer without delay if the employee derives a claim for continuation from them (9 ObA 55/20h mwN).

In the present case, the Supreme Court rejected the claim, referring to the fact that the claim was raised 6 ½ months after the end of the last fixed-term contract. The employee did not claim a continuing employment relationship with the university, but on the contrary, repeatedly expressed that she wished to conclude a new employment contract after the termination of the last one and an interruption of employment of six months, and also made corresponding applications for third-party funding. In this way, however, she conveyed to the defendant that she did not assume that the previous employment

Flash Report 05/2021 on Labour Law

relationship would continue without interruption, but that she, like the employer, was of the opinion that the conclusion of a new employment contract was necessary to further work for the university.

Therefore, if the employee, trusting that she would receive a new employment contract after an interruption of several months, failed to raise a possible claim for continuation beyond the last fixed-term for a period of six months and longer, to the Supreme Court this constitutes a violation of the obligation to take up the matter with regard to the assertion of an already existing employment relationship of indefinite duration.

Just like in the case of the inadmissibility of a dismissal in the context of a transfer of an enterprise, the Supreme Court ruled that a claim for continuation may not be raised without any time limit. As the respective legislation does not include any explicit time ban, the Court rejects strict time periods such as six months, but prefers an assessment of all factors of the case, taking into account the interests of the employer as well as those of the employee as well as their respective actions. This well-balanced approach seems to be in line with the *telos* of Directive 1999/70/EC, which prohibits the abuse of successive fixed-term contracts and requires the Member States to lay down penalties for infringements. It does not state that the impermissibility of successive fixed-term contracts may be claimed indefinitely, but on the contrary, also the interests of the employer must be taken into account to clarify the contractual status of the employees. A time period of about six months should therefore be in line with EU requirements. For example, Article 9 (3) of the Framework Directive 2000/78/EC explicitly refers to time periods for raising claims.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) Employers working with service voucher contracts or employees who mainly transport pupils to and from school and who are prevented from working due to COVID-19 will be granted temporary unemployment benefits for half a working day.

(II) The competence of occupational doctors to monitor whether an employee's travel was for purely professional reasons, has been abolished.

(III) According to the Court of Cassation, the claim against the Belgian State for decisions taken by the social partner representatives within the Joint Committees is inadmissible. In another judgment, the Court of Cassation dealt with the immediate dismissal of an occupational safety and prevention adviser for gross misconduct.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Relief measures for businesses and workers

The Royal Decree of 02 May 2021 on the granting of temporary unemployment benefits to some employees who lose part of their full working day as a result of COVID-19 (*Moniteur belge*, 10 May 2021).

This Royal Decree implements the Law of 02 April 2021, which was reported in the previous Belgian Flash Report (see April 2021 Flash Report, 1.1.2). In response to the COVID-19 pandemic, the Royal Decree defines the procedure that employers working with service voucher contracts or who employ workers who primarily transport pupils to and from school, can follow to avoid paying a half-day guaranteed daily wage due to COVID-19. If the conditions are met, the workers in question will receive temporary unemployment benefits for half a working day.

1.1.2 Lifting of prevention measures

The Ministerial Decree of 07 May 2021 amending the Ministerial Decree of 28 October 2020 on urgent measures to limit the spread of the coronavirus COVID-19 (*Moniteur belge*, 07 May 2021).

The provision that allowed prevention advisers/ occupational doctors in charge of monitoring compliance with COVID-19 measures to ask employees at the workplace for proof that they were travelling for purely professional reasons has been abolished.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Liability claims for decisions taken by a Joint Committee

Cour de cassation, No. AR S.19.0022.N, 12 April 2021

An employer held the Belgian State liable for a decision taken by a Joint Committee. The case concerned a decision by the Joint Committee for the Port of Antwerp to impose a fine for non-compliance with the statutory or regulatory provisions that apply in the port in the social field. The employer wanted to reclaim the additional fine, as it appeared

Flash Report 05/2021 on Labour Law

that its imposition was related to the enforcement of the Labour Law of 16 March 1971. Infringements of this law can give rise to criminal proceedings and lie outside the competence of the Joint Committee. However, Joint Committees do not have legal personality. They cannot therefore act as claimants or defendants in legal proceedings, which is why the employer brought the action against the Belgian State.

The Cour de Cassation **examined** all of the legal provisions governing the relationship between the State and the Joint Committees (the Collective Bargaining Agreement Law and the implementing Royal Decree of 06 November 1969) and found that the Belgian State was responsible for the establishment and proper functioning of the Joint Committees. However, it cannot be deduced from this that the decisions taken by the representatives of the employers' organisations and the employees' trade unions within the Joint Committees are imputable to the State. Consequently, the Belgian State does not have the appropriate legal capacity to act as a defendant in actions directed against such decisions. The liability claim against the Belgian State is inadmissible.

2.2 Dismissal

Cour de cassation, AR S.20.0050.N, 12 April 2021

The present **ruling** concerned the immediate dismissal of an occupational safety and prevention adviser for gross misconduct. The dismissal took place after a fire at the employer's premises. The employer blamed the safety and prevention adviser for not having properly trained the staff to respond to the new alarm system. The safety and prevention adviser had allegedly only taught the staff how to turn off the alarm but had not explained the concept of the alarm system or the description of the different zones. The safety and prevention adviser disagreed and claimed the special dismissal compensation stipulated in the Law of 20 December 2002 on the protection of the safety and prevention advisers.

The Cour de Cassation ruled that that when the dismissal for gross misconduct has not been accepted by the Labour Court, the special dismissal protection severance pay equal to the salary for 2 or 3 years is due if the court finds that the reasons invoked are related to the independence of the safety and prevention adviser or the employer does not prove the safety and prevention adviser's incapacity to perform his duties as the safety prevention adviser.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

The Civil Protection Headquarters has issued a Decision which contains epidemiological measures related to the prevention of the spread of COVID-19 in the workplace.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Epidemiological measures for the workplace

According to the Decision on necessary epidemiological measures restricting gatherings and introducing other necessary epidemiological measures and recommendations to prevent the transmission of COVID-19 through gatherings ([see here](#), Official Gazette No 58/2021), issued by the Civil Protection Headquarters, employers are required to:

- prohibit the arrival at work of employees who have fever and respiratory problems, especially a dry cough and shortness of breath;
- reduce physical contact between employees, whenever possible;
- introduce working from home, where possible;
- introduce flexible working time, where possible;
- organise work in shifts, i.e. work in groups, where possible;
- reduce the number of physical meetings to a minimum; and
- regularly ventilate the areas where employees gather.

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.

Cyprus

Summary

There was a gradual reopening of the economy and of social activities in May. Therefore, many measures such as curfew hours, vaccination passes as a means of entrance and reopening of businesses were adopted.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Lifting of lockdown measures

May saw a gradual easing of the lockdown measures. Following a decision of the Council of Ministers on 27 May 2021, the following measures apply:

The curfew hours have been reduced. For most of May, the curfew hours were reduced from 9.00 pm to 11.00 pm. From 29 May to 9 June, movement is prohibited from 1 a.m. until 5 a.m.. As of 10 June, the curfew will be lifted altogether.

The movement of persons during curfew hours (1 a.m. until 5 a.m.) is permitted for the following reasons for the period 29 May to 9 June:

- For purposes of moving to and from the workplace with the presentation of a specific form, completed and signed by the employer, which certifies the necessity for the movement during the aforementioned hours.
- For urgent purposes, such as a medical centre, hospital, pharmacy or veterinarian visit for medical emergencies and to render assistance to people who are unable to care for themselves or who need to self-isolate.

The 'SafePass' measure has been introduced. A prerequisite for going to specific places is the presentation of one of the following forms of evidence: vaccination certificate with at least one dose, after a period of 3 weeks since the vaccination; proof that a person contracted COVID-19 in the last 6 months; if one of the above does not apply, and as a temporary solution, citizens aged 12 and over are given the option to present a negative test certificate, either a PCR or a rapid test, valid for 72 hours. For certain places, it is necessary to present evidence of the above. Persons aged 12 and over must have a SafePass and present it in case of a check by authorised officials in the following premises/businesses:

- Indoor spaces of catering establishments (restaurants, cafes, bars, snack bars, etc.) - places of religious worship;
- Indoor theatres, cinemas and performing arts or concert halls - shopping centres and department stores;
- Social events such as weddings, christenings and funerals;
- Gyms, dance schools and other sports schools in accordance with the guidelines by the Cyprus Sports Organisation;
- Senior homes, nursing homes, accommodation facilities for the chronically ill and other enclosed structures;
- Hotels and tourist accommodations;
- Conferences, trade fairs - casinos.

For certain places, it is not necessary to present such evidence. The presentation of evidence is not mandatory in the following places: outdoor spaces of catering establishments; hair salons, beauty parlours; banks; departments of the private, public and wider public sector which serve the public; gambling and betting businesses; farmers' markets, supermarkets, bakeries, butcheries, fishmongers, fruit markets, minimarkets, kiosks, pharmacies; beaches; outdoor picnic areas, dams and zoos.

Flash Report 05/2021 on Labour Law

Certain certificates are accepted as SafePasses. The SafePass for a negative result of a coronavirus test (PCR or rapid test) is presented in print form, as issued at private clinical laboratories or at the mobile testing stations in their original form, or in the form of a text message that is sent to the individual's phone number. In cases of proof of vaccination, the Vaccination Card issued by the vaccination centres is presented. In cases of people who had COVID-19 during the last 6 months, the text message for release sent to the citizen shall be presented. Only police officers or officials of the competent ministries/departments depending on the businesses that fall within the area of their competence are authorised to check whether individuals are in possession of a SafePass. The managers of businesses/premises are not responsible for checking the SafePass, and citizens are not required to present their SafePass to unauthorised persons.

Gatherings are allowed in public areas, such as parks, squares, dams, picnic areas, beaches, pedestrian streets, marinas, zoos, etc. Gatherings in homes are also allowed for a maximum of 20 persons, including minors and permanent residents.

Holding lunches/dinners for weddings and baptisms in homes is allowed, provided that proof of marriage/baptism (e.g. invitation) is submitted, as well as the available square metres of the house to determine the maximum number of attendees based on the relevant protocol. The information must be sent electronically to healthservices@mphs.moh.gov.cy for approval. Provided that approval is granted, the lunch/dinner may take place in a home by complying with the health protocol for social events. A prerequisite for attendees is the presentation of evidence described above.

As of 1 June until 9 June, holding lunches/dinners for weddings and baptisms is allowed in catering establishments or hotel facilities or event halls, by complying with the health protocol for social events, as follows: 150 persons in an indoor space for lunch or dinner, or 280 persons in an outdoor space for lunch or dinner; cocktail parties are allowed with a maximum number of 250 persons at any given time only in an outdoor space. As of 10 June until 30 June, holding lunches/dinners for weddings and baptisms is allowed in catering establishments or hotel facilities or event halls, by complying with the health protocol, as follows: 200 persons in an indoor space for lunch or dinner; 350 persons in an outdoor space for lunch or dinner; cocktail parties are allowed with a maximum number of 250 persons at any given time only in an outdoor space. A prerequisite for the attendees is the presentation of evidence as described above.

Weddings, baptisms, graduation parties, etc., among others, are considered to be social events. For any form of social event, the framework and conditions (maximum number of people indoors and outdoors, reception, etc.) described above apply and the protocol for social events is followed. A prerequisite for the attendees is the presentation of evidence as described above.

As of 1 June, religious services and other forms of religious worship will allow the presence of parishioners, with a maximum physical presence of 50 per cent capacity of the place of religious worship. The maximum physical presence of 50 per cent capacity also applies to religious ceremonies, such as weddings, baptisms and funerals. A necessary prerequisite for the physical presence of parishioners in places of religious worship is the possession of a SafePass as described above.

As of 1 June, the operation of indoor and outdoor spaces of the following categories of catering establishments will be permitted on the basis of the relevant protocol: restaurants; taverns; cafes; pubs; snack bars and bars; coffee shops; restaurants within shopping centres, canteens and/or sports clubs, cultural clubs, associations, societies, etc. A necessary prerequisite for indoor spaces is the possession of a SafePass as described above.

Nightclubs will be able to operate again as of 10 June according to the health protocol. One necessary prerequisite for indoor spaces is the possession of a SafePass as described above. As of 1 June, the percentage of the use of casinos' capacity shall increase to 50 per cent. One necessary prerequisite is the possession of a SafePass as

Flash Report 05/2021 on Labour Law

described above. In May, the operation of playgrounds, luna parks and theme parks was not allowed. As of 1 June, the operation of playgrounds will be permissible in indoor and outdoor spaces according to the protocol that is in effect for catering establishments, without holding events (i.e. birthday parties, etc.). As of 16 June and on the basis of the health protocol, holding parties for children at playgrounds, luna parks and theme parks is allowed. One necessary prerequisite for indoor spaces is the possession of a SafePass as described above.

In May, conferences and trade exhibitions were not allowed. As of 1 June, conferences and trade exhibitions will be allowed, provided that only 50 per cent of the indoor space is being used. Cocktail parties have to follow the social events protocol. One necessary prerequisite is the possession of a SafePass as described above. The operation of camping sites and other similar spaces will be allowed as of 16 June. As of 16 June, the operation of summer schools and children's camping sites will be allowed as well. One necessary prerequisite for visiting the above places is the possession of a SafePass for all individuals aged 12 and over.

Private businesses and the public and wider public sector were only partially allowed to operate. Until 9 June, private businesses and the departments/services of the public and wider public sector, with the exception of essential services, have been working with a physical presence of staff that does not exceed 50 per cent of all employees. As of 10 June, the limitation of physical presence of employees will be lifted.

In the field of sports and sports activities, some restrictions are still in place. Regarding the operation of sports facilities, including swimming pools and other sports activities, the guidelines issued by the Cyprus Sports Organisation apply.

In the field of culture, restrictions are also still in place. Cultural establishments are operational (theatres, amphitheatres and other performance spaces of the arts). As of 1 June, the operation of indoor and open air cultural spaces (theatres, amphitheatres and other performance spaces of the arts) is allowed at 50 per cent capacity and in compliance with the health protocols. One necessary prerequisite for indoor spaces is the possession of a SafePass as described above.

Festivals were not allowed at churches. As of 10 June, folk festivals will be allowed at churches and on the basis of the health protocol in effect for farmers' markets.

Group institutes and the sports and social activities for children aged 18 and under still operate with restrictions. As of 1 June, all group institutes for children aged 18 and under will be allowed on the basis of the health protocol. As of 1 June, other social and extracurricular activities for children aged 18 and under will be allowed as well, if they are in the possession of a negative test with effect for 72 hours for all individuals aged 12 and over. For social and extracurricular activities for children under the age of 18 in open air spaces, the requirement of weekly testing for all individuals aged 12 and over remains in place.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

Flash Report 05/2021 on Labour Law

4 Other Relevant Information

Nothing to report.

Czech Republic

Summary

(I) The travel ban has been amended and extended, as well as the additional travel ban preventing Czech citizens and residents from travelling to certain high-risk countries.

(II) Restrictions on businesses and obligations to wear respiratory protective equipment have been reintroduced and amended. The notification obligation for employees to notify the employer about a positive COVID-19 test has been reintroduced.

(III) Relief measures for businesses and workers have been extended and amended.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Travel ban

The government has retained and amended the travel ban. The protective measure of the Ministry of Health No. MZDR 20599/2020-83/MIN/KAN of 28 May 2021 has been adopted with effect as of 01 June 2021.

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

The list of countries according to risk is available [here](#).

With effect as of 01 June 2021, the restrictions on the entry of persons into the territory of the Czech Republic have been readopted – with certain amendments (see, among others, April 2021 Flash Report).

The government has adopted an additional travel ban in connection with the spread of the new variant of COVID-19.

The protective measure of the Ministry of Health No. MZDR 20599/2020-80/MIN/KAN of 21 May 2021 was adopted with effect as of 22 May 2021.

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

With effect as of 21 May 2021 until 30 June 2021, Czech citizens as well as foreign nationals who reside on the territory of the Czech Republic may not travel to certain countries, namely Botswana, Brazil, Eswatini, India, South Africa, Colombia, Lesotho, Malawi, Mozambique, Nepal, Peru, Tanzania, Zambia, and Zimbabwe – due to the increased COVID-19 risk in these countries.

1.1.2 Restrictions to the operation of businesses and other establishments

The government has readopted and amended restrictions on certain businesses.

The protective measure of the Ministry of Health No. MZDR 14601/2021-16/MIN/KAN of 28 May 2021 was adopted with effect as of 31 May 2021.

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

With effect as of 31 May 2021, the restrictions on certain businesses have been readopted and amended.

There has been some loosening of the restrictions, and most establishments are now open to the public. Certain rules must, however, be adhered to, e.g. in certain establishments (restaurants, hairdressers, gyms, etc.), customers must either be vaccinated or must have proof of a negative COVID-19 test.

Flash Report 05/2021 on Labour Law

1.1.3 Mandatory respiratory protective equipment

The government has readopted and amended the obligation to wear respiratory protective equipment.

The protective measure of the Ministry of Health No. MZDR 15757/2020-50/MIN/KAN of 04 May 2021 was adopted with effect as of 10 May 2021.

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

With effect as of 10 May 2021, the obligation to wear respiratory protective equipment has been readopted and amended (see February 2021 Flash Report).

The government has amended the obligation to wear respiratory protective equipment.

The protective measure of the Ministry of Health No. MZDR 15757/2020-50/MIN/KAN of 4 May 2021 (above) was amended by the protective measure of the Ministry of Health No. MZDR 15757/2020-51/MIN/KAN of 17 May 2021 with effect as of 18 May 2021.

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

With effect as of 18 May 2021, the obligation to wear respiratory protective equipment has been amended.

1.1.4 Notification obligation in case of positive COVID-19 test result

Any employee who the obligation to notify their employer of their test result.

The extraordinary measure of the Ministry of Health No. MZDR 47828/2020-28/MIN/KAN of 14 May 2021 was adopted and entered into effect on 15 May 2021.

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

Employees who test positive for COVID-19 have the obligation to immediately notify their employer, to leave the workplace, quarantine in their place of residence, and notify the employer's medical service provider or their general practitioner.

The measure has only been re-adopted. Essentially the same measure is reported in March 2021 Flash Report.

1.1.5 Relief measures for employees

The Draft Act amending Act No. 435/2004 Coll., on Employment, as amended, and other related legislation has been passed by the House of Deputies and is currently being deliberated in the Senate.

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

The Draft Act was already reported on in August and September 2020 Flash Reports – this issue reflects the latest changes to the Draft Act.

First, as already reported, the Draft Act introduces so-called 'support during partial unemployment' – this support essentially consists in the State providing financial assistance to employees for whom the employer cannot assign work (i.e. furloughed employees) for various reasons (drop in demand for goods and services, lack of raw materials, etc.). The State financial assistance is provided instead of compensation of salary, which the employer would have to pay to furloughed employees under normal circumstances (i.e. without the regime being activated).

The support regime during partial unemployment shall be activated by a government regulation when the economy is at risk (due to e.g. a pandemic, cyberattack, natural catastrophe, etc.). However, in the new Draft Act, the regulation may also determine a

Flash Report 05/2021 on Labour Law

particular range of employers who shall be provided with such support, or rather to stipulate the means to determine the range (e.g. only for certain industries).

The support is only to be provided if the employer does not assign work to the employee to the extent of at least 20 per cent and at most 80 per cent of his or her weekly working hours. Now additionally, an employer must pay the employees a compensatory salary amounting to at least 80 per cent of their average earnings in order to be eligible for the support (note that in case of certain obstacles to work, the employer is required to pay only 60 per cent of the employee's average earnings – therefore, in order to be eligible for the support, the employer would have to provide the employee with higher compensation than the Labour Code stipulates).

Nevertheless, the amount of the support has been changed from 70 per cent of the employee's hourly net earnings to 80 per cent of his or her compensatory salary provided by the employer (see above). The maximum monthly amount of such support has been increased from 100 per cent to 150 per cent of the average salary in the national economy for the 1st and 3rd quarters of the previous calendar year.

These are the major changes to the Draft Act. In short, they consist of further increases to the support provided by the State to employers and employees.

The support regime during partial unemployment should give the State the flexibility to provide employers with support by paying their employees for periods when they cannot assign work to them during an economic crisis (or risk of an economic crisis). Currently, the Draft Act actually increases the amount of support, as described above.

1.1.6 Compensation bonus

The government has extended the bonus period for the provision of the compensation bonus 2021.

Government Regulation No. 188/2021 Coll., on the setting of the bonus period for the compensation bonus 2021, was adopted and published and entered into effect on 07 May 2021.

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

With this resolution, the government extends the bonus period for the provision of the compensation bonus 2021, from 01 May 2021 until 31 May 2021.

This compensation bonus 2021 was reported on in March 2021 Flash Report.

1.1.7 Relief measures for employers

The government by its resolution decided to not extend the 'anti-virus' programme in its entirety.

The resolution is not yet available – information made public through a press release of the Ministry of Labour and Social Affairs ([here](#)).

We previously informed you about the 'Antivirus' programme in our March-June 2020, August 2020, October 2020, and March-April 2021 Flash Reports.

Under the 'anti-virus' programme, employers who provide salary compensation to employees to whom they cannot allocate work due to obstacles to work (i.e. where employees are not working but are kept on the employer's payroll) may apply to be provided State contribution (as a full or partial reimbursement of the relevant payroll costs).

With effect as of 01 June 2021 until 30 June 2021, employers can only apply for a State contribution to partially be reimbursed for providing salary compensation to employees for the duration of their quarantine (ordered by a physician or public health authority)

Flash Report 05/2021 on Labour Law

in connection with the COVID-19 disease (where the employer provides the employees with salary compensation in the amount of 60 per cent of their reduced average earnings for the first 14 days of quarantine). Other reasons for reimbursement no longer apply. The State contribution provided covers 80 per cent of salary compensation paid by the employer to employees who must quarantine (including health and social security contributions). The upper limit per month per employee is CZK 39 000 (i.e. approx. EUR 1 427).

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.

Denmark

Summary

(I) COVID-19 related restrictions are gradually being lifted in Denmark based on a new reopening plan.

(II) In a recent ruling of the Western High Court, the Court found that a temporary agency worker could direct his claim for compensation for the transgression of maximum weekly working time directly towards the user company.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Reopening of businesses

The most recent political negotiation on the reopening of Danish society was concluded on 21 May 2021. The agreement entails an increased physical attendance in schools and a "normalisation" of physical attendance in (public) work places. The existing rules on the use of the COVID-19 passport in libraries and volunteer associations have been adjusted. The political parties also agreed to elaborate a plan to phase out the use of face masks at the beginning of June (on the precondition that the requirement to wear masks is lifted when all citizens older than 16 years of age, who wish to be, have been vaccinated).

The Danish COVID-19 vaccination programme will continue without the use of AstraZeneca and Johnson & Johnson vaccines. On a voluntary basis, citizens may request to be vaccinated with the AstraZeneca vaccine. As of May, approx. 1,200,000 citizens have been (fully) vaccinated out of a population of 5.8 million.

News from the Danish Health Authority of 3 May 2021 is available [here](#).

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Temporary agency work

Western High Court ruling, No BS-31204/2018-VLR, 8 February 2021

The present case examined whether a company is required to observe the 48-hour limit included in the Danish Implementation Act on the Working Time Directive in relation to a temporary agency worker, and whether that limit was transgressed to such an effect that the company must pay compensation to the worker. The parties disagreed on whether the Act on temporary agency work applied to the situation at hand. The employee had filed a claim against the user company, as the two temporary work agencies he had worked for were liquidated and under insolvency proceedings.

The High Court found that the employee had demonstrated that he had worked for more than 48 hours in three different reference periods. This was a transgression of the maximum weekly working time as laid down in Article 4 in the Danish Implementation Act on the Working Time Directive.

The employee, as a general rule, should have directed his claim for compensation against the two temporary work agencies under which he was employed during the relevant periods, cf. Act on Temporary Agency Work, Articles 1(1) and 2.

Flash Report 05/2021 on Labour Law

However, due to the number of factual circumstances of the specific case, the employee could direct his claim for compensation against the user company according to Article 8 of the Danish Implementation Act on the Working Time Directive. The circumstances included:

- part of the company's workforce was continually made up of temporary agency workers, i.e. out of 60-70 employees there were 12-18 temporary agency workers. Another explanation given was that there were 30-35 regular employees and 10-15 temporary agency workers in the company.
- according to the information on time of formation and the directors of both temporary work agencies, the agencies were considered as having been established for the purpose of cooperating with the user company.
- the employee performed work for the user company for 1 year and 7 months without being dispatched to another company.
- The user company could dismiss workers with immediate effect on behalf of the agency according to the contract with one of the temporary work agencies. In addition, the user company was responsible for worker accommodation.
- according to testimonials before the court, the temporary agency workers' working time was typed in spreadsheets of 16-week periods to meet the rules on the maximum average weekly working time of 48 hours by the bookkeeper at the user company.
- Finally, one of the temporary work agencies paid DKK 1 million to the user company, which afterwards paid government taxes for multiple temporary agency workers. The surplus amount of more than DKK 183,000 was supposedly not returned to the agency.

The High Court set the compensation to DKK 25,000, which is the normal amount awarded for transgressions of the maximum weekly working time according to a Supreme Court case of 14 November 2017. The Court emphasised that the temporary agency worker had not demonstrated that he had not received pay for overtime work. As a whole, there were no grounds for departing from the said amount.

Where the District Court had refused the employee's claim on the basis of the user company not being his *employer*, the Western High Court found the user company to be liable. It was emphasised that an employee as a *main rule* should direct his/her claim against the relevant temporary work agency (as the agency is the contractual employer). However, user companies may also be held liable for transgressions of the 48-hour limit rule, without necessarily establishing that the user company is an employer. The listed relevant factual circumstances of the case do, however, indicate that the Court determined that the user company carried the responsibility for setting the employee's working hours, had dismissal competences, accommodation responsibility, etc., which are usually linked to employer responsibility.

The wording of Article 8 in the Danish Implementation Act on the Working Time Directive does not specify from whom an employee may claim compensation: "An employee, whose rights have been violated according to this Act, may be awarded compensation."

Finally, even though the Court did not use the word *circumvention or abuse*, several of the relevant facts mentioned demonstrates that the Court was aware of the risks at play in this particular case. What is of relevance for the result of the case was, inter alia, the special link between the temporary work agencies and the user company, both the purpose of their foundation and their financial transactions.

As a whole, the ruling establishes that not only temporary work agencies as employers may be liable for transgressions of the maximum weekly working time. Even though the ruling is a result of the very special circumstances of the case, it does effectively show that the courts are willing to set aside attempts of abuse of employees' basic rights in relation to the establishment of temporary work agencies.

The Western High Court ruling of 8 February 2021 (U 2021.2117 V) is not publicly available.

Flash Report 05/2021 on Labour Law

The Supreme Court case of 14 Nov 2017 (case 299/2016) (U 2018.763 H) is available [here](#).

The Danish Implementation Act on the Working Time Directive, L 896 of 24/08/2004 is available [here](#).

The Act on Temporary Agency Work, L 595 of 12/06/2013 is available [here](#).

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

(I) The temporary wage subsidy for employers due to COVID-19 has been extended for May 2021. The government has also proposed an extension of the payment of unemployment insurance.

(II) The transposition of Directive (EU) 2019/1158 on work-life balance is being discussed by Parliament.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Relief measures for businesses and workers

On 06 May 2021, the Government of the Republic of Estonia adopted a decree extending the wage subsidy to employers for May 2021 to mitigate the consequences of the COVID-19 pandemic (see [here](#) and [here](#)). Previously, this support was to be provided in March and April 2021 only, in addition to the previous measures.

Remuneration is paid directly to employees whose employer's activities have been significantly disrupted due to the restrictions imposed to prevent the spread of COVID-19.

The Unemployment Insurance Fund pays compensation to the employee in the amount of 60 per cent of his or her average monthly salary, but not more than EUR 1 000 (gross). The employee must meet certain preconditions to benefit from this compensation.

The government discussed an initiative on 20 May to extend the payment of unemployment insurance benefits and unemployment benefits by 60 days to people registered as unemployed, if the registered unemployment rate in Estonia rises above 8.5 per cent.

According to the proposal, unemployment insurance benefits and unemployment benefits will be extended by 60 days if the registered unemployment rate increases by 8.5 per cent compared to the previous month.

This initiative intends to grant unemployment benefits for a maximum of one year, i.e. thousands of unemployed persons will not be entitled to unemployment benefits in the near future. However, due to the constraints and more indirect effects of the COVID-19 crisis, it is still difficult for the unemployed to find work.

The measure to temporarily extend unemployment benefits is related to the proposals for the reorganisation of the unemployment benefit system (the proposed amendments are related to this [draft legislation](#)) developed by the Ministry of Social Affairs, to permanently reorganise the payment of unemployment benefits according to economic cycles. This would allow benefits to be paid over a longer period when the economy is facing difficulties and the job search takes a lot longer.

1.2 Other legislative developments

1.2.1 Work-life balance

Parliament is in the process of amending the Employment Contracts Act and the Act Amending Other Acts.

The [draft](#) transposes Directive (EU) 2019/1158 of the European Parliament and of the Council on work-life balance for parents and carers and repeals Council Directive

Flash Report 05/2021 on Labour Law

2010/18/EU. The draft transposes an EU directive specifying the right of carers and officials to request flexible working or employment conditions, such as part-time or flexible working hours, the possibility of teleworking, etc.

In addition, when concluding an employment contract with a minor aged 13–14 years, the waiting period of 10 working days from the registration of the minor in the employment register has been abolished.

Opinions from various institutions to the proposed draft were collected throughout May 2021.

Proposed changes to the Collective Agreements Act address the extension of the collective agreement in Estonia. These changes were reported in the October 2020 and April 2021 Flash Reports. The draft is currently being prepared.

The bill was [initiated](#) in Parliament on 03 May 2021. Opinions from various institutions were collected until 26 May 2021.

The draft amendment to the Employment Contracts Act has been prepared and introduces the possibility to conclude a variable hours contract in the retail sector in July 2021. This amendment was reported in the October 2020 and April 2021 Flash Reports. The bill was [initiated](#) in Parliament on 31 May 2021.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Wage trends

According to [Statistics Estonia](#), the average gross monthly salary in the first quarter of 2021 was EUR 1 473 gross. The average gross monthly salary has steadily increased over the past five years.

The average gross monthly salary was highest in the information and communication (EUR 2 629), financial and insurance activities (EUR 2 582) and the energy sector (EUR 2 295). By contrast, the lowest wages were earned in the accommodation and food service sector (EUR 847), real estate activities (EUR 1 119) and arts, entertainment and leisure activities (EUR 1 165).

The monthly minimum wage in Estonia is EUR 584 gross.

Finland

Summary

The government has proposed raising the maximum amount of wage security in case of employer insolvency. Additionally, it has proposed regulatory changes that would decrease the harm to health caused by work-related travelling outside working hours and night work.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Employer insolvency

The government has proposed (Government Proposal No. 88/2021) raising the maximum amount of wage security to EUR 19,000 from the current EUR 15,200 for it to better correspond with the current wage level. The coronavirus epidemic is expected to increase solvency problems among companies, which may lead to a growth in the number of employees applying for wage security and the amount of claims for it. Employees have the right to receive their claims arising from an employment relationship to be paid by the State as wage security if the employer is bankrupt or otherwise insolvent. The maximum amount of wage security paid to an employee under the Pay Security Act has remained unchanged since 1999.

The maximum amount would be raised by amending the Wage Security Act. Similarly, the government has proposed to amend the Seamen's Wage Security Act. The maximum amount of indemnity or compensation paid as wage security under that Act would also be increased to EUR 19,000 from currently EUR 15,200. According to the Government Proposal, the amendments would come into effect as soon as possible.

1.2 Other legislative developments

1.2.1 Occupational health and safety

The government has proposed (Government Proposal No. 80/2021) changes to the Act on Occupational Health and Safety at Work to diminish the strain for employees that travel and night work cause. The aim is to decrease any harm to the employees' health caused by work-related travel outside working hours and night work. The proposed legislative changes would increase the settlement and assessment of risks in advance in a comprehensive and systematic way and require taking personal conditions of employees into account.

The employer would have an obligation to determine which measures would be effective in decreasing work-related strain in situations where the work-related tasks of an employee carrying out night work cannot be changed or a transfer to daywork is not possible. The employee carrying out night work would have a right to settlement by the employer of factors that make modifying the employee's work tasks or a transfer to daywork impossible.

2 Court Rulings

2.1 Agreement on education

Labour Court, TT 2021:47, 17 May 2021

A collective agreement and the agreement on education, which was attached to the collective agreement and followed as part of the agreement, included provisions on the

Flash Report 05/2021 on Labour Law

employer's obligation to provide or finance further education for the driver in compliance with Directive 2003/59/EC. The statement issued by the Labour Court focussed on the obligation of the employer to arrange for further education and how these provisions were to be interpreted.

The Labour Court held that the wording of the collective agreement or the joint statement of the parties to the collective agreement did not clearly stipulate that the employer would have had a responsibility to provide or finance further education and to ensure that the employee *de facto* provides for such education programmes. It was sufficient in terms of meeting the obligation of further education, for example, that the employer informed the employee of education days among which the employee could choose suitable ones and that the employer, in addition, would have paid the costs for the education programme. The duty to participate in education programmes organised by the employer was, according to the statement of the parties to the collective agreement, an obligation of the employee.

As there was no local agreement on education programmes that take place outside working hours, the employee must have had an opportunity to participate in an education programme during working time.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

France

Summary

(I) As a result of a new law on exit management from the health crisis, the measures implemented to deal with the consequences of the pandemic have been extended until 30 September 2021.

(II) A new Decree specifies the new conditions for taking paternity leave.

(III) The Labour Division of the Court of Cassation has issued a ruling on the equality of treatment regarding settlement agreements, while the Council of State has ruled on the freedom of work during a strike. Also, the Second Civil Division of the Court of Cassation ruled on the lawyers' pension fund.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Exit management of the health crisis

The law on exit management from the health crisis (Law No. 2021-689 on the exit management from the health crisis, 31 May 2021, Official Journal of 01 June) was definitively adopted by the French Parliament on 27 May 2021. The law extends the implementation of several emergency measures implemented to mitigate the consequences of the health crisis until 30 September 2021, in particular with regard to paid leave, labour lending and meetings of employee representatives.

In addition, the government shall have the authority to enact new measures by ordinance to assist the gradual resumption of activities and to anticipate possible outbreaks of the epidemic, in particular with regard to partial activity. On 31 May, the Constitutional Council ruled on the conformity of the adopted bill to the Constitution: it did not declare that the social measures of the adopted bill were unconstitutional, nor did it express any reservations.

To ease the management of paid leave, which has been affected by the health crisis, a company-wide collective bargaining agreement or, failing that, a branch level agreement, may determine the conditions under which the employer is authorised, on a unilateral basis, to order employees to use paid leave that has been earned, including before the start of the period during which it shall be used, or to change the timing of leave already taken (by exception to the Labour Code and the applicable collective bargaining agreements, such agreements will always determine the number of days of paid leave concerned. However, the number of leave days that may be imposed by the employer may not exceed eight working days).

When the interests of the company so require, given the economic difficulties associated with the COVID-19 pandemic, the employer may unilaterally decide to change the dates of certain rest days, as an exception to the rules of the Labour Code and collective bargaining agreements, up to a maximum of ten days. These are:

- Days provided for by collective bargaining agreement (agreements on the reduction of working time);
- Days provided for by a flat-rate agreement;
- Days resulting from rights allocated to the employee's time savings account.

To enable companies with restricted activity to make employees available to those with labour needs, certain possibilities for derogation from the rules on non-profit labour lending will be renewed. Thus, the loan agreement between the lending and the user company, which is in principle individual, may exceptionally cover the provision of

Flash Report 05/2021 on Labour Law

several employees. The rider to the employment contract of the employee made available may, as an exception, not include the working hours (in this case, it will specify the weekly volume of working hours during which the employee is assigned and the hours will be determined by the user company with the employee's agreement). Finally, there is an exception to the requirement of the operation's non-profit-making nature: labour lending operations will continue to be considered to be non-profit-making for the user undertakings, even when the amount invoiced by the lending company is lower than the wages paid to the employee, the related social security charges and the professional expenses reimbursed to the person concerned for the temporary loan, or is equal to zero due to the use of partial activity.

The law also maintains the possibility of meeting employee representative bodies remotely (under normal circumstances, employee representatives may only meet using videoconferencing up to a limit of three times per calendar year, unless an agreement with the members of the Social and Economic Council decides otherwise), until 30 September 2021.

1.2 Other legislative developments

1.2.1 Paternity leave

Paternity and childcare leave was partially reformed by Law No. 2020-1576 of 14 December 2020, which increased its duration to 25 days. The new provisions (Decree No. 2021-574, 10 May 2021, Official Journal of 12 May) will enter into force on 01 July 2021. Decree No. 2021-574 specifies the rules on the time limit to request leave, the notice period and the terms and conditions for allocating the leave. It also adapts the provisions of the Social Security Code accordingly and provides various clarifications concerning the terms and conditions for using the leave for self-employed persons.

The period within which the employee must take leave will be increased from 4 to 6 months from the birth of the child. The notice period is set at one month: the employee must inform his or her employer of the expected date of birth at least one month before the birth and must also inform the employer of the dates and duration of the leave at least one month before it commences (Article D. 1225-8 of the Labour Code).

The decree adapts the provisions of the Social Security Code accordingly. It provides that the insured person benefits from the payment of daily allowances during the period of paternity and childcare leave as amended on 01 July 2021 (Article D. 331-3 of the Social Security Code).

In addition, self-employed workers will, upon request, benefit from fixed daily allowances in the same amount as those paid for maternity leave (Article L. 623-1, II of the Social Security Code). Concerning the duration of the allowances, the decree indicates that, just like for employees, self-employed workers will be able to benefit from daily allowances for a maximum of 25 days during paternity leave, starting on 1 July 2021. In the event of multiple births, the maximum duration will be increased to 32 days (Article D. 623-2 of the Social Security Code). The decree specifies, however, that in order to benefit from paid paternity leave, self-employed workers will have to cease their professional activity for a minimum of 7 days, starting from the date of birth. They may not resume this activity during the period of compensation.

2 Court Rulings

2.1 Equal treatment

Labour Division of the Court of Cassation, No. 20-10.796, 12 May 2021

In the present case, several employees impacted by the economic measures aimed at eliminating night shifts had accepted a daytime position and, in application of the current

Flash Report 05/2021 on Labour Law

Employment Protection Plan, benefited from an exceptional temporary indemnity for a period of 12 months to compensate for the loss of night bonuses. They also claimed the benefit of an additional indemnity provided for in the Employment Protection Plan, which was intended for employees whose jobs had been eradicated and who had accepted a replacement position within the company. Those employees obtained the signature of a settlement agreement from their employer and as a result, received a settlement indemnity as a result.

Subsequently, other employees claimed the benefit of the additional indemnity. Considering that they were in an equivalent situation in terms of seniority, position and modification of the employment contract for economic reasons, the employees submitted a request to their employer to this effect. Following the employer's refusal, the employees applied to the Employment Tribunal for payment of the indemnity.

The Bourges Court of Appeal ordered the employer to pay a certain sum for the damage caused by the violation of the principle of equal treatment. The employer was also ordered to pay damages for unfair execution of the employment contract. Considering that the principle of equal treatment could not require the employer, who had concluded a settlement agreement with an employee, to propose the conclusion of a comparable settlement agreement to an employee who had made an identical claim, the employer filed an appeal in cassation.

The solution was dismissed by the Court of Cassation, which recalled the very essence of a settlement agreement, "*a contract by which the parties, through mutual concessions, terminate a dispute that has arisen or prevent a dispute from arising*" (Article 2044 of the Civil Code). It follows that the principle of equal treatment cannot be invoked in this context to claim the rights and benefits of a settlement resulting from a contract concluded by the employer with other employees.

2.2 Freedom of work during a strike

Council of State, No. 433078, 27 May 2021

An employee who held representative functions had prevented several employees and service providers from accessing the work site during a strike. Reproaching the protected employee for his attitude, the employer applied to the labour inspector for authorisation to dismiss him.

The request was denied by the inspector, whose decision was subsequently implicitly confirmed by the Minister of Labour in a hierarchical appeal.

However, their decision was overruled by the Administrative Tribunal and subsequently by the Administrative Court of Appeal. The protected employee then challenged the decision of the Administrative Court of Appeal before the Council of State.

Employees holding representative functions can only be dismissed for misconduct if their acts are sufficiently serious, taking into account all of the rules applicable to their employment contracts. In the case of acts that occurred during a strike, it must even be possible to justify gross misconduct on the part of the employee, and any dismissal pronounced in the absence of gross misconduct is automatically null and void (Article L. 2511-1 of the Labour Code).

Nevertheless, the freedom of work of other employees must be preserved, even in the event of a strike. In this case, the striking employee physically blocked access to a cable uncoiling control cabin, thus preventing not only company employees but also employees of a partner company from working. During these illegal obstructions, it was noted, notably by a bailiff, that the employee had played a predominant and particularly active role, infringing on the freedom of work and committing several assaults against members of his company's staff.

Flash Report 05/2021 on Labour Law

There was therefore an obstacle to the freedom of work of other employees which could not be linked to the normal performance of his duties, justifying the dismissal of the protected employee.

2.3 Lawyers pension fund

Second civil Division of the Court of Cassation, No. 19-20.938, 12 May 2021

In this case, a person who had been a lawyer between 1975 and 1990, applied to the *Caisse nationale des barreaux français* for the liquidation of her pension rights. In 2016, she was notified of the allocation of a minimum old-age pension on the grounds that she had not collected the minimum insurance period of 60 quarters.

The basic retirement pension is calculated by reference to a full rate corresponding to the required period of insurance 'under all schemes combined'.

When the person concerned has completed the period of insurance set pursuant to the second paragraph of Article L. 351-1 of the Social Security Code, 'all schemes combined', the amount of the retirement pension is calculated in proportion to the period of insurance under the *Caisse nationale des barreaux français*, in accordance with the rules of coordination applicable, in accordance with appropriate procedures, between the various old-age insurance schemes.

This basic old-age insurance scheme for lawyers provided for a 'probationary clause' setting a minimum period of insurance for the purpose of acquiring pension rights. This probationary clause was abolished by Law No. 2016-1827 of 23 December 2016.

The trial judges confirmed that the claimant did not have the necessary insurance period and could therefore not obtain a retirement pension.

The Court of Cassation raised ex officio the question of compliance of this probationary clause with Article 1 of Additional Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the protection of property.

It follows from the case law of the European Court of Human Rights that, while the right to a pension is not guaranteed as such by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the right to a pension based on employment may, in certain circumstances, give rise to a property right falling within the scope of Article 1 of the Additional Protocol. This is particularly the case where the right to receive a social benefit is linked to the payment of contributions and these contributions have been paid: the granting of the benefit cannot be refused to the person concerned (*Apostolakis v. Greece*, 22 October 2009, application No. 39574/07, § 27 and 28; *Klein v. Austria*, 3 March 2011, No. 57028/00).

The Second Civil Chamber concluded that this probationary clause excessively infringes the protection of property under Article 1 of the Additional Protocol. It stated that a contributory pension scheme must ensure a reasonable relationship of proportionality expressing a fair balance between the financial constraints of the scheme and the pension rights of the insured. The probationary clause does not guarantee a reasonable proportion between the contributions paid and the minimum old-age allowance received. This solution of the Court of Cassation is intended to apply to any pension scheme that is essentially contributory.

3 Implications of CJEU Rulings

Nothing to report.

Flash Report 05/2021 on Labour Law

4 Other Relevant Information

Nothing to report.

Germany

Summary

(I) The Federal Council has approved the Works Council Modernisation Act, which aims to counteract the decrease in the number of works council bodies.

(II) The Federal Council has also approved a derogation extending the permissible duration of employment for seasonal workers for a limited period of 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 Works Council Modernisation Act

In its plenary session on 28 May 2021, the Federal Council (*Bundesrat*), the upper house of the German Parliament, approved the Works Council Modernisation Act (*Betriebsrätemodernisierungsgesetz*), which had been passed by the *Bundestag* a week earlier, and is specifically intended to counteract the decrease in the number of works council bodies. Among other things, the law also contains provisions on working from home and the use of AI.

To promote mobile work and to ensure uniform and binding framework conditions for employees, a new right of co-determination in the organisation of mobile work has been introduced. Unlike before, accident insurance protection is also extended to cover movements within the own home to prepare food or to use the bathroom. Furthermore, it extends to movements employees undertake outside their home to look after their children.

In the future, the works council may consult an expert to evaluate AI. The rights of the works council in the planning of work procedures and processes also apply if these guidelines are drawn up either exclusively or with the support of AI. The same applies to the determination of guidelines on the selection of staff, if these guidelines are drawn up either exclusively or with the support of AI.

A public hearing on the law by the relevant committee in the Bundestag previously clarified that opinions on the law differed among experts, but also among the social partners. In the view of the German Trade Union Confederation (DGB), the law is a step in the right direction. In the view of the Confederation of German Employers' Associations (BDA), on the other hand, it will further regulate cooperation between employers and works councils and create more bureaucracy.

See [here](#) for the bill and [here](#) for further information provided by the Parliamentary Committee on Labour and Social Affairs.

1.2.2 Derogation for seasonal workers

On 07 May 2021, the Federal Council approved a derogation for seasonal employment, according to which extended periods of employment are to apply for seasonal workers until 31 October 2021. This is intended to support agriculture during the corona pandemic.

Flash Report 05/2021 on Labour Law

To be more concrete, [the law](#) exceptionally extends the permissible duration of short-term employment exempt from social security contributions by about 25 per cent: instead of the normal deployment period of 3 months or 70 days in a calendar year, a deployment period of up to 4 months or 102 working days is to apply to seasonal workers for the period from 01 March 2021 to 31 October 2021.

To support the cultivation of fruits and vegetables, the Federal Parliament added this amendment to the reform of the Sea Fisheries Act at short notice. This law addresses the responsibility of the authorities for fisheries supervision, data protection regulations and the implementation of EU law.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Greece

Summary

(I) Two Ministerial Decisions extend both the work contract suspension mechanism and the rules for mandatory teleworking quotas.

(II) The Labour Ministry has presented a bill providing for significant changes to individual and collective labour legislation.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Extension of emergency measures

Ministerial Decision 28631/2021 (Official Journal, [B/2012/14.5.2021](#)) provides for the continuation of the work contract suspension mechanism in various economic activities (tourism, transportation, cultural activities, etc) for one more month (June 2021).

A joint Ministerial Decision of the Finance, Labour, Development and Health Ministries extended the emergency temporary measures for mandatory teleworking quotas designed to protect public health and limit the spread of COVID-19 until 30 June (No. 33506, Official Gazette [B 2233/29.5.2021](#)). The rules require all companies to use teleworking for at least 20 per cent (previously 50 per cent) of their employees, wherever it is possible for them to work remotely.

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 Labour law reform

The Labour Ministry has presented a bill providing for significant changes to individual and collective labour legislation, with clauses in favour of flexibility. This bill is expected to be adopted at the end of June 2021.

Among the bill's key provisions is the conversion of the labour inspectorate into an independent authority.

According to the existing legal framework, an employee may work up to 10 hours a day during periods of intensive production, making up for the additional hours with a shorter day or a day off at a later point, without any changes to salary. Such an arrangement may only be agreed through a company-specific collective labour agreement or through an agreement concluded between the employer and the company's trade union.

Flash Report 05/2021 on Labour Law

The bill provides that where there is no agreement between the trade union and the employer, the flexible eight-hour work shift may apply, but only upon a request by the employee. The eight-hour day and the five-day/ 40-hour workweek are reaffirmed; in any case, employers cannot dismiss workers for not agreeing to a working time arrangement.

The bill also raises the ceiling of permissible overtime to 150 hours per year, thereby levelling up the limit in the private sector.

A digital working hour system and the use of electronic work cards will be introduced. This measure aims to establish a complete record of working hours as well as changes in real time for all employees employed in a company. Specifically, overtime will be recorded and the Ministry of Labour's ERGANI II information system will be electronically updated in real time.

Issues addressed by the draft legislation include health and safety at work, violence and harassment at work, work-life balance, remote online work, working hour flexibility, breaks, overtime and work on Sundays, protection from dismissal and measures for transparency in the trade union movement.

The ILO Convention on violence and harassment in the world of work will be ratified.

Directive 2019/1158 on work-life balance for parents and carers will also be implemented in Greek law.

A longer paternity leave of 14 days of paid leave instead of 10 days, is expected to be passed. The protection of new fathers from dismissal for six months after their child's birth is provided. The provision shall also allow for four months of parental leave for each parent, with employment agency subsidies for two months.

Hungary

Summary

A decision of the Constitutional Court confirms the constitutionality of the 2019 Amendment of the Labour Code, with only one obligation of further amendment.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Amendment to the Labour Code

Constitutional Court, No. II/83/2019, 30 April 2021

Act 116 of 2018 amended the Labour Code. The amendment was passed on 12 December 2018 and came into effect on 01 January 2019.

The amendment contained the following noteworthy provisions:

- Article 94:
“(3) *Where justified by objective or technical reasons or reasons related to work organisation, the maximum duration of working time banks established in the collective agreement is thirty-six months*”;
- Article 97:
“(5) *The employer may modify the communicated work schedule upon the occurrence of unforeseen circumstances in its business or financial affairs, at least ninety-six hours in advance prior to the commencement of the scheduled daily working time. The employer may also modify the communicated work schedule upon the employee’s request, which must be made in writing*”;
- Article 99:
“(7) *In case of an irregular work schedule, the duration of scheduled weekly working time shall be taken into account as an average a) within the time periods defined under Subsections (1) and (2) of Section 94, or b) where justified by objective or technical reasons or reasons related to work organisation, within a twelve-month period according to the collective agreement*”;
- Article 109:
“(1) *In a given calendar year, two hundred and fifty hours of overtime work can be ordered.*

(2) In addition to what is contained in Subsection (1), a maximum of one hundred and fifty hours of overtime work can be ordered in a given calendar year subject to agreement between the employee and the employer made in writing (voluntary overtime). The employee may withdraw from the agreement at the end of the given calendar year.

(3) The provisions set out in Subsections (1)-(2) shall apply proportionately: a) if the employment relationship commenced during the year; b) in case of fixed-term employment relationships; or c) in connection with part-time jobs”;
- Article 135:

Flash Report 05/2021 on Labour Law

"(3) The amount of overtime that may be ordered based on the collective agreement is limited to three hundred hours in a given year. In addition to the above, a maximum of one hundred hours of overtime work can be ordered in a given calendar year subject to agreement between the employer and the employee made in writing (voluntary overtime). The employee may withdraw from the agreement at the end of the given calendar year".

The Constitutional Court received several complaints from Members of Parliament (from the opposition parties) regarding the amendment. On 27 April 2021, the Constitutional Court passed its decision concerning the complaints in relation to the Labour Code amendment.

Decision No. II/83/2019 contained the following decisions:

- Parliament has neglected to establish rules regarding the application of Article 94 (3)-(4), which would guarantee that the provisions of the collective agreement, in force for up to 36 months and providing more favourable rules for employees than the Labour Code, would be implemented in case of termination of the respective collective agreement. Therefore, the Constitutional Court has invited Parliament to establish such protective provisions by 31 July 2021;
- The Constitutional Court rejected the complaints regarding unconstitutionality of Article 94 (3), 109 (2) and 135 (3);
- The Constitutional Court stated that in case of a working time banks over one year based on Article 94 (3), calculation of weekly rest periods and overtime (calculation as the average of working time banks) shall be based on one year as stated in Article 99 (7), instead of the entire duration of the working time bank.

Beyond the obligation to pass a new provision as stated in Point 1 above, the amendment as initially passed will remain in force. Consequently, the Constitutional Court confirms the amendment's constitutionality.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Iceland

Summary

(I) New legislation allowing for the derogation from working time legislation for employees who provide user-managed personal assistance has been passed.

(II) The District Court of Reykjavík has ruled on the issue of sick leave and gender reassignment surgery.

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

On 25 May, a [temporary provision in Act No. 46/1980, Working Conditions, Hygiene and Safety at Work](#) was extended until 01 April 2022, but the provision has been in use since 01 October 2018. The provision allows for the social partners to derogate from Articles 53 and 56 for employees who provide user-managed personal assistance in line with Article 11 of [Act No. 38/2018, on Services for People with Disabilities with Long-standing Support Needs](#). Those articles, respectively, provide for daily resting time and maximum nightly work, and correspond with Articles 3 and 8 of Directive 2003/88/EC concerning certain aspects of the organisation of working time. The amendment also states that if the minimum daily resting time is reduced, the employee should enjoy that resting time as soon as possible.

2 Court Rulings

2.1 Sickness leave

District Court of Reykjavík, E-6374/2020, 10 May 2021

A ruling was issued by the District Court of Reykjavík on 10 May in [case No. E-6374/2020](#). The case reviewed whether an employer would be required to pay an employee's sick leave due to complications arising from a gender reassignment surgery. The relevant collective agreement provided *inter alia* that sick leave is activated if the employee needs to undergo an urgent and necessary surgery to reduce or eliminate the repercussions from a disease that is foreseeable to cause the employee's incapacity for work.

The court ruled that the employee was indeed entitled to sick leave in this case. The reasoning was that transsexualism could be considered a 'disease' according to medical and labour law definitions. Additionally, in light of research and testimonies from physicians, it was concluded that the employee could be incapacitated for work if the surgery was not performed and the surgery was furthermore urgent and necessary as such surgeries, amongst other things, have a positive impact on mental health, reduce the risk of suicide, and increase societal participation.

While the ruling has been celebrated by the National Queer Organisation of Iceland, for example, the reasoning that transsexualism is considered a 'disease' has received heavy criticism. It should be mentioned that a review on the disease diagnosis system will take place next year.

Flash Report 05/2021 on Labour Law

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

New regulations address the issue of night work for young persons in the fishing and shipping industries.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Young workers in the fishing industry

The Minister of State at the Department of Enterprise, Trade and Employment has issued the Protection of Young Persons (Employment) (Exclusion of Workers in the Fishing and Shipping Sectors) Regulations 2021 (S.I. No. 250 of 2021), which replace and revoke the previous Regulations (S.I. No. 357 of 2014). These new regulations extend the disapplication on night-time working in the fishing sector as well as in the shipping sector, and require *inter alia* that the terms on which a young person employed in the fishing sector are in accordance with the European Union (International Labour Organisation Work in Fishing Convention) (Minimum Age) Regulations 2020 (S.I. No. 179 of 2020).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Data on the Pandemic Unemployment Payment

As of 25 May 2021, 333 993 persons (47.2 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 (93 687), wholesale and retail trade (54 391) and administration and support services (30 603). The number in construction has dropped from 42,333, at the end of April, to 28 758. In terms of the age profile of PUP recipients, 25.8 per cent were under 25. Additionally, 1 389 persons were in receipt of the COVID-19 Enhanced Illness Benefit. In total to date, 152 697 persons have been medically certified for receipt of this benefit, 53.6 per cent of whom were female. [See here](#) for further information.

Italy

Summary

(I) The Italian legislator has initiated a gradual reopening of the economy which was closed or limited due to the COVID-19 emergency, and has established a right to disconnect for public servants who are teleworking.

(II) The Court of Cassation ruled that the time needed by operators of the transport service sector to travel from one site to another for delivery purposes and to return following the delivery must be paid.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Teleworking in the public sector

The [Act](#) of 06 May 2021 No. 61 converts the Law Decree 13 March 2021 No. 30 into law and provides that public employees engaged in teleworking have the right to disconnect. This right is necessary to ensure workers' rest and health. In any case, the employees must guarantee their availability, if required.

1.1.2 Reopening of economy

The Law [Decree](#) of 18 May 2021 No. 65 regulates the gradual reopening of some economic activities which had been closed (i.e. cinemas, theatres, gyms, swimming pools, arcades, amusement parks) or whose exercise had been limited (i.e. restaurants) due to the COVID-19 emergency.

The [Act](#) of 21 May 2021 No. 69 converts the Law Decree 22 March 2021 No. 41 (so called '*Decreto sostegni*') into law.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Working time

Corte di Cassazione, No. 11338, 29 April 2021

The time needed by operators of the transport service sector to travel from one site to another for the purpose of delivery and to return after the delivery must be paid.

Article 17 (c) R.D.L. No. 2328/1923, on operators of the transport service sector, provides that only half of the time taken to travel in a service vehicle or one's own vehicle, from one location to another to provide a delivery service or to return after the delivery has been completed, must be considered working time, if the employer orders the employee to travel from one site to another (i.e. from the warehouse to the place of service or vice versa).

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Lithuania

Summary

Proposed amendments to the Labour Code concerning the compensation of expenses in case of teleworking and the prohibition of cash payments to employees are being debated in Parliament.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Teleworking

A Member of the Parliament has proposed an amendment to the Labour Code to clarify the duties of the employer to compensate the expenses of employees in preparation of remote working (Draft Law No. XIVP-210 (2), MP Linas Jonauskas). Currently, the Labour Code simply states that the employer must provide the employee with appropriate conditions to perform his or her work function and must provide the employee with the necessary work equipment or property, except in cases when the parties agree that the employee shall use his or her own work equipment and property. In this case, an agreement on compensation paid to the employee for the use of his or her own equipment or property may be concluded. The proposal envisages facilitating such agreements between the parties on the explicit compensation, which shall not be included in the employee's salary. In addition, the parties must agree on the particularities within 20 working days from the commencement of remote working. The proposal addresses an important practical problem related to the pandemic and to changes in work organisation, but it is difficult to predict the proposal's outcome given the fact that the relevance of remote working has decreased, at least for the time being.

4.2 Prohibition of cash payments to employees

The social partners were involved in an active debate on the general prohibition of the possibility to pay wages in cash, and to use a bank transfer system instead. The discussions were triggered by a recent media report on inadequate conditions of work in cross-border road transport. The sector is well known for several problematic issues related to social dumping, the employment of third-country nationals, working times

Flash Report 05/2021 on Labour Law

and resting conditions. Among one of the issues is illegal payments in cash for the work of mobile workers. This problem is also relevant in construction, agriculture and restaurants, as the country-wide share of the shadow economy is around 20 per cent. To address the current situation of the concealment of payments, the Members of Parliament have initiated a draft law amending the Labour Code to impose the obligation to transfer all work-related payments (wages, per diem allowances and compensation) to each employee's bank account (Draft No. XIVP-419 (2), MP Mindaugas Lingė). Parliament will debate the amendment and most likely pass it in the coming weeks.

Luxembourg

Summary

(I) In the context of criminal proceedings against platforms, the labour inspectorate has qualified Deliveroo's couriers as self-employed persons.

(II) The Administrative Tribunal issued a ruling on trade union representativeness.

(III) The social partners have adopted an opinion on the right to disconnect and have proposed changes to labour legislation.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Family support leave

As announced in the April 2021 Flash Report, the bill extending family support leave (*congé pour soutien familial*) until 25 November 2021 has been adopted ([see here](#) for *Loi du 20 mai 2021 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*).

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Platform work

Tribunal d'Arrondissement de Luxembourg, chambre correctionnelle, No. 955/2021, 04 May 2021

A first decision related to food-delivery platform workers has been issued in Luxembourg. Even though it is not a decision by a labour law court but by a criminal court, it has an impact on the qualification of platform workers.

With the closure of restaurants, meal delivery services flourished, and both the labour inspectorate (*Inspection du Travail et des Mines*) and other authorities have taken a close interest. The Deliveroo service has been indicted for using self-employed persons without checking whether they possess a business licence (*autorisation d'établissement*). Indeed, like any commercial activity, providing services as a self-employed delivery driver requires such a licence. It is not only punishable to carry out an activity without authorisation, but also to use the services of a person who is known to not be authorised to perform such services (Article L. 571-2 of the Labour Code).

Many delivery drivers did not have a licence. The Public Prosecutor's Office did not initiate proceedings against them, but only against the Deliveroo platform.

The labour inspectorate's inspection revealed that the majority of workers were pupils and students with no professional experience, and had been recruited through advertisements on social networks. The labour inspectorate came to the conclusion that they were not employees, but self-employed persons:

"In view of the documentation sent by the company ... to the labour inspectorate, the collaboration agreement concluded with the 'freelance' delivery drivers could not be reclassified as an employment contract, thus ascribing the status of

Flash Report 05/2021 on Labour Law

employee for the delivery drivers, particularly in view of the number of hours worked and the flexibility granted to the delivery drivers. In fact, the delivery drivers were under no obligation to connect to the 'Getswift' application, which sends them their orders, to be in the exclusive service of the company, and the amounts received for their service were often far below a monthly salary."

It therefore forwarded the file to the Ministry of Economics, Department of Business Licences, which confirmed that Deliveroo possessed all of the necessary authorisations, but the delivery drivers did not.

The Tribunal held that the delivery drivers' activity was not merely occasional and that they thus required a licence.

The defence relied on the contracts, which provided that the drivers had to comply with the legislation. Indeed, the contracts signed with the service providers required the drivers to comply with all legislation on self-employed workers, including the provisions on business licences. The Tribunal rejected this argument, stating that the defendants must have at least envisaged that the drivers would not have one (*dolus eventualis*), especially since most of them were students in a precarious situation.

The company and three of its directors were each fined EUR 5 000.

It is interesting that the Tribunal did not otherwise question the labour inspectorate's assessment that the delivery drivers are self-employed and that there is no reason to reclassify them as employees.

It remains to be seen whether this case law will be upheld. In the light of the recent excellent work by Christina Hiebl ('Case law on the classification of platform workers: Cross-European comparative analysis and tentative conclusions'), Luxembourg thus seems to have adopted a minority position (UK and partly France), while the majority of jurisdictions have gone towards reclassifying Deliveroo drivers as employees (Belgium, Ireland (Domino's Pizza), Italy, the Netherlands, Spain).

This decision has not been published yet.

2.2 Trade union representativeness

Tribunal administratif, No. 45850, 04 May 2021

As announced in the March 2021 Flash Report, upon request of the two nationally representative trade unions (OGBL and LCGB), the Minister for Labour has decided that the only sectoral representative trade union (ALEBA) no longer meets the criteria to be representative. Indeed, to be representative in a given sector, a trade union must reach 50 per cent in its group in elections for the professional chamber (*Chambre des Salariés*). ALEBA, however, only attained 49.22 per cent in the social elections of 2019.

ALEBA announced that it would not accept this decision and has taken legal action.

The action on the merits before the administrative court is pending. Awaiting the proceedings, there is a possibility to apply to the President of the Administrative Tribunal for a stay of execution of an administrative decision (*requête en sursis d'exécution d'une décision administrative*). On this basis, an order (*ordonnance*) has just been issued, which rules against ALEBA.

ALEBA argued that the ministerial decision would cause serious prejudice and that its action on the merits would have a serious chance of success. It claimed violations of both national and ILO law. The union raised various formal arguments, including the fact that the Minister would have accepted the situation, as there had not been a prompt response after the elections in 2019. The union also recalled that in the past, it had had to take legal action and call on the ILO Committee on Freedom of Association to have its representativeness recognised.

Flash Report 05/2021 on Labour Law

After recalling that a stay of execution is an exceptional measure, the judge arrived at the conclusion that the arguments put forward in the proceedings on the merits did not present the necessary seriousness to justify the requested suspension. In a summary analysis, he considered that the formal arguments put forward were not *prima facie* convincing. For other arguments, the judge considered that they are mere drafts of an argument, and that the application on the merits does not detail and develop them sufficiently, so that at this stage, they cannot be considered serious. ALEBA certainly refers to the ILO decision, but without drawing any conclusion that would allow Luxembourg legislation to be called into question. It is recalled that the ILO recommendations are a priori only non-binding guidelines.

ALEBA's request for a stay of proceedings was therefore rejected.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Right to disconnect

The Social and Economic Council (*Conseil Economique et Social*), composed of representatives of employees, employers and the government, has adopted an opinion on the [right to disconnect](#) (*droit à la déconnexion*).

In its introduction, the Council notes that the majority of workers are permanently connected to work and is contemplating whether there should be a right for everyone to cut this permanent connection to work. While a number of countries have clarified this legal situation, Luxembourg has not yet done so, although the government coalition agreement and the teleworking agreement announced that such clarifications would be made.

In the introduction, the opinion outlines the risks inherent in hyper-connectivity. The next section of the opinion reviews the initiatives and recommendations at European level. The third section summarises legislation and measures taken in several countries.

The fourth section is the most interesting, as it addresses the specific situation in Luxembourg. Firstly, the social partners note that Luxembourg legislation already contains general principles to address the issue, such as the rules on working time and on health and safety at work. In addition, employee representatives have advisory powers on all matters relating to working time. They also note that two company collective agreements (University of Luxembourg, Post Luxembourg) and one sectoral collective agreement (social sector) already address the issue of disconnection. They also refer to a judgment of the Court of Appeal of 02 May 2019 (see May 2019 Flash Report, section 2, first case).

On this basis, the social partners conclude that the right to disconnect, even if it is not mentioned as such in Luxembourg legislation, is nonetheless acquired: "*Technical accessibility does not change the legal inaccessibility and it is therefore not necessary to introduce a right to disconnect that already exists*" ("*L'accessibilité technique ne change rien à l'inaccessibilité légale et il n'est donc pas nécessaire d'introduire un droit à la déconnexion qui existe déjà*"). They nevertheless propose measures to implement this right and ensure that it is respected in practice.

For private law employment contracts, it is proposed to supplement the Labour Code with a new Article L. 312-9. Hence, when employees use digital tools for professional purposes, a system ensuring respect for the right to disconnect outside working hours adapted to the particular situation of the company or sector must be defined at the respective company or sector level concerning, where appropriate, the practical

Flash Report 05/2021 on Labour Law

arrangements and technical measures for disconnecting from digital tools, awareness-raising and training measures and compensation arrangements in case of exceptional derogations from the right to disconnect.

This specific regime can be defined through collective bargaining (collective agreement or subordinate agreement, *accord subordonné*). In the absence of a collective agreement, it shall be defined at company level, in accordance with the powers of the employee representatives. In companies with less than 150 employees, the employee representatives must be informed and consulted. In undertakings with 150 employees or more, the introduction or modification of the disconnection regime would fall within the competence of co-decision.

In case of violation of these rules, an administrative fine of EUR 251 to 25 000, to be imposed by the Director of the Labour Inspectorate, shall apply. This would therefore entail companies that fail to set up a disconnection regime when they are required to do so, as well as failure to respect the powers of the employee representatives.

For the civil service (*fonction publique*), the opinion refers to the ongoing discussions on the regulation of teleworking and suggests including the issue of disconnection.

The final section of the opinion contains recommendations on training and awareness raising and envisages the development of a practical guide.

This opinion of the Economic and Social Council has some points in common with the recently adopted opinion on teleworking (see October 2020 Flash Report, section 1.1). One important difference, however, is that it suggests an adaptation of the Labour Code and not the conclusion of a national agreement by the social partners. Since the opinion was adopted unanimously, it seems likely that the government will soon take up the issue and draft a bill which will include, either verbatim or with slight modifications, the proposed text.

As in the case of teleworking, it is remarkable that the employers have agreed to an extension of the co-decision powers of the employee delegation.

Netherlands

Summary

- (I) Free COVID-19 tests have been made available for teachers and students.
- (II) The new pension legislation has been delayed for a year.
- (III) According to the Court of Rotterdam, the COVID-19 crisis is not a valid reason to deduct annual leave days.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 COVID-19 testing in the education sector

The Dutch government is working on re-opening of Dutch society. Since 26 April, students have been able to attend education facilities at colleges or universities in person again. To protect the health of teachers and students and to prevent the spread of COVID-19, free, at home COVID-19 tests have been made available to teachers and students.

1.2 Other legislative developments

1.2.1 Delay of pension legislation

The new Pensions Act will enter into force one year later than expected, namely on 01 January 2023 at the latest. Just before the Christmas recess, the draft bill was made available for internet consultation and the number of responses was high. All inputs are being carefully viewed and weighed. Given the complex matter and the required coordination with the parties involved, this will take more time than initially estimated. According to the Minister of Social Affairs, the aim of switching to the new pension system by 01 January 2026 or, if possible, earlier, remains unchanged.

2 Court Rulings

2.1 Mandatory holiday leave

Court of Rotterdam, 9021905 vz verz 21-1574, 23 April 2021

On 23 April 2021 (published 04 May 2021), the Court of Rotterdam ruled on the question of mandatory holiday leave as a result of the corona crisis. In the present case, the employer deducted annual leave hours without granting the employees a holiday or compensation in return. According to the Court, the fact that the employer had requested its employees to take annual leave and/or donate annual leave hours in connection with the corona crisis does not alter the fact that COVID-19 cannot serve as a basis for deducting annual leave days.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Norway

Summary

(I) A right to holiday pay for those who received unemployment benefits in 2020 has been introduced as a temporary measure to mitigate the effects of the COVID-19 crisis.

(II) The scope of the Working Environment Act now includes diving operations and the service of navigating ships through unfamiliar waters.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Holiday pay for the unemployed

Infection rates continued to decrease throughout May. The first step of the government's plan for a gradual reopening of society was enacted in April, and a second step was enacted from 27 May. This includes further easing of the strict national infection control regulations introduced in March (see March 2021 Flash Report). Stricter regulations still apply to some municipalities and regions, i.e. Oslo. The general trend is that stricter local regulations are gradually being removed.

There are still strict rules on foreign nationals who seek entry into Norway. Since January, the general rule has been that only foreign nationals who reside in Norway are allowed to enter. The regulations on quarantine have been slightly adjusted and are available [here](#).

The unemployment rate has been relatively stable since October 2020, but rose slightly between December and March. Since then, the employment rate has started to decline, and in May, the decline was significant. By the end of May, there were 183 900 unemployed persons, which amounts to 6.5 per cent of the workforce (see the statistics [here](#)).

The employment and labour law measures introduced in 2020 to mitigate the effects of the COVID-19 crisis have been described in previous Flash Reports.

In May 2021, only few new regulations were introduced, most importantly, the right to holiday pay in the amount of 10.2 per cent of gross unemployment benefit pay in 2020, has been introduced ([FOR-2020-03-20-368](#)). This is a temporary right introduced due to the high number of unemployed persons (including those who have been temporarily laid off) during the COVID-19 crisis. The general rule in Norway has been that persons who receive unemployment benefits do not qualify for holiday pay. The right is temporary, as it has been introduced by an amendment to the temporary regulations on exemptions from the National Insurance Act and the Working Environment Act due to the COVID-19 pandemic ([FOR-2021-05-21-1565](#)).

1.2 Other legislative developments

1.2.1 Seafarers work

The scope of application of the Working Environment Act has been slightly modified by a legislative amendment, [LOV-2021-05-07-29](#). Shipping and fishing are exempt from the WEA, and regulated in a separate Maritime Labour Act, cf. WEA section 1-2 (2) b. This provision now explicitly states that diving operations and the service of navigating ships through unfamiliar waters (*losvirksomhet*) are covered by the WEA.

Flash Report 05/2021 on Labour Law

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Collective bargaining

Wage settlement negotiations and arbitration have taken place in several sectors. The social partners have concluded new agreements in the public sector, and several organisations have concluded new agreements covering municipalities. However, there is an industrial dispute on municipalities (including Oslo), between the main organisation Unio and Oslo/KS (employers' organisation for the other municipalities). The workers on strike are members of the teachers' trade union Utdanningsforbundet. By 28 May 2021, the strike included 6 500 workers. Another 11 400 workers will be included from 02 June 2021.

Poland

Summary

A new Draft Law on remote working intends to replace current regulations on teleworking. The new regulations include the requirement to reimburse employees for any costs related to remote working, and imposes certain health and safety obligations on employees who work remotely.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Remote working

On 18 May 2021, a draft law was published that aims to amend the Labour Code and regulate the rules of remote working.

The government announced that the Council of Ministers would adopt the draft in the third quarter of 2021.

The provisions on remote working will replace those on teleworking.

Remote working refers to work performed entirely or partly at a location specified by the employee and agreed with the employer, including the employee's place of residence, using means of direct remote communication.

An employer has the right to request the employee to perform his or her work remotely, even if this option has not been provided for in the initial employment contract:

- during a state of emergency, state of epidemic threat, or state of epidemic and for 3 months after it has ended; or
- if necessary due to the employer's obligation to provide the employee with safe and hygienic working conditions, if for reasons beyond the employer's control it is temporarily impossible to provide such conditions at the employee's current place of work. However, the employee must submit a declaration in advance that the employee has the necessary means to work remotely. The employer may also withdraw the request at any time.

If the employee has submitted a previously written or electronic declaration that the employee has the necessary means and technical conditions to perform the work remotely.

The parent of a child with a disability has a right to request remote working and the employer shall grant the request, if permitted by the type of work.

The employer must notify the employee of a refusal to work remotely in writing or electronically within 5 business days of the date of the request. The employer must also attempt to reach an agreement with the trade union at the company as to the terms and conditions of remote working and in case no such organisation exists, with the employee representatives. If no agreement is concluded within 30 days from the date on which the employer presented a draft agreement, the employer shall be authorised to establish the rules for the performance of remote working in regulations, taking into account the arrangements made with trade unions while attempting to reach an agreement. Nonetheless, the absence of the above regulations will not be an obstacle

Flash Report 05/2021 on Labour Law

to requesting an employee to work remotely. In such a case, the employer will specify the rules in the request.

The employer's obligations would be the following: providing the employee who is working remotely with the essential equipment and tools necessary to work remotely; covering the costs directly associated with the performance of remote working, including, in particular, the installation, servicing, use and maintenance of the essential equipment required for working remotely, as well as for electricity and internet access; providing the employee who is working remotely with technical assistance and necessary training in the use of equipment essential for working remotely.

There would be the option to use equipment owned by the employee, on condition that the scope should be specified in an agreement, and that the employee is entitled to a cash allowance in an amount specified in the agreement concluded with the employee (possibly replaced by a lump sum). When determining the amount of the allowance, account must be taken in particular of the wear and tear of materials and equipment, their documented market prices and the amount of material used for the employer's purposes and its market prices, as well as the consumption norms for other costs directly associated with remote working, including, in particular, electricity consumption and costs of access to telecommunication connections.

The employer shall ensure data protection by collecting statements of awareness of data protection rules from employees and shall conduct necessary training in this regard. An inspection carried out by the employer is subject to prior consent of the employee, and only possible during working hours. It could only cover the performance of work, the condition of the provided equipment, and health and safety at work. It may not violate the privacy of the employee who is working remotely or of other persons, or impede the use of domestic premises in a manner consistent with their purpose, and may only take place before the commencement of the remote working at the employee's request.

The initial training in health and safety at work for persons hired for administrative and clerical positions may be conducted entirely by means of electronic communication. The employee must confirm the completed training in paper or electronic form. Before allowing an employee to work remotely, the employer must prepare an occupational risk assessment and draw up information on occupational health and safety rules based on it.

The employer is responsible for ensuring safe and healthy working conditions, but the employee is responsible for the proper organisation of the remote workstation, taking into account ergonomic requirements.

Reporting a remote work accident to the employer implies that the employee agrees to an inspection of the scene of the accident.

While working remotely, the employee's requests that require written form may be submitted in electronic form.

An agreement or notice of amendment is required, if the employee is to return to working at a fixed location after three months have elapsed since the commencement of the remote working under an agreement with the employer.

If remote working only occurs occasionally (up to 12 days per year), the above rules do not apply.

2 Court Rulings

Nothing to report.

Flash Report 05/2021 on Labour Law

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Portugal

Summary

(I) The government has extended the state of emergency until 13 June 2021, maintaining a mandatory adoption of teleworking, where possible.

(II) Incentives for companies that are no longer covered by the support measures provided by social security within the context of the COVID-19 crisis have been issued.

(III) An exceptional measure compensating companies for the increase in the statutory minimum wage in 2021 has been approved.

(IV) The rules on the recognition of professional qualifications of Member State nationals obtained abroad have been approved, transposing Directive 2005/36/EC, as amended by Directive 2013/55/EU.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 State of emergency

The [Resolution](#) of the Council of Ministers No. 59-B/2021 of 14 May extends the state of emergency for the entire national territory until 30 May. This resolution (*i*) allows for the operation, in accordance with the provisions of the General Health Directorate, of aquatic parks, private children's amusement parks and the activity of mobile entertainment facilities, and (*ii*) broadens the operating hours of sports facilities that render services until 10.30 pm. Moreover, the civic duty of home isolation and the mandatory adoption of teleworking in the entire national territory, provided that the work can be performed under this regime, remains in place. These measures apply as of 15 May 2021.

On 28 May 2021 [Resolution](#) of the Council of Ministers No. 64-A/2021 was published, which renews the state of emergency until 13 June 2021. Hence, until that date, the measures approved by the previous Resolution (namely, those related to the civic duty of home isolation and teleworking) remain in force. This Resolution entered into force on 31 May 2021.

1.1.2 Relief measures for businesses

In addition, on 14 May 2021, [Ordinance No. 102-A/2021](#) was published, which regulates the incentive approved by Law No. 23-A/2021 of 24 March—the 'new extraordinary incentive on the normalisation of the business activity' (in this regard, refer to the March 2021 Flash Report)—as well as simplified support, provided for micro-companies, for the retention of jobs. On the one hand, the extraordinary incentive for the normalisation of business activity may be requested by companies that benefited from one of the support measures in the first quarter of 2021 provided by social security within the context of the COVID-19 crisis ('simplified layoff' or extraordinary support for the progressive resumption of the activity), provided that they are no longer covered by the referred measures. This extraordinary incentive corresponds to (*i*) the amount of twice the national minimum wage (EUR 1 330) per employee, covered by the referred support measures, which will be paid in instalments over six months, to which the partial exemption of the payment of social security contributions is added, with reference to the covered employees, during the first two months of support, provided that this incentive is requested until 31 May 2021 or (*ii*) the amount of the national minimum wage (EUR 665) per employee covered by the referred support measures, which will be paid in one single instalment, if the incentive is requested between 01 June and 31

Flash Report 05/2021 on Labour Law

August 2021. On the other hand, simplified support is granted to micro-companies that benefited from one of the support measures referred to above during 2020, provided that they were not covered by such measures during the first quarter of 2021. This support to micro-companies consists of an amount of twice the national minimum wage (EUR 1 330) per employee covered by the referred measures, paid in instalments, for six months. This Ordinance entered into force on 15 May 2021.

1.2 Other legislative developments

1.2.1 Minimum wage

Decree Law No. 37/2021 of 21 May introduces an exceptional measure that aims to compensate employers for the increase of the statutory national minimum wage in force since 01 January 2021. Specifically, this support applies to all employers based in mainland Portugal (including natural persons), with one or more full-time employees at their service who, on 31 December 2020, received the amount of the national minimum wage in force at that time (EUR 635) as a base remuneration, or whose base remuneration was more than EUR 635 and less than EUR 665 (the national minimum wage that has applied since 01 January 2021).

1.2.2 Recognition of professional qualifications

Law No. 31/2021 of 24 May simplifies the procedures associated with the recognition of professional qualifications, transposing Directive 2005/36/EC of 07 September 2005, in the version introduced by Directive 2013/55/EU of 20 November 2013, amending Law No. 9/2009 of 04 March (the Portuguese law that transposed the first directive referred to above). Among other measures, this Law states that the recognition of qualifications obtained outside the EU by a national of a Member State can be achieved through (i) subsequent recognition of training qualification already recognised in another Member State, based on certified professional experience of at least three years in that Member State, or (ii) automatic initial recognition for the professions referred to in Section III of Chapter III of the referred Law, provided that the conditions established therein are observed. This Law entered into force on 01 June 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) In case of employer insolvency, liquidators and judicial administrators are now required to issue the documents relating to the termination of the employment contract to the employee.

(II) A record of working time in micro-enterprises shall be established and maintained on the basis of an agreement concluded between the employees and the employer.

(III) The Craiova Court of Appeal has ruled that the 24-hour rest period after 12 hours of work does not necessarily have to be cumulated with the weekly rest period.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Employer insolvency

Law No. 138/2021 to finalise Article 34 of Law No. 53/2003 – Labour Code (published in the Official Gazette of Romania No. 501 of 13 May 2021), introduces a new provision in the Labour Code.

Thus, according to Article 34 (6), if the employer is involved in insolvency, bankruptcy or liquidation proceedings, the administrator or, as the case may be, the liquidator, shall be required to issue a document to the employees certifying the work carried out by them, to cease and to transmit the termination of employment contracts in the general register of employees.

The regulation covers employers who implement the procedures regulated in Law No. 85/2014 on insolvency prevention and insolvency procedures (published in the Official Gazette of Romania No. 466 of 25 June 2014).

It should be noted that until now, the judicial administrator, as the representative of the employer, issued these certificates and recorded the termination of employment contracts in the general register of employees, but this obligation is now explicitly regulated in the Labour Code.

1.2.2 Working time

Article 119 (1) of the Labour Code provides that the employer is required to maintain records of the daily work hours performed by each employee, indicating the start and end times of work, and to submit these records to the labour inspectors, where required.

As a rule, the method for recording working time is established in the employer's unilateral act.

By way of exception, for certain categories of employees, the system for recording workers' daily working time is established by agreement between the employees and the employer. These categories of employees to date included teleworkers (Article 5 e) of Law No. 81/2018, on the regulation of teleworking activity (published in the Official Gazette of Romania No. 296 of 2 April 2018), mobile employees and employees performing domestic work (Article 119 (2) of the Labour Code). Government Emergency

Flash Report 05/2021 on Labour Law

Ordinance No. 37/2021 (Government Emergency Ordinance No. 37/2021 amending and supplementing Law No. 53/2003 - Labour Code, published in the Official Gazette of Romania No. 474 of 06 May 2021. It also included other amendments to the Labour Code on micro-enterprises, detailed in FR 4/2021) amended the provisions of Article 119 (2) of the Labour Code, adding employees of micro-enterprises (employers with less than 9 employees) to the categories of workers whose records are not maintained by a unilateral act of the employer, but on the basis of a written agreement with the employees.

2 Court Rulings

2.1 Weekly rest time

Craiova Court of Appeal, Decision No. 1675/2021, 17 May 2021

Romanian legislation contains more favourable provisions for employees than those laid down by the Working Time Directive in terms of minimum weekly rest periods and the duration of daily rest periods. Thus, according to Article 137 (1) of the Labour Code, 'the weekly rest period is 48 consecutive hours, usually on Saturday and Sunday'. The daily rest period shall last 12 consecutive hours according to Article 135 (1) of the Labour Code. Moreover, according to Article 115 (2) of the Labour Code, 'a daily working time of 12 hours shall be followed by a rest period of 24 hours'.

Based on these provisions, the Craiova Court of Appeal, by Decision No. 1675/2021 of 17 May 2021, issued a ruling on a request of a trade union of the railway company on employees' wage rights, who worked 12 hours followed by a 24-hour rest period. The union argued that the 24 hours due following a 12-hour workday, should be added to the 48-hour weekly rest period. At the end of the week after a 12-hour workday, the employees were only granted the 48 hours, which represented the weekly rest period, without distinctively being granted the 24 hour rest period to which they were entitled according to Article 115 (2) of the Labour Code. Failure to grant this rest period should have been accompanied by appropriate monetary compensation. The union claimed that the right to cumulation of daily rest with the weekly rest period derives from the provisions of Article 5 (1) of the Working Time Directive. The transposition of this provision into Romanian law implies the cumulation of the weekly and the daily rest periods, regardless of their duration, as established in the national legislation.

The railway company pointed out that, on the contrary, given the fact that Romanian law provides for much longer periods of daily and weekly rest periods than those provided for in the Working Time Directive, "the cumulation required by employees would lead to a work week of 4 days, which would make it impossible to ensure a weekly working time of 40 hours". It pointed out that the weekly rest period of 48 hours provided for by national law, nevertheless, exceeds the duration of the total daily and weekly rest periods laid down in the provisions of the Directive (11+ 24).

The Court of Appeal, in this respect, agreed with the railway company's line of reasoning, and upheld the decision of the lower court (Craiova Tribunal). The Court ruled that "the establishment of a 12-hour work schedule with a 24-hour rest period does not automatically imply the existence of a 72-hour consecutive rest period, a 24-hour daily rest and a 48-hour weekly rest periods. A period of 48 hours of rest ensures the possibility of restoring the working capacity, which is the purpose of the daily and weekly rest periods as regulated by the legislator".

3 Implications of CJEU Rulings

Nothing to report.

Flash Report 05/2021 on Labour Law

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

(I) The Government of the Slovak Republic has approved the proposal to end the state of emergency from 14 May onwards. A new act authorises economic mobilisation measures during a state of extraordinary situation, which continues.

(II) Parliament has adopted an act regulating the state-supported short-time work scheme.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 End of the state of emergency

On 14 May 2021, the Government of the Slovak Republic adopted Resolution No. 260 of 14 May 2021 on [the proposal to end the state of emergency](#) declared by the Resolution of the Government of the Slovak Republic No. 587 of 30 September 2020.

[The government has approved a proposal](#) to end the state of emergency declared by the Resolution of the Government of the Slovak Republic No. 587 of 30 September 2020 (point A.1.), terminating the state of emergency declared by Government Resolution No. 587 of 30 September 2020 in the territory of the Slovak Republic on the expiration of 14 May 2021 (point B.1.).

The government also stated that the extraordinary situation declared by the Resolution of the Government of the Slovak Republic No. 111 of 11 March 2020 continues even after the end of the emergency (point D.1.).

This Resolution entered into force on 14 May 2021, and is published in the Collection of Laws – No. 175/2021 Coll.

1.1.2 Emergency measures

On 14 May 2021, the National Council of the Slovak Republic (Parliament) approved [Act No. 176/2021 Coll.](#) amending Act No. 179/2011 Coll. on economic mobilisation and on the amendment of Act No. 387/2002 Coll. on the management of the state in crisis situations outside the time of war and martial law, as amended, supplementing Act No. 42/1994 Coll. on civil protection of the population, as amended.

The Act regulates the possibility of adopting certain measures of economic mobilisation not only in an exceptional state and in a state of emergency, but also in an extraordinary situation. The Act allows most of the economic mobilisation measures to be maintained, even if the state of emergency ends. An extraordinary situation would suffice for their continuation.

The relevant provisions of Act No. 179/2011 Coll. on economic mobilisation, which were linked to a state of emergency or an exceptional state, were supplemented by a link to extraordinary situations. An exception to the measures implemented so far is the work obligation, which will continue to be tied at least to the state of emergency.

Act No. 176/2021 Coll. entered into force on 15 May 2021 (the Act is related to the aforementioned Resolution of the Government on the end of the state of emergency).

Flash Report 05/2021 on Labour Law

1.1.3 Short-time work scheme

On 04 May 2021, the National Council of the Slovak Republic (Parliament) adopted the Act on Support in Time of Shortened Work, amending certain acts. This Act amends eight acts; Part II of the Act also amends the Labour Code (Act No. 311/2001 Coll., as amended).

According to Article 1 in Part I of the Act, the Act regulates the provision of support during shortened work for partial reimbursement of the employer's costs to reimburse employees' wages for the duration of the external factor, as a result of which the employer's activities are limited.

According to Article 2 letter c/ in Part I of the Act, for the purposes of this Act, the external factor is one of a temporary nature which the employer cannot influence or prevent, and which has a negative effect on the allocation of work to employees by the employer, in particular during an extraordinary situation, exceptional state or a state of emergency, an exceptional circumstance or force majeure; the time of war and the state of war, seasonality of the performed activity, restructuring, planned shutdown or reconstruction are not considered to be an external factor.

In Part II of the Act, new provisions of the Labour Code regulate certain rules related to support during shortened work periods, such as provisions on obstacles at work and on the average wages of employees.

For example, in the new Article 142 paragraph 5 of the Labour Code, within the framework of obstacles to work on the part of the employer, a procedure for an employer who chooses to use the support system during shortened work periods is established. The use of this system requires an agreement with the employee representatives, in case they have been established. If the employer does not have employee representatives, an agreement with the individual employees is required.

On the one hand, this agreement allows the employer to benefit from the Act on support during shortened work periods (i.e. to submit an application for support), on the other hand, the agreement means that the employer must provide compensation to the employee in the amount of (at least) 80 per cent of his or her average earning.

If the employee representatives do not agree to the application for support during shortened work periods, the dispute between them and the employer shall be decided by an arbitrator (new Article 142a).

Part I and Part II (amendment of the Labour Code) will enter into force on 01 January 2022.

The Act has not yet been published in the Collection of Laws ("Coll.").

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

Flash Report 05/2021 on Labour Law

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) The government has extended the declaration of the COVID-19 epidemic for additional 30 days, from 17 May until 15 June 2021, although the measures to contain the spread of the virus have been loosened considerably due to a better epidemic situation.

(II) New rules on the protection of workers from risks related to the exposure to chemicals at work have been issued.

(III) The Constitutional Court has held that the ban on Sunday trade is not contrary to the Constitution.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Emergency measures

The declaration of the COVID-19 epidemic in Slovenia was extended by the government for an additional 30 days, from 17 May 2021 until 15 June 2021 (Ordinance on the declaration of the COVID-19 epidemic in the territory of the Republic of Slovenia, '*Odlok o razglasitvi epidemije nalezljive bolezni COVID-19 na območju Republike Slovenije*', Official Journal of the Republic of Slovenia (OJ RS), No. 73/2021, 13.5.2021, p. 4385). The government announced that it would not extend the declaration following the expiry of this Ordinance. The second wave of the epidemic was declared/extended on 19 October 2020 (see Flash Reports October, November, December 2020 and January, March and April 2021).

Although the declaration of the COVID-19 epidemic was extended until 15 June 2021, the measures to contain the spread of the virus were relaxed significantly in mid-May 2021, due to a better epidemic situation (OJ RS No. 73/2021, 13.5.2021), and have been further loosened since then. The most recent regulations have been published here: OJ RS, No. 85/2021, 27 May 2021.

Various measures aimed at mitigating the negative consequences of the COVID-19 crisis, which were introduced by previous anti-corona packages, the so-called PKPs (see FRs March 2020 – April 2021), continue to remain in force. The measure of partial reimbursement of wage compensation for temporarily laid-off workers has been extended for an additional month, until 30 June 2021 ('*Sklep o podaljšanju ukrepa delnega povračila nadomestila plače delavcem na začasnem čakanju na delo*', OJ RS No. 85/2021, 27.5.2021, p. 5023).

The amendments to the Contagious Diseases Act were passed by the National Assembly on 14 May 2021 ('*Zakon o spremembah in dopolnitvah Zakona o nalezljivih boleznih (ZNB-C)*', OJ RS No. 82/2021, 24.5.2021, p. 4811-4815), introducing more precise rules governing quarantine. From a labour law perspective, the provisions of the new Article 19.a, para. 10 and Article 19.c, para. 7 are of particular importance, since they regulate labour law issues – if a person, who is a worker, has been ordered to quarantine, he or she:

- has a duty to inform an employer within 24 hours;
- has a right to wage compensation during quarantine.

The workers were already entitled to wage compensation during a quarantine before these amendments were issued, on the basis of general labour law rules and special 'anti-corona crisis' acts, the so-called PKPs.

1.2 Other legislative developments

1.2.1 Occupational health and safety

On the basis of the Safety and Health at Work [Act](#), the Minister of Labour, Family, Social Affairs and Equal Opportunities issued the new rules on the protection of workers from risks related to the exposure to chemicals at work ('*Pravilnik o varovanju delavcev pred tveganji zaradi izpostavljenosti kemičnim snovem pri delu*', OJ RS No. 72/2021, 11.5.2021, p. 4325-4371), replacing the previous ones. The rules (Article 1) refer to the relevant EU directives in this field and lay down the minimum requirements for the protection of workers against risks to their health and safety arising from the exposure to chemicals at work.

2 Court Rulings

2.1 Ban on Sunday trade

Constitutional Court, joined cases No. U-I-446/20, U-I-448/20, U-I-455/20 and U-I-467/20, 07 May 2021

The (unanimous) decision of the Constitutional Court of the Republic of Slovenia concerning the ban on Sunday trade was announced on 07 May 2021 and published in the OJ RS on 11 May 2021 (joined cases No. U-I-446/20, U-I-448/20, U-I-455/20 and U-I-467/20, 15.4.2021, OJ RS No. 72/2020, 11.5.2021, p. 4372-4380).

The Amendments to the Trade Act, which entered into force on 24 October 2020, introduced the ban on Sunday trade, with certain exceptions (see Flash Report October 2020, under 1.2.3). The Constitutional Court found that the introduced regime, which limits the freedom of enterprise guaranteed by Article 74 of the Constitution, meets the requirements of the proportionality and is not contrary to the Constitution. Among others, the Constitutional Court emphasised that 'commercial activities may not be pursued in a manner contrary to the public interest' and that the challenged provisions of the Trade Act aim to achieve various goals, including enabling employees in the trade sector to enjoy free Sundays and public holidays, and that 'ensuring the employees a weekly rest day is in the public interest of the protection of employees', whereby work on Sundays and public holidays should be an exception rather than the rule.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Social dialogue

Increasing concerns have been raised over the last year that a genuine social dialogue was missing, that the rules of procedure of the Economic and Social Council (the Slovenian institutional framework for the tripartite social dialogue - 'Ekonomsko-socialni svet (ESS)', available [here](#)) were violated and similar. The problems in this respect and obstacles in the social dialogue in Slovenia have intensified recently, and the conflicts culminated in the decision of the trade unions (all national trade union confederations that are members of the ESS announced their decision on 13 May 2021) to withdraw from the ESS, because of 'the government's systematic violation of rules on the functioning of the ESS' (see, for example, [here](#) and [here](#)). The trade union confederations emphasised that 'the government has destroyed the social dialogue with its attitude towards trade unions' and that instead of being actively involved in creating

Flash Report 05/2021 on Labour Law

laws and other regulations affecting citizens' lives, 'the government has merely informed trade unions of the changes' (see, for example, [here](#) and [here](#)). The trade unions asserted that 'they decided to leave the ESS because the government has practically abolished social dialogue and has thus deprived them of seats at the negotiating table'; the president of the ZSSS (Association of Free Trade Unions of Slovenia, a member of the ETUC) stated that 'it is difficult to withdraw from what does not exist' and that they were willing to return to the negotiation table if the basic rules governing the ESS dialogue, which the government itself adopted, are respected (see [here](#)).

4.2 Collective agreement on the pension plan for public employees

Several trade unions in the public sector (Sindikat delavcev v pravosodju, Sindikat javnih uslužbencev Slovenije, Sindikat delavcev radiodifuzije Slovenije in Konfederacija sindikatov javnega sektorja Slovenije, Konfederacija sindikatov Slovenije – PERGAM) have already acceded to the Collective Agreement on the Pension Plan for Public Employees ('*Kolektivna pogodba o oblikovanju pokojninskega načrta za javne uslužbenke*', OJ RS Nos 11/04, 34/04 – popr., 43/06 – ZKolP, 66/07, 103/09, 11/12 in 18/16) from 2004, as later amended (Accession to the Collective Agreement on the Pension Plan for Public Employees, '*Pristop h Kolektivni pogodbi o oblikovanju pokojninskega načrta za javne uslužbenke*', OJ RS No 81/2021, 21.5.2021, p. 4655).

4.3 Police union strike

The Police Trade Union ended its strike action following the [conclusion](#) with the government, represented by the Minister of Interior, of the agreement on resolving the strike demands ('*Sporazum o razreševanju stavkovnih zahtev*', OJ RS No 74/2021, p. 4417-4419). The main strike demands were to respect the previous agreement of 2019, the re-evaluation of jobs in the police and higher pay, new rules on the promotion of police officers and separate collective bargaining for the police. The strike started in mid-January 2021.

4.4 Wage trends

In March 2021, the average monthly gross salary amounted to EUR 2 009.50, and the average monthly net salary amounted to EUR 1 290.97 – an increase of approx. 3 per cent in comparison to February 2021 ([Report](#) on wage trends March 2021, *Poročilo o gibanju plač za marec 2021*, OJ RS No. 86/2021, 28.5.2021, p. 5047).

Spain

Summary

(I) The measures to protect employment introduced in March 2020 to mitigate the effects of the pandemic have been extended until 30 September 2021.

(II) The government has approved the so-called 'Riders Law', establishing a presumption of employment for couriers. A new information right to algorithmic management has been introduced for worker representatives.

(III) New employment promotion measures for workers with disabilities have been introduced.

(IV) A ruling of the Supreme Court deals with the right to strike.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Relief measures for workers

As reported in previous Flash Reports (from March to June 2020), the government has approved numerous measures to protect workers and undertakings from the pandemic's impacts.

Specifically, layoffs due to COVID were not permitted, the main purpose being to deal with the situation without a huge loss of jobs. The government provides financial assistance for undertakings, i.e. instead of terminating work contracts, employers adopt less harmful measures, such as the suspension of employment contracts, the reduction of working hours or changes in working conditions. Workers affected by these measures are entitled to unemployment benefits because more flexible rules have been implemented. Dismissal due to COVID is not permitted and undertakings that receive temporary layoff benefits may not dismiss workers for the following six months. Those temporary measures have been extended several times: until June 2020, until 30 September 2020, until 31 January 2021, until May 31 and have now been [extended](#) until 30 September 2021.

1.2 Other legislative developments

1.2.1 Platform work

The Labour Code has been [modified](#) to introduce two different regulations:

- There is a new (rebuttable) presumption of an employment relationship for delivery riders in the context of platform work. Specifically, this presumption affects the 'activity of persons providing paid services consisting of the delivery or distribution of any consumer product or merchandise, by employers who exercise the entrepreneurial powers of organisation, direction and control directly, indirectly or implicitly, by means of algorithmic management of the service or working conditions, through a digital platform'.
- Worker representatives have been granted a new information right (not including consultation) to algorithmic management. In particular, the works council has the right 'to be informed by the undertaking of the parameters, rules and instructions on which algorithms or artificial intelligence systems are based, which affect decision-making that may have an impact on the working conditions, hiring and maintenance of employment, including profiling'.

Flash Report 05/2021 on Labour Law

As already reported in the October 2020 Flash Report, the Spanish Supreme Court ruled that food-delivery riders are employees, not self-employed workers. After that ruling, the social partners and government reached an agreement, this regulation being the result. This is not a regulatory framework for platform work, but only two rules that are somehow connected, but with a different purpose and scope.

Any assessment is premature, even for the first regulation. Article 8.1 of the Labour Code contains a traditional presumption of an employment relationship, and it is uncertain whether this new presumption is narrower or broader, and whether its purpose is merely to reinforce that traditional presumption and clarify its application to the sector of delivery of goods. The wording of the two presumptions is not identical, hence the options are open.

The second rule could have a more significant impact in the future, but it is too early to know. The purpose clearly is to assign worker representatives a more active role in the design of the algorithms, but the right of information, without consultation or bargaining rights, might not suffice. It is also uncertain how this rule relates to and coexists with legislation on data protection and protection of industrial property.

1.2.2 Workers with disabilities

A new [regulation](#) contains employment promotion measures in the form of grants for employers to encourage the employment of people with borderline intellectual abilities. It is also possible to extend the duration of training and apprenticeship contracts for these workers.

2 Court Rulings

2.1 Right to strike

Supreme Court, 4975/2018, 06 May 2021

The right to strike is fundamental in Spain (Article 28 of the Constitution), which explains why it is prohibited to replace strikers with other workers. This prohibition affects the direct hiring of substitutes, but also other forms, such as hiring through temporary employment agencies or the posting of workers from other countries, as well as substitution by technological means. In this particular [case](#), other workers of the undertaking, who held managerial positions, carried out the job of the strikers. The Supreme Court has thus also prohibited such internal reorganisation during strike actions, hence such practices are prohibited by the right to strike.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Unemployment trends

Unemployment decreased in February by 39 012 people and there are 3 910 628 unemployed people.

Sweden

Summary

(I) The Swedish government has prepared a proposal for the implementation of the new whistleblower directive.

(II) The Labour Court found that the grounds for a summary dismissal of an employee who had falsely called in sick.

(III) Interpreting a collective agreement, the Labour Court also held that employees are not entitled to an additional leave day if he or she falls sick on a holiday.

(IV) The Labour Court furthermore found that the GDPR is not obstacle for an employer to submit copies of employment contracts to a trade union according to a collective agreement.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Whistleblowers

As reported last month (see April 2021 Flash Report), the Swedish government has initiated the legislative procedure to transpose [Directive 2019/1937 on the protection of persons who report breaches of Union law](#) (the new whistleblower directive). On 20 May 2021, the government undertook one more step in this procedure by preparing a proposal for its implementation. The Swedish act is proposed to enter into force on 17 December 2021. Medium-sized companies must introduce whistleblowing channels before 17 December 2023, while other businesses have until 17 July 2022 to establish such channels. The government's press release of 20 May 2021 is available [here](#).

2 Court Rulings

2.1 Dismissal due to false sick leave

Labour Court, AD 2021 No. 21, 12 May 2021

A police officer was summarily dismissed for taking false sick leave. The police officer had applied for two weeks of annual leave in the autumn of 2019. When applying for leave, he had already bought flight tickets to the Seychelles. The employer approved only one of the two weeks due to the fact that the work schedules had already been planned. The police officer left for the Seychelles anyway. One day prior to the week for which annual leave had not been approved, he sent a text message from the Seychelles stating that he would need to take sick leave for the entire week. The Labour Court held that it was proven (and sufficiently investigated) that his sick leave was false, and that the reason for him not appearing to work was that he was abroad on vacation. This was therefore grounds for a summary dismissal.

The case raises questions about the burden of proof and evidentiary requirements for employee misconduct. In the present case, the special circumstance that the employee had already paid for his travel and had applied for annual leave which was subsequently denied implies that the burden of proof was passed over to the employee.

Flash Report 05/2021 on Labour Law

2.2 Working time

Labour Court, AD 2021 No. 17, 28 April 2021

According to a collective agreement, employees are entitled to additional leave days when they work on holidays that occur on weekdays (Monday-Friday). In the present case, the parties to the collective agreement had different understandings of how such a leave day is to be treated when an employee falls sick on a holiday. In the present case, the parties had agreed that the paragraph in the collective agreement entailed the reduction of working time. The Labour Court held that the collective agreement was to be interpreted in line with the employer's line of reasoning. Hence, there is no right for an additional leave day if the employee falls sick and takes sick leave on holiday.

The Swedish Labour Court's case is in line with the CJEU's judgment in C-609/17 and C-610/17, 19 November 2019, TSN (ECLI:EU:C:2019:981). In this judgment, the CJEU held that leave days exceeding the EU's four-week minimum leave period are not protected under EU law. Hence, the Finnish collective agreement was not in breach of EU law when employees who fell sick on leave days exceeding the minimum were not compensated. Unfortunately, the Swedish Labour Court does not mention the EU law aspect in its judgment.

2.3 Processing of employment contracts

Labour Court, AD 2021 No. 23, 26 May 2021

A collective agreement contained a clause stating that the employer should submit copies of all employment contracts that are concluded for periods longer than one month to the trade union. The employer refused to submit copies of contracts identifying the employees, stating data security reasons. The trade union sued the employer for breach of the collective agreement. The Labour Court held that the clause in the collective agreement was to be understood as an entitlement of the trade union to receive unmasked copies of the employment contracts. According to Swedish labour law, a clause in a collective agreement shall be considered invalid if it means that the party's action entails breaking the law. In the present case, the Labour Court found that processing the unmasked employment contracts would not be contrary to the General Data Protection Regulation (GDPR). Applying Article 6.1 c of the [GDPR](#), the Labour Court held that it would have been lawful for the employer to process the data in the employment contracts. Processing of data is lawful, according to the abovementioned provision, when 'processing is necessary for a legal obligation to which the agent is subject'. The Labour Court held that processing was necessary to fulfil the collective agreement. Hence, the employer had breached the collective agreement by not submitting the unmasked employment contracts to the trade union.

The Labour Court's clarification might dispel misunderstandings of the GDPR.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

United Kingdom

Summary

(I) New health protection regulations concerning COVID-19 came into force.

(II) A Professional Qualifications Bill was presented to Parliament. It will give UK regulators the power to make mutual recognition agreements with their counterparts in other countries across the world.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Health Protection Regulations

The Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) [Regulations](#) 2021 (SI 2021/585) came into force on 17 May 2021 in England. As the explanatory memorandum notes: 'This instrument amends the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 (S.I. 2021/364) ('the Steps Regulations') to move all of England into Step 3 of the roadmap out of lockdown It amends the Steps Regulations to remove the prohibition on travelling abroad without a legally permitted reason for doing so and the requirement for individuals to complete a travel declaration form indicating their reason for travelling abroad.'

1.2 Other relevant information

1.2.1 Worker protection

The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) [Order](#) 2021 (SI 2021/618) has been issued and came into force on 31 May 2021. According to the explanatory notes, this Order 'amends Section 44 of the Employment Rights Act 1996 to extend the rights conferred previously under section 44(1)(d) and (e) not to be subjected to a detriment in health and safety cases to workers, as defined in section 230(3) of the Act. Those rights were previously conferred only upon employees, as defined in section 230(1) of the Act. The rights conferred are for a worker to not be subjected to a detriment by his or her employer for leaving or refusing to return to his or her workplace or for taking steps to protect himself or herself in circumstances of danger which the worker reasonably believes to be serious and imminent.'

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Fire and rehire

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 inferior terms since March 2020, with higher rates among young and BME workers. ACAS has [issued](#) advice. The government is still considering this matter.

4.2 Professional Qualifications Bill

On 12 May 2021, the [Professional Qualifications Bill 2021-22](#) was laid before Parliament. It will give UK regulators the power to make mutual recognition agreements with their counterparts in other countries across the world. The government [states](#):

- By being able to recognise qualifications from professionals around the world, the Professional Qualifications Bill will further strengthen UK professions' reputation for excellence and help to ensure the UK can address cases where the demand for skills is not currently being met.
- Much of the UK's current framework for recognising professional qualifications derives from EU law. Currently, regulators must have routes to recognising professional qualifications from the European Economic Area (the EU, Norway, Iceland and Liechtenstein) and Switzerland.
- Workers with professional qualifications from outside these areas may face hurdles to having their qualifications recognised in the UK. This might include higher application fees or, in some cases, no means to recognition at all.
- Now the UK has taken back control of its laws from the EU, the government is introducing new legislation so skilled professionals can have their qualifications recognised in the UK where they meet UK standards. Regulators will have the autonomy to assess qualifications, and to pursue arrangements with counterparts in other countries in the interests of their professions.
- An example would be if a regulator like the Architects Registration Board concluded a mutual recognition agreement with international partners. This would support UK businesses and professionals to win and provide architectural services in new markets, such as the Middle East or Asia, by helping UK architects have their qualifications recognised overseas.
- The Bill gives devolved administrations powers to equip their regulators with the ability to enter into arrangements with international partners. This will help all parts of the UK to take advantage of the UK's global trading status.

GETTING IN TOUCH WITH THE EU

In person

All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at:

https://europa.eu/european-union/contact_en

On the phone or by email

Europe Direct is a service that answers your questions about the European Union. You can contact this service:

- by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls),
- at the following standard number: +32 22999696 or
- by email via: https://europa.eu/european-union/contact_en

FINDING INFORMATION ABOUT THE EU

Online

Information about the European Union in all the official languages of the EU is available on the Europa website at: https://europa.eu/european-union/index_en

EU publications

You can download or order free and priced EU publications at: <https://op.europa.eu/en/publications>. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see https://europa.eu/european-union/contact_en).

EU law and related documents

For access to legal information from the EU, including all EU law since 1952 in all the official language versions, go to EUR-Lex at: <http://eur-lex.europa.eu>

Open data from the EU

The EU Open Data Portal (<http://data.europa.eu/euodp/en>) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.

