Flash Reports on Labour Law August 2021

Summary and country reports

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

August 2021

EUROPEAN COMMISSION

Directorate DG Employment, Social Affairs and Inclusion

Unit C.1 – Labour Law

Contact: Marie LAGARRIGUE

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

European Commission

B-1049 Brussels

Flash Report 08/2021 on Labour Law

Manuscript completed in August 2021

Luxembourg: Publications Office of the European Union, 2021

PDF ISSN 2600-3252 KE-CC-21-006-EN-N

Flash Report 08/2021 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

National level developments

This summary is divided into two parts. The first part provides an overview of the extraordinary development of labour law in many Member States and the European Economic Area (EEA) triggered by the COVID-19 crisis; the second part sums up other labour law developments with particular relevance for the transposition of EU labour law.

Developments related to the COVID-19 crisis

Measures to reduce the risk of infection in the workplace

In August 2021, most countries still had measures in place to prevent the spread of the virus in the workplace. While many governments have eased the restrictions related to the lockdown, the state of emergency and/or restrictions to businesses have been extended in some countries, including the **Czech Republic**, **Portugal** and **Romania.** In **Norway**, the final step of the government's plan for a gradual reopening of society, initially planned for late July, has been postponed due to increasing infection rates. Conversely, following in the footsteps of England, all restrictive measures have been lifted in **Scotland** and **Wales**. Due to the high vaccination rates, **Denmark** will end all COVID-19 restrictions, including the use of the COVID-19 passport, starting 10 September 2021.

Teleworking continues to be recommended in many countries, such as the **Netherlands**. Interestingly, in a decision of a Dutch Court of Appeal, the refusal of an employee to work at the office during the pandemic was considered to not represent a condition for a legally valid dismissal.

In the context of the ongoing COVID-19 vaccination plans, the vaccination of workers remains a topical issue.

The obligation for several categories of employees working in healthcare facilities to be vaccinated against COVID-19, already introduced, among others, in **Greece** and the **United Kingdom,** has been contested and is being judicially challenged. In **Greece**, the Council of State has rejected the appeals of healthcare professional to suspend the provision that would place healthcare professionals on unpaid leave and entail the loss of social security if they do not get vaccinated against COVID-19. Likewise, in **Latvia,** a draft law envisages mandatory vaccination for employees who work in healthcare, long-term care institutions and education.

Beyond mandatory vaccination, in many countries, such as **Cyprus, France** and **Italy**, some categories of workers are required to provide a COVID-19 certificate (so-called 'Health Pass', 'Green Pass', 'SafePass', etc.) proving vaccination against COVID-19, recovery or a negative rapid test result. Similarly, in **Estonia** it has been established that an employer can demand proof of vaccination against COVID-19 or another form of proof that an employee is not COVID-19 positive. Likewise, in **Poland**, the Ministry of Health has elaborated the draft of a law that would give the employer the right to obtain information whether employees have been vaccinated against COVID-19 and to unilaterally modify the employment conditions of employees who are not vaccinated.

Finally, in **Latvia**, some draft amendments envisage the right to dismiss an employee on account of lack of a COVID-19 certificate.

Measures to alleviate the financial consequences for businesses and workers

To alleviate the adverse effects of the COVID-19 crisis, state-supported short-time work, temporary layoffs or equivalent wage guarantee schemes remain in place in many countries and have been renewed in **Portugal**.

Measures to ensure the performance of essential work

In **Belgium**, a number of temporary measures, such as additional quota of voluntary overtime, the possibility to conclude successive fixed-term employment contracts, and the temporary suspension of career breaks in crucial sectors were extended until 30 September 2021.

Leave entitlements and social security

In **France,** a right to paid leave in order to be vaccinated has been introduced.

In **Romania**, the quarantine leave allowance is no longer fully supported by the State.

Main developments related to measures addressing the COVID-19 crisis

Topic	Countries
Proof of vaccination or negative test for workers	CY EE FR IT LV PL
Mandatory vaccination against COVID-19	EL LV UK
State of emergency	PT RO
Travel ban	CZ NO
Re-opening of society	DK UK
Quarantine leave	RO
Vaccination leave	FR
Teleworking	NL
Employer subsidies	PT

Other developments

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

Working time

In a recent ruling of a **Danish** Labour Court, the Court found that the time an employee spent on COVID-19 testing outside working hours was to be considered working time.

In **Germany**, the Federal Labour Court has suspended a case on the remuneration of night work pending before it until the CJEU rules on cases C-257/21 and C-258/21.

In **Luxembourg**, a judgment of the Supreme Court dismissed an employee's claim to consider the time spent travelling to the client's location as working time.

In **Romania**, a decision of a Court of Appeal reaffirms that the right to a weekly rest period must be granted within each seven-day period, even if the employee has received days off in advance.

Work-life balance

In the **Czech Republic**, a draft law introduces several changes as of 01 January 2022 as regards sickness insurance, including the extension of paternity leave, as well as changes to care and long-term care support.

In **Ireland**, a report on the responses to the public consultation on the introduction of a right to request remote working has been published.

In **Luxembourg**, a judgment of the Supreme Court admitted the dismissal of an employee at the end of parental leave for subjective reasons that pre-date the commencement of parental leave.

Temporary agency work

The **Danish** Maritime and Commercial Court has issued a ruling in a case on the scope of application of the Temporary Agency Worker Act, ruling that successive renewals and the ongoing need for temporary agency workers were not carried out with the intent of circumventing the rules on temporary agency workers.

In **Germany**, the parliamentary group Die Linke has called for far-reaching amendments to the current law on temporary agency work.

Other developments

In **Croatia**, the Minister of Labour has issued the new Ordinance on the Recognition of Awards for the Improvement of Occupational Health and Safety.

In **Finland**, following the extension of compulsory education to upper secondary education, the legislation concerning work performed by young workers has been amended to ensure that young workers' work shifts do not overlap with their classes that require personal attendance.

In **France**, the Law to Fight Climate Change aims to include employee representation (trade unions and the Social and Economic Council) in the ecological transition.

In **Germany**, the State Labour Court Berlin-Brandenburg has delivered an important judgment on the eligibility of a trade union to conclude a collective agreement.

In **Luxembourg**, in a case in which the employee resigned before the commencement of the employment contract, the employee's resignation was found to be untimely and wrongful, hence the employer could claim compensation.

In the **Netherlands**, two judgments of two Courts of Appeal ruled that the Dutch court has jurisdiction in a case involving a pilot, who usually starts and ends his work at Schiphol Airport, and on the reimbursement by an employee of the educational expenses covered by the employer.

In **Poland**, the amendment to the Law on Work at Sea was signed by the President.

In **Portugal**, the government has presented a set of proposals to the social partners to promote the Decent Work Agenda, which may result in amendments to Portuguese labour law.

In **Sweden**, in a case concerning the posting of workers, the Labour Court ruled that statutory remuneration in Lithuania should not be included in the calculation of the application of the Swedish collective agreement applicable to the workplace.

In the **United Kingdom**, following Brexit, an open consultation has been launched concerning the implementation of the Trade and Cooperation Agreement.

Table 2: Other major developments

Topic	Countries
Working time	DE DK LU RO
Work-life balance	CZ IE LU
Temporary agency work	DE DK
Jurisdiction of transport sector work	NL
Occupational health and safety	HR
Posting of workers	SE
Seafarers	PL
Training of workers	NL
Workers' representation	FR
Young workers	FI

Belgium

Summary

A number of temporary measures to ensure essential work, such as the additional quota of voluntary overtime, the possibility to conclude successive fixed-term employment contracts, and temporary suspension of career breaks in crucial sectors were extended until 30 September 2021.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Measures to ensure essential work

With the publication of the Law of 18 July 2021 on Temporary Support Measures as a result of the COVID-19 pandemic in the Belgian State Gazette (*Moniteur belge*) of 29 July 2021 (P. 76.957), a number of measures were extended until 30 September 2021.

Among other things, the law extends the period during which the additional quota of 120 additional voluntary overtime hours can be performed for employers in crucial sectors.

Other measures have been extended:

- Relaxed formalities for the employment of foreign nationals in a specific residence situation;
- Temporary suspension of career breaks or reduction of working hours;
- Possibility to conclude successive fixed-term employment contracts for workers temporarily unemployed;
- Easier posting of workers to users from the care sector, education or institutions and centres that carry out contact tracing;
- Temporary employment with employers from the care sector, educational institutions and centres that carry out contact tracing.

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 Determination of maximum increase in wage costs

The Royal Decree of 30 July 2021 implementing Article 7(1) of the Law of 26 July 1996 on Promoting employment and preventive safeguarding of competitiveness has been published in the Belgian State Gazette (*Moniteur belge*) of 09 August 2021.

The legal maximum wage standard is an important topic in Belgium for maintaining the Belgian economy's competitiveness, which is strongly dependent on exports to neighbouring countries (import and export represents approximately 70 per cent of Belgian GDP). The legal wage standard, *id est* the maximum margin for the development of wage costs, is set every two years and determines the maximum increase in wage costs. It is the Law of 26 July 1996 on the promotion of employment and the preventive safeguarding of competitiveness, hereinafter called the Wage Standard Law, which creates the possibility to adapt the development of wage costs in Belgium preventively to the expected development in the Belgian main trade partners, Germany, the Netherlands and France. The wage standard represents the maximum framework for the biennial wage negotiations on collective bargaining agreements in the private sector. The Wage Standard Law provides that indexation and barometric increases related to the seniority of employees are always guaranteed.

As the social partners could not reach an agreement on the maximum margin of the development of labour costs for the years 2021-2022, the federal government decided by Royal Decree of 30 July 2021 that this maximum margin, the so-called wage standard, for the years 2021-2022 is a maximum of 0.4 per cent, on average.

The wage norm, expressed by this percentage, determines the extent to which a company's average wage cost may increase over a two-year period and aims to safeguard Belgium's international competitiveness in relation to its neighbours.

With the Royal Decree of 30 July 2021, the government confirmed the rate of 0.4 per cent proposed by the Central Economic Council for the years 2021-2022. In concrete terms, this means that the average wage cost within a company may increase by 0.4 per cent in the years 2021-2022. Individual wage increases are therefore still possible, as long as the average wage cost within the company increases by a maximum of 0.4 per cent. Also, wage increases as a result of indexation and baremic increases are not covered by the maximum margin of 0.4 per cent.

Companies that do not respect this wage standard can, at least in theory, be sanctioned with administrative sanctions. In addition, collective bargaining agreements containing wage increases that do not comply with this wage standard can be annulled by the courts. Therefore, companies should monitor the development of their labour costs for the years 2021-2022.

4.2 Duty of neutrality in the workplace

The Belgian legal press has paid a lot of attention to the recent rulings of the CJEU (Grand Chamber) of 15 July 2021, C-804/18, *WABE* and C-341/19, *Müller*. These judgments refine the Court's view in its decision of case C-157/15, *Achbita,* of 15 March 2017, which was raised by a Belgian court.

In these cases, the CJEU decided that an imposed neutral dress code in the workplace does not constitute either direct or indirect discrimination based on religion or belief. The Court sets some conditions for such neutral dress codes, including the employer's obligation to prove that the neutrality policy meets a 'genuine need'. This genuine need can consist in both a neutral attitude towards customers and the avoidance of social conflict in the workplace.

The CJEU connects the neutrality policy imposed by the employer on its employees with some important conditions. Thus, the employer has the obligation to prove that the neutrality policy meets an 'actual need'. This need can be both a neutral attitude towards customers and the avoidance of social conflict in the workplace. Another striking point is the visible signs of political, philosophical or religious conviction. Even if a ban on large, conspicuous signs is applied coherently and systematically, it is unjustified according to the Court. Indeed, any sign, even a small one, undermines the coherence of the neutrality policy. Therefore, it is not possible to limit the ban to the wearing of 'large conspicuous signs' of political, philosophical or religious conviction.

Croatia

Summary

The Minister of Labour has issued the new Ordinance on the Recognition of Awards for Improvement of Occupational Health and Safety.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Occupational health and safety

The Minister of Labour has issued the new Ordinance on Recognitions and Awards for the Improvement of Occupational Health and Safety (Official Gazette No 91/2021). This Ordinance prescribes the procedure, manner and conditions for awarding recognitions and awards to legal and natural persons for improvements in occupational health and safety, the type of recognition and award, procedure for submitting proposals and the appointment and the work process of the commission for awarding recognitions and awards.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Cyprus

Summary

A certificate of vaccination, recovery from COVID-19 within the last 180 days, or of a negative COVID-19 test, is required for hospital employees, as well as for employees in any other sectors where 10+ people are present at all times.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Requirement of COVID-19 certificate

On 30 July 2021, after reviewing the periodontological situation, the Council of Ministers decided to extend the provisions of the existing Decree until 31 August 2021. Among others, the decision requires:

- The presentation of the SafePass in places where more than 10 people are present, including employees of the establishment/enterprise;
- Mandatory presentation of the SafePass by all persons aged 12 years and over, including patients, visitors and employees, for admission to the State Health Services Organization hospitals and private hospitals;
- Mandatory presentation of a certificate of vaccination or recovery from COVID-19 within the last 180 days or a negative result based on a PCR test that is valid for 72 hours by all persons aged 12 years or over, including workers and visitors, for entry into nursing homes and other closed facilities.

The above decisions are regulated by Decree and were in force until 31 August.

Already in place were a number of measures taken by the Council of Ministers to minimise the possibility of transmission of COVID-19 in highly frequented areas or social events. These measures included the requirement to hold a SafePass or a 72-hour valid rapid test or PCR test to enter closed spaces or specific venues, as well as the granting of a special leave of absence for public and private sector employees on the day of their vaccination.

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 Rights of workers in the context of the COVID-19 pandemic

A number of issues relating to the rights of workers in the context of the implementation of restrictive measures to contain the spread of the virus are being debated.

One issue relates to doctors who issue false vaccination certifications. The Pancyprian Medical Association (PMA), together with the Disciplinary Board, has proposed for the PMA to apply to the court to issue a decree to suspend the license to practice of doctors who are being investigated for serious offenses by the Police. This is the procedure to be followed so doctors are removed from their duties when they are under investigation, not only *after* their conviction (see '*Με δικαστικό διάταγμα θα παίρνουν την άδεια των γιατρών*', *Φιλενεws*, 13 August 2021).

Czech Republic

Summary

(I) The travel ban has been amended and extended. An additional travel ban prohibiting Czech citizens and foreign nationals residing in the territory of the Czech Republic from travelling to certain high-risk countries has been amended and extended.

(II) Restrictions on businesses have been readopted and extended.

(III) A draft law introduces several changes as of 01 January 2022 in the area of sickness insurance, including the extension of paternity leave, as well as changes to care and long-term care support.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Travel ban

With the protective measure of the Ministry of Health No. MZDR 20599/2020-109/MIN/KAN of 17 August 2021, adopted with effect as of 23 August 2021, the restrictions on the entry of persons into the territory of the Czech Republic have been readopted with certain amendments.

The text of the protective measure is available here.

The list of countries listed according to risk is available here.

The government adopted an additional travel ban in connection with the spread of the new COVID-19 variant. With the protective measure of the Ministry of Health No. MZDR 20599/2020-110/MIN/KAN of 17 August 2021, adopted with effect as of 23 August 2021 until 30 September 2021, Czech citizens as well as foreign nationals with residence in the territory of the Czech Republic are recommended to refrain from traveling to specific countries, unless absolutely necessary.

The text of the measure is available here.

1.1.2 Restrictions for businesses, rules for mass events and assemblies

With the protective measure of the Ministry of Health No. MZDR 14601/2021-23/MIN/KAN of 26 August 2021, adopted with effect as of 01 September 2021, the government has readopted and amended conditions on the operation of businesses. At the same time, requirements for holding of mass events and assemblies have been adopted as well.

Businesses are allowed to operate as long as they adhere to certain rules. Mass events and assemblies may take place only if certain rules are adhered to. Persons may only enter businesses and attend mass events and assemblies under certain conditions as well (they need to have been tested, vaccinated, keep a distance from one another, etc.).

The text of the measure is available here.

1.2 Other legislative developments

1.2.1 Work-life balance measures

The Draft Act amending Act No. 187/2006 Coll., on sickness insurance, as amended, as well as certain other acts, has been approved by the Senate. The Draft Act will now be

signed by the President, published in the Collection of Laws, and enter into effect on 01 January 2022.

The text of the Draft Act is available here.

The Draft Act introduces several changes in the area of sickness insurance. Most notably, it extends the duration of paternity leave. Fathers will be entitled to a paternal leave of 2 weeks. The paternal leave can be used within a period of 6 weeks after the birth (or adoption) of a child (in case the child is hospitalised due to health problems of the child or the child's mother, the period will be proportionately extended). The father-employee is entitled to time off to be provided by the employer, and is entitled to paternal benefits paid by the State (from the sickness insurance scheme which the employee must participate in).

Further, the law currently requires the dependant (person being cared for) and the entitled person-employee (person providing care for the dependant) to live together in a shared household for the employee to be entitled to care benefits (and time off) in the cases stated by law. At present, there is only one exception – the fulfilment of the condition of a shared household is not required for a parent and a child that is younger than 10. The Draft Act will extend the list of exceptions – the fulfilment of the condition of a shared household will not be required for direct relatives, siblings' spouses, registered partners, spouse/registered partner and the other spouse's/registered partner's parents.

As regards long-term care benefits, some changes have been introduced as well. The dependant will not need to be hospitalised for 7 calendar days for entitlement to the benefit – the period will be shortened to 4 calendar days. In case of terminally ill patients, no minimum days of hospitalisation will be required.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

(I) All COVID-19 restrictions, including the use of COVID-19 passport, will end on 10 September 2021.

(II) The Danish Maritime and Commercial Court has issued a ruling in a case on the scope of application of the Danish Temporary Agency Worker Act, ruling that successive renewals and the ongoing need for temporary agency workers were not carried out with the intent of circumventing the rules on temporary agency workers.

(III) In a recent ruling by the Danish Labour Court, the Court found that the time an employee spent on COVID-19 testing outside working hours was to be considered working time. The issue of remuneration of the time spent testing was dismissed by the Labour Court.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Re-opening of society

Society has now almost fully re-opened. 71.2 per cent of the population are fully vaccinated, and 75.2 per cent have received their first vaccine injection. Infection rates are relatively stable. The government has launched five specific initiatives to increase vaccination rates, as the aim is for 90 per cent of all those who have been invited to be vaccinated, to be vaccinated before 01 October 2021.

As of 10 September 2021, COVID-19 will be downgraded from being a 'critical disease for society' in Denmark. This is primarily due to the high vaccination rate and the overall control over the epidemic. According to this decision, all remaining COVID-19 restrictions will end on 10 September, including the use of a COVID-19 passport. The testing capacity for COVID-19 will be downsized, and from 9 October, free rapid (antigen) tests will no longer be offered.

The press release of the Danish Ministry of Health is available here.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Temporary agency work

Maritime and Commercial Court, BS-3222/2021-SHR, 18 August 2021

Two employees were employed by a temporary work agency and performed work for the same user undertaking. The deployment to the same user entity was renewed seven times without interruptions, for an overall time period of present. 25 months.

The question in the present case was whether the employees were covered by the Danish TAW Act, section 1(1), which implements Art 1(1) of EU Directive 2008/104/EC. If this was so, the question was whether the employment relationships were contrary the purpose of the TAW Directive and TAW Act, as the employees did not perform work on a temporary basis, and that the temporary work agency was therefore their actual employer and responsible for observing labour legislation.

The material claims primarily concerned entitlement to compensation for breach of the Act on Fixed-Term Employment. Secondly, if the employment relationships were covered by the TAW Act, the employees were entitled to a salary during their notice period as well as during sick leave according to the Danish Salaried Employees Act, due to the long-lasting nature of the employment relationship with the agency.

In its ruling, the Maritime and Commercial Court, firstly, referenced CJEU case law. In the CJEU ruling of 14 October 2020, C-681/18, the CJEU pointed out that the Directive is intended to meet not only undertakings' needs for flexibility, but also employees' need to reconcile their work and private life. Furthermore, it follows from that ruling that it is for the national court to review the legal classification of the employment relationship at issue, and to determine whether it is a permanent employment relationship concealed behind successive temporary agency contracts designed to circumvent the objectives of Directive 2008/104, in particular the temporary nature of temporary agency work.

A majority of four out of five judges found that the two employment relationships at issue in the main proceedings were covered by the Danish TAW Act. The judges emphasised that the user undertaking underwent a comprehensive and complex merger in the time period during which the two employees were present at the user undertaking, resulting in a higher need for flexibility and ongoing adjustments in the user undertaking's IT department over a longer period. The merger was delayed multiple times, which altered the plans. Neither the user undertaking nor the temporary work agency were able to foresee or influence this development. In conclusion, the Court did not find evidence for the claim that the successive employment terms had been designed to circumvent the TAW Act and TAW Directive.

The majority also dismissed that the Salaried Employees Act was applicable. It follows from the preparatory works to the Danish TAW Act that temporary agency workers are not in an employment 'relationship of service' (*tjenestestilling*) with the user undertaking, irrespective of what kind of work they are performing in the user undertaking.

One dissenting judge found that that the two employees had not performed their tasks for the user undertaking on a temporary basis. The temporary work agency had not demonstrated that it (or the user undertaking) could not have foreseen the long-lasting need for the two employees from the beginning, and that they had not demonstrated that there was a need for flexibility, which legitimated the use of temporary agency work. Accordingly, the two employment relationships were not covered by the TAW Act. Instead, they were covered by the Salaried Employees Act, which entitled them to pay during their notice periods and sick leaves.

In line with the majority's ruling, the temporary work agency was acquitted.

The case was decided by three—instead of the usual one—judicial judges, which shows that the Court considered the case to address fundamental or complex legal issues.

This case demonstrates that it is possible to successively renew employment periods with the same user undertaking and to still be considered a temporary agency worker within the meaning of the Directive and the Danish Act on TAW and still not be in breach of the TAW Act.

While the dissenting judge emphasised that employment must be performed 'on a temporary basis', the majority judges paid less attention to the duration of the successive employment relationships, and instead underscored that the renewals and ongoing need for the temporary agency workers could not have been foreseen by the agency or user undertaking. In other words, there was insufficient evidence of an *intent* to circumvent the rules on temporary agency workers.

The case also demonstrates that in theory, there is no specific time limit or number of renewals before temporary agency employment will be considered permanent employment. However, this seems to be a case of *very particular circumstances* in which

so many successive renewals are possible without the employment relationship becoming one of permanent duration.

The judgment is in line with existing CJEU case law.

2.2 Working time

Danish Labour Court, No. 2020-1444, 12 August 2021

The case concerned the definition of working time in relation to employees who are required by their employer to be tested for COVID-19 in their spare time, e.g. on a day off from work or before/after a shift following infections among hospital staff.

The question was whether nurses without COVID-19 symptoms can request the time spent on COVID-19 testing to be considered 'working time' and paid as such according to the working time agreement between the Regional Employers' Association and the Nurses' Union (*Regionernes Lønnings- og Takstnævn (RLTN) og Dansk Sygeplejeråd m.fl.*).

The Nurses' Union argued that the employer had instructed the employees to get tested. Functions carried out upon instruction typically fall within the concept of working time. The union referred to Danish case law as well as CJEU case C-518/15, *Matzak*.

The Employers' Association argued that testing had not been instructed by the employer, but followed from the guidelines by the Danish health authorities. The employer had no influence on whether the employee was at work the day of testing. Furthermore, there was no sufficiently intense infringement on the employee's free time for the Directive on working time to apply.

The Labour Court found that the employees had been instructed by their employer to be tested for COVID-19. There was an employment law obligation to follow the instruction, irrespective of the fact that the instruction was a result of official guidelines.

To the extent that testing meant they would have to take the test in their free time, the employees were prevented from using that part of their free time on other activities. Against that background, the Labour Court found that the employer had intervened in the employees' free time in such a way that the time spent testing was to be considered working time or as being similar to working time in the understanding of the Working Time Act and the Working Time Directive.

The question concerning remuneration for time spent testing for COVID-19, on the other hand, depended on an interpretation of the parties' agreement on working time and remuneration. The Court noted that in this particular situation, it was not a given that the time spent testing was covered by the parties' remuneration agreement for working time, namely the employer did not receive any traditional performance of work in return. As it follows from the division of competences in the industrial dispute resolution system, the competence to interpret collective agreements is delegated to Industrial Arbitration Courts, cf. the Labour Court Act, section 21(1). The question of remuneration was thus dismissed by the Labour Court.

This case is of particular interest, as it is one of the first legal cases in Denmark that focusses on COVID-19 restrictions or measures are at the centre of an employment dispute before the courts. The Court emphasised that an instruction by an employer is an instruction that—within the relationship between the employer and the employee—must be adhered to, irrespective of the special circumstances of COVID-19 that led to the issuance of health guidelines on testing.

Even though the Labour Court does not directly refer to EU case law or the Directive on Working Time, it is evident from the parties' arguments in the case that the definition of 'working time' in the dispute is the EU law concept of 'working time' vis-à-vis resting time. The decisive factor in the Court's ruling is also whether the time spent testing means that the employees could not use their free time on other activities.

The ruling is in line with existing CJEU case law.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

(I) The Estonian government has established that an employer can demand proof of vaccination against COVID-19 or other proof that an employee is not COVID-19 positive.

(II) The monthly minimum wage in the second quarter in Estonia will be agreed by the social partners.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Requirement of COVID-19 certificate

The Estonian government has approved changes to the regulation on biological hazards in the working environment. The changes to the regulation are connected to the question whether an employer can require the vaccination of employees in situations such as COVID-19. To request proof of vaccination or the presentation of other proof that an employee is not COVID-19 positive is a biological hazard that must be identified in the working environment and related risk assessment. If COVID-19 is covered in the risk assessment, the employer can request proof of vaccination against COVID-19 or proof that an employee is not COVID-19 positive.

In situations in which an employee refuses to present the required proof, the employer has several options: to change the working environment; to place to employee in another job or—as a last resort—to dismiss the employee if no suitable job is available.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Minimum wage

The monthly minimum wage in Estonia will be negotiated and agreed between the central employees' and employers' organisations. Thereafter, the Government of the Republic will issue a regulation to determine the monthly minimum wage for all economic activities and areas of employment. There are no concrete rules or indicators that will be taken into account to determine the monthly minimum wage.

In 2010, the minimum wage was equal to 35 per cent of the average wage, in 2020, this percentage was 40 per cent. With the increase in the monthly minimum wage, other wages will also increase. In Estonia, there are approx. 21 000 employees who earn the monthly minimum wage. This number has been stable for years.

Recently, a research study on the impact of minimum wage on the economy was published. The monthly minimum wage has two important functions: 1) it is the lowest wage that must be paid for full-time employment, and 2) certain social benefits are connected to the amount of the monthly minimum wage.

4.2 Average wage

According to Statistics Estonia, in the second quarter of 2021, the average monthly gross wage and salary was EUR 1 538, which is 7.3 per cent higher than in the previous year. The gross wages and salaries were highest in the information and communication, financial and insurance activities and in the energy sector.

By economic activity, the average monthly gross wages and salaries were again highest in information and communication (EUR 2 761), financial and insurance activities (EUR 2 545) and energy (EUR 2 124). The average gross wages were lowest in accommodation and food service activities (EUR 884), real estate activities (EUR 1 124) and arts, entertainment and recreation (EUR 1 208).

Finland

Summary

Following the extension of compulsory education to upper secondary education, the legislation concerning work carried out by young workers has been amended to ensure that young workers' work shifts do not overlap with their classes that require personal attendance.

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

The new Act on Compulsory Education (1214/2020) entered into force on 01 August 2021. According to the Act, compulsory education ends when the person reaches the age of 18 or completes an upper secondary qualification.

Extending compulsory education to upper secondary education necessitated an amendment to the legislation on young workers who are under 18 years. The starting point is that young workers' work shifts may not overlap with classes that require personal attendance. The legislative changes entered into force on 01 August 2021.

According to the Young Workers Act (998/1993), an employer can hire a person who has turned 15 years and has completed compulsory education under an employment or public service relationship on a permanent basis. The Act applies to work being performed by a person under 18 years of age (young worker) in an employment relationship or public service employment relationship. The Act lays down, among other things, the conditions under which a young worker can be employed, as well as the working hours and rest periods, and the occupational safety and health requirements. The purpose of the special provisions concerning young workers is to protect them from excessive strain caused by work.

As a result of the amendment to the Young Workers Act, a young person aged 15 years, who has completed the basic education syllabus referred to in the Basic Education Act or whose obligation to complete the basic education syllabus has otherwise ended, may be admitted to permanent employment. Before hiring a young worker, an employer must obtain a reliable account of the young worker's age and that his or her obligation to complete the basic education syllabus has ended.

Young persons who have completed basic education and who attend upper secondary education can still work part time, for example, insofar as the work is suitable for them. It is also still possible to complete a vocational qualification as apprenticeship training based on a fixed-term employment or public service relationship.

The Young Workers Act lays down the conditions under which young people under 15 years of age and those still attending basic education can be employed during the school year or holidays. The Act also contains provisions on terms under which a person aged 13 years or younger may be hired to work temporarily as a performer or assistant in art and cultural performances or similar events. These provisions have remained unchanged.

Attending compulsory education is a young person's primary obligation. For this reason, a provision concerning employees under the age of 18 years who are attending post-comprehensive compulsory education, which usually is upper secondary education, has

been included in the Young Workers Act. Employers must arrange the working hours of such young workers in a way that does not preclude their participation in education. In order for the employer to plan work shifts, a young worker must inform the employer well in advance of any compulsory class attendance. If work and studies overlap, a young worker has the right to refuse a shift that would prevent him or her from participating in class.

These amendments also concern work carried out in shipping and on fishing vessels. As was the case before, those who work at sea and on fishing vessels must be at least 16 years old. Compliance with the Young Workers Act is supervised by the labour protection authorities.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Matching labour supply and demand

A recent analysis (*Työvoiman hankinta toimipaikoissa vuonna 2020* by Juho Peltonen), published by the Ministry of Economic Affairs and Employment in August 2021, focusses on examining the search for labour and the filling of vacancies by business establishments and their short-term plans of hiring or dismissing staff. The report is based on employer interviews carried out by Statistics Finland.

Last year, recruitment problems were most common in the social and health care services, with 54 per cent of establishments reporting that they had recruitment problems when searching for labour. Recruitment problems decreased in every industry except administrative services. The impact of COVID-19 was most visible in accommodation and food services, where the share of establishments that had recruitment problems increased by 13 per cent compared to 2019.

In 2020, the most common reasons for recruitment problems were the skills of jobseekers. The second most common set of reasons was related to the characteristics of the job. Job-related reasons were less common in the private sector than in other sectors. According to the report, the year 2020 was an unusual one in the Finnish labour market due to the global pandemic which had an impact on the recruitment of labour. On the one hand, recruitment problems decreased slightly, social and health services had most severe recruitment problems among the different industries and the importance of digital means of recruitment increased. On the other hand, the COVID-19 crisis seems to have had only little impact on the reasons for recruitment.

France

Summary

(I) A law has extended the health pass, introduced compulsory vaccination for certain professions and created a right to paid time off work to be vaccinated.

(II) The Law to Fight Climate Change aims to include employee representation (trade unions and the Social and Economic Council) in the ecological transition.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Requirement of COVID-19 certificate

Law No. 2021-1040 of 05 August 2021 on the health pass and compulsory vaccination and its application texts came into force on 09 August 2021. These new rules extend the health pass ('*pass sanitaire*'), introduce a compulsory vaccination requirement for specific occupations and create a right to be absent from work in order to be vaccinated.

The transitional regime for the end of the health crisis (Regime defined by Law No. 2021-689 of 31 May 2021) was to end on 30 September 2021. The Law of 05 August 2021 on the management of the health crisis has extended this regime until 15 November 2021, i.e. by more than one and a half months. The government thus still has the possibility to take measures to restrict the movement of people, establish a curfew or regulate the opening of shops for health reasons related to the COVID-19 epidemic.

The Law of 05 August 2021 requires the presentation and control of a health pass in the context of the following activities or situations, regardless of the number of people present:

- Entertainment activities;
- Commercial catering or drinking establishment activities;
- Fairs, seminars or professional salons;
- Health, social and medical-social services and establishments, except in case of emergency;
- Long-distance travel by interregional public transport, except in case of emergency.

In this context, Decree No. 2021-1059 of 07 August 2021 specifies the establishments, places, services and events requiring the presentation of a health pass.

Moreover, persons who are present in the places, establishments, services or events concerned must present a health pass as of 30 August 2021 (Article 1, II, A, 2°, f of Law No. 2021-689 of 31 May 2021, modified by Article 1 of Law No. 2021-1040 of 05 August 2021). This obligation applies to employees, public officials, volunteers and other persons (service providers, temporary workers and subcontractors):

- When their activity takes place in areas and during hours in which these are accessible to the public;
- Except for delivery or emergency intervention activities (Article 1, 6°, of Decree No. 2021-1059 of 07 August 2021).

An employee who is not able to present a valid health pass can no longer carry out his or her activity (Article 1, II, of Law No. 2021-689 of 31 May 2021). With the employer's

agreement, the employee can request conventional rest days or paid holidays. However, the employee is not required to make such a request and the employer is not forced to accept it. If no paid leave is used, the employer must notify the employee on the same day and by any means of the suspension of the employment agreement, with a suspension of compensation. The suspension of the agreement ends on the day on which the employee produces the required documents (valid health pass).

If the suspension lasts longer than 3 days, the employer must summon the employee to an interview (on site or by videoconference) allowing him or her to review the means to regularise the situation, in particular through an assignment, even temporary, to a position not subject to the obligation to present a valid health pass.

With regard to penalties for failing to present a health pass (Article L. 3136-1 of the Public health Code), employees or users who fail to comply with the obligation to present a health pass are liable to a 4th class fine (up to EUR 750) and in the event of a repeat offence within 15 days, they are liable to a 5th class fine (up to EUR 1 500). If the offence is repeated three times within 30 days, it may be punishable by 6 months' imprisonment and a fine of EUR 3 750.

The operator of one of the above-mentioned places or the person in charge of an event who does not control the health pass will be ordered to comply with their obligation. If the operator or the person in charge does not comply with this injunction, the authorities may order the administrative closure of the venue for a maximum of 7 days. If the violations are observed on more than three occasions over 45 days, the penalty is one year imprisonment and a EUR 9 000 fine.

1.2 Other legislative developments

1.2.1 Workers' representation

Law No. 2021-1104, of 22 August 2021 on fighting climate change and strengthening resilience to its effects was confirmed by the Constitutional Council (Constitutional Council, decision No. 2021-825 DC, 13 August 2021).

It is worth noting that Articles 40 and 41 of the Law contain provisions aimed at involving trade union organisations and the Social and Economic Council more actively in the fight against climate change.

Article 40 introduces the requirement to take account of the challenges of an ecological transition in branch and company-level negotiations on a forward-looking labour force and skills management (Articles L. 2241-4 and L. 2242-10 of the Labour Code: in the presence of an adaptation collective bargaining agreement, compulsory periodic negotiations in the company and at branch level must take place at least every four years and must cover, among other things, a forward-looking labour force and skills management. Article L. 2241-12 of the Labour Code: in the absence of an adaptation collective bargaining agreement, negotiations on a forward-looking labour force and skills must take place every three years) and includes the issue of ecological transition in the consultative responsibilities of the Social and Economic Council.

Under the terms of Article L. 2312-8 of the Labour Code, the Social and Economic Council's mission is to ensure that the collective expression of employees allows for their interests to be taken into account on an ongoing basis in decisions relating to the management and economic and financial development of the company, to the organisation of work, to vocational training and to production methods. It is now specified that this must be done in particular 'with regard to the environmental consequences of these decisions' (Article L. 2312-8, I, of the Labour Code).

Article 41 renames the Economic and Social Database into the Economic, Social and Environmental Database. This article also broadens its content (Articles L. 2312-21 and L. 2312-36 of the Labour Code: a new topic entitled 'environmental consequences of the company's activity' is added to the existing topics), extends the training of elected

representatives (Article L. 2315-63 of the Labour Code), expands the mission of the Social and Economic Council's chartered accountant to the environmental consequences of the activity of companies (Articles L. 2315-87-1, L. 2315-89 and L. 2315-91-1 of the Labour Code). Finally, this article also renames the economic, social and trade union training leave, which has become the economic, social, environmental and trade union training leave (Article L. 2145-1 of the Labour Code).

1.2.2 Employees' duty of neutrality

This concerns Law No. 2021-1109 strengthening the respect of the French Republic's principles, 24 August 2021, Official Journal of 25 August. While the Labour Division of the Court of Cassation established the principle of the application of the neutrality and secular principles to public service, including when it is carried out by a private organisation (Labour Division of the Court of Cassation, No. 12-11.690, 19 March 2013), the legislator has now incorporated this rule into the law to avoid any risk of infringement of these principles.

Thus, the public or private entity, which has been directly entrusted with the execution of a public service, is required to:

- ensure the equality of users before the public service; and
- ensure compliance with the principles of secularism and the neutrality of public service.

The employer concerned must therefore ensure that employees who participate in the performance of the public service:

- refrain from expressing their political or religious opinions; and
- treat all persons equally and respect their freedom of conscience and dignity.

A decree will have to specify the procedures for monitoring and sanctioning these obligations.

The implementation of this principle of neutrality is concretely translated by the inclusion of a neutrality clause in the internal rules or in a service memorandum (Article L. 1321-2-1 of the Labour Code).

Moreover, it has already been ruled that an employee's refusal to comply with the restriction on manifesting his or her beliefs must lead the employer, before any dismissal procedure, to seek an assignment that is not subject to this restriction (Labour Division of the Court of Cassation, No. 13-19.855, 22 November 2017).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Germany

Summary

(I) The State Labour Court Berlin-Brandenburg has delivered an important judgment on the eligibility of a trade union to conclude a collective agreement.

(II) The Federal Labour Court has suspended a case on the remuneration of night work pending before it until the CJEU rules on cases C-257/21 and C-258/21.

(III) The parliamentary group *Die Linke* in the German Bundestag has called for far-reaching amendments to the current law on temporary agency work.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Collective bargaining

State Labour Court Berlin, 21 BVL 5001/21, 24 June 2021

In the present case, a Regional Labour Court rejected applications from an employers' association to determine that the *ver.di* union is not eligible to conclude a collective agreement. In the Court's opinion, it can be assumed that an employees´ association that is 'assertive' in significant areas of competence claimed by it does not submit to employers' demands when concluding collective agreements, even in those areas where it lacks assertiveness. Therefore, any lack of assertiveness of the trade union *ver.di* in the area of the care sector does not in itself mean that *ver.di* as a whole is incapable of concluding collective agreements.

According to case law, there are—beyond the wording of section 2(1) of the Collective Bargaining Act (*Tarifvertragsgesetz*)—further requirements for the so-called collective bargaining capacity of employee associations arising from the need to ensure a functioning collective bargaining system. The most important of these requirements is so-called 'assertiveness' or social power.

2.2 Suspension of legal proceedings

The Federal Labour Court has ruled that a legal dispute may be suspended by analogous application of section 148(1) of the Code of Civil Procedure (*Zivilprozessordnung*, *ZPO*), if it is relevant to the decision of how EU law is to be interpreted, and a preliminary ruling on this question is already pending before the CJEU.

The decision of the Court is based on an action by which the plaintiff requested higher remuneration from the defendant for the hours he worked during night shifts . The plaintiff claimed that the provisions in the relevant collective agreement on bonuses for work during night shifts and alternating shift work violate the principle of equality of the Constitution (Article 3 (1) of the Basic Law – *Grundgesetz*, *GG*) and the principle of equal treatment under EU law. Work at night was remunerated at different rates. Circumstances other than health protection could not justify higher bonuses. Conversely, the defendant claimed that the provisions of the collective agreement were effective. The parties to the collective agreement, who were at most indirectly bound by fundamental rights, had complied with the broad scope for design and assessment they were entitled to in accordance with Article 9 (3) of the GG.

The lower courts had dismissed the action. The Federal Labour Court suspended the proceedings by analogous application of section 148 (1) of the ZPO until the CJEU has ruled on the references for a preliminary ruling in case C-257/21 and C-258/21, *Coca-Cola European Partners Deutschland GmbH v L.B*.

Section 148 (1) of the ZPO reads as follows:

> *"The court may, if the decision of the dispute depends wholly or partly on the existence or non-existence of a legal relationship, which is the subject of another pending dispute or which is to be determined by an administrative authority, order that the hearing be suspended until the other dispute has been settled or until the administrative authority has reached a decision."*

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Working time

In response to a question from the German Bundestag on the development of working time control (BT-Drucks. 19/31685 of 21 July 2021), the Federal Government commented on the implementation of CJEU ruling C-55/18, *CCOO* on the recording of working time. The Federal Government made the following statement in this regard:

> *"The question of what legislative consequences arise for Germany from the CJEU ruling is the subject of controversial discussion in the literature, between the social partners and within the Federal Government. Therefore, diligence is required to balance the different perspectives"* (BT-Drucks. 19/31886 of 05 August 2021, 4 et seq.).

4.2 Temporary agency work

In a motion (BT-Drucks. 19/30387 of 08 June 2021), the parliamentary group *Die Linke* demanded an end to the abuse of temporary agency work. It criticised the lack of a strict legal framework that effectively restricts the use of temporary agency work. The motion literally states:

> *"The bottom line is that the legal regulation of equal pay after nine months of employment for the majority of temporary agency workers comes to nothing, since only a few remain in a user undertaking for that long, and secondly, even this regulation can be extended to 15 months by collective agreement. The same applies to the maximum assignment period of 18 months: it can also be exceeded by collective agreement and is furthermore linked to the individual worker and not to the workplace"* (BT-Drucks. 19/30387 of 08 June 2021, 1).

In the group's view, the Temporary Agency Work Act thereby legitimises permanent employment in the temporary employment agency, contrary to the EU Directive on Temporary Agency Work.

The Federal Government is called upon to submit a draft law prohibiting the permanent occupation of jobs with temporary agency workers. Only in case of a temporary need should a job be occupied by a temporary agency worker for a maximum of three months. Temporary agency workers should receive the same wages and working conditions as permanent employees from the first day of employment, plus a flexibility surcharge of 10 per cent on their wages. Furthermore, the works council should have a mandatory right of co-determination in the use, organisation and restriction of temporary work.

4.3 Volume of work on the rise

The volume of work of employed workers in Germany was 52.4 million hours last year. Compared to 2005, this corresponds to an increase of about five million working hours. These and other figures on the employment situation in general and on the situation of atypical and precarious employment, in particular, are provided by the Federal Government in its answer (BT-Drucks. 19/32061 of 17 August 2021) to a question of the parliamentary group *Die Linke* (BT-Drucks. 19/31498 of 12 July 2021).

4.4 English translation of the Supply Chains Act

The so-called Act on Corporate Due Diligence in Supply Chains (*Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten*), which regulates the responsibility of German companies to respect human rights in global supply chains, is now also available in English. The law passed the Bundestag and Bundesrat in June 2021 (see June 2021 Flash Report) and was promulgated in the Federal Law Gazette on 22 July 2021.

Greece

Summary

(I) The Council of State has rejected the appeals of healthcare professional to suspend the provision that would place healthcare professionals on unpaid leave and entail the loss of social security if they do not get vaccinated against COVID-19.

(II) According to an upcoming bill by the Migration and Asylum Ministry, a residence permit can be provided to digital nomads for up to 12 months.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Mandatory vaccinations of healthcare professionals

Law 4820/2021 stipulates that several categories of employees, such as healthcare professionals, will be placed on unpaid leave and lose social security if they do not get vaccinated against COVID-19.

Four recent decisions of the Third Section of the Greek Council of State reject the appeals of 115 health employees requesting the suspension of the above provision concerning vaccinations against COVID-19.

The decisions are provisional and do not definitively rule out the issue of mandatory vaccination. The Council of State will soon consider whether to issue a final suspension decision on this issue or not.

1.2 Other legislative developments

1.2.1 Labour migration

According to the provisions of an upcoming bill by the Migration and Asylum Ministry, a residence permit can be provided to so-called 'digital nomads' for up to 12 months. They must have a minimum net monthly income of EUR 3 500. If a spouse or companion is included, the minimum income rises to EUR 4 200 per month and 15 per cent is added for each dependent child.

Those who are awarded such permits are prohibited from working for a local employer, and in order to not burden the national health system, must prove they are insured.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Draft Bill on caretaking mothers' cooperative

A Draft Bill on a cooperative of caretaking mothers has been submitted in May 2021. Parliament has not yet voted on the Bill.

The Bill would allow members of a cooperative of caretaking mothers to perform services for third parties through the cooperative. This would be very similar or even equal to temporary agency work, but would be exempt from the rules of the Labour Code (Article 46). Only very limited working time rules would apply to these workers.

Ireland

Summary

A report on the responses to the public consultation on the introduction of a right to request remote working has been published.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Teleworking

The Department of Enterprise, Trade and Employment has published a Report on the submissions received for the public consultation on the Introduction of a Right to Request Remote Working. Respondents, which included trade unions, employer representative bodies and individual employers and employees, who were asked a series of questions with options for general comments.

In response to the question on the timeframe for an employer to respond to an employee's request to work remotely, 64 per cent were in favour of a one-month timeframe. Concern was expressed by some respondents, who queried the meaning of a 'response' that the timeframe should relate to a 'decision'.

As to whether there should be a minimum length of service before an employee could make such a request, there was a wide variety of responses: 31 per cent were in favour of a 12-month service requirement; 25 per cent in favour of no service requirement; and 16 per cent in favour of six months.

Only 44 per cent of employer respondents felt confident of their ability to carry out a 'risk assessment' of an employee's proposed remote workplace and, when it came to the issue of 'reasonable grounds' for refusing a request for remote working, 38 per cent cited the 'physical nature' of the job, and 9 per cent cited 'client-facing' roles.

The two questions that generated the highest percentage of affirmative responses were, first, whether the employer should bear the cost of providing the equipment for a remote working arrangement. 85 per cent were in favour of the employer bearing the cost. Secondly, 84 per cent considered that an employer should have the entitlement to monitor the employee's activity.

These submissions will inform the 'deliberative process' in drafting the proposed legislation. The Minister, when launching the Report, recognised that not all occupations are suitable for remote working and confirmed that the government had committed to taking a 'balanced approach'.

4.2 Unemployment

As of 24 August 2021, 149 436 persons (46.4 per cent of whom are female) were in receipt of the Pandemic Unemployment Payment (PUP). The sectors with the highest number of PUP recipients are accommodation and food services (30 346), wholesale and retail trade (23 762) and administration and support services (17 158). The number in construction has dropped from 42 333, at the end of April, to 12 366. In terms of the age profile of PUP recipients, 18.7 per cent were under 25.

Additionally, 2 494 persons were in receipt of the COVID-19 Enhanced Illness Benefit. In total to date, 169 120 persons have been medically certified for receipt of this benefit, 53.5 per cent of whom were female.

Italy

Summary

The Italian Government has extended the requirement to carry a 'Green Pass' (obtained after vaccination against COVID-19, following recovery or a negative swab) for employees in the education sector.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Requirement of COVID-19 certificate

The Law Decree No. 111/2021, of 06 August 2021, establishes measures for the start of school and university and for public transport.

To ensure that pupils and students can attend school and university in person, the Decree provides the obligation for school and university staff and university students to hold a 'Green Pass'. From 01 September 2021 school and university staff without a 'Green Pass' are not allowed to access the workplace. Their absence will be considered unexcused and, starting from the fifth day of absence, the employment relationship will be suspended and no wage or other form of compensation will be due.

A 'Green Pass' is also mandatory for air travel, trains, ferries (except those crossing the 'Stretto of Messina') and buses travelling across at least two regions.

Persons who cannot be vaccinated (because they are under the age of 12 or for documented health reasons) are excluded from the obligation.

The Green Pass is obtained after an individual is vaccinated, after recovering from COVID or after a negative swab, which is only valid for 48 hours.

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 Collective bargaining

On 03 August 2021, the National Agency for collective bargaining in the Public Administration (ARAN) and national trade unions signed a collective agreement to determine the branches for the collective bargaining period 2019-2021. These branches are: Central Administrations, Local Administrations, Education and Research and Health.

Latvia

Summary

Draft amendments to national law envisage mandatory vaccination for employees who work in healthcare, long-term care institutions and education, ad well as the right to dismiss an employee on account of lack of a COVID-19 certificate.

1 National Legislation

1.1 Measures to respond to COVID-19 crisis

1.1.1 Mandatory vaccinations and requirement of COVID-19 certificate

In August 2021, the Cabinet of Ministers submitted amendments to the Law on Actions for the Prevention of Risks and Consequences Related to the Spread of COVID-19 (*Grozījumi Epidemioloģiskās drošības pasākumi COVID-19 infekcijas izplatības ierobežošanai*, available here) to Parliament.

These amendments envisage mandatory vaccination for employees who work in healthcare, long-term care institutions and education. In addition, the amendments envisage the right of any employer to dismiss an employee, whose work involves contact with a high number of customers, within 3 months if he/she does not present a valid COVID-19 certificate. The amendments are being intensively debated, as the vaccination rate in Latvia is among the lowest in the EU, meaning there is a considerable share of employees who are not vaccinated.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

(I) A judgment of the Supreme Court dismissed the claim of an employee to consider the time spent travelling to the client's location as working time.

(II) A judgment of the Supreme Court admitted the dismissal of an employee at the end of parental leave for subjective reasons that pre-date the commencement of parental leave.

(III) In a recent judgment, the Supreme Court did not review the proportionality of conventional disciplinary sanctions.

(IV) In a case in which the employee resigned before the commencement of the employment contract, the employee's resignation was found to be untimely and wrongful, so the employer could claim compensation.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working time

CSJ, 8th, CAL-2019-00954, 24 June 2021

An employee's contract contained a flexibility clause concerning his place of work. Although he usually worked at the company's headquarters, the employer assigned him to a client's office for approximately one year. The employee argued that the time spent travelling to the client should count as working time and referred in particular to the CJEU decision C-266/14, *CC.OO*.

The Court of Appeal (in a decision yet to be published) dismissed the employee's claim; it considered that the respective case law was not applicable in this case, since not only did the employment contract provide for flexibility, the change of workplace was also variable; the employee was not required to travel to a different client every day.

2.2 Parental leave

CSJ, 8th, CAL-2019-00954, 24 June 2021

In line with previous rulings, the Court of Appeal again decided (in a decision yet to be published) that the provisions of the Labour Code (L. 234-47), based on Directive 2010/18/EU (Framework Agreement on Parental Leave), do not prevent the employer from recovering his/her right to dismiss the employee with notice after the end of parental leave for reasons related to the employee's capacity or conduct that pre-dates the commencement of the parental leave.

According to the judgment, parental leave therefore protects against dismissal from the time of application until the end of the leave. While the employee in principle has the right to return to the same job or to an equivalent or similar job at the end of parental leave (Clause 5(1) of the Agreement), this text does not exclude dismissal.

2.3 Termination of contract

CSJ, 8th, CAL-2020-00229, 10 June 2021

For the employee to claim damages for unfair dismissal, he or she must prove that there was a dismissal; conversely, the employer can only claim possible compensation if there was a resignation.

In a case before the Court of Appeal (yet to be published), the employer argued that the employee had resigned, while the employee considered that he had been dismissed. In the end, the judges considered that neither the resignation nor the dismissal was proven, so that it remained unclear how the contract actually ended. Thus, if it turns out that the employment relationship was terminated without it being possible to establish who initiated the termination, no legal consequences related to either dismissal or resignation can be drawn.

2.4 Disciplinary sanctions

CSJ, 8th, CAL-2019-00887, 17 June 2021

Another decision of the Court of Appeal (yet to be published) can be interpreted as meaning that where a clause in the employment contract provides that the employer has the discretion to withhold part or all of the employee's bonus, and it is established that there has been a breach of the rules of conduct, the employer may discretionarily decide to withdraw the entire bonus without the court checking the proportionality between the breach and the sanction.

The Court of Appeal thus seems to continue to follow its case law that it does not review the proportionality of conventional disciplinary sanctions.

2.5 Omission of medical examination

CSJ, 8th, CAL-2021-00329, 15 July 2021

Not all employers comply with the obligations of the pre-employment medical examination (*examen medical d'embauche*). If the omission of this examination can lead to criminal sanctions, the question arises whether civil consequences can be attached to it.

In the present case (yet to be published), the fact that the employee's capacity for work was not confirmed by an occupational physician at the time of hiring meant that he was, at a later stage, denied the benefit of a professional reclassification (*reclassement professionnel)*. He therefore sued his employer for compensation for material and moral damage, or at least for loss of opportunity (*perte d'une chance*). He was dismissed from all his claims, the judges considering that the causal link between the employer's fault and the damage was uncertain.

2.6 Resignation before taking up employment

CSJ, 3rd, CAL-2020-00529, 01 July 2021

There is some legal uncertainty as to the regime to be applied to a resignation before the employment contract has actually commenced. In the present case, the contract was subject to the condition that the company would win a tender; although this condition was fulfilled, the employee had informed the employer in advance that for personal reasons, he would not take up the job.

In this recent decision (yet to be published), the Court of Appeal gave an innovative answer. It considers that an employment contract is only subject to the rules of the Labour Code from the moment it takes effect, which can be postponed by virtue of a

suspensive term. Therefore, the dispute was resolved on the basis of the general rules of the law of obligations and civil liability. The employee's resignation was found to be untimely and wrongful, so that the employer could claim compensation.

However, due to lack of evidence, the majority of the material damage claimed by the employer was not awarded. For the compensation of reputational damage (towards the company's customer; *atteinte à l'image*), the Court nevertheless awarded a lump sum of EUR 1 500.

This solution could also be transposed to dismissal before taking up employment.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

(I) Whereas working from home is still recommended, students in higher education will be taught on campus during the new academic year.

(II) The Dutch Court of Appeal (The Hague) considered the refusal of an employee to work at the office during the pandemic to not represent a condition for a legally valid dismissal.

(III) According to the Dutch Court of Appeal (Amsterdam), the Dutch court has jurisdiction in a case involving a pilot who usually starts and ends his work at Schiphol Airport.

(IV) The Dutch Court of Appeal (The Hague) ruled on the reimbursement by an employee of the educational expenses covered by the employer.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Teleworking

In the Netherlands, the urgent advice to work from home still applies to prevent the spread of COVID-19. However, one deviation is being made. In the new academic year, students in higher education will be taught on campus in person instead of online. Additionally, the general rule to keep a distance of one and a half metres between persons no longer applies at institutions for higher education. A number of conditions apply, such as the use of face masks outside the classroom or lecture halls and a maximum group size of 75 students.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Flexible working conditions

Court of Appeal The Hague, ECLI:NL:GHDHA:2021:1373, 11 August 2021

A judgment of the Court of Appeal in The Hague discussed several occurrences regarding the end of an employment contract. One of these was the fact that the employer required the employee to be present at the office during the COVID-19 pandemic, despite the government's recommendation for employees to work from home as much as possible. The employer had no pressing reason why presence in the office was necessary and the employee refused to go to the office because of the pandemic. His wages were blocked and he was subsequently fired.

According to the Court of Appeal, the conditions for a legally valid dismissal were not met. When reaching this conclusion, it was taken into account that the employer had not adequately explained the importance of the employee's presence at the office. According to the Court of Appeal, the refusal of the employee to be present at the office and the other circumstances of the case could not be regarded as acts, characteristics or conduct of the employee that warrant the employer's explanation that it could no longer reasonably be expected to allow the employment contract to continue.

2.2 Location of work performance

Court of Appeal Amsterdam, ECLI:NL:GHAMS:2021:2319, 17 August 2021

A judgment of the Court of Appeal Amsterdam concerned the question from where a pilot fulfilled the main part of his obligations towards the airline. This is relevant with regard to establishing whether or not the Dutch court has jurisdiction and whether or not Dutch law applies to the dispute.

Article 21(1)(b)(i) Brussels I-bis Regulation and the home base within the meaning of Regulation 3922/21 are relevant European frameworks for this case. Article 21(1)(b)(i) Brussels I-bis Regulation provides that an employer domiciled in the territory of a Member State may be sued in another Member State in the court of the place where or from which the employee habitually works or has worked.

The pilot in this case usually started and ended his work at the Airport of Amsterdam-Schiphol. Since the place where the pilot usually worked could not be established, the Court of Appeal had to determine the place 'from which' the pilot fulfilled the main part of his obligations towards the employer in order to determine whether it has jurisdiction. This was determined to be Schiphol Airport, giving the Dutch court jurisdiction in this case.

2.3 Cost of educational expenses

Court of Appeal The Hague, ECLI:NL:GHDHA:2021:1529, 25 August 2021

In a case brought before the Court of Appeal in The Hague, an employer claimed reimbursement from a former employee of study costs that were paid by the employer during the employment contract between the two parties. According to the Court of Appeal, the former employee did not culpably terminate the employment contract without renewal and did not expressly promise to reimburse the costs. Additionally, he was not required to reimburse the study costs on the basis of reasonableness, either. Thus, the Court of Appeal concluded that the employee did not have to reimburse these costs.

This ruling is interesting in light of Article 13 of Directive 2019/1152 on transparent and predictable working conditions. This article states that Member States shall ensure that where an employer is required by Union or national law or by collective agreements to provide training to a worker to carry out the work for which he or she is employed, such training shall be provided to the worker free of cost, shall count as working time and, where possible, shall take place during working hours.

In the present case, the employee did not have to reimburse the study costs as the conditions for an obligation to do so had not been met. However, if these conditions had been met, an obligation for the employee to reimburse the costs might have conflicted with Article 13 of Directive 2019/1152.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Norway

Summary

The final step of the Norwegian government's plan for a gradual reopening of society, initially planned for late July, has been postponed because of increasing infection rates.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Reopening of society

The fourth and final step of the government's plan for a gradual reopening of society was initially planned for late July, but has been postponed due to increasing infection rates.

Following a long period of decreasing infection rates, an increasing trend is now evident. By the end of August, the daily infection rates were as high as during the peaks in previous periods. However, the number of hospitalised is low. Approximately 70 per cent of the population has received the first dose of the vaccine, and 55 per cent are fully vaccinated.

Stricter regulations are in place in some municipalities and regions where infection rates are high.

The employment and labour law measures introduced in 2020 to mitigate the effects of the COVID-19 crisis have been elaborated in previous Flash Reports. There were no significant developments related to these measures in August 2021.

1.1.2 Travel ban

The request to refrain from traveling abroad was removed on 05 July to countries in the EEA, Schengen and the UK, and other countries considered safe (see July 2021 Flash Report).

There are restrictions to entry into Norway by foreign nationals, but these restrictions were further eased from 26 July 2021 onwards. See further details on the current regulations here.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Unemployment rate

The unemployment rate has been relatively stable since October 2020, but rose slightly between December and March. Since then, the employment rate has started to decline. The drop was significant in both May and June. At the beginning of July, there were 163 300 unemployed persons, amounting to 5.8 per cent of the workforce (see the figures here). The numbers for August have not yet been published.

Poland

Summary

(I) The Ministry of Health has elaborated the draft of a law that would give the employer the right to obtain information whether employees have been vaccinated against COVID-19, and to unilaterally modify the employment conditions of employees who are not vaccinated.

(II) The amendment to the Law on Work at Sea was signed by the President.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Information on vaccination status of employees

According to media information, the Ministry of Health has elaborated a law that would give the employer the right to obtain information whether employees have been vaccinated or have recovered from COVID-19.

In Poland, the vaccination against COVID-19 is not mandatory. The employer does not have statutory competence to request employees to inform the employer whether they have been vaccinated against the coronavirus, although employees do provide such information on a voluntary basis. The draft provides that each employer would have access to a national database and would be able to check the vaccination/heath status of their employees. The draft provides that the employer would be entitled to unilaterally modify the employment conditions of employees who are not vaccinated. For example, it would be admissible to assign a non-vaccinated employee other type of work or to modify the location of work performance (e.g. without contact with other employees and/or clients). The non-vaccination status of an employee cannot be a ground for dismissal.

The draft has not yet been made public. The media information is available here.

It can be expected that the draft will soon be submitted to Parliament and will be subject to the legislative process.

1.2 Other legislative developments

1.2.1 Seafarers and ILO Maritime Labour Convention

The amendment of 23 July to the Law of 05 August on work at sea enacted by the Sejm (the lower chamber of Parliament) was subject to an additional legislative process. On 06 August, the amendment was accepted by the Senate, and on 19 August, it was signed by the President. The new regulations will implement the provisions of the ILO Maritime Labour Convention, as amended by the Special Tripartite Commission on 27 April 2018. The draft was analysed in the July 2021 Flash Report.

The Law of 5 August 2015 on work at sea (consolidated text: Journal of Laws 2020, item 1353) is available here.

The amendment of 23 July and its substantiation is available here.

The information on the legislative process is available here.

The amendment will take effect soon, 14 days after it is promulgated in the Journal of Laws.

2 Court Rulings

Nothing to report.

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 in the Portuguese mainland territory until 30 September 2021, and extended the extraordinary support for the progressive resumption of activity until the end of the month in which restrictive measures apply to economic activities based on a legislative or administrative order;

(II) The government has presented a set of proposals to the social partners to promote the Decent Work Agenda (to be discussed as of 03 September 2021), which may result in amendments to Portuguese labour law.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Relief measures for businesses

By Resolution of the Council of Ministers No. 114-A/2021, of 20 August, the government has extended the state of emergency in the Portuguese mainland territory until 30 September 2021. This resolution entered into force on 23 August 2021.

Furthermore, Decree Law No. 71-A/2021, of 13 August extends the period of application of extraordinary support for the progressive resumption of activity ('*apoio extraordinário à retoma progressiva da atividade*'), created by Decree Law No. 46-A/2020, of 30 July, and subsequently amended within the context of the COVID-19 pandemic. Specifically, employers can benefit from this support—and can reduce the normal working period of employees—until the end of the month in which, in accordance with a legislative or administrative order, restrictions to economic activities, such as rules on opening hours, occupation or capacity of establishments or events, as well as limitations on the movement of people in the territory, or restrictions to access of tourists from the main tourist source markets, remain in force (this rule applies from 14 August 2021).

During the period of application of this measure, as well as during the following 90 days, the employer cannot terminate employment agreements through collective dismissal, dismissal due to the extinction of job positions or dismissal for ineptitude, nor initiate the respective procedures.

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 Proposals to promote the Decent Work Agenda

The government has recently presented a set of proposals to the social partners to promote the Decent Work Agenda, following the discussion of the Green Book on the Future of Work.

Discussions on the proposed measures between the government and social partners will begin on 03 September 2021. The proposed measures cover different issues, including, among others, temporary work, misclassification of independent contractors, probation period, digital platform workers, collective bargaining agreement and reinforcement of employment authority powers.

The referred agenda and upcoming discussion with social partners are likely to result in amendments to current labour legislation.

Romania

Summary

(I) The state of emergency and the measures to prevent the spread of the virus have been extended until 09 September 2021.

(II) The quarantine leave allowance is no longer fully supported by the State in all situations.

(III) A decision of a Court of Appeal reaffirms that the right to weekly rest must be granted within each seven-day period, even if the employee has received days off in advance.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 State of emergency

The state of emergency was extended in Romania for another 30 days by Government Decision No. 826/2021 on the extension of the state of emergency on the Romanian territory starting on 11 August 2021, as well as the establishment of the measures applied during the state of emergency to prevent and fight the effects of the COVID-19 pandemic (published in the Official Gazette of Romania No. 767 of 06 August 2021).

1.1.2 Quarantine leave

Under the provisions of the state of emergency, employees traveling in areas of epidemiological risk are entitled to quarantine leave, which is subject to the rules on sick leave. However, the legal regime of such leave days was amended by Emergency Ordinance No. 74/2021 on the amendment and completion of Government Emergency Ordinance No. 158/2005 (published in the Official Gazette of Romania No. 645 of 30 June 2021). In the application of the new regulations, Order No. 1,398/729/2021 was adopted (published in the Official Gazette of Romania No. 745 of 30 July 2021).

The main issue related to the new regulations concerns compensation due in case of quarantine leave. Thus, as a rule, this allowance is borne by the State from the Unique National Health Insurance Fund. As an exception, however, the new regulations stipulate that this allowance will be borne from this source for only 5 days, if the employee has travelled for private purposes in an area where at the time of travel there was an epidemiological risk. Since the quarantine leave is still 14 days, the question in this case is which legal regime covers the remaining 9 days. The texts of the law do not provide an answer to this question, therefore, in practice, these days have so far been considered days that have the legal status of unpaid leave. They are considered excused absences, but the employer will not be required to remunerate them.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Rest time

Iași Court of Appeal, no. 406/22021, 26 May 2021

The Iași Court of Appeal issued a decision (Decision No. 406/2021 of 26 May 2021, available at 406/2021 *contestatie decizie de sanctionare* – ROLII) on the allocation of rest time in the case of an employee who worked as a bus driver. The issue raised concerned the right to a weekly rest period of an employee who benefited from leave hours granted in advance.

Thus, according to Art. 122 (3) of the Labour Code, "*during the periods of reduction of activity, the employer has the possibility to grant paid days off from which the overtime provided during the following 12 months can be compensated*". Article 137 (1) of the Labour Code stipulates that the weekly rest period is 48 consecutive hours and that it is carried out as a rule on Saturdays and Sundays. By exception, the weekly rest period can be granted on other days of the week, in which case the employee benefits from a salary bonus.

In the present case, the employee was granted leave hours in advance, referred to in the company's procedures as 'credit hours'. Subsequently, he was scheduled to work overtime to recover the credit hours. These hours were scheduled on Saturdays and Sundays, at the end of a week during which he had worked from Monday to Friday.

The employee did not show up for work, considering that this violates his right to a weekly rest period, and the company applied a disciplinary sanction for unexcused absences. The employee challenged the sanction in court.

The employer argued that it only has the possibility to schedule the employee to work for the recovery of credit hours on leave days, i.e. on Saturdays and Sundays, in order to ensure the continuity of the transport activity. According to Art. 122 (3) of the Labour Code, the employee must provide overtime based on a request by the employer, in other words, when the employer, during the 12 months following the advance payments, schedules the employee to work overtime to compensate for the 'credit hours'.

The Iași Court of Appeal, upholding the decision of the Court of First Instance, decided that the disciplinary sanction is unjustified, the absences are not 'unauthorised', so that the deed does not meet the conditions of a disciplinary violation. In its ruling, the Court referred to case C-306/16, *Maio Marques da Rosa*, where the CJEU ruled that the minimum weekly rest period should be granted within each seven-day period. The fact that the employee had received days off in advance, which he was to compensate with overtime, was not considered relevant as regards the observance of the employee's right to a weekly rest period.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Minimum wage

Discussions surrounding the minimum wage for the year 2022 started in accordance with Act No. 663/2007 Coll. on minimum wage, with negotiations among the social partners at the national level.

According to Article 7 of Act No. 663/2007 Coll. on minimum wage, if an agreement between the employers' representatives and the employees' representatives is reached by 15 July or at the meeting of the Economic and Social Council of the Slovak Republic by 31 August, the monthly minimum wage for the following calendar year will be based on their agreement.

However, at the meeting of the Economic and Social Council of the Slovak Republic on 23 August 2021, no agreement between the employers' representatives and the employees' representatives was reached, as has been the case in the previous ten plus years.

According to Article 8 of Act No. 663/2007 Coll., if no agreement is reached pursuant to Article 7, the amount of the monthly minimum wage for the following calendar year will be 57 per cent of the average monthly nominal wage of an employee in the Slovak economy published by the Statistical Office of the Slovak Republic for the calendar year which precedes the calendar year by two years for which the amount of the monthly minimum wage is determined.

Consequently, the minimum wage for the year 2022 is as follows:

- the gross monthly minimum wage: EUR 646.00 (EUR 623.00 in 2021)
  the gross hourly minimum wage: EUR 3.71 (EUR 3.58 in 2021).

Slovenia

Summary

Various measures aiming to contain the spread of COVID-19 virus infections also applied during August 2021.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Relief measures

Various measures aiming to contain the spread of COVID-19 virus infections applied during August 2021. The most recent ones have been published in the Official Journal of the Republic of Slovenia (OJ RS) No. 138/2021 of 31 August 2021; No. 135/2021, 27 August 2021, pp. 8176-8178, and OJ RS No. 136/2021, 27 August 2021, p. 8183.

Various measures aimed at mitigating the negative consequences of the COVID-19 crisis also remain in force. A summary overview of all valid measures are published in English here on the Government's website.

In those sectors of activity in which the recovered-vaccinated-tested (RVT) requirement is mandatory for workers, the rapid antigen tests remain free of charge and the costs are covered by the State budget.

The Decree on the implementation of screening programmes for the early detection of SARS-CoV-2 virus infections, adopted in July 2021 (see July 2021 Flash Report), was amended twice in August 2021 (see OJ RS No. 132/2021 of 20 August 2021, and OJ RS No. 135/2021 of 27 August 2021, p. 8176).

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 Social dialogue

Following the decision of all national representative trade union confederations to retreat from the Economic and Social Council and other forms of social dialogue because the government failed to respect the social dialogue (see May 2021 Flash Report; see also here), an attempt was made to restore social dialogue in Slovenia.

On 26 August 2021, all social partners—the trade union representatives, the employers' organisations and the government—attended a meeting organised by the President of the Republic of Slovenia. No relevant improvements were achieved except that they

agreed that a special negotiating group would prepare an agreement on restoring the dialogue.

4.2 Collective agreement on the pension plan for public employees

The Slovenian Union of Journalists (*Sindikat novinarjev Slovenije*) acceded to the already concluded collective agreement on the pension plan for public employees 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 uslužbence*', OJ RS No. 128/2021, 13 August 2021, p. 7968).

Spain

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Unemployment

Unemployment dropped by 197 841 persons in July. The trend seems to be consolidating because unemployment has reduced by 592 291 persons over the last five months. There are currently 3 416 498 unemployed persons in Spain.

4.2 Minimum wage

The minimum wage is usually updated (increased) in December/January every year. However, there were no changes for 2021 due to the COVID-19-related crisis. The government announced in August that the minimum wage will be increased in September, following consultations with the most representative unions and business organisations.

Sweden

Summary

(I) In a case concerning the posting of workers, the Labour Court ruled that statutory remuneration in Lithuania should not be included in the calculation of the application of the Swedish collective agreement applicable to the workplace.

(II) The Labour Court has concluded that a employer who refused to apply an age-related early retirement or altered working conditions scheme had violated the collective agreement covering this scheme, since the application of the scheme could be justified with regard to the employee's health.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Posting of workers

Swedish Labour Court, AD 2021 No. 42, 25 August 2021

In case AD 2021 No. 42, the Court addressed a situation in which a Lithuanian company had signed a suspension collective agreement (hängavtal) with the Swedish trade union, but had not applied all of the agreement's provisions to the posted workers. The Swedish transposition of the posted workers directive presupposes that Swedish trade unions will function as watchdogs of the Swedish labour market and, as an ultima ratio option, take industrial action to demand a special type of limited collective agreement for posted workers. However, if the posting employer voluntarily (i.e. without industrial action having been taken) signs a collective agreement, it will have full effect, just like a 'normal' Swedish collective agreement. In the present case, the Lithuanian employer had voluntarily signed the suspension collective agreement. Questions also emerged in relation to provisions in Lithuanian labour law on the calculation of, or possibly an additional fee to the statutory remuneration of posted workers under Lithuanian law. While accommodation and travel expenses were covered by the employer, this particular posting of workers remuneration added EUR 29.50 for each posted day. The Swedish Labour Court concluded that the Lithuanian additional fee did not breach any EU provisions, and furthermore, that it should *not* be part of the calculation of the amount of pay or overtime pay the employees were entitled to under the suspension collective agreement with the Swedish trade union. Since the Lithuanian statutory remuneration was, according to the Labour Court, to be considered separately, the employees' total salary and over-time pay did not match the Swedish suspension agreement, with the result that the employer violated the collective agreement. The employer, moreover, had not properly applied the provisions of the collective agreement on the calculation of overtime and working time, and the Court concluded that the employer had to pay damages to the (Swedish) trade union for breach of the collective agreement. The trade union could not prove that other violations, such as limited payment to the occupational pension scheme, had occurred.

The case reflects some very interesting features of the Swedish application of the Posting of Workers Directive – and the interpretation of foreign law in parallel to a domestic suspension collective agreement. The key question concerning the inclusion or exclusion of the Lithuanian statutory remuneration for posted workers resulted in a closer reading of both the Directive and Lithuanian legislation. The Labour Court's conclusion that this payment was an additional fee and did not affect the calculation of the employees' salary (and other forms of payment) under the collective agreement

appears to be well-argued. The employer objected that this interpretation represents an unsurmountable burden for their work and services, contrary to free movement under Art 56 TFEU. The Labour Court, which rejected the employer's request to submit the case to the CJEU, ruled against the employer and focussed primarily on the interpretation of the provisions in the collective agreement.

2.2 Age Discrimination

Swedish Labour Court, AD 2021 No. 38, 18 August 2021

The Labour Court case AD 2021 No. 38 concerned the collective agreement for sea pilots employed as civil servants. The collective agreement included provisions on an option for early retirement or significantly altered working conditions after the age of 60. The employee (a sea pilot) continued his employment relationship on his previous conditions, even after turning 60, but the trade union claimed that this constituted a violation of the collective agreement, since the same conditions continued to apply to the employee, most importantly, his working time. The Swedish Maritime Administration (*Sjöfartsverket*) argued that an application of the collective agreement and a discontinuation of the previous terms would constitute age discrimination.

The Labour Court concluded that the application of new conditions after reaching the age of 60 years would have been a case of unequal treatment, but that the provisions in the collective agreement were justifiable considering an older worker's increasing need for rest and time off. The Labour Court also found that more stringently regulated working time reflected reasonable and necessary measures for the benefit of the older worker's rights, and that such social aspects could fall under the scope of the negotiations between the industrial partners.

The Labour Court concluded that the employer had violated the collective agreement and was liable to pay damages to the trade union.

The case is interesting insofar as it clearly demonstrates the significance of collective agreements also in cases of discrimination. The justification for treating workers who are older than 60 years of age differently was, according to the Labour Court, clearly associated with the health and status of the employee. In a previous case, AD 2011 No. 37 on redundancy selection of older cabin staff within the Scandinavian Airlines Systems, the Labour Court concluded that differential treatment in a collective agreement, which did not relate to the health or social status of the older employees, was not justifiable.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

United Kingdom

Summary

(I) Restrictive measures have been lifted in Scotland and Wales;

(II) The Act providing for mandatory vaccination of staff employed in registered care homes has been challenged in front of the court;

(III) In the context of Brexit, an open consultation has been launched concerning the implementation of the Trade and Cooperation Agreement.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Re-opening of society

The Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (SSI 2021/277) allowed all businesses and venues in Scotland to open from 09 August 2021.

Likewise, on 07 August 2021, Wales moved into Alert Level 0.

1.1.2 Mandatory vaccinations in social care

The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 (SI 2021/891) (Regulations) were made on 22 July 2021 and come into force on 11 November 2021. They amend SI 2014/2936 by requiring staff employed in registered care homes to be fully vaccinated unless they are exempt.

A judicial review has now been started to challenge the scheme.

The government has also published operational guidance on managing the scheme.

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 Brexit

The Cabinet Office has launched an open consultation on engagement with business and civil society groups in accordance with Articles 13 and 14 of the Trade and Cooperation Agreement (TCA), which provides for the parties to consult a domestic advisory group (DAG). The questions are:

> *"How should the UK Government engage formally on TCA implementation issues through a domestic advisory group? The Government is planning a*

meeting once or twice a year with one group and would welcome your comments on the format, scope, and other ways of consultation. How do you see this group operating effectively?

If a selection had to be made, what further criteria, additional to those set out in Article 14 of the TCA, could be prioritised to decide the members of the UK delegation to the Civil Society Forum, e.g. the size of the economic or public interest, geographical interest, trade knowledge and experience or ability to protect and represent the UK's interest effectively?

What role should the UK Government play in supporting interactions between UK and EU stakeholders on TCA implementation, in addition to the sharing of contact information under the terms of the TCA and facilitating the CSF meetings?"

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.

Publications Office
of the European Union