



Flash Reports on Labour Law October 2021

Summary and country reports

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Flash Report 10/2021 on Labour Law

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Executive Summary

National level developments

This summary is divided into two parts. The first part offers an overview of the extraordinary developments 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 October 2021, many countries still have measures in place to prevent the spread of the COVID-19 virus in the workplace. In response to an increase in infection rates, a state of emergency and/or restrictions on business activities were extended or re-adopted in the **Czech Republic**, **Portugal** and **Romania**. Conversely, other countries such as **Denmark** and **Cyprus** eased the previously instated restrictions.

In **Austria**, a collective agreement including a rule to fight COVID-19 in the workplace has been declared universally applicable.

In **Belgium**, teleworking is once again being strongly recommended for all companies. Similarly, in **Romania**, employers are required to arrange teleworking for at least 50 per cent of the workforce. By contrast, in **Italy**, the personal presence of public administration workers is now required, with teleworking only being admitted under certain conditions.

In many countries, some categories of workers are required to provide a COVID-19 certificate (so-called '3G Certification', 'Green Pass', 'SafePass', etc.) verifying that they have been vaccinated against COVID-19, have recovered or provide a negative test result. In **Austria**, the '3G rule' will apply in both the public and private sector from 01 November 2021

onwards. Likewise, in **Greece**, public and private sector employees will have to pay for weekly tests or carry a vaccination certificate to gain access to their workplace, while in **Luxembourg**, it is now possible to introduce the 'COVID-check' regime in companies as well as in public administrations. Furthermore, in **Italy**, the procedures for checking the 'Green Pass' in the workplace have been defined, while in **France**, the reimbursement of COVID-19 tests has been limited to certain categories of the population. Finally, in **Croatia**, all employees in the healthcare sector must now be tested twice a week.

By contrast, in **Lithuania**, the President has vetoed Parliament's attempt to impose the duty on employees to present evidence of their vaccination or to undergo periodical testing at their own expense.

More case law relating to employees who do not adhere to COVID-19 testing rules emerged in **Austria**, where the Supreme Court upheld the dismissal of an employee who went to work while officially being quarantined.

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. Previously enacted relief measures have been extended in **Norway**.

In **Bulgaria**, a new Decree regulates the economic compensation of workers in sectors where temporary restrictions have been imposed to fight the pandemic. Similarly, in **Italy**, employers in non-industrial sectors who have no access to the Wages Guarantee Fund are entitled to a redundancy fund for a maximum of 13 weeks if their undertakings suspend or reduce their work activity due to COVID-19.

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In the **Netherlands**, specific measures remain in place after the expiration of the COVID-19 Emergency Package.

Leave entitlements and social security

Special care benefits or family leave for parents whose child needs to quarantine

or in the event of school closures have been reintroduced in **Austria** and **Italy**, where they will be in force until 31 December 2021. Also, leave of unvaccinated pregnant women has been extended until the end of December 2021 in **Austria**.

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

| Topic | Countries |
|--|-------------------|
| Proof of vaccination or negative test for workers | AT EL FR IT LU LT |
| Relief measures | BG IT NO |
| Teleworking | BE RO IT |
| Restrictive measures | CZ PT RO |
| Childcare leave | AT IT |
| Re-opening of society | DK CY |
| End of relief measures | NL |

Other developments

The following developments in September 2021 were of particular significance from an EU law perspective:

Transfer of Undertaking

In the **Czech Republic**, the Supreme Court has ruled that a significant reduction of the employee's salary in the context of a transfer of undertaking must be considered a substantial deterioration of the worker's working conditions.

In **Spain**, the Supreme Court ruled that in the event of a transfer of undertaking, the applicable rules entail the succession of all workers of the former business under the new employer.

In **Finland**, the Labour Court held that new employment contracts concluded by the transferee are not governed by the collective agreement applied by the transferred undertaking.

In **Portugal**, the Supreme Court of Justice submitted a request for a preliminary ruling to the CJEU regarding the interpretation of Directive 2001/23/EC. Similarly, in **Romania**, courts are facing problems arising from the definition of the concept of transfers of undertakings in national law.

Fixed-term work

In **Estonia**, the Employment Contracts Act will be amended to allow for the conclusion of short-term contracts without restrictions.

In the **Netherlands**, a provision in a collective agreement excluding protection against abuse of successive fixed-term contracts was ruled to be unlawful.

In **Portugal**, the Lisbon Court of Appeal ruled that the stipulation of a short contract to provide services between the employer and a third party is not a sufficient reason to justify recourse to a fixed-term contract with the employee.

Posting of workers

In **Luxembourg**, a bill implementing Directive (EU) 2020/1057 on the posting of workers in the road transport sector and adapting the implementation of Directive 2014/67/EU has been deposited.

Similarly, in **Slovakia**, the legislation was amended to implement Directive (EU) 2020/1057.

Other developments

In **Austria**, the Supreme Court ruled that the relevant professional experience of a migrant worker must lead to the same salary classification as the similar experience of a domestic worker.

In **Germany**, the Federal Labour Court requested a preliminary ruling to the CJEU, asking whether the provisions of a collective agreement providing for overtime pay for part-time workers only in respect of hours worked in excess of the working time of a full-time employee amounts to a discriminatory treatment of part-time workers. Conversely, in another ruling, the Federal Labour Court held that a collective agreement containing independent provisions on overtime for part-time workers does not discriminate against them.

In **Hungary**, according to a decision of the Supreme Court in relation to the application of the Rome I Regulation, if an employee works abroad, the applicable national labour law must be defined first.

In **Lithuania**, a new law introduces the several joint liability of the main constructor for payment of wages to the employees of the subcontractor.

In the **Netherlands**, the Act on Paid Parental Leave implementing Directive (EU) 2019/1158 was passed by the Senate.

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Table 2: Other major developments

| Topic | Countries |
|---------------------------------------|----------------|
| Transfer of undertaking | CZ ES FI PT RO |
| Minimum wage | EE HR IE SK UK |
| Fixed-term work | EE NL PT |
| Posting of workers | IT LU SK |
| Leave entitlements | BE FR NL |
| Dismissal | BE FR IT |
| Collective bargaining | IT SI |
| Migrant workers | AT |
| Occupational health and safety | CZ |
| Part-time work | DE |
| Working time | FI |
| Employees' copyright | HR |
| Applicable legislation | HU |
| Subcontracting | LT |
| Placement of workers | NL |
| Ban on Sunday trade | PL |
| Undeclared work | RO |
| Employment status | UK |

Austria

Summary

(I) The so-called '3G rule' requiring a COVID-19 certificate has been introduced at the workplace.

(II) The special paid leave for parents in case of school closures was reintroduced until 31 December 2021, while special pregnancy leave for unvaccinated women was extended.

(III) The Supreme Court ruled on the dismissal of an employee who went to work despite testing positive for COVID-19, as well as on previous work experience with other employers for the calculation of pay.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 COVID-19 certificate

Both the National and Federal Assembly passed an amendment of the COVID-19 Measurements Act on 13 and 21 October 2021, respectively, and entered into force on 23 October 2021 (Amendment of the *COVID-19-Maßnahmengesetz/COVID-19 Measurements Act*, BGBl. I Nr. 183/2021 and 3. *COVID-19-Maßnahmenverordnung – 3. COVID-19-MV/3. COVID-19 Measurement Ordinance/Public Order*, BGBl. II. Nr. 441/2021). The amendment now allows the Minister of Health and Social Affairs to issue a public administrative order introducing the so-called '3G rule' at the workplace, which he did on 25 October, through an amendment of the currently applicable 3rd COVID-19 Measurement Ordinance/Public Order.

The 3G-rule at the workplace will apply from 01 November 2021 onwards, with a transition phase up to and including 14 November. During the transition period, employees must either provide a 3G certificate (meaning evidence that they are either vaccinated, have recently been tested or have recovered from COVID-19) or must wear an FFP2 mask at all times. From 15 November 2021, onwards, a 3G certificate is mandatory. Only employees in senior and nursing homes and in hospitals must wear mouth-nose protection in addition to being in possession of a valid 3G certificate.

The 3G rule at the workplace applies to both the public and the private sector and does not differentiate between type or size of the company. It applies when physical contact with other persons cannot be ruled out at the workplace and is therefore aimed at employees and owners alike who are in contact with other people at their workplace. The only exception is if there are maximum two physical contacts per day, which take place outdoors and do not last longer than 15 minutes each. Examples mentioned by the Ministry of Health are lorry drivers or foresters. Working from home is generally possible without 3G proof, as there is likely to be no physical contact with other employees/customers.

Employers may not admit employees to the work premises/ to have contact with others without a valid 3G certificate. If home-office has been agreed (or is agreed), employees without a 3G certificate may work from home. If not, employees who may not enter the work premises due to lack of a valid 3G certificate lose their entitlement to remuneration for the time they are unable to work as a result of the lack of a valid 3G certificate. They may also be dismissed, in certain cases, even a [summary dismissal is likely to be legally possible](#). The Ministry of Labour has provided detailed and [official FAQs](#).

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Both employers and employees are responsible for compliance with the 3G regulation and are subject to fines of up to EUR 500 (for employees) and 3 600 (for employers) in case of non-compliance.

1.1.2 Care leave

As described in detail in the September 2021 Flash Report, the legislator re-introduced funded paid leave for parents during the COVID-19 crisis (§ 18b AVRAG). The legislative proposal passed the National Assembly on 22 September 2021 and passed the Federal Assembly on 07 October 2021. The Act entered into force retroactively as of 01 September 2021 and remains in force at least until 31 December 2021 ([BGBl. I Nr. 180/2021](#)).

Funded paid leave for parents (and relatives with certain care obligations) aims to allow employees with certain care responsibilities who are affected by the full or partial closure of day care facilities additional paid leave for up to three weeks, for which the employer is then reimbursed by the State. Employees are entitled to special care time with continued remuneration for the care of:

- a) children under 14 years of age if educational institutions or childcare facilities are partially or completely closed due to official measures, or if the child is placed in quarantine by the authorities;
- b) persons with disabilities if the establishment providing disability assistance/the teaching institution or school in which they are looked after or taught is partially or completely closed due to official measures, or if the care is provided at home on a voluntary basis;
- c) relatives of persons with disabilities who require personal assistance if the personal assistance can no longer be guaranteed as a result of COVID-19;
- d) dependents of persons in need of care (generally, these are elderly and/or sickly citizens living at home with a professional caregiver at their side) if their caregiver is unavailable and therefore, care can no longer be ensured.

The employee must take all reasonable steps to ensure that she or he can perform the agreed work. Only in cases where there are no alternative care options does an entitlement to funded paid leave exist. Employees who are not entitled to paid funded leave or any other alternative care leave and whose work is not required for the operation of the establishment in which she or he is employed may agree with her or his employer on paid funded leave.

Government provides a detailed [official FAQ](#) with regard to funded paid leave.

1.1.3 Special pregnancy leave

Unvaccinated pregnant women who have physical contacts with other persons at their workplace were granted paid time off from work if no alternative employment is possible. Employers were entitled to compensation for continued remuneration for that leave. This COVID-19 leave for pregnant women has now been extended until the end of December 2021 ([BGBl. I Nr. 184/2021](#)).

1.1.4 Collective Bargaining

The [General CBA on Regulations on Fighting COVID-19 \(Generalkollektivvertrag Corona-Maßnahmen\)](#), which entered into force on 01 September 2021 (for details, see September 2021 Flash Report), has been [declared universally applicable](#) starting on 29 October 2021. It therefore applies to all private employment relationships and provides as follows:

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- Workers who are required to wear masks must, after wearing their masks for three hours, be allowed to take off their masks for at least ten minutes.
- The employer may not request workers who can show a valid 3G (*Geimpft* – vaccinated, *Genesen* – recovered, *Getestet* – tested) certification to wear a mask.
- Workers may not be disadvantaged or dismissed for enforcing their rights under the CBA, or for falling ill with COVID-19.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Dismissal for going to work when testing positive for COVID-19

Austrian Supreme Court, 8 ObA 54/21f, 14 September 2021

Contractual public servants may be summarily dismissed if they are guilty of a particularly serious breach of their official duties or of an act or omission that renders them unworthy of the employer's confidence (§ 34 (1) b Act on Contractual Public Servants – *Vertragsbedienstetengesetz*). In the present case, an employee was officially quarantined after testing for COVID-19 until the test results became available as a suspected case of an infection pursuant to § 7 of the Epidemic Act (*Epidemiegesetz*) had been determined. She went to work anyway without informing her employer and thereby at least negligently exposed all her colleagues in her department to the risk of contracting COVID-19.

The Supreme Court, as well as both lower courts, **considered** this an act which renders the employee unworthy of the employer's trust and therefore ruled that the summary dismissal was justified.

This is the second decision involving a dismissal of an employee who did not adhere to the epidemic law following the dismissal of an employee last month who refused to get tested for COVID-19 (see September 2021 Flash Report).

2.2 Mobility of workers

Austrian Supreme Court, 9 ObA 15/21b, 02 September 2021

The employment relationships of doctors working in hospitals of the Federal State of Carinthia (*Kärnten*) are regulated in the Carinthian Act on Contractual Public Servants (*Kärntner Landesvertragsbedienstetengesetz* - K-LVBG). Its provisions and their application in practice lead to differences in remuneration of persons who have not yet been employed in a Carinthian public hospital when obtaining their professional licence compared to those who have already been employed by such a hospital. The statutory representation of the interests of medical doctors, the Chamber of Doctors for Carinthia, claimed that this difference in application of the law contradicted the principle of equal treatment of all citizens as well as the provisions of EU law, as the relevant professional experience of a migrant worker resulted in a lower salary classification than of a domestic worker who had a similar level of experience. Such workers should therefore also be treated as though they had undergone training in a public hospital in Carinthia.

The Supreme Court did not follow this argument in the present **case**, pointing out that this result cannot be achieved due to the explicit intention of the legislator aiming to treat the two constellations differently. Even an interpretation in conformity with EU law may not result in a divergent or even contrary meaning to a national provision that is

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unambiguous in terms of wording and meaning, which cannot be achieved by the national rules of interpretation.

As far as the alleged discrimination itself is concerned, the Supreme Court stated that the principle of equal treatment was not violated, as an employee who has already been employed by the respondent for several years is not in the same exact position as an employee who is newly employed by the respondent employer. The Court pointed out that the respondent attempted to motivate employees to work at the hospital for many years by means of an attractive salary model and that this does not constitute a violation of the principle of equal treatment or of EU law.

The Supreme Court's argument referring to the alleged breach of EU law, especially concerning the mobility of workers, is very brief and only extends to one short sentence. The Court only refers to the motivation to work for an extended time at public hospitals in the Federal State of Carinthia and therefore obviously considers a privileged treatment based on loyalty justified. One would have expected that the Court would have explored whether the pay scheme consistently reflects this intention and does not also compensate other aspects pointing in the opposite direction, such as employee mobility. This is actually the case, as work experience with other employers is also taken into account in the relevant act. Therefore, a balancing of the different aspects would have not only been interesting but also necessary to justify such treatment that can have adverse effects on employee transnational mobility.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) In view of increasing COVID-19 infections, a recent Royal Decree strongly recommends teleworking.

(II) A recent law has extended bereavement leave paid by the employer.

(III) A ruling of the Court of Cassation concerned the dismissal of protected employees' representatives.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Teleworking

A recent Royal Decree of 28 October 2021 containing the necessary administrative police measures to limit the consequences of the COVID-19 pandemic for public health reiterates the importance of teleworking (*Moniteur belge* of 29 October 2021).

In view of the increasing number of COVID-19 infections, teleworking, although not compulsory, is once again strongly recommended in all companies, associations and services, regardless of size, and for all staff members whose position lends itself to it. Teleworking should be carried out in accordance with the existing collective labour agreements and conventions. Consequently, everyone present at the workplace must observe the appropriate preventive measures, such as the rules of social distancing.

1.2 Other legislative developments

1.2.1 Bereavement leave

In the absence of recent legislation, reference is made to legislation from this summer that is less important but nevertheless worth mentioning.

The Law of 27 June 2021 on the extension of bereavement leave in case of death of a partner or child and on making the use of bereavement leave more flexible, the current regulation on the short leave in case of death was significantly amended. The law entered into force on 25 July 2021 (*Moniteur belge* of 15 July 2021). This law is based on a parliamentary initiative and is not an initiative of the federal government. The law amended a few articles of the Employment Contracts Law of 03 July 1978 and of the Royal Decree of 28 August 1963 on maintaining employees' normal wage for days of absence on the occasion of family events.

Pursuant to the Law, the right to short leave in the event of death has been extended in a number of situations by increasing the number of days of short leave and/or by expanding the category of employees who are entitled to such leave. These are extensions with entitlement to salary at the expense of the employer.

The most important innovations are the following:

Entitlement to 10 days of bereavement leave in case of death of the spouse, cohabiting partner or child. Concretely, the employee is now entitled to 10 days of bereavement leave in case of death of:

- the employee's spouse or cohabiting partner;
- a child of the employee or of his/her spouse or cohabiting partner.

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The first 3 days must be taken by the employee in the period starting on the date of the death and ending on the date of the funeral. The remaining 7 days can be freely taken by the employee within the year following the death.

From now on, the employee is also entitled to the following bereavement leave:

- 10 days in the event of the death of a foster child of whom the employee or his/her spouse or cohabiting partner is or was a foster parent in the context of long-term foster care. The bereavement leave is to be taken during or after the period of long-term foster care according to the same modalities as the bereavement leave in case of death of the spouse, cohabiting partner or child;
- 3 days in case of death of a foster parent of the employee within the scope of long-term foster care at the time of death, to be taken during the period starting on the date of death and ending on the date of the funeral;
- 1 day in case of death of a foster child of whom the employee or his/her spouse or cohabiting partner is a foster parent within the scope of short-term foster care at the time of death. This day is to be taken up on the day of the funeral.

The law introduces a more flexible take-up of the leave at the employee's request. For all forms of bereavement leave, it is now provided that the period in which the days must be taken can be deviated from at the request of the employee and with the agreement of the employer.

When the employee falls ill following the short leave due to the death of the spouse, cohabitant partner, child of the employee or of the spouse or cohabitant partner, in certain cases, a deduction will be made from the legal period of guaranteed salary due to incapacity for work. A deduction will be made when the employee, following the first, second or third day of bereavement leave, takes one or more consecutive days of additional bereavement leave (max. 7) and falls ill immediately afterwards. The imputation will result in the statutory period of the guaranteed salary due to work disability being shortened by the number of days of additional leave that the employee took under these conditions.

2 Court Rulings

2.1 Dismissal of a protected employee

Cour de Cassation, No. 20.0051.N., 04 October 2021

The elected employee representatives in the prevention and health committee in companies with at least 50 employees and in the works council in companies with at least 100 employees enjoy special protection against dismissal (Law on Dismissal Protection of Employee Representatives of 19 March 1991). These staff representatives are 'protected employees'. If the company or a department thereof to which a protected employee is attached closes down, a special arrangement applies to the dismissal of that employee for economic or technical reasons. It is true that the employer still needs approval for such dismissals from the joint committee (or subcommittee) to which the company belongs: the committee must acknowledge the existence of an economic or technical reason. However, if the question 'to remove the employee's protection against dismissal' is not answered within the statutory period of two months, the employer who closes down the technical business unit or department in which the protected employee is employed does not have to ask the labour court for recognition of the economic or technical reason before proceeding with the dismissal.

In the present case in which the Belgian *Cour de Cassation* rendered the judgment referred to below, the Appeal Labour Court had accepted that there was a closure of a department because it no longer existed and all employees working in it were dismissed. However, the Appeal Labour Court also found that the department's former activity had been absorbed and integrated into the company's ordinary operation. According to the

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Cour de Cassation, the Appeal Labour Court thus established that the company's main activity was not discontinued but was continued by other employees of the company. In that case, there is no question about the closing down of a department of the company. The definition of closure used in Article 1, §2, 6° of the Law on Dismissal Protection of Employee Representatives of 19 March 1991 is indeed the same as that of the Law on the Closure of Undertakings of 26 June 2002, 'it est' the definitive cessation of the main activity of the company or a department thereof.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Mandatory vaccination of health personnel

The National Labour Council has issued a divided opinion on the possibility of making it compulsory for personnel working in the care sector, i.e. hospitals and retirement homes for the elderly, to be vaccinated against the COVID-19 virus (see [Opinion No. 2246](#) of 15 October 2021 of the National Labour Council on the possible mandatory vaccination of health personnel). The trade union representatives are divided. The representatives of the liberal trade union and the Christian trade union, irrespective of the compulsory nature of the vaccination, place emphasis on raising awareness among healthcare personnel and thus on achieving voluntary vaccination. The socialist trade union is opposed to compulsory vaccination. The representatives of the employers' organisations in the National Labour Council are in favour of compulsory vaccination for healthcare personnel.

Bulgaria

Summary

A new Decree regulates the economic compensation of workers in sectors where temporary restrictions have been imposed to fight the pandemic.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Relief measures for workers

Decree No. 328 of 14 October 2021 of the Council of Ministers determining the terms and conditions for payment of compensation to employees and self-insured persons who perform economic activities for which temporary restrictions have been imposed by a State body during the period of the state of emergency or declared epidemic emergency has been issued (published in [State Gazette No. 87](#) of 19 October 2021).

This Decree regulates the conditions and the order for payment of compensation to persons performing labour activities for which by an act of a State body temporary restrictions have been introduced for their implementation in the period of a declared state of emergency or a declared epidemic situation. Such persons are employees, employed by employers, who are local natural or legal persons or their divisions, other organisationally and economically separate entities, as well as foreign legal entities that carry out economic activities in the Republic of Bulgaria and are insured by the order of Article 4, para. 1, item 1 of the Social Insurance Code (CSR) - for the time during which due to the introduced temporary restrictions for performing the activity, specified in the act of the State body, they were on unpaid leave; self-insured persons - for the time during which their activity is interrupted due to the introduced temporary restrictions for carrying out the activity, specified in the act of the State body. Compensations shall not be paid to employees who have not been insured with the same employer on the date preceding the date of issuance of the act of the State body and for the claimed period use leave on other grounds.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

(I) Compulsory COVID-19 testing has been introduced for workers in the healthcare sector.

(II) A new Act on Copyright and Related Rights has been adopted, also regulating the copyright of employees.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Compulsory testing of employees in the healthcare sector

All employees employed in the healthcare sector must be tested for the virus SARS-CoV-2 twice a week (see Official Gazette Nos [105/2021](#), [108/2021](#)). Testing is not obligatory for employees in the healthcare sector who have been vaccinated or have recovered from COVID-19, unless they have symptoms of respiratory infection, other symptoms or signs of COVID-19 or a positive epidemiological history of the disease.

1.2 Other legislative developments

1.2.1 Minimum wage

Pursuant to Article 6 of the Minimum Wage Act (Official Gazette 118/2018), the Government of the Republic of Croatia has adopted the Regulation on the Amount of Minimum Wage for 2022 (Official Gazette No. [117/2021](#)). The amount of minimum wage for the period from 01 January to 31 December 2022 has been set at HRK 4 687.50 gross, i.e. HRK 3 750.00 net. It has been increased compared to the previous year. In 2021, the amount of minimum wage is HRK 4 250.00 gross, i.e. HRK 3 400.00 net.

1.2.2 Act on Copyright and Related Rights

The new Act on Copyright and Related Rights has been adopted (Official Gazette No. [111/2021](#)). It regulates, among others, the copyrights of employees. Articles 100 – 103 regulate the copyright of employees in the private sector and Articles 104 – 110 regulate the copyright of public servants and employees in the public sector. Compared to the previous regulation in the abolished Act on Copyright and Related Rights of 2003 (last amended in 2018), the provisions are more detailed. Unless otherwise stipulated by an employment contract or other act regulating the employment relationship or another contract concluded between the author and the employer, the employer acquires the exclusive copyright property rights to exploit the copyright work created within the employment relationship.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

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4 Other Relevant Information

Nothing to report.

Cyprus

Summary

Nothing to report.

1 National Legislation

1.1 Measures to respond to Covid-19 crisis

1.1.1 Easing of COVID-19 restrictions

October saw the continuation of the same restrictions that applied in September with some further easing of the restrictive measures imposed due to the pandemic, as the number of vaccinated persons is increasing. The infection rate seems to have stabilised at a relatively low rate. Businesses are allowed to operate but customers must present a safe pass (vaccination certificate or 72-hour rapid test).

The measures listed below ([Decisions of the Council of Ministers on restrictive measures against the spread of COVID-19, 08 October 2021](#)) were decided by the Council of Ministers, given that more time is needed to increase the number of citizens vaccinated with the 3rd dose who belong to groups with an increased risk of serious illness.

Spectators may be present at football matches at a capacity of 75 per cent of the stadium, provided that one of the following conditions is met:

- Certificate of complete vaccination (vaccination with both doses or vaccination with Johnson & Johnson's single-dose vaccine and after two weeks' time has elapsed), or
- Certificate of COVID-19 recovery in the last six months, or
- Certificate of a negative PCR test result, which is valid for 72 hours.

The operation of theatres, amphitheatres, cinemas and event halls is governed by the following rules:

- a) a maximum of 300 persons indoors with a mandatory presentation of a SafePass, or
- b) a maximum of 350 persons outdoors with a mandatory presentation of a SafePass, or
- c) at 75 per cent capacity of the premises, provided that only persons who hold a full vaccination certificate or have recovered from COVID-19 in the last six months or have a negative PCR test certificate that is valid for 72 hours enter the premises.

Subject to the distancing measures and the health protocols and provisions of the decree that is in force, the following rules also apply:

- a) increase in the maximum number of persons indoors from 250 to 300 persons,
- b) with a mandatory presentation of a SafePass, or
- c) increase in the maximum number of persons indoors from 450 to 500 persons,
- d) provided that only people with a full vaccination certificate or a COVID-19 recovery certificate within the last 6 months enter the premises.
- e) increase in the number of persons per table from 10 to 12.

The above changes to the maximum number of persons apply to the following:

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- The presence of congregants during church or/and other forms of religious worship,
- Weddings, christenings and funerals,
- Events, including weddings and christenings in catering establishments, event venues, hotels and/or tourist accommodations, nightclubs, entertainment centres and music dance venues,
- Catering establishments: restaurants, taverns, cafes, pubs, snack bars, bars, coffee shops, restaurants in shopping centres, restaurants in hotels and tourist accommodations, canteens and/or sports clubs, cultural clubs, associations, societies, etc.
- Nightclubs, event venues, discos, clubs and music and dancing venues,
- The presence of spectators at matches held in stadiums and sports facilities (excluding football stadiums).

The above-mentioned decisions came into force on 09 October and will be regulated by decree. Also, the Ministry of Health is continuing to closely monitor the progress of the epidemiological indicators and is reassessing the data on a regular basis. The aim is maximum protection that will allow the government to adequately respond to the needs that may arise in the run-up to winter. To this effect, two further decrees were issued: the first on 08 October 2021, valid from 09 October 2021 to 29 October 2021 (Quarantine (Determination of Measures to Prevent the Spread of COVID-19 Coronavirus) [Decree \(No. 37\)](#) of 2021, Government Gazette of the Republic of Cyprus, 3121 R.A.A. 421/2021, 08 October 2021) and the second on 18 October 2021, which was valid from 18 October 2021 at 20.00 p.m. to 29 October 2021 (Quarantine (Determination of Measures to Prevent the Spread of COVID-19 Coronavirus) [Decree \(No. 38\)](#) of 2021, Government Gazette of the Republic of Cyprus 3231, R.A.A. 427/2021, 18 October 2021).

Check points dividing the country continue to allow access to the country from two northern territories that are not under the control of the Republic of Cyprus, however, until 26 September, there was a requirement that together with the vaccination certificate, a rapid test or PCR test that is valid for seven days was required.

Persons who are vaccinated are allowed to cross Cyprus, provided that they are in the country for ten days.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Czech Republic

Summary

(I) The travel ban has been amended, while restrictions on businesses have been readopted and extended. The obligation to wear respiratory protective equipment has also been extended.

(II) A regulation establishing conditions for the provision of personal protective equipment and washing, cleaning and disinfecting agents has been adopted.

(III) The Supreme Court has ruled that a significant reduction of the employee's salary in the context of a transfer of undertaking must be considered as a substantial deterioration of working conditions.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Travel ban

The government has retained and amended the travel ban.

A protective measure of the Ministry of Health No. MZDR 20599/2020-126/MIN/KAN of 26 October has been adopted with effect as of 27 October 2021.

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

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

With effect as of 27 October 2021, the restrictions on the entry of persons into the territory of the Czech Republic have been readopted – with certain amendments.

These restrictions have been amended with effect as of 27 October 2021.

1.1.2 Restrictions to business activities

The government has readopted and amended the conditions on the operation of businesses and introduced rules for mass events and assemblies.

The extraordinary measure of the Ministry of Health No. MZDR 14601/2021-25/MIN/KAN of 27 September 2021 has been adopted with effect as of 30 September 2021.

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

The extraordinary measure was subsequently amended by extraordinary measure of the Ministry of Health No. MZDR 14601/2021-26/MIN/KAN of 22 October, which has been adopted with effect as of 01 November 2021.

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

The conditions on the operation of businesses have been readopted and amended. At the same time, requirements for holding 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 also take place only if certain rules are adhered to. Persons may enter businesses and attend mass events and assemblies only under certain conditions as well (they need to have been tested, vaccinated, must maintain a distance from one another, etc.).

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1.1.3 Protective respiratory equipment

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

The extraordinary measure of the Ministry of Health No. MZDR 15757/2020-61/MIN/KAN of 27 October 2021 has been adopted with effect as of 01 November 2021.

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

With effect as of 01 November 2021, the extraordinary measure sets an obligation for all persons to wear specified respiratory protective equipment in the following places:

- certain interior spaces (such as shops, medical facilities, social service facilities, international airports, etc.);
- all other interior spaces, with the exception of home or hotel rooms, or where there are at least 2 persons closer than 1,5 metres apart, with the exception of household members;
- in public transportation;
- during certain events (public and private).

The extraordinary measure lists certain exceptions to the above.

With effect as of 01 November 2021, the extraordinary measure sets an obligation of the employer to provide employees with respiratory protective equipment for the purpose of performance of work.

1.2 Other legislative developments

1.2.1 Personal protective equipment

Government Regulation No. 390/2021 Coll., on detailed conditions of the provision of personal protective equipment and washing, cleaning and disinfecting agents, is a state legislation that was adopted to comply with Commission Directive 2019/1832. It replaces the previous Government Regulation No. 495/2001 Coll.

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

Pursuant to the Commission Directive and similarly to the original Government Regulation, the new Government Regulation provides a definition of personal protective equipment (PPE), sets standards for PPE and sets forth employers' obligations with reference to PPE. Compared to the original Government Regulation, the new Government Regulation emphasises the necessity to provide new PPE if the previous ones have lost their durability, features or effectiveness.

The four annexes represent the main part of the Government Regulation. Pursuant to the Commission Directive, they regulate (1) risks in relation to body parts, (2) types of personal protective equipment for each specific risk, and (3) activities and sectors of activity that may require the wearing of personal protective equipment. In addition, a fourth annex has been introduced which categorises types of work by degree of contamination and the recommended amounts of washing and cleaning agents. The annexes were amended as well – for instance, the first annex now contains more risk categories. The other annexes were slightly reconstructed and updated with a view to today's standards.

The Government Regulation shall enter into effect on 01 November 2021. The new Government Regulation aims to reflect the current standards.

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2 Court Rulings

2.1 Transfers of undertakings

Decision of the Supreme Court, No. 21 Cdo 1448/2021, 28 June 2021

The Supreme Court has ruled that a reduction of the employee's salary in the range of tens of thousands of CZK must undoubtedly be considered a 'substantial deterioration of working conditions', regardless whether or not the reduction was made in accordance with the law.

The decision is available [here](#).

An employee performed work in an employment relationship for her former employer who determined her salary based on a salary statement in the amount of CZK 75 000 (approx. EUR 2 950). After a transfer of rights and obligations (TUPE), the new employer determined her salary to be CZK 15 000 (EUR 590). The employee terminated the employment relationship by notice of termination and pursuant to Section 339a of the Labour Code and took legal action for a declaration to be issued that the notice was submitted following a substantial deterioration of her working conditions.

In Section 339a, the Labour Code states that where notice of termination is given by an employee within two months from the effective date of the transfer or exercise of rights and obligations or where, within the same time limit, an employment relationship of an employee is terminated by agreement, the employee may demand a declaration by the court that the termination of the employment relationship occurred due to a substantial deterioration of the working conditions in connection with the transfer of rights and obligations. If this is the case, the employee is entitled to severance pay.

The lower courts and the Supreme Court held that the law does not explicitly specify what falls under 'working conditions' in the sense of Section 339a, it only imposes a general obligation on the employer to create conditions for the performance of the employee's work tasks, and these must be satisfactory and safe. The law does not define 'deterioration of working conditions', nor does it define a 'substantial' deterioration. The Supreme Court stated that 'working conditions' may not be reduced to working conditions as stipulated by the Labour Code, they must be understood as all conditions and circumstances that affect the employee in the performance of his or her work. A reduction in salary in the range of tens of thousands of CZK must be considered a substantial deterioration of working conditions, regardless of whether or not the reduction was made in accordance with the law as the right to a fair remuneration is a fundamental principle of labour law.

The deterioration of working conditions was the topic of an earlier ruling of the Supreme Court of 28 January 2020, No. 21 Cdo 1148/2019 (available [here](#)).

The above relates to Article 4(1) of Directive 2000/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

Nothing to report.

1 National Legislation

1.1 Measures to respond to Covid-19 crisis

1.1.1 COVID-19 update

Danish society has now fully re-opened. As of 10 September 2021, COVID-19 was downgraded from being a 'socially critical disease' in Denmark. The decision entailed that all remaining COVID-19 restrictions ended on 10 September, including the use of face masks as well as the COVID-19 passport. Infection rates began rising in October 2021, which has caused the government to re-introduce the availability of free rapid antigen tests.

As of 01 November 2021, approximately 75 per cent of the population is fully vaccinated. 5.3 per cent of the population has gotten a booster vaccination, which means that they have received their third injection. It is the intention of the Danish health authorities that eventually the entire population will be invited to get their third vaccine injection.

1.2 Other legislative measures

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Enforcement of Danish Labour Court rulings

On 08 December 2017, the Danish Labour Court [found](#) an Italian contractor liable to pay DKK 14 million (approx. EUR 1.87 million) in damages for underpayment of 130 construction workers. Solesi, the Italian company, had signed a collective agreement for the work being performed in Denmark, but failed to make pension and holiday payments in accordance with the agreement.

3F (the United Federation of Danish Workers) was unsuccessful in collecting its claim from the Italian company, which eventually resulted in a legal dispute on the enforcement of the Danish Labour Court ruling.

On 05 December 2018, a court in Syracuse, Italy, issued a judgment stating that the Danish Labour Court's ruling could not be enforced in Italy. The Syracuse court stated that the Danish Labour Court ruling was in clear breach of the Italian state's 'ordre public'.

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The Syracuse court seems to have applied the exception in the [EU Judgment Regulation \(1215/2012\)](#) Article 45 (1), litra a, according to which recognition and enforcement of another Member State's ruling can be refused, if such recognition is manifestly contrary to public policy ('ordre public') in the respective Member State. The case was appealed.

Not surprisingly, the Italian ruling achieved much media and political attention in Denmark. The Italian judgment challenges the Danish labour market model in stating that Denmark is unable to enforce labour law-related claims outside Denmark. Without the possibility of collecting outstanding claims abroad, there would be a risk of social dumping by foreign contractors performing work in Denmark.

In October 2021, the Italian Court of Appeal ruled differently. The Court found that Solesi was 'not' entitled to disregard the ruling of the Danish Labour Court.

[See here](#) for news from FH (the largest trade union confederation in Denmark).

Estonia

Summary

The Employment Contracts Act will be amended to allow for the conclusion of short-term contracts without restrictions.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Fixed-term work

The Ministry of Social Affairs [prepared](#) amendments to the Employment Contracts Act that allow for more flexibility in the conclusion of fixed-term labour contracts.

The draft establishes a derogation from the restriction on the conclusion and extension of fixed-term employment contracts provided for in subsection 10 (1) of the Employment Contracts Act.

According to the proposals, the employer is allowed to enter into short-term employment contracts with the employee for a period of six months for up to 10 calendar days. Fixed-term employment contracts concluded during those six months will not convert into open-ended ones.

For example, an employer can conclude three fixed-term employment contracts with an employee every month for six consecutive months.

The beginning of the six-month period shall be deemed to be the date of conclusion of the first fixed-term employment contract of up to 10 calendar days.

After the end of the six-month period, the conclusion of fixed-term employment contracts is limited for the next six months. This means that if the employer enters into a new fixed-term employment contract with the employee, the concluded employment contract becomes indefinite.

2 Court Rulings

Nothing to report

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Minimum wage

The Estonian Employers' Confederation and the Estonian Trade Union Confederation [approved](#) a nationwide minimum wage agreement for 2022, as a result of which the minimum wage will increase by EUR 70 to EUR 654 and the minimum hourly wage will be EUR 3.86.

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If in 2020 it was decided to freeze the minimum wage due to the crisis, then due to the faster-than-expected economic recovery it was planned to raise the minimum wage again in 2022. The faster-than-usual wage growth next year will compensate for this year's minimum wage freeze.

As a result of the agreement, the minimum wage will increase by 12 per cent and will make up 39.5 per cent of the average salary growth according to data of the Estonian National Bank in 2022.

Employers and trade unions are also suggesting that the increase in minimum wage should not be arbitrarily linked to other fees or benefits, such as kindergarten pay or the salary of local government leaders.

On the basis of the minimum wage agreement, the Government of the Republic also usually approves the national minimum wage amounts in the same amount. The current minimum wage of EUR 584 is valid from 2020.

Finland

Summary

The Labour Court held that new employment contracts made by the transferee were not governed by the collective agreement applied by the transferred undertaking.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working time

Supreme Court, KKO 2021:76, 15 October 2021

According to the workplace practice which has been in place since 1995, employees who carried out heavy sorting were entitled to longer daily breaks than provided for in law and the collective agreement. These breaks were 23 minutes long in total and were considered working time. The employer decided in 2016 to end this practice involving the breaks.

The Supreme Court held that this practice of breaks, which had been consistently followed for a long time between the parties had become an established binding term of employment. As breaks constitute an essential term of employment, the employer had no right to change this practice in a unilateral statement. The Supreme Court considered that the employees were entitled to the previous practice due to unjust enrichment because the employer had unjustly benefited from the employees' additional work input in violation of their terms of employment.

2.2 Transfer of undertaking

Labour Court, TT 2021:85, 19 October 2021

The plaintiff claimed that the employer, who was a transferee, had an obligation by virtue of Section 5 or Section 4 subsection 3 of the Collective Agreement Act to comply with the collective agreement on bakeries, which had bound the transferor, and should also apply to the new employment relationships that had started after the transfer until the collective agreement was valid.

The Labour Court considered that Section 5 of the Collective Agreement Act only concerned the protection of employees who are transferred due to a transfer of undertaking. The obligations that were based on the collective agreement which was applied by the transferred undertaking did not cover employees other than those who had been transferred. There was no question about the application of two different collective agreements, either, hence Section 4 subsection 3 of the Collective Agreements Act was not applicable.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Occupational safety and health

The working group on the reorganisation of licensing, guidance and supervision duties falling under the mandate of the Ministry of Social Affairs and Health issued its report on 27 October 2021 (Reports and Memorandums of the Ministry of Social Affairs and Health 2021:26). The working group had been tasked to examine the development needs of licensing, guidance and supervision duties that fall under the mandate of the Ministry of Social Affairs and Health, to explore possibilities for reorganising these duties, and to make related proposals. The working group proposed that a new national authority responsible for supervising the health and social services sector be established, combining the current duties of the National Supervisory Authority for Welfare and Health as well as those of the basic public services, legal rights and permits divisions of the Regional State Administrative Agencies in so far as they fall under the guidance of the Ministry of Social Affairs and Health. Among other things, the working group also considered that further analysis of occupational safety and health should be carried out to explore the possibility of transferring occupational safety and health enforcement to the new supervisory authority.

France

Summary

(I) The French government has limited the reimbursement of COVID-19 tests to certain categories of the population.

(II) The Court of Cassation ruled on the liability of an employer affiliated to a paid leave fund, and on preliminary meetings in the context of a disciplinary sanction. The Council of State ruled on the liability of the State in the event of a refusal by the administration to dismiss a protected employee.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 COVID-19 testing

The Order of 14 October 2021 (Order amending the Order of 01 June 2021 prescribing the general measures necessary to manage the health crisis), entered into force on 15 October in application of the Decree of 14 October 2021 (14 October 2021 Order, No. 2021-1333). It ends the systematic reimbursement of COVID-19 screening tests and introduces a list of persons who shall continue to benefit from a reimbursement of antigen or RT-PCR tests.

Socially insured persons as well as residents of France shall continue to benefit from reimbursements of tests. The tests of non-residents shall only be reimbursed if they possess a medical prescription or if they are identified as a close contact upon presentation of a European health insurance card. The test of persons who are not residents may be reimbursed if they are subject to an expulsion measure, the execution of which requires such a test.

Without a medical prescription, the persons whose RT-PCR or antigen test is covered by health insurance are:

- insured persons with a complete vaccination schedule;
- insured persons for whom a medical contraindication to vaccination against COVID-19 has been established;
- insured persons with a certificate of recovery from a COVID-19 infection;
- minors;
- contact persons;
- persons subject to group screening;
- persons with a positive antigen test result less than 48 hours old;
- people moving between metropolitan and overseas France;
- people from a country classified as being in the orange or red zones.

The following tests are reimbursed based on a medical prescription:

- in case of COVID-19 symptoms, a test performed within 48 hours of issuance of the prescription;
- in case of scheduled care, a test performed within 72 hours before the date of the intervention mentioned in the prescription order;
- exceptionally, in the interest of health protection, a test prescribed by a midwife for a pregnant woman and the family members with whom she resides or is in frequent contact with.

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Finally, since Decree No. 2021-1343 of 15 October 2021 (14 October 2021 Decree No. 2021-1343 (amending Decree No. 2021-699 of 01 June 2021, prescribing the general measures necessary to manage the health crisis)) came into force, the negative result of a self-test carried out under the supervision of a health professional no longer entitles the holder to a health pass, in particular for access to places open to the public which are subject to this requirement.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Employer's liability and paid leave

Labour Division of the Court of Cassation, No. 19-17.046, 22 September 2021

It must be noted that not all sectors are covered by the externalization of payment of paid leave to funds. Only dockers, transporters and construction workers are covered.

In the present case, a construction worker suffered a relapse in March 2012 following an accident at work before being placed on disability in 2013. In 2014, he applied to the Labour Court for judicial termination of his employment contract and for payment of paid leave by his employer for the period of his occupational illness, from 01 April 2012 to 31 May 2013. In fact, the payment of paid leave benefits was ensured by a fund with which the employer was affiliated. In a letter of 2015, the paid leave fund stated that the employee had no leave entitlement for the year 2013, and that it was up to the employer to submit a claim for paid leave compensation if the employee had not returned to work and was unable to claim his rights

In principle, the *Court of Cassation* has held until now that in the event of the employer's failure to comply with his legal obligations and having prevented the employee from benefiting from paid leave, the employee could only claim damages from his employer because of the prejudice suffered, but not the payment of paid leave (Labour Division, 24 November 1993 No. 89-43.437; Labour Division 28 March 2018, No. 16-25.429).

The Court of Appeal rejected the claimant's request on the grounds that once the employer has fulfilled its obligations towards the fund (affiliation and payment of contributions), the employer is discharged from any further obligation to payment of paid leave. For the Court of Appeal, it was up to the employee to take action against the fund and not against his employer.

In its 22 September 2021 decision, the Labour Division of the *Court of Cassation* overturned the Court of Appeal's judgment, rejecting the employee's requests for payment of a sum in respect of paid leave, on the one hand, and stating that it was the employer's responsibility to take all necessary measures to enable the employee to take leave and to provide proof thereof. On the other hand, it determined that should these elements not be established, the fund does not substitute for the employer, i.e. the employer remains liable for the payment of the paid leave allowance directly to the employee.

With this decision, the Labour Division aligns the liability of an employer affiliated with a paid leave fund with the employer's liability under ordinary law.

2.2 Dismissal

Labour Division of the Court of Cassation, No. 18-22.204 and No 19-12.538, 22 September 2021

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In the present case, an employee was dismissed after having been sanctioned twice in an observation letter (equivalent to a warning). The employee requested his dismissal to be considered a dismissal without real and serious cause arguing that the letters should have been preceded by a preliminary meeting. The applicable collective agreement stipulates that *"except for serious misconduct, an employee cannot be dismissed if he or she has not been subject to at least two prior sanctions"*. The employee deduced that the two letters of observation he received had an immediate impact on his employment since they seemed to have led to his dismissal.

Article L. 1332-2 of the Labour Code provides that the employer is not, in principle, required to summon an employee to an interview before notifying him or her of a warning or sanction of the same nature.

The Court of Appeal rejected the employee's request, ruling that the observations constituting disciplinary sanctions *"in the absence of conventional provisions to the contrary, did not require a prior meeting"* and that these two regular disciplinary sanctions could simply *"pave the way for the initiation of a dismissal procedure"*. In other words, a prior meeting is not necessary for sanctions of this nature as the NCC does not expressly provide for it.

The Social Chamber of the *Court of Cassation* stated, on the one hand, that it follows from Article L. 1332-2 that the employer is not in principle required to summon an employee for a meeting before notifying him or her of a warning or sanction of the same nature. The *Court of Cassation* also stated that the case is different when, with regard to the provisions of a collective agreement, the sanction may have an influence on the employee's retention in the company and confirms that this is the case when *"the collective agreement instituting a substantive guarantee makes the dismissal of an employee conditional on the existence of two previous sanctions"*.

2.3 Dismissal of a protected employee

Council of State, combined chambers, No 430899, 07 October 2021

In the present case, the mayor of a municipality requested authorisation from the Labour Inspector to dismiss a protected employee, a staff representative, employed in a service operated by the municipality, on grounds of incapacity. The Labour Inspector refused to rule on this request, considering that he was not competent to rule on the dismissal of an employee employed by a municipal authority.

Following his dismissal for incapacity and the impossibility of reclassification, the employee, who deemed that the refusal to examine the request for authorisation was illegal, brought an action before the Administrative Court claiming that the State was liable and to obtain compensation in the amount of EUR 43 320 for the damage suffered. According to the dismissed employee, given the employer's failure to fulfil its obligation to reclassify him, the Labour Inspector would never have authorised such a dismissal if he had agreed to examine the request for prior authorisation. The employee claimed the equivalent of the wages lost from the State between the date of his dismissal and the end of the protection period under which he was placed because of his mandate as a staff representative. The Administrative Court effectively ruled that the Labour Inspector's refusal to examine the request for authorisation was illegal. However, the employee's request for compensation was rejected, first by the Court and subsequently by the Administrative Court of Appeal.

For the Council of State, the illegal refusal to examine the request for authorisation *"constitutes a fault likely to entail the responsibility of the State towards the employee, if it resulted in a direct and certain prejudice for him"*. The judge was required to investigate whether the administrative authority could have legally authorised or rejected the request for authorisation for dismissal, if it had not unlawfully refused to give its opinion on the request, by verifying in particular whether the employer had seriously looked into whether the person concerned could be reclassified.

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The case was therefore referred back to the Administrative Court of Appeal, which will have to conduct an investigation. If it turns out that the administration should have refused the request for authorisation because of the employer's failure to comply with the reclassification obligation, the employee should be eligible for compensation from the State.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Germany

Summary

(I) The Federal Labour Court has requested a preliminary ruling by the CJEU regarding overtime allowances for part-time employees.

(II) In another ruling, the Federal Labour Court held that a collective agreement containing provisions on overtime and extra hours does not discriminate against part-time workers.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Overtime allowances for part-time workers

Federal Labour Court, 8 AZR 372/20 (A), 28 October 2021

On 28 October, the Eighth Senate of the Federal Labour Court [asked](#) the Court of Justice of the European Union to answer the following questions on the interpretation of Union law:

(1) Are Article 157 TFEU and Article 2(1)(b) and the first sentence of Article 4 of Directive 2006/54/EC to be interpreted as meaning that a national provision of a collective agreement, which provides for the payment of overtime pay only in respect of hours worked in excess of the normal working time of a full-time worker, contains a difference in treatment between full-time workers and part-time workers?

(2) In the event that the Court should answer the first question in the affirmative:

(a) Are Article 157 TFEU and Article 2(1)(b) and the first sentence of Article 4 of Directive 2006/54/EC to be interpreted as meaning that, in such a case, for it to be established that the unequal treatment affects significantly more women than men, it is not sufficient that there are significantly more women than men among part-time workers, but that it must be added that there are significantly more men among full-time workers or that there is a significantly higher proportion of men?

(b) Or does something else also follow for Article 157 TFEU and Directive 2006/54/EC from the Court's reasoning in the judgment of 26 January 2021 – C-16/19 (Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie) at paras. 25 to 36, according to which a difference of treatment within a group of persons suffering from a disability may also fall within the 'concept of 'discrimination' under Article 2 of Directive 2000/78/EC?

(3) In the event that the Court were to answer Question 1 in the affirmative and Questions 2a) and 2b) in such a way that, in a case such as that in the main proceedings, it could be found that the difference in treatment as regards pay affects significantly more women than men:

Are Article 157 TFEU and Article 2(1)(b) and the first sentence of Article 4 of Directive 2006/54/EC to be interpreted as meaning that it can be a legitimate

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objective for parties to collective agreements, to pursue, on the one hand, the objective of preventing the employer from ordering overtime and of rewarding the use of the employees beyond the agreed extent with an overtime premium and, on the other hand, also pursue the objective of preventing an unfavourable treatment of full-time employees compared to part-time employees and therefore regulate that premiums are owed only for overtime worked in excess of the calendar monthly working time of a full-time employee?

(4) Is Clause 4(1) of the Framework Agreement on part-time work annexed to Directive 97/81/EC to be interpreted as meaning that a national collective agreement, which provides for the payment of overtime bonuses only in respect of hours worked in excess of the normal working time of a full-time worker, contains a difference in treatment between full-time and part-time workers?

(5) In the event that the Court should answer Question 4 in the affirmative:

Is Clause 4(1) of the Framework Agreement on part-time work annexed to Directive 97/81/EC to be interpreted as meaning that it can be an objective reason if parties to a collective agreement, by means of a provision such as that referred to in Question 4. on the one hand, pursue the objective of preventing the employer from ordering overtime and of rewarding the use of overtime by employees beyond the agreed amount with an overtime premium, but, on the other hand, also pursue the objective of preventing less favourable treatment of full-time employees in comparison with part-time employees and therefore provide that premiums are due only for overtime worked in excess of the calendar monthly working time of a full-time employee?

2.2 Part-time work

Federal Labour Court, 6 AZR 253/19, 15 October 2021

The Court ruled that a collective agreement containing provisions on overtime and extra hours does not discriminate against part-time workers.

The version of the collective agreement for the public service sector applicable to the hospital service sector in the area of the Federation of Municipal Employer' Associations contains independent provisions for compensatory time off and remuneration for hours worked by part-time employees in excess of their contractually agreed working hours on an unplanned basis. In the view of the Federal Labour Court, these provisions differ so much from those on overtime for full-time employees that there is no longer any comparability. Moreover, the Court is of the opinion that with this differentiation, the parties to the collective agreement did not exceed their scope of discretion guaranteed by Article 9 (3) of the Basic Law on freedom of association. Therefore, the provisions applicable to part-time workers do not discriminate against them and are effective.

The decision is so far only available as a press release.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Temporary agency work

According to the Federal Government, the temporary employment industry was hit particularly hard during the first phase of the COVID-19 pandemic in the first half of 2020. Business expectations were significantly more pessimistic than in other sectors, which meant that the 'personnel policy reactions' by temporary agencies, such as the use of short-time work or not filling vacancies, were much stronger than in most sectors. In some 'systemically important' sectors, which witnessed increased demand for labour due to the COVID-19 pandemic, there was an additional placement of temporary workers, but this could not compensate for the shortfalls elsewhere.

Greece

Summary

Mandatory weekly testing for all unvaccinated workers has been introduced.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Mandatory COVID-19 testing

Greece has introduced mandatory weekly testing for all unvaccinated workers. Public and private sector employees who are not vaccinated will have to pay for weekly tests or carry a vaccination certificate to gain access to their place of work (Ministerial Decision 6432 of 16 October 2021, Official Gazette 4766/2021, Ministerial Decision 55570 of 12 September 2021, Official Gazette 4207/2021).

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

According to a decision of the Supreme Court on the application of the Rome I Regulation, the applicable national labour law must be defined first for an employee who is to work abroad.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Applicable national labour law

Supreme Court, BH2001. 189

The Supreme Court (*Kúria*) has passed a published decision (BH2001. 289) on the application of the Rome I Regulation (593/2008/EC). According to the judgment, if an employee is to work abroad, the applicable national labour law must be defined first.

The employee in the present case was employed by a Hungarian employer, but worked at a construction site in Germany, where he suffered a work accident. His employment contract stipulated that Hungarian labour law shall apply to all types of paid leave, but that German law applies to working time matters, and any matters relating to his work in Germany. The parties debated whether the contract had been concluded to exclusively work in Germany (employer's argument), or whether the worker was posted to Germany (employee's argument).

The Supreme Court determined that the employee had worked in Germany only, and that this was also the parties' intention for the future. The employment contract was thus deemed to have been concluded for work in Germany. In addition, the Supreme Court stated that the provision of the employment contract can be interpreted as selecting German law as the applicable national labour law under Article 8 of the Rome I Regulation. Therefore, the Supreme Court found that German law must be applied in this case.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

The national hourly minimum wage will increase from 01 January 2022.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Minimum wage

The Minister for Enterprise, Trade and Employment has signed an Order increasing the national minimum hourly pay rate from EUR 10.20 to EUR 10.50 with effect from 01 January 2022: see the National Minimum Wage Order 2021 ([S.I. No. 517 of 2021](#)). The Order gives effect to the recommendations of the Low Pay Commission in its [2021 Annual Report](#).

2 Court Rulings

Nothing to Report.

3 Implications of CJEU Rulings

Nothing to Report.

4 Other Relevant Information

4.1 Recipients of COVID-19 relief measures

As of 26 October 2021, 90 623 persons (44.8 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 (14 912), wholesale and retail trade (14 641) and administration and support services (10 580). The number in construction has dropped from 42 333, at the end of April to 8 372. In terms of the age profile of PUP recipients, 9.3 per cent were under 25. Additionally, 2 182 persons were in receipt of the COVID-19 Enhanced Illness Benefit. In total to date, 189 460 persons have been medically certified for receipt of this benefit, 53.3 per cent of whom were female.

The Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No.16) (COVID-19 Pandemic Unemployment Payment) Regulations 2021 ([S.I. No. 546 of 2021](#)) specify the dates when payment of the PUP will cease beginning with those whose reckonable weekly income is less than EUR 200. The final date from which no further payments of the PUP will be made is set at 25 March 2022.

Italy

Summary

(I) The rules concerning the COVID-19 certificate (Green Pass) have been amended, and new relief measures have been introduced.

(II) The Court of Cassation dealt with the employer's power of dismissal in case of serious offenses posted on social media by an employee and with the application of collective bargaining agreements.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 COVID-19 certificate

The [Decree](#) of the President of the Council of Ministers of 12 October 2021 defines the procedures for checking COVID-19 certificates ('Green Pass') in the workplace. The Decree reiterates that the employer, in case of specific organisational needs, may request the worker in advance to present his or her Green Pass, confirming the provisions of Legislative Decree No. 139/2021, Article 3.

[Act](#) 24 September 2021, No. 133 converts the Law Decree of 06 August 2021 No. 111 into law, which provides for certain measures for the start of school and university activities and for public transport. Specifically, it provides for the obligation for school and university staff as well as for university students to be in possession of a 'Green Pass' as well as for passengers of airplanes, trains, ships (except those crossing the Strait of Messina) and buses that cross at least two regions.

The Law [Decree](#) of 08 October 2021, No. 139, provides for new rules on the maximum occupancy of theatres, cinemas and stadiums and introduces rules on the use of the 'Green Pass' at workplaces.

Specifically, according to Article 3, public and private employers will be able to request workers to present their Green Pass even before entering the plant or workplace, if this is necessary due to "*specific organisational needs aimed at guaranteeing effective work planning*".

1.1.2 Relief measures

The Law [Decree](#) of 21 October 2021, No. 146 introduces new rules for the protection of employees in the wake of the COVID-19 emergency.

Article 9 introduces new COVID-19 parental leaves that apply until 31 December for absences from work due to quarantine or if their children (under the age of 14) contract COVID, or if educational facilities are closed due to COVID-19. Employees with children between the ages of 14 and 16 years, who are in the same situation, can take leave without pay, with the right to keep their job.

According to Article 11, para. 1-12, employers in non-industrial sectors that do not have access to the Wages Guarantee Fund (*Cassa Integrazione*), are entitled to a redundancy fund for a maximum of 13 weeks in the period from 01 October to 31 December 2021, if their undertaking suspends or reduces its work activity due to COVID-19. Companies in the textile and clothing sector are entitled to an additional 9 weeks of ordinary *Cassa Integrazione* in the last quarter of 2021. Employers who use these funds can neither start collective dismissal procedures nor dismiss workers for economic reasons. This prohibition does not apply in the event of bankruptcy, company closure and in the event

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of a trade union agreement signed by the most representative unions, albeit only for employees who are part of the agreement.

According to Article 11, para. 15, the 24-month limit for postings to the user of an employee hired for an indefinite period by a temporary work agency is definitively eliminated. This limit had already been temporarily suspended by Legislative Decree No. 104/2020 until 31 December 2021.

1.1.3 Public administration workers

According to the [Decree](#) of the President of the Council of Ministers of 08 October 2021, the presence in service of the staff assigned to front office and back office activities must be guaranteed, also through the flexibility of reception hours and the use of digital platforms already being used by public administrations.

Time slots of hourly flexibility in terms of entry and exit may be introduced in addition to those already adopted, also in derogation of collective agreements and in compliance with trade union participation.

Smart working can only be admitted under certain conditions: it must not in any way prejudice or reduce the availability of services for customers; public administrations must ensure adequate rotation of workers in smart working, with each worker having to perform his or her service in person; the administration must provide for adequate and suitable hardware and software tools to guarantee data protection and must have provided a plan for the disposal of the backlog.

The agreement between the administration and the worker that defines agile work (Article 18, para. 1, l. 81/17) must define the objectives of the work to be carried out in an agile way; the methods and times of execution of the service and of the disconnection of the worker, the time slots during which he or she may be contacted, as well as the methods and criteria for measuring performance.

Furthermore, managers and those responsible for administrative procedures must primarily perform their work in person.

Any individual agreements that were concluded before the Decree was issued remain valid if those criteria are respected.

To facilitate travel for employees between their home and work, the mobility managers of public administrations shall draw up plans for home-work mobility (*Piani degli spostamenti casa-lavoro* - PSCL), taking into account the extension of the entry and exit hours from the workplace. Regions and local authorities must adapt public transport to the new mobility plans.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Dismissal

Corte di Cassazione, No. 27939, 13 October 2021

An employer can dismiss an employee who publishes posts on social media in which he/she seriously offends his/her direct superiors in the company as well as the company's top management.

[According](#) to the Court, messages exchanged in a private chat and intended for a small and identified number of recipients must be considered private, closed and inviolable

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correspondence (Italian Constitution, Article 15). By contrast, this does not apply to the publication of posts in a social network, which are circulated to an indefinite number of people. If the posts are seriously offensive to superiors and top management, they represent a form of insubordination that can be sanctioned with dismissal. Insubordination is not only the employee's failure to comply with instructions received from superiors, but also entails any behaviour that compromises the execution of service within the company. Any criticism of superiors that exceeds the limits of formal correctness in terms of tone and content, not only harms the superior, but can also damage the company's reputation, which in part depends on the manager's authority. This authority may be undermined if the manager is associated with very dishonourable qualities.

2.2 Collective bargaining

Corte di Cassazione, No. 28905/21, 19 October 2021

If a company applies some components of a collective agreement, that contract is deemed to apply in full, even if the employer is not a member of the employer's association which signed the contract.

If an employer withdraws from the employer's association that signed the collective agreement but continues to apply various rules of that agreement, he/she/it implicitly continues to apply the entire collective agreement.

The Court's decision is available [here](#).

3 Implications of CJEU Rulings

Nothing to report.

4 Other relevant information

Nothing to report.

Liechtenstein

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Free trade agreement

The Liechtenstein government has produced a report and motion for Parliament on the Free Trade Agreement between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland (*Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend das Freihandelsabkommen zwischen Island, dem Fürstentum Liechtenstein, dem Königreich Norwegen und dem Vereinigten Königreich von Grossbritannien und Nordirland*).

With the free trade agreement, in addition to the trade of goods that already seamlessly continued from 01 January 2021 based on the supplementary agreement to the trade agreement between Switzerland and the UK, other areas such as in particular cross-border trade in services, including financial services, will now also be regulated in a preferential agreement.

The agreement prevents discrimination against companies from the EU and offers Liechtenstein companies preferential market access compared to countries that do not have a free trade agreement with the UK.

The report and motion as well as the draft law can be found [here](#).

The next steps will be the consultation in Parliament and the adoption of the relevant legislative amendment. It is not yet possible to project when the amendment will be passed.

Lithuania

Summary

(I) The Lithuanian President has vetoed Parliament's attempt to impose the duty on employees to present evidence of their vaccination or undergo periodic testing at their own expense.

(II) A new law introduces the several and joint liability of the main contractor for payment of wages to the employees of the subcontractor within the framework of the national provision of service.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Proof of vaccination and mandatory testing

Parliament has adopted an amendment to Article 18 (7) of the Law on the Prevention and Control of Communicable Diseases (*Užkrečiamųjų ligų profilaktikos ir kontrolės įstatymas*) which would require employees to pay for the obligatory COVID-19 tests themselves, if they are not vaccinated (Law No. XIVP-912GR of 19 October 2021). The measure, which was clearly intended to increase the number of vaccinations in the country, was accompanied by another new provision (Article 18 (8) of the Law), which would allow all employers to request proof of vaccination or proof of a recent COVID-19 test (unless there are medical reasons against vaccination). The adopted law has not yet entered into force, as it has been vetoed by the President of the Republic. Parliament will have to decide on the veto in mid-November.

1.2 Other legislative developments

1.2.1 Subcontracting

On 01 November, new legislation came into force which slightly amend the regime of the posting of foreign workers to Lithuania (e.g. new provisions allow the State Labour Inspectorate to extend the duration of the posting from 12 to 18 months) (Law No. XIV-457 of 29 June 2021. Registry of Legal Acts, 2021, No. 15454). The amendments to the Labour Code have also introduced a completely new provision in Lithuania which concerns joint and several liability of the main contractor in relation to the employees of the subcontractor. The instrument has already been known for years (at least theoretically, because no such cases have arisen) from the implementation of Directive 2009/52/EC, but it was intended to be used for the posting of foreign employees to Lithuania only. The new provision introduces the same rule for joint and several liability for Lithuanian workers of domestic companies in the construction sector. The new provision of Article 139 (5) of the Labour Code provides that if the employer is a subcontractor, the contractor shall be jointly and severally liable for the payment of wages, including increased overtime pay, night work, work on holidays and public holidays, to an employee performing work specified in the Construction Law of the Republic of Lithuania. The liability of the main contractor shall be limited to the employee's wage rights, including increased overtime pay, night work, work on holidays and public holidays acquired in the course of work performed under a construction contract concluded between the contractor and subcontractor. In fact, the objectives of the legislator are not clear enough as the problem of unpaid wages in the sector of construction has not been detected at all. The instrument of the joint and several liability of the subcontractor has been known in Lithuania for years but has never been used in practice, therefore, the real impact of the novelty seems to be rather very low.

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2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

(I) Employers are now allowed to introduce a 'COVID Check' regime in their undertaking.

(II) A bill has been deposited to implement Directive (EU) 2020/1057 on the posting of workers in the road transport sector and to adapt the implementation of Directive 2014/67/EU.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 COVID-19 certificate

In the context of the health crisis, a so-called 'COVID Check' regime was already in place for various events (e.g. meetings). The event had to be pre-announced and the persons present (vaccinated, recovered or tested) had to be checked. If these conditions were met, certain protective measures (wearing a mask, physical distancing) were not applicable.

Since 19 October 2021, it is possible for companies to introduce this regime on their premises, as well as in public administrations. In other words, the employer must check whether people have a corresponding QR code, which means that the wearing of a mask and maintenance of a physical distance are no longer binding at the workplace. The employer must notify the health authorities of its decision and display it in the workplace.

Each employer (or head of administration) is free to decide whether to implement this scheme for all or part of the company.

The ordinary rules on consultation of the staff delegation (> 15 employees) or co-decision with the staff delegation (> 150 employees) apply.

People who are neither vaccinated nor recovered must be regularly tested to come to work. These tests are no longer free in Luxembourg. An exception is made (a) for people who cannot be vaccinated for medical reasons, and (b) for people who, as a result of this new regime, have chosen to be vaccinated, pending the completion of their vaccination scheme.

This legislative change was introduced at the request of a large number of employers.

On the other hand, both the private (OGBL and LCGB) and public (CGFP) sector unions have expressed strong opposition, with threats of collective and legal action. In particular, the unions denounce the many grey areas in the legal regime.

The parliamentary work makes it clear that the aim of these binding measures is to encourage more people to be vaccinated to guarantee the freedoms of those who are vaccinated and to allow a return to a normal life.

A key issue, of course, is the question of how the costs of the tests will be covered, as self-tests will no longer be accepted (from 01 November 2021). The government and the employers' side argue that the burden is on the employee, as they have the opportunity to be vaccinated free of charge. It could of course also be argued that testing is an occupational health measure which should therefore be borne by the company. The trade unions also point out that people with a low income may not be able to afford the cost of testing and therefore either accept the subsequent sanctions or are forced to get vaccinated.

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In the same vein, the question arises whether the time spent testing shall be considered working time, as is the case for other occupational health and safety measures (e.g. training, medical examinations).

Thirdly, the question arises with regard to the status of employees who do not present a valid QR code. Is he or she absent from work without cause? Can he or she be sanctioned? The employer's side points out the obligation of employees to cooperate with health and safety rules and the fact that they cannot require the employer to grant them teleworking or leave.

As far as data protection is concerned, the employer must in principle carry out a check each time a person who is subject to this regime enters and leaves the premises. Data recording is therefore not necessary. Furthermore, the employer would in principle not be entitled to retain this data. The National Commission for Data Protection takes a nuanced view. More information is available [here](#).

Reference: Loi du 18 octobre 2021 portant modification : 1° de la loi modifiée du 17 juillet 2020 sur les mesures de lutte contre la pandémie Covid-19 ; 2° de la loi modifiée du 8 mars 2018 relative aux établissements hospitaliers et à la planification hospitalière ; 3° de la loi modifiée du 22 janvier 2021 portant : 1° modification des articles L. 234-51, L. 234-52 et L. 234-53 du Code du travail ; 2° dérogation temporaire aux dispositions des articles L. 234-51, L. 234-52 et L. 234-53 du Code du travail, more information is available [here](#).

1.2 Other legislative developments

1.2.1 Posting of workers

A bill has been deposited to:

- a) implement Directive 2020/1057 (posted workers in the road transport sector);
- b) adapt the legislation in line with the Commission's observations on the implementation of Directive 2014/67;
- c) make some additional changes to the legislation on posting.

Implementation of Directive 2020/1057

Concerning the implementation of Directive 2020/1057, the complexity of the subject merits a detailed analysis that goes beyond the ambit of a Flash Report. As far as the scope of application is concerned, the bill is closely based on the text of the Directive and there does not seem to be any obvious non-conformity.

The list of administrative requirements and control measures (Article 1 (11) a) and b) and c)) has been copied verbatim from the Directive. The documents the driver must have at his or her disposal, as well as the documents the Labour Inspectorate can request must be translated into French or German.

The bill states that the competent authorities of a Member State when requested by the Labour Inspectorate shall provide the documentation within 25 working days from receipt of the request (see Article 8 (2) of Directive 2006/22 as modified by Directive 2020/1057). This is surprising as the Luxembourg legislator imposes this obligation on foreign authorities.

Observations from the Commission

Concerning the Commission's observations, the following elements are highlighted:

- (i) The Commission observed that Article 11 (5) of the Directive concerning protection against unfavourable treatment of posted workers who bring judicial or administrative proceedings was being implemented.

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For the sake of equal treatment, the legislator has chosen to introduce a basic protection for all employees, whether posted or not, concerning the prohibition of reprisals: no employee may be subject to reprisals in response to any legal action taken to enforce his or her rights under the Labour Code. Any provision or act to the contrary, including dismissal, is void. The nullity of the dismissal can be established in an accelerated procedure.

This provision will appear as the 2nd Article of the Labour Code (L. 010-2), immediately after the definition of the rules considered to represent public order. The regime of nullity is inspired by provisions that already exist in the Code, relating to other forms of protection against retaliation.

It must be noted that this new article only deals with judicial and not with administrative proceedings. The concept of 'retaliation' (*représailles*) also seems more restrictive than 'unfavourable treatment' (*traitement défavorable*). It thus seems doubtful whether the implementation is satisfactory.

(ii) Luxembourg has implemented subcontracting liability (Article 12) in an extensive way, by including not only subcontractors as such, but all service providers (*prestataires de services*). According to the Commission, this would discourage the conclusion of contracts, hence the Labour Code will be adapted accordingly.

(iii) Luxembourg has implemented an extensive list of documents that must be provided before the posting starts (Article L. 142-2) or upon request (Article L. 142-3). The Commission considered:

- that some potentially do not exist in every Member State (such as an 'attestation de conformité' of some legal obligations, pre-employment medical examination)
- for others that the Directive does not mention them (such as the employee's profession, VAT number)
- for others that these aspects are usually controlled in the Member State of origin, and a double administrative burden must be avoided.

Luxembourg has decided to comply with all observations.

Other information to be provided has been clarified, such as the identification (address, phone and electronic contact) or the type of 'service' (a description of the activity to determine which collective agreements might be applicable).

On request of the Commission, all references to the 'employer's effective representative' will be suppressed, as the Directive does not mention it.

Furthermore, the sanction applicable in case of violation of the rules on the accommodation conditions for employees who are away from their usual workplace will be modified: the administrative fine has been replaced by a criminal fine of EUR 251 to EUR 25 000 and /or imprisonment of up to five years. This is a substantial change of the type and severity of the sanction.

Reference : Projet de loi n° 7901 portant : 1° transposition de la directive (UE) 2020/1057 du Parlement européen et du Conseil du 15 juillet 2020 établissant des règles spécifiques en ce qui concerne la directive 96/71/CE et la directive 2014/67/UE pour le détachement de conducteurs dans le secteur du transport routier et modifiant la directive 2006/22/CE quant aux exigences en matière de contrôle et le règlement (UE) n°1024/2012 ; 2° modification du Code du travail, more information is available [here](#).

Additional changes

Some minor changes have been introduced, some of which are mentioned here for completeness:

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(i) As part of a more comprehensive reform of civil proceedings in Luxembourg's courts, the Labour Courts of first instance (*Tribunal du travail*) have final jurisdiction since 15 September 2021 (i.e. no possibility of appeal) up to a value of EUR 2 000. The threshold was previously set at EUR 1 250.

Reference: Art. 25 du Nouveau Code de procédure civile; modified by : loi du 15 juillet 2021 portant modification : 1° du Nouveau Code de procédure civile ; 2° du Code du travail ; 3° de la loi modifiée du 18 février 1885 sur les pourvois et la procédure en cassation ; 4° de la loi modifiée du 7 mars 1980 sur l'organisation judiciaire ; 5° de la loi modifiée du 7 novembre 1996 portant organisation des juridictions de l'ordre administratif ; et ayant pour objet le renforcement de l'efficacité de la justice civile et commerciale, more information is available [here](#).

(ii) As in the previous year, the deadline for concluding apprenticeship contracts was extended to 30 November due to the current health situation.

Reference: Loi du 15 octobre 2021 portant dérogation temporaire au délai de conclusion des contrats d'apprentissage prévu à l'article L. 111-3, paragraphe 4, du Code du travail, more information is available [here](#).

(iii) A draft Grand-Ducal regulation envisages the correction of material errors in the transposition of Directive 2002/44/EC (risks arising from physical agents – vibration).

Reference: Projet de règlement grand-ducal n° 7902 portant modification du règlement grand-ducal du 6 février 2007 1. concernant les prescriptions minimales de sécurité et de santé relatives à l'exposition des travailleurs aux risques dus aux agents physiques (vibrations); 2. portant modification du règlement grand-ducal du 17 juin 1997 concernant la périodicité des examens médicaux en matière de médecine du travail, more information is available [here](#).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

(I) New relief measures have been introduced following the expiration of the COVID-19-related Emergency Package.

(II) The Act on Paid Parental Leave implementing Directive (EU) 2019/1158 has been passed by the Senate.

(III) A lower court has ruled that a provision in a collective labour agreement that excludes protection against abuse of successive fixed-term contracts was unlawful. Another ruling extends the prohibition to request a fee from an employee in case of job placement, including self-employed workers.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 End of relief measures

As mentioned in the September 2021 Flash Report (September), the support measures included in the 'Emergency package jobs and economy' ended in October 2021. The following measures remain in place for employees or people seeking work: (i) measures to help people who lost their job after 12 March 2020 find a job via one of the 35 [regional mobility teams](#); (ii) at the level of municipalities, support is provided for individuals who are facing or are at risk of facing financial debt to prevent personal bankruptcies, and (iii) various possibilities to make use of subsidies for training or retraining, including a personal budget of EUR 1 000 for workers looking for a job. This financial assistance can be applied for as of 01 March 2022 and replaces the possibility to deduct training costs from income taxes for individuals. It is based on a [subsidy scheme](#) developed by the Ministry of Social Affairs and Employment.

Furthermore, as of 01 October 2021, the Regulation for Reduction of Working Times, which was suspended [as of 17 March 2020](#) to be replaced by the *Temporary Emergency Bridging Measure to Preserve Employment (NOW)*, has been reintroduced (Policy Regulation of the Ministry of Social Affairs and Employment of 22 September 2021, [Stcrt. 2021, 42158](#)). This regulation stipulates that if companies face extraordinary circumstances that cannot be considered a regular entrepreneurial risk and that lead to a short period of a decrease in work, it is possible to temporarily reduce employees' working time. The employees are entitled to unemployment benefits during that period. This Regulation, which applied approximately 150 times per year between 2010 and 2019, is implemented by the Ministry of Social Affairs and Employment but was not suitable during the corona crisis and has now been reinstated. Applications based on the COVID-19 situation will not be accepted. The government has stated that the consequences of the current COVID-19 measures are to be considered as part of normal entrepreneurial risks given the current phase of the pandemic ([answers to parliamentary questions](#)).

1.2 Other legislative developments

1.2.1 Parental leave

The draft Paid Parental Leave bill that was presented to implement Directive (EU) 2019/1158 was discussed in the November 2020 Flash Report. The Senate ('Eerste Kamer') adopted the bill on [12 October 2021](#) in a vote. The official act has not yet been published. The Act will enter into force on 02 August 2022.

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At present, parents have 26 weeks of parental leave per parent in the first 8 years of the child's life. When the Act enters into force, both parents will be partially paid for 9 of these weeks in the first year of the child's life. These weeks are in addition to 16 weeks maternity leave for the mother and 6 weeks of birth leave for the mother's partner. The Act applies to all employers and the compensation during such leave is set at 70 per cent of the maximum daily wage (currently EUR 225.57 gross per day/ EUR 4 906.15 gross per month). Initially, the Act set the amount at 50 per cent, but this has been increased to 70 per cent via a motion.

2 Court Rulings

2.1 Fixed-term work

Court of Gelderland, ECLI:NL:RBGEL:2021:5633, 18 October 2021

This [decision](#) deals with subsequent employment contracts for a fixed-term within academia. The Court ruled that Article 2.3 (11) under a of the Collective Labour Agreement for Dutch Universities (CAO NU) allows universities make use of a certain 'revolving' door construction contrary to labour law legislation.

The Dutch Civil Code includes the so-called 'chain rule'. This is an anti-abuse provision against the repeated use of fixed-term contracts, in line with the requirement of Directive 1999/70 on fixed-term work. [Article 7:668a DCC](#) establishes a restriction in terms of duration (a maximum of 36 months, including intervals of maximum 6 months) and number (a maximum of 3 contracts). If the maximum duration or number is exceeded, the contract is automatically converted into a contract of indefinite duration. These restrictions also apply to successive employment contracts between employees and different employers who must reasonably be considered to be each other's successors with regard to the work being performed. It is possible to deviate in a collective labour agreement to the disadvantage of the employee and conclude successive employment contracts. Social partners have used this possibility in Article 2.3 (11) under a of the CAO NU (as well as in collective labour agreements for the temporary work agency sector). The deviation entails that the rule of successive employment as described does not apply at all. In other words, a worker can work under an unending fixed-term contract and perform the same job if the employer changes (typically between the 'actual employer' and a temporary work agency).

The Court ruled that the CLA provision in question is not contrary to the wording of Article 7:668a DCC, but arrived at the conclusion that it is contrary to the meaning of the law, given the explanations provided by the government during the parliamentary debate. The employee can thus claim a contract of indefinite duration (she had worked for at least 7 years in the same position at the same university).

Although the Court's reasoning is ambiguous (it is questionable to set aside the very clear letter of the law based on the parliamentary debate), the decision is in line with Directive 1999/70. Such provisions undermine the protection of fixed-term employees. An interpretation of the law in conformity with the Directive would have provided a sounder basis for the decision. There have not yet been any comments about this decision in academic literature.

2.2 Placement of self-employed workers

Court of Gelderland, ECLI:NL:2021:5378, 06 October 2021

This [decision](#) concerned a self-employed worker in the healthcare sector who also acted as a 'job broker' for other self-employed workers. He acted as an intermediary between the healthcare institution and other self-employed workers and collected a fee from the self-employed workers per hour worked. One of the other self-employed workers initiated proceedings against the 'job broker' because of those fees.

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The Court ruled that the 'job broker's' conduct was contrary to the 'no fee to worker' principle laid down in Article 7 (1) of ILO Treaty 181 with respect to job placement. Article 6 (3) TAW Directive 2008/104 contains a similar provision with respect to temporary work agencies: the agency cannot request a fee from workers. In Dutch law, temporary work agencies and job placement are partly covered in the same act, the [Placement of Personnel by Intermediaries Act](#) (Placement Act). Article 6 of the Directive is implemented in this Act and the 'no fee to worker' principle in case of job placement is also laid down (in Article 3). The Placement Act defines job placement as the

"provision of services in the exercise of a profession or business on behalf of an employer, a job-seeker, or both, involving assistance in the search for labour or employment, respectively, with a view to the conclusion of an employment contract or an appointment as a civil servant".

This definition and the relevant provisions in the Placement Act therefore do not apply in case of placement of self-employed workers.

Nevertheless, the Court ruled, referring amongst others to CJEU 17 November 2016, C-216/5, ECLI:EU:C:2016:883 (*Ruhrlandklinik*), that if self-employed workers are placed, the prohibition to charge them a fee as laid down in Article 3 Placement Act applies.

If this decision were upheld in an appeal (if any), this could have consequences for platform companies who act as job brokers for self-employed workers. However, caution should be exercised regarding the very extensive scope that the Court has read into Article 3 of the Placement Act. There have not yet been any comments about this decision in academic literature.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Norway

Summary

Some temporary measures to mitigate the effects of the COVID-19 crisis have been extended.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Relief measures

Following a long period of decreasing infection rates, the trend has been increasing since August and the beginning of September. This was followed by a period of decreasing infection rates until it began to increase again from mid-October, especially in northern parts of Norway. The final step of the government's reopening plan was enacted on 25 September (see September 2021 Flash Report). The increasing infection rates in October have not yet led to stricter national regulations, but local restrictions apply in some areas.

Vaccination rates have been steadily increasing. By the end of September, 86.6 per cent of the population above 18 years of age was fully vaccinated (see updated statistics [here](#)). The first vaccine dose had also been administered to children aged 12 to 15 years since the beginning of September. The Norwegian Institute of Public Health is examining whether a second dose should be administered but has recommended to wait until more knowledge is available.

The advisory against non-essential travel abroad has already been removed for countries in the EEA, Schengen and the UK and other countries that are considered to be safe. From 01 October, the remaining global advisory against non-essential travel has also been removed. There may still be an advisory against travel to specific countries. Updated travel advisories can be found [here](#).

In normal everyday life with increased emergency preparedness, the restrictions on entry to Norway will be removed in three phases. Phase 1 began on 25 September at 4 pm. Since then, EEA nationals, people from other countries who reside in the EEA and people who live in the UK and Switzerland are able to enter Norway. This also applies to people who live in purple countries, i.e. countries outside the EEA/Schengen area to which the Norwegian Institute of Public Health applies slightly lighter restrictions. More information on the three phases can be found [here](#). Changes to the entry restrictions for several countries and areas were introduced during October. Quarantine has been introduced for travellers from certain countries, for example Hungary, Norbotten in Sweden and three regions in Finland. Quarantine only applies to travellers who do not have a valid COVID-19 certificate. More information about the current entry rules can be found [here](#).

The unemployment rate rose slightly between December to March and then started to decline. The decline was significant both in May and in June and continued during the summer and fall. By the end of September, there were 129 600 unemployed people, amounting to 4.6 per cent of the workforce (see the statistics [here](#)).

The employment and labour law measures introduced in 2020 to mitigate the effects of the COVID-19 crisis have been described in more detail in previous Flash Reports. In October 2021, a few temporary measures were extended until the end of year. Most importantly, the unemployment benefit period was extended until 31 December 2021 for all unemployment benefit recipients who would otherwise have reached the maximum benefit period (see [FOR-2021-10-29-3101](#)).

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In October, Norway elected a new government. Jonas Gahr Støre's government succeeded Erna Solberg's government on 14 October. The new government is a coalition between the Labour Party (*Arbeiderpartiet*) and the Centre Party (*Senterpartiet*). The new government has proposed several other employment measures to mitigate the effects of the COVID-19 crisis to be extended until the end of the year. The government has also proposed to reintroduce compensation schemes for self-employed persons who lost income due to the COVID-19 crisis. More information on these proposals can be found [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

Nothing to report.

Poland

Summary

An amendment to the Law on Limiting Trade on Sundays, Public Holidays and Some Other Days will take effect from 01 February 2022.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Ban on Sunday trade

On 14 October, the amendment to the Law of 10 January 2018 on Limiting Trade on Sundays, Public Holidays and Some Other Days (Journal of Laws 2021, item 936) was finally enacted by Parliament. It was signed by the President on 18 October and subsequently published in the Journal of Laws.

From 01 January 2020, there is a general prohibition in Poland to perform trade activities on Sunday. However, there are numerous statutory exceptions to the ban that make it possible for entrepreneurs to keep their shops/supermarkets open. The amendment refers to these exceptions. Sunday trade activities can be performed in post offices (Article 6 item 1.7 of the Law). In practice, several commercial networks and shops have decided to provide postal services, especially the possibility to pick up a parcel delivered by private delivery companies. The amendment of 14 October only allows the performance of trade activities by such entities if the postal services are predominant. At the final stage of the legislative process, it was determined that the abovementioned activities are 'predominant' if they provide at least 40 per cent of monthly revenue.

Another exception refers to commercial outposts where trade activities are performed personally by an entrepreneur who is a natural person, who acts in his or her own name and on his or her own account (Article 6 item 1.27 of the Law). In practice, this regulation covers small shops where the owner him- or herself performs the trade activities on Sundays. The amendment of 14 October provides that such an entrepreneur is entitled to a free of charge assistance provided by his/her spouse, children, stepchildren, parents, stepparents, grandparents and grandchildren. Those persons cannot be employed by the entrepreneur/owner of the shop.

The amendment will take effect on 01 February 2022. The earlier stages of the legislative process were presented in the July and September 2021 Flash Reports.

The amendment can be found [here](#) (Journal of Laws 2021, item 1891).

The text of the Law on Limiting Trade on Sundays and Other Public Holidays (consolidated text: Journal of Laws 2021, item 936) can be found [here](#).

The draft and its substantiation can be found [here](#).

The information on the legislative process can be found [here](#).

Although the statutory ban on Sunday trading activities is in force, there have been exceptions: the recourse to 'postal activities' constitutes a good example of this phenomenon. The new regulations will take effect on 01 February 2022.

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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 alert in the Portuguese mainland territory until 30 November 2021.

(II) The Supreme Court of Justice submitted a request for a preliminary ruling to the CJEU regarding the interpretation of Directive 2001/23/EC on the transfers of undertakings.

(III) The Lisbon Court of Appeal ruled on the grounds to enter into a fixed-term employment contract.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 State of alert

By Resolution of the Council of Ministers No. 142-A/2021, of 29 October, the government has extended the state of alert in the Portuguese mainland territory for 30 days, i.e. until 30 November 2021, considering the development of the epidemiological situation in Portugal in recent weeks in terms of the number of new cases, deaths and hospitalisations, as well as the indicators that must be taken into account, namely those relating to the assessment of the risk of transmission of the infection and the incidence level. Therefore, all rules and measures established in the Resolution of the Council of Ministers No. 135-A/2021, of 29 September (see September 2021 Flash Report) remain in force.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Transfer of undertaking

Supreme Court of Justice, Proc. no. 445/19.2T8VLG.P1.S1, 15 September 2021

In the present [ruling](#), the Portuguese Supreme Court of Justice analysed a potential case of transfer of an economic unit pursuant to Articles 285 and *seq.* of Portuguese Labour Code, approved by Law No. 7/2009, of 12 February, as subsequently amended ('PLC'), which transposed Directive 2001/23/EC into national law.

The Supreme Court of Justice stated that to determine whether a transfer of an economic unit had effectively occurred in the present case, the relevant case law of the Court of Justice of the European Union ('CJEU') on the interpretation of the said Directive should be taken into account.

This Supreme Court analysed the definition of 'economic unit' included in Article 285 (5) of PLC, according to which "*an economic unit is considered a set of organised means that constitutes a productive unit with technical and organisational autonomy and that maintains its own identity with the purpose of exercising an economic activity, whether principal or accessory*", stating that this definition should be interpreted in light of the CJEU's case law.

The Supreme Court asserted that in the present case, there was an economic entity that could be transferred: the employees who ensured the surveillance of the client's

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premises, using equipment provided partially by their employer and partially by the client, have minimum technical and organisational autonomy. The small number of employees who made up such a unit (four) should not be considered an obstacle, as the CJEU has already confirmed the existence of an economic unit consisting of one single employee in the well-known judgment *Christel Schmidt*.

The Supreme Court of Justice has stated that although the non-existence of contractual relationships between successive service providers is not an obstacle to the existence of a transfer, it may be an indication against such a transfer.

The appellant sustained that a teleological interpretation should give primacy to the interest of employees in the maintenance of their employment relationship. However, "*Directive 2001/23 does not aim solely to safeguard the interests of the employees at the time of a transfer of undertaking but is intended to ensure a fair balance between the interests of the latter, on the one hand, and those of the transferee, on the other*" (paragraph 26 – judgment of 26 March 2020 – *ISS Facility Services NV*). For the Portuguese Court, it is not clear whether this teleological interpretation today should also take into account the interest of the transferee.

Therefore, the Supreme Court decided to refer the following questions to the CJEU for a preliminary ruling, pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU):

- a) Can it still be held that the absence of any contractual link between successive service providers is an indication of the absence of a transfer within the meaning of Directive 2001/23/EC, even though, as the other indications, it is not decisive on its own and should not be considered in isolation (judgment of 11 March 1997, *Ayşe Süzen*, C-13/95, No. 11)?
- b) In an activity such as the private security of industrial premises, where the new service provider has taken over only one of the four workers who made up part of the economic unit (and was therefore not taken over with the majority) and there is no evidence to suggest that the worker in question had specific skills and knowledge such that it can be said that an essential part of the workforce in terms of skills has been transferred to the new service provider, nor has there been a transfer of intangible property, can it be concluded that there is no transfer of any economic entity, even though some equipment (alarms, CCTV, computer) continues to be provided by the customer to the new service provider, given *i*) the relatively low economic value of the investment that such equipment represents in the transaction as a whole, and *ii*) it would not be economically rational (judgment of 27 February 2020, *Grafe and Pohle*, C-298/18, No. 32) to require its replacement from the customer?
- c) Whether "*this question must be assessed in concrete by the national court in light of the criteria established by the Court of Justice (judgment of 07 August 2018, Colino Siguënza, C-472/16, EU:C:2018:646, paragraph 45; Grafe and Pohle, No. 27) and of the objectives pursued by Directive 2001/23, as set out in particular in recital 3 thereof*", it must be borne in mind that "*Directive 2001/23 is not solely intended to safeguard the interests of employees when a transfer of undertaking takes place, but aims to ensure a fair balance between the interests of the employees, on the one hand, and those of the transferee on the other*" (judgment of 26 March 2020, *ISS Facility Services NV*, C-344/18, No. 26, which reiterates the statement made in judgment of 18 July 2013, *Alemo-Herron*, C-426/11, paragraph 25).

2.2 Fixed-term work

Appeal Court of Lisbon, Proc. No. 9999/20.0T8LSB.L1-4, 13 October 2021

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In the present [ruling](#), the Lisbon Court of Appeal has ruled that the conclusion between the defendant (employer) and a third party of a contract to provide services for passengers with reduced mobility, for the duration of one year, renewable, and that can be terminated at any time, is not sufficient to justify the conclusion of a fixed-term employment contract with an employee (plaintiff), based on the temporary needs of the employer.

According to the Court, fixed-term employment contracts are of an exceptional nature and are justified to meet temporary needs, objectively defined by the employer and only for the period strictly necessary for that purpose. In the present case, the service of assistance of passengers with reduced mobility does not reveal a temporary need of the employer, considering its lasting nature, as a result of the requirements of Regulation (EC) No. 1107/2006, as recommended by the European Civil Aviation Conference, which has been executed by the defendant (employer) since 2008.

For these reasons, the Lisbon Court of Appeal deemed that the fixed-term employment contract entered into between the parties was null and void and, therefore, the employee was bound to the employer by a permanent employment contract (PLC, Article 147). As a result, the Court concluded that the letter sent by the defendant to the employee constituted an unlawful dismissal under Portuguese law.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Romania

Summary

- (I) New restrictive measures have been adopted to limit the effects of the pandemic.
- (II) Administrative sanctions were introduced to discourage undeclared work and under-declared work.
- (III) The minimum wage is set to increase from 01 January 2022.
- (IV) National courts are facing problems that arise from the definition of the concept of transfer of undertaking in national law.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Restrictive measures

As a result of the increase in infection rates, some measures which had been abandoned at the beginning of the summer were reinstated. The state of alert has been renewed (by Government Decision No. 1090/2021 on the extension of the state of alert on the Romanian territory starting on 10 October 2021, as well as the establishment of the measures applied during this period to prevent and mitigate the effects of the COVID-19 pandemic, published in the Official Gazette of Romania No. 962 of 07 October 2021), and some restrictions have been extended.

Thus, by Government Emergency Ordinance No. 110/2021 on granting paid days off for parents and other categories of persons in the context of the spread of the SARS-CoV-2 coronavirus (published in the Official Gazette of Romania No. 945 of 04 October 2021), the obligation of employers to grant days off to parents of children studying online has been reinstated. Refusal to grant days off shall be punishable by a fine. The employer shall pay the worker an indemnity of 75 per cent of the salary, and the amount will be subsequently settled from the Guarantee Fund for the payment of salary claims.

Teleworkers, as well as the employees of certain essential services, do not benefit from this measure.

b) Government Emergency Ordinance No. 111/2021 for the establishment of social protection measures for employees and other professional categories in the context of the prohibition, suspension or limitation of economic activities, determined by the epidemiological situation generated by the spread of the SARS-CoV-2 coronavirus (published in the Official Gazette of Romania No. 945 of 04 October 2021) provides for compensation allowances for workers whose contract has been temporarily suspended. This measure had already been applied previously, but expired on June 30.

Thus, for the period of temporary suspension of the individual employment contract, as a result of the effects of the SARS-CoV-2 coronavirus, employees benefit from an allowance set at 75 per cent of the basic salary corresponding to the position filled, which is settled from the unemployment insurance budget. The new provisions are applicable until 31 December 2021.

Certain categories of non-employees also benefit from a monthly allowance, namely: professionals, as regulated by the Civil Code; individuals who obtain income exclusively from copyright and related rights; co-operators; and athletes with a suspended sports activity contract.

According to Government Decision No. 1130/2021 (GD No. 1,130/2021 for the amendment of Annexes Nos 2 and 3 of Government Decision No. 1,090/2021 regarding the extension of the state of alert on the Romanian territory starting on 10 October

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2021, as well as the establishment of the measures applied to prevent and mitigate the effects of the COVID-19 pandemic, published in the Official Gazette of Romania No. 1013 of 22 October 2021), the employers shall order the organisation of work from home or teleworking for at least 50 per cent of their employees. If this is not possible, employers with over 50 employees have the obligation to organise the work schedule so that the staff is divided into groups to start or finish the activity with a difference of at least one hour, in strict compliance with health protection measures.

Access to public institutions by persons who do not work in those institutions is restricted. Only persons who are vaccinated, tested or have recently recovered from COVID-19 may enter. Exceptions apply to lawyers, who can enter public institutions without such proof.

1.2 Other legislative developments

1.2.1 Undeclared work

Emergency Ordinance No. 117/2021 amends and supplements Law No. 53/2003 - Labour Code (published in the Official Gazette of Romania no. 951 of 05 October 2021), and introduces new administrative sanctions to limit undeclared and under-declared work, as well as the practice of paying 'envelope wages':

- Delay in the payment of salary by more than one month is sanctioned with a fine between LEI 5 000 to LEI 10 000, except if the employer is undergoing insolvency proceedings;
- the employer benefiting from the work of a part-time employee which exceeds the contractual work schedule, is sanctioned with a fine of between LEI 10 000 to LEI 15 000 (until now, the sanction was LEI 10 000 per person. This is the third change aimed at tightening the sanctions for overtime work provided by part-time employees);
- the payment of a net salary higher than the one in the payroll statements and in the fiscal declarations is sanctioned with a fine between LEI 8 000 and LEI 10 000.

1.2.2 Overtime compensation

The same Government Emergency Ordinance No. 117/2021 extended the period during which the employer can compensate overtime work with leave. Thus, at present, overtime is compensated by paid leave in the next 90 calendar days after it has been performed. The period during which overtime can be compensated was initially 30 days (2003), was extended to 60 days (2011), and is now 90 days (2021).

1.2.3 Minimum wage

Government Decision No. 1071/2021 (published in the Official Gazette of Romania No. 950 of 05 October 2021) states that starting on 01 January 2022, the minimum national gross basic salary shall be set at a minimum of LEI 2 550 per month. Currently, the monthly minimum wage is LEI 2 300.

According to the government, the formula for calculating the new minimum wage takes into account:

- the inflation rate of 5.0 per cent forecasted by the National Strategy and Forecast Commission;
- 2.1 per cent real increase in labour productivity per person for 2020 according to EUROSTAT data;

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- increase in average gross earnings;
- part of the projected economic growth for 2021/2022, by applying a correction coefficient of 2 per cent.

2 Court Rulings

2.1 Transfer of undertaking

Bucharest Court of Appeal, Decision no. 4476/2021, 28 September 2021

Law No. 67/2006 on the protection of the rights of employees in the event of transfers of undertakings, businesses or parts thereof (published in the Official Gazette of Romania No. 276 of 28 March 2006), defines a transfer as a "*transfer from the ownership of the transferor to the ownership of the transferee of an undertaking, business or parts thereof, with the aim of continuing the main or ancillary activity, whether or not they are operating for gain*". The Romanian law thus defines transfers as a change in ownership from the hands of the transferor to those of the transferee. The reference to 'ownership' is restrictive, compared to the definition in Directive 2001/23/EC on transfers of undertakings, since the transfer of an undertaking to another employer would not necessarily also mean a transfer of ownership.

The issue of the inconsistency between the national law and the Directive was raised at the Constitutional Court, which, however, by Decision No. 729/2020 (published in the Official Gazette of Romania No. 1242 of 16 December 2020), rejected the claim of unconstitutionality on the grounds that "*it does not constitute problems of constitutionality of the criticised text of law*".

Under these circumstances, the labour law courts were faced with the question of how to apply national law in cases where, without a transfer of ownership from the transferor to the transferee, the operation nevertheless falls within the concept of 'transfer of undertaking' within the meaning of the Directive.

For example, the Bucharest Tribunal and, on appeal, the Bucharest Court of Appeal (Decision of the Bucharest Court of Appeal, Section VII for cases regarding labour disputes and social insurance No. 4476/2021 from 28 September 2021 (www.lege5.ro)), deal with a dismissal that had occurred in the context of an assignment of the transferor's activity without the transfer of property rights. Both courts held that the provisions of Article 4 d) of Law No. 67/2006, which conditions the existence of the transfer of the ownership right from the transferor's patrimony to the transferee's patrimony, restricts the scope of application of the law in relation to that of the Directive 2001/23/EC on transfers of undertakings.

The courts did not agree with the company's argument, i.e. the claim that the transfer of the company had not been completed due to the seizure of the company's shares. This is because a transfer of undertaking does not necessarily involve a transfer of shares between the two parties involved in the transfer. The Bucharest Court of Appeal ruled that the transfer of ownership of tangible assets between the two entities is not a condition for a transfer of undertaking, nor is the value of the transferred tangible assets relevant.

Based on this decision, the Bucharest Court of Appeal ruled that the reason for dismissal of the employee was precisely a transfer of undertaking, corroborated by the employee's refusal to accept other conditions than those established under the contract signed with the transferor. Since the transfer of the undertaking cannot in itself constitute a ground for dismissal, the Court overturned the termination of the employment relationship. Thereby, the Court held that the Directive is applicable in the present case, pointing out that the legal provision requiring the national court to not give effect to legal acts that do not comply with the relevant European legislation prevails.

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Similar decisions have been issued in the recent past by the Bucharest Court of Appeal. Thus, in Civil Decision No. 1,771/25 June 2020 (issued by the Bucharest Court of Appeal, Section VII for cases involving labour disputes and social insurance in file No. 30633/3/2018, with comments by judge Maria Violeta Duca, published in 'Dreptul' [the Law], No. 11/2020, pp. 184-200), essentially the following factual situation was established: company B participated in a tender for the award of a security service contract in the X location of the beneficiary, the service contract being awarded to company B. Following this contract award by tender, the former service provider, company A, laid off staff. Of the five security guards operating at location X, company B re-employed three of them, and they continued to work without interruption under the same conditions and in the same location for the benefit of the new service provider. Company B hired *the applicant*, a former employee of company A, with a probation period of 90 calendar days.

By written notification, company B informed *the applicant* that his employment contract would be terminated during the probation period (without a notice period and without justification, according to Article 31 (3) of the Labour Code). *The applicant* argued that it was illegal to stipulate a new probation period for the same position, given that, in fact, a transfer of undertaking had taken place, and asked to be reinstated.

The Court of Appeal examined the case law of the Court of Justice of the European Union to establish the essential elements for the qualification of an operation as a transfer of undertaking in the interpretation of the provisions of Article 1 a) and b) of Directive 2001/23/EC and held that the transfer of undertaking could take place without any contractual relationship or transfer of ownership between the transferor and the transferee. Consequently, the Court ruled that a transfer of undertaking had taken place and ruled in favour of *the applicant*.

The Court based its decision on the fact that company B had taken over the majority of staff in location X, there was continuity in the work of security guards after the change in service provider, the security guards were an economic entity that maintained its identity, the activities performed before and after the transfer remained the same, and that the activities were carried out, both before and after the transfer, in a stable manner.

The Court of Appeal held that the national court is entitled to set aside national provisions contrary to European Union law. This type of effect must be dissociated from the notion of 'direct effect' of the Directives. In conclusion, the national court held that the transfer of ownership or the contractual relationship between the transferor and the transferee does not constitute a *sine qua non* for the transfer of an undertaking within the meaning of Directive 2001/23/EC and, although provided for by national law, cannot have effects contrary to the purpose of the Directive, by restricting its scope.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

(I) The Ministry of Labour, Social Affairs and Family has set the amount of minimum wage for the year 2022.

(II) Parliament has adopted two acts amending the Labour Code and the rules on the posting of workers to implement Directive (EU) 2020/1057.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Minimum wage

The Ministry of Labour, Social Affairs and Family of the Slovak Republic in accordance with Article 9 paragraph 1 of Act No. 663/2007 Coll. on minimum wage, as amended, announced in [352/2021](#) that the amount of minimum wage for 2022 has been set at:

- a) EUR 646 per month for an employee remunerated with a monthly salary,
- b) EUR 3 713 for each hour worked by an employee.

(The gross monthly minimum wage for 2021 was set at EUR 623.00, while the gross hourly minimum wage was set at EUR 3.58).

The Ministry of Labour, Social Affairs and Family of the Slovak Republic, in accordance with Article 120 paragraph 8 of Act No. 311/2001 Coll. the Labour Code, as amended, announced in [353/2021](#) that the amount of minimum wage claims according to Article 120 paragraph 4 of the Labour Code for 2022 are as follows:

(a) the amount of minimum wage entitlement of the employee remunerated with a monthly salary for the respective grade:

| Grade | Amount of minimum wage entitlement |
|-------|------------------------------------|
| 1 | EUR 1 646.00 per month |
| 2 | EUR 2 762.00 per month |
| 3 | EUR 3 878.00 per month |
| 4 | EUR 4 994.00 per month |
| 5 | EUR 1 110.00 per month |
| 6 | EUR 1 226.00 per month |

(b) the amount of minimum wage entitlement for the respective grade for each hour worked by the employee at the prescribed weekly working time of 40 hours:

| Grade | Amount of minimum wage entitlement |
|-------|------------------------------------|
| 1 | EUR 3 713 per hour |
| 2 | EUR 4 379 per hour |
| 3 | EUR 5 046 per hour |

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| | |
|---|--------------------|
| 4 | EUR 5 713 per hour |
| 5 | EUR 6 379 per hour |
| 6 | EUR 7 046 per hour |

1.2.2 Posting of workers

On 20 October 2021, the National Council of the Slovak Republic (Parliament) adopted an Act amending Act No. 462/2007 Coll. on the organisation of working time in transport, as amended. This Act also amends

- Act No. 311/2001 Coll. Labour Code as amended,
- Act No. 351/2015 Coll. on cross-border cooperation for the posting of workers to perform services, as amended.

The main reason for adopting this Act is the transposition of Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No. 1024/2012.

At the same time, this Act will ensure the implementation of Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs.

As regards the amendment of Act No. 462/2007 Coll. on the organisation of working time in transport, two changes must be mentioned, in particular. According to the new wording of Article 27 paragraph 1, the employer is required to schedule the working time of drivers of regular passenger transport which must include a break of 30 minutes after maximum four hours of driving time; this shall not apply if after maximum four hours of driving time, there is a continuous daily rest period or a continuous weekly rest period.

According to the new Article 40a paragraph 1 of Act No. 462/2007 Coll. in times of an extraordinary situation or in a state of emergency, the employer may schedule train drivers' daily working time so that the duration of the shift is a maximum of 15 hours. According to Article 40a paragraph 2, if the employer schedules a train driver's daily working time in accordance with paragraph 1, the daily rest period shall not be less than 11 hours.

As regards Act No. 311/2001 Coll. Labour Code, the new Article 5a (paragraphs 1-7) was inserted after Article 5. The new Article 5a paragraph 2 letters a /-f / covers cases in which the driver is not considered to be an employee who is posted to provide services under Article 5 paragraph 6 letter a / of the Labour Code. For example, according to Article 5a paragraph 2 letter a/, as an employee sent to perform work within the scope of the provision of services under Article 5 paragraph 6 letter a/ is not considered to be a driver who passes through the territory of a Member State of the European Union without loading or unloading goods or without picking up or dropping off passengers. According to Article 5a paragraph 7, for the purposes of paragraphs 1 to 6, an employee who is a driver in the field of road transport shall be considered a driver.

(Section 5 paragraph 6 letter a/ of the Labour Code: "the sending of an employee to perform work within the provision of services is considered a cross-border posting under the direction and responsibility of the posting employer under a contract between the posting employer as a cross-border service provider and the recipient of that service, if an employment relationship has been established between the posting employer and the employee during the period of posting".)

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Article 4 paragraphs 1-6 of Act No. 351/2015 Coll. on cross-border cooperation in the posting of workers to perform services within the provision of services regulates the obligations of the visiting employer and the home employer. Article 4 was supplemented by paragraph 7. According to the new paragraph 7, the provisions of Article 4 paragraphs 1 to 5 shall not apply to a visiting employer if the posted employee is a driver in the field of road transport.

Article 4a was inserted after Article 4. The new Article 4a regulates the obligations of the visiting employer when posting employees in the field of road transport.

This new Act shall enter into force on 02 February 2022, except for Article I point 30, which shall enter into force on 31 December 2024.

This Act has not yet been promulgated in the Collection of Laws.

1.2.3 Pedagogical and professional employees

On 20 October 2021, the National Council (Parliament) adopted the Act amending Act No. 138/2019 Coll. on pedagogical employees and professional employees and on amendments to certain acts, as amended.

The aim of the Act is, in particular, a harmonisation with the current needs of application in practice, especially in terms of performance of work activities in the context of providing education and training for children and pupils.

Within the framework of the adopted Act, the following Acts were amended:

- Act No. 138/2019 Coll. on pedagogical employees and professional employees;
- Act No. 553/2003 Coll. on remuneration of certain employees in the performance of their work in the public interest;
- Act No. 330/2007 Coll. on criminal records.

The new wording of Article 6 paragraph 1 letters a/-i/ of Act No. 138/2019 Coll. on pedagogical employees and professional employees defines what is meant by the work activity of a pedagogical employee. According to letter a/, the work activity of a pedagogical employee refers to a direct teaching/ educational activity based on which a school's educational programme or teaching programme is carried out. According to the new paragraph 3 of Article 6, work activities pursuant to paragraphs 1 and 2 shall be performed by a pedagogical employee and a professional employee on the basis of an employment relationship only.

The amendment of Act No. 138/2019 Coll. regulates overtime work as well. According to the new wording of Article 7 paragraph 4, one hour of overtime work is considered one completed hour of direct teaching/ educational activity, which exceeds the basic duration of work agreed on

- a) of a pedagogical employee, if he or she has fulfilled his or her basic work commitment, or
- b) of a chief pedagogical employee who is not a statutory body, if he or she has fulfilled his or her basic work commitment.

The Act also simplifies proof of integrity of pedagogical employees and of professional employees (Articles 15, new Articles 15a, 15b). According to Article 15a paragraph 1 letter a/, a successful candidate for the performance of the work activity of a pedagogical employee or of a professional employee demonstrates integrity in the first employment relationship in which he or she performs the work activity of a pedagogical or of a professional employee.

A new second sentence is inserted after the first sentence in Article 82 paragraph 7, which reads as follows: "A *pedagogical employee and a professional employee are*

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entitled to severance pay upon termination of employment for the reasons stated in Article 63 paragraph 1 letter b) of the Labour Code."

(Article 63 paragraph 1 letter b) of the Labour Code:

"An employer may only give notice to an employee for the following reasons: b) the employee has become redundant by virtue of a written decision of the employer or the competent authority on the modification of their work tasks, technical equipment or reduction of the number of employees to ensure work efficiency or due to other organisational changes and the employer who is a temporary work agency, even if the employee becomes redundant for the termination of the temporary assignment pursuant to Article 58 prior to the expiry of the period for which the fixed period employment was agreed for."

In Act No. 553/2003 Coll. on the remuneration of certain employees in the performance of their work in the public interest, the amendment of the Act, inter alia, complements the possibility to pay a functional salary for overtime work during the period of taking substitute time off (Article 19 paragraph 1).

This new Act shall enter into force on 01 January 2022. This Act has not yet been promulgated in the Collection of Laws.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) Several restrictive measures aiming to contain the spread of COVID-19 continued to apply throughout October 2021.

(II) The collective agreement on road passenger transport in Slovenia was extended to the entire sector.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Restrictive measures

Various measures aiming to contain the spread of COVID-19 virus infections continued to be applied during October 2021 (the recovered-vaccinated-tested (RVT) requirement as a general rule for all activities, for all employees and self-employed and persons working on another basis, for all users of services or activities, with very few exceptions; face masks, limited gathering of people; etc.). A summary overview of all valid measures are [published](#) in English on the government's website.

As the epidemiological situation in Slovenia has been deteriorating, the government announced stricter measures (more frequent testing required, etc.).

The most recent changes are published here: 'Odlok o spremembi Odloka o izjemah od karantene na domu po visoko tveganem stiku s povzročiteljem nalezljive bolezni COVID-19', OJ RS No. [164/2021](#), 15 October 2021, p. 9643; 'Odlok o spremembah in dopolnitvah Odloka o načinu izpolnjevanja pogoja prebolewnosti, cepljenja in testiranja za zajezitev širjenja okužb z virusom SARS-CoV-2', OJ RS No [171/2021](#), 28 October 2021, p. 9805.

1.2 Other legislative developments

1.2.1 Personal assistants

The Personal Assistance Act ('Zakon o osebni asistenci (ZOA)', Official Journal of the Republic of Slovenia (OJ RS) Nos [10/17](#) et subseq.;) was amended.

Among others, the amendments ('Zakon o spremembah in dopolnitvah Zakona o osebni asistenci (ZOA-B)', OJ RS No. [172/2021](#), 29 October 2021, p. 9859-9862) also concern the regulation of various forms of employment for personal assistants (regular employment relationships, self-employment, occasional work of students, occasional work of retired persons).

1.2.2 Police officers

The Organisation and Work of the Police Act ('Zakon o organiziranosti in delu v policiji (ZODPol)', OJ RS Nos [15/13](#) et subseq.,) has been amended.

Among others, the amendments ('Zakon spremembah in dopolnitvah Zakona o organiziranosti in delu v policiji (ZODPol-G)', OJ RS No [172/2021](#), 29 October 2021, p. 9867-9874) also concern some employment-related issues of the police officers (special rules as regards restrictions on the right to strike have slightly changed, rules on auxiliary police staff have been amended, certain aspects of remuneration, such as additional bonuses etc., stricter prohibition of other activities and work, etc.).

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2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Collective bargaining

The collective agreement on road passenger transport in Slovenia (*'Kolektivna pogodba za cestni potniški promet Slovenije'*, OJ RS No. [197/20](#), 24 December 2020, , pp. 10103-10110) was extended on the proposal of the social partners, by the decision of the Minister of Labour, which was published in the Official Journal (OJ RS No. [163/2021](#), 15 October 2021, p. 9417).

The extension of collective agreements is regulated by Articles 12-14 of the Collective Agreements Act (*'Zakon o kolektivnih pogodbah'* (ZKoIP), OJ RS No. [43/2006](#) et subseq. A sectoral collective agreement may, under the prescribed conditions, be extended, i.e. declared universally applicable to the entire sector concerned, which means that it applies to all employers and workers within the relevant sector of activity, irrespective of their membership in the employers' associations and the trade unions that concluded a collective agreement.

Spain

Summary

(I) The requirements to grant a residence permit to unaccompanied foreign minors have been modified with the aim of making the procedure easier.

(II) The Supreme Court ruled on the subject of transfers of undertakings in a case of succession of subcontractors in the cleaning sector.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Public holidays

The Ministry of Labour has [published](#) the list of public holidays for the year 2022. Spanish Labour Law establishes that workers are entitled to 14 days of public holidays per year (all paid), some religious and others of a secular or institutional nature. Some of these public holidays apply throughout the Spanish territory, and others change depending on the region or municipality. The Ministry of Employment has the legal mandate (Article 37.2 of the Labour Code) to determine the full public holiday calendar in advance, a task that this Resolution has established for 2022. The regions can add a 15th day of public holiday (unpaid). Collective agreements can also create other public holidays/days of leave.

1.2.2 Work of foreigners

The government has [modified](#) the regulations on the work of foreigners to make it easier for unaccompanied foreign minors, who are under the guardianship of the Spanish administration, to obtain a residence and work permit when they reach 18 years of age. The government considered that the previous rules that were in place were too demanding, making it difficult for these foreigners to obtain a residence permit when they came of age.

The requirements are now easier to meet and some of the modifications seek to adapt the rules to reality. For example, according to the former rules, the procedure to grant these minors their first residence permit was too long (nine months) and it is now reduced to 90 days. When they come of age, they can apply for a residence permit. They need to prove that they have sufficient income (from work, benefits or other sources), but the necessary amount has been reduced. It is not equal to EUR 564 as was the case in the past, but to the amount of the minimum living income (EUR 469.93 in 2021). Moreover, the national employment situation is no longer a factor for this particular group.

2 Court Rulings

2.1 Equal treatment

Constitutional Court, ECLI:ES:TC:2021:153, 20 October 2021

The Constitutional Court [ruled](#) on a decision of the employer (a hospital) to temporarily change the post of a nurse who worked in a paediatric ICU, a change motivated by a

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reduction in working hours because she had legal guardianship of a minor. The Constitutional Court argued that the principle of equality had not been violated because there was no other worker in a comparable situation who would have received better treatment.

Concerning the principle of non-discrimination, the Constitutional Court, which expressly mentions Directive (EU) 2019/1158 and CJEU case law, admits that these situations could lead to an indirect discrimination on ground of sex, because women are more likely to request these measures to reconcile work and family life. However, in this particular case the Constitutional Court finds that the reasons argued by the Hospital were solid, because the nurse have reduced her working time in 1.5 hours every day and it was very difficult to find a proper replacement. The guidelines provided by the Ministry of Health for this specific service, where the patients require permanent and specialized care, do not recommend a change of nurses during the same shift. The employer, therefore, had objective grounds for the decision and the Constitutional Court considers that the nurse had not suffered a real harm for the temporary change of the job.

2.3 Transfers of undertakings

Supreme Court, ECLI:ES:TC:2021:153, 22 September 2021

Transfers of undertakings have been a key issue in Spanish case law over the last few years. The Supreme Court is trying to adapt its doctrine to CJEU case law, but this is not an easy task. Many CJEU rulings on transfers of undertakings have recently been published, and experience proves that the Supreme Court has not always been able to fully comply with these, at least not initially. At this [moment](#), the Supreme Court has adapted its doctrine to CJEU case law, even in cases concerning the succession of staff through collective bargaining.

The Supreme Court has stated that the legal rules on transfers of undertakings (Article 44 of the Labour Code) do not apply when only a succession of sub-contractors occurs but no transfer of material resources, except in the case of 'succession of staff'. This Supreme Court ruling refers to the CJEU Somoza Hermo ruling (C-60/17, 11 July 2018), which states that the

"directive applies to a situation in which a contracting entity has terminated the contract for the provision of services relating to the security of buildings concluded with one undertaking and has, for the purposes of the provision of those services, concluded a new contract with another undertaking, which takes on, pursuant to a collective agreement, the majority, in terms of their number and skills, of the staff whom the first undertaking had assigned to the performance of those services, in so far as the operation is accompanied by the transfer of an economic entity between the two undertakings concerned".

The Supreme Court ruled that a transfer of undertaking had taken place in a similar case which involved two subcontractors in the cleaning sector. However, this ruling is relevant because it provides an answer concerning the minority of the staff of the first undertaking, which had not been assigned to perform those services, i.e. the staff the new subcontractor did not want to retain. The Supreme Court considered that the rules on transfers of undertakings, if applicable, require the succession of all of the former undertaking's staff. If the situation qualifies as a transfer of undertaking, the Directive shall apply to all workers, not only those chosen by the new subcontractor. Those not chosen shall be dismissed on objective grounds, i.e. the new employer must follow the relevant procedure (even a collective dismissal if the number of affected staff requires it). The workers have the right to severance pay and it will be considered an unfair dismissal if no procedure has been followed because the new subcontractor simply disregarded those workers.

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3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Unemployment

Unemployment continues to decrease (76 113 people in September) for the seventh consecutive month. There are 3 257 802 unemployed people.

4.2 Volcanic eruption in La Palma

Volcanic activity on the island of La Palma (Canary Islands) has caused serious damage. The government has [approved](#) a series of measures to improve the situation of those affected. These include the development of specific employment plans.

Sweden

Summary

(I) The Swedish authorities have published details on the distribution of public COVID-19 relief funds.

(II) The Swedish government was presented with an enquiry on legislative efforts related to ILO Convention No. 190, Eliminating Violence and Harassment in the World of Work.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Relief measures

No new labour law measures have been initiated during the period. The details on the distribution of COVID relief funds for reduced working time among employers were made public by the Swedish *Tillväxtverket*. A total of SEK 34 billion (approx. EUR 3.4 billion) has been paid to Swedish employers. *Criticism* has recently been raised since many of the major companies on the receiving end managed to stay profitable and pay dividends to their shareholders during the pandemic.

1.2 Other legislative developments

1.2.1 Ratification of ILO Convention No. 190

The Swedish government has investigated the legislative measures relevant for an eventual ratification of the recent *ILO Convention No. 190*. The investigation and legislative proposals were presented in the public enquiry *SOU 2021:86 ILO:s konvention om våld och trakasserier i arbetslivet*. The conclusion in the enquiry is that the Swedish legislation is in line with the Convention. Employers have a vast responsibility to undertake pro-active and reactive measures to fight violence and harassment in the workplace, and the major surveillance and monitoring responsibilities lies with the Work Environment Agency (*Arbetsmiljöverket*) and the Discrimination Ombudsman (in relation to discriminatory harassment and violence). The only draft legislative proposals presented by the enquiry concerns a minor section highlighting that the work environment, 'as far as possible', must be free from violence and harassment.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

United Kingdom

Summary

A national court ruling dealt with the employment status of a delivery courier.

1 National Legislation

Nothing to report.

2 Implications of CJEU Rulings

Nothing to report.

3 National Court Rulings

3.1 Employment status

England and Wales Court of Appeal (Civil Division), Stuart Delivery Ltd v Augustine [2021] EWCA Civ 1514, 19 October 2021

It will be recalled that the UK operates a tripartite system of employment status: employee, worker and self-employed. Section 230(3) of the [Employment Rights] Act 1996 defines a worker as a person who has entered into or worked under:

- (1) a contract of employment; or
- (2) a contract where the individual undertakes to do or perform personally any work or services for another person who is a party to the contract and whose status is not by virtue of the contract a client or customer of any profession or business undertaking carried on by the individual.

As Lewis LJ put it in *Augustine*:

"That reflects a distinction between (1) persons employed under a contract of employment (2) persons who are self-employed, carrying on a profession or a business on their own account and who enter into contracts and provide work or services to clients and (3) persons who are self-employed and provide services as part of a profession or business carried on by others: see Bates van Winkelhof v Clyde & Co LLP [2014] ICR 730 at para. 25. If it is relevant or helpful to talk of categories at all, those are the three categories. The persons in (1) fall within section 230(3)(a) of the Act. The persons in group (3) are those who fall within section 230(3)(b) of the Act. Those in the second group are not workers within the meaning of section 230 of the Act."

The Supreme Court decision in *Uber BV v Aslam* [2021] UKSC 5, [2021] ICR 657 urged the courts to adopt a purposive approach (see in particular paragraphs 83 to 85 of the judgment of Lord Leggatt with whom the other Justices agreed). *Augustine* is the first higher court decision since *Uber*. The question was raised whether a moped courier with limited right of substitution (he could release a delivery slot that he had agreed to undertake to another courier via a smartphone app) was a worker. The Employment Tribunal found that he was, a position upheld by the Court of Appeal).

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4 Other Relevant Information

4.1 Fire and rehire

Trade unions have become increasingly concerned about 'fire and rehire' practices i.e. the practice where employers wish to change employees' terms and conditions by dismissing the employees and then rehiring them under a new contract. Labour MP Barry Gardiner sponsored a private members bill, the Employment and Trade Union Rights (Dismissal and Re-engagement) Bill, to discourage this practice, but the government blocked the Bill. It condemns the practice but is awaiting guidance from ACAS.

4.2 Minimum wage

In his budget, the Chancellor of the Exchequer, Mr Sunak, [confirmed](#) plans to raise the national living wage paid to workers aged 23 and above across the UK from £8.91/hr to £9.50/hr from 01 April 2022. The national minimum wage for workers aged under 23 and apprentices will also rise.

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