



Flash Reports on Labour Law March 2022

Summary and country reports

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Contact: Marie LAGARRIGUE

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

European Commission

B-1049 Brussels

Flash Report 03/2022 on Labour Law

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

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Executive Summary

National level developments

In March 2022, the extraordinary measures associated with the COVID-19 crisis played a relatively lesser role in the development of labour law in many Member States and European Economic Area (EEA) countries compared to the previous months. Conversely, new extraordinary employment-related measures have been adopted in some countries to cope with the consequences of the war in Ukraine.

This summary is divided into two parts: the first provides an overview of developments relating to the COVID-19 crisis measures, while the second sums up other labour law developments with particular relevance for the transposition of EU labour law.

Developments related to the COVID-19 crisis

Fewer and fewer countries had measures in place in March 2022 to prevent the spread of the COVID-19 virus in the workplace. Only in **Portugal** has the state of emergency been extended until 14 April 2022. Conversely, it has ended in **Belgium, Italy** and **Romania**.

COVID-19 restrictions have been lifted altogether in **Croatia, Cyprus, the Netherlands, Poland, Romania** and the **United Kingdom** (Wales).

Some temporary measures remain in place in some countries. In **Austria**, due to the rising number of infections, the requirement to wear a protective mask indoors has been reintroduced. However, the vaccine mandate has been suspended until 31 May 2022. In the **Czech**

Republic, the government has retained and amended the travel restrictions and the conditions for wearing face masks. In **Italy**, as the state of emergency comes to an end, some exceptional health and safety measures remain in place until June 2022.

Measures to alleviate the financial consequences for businesses and workers

To alleviate the adverse effects of the COVID-19 crisis, measures to support companies affected by the COVID-19 emergency continued to apply in some countries, such as **Greece** and **Romania**.

Some measures have been introduced to address the labour shortage resulting from the new wave of COVID-19 infections. In **Belgium**, two federal laws reintroduced the possibility for certain categories of unemployed persons to be hired to work with partial preservation of their unemployment benefit and the possibility to conclude consecutive fixed-term employment contracts without the presumption of the existence of an open-ended contract. In **Slovenia**, the scope of temporary and occasional work of retired persons has been increased.

Leave entitlements and social security

In the **United Kingdom**, testing positive to COVID-19 will cease to be a condition for entitlement to statutory sick pay. This will be recognised only in case of actual sickness or incapacity for work.

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Table 1: Main developments related to COVID-19 measures

Topic	Countries
Lifting of COVID-19 restrictions	HR CY NL PL RO UK
State of emergency	BE IT PT RO
COVID-19 workplace restrictions	AT CZ
Relief measures	EL IT RO
Measures to ease temporary employment	BE SI
Sick leave	UK

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Other developments

The following developments in March 2022 were of particular significance from an EU law perspective:

Measures to respond to the humanitarian and financial consequences of the war in Ukraine

In the **Czech Republic** and **Denmark**, special legislation has been adopted to grant Ukrainian nationals temporary residence permits that enable them to access the labour market. Similarly, an emergency ordinance, which provides that Ukrainian citizens can be hired without possession of a work permit or professional qualification documents, has been adopted in **Romania**. In **Spain**, the work permit of Ukrainian nationals working on Spanish ships may be extended for up to 12 months.

Relief measures to respond to the economic consequences of the Ukrainian war on business activities were introduced in **Italy** and **Spain**.

In **Poland**, several provisions were adopted, providing employment-related rights to soldiers or persons called up for military service.

Working time and teleworking

In **France**, the Court of Cassation held that an employer, who had not monitored the workload of an employee who was subject to unreasonable working hours, failed to respect its health and safety obligations.

In **Luxembourg**, the Court of Appeal relied on the Commission's Interpretative Communication on the Working Time Directive to hold that the travel time of a cleaner to and from various work sites was not working time.

In **Slovenia**, the Supreme Court ruled on the right of a policeman to take a break during his shift.

In **Norway**, the rules on teleworking have been amended to clarify the applicability of the working time regulations and safety and health

measures. Similarly, a draft law on teleworking has been prepared by the Ministry of Labour and is currently under discussion in **Cyprus**.

Fixed-term work

In **Ireland**, the Supreme Court confirmed that a permanent employee who fulfilled a more senior role on a temporary fixed-term basis is to be regulated as a fixed-term employee.

In **Luxembourg**, the Court of Appeal confirmed that a fixed-term contract is to be requalified as a contract of indefinite duration in case the employer is not able to prove that the significant increase in the company's activity is not temporary or unusual.

In **Norway**, the possibility to temporarily hire employees for up to 12 months has been removed with effect as of 01 July 2022.

Occupational safety and health

In **Bulgaria**, an ordinance provides specific occupational health and safety rules in the industrial sector of ferrous and non-ferrous metallurgy.

In **Croatia**, the health and safety legislation has been amended to transpose Directive 2013/59/Euratom on protection against hazards arising from exposure to ionising radiation into Croatian law.

In **Ireland**, the government has approved the introduction of legislation establishing the right to paid sick leave.

Equal treatment

In **France**, the Court of Cassation rendered a judgment clarifying the definition of sexual harassment at work.

In **Italy**, a judgment confirmed that the exclusion of pregnant workers from the pre-hiring phase constitutes discrimination on the ground of pregnancy.

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In **Slovakia**, after the President refused to sign the Act, Parliament reapproved the Act amending the procedure of termination of employment of an employee with disabilities.

In **Sweden**, the Labour Court held that the dismissal of a person with disabilities for misconduct was wrongful since his behaviour was related to his disability.

Work-life balance

In **France**, the Act reforming the duration of adoption leave entered into force on 23 February 2022.

In **Romania**, a new type of paid leave of maximum 45 days annually has been introduced for employees who are also a caregiver of a patient with an oncological disease.

In **Slovakia**, Parliament has adopted an Act amending the specific rules on night work, overtime and on-call time applicable to female members of the Fire and Rescue Corps who are pregnant or have recently given birth.

Protection of whistleblowers

In **France**, the Act improving the protection of whistleblowers entered into force on 23 March 2022.

In the **Netherlands**, in the context of the legislative process to implement Directive 2019/1937 on the protection of whistleblowers, the government is considering the integration of several other measures that emerged from the evaluation of the 2020 Whistleblowers Act.

Other developments

In **Belgium**, a law removes the obstacles that limited the conclusion of

employment contracts in the field of sex work.

In **Croatia**, the Insolvency Act has been amended to transpose Directive (EU) 2019/1023 on restructuring and insolvency into Croatian law.

In **Finland**, the government submitted a proposal that would clarify the right of an employer to collect personal data on employees in line with the GDPR.

In **France**, the Court of Cassation issued two judgments clarifying the possibility for terminating the employment contract of a worker who is a trade union representative and in case of serious misconduct of that worker.

In **Luxembourg**, the Court of Appeal upheld the dismissal of several employees, even if no social plan had been negotiated by the social partners due to the fact that the company was too small and was not covered by a collective agreement.

In the **Netherlands**, a labour court decided that the employment contract of an employee who refused to be transferred to another undertaking had legally ended, and the employee was entitled to compensation for irregular termination since the transfer would have entailed a significant change in his working conditions.

In **Spain**, the regulatory framework on the work of stevedores has been reformed, with the aim of prioritising the 'port employment centres' over temporary employment agencies.

In **Spain**, the rules regulating work in the road transport sector has been amended, among others to implement Directive EU 2020/1057 on the posting of professional drivers in the commercial road transport sector. Moreover, working conditions for artists have been reformed.

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Table 2: Other major developments

Topic	Countries
Ukraine: work of third-country nationals	CZ DK RO ES
Ukraine: measures for workers and businesses	IT PL ES
Working time	FR LU SI
Equal treatment	FR IT SK SE
Fixed-term work	IE LU NO
Occupational safety and health	BG HR IE
Work-life balance	FR RO SK
Teleworking	CY NO
Whistleblowers	FR NL
Workers' privacy	FI
Transfer of undertakings	NL
Insolvency protection	HR
Collective redundancy	LU
Temporary agency work	ES
Road transport sector	ES

Implications of CJEU Rulings

Temporary agency work

This FR analyses the implications of a CJEU ruling on temporary agency work.

CJEU, case C-232/20, 17 March 2022, Daimler

Following its decision in case C-681/18, *KG* (see October 2020 Flash Report), in the present case, the CJEU further clarified the temporary nature of agency work.

Most importantly, the Court held that the term 'temporarily', used in Article 1(1) of the **Directive 2008/104/EC**, does not preclude the assignment of a temporary agency worker to a user undertaking to fill a permanent post, since the notion relates only to the period of the assignment of a temporary agency worker to a user undertaking and not to the nature of the work to be performed.

Secondly, following its case law on Article 5(5) of the Directive, the Court confirmed that there is no specific duration beyond which an assignment to a user undertaking can no longer be considered 'temporary'; however, the renewal of temporary assignments to a user undertaking for the same post for 55 months constitutes a misuse of temporary agency work since it resulted in a period of activity that can no longer be named 'temporary', taking account of all the relevant circumstances, including, in particular, the specific features of the sector.

Concerning the first point, a few national reports (**BE, BG, FR, LU, NO, PT, ES**) refer that their concept of temporariness is more restrictive than that of the Court, since temporary agency work is allowed

only to meet the temporary need of the user undertaking and cannot be used to fill up permanent positions.

As regards the second point, most countries (e.g. **BE, BG, HR, DK, FR, LI, LU, NO, PL, PT, SK, ES**) indicate that their national legislations have adopted measures to avoid the abuse of successive assignments of the same agency worker to the same user undertaking. These countries either require an objective reason for the re-assignment, or have set up a maximum duration of the period during which a temporary agency worker can be lawfully employed by a user undertaking and/or a maximum number of renewals, or a combination of all these.

Although the case was referred to the CJEU by a German court, the ruling might have very limited effects in **Germany** since it refers to a large extent to past legal regulations that have now been amended to include a maximum assignment period of 18 months.

However, some country reports (e.g. **CZ, MT, RO**) raise concerns about the suitability of the anti-abuse provisions, which may not be sufficient to prevent the misuse of temporary agency work in case of successive assignments.

On the contrary, it appears that some countries (e.g. **AT, IE, LV, SI, SE**) do not have any specific measures to preserve the temporary nature of temporary agency work. However, in **Sweden**, the labour reform that is currently being discussed would provide for special provisions to preserve the temporariness of temporary agency work (namely, a maximum assignment period of 24 months over a total period of 36 months).

Austria

Summary

(I) Austria has lifted most of its COVID-19 restrictions, including at the workplace. Yet following rising numbers of infections, a requirement to wear a mask indoors has been reintroduced if no alternative means of protection are available.

(II) The vaccine mandate has been suspended until 31 May 2022.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 COVID-19 restrictions at the workplace

As of 05 March 2022, Austria lifted most of its COVID-19 restrictions, including all restrictions at the workplace with the introduction of the new [COVID-19 Basic Measures Ordinance \(COVID-19-Basismaßnahmenverordnung – COVID-19-BMV\)](#). The ordinance abolishes the 3G regulation (proof of either being vaccinated, recovered or tested) at the workplace for the majority of workplaces. 3G proof is only required in particularly 'vulnerable settings', e.g. for employees and visitors in senior and nursing homes and hospitals.

The ordinance was [amended on 23 March 2022](#) to reintroduce the requirement to wear a FFP2 mask indoors at the workplace unless physical contact to others can be avoided or the risk of infection can be minimised by other suitable protective measures, such as technical protective measures (e.g. the installation of partitions or Plexiglas walls) or, if technical protective measures make it impossible to carry out the work activities, to introduce organisational protective measures such as the establishment of fixed teams (§ 3a of the COVID-19-BMV).

1.1.2 Suspension of the vaccine mandate

The general obligation to get vaccinated according to the COVID-19 Vaccination Mandate Act ([COVID-19-Impfpflichtgesetz – COVID-19-IG](#)), which required all persons residing in Austria to be vaccinated against COVID-19 by 01 February 2022, the latest, with pecuniary sanctions for breaches starting from 15 March 2022 (see January 2022 Flash Report) was suspended on 12 March by [ministerial decree](#) until 31 May 2022. An independent advisory commission will convene again in May and issue a recommendation on how to proceed further.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

As pointed out in the October 2020 Flash Report, as regards the implications of CJEU decision C-681/18, *KG*, the Austrian Act on Temporary Agency Work (*Arbeitskräfteüberlassungsgesetz*, AÜG) explicitly refers to the temporary nature of temporary agency work. The specific wording used is the '*Überlassung von Arbeitskräften*', i.e. the assignment of workers, which is defined in § 3 (1) AÜG as (unofficial translation by the author): "*The assignment of workers refers to making workers available to third parties for the performance of work.*"

The AÜG does not contain specific measures to ensure the temporary nature of temporary agency work: the Austrian legislation neither limits the duration of temporary agency work assignments, nor does it limit or prohibit successive assignments of the same temporary agency worker to the same user undertaking. It also does not limit the assignment of temporary agency workers to non-permanent positions in the user undertaking or to the replacement of workers directly employed – it is precisely the other way round and temporary agency workers can definitely be employed in permanent positions as well. This is evident in the AÜG's provision, which asserts that in case of an assignment of 'more than four years' to a user undertaking that offers company pensions to directly employed employees, these temporary agency workers are to also be included in the company pension scheme. § 10 para 1 a AÜG, introduced in 2012, BGBl I 2012/98, reads as follows (unofficial translation by the authors):

"If temporary agency workers are assigned to a user undertaking for more than four years, which has introduced an employee benefit scheme within the meaning of § 2 No. 1 of the Company Pension Act (BPG), Federal Law Gazette No. 282/1990, the user undertaking shall be deemed to be the employer of the temporary agency worker within the meaning of the BPG for the further duration of agency work after the expiry of the fourth year, unless the temporary work agency has an equivalent agreement in place for the temporary agency workers."

It should be noted, however, that the theoretical possibility (at least) exists to limit the maximum duration of an assignment at a user undertaking by way of a ministerial decree pursuant to § 15 AÜG:

"The Federal Minister of Labour, Social Affairs and Consumer Protection may, after consulting the statutory interest groups and the employers' and employees' professional associations that may conclude collective agreements, determine by decree that for certain statutory interest groups or professional associations or their subdivisions

1. ...
2. *the duration of the assignment for temporary agency workers to a user undertaking is limited;*
3. ...

(2) A precondition for such a ministerial decree under subsections 1(1) and (2) is that if the area covered by the share of assigned workers is more than one-tenth of the total number of employed persons, blue collar or white collar workers."

So far, no such ministerial decree has been issued which limits the maximum duration of assignments of temporary agency workers to a user undertaking.

The Austrian Supreme Court has already dealt with long-term temporary agency work and never considered it to be illegal. It initially stated that an assignment of nine years of a temporary agency worker with one and the same user undertaking was to be considered 'atypical temporary agency work'; the temporary agency worker was therefore also granted severance pay beyond the amount provided for in the AÜG (see

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OGH 9 ObA 113/03p). However, the Supreme Court has not used the argument of atypical temporary agency work again, even in cases where the duration of the temporary work continued for six (OGH 8 ObA 54/11s) and five years (OGH 9 ObA 158/07m and 8 ObA 6/10f), respectively.

The [official statistics on temporary agency work for 2021](#) published by the Federal Ministry of Labour indicate that out of the total number of assignments (373 870) in 2021, 12 198 lasted between one and three years and 2 144 lasted more than three years. Therefore, long assignments are not the norm but nonetheless a relevant phenomenon.

Apart from the so far unused possibility to limit the periods of assignment in certain industries, Austrian law does not include any explicit measures to prevent successive and/or permanent temporary agency work. Instead, it actually introduced supportive legislative measures for workers on long-term temporary agency assignments (see § 10 Abs 1a AÜG above).

It can therefore be said that the Austrian implementation of Directive 2008/104/EC is not compliant with the CJEU's judgment in C-681/18, *KG*, as well with the recent ruling in C-232/20, *Daimler*.

In the legal literature commenting on the earlier decision C-681/18, *KG* (W. Gagawczuk, *Das Recht der Arbeit*, 2021, 283), it has already been argued that the Directive cannot be directly applied between the private parties. It is also not possible to interpret the AÜG in line with the Directive, as it obviously not only does not prohibit long-term assignments but actually presupposes their legality as it includes explicit provisions on assignments that are longer than four years. The breach of the duty of the Austrian state to properly transpose the Directive can only be enforced vis-à-vis the state by way of state liability. This is now backed by the CJEU in the present case, in the answer to the fourth question.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) To address the labour shortage resulting from the COVID-19 pandemic, two federal laws of 14 February 2022 introduce temporary emergency labour measures, including the possibility for certain unemployed persons to be hired to work while continuing to receive partial unemployment benefits, and the possibility to conclude consecutive fixed-term employment contracts without the presumption of an open-ended contract.

(II) The federal epidemic state of emergency was lifted on 11 March 2022 .

(III) A law has removed the obstacles that limit the conclusion of employment contracts in the field of sex work.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Temporary emergency labour measures

The law on various temporary emergency labour measures to fight the labour shortage caused by the *omicron* variant was introduced on 14 February 2022 (see *Moniteur belge*, 09 March 2022, P. 18.921). The same measures have been introduced by a specific regulation in the care and education sectors, the law containing various labour law measures for the benefit of the health care and education sectors in the context of the fight against the spread of COVID-19 (see *Moniteur belge*, 09 March 2022, P. 18.925). This measure applied from 26 January 2022 to 31 March 2022.

To cope with the labour shortages resulting from the high levels of absences from work due to the rapid spread of the *omicron* variant, the federal government has reintroduced a number of measures allowing temporarily unemployed persons, unemployed persons receiving a company allowance and workers on career breaks or time credit to resume work for a certain period, depending on sector, while retaining part of their unemployment benefits.

Another legal measure concerns the possibility for employers to conclude successive fixed-term employment contracts more easily. Specifically, employers have the possibility to conclude successive fixed-term employment contracts of at least 7 days, without these successive employment contracts creating a contract of indefinite duration between the parties if a set of legal conditions are met. This legal measure is an exception to the principles concerning successive fixed-term employment contracts in Article 10 of the Employment Contracts Law of 03 July 1978.

The law also expands the possibility of concluding employment contracts for student work.

An additional measure applies to the care and education sectors only: workers in these sectors may be made available to users in the care and education sectors in derogation from the prohibition established in Article 31 of the Law on Temporary Agency Work of 24 July 1987.

1.1.2 End of state of emergency

The law on the end of the epidemic state of emergency due to the COVID-19 pandemic was introduced on 11 March 2022 (see *Moniteur belge*, 11 March 2022, P. 19.667).

This new law of 11 March 2022 cancels the following provisions:

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- the Law of 11 February 2022 ratifying the Royal Decree of 27 January 2022 declaring the establishment of the epidemic state of emergency due to the COVID-19 pandemic;
- the Royal Decree of 27 January 2022 on the proclamation of the establishment of the epidemic state of emergency due to the COVID-19 pandemic, ratified by the Law of 11 February 2022;
- the Royal Decree of 28 October 2021 containing the necessary administrative police measures to prevent or limit the consequences of the epidemic state of emergency for public health, which was declared due to the COVID-19 pandemic.

These provisions have been directly applicable since 11 March 2022.

This federal law does not imply that the coronavirus measures are no longer in place, it only provides that the federal emergency planning phase has been lifted. It is now for other levels, such as the Regions, to impose measures in accordance with their competences. In addition, the provisions of the August 1996 law on health and safety at work still apply.

The wearing of face masks in public transport and in care institutions, for example, is regulated by the Flemish Government Decree on compulsory face masks in public transport and in care institutions of 11 March 2022, which was also published in the *Moniteur belge* on 11 March 2022 and which has been applicable since 12 March 2022.

1.2 Other legislative developments

1.2.1 Sex work

Engaging in prostitution as such does not constitute a criminal offense in Belgium, insofar as it takes place between adults who consent to it. On the other hand, pandering and exploitation are criminal offences.

An employment contract to provide sexual services was usually immediately null and void because it is contrary to public order and morality. To circumvent this prohibition, employment contracts to provide sex work were sometimes concluded with reference to other activities.

To improve the working conditions of sex workers, the Law of 21 February 2022 creates the legal non-invocability of the nullity of the employment contract for sex workers. The law amends the following labour and social security contributions laws:

- the Wage Protection Law of 12 April 1965;
- the Collective Bargaining Agreements Law of 05 December 1968;
- the Labour Law of 16 March 1971 on the protection of labour conditions;
- Article 14 of the Employment Contracts Law of 03 July 1978;
- the Social Security Contributions Laws of 27 June 1969 and 29 June 1981.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

Temporary agency work is, in principle, prohibited in Belgium, and only possible for legally regulated temporary employment.

Temporary employment within the meaning of the Temporary Agency Work Law of 24 July 1987 refers to activities performed on the basis of an employment contract, the purpose of which is:

- to provide for the replacement of a permanent employee;
- to respond to a temporary increase in work;
- to ensure the performance of exceptional work;
- to supply a temporary worker to a user to fill a vacancy with the intention of the user to permanently hire the temporary worker after the period of posting (i.e. for the same job).

The Belgian restrictive law on temporary agency work is at odds with Directive 2008/104. Article 4(1) of the Temporary Agency Work Directive 2008/104 provides that restrictions on the use of temporary agency workers may only be justified on grounds of general interest relating to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly, and to prevent abuse. That provision is not to be interpreted as requiring the national courts to disapply any provision of national law which lays down prohibitions or restrictions on the use of temporary agency workers, which are not justified on the abovementioned grounds of public interest (CJEU case C-533/13, 17 March 2015, *Auto-ja*).

The Belgian restriction in the Law of 24 July 1987 is evinced the fact that the CJEU ruled that the concept 'temporary work' does not imply that temporary work is only possible for temporary jobs or for the temporary replacement of an absent worker, and by the fact that the term 'temporary' in Article 1(1) of Directive 2008/104 must be interpreted as 'not' precluding a worker with an employment contract for temporary agency work from being posted to a user undertaking to perform a job that is 'permanent' without replacing anyone.

The judgment therefore has substantial implications for the Belgian legal order. Article 3 of the Law of 24 July 1987 provides that when the parties conclude successive temporary employment contracts in accordance with the legally applicable rules, they are not to be regarded as having entered into an employment contract of indefinite duration. However, successive daily contracts of temporary work are only permitted under specific conditions.

The Belgian regulation is in line with the Temporary Agency Work Directive. The CJEU ruled that the Directive does not, in principle, set any limits on the number of consecutive assignments of the same temporary agency worker to the same user undertaking, which is not in itself contrary to the Temporary Agency Work Directive 2008/104 (CJEU, case C-681/18, *KG*).

The CJEU's judgment discussed here further develops its case law on the anti-abuse provision of Article 5(5): see CJEU, case C-681/18, *KG*, paras 55-72. Articles 1(1) and 5(5) of Directive 2008/104 must be interpreted as meaning that the awarding of successive assignments of the same job to a user undertaking for a period of '55 months' constitutes an abusive practice (not surprisingly), where successive assignments of a temporary agency worker to the same user undertaking result in the duration of that undertaking exceeding what may reasonably be classified as 'temporary', but all

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relevant circumstances, especially specificities of the industry and national regulations would also have to be taken into account.

4 Other Relevant Information

Nothing to report.

Bulgaria

Summary

An ordinance provides specific occupational health and safety rules in the industrial sector of ferrous and non-ferrous metallurgy.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Occupational safety and health

The Minister of Labour and Social Policy and the Minister of Economics and Industry have adopted Ordinance N RD-06-3 on Guaranteeing Healthy and Safe Conditions at Work in the Ferrous and Non-ferrous Metallurgy Sectors (promulgated in [State Gazette No. 19](#) of 08 March 2022). This Ordinance regulates the requirements for ensuring healthy and safe working conditions in the production of ferrous, non-ferrous and precious metals from primary and secondary raw materials and their processing by plastic deformation into products.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The Bulgarian Labour Code contains a special framework for the provision of work through a temporary work agency – Articles (107p – 107h; 327, para. 1, item 7a; 357, para. 3; § 1, items 1, 17 and 18 of the Additional Provisions). This framework applies together with the norms of Articles 74e - 74p of the Employment Promotion Act. None of the provisions is contrary to, but in aggregate further develop and ensure the application of the rules of Directive 2008/104/EC.

The national framework does not entitle the social partners, including at industry level of a user undertaking, to grant derogations to definitions within the scope of Directive 2008/104/EC. Bulgarian legislation only allows the establishment of employment relationships with temporary work agencies to meet the temporary needs of a user undertaking. Employment contracts can only be concluded as fixed-term contracts to carry out a specific assignment and to substitute absent workers. Employment contracts cannot be concluded for an indefinite period.

The duration of the employment contract shall be agreed based on the specified assignment. The assignment should therefore be defined by type, volume and quality at the time of conclusion of the employment contract in such a way that the 'time limit' for carrying out the assignment is clear to the worker. Established case law based on judgments of the Supreme Court of Cassation requires conclusions of fixed-term contracts 'for the performance of a particular assignment' to clearly state the contract's expiration period, since it is decisive for the duration of the employment relationship.

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The volume of work to be completed shall be determined by the user, but must also be explicitly stated in the contract between the temporary work agency and the temporary agency worker. It is also for the user undertaking to determine whether the work for which the contract was concluded, has been carried out by the worker. The completion of the assignment ends the employment relationship and the employment contract shall be terminated.

Bulgarian legislation does not provide for a maximum number of possible assignments of the same worker to the same user undertaking. The limit of such assignments is based on the fact that they are only permitted in the event of temporary needs of the user undertaking. In practice, such contracts are only possible if they meet the user undertaking's temporary needs.

4 Other Relevant Information

4.1 Occupational health and safety

The National Assembly (Parliament) has adopted the Decision on the Adoption of the Annual Work Programme of the National Assembly on European Union Affairs (2022) (promulgated [State Gazette No. 25](#) of 29 March 2022). In the section on the 'Economy in the interest of people', the Annual Work Programme includes a specific section on the protection of workers from risks associated with asbestos exposure at work.

4.2 Minimum wage

On 24 March 2022, the Council of Ministers adopted Decree No. 37 on determining the amount of minimum wage (promulgated [State Gazette No. 25](#) of 29 March 2022). From 01 April 2022, the amount of the minimum monthly salary will amount to BGN 710 and the minimum hourly wage to BGN 4.29 for normal daily working time of 8 hours for a 5-day work week. The amount of the minimum monthly salary applies to a full work month.

4.3 Re-skilling of migrant female workers

The largest Bulgarian employer's organisation, the Bulgarian Chamber of Commerce and Industry, has introduced computer training for migrant and refugee women from third countries. It aims to improve the opportunities for migrant and refugee women to enter the labour market based on digital skills and to optimise their inclusion in the host society.

The project partners are organisations from Belgium, Germany, Greece, Italy, the Netherlands and the Czech Republic. The trainings will be implemented under the European project RIDE.

Croatia

Summary

(I) Some anti-COVID measures have been abolished due to favourable conditions.

(II) The Insolvency Act has been amended to transpose Directive (EU) 2019/1023 on restructuring and insolvency into Croatian law.

(III) The Croatian health and safety legislation has been amended to transpose Directive 2013/59/Euratom on protection against the dangers arising from exposure to ionising radiation into Croatian law.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Reduction of COVID-19 restrictions

Some anti-COVID measures have been abolished due to the favourable conditions (e.g. the Decision on termination of the Decision on measures for drivers of international transport vehicles during the declared epidemic due to COVID-19, [Official Gazette No. 35/2022](#)).

1.2 Other legislative developments

1.2.1. Protection of workers in the event of insolvency

The purpose of the amendment to the Insolvency Act ([Official Gazette No. 36/22](#)) is to transpose Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) into Croatian law.

The novelties, to name just a few, entail the obligations of the employer to inform employees about the procedures and measures related to debt restructuring and debt relief; the content of the proposal of the restructuring plan; which workers' claims are not affected by the pre-insolvency proceedings; a guarantee that the right to collective bargaining and to organise and participate in industrial actions as well as the right of employees to be informed and consulted will not be affected during the pre-insolvency proceedings, etc.

1.2.2. Occupational health and safety

The 2018 Ordinance on the health conditions of exposed workers and persons trained to work in the field of exposure has been amended ([Official Gazette No. 36/2022](#)). This Ordinance transposes Directive 2013/59/Euratom into Croatian law. The novelty introduced is of an organisational nature. Since the Croatian Institute for Health Protection and Safety at Work no longer exists, the tasks of this Institute were transferred to the Croatian Institute of Public Health, a fact that should be noted in the Ordinance.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

Article 48 of the Labour Act of 2014 (as amended in 2017 and 2019) prescribes the limitation of the assignment of agency workers. Namely, the user undertaking is not allowed to use the services of the assigned worker for the performance of the same assignment for an uninterrupted period exceeding three years. However, there are some exceptions to this rule. A temporary agency worker can be assigned for a longer period when this is necessary for the purpose of replacing a temporarily absent worker or where it is allowed by collective agreement on the grounds of some other objective reasons.

Additionally, to avoid abuse of successive assignments of agency workers, an interruption of less than two months between two assignments is not considered an interruption of the three-year period (Article 48(2) of the Labour Act).

In case of a breach of this provision on the maximum duration of assignment of an agency worker to the user undertaking, the employer (a legal person) is fined in the amount of HRK 31 000 – 60 000 [approximately EUR 4 100 – 7 950] or, if the employer is a natural person, he or she is fined in the amount of HRK 4 000 – 6 000 [approximately EUR 530 – 800].

It can be concluded that in this context, Croatian law is in line with the judgment in the *Daimler* case.

4 Other Relevant Information

4.1 Minimum wage

The Government of the Republic of Croatia has established the Coordinating Body for Inter-Institutional Coordination of Activities Related to the Improvement of the Salary System in the Civil Service and Public Services ([Official Gazette No. 31/2022](#)).

Cyprus

Summary

(I) The government has announced a readjustment plan for COVID-19-related restrictions.

(II) A draft law on teleworking has been prepared by the Ministry of Labour and is currently under discussion.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Reduction of COVID-19 restrictions

Despite the high number of COVID-19 infections, the restrictive measures were further eased throughout March 2022.

The authorities of the Republic of Cyprus have announced a 'Readjustment plan for COVID-19-related restrictions. The readjustment plan was introduced on 08 March 2022. A different set of measures (e.g. the obligation to present a negative COVID-19 test) will apply to enter public places in accordance with the risk category of the given place (high-risk, average risk or low-risk). For more information, see [here](#).

1.2 Other legislative developments

1.2.1 Teleworking

The Ministry of Labour has prepared a draft legislation entitled, 'The Regulation of the Teleworking Organisation Framework Law of 2022', which is now before the Labour Advisory Board (see Adamou, A.: '*Έτοιμο το νομοσχέδιο για την τηλεργασία*', [ΦileneWS](#), 06 March 2022). It will then be put before the Council of Ministers for approval and finally presented to the House of Representatives.

The trade unions and employers' organisations are also reviewing the draft Cypriot bill prepared by the Ministry of Labour on teleworking, which the social partners will take a position on at a meeting of the Technical Committee discussed in March 2022.

The bill is based on a Greek regulation on teleworking, but also considered the positions of the social partners in the context of the consultation that preceded it.

Teleworking agreement

The draft Cypriot law on teleworking stipulates that teleworking shall be agreed between the two parties or imposed for health reasons, following decisions of the Ministry of Health. It ensures that the employee can also request teleworking for health reasons and provides for procedures in case of refusal by the employer to do so.

The proposed legislation notes, inter alia, that teleworking shall be agreed between the employer and the employee at the time of hiring or by amending the employment contract and specifies that teleworking may not adversely affect any terms and conditions of employment. It is exceptionally added that if the work can be performed remotely, teleworking may be applied:

- Upon the employer's decision, for reasons of public health protection, subject to a prior decision of the Minister of Health and for the duration specified in the decision of the Minister of Health; and

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- At the request of the employee, in case of a documented risk to his/her health which can be avoided if he/she teleworks and not on the employer's premises for the duration of the risk.

Based on what the Ministry of Labour has prepared, if the employer disagrees, the employee can request the labour inspectorate to resolve the dispute. The draft legislation further states that the conditions, diseases or disabilities of the employer that can document the risk to his/her health, as well as the supporting documents, the competent bodies and the procedure for documenting this risk shall be determined by a joint decision of the Ministers of Health and Labour. Under the draft legislation prepared, the definition of teleworking is defined as the remote provision of dependent work by the employee with the use of technology under a full-time, part-time, rotational or other form of employment contract, which can also be performed at the employer's premises.

Cost of teleworking

The draft law also states that the employer shall assume responsibility for the cost of telecommuting, clarifying that this includes the cost of equipment, unless it is agreed that the employer will take responsibility for the equipment, telecommunications, maintenance of equipment and repair of breakdowns, and for the use of the home workplace. The employer shall also provide the employee with technical support for the performance of work and undertakes to reimburse the costs of repairing the equipment used for the performance of work or to replace it in the event of damage, further clarifying the legislation that this obligation also applies to equipment owned by the employer, unless otherwise specified in the contract or employment relationship.

For the specific cost to the employer, the legislation stipulates that the minimum amount to be paid by employers to the employer shall be determined by decision of the Minister of Labour. It is also specified that the costs concerned shall not constitute remuneration but a deductible expense for the employer's undertaking, will not be subject to any tax or fee, nor will they be subject to any employer or employee insurance contributions, and that they will be calculated in proportion to the frequency and duration of teleworking, the provision or otherwise of equipment and any other relevant element.

Also, within eight days of the commencement of teleworking, the employer shall notify the employee by any reasonable means, including email, of the terms and conditions of employment that differ as a result of telecommuting. This information should include, inter alia, an analysis of the additional costs the teleworker periodically incurs as a result of teleworking, in particular, the costs of telecommunication, equipment and its maintenance and the ways in which the employer covers these, the equipment necessary for the provision of telework which is available to the teleworker or provided by the employer and the procedures for technical support, maintenance and repair of such equipment, and the health and safety conditions of teleworking.

Right to telework and workers' privacy

The bill also ensures that teleworkers have a right to disconnect.

At the same time, the employer's right to monitor the performance of teleworkers is also guaranteed, but in a manner that respects the employee's privacy and that is consistent with the protection of personal data in a manner that informs the employee. The draft legislation also notes that it is understood that the use of the webcam to monitor the performance of the employee is prohibited.

Health and safety

As regards health and safety issues, the bill states, among other things, that the employer shall inform the teleworker of the company's policy on health and safety at work, which includes, in particular, the specifications of the teleworking area, the rules for the use of visual display screens, breaks, the organisational and technical means set

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out in Article 10—on the right to disconnect—and any other necessary information, and that the teleworker is required to apply the legislation on health and safety at work. It is also stated that when a teleworker provides teleworking services, it is presumed that the teleworking location meets the above specifications, and that the teleworker complies with the health and safety rules. To a large extent, health and safety issues will also be determined by relevant decrees of the Ministry of Labour.

In conclusion, it must be noted that under the draft legislation, the employment relationship does not change. The bill ensures that any teleworking agreement does not affect the employment status and/or employment contract of the teleworker as a full-time, part-time, rotational or other form of employment, but only changes the manner in which the work is performed and teleworking may be provided on a full-time, part-time or rotational basis, independently or in conjunction with employment at the employer's premises. It should also be noted that teleworkers have the same rights and obligations as comparable workers who work on the premises of the undertaking or holding, in particular with regard to workload, assessment criteria and procedures, rewards, access to information relating to the undertaking, training and career development, membership of trade unions, trade union activity and unimpeded and confidential communication with their trade union representatives.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The CJEU's decision has some implications for Cypriot labour law, as it provides some guidance on temporary work agencies. However, trade unions in Cyprus are unlikely to agree to the derogations permitted by the Court.

Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 concerning temporary agency work has been transposed in Cyprus's legal system through the Cypriot Temporary Work Agency (TWA Law) ([Ο Περί της Εργασίας μέσω Επιχείρησης Προσωρινής Απασχόλησης Νόμος του 2012 \(174\(I\)/2012\)](#)).

Article 1 TWA Law translates 'temporary work agency' as temporary work 'undertaking' or 'enterprise' (*επιχείρηση*), which is closer to the English 'agency' than the official translation of the Directive, which uses the restrictive term 'company' (*εταιρεία*). The rest is a verbatim copy of Article 3(1)(b).

Article 5(5) of the Directive provides that Member States shall take appropriate measures in accordance with national law and/or practice, with a view to preventing misuse of the application of this Article and, in particular, to preventing successive assignments designed to circumvent the provisions of this Directive. There are no derogations in the TWA Law. The Law, which to a large extent replicates the wording of the TWAD, introduces the following conditions for granting a permit to operate a temporary work agency. Article 15(1) of TWA Law provides that an employee's assignment period with the indirect employer may not exceed four months. Moreover, Article 15(1) of TWA Law provides that a written renewal with the same indirect employer for a specified period is permitted, which, when added to the period of the original assignment, shall not result in a total assignment period of more than 12 months.

In Cyprus, numerous measures are provided for in the TWA Law so as to comply with Article 10 of the Directive, providing for administrative, judicial procedures for criminal

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penalties in the event of non-compliance with this Directive by temporary work agencies or user undertakings. Art. 25 of TWA Law provides administrative sanctions in case of non-compliance:

- A fine of up to EUR 2 500, in accordance with Art. 25(a) of TWA Law;
- Suspension of the operation of the TWA in accordance with Art. 25(b) of TWA Law;
- Recall of the permit for the operation of the TWA in accordance with Art. 26 of TWA Law;
- There are also a number of criminal provisions that provide for maximum imprisonment, if found guilty, for up to 1 year or EUR 10 000 or both.

The penalties can be said to be effective, proportionate and dissuasive as required by Article 10(2) of the Directive.

4 Other Relevant Information

4.1 Justice system on undeclared work

Data from the Central Prison reveal a striking inequality of the justice system pertaining to migrant workers, as Cypriot courts punish migrant work as 'illegal employment' with imprisonment, but rarely, if at all, punish the employer with such severity, who benefits and exploits these workers (see M. Hadjivassilis: *Φυλακίζονται οι εργαζόμενοι, αλλά όχι οι εργοδότες τους*, [Filenews](#), 29 March 2022). Typically, the conditions and terms of employment for foreign migrant workers from third countries inevitably work in substandard jobs, i.e. earn inadequate wages and have no health and social security funds.

- Between 2016 to 2022, 1 145 foreigners were imprisoned for undeclared work, while only 9 employers who offered them illegal work were imprisoned;
- There is also a difference in the sentences imposed, as the majority of foreigners were sentenced to between 6 and 12 months in prison, while employers, the majority of who are Cypriot, were sentenced to between 1 and 3 months in prison;
- In 2016, 142 foreigners were sentenced to prison for illegal employment but only one employer was incarcerated;
- In 2017, another 159 foreigners were imprisoned compared to one employer;
- In 2018, 166 persons were incarcerated for illegal employment, all of whom were foreigners and only three were employers;
- In 2019, 214 foreigners were convicted, and no employers were sentenced to prison, but those who appeared before the court were fined;
- In 2020, 186 foreigners and one employer were sentenced to imprisonment for illegal work and employment, respectively. Last year saw the highest number of prison sentences for illegal work, i.e. 225 foreigners received prison sentences, while only one Cypriot ended up in prison for illegal employment;
- This year, 53 foreigners are serving prison sentences for working illegally and two employers have been imprisoned.

The case of 19 Georgians, who were found to work illegally in construction, is typical: they were all sent to prison, but their employer was not. Most of the foreigners were found to perform illegal work in manual labour, such as construction, agriculture and livestock and wherever cheap labour is required for a short period of time.

Czech Republic

Summary

(I) The government has retained and amended the travel restrictions and the conditions for wearing face masks.

(II) Ukrainian nationals covered by temporary protection will be granted free entry to the Czech labour market.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Extension of COVID-19 restrictions

With effect as of 18 March 2022, the government has retained and amended the travel restrictions (Protective measure of the Ministry of Health No. MZDR 705/2022-13/MIN/KAN of 17 March 2022).

With effect as of 14 March 2022, the government readopted the obligation to wear face masks in public transport and in certain buildings (in particular, social and healthcare service facilities), with specific exceptions (Extraordinary measure of the Ministry of Health No. MZDR 8789/2022-1/MIN/KAN of 10 March 2022).

The measure also provides that certain employers (namely in public transport and social and healthcare services) have the obligation to provide face masks to their employees.

1.2 Other legislative developments

1.2.1 Measures to promote employment of Ukrainian nationals

Act No. 66/2022 Coll., on measures in the area of employment and social security in connection with the armed conflict in Ukraine caused by the invasion of the Russian Federation's Army, was published and entered into effect on 21 March 2022.

Based on this Act, persons covered by temporary protection (in particular, Ukrainian nationals) will be considered foreign nationals with permanent residence and will be afforded free access to the Czech labour market, i.e. they will not need to apply for a special work permit.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The Czech Labour Code regulates agency work in its Chapter V., in Sections 307a-309a. There is no restriction on the nature of the work – the post filled by the temporary agency worker can be a permanent post. This is in line with the ruling.

Section 309(6) of the Labour Code states that:

"the temporary work agency may not assign the same employee to perform temporary work for the same user undertaking for a period of more than 12

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consecutive calendar months. This restriction shall not apply if the worker continues to perform temporary work for the user undertaking to replace an employee who is on maternity or parental leave”.

This provision provides a restriction on the duration of assignments of a temporary agency worker to one specific user undertaking. Generally, the temporary work agency can assign the same employee to one user undertaking for a maximum of 12 months and the assignment to the same user undertaking may not be repeated. However, the Labour Code provides for two exceptions. The worker can be repeatedly assigned to one user undertaking for 12 months, if he or she requests to continue working for the same user undertaking. The employee can also be assigned to the same user undertaking for more than 12 months if he/she serves as a substitute of one of the user's employees who is on maternity or parental leave.

The mentioned exceptions could lead to cases in which the employee effectively performs work for the same user undertaking for a period of time that cannot reasonably be classified as temporary.

Therefore, the provision of Section 309(6) of the Labour Code may be in conflict with this ruling, especially with the answer to the second question.

4 Other Relevant Information

4.1 Increase of travel compensation rates

Decree No. 47/2022 Coll., amending Decree No. 511/2021 Coll. on the change of the rate of basic compensation for the use of motor vehicles, per diems, and on setting the average price of fuel for the purposes of travel compensation, was published on 11 March 2022 and entered into effect on 12 March 2022.

Based on the Decree, the rate of basic compensation for use of motor vehicles is being raised from CZK 4.10 to CZK 6.00 (i.e. approx. EUR 0.24) per km.

The rate of basic compensation for use of motor vehicles has been increased.

4.2 Work of third-country nationals

With effect from 21 March 2022, the Ministry of Labour and Social Affairs has set the amount of the average gross annual salary in the Czech Republic for 2021 for the purposes of issuing blue cards (Declaration of the Ministry of Labour and Social Affairs No. 64/2022 Coll.).

According to this Declaration, blue card applicants must submit an employment contract with the agreed salary in the amount of at least 1.5 times the average gross annual salary in the Czech Republic with their application. The amount is set by the Ministry of Labour and Social Affairs. For 2021, the amount of the average gross annual salary in the Czech Republic was set to CZK 454 068 (i.e. approx. EUR 18 466.26).

Denmark

Summary

Denmark has adopted special legislation to provide Ukrainian refugees temporary residence permits.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Temporary residence permit for Ukrainian refugees

In March, a broad political majority adopted a Statutory Act (L 324 of 16 March 2022) giving Ukrainian refugees a right to temporary residence (upon application) in Denmark, irrespective of whether the ordinary conditions for residence in the Danish Aliens Act are fulfilled.

The persons covered by the Act will benefit from expedited integration into Danish society (access to education, health care and the labour market). Ukrainian refugees are allowed to work immediately, and to immediately attend school and secondary education.

The Act came into force on 17 March 2022.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The concept of 'temporariness'

In *Daimler*, the CJEU states that the term 'temporarily' does not preclude that a temporary agency worker is assigned to the user undertaking to work in a permanent position, which is not performed by substitutes. In other words, it is not a requirement under the Directive that a temporary agency worker is assigned to a position in the user company, which is non-permanent, i.e. exclusively performed by substitutes.

Directive 2008/104/EC was implemented into Danish statutory law in 2013 by the Act on Temporary Agency Work (TAW Act, L 595 of 12 June 2013; see also [preparatory works to the Danish TAW Act](#), L 209 of 17 April 2013 (proposal), comments in section 3(3)).

The scope of the TAW Act is defined in similar terms as Article 1(1). This means that—just as in the Directive—the TAW Act does not regulate the nature of the work or the position the TAW worker is assigned to in the user undertaking.

There are no exceptions to the 'scope of application' of the TAW Act, i.e. it also applies to workers covered by collective agreements. A derogation from 'the principle of equal

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treatment' is possible in certain collective agreements. This does not address the question of the character of the position the worker is assigned to in the user undertaking.

The use of temporary agency workers is also not restricted in the interpretations in case law. The assessments of ordinary courts show that the nature of the work or the position the TAW worker is assigned to in the user undertaking is not relevant.

This was addressed in the Western High Court ruling of 08 February 2021 (BS-31204/2018-VLR).

In any case, the CJEU's ruling in *Daimler* provides clarification about the existing wording and its application is in line with the CJEU ruling.

Misuse of successive temporary work assignments

The CJEU reiterates that the Directive does not aim to specify the duration beyond which an assignment to a user undertaking can no longer be considered 'temporary'. The Directive does not require Member States to introduce specific legislation in this regard. However, Member States must provide for appropriate measures to prevent misuse and to ensure that temporary agency work assignments with the same user undertaking do not end being a permanent situation.

If successive assignments to the same user undertaking exceed what might be considered 'temporary', it could indicate misuse. Furthermore, a relevant circumstance to consider in such situations is whether the user undertaking is able to provide objective reasons for concluding successive assignments. In essence, the CJEU provides some clarification on how to establish misuse in the context of the TAW Directive.

Denmark has not—as was the case in the CJEU's case on German legislation—introduced a maximum duration for assignments of temporary agency workers. Instead, the tool chosen by the Danish legislator to prevent misuse is the requirement for objective reasons to conclude successive assignments with a temporary agency worker, cf. TAW Act, Section 3(4). According to the preliminary works of the Danish TAW Act, this provision reflects a prohibition to circumvent the equal treatment principle. This prohibition is not directed at successive assignments with different user undertakings, and successive assignments as such are not prohibited. Under Danish law, the requirement to state objective reasons is, thus, closely connected to the court's evaluation of misuse.

Danish courts very frequently assess the risk of misuse/abuse. In the recent Western High Court decision (08 February 2021, BS-31204/2018-VLR), the Court was evidently aware of the risks of circumvention or abuse in this particular case, even though the Court did not actually use the word circumvention or abuse in its decision.

The case concerned a temporary agency worker's maximum weekly working hours. The temporary agency worker demonstrated that he had worked over 48 hours per week during three different reference periods. This was a breach of the maximum weekly working time according to Section 4 of the Danish Working Time Act. The temporary agency worker should have, as a general rule, direct his claim for compensation against the two temporary work agencies that he was employed with during the relevant periods, cf. TAW Act, Sections 1(1) and 2.

However, due to a number of factual circumstances of the specific case, the employee was able to direct his claim for compensation against 'the user undertaking' according to Section 8 in the Danish Working Time Act. The circumstances included, inter alia, that the employee had performed work for the user undertaking for 1 year and 7 months without being assigned to another company.

What was relevant for the decision in the case was, inter alia, the special link between the temporary work agencies and the user undertaking, both in terms of the purpose of their foundation and their financial transactions. Even though the ruling is a result of

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the very distinct circumstances of the case, it effectively shows that the courts are willing to set aside attempts of misuse of basic employee rights in relation to the establishment of temporary work agencies.

The same scrutiny has been applied to industrial arbitration cases.

Under the TAW Act, Section 3(5), a derogation of the principle of equal treatment is possible by temporary work agencies that are covered by a collective agreement entered into by the most representative parties in Denmark and which applies nationwide, whereby the overall protection of temporary agency workers is protected.

In industrial arbitration case FV 2014.0063, 13 July 2015, the arbitrator stated in general terms that "*successive time-limited assignments to the same user undertaking cannot, however, take the form of circumvention of the collective agreement*". The interpretation referred to the Industrial Collective Agreement. The parties to this agreement had concluded [an implementation agreement](#) of the TAW Directive (*DI og CO-industris organisationsaftale af 19 August 2011 om implementering af vikardirektivet i Industriens Overenskomst*).

The question was whether the specific case amounted to such circumvention. The arbitrator found, inter alia, that the assignments were in reality not decided by the employer's operational needs on a weekly basis but were being concluded 'until further notice' (*indtil videre*). The weekly confirmations of work did not reflect reality but was a practice that could be used to circumvent the collective agreement. Against that background, the temporary work agency was required to observe the individual notice period in the collective agreement in connection with the worker's dismissal.

In general, Danish case law intensely scrutinises cases of circumvention or abuse of the general principles, including the temporary nature of assignments as established in the TAW Directive. In any case, the CJEU's ruling in *Daimler* provides clarification in this regard.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

This judgment concerns the conditions of temporary agency work. The main issue at stake is the temporary nature of temporary agency work, as well as effective measures if the employer breaches the 'temporary' nature requirement for temporary agency work.

This CJEU decision has implications for Estonian labour law, as it specifies certain employment conditions related to temporary agency work.

There are not many provisions on temporary agency work in Estonian labour law. The Employment Contracts Act specifies that if the work is performed as temporary work, such work must be agreed in writing.

Temporary employment is one of the legal foundations for concluding a fixed-term employment contract. A fixed-term employment contract can be concluded for up to five years and can be renewed once. Thereafter, the employment contract will be considered one of indefinite duration.

The Estonian Employment Contracts Act does not explicitly state what is meant by 'temporary' in case of temporary agency work. If, based on fact, a fixed-term employment contract can be concluded for five years, it could also be considered 'temporary employment'.

The Employment Contracts Act does not provide for separate penalties in case the employer violates the rules of temporary employment in the case of temporary work.

4 Other Relevant Information

4.1 Average monthly wage

According to [Statistics Estonia](#), the average monthly gross wage in Estonia in 2021 was EUR 1 548, which is 6.9 per cent higher than in 2020. Wage growth recovered following a slowdown in 2020 and reached the pre-pandemic level.

In 2021, average monthly gross wages and salaries were again highest in information and communication (EUR 2 804), financial and insurance activities (EUR 2 568) and energy (EUR 2 128). Average gross wages were lowest in real estate activities (EUR 1 132) and accommodation and food service activities (EUR 916).

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The increase in average wages and salaries was highest in human healthcare and social work activities (13.1 per cent) and in trade (10.7 per cent). There was slower growth in wages in education (2.5 per cent) and energy (0.5 per cent).

4.2 Survey on teleworking

On behalf of the Estonian Employers' Association, a survey among employers was conducted to identify the problems, needs and challenges of teleworking from the employers' perspective. One quarter of employers surveyed offer large-scale teleworking.

The survey was conducted in the second half of 2021 and consisted of three parts. Interviewees were first asked about the possibilities of teleworking in their organisation. Most of the interviewees offered teleworking to office workers. In some organisations, teleworking was already common prior to COVID-19, in others it was introduced in response to the health crisis. There were examples of teleworking being more frequently chosen than before, and vice versa, with some people finding it more difficult to work from home during the health crisis and wanting to go to the office more often.

The limits on teleworking also vary, with some companies giving employees the freedom to determine their place of work, while others set stricter rules. For example, it was planned that an employee should work in the office at least one day per week.

Teleworking is not possible at workplaces where an employee is in direct contact with customers, such as production units, warehouses, ports, ships, accommodation and catering establishments, laboratories, ancillary services provided in homes or offices, etc. When all of the rest of the staff is on the ground, it is difficult for managers to work remotely. Teleworking is also hampered when working with sensitive customer data. However, due to the health crisis, secure options were sometimes created to work with sensitive data from home.

The survey on the use of teleworking focused on two main issues.

Firstly, the biggest advantage of teleworking is that a wider range of workers can be hired. In some organisations, teleworking reduced office space and thus lowered costs and made it more attractive for employees who prefer to work remotely.

Moreover, the shift to teleworking due to the health crisis has forced workers to upgrade their digital skills, which gives them an advantage in the labour market. It is also possible for people who reside in less urban areas or abroad to apply to companies where teleworking is encouraged.

It was also found that more flexible work arrangements were beneficial for some employees. For example, they gained more personal time to spend their mornings and evenings with their families at the expense of commuting to work. Some workers also started taking more care of their health.

However, achieving the required results in the form of hybrid work also posed difficulties in some cases. People's living conditions differ, and teleworking is not for everyone. Managers also had to learn to lead a team remotely, because it is more difficult to monitor people's disposition and motivation while working remotely. Another problem is that the employer is not in a position to check the conditions of employees' home offices or to ensure that the employee is taking care of his or her health. Respondents emphasised that it was also difficult to recruit workers from abroad due to travel restrictions and to support entry when the team was teleworking.

Secondly, interviewees expressed their views on the need to change regulations and legislation. In their view, the regulation on employment contracts, in particular, needs to be made more flexible.

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It was proposed for the Employment Contracts Act should become more flexible due to the massive use of flexible working hours. People want to work remotely from home or even from another country, and many employers are willing to give them that freedom. In the case of creative work, setting work with a fixed schedule and workload is more of an obstacle, while achieving results is far more important.

Regulations related to teleworking are considered too vague and the employer's responsibility for ensuring a suitable working environment is disproportionate. The employers interviewed do not consider it appropriate that they should fully furnish their home offices, pay a special incentive tax and also be responsible for the employee's health if they cannot control the work environment themselves. The importance of keeping workers healthy was emphasised. The state may need to intervene if people themselves do not have the skills or resources to create a healthy work environment.

In summary, one of the drivers of the development of teleworking is that this form of working seems to provide opportunities that motivate employees, that they can be recruited regardless of location, and saving on office and travel costs are possible.

Finland

Summary

(I) The government has submitted a proposal which would clarify the right of an employer to collect personal data on employees in line with the GDPR.

(II) The government has submitted a proposal that would provide the right for the employer to require employees working as seafarers to take breathalyser tests.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Worker's privacy

Government Proposal 35/2022 would clarify the right of an employer to collect personal data on employees. The aim is to clarify the regulatory approach in terms of the EU General Data Protection Regulation and practices of working life. The government submitted its proposal on amendments to the Act on the Protection of Privacy in Working Life (759/2004) to Parliament on 24 March 2022.

The employer shall collect personal data on employees primarily from the employee him- or herself. To collect personal data from elsewhere, the employer must obtain the employee's consent. The proposed changes would mean that no consent would be required for the employer to collect personal data during the employment relationship in line with statutory employers' rights and obligations. The proposed change shall enter into force as soon as possible.

1.2.2 Seafarers

The government has proposed changes (Government Proposal 34/2022) to the Seafarers' Employment Contracts Act (756/2011) that would allow employers to require employees who work on ships to take a breathalyser test under certain circumstances. Taking a breathalyser test could be required in situations where employees who work while intoxicated could endanger the lives, health or safety of other persons on the ship or endanger the safety of the ship or the environment. Moreover, an employee could be required to take a test when there are grounds to suspect that he or she is intoxicated.

The government submitted its proposal on amendments to the Seafarers' Employment Contracts Act to Parliament on 24 March 2022.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

Section 3 of Chapter 1 of the Employment Contracts Act (55/2001) contains provisions on the duration of an employment contract. As regards temporary agency work, the general rule is that an employment contract is valid indefinitely. Hence, the term “temporarily” in Directive 2008/104 does not affect this circumstance. The conclusion of a fixed-term employment contract requires a justified reason.

The point of departure is that an employment contract can be concluded for a fixed term if it is presumed that the assignment for which the contract is being concluded will end once the contract ceases.

If the employer has terminated an employment contract contrary to the grounds laid down in the Employment Contracts Act by virtue of Section 2 of Chapter 12 of the Act, the employer must be ordered to pay compensation for unjustified termination of the employment contract.

4 Other Relevant Information

4.1 Promotion of employment

Työkanava Ltd, a special assignment company wholly owned by the state will start to employ persons with impaired capacity for work who find themselves in the most difficult labour market position. The objective is to improve and support the labour market and other skills of such individuals so that as many as possible can move from *Työkanava Ltd* to the open labour market. The government submitted the bill on the Act on *Työkanava* for approval on 31 March 2022. The Act is intended to enter into force on 01 July 2022.

4.2 Proposed amendments to the Non-Discrimination Act

Two groups, one of which has worked in the context of the Ministry of Justice and another in the context of the Ministry of Economic Affairs and Employment, which have prepared changes to the Non-discrimination Act (1325/2014), have submitted their proposals for comments.

The proposed changes that relate to working life questions would strengthen the cooperation between the occupational health and safety authority and the Non-discrimination Ombudsman. Comments on the proposals can be submitted until 18 May 2022.

France

Summary

(I) An Act reforming the length of adoption leave entered into force on 23 February 2022.

(II) An Act improving the protection of whistleblowers entered into force on 23 March 2022.

(III) The Court of Cassation rendered a judgment in which it clarified the definition of sexual harassment at work.

(IV) The Court of Cassation issued two judgments clarifying the possibility for terminating the employment contract of a worker who is a trade union representative and in case of serious misconduct of a worker.

(V) The Court of Cassation held that the employer who did not monitor the workload of an employee subject to unreasonable working hours failed to respect its health and safety obligation.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Work-life balance

[Act No. 2022-219](#) of 21 February 2022 (OJ of 22 February 2022), reforming regulations on adoption, came into force on 23 February 2022.

Previously, an employee could benefit from an adoption leave of a maximum of 16 weeks from the arrival of the child in the home, or in the seven days preceding it ([former Article L. 1225-37, al. 1](#) of the French Labour Code). This leave has been increased to 18 weeks if the adoption means the number of children who the employee or the household is responsible for amounts to three or more, and 22 weeks in case of multiple adoptions ([former Article L. 1225-37, al. 2](#) of the French Labour Code).

To facilitate the modalities for taking this leave, the Act provides for the intervention of a decree to set the period within which it may be taken, its starting point could thus be deferred ([Article L. 1225-37, al. 1](#) of the French Labour Code). However, the duration of adoption leave remains unchanged. The Act also opens up the possibility of dividing adoption leave and its compensation, again in accordance with procedures to be determined by decree. Until then, the duration of the leave could not be divided, requiring the parent employee to take it in one go ([Article L. 1225-37, al. 1](#) of the French Labour Code). The period of compensation by the social security system is adapted to these new modalities for taking adoption leave ([Article L. 331-7](#) of the French Social Security Code).

Previously, when the duration of adoption leave was divided between the two parents, the adoption of a child by a couple of employed parents gave entitlement to 25 additional days and 32 additional days in the case of multiple adoptions ([former Article L. 1225-40, al. 1](#) of the French Labour Code). Under the previous legislation, the duration of this leave could only be divided between the two parents into two periods, the shorter of which was at least 25 days ([former Article L. 1225-40, al. 2](#) of the French Labour Code).

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The Act of 21 February 2022 amends this last point by providing that when it is divided between the two parents, adoption leave may not exceed a duration of 16 weeks for each parent, or, where applicable, 18 weeks in the event of an adoption which brings the number of children in the household to three or more, or finally, 22 weeks in the event of multiple adoptions ([Article L. 1225-40, al. 1](#) of the French Labour Code).

From now on, the modalities for the distribution of leave taken by both parents are clarified: neither parent may take leave for a period longer than that provided for a single parent (i.e. 16, 18, or 22 weeks depending on the total number of dependent children in the household ([Article L. 1225-40 al. 2](#) of the French Labour Code)).

1.2.2 Protection of whistleblowers

The Act improves protection of whistleblowers ([Act No. 2022-401](#) of 21 March 2020, OJ of 22 March 2022) and came into force on 23 March 2022.

Firstly, this new Act amends the definition of whistleblower to extend the protection attached to it to situations not yet covered. In particular, the disclosure of information will no longer have to be done 'in an unbiased form', but only 'without direct financial compensation'. In addition, the whistleblower will only have to justify that he/she had personal knowledge of the information he/she is disclosing when he/she obtained it outside the framework of her professional activity. From now on, the whistleblower is defined as:

"a natural person who reports or discloses, without direct financial compensation and in good faith, information concerning a crime, an offence, a threat or harm to the general interest, a violation or an attempt to hide a violation of an international commitment regularly ratified or approved by France, a unilateral act of an international organisation taken on the basis of such a commitment, European Union law, the law or the regulations" ([Article 1 of Act No. 2022-401](#) of 21 March 2020).

Secondly, the reporting procedures (internal, external or by public disclosure) which a whistleblower must choose between to benefit from the protection provided by the Act have been reviewed. With some exceptions, a whistleblower will no longer need to go through an internal reporting procedure before considering an external reporting procedure and will therefore be free to choose between these two options. In particular, the Act lists persons who will be able to produce an internal report to remedy a violation observed in the course of their professional activity, when they deem that they are not exposed to a risk of reprisals ([Article 3 of Act No. 2022-401](#) of 21 March 2020).

Finally, the Act completes the list of prohibited retaliatory measures against whistleblowers and also prohibits threats or attempts to use any of them ([Article 6 of Act No. 2022-401](#) of 21 March 2020). The Act also introduces a principle of non-discrimination in favour of whistleblowers and defines new protective measures: a new complementary sanction may be pronounced by the Labour Court, which will force the employer to contribute to the whistleblower's personal training account up to a ceiling of EUR 8 000 ([Article 8 of Act No. 2022-401](#) of 21 March 2020). Furthermore, any procedure directed against a whistleblower because of the information reported or disclosed may be sanctioned if it is deemed abusive or dilatory. The amount of the civil fine that may be imposed by civil or criminal courts is increased to EUR 60 000 ([Article 9 of Act No. 2022-401](#) of 21 March 2020).

2 Court Rulings

2.1 Sexual harassment

Labour Division of the Court of Cassation, No. 19-23.345, 02 February 2022

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In the present case, an employee who was a general sales manager and had executive status sent various messages with a sexual connotation to three male contacts outside the company on several occasions by e-mail. The employer discovered these messages during an audit operation before dismissing the employee for serious misconduct on 20 September 2015.

As a reminder, Article [L. 1153-1 of the French Labour Code](#) provides that no employee should be subjected to sexual harassment or acts associated with it.

The Court of Appeal confirmed the dismissal in the following terms: "*the disputed messages contravened the charter intended to prevent sexual harassment (internal to the company), of which the employee had been aware*". This document recalled that "*comments, jokes, images, (...) whether verbal, in writing, or sent by e-mail (...) may constitute sexual harassment*". The employee appealed against this decision because, according to him, harassment requires an employee to be a personal victim, but this was not the case, because the three males who the sexual messages were sent to were non-employees: in the absence of a victim, harassment cannot be claimed.

In its decision of 02 February 2022, the Social Division of the Court of Cassation considered that sending e-mails with sexual connotations to people who were not part of the company, in violation of an internal charter designed to prevent sexual harassment, did not constitute sexual harassment within the meaning of the Labour Code. The Court first recalled the provisions of Article L. 1153-1 of the Labour Code defining the notion of sexual harassment at work. Then, the Court confirmed the appeal decision by considering that it did not matter that the company's internal charter on the prevention of sexual harassment condemned the sending of messages of a sexual nature: since these messages were addressed to people located outside the company, and therefore no employee had been a victim, the dismissal for serious misconduct could not be based on the existence of sexual harassment within the meaning of the provisions of Article L. 1153-1 of the Labour Code.

Indeed, the employer must take action when confronted with a situation of sexual harassment, unless he or she is potentially liable on the basis of the safety obligation provided for in Article [L. 4121-1 of the Labour Code](#). Article [L. 1153-6 of the Labour Code](#) provides that the author of (written) harassment is liable to disciplinary action and case law considers such an act to necessarily constitute serious misconduct (Labour Division of the Court of Cassation, [No. 00-40.717, 5 March 2002](#) and [No. 15-14.630, 14 September 2016](#)). On the other hand, the employer is only required to react when the facts point indeed to sexual harassment as defined in the Labour Code, and this is not the case when an employee sends messages, even vulgar or degrading ones, to people outside the company. A dismissal on these grounds cannot therefore be considered justified.

2.2 Dismissal of a trade union representative

Labour Division of the Court of Cassation, No. 20-16.171, 16 February 2022

In the present case, an employee was hired in 1989 before running as a candidate in the professional elections, thus benefiting from a protection period from 19 March 2015 to 18 September 2015. On 28 October 2015, he was appointed as a trade union representative on the works council. Summoned by letter to a preliminary interview scheduled for 04 November 2015, the employee was dismissed for misconduct on 23 November 2015, due to aggressive, insulting and denigrating behaviour. The employee contested his dismissal before the Labour Court, considering that the dismissal should have been authorised by the labour inspector.

As a reminder, the Labour Code provides that authorisation for dismissal is required for a candidate for a position of elected member of the works council, in the first or second round, during the six months following submission of the list of candidates to the

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employer (former Article L. 2411-10 and new Article L. 2411-8 of the French Labour Code).

The Court of Appeal, in its judgment of 11 February 2020, upheld the employee's request. The misconduct of the employee referred to in the letter of dismissal had been noted in part during his period of protection and had not changed since then, so that the dismissal was null and void for lack of authorisation by the labour inspector. The Court of Appeal therefore ordered the reinstatement of the employee and ordered the employer to pay the employee damages for breach of his protective status. The employer appealed against this decision, arguing that while a protected employee cannot be dismissed at the end of his term of office because of acts committed during the period of protection, which should have been submitted to the labour inspector, this is not the case when the employee's misconduct is persistent or renewed after the expiration of the period of protection, which was the case in this instance. According to the employer, the employee had behaved in an aggressive, insulting and denigrating manner during the period of protection, but this behaviour continued after the end of the protection period. Finally, the employer argued that it was not required to request authorisation from the labour inspector since he had only become aware of the reality, nature and extent of the acts of which the employee was accused after the expiry of the protection period.

In its judgment of 16 February 2022, the Court of Cassation, on the basis of Article L. 2411-10 of the Labour Code, in its version applicable to the facts, overturned the judgment of the Court of Appeal. The Court of Cassation reiterated its case law according to which the dismissal of an employee at the end of the period of protection is null if it is the result of acts committed during this period and which should have been submitted to the labour inspector (Labour Division of the Court of Cassation, No. 01-46.234, 13 November 2044 and No. 14-17.131, 18 February 2016). Secondly, the Court of Cassation specified that the persistence of the protected employee's misconduct beyond the protection period may justify dismissal without authorisation from the labour inspector. The Court of Appeal should therefore have firstly investigated whether the employer obtained detailed knowledge of the acts attributed to the employee which were committed during the period after the expiry of the period of protection, and secondly, whether the misconduct attributed to the employee had not persisted after the expiry of the period of protection.

With this decision of 16 February 2022, the Social Chamber of the Court of Cassation confirms its case law according to which if the acts were committed during the protection period and persisted after its expiry, the employer may dismiss the employee without seeking authorisation from the labour inspector (Labour Division of the Court of Cassation, No. 07-42.395, 24 September 2008). As a result, the employee's protection only continues beyond the period of protection if the employer was not aware of the misconduct committed before the end of the mandate and if it was not repeated in the future. Clearly, the difference in treatment between a formerly protected employee and other employees would no longer be justified once the former is no longer exposed due to the expired mandate.

2.3 Dismissal for serious misconduct

Labour Division of the Court of Cassation, No. 20-20.872, 09 March 2022

In the present case, an employee who had been on sick leave as of 31 May 2013, had been summoned to an interview prior to a sanction and then dismissed for gross misconduct. The employee had taken advantage of her duties and used her influence with an elderly person in a weak situation to take over all of her assets, along with specific members of her family. The employee brought an action before the Labour Court requesting the judge to rule out serious misconduct, since the employer had waited for four weeks after becoming aware of the misconduct before initiating the dismissal procedure.

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As a reminder, serious misconduct is defined as misconduct that 'makes it impossible for the employee to remain in the company' (Labour Division of the Court of Cassation, No. 88-44.908, 26 February 1991): this misconduct justifies the immediate interruption of the employment relationship due to the content of the facts attributed to the employee. In principle, the employer's reaction must be concomitant with the discovery of the employee's breaches, the assessment of this time period being within the sovereign power of the trial judges, since the nature of this misconduct is supposed to prevent the employee from remaining in the company (Labour Division of the Court of Cassation, No. 03-47.335, 25 October 2005).

According to the Court of Appeal in its judgment of 26 March 2020, the employer had detailed knowledge of the facts on 17 October 2014 and had summoned the employee to an interview prior to dismissal for serious misconduct on 14 November, i.e. 4 weeks later. Moreover, the employee had been absent from the company due to a suspension of her employment contract since 31 March 2013 on account of sick leave. Based on these considerations, the Court concluded that the passage of this period could not have the effect of removing the serious nature of the fault. The Court of Appeal therefore confirmed the dismissal for serious misconduct, which the employee contested before the Court of Cassation.

In its decision of 09 March 2022, the Labour Division approved the appeal judges' decision and rejected the claimant's request. For the Court of Cassation, the expiration of the four-week period could not have the effect of removing the serious nature of the employee's misconduct, since the employee, whose employment contract had been suspended for several months, was absent from the company at the time of her dismissal. For the Court, the late start of the dismissal procedure was therefore not such as to disqualify it for serious misconduct because the employee was already no longer present in the company due to the suspension of her employment contract linked to her sick leave.

With this decision, the Court of Cassation clarified its case law on the late initiation of the dismissal procedure for serious misconduct by basing its reasoning on the presence or absence of the employee in the company, whatever the reason for this absence.

2.4 Working time

Labour Division of the Court of Cassation, No. 20-16.883, 02 March 2022

In the present case, an employed occupational physician brought various claims for compensation for the performance of his employment contract before the Labour Court in November 2013. The employee claimed that the employer had failed to fulfil its security obligation by not taking measures to ensure that his working hours and workload remained reasonable. The employee claimed that he had alerted his employer about his workload and to the lack of staff in the department, without the stress caused by this situation having been taken into account, with the result that his health had deteriorated.

As a reminder, the Labour Code provides that the employer must take the necessary measures to ensure the security and protection of the physical and mental health of workers (Article L. 4121-1 of the French Labour Code).

In its decision of 20 May 2020, the Court of Appeal dismissed the employee's claim because the employer, although he had not taken the necessary measures to ensure that the employee's workload and amount remained reasonable, had not failed in its security obligation. On the one hand, the alerts on the deterioration of the employee's health had only appeared from June 2013 and, on the other hand, the employer alerted the employee's occupational doctor in August 2013. These elements were such for the Court of Appeal as to demonstrate that the employer had fulfilled its security obligation.

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The Court of Cassation, in its judgment of 02 March 2022, overturned the judgment of the Court of Appeal insofar as it dismissed the employee's claim for damages for failure to comply with the security obligation. The Court based its decision on its so-called 'Air France' case law (Labour Division of the Court of Cassation, No. 14-24.444, 25 November 2015) relating to the security obligation and recalled that the employer, bound by a security obligation towards employees, must take the necessary measures to ensure the security and protection of the physical and mental health of workers, so that it does not disregard this legal obligation if it justifies having taken all measures provided for by Articles L. 4121-1 and L. 4121-2 of the Labour Code. In this sense, the Social Chamber goes on to note that the employer did not justify having taken the necessary measures to guarantee that the employee's workload and amount remained reasonable and ensured a good distribution of working time and therefore to ensure the protection of the employee's security and health: it was therefore up to the Court of Appeal to verify whether any prejudice had resulted from this and, if so, to award the employee compensation.

With its decision, the Court of Cassation clarified the scope of the legal obligation of security and protection incumbent on the employer. In accordance with the facts of the case, the only alert issued by the employer to the occupational doctor does not constitute a sufficient response to the situation of an employee who had informed him about the deterioration of his working conditions. The Court of Cassation had already explicitly established a link between failure to comply with the guarantees related to the workload of the employee on a fixed-term contract and the obligation of security and protection, considering that the employer had failed to comply with this obligation when it had consciously refrained from monitoring the workload of an employee subject to unreasonable working hours (Labour Division of the Court of Cassation, No. 17-10.248, 10 October 2018).

3 Implications of CJEU Rulings

3.1 Temporary work agency

CJEU case C-232/20, 17 March 2022, Daimler

The concept of 'temporariness'

Under French law, a worker can be temporarily placed at the disposal of a user undertaking: a first contract called a 'provisional contract' concluded between this undertaking and the temporary work agency is then concluded in addition to a second contract, called an 'assignment contract' concluded between the temporary work agency and the temporary worker it hires (Articles 1251-1 and following of the French Labour Code).

The current legislation requires this assignment contract, under which the temporary worker carries out his/her activity for a user undertaking, to include a specific term with a maximum duration.

Ordinance No. 2017-1387 of 22 September 2017 on the predictability and security of labour relations opened the possibility of negotiating the total duration of so-called 'temporary employment' contracts by agreement or extended branch agreements.

Therefore, in the absence of an extended branch agreement setting the total duration of the contract, the provisions of the Labour Code must be applied. The law sets a maximum duration of 18 months, in principle, including renewals (Article L. 1251-35-1 of the French Labour Code), but also other durations ranging from 8 months for seasonal work to 24 months for permanent employment preceding the redundancy of a post (Article L. 1251-12-1 of the French Labour Code).

An agreement or an extended branch agreement of the user undertaking may also set the total duration of the assignment contract (including renewals), but this duration may

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not have the purpose or effect of permanently filling a job linked to the undertaking's normal and permanent activity (Article L. 1251-12 of the French Labour Code). This possibility of derogating by agreement from the maximum duration set by the Labour Code only applies to assignment contracts concluded after 24 September 2017 (Ordinance No. 2017-1387, 22 September 2017, OJ 23 September 2017).

If the duration of a contract is longer than that stipulated by law or if the duration stipulated by the agreement has the purpose or effect of permanently filling a job linked to the normal and permanent activity of the company, the use of temporary work will be considered abusive under French law.

Abuse of temporary agency work in case of successive assignments

Under French law, the maximum legal or conventional duration of assignment contracts are provided for, including renewals: abuse occurs as soon as all the cumulative durations carried out for the same user undertaking exceed the limits laid down by law. In the event of abusive use of temporary work for a period exceeding the above-mentioned limits, the worker's assignment contract could be requalified. Indeed, the temporary employee may claim rights from the user undertaking relating to an indeterminate term contract, taking effect on the first day of his/her assignment when this company has used his/her services in violation of the provisions relating to the duration of assignments (Articles L. 1251-12-1 and L. 1251-40 of the French Labour Code).

4 Other Relevant Information

Nothing to report.

Germany

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The CJEU's decision is based on a reference for a preliminary ruling from a German court and refers to a large extent to legal regulations that have been amended in the meantime.

The CJEU has ruled that the term "temporary" used in Article 1(1) of the Directive does not preclude the assignment of a worker who has an employment contract or employment relationship with a temporary work agency to a user undertaking for the purpose of employment in a job that is permanently available, and which is not filled on a temporary basis. This finding corresponds to the current provision in Section 1 (1b) sentence 1 of the Temporary Agency Act (*Arbeitnehmerüberlassungsgesetz, AÜG*), according to which the maximum duration of an assignment is linked to the temporary agency worker and not to the workplace. The previous law disputed whether the term "temporary" was to be understood as referring exclusively to the individual assignment period of the temporary agency worker or whether it referred to the jobs to be filled and was accordingly to be understood as meaning that temporary agency workers could not be assigned to permanent jobs at the user undertaking without a need for substitution.

The CJEU has also held that an abusive use of successive assignments of a temporary agency worker refers to a situation in which assignments are extended for a period of 55 months for the same job with a user undertaking, if the successive assignments of the same temporary worker with the same user undertaking result in a period of employment with that undertaking, which is longer than what can reasonably be regarded as "temporary", taking into account all the relevant circumstances, including in particular the specificities of the sector, and in the context of the national regulatory framework, without any objective explanation being provided for the fact that the user undertaking in question has recourse to a series of successive temporary employment contracts. Current German law sets a maximum assignment period of 18 months in Section 1(1b) sentence 1 AÜG.

The CJEU has also ruled that the Directive precludes national legislation which sets a maximum period of assignment of the same temporary agency worker to the same user undertaking if it excludes, by means of a transitional provision, the taking into account of periods prior to the entry into force of that legislation when calculating that period and deprives the national court of the possibility of taking into account the actual duration of the assignment of a temporary worker to determine whether that assignment was "temporary" within the meaning of the Directive. This finding is aimed

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at the transitional period set in Section 19 (2) AÜG, according to which only assignment periods from the entry into force of the new regulation, i.e. only assignment periods from 01 April 2017 onwards, count for the purpose of reaching the threshold.

According to the CJEU's decision, Article 10(1) of the Directive must be interpreted as meaning that in the absence of a national legal provision providing for a sanction for non-compliance with this Directive by temporary work agencies or user undertakings, the temporary worker cannot derive from Union law a subjective right to establish an employment relationship with the user undertaking. In Germany, the former law did not provide for any sanction. Under the current law, a transfer that violates the maximum transfer period is invalid (Section 9(1) No. 1b AÜG) and an employment relationship between the user undertaking and the temporary agency worker is deemed to exist (Section 10(1) sentence 1 AÜG).

According to the CJEU's decision, Directive 2008/104 must be interpreted as not precluding national legislation that authorises the parties to collective agreements to derogate, at the level of the user undertaking's sector, from the maximum duration of a temporary worker's assignment laid down by such legislation. In Germany, the current law stipulates that a collective agreement concluded by the parties to the collective agreement in the sector of use may set a maximum assignment period that deviates from the law (Section 1 (1b) sentence 3 AÜG).

4 Other Relevant Information

Nothing to report.

Greece

Summary

The short-time work mechanism introduced to respond to the financial consequences of COVID-19 has been extended until 31 May 2022.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Short-time work scheme

The Ministry of Employment announced the extension of the short-time work mechanism under the name 'Co-operation' (see the May 2020 and January 2021 Flash Reports). This mechanism provides enterprises that have experienced a reduction in their level of income the possibility of reducing up to 50 per cent of the weekly working hours of all or of part of their employees. Employees included in the mechanism are entitled to receive additional support from the Greek state in addition to their wage for reduced working hours, amounting to 60 per cent of their net salary corresponding to the time they do not provide any work (i.e. 60 per cent of their lost income).

This mechanism will be applicable until 31 May 2022 for workers that have been hired until 30 October 2021.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The case is of major significance as it clarifies measures to prevent successive assignments in the event of temporary agency employment. It clarifies that Directive 2008/104 does not make the lawfulness of the use of temporary agency work subject to the prerequisite that it must be justified by technical, production, organisational or replacement-related reasons. What matters is that appropriate measures must be taken to preserve the temporary nature of temporary agency work and to prevent successive assignments of the same temporary agency worker to the same user undertaking .

Greek legislation (Article 117(2) of Law 4052/2012) stipulates that the period for which a temporary agency worker shall be employed at the user undertaking may not exceed 36 months, including renewals. If the above rule is not respected, the employee's employment contract with the temporary employment agency will automatically convert into an employment contract of indefinite duration between the employee and the indirect employer (i.e. the user undertaking).

If the same temporary worker is reemployed by the same indirect employer (i.e. the user undertaking) after the end of the initial assignment or after its renewal (regardless of whether it is for a new (different) assignment), without the lapse of a 23-day period

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between the end of the initial contract and the renewal, then the employee's employment contract with the temporary employment agency automatically converts into an employment contract of indefinite duration between the employee and the indirect employer (Article 117(3) of Law 4052/2012).

Finally, in the event of continuation of employment of the temporary worker by the user undertaking following the expiration of the assignment, and in the event of any renewal of the assignment prior to the lapse of 45 (calendar) days, it is deemed that a contract of indefinite duration has been concluded between the temporary worker and the user undertaking. Greek case law on the above provision has determined that it is not contrary to the constitutionally protected freedom of the worker's personality, or to the freedom of business (see Areios Pagos (Supreme Court) 742/2009 *Δίκαιο Επιχειρήσεων και Εταιριών* (Law of Enterprises and of Companies) 2011, p 223).

Therefore, Greek law appears to be in compliance with the present CJEU ruling.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The Hungarian Labour Code regulates temporary agency work in Articles 2014 to 2221. Article 2014(2) contains detailed provisions on the maximum length of temporary agency work assignments:

"The duration of an assignment may not exceed five years, including any period of extended assignments and re-assignments within a period of six months from the date of termination of his/her previous assignment, irrespective of whether that assignment was concluded by the same or by a different temporary work agency."

The maximum length of an assignment (including extended or renewed assignments) with the same user undertaking may not exceed five years. After five years, the assignment is null and void. Therefore, the employment relationship between the user undertaking and the temporary agency worker can be established by the labour inspector (in case of inspection) or the court (in case of litigation).

Article 222(1)b) of the Labour Code asserts that Article 2014(2) is *ius cogens*; thus, any derogation from this provision in a collective agreement is null and void.

Consequently, the detailed provisions of the Labour Code fully comply with the CJEU judgment.

4 Other Relevant Information

Nothing to report.

Iceland

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The case law on temporary agency work in Iceland is not substantial. The current [Act No. 139/2005 on Temporary Agency Work](#) (*Lög um starfsmannaleigur*) does not include similar provisions as those disputed in the case.

Therefore, it seems that there are no obstacles to interpreting the Act in line with the ruling in the case, or to the second question relating to the misuse of successive assignments.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

(I) The government has approved the introduction of legislation establishing the right to paid sick leave.

(II) the Supreme Court confirmed that a permanent employee who fulfilled a more senior role on a temporary fixed-term basis is to be regulated as a fixed-term employee.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Sick leave

Following pre-legislative scrutiny, the government has [announced](#) that Cabinet approval has been given for the introduction of the Sick Leave Bill 2022, under which the right to paid sick leave will be extended to all employees over a period of four years.

The Bill, when enacted, will initially provide employees with a statutory entitlement to sick pay for three days per year, rising to five days in 2024, to seven days in 2025 and to ten days in 2026.

Statutory sick pay will be paid at a rate of 70 per cent of an employee's wage subject to a daily cap of EUR 110, a figure which can be revised by ministerial order in line with inflation and changing incomes. An employee must obtain a medical certificate to avail of statutory sick pay and the entitlement will be subject to the employee having worked for their employer for a minimum of 13 weeks.

The Minister for Enterprise, Trade and Employment has stated that the Bill was primarily intended to provide a minimum level of protection to low-paid employees who had no contractual entitlement to a company sick pay scheme, and that the 70 per cent rate and daily cap were to ensure that excessive costs were not placed on employers.

2 Court Rulings

2.1 Fixed-term work

Supreme Court, [2022] IESC 17, Health Service Executive v Power, 31 March 2022

The Supreme Court [has upheld](#) a decision of the High Court that a permanent employee, fulfilling a more senior role on a temporary fixed-term basis, is not excluded from the scope of the Protection of Employees (Fixed-Term Work) Act 2003 (implementing Directive 99/70/EC).

The case concerned a worker who was employed in the position of chief financial officer. In 2014, he took up the position of interim chief executive officer on a temporary basis for a period of six months or until the role was filled on a permanent basis, whichever occurred sooner. He was informed in writing that when his temporary role ceased, he would revert to his substantive terms and conditions as chief financial officer. His temporary appointment was extended four times and lasted for a total period in excess of four years.

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In 2019, a chief executive officer was permanently appointed and the claimant resumed his position as chief financial officer. His complaint under the 2003 Act that he was entitled to a contract of indefinite duration, pursuant to Section 9(2) of the Act, was dismissed by the Labour Court on the basis that, as he was a permanent employee, he could not at the same time be a fixed-term employee. He successfully appealed to the High Court on a point of law, whose decision was unanimously upheld by the Supreme Court. That Court was satisfied that between 2014 and 2019, he was a fixed-term employee, as the end of each of the five temporary contracts concerned was determined by an objective condition, such as arriving at a specific date or the occurrence of a specific event.

The Supreme Court noted that if the employer was right, the effect would be to remove the application of the Act from an entire cohort of employees – those who are in a permanent employment relationship but who agree to serve in a higher post on a temporary basis. The Framework Agreement annexed to the Directive, however, contained no express exclusion of such employees. It is implicit in the decision that the Supreme Court saw no need to refer to Article 267 TFEU.

The case now has to return to the Labour Court which will determine whether there were 'objective grounds' justifying the repeated renewals of the claimant's original fixed-term contract.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

Directive 2008/104/EC was implemented by the [Protection of Employees \(Temporary Agency Work\) Act 2012](#). Section 3 of the Act provides that it applies to "agency workers temporarily assigned by an employment agency to work for, and under the direction and supervision of, a hirer". The Act contains no temporal limitations on the use by hirers of temporary agency workers.

Section 7 of the Act is designed to prevent the use of successive assignments designed to circumvent the entitlements conferred by the Act on agency workers. This section provides that, where there is a break of three months or more between the two assignments, they will not constitute a series of assignments. The section, however, does not address the situation where the assignment, such as that of the present case, is a single assignment of 55 months.

The academic opinion is that this section does not satisfy the obligation in Article 5(5) of the Directive to take appropriate measures to prevent successive assignments designed to circumvent the provisions of the Directive. In particular, the Act does not provide that an agency worker on a lengthy assignment can lodge a complaint with the Workplace Relations Commission that an employment relationship now exists between the hirer and him/herself. He or she would have to seek declaratory relief in the High Court with all of the attendant legal costs implications.

4 Other Relevant Information

4.1 Pandemic Unemployment Payment

As of 29 March 2022, 44 747 persons (down from 56 378 as of 22 February 2022) (39.7 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 (7 935), wholesale and retail trade (7 346) and administration and support services (5 264). The number in construction dropped from 42 333 at the end of April 2021, to 5 914 in December and has now further decreased to 4 254. In terms of the

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age profile of PUP recipients, 9.6 per cent were under 25. Additionally, 10 679 persons (down from 13 186 as of 22 February 2022) were in receipt of the COVID-19 Enhanced Illness Benefit. In total to date, 459 417 persons have been medically certified for receipt of this benefit, 53.1 per cent of whom were female.

[See here](#) for further information.

Italy

Summary

(I) As the state of emergency declared due to the COVID-19 pandemic ended on 31 March 2022, the Italian government has introduced some temporary measures that will be valid until 30 June 2022.

(II) Relief measures have been introduced to respond to the economic consequences of the war in Ukraine on business activities.

(III) A ruling on the recruitment of staff by an airline company examined the problem of discrimination in the pre-employment phase with reference to CJEU case law.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Vaccination mandate

The Act of 04 March 2022 No. 18 has converted the [Law Decree of 07 January 2022 No. 1](#) into law.

The Decree has extended the vaccine mandate to all citizens who are at least 50 years old, provides for the 'reinforced' Green Pass for all workers in the private sector, for public employees and for university staff (in addition to staff in healthcare, education, defence and police), provided the necessity to possess and present the ordinary Green Pass to access various places, such as hairdressers, barbers and beauty centres, banks, post offices and shops, except where basic necessities are sold.

1.1.2 End of the state of emergency

[Law Decree 24 March 2022 No. 24](#) provides various rules to manage the end of the state of emergency due to COVID-19.

The state of emergency due to COVID-19 ends on 31 March 2022, as provided by Law Decree of 24 December 2021 No. 221, conv. Act 18 February 2022 No. 11.

Law Decree of 24 March 2022 No. 24 extends until 30 June 2022:

- the deadline for the application of exceptional health surveillance (which was initially provided by Article 83 of Law Decree 34/2020, converted into Act 77/2020);
- the deadline for simplified teleworking (that is, without an individual agreement).

The obligation to possess and present a Green Pass to access the workplace has been extended to 30 April 2022 (from 01 April, the simple Green Pass will suffice).

The vaccine mandate for healthcare professionals has been extended until 31 December 2022.

1.2 Other legislative developments

1.2.1 Measures to respond to the consequences of the war in Ukraine

[Law Decree 21 March 2022 No. 21](#) introduces some urgent measures to counter the economic and humanitarian effects of the war in Ukraine.

Specifically, it provides for further periods of *Cassa integrazione* and an exemption from the payment of social security contributions for employers who suspend or reduce their production activity due to problems connected with the Ukraine crisis.

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In addition, for the year 2022, private employers can provide their employees with vouchers for the purchase of fuel that, within a limit of EUR 200 per worker, do not represent taxable income.

2 Court Rulings

2.1 Discrimination on grounds of pregnancy

Tribunal of Rome, No. 35684/2021, 23 March 2022

In this [judgment](#), the Tribunal held that the practice of an airline company to exclude pregnant women in their selection of flight attendants was discriminatory.

Ita Airlines, the Italian flag carrier which took over from Alitalia, must hire flight attendants in accordance with a trade union agreement signed in December 2021. However, the company excluded workers on maternity leave from the selection, as demonstrated by some flight attendants and confirmed by statistical data on hiring.

In deciding the matter, the Court recalled the jurisprudence of the CJEU, most notably CJEU case C-177/88, 08 November 1990, *Dekker*, and CJEU case C-207/98, 03 February 2000, *Silke-Karin Mahlburg v Land Mecklenburg-Vorpommern*, according to which “the application of provisions concerning the protection of pregnant women cannot result in unfavourable treatment regarding their access to employment”.

This judgment confirms settled case law on the topic (see, similarly, the judgment of the Court of Cassation, No. 5476, 26 February 2021).

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The case has no relevant implications for Italian legislation.

According to Italian legislation, the supply of labour by a temporary work agency can be permanent (staff leasing) and does not have to be linked to the substitution of another worker only.

Italian legislation provides for several limitations to temporary agency work to prevent abuse (maximum duration, limit to the number of extensions).

Although the possibility of fraudulent agency work cannot be excluded, the Italian legislator has introduced a complex system of sanctions to prevent abuse. Specifically, if temporary agency work is carried out with the specific purpose of circumventing mandatory provisions of law or collective agreements, the temporary work agency and the user undertaking are punished with a criminal fine of EUR 20 for each worker involved and for each day they performed work (Article 38-*bis*, Legislative Decree 81/2015).

Italian legislation allows collective bargaining to modify some of the regulations on temporary agency work. For example, Article 19(2), Legislative Decree 81/2015 provides that collective bargaining can introduce a contract duration of more than 24 months (which is established by law). A specific agreement for temporary work agencies applies as well (the last one was approved on 21 December 2018). This agreement includes some rules on the maximum duration of fixed-terms contracts between the temporary work agency and the worker. The maximum duration of postings of the same worker to the same user undertaking is specified in the collective agreement applied by the user undertaking (for a maximum of 24 months unless otherwise regulated). In case of postings to several user undertakings, the total duration is limited to 24 months. This duration applies to contracts concluded for the same tasks and category and only applies

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to the succession of contracts between the temporary work agency and the worker. The duration of the contract between the agency and the worker can be extended in writing, in the cases and for the duration provided for by the collective agreement applied by the temporary work agency (Article 34, Legislative Decree 81/2015). This agreement envisages a maximum of six extensions (four according to the law) if the maximum duration is 24 months (legal limit). Instead, if the collective bargaining establishes a different limit, the extensions can be up to eight in total.

4 Other Relevant Information

Nothing to report.

Latvia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

As already reported in the October 2020 Flash Report on the CJEU's judgement in case C-681/18, *KG*, the Latvian legal regulation does not reflect the temporary character of temporary agency work. Therefore, the CJEU's decision in case *KG* was a landmark decision, as it provided an explanation of the very substance of temporary agency work, i.e. that such a form of employment is temporary in nature.

Latvian law (the Labour Law) considers temporary agency work as a form of permanent work. For example, Article 74(7) of the Labour Law provides for the obligation to at least pay the minimum wage if a worker is on 'stand-by' due to a lack of requests from user undertakings (*Darba likums*, OG No.105, 06 July 2001). The Labour Law contains no provision stating that if that same worker is continuously used by the same undertaking, the relationship can no longer be considered 'temporary' work provided by a temporary agency worker.

As reported in the October 2020 Flash Report, the Latvian legislator must first amend the legal regulations in accordance with the ruling in the case *KG* and in the present ruling.

Since October 2020, no legislative changes or even debates about the need for amendments to prevent abuse of temporary agency workers if they in fact are being permanently 'used' by user undertakings to perform work for long periods of time.

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

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The concept of 'temporariness'

The first point of the judgment refers to the term 'temporarily'. In Liechtenstein, temporary agency work is regulated by the [Act on the Placement of Workers and the Temporary Agency Work \(Gesetz über die Arbeitsvermittlung und den Personalverleih, Arbeitsvermittlungsgesetz, AVG, LR 823.10\)](#) and the associated [Ordinance to the Act on the Placement of Workers and the Temporary Agency Work \(Verordnung zum Gesetz über die Arbeitsvermittlung und den Personalverleih, Arbeitsvermittlungsverordnung, AVV, LR 823.101\)](#).

Liechtenstein law does not explicitly set a specific maximum period for temporary agency work. However, the temporary nature of temporary agency work clearly results from various circumstances.

According to Article 19 of the Ordinance to the Act on the Placement of Workers and Temporary Agency Work, temporary agency work occurs in three different forms. '*Temporärarbeit*' (temporary agency work in the strict sense) exists if the purpose and duration of the employment contract between the employer and the employee are limited to a single assignment at a user undertaking. The temporary nature lies in the term '*temporär*' and in the limitation to a single assignment. '*Leiharbeit*' exists if the purpose of the employment contract between the employer and the employee is mainly to transfer the employee to user undertakings, and the duration of the employment contract is independent of individual assignments at user undertakings. This form is a priori unproblematic, since the individual assignments are of a temporary nature and, at the same time, the employee is protected by a permanent employment contract that is independent of the individual assignments. '*Occasional assignment of employees to user undertakings*' exists if the purpose of the employment contract between the employer and the employee is that the employee works primarily under the authority of the employer, or if the employee is only exceptionally assigned to a user undertaking and the duration of the employment contract is independent of any assignments at user undertakings. Here, too, there is a permanent employment contract that is independent of individual assignments. The temporary character of the assignments already results from the term 'occasional'.

According to Art. 1(4) of the Act on the Placement of Workers and Temporary Agency Work, the definitions of Art. 3 of Directive 2008/104/EC shall apply to this Act in

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addition. Art. 3(1)(b)–(e) of this Directive asserts that temporary agency work is always temporary: (b) ‘*temporary work agency*’ ... ‘to work there temporarily’; (c) ‘*temporary agency worker*’ ... ‘to work temporarily’; (d) ‘*user undertaking*’ ... ‘works temporarily’; (e) ‘*assignment*’ ... ‘to work temporarily’. By this legal reference to the mentioned definitions of the Directive, these terms are incorporated into Liechtenstein law, which includes the temporary nature of temporary agency work. Thus, the Liechtenstein courts are bound by this concept.

In Liechtenstein, there is no regulation comparable to that applicable in Germany, which gave rise to the present CJEU judgment. Such a case can therefore not arise under Liechtenstein law.

Misuse of temporary agency work

The second point of the judgment refers to the misuse of temporary agency work in case of successive assignments to the same user undertaking. In Liechtenstein, such misuse of temporary agency work is already prohibited due to the general prohibition of abuse of rights. According to Article 2 of the [Act on the Law of Persons and Companies \(Personen- und Gesellschaftsrecht, PGR, LR 216.0\)](#), all involved shall act in good faith in the exercise of their rights and in the performance of their duties; the manifest abuse of a right shall not be protected by law.

According to the Collective Labour Agreement for Temporary Agency Work, which has been declared generally binding by the [Ordinance of the Government \(Verordnung über die Allgemeinverbindlicherklärung des Gesamtarbeitsvertrages für den Personalverleih, LR 215.215.027\)](#), consecutive (‘chain’) employment contracts (‘*Kettenarbeitsverträge*’) are inadmissible if they cannot be justified on objective grounds (see Article 9(3) of the mentioned collective labour agreement). This provision is in line with prevailing doctrine and case law on consecutive (chain) employment contracts in general.

It generally does not seem that problems comparable to that dealt with by the CJEU could arise in Liechtenstein. It can be assumed that the Liechtenstein courts will rule in accordance with the case law of the CJEU.

4 Other Relevant Information

Nothing to report.

Lithuania

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

Lithuanian law does not contain any specific provisions that directly prescribe the temporary nature of the work of temporary workers who work for a user undertaking or set limits on the duration of assignments to the user undertaking. The maximum duration of assignments is not explicitly regulated. However, the factual limitation of assignments to a user undertaking in the majority of cases is determined by virtue of another limitation – the limitation of the duration of the fixed-term contract between the temporary worker and the temporary work agency.

In accordance with Article 72 (4) of the Labour Code, if the temporary work contract is concluded for a fixed term, the maximum term of the fixed-term temporary work contract as well as the maximum total duration of consecutive contracts concluded by the agency with the same temporary worker for the same work shall be three years. Contracts are considered consecutive when they are separated by a period of no more than two weeks.

These provisions, however, do not preclude situations in which the temporary worker, who has concluded a temporary work contract of indefinite duration, is assigned to a user undertaking for an indefinite period of time. In addition, these provisions also do not preclude situations in which the temporary worker who has concluded a fixed-term contract is not dismissed from work (an assignment) upon the expiry of the fixed term of the temporary work contract—under these circumstances, the general rules will apply—the fixed-term provision will expire and the temporary work contract converts into a contract of indefinite duration. The temporary worker will then again be able to permanently work for the same user undertaking.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

(I) The Court of Appeal relied on the Commission's Interpretative Communication on the Working Time Directive to hold that the travel time of a cleaner to and from various work locations is not working time.

(II) The Court of Appeal confirmed that a fixed-term contract is to be requalified as a contract of indefinite duration in case the employer is not able to prove that the significant increase in the company's activity is not temporary or unusual.

(III) The Court of Appeal upheld the dismissal of several employees even though no social plan had been negotiated by the social partners due to the fact that the company was too small and was not covered by a collective agreement.

(IV) The Court of Appeal held that a WhatsApp chat could be used as evidence to prove serious misconduct of an employee.

(V) The Court of Appeal admitted limitations to employers' unilateral decisions to modify employment conditions when a flexibility clause has been agreed.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working time

CSJ, 8e, CAL-2021-00816, 24 February 2022

The present case concerned a domestic worker who worked as a cleaner at various locations during the day. The spacing between the different jobs was calculated in such a way to allow for travel by public transport between locations. The travel time was considered rest time by the employer. The worker challenged this approach and claimed overtime, arguing that the travel time was carried out on the employer's instructions without giving her any time off. This therefore constituted actual work.

The Court of Appeal, in deciding the case, made direct reference to CJEU case C-266/14, *Tyco*, noting that this judgment had not answered the question of travel between appointments during the work day. However, the Court referred to the conclusions drawn from this judgment in the Commission's interpretative communication, especially the section on travel between appointments during the work day. According to the Commission, such travel qualifies as working time if three conditions are met:

1. if the travel concerned constitutes a necessary means of providing services to customers and they must therefore be considered periods during which workers carry out their activity or duties;
2. if the workers concerned are at the employer's disposal during that time, meaning that they act on instructions of the employer and cannot use their time freely to pursue their own interests;
3. if the time spent travelling forms an integral part of the workers' tasks and the place of work of such workers cannot therefore be reduced to the premises of their employer's customers.

The Court of Appeal considered that the first condition was met. However, the second condition was not met, since the employee could not receive instructions or orders at

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any time during those travel periods. The start and end time of the work in the various buildings was not strictly controlled.

Consequently, the employee's claims were dismissed.

However, it is questionable whether the employee is not at the disposal of the employer during these travel periods, since he or she is travelling on the employer's instructions and has only a rather theoretical possibility to engage in private activities. By applying this case law, the working day could be subdivided into a large number of small working units. Although the Labour Code in principle provides that the working day may only be interrupted by one single unpaid break, it does contain an exception for "intermittent work", which was applied in this case.

2.2 Fixed-term contracts

CSJ, 8e, CAL-2020-00818, 17 February 2022

As regards fixed-term contracts, a judgment of February 2022 provided a number of clarifications.

One of the questions was whether the contract had been validly limited in duration. This possibility is only available for specific, temporary tasks, in particular in the event of "increased activity" (*accroissement temporaire d'activité*). The judges stress that this must be a temporary, unusual and significant increase in the company's activity. In the event of a continual increase in activity, the company must conclude permanent contracts. An unusual order (*commande*) may justify the use of temporary labour. However, the employer was unable to prove such a temporary increase. As a sanction for the unjustified use of the fixed-term contract, it was reclassified as a contract of indefinite duration.

The question then arose as to the consequences of this reclassification. In accordance with its established case law, the end of a requalified fixed-term contract does not automatically amount to dismissal. In the present case, however, the employee had already questioned the validity of his fixed-term contract during the course of the contract. The employer put in writing that he considered the employment relationship to have ended. The Court deduced from this that the employer had expressed an intention to terminate the contract and that this was therefore an unfair dismissal. The employee was compensated for his material and moral prejudice; he also obtained compensation for notice (*indemnité compensatoire de préavis*).

2.3 Collective redundancy

CSJ, 3e, CAL-2021-01062, CAL-2021-01063, CAL-2021-01064, CAL-2021-01065 and CAL-2021-01066, 27 January 2022

Court actions in cases of collective dismissal are quite rare. In the present case, several employees requested their dismissal to be declared null and void on grounds that they had been collectively dismissed and that no social plan had been negotiated by the social partners (trade unions and/or staff representatives). No staff delegation was in place, and the Labour Code provides that in such a case, social elections must be held before the employer can initiate the collective redundancy procedure.

However, the employees worked for different companies, operating nurseries (*crèches*), each with a number of employees below the mandatory threshold for setting up a staff delegation (15 employees). However, it was common ground that the different companies were linked and formed an "economic and social entity" (*entité économique et sociale*) within the definition of the Labour Code. After having analysed the new (2016) provisions on staff delegations, the Court of Appeal concluded that it was not a "single company" that was required to spontaneously hold social elections. Within an "economic

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and social entity”, the setting up of a delegation would only have been compulsory if the employees had expressly requested it (at the time of the last electoral date).

It should be noted that according to case law, the negotiation of a social plan is not mandatory, even if the thresholds for collective redundancies are reached, under the double condition that:

- the company was too small to be required to have a staff delegation, and
- it does not have a collective agreement signed by trade unions that could negotiate.

Therefore, the individual companies were not required to negotiate a social plan, so that the dismissals were not void.

The question of whether or not a collective redundancy occurs when the triggering thresholds are reached not within individual companies but at the level of the entire “economic and social entity” was thus not decided in the judgment.

2.4 Workers’ privacy

CSJ, 3e, CAL-2021-00184, 27 January 2022

In a case concerning the dismissal of a pregnant woman, the question arose as to whether the employer could introduce private WhatsApp communications as evidence. While searching the employee’s computer for various documents to ensure continuity of work, a secretary came across these messages. The employee herself had installed WhatsApp on her work computer and had no password in place.

The employee argued that a breach of the European Data Protection Regulation had occurred. This argument was rejected by the Court, with the argument that because the employee used a messaging app on her work computer, the employer was not processing personal data.

The employee furthermore claimed that this circumstance was to be deemed prohibited electronic surveillance within the meaning of Article L. 261-1 of the Labour Code. However, the Court recalled its case law according to which this text prohibits permanent and continuous monitoring, but not isolated monitoring.

The messages could therefore be used as evidence. It followed that the employee had made disparaging remarks about several colleagues and the company manager. The judges ruled that this was serious misconduct justifying immediate termination of the employment contract.

2.5 Flexibility clauses

CSJ, 3e, CAL-2020-00828, 06 January 2022

Normally, case law recognises flexibility clauses (*clause de flexibilité*) for the place of work, the working hours or the nature of the work. The employer can change these elements by unilateral decision. It is generally accepted that this right should only be exercised in the interests of the company.

However, a recent judgment has led to the conclusion that there might be stronger restrictions inherent in these clauses. In the present case, an employee’s employment contract provided for working hours from Monday to Thursday from 9.00 am to 12.30 pm and on Fridays from 8.30 am to 12.30 pm, with the stipulation that “*the working hours may vary according to the specific needs of the company in general*”.

According to the judges, this clause might allow for certain modifications of the schedule but not a complete upheaval (*bouleversement*) of the schedule. Indeed, the employer

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wanted to change the employee's working hours to include night work and weekend work.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

Temporary work is relatively strictly regulated in Luxembourg.

The first answer of the ruling has no direct implications for Luxembourg's legislation, since the Court confirms that there is no restriction. In Luxembourg, recourse to temporary work is only authorised for the performance of a specific and temporary task; its purpose cannot be to fill a job related to the normal and permanent activity of the user undertaking on a permanent basis (Art. L. 131-4(1) of the Labour Code). It must therefore not be a position that exists permanently. However, it does not necessarily have to be a replacement (e.g. of an employee who is ill, on leave or who has resigned); other cases are also admissible, such as an exceptional increase in activity (for this concept, see case law sub 2.2.).

The second answer also has no implications. The use of temporary work is limited to a period of 12 months for the same employee and the same job, including renewals (Art. L. 131-8(2) of the Labour Code). A duration of 12 months can reasonably be described as "temporary".

The third answer also has no implications in the absence of legislative change and transitional provisions in Luxembourg's legislation.

The same applies to the fourth answer, which also has no direct implications for Luxembourg's labour law. However, it should be pointed out that Luxembourg's law provides for specific sanctions. In certain cases, the temporary employment agency and/or the user undertaking incur a criminal fine (Art. L. 134-3 (1) of the Labour Code), in particular in the event of failure to comply with certain formalities. On the civil law side, the requalification of the contract is also provided for. However, this sanction does not apply to any violation of the rules on temporary work, but only to very specific cases. Thus, for example, exceeding the total duration of 12 months is sanctioned by a requalification, but repeated conclusions of short-term assignment contracts which, added together, exceed one year, is not (CSJ, 3e, 37187, 11 October 2012). In addition, the requalification into contract of indefinite duration can only affect the assignment contract concluded with the temporary work agency and does not concern the user undertaking (CSJ, 3e, 37491, 21 March 2013).

Finally, the fifth answer has no implications for Luxembourg, since the social partners are not allowed to derogate from the 12-month limitation.

Despite these restrictions, it can be admitted that in practice, there are cases in which the use of temporary work does not comply with the legal framework. Legal action in this area is rare. There are some court cases that show that the spirit of the legislation can be circumvented. For example, a person who had accumulated 50 assignment contracts over two years, always for the same undertaking, carrying out the same activity, did not benefit from a requalification of the contract (CSJ, 3e, 30950, 10 May 2007). There is also no requalification when the duration exceeds 12 months, and the different contracts were concluded with different temporary employment agencies (CSJ, order (*ordonnance*), 27 April 2006). The case law therefore approaches the limitation of the use of temporary work from the perspective of the temporary worker, and not the user undertaking, which makes it possible to circumvent the spirit of the law.

Overall, it appears that the criminal and civil sanctions provided for in Luxembourg's legislation represent an unsatisfactory result and it is questionable whether they are

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sufficiently dissuasive and effective in practice to ensure compliance with this legislation, and thus also with the Temporary Agency Work Directive.

4 Other Relevant Information

Nothing to report.

Malta

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

Temporary work agencies, temporary agency workers and the relevant conditions of employment are regulated in Malta in the [Temporary Agency Workers Regulations](#).

As a preliminary comment, it is submitted that the present judgment addresses quite a burning issue related to temporary agency work, namely, what renders agency work 'temporary' and when does it stop being 'temporary'. Indeed, Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work is relatively silent on this issue. The same 'silence' (perhaps not quite a lacuna) is echoed (as it were) in the Maltese provisions.

There are evidences of use of temporary agency workers to fill permanent positions, despite this is not quite what the legislator intended and may certainly cause a discrepancy between the legislator's intentions and the development on the labour market. Indeed, it appears that there are some temporary work agencies that operate in a grey area, as they supply labour for an indefinite term and hence they operate as recruitment agencies and not as temporary work agencies.

The CJEU sought to address this matter through its judgment.

The reply of the CJEU to the second question is of particular interest, as it clearly tries to strike a balance between the 'temporariness' element and a real time factor, in this case, 55 months. This contrasts starkly with the concept of fixed-term contracts that are renewed for successive terms, and which are therefore then considered to be a contract of indefinite duration. Under Maltese law, for example, a fixed-term contract cannot be successively renewed for a period exceeding four years. Once the four-year limit has been reached, the contract becomes permanent.

This ruling, therefore, is extremely important in view of the fact that it declares that certain practices are unlawful (depending on the various circumstances of the case, including type of industry).

The reply of the CJEU to the third question is even more telling because it clearly states that certain practices are illegal. This reply also clarifies that a temporary agency worker cannot simply be placed at a user undertaking indefinitely as though he or she were an employee of that user undertaking.

As Maltese law reflect some of the uncertainties related to the concept of temporariness enshrined in the Temporary Work Agency Directive, the ruling has very significant

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implications for Malta. The Maltese legislator now has clearer guidelines upon which to model any amendments to the regulations.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

(I) The Dutch COVID-19 measures have ended.

(II) In the context of the legislative process to implement Directive 2019/1937 on the protection of whistleblowers, the government is considering the integration of several other measures that emerged from the evaluation of the 2020 Whistleblowers Act.

(III) A labour court decided that the employment contract of an employee, who refused to be transferred to another undertaking, has legally ended, and the employee is entitled to compensation for irregular termination since the transfer would have entailed a significant change to his working conditions.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 End of COVID-19 restrictions

Since 23 March 2022, nearly all of the COVID-19-related measures have ended. This includes the recommendation to work from home if possible. The only rule that remains is that those who test positive should remain in isolation for some time, along with basic recommendations such as frequent hand washing.

1.2 Other legislative developments

1.2.1 Protection of whistleblowers

In a [letter](#) of 24 February 2022 (published on 1 March 2022), the Ministry of the Interior and Kingdom Relations responded to a request of the Whistleblower Authority to broadly implement Directive EU 2019/1937 on the protection of whistleblowers to also include the results of an evaluation of the Whistleblowers Act ([Evaluation of the Whistleblowers Act 2020](#)).

The Minister promised to examine the extent to which the evaluation's results can be included in the implementation bill. The results concern:

- an independent fund to which those reporting abuses and violations of Union law can appeal,
- coercive measures/granting administrative law powers to the Whistleblower Authority, and
- embedding the Whistleblower Authority's prevention task in law.

2 Court Rulings

2.1 Transfer of undertaking

Court of Zeeland-West Brabant, ECLI:NL:RBZWB:2022:1024, 18 January 2022

In the [present case](#), the Court of Zeeland-West Brabant ruled on the consequences of the refusal of an employee to transfer from working in Etten-Leur (the Netherlands) to Heidelberg (Germany). This change would increase the employee's travel distance by 480 km and was to take place in the light of a transfer of undertaking.

The Court relied on established case law of the Dutch Supreme Court and ruled that the employment contract had legally ended due to the transfer of undertaking. As the

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employee had explicitly refused to be transferred, his employment contract had ended and no new contract with the receiving company had been established in its place.

On the basis of the interpretation of [Article 7:665](#) of the Dutch Civil Code in accordance with [Directive 2001/23/EC](#) and in particular with [the Juuri judgment](#), the employee was entitled to compensation for irregular termination, in addition to the transition payment. Although it was the employee who had refused to transfer to Heidelberg, the end of the contract must be seen as the contract being terminated at the employer's initiative due to the significant change the transfer would have entailed for the employee's working conditions.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The temporary agency contract is a *speciales* of the employment contract. A temporary agency worker falls within the scope of employment contract law, but a slightly modified regime applies. In the first 26 weeks of a temporary agency contract, the worker has very limited rights. Ultimately, the worker's contract 'grows' into an employment contract of indefinite duration with the temporary work agency with full protection of employment law. This is achieved after 5.5 years (as of January 2023, it will be reduced to 4 years). This is mainly because the social partners have—until recently—used the maximum leeway given by the law in the collective labour agreement for temporary agency work to deviate from that same law. The most [recent collective labour agreement](#) (concluded in November 2021) is less lenient, hence the total period has been shortened.

The Directive does not preclude placement of a temporary agency worker to a permanent position

Temporary agency work under Dutch law is not limited to the temporary placement of workers. The position the temporary agency worker fills does not have to be a temporary position, it can be a permanent position as well. This follows from the definition of temporary agency work ([Art. 7:690 DCC](#)), which does not include any reference to the duration of the placement. However, the temporary work agency is in charge of recruiting and selecting workers. Given the above, the first decision of the CJEU in the Daimler case has no noteworthy implications for Dutch legislation.

In addition to temporary agency work, so-called *payrolling* is also defined in Dutch labour legislation ([Art. 7:692 DCC](#) and [Art. 1, para. 1 under d of the Placement Act](#)). It is a form of temporary agency work where the user company recruits and selects the worker, and the payroll company acts as the formal employer. This definition is the result of a practice that has increased in the past decade. This practice aims to make use of the labour law regime for temporary agency workers for permanent placement right from the outset. The legislator has ended this practice by defining 'payrolling' and excluding payrolling from the labour law regime for temporary agency workers.

Misuse of successive temporary agency assignments

As mentioned above, temporary agency contracts are employment contracts and therefore, in principle, the regular rules of employment law apply, including the chain (consecutive) rule. The chain rule 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. [Art. 7:668a DCC](#) provides for a restriction in terms of duration (a maximum of 36 months, including intervals of maximum 6 months) and number (a maximum of 3 contracts).

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In case of a temporary agency contract, this provision only applies if the worker has performed work for more than 26 weeks. Periods in which work is performed are counted together if the interruption between two periods is six months or less. Periods worked for other employers who can be regarded as each other's successors with respect to the work performed are also counted together. This is to avoid circumvention ([Art. 7:691 para. 1, 4 and 5 DCC](#)).

The 26-week period may be extended to a total of 78 weeks by means of a collective labour agreement (Article 7:691 para. 8 sub a DCC). A period of 36 months and the number of 3 contracts can be extended to 48 months or increased to 6 contracts in collective labour agreements (Article [7:691 para. 8 sub c DCC](#)). Also, Art. 7:668a DCC (the chain rule itself) includes a provision stating that the restrictions on the duration and number of contracts 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 performed. It is possible to deviate from the regulation on successive employment in a collective labour agreement to the disadvantage of the employee. As mentioned above, the social partners have made use of this possibility, though as of 1 January 2023, the total duration will be shortened. As a result, temporary agency workers can currently work under fixed-term contracts for the temporary work agency for a total of 5.5 years (2.5 years longer than regular employees with a fixed-term contract). The last possibility (successive employment) enables a 'revolving door arrangement', keeping temporary agency workers in a fixed-term contract even longer by making use of different employers.

In short, the law provides for a mechanism to avoid successive assignments of a temporary agency worker without limitation. However, the level of protection is lower than for regular employees working under a fixed-term contract.

There is no other specific regulation to prevent misuse. However, the Supreme Court ruled in 2020 that using a payroll / temporary agency contract after a number of fixed-term contracts with the user undertaking had been concluded was not a *genuine* temporary agency contract, given that the agreement was only constructed to avoid employee protection (e.g. a contract of indefinite duration after three successive contracts under the chain rule) and could therefore not be considered an actual temporary work agency agreement. Consequently, the Court ruled that a contract of indefinite duration with the user undertaking had in fact been concluded (Supreme Court 21 February 2020, [ECLI:NL:HR:2020:312](#)).

Given the above, it seems that the Dutch system supported by case law provides a certain level of protection against misuse of successive temporary agency assignments as was at stake in the case decided by the CJEU.

4 Other Relevant Information

4.1 Non-competition clauses

In a [letter](#) of 25 February 2022 (published on 02 March 2022), the Minister of Social Affairs and Employment informed Parliament that she was preparing a proposal to amend the current legislation on non-competition clauses.

The reason is a [motion](#) of several Members of Parliament and a [report](#) that was subsequently prepared at the request of the ministry. In short, the goal of the amendments will be to limit the use of non-competition clauses in employment contracts.

4.2 Energy allowance

In response to increasing energy prices, [the Dutch government has decided](#) to give households with a low income a one-off energy allowance. The target amount for this

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allowance has been increased from EUR 200 to EUR 800. Whether or not a household qualifies for the allowance can in part be linked to their entitlement to certain social security schemes. Households entitled to social assistance benefits and an IOAW or IOAZ benefit (benefits for older unemployed workers) automatically receive the allowance. Other groups, such as employed and self-employed persons with a minimum income and AOW (state pension) pensioners without a supplementary pension can apply for these individually from their municipality.

Norway

Summary

(I) The possibility of temporarily hiring employees for up to 12 months has been removed with effect as of 01 July 2022.

(II) Rules on teleworking have been amended to clarify the applicability of the working time regulations and safety and health measures.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 End of COVID-19 restrictions

The government's original reopening plan from September 2021 and the reintroduction of national infection control measures in December 2021 have been described in previous Flash Reports. From late January 2022, these measures have been gradually lifted, and the last measures were removed on 12 February 2022 (see also the January 2022 and February 2022 Flash Reports). However, some national recommendations continue to apply. For further details, see [here](#).

The recommendation against non-essential travel abroad has been removed, first for countries in EEA, Schengen and the UK and certain other countries, and later for the rest of the world. However, there might still be advice against travel to specific countries. Updated travel recommendations can be found [here](#). The restrictions on who can enter Norway have also been lifted, and the rules that apply are now the same as prior to the pandemic. More information about the current entry rules can be found [here](#).

1.2 Other legislative developments

1.2.1 Fixed-term work

The Working Environment Act ([LOV-2005-06-17-62](#), WEA) has been amended concerning temporary employment. Permanent employment is the general rule, and temporary employment is only possible when specific conditions are met, see WEA Section 14-9. There was, however, a 'general right' to temporarily hire employees for up to 12 months, within certain, mainly quantitative, restrictions, cf. WEA Section 14-9 (2) f.

This legal basis for temporary employment has now been removed by an Amendment Act ([LOV-2022-03-18-10](#)). The amendment will enter into force on 01 July 2022 and is part of the government's efforts to strengthen employees' right to permanent employment and to facilitate a safe and organised working life.

1.2.2 Teleworking

The regulations on work performed at the home of the employee has been amended ([FOR-2022-03-18-409](#), amending [FOR-2002-07-05-715](#)).

The most significant change concerns working time regulations. A broad exception has been removed so that working time regulations fully apply to work performed from home. Furthermore, the scope of application has been slightly altered, and the requirements concerning the psychosocial work environment have been clarified. The amendment will enter into force on 01 July 2022.

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The changes were partly triggered by the sharp increase in working from home during the pandemic but are also related to general changes in work patterns.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

On the first question, the CJEU ruling clarifies that the concept 'temporary' in Directive 2008/104/EC Article 1.1 does not preclude that a temporary agency worker may be hired by a user undertaking for the purpose of filling a permanent post. The Court's reasoning shows that the term 'temporary' does not refer to the post to be filled in the user undertaking, but to the conditions under which a worker is posted (para. 31).

This clarification does not seem to have direct implications for Norwegian law. In Norwegian law, the use of temporary agency workers is restricted to ensure that the posting is of a temporary nature. The restrictions were introduced prior to the Directive and are not dependent on a specific interpretation of the concept 'temporary' in the Directive.

The hiring of workers from undertakings whose object is to hire out labour (temporary work agencies) is only permitted to the extent that a temporary appointment of an employee can be agreed, cf. WEA Section 14-12 (1), cf. Section 14-9 (2) a–e. Temporary agency workers can only be hired for (a) work that is of a temporary nature, (b) work to temporarily replace another person or persons, (c) work as a trainee, (d) participants in labour market schemes or (e) athletes, trainers, referees, and other leaders in organised sports. The main sanction for breaching these provisions is that the employee can claim a permanent employment relationship with the hirer/user undertaking, cf. WEA Section 14-14.

Furthermore, there are restrictions (i.e. maximum periods) for how long a worker can be posted to a user undertaking. The maximum periods for successive temporary employment apply (three years as a general rule) , cf. WEA Section 14-12 (4), cf. Section 14-9 (7). If the maximum duration is exceeded, the agency worker shall be considered permanently employed with the user undertaking.

On the second question, the CJEU addressed what shall be considered misuse by successive assignments designed to circumvent the provisions of the Directive, cf. Article 1.1 and 5.5. The Court emphasises that the Directive does not impose an obligation to set maximum periods for such assignments in national law (paras. 53 and 55), while on the other hand, Member States are free to set maximum periods beyond which an assignment cannot be considered temporary (para. 57). The Court furthermore gives guidance for the concrete assessment of misuse where no such maximum periods have been set out in national law (paras. 58 to 63).

As already mentioned above, Norwegian law stipulates both objective conditions and maximum periods for the use of temporary agency workers. Therefore, this ruling will not have any direct implications for Norwegian law.

4 Other Relevant Information

4.1 Unemployment rate

The unemployment rate reached high levels early in the pandemic (see previous Flash Reports). A significant decline started in the spring of 2021 and continued throughout the summer and fall 2021. The rate rose slightly from December onwards but are now slowly declining. By the end of February 2022, 119 400 persons were unemployed, which amounts to 4.2 per cent of the workforce (see statistics [here](#)).

4.2 COVID-19 vaccination rates

Vaccination rates are high. By the end of March 2022, 90.6 per cent of the population above the age of 18 years were vaccinated with two doses. The vaccine has been offered to children 16 to 17 since August 2021, and since September to children aged 12 to 15 years. A third vaccination dose—a “booster-dose”—is being offered to an increasingly larger group and is now available to everyone above the age of 18 years. People defined as belonging to medical risk groups are being offered a fourth dose. From January, the vaccine has also been offered to children aged 5 to 11 years and a second dose to children aged 12 to 15 years (see updated statistics [here](#)).

Poland

Summary

(I) All COVID-19-related restrictions for working at the workplace have been lifted.

(II) The Polish government has introduced several provisions providing employment-related rights to soldiers or persons called up for military duty.

(III) The regulations on temporary work in Poland guarantee that the provisions of Directive are not abused.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 End of COVID-19 restrictions

By Regulation of the Council of Ministers on the establishment of certain restrictions, orders and bans in connection with an epidemic, all COVID-19-related restrictions regarding working at the workplace have been lifted, including the obligation to wear a face mask ([Rozporządzenie Rady Ministrów z 23 marca 2022 r. w sprawie ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem stanu epidemii](#) (Dz. U. 2022, poz. 679)).

1.2 Other legislative developments

1.2.1 Measures to respond to the consequences of war in Ukraine

In response to the war in Ukraine, the Homeland Defence Act of 11 March 2022 has been enacted ([Ustawa z 11 marca 2022 o obronie Ojczyzny](#), Journal of Laws 2022, item 655).

The Act addresses several important labour law issues. The most important ones are presented here:

- The employment relationship with a person called up for basic military duty or territorial military service can only be terminated with the employee's explicit consent. However, the above does not apply to employment contracts concluded for a probation period or for a definite period not longer than 12 months, as well as terminations of the employment relationship without notice due to the fault of the employee in the event of declaration of bankruptcy or liquidation of the employer;
- Protection against dismissal of an employee who is the spouse of a soldier during the period of the soldier's compulsory military duty. This protection does not cover terminations of the employment relationship without notice due to the fault of the employee, or in the event of the declaration of bankruptcy or liquidation of the employer;
- The employer's obligation to grant an employee called up to perform territorial military duty on a rotational basis unpaid leave for the duration of that service, with the retention of all rights arising from the employment relationship, except for the right to remuneration;
- The employer's obligation to pay an employee called up for territorial military duty severance pay in the amount of two weeks' remuneration, calculated according to the principles specified for determining the equivalent for annual leave;

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- The employer's obligation to re-employ an employee called up for active military duty in the previously occupied position or in a position equivalent in terms of type of work and remuneration if, within 30 days from the date of release from military duty, the employee declares his willingness to resume work;
- The possibility for the employer to obtain compensation for the costs incurred in hiring a new employee to replace an employee who is a soldier called up to perform military duty, or for entrusting this replacement to another employee previously employed by the employer;
- The right to the last salary of an employee called up for professional military duty (vested until the end of the calendar month in which the employee is required to report for duty) and the expiry of the employment relationship of an employee called up for professional military duty on the date of reporting for duty.

The provisions of the Act will enter into force on 23 April 2022.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The present judgment does not have any implications for Polish legislation on temporary work. The Polish regulations are in line with the interpretation by the CJEU.

The Polish Act on Employment of Temporary Agency Workers does not link temporary employment with the temporary nature of the work (position) to be performed by a temporary employee. According to Article 2 Section 3 of the Act on Employment of Temporary Agency Workers, 'temporary agency work' means the performance of the following tasks for a given 'user employer' (which is term used in Polish law for a user undertaking) for a period no longer than defined by the Act:

- seasonal, periodic, or ad hoc tasks;
- tasks whose timely performance by the workers employed in the user employer would not be possible;
- replacement of a permanent employee who is absent from work.

The duration for which a temporary worker may work for a given user employer is, in accordance with Article 20 Sec. 3 of the Act on Employment of Temporary Workers, the period for performing the temporary work – it is limited and may not exceed a total of 18 months over a period of 36 consecutive months.

The limit to temporary work performed by the same temporary worker for the same user employer:

- may be extended for up to 36 months, if the temporary worker has been assigned to perform tasks that belong to the duties of an absent (direct) employee of the user employer. However, the resumption of temporary work is only possible after 36 months from the date of termination of the assignment to perform work based on the above extended time limit for temporary work;
- does not apply to extensions of the employment contract for temporary work with a pregnant worker up to the date she gives birth, if it were terminated after the third month of pregnancy, provided that the total period of the

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referral for temporary work by the given temporary work agency is at least 2 months.

This solution appears to be apt to prevent abuse of temporary workers; moreover, the reference in Polish legislation to 'temporary' worker is in line with the meaning of the Directive.

The Polish regulations include sanctions for exceeding the maximum period of temporary employment. The penalty is a fine of PLN 1 000 – 30 000 [approximately EUR 220 – 6 600]. The regulations do not, however, stipulate that the user employer will, under such circumstances, be treated as the direct employer of the temporary agency worker. The worker may nonetheless lodge such a claim, but this would require the relationship between the temporary worker and the user employer to be declared a typical employment relationship.

4 Other Relevant Information

Nothing to report.

Portugal

Summary

The state of alert due to the COVID-19 pandemic was extended until 18 April 2022.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Extension of state of alert

The [Resolution of the Council of Ministers No. 29-C/2022, of 7 March](#) extended the state of alert in the Portuguese mainland territory due to the COVID-19 pandemic until 22 March 2022.

Later, the state of alert was extended until 30 March through [Resolution of the Council of Ministers No. 29-F/2022, of 21 March](#), and, subsequently, until 18 April 2022, through [Resolution of the Council of Ministers No. 34-A/2022, of 29 March](#).

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The present case concerned the interpretation of Directive 2008/104/EC of the European Parliament and the Council of 19 November 2008, on temporary agency work (hereinafter referred to as “Directive”).

Under Portuguese law, temporary agency work is subject to specific rules, namely those related to the grounds for the resource to this form of employment, the maximum duration of the assignment of the temporary agency worker to a user undertaking, and the prohibition of successive contracts.

Pursuant to Article 175 (1) of the [Portuguese Labour Code](#) (hereinafter referred to as “PLC”), an agreement for the use of temporary agency work may only be entered into between the temporary work agency and the user undertaking whenever any of the situations foreseen in the law—which correspond, essentially, to the temporary needs of the user undertaking—is verified.

The admissible grounds are the following:

- (i) Direct or indirect replacement of an absent worker who, regardless of the reason, is temporarily unable to provide work;
- (ii) Direct or indirect replacement of a worker with a pending lawsuit against the company, in which his/her dismissal is being challenged;
- (iii) Direct or indirect replacement of a worker on unpaid leave;

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- (iv) Direct or indirect replacement of a full-time worker who is providing part-time work for a certain period of time;
- (v) Seasonal activity;
- (vi) Exceptional increase of the company's activity;
- (vii) Execution of an occasional task or defined and non-lasting service;
- (viii) Vacant job position, for which a recruitment process is taking place;
- (ix) Intermittent need of manpower, determined by fluctuations in the activity for days or part of days, provided the use of temporary work does not exceed half of the weekly normal working hours most often practiced in the user company;
- (x) Intermittent need to provide direct family support of a social nature for days or part of days;
- (xi) Execution of a temporary project, including the installation or restructuring of a company or establishment, assembly or industrial repair.

If an agreement for the use of temporary agency work does not fall into the abovementioned situations, such an agreement will be deemed null, and the assigned worker will be bound to the user undertaking through a permanent employment contract. As an alternative, the worker may opt for the payment of compensation corresponding to an amount between 15 days and 45 days of base salary and seniority premiums per year of service (Articles 176 (2) and (3) and 173 (6) of PLC).

Furthermore, the PLC provides for a maximum period for the assignment of the same temporary agency worker to the same user undertaking. Under Article 175 (3) of PLC, the agreement for the use of temporary agency work may not exceed the period strictly necessary to satisfy the user undertaking's need which justified its execution. In any case, the duration of this agreement, including renewals, may not exceed 6 months, if it was grounded on a vacant job position for which a recruitment process is taking place, or 12 months in case of an exceptional increase in the company's activity, or 2 years in the remaining cases (Article 178 (2) of PLC). A temporary agency worker who is still in service after 10 days from the termination of the agreement for the use of temporary agency work is deemed to be an employee of the user undertaking, hired on a permanent basis (Article 178 (4) of PLC).

Portuguese law also establishes that once the maximum duration of the agreement for the use of temporary agency work referred to above has been reached, the user undertaking is not allowed to hire another temporary agency worker or a worker under a fixed-term employment contract for the same post unless a period of time corresponding to one-third of the duration of the said agreement for the use of temporary agency work, including renewals, has lapsed, except in case of (i) a new absence of the replaced worker if the original agreement was entered into on this ground, or (ii) an exceptional increase in manpower needs for an activity considered seasonal (Article 179 of PLC).

These rules envisaged in the PLC aim to prevent misuse of temporary agency work and to fortify the provision of Article 5 (5) of Directive 2008/104/EC, according to which the Member States shall take appropriate measures, in particular, to prevent successive assignments designed to circumvent the provisions of the said Directive.

The stipulation of a maximum duration (including renewals) of an agreement for the use of temporary agency work and the imposition of certain restrictions on the succession of temporary agency workers in the same job position seem to be adequate measures to protect those workers and to ensure that their assignment to a user undertaking is temporary as required by Directive 2008/04/EC. Therefore, Portuguese law seems to be in line with the Directive and the interpretation thereof arising from the judgment of the CJEU.

4 Other Relevant Information

4.1 Minimum wage

Regional Legislative Decree No. 5/2022/M, of 17 March, approves the minimum monthly wage (corresponding to the amount of EUR 723) applicable in the Autonomous Region of Madeira as of 01 January 2022.

Romania

Summary

(I) The state of alert has ended and most of the measures applicable during the COVID-19 crisis have ceased or will come to an end in the next 3 months.

(II) The Constitutional Court has declared a number of measures applicable to the workplace during the COVID-19 crisis to be unconstitutional. The effect of this judgment is limited as the measures have in the meantime been lifted.

(III) An emergency ordinance provides that Ukrainian citizens can be hired without a work permit or professional qualification documents.

(IV) A new type of paid leave of maximum 45 days annually applies to employees who are at the same time caregivers of a patient with an oncological disease.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 End of state of alert

In Romania, the state of alert ended on 08 March 2022. Some of the measures adopted during the COVID crisis ceased on this date, such as quarantine leave and the right of employees to days off to care for their children while online learning measures were in place.

Other measures will continue to apply for an additional three months, such as the short time work measure, regulated by Government Emergency Ordinance No. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus and to stimulate employment.

The validity of collective labour agreements, which has been extended by Law No. 55/2020 regarding certain measures to prevent and mitigate the effects of the COVID-19 pandemic, will end on 06 June 2022.

1.2 Other legislative developments

1.2.1 Measures to promote employment of Ukrainian nationals

The employment of Ukrainian citizens is supported by a series of support measures and exemptions from the requirement to possess certain documents to conclude an employment contract. These measures are laid down in Emergency Ordinance No. 20/2022 (published in the Official Gazette of Romania No. 231 of 08 March 2022) on amending and supplementing some normative acts, as well as for establishing measures of humanitarian support and assistance and in Order No. 301/2022 for the approval of the Employment Procedure of Ukrainian citizens who are arriving from areas affected by the armed conflict. Thus, Ukrainian citizens can be employed without a work permit and without an extended residence permit for employment.

Ukrainian citizens who do not have documents proving their professional qualification or work experience can be employed under a fixed-term employment contract up to 12 months. After the 12-month period, the individual employment contract can be extended no more than twice by 6 months. Ukrainian citizens without any documentation proving their qualifications can receive support either through employment agencies or directly from employers on the basis of a self-declaration. Several professions are exempt from this exception.

1.2.2 Work-life balance

Law No. 24/2022 amending and supplementing Government Emergency Ordinance No. 158/2005 on leave and social health insurance benefits provides for a new type of leave, which is granted to the caregiver of a patient with an oncological disease, who is older than 18 years and who, with the patient's consent, accompanies him/her to surgery and treatments prescribed by health professionals. The leave is granted on the basis of a medical certificate and a minimum period of 6 months of contributions for a maximum duration of 45 days annually. During this leave, the employee receives an indemnity of 85 per cent of the salary paid from the Single National Health Insurance Fund.

The law does not directly refer to the provisions of Directive (EU) 2019/1158 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, but the new leave seems to be in line with the definition of "carers' leave" in Art. 3(1)(c) of the Directive.

2 Court Rulings

2.1 Measures to respond to the COVID-19 crisis

Constitutional Court, No. 50/2022, 25 March 2022

By Decision No. 50/2022 (published in the Official Gazette of Romania No. 291 of 25 March 2022), the Constitutional Court declared Government Emergency Ordinance No. 192/2020 amending and supplementing Law No. 55/2020 on some measures to prevent and mitigate the effects of the COVID-19 pandemic, as well as amending letter a) in Article 7 of Law No. 81/2018 regarding the regulation of teleworking, to be unconstitutional.

The ordinance regulated a number of measures applicable to the workplace during the COVID-19 crisis, such as the right of employers to unilaterally impose teleworking (see also the November 2020 Flash Report). The reason for claiming the ordinance to be unconstitutional was that the government had not obtained approval from the Legislative Council in a timely manner. It should be noted, however, that the ordinance has expired in the meantime with the cessation of the state of alert, which renders the effects of the claim of unconstitutionality superfluous.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

In defining the notion of temporary work assignment, Art. 88 (5) of the Labour Code refers to the performance of a precise and temporary task. However, the temporary worker can be assigned to temporarily work in a post that is a permanent post. Until 2011, the Labour Code listed situations in which a temporary employment contract could be concluded. This limitation has now been removed.

Romania did not face any problems in transposing Directive 2008/104 into its legislation, because from the outset, legislation expressly limited the duration of temporary assignments, thus clearly defining the concept of "temporary". Although the Directive did not impose an obligation on Member States to provide for such a duration in national law, it was expressly provided for in Romanian law. The maximum duration of a temporary assignment was a maximum of 18 months until 2011 and is currently 24 months; in case of an extension for successive periods, which are added to the contract's initial duration, the total period may not exceed 36 months in total. These durations may not be extended by agreement of the social partners.

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However, while national law provides for a binding maximum duration of an assignment, it does not expressly prohibit the conclusion of a new temporary employment contract between the same parties for the benefit of the same user undertaking.

From this perspective, the CJEU's decision in the present case would prove useful for Romanian courts in assessing the temporary nature, as a whole, of successive contracts concluded between the same parties.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

(I) After the President refused to sign the Act, Parliament reapproved the Act amending the procedure of termination of employment of an employee with disabilities.

(II) Parliament has adopted two acts amending the legislation on illegal work and on labour inspections.

(III) Parliament has adopted an Act amending the special rules on night work, overtime and on-call time applicable to female members of the Fire and Rescue Corps who are pregnant or have recently given birth.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Dismissal of employees with disabilities

On 10 February 2022, the National Council of the Slovak Republic (Parliament) adopted an Act amending the Labour Code (Act No. 311/2001 Coll. as amended), Act No. 55/2017 Coll. on civil service, as amended, and Act No. 5/2004 Coll. on employment services, as amended.

The Act amends the provisions of the said Acts regulating the procedure of termination of employment of an employee with a disability by notice of the employer, as well as of civil servants with a disability (see also February 2022 Flash Report).

The Act was returned by the President. By letter dated 25 February 2022, the President informed the President of the National Council of the Slovak Republic that she will not sign the approved Act and proposed that the National Council of the Slovak Republic do not adopt the Act as a whole when re-negotiating it. In her view, the proposed legal solution diminishes, in principle, the real effect of protecting an employee with a disability against dismissal by the employer.

The Act returned by the President was discussed again at the 60th meeting of the National Council of the Slovak Republic, and was adopted again as a whole on 15 March 2022.

This new [Act No. 82/2022 Coll.](#) amending the three above-mentioned Acts will enter into force on 01 April 2022.

1.2.2 Illegal work and labour inspections

On 16 March 2022, Parliament adopted two Acts amending the regulation on illegal work.

The first Act amends Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on Amendments to Certain Acts, as amended, and amending Act No. 5/2004 Coll. on employment services and on the amendment of certain acts, as amended.

It extends the exemption from illegal work and illegal employment under the new § 2a of Act No. 82/2005 Coll. also to limited liability companies with a maximum of two

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partners, who are directly related to each other, through spouses or siblings, and their direct relatives, siblings or spouses, if these relatives are pension-insured, recipients of pensions under special regulations or are pupils or students under the age of 26 years.

In the approved Act, in connection with the new regulation in Article I, Article II also amends Act No. 5/2004 Coll. on employment services. At the same time, to streamline and unify the procedures for the control of illegal work and illegal employment, the performance of such control falls under the exclusive competence of labour inspectorates.

The second Act amends Act No. 125/2006 Coll. on labour inspection and on the amendment of Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on Amendments to Certain Acts, as amended.

It aims to streamline the organisation and management of the labour inspection system, in particular by introducing the management function of the "director of the labour inspectorate" instead of the "chief labour inspector" without the obligation to possess the professional competence of a labour inspector, but maintaining the obligation of five years of professional experience in the field of occupational safety and health, labour law or labour inspection.

At the same time, the time of registration in the central, publicly accessible list of natural and legal persons who have violated the prohibition of illegal employment in the previous five years is being clarified.

Furthermore, the mandatory content of the protocol on the result of the labour inspection was supplemented with instructions on the possibility of filing a corrective action against the protocol in accordance with the relevant provisions of Act No. 162/2015 Coll. of the Administrative Procedure Code. At the same time, some provisions of the Act are being clarified and based on the needs of the application practice of public authorities, the moment of identifying a violation of the prohibition of illegal employment is established.

Following the adjustment of the time of registration in the list of illegal employers in Article I, the Act in Articles II to XI regulates special regulations which contain a condition of non-violation of the prohibition of illegal employment linked to various purposes (e.g. providing contributions from public funds), which will now be linked to the fact that a natural or legal person has not been legally fined for violating the prohibition of illegal employment. At the same time, the conditions of provision and return of contributions under Act No. 5/2004 Coll. on employment services, part-time support, employment permits for third-country nationals and the issuing of temporary agency work permits in accordance with Directive 2009/52 / EC of the European Parliament and of the Council of 18 June 2009 laying down minimum standards for sanctions and measures against employers of third-country nationals staying illegally on the territory of the Member States are established. To comply with the principle of legal certainty, the Act is amended so that the relevant conditions are subject to the entry into force of the decision imposing a fine for breach of the prohibition of illegal employment.

These two Acts, which have not yet been promulgated in the Collection of Laws ("Coll."), will enter into force on 01 January 2023 (except for Article I point 4, of the second Act, which will enter into force on 01 January 2024).

1.2.3 Occupational safety and health

On 16 March 2022, Parliament adopted an Act amending Act No. 124/2006 Coll. on Safety and Health at Work and on Amendments to Certain Acts, as amended, and Amending Certain Acts.

The aim of the Act is mainly to clarify the existing legislation in the field of safety and health at work, its harmonisation with the needs of application practice, incorporation

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of systemic changes and reduction of administrative burden without a negative impact on the current level of health and safety.

With an emphasis on improving the business environment, reducing administrative burdens and increasing the level of health and safety, among other things, the deadlines for recording a registered occupational accident are harmonised and the obligation to report changes in the data on trainers to a person entitled to education is modified within 30 days. The Act also aims to ensure a uniform level of expertise while increasing the expertise of those performing the function of security technician. The Act, based on the needs of application practice, for example, also added the competence of the National Labour Inspectorate to conduct an aptitude test of applicants for recognition of the professional competence of a safety technician within the meaning of Article 28 of Act No. 422/2015 Coll. on the recognition of diplomas and on the recognition of professional qualifications.

This Act, which has not yet been promulgated in the Collection of Laws, will enter into force on 01 January 2023.

1.2.4 Protection of pregnant workers and work-life balance

On 24 March 2022, Parliament adopted an Act amending Act No. 315/2001 Coll. on the Fire and Rescue Corps, as amended.

The aim of the Act is to lower the age of the child a female member is caring for and for which she is exempt from performing civil service at night, beyond the basic hours of service during the week or on-call time.

In § 102aa, the new wording of paragraph 1 reads:

'(1) A pregnant female member and a female member caring for a child under the age of one year may not perform civil service at night, civil service beyond the basic hours of service during the week and on-call duty. A female member who is caring for a child who has reached the age of one and has not attained the age of three may be ordered to perform civil service at night and to perform civil service beyond the basic working hours of the week only with her written consent. A female member caring for a child who has reached the age of one and who is under the age of 15 may only be ordered to perform on-call work with her written consent.'

This Act, which has not yet been promulgated in the Collection of Laws, will enter into force on 15 April 2022.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The issue of temporary assignment and agency employment are primarily regulated by legislation. Act No. 311/2001 Coll., as amended (Labour Code), regulates temporary assignments, the relationship between the employer and the user undertaking, between the employee, his/her employer and the user undertaking and stipulates the duties of such employees during their assignment (Articles 58, 58a, 58b).

Act No. 5/2004 Coll. on Employment Services, as amended (Articles 29, 30, 31), regulates the rights and obligations of temporary work agencies and the process of

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obtaining authorisation for their activities. Collective agreements must comply with the relevant legislation.

Concerning the first point of the ruling, according to Article 58(1) of the Labour Code, the employer or temporary work agency pursuant to a special regulation may agree in writing with an employee in an employment relationship to conclude a temporary assignment for the performance of work for a user undertaking. Temporary assignments cannot be agreed for the performance of work which the relevant public health authority has classified as fourth category work pursuant to a special regulation.

Article 58a(1) of the Labour Code reads as follows:

“The employer or temporary work agency may agree with the user undertaking to conclude the temporary assignment of an employee in an employment relationship to perform work. The employer may agree with the user undertaking to conclude a temporary assignment of an employee only if that undertaking has objective operational reasons, at the earliest after three months from the date of employment. In case of a temporary assignment of an employee in an employment relationship between the controlling entity and the controlled entity agreed to free of charge, the provision of the second sentence shall not apply; this does not affect the compensation costs demonstrably incurred for the performance of work, including wage conditions and employment conditions.”

The legislation does not prevent a worker who has concluded an employment contract or employment relationship with a temporary work agency from being assigned to a user undertaking for the purpose of filling a post that exists permanently, but which is not occupied by reason of representation.

Concerning questions 2 and 3 of the ruling, it must be noted that according to Article 58(6) of the Labour Code, a temporary assignment may be agreed for a maximum period of 24 months. The temporary assignment of an employee to the same user undertaking may be extended or renegotiated within 24 months for a maximum of four times; this shall also apply to the temporary assignment of an employee by another employer or another temporary work agency to the same user undertaking. Renegotiations of temporary assignments refers to assignments in which the employee is temporarily assigned to the same user undertaking prior to the expiration of six months after the end of the previous temporary assignment and in case it is a temporary assignment for the reason stated in Article 48(4)(b) or (c), prior to the expiry of the four months following the end of the previous temporary assignment. The provisions of the first sentence and the second sentence shall not apply to the temporary assignment for the reason stated in Article 48 (4)(a)), according to which a further extension or renewal of the fixed-term employment relationship to two years or beyond two years may only be agreed for reasons of:

- a) substitution of an employee during maternity leave, parental leave, leave immediately linked to maternity leave or parental leave, temporary incapacity for work or an employee who has been given long-term leave to perform a public function or trade union function,*
- b) the performance of work in which it is necessary to increase employee numbers significantly for a temporary period not exceeding eight months of the calendar year,*
- c) the performance of work that is linked to the seasonal cycle, which repeats every year and does not exceed eight months in the calendar year (seasonal work),”*

According to Article 58(7) of the Labour Code, if an employee is temporarily assigned in violation of Article 58(6) by the first sentence or the second sentence, the employment relationship between the employee and the employer or the temporary work agency shall be terminated and the employment relationship between the temporary worker and the user undertaking shall be converted into an employment relationship of

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indefinite duration. The user undertaking is required to issue to the employee, in writing within five working days from the date of commencement of the employment relationship, the written notice of its establishment; the employee's working conditions shall be adequately regulated in the temporary assignment agreement or an employment contract pursuant to paragraph 5.

Concerning question 4 of the ruling, according to Article 58(7) of the Labour Code, if an employee is temporarily assigned in violation of Article 58(6) by the first sentence or second sentence, the employment relationship between the employee and the employer or the temporary work agency shall be terminated and the employment relationship between the employee and the user undertaking shall be converted into one of indefinite duration.

There is control and sanctions for non-compliance with the labour law. According to Article 2(1)(a)(1) of Act No. 125/2006, Coll. on Labour Inspection, labour inspection refers to supervision of adherence with labour law regulations (of course, including the Labour Code, and therefore also the included directive).

According to Article 150(2) of the Labour Code, employees who are harmed by a breach of duty under the regulations of the labour law, as well as employee representatives in an employment relationship with an employer that has breached labour legislation and which was discovered during inspection (Article 149, LC), may file a complaint and refer it to the Labour Inspectorate.

The Labour Inspectorate may impose a fine of up to EUR 100 000 on the employer for breaching the obligations arising from this Act, from the regulations referred to in Article 2 (1)(a)(1)-(3), (6), (7) of Act No. 125/2006 Coll., or for breach of obligation under the collective agreement. (Article 19(1)(a) of Act No. 125/2006, Coll.).

Under Article 7(7) of [Act 125/2006 Z. z. Coll. on Labour Inspection](#), the Labour Inspectorate is entitled to submit a proposal to the Labour Office to suspend the activity or revoke the activity permit of the temporary work agency if it discovers a violation of labour law regulations or of regulations to ensure safety and health at work. By the same token, the Labour Inspectorate is entitled to supervise compliance with labour law obligations arising from collective agreements (Article 2 para. 1 letter a/ point 5 of the Act 125/2006 Z. z. Coll.).

A temporary agency worker cannot derive a subjective right to the establishment of an employment relationship with a user undertaking.

Finally, with regard to question 5 of the ruling, it is not usual in Slovakia to include references to temporary assignments in collective agreements.

A trade union body shall conclude a collective agreement with an employer, which shall regulate the working conditions, including wage conditions and the conditions of employment, the relationship between the employer and employees, the relationship between the employer or organisation and one or more employee organisations on more favourable terms than those stipulated in this Act or other labour law regulations, except where this Act or other labour law regulations do not expressly prohibit such terms or where deviation from such terms is not impossible (Article 231(1) of the Labour Code).

According to Article 4(2) of Act No. 2/1991 Coll. on Collective Bargaining, the collective agreement shall be invalid in the part which:

- a) contravenes generally binding legal regulations,
- b) regulates claims by employees to an extent more limited than in the collective agreement of a higher degree.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) The scope of temporary and occasional work of retired persons has been increased to mitigate labour shortages due to sick leaves and quarantines related to COVID-19.

(II) The Supreme Court has ruled on the right of policemen to take a break during their shift.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Temporary employment of retired persons

A further easing of measures occurred in March 2022. A summary overview of valid measures are published in English on the [government's website](#).

The Labour Market Intervention Measures Act ('[Zakon o interventnih ukrepih za podporu trgu dela \(ZIUPTD1\)](#)', OJ RS No. 29/2022, 04 March 2022) temporarily increased the scope of temporary and occasional work of retired persons. According to the government, this measure will help mitigate labour shortages due to sick leaves and quarantines related to COVID-19.

The Act increases (as an exception, valid until 31 December 2022) the monthly and annual amount of permitted temporary or occasional work performed by retired persons: a pensioner is now allowed to perform up to 90 hours of such work per month (instead of 60 hours), whereby this limit can be increased to 120 hours per month three times per year (instead of previously 90 hours); the maximum of 720 hours per year has been increased to 1 080 hours; an employer employing more than 4 000 workers may not use more than 7 500 hours of such temporary and occasional work within a year.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Working time

Supreme court, No. VIII Ips 54/2021, 01 February 2022

The Supreme Court decision [No. VIII Ips 54/2021](#) (delivered on 01 February 2022, published on 21 March 2022,) concerns the right of workers to a rest break.

A policeman performing work at a border control at several small (local) border crossings claimed that his right to a break was violated, in particular during night shifts when only one officer was present and there was no one else who could replace him during a break. In its reasoning, the Supreme Court emphasised that the right to a break during working hours is not infringed solely because the worker must be present at the workplace or close by, and that it is also not necessary to offer the possibility of replacement by another worker for the duration of a break. In assessing the employer's duty to provide the worker a break during working hours, account must also be taken of the nature of the work being performed, the workplace, the workload and the general dynamics. In some cases, the nature and characteristics of the work allow the employee to take a break between individual tasks during working time.

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The Supreme Court extensively referred to the EU Working Time Directive 2003/88, which stipulates that Member States shall take the measures necessary to ensure that, where the working day is longer than six hours, every worker is entitled to a rest break, the details of which, including the duration and terms on which it is granted, shall be laid down in collective agreements or agreements between the social partners or, failing that, by national legislation. It also referred to CJEU case law dealing with the definition of working time and the right to a break (in particular, C- 107/2019, C-266/14, C-214/20, C-580/19, C- 518/15, C-14/04, C -151/02, C-303/98, C-344/19).

The Court emphasised, *inter alia*, that in principle, the time during which a worker does not perform work can only be considered a break if the worker knows that he or she will be able to take a break from work and that the employer will not require him/her to immediately start working during this time, and that in this sense, the nature of a break is to rest. The Court also emphasised that the EU Directive leaves a wide margin of appreciation to national legislation as regards the right to a break during working time.

According to the Slovenian legislation ([Employment Relationships Act, 'Zakon o delovnih razmerjih \(ZDR-1\)', OJ RS No. 21/13 et subseq.](#)), specifically Article 154, a full-time worker shall have the right to a 30-minute break during the working day and a part-time worker, who works at least four hours a day, shall have the right to a break in proportion to the time spent at work. In the case of irregular distribution or temporary redistribution of working time, the time of a break shall be defined in proportion to the length of the worker's daily working time. The time of the break may be set no earlier than after one hour of work and no later than one hour prior to the end of the worker's working time. A break during the working day is included in the working time and is remunerated as such.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

This CJEU judgment is of relevance for Slovenian law, in particular as regards the second question.

Temporary agency work is regulated in the Employment Relationships Act (['Zakon o delovnih razmerjih \(ZDR-1\)', Official Journal No. 21/13 et subseq.](#)), Articles 59 to 63, and in the Labour Market Regulation Act ([Zakon o urejanju trga dela \(ZUTD\), OJ RS No. 80/10 et subseq.](#)), Articles 163 to 174.a.

It is worth noting that Slovenian legislation does not use the terms temporary agency work, temporary agency worker, etc., but instead refers to the following: 'providing the work of workers to user undertakings' ("*zagotavljanje dela delavcev uporabnikom*"), 'employment contract between a worker and an employer who carries out the activity of providing the work of workers for another employer - a user undertaking' ("*pogodba o zaposlitvi med delavcem in delodajalcem, ki zagotavlja delo delavcev drugemu delodajalcu-uporabniku*"); 'assigned worker' ("*napoteni delavec*"), etc.

According to Article 60 of the Employment Relationships Act, temporary agency worker may conclude a contract of employment with a TWA for an indefinite or for a definite period.

A fixed-term employment contract may be concluded if the prescribed conditions for a fixed-term employment are met at the user undertaking (the specified reasons and the time limits for fixed-term contracts according to Articles 54 and 55 of the Employment Relationships Act must be respected).

There is no explicit provision in Slovenian law prohibiting an assignment of a temporary agency worker to a permanent post at the user undertaking. The Employment Relationships Act does not make the lawfulness of the use of temporary agency work

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subject to the prerequisite that it must be justified by technical, production, organisational or replacement-related reasons. It seems that the CJEU judgment in the Daimler case confirmed that this is not required by the TAW Directive.

Slovenian law also does not limit the number of successive assignments of the same temporary agency worker to the same user undertaking. It also does not limit the duration of an assignment of the worker to the user undertaking. In fact, there are no explicit rules in the legislation on the temporary nature of this type of work arrangement. The only provision that uses the term 'temporarily' is Article 61 of the Employment Relationships Act: "A worker and employer providing work shall agree in the employment contract that the worker will temporarily work with other user undertakings at the location and in the period defined for the worker's assignment to work with the user undertaking." There are no clear rules and no criteria what 'temporarily' means.

This approach has been criticised in the literature (see, for example, Katarina Kresal Šoltes (2020), 'Začasno agencijsko delo [Temporary agency work]', in K. Kresal Šoltes, G. Strban, P. Domadenik (eds.), *Prekarno delo – Interdisciplinarna analiza [Precarious work – Interdisciplinary analysis]*, Pravna fakulteta/Ekonomska fakulteta, Ljubljana, pp. 83-103; Katarina Kresal Šoltes (2020), 'Prepoved nadomeščanja stalnih zaposlitev z zunanjimi delavci – primer začasnega agencijskega dela [Prohibition of replacing permanent employment with external workers – the case of temporary agency work]', *Delavci in delodajalci*, Vol. 20, No. 2-3, pp. 275-292).

Although certain measures are included in legislation aiming to prevent the misuse of temporary agency work (quotas, certain prohibitions, etc.) and to strengthening the principle of equal treatment, there are serious doubts whether the existing measures are sufficient and efficient against the misuse of (temporary) agency work and whether they can actually ensure the temporary nature of such work, i.e. that an agency worker is assigned to the same user undertaking only temporarily (see, for example, Katarina Kresal Šoltes, op. cit.). It seems that the existing rules on TAW in Slovenia do not prevent assignment(s) of a particular temporary agency worker to the same user undertaking from becoming a permanent situation for this worker.

4 Other Relevant Information

4.1 Minimum wage in agriculture

On the basis of Article 105.d of the Agriculture Act ('Zakon o kmetijstvu', OJ RS No. 45/08 et subseq.), the minimum hourly rate for occasional and temporary work in agriculture was adjusted ('Odredba o uskladitvi najnižje bruto urne postavke za opravljeno začasno ali občasno delo v kmetijstvu', OJ RS No. 38/22, 18 March 2022, p. 1912). The minimum gross hourly rate for occasional and temporary work in agriculture amounts to EUR 5.79 (from 01 April 2022).

4.2 Collective bargaining

The Collective Agreement on Road Passenger Transport in Slovenia concluded on 12 November 2021 ('Kolektivna pogodba za cestni potniški promet Slovenije', OJ RS No. 192/2021, 07 December 2021, pp. 11996-12004 – see also December 2021 Flash Report under 4.1.) has been extended to the entire sector (Decree on the extended validity, 'Sklep o razširjeni veljavnosti...', OJ RS No 38/2022, 18 March 2022, p. 1913).

Spain

Summary

(I) The regulatory framework on the work of stevedores has been reformed, with the aim of prioritising 'port employment centres' over temporary employment agencies.

(II) The rules regulating work in the road transport sector has been amended to implement, among other things, Directive EU 2020/1057 on posting of professional drivers in the commercial road transport sector.

(III) Working conditions for artists have been amended.

(IV) Relief measures have been adopted to respond to the financial consequences of the war in Ukraine on businesses. Moreover, work permits of Ukrainian nationals working on Spanish ships can be extended for up to 12 months.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Dockworkers

Spanish law traditionally imposed on stevedoring companies operating in Spanish ports to register in a 'port stevedores joint stock company' (SAGEP). Thus, these companies could not freely hire their own staff, permanent or temporary, in the regular labour market, being instead forced to employ those belonging to the staff or workforce pool of the SAGEP, unless the workers proposed by this entity were insufficient or unsuitable.

A CJEU ruling of 11 December 2014 (case C-576/13, *Commission v. Spain*) stated that Spain had infringed Article 49 TFEU, violating the EU freedom to provide services, by forcing undertakings to register with a SAGEP, and sometimes to be shareholders, and by imposing on them the obligation to recruit workers made available by the SAGEP and a minimum of such workers on a permanent basis. The CJEU pointed out that less restrictive measures could be adopted than the Spanish ones to reach the same goals, such as the management by the stevedoring companies themselves of the training and placement of dockworkers, or the creation of temporary work agencies to manage a reserve of workers for supplying them in due time to stevedoring companies.

The CJEU required an easing of restrictions to the hiring of workers for stevedoring activities, which was achieved through Royal Decree Law 8/2017 and Royal Decree Law 9/2019 (see the relevant Flash Reports). These provisions introduced the freedom of hiring of workers for stevedoring companies, with the only requirement to ensure the "professionalism" of dockworkers. However, the provisions allow the creation of 'port employment centres', which are similar to temporary work agencies in this particular field. That is why these rules have been included in the Law on Temporary Agency Work, because they play that role in that particular sector (Article 18 of the [Law of Temporary Agency Work](#)). Regular temporary work agencies (not the port employment centres) are allowed to hire stevedoring workers, but they must comply with the specific requirements provided for in Articles 18.2.b) and 18.3 of the Law on Temporary Agency Work for the port employment centres concerning the minimum number of workers with a permanent contract and the conditions of financial collateral.

That is, regular temporary work agencies can hire port workers if they comply with two specific requirements of Article 18 of the Law on Temporary Agency Work. They do not

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have to comply with all of the requirements to become a port employment centre, but only with two. The first one refers to the minimum number of structural workers with a permanent contract which the temporary work agency must hire (as mentioned before, structural workers are not TAW, but employed with the temporary work agency for its own internal needs). The second one refers to the financial guarantee required to be a port employment centre. All temporary work agencies need to provide a financial guarantee to cover any liabilities as regards wages, severance pay and social security contributions and benefits. However, the financial guarantee of the port employment centres is calculated by taking into account the wages of the TAW in this port sector during the last year. This rule tries to match the financial guarantee required for port employment centres with the financial guarantee required for a regular temporary work agency seeking to operate in this particular sector.

These rules have now been amended by [Law 4/2022, of 25 February 2022](#), following complaints in the sector. The aim of this reform is to prioritise the “port employment centres” over temporary employment agencies, and to do so, the employers in the sector shall ‘ensure effective employment of the staff of the port employment centre’. Therefore, the workers of the port employment centres have priority over the workers of regular temporary work agencies or over any other workers.

This is somehow a step backwards in the process of liberalisation of this sector as required by the aforementioned CJEU ruling.

1.2.2 Work in the road transport sector

This [Royal Decree Law](#) amends the relevant provision on road transport (a Law from 1987) to address the concerns of this sector). Regarding EU law, this new provision seeks to fully comply with Regulation No. 561/2006 and implements Directive EU 2020/1057 laying down specific rules on the posting of professional drivers in the commercial road transport sector to fight against so-called letterbox companies.

There are four key measures relating to labour law:

1. The carrier may not be involved in loading and unloading.
2. The carrier/driver may claim financial compensation when the vehicle has to wait for more than one hour until the completion of loading or unloading.
3. The catalogue of administrative offences and penalties is extended to include, for example, new penalties for breaching the rules on rests and breaks.
4. The driver is not considered to have been posted when performing bilateral transport operations.
5. The fraudulent posting of workers by letterbox companies is a new very serious administrative offence.

More information is available [here](#).

In the field of road transport, the [government allows for working time limits](#) to be exceeded between 17 March and 27 March to deal with the effects of strikes by drivers.

1.2.3 Work of artists

Labour law has traditionally protected people involved in the arts and in public performances, and they benefit from special rules, because they have an employment relationship ‘of a special nature’. The relevant provision that applied so far was a Royal Decree of 1985, which has now been amended with the aim of updating (modernising) the regulatory framework.

Firstly, this special employment relationship will now apply not only to performers (artists in the narrow sense), but also to technical and auxiliary staff who collaborate in

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the show. Moreover, the venues for shows/events have been expanded, because in addition to the usual venues (sports arenas, circus, festivals, theatres, nightclubs, etc.), the internet is now explicitly mentioned to include streaming.

Secondly, the new labour reform of 2021 amended the types of employment contracts to reduce the temporality rate. As reported in the December 2021 Flash Report, this reform has eliminated the fixed-term contract for a specific assignment or service, so now only two grounds for a fixed-term employment contract apply: 'circumstances of production' and 'substitution of the worker'. Neither of them apply to the arts sector, so this update of the relevant regulation creates a special fixed-term employment contract, available when the arts employer proves a temporary need (one or more shows, a season, etc.).

Finally, artists are entitled to severance pay after the termination of the employment contract. Prior to this new provision, such severance pay consisted of seven days' salary per year worked (and could be increased by collective agreement). This severance pay has now, as a general rule, been increased to 12 days' salary per year worked, and up to 20 days when the contract lasted at least 18 months (can also be improved through a collective agreement).

More information is available [here](#).

1.2.4 Special measures to respond to the consequences of the war in Ukraine

The situation in Ukraine has led to a general increase in prices and some sectors of production are struggling. The government has approved a package of measures, including financial aid. The undertakings that can benefit from this aid cannot terminate contracts until 30 June 2022 on objective grounds linked to the impact of the war in Ukraine .

Besides, fixed-term employment contracts and the attached work permits of Ukrainian crew members working on ships under a Spanish flag may be extended to a maximum duration of 12 months if requested.

More information is available [here](#).

2 Court Rulings

2.1 Punitive damages

Supreme Court, STS 907/2022, 09 March 2022

According to established and consolidated case law, when the law established severance pay, the worker could not claim additional compensation. The Constitutional Court, firstly, and the Labour Procedure Law, secondly, created an exception in case of violation of a fundamental right, so the worker affected is entitled to compensation for all damages, including moral ones.

The quantification of non-material damages is not easy under Spanish law, because there is no tradition of punitive damages, so the worker has to prove the actual damage suffered.

In the [present case](#), the Supreme Court stated that any violation of a fundamental right or any discrimination that causes moral damage must be deemed non-material damages, even if the worker did not prove the extent of those damages in detail.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

This ruling should not have any major implications for Spanish legislation. According to Law 14/1994, a temporary work agency concludes an employment contract with a worker, hence assuming the role of employer, and temporarily assigns him/her to a user undertaking. The contract of employment can be a fixed-term contract or a permanent one, but the assignment of the worker to the user undertaking must be temporary (Articles 7 and 10 of Act 14/1994). Indeed, although the contracts between the temporary work agency and the user undertaking are commercial workforce supply contracts, they must respect the general regulation on fixed-term employment contracts in terms of objective reasons justifying the temporary nature of the relationship, duration limits, etc. (Article 15 of the Labour Code).

According to well-established Supreme Court case law, Spanish law does not allow the use of temporary agency work to cover permanent jobs, because it does not allow the use of fixed-term employment contracts, either. The limitations for both are the same (for instance, [Supreme Court of 2 December 2021](#)). The consequences for breaching those limitations are treated as illegal assignments of workers (Article 43 of the Labour Code). If a case of illegal assignment of a worker is discovered, the employee can choose to become permanent staff member of either of the involved undertakings. Moreover, the undertakings involved have joint and several liability towards all labour law and social security responsibilities emerging from this breach (similar effect as the consideration as "joint employers"). Therefore, if the temporary work agency and the user undertaking fail to comply with the relevant rules on temporary agency work, and, in particular, use this formula to meet the permanent needs of the user undertaking, the contract of employment with the temporary work agency becomes a permanent contract with the user undertaking.

4 Other Relevant Information

Nothing to report.

Sweden

Summary

The Swedish Labour Court has held that the dismissal of a mentally disabled person was wrongful as the misconduct was related to the employee's disability.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Work of persons with a disability

Labour Court, AD 2022 nr 15, 23 March 2022

A mentally disabled person directed to work in sheltered employment was summarily dismissed due to sexual harassments of other employees at the worksite. Despite the fact that Section 1 para. 4 of the [Swedish Employment Protection Act \(lag \[1982:80\] om anställningsskydd\)](#) prescribes that the Act is not applicable to employees directed to work in sheltered employment, the Labour Court held that the collective agreement regulating the employment conditions referred to the principles of the Act as regards summary dismissals. Hence, the Labour Court based its judgment on analogies from the Employment Protection Act. According to this Act, a decision to summarily dismiss an employee shall be set aside if the employer's motivation would not have been sufficient even for a regular termination of the employment contract due to personal causes.

In [this decision](#), the Court held that even if the harassment could not be tolerated by the employer, the employee's conduct was related to his mental disability. With respect to the employee's disability and the employer's special responsibility for sheltered employment, the Court held that the dismissal was wrongful.

It is noteworthy that the legally trained judge together with one of the employer's representatives dissented from the opinion of the majority. The dissenting opinion held, in essence, that it was not proven that the employee's conduct was related to the employee's disability. Consequently, the conclusion in the dissenting opinion was that the summary dismissal was justified.

The case illustrates the delicate issues of the employer's responsibility for disabled employees as well as the issue of causality between an employee's mental disability and his or her behaviour. EU discrimination law was not discussed in the judgment or the dissenting opinion, but it can be questioned whether the dissenting opinion is in line with EU discrimination law and with the UN Convention on the Rights of Persons with Disabilities.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The CJEU has held that the Temporary Agency Workers Directive means that Member States must take appropriate means to prevent misuse of the Directive by successive assignments for periods longer than what can normally be understood as "temporarily".

The Temporary Agency Workers Directive is implemented in Sweden by the [Agency Workers Act \(lag \[2012:854\] om uthyrning av arbetstagare\)](#). The Agency Workers Act

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contains no rules on the duration of agency work nor does it contain any rules on successive assignments. In fact, there is nothing in the Act that actually limits agency work to be temporary at all. The Swedish implementation of the Temporary Agency Act relies instead on the premise that if equal treatment is guaranteed for the agency workers from day one, there is no need to prevent successive assignments to the same undertaking. The Swedish legislator's motivation follows explicitly from the preparatory works (see [prop. 2011/12:178](#) at p. 46 and p. 120, see also the public inquiry predating the draft legislation, [SOU 2011:5](#), p. 159 which concludes that there is no need to define—or even use—"temporary").

Hence, it is highly likely that Swedish law does not meet the standards of the EU Directive as regards the prevention of successive assignments to the same undertaking, at least if successive assignments are misused with the purpose to avoid the rights under the Directive. However, it must be noted that the proposed new Employment Protection Act contains a special provision that seeks to avoid successive assignments. In Section 12 a of the proposal, it is suggested that a temporary agency worker, who has worked for the same undertaking for more than 24 months over a total period of 36 months must be offered employment in the undertaking. Consequently, if Parliament decides to adopt the government's proposal, Swedish law will be in line with EU law as there will be means to prevent the misuse of temporary agency workers for longer periods.

4 Other Relevant Information

4.1 Reform of the Swedish Employment Protection Act

As reported in several Flash Reports, there is an ongoing procedure to reform the [Swedish Employment Protection Act \(lag \[1982:80\] om anställningsskydd\)](#).

On 18 March 2022, the Swedish government decided to adopt a proposition ([prop. 2021/22:176](#)), which is the formal government initiative submitted to Parliament to adopt legislation. According to the proposition, the legal reforms will be enforced on 30 June and applied from 01 October 2022.

United Kingdom

Summary

(I) Following England, all COVID restrictions have been removed in Wales as of 28 March 2022.

(II) Statutory sick pay is to only be recognised in case of actual sickness or incapacity for work. Simply testing positive will no longer be sufficient for getting sick pay.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 End of COVID-19 restrictions

While all restrictions have been removed in England, Wales removed its restrictions on 28 March 2022 via the [Health Protection \(Coronavirus Restrictions\) \(No 5\) \(Wales\) \(Amendment\) \(No 8\) Regulations 2022 \(SI 2022/388\)](#). Free testing for all but sensitive settings has also ended in England on 01 April 2022.

1.1.2 Sick pay in case of COVID-19 infections

Even though COVID-19 rate levels are very [high](#) in the UK at the moment ([see here](#) for the case numbers), the government has stopped paying statutory sick pay (SSP) from day one ([Statutory Sick Pay \(Coronavirus\) \(Suspension of Waiting Days\) \(Saving Provision\) Regulations 2022 \(SI 2022/381\)](#)) and will only pay SSP to those who are actually sick or incapacitated for work. Simply testing positive is no longer sufficient for receiving SSP.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-232/20, 17 March 2022, Daimler

The [decision](#) of the CJEU in case C-232/20, *Daimler* addressed two questions on the interpretation of the Temporary Agency Work Directive, with particular regard to the concept of 'temporarily' (Question 1) and of misuse of temporary agency work in case of successive assignments to the same user undertaking (Question 2).

In answer to the first question, the Court ruled that Article 1(1) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary work must be interpreted as meaning that the terms 'temporarily', referred to in this provision, do not preclude the making available of a worker with an employment contract or an employment relationship with a temporary employment company to a user company for the purpose of filling a position which exists on a long-term basis and which is not employed as a replacement.

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This is likely to be the position in the UK as well. In the 2011 [Guidance on the Agency Regulations](#), there is a list of situations that fall outside the Regulations. These do not include the situation in question 1.

Those who are likely to be outside the scope of the Regulations include:

- individuals who find work through a temporary work agency but are in business on their own account (where they have a business-to-business relationship with the hirer who is a client or customer);
- individuals working on Managed Service Contracts where the worker does not work under the direction and supervision of the host organisation;
- individuals working for in-house temporary staffing banks where a company employs its temporary workers directly (and they only work for that same business or service);
- individuals who find direct employment with an employer through an 'employment agency';
- individuals on secondment or loan from one organisation to another – this is usually where the main activity of the organisation seconding the individual is not the supply of individuals to work temporarily under the supervision and direction of another party.

In answer to question 2), the Court stated that Article 1(1) and Article 5(5) of Directive 2008/104 must be interpreted as meaning that the renewal of such assignments constitutes an abusive use of the assignment of successive assignments to a temporary worker in the same position with a user company for a period of 55 months, in the event that the successive assignments of the same temporary worker with the same user company result in a longer period of activity with this company than what can reasonably be described as 'temporary', having regard to all the relevant circumstances, which include in particular the specificities of the sector, and in the context of the national regulatory framework, without any objective explanation being given for the fact that the user undertaking concerned has recourse to a succession of successive temporary employment contracts, which it is for the referring court to determine.

The guidance mentioned above makes no reference to the abusive use of successive assignments. The only provisions in UK law which covers this point concerns the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002/2034. Regulation 8 concerns repeated renewals of fixed-term contracts. A renewal beyond four years becomes a permanent contract:

"Successive fixed-term contracts

8.—(1) This regulation applies where—

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

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

(2) Where this regulation applies then, with effect from the date specified in paragraph (3), the provision of the contract mentioned in paragraph (1)(a) that restricts the duration of the contract shall be of no effect, and the employee shall be a permanent employee, if—

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

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

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

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

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

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

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

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

(5) A collective agreement or a workforce agreement may modify the application of paragraphs (1) to (3) of this regulation in relation to any employee or specified description of employees, by substituting for the provisions of paragraph (2) or paragraph (3), or for the provisions of both of those paragraphs, one or more different provisions which, in order to prevent abuse arising from the use of successive fixed-term contracts, specify one or more of the following—

(a) the maximum total period for which the employee or employees of that description may be continuously employed on a fixed-term contract or on successive fixed-term contracts;

(b) the maximum number of successive fixed-term contracts and renewals of such contracts under which the employee or employees of that description may be employed; or

(c) objective grounds justifying the renewal of fixed-term contracts, or the engagement of the employee or employees of that description under successive fixed-term contracts,

and those provisions shall have effect in relation to that employee or an employee of that description as if they were contained in paragraphs (2) and (3)."

4 Other Relevant Information

4.1 Fire and rehire

Throughout the COVID-19 period, much concern was expressed about 'fire and rehire' practices. ACAS published [guidance](#). Despite hints to the contrary, the government has now announced that it has no plans to legislate against this practice. Paul Scully MP, Parliamentary Under-Secretary (BEIS) [said](#):

"Using threats to 'fire and rehire' as a tactic to pressure workers during negotiations is unacceptable. Employers should refer to Acas' guidance, which sets out that dismissal and re-engagement should only be considered an option of last resort."

The government did commit to a new code of practice on fire and rehire (see [here](#)), an issue which became pressing when P&O decided to dismiss 800 workers without going through any consultation. The details of what happened, and the various legal issues are summarised [here](#).

The government said it would take a tough stance but then [backtracked](#). It has said it will change the law on the minimum wage to ensure that those sailing out of UK ports receive the UK minimum wage, but even this proposal has come under [fire](#). The Transport Secretary announced nine measures he was proposing to stop this from

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happening again. His statement can be found [here](#). The Insolvency Service does, however, say it is [investigating](#) whether there are any civil or criminal cases.

4.2 National minimum wage

The [National Minimum Wage \(Amendment\) Regulations 2022 \(SI 2022/382\)](#) give effect to the new rates of the national living wage (NLW) and national minimum wage (NMW):

- Age 23 or over (NLW rate): GBP 9.50 (up from GBP 8.91);
- Age 21 to 22: GBP 9.18 (up from GBP 8.36);
- Age 18 to 20: GBP 6.83 (up from GBP 6.56);
- Age 16 to 17: GBP 4.81 (up from GBP 4.62);
- Apprentice rate: GBP 4.81 (up from GBP 4.30);
- Accommodation offset amount: GBP 8.70 (up from GBP 8.36).

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