Flash Reports on Labour Law June 2022

Summary and country reports

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

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Cyprus, Denmark, Latvia and Malta did not report any labour law development in June 2022, thereby they are not included in this Flash Report.

Executive Summary

National level developments

In June 2022, 27 countries (all but **Cyprus**, **Denmark**, **Latvia** and **Malta**) reported some labour law developments. The following were of particular significance from an EU law perspective:

Measures to respond to the COVID-19 crisis

The extraordinary measures associated with the COVID-19 crisis continued to play a relatively lesser role in the development of labour law in many Member States and European Economic Area (EEA) countries compared to previous months.

In a few countries, some of these measures have been, or are being, renewed. In **Luxembourg**, the relief measures to respond to COVID-19 have been extended until 31 December 2022. Likewise, in **Austria**, a new draft has been introduced to reintroduce the special COVID-19 paid leave for pregnant workers, which expired on 30 June 2022. Conversely, in **Belgium**, the easing of conditions to access unemployment benefits ended on 01 July 2022.

Significant judicial decisions concerning the measures to prevent the spread of COVID-19 were issued in several countries. In **Liechtenstein,** the State Court held that the regulation allowing access to restaurants, public events and facilities only for persons who were either vaccinated against, or had recovered from COVID-19, adopted from December 2021 until February 2022, lacked sufficient legal basis and was therefore unconstitutional. The government consequently produced a report and motion with a draft law which aims to create the prerequisite for a specific legal basis to enable the adoption of any similar regulation in the future. In the **Netherlands**, a decision held that an airline company cannot ask candidate pilots about their vaccination status.

Measures to support workers' income

In several countries, such as **Belgium** and **Luxembourg**, new measures have been adopted to adjust wages and protect employees from rising costs and inflation. To this aim, the amount of minimum wage has been increased in **Germany** and the **Netherlands**.

In **Spain**, the measures addressing the economic consequences of the war in Ukraine, including the limitation of dismissal, have been extended until the end of 2022.

Atypical work

In **France**, the Court of Cassation clarified the time limit to claim back pay in the context of a requalification of a part-time assignment as full-time.

The **Italian** Court of Cassation ruled that a teacher, who worked under fixed-term contracts of one year for over three years, has the right to compensation in case the Ministry of Education has not organised a competition for recruitment.

In the **Netherlands**, a Court of Appeal has clarified the concept of abuse of subsequent fixed-term contracts.

In **Sweden**, where a labour law reform has been adopted, the regulation of fixed-term work has been amended.

In two other countries, amendments to atypical work regulations are currently being discussed. In **Estonia**, Parliament is currently discussing amendments to the Employment Contracts Acts that would allow the hiring of unemployed persons under an unlimited number of fixed-term employment contracts. In the **UK**, the government announced its willingness to amend the regulation of temporary agency work to allow for the

use of agency workers to replace workers who are on strike.

Working time

In **Finland**, a decision of the Labour Court examined whether the travel time of police officers can be considered working time.

In **Iceland**, an amendment to the Act on working conditions introduced a derogation to the 11-hour rest period for workers providing long-term care services. Moreover, a new Act regulates the working time of seafarers.

In **Spain**, a decision of the Supreme Court has clarified that the minimum duration of rest periods can be reduced in case of shift work.

Annual leave

In **Germany**, two Administrative Courts rendered two decisions on annual leave, the first holding that holiday leave of civil servant teachers in North Rhine-Westphalia does not expire after 15 months, even if the employer has not previously pointed out the expiry, the second clarifying that the heirs of a deceased civil servant do not have an unlimited claim to financial compensation for unused recreational leave.

In **Italy**, the Court of Cassation ruled that an employee is entitled to payment in lieu of the annual leave not taken during her maternity leave.

In **Portugal**, a decision clarified the concept of remuneration for the calculation of holiday pay as well as holiday and Christmas allowances.

Transfers of undertakings

In **Greece,** a decision of the Supreme Court has clarified that the concept of bankruptcy and insolvency proceedings, which allows for a bypassing of the Transfer of Undertakings Directive, shall be narrowly interpreted.

In **Ireland**, two decisions have been issued under the regulations transposing the Transfer of Undertakings Directive 2001/23/EC, addressing whether a transfer of an undertaking had taken place and whether a collective agreement continued after a transfer.

In **Portugal**, a judgement held that the employment contract of an employee, who was unlawfully dismissed by the transferor, must be considered to have existed on the date of transfer, and thus was transferred to the transferee of the economic unit.

Employment status

In **Ireland**, the Court of Appeal held that pizza delivery drivers were not employees but were self-employed.

Conversely, the Advocate-General at the **Dutch** Supreme Court stated that meal deliverers working for Deliveroo were to be considered employees.

Domestic work

In **Norway**, a new law regulates the employment relationship of domestic workers.

In **Romania,** a system of work vouchers for the formalisation of domestic work has been adopted and will enter into force on 01 January 2024.

Jurisdiction

The **Belgian** Court of Cassation decided that the determination of the place where an employee habitually works should not only be based on the mere quantitative criterium of working time but that the determination should be made on the basis of a more qualitative assessment.

The **Italian** Court of Cassation ruled that Italian jurisdiction applies to an employment contract concluded with a foreign Embassy in Italy.

Transposition of EU directives

Lithuania has amended its Labour Code to transpose EU Directive 2019/1158 on Work-life Balance. Similar measures are

under discussion in other countries, such as **Luxembourg**, where the government has published two bills aiming at transposing the EU directive, and **Poland**, where a new draft law which would introduce numerous changes to the Labour Code concerning work-life balance, has been presented.

Likewise, measures to implement EU Directive 2019/1152 on Transparent and Predictable Working Conditions has been adopted in **Germany** and **Lithuania**.

In **Portugal**, the Whistleblowing Law, published on 20 December 2021 which aims at transposing EU Directive 2019/1937 on the protection of persons who report breaches of Union law, entered into force on 18 June 2022.

Finally, in **Lithuania**, measures were adopted to transpose EU Directive 2020/1057 on road transport of mobile workers int the national legal framework.

Collective action

In **Hungary**, the Parliament has passed a new act that includes provisions on strikes in the public education sector.

The **Swedish** Labour Court has issued an interim decision on the solidarity action by the Dockworkers' Union, who refused to unload Russian ships in Swedish harbours in sympathy with workers in Ukraine.

Other legislative developments

In **Belgium**, the federal government reached a final agreement on the so called Labour Deal, which aims to modernise labour legislation on working time, flexibility of the worker, night work and platform work.

In **Bulgaria**, a new Act provides measures to promote the employment of economically inactive persons. Moreover, the Act clarifies that no work permission is required for third-country nationals with temporary protection.

In **Croatia**, a new Act regulates the procedure of recognition of foreign educational qualifications for the purpose of access to the labour market.

In **Estonia**, amendments to the Posted Workers Act that would give posted workers better protection in case of sub-contracting and in legal disputes are currently under discussion.

In **Finland**, the report of a working group advances several proposals to prevent abuse in the accommodation conditions of foreign workers.

In **France**, the Court of Cassation decided two cases on the regularity of worker representatives' elections.

In **Iceland**, the Court of Appeal decided a case concerning the unfair dismissal of an employee after she complained about harassment.

In **Slovakia**, the National Council adopted an Act which simplifies employment and reduces the employer's wage costs in connection with the employment of workers performing seasonal work in the agricultural and the tourism sectors.

Spain has ratified three international conventions concerning home working, violence and harassment at work, and work in the international road transport sector.

In **Sweden**, the Employment Protection Act was modified, introducing changes to the regulation of fixed-term work, fairness of dismissal and exemptions from selection for redundancies. Moreover, the Labour Court has ruled in a case on reasonable accommodation in relation to disability discrimination.

In the **UK**, the government published two bills (the Northern Ireland Protocol Bill and Bill of Rights Bill) in June 2022, which are likely to have significant implications on UK-EU relations.

Table 1: Major labour law developments

Topic	Countries
COVID-19 – Relief and social security measures	AT BE LU
COVID-19 – Restrictions	LI
COVID-19 – Vaccination status	NL
Fixed-term work	EE IT NL SE
Annual leave	DE IT PT
Working time	FI IS ES
Foreign workers	BG HR FI
Measures to support workers' income	BE LU ES
Transfer of undertaking	EL IE PT
Work-life balance	LT LU PL
Collective action	HU SE
Domestic work	NO RO
Jurisdiction	BE IT
Labour law reform	BE SE
Minimum wage	DE NL
Platform work	IE NL
Promotion of employment	BG SK
Road transport mobile workers	LT ES
Transparent and predictable working conditions	DE LT
Discrimination	IS
Part-time work	FR
Posting of workers	EE
Temporary agency work	UK
Whistleblowers	PT
Worker representatives	FR

Austria

Summary

A new draft has been introduced to reintroduce the special COVID-19 paid leave for pregnant workers, which expired on 30 June 2022.

1 National Legislation

1.1 Protection of Pregnant Workers during COVID-19

The legislative grounds for special paid leave for pregnant workers and workers who belong to a risk group and who are unable to perform their work in a manner that protects them as much as possible from infection with Sars-CoV2 at the workplace (or the commute to work) expired on 30 June 2022. As the numbers of COVID-19 infections continue to rise, this lack of protection has been criticised.

National and Federal Assembly have now passed an amendment of the Act on Protection of Mothers (*Mutterschutzgesetz* 1979 (539/BNR), *MSchG*) that allows the government to introduce special paid leave for pregnant workers as of the 14th week of pregnancy per public ordinance. The new § 3a(1) MSchG reads as follows (unofficial translation by the author):

> *"If the epidemiological situation calls for the protection of the life and health of the expectant mother and her unborn child, the Federal Minister of Labour may, in agreement with the Federal Minister for Social Affairs, Health, Care and Consumer Protection, determine by ordinance for which period and under which conditions expectant mothers shall be entitled to a special paid leave from the beginning of the of the 14th week of pregnancy until the beginning of the suspension of employment (=maternity leave) pursuant to § 3 at the latest."*

The amendment further regulates that in case the pregnant worker meets the conditions stipulated in the ordinance, the employer must check whether a change in working conditions or a move to another job is possible for objective reasons. Whether the pregnant worker can perform her work at home (home office) should also be explored. In any event, the employee is entitled to the same remuneration as before. If none of these options are possible, the employee shall be granted special paid leave with the same remuneration. The employer can claim a refund for the remuneration paid to the pregnant worker (capped at a maximum contribution limit for social security). This regulation practically reiterates the previous regulation on Special COVID-19 Paid Leave for Pregnant Workers.

Despite rising numbers of COVID-19 infections, no ordinance has yet been issued.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) The easing of the conditions to access unemployment benefits ended on 01 July 2022.

(II) The Belgian Court of Cassation has decided that the determination of the place where an employee habitually works should not only be based on the mere quantitative criterium of working time but on the basis of a more qualitative assessment.

(III) The federal government has reached a final political agreement on the so called Labour Deal, which aims to modernise labour legislation on working time, flexibility for the worker, night work and platform work.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

The many COVID-19 related measures led to an increase in applications for temporary unemployment benefits. In response, the government decided to consider all cases of temporary unemployment resulting from the pandemic to be considered cases of unemployment due to force majeure, and to temporarily ease the procedures and formalities to be met.

The temporary easing of the conditions to be met to access unemployment benefits was initially valid for five months but was extended several times. However, on 30 June 2022, more than two years after being, the temporary easing of measures came to an end.

This means that as of 01 July 2022, the traditional procedures for introducing temporary unemployment benefits will apply again. Moreover, the right of temporarily unemployed persons to increased unemployment benefits (70 per cent instead of 65 per cent of their average wage) expires as of 01 July 2022 (Article 9(1), Law of 23 December 2021 on temporary support measures due to the COVID-19 pandemic and Article 16, Royal Decree of 30 March 2020 adapting the regulations on temporary unemployment due to the COVID-19 virus).

2 Court Rulings

2.1 Jurisdiction

Cour de cassation, S. 21.0038.F, 16 May 2022, H.N.M. v. Astrazeneca UK Limited

In matters relating to individual employment contracts, Article 19 of Council EU Regulation No- 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters provides that an employer established in a Member State may be sued:

- in the courts of the Member State where the employer is established; or
- in another Member State:
  a) in the courts of the place where the employee habitually carries out his or her work or in the courts of the last place where he or she did so; or
  b) if the employee does not or did not habitually carry out his or her work in any one country, in the courts of the place where the business that hired the employee is or was located.

In the present case, the employee did not spend most of his working time in Belgium, but the contractual elements of his employment contract established Brussels as the applicant's regular workplace, that Brussels was the only office from which he organised his activities and to which he returned after each business trip, and that there was a particularly close link with Belgium where he resided. Questions about the 'place where the employee habitually carries out his work' arose.

According to the Court of Cassation, in case of a contract of employment performed in the territory of several Member States, it follows from CJEU case law, on the one hand, that the concept of the place where the employee habitually carries out his or her work within the meaning of Article 19(2)(a) must be interpreted as referring to the place where the notion of a place where the worker in fact performs the essential part of his or her obligations towards his or her employer. Secondly, it follows from CJEU case law that the court must, in order to determine that place, take account of a body of evidence which allows the court to ascertain that it is the place which the dispute has the most significant connecting factors with.

The Appeal Labour Court of Brussels determined that

> "*the relevant criterion to be taken into account when determining the habitual place of work [...] is, in principle, the place where the employee has completed the major part of his working time for his employer"* and that *"the criterion is therefore 'quantitative'"*.

The Court thus examined the evidence submitted to the Labour Court on the basis of this criterion alone, comparing the duration of time the claimant had worked in Belgium and elsewhere during the periods in question and dismissing other evidence on the grounds that it had 'no bearing on the share of work performed in Belgium', did not provide 'any indication about the time he had worked in Belgium' nor 'any concrete element which would make it possible to determine the share of work he performed in Belgium and abroad', infringes Article 19(2)(a) of Regulation No. 44/2001. Therefore, the Court concluded that:

> "*in view of the evidence submitted to the Appeal Labour Court, it does not appear that Belgium was the place where the employee habitually performed his work or even the last place where he habitually carried out his work"*.

The Cour de Cassation's decision is in line with CJEU case law. Specifically, the CJEU has already retained a number of indicators to determine the connection with the place of work, such as:

- the availability of an office (CJEU case C-383/95, *Rutten*, point 25);
- the possibility of using a qualitative criterion based on the nature and importance of the work carried out in different countries (CJEU case C-37/2002, *Weber*, point 25);
- the place from which the work is organised, where the worker receives instructions, organises his/her work and where his/her working tools are located (CJEU case, C-29/10, 15 March 2011, *Koelzsch*, point 49);
- the place where the worker returns after performing his/her work, the place where he receives instructions and the place where the work tools and aircraft are located (CJEU cases C-168/16 and C-169/16, *Ryanair*, points 63-64);
- the place where the majority of the activities are carried out, indicating that for the application of this quantitative criterion, the entire period of activity should be taken into account, unless there is a closer link with another place of work or it is justified to retain the last place of performance of the services if it is intended to become the new habitual place of work (CJEU case C-37/00, *Weber*, points 52 ff.).

In the *Weber* ruling, the CJEU found that the quantitative criterion shall only apply in the absence of other criteria and that it should be fully excluded if the subject of the dispute has closer links with another place of work (see CJEU decision in *Weber*, point 58).

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Labour Deal

On 17 June 2022, the Federal Government reached a final agreement on the so called Labour Deal. The Labour Deal aims to modernise labour legislation (working time, flexibility for the worker, night work and platform work), but it would also reflect the Federal Government's aim to reach an employment rate of 80 per cent by 2030.

It provides for the following measures:

Flexibility for workers: a four-day work week without a reduction in working time. The employee may request to work 9.5 hours/day for 4 days based on work rules or 10 hours/day based on a collective bargaining agreement (CBA). The employer may reject this arrangement in case of valid reasons. Ten employees may request a week by week regulation. Employees can also request to work more over one week (max. 45h per week) and compensate this overtime by working less the following week. The employer can reject this request.

Part-time variable rosters: the term for notifying a part-time employee of a variable part-time table is increased to seven working days.

Right to disconnect: companies with over 20 employees have to conclude a company CBA in which agreements are made on the right to disconnect outside working hours. Companies have until 01 January 2023 to draw up such an arrangement. Nevertheless, a sector or the inter-professional social partners of the National Labour Council can decide to draw up a CBA to remove this obligation at the enterprise level.

E-commerce: easing the framework conditions of e-commerce is possible by concluding a CBA for evening work related to e-commerce with a single trade union that automatically amends the work rules at company level. A CBA with one trade union is sufficient. Temporary experiments allow for night work between 8pm and midnight without the requirement of trade union agreement. Workers can participate in these experiments on a voluntary basis. The experiment may not last longer than 18 months.

Platform economy: for platform workers, the existing regulations include a list of specific criteria (inspired by an EU draft directive) to establish a presumption of worker/independent status. The presumption is rebuttable.

Activating dismissal law: activation or training is already provided during the notice period and there are faster prospects for new jobs via either transition paths (during the notice period, an employee can voluntarily be made available to a new employer) or through the implementation of Article 39ter of the Employment Contracts Law of 03 July 2022, whereby the employee is offered additional measures during long notice periods to promote his/her employability (such as training) are offered to the employee.

Lifelong learning: companies with 20 employees or more must draw up an annual training plan. Employees in companies with at least 20 employees shall be entitled to an individual training right of five training days/year by 2024. The number of five training days can be increased or reduced to a minimum of two days at sector level.

4.2 Measures for low-income workers

On 08 June 2022, the Decree of the Flemish Parliament of 20 May 2022 regulating job bonuses was published. The job bonus is a bonus payment for residents of Flanders who earn a low income from work.

The scheme has a dual purpose:

- to respond to the persistent shortage of workers on the Flemish labour market by increasing the difference between unemployment benefits and income from work;
- to motivate employees with low incomes to get and stay in work.

The Flemish job bonus should not be confused with the federal work bonus. The work bonus is not a payment, but a reduction in personal social security contributions in favour of low wage workers.

The job bonus can be granted to private sector employees, civil servants and staff of educational institutions, and persons employed in an EU Member State who return to their main place of residence in the Flemish Region on a daily basis or at least once a week.

The job bonus amount depends on the wages earned in the reference year. It depends on full-time employment during the entire reference year. If the average monthly gross salary is less than EUR 1 800, the annual job bonus is EUR 600, If the average monthly gross salary is between EUR 1 800 and EUR 2 500, the annual job bonus is reduced from EUR 600 down to EUR 20.

The amount of the job bonus for persons who do not work the entire reference year as an employee or who do not work full-time still has to be determined in an executive decision by the Flemish government.

The job bonus will be granted automatically if the Flemish government can gain access to the beneficiaries' necessary data. If this is not the case, the beneficiary must submit an application. The job bonus scheme is not yet operational. The Flemish government still has to decide when the decree will enter into force and also has to issue a number of implementing measures.

Bulgaria

Summary

(I) A new act provides for measures to promote the employment of economically inactive persons, and specifies that no work permission is required for third-country nationals who are covered by temporary protection.

(II) A new law ratifies several articles of the revised European Social Charter.

1 National Legislation

1.1 Promotion of employment

The National Assembly (Parliament) adopted the Act on Amendment and Supplement of the Employment Promotion Act (promulgated in State Gazette No. 41 of 03 June 2022). It provides that for the purpose of promoting the employment of economically inactive persons and for research and analyses of labour resources in the country, the Employment Agency shall exchange information on individuals aged 16 to 65 with the National Revenue Agency, the Ministry of Education and Science, the Executive Agency 'General Labour Inspectorate', the General Directorate 'Civil Registration and Administrative Services', the General Directorate 'Execution of Sentences', the Social Assistance Agency, the Agency for People with Disabilities, the National Social Insurance Institute, the National Agency for Vocational Education and Training and the National Expert Medical Commission. The conditions and procedure for the exchange of information and for the joint activity of the institutions shall be determined by an act of the Council of Ministers.

A new provision also provides that no work permission is required for third-country nationals with temporary protection.

1.2 European Social Charter

The National Assembly (Parliament) has adopted the Amendment of the Act on the Ratification of the European Social Charter (revised) (promulgated in the State Gazette No. 47 of 24 June 22).

This Act ratifies Article 9, Article 10(2), Article 10(3)(a), Article 10 (4), Article 12, Article 19(5) and Article 19(9) of Part II of the Charter and repeals Article 2(3) of the Charter.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

A new act regulates the procedure of the recognition of foreign educational qualifications for the purpose of labour market access.

1 National Legislation

1.1 Recognition of foreign qualifications

The new Act on Recognition and Evaluation of Foreign Educational Qualifications has been adopted (Official Gazette No. 69/2022). Among others, it regulates the procedure of the recognition of foreign educational qualifications for the purpose of labour market access (Articles 6-10).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Collective bargaining

The collective bargaining process between the Government of the Republic of Croatia and the representative trade unions of employees employed in elementary schools, high schools, in social assistance, and in cultural institutions financed by the state budget has been initiated (Official Gazette No. 67/2022)

Czech Republic

Summary

A decision of the Supreme Court clarifies that bilateral transactions—in this case, a settlement agreement—can be concluded via e-mail and scanned signed documentation.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Electronic delivery of legal documents

Supreme Court, No. 21 Cdo 2061/2021, 27 April 2022

In this decision, the Supreme Court ruled that since the Labour Code lacks comprehensive regulation of legal transactions, the Civil Code shall apply to the procedure for concluding employment contracts.

This decision arose from the layoff of an employee by notice of termination. Since the employee objected, negotiations between the two parties followed via e-mail correspondence. Finally, the employer sent an e-mail with a scan of a signed settlement agreement to the employee and on the following day, the employee's legal representative confirmed the employee's acceptance of the settlement, also via e-mail. Eventually, a conflict about severance payment, which had been part of the agreement, arose: the employer claimed that the agreement was invalid because the rules for delivery of documents specific to labour relations had not been followed (employment documents must normally be delivered in accordance with the applicable rules provided for in Section 334 to 337 of Act No. 262/2006, the Labour Code).

The Supreme Court held that the Labour Code lacks comprehensive regulation of legal transactions as it does not regulate the procedure of concluding contracts/agreements. The special rules under Sections 334 to 337 of the Labour Code regarding the delivery of documents in employment relationships only apply to certain enumerated unilateral actions and their delivery, not to bilateral transactions. Therefore, in accordance with Section 4 of the Labour Code, Act No. 89/2012 Coll., the Civil Code, shall apply. Therefore, the Court stated that the regulation on the delivery of documents contained in the Labour Code is not essential for the assessment of the prerequisites for a bilateral legal transaction (agreement); the purpose of this legal regulation is to ensure that the document actually reaches the employee. Thus, although said provisions state that violations thereof result in nullity, it does not mean that a bilateral legal transaction could not arise (come into existence) in any other manner provided for by law. The conclusion of employment contracts is governed by the Civil Code, especially Section 545 et seq. and 1721 et seq. The settlement agreement was thus legitimately concluded.

The expert public welcomes this ruling as it reflects contemporary practice. It can be applied to the conclusion of employment contracts which can, as is apparent from the above, be concluded via e-mail and scanned signed documentation.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Promotion of part-time employment

A Draft Act on social insurance contributions was passed by the Chamber of Deputies of the Czech Republic and was referred to the Senate of the Czech Republic on 16 June 2022.

The Draft Act proposes a discount for employers of social insurance contributions. If the employer concludes a part-time employment relationship with an employee from a selected group, the employer is entitled to a monthly discount of 5 per cent on social insurance contributions. These groups are:

- persons above the age of 55 years;
- persons below the age of 21 years;
- parents caring for children below the age of 10 years (or legal guardians);
- persons caring for a close relative below the age of 10 years of age who is dependent on the assistance of another person at level I (light dependence) or for a close relative who is dependent on the assistance of another person and is at level II (moderate dependence) or level III (heavy dependence) or level IV (total dependence);
- students at secondary schools and universities;
- persons with disabilities in an unprotected labour market.

The weekly working time shall fall within a range of 8-30 hours; the monthly limit is 138 hours. Further, the base of assessment of such employees may not exceed 1.5 times the average salary, and their hourly salary may not exceed 1.15 per cent of the average salary. The discount can only be applied to one employment relationship of such an employee. These working time limits do not apply to persons aged below 21.

The discount also does not apply to employees in a protected labour market and during partial work pursuant to Sec. 120a et seq. of Act No. 435/2004 Coll., on Employment.

The Draft Act aims to support part-time jobs for selected groups of employees by motivating employers to conclude them based on a proposal of a discount on social insurance contributions.

Estonia

Summary

(I) Parliament is currently discussing amendments to the Employment Contracts Acts that would allow firms to hire unemployed persons under an unlimited number of fixed-term employment contracts.

(II) Amendments to the Posted Workers Act that would give posted workers better protection in case of sub-contracting and in legal disputes are currently under discussion.

1 National Legislation

1.1 Fixed-term work

The Parliament of Estonia is discussing amendments to the Estonian Employment Contracts Act to enable short-time employment. The amendment concerns § 10 of the ECA.

The amendment intends to give employers the option to conclude successive short-term employment contracts with individuals who are registered as unemployed. The draft stipulates that the employer can enter into an unlimited number of fixed-term employment contracts of up to eight calendar days with during a six-month period.

The current procedure allows for the conclusion of a maximum of two successive fixed-term employment contracts or to be extended once. Due to the current restrictive regulations, employers can enter into another contractual agreement, e.g. with a temporary work agency, instead of an employment contract. In that case, however, the employee is not covered by labour protection. For example, working time restrictions, minimum wage, occupational safety requirements, etc. do not apply to such workers.

The purpose of the amendment is to guide employers who temporarily employ individuals registered as unemployed to use short-term employment contracts instead of employment and temporary work agency contracts, which provide greater protection for the employee.

1.2 Posting of workers

The Estonian Parliament is discussing amendments to the Posted Workers' Act. Amendments in the Posted Workers' Act are necessary to comply with the requirements of the Posted Workers Directive.

The Posted Workers Working Conditions Act (hereinafter PWA) is supplemented with a provision prohibiting unfavourable treatment of employees, protecting posted workers who have appealed to a court or administrative body for protection of their rights. In addition, it is specified that an employee in the field of construction can claim wages not only from his or her employer, but also from the person who ordered subcontracted services from the employer.

According to the current procedure, the individual who ordered the service can claim the wages from the posted employee's employer, which, according to the European Commission, is too broadly defined. The employee must first submit his/her wage claim to the employer who posted him or her, and if the claim is not paid within four months from the start of the enforcement procedure, the wage claim can be submitted to the employee's employer of the individual who ordered the subcontracted services. The employee has the right to demand the full amount of wages from the employer, but the liability of the individual subcontracting services from the employer is limited to the minimum wage per calendar month established by the Government of the Republic,

which is currently EUR 654. The individual who ordered the subcontracted services can avoid paying wages if he or she can prove that he/she acted with due diligence as an entrepreneur.

The bill adds a similar regulation to the Employment Contracts Act according to which the individual subcontracting the construction work is responsible for paying the wages of the employee's employer.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Inclusion of people with reduced work capacity

According to the evaluation of the work capacity reform, 61 per cent of people with partial work capacity worked in 2020, which is higher than the goal initially set to include half of all persons with partial work capacity in the labour market. About one-fifth of people with no work capacity are working.

- The employment of persons with partial work capacity increased by approx. 5 per cent faster than the average of persons of the same gender, age and place of residence;
- More than half of the target group (52 per cent) supports that individuals with partial work capacity is expected to work, study or look for work. In 2017, only one-third of the target group supported it;
- The incomes and assessment of self-sufficiency of persons with partial work capacity improved.

Therefore, the goals of the work capacity reform were achieved.

According to the Minister of Social Protection Signe Riisalo,

> *"The underlying idea of the work capacity reform was the inclusion of persons with reduced work capacity in the labour market to improve people's quality of life, on the one hand, and to increase labour supply in Estonia, on the other hand. Success required a change in the attitudes of people with reduced work capacity, employers and society in general, and so far, we can see that it has borne fruit".*

According to the Minister, the next step in the planning process are various activities to prevent the permanent loss of work capacity of persons on long-term sick leave. It is also planned to continue with the integration of services between the social, work and health fields to ensure better help for persons with reduced work capacity, so people do not have to navigate between many different systems and rules to obtain the necessary help. The underlying idea of the work capacity reform is the assessment and use of existing work capacity, and several targeted labour market measures were created for persons with reduced work capacity. The main goal is to help persons with reduced work capacity to enter the labour market and to ensure the financial sustainability of the support system for such persons. To develop an environment that supports working, society's attitude towards persons with reduced work capacity needs to change.

An analysis in Estonian is provided here (Estonian employers' association, published on 10 June 2022).

Finland

Summary

(I) A decision of the labour court reviewed whether the travel time of police officers can be considered as working time.

(II) The report of a working group advances several proposals to prevent abuse in the accommodation conditions of foreign workers.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working Time

Finnish Labour Court, TT 2022:41, 13 June 2022

This ruling reviewed whether the travel time of a police unit from the police station of Lahti to Helsinki for a security task related to a work visit was to be considered working time. According to the Labour Court, there was insufficient evidence that the entire travel time was to be considered actual work performance for all members of the unit, and the claim was therefore dismissed.

The present case concerned the ordinary activity of police, which falls under the sphere of the Working Time Directive.

The plaintiff asked the court to make a reference for a preliminary ruling to the CJEU about the interpretation of the concept of working time.

The Labour Court stated that the CJEU has issued several preliminary rulings concerning the interpretation of the concept of working time. Taking into account the CJEU judgements referred to by the Labour Court, such as those in case C-742/19, *Ministrstvo za obrambo*, C-580/19, *Stadt Offenbach am Main,* C-107/19, *Dopravní podnik hl. m. Prahy*, C-518/15, *Matzak*, C-266/14, *CCOO*, and C-227/09, *Accardo and others,* the Court stated that the case law on the interpretation of the concept has been established and there is not much ambiguity about the interpretation.

The issue was rather how EU law was to be applied in the present case in terms of the facts. The Court determined that it was unnecessary to make a reference for a preliminary ruling to the CJEU.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Employer insolvency

The Ministry of Economic Affairs and Employment has submitted a proposal for the reform of pay security legislation for comments. The pay security system ensures the payment of employee claims arising from an employment relationship in the event of employer insolvency.

The aim of the reform is to resolve questions that relate to the coverage of pay security and to develop the legislation in terms of acquiring information and submitting it.

The proposal seeks to speed up the pay security procedure and prevent the grey economy. The deadline for submitting comments is 15 August 2022.

4.2 Working group on the prevention of abuse of foreign workers

The aim of the working group appointed by the Ministry of Economic Affairs and Employment and the Ministry of Social Affairs and Health was to seek ways to prevent abuse in the accommodation conditions of foreign workers. The working group presented the current situation and identified areas of further development as well as a need for further measures. The phenomenon is widespread and extends to the operating areas of many different authorities.

According to the working group (‘*Report Ulkomaalaisten työntekijöiden majoittaminen ja sen valvonta’*, ‘Accommodation of foreign workers and its supervision’, Publications of the Finnish Government 2022:56), cooperation and the exchange of information between authorities are key to preventing the exploitation of foreign workers. The working group proposed national coordination measures and an establishment of regional multi-authority working groups to enhance cooperation between authorities.

The working group identified opportunities for improving the efficiency of activities under the existing legislation, but at the same time, identified the need to explore new pathways. The working group proposed additional measures to prevent abuse related to the housing and accommodation of foreign workers. Cooperation and the exchange of information between authorities need to be increased. The working group therefore proposed several national coordination measures and the establishment of regional multi-authority working groups to enhance cooperation between authorities. It proposed the provision of guidance and training on human trafficking and labour exploitation for employers and authorities. In addition, foreign workers need more information and guidance on their rights. The working group also highlighted the need to link housing policy more closely with labour immigration to ensure sufficient affordable housing and for labour needs to be met.

France

Summary

(I) The Court of Cassation decided two cases on the regularity of elections of worker representatives.

(II) The Court of Cassation has clarified the time limit to claim back pay in the context of a requalification of part-time work as full-time.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Workers' representation

Social Division of the Court of Cassation, No. 20-21.529, 18 May 2022

In the present case, a trade union requested the annulment of two rounds of elections of members to the '*Comité social et économique*' (CSE). The claim was based on the employer's disregard of its obligation of neutrality, as the trade union's list of candidates was rejected by the employer for having been sent by e-mail on 04 November 2019 at 12:16, a few minutes after the expiration of the deadline set for the pre-electoral protocol on that same day at 12:00. The claimant argued that the list of candidates of another trade union had been delivered manually on the same day, without any evidence of its time of submission to the employer. Had the other union also filed their list of candidates late, this difference in treatment between the two organisations would likely constitute a breach of the neutrality obligation.

The judges in the first instance granted the request, as the company was unable to prove the time at which the list was submitted by the other trade union, and thus to verify that it had complied with its obligation of neutrality. Hence, the judges declared the elections null and void.

The employer appealed on the basis of the principle that those who claim the performance of an obligation must prove it (French Civil Code, Article 1353). For the latter, it was up to the plaintiff union, which claimed that the competing union's list had been filed late and that the employer had failed in its obligation of neutrality, to prove this.

The Court of Cassation overturned the judgement and held that it was indeed up to the trade union to prove the breach of the neutrality obligation. First, the Court recalled that the employer's obligation of neutrality is a general principle of electoral law. Secondly, the Court recalled that irregularities directly contrary to the general principles of electoral law constitute a cause for annulment of the elections, irrespective of their influence on the elections' outcome (Social Division of the Court of cassation, 10 May 2012, No 11-14.178). Thereby, the Court of Cassation responded to the employer's challenge by stating that 'it is up to the person claiming a violation by the employer of its obligation of neutrality to prove it'. In other words, it was not up to the employer to verify that it had complied with the neutrality obligation, but up to the union alleging a breach of the said obligation to prove it by demonstrating that the disputed list had indeed been filed late. In the view of the Court of Cassation, in holding that there had been a breach of this principle on the grounds that the employer had not provided evidence of the time at which the list was submitted, the Court of Appeal reversed the burden of proof and failed to characterise the employer's breach of its obligation of neutrality.

Social Division of the Court of Cassation, No. 20-22.860, 01 June 2022

In the present case, a company, following a unilateral decision, decided to use electronic voting: voters would be able to vote from their workplace, their home or any other place of their choice by connecting to a secure site specific to the elections.

Mentioning various irregularities in the use of electronic voting and the way it was carried out, two trade unions subsequently brought the matter before the Court and achieved an annulment of these elections: some of the employees in the 'employee' college had not had access to professional IT equipment that would have enabled them to vote, unlike those in the other colleges (managers and supervisors), who had a desk and a workstation as part of their duties. Alerted to the lack of internet access by some of these employees to connect to the voting platform, the employer had even prohibited its use during working hours, prohibited the use of a professional computer belonging to the staff of managers or supervisors or the use of personal computers in the company for reasons of confidentiality and security of the vote. According to the Court, the employer had disregarded the equality of employees in the exercise of the right to vote by not taking the 'appropriate precautions to ensure that no one without the necessary equipment or living in an area without internet access is excluded from the vote'.

In principle, elections of members of the staff delegation of the Social and Economic Council can take place electronically, either at the workplace or remotely. This method is provided for in a company or group agreement or, failing that, in a unilateral decision of the employer (French Labour Code, Article L. 2314-26).

In its decision of 01 June 2022, the Court of Cassation recalls that 'the use of electronic voting does not allow for derogations from the general principles of electoral law' (Social Division of the Court of Cassation, 03 October 2018, No 17-29.022): for the Court, the judges in first instance had legitimately found an 'infringement of the general principle of equality with regard to the exercise of the right to vote, constituting in itself a cause for annulment of the ballot, regardless of its impact on the result'. The decision criticised the employer for 'being aware of the difficulties of certain employees who had no office or workstation on the company's premises to connect to the voting platform':

- not ensuring that all its employees would have access to equipment enabling them to exercise their voting rights;
- and that it did not justify what prevented it from putting in place procedures to compensate for its employees' lack of access to voting equipment, such as, for example, the installation of terminals dedicated to electronic voting with a protocol guaranteeing the security and confidentiality of votes.

Where electronic voting is used, it is therefore up to the employer and social partners, where a collective agreement applies, to ensure that all voters have the necessary equipment to take part in the ballot, particularly where the ballot is conducted exclusively by electronic means. If necessary, a dedicated computer workstation should be provided for employees who do not have a work computer. While the use of electronic voting must be accompanied by a number of safeguards to ensure the fairness of the ballot, these safeguards must not be allowed to prevent voters from casting their votes. It is up to the employer to find the appropriate procedure if it does not want to run the risk of having the ballot cancelled later.

The Court of Cassation has thus raised the principle of equality in the exercise of the right to vote to the rank of general principles of electoral law: the Court makes annulments inevitable as soon as an irregularity is noted in this area.

2.2 Part-time work

Social Division of the Court of Cassation, No. 20-16.992, 09 June 2022

In the present case, an employee was recruited from 10 March 2001 on a fixed-term, part-time contract, with a weekly working time of eight hours, and later on a permanent contract from 07 September 2002. On 16 October 2015, he was dismissed for economic reasons and accepted an offer of redeployment leave. On 12 December 2016, he applied to the Labour Court requesting his part-time contract to be reclassified as a full-time contract and for his employer to be ordered to pay various sums for the execution of the termination of his employment contract. Mentioning that he had worked 182 hours in August 2013, the employee requested the requalification of his part-time contract into a full-time contract as of September 2013 and the payment of full-time wages as of November 2013.

The employer argued that the requalification action was time-barred and that the employee had been aware of the irregularity at the time he received his pay slip, including the overtime hours worked in August 2013, and that the receipt of this pay slip had triggered the 3-year limitation period. The Court of Appeal rejected the employer's argument based on the statute of limitations before requalifying the contract and ordering the employer to pay back wages and paid leave from November 2013 to 16 December 2015, the date of termination of the contract.

The Court of Cassation rejected the employer's appeal. Firstly, the Court recalled its case law according to which the claim for back pay based on the requested reclassification is of a salary nature and is therefore subject to the three-year limitation period (French Labour Code, Article L. 3245-1). This three-year limitation period runs from each pay date for the amount due on that date or, when the contract is terminated, for the sums due for the three years preceding the termination of the contract. Consequently, the starting point of the action is not the date of the irregularity mentioned by the employee, but the date on which the wage arrears due as a result of the reclassification became payable.

Moreover, the Court of Cassation approved the Court of Appeal's decision that the three-year limitation period had been interrupted by the employee's application to the Labour Court on 12 December 2016. Consequently, the wage arrears requested and due as of November 2013, less than three years before the termination of the employment contract, were not time-barred. The employee's claim for back pay was therefore well-founded within the limit of the three years preceding the termination of his employment contract.

2.3 Dismissal of a trade union delegate

Social Division of the Court of Cassation, No. 21-10.118, 18 May 2022

This case concerned a trade union delegate whose protection period ended on 15 March 2013, one year after the termination of his mandate. The employee was summoned to a pre-dismissal interview on 15 March 2013, the last day of the protection period, before being dismissed on 03 May 2013, without any prior administrative authorisation having been sought by the employer.

In principle, the dismissal of a former trade union delegate whose mandate ceased less than 12 months ago can only take place following authorisation from the labour inspector: after 12 months, authorisation for dismissal is no longer required (French Labour Code, Article L. 2411-3).

In the present case, the employee claimed nullity of the dismissal and reinstatement on 02 July 2013. The employee claimed his retirement rights during the legal proceedings on 01 December 2014 and consequently claimed compensation for the financial loss resulting from his loss of employment at the age of 62 due to his dismissal being null

and void. The Court of Appeal granted this request by awarding the former employee a sum of EUR 30 000 in compensation for this loss.

The employer appealed to the Court of Cassation, arguing that it was not its responsibility 'to assume the consequences of the employee's choice to claim his pension rights'. According to the employer, it was the employee who had made his reinstatement impossible by unilaterally deciding to claim his retirement rights. Therefore, he could not claim damages for the financial consequences of the termination of his employment contract in addition to the sums due for violation of his protective status.

In its decision, the Court of Cassation recalled the legal framework on the indemnity of a protected employee whose dismissal is null and void because it occurred without authorisation when the employee does not request reinstatement or when 'reinstatement is impossible'. In these two cases, the employee is entitled to obtain:

- an indemnity for violation of the protective status to compensate for the loss of wages;
- compensation for termination of employment (legal or contractual indemnities for notice and dismissal);
- as well as an indemnity, at the heart of this case, 'to compensate for the entirety of the prejudice resulting from the unlawful nature of the dismissal (...), without the judge having to rule on the existence of a real and serious reason for dismissal'. This compensation must be at least equal to 6 months' salary if the dismissal is null and void (French Labour Code, Article L. 1235-3-1.).

In the decision of 18 May 2022, the Court of Cassation thus deduced that in awarding the employee 'in addition to compensation for violation of the protective status, damages in reparations for his loss of employment', the Court of Appeal had ruled correctly. It is therefore irrelevant that the employee himself made his reinstatement impossible by claiming his retirement rights before the judge ruled on the litigation, as the employer pointed out. This is not a factor that has an impact on the employee's right to indemnity for the consequences of unlawful termination. The Court of Cassation therefore makes no distinction between situations where reinstatement is made impossible and where the employee does not request reinstatement, so that the employee must be indemnified in both circumstances.

2.4 Dismissal

Social Division of the Court of Cassation, No. 20-17.360, 01 June 2022

On 04 October 2013, an employer notified the administration of a plan for economic redundancy. Following this plan, an employee was summoned to an interview prior to his dismissal on 17 October 2013. During this interview, he was offered to sign up for a professional security contract. During the 21-day reflection period offered to the employee to respond, the employer notified him, by letter dated 04 November 2013 of the economic reason for the planned termination, specifying that if he rejected the professional security contract, this letter would constitute notification of his dismissal.

In principle, the professional security contract is intended for employees who are dismissed for economic reasons and aims to promote their professional retraining through support measures and a specific allowance: the employer is required to offer the proposal to the employee, who has the option to reject it (French Labour Code, Articles L. 1233-65 à L. 1233-70.).

On 07 November 2013, the contract was terminated at the end of the reflection period, the employee having agreed to accept the contract. The employee then applied to the Labour Court for indemnity, considering in particular that the employer had not respected his procedural obligations: he mentioned in particular the failure to respect the minimum time limit for notification of redundancy for economic reasons in

companies with fewer than 50 employees. Indeed, when the procedure concerns at least ten employees, "*the notification letter cannot be sent before the expiry of a period of time starting from the notification of the redundancy project to the administrative authority. This period may not be less than 30 days*" (French Labour Code, Articles L. 1233-39, al. 2 et 3). In the present case, this 30-day period expired on Sunday 03 November 2013 and therefore had to be extended until Monday 04 November at midnight, so that the employer could not notify the employee of the dismissal before the following Tuesday, 05 November. The judges dismissed the employee's claim for compensation on the grounds that this letter of dismissal sent as a precautionary measure 'did not have the effect of dissolving the employment contract'.

In its decision of 01 June 2022, the Court of Cassation established the principle that an employee who has agreed to a professional security contract cannot claim that the employer failed to comply with the time limit for sending the letter of dismissal imposed by Article L. 1233-39 of the French Labour Code. Consequently, the Court of Cassation confirmed that when the employee concludes a job security contract, the letter of dismissal for economic reasons that the employer is required to send to the employee does not have the effect of terminating the employment contract. Its only purpose is 'to notify the person concerned of the economic reason for the dismissal'. As a result, the employee who has effectively given his agreement to conclude the said professional security contract is not entitled to claim a breach of the dismissal procedure due to the failure to comply with the legal time limit for sending the dismissal letter.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Germany

Summary

(I) Parliament approved a bill of the Federal Government to implement EU Directive 2019/1152 on Transparent and Predictable Working Conditions, which will come into force on 01 August 2022.

(II) Two Administrative Courts have rendered decisions on annual leave, the first holding that the holiday leave of civil servant teachers in North Rhine-Westphalia does not expire after 15 months, even if the employer has not previously called attention to the expiry, the second clarifying that the heirs of a deceased civil servant do not have an unlimited claim to financial compensation for unused recreational leave.

1 National Legislation

1.1 Transparent and predictable working conditions

On 23 June 2022, the German *Bundestag* approved a bill of the Federal Government (20/1636; 20/2245) to implement EU Directive 2019/1152 on transparent and predictable working conditions in the European Union in the field of civil law. The Committee on Labour and Social Affairs had previously made amendments to the bill. The law will come into force on 01 August 2022.

In future, in addition to the contractual conditions already mentioned in section 2 of the Act on notification of conditions governing an employment relationship (*Nachweisgesetz*), the following must, inter alia, be included: the end date in case of fixed-term employment; the possibility for employees to freely choose their respective workplace, if agreed; the duration of the probation period, if agreed; remuneration for overtime; the due date for remuneration and the form in which remuneration is paid; the agreed rest breaks and rest periods; details of on-call work, if agreed; the employer's possibility of requesting overtime work and the attached conditions; any entitlement to training provided by the employer; in principle: name and address of the pension provider of the occupational pension scheme, if such is included; the procedure to be followed by the employer and employee when terminating the employment relationship, at least the written form requirement and the time limits for terminating the employment relationship as well as the time limit for bringing an action for protection against dismissal; a reference to the applicable collective agreements, works or service agreements. The law provides for the written form. In addition, individual violations of the law qualify as administrative offences.

2 Court Rulings

2.1 Annual Leave

Administrative Court Gelsenkirchen, 1 K 4290/20, 25 May 2022

According to this ruling of the Administrative Court, the claims to holiday leave of civil servant teachers in North Rhine-Westphalia do not expire after 15 months, even if the employer has not previously called attention to the expiry.

The complaint was filed by a civil servant teacher who had retired at the end of 31 July 2019 and wanted to be financially compensated for the holiday leave from 2017 onwards that she had not taken due to illness. The competent district government refused this with reference to the expiry of her holiday entitlement. The plaintiff essentially objected by referring to CJEU case law, according to which holiday leave can only be forfeited if the employer had notified the employees of this in advance.

The Court dismissed the action. According to the Court, the principles established by the CJEU do not apply to teachers. The purpose of notification by the employer is to enable the persons concerned to take their leave in time and to prevent it from being forfeited. However, this purpose did not apply to teachers because according to the law applicable in North Rhine-Westphalia, their leave is automatically considered compensated by the school holidays. Recreational leave outside school holidays is not possible. Teachers are therefore also not notified by their employer that their holiday entitlement will expire nor is their recreational leave approved. Under such conditions, any notification of forfeiture would be meaningless from the outset, because teachers automatically realise their holiday entitlement when schools are closed.

Administrative Court Berlin, VG 28 K 563.19, 19 May 2022

According to a decision of the Berlin Administrative Court, the heirs of a deceased civil servant do not have an unlimited claim to financial compensation for unused recreational leave.

The heirs in the present case were in principle entitled to financial compensation for the unused holiday, which had passed to the heirs. However, the claim was limited to the minimum of 20 days of leave for a five-day work week, as guaranteed under EU law. According to CJEU case law, Member States are not required to grant further paid leave entitlements and to provide for financial compensation in the event that such leave is not taken. Rather, the relevant Working Time Directive 2003/88/EC is limited to establishing minimum health and safety requirements.

In the present case, there was no basis for claiming remuneration for overtime worked. The overtime the employee had worked had not been ordered by the employer; moreover, the number of overtime hours worked had not reached an average of more than five hours per calendar month.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Minimum wage

As of 01 October 2022, a statutory minimum wage of 12 EUR per hour will apply in Germany. At the same time, the marginal earnings threshold for so-called mini-jobs will be increased to EUR 520 and linked to the development of the minimum wage. This was decided by the German Parliament on 03 June 2022; the *Bundesrat* gave its final approval to the law on 10 June 2022.

According to the CDU/CSU, the political intervention to set the minimum wage level without involvement of the Minimum Wage Commission to be wrong and has formulated this in a motion for a resolution which did not, however, achieve a majority.

Employer representatives also criticised the draft. They argued that although the work of the Minimum Wage Commission had been positively evaluated for many years, a certain wage level was now being imposed politically. This was a considerable interference in the autonomy of collective bargaining and in the Minimum Wage Commission’s consensual decisions.

Greece

Summary

A Supreme Court decision clarifies that the concept of bankruptcy and insolvency proceedings, which allows for the provisions on transfers of undertakings not to apply, shall be narrowly interpreted.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Transfer of undertaking

Greek Supreme Court (Areios Pagos), 317/2022, 24 February 2022

The judgement interprets the concept of both bankruptcy and insolvency proceedings.

In the present case, the provisions on transfers of undertakings did not apply (Article 6, Presidential Decree 178/2002). The Court emphasised that the exceptions from the scope of the Transfer of Undertakings Directive shall be narrowly interpreted.

This exception does not apply in case the business as a whole will be auctioned. In this event, the unity of the business is preserved. Therefore, the provisions on transfers of undertakings apply as well.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Collective bargaining

A new national interprofessional collective agreement was concluded on 30 June 2022. It will be valid until the end of June 2023.

Hungary

Summary

The Parliament has passed a new act that includes provisions on strikes in the public education sector.

1 National Legislation

1.1 Collective action

Parliament has passed Act 5/2022 on regulatory issues concerning the end of the COVID-19 state of emergency.

Article 14, which enacts the provisions of Government Decree No. 36/2022, requires teachers to provide care for children in their original groups between 7:00 and 16-18:00 (depending on school level). The law also provides for disciplinary measures in case of work refusal, referring to civil disobedience.

The law has practical implications on the possibility for teachers to strike. For more information on the developments of the law concerning strikes, see the June 2022 Flash Report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Iceland

Summary

(I) An amendment to the Act on Working Conditions introduces a derogation to the 11-hour rest period for workers providing long-term care services,

(II) A new act provides rules on the working time of seafarers,

(III) The Court of Appeal has decided a case concerning the unfair dismissal of an employee after she complained about harassment.

1 National Legislation

1.1 Working time

On 09 June 2022, an amendment was introduced to Act No. 46/1980 on working conditions, hygiene and safety at work. The new Article 53b of the Act states that in exceptional cases, the working hours of employees who provide services covered by the Act on Services for the Disabled with Long-Term Support Needs, No. 38/2018, may be arranged in such a way as to reduce the rest period provided for in Article 53 of the Act. That provision states that every 24 hours calculated from the start of the work day, employees shall receive at least 11 hours of continuous rest.

The provision lists certain conditions under which derogations are possible.

First, there must be an agreement between the municipality concerned and the relevant administrator on the working arrangements of employees based on the municipality's assessment which, among other things, shall state the significance of the service in question for the user. At least one of the following conditions must be present:

- In case a disruption of the service results in mental and/or physical struggles for the user, such as insecurity or anxiety (Article 53(1));
- In case of temporary changes in the service user's situation, such as a temporary trip away from home, resulting in a change in the person's need for services and thus necessitating a temporary rearrangement of the service provider's working hours, reducing the service provider's rest period (Article 53).

Secondly, employees must have adequate rest facilities and must be able to rest for a minimum of seven continuous hours during night working hours that fall within the service provider's working hours, and only a maximum of two breaks in the rest period are assumed during that period.

Third, a risk assessment in line with Article 65 of Act No. 46/1980 must have been made.

In case of derogation from the 11-hour rest period, it shall be assumed that the employee will be able to take the corresponding rest period as soon as possible as stipulated in Article 53.

In recent years, Parliament has passed temporary provisions, including derogations from the rest period of employees, and a permanent provision is thus a significant step.

1.2 Working time of seafarers

A new Act on Seafarers was passed on 15 June 2022. The Act is a transposition of Council Directive 1999/63/EC, Directive 1999/95/EC, Directive 2005/45/EC, Regulation 336/2006/EC, Directive 2008/106/EC, Directive 2009/13/EC, and Directive 2013/54/EU

concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006.

The Act includes *inter alia* a provision on working time in Article 21. It states that the limit for working time or rest periods shall either be:

- 14 hours of maximum working hours within a 24-hour period, and 72 hours every seven days; or
- a 10-hour minimum rest period every 24-hour period and 77 hours every seven days. Rest periods may not be divided into more than two periods and the other period shall last for a minimum of 6 hours and shall not exceed 14 hours between two rest periods.

Article 21(3) allows for derogations from this provision by collective agreement. Article 21(2) states that shift arrangements and the total manning of fishing vessels shall always be arranged so that the crew's working time and rest period is in line with the first paragraph. However, the first paragraph does not apply to the owner of a ship according to the ship register when he or she is legally registered as a skipper and is on board on his or her own.

Finally, paragraph 4 provides that a skipper may always require the crew to work the number of hours necessary to ensure the ship's safety, of all those on board, cargo and other resources on board the ship or to assist other ships or persons in danger at sea.

2 Court Rulings

2.1 Discriminatory dismissal

Court of Appeals, No. 681/2020, 16 June 2022

In the present case, an employee filed a lawsuit against her former employer following her dismissal and demanded that the employer's liability for damages be recognised due to unlawful termination. She relied in particular on the fact that her dismissal had been based on the fact that she had complained about the conduct of her superior, the managing director. The employer claimed, on the other hand, that the dismissal was rooted in the fact that the employee had not lived up to expectations.

The judgement of the Court of Appeals states that according to Article 27 of the then applicable Act No. 10/2008 on equal status and equal rights of women and men (now Article 20, Act No. 150/2020 on the equal status and equal rights of the sexes), the employer would not be allowed to dismiss an employee on the basis of such a complaint. According to Article 27(3), the employer should demonstrate that dismissal is not based on the employee's complaint if it is deemed probable that the provision has been violated.

From the evidence in the case, it could be deduced that the employer had had confidence in the employee for a long time, had increased her number of projects and responsibilities, and discussed a pay raise for her. However, the employee's complaint was treated as a communication problem and not as a complaint of gender-based harassment, despite the grounds that this was the case, as the evidence demonstrated that the employee and other women had complained about her superior's conduct many times before.

The company had not initiated the relevant process in accordance with its procedures on bullying, harassment or violence or followed the rules provided for in Regulation No. 1009/2015 on measures against bullying, sexual harassment, gender-based harassment and violence in the workplace.

Thus, there was no clear information about any action taken in response to the employee's complaint. With reference to Article 27(3) Act No. 10/2008, the Court determined that the employer had not successfully ruled out the likelihood that the

dismissal had been based on the complaint. Therefore, the Court decided that the employer was liable for damages the employee had suffered in financial as well as non-financial terms.

This Court ruling is significant as it strengthens dismissal protection on the grounds that an employee has complained about sexual harassment in the workplace, and emphasises the importance of following the guidelines established in Regulation No. 1009/2015.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

(I) Two decisions have been issued under the Regulations transposing the Transfer of Undertakings Directive 2001/23/EC, addressing whether there had been a transfer of an undertaking and whether a collective agreement continued after a transfer.

(II) The Court of Appeal has held that pizza delivery drivers were not employees but were self-employed.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Transfer of undertakings

Labour Court, No. TUD222*, 25 May 2022, Carroll v Young; No. ADJ-00033560, 01 June 2022, Reilly v Wedding List Solutions Ltd*

The Transfer of Undertakings Directive 2001/23/EC was transposed into Irish law by the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003). The implementation of the Directive has been relatively uncontroversial, generating comparatively little litigation. Two decisions, however, have recently been issued: *Carroll v Young* (TUD222) and *Reilly v Wedding List Solutions Ltd* (ADJ-00033560).

Carroll v Young concerned a claimant who had been employed in a post office in a rural town with a population of 1 069 until her employer (Ms Dunne) ceased trading on Friday 12 April 2019. The respondent opened a post office on Monday 15 April 2019, in a premise located 100 metres from Ms Dunne's premises and on the same street. As Ms Dunne took the view that the business was being transferred to the respondent, she did not provide the claimant with a redundancy payment; the respondent, however, did not share that view. All equipment required by the respondent was provided by the national postal company (An Post), albeit some of it—safes, franking machines, weighing scales—had been in use in Ms Dunne's premises. Many CJEU decisions were cited before the Labour Court including Case C-13/95, *Suzen*, Case C-173/96, *Hidalgo*, Case C-340/01, *Abler* and Case C-463/09, *CLECE*.

The Labour Court was satisfied that although customer records and other significant operational assets had not directly been transferred from Ms Dunne to the respondent, the respondent had equivalent access to those records through An Post's central database. In addition, the respondent was provided with several 'key operational assets' which had previously been used by Ms Dunne. In this regard, the decision in *Abler* was very relevant. The Labour Court did not agree with the submission that the decision in *CLECE* was authority for the proposition that there must be a transfer of both tangible and intangible assets to give rise to a transfer of an undertaking in an 'asset reliant' business context. In any event, the most significant intangible asset at play was the customer base. The respondent had access to the same pool of customers for postal services as Ms Dunne had had.

Accordingly, the Labour Court found that the business of providing postal services previously operated by Ms Dunne had transferred to the respondent and that the claimant was entitled to continuous employment with the respondent on no less favourable terms than she had enjoyed with Ms Dunne.

In *Reilly v Wedding List Solutions Ltd*, a 2003 collective agreement with the transferor provided for enhanced severance payments in the event of redundancy. The claimant transferred to the respondent in 2008 and was subsequently dismissed by reason of redundancy in 2020. Because she was only paid her statutory entitlements, she sought an order that the respondent observe the terms of the 2003 collective agreement. In granting the relief sought, the WRC adjudication officer noted that Article 3(3) of the Directive permitted the Member States to limit the period for observing collectively agreed terms and conditions. Ireland, however, had not availed of the option of placing a limit to the time for future observance of a collective agreement. Consequently, the complaint was upheld.

2.2 Employment status

Court of Appeal, [2022] IECA 124, 31 May 2022, Karshan (Midlands) Limited t/a Domino's Pizza v The Revenue Commissioners

The Court of Appeal has now delivered its decision as to whether a Tax Appeals Commissioner and the High Court were correct in ruling that Domino's pizza delivery drivers were employees. Each driver was required to provide their own delivery vehicle, but the company supplied fully branded company clothing. The contract recognised the drivers' right to make themselves available on only certain days/times of their own choosing and expressly did not warrant a minimum number of deliveries.

The majority of the Court (Costello and Haughton JJ.; Whelan J. dissenting) found that the contract neither required the company to provide work nor required the drivers to accept work if it were offered. As 'mutuality of obligation' did not exist, the drivers could not be regarded in law as 'employees'.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Italy

Summary

(I) The Italian Court of Cassation ruled that a teacher who had worked under fixed-term contracts of one year for over three years, has the right to compensation if the Ministry of Education did not carry out a competitive recruitment process.

(II) The Court ruled that Italian jurisdiction applies to an employment contract concluded with a foreign Embassy in Italy.

(III) The Court ruled that an employee is entitled to substitute allowance for holiday leave not taken during maternity leave.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Fixed-term work

Corte di Cassazione, No. 18698, 09 June 2022

In this decision, the Court stated that a religion teacher has the right to compensation if he/she has worked for over three years under annual contracts (automatically renewed), without the Ministry of Education having carried out a competitive recruitment process.

A Catholic religion teacher, after having worked continuously at the public school from 1993 to 2012 under successive annual employment contracts that were automatically renewed, had taken legal action against the Ministry of Education, obtaining in the first degree and on appeal recognition of the right to compensation for damage due to misuse of fixed-term contracts.

The Court of Cassation confirmed the decision, recalling the CJEU rulings in case C-494/16, *Santoro,* and case C-361/20, *YG and others*.

According to the Court, in the case of religion teachers, fixed-term contracts do not constitute an abuse of such contracts (as the law provides that 30 per cent of Catholic religion teachers must be hired under fixed-term contracts), but the Ministry of Education must carry out a competitive recruitment process every three years, giving teachers with a fixed-term contract the opportunity to be permanently employed.

In case of violation of this obligation after the third year of successive fixed-term contracts, the next fixed-term contract will be considered abusive and the teacher thus has the right to compensation for damage. The fixed-term contract cannot be converted into a permanent one since this remedy does not apply to the public sector.

2.2 Jurisdiction

Corte di Cassazione, No. 18801, 10 June 2022

In this ruling, the Court held that in an employment dispute between the employee of a foreign Embassy in Italy and the foreign State, which exclusively affects the remuneration aspects of the relationship, the jurisdiction clause contained in the employment contract between the parties is ineffective and the jurisdiction of the Italian court applies.

A Tunisian citizen, who had worked as a secretary at the Embassy of the United Arab Emirates in Italy from 1992 to 2015, sued the Embassy before the Court of Rome, requesting recognition of the performance of higher tasks and the payment of the wage difference, indemnity in lieu of notice and compensation for damage.

The Court of Cassation held that when the dispute exclusively concerns the economic profiles of the employment relationship, the limits to the derogation of the jurisdiction established in Article 21 of Regulation 2001/44/EC (now Regulation EU 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters) apply. This Regulation provides that the agreement on jurisdiction is only valid if it offers the worker the possibility of resorting to different judges, without however precluding the right to appeal to judges that would normally be competent.

2.3 Maternity leave

Corte di Cassazione, No. 19330, 15 June 2022

In the present case, the Court of Cassation held that an employee who resigns at the end of maternity leave is entitled to a substitute allowance for holiday leave not taken during that period.

The Court stated that although the relationship had ended on the basis of a voluntary choice of the employee, she would not have been able to take annual leave during her period of compulsory leave, and this makes the fact that the employee resigned irrelevant.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

The State Court held that the 2G regulation, adopted in December 2021 until February 2022, lacked sufficient legal basis and was therefore unconstitutional and illegal. The government consequently produced a report and motion with a draft law that aims to create the prerequisite for a specific legal basis to enable the adoption of any similar regulation in the future.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Measures to respond to the COVID-19 crisis

State Court of the Principality of Liechtenstein, StGH 2022/003, 10 May 2022

In its ruling of 10 May 2022, the State Court found that the 2G regulation in the Ordinance of 15 December 2021, which has already expired, lacked sufficient legal basis.

The 2G certificate obligation applied in Liechtenstein in the period between 18 December 2021 and 17 February 2022. During this period, access to restaurants, public events and facilities was only possible for people who could prove that they had either been vaccinat-ed against or had recovered from COVID-19 (see December 2021 Flash Report).

In its reasoning for its ruling, the State Court stated that it could not identify any convinc-ing arguments that the 2G regulation was not based on public interest or violated the prin-ciple of proportionality. These two criteria for encroachments on fundamental rights had thus been fulfilled. However, there was no sufficient legal basis for this. The Ordinance was therefore to a large extent unconstitutional and illegal.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Measures to respond to the COVID-19 crisis

In response to the State Court's ruling of 10 May 2022 (analysed above, Section 2.1), the government has adopted a report and motion for Parliament on the amendment of the Health Act. The draft law aims to create the prerequisite for the government to have a specific legal basis in the future—if necessary, i.e. if the epidemiological situation in Liech-tenstein and the region requires it—to restrict access to certain facilities, businesses and events to persons with proof of vaccination or recovery.

The next steps will be the consultation in Parliament and the adoption of the relevant legis-lative amendment. To date, it is not possible to project when the amendment will be passed.

Lithuania

Summary

The Labour Code has been widely amended to transpose the EU Directives on transparent and predictable working conditions, on work-life balance and on road transport mobile workers.

1 National Legislation

1.1 Transposition of EU Directives

The Lithuanian Parliament (*Seimas*), with Law No. XIV-1189 (not yet published), adopted a supplementary amendment to the Labour Code to amend nearly 30 provisions of the Code. Some of the provisions are of relatively little technical importance (amelioration of the text for the sake of unity and clarity), whereas some are related to the transposition of various EU directives, namely EU Directive 2019/1152 on transparent and predictable working conditions, EU Directive 2019/1158 on work-life balance, and EU Directive 2020/1057 on road transport of mobile workers. The amendments constitute a necessary adaptation of the Labour Code to the new EU standards, but also contain some reflections on realities of working life (e.g. work of foreigners, protection following a change in working conditions, prohibition of psychological harassment, etc.).

According to some of these amendments, information related to contracts of employment of an employee who is a foreigner must be provided in Lithuanian and another language which the employee understands.

Moreover, if a fixed-term employment contract is concluded for a period shorter than six months, the probation period must be proportional to the term of this contract (respectively shorter than three months).

Furthermore, there are additional aspects of the employment relationship which the employee must be informed of (in an employment contract or other document) prior to the commencement of work: the duration and conditions of the probation period; the procedure for the termination of the employment contract; the procedure for determining and payment of overtime and, if applicable, the procedure for adapting work schedules (shifts); the right to training services, if granted by the employer; the name of social insurance institutions that receive social insurance contributions related to labour relations and information about other social insurance-related protection measures provided by the employer, if the employer is responsible for them.

The amendments also provide that in case the employment contract is adapted at the employee's initiative and the change in the employment contract has a time limit, the employee shall return to work under the previous working conditions after the time limit has expired.

Moreover, a new employer's obligation to provide the employee with information when going on a business trip that lasts longer than 28 days has been introduced. Among other information, the employee will have to be informed in advance about the country(s) they will be visiting. In addition, if the employee is seconded to another EU or EEA country to temporarily work under a contract for the provision of services or the performance of work concluded by the employer with a client operating in another country, to work in a branch, representative office, group company or other workplace of the employer's legal entity or to work as a temporary employee , the documents handed to him/her before leaving for the assignment must additionally indicate:

- the salary he/she is entitled to according to the law of the country to which he/she is seconded;

- per diems and allowances to offset actual travel, accommodation and meal expenses related to the assignment, if applicable;
- a link to the host country's official national website containing information on posted workers.

In the area of work-life balance, the amendments provide that the employer must provide free time off to the employee if the employee's request is related to urgent family reasons in the event of illness or accident, where the employee must be directly involved. As previously, the employer and employee can agree on the transfer of such time to the next work day (shift), without violating the requirements of the maximum working time and minimum rest period.

Moreover, employees raising a child under the age of 12 are granted an additional day off every three months. This possibility did not exist before, but if this right is not used, no leave days are accumulated and the employee simply loses his/her right to the specified free time.

Psychological harassment has been defined for the first time. Such harassment refers to any unacceptable behaviour or threat thereof, regardless whether the unacceptable behaviour once or repeatedly aims to cause a physical, psychological, sexual or economic effect, whether this effect is caused or could be caused by the unacceptable behaviour, or whether such behaviour offends the dignity of a person or creates an intimidating, hostile, humiliating or offensive environment or (and) physical, property and (or) non-property damage has occurred or may occur.

It is also determined that the harassment covered by the above definition is prohibited not only in the workplace, when employees are under the employer's control, but also during breaks, during work-related trips, trips, trainings, events or social activities. Harassment is prohibited when traveling to and from work, in employer-provided accommodations or even when communicating with employees in electronic spaces. Accordingly, the employer has the obligation to initiate measures to eliminate harassment and violence, introduce procedures to report harassment and violence and organise trainings for employees about the dangers of violence and harassment and its prevention. An employer with an average of 50 or more employees must approve a violence and harassment prevention policy, and publish and implement it in the workplace.

Finally, these amendments introduce additional guarantees for employees with childcare responsibilities. Each parent (adoptive, guardian) taking leave to look after a child, at any time until the child turns 18 months or 24 months old, first has the right to use the two-month part of leave to look after a child, which cannot be transferred to anyone else.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

(I) Relief measures to respond to COVID-19 have been extended until 31 December 2022. Likewise, new measures have been adopted to adjust wages and protect employees from rising costs and inflation.

(II) The government has adopted two bills to implement the Work-Life Balance Directive EU 2019/1158.

(III) Two decisions were adopted on unfair dismissals and on the managerial status of employees.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

With Law of 30 June 2022 amending the amended law of 20 June 2020 on the first temporary derogation from certain provisions of labour law in relation to the state of crisis related to COVID-19, Bill 8004 was passed (see May 2022 Flash Report).

This law extends the measures due to expire in June 2022 until 31 December 2022, i.e. the immunisation of income received in the context of certain activities related to the fight against the pandemic, for persons receiving an early retirement benefit.

2 Court Rulings

2.1 Dismissal

CSJ, CAL-2021-00115, 19 May 2022

An employee was dismissed with one month's notice for economic and personal reasons (destruction of equipment). He requested, among other things, that his dismissal be declared unfair and that his former employer reimburse him for the illegal deductions made from his salary.

The Court of Appeal recalled that it is possible to combine a dismissal for economic reasons and for personal reasons (use of the conjunction 'or' in Article L.124-5 (2) of the Labour Code), whereas the Tribunal had held that the employer made an "*amalgam between two categories of grounds which would be incompatible*". The Court held that the dismissal was unfair due to the lack of precision in the letter of reasons.

The employee received compensation for non-material damages of EUR 2 500 and compensation for material damage equivalent to 10 months of salary. Although the Court recognised that there was no causal link between the employee's health problems and his dismissal, it considered that given his age (60 years old) his reintegration into the labour market would be difficult. The Court deducted the compensation for notice and sick pay from the 10 months.

Concerning the deductions from wages, the Court recalled that the employee is only liable if he or she commits a gross fault similar to fraud, gross negligence being assimilated to such a fault and that it is up to the employer to prove it. In the absence of a precise definition of the employee's fault, the Court declared that the deductions from wages were illegal and must be reimbursed to the employee.

2.2 Status of senior managers

CSJ, CAL-2020-00770, 19 May 2022

Following his dismissal for economic reasons, an employee sued his employer to pay him various amounts on the grounds that he was not a real senior manager (*cadre supérieur)*. The Court recalled that, in principle, it is up to the employer who invokes the status of senior manager of an employee to establish that the legal criteria are met by the employee. However, the Court held that "*when an employee expressly accepts the status of senior manager, it is up to him to establish, in the event of a dispute on his part, that he performs a function which does not meet the criteria laid down by law*".

The Court also recalled that the criteria for establishing whether an employee is a senior manager apply cumulatively, contrary to the analysis made by the Court of First Instance in the present case. In this respect,

> *"An employee is thus to be considered as having the status of a senior manager when he or she has, in particular, a salary that is significantly higher than that provided for by the collective agreement for other employees, real power of direction, a large degree of independence in the organisation of work and a large degree of freedom in terms of working hours, including the absence of constraints on working hours."*

It thus ruled that the Court's decision had to be adapted in that it had not examined the other criteria, given that the remuneration criterion had been met to find that the employee had the status of a senior manager. The Court noted that the employee had managerial authority within his department as 'head of desk'.

Concerning independence in the workplace, it specified that

> "*the existence of precise annual objectives imposed by the employer is not in itself decisive of the existence of independence in the organisation of an employee's work* - and that, similarly - *the existence of a relationship of subordination to a hierarchical superior is not contrary to the existence of a large degree of independence in the performance of work*".

The Court also found that there was flexibility in the working hours due to the existence of a flexible schedule with fixed and flexible attendance periods, as the employee had not established that he was subject to a time clock system.

It also held that the fact that the employer had given the employee the benefit of the notice period and the amount of severance pay provided for in Article 5.2 of the Agreement did not "*imply that this favour amounts to a change in the status of manager, or to recognition of the appellant's status as a contractual employee by his former employer*."

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Work-life balance

As announced in the May 2022 Flash Report, Bill No. 8016 has just been tabled to transpose the Directive on Work-life Balance for parents and carers. The aim of this bill is to transpose the entire Directive, with the exception of paternity leave (Article 4), which is the subject of a separate bill.

Luxembourg has opted for a minimal transposition of the Directive. First, the bill provides for the introduction of two new forms of extraordinary leave, namely leave for reasons of force majeure and carers' leave.

Secondly, it strengthens protection against dismissal and discrimination on the grounds of application for or use of these two leaves or any other type of extraordinary leave (including the leave schemes granted in case of death of relatives, relocation, marriage of a child).

Thirdly, only minor amendments are provided for the regulation of parental leave.

Finally, the bill regulates the right to flexible forms of work**,** including the possibility for workers to arrange their working arrangements, including through the use of teleworking, flexible working hours or reduced working hours for a 'reasonable time' of one year.

As regards paternity leave, Luxembourg had already previously increased the right to paternity leave from two to ten days, in line with the Work-life Balance Directive.

A new Bill No. 8017 aims to introduce further changes, both for employees under private law contracts and for civil servants. By referring to the Directive, which envisages 'second parents', the legislator wants to take same-sex couples into account if the national law of the employee allows the establishment of parenting of a child. This person must demonstrate that he or she is officially recognised as a second parent or co-parent. However, the parliamentary work points out that Luxembourg nationals in a same-sex couple do not yet have this possibility; the planned change therefore cannot benefit them.

The bill includes further procedural clarifications regarding the application for hospitality leave, the splitting of paternity and fostering leave, modalities to take the leave in case of premature birth, and other details.

Going beyond the requirements of the European text, the bill also intends to open the right to paternity leave to the self-employed.

4.2 Measures to protect workers' income

Tripartite talks took place in April and May 2022 between the government, trade unions and employers' organisations concerning the substantial increase in the inflation rate (see April 2022 and May 2022 Flash Reports).

On 29 June 2022, an Act was adopted, providing measures that aim to strike a delicate balance between the needs of companies just emerging from the health crisis and faced with a rise in materials costs, and maintaining the purchasing power of employees.

We recall that Luxembourg has a system of automatic adjustment of wages (as well as pensions and certain social benefits) to the cost of living index, in steps of 2.5 per cent. In other words, maintaining purchasing power is legally binding.

The initial draft included a mechanism for limiting indexation steps until 2024. The main private sector union (OGBL) refused to sign the agreement because it felt that this wage indexation mechanism was being undermined. The ensuing discussions led to amendments to the draft. It now provides only that the first instalment triggered after 01 April 2022 is made on 01 April 2023. The last adjustment was in fact made in April 2022.

Given the unpredictability of the current economic situation, the social partners will consult each other should further measures be necessary. Any new salary increase will be subject to a meeting of the Tripartite Coordination Committee (*Comité de coordination tripartite)* to discuss the modalities of the shift and compensation.

For the period during which the index is carried forward, a tax credit is planned, but with a ceiling. Officially, this tax credit is not directly linked to the index, since it is called

'energy tax credit' (*credit d'impôt énergie)* and therefore refers to the increase in energy prices; in fact, it was presented as a compensatory measure for the non-indexation of salaries. It is EUR 84 per month for the lowest incomes (< EUR 3 667 gross per month), then degressive until a monthly income of EUR 8 334, above which the deferral of the index is not compensated.

This tax credit will benefit not only employees, but also self-employed persons, pensioners and recipients of specific benefits (REVIS - minimum social subsidies), income for the severely disabled).

Family allowances are not affected by the carry-over of the index and will continue to be indexed normally.

The law includes a number of other measures, such as a rent freeze, increased financial support for studies, an extension of the rent subsidy as well as support for companies affected by energy price increases.

4.3 Moral harassment

As reported in the July 2021 Flash Report, Bill No. 7864 was deposited to address the issue of moral harassment at the workplace. The State Council (*Conseil d'Etat*) has now issued its opinion.

The Council first expresses its surprise that there was no consultation with the social partners before the draft law was published. It also points out that civil servants already benefit from a protective legal framework and expresses concerns on the coexistence of several definitions of moral harassment, which would clash with Article 10-bis of the Constitution (equal treatment) with regard to civil servants. Moreover, it observes that no reversal of the burden of proof is provided for in the draft.

The list of obligations for the employer should be reduced and clarified, including the obligation to consult all employees if there is no staff delegation. In particular, the draft requires the employer to take 'appropriate measures' to put an end to any act of moral harassment, an obligation which is accompanied by penal sanctions. In the Council's opinion, this obligation is too broad to satisfy the constitutional principle of legality of criminal offences. The Council also questions the added value of the new procedure before the labour inspectorate. Finally, as non-compliance with the injunctions given by the labour inspectorate may give rise to criminal and administrative sanctions, there is a risk of violation of the *ne bis in idem* principle.

In view of the large number of formal objections, it is to be expected that the bill will be substantially revised.

Netherlands

Summary

(I) A judicial decision held that an airline company cannot ask candidate pilots about their vaccination status.

(II) A decision of the Court of Appeal ruled on the abuse of successive fixed-term contracts.

(III) The Advocate-General at the Supreme Court advises that meal deliverers working for Deliveroo are indeed employees.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Vaccination status

Amsterdam District Court, ECLI:NL:RBAMS:2022:3029, 02 June 2022

Legal debates on COVID-related issues continue. On 02 June 2022, the Amsterdam District Court in preliminary proceedings ruled that KLM (national airline) is not allowed to ask candidate pilots (who are applying for a job) about their vaccination status (directly or indirectly) and to cease the hiring process in case the candidate is not vaccinated (nor willing to be vaccinated). KLM might have a legitimate interest in knowing the vaccination status of its pilots (having a workable schedule). However, the measure does not prevent prospective pilots from not being able to be vaccinated after entering service, for example, due to medical reasons or because the corona measures change and the pilot in question decides to forgo any new vaccinations. In addition, there are other less radical measures based on which the goal of a workable schedule can be achieved. For example, many pilots are willing to conduct PCR tests.

Therefore, the Court granted the claim brought forward by the trade union of pilots: asking for and demanding vaccination constitutes an unjustified infringement of the right to respect for privacy.

2.2 Fixed-term work

Arnhem-Leeuwarden Court of Appeals, ECLI:NL:GHARL:2022:5128, 20 June 2022

This case focused on the question whether the Dutch system of fixed-term contracts, which under certain circumstances can lead to a relatively long periods of employment based on fixed-term contracts, is contrary to the Fixed-term Work Directive 1999/70/EC.

The employee worked 7.5 years for the Wageningen University via various temporary work agencies and other intermediaries (seven contracts in total) and, subsequently, directly for Wageningen University on a contract for 14 months. Dutch law stipulates that after three successive contracts or after 36 months of successive contracts, a contract of indefinite duration is established (Article 7:668a DCC). Periods in which work is performed for employers that can each be considered others' successors with respect to the work carried out, are counted to calculate three contracts of 36 months in total. This is the implementation of the Fixed-term Work Directive.

In this case, it was not contested that the various employers' were each other's successors. However, the applicable collective labour agreement (collective labour

agreement for Dutch universities) stipulates that social partners may deviate from the principle of 'succession' (Article 7:668a (6) DCC). This deviation is thus in line with the Dutch legislation.

In first instance, the Court ruled that the provision in the collective labour agreement was not in line with the law given the parliamentary history of the provision that states that abuse of the provision is prohibited. The Court of Appeal ruled differently and considered that the possibility to deviate as stipulated in Article 7:668a (6) DCC is not limited by the legislator, not when it was introduced and not when labour legislation has been significantly amended in the past years. Therefore, the collective labour agreement is lawful.

The Court of Appeal acknowledged that the manner in which the collective labour agreement has implemented the option of deviation may conflict with the purpose of the Fixed-term Work Directive to prevent the abuse of successive fixed-term contracts. The Court of Appeal also took the employee's age into consideration and the fact that from 2012, she had been successively employed by various employers with the aim of preventing the right to an employment contract of indefinite duration from arising. However, according to the Court of Appeal, these circumstances do not justify the conclusion that universities' reliance on the collective labour agreement constitutes an abuse of rights or an act contrary to good employment practice, or that it is unacceptable according to standards of reasonableness and fairness. Determinative for such a judgement are the circumstances set out above, of which the most decisive is that the legislator has chosen to make unlimited deviations possible by means of a collective labour agreement.

2.3 Employment status

Dutch Supreme Court, ELCI:NL:PHR:2022:578, 17 June 2022

The Amsterdam Court of Appeals ruled on 16 February 2021 that meal deliverers who work for Deliveroo work on the basis of an employment contract. Deliveroo appealed that decision to the Supreme Court.

Before the Supreme Court issues a ruling, the Advocate-General has advised on the matter. In her 85-page recommendation, the Advocate-General concluded that the Court of Appeal's decision can be upheld, since the workers are to be considered as working under an employment contract. In short, she finds that there is no entrepreneurship and, also taking the way the work is organised into account, that there is subordination and thus an employment contract.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Measures to protect workers' income

The Dutch minimum wage will be increased by an additional amount (on top of regular increases provided for in Article 14 of the Minimum Wages and Minimum Holiday Allowance Act) for the first time since its introduction in 1969. This extra increase will take place in three steps. In 2023, wages will increase by 2.5 per cent to EUR 11.94 for a 36-hour work week. Ultimately, the minimum wage will be increased by 7.5 per cent in 2025. By then, the minimum wage is expected to be EUR 13.18. The amount of social benefits linked to the minimum wage will also be increased.

The reasons behind the additional increase lie in the current high inflation and the government's belief that working more should be worthwhile.

The adjustment of the minimum wage will be implemented by Decree (AMvB) instead of amending the Minimum Wages and Minimum Holiday Allowance Act itself. This can be realised more quickly than an amendment to the Act itself and also means that all benefits linked to the minimum wage will increase automatically.

4.2 Promotion of employment

New measures have been introduced to help unemployed persons find a job. Those who have become unemployed during the COVID-19 pandemic could already ask for assistance from the Regional Mobility Teams (RMTs). Starting 01 June 2022, the RMTs are also available to certain categories of people that became unemployed before the pandemic started (namely people that are entitled to a social minimum benefit, or to no benefits at all).

RMTs are a partnership between municipalities, the UWV, education unions and social partners. Their aim is to prevent unemployment or to keep it as short as possible by offering services that are necessary for the transition to new work. According to the Minister of Social Affairs and Employment, the importance of helping these people find a job is even more urgent considering the staff shortages in the current Dutch labour market.

Norway

Summary

A new law regulates the employment relationship of domestic workers.

1 National Legislation

1.1 Domestic workers

New regulations on work performed in a private employer's home and household have been issued (FOR-2022-06-03-969).

The new regulations are based, among others, on the ILO Domestic Workers Convention, No. 189 (2011), which was ratified by Norway in 2021.

The new regulations contain provisions concerning most aspects of the employment relationship, for example, working time, working environment, anti-discrimination, payment and termination in addition to rules on temporary employment. The Norwegian Labour Inspection Authority has been given authority to supervise these rules.

The new regulations entered into force on 01 July 2022.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Strike in the civil aviation sector

The Norwegian government has decided to intervene in an industrial conflict in the aviation sector and has informed the parties that the dispute shall be resolved by compulsory arbitration.

The Norwegian Aircraft Engineers Organisation ('*Norsk Flytekniker Organisasjon'*, NFO), which includes about 500 aircraft engineers, went on strike after negotiations with the Confederation of Norwegian Enterprise (NHO) and the Federation of Norwegian Aviation Industries (NHO Luftfart) on a new collective agreement did not succeed. The strike at the outset involved 31 aircraft engineers and was later expanded by an additional 75.

NHO and NHO Luftfart responded with a lockout of all the aircraft engineers organised in NFO. The lockout also included aircraft engineers in an air ambulance company. The government intervened two days after the lockout was implemented and justified its decision because the industrial conflict represented a danger to life and health, in particular due to reduced capacity in air ambulance services.

Poland

Summary

A new draft law aims at introducing numerous changes to the Labour Code concerning work-life balance.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Work-life balance

On 06 June 2022, the Draft Act amending the Labour Code and certain other acts of 03 June 2022 (bill number: UC118) was published on the website of the Government Legislation Centre.

The draft is intended to introduce numerous changes to the Labour Code concerning work-life balance and includes provisions on more predictable or safer working conditions, flexible working arrangements, breaks, training and working hours, the necessity to have the employee consent to overtime, nightwork and to work according to an intermittent working time system. It also provides rules on leave from work due to force majeure, care leave, parental leave and paternity leave, amends the provisions on the protection of the employment relationship of employees during pregnancy, maternity leave, parental leave and in case of request for flexible work arrangements.

The new draft also grants certain rights to employees employed under fixed-term employment contracts, introducing the requirement to provide grounds when terminating fixed-term employment contracts as well as to consult the intention of termination with trade unions.

Legislative work is still in progress and remains at an early stage. The draft law has not yet been submitted to the Sejm.

Portugal

Summary

(I) The Portuguese Whistleblowing Law, published on 20 December 2021, entered into force on 18 June 2022.

(II) A decision clarifies the concept of remuneration for the calculation of holiday pay as well as holiday and Christmas allowances.

(III) A ruling holds that the employment contract of an employee who was unlawfully dismissed by the transferor must be considered as having existed on the date of the transfer, and that the employee has thus been transferred to the transferee of the economic unit.

1 National Legislation

1.1 Protection of whistleblowers

On 18 June 2022, Law No. 93/2021, of 20 December, which establishes the general regime for the protection of whistleblowers and transposes Directive (EU) No. 2019/1937, on the protection of persons who report beaches of Union law, into national law, entered into force (for further details, see the December 2021 Flash Report).

As a result, after 18 June 2022, companies and public entities, in particular those employing 50 or more employees, are required to create and implement internal channels for reporting breaches, as well as to implement specific measures of protection of whistleblowers.

2 Court Rulings

2.1 Annual leave

Lisbon Court of Appeal, Process No. 1208/21.0T8PDL.L1-4, 11 May 2022

In this ruling, the Lisbon Court of Appeal reviewed whether the so-called 'prevention allowance' and 'driving allowance' should be qualified as 'remuneration' for the purposes of Articles 258 (1) and (2) of the Portuguese Labour Code, and whether such allowances must integrate holiday pay as well as the holiday and Christmas allowances, calculated in accordance with Articles 263 and 264 of the Portuguese Labour Code.

In the present case, the purpose of the 'prevention allowance' was to compensate employees so they are available to perform work from home, and payment thereof does not presuppose the performance of any task. The 'driving allowance' is intended to compensate employees for the arduous and hazardous nature of driving a motor vehicle, considering that driving such a vehicle is not one of their professional duties.

The Court distinguished between remuneration in broad terms (*remuneração*) and remuneration in a strict sense (*retribuição*), the latter corresponding to the legal concept of 'remuneration' stipulated in Article 258 of the Portuguese Labour Code. According to this concept, 'remuneration' encompasses the set of pecuniary and non-pecuniary values which, under the terms of the contract based on the rules that regulate it or its usages, the employer is required to pay to the employee on a regular and periodic basis for the performance of his/her work. Only if a payment is made for the work provided can it qualify as 'remuneration' for the purposes of the protective regime of remuneration foreseen in Portuguese labour law.

Under Portuguese law, benefits granted by the employer that do not arise from the work performed, but are based on other objectives or different grounds are excluded from the scope of remuneration. According to the Court, the 'prevention allowance' does not

compensate the work performed but is intended to mitigate the inconvenience to the employee's personal life resulting from 'being on call', not related to the employee's availability during regular working hours. On the other hand, the aim of the 'driving allowance' is to compensate the employee for the arduousness and risk involved in driving motor vehicles, considering that this activity is not part of his/her daily duties.

In the present case, the Court ruled that the benefits (prevention and driving allowances) have a specific cause that differs from consideration of the work performed and, therefore, do not have the legal nature of remuneration. As a result, the respective average amounts cannot be integrated in holiday pay, nor in the holiday and Christmas allowance. In particular regarding holiday pay, Article 264(1) of the Portuguese Labour Code envisages that:

> *"the remuneration of holiday leave corresponds to that which the employee would receive if he [or she] were in effective service".*

For the purpose of calculating holiday pay, only the amounts paid by the employer which due to their nature are considered remuneration.

The position followed by the Court in this ruling regarding the qualification of 'prevention allowance' and 'driving allowance' is inconsistent, and there are rulings by Portuguese courts that arrive at different conclusions, considering that this type of benefit is of a retributive nature. For instance, see the rulings of the Oporto Appeal Court of 16 December 2015 (Process No. 364/14.9TTOAZ.P1) and of 15 February 2016 (Process No. 1116/14.1T8PNF.P1), as well as the ruling of the Guimarães Appeal Court of 02 February 2017 (Process No. 4156/15.0T8BRG.G1).

2.2 Transfer of undertakings

Guimarães Court of Appeal, Process no. 544/14.7T8VCT.G2, 15 June 2022

In this ruling, the Guimarães Court of Appeal stated that the employment contracts that had been transferred to the transferee of the economic unit under the transfers of undertakings regulations established in Articles 285 *ff.* of the Portuguese Labour Code—which transposed the Transfer of Undertakings Directive 2001/23/EC into national law—are only those that existed on the date of transfer.

Nevertheless, considering that a declaration of unlawful dismissal has the consequence of reinstatement of the employee who was dismissed as though the dismissal had never occurred, this Court ruled that the employment contract of an employee who was unlawfully dismissed by the transferor must be considered to have existed on the date of transfer, being transferred to the transferee as a result of the transfer of the economic unit.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Proposed amendments to labour legislation

On 06 June 2022, the government approved the Proposal of Law No. 15/XV/1, which includes several changes to the labour legislation introduced within the scope of the 'Decent Work Agenda'.

This law proposal encompasses several labour law amendments regarding the misclassification of independent contractors, probation period, digital platform workers,

temporary work, term employment contracts, collective bargaining agreements and reinforcement of the Employment Authority's powers.

This law proposal will be discussed and voted on in the Portuguese Parliament.

Romania

Summary

A system of work vouchers for the formalisation of domestic work has been adopted and will enter into force on 01 January 2024.

1 National Legislation

1.1 Domestic workers

Law No. 111/2022 on the regulation of activities of domestic service providers (domestic workers, published in the official Gazette of Romania No. 402 of 27 April 2022) aims to regulate an area that has so far predominantly remained untaxed. The law defines domestic activity as "*occasional, unskilled activities carried out by a domestic service provider in connection with the household(s) of a family or of a single person, as a domestic beneficiary*".

The domestic worker and the beneficiary shall verbally agree on the work and the amount to be paid. The law provides for the possibility of granting vouchers for domestic activities as payment for work carried out by domestic workers. Domestic activity vouchers that can be used to pay workers will only be subject to income tax and pension contributions. The law also provides for the possibility of the employer to give employees—in addition to their salary—domestic activity vouchers in the form of a bonus. The number of domestic activity vouchers and their frequency shall be decided by the employer together with the trade union organisation or with the employee representatives (additional details are available here).

In June 2022, the implementing rules for the provisions of Law No. 111/2022 (methodological norms for applying the provisions of Law No. 111/2022, published in the official Gazette of Romania No. 631 of 27 June 2022) were adopted. The rules introduced domestic activity vouchers, determines how the beneficiary can use them, as well as how they can be redeemed for money. According to the regulation adopted by the government, this type of vouchers can be purchased both electronically (by creating an online account on the electronic platform for recording domestic activities), and on paper.

The law and its implementing rules will enter into force on 01 January 2024. They were adopted in the context of the National Recovery and Resilience Plan, which provides, inter alia, the operationalisation of a system of work vouchers for the formalisation of domestic work.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

The National Council adopted an Act which simplifies employment and reduces the employer's wage costs in connection with the employment of workers performing seasonal work in the agricultural and the tourism sectors.

1 National Legislation

1.1 Promotion of employment

On 15 June 2022, the National Council of the Slovak Republic (Parliament) adopted an Act amending the Labour Code (Act No. 311/2001 Coll. as amended). Within the scope of this Act, the following Acts were amended:

- Act No. 461/2003 Coll. on social insurance, as amended (Part II of the new Act);
- Act No. 462/2003 Coll. on income compensation in case of temporary incapacity for work of an employee, as amended (Part III of the adopted Act)).

The main aim of the approved Act is to simplify employment and reduce the employer's wage costs in connection with the employment of workers performing defined seasonal work in the agricultural sector and in the tourism sector. The intention is to solve the problematic situation of farmers and service providers in the tourism industry, which are facing a sudden lack of workers during a period of increased labour needs due to the seasonal nature of some types of work.

Part Nine of the Labour Code regulates 'Agreements on work performed outside the employment relationship' (Articles 223 – 228a). These agreements are:

- the agreement on performance of work (Article 226);
- the agreement on temporary work of students (Articles 227- 228);
- the agreement on work activity (Article 228a).

The amendment of the Labour Code concerns the agreement on work activity (Article 228a). According to the new text of the Article 228a(1),

> *"On the basis of an agreement on work activity, work activity can be performed to the maximum extent of*
>
> *a) 10 hours per week or*
> b) *520 hours in a calendar year, if it concerns the performance of seasonal work according to Annex No. 1b; for these purposes, the agreement on work activity is referred to as the agreement on work activity for the performance of seasonal work."*

According to the new Article 228a(2),

> *"An agreement on work activity for the performance of seasonal work*
>
> *a) the scope of work activity also includes work performed by an employee for the same employer on the basis of another agreement on work activity for the performance of seasonal work,*
>
> *b) the average weekly working time for the duration of the agreement, but no more than four months, may not exceed 40 hours."*

In Article 228a(4), the first sentence reads:

> *"Agreement on work activity may be concluded for a maximum of 12 months, except an agreement on work activity for the performance of seasonal work, which may be concluded for a maximum of 8 months."*

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

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Collective bargaining

Several annexes and/or amendments to sectoral collective agreements have been published (adjusting wages and other payments):

- Annex to the Collective Agreement for the Hospitality and Tourism Industries was published (‘*Aneks h Kolektivni pogodbi dejavnosti gostinstva in turizma Slovenije*’, OJ RS No. 87/22, 24 June 2022, p. 6456);
- Amendments to the Collective Agreement for the Construction Industry (‘*Spremembe in dopolnitve Kolektivne pogodbe gradbenih dejavnosti’,* OJ RS No. 87/22, 24 June 2022, p. 6456);
- Annex III to the Collective Agreement for the Slovenian Electricity Industry (‘*Aneks št. 3 h Kolektivni pogodbi elektrogospodarstva Slovenije’,* OJ RS No 79/22, 03 June 2022, p. 5772);
- Annex I to the Collective Agreement for the Slovenian Coal Mining Industry (‘*Aneks št. 1 h Kolektivni pogodbi premogovništva Slovenije’,* OJ RS No 79/22, 03 June 2022, p. 5772);
- Annex No. 5 to the Collective Agreement for Slovenian Metal Industry (‘*Dodatek št. 5 h Kolektivni pogodbi za kovinsko industrijo Slovenije’,* OJ RS No 79/22, 3.6.2022, p. 5773).

Spain

Summary

(I) The measures introduced to address the economic consequences of the war in Ukraine, including the limitation of dismissal, have been extended until the end of 2022.

(II) Spain has ratified three international conventions concerning home working, violence and harassment at work, and work in the international road transport sector.

(III) A decision of the Supreme Court clarifies the minimum duration of rest periods can be reduced in case of shift work.

1 National Legislation

1.1 Measures to respond to the Ukrainian war

The current situation in Ukraine has led to a general increase in prices and some sectors of production are struggling (see March 2022 Flash Report).

The government has approved a package of measures, including financial assistance. The undertakings that can benefit from assistance cannot terminate contracts on objective grounds linked to the impact of the invasion of Ukraine. The deadline for this limitation was initially set to 30 June 2022, but has been extended until 31 December 2022.

1.2 Ratification of international treaties

In June 2022, Spain ratified three different international instruments:

- The ILO Home Work Convention, 1996 (No. 177);
- The ILO Violence and Harassment Convention in the world of work, 2019 (No. 190);
- The European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (*AETR*), 1970.

2 Court Rulings

2.1 Working time

Supreme Court, No. 523/2022, 07 June 2022

In this decision, the Supreme Court determined that the minimum rest period between the end of one working day and the beginning of the next could fall below the statutory minimum of 12 hours in case of shift work, provided that this reduction is compensated by an equivalent rest period on the following days.

In the present case, the undertaking changed the rules on working time concerning shifts. As a result, the daily rest period of some workers was occasionally reduced from 12 to 8 hours, but they have the right to a 16-hour rest period during their next daily rest. The Supreme Court deemed that this 4-hour reduction was adequately compensated according to Spain's relevant provisions concerning shift work.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Unemployment

The number of unemployed decreased again in May 2022 (99 512). The total number of unemployed persons (2 922 911) is currently below three million for the first time since 2008.

Sweden

Summary

(I) The Employment Protection Act has been modified, introducing changes concerning the regulation of fixed-term work, fairness of dismissal and exemptions of selection for redundancy.

(II) The Swedish Labour Court has issued an interim decision on the solidarity action by the Dockworkers' Union, who refused to unload Russian ships in Swedish harbours in solidarity with workers in Ukraine.

(III) The Labour Court has ruled in a case on reasonable accommodation in relation to disability discrimination.

1 National Legislation

1.1 Labour Law Reform

Following a long legislative iter, the Swedish Parliament has accepted a proposal to amend the Employment Protection Act. Apart from some changes on minor, almost technical issues, the main new features are the following:

- The possibility of concluding ordinary fixed-term employment contracts is limited to two years and the updated special fixed-term contract for a maximum of one year. However, the provisions on fixed-term contracts can be modified, also *in pejus,* by collective agreement. The special fixed-term contract can also be combined with substitute employment up to a maximum of two years (Section 5 a);
- The provision on fairness of dismissal (*saklig grund*) has been slightly modified *(sakliga skäl*) and made semi-dispositive by collective bargaining between the employers' federations and the major central union federations (Section 7);
- New provisions on selection criteria and notice periods for permanently reduced working hours (and pay) have been introduced (Section 7 a and 7 b).
- The previous exemption of two key employees from redundancy selection, which only applied to small enterprises (with less than ten employees), has been expanded to three key employees, and is now applicable to all enterprises (Section 22). The statutory selection criteria, namely last in-first out, still applies, and can still be modified by collective agreement, also *in pejus*.
- The previous possibility for employees to maintain their employment contract during the entire litigation process in disputes on unfair dismissal has been replaced (Section 34). Previously, employers had to pay the employee's wages and social contributions until the final settlement of the dispute and were unable to recoup these expenses if the final court decision did not make a finding of unfair dismissal.

The updated provisions will enter into force on 30 June 2022 and will apply from 01 October 2022. This unusual procedure offers some time for the industrial partners to renegotiate and adjust the multiple collective agreements in the field.

2 Court Rulings

2.1 Collective action

Labour Court, AD 2022 No. 33, 03 June 2022

The Swedish Labour Court issued an interim decision on international solidarity actions, or sympathy strikes, related to the Russian invasion of Ukraine.

Since the invasion of Ukraine earlier this year, the Swedish Dockworkers Union has taken industrial action to support Ukraine by refusing to load and unload Russian ships. As the trade union had given notice on a renewed industrial action to support Ukraine in May, the trade union called on the Swedish Labour Court to declare the industrial action lawful in an interim decision. As a collective agreement has been concluded between the employer and the Swedish Dockworkers Union—and consequently, a strong mutual peace obligation exists—industrial actions can only be taken in extraordinary situations. One such extraordinary situation is a solidarity action. These are lawful even though the parties to the collective agreement are bound by a collective agreement if the primary action is lawful, and the solidarity action is limited in time. This also applies when the solidarity action is taken to support someone in another country. In such a situation, the Swedish substantive law assessment depends on the content of foreign law, even if both parties are Swedish. Another exception are political strikes that trade unions may take to demonstrate a political opinion if it is limited to a short period of time.

In the present case, the trade union argued that the planned industrial action was an action of solidarity to support Ukrainian and Belarusian trade unions in their industrial actions. According to Swedish labour law, the exception for solidarity or sympathy actions is also applicable to international situations. The employer objected and stated that there were no lawful primary industrial actions in Ukraine or Belarus. As the Swedish substantive law assessment in this regard is dependent on the content of foreign law, the Labour Court pointed out that the parties had not presented proof of the content of foreign law.

According to the Swedish procedural code, foreign law is both a matter of fact and a matter of law. It is not subject to the principle of *iura novit curia,* but the court may use the knowledge it has or research the content of foreign law on its own motion. After having declared that it was not a solidarity action, the Labour Court held that the planned industrial action was not a lawful political industrial action as the intended time of three weeks was too long and would have been a disproportionate limitation to the employer's right to conduct a business.

2.2 Discriminatory dismissal

Labour Court, AD 2022 No. 34, 08 June 2022

The Labour Court ruled in a case of discrimination on the ground of disability.

The employee, who suffers from multiple sclerosis, had been dismissed from an administrative position with the police department, and sued the employer for unfair dismissal.

The Labour Court concluded that the employer had met the requirements to re-arrange the work and to reasonably accommodate accessibility to the workplace, but that despite these efforts, the employee was unable to perform any meaningful work for the employer. Thus, the Court held that the dismissal was fair and not in violation of the Discrimination Act.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Strike in the civil aviation sector

Despite a very grave financial situation for the company, the pilots of the Danish, Norwegian and Swedish flag carrier, SAS, have called for a strike as of 29 June 2022, affecting almost half of the airline's operations.

Intense negotiations and mediation are underway. SAS has suffered massive financial losses over the last several years and the Swedish government, which along with the Danish government, is the major shareholder, and has indicated that Sweden will not support any further rounds of financing for the troubled company.

United Kingdom

Summary

(I) In June 2022, the government published two bills (the Northern Ireland Protocol Bill and Bill of Rights Bill), which are likely to have significant implications on UK-EU relations.

(II) The government announced its willingness to amend the regulation of agency work as to allow use of agency workers to replace strikers.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Brexit

On 13 June 2022, the government published the Northern Ireland Protocol Bill. While this is not directly relevant to employment law, the Bill has the potential of having major implications on the UK-Europe relationship.

As the House of Commons library's helpful summary states, the legislation empowers ministers to disapply the Protocol and relevant parts of the EU-UK Withdrawal Agreement in domestic law, as well as to introduce new domestic laws in place of what is set out in the Protocol.

Ministers can do this for a wide range of purposes including safeguarding 'social or economic stability in Northern Ireland', 'the territorial or constitutional integrity of the United Kingdom', the 'functioning of the Belfast Agreement', and various other purposes including health, welfare and environmental interests.

The only parts of the Protocol that will be protected in their current form are Articles 2 (individual rights) [so the equality provisions will continue to apply in the NI], 3 (the Common Travel Area) and 11 (North-South co-operation).

There are five specific areas in which the Bill empowers ministers to change the application of the Protocol:

- The movement of goods: removing checks and paperwork on so called 'green lane' goods. These are goods moving from Great Britain (GB) to Northern Ireland (NI) that are destined to stay in NI and are not at risk of moving into Ireland/the EU;
- The regulation of goods: creating a new dual regulatory system where NI companies can choose to apply the EU or the UK's regulatory regime for goods;
- VAT and excise: allowing changes to VAT and excise rates in GB to be applied to NI as well (at present, the EU's VAT rules apply in NI);

- The governance of the Protocol: removing the jurisdiction of the Court of Justice of the EU (CJEU), which currently has a role in enforcing EU rules and settling disputes over the Protocol;
- State aid/subsidy control: bringing Northern Ireland fully under the UK's new subsidy control regime. It currently follows the EU's state aid regime.

The government justifies the need for the Bill on the basis of Article 25 of the International Law Commission's 2001 Articles on State Responsibility:

> *"It is the Government's assessment that the legislation is currently the only way to provide the means to alleviate the socio-political conditions, while continuing to support the Protocol's objectives, including supporting North-South trade and cooperation, and the interests of both the EU and the UK. It is the Government's assessment that these measures will alleviate the imbalance and socio-political tensions without causing further issues elsewhere in the Northern Ireland community, including by ensuring that East-West connections are restored, without diminishing existing North-South connections. It is also assessed that the legislation will not seriously impair an essential interest of the state or states towards which the obligations exist, or of the international community as a whole. Nor do the relevant international obligations contained in the Withdrawal Agreement and/or the Protocol exclude the possibility of invoking necessity. Further, the UK has not contributed to the situation of necessity relied upon. The UK exercised its sovereign choice to leave the EU single market and customs union and the peril that has emerged was not inherent in the Protocol's provisions."*

It has been held that, under the current circumstances, the justification does not appear to be supported by facts (more information and comments about it are available here and here) and the Commission itself has rejected the justification. Many commentators argue that this Bill therefore breaches the UK's international obligations under the Treaty.

The Bill has now entered the committee stage. It is expected to pass the Commons but it will have difficulty in the House of Lords. Ultimately, the House of Commons can insist that the Bill becomes an Act by using a Parliament Act after one year. The UK government still insists it would prefer to reach a negotiated solution over the Northern Ireland Protocol with the EU.

4.2 Human rights

On 22 June 2022, the government published the Bill of Right Bill (BRB). While this is not directly relevant to employment law, the Bill has the potential of having major implications on the UK-Europe relationship.

The British Bill of Rights aims to repeal the Human Rights Act 1998, which implemented the European Convention on Human Rights into UK law, and replaces it with a text which reduces the impact of the Convention on the UK in a number of ways. A fuller analysis can be found here. The most significant changes are:

- Repealing Section 3 on interpretative obligation: at present, section 3 requires courts to interpret domestic legislation in compliance with the Convention rights to the extent possible. As Elliott notes *"This has enabled UK courts to confer a high degree of protection on human rights through the medium of interpretation: declarations of incompatibility under section 4 have remained relatively rare, thanks to the potent interpretive powers given to domestic courts by section 3";*
- Repealing Section 2 HRA, which requires UK courts to take account of ECtHR case law in cases concerning Convention rights. In its place, Clause 3 has been introduced, which states that the UK Supreme Court is the *"ultimate judicial authority on questions arising under domestic law in connection with the*

Convention rights". As Elliott notes 'that the UK Supreme Court is the 'ultimate judicial authority' [is all well and good] when it comes to the interpretation of Convention rights as a matter of domestic law — but it cannot change the fact that, as a matter of *international* law, the ECtHR is the ultimate judicial authority on such issues, and will continue to determine the scope of the UK's binding treaty obligations.

- Limiting proportionality review: Clause 7 requires courts, when deciding 'incompatibility questions', to treat Parliament, by having enacted the relevant legislation, has having 'decided' that the Act strikes an appropriate balance between the relevant competing factors. It also requires courts to *"give the greatest possible weight to the principle that, in a Parliamentary democracy, decisions about how such a balance should be struck are properly made by Parliament".* Again, as Elliott points out *"This appears to be a statutory attempt to draw the teeth from the proportionality test"*.
- Test for proceeding: the Bill also imposes a higher threshold for victims of alleged breaches of Convention rights in terms of permission for their claim to proceed, namely that they have suffered a 'significant disadvantage'.

4.3 Retained EU law

The UK government's desire to speed up the process of the removal of retained EU law (REUL) was reported in the May 2022 Flash Report.

The Brexit Freedoms Bill has not yet been adopted, but it will have a significant impact on employment law. For now, the government has published a dashboard of retained EU law (REUL), which tracks the status of REUL, and lists the legislation by department and policy area. As the government explains:

> *"In September 2021, Lord Frost announced the review into the substance of retained EU law (REUL) to determine which departments, policy areas and sectors of the economy contain the most REUL.*
>
> *The Rt Hon Jacob Rees-Mogg, the Minister for Brexit Opportunities and Government Efficiency, has published the outcome of this review, which is an authoritative catalogue of REUL. The Minister invites the public to view this catalogue so that the public is aware of where EU-derived legislation sits on the statute book and is able to scrutinise it.*
>
> *Now that we have taken back control of our statute book, we will work to update it by amending, repealing or replacing REUL that is no longer fit for the UK. This will allow us to create a new pro-growth, high standards regulatory framework that gives businesses the confidence to innovate, invest and create jobs, transforming the UK into the best regulated economy in the world.*
>
> *In terms of next steps, we will bring forward the Brexit Freedoms Bill, as announced in the Queen's Speech, to make it easier to amend, repeal or replace REUL to deliver the UK's regulatory, economic and environmental priorities."*

4.4 Temporary agency work

The UK government is anticipating considerable strike action in coming months. Following a strike called by the RMT (Rail, Maritime and transport Union) in the week of 20 June 2022, the government has decided that it will change the current law, which does not allow temporary agency workers to be used to replace strikers. According to the government:

> *"Under current trade union laws employment businesses are restricted from supplying temporary agency workers to fill duties by employees who are taking*

part in strikes. This can have a disproportionate impact, including on important public services, causing severe disruption to the UK economy and society – from preventing people from getting to work to creating challenges for how businesses manage their workforce.

Today's legislation, repealing these burdensome legal restrictions, will give businesses impacted by strike action the freedom to tap into the services of employment businesses who can provide skilled, temporary agency staff at short notice to temporarily cover essential roles for the duration of the strike.

Removing these regulations will give employers more flexibility but businesses will still need to comply with broader health and safety rules that keep both employees and the public safe. It would be their responsibility to hire cover workers with the necessary skills and/or qualifications to meet those obligations.

It would also help mitigate against the impact of future strikes, such as those seen on our railways this week, by allowing trained, temporary workers to carry out crucial roles to keep trains moving. For instance, skilled temporary workers would be able to fill vacant positions such as train dispatchers, who perform vital tasks such as giving train drivers the signal they are safe to proceed and making sure train doors aren't obstructed.

The change in law [not yet published], which will apply across all sectors, is designed to minimise the negative and unfair impact of strikes on the British public by ensuring that businesses and services can continue operating. For example, strikes in public services such as education can often mean parents have to stay at home with their children rather than go to work, or rail sector strikes stopping commuters getting to work or to other businesses."

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