Flash Reports on Labour Law July 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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Table of Contents

Executive Summary

National level developments

In July 2022, all countries 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 **Portugal**, the state of alert due to the COVID-19 crisis was renewed once again and extended until 31 August 2022. In **Austria**, by contrast, the obligation to quarantine for individuals who test positive for COVID-19 was replaced with the obligation to wear an FPP-2 mask at the workplace.

A judicial decision on measures to prevent the spread of COVID-19 was issued in **France**, where the Court of Cassation ruled on organisational difficulties and compulsorily paid holidays in the context of the COVID-19 pandemic, stating that purely financial difficulties cannot justify an application of the extraordinary COVID-19 rules.

Transposition of EU law

In the area of posting of workers, Directive (EU) 2020/1057, which lays down specific rules for posting drivers in the road transport sector, was transposed into national law in **Austria**, **Belgium** and **Ireland**, whereas a draft law to transpose the Directive was published in the **Netherlands**.

In **Latvia**, labour legislation was amended to transpose the Enforcement Directive 2014/67/EU on the posting of workers. In **Liechtenstein**, the legislative process to transpose Directive (EU) 2018/957 on the posting of workers within the framework of the provision of services is progressing.

The Directive (EU) 2019/1158 on work-life balance for parents and carers has been transposed in **Malta** and **Latvia**. The adoption of measures to transpose the Directive is currently under discussion in **Croatia,** the **Czech Republic, Poland** and **Portugal**.

Likewise, the Directive (EU) 2019/1152 on Transparent and Predictable Working Conditions was transposed in **Latvia** and **Finland**. The transposition of the same Directive is currently under discussion in the **Czech Republic, Poland,** and **Portugal**.

Finally, legislation was enacted to implement Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law in **Ireland** and **Germany**.

Working time and annual leave

In **Austria**, the Supreme Court confirmed its line of jurisprudence according to which no allowance is payable in lieu of the quota of paid annual leave that exceeds the four-week minimum guaranteed by the Working Time Directive, in line with the CJEU's ruling in case C-233/20, *job-medium*.

Latvia, a ruling states the applicability of Directive 2003/88/EC to certain activities of national military forces, referring to the CJEU's decision in case C-147/17, *Sindicatul Familia Constanta*.

In **Ireland**, the Labour Court has issued a decision on the calculation of holiday pay and the extent of its powers of redress.

In the **United Kingdom,** the Supreme Court held that statutory holiday entitlement for a 'part-year' worker must not be calculated based on the *pro–rata temporis* principle.

Atypical work

In **Germany**, the Federal Constitutional Court has not accepted the constitutional complaints directed against the prohibition of civil law contracts and temporary agency work in the meat industry.

In **Romania**, the government adopted various measures aimed at increasing revenues to the state budget and limiting expenses, including a measure raising the taxes paid by part-time workers in order to reduce the use of underdeclared work.

In **Spain**, a Royal Decree provides further rules on fixed-term employment in the health sector in line with EU law.

In the **United Kingdom**, the temporary agency work regulation has been amended to enable agency workers to be used to replace strikers.

Employment status

In **Cyprus**, an important decision of the Supreme Court has clarified the meaning of 'employee' in Cypriot employment law.

In **Estonia**, the Ministry of Finance will officially start to collect data on workers employed by different service platforms.

In the **United Kingdom**, the government has issued a guidance on employment status.

Other legislative developments

In **Greece**, a new regulation provides that private companies, including digital platforms, must provide sufficient and clear information to each employee or candidate employee before an AI system that would have an impact on their working conditions is used.

An advisory opinion of the EFTA Court to the Reykjavík District Court clarified that the time worked in another EU/EEA State must be taken into account in the calculation of the amount of total maternity leave benefits, which has implications for **Icelandic** legislation.

In **Ireland**, a new Act establishes a scheme of statutory sick leave for employees who have completed 13 weeks of continuous service with their employer.

In **Italy**, a ruling of the Court of Cassation held that the dismissal of a worker who refused to undergo a compulsory medical examination was legitimate.

In **Lithuania**, the Labour Code was amended to include the possibility to elect works councils at the level of establishments as of 01 August 2022.

In the **Netherlands,** a court held that the seafarers 'dockers' clause falls within the scope of the Albany exception, and thus outside the scope of application of Article 101 TFEU.

In **Norway**, a new Transparency Act entered into force on 01 July 2022, with the aim of promoting enterprises' respect for basic human rights and decent working conditions and ensuring public access to information.

In **Portugal**, a judgement clarified the concept of transfers of an economic unit for the purpose of national labour law.

In **Spain**, a new law on equality and non-discrimination was adopted on 12 July 2022, with implications on employment relationships. Moreover, rules to employ foreign workers have been modified to facilitate the hiring of workers who are already in Spain without possessing the relevant permits to work and live there.

Table 1: Major labour law developments

Topic	Countries
Easing of COVID-19 restrictions	AT
Posting of workers	AT BE IE LI LV NL
Work-life balance	CZ IS LV MT PL PT
Transparent and predictable working conditions	CZ FI LV PL PT
Annual leave	AT IE UK
Employment status	CY UK
Part-time work	RO UK
Temporary agency work	DE UK
Whistleblowers' protection	IE DE
Collective bargaining	NL
Equal treatment	ES
Foreign workers	ES
Fixed-term work	ES
Platform work	EE
Transfer of undertaking	PT
Workers' representation	LT
Working time	LV

Implications of CJEU Rulings

Fixed-term work

This Flash Report analyses the implications of a CJEU ruling on the recognition of prior service in the public sector performed as a fixed-term worker for determining the grade of a career civil servant.

CJEU, case C-192/21, 30 June 2022, Comunidad de Castilla y León

This ruling is based on the request for a preliminary ruling by a Spanish court concerning the refusal of a Region to consolidate the personal grade of an interim civil servant considered a fixed-term worker, following his appointment as a career civil servant. In this regard, the CJEU held that in line with Clause 4(1) of the Framework Agreement on Fixed-term Work, the services provided by an interim civil servant who has become a career civil servant must be taken into consideration for the purpose of consolidating his or her personal grade.

A **large majority** of reports indicate that this case has no implications for national legislation, as no distinction is made between periods of work performed as a fixed-term worker and as a permanent worker**,** or no system of evaluation comparable to the Spanish one at issue exists.

Interestingly, in **Italy**, the consideration of the service completed under a fixed-term contract at the time of appointment of a public employee has already been dealt with by the CJEU, in case C-466/17, *Motter,* which considered the Italian legislation which, for the purpose of classifying a worker in a salary grade at the time of his or her recruitment on the basis of qualifications as a career civil servant, to be in line with Directive 1999/70/EC, as it takes full account only of the first four years of service completed under a fixed-term contract, i.e. only two-thirds of subsequent periods of service are taken into consideration.

Conversely, this ruling will have major implications in **Spain**, where there have been other cases of civil servants who, once appointed, may lose certain rights they enjoyed while working as fixed-term employees. Likewise, the ruling might have implications for public sector workers under fixed-term contracts in **Cyprus**, since the Court allows for differentiated treatment of workers who work in the public sector under a fixed-term contract and civil servants who perform the same tasks. Therefore, as in the case at issue, there is no recognition of service in the public sector as a worker under a fixed-term contract when appointed as a career civil servant.

Austria

Summary

(I) Directive (EU) 2020/1057 on the posting of drivers in the road transport sector has been transposed into national law.

(II) As of 01 August 2022, the obligation to quarantine for individuals who have tested positive for COVID-19 was replaced with the obligation to wear an FPP2 mask at the workplace.

(III) The Supreme Court has confirmed its case law according to which no allowance is payable in lieu of the quota of paid annual leave that exceeds the 4-week guaranteed minimum in accordance with the Working Time Directive, and in line with the CJEU's ruling in case C-233/20, *job-medium*.

1 National Legislation

1.1 Posting of workers

Postings to Austria are regulated in the Act against Wage and Social Dumping (*Lohn- und Sozialbetrugsbekämpfungsgesetz, LSD-BG*).

The newly added § 1a LSD-BG transposes Article 1 (3), (4) and (6) of Directive (EU) 2020/1057. It contains a clarification on cross-border transport that does not constitute a posting within the meaning of the LSD-BG. In particular, bilateral transport occurs from or to the Member State of establishment and any related additional transport activities. § 1a (10) LSD-BG clarifies that cabotage transport remains a form of posting.

For undertakings established in the EU, the IMI standard form for the posting of mobile workers in road transport now applies (newly added § 19a LSD-BG, it contains e.g. the identity of the undertaking, the residential address and driving licence number of the mobile worker). For hauliers from the EEA (Iceland, Liechtenstein and Norway) countries, or the Swiss Confederation, general notification duties according to the § 19 (7) LSD-BG continue to apply.

The amendments have passed both the National and Federal Assembly and will enter into force on 02 February 2023 (the text contains a typo and refers to 2022).

1.2 Measures to respond to the COVID-19 crisis

Up until 31 July 2022, individuals who tested positive for COVID-19 had to quarantine for 10 days, with the option of testing as being 'non-infectious' and to be released from quarantine after five days. Companies are entitled to a refund from the State for the remuneration of quarantined employees.

As of 01 August 2022, a new ordinance regulates that employees who test positive for COVID-19 no longer have the obligation to quarantine but are subject to so-called 'traffic restrictions'. They must wear an FFP2 mask outside their private homes whenever they are indoors with another person or when they cannot ensure a distance of two meters to another person outdoors.

They may also not enter senior and nursing homes or residencies for disabled persons, as well as in-patient residential facilities for disabled persons and hospitals; health resorts; day care facilities for the disabled and the elderly; kindergartens, day nurseries, crèches and primary schools. This restriction does not apply to employees of such establishments.

The end of the quarantine regulation has been criticised, specifically because it means lower protection for vulnerable groups at the workplace and additional burdens for employees with childcare obligations (since children may not attend childcare when tested positive for COVID-19). The latter are covered by general employment law protection under § 8 (3) AngG (Act on Salaried Employees) which ensures that employees continue to receive their pay if they are prevented from performing work duties for a short period for important reasons for which they are not liable. This is generally understood as giving parents the right to take care of their COVID-19 positive child for up to one week if no alternative childcare is available. Moreover, the employer's liability in relation to COVID-19 infections at his/her premises is another issue that is currently under discussion (the press article is available here).

2 Court Rulings

2.1 Annual leave

Supreme Court, 8 ObA 37/22g, 29 June 2022

This ruling of the Austrian Supreme Court is aligned with the CJEU's decision in case C-233/20, *job-medium,* of 25 November 2021, which states that Article 7 of the Working Time Directive 2003/88/EC, read in the light of Article 31(2) CFREU, must be interpreted as precluding a provision of national law under which no allowance is payable in lieu of paid annual leave not taken in respect of the current and last year of employment, where the worker unilaterally terminates the employment relationship early and without cause. It is not necessary for the national court to verify whether the worker was unable to take the leave to which he or she was entitled (for the legal context, see April 2022 Flash Report).

In the present case, the Supreme Court, referring to its decisions from February 2022 (see April 2022 Flash Report), ruled that financial compensation for the part of the leave exceeding the four-week minimum leave promulgated in the Working Time Directive is not required under Union law and the employee is therefore only entitled to an allowance in lieu for these four weeks (minus the annual leave already used), the fifth week only being granted by Austrian national legislation, which is not to be compensated financially in case of early termination of the employment contract by the employee without cause.

The Supreme Court reconfirmed its case law, in line with EU prerequisites (see April 2022 Flash Report).

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

The CJEU's ruling concerned periods of service of an employee as an interim civil servant for the purpose of consolidating his or her personal grade. The CJEU ruled that periods of services acquired on the basis of a fixed-term contract cannot be excluded from the calculation simply because they were acquired under a fixed-term contract.

The CJEU ruling confirms the Austrian approach of taking previous periods of service into account when determining an employee's grade/ remuneration. Periods of service acquired as an interim contract employee of the state are taken into account when determining the employee's grade once she or he advances to a permanent contract/is appointed a civil servant (Austrian law does not recognise 'interim civil servants').

In general, Austrian law (as well as the parties to collective bargaining agreements) focuses on the individual's experience gained in his/her previous service (though

sometimes extensively) but does not refer to the type of contract the individual held when she or he acquired that experience. The legal situation in Austria is therefore in line with Union law.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

A new law of 19 June 2022 transposes Directive (EU) 2020/1057 on the posting of drivers in the road transport sector into Belgian law.

1 National Legislation

1.1 Posting of workers

General overview

On 11 July 2022, the new Law of 19 June 2022 containing various provisions relating to the posting of drivers in the road transport sector was published in the *Moniteur belge* (P. 55293). This Law transposes EU Directive 2020/1057 of 15 July 2020 setting down specific rules related to Directive 1996/71/EC and Directive 2014/67/EU on the posting of drivers in international road transport and amending Directive 2006/22/EC on the enforcement rules and Regulation No. 1024/2012.

Directive 2020/1057 establishes sector-specific rules for the posting of professional drivers in commercial road transport and for the effective enforcement of these rules. It thereby seeks to maintain a balance between the freedom of entrepreneurs to provide cross-border services, the free movement of goods, and proper working conditions and social protection for drivers. The law imposes new information obligations for Belgian employers who post drivers through the national posting website. A Belgian employer, who posts one or more drivers from Belgium to another EU Member State, must provide the driver(s) in advance in writing (on paper or electronically) with the web address of the official national website of that Member State with reference to the posting. Each EU Member State must have an official national website that explains the conditions that apply to posted workers in that country and how to reach the local authorities. On that website, drivers can find information on their rights and obligations when working in that Member State within the scope of the posting. The only official website of each EU Member State can be found through the European Union's 'Your Europe' website.

A Belgian employer who posts a driver from Belgium to another country must moreover also comply with its obligations under foreign law. For example, the employer must submit a prior IMI notification via the European website.

The law can be divided into three sections. In the first section, a number of road transport activities are excluded from the notion of posting. Thus, a distinction is made between the different types of transport, depending on the extent to which they are linked to the territory of the host Member State.

Scope

This new information obligation applies to Belgian employers who meet each of the following four conditions:

- The employer is established in Belgium; and
- Is posting his/her own employee-drivers;
- From Belgium to another EU Member State;
- Within the framework of road transport activities for third parties that fall under the competence of one of the following joint committees:
    - the Joint Committee for the Petroleum Industry and Trade (JC 117);

- the Joint Committee for the Building Industry (JC 124);
- the Joint Committee for Fuel Trade (JC 127);
- the Joint Committee for Transport and Logistics (JC 140);
- the Joint Committee for Security and/or Surveillance Services (JC 317);
- The King may amend this list of joint industrial committees after consulting the National Labour Council.

It follows from the second condition that the information obligation is applicable to 'postings'. This refers to situations in which a Belgian employer, in the context of road transport service in another EU Member State, has one or more of his/her employee drivers work under his/her supervision in that Member State. More specifically, it gives rise to postings within the meaning of the following information obligation:

- Non-bilateral international transport: transport between countries that are not the country of the transport company's establishment. Example: a Belgian transport company transports goods from the Netherlands to Italy for a company based in Italy;
- Cabotage: domestic transport carried out on a temporary basis within the territory of an EU Member State by a transport company established in another Member State. Example: a Belgian transport company carries goods from Paris to Lille for a company based in France (Article 6 of the new law).

There is no question of posting, and therefore the information obligation does not apply in case of bilateral transport and in case of transit (Article 7):

- Bilateral transport: this refers to transport from or to the Member State in which the transport company is established. If the driver carries out limited additional activities en route in the countries he/she crosses, such as loading goods, this may, under specific conditions, also fall under the exemption for bilateral transport. There is also no question of posting when combined transport is used (i.e. transport of goods that is partly by road and partly by rail, inland waterways or sea, with the initial or final route being by road), if the road route itself consists of bilateral transport;
- Transit: transit refers to when a driver merely transits through the territory of a Member State without carrying out any activity there, such as unloading cargo;
- Another exclusion from the scope remains, as before, namely merchant navy personnel and their employers.

Content

The second part of the new law limits the administrative rules and control measures that may be imposed on foreign employers who post their drivers to Belgium. An employer who employs a driver in connection with activities in the road transport sector in Belgium, has the obligation to ensure that the driver has the following documents, on paper or in electronic form, and the driver is required to retain these documents and to make them available if they are requested during a roadside check by labour inspectorate appointed by the King:

- a copy of the statutory declaration of posting prior to the driver's employment on Belgian territory to be submitted to the competent inspection authority;
- proof that the transport activities are taking place in Belgium;
- the tachograph data and in particular the country symbols of the States where the driver was located during the international road transport or cabotage.

Finally, the third section of the Law expands the information obligation for Belgian users who use temporary agency workers as drivers.

When a Belgian user has a driver who works for him/her as a temporary agency worker, performing work in a Member State of the European Economic Area other than Belgium, the user must inform the temporary employment agency in advance, in writing or electronically, in which country or countries other than Belgium the work will be performed.

Amendments have been made to the Law of 05 March 2002 on the working, salary and employment conditions when posting workers in Belgium, the Wage Protection Law of 12 April 1965, Royal Decree No. 5 on keeping social documents, the Law of 24 July 1987 on temporary agency work, and the Social Criminal Code.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

The consolidation of a permanent civil servant's grade, which is established in Spanish civil service law, does not exist in Belgian civil service law. The CJEU's ruling therefore does not have direct implications on the Belgian legal order.

However, the judgement may possibly become relevant in situations that are comparable to some degree with those in the Spanish legal system. It cannot be ruled out that an analogy would be made with the present judgement if, when determining the required seniority for a promotion of a permanent civil servant, no account were to be taken in Belgian civil service law of the same work performed but of temporary employment, and only the work performed in permanent employment were to be taken into account.

4 Other Relevant Information

4.1 Human trafficking

On Monday 25 July 2022, the Belgian Minister of Justice officially launched the Belgian campaign of a central reporting point for human trafficking. In the run-up to World Anti-Trafficking Day on 30 July, all social partners, labour and capital and the labour inspectorate, will be working for a week to raise awareness about the impact of human trafficking. This year, the campaign focusses on the importance of technology and how it can work both ways: criminals can quickly and anonymously trap victims online, while authorities can also track abuse more effectively and reach those in danger more easily using technology.

The legal conditions related to the crime of trafficking human beings are as follows:

- The conduct must pursue one of the objectives of exploitation which Article 433quinquies of the Belgian Criminal Code enumerates in a restrictive manner: sexual exploitation, exploitation in the form of begging, recruitment or employment in conditions contrary to human dignity, the removal or ordering the removal of organs or tissues, or the commission of a crime or offence.

- There must be a material element to the existence of the offence, in particular the recruitment, transportation, transfer, lodging, reception of a person, exchange or transfer of control over him/her.
- The moral element of guilt of the crime of trafficking human beings involves the intention to exploit a person for a specific economic purpose.
- Foreign nationals who are victims of human trafficking are entitled to social welfare services during the procedure for obtaining a residence permit.

When the reporting point for human trafficking was created, a scandal broke out concerning human trafficking at construction sites of the chemical giant Borealis in the port of Antwerp. The case concerns the economic exploitation of foreign workers on the building site of the chemical company Borealis. Following a complaint, police and social inspection officers carried out several checks on the site in the port of Antwerp. As many as 100 Filipino and Bengali workers were found to be exploited by the subcontractor of the main contractor IREM-Ponticelli. The Italian company Irem SpA and the French Ponticelli Frères SA concluded a joint venture to build the new plant. It is in the context of polypropylene production that Borealis has been building a new factory since 2019. Police and social inspection discovered 100 Filipinos and Bengalis working on a large construction site in the port of Antwerp. They were staying in Belgium with expired Hungarian work visas. The 100 workers stayed in appalling conditions on an industrial site in Deurne, a district of the City of Antwerp. That building was evacuated. In cooperation with the City of Antwerp, the victims found temporary shelter elsewhere.

It emerged clearly that the foreign workers were underpaid. According to the Flemish Social Inspectorate, the workers were paid EUR 650 a month to work six days a week on the site. The principal Borealis and the contractor Irem-Ponticelli rejected any civil responsibility and pointed to Irem-Ponticelli's subcontractor. However, it is not certain that Borealis and Irem-Ponticelli can avoid civil liability for the lack of paying proper wages. There is insufficient information because the criminal investigation is still ongoing. However, both for construction activities and for the employment of illegal third-country workers from outside the EU, there are rules for joint and several liability of the general contractor and the principal provided for in the Belgian Wage Protection Law of 12 April 1965.

Bulgaria

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

The present case does not have any implications for Bulgarian legislation and national practice related to Clause 4 (1) of the Framework Agreement on Fixed-term Work.

Pursuant to Article 2 (2) of the Civil Servants Act, positions to be occupied by civil servants and their rank shall be specified in the Classification of Positions in the Administration, adopted by the Council of Ministers. The civil servant's rank is an expression of the level of his/her professional qualification, i.e. the 'sum' of his/her knowledge and skills. The Civil Servants Act specifies the principal requirements for the occupation of any position in the administration. A mandatory minimum level of education and previous professional experience or a given rank may be required for specific positions in the administration. Upon entering civil service for the first time, persons who meet the requirements in terms of years of professional experience in the relevant activity shall be assigned the lowest rank provided for the given position in accordance with the Classification of Positions in the Administration. Promotions to a higher rank can be attained on the basis of an annual evaluation of the individual's performance, namely following two or three successive annual evaluations among the junior ranks and three or four successive annual evaluations among the senior ranks in accordance with the terms and procedures established by the Ordinance of the Council of Ministers. A civil servant can be promoted to the subsequent higher rank prior to the expiration of the minimum periods if he/she received the highest annual evaluation results in the performance of his/her office.

Bulgarian legislation does not provide for differences in professional experience of civil servants in terms of rank, depending on the nature (fixed-term or permanent) of the employment relationship under which this experience was acquired.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

(I) The amendment to the Family Benefits Act has been adopted to transpose the Work-Life Balance Directive of 2019 into Croatian law.

(II) A proposal for a general amendment to the Labour Act, which would also transpose Directive (EU) 2019/1152 on transparent and predictable working conditions and the Directive into Croatian law, is currently under discussion.

1 National Legislation

1.1 Work-life balance

The Amendment to the Family Benefits Act has been adopted to implement the Directive (EU) 2019/1158 on work-life balance into Croatian law (Official Gazette No. 85/2022).

The most relevant novelty is the introduction of paid paternity leave. According to Article 12a(1),

> *"An employed or self-employed father is entitled to continuous paternity leave following the birth of a child, depending on the number of children born:*
>
> - *of ten working days for one child,*
> - *of 15 working days in case of the birth of twins, triplets, or simultaneous births of several children."*

This right can be used until the child reaches the age of six months, provided that the working father does not use one of the rights covered by the Family Benefits Act at the same time and for the same child (Article 12a(2)).

This right is non-transferable and can be used regardless of the employment status of the mother (Article 12a (3)-(4)).

The right of the employer to postpone the granting of parental and paternity leave for 30 days is regulated in Article 47.

The maximum amount of salary compensation paid during parental leave for employed and self-employed parents has been increased (from the previous HRK 5 654.20 (170 per cent of the budget base) to HRK 7 500.13 (225.5 per cent of the budget base)).

The provisions on parental leave have been amended in relation to the use of this right when twins are born, a third and every subsequent child. When only one parent uses this right, he or she can take leave for a duration of 28 months (instead of the previous 30 months), while respecting the possibility and right of the other parent to take two months of his or her non-transferable parental leave (Article 14(6)).

A novelty on exercising the right to parental leave has also been introduced. Namely, parents have the opportunity to take parental leave not only individually, but also simultaneously or alternately based on mutual agreement (Article 14(4)).

1.2 Labour law reform

The Proposal to the Amendment to the Labour Act has been issued for public discussion (via so-called e-counselling). Its purpose is, among others, to transpose the Directive (EU) 2019/1152 on Transparent and Predictable Working Conditions and Directive (EU) 2019/1158 on Work-life Balance into Croatian law.

Furthermore, the high percentage of fixed-term contracts is the driver for the amendment of the regulation of fixed-term work in the Labour Act. The current statutory regulation of fixed-term work is relatively liberal because the employer does not need to have an objective justification to conclude a first fixed-term contract nor is the duration of the first fixed-term contract limited. By contrast, the proposed amendment is very rigid. Accordingly, the employer must have an objective justification to conclude a fixed-term contract, the total duration of successive fixed-term contracts is limited to three years (with certain exceptions), and the number of fixed-term contracts is limited to three successive contracts with the same employee, i.e. all of these measures would prevent abuse in line with Clause 5 of the ETUC-UNICE-CEEP Framework Agreement on Fixed-term Work.

Amendments to the statutory regulations on teleworking have been proposed as well because the current regulations are not adjusted to force majeure circumstances (such as the ongoing pandemic). The proposal, which is rather confusing, distinguishes between teleworking and working at home. Both types of work are referred to as 'employment at an alternative workplace'. The novelty is that the employer does not need to amend an employee's employment contract in case of short periods of working at home (up to 30 days) in case of force majeure (epidemic, earthquake, flood, ecological incidents, etc.). It is also proposed for the employee to have the right to request to work from home, in particular disabled employees, pregnant employees, working parents of young children and employees who are caring for seriously sick family members. The employer in the past could refuse such requests based on objective justifications. Employees who are caring for a seriously sick family member would now have the right to request to work part time or to otherwise adjust their working time. Five days of unpaid leave per year are proposed for the purpose of caring for a seriously sick family member or another person with whom the employee lives in a joint household.

Detailed provisions on salary compensation in case of work interruption due to force majeure (epidemic, earthquake, flood, ecological incidents, etc.) are proposed as well. In this case, salary compensation would amount to 70 per cent of the employee's average salary paid in the previous three months.

Some improvements on the procedures in case of harassment and sexual harassment have been proposed as well in terms of employees in charge of such complaints.

The proposal also takes the unions' long-standing demand for their members to be granted a higher level of rights in collective agreements over non-union members into account. In this context, the promotion of collective bargaining in this proposal does not seem to be adequately formulated.

According to the proposal, it would be possible in the collective agreement to agree to a higher amount of the Jubilee Award, Christmas bonus, holiday pay, severance pay due to retirement, etc. for employees who are trade union members, albeit only for those members of trade unions that are party to the collective agreement. The reason why some trade unions have refused to conclude a collective agreement might however be justified, for instance, due to the fact that they might believe that the collective agreement does not provide adequate employment protection. Another problematic provision that has been proposed is the amount of material rights that could be guaranteed to such union members. The proposal suggests that parties to the collective agreement could agree to a higher level of material rights for union members who have signed a collective agreement, up to twice the amount of the average annual union membership fee. This is highly problematic from the aspect of the freedom to not be a union member as determined by the Constitutional Court of the Republic of Croatia regarding the solidarity (negotiation) fee (Decision of the Constitutional Court of the Republic of Croatia No. U-I-2766/2003 of 2005).

The need to regulate the employment protection of digital platform workers is also considered in this proposal. The proposal to amend the Labour Act does not fully follow the Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work. The main intention of the proposed provision on the legal presumption of an employment relationship is contained in the proposal to amend the Labour Act. In case both proposals are adopted, the provisions of the Labour Act will need to be adapted in line with the Directive.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

The employment of civil servants in Croatia and their employment protection are regulated in the Civil Servants Act of 2005 (last amended in 2019). Another piece of legislation worth mentioning in this context is the regulation on job titles and job complexity coefficients in the civil service of 2001 (last amended in 2022). Among others, it describes the professional requirements civil servants must meet to be assigned to specific positions and the job complexity coefficients of those positions.

Civil servants in Croatia can be exceptionally employed as fixed-term civil servants. More precisely,

> *"for the performance of temporary jobs or jobs whose scope has temporarily increased, and which are not of a more permanent nature, as well as for the purpose of replacing an employee who has been absent for a long time, persons may be admitted to the civil service for a certain period of time while temporary jobs or jobs whose scope has temporarily increased, i.e. until the return of the absent officer."* (Article 61(1) of the Civil Servants Act).

When the Civil Servants Act cites previous work experience as a requirement for employment in the civil service (for instance in Article 48(1)(b)), it does not differentiate between the work experience gained under the fixed-term contract or in any other way. Work experience is defined *as "work experience achieved in the civil service or in an employment relationship outside the civil service in the appropriate professional training and profession."* (Article 48(4) of the Civil Servants Act). Moreover, even the experience gained in the civil service based on the contract for service is considered work experience in the context of requirements for employment as well as the duration of professional training without establishing an employment relationship (Article 48(5) of the Civil Servants Act.

Nothing in the aforementioned pieces of legislation indicates that the situation described in the Spanish case could arise in Croatia. Therefore, it can be concluded that the CJEU's judgement in this case has no implications for Croatian law.

4 Other Relevant Information

Nothing to report.

Cyprus

Summary

(I) An important decision of the Supreme Court clarifies the meaning of 'employee' in Cypriot employment law.

(II) The government plans to introduce a statutory minimum wage continues to raise controversy due to its scope of application.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Employment status

Supreme Court, ECLI:CY:AD:2022:D225, 06 July 2022, Προεδρος Της Δημοκρατιας v Βουλης Των Αντιπροσωπων (*President of the Republic v. House of Representatives)*

In this ruling, the Supreme Court reviewed the meaning of employee in Cypriot employment law, after striking down the appointment of aides made by the President. This case represented a petition to the Supreme Court by the President of the Republic challenging Social Security (Amendment) (No. 6) Law of 2021 (*Ο περί Κοινωνικών Ασφαλίσεων (Τροποποιητικός) (Αρ. 6) Νόμος του 2021*) on the ground that is contrary to and inconsistent with Directive 2014/24/EU on public procurement, the Constitution of the Republic of Cyprus (Articles 80.2, 122, 125.1 and 179) and the Principle of Separation of Powers.

According to the Explanatory Memorandum, the adopted legislation aims at:

> *"amending the Social Security Law so that the term 'employee' for social security purposes shall include, in an express and unambiguous manner, employment under a contract for the purchase of services or any other relevant contract, regardless of the characterisation attributed to such contract, and which is characterised by an employer-employee relationship, in order for employees to have all rights and benefits, including the payment of their social security as employees and not as self-employed persons".*

By the amendment made by the Act to add reference to the 'purchase or provision of services or any other employment contract, irrespective of its characterisation', the said provision, if enacted into law, will read as follows:

> *"Part I – Insured Employment*
>
> *1. Employment in Cyprus of a person under a contract of employment or apprenticeship or purchase or provision of services or any other contract of employment, irrespective of its characterisation under such circumstances from which the existence of an employer-employee relationship may be inferred, including employment in the Service of the Republic."*

The position of the Attorney General, on behalf of the President of the Republic, argued as follows:

First, that the Act seeks to equate the concept of 'contract of service' with the concept of 'contract for services', concepts which are entirely different. His argument is that the concept of 'purchase or provision of services' in the Law is contrary to EU law, which

governs public tenders and, in particular, Directive 2014/24/EU. This is because the conclusion of a public service contract between an economic operator and a contracting authority does not constitute an employment contract and cannot be considered in any way to create an employer-employee relationship. By transforming the result of a public procurement procedure into an employer-employee relationship, the Law violates the letter and spirit of the Directive in question.

Secondly, that the Law also violates Article 80.2 of the Constitution, since it will result in an increase in State expenditure by equating service providers with salaried persons and by converting all those who provide services to the government into salaried persons. In such a case, the State will be required to pay contributions to the various funds administered by the Social Security Services. This will result in a burden on the Republic's General Fund and an increase in the budget's expenditure in violation of Article 80.2 of the Constitution.

Third, that the Law violates Articles 122 and 125.1 of the Constitution in that it includes persons who provide services in the public sector in the term 'employee' for social security purposes and, in effect, civil servants, a power which only the Public Service Commission (PSC) has, and also violates the constitutional power of the PSC to rule on the appointment of civil servants. Because of the above, the Law, by extension, is also in conflict with Article 179 of the Constitution.

Finally, pertaining to the distinction between the Executive, Legislative and Judicial Powers, the Attorney General argued that Parliament did not pass a rule of law of general application and does not exercise any kind of regulatory administrative function, therefore via this Law, it interferes with the area of competence of the Executive and Judicial Powers. This is because the Law contains elements of administrative action, thus violating the Principle of Separation of Powers and the existing legislation. (Reference was made to Article 81 of the Basic Law, according to which the Director of Social Security Services is responsible for resolving issues relating to whether a worker is providing dependent or independent services, who, before making a decision, conducts an in-depth investigation).

Conversely, the Counsel for Parliament argued that the adopted legislation is fully in line with European law and the provisions of the Constitution, while respecting and complying with the Principle of Separation of Powers. It underlines, in particular, the requirement of the Basic Law 59(I)/2010 for 'the existence of an employer-employee relationship' for a contract for the purchase of services to be considered a contract of employment. This is a condition that will be examined by the Director of Social Security Services.

Moreover, it argued that the Directive regulates public procurement, which is not mentioned in the Law, which concerns social security rights and does not fall within the scope of the Directive. It also held that the Attorney General's allegation of a violation of Article 80.2 of the Constitution has not been concretised and/or substantiated. Also rejecting his position on the violation of Articles 122 and 125 of the Constitution, the Counsel for Parliament noted that the Law neither provides for nor allows for the employment of persons in the public sector, but only regulates those cases where a person employed in the public sector under a contract of employment or purchase of services creating an employer-employee relationship is considered as an employee for social security purposes. Nor does the Law interfere with the powers of the Executive or Judiciary since it does not provide for the conversion and/or automatic recognition of all employed service providers as employees.

Against this background, the Court rejected the view of the Attorney General that the Act created a new category of insurable employment involving increased costs. The relevant statutory provision prior to its amendment by the Act under consideration was as follows: a person who provided services under a contract for the purchase of services

could and was entitled, regardless of the characterisation of the contract, as long as the circumstances of his/her employment were such that an employer-employee relationship could be inferred, to be recognised as an 'employee' for social security purposes.

Moreover, it held that decisive of the meaning of the provision under discussion, as amended by the Act, is the phrase 'under such circumstances from which the existence of an employer-employee relationship could be inferred', which is a condition under which every contract of employment referred to in that provision, regardless of its characterisation, is subject to for the employment to be socially insurable.

The Court concluded that it is clear, therefore, that the Act did 'not' create a new category of employees, nor did it establish a new right. Any, 'employment', under such circumstances from which the existence of an 'employer-employee relationship' can be inferred, continues to exist as the dominant element of the provision under consideration. The same applies to employment under a 'purchase or supply of services or any other contract of employment', irrespective of its characterisation, provided, however, that there is, in essence, a genuine employer-employee relationship.

In light of the above, the Law in question does not contradict Directive 2014/24/EU. It is also not contrary to Article 80.2 of the Constitution, and this is because it does not entail an increase in State expenditure.

Service providers could, under Basic Law, and still can, given the amendment under consideration, request the Director of Social Security to examine the conditions of their employment and whether an employer-employee relationship exists. In particular, under Article 81 of the Law, it is provided that the Director of Social Security Services is responsible for resolving questions relating to whether a person is an employee or self-employed person, who, before making a decision, appoints competent officials to conduct a full investigation. Therefore, there is no question of interfering with the powers of the Director of Social Security Services, who retains the power and authority to determine whether an employer-employee relationship has been established or exists in the context of a contract of purchase or provision of services, for a particular job. The Director's decision may be challenged by filing a hierarchical appeal to the Minister of Labour and, if the person concerned is not satisfied with the Minister's decision, he or she may then appeal to the Court of Justice.

Consequently, the regulation Parliament has issued within the scope of its legislative function under Article 61 of the Constitution does not lie within the exclusive domain of the Executive or the Judiciary.

The Court also rejected the Attorney General's position on the violation of Articles 122 and 125.1 of the Constitution. The Act under consideration does not provide for, nor does it authorise, the employment of persons in the public sector, but only regulates the circumstances in which a person employed in the public sector under a contract of employment or purchase of services is considered an 'employee' for social security purposes. Consequently, the Court decided that the Social Security (Amendment) (No. 6) Law of 2021 is not contrary to or inconsistent with Directive 2014/24/EU, Articles 80.2, 122, 125.1 and 179 of the Constitution and the Principle of Separation of Powers and may therefore be enacted.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

This case might have implications on public sector workers under fixed-term contracts in Cyprus.

Given that the Constitution of the Republic of Cyprus prohibits the granting of the same civil servant or public sector employee status to those who are employed on a temporary fixed-term contract, the authorities have devised a system which essentially provides for a permanent status 'in private law' for public sector employee, and who is 'parallel' but inferior to the civil servant in a proper service.

As discussed elsewhere (see February 2021 Flash Report), the employment of workers on fixed-term contracts in Cyprus is regulated by law (FT Law, Law 98(I)2003, 25 July 2003, *Ο Περί Εργοδοτουμένων με Εργασία Ορισμένου Χρόνου (Απαγόρευση Δυσμενούς Μεταχείρισης) Νόμος του 2003*) purporting to transpose Directive 1999/70/EC on Employees with Fixed-term Work (Prohibition of Less Favourable Treatment) of 2003, herein referred to as the 'Framework Agreement'. The law entered into force a year prior to EU accession, explicitly stipulating its purpose to harmonise Cypriot law (Law 70(I)2002 (07 June 2002) amending the law on Termination of Employment, published in the Cyprus Official Gazette 3610 on 07 June 2002, effective 01 January 2003) with the Directive.

Fixed-term workers who work in the public sector do not enjoy the same rights as civil servants or employees under public law; instead, their rights are regulated by private law. A number of Supreme Court cases have underscored the necessity to retain the distinction between civil servants appointed in accordance with Public Service Law of 1/90 and regulated by public law and those employed on a temporary basis with fixed-term contracts regulated by private employment law, derived from EU Directive 1999/70/EC.

Specifically, a claim by a worker on a fixed-term contract in the public sector that she was entitled to the same rights as a public sector employee to preclude the possibility of discrimination failed (see Supreme Court of Cyprus, Civil appeal No. 60/2010, 14 October 2014, *Christina Laouta v The Republic of Cyprus through the Attorney General*). In that case, the Supreme Court ruled that the differentiation between a permanent public employee and a temporary employee with a fixed-term contract or a contract of indefinite duration must be maintained, since the employment of the latter is not based on the Constitution or on the Public Service Law of 1/90.

In terms of measures introduced to prevent abuse, Article 7(1) of the FT Law provides that where an employer employs an employee under a fixed-term contract, either following a renewal of the contract or otherwise, and the employee had previously worked under a fixed-term contract for a total period of 30 months or more, irrespective of the order of successive fixed-term contracts, the contract shall, for all intents and purposes, be deemed a contract of indefinite duration and any provision in this contract restricting its duration will be void, unless the employer proves that the fixed-term employment of the said worker can be justified on objective grounds.

Whilst equal treatment in Cypriot employment law, the Constitution, the ECHR and the Charter for Fundamental Rights, the mechanism that 'effectively implements' the principle of non-discrimination as regards workers on fixed-term contracts seems deficient. Fixed-term employees have the right to be treated equally just like regular permanent employees as the principle of non-discrimination as enshrined in the Law (Article 5(1) of the Cypriot Law copies verbatim the text of Clause 4(1) of the Framework Agreement) provides that with reference to employment conditions, fixed-term workers shall not be treated less favourably than comparable permanent workers solely because they have a fixed-term contract or relationship, unless differentiated treatment is justified on objective grounds. However, the Court allows for different treatment of workers between workers on fixed-term contacts who work in the public sector and civil servants performing the same tasks on the grounds of the Constitution or the Public Service Law of 1/90 (Article 2 of the FT Law defines the term 'comparable employee with a contract of indefinite duration' as a worker with an employment contract or relationship of indefinite duration, who works in the same establishment, is engaged in

the same or similar work/occupation, due regard being given to qualifications/skills). The Court has not provided any other 'objective grounds'.

As in Spain, there is no recognition of service in the public sector as a worker on a fixed-term contract when someone is hired in the public sector as a career civil servant.

4 Other Relevant Information

4.1 Minimum wage

Despite the government's announcement that Cyprus will duly publish the minimum statutory wage in line with the relevant EU Commission proposal (see the Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union (COM/2020/682 final)), new disagreements emerged, with the employers' association demanding that bakery workers also be excluded from protection, like migrant domestic and agricultural workers, and sailors, as had been previously agreed. New talks are scheduled for August, with trade unions criticising the government for backtracking on the framework of minimum wages (see Anna Savva: 'New talks due with employers on minimum wage', Cyprus Mail, 30 July 2022).There is disagreement between the two sides about the implementation process, with employers reportedly asking for certain exceptions for new hires. Another disagreement is how much the minimum wage should be. Unions and employers' organisations disagree over the method for determining the median salary, on which the minimum salary would be based. The median wage calculated by the Cyprus Statistical Service is lower than that calculated by EU-SILC, which the unions want the minimum wage to be based on. The unions argue that the most correct methodology of the median salary is the EU-SILC, as it was the late Minister of Labour's, which ranged between EUR 940 and EUR 950. Employers' organisations support the former.

As reported in the April 2022 Flash Report, the social partners had locked an agreement at the Labour Advisory Council which excluded domestic and agricultural workers and sailors from the national minimum wage provision which was scheduled to be enacted in May 2022 (see Annie Charalambous: 'Three exemptions in minimum national wage by law in Cyprus', In-Cyprus philenews, 28 April 2022). The decision to exclude agricultural and domestic workers was strongly criticised by the Union of Doctoral Teaching and Research Scientists (DEDE), which expressed its outrage at the intention of the government, social partners, institutional bodies, as well as a large number of MPs, noting that these jobs are almost exclusively held by migrants and asylum seekers, who are the most vulnerable and impoverished social groups in the country, working in conditions of modern slavery, who need legal protection more than any other group of the population, since they do not even have the right to freely organise themselves in trade unions. The Union considers that this is a racist logic that on the basis of origin denies the needs of immigrants and refugees a decent living and constitutes an example of institutional racism (see Stockwatch: *‚Να μην εξαιρεθούν εργάτες και οικιακές εργάτριες ζητά η ΔΕΔΕ*', 30 April 2022). Publicly, none of the largest unions has expressed misgiving about the exclusions, even though PEO trade unionists suggest that the written submission of PEO expressed its disagreement (Communication with leading PEO Trade unionist. The author has not seen the written submission of PEO).

Currently, the Republic of Cyprus does not have a national minimum wage. It pursues a policy based on the Minimum Wage Law, a law that has been in force since colonial times (Minimum Wage Law, Chapter 183 (ANAK.307), in operation since November 1941, *Ο περί Κατωτάτου Ορίου Μισθών Νόμος - ΚΕΦ.183*), which empowers the Council of Ministers to set minimum wage rates for any occupation in the Republic, either generally or in any specified area, place or district, in any case in which it is convinced that the wages paid to any persons employed in any occupation are unreasonably or unjustifiably low (Section 3, *Ο περί Κατωτάτου Ορίου Μισθών Νόμος - ΚΕΦ.183*). The

current law does not specify the criteria upon which the Council of Ministers may decide, but there is an established practice.

4.2 Workers' privacy

The privacy rights of employees in prisons have emerged as an issue following the complaint by the central prison's director that she feared for her safety. The director of central prison, Anna Aristotelous, accused the Minister of Justice, Stephie Drakos, of putting pressure on her to introduce software in the prison that had the capacity to record, retain and process the content of data from mobile phones of prison guards. The prison director refused to implement the software on the grounds that it is illegal and expressly prohibited by the Acquis Communautaire (GDPR) and by decisions of the Supreme Court on surveillance and data retention. In turn, the Minister of Justice has attacked the Director of Central Prison for disclosing classified information in connection with the software that the Minister had asked her to implement in the prisons.

Human rights concerns were raised about the privacy rights of persons working in prisons, as well as the rights of whistleblowers.

The prison director filed a complaint with the Attorney General, requesting protection, accusing a senior police officer of colluding with a criminal in prison and blackmailing her to reveal aspects of her private life. The Attorney General's office appointed an investigating officer and initiated an inquiry, and the senior police officer was suspended pending the investigation. However, the prison director and the unit's senior officer have asked to be transferred from their positions – a day after the Deputy Attorney General announced an investigation into the prisons (see Nick Theodoulou: 'Prison director asks to be removed in wake of second probe', Cyprus Mail, 28 July 2022).

Czech Republic

Summary

A draft act implementing Directive (EU) 2019/1152 on Transparent and Predictable Working Conditions and Directive (EU) 2019/1158 on Work-life Balance is currently being prepared by the government.

1 National Legislation

1.1 Transposition of EU legislation

A new Draft Act amending Act No. 262/2006 Coll., the Labour Code, will be submitted shortly to the interdepartmental comment procedure. The text of the Draft Act is not yet publicly available.

This amendment primarily aims to implement two EU directives, Directive (EU) 2019/1152 on Transparent and Predictable Working Conditions in the European Union and Directive (EU) 2019/1158 on Work-life Balance.

As the deadline for implementation of the directives is edging closer, the Ministry of Labour and Social Affairs has finalised the draft of the transposition amendment. However, this is only a preliminary information as the legislative process is still very much in the early stages. Therefore, significant changes to the content are to be expected.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

In the Czech Republic, the remuneration of civil servants is governed by the Labour Code, Act No. 234/2014 Coll. on Civil Service and by Government Regulation No. 304/2014 Coll. on pay conditions of civil servants. Each civil servant is entitled to a pay tariff determined based on the pay scale, which is an annex to the Government Regulation. Based on this, the pay of civil servants is determined by two factors.

The first is the classification of his/her post, as posts in the public sector are divided into 16 classes. Criteria for classifying posts into classes are specified in an annex to the Act on Civil Service.

The second factor is the pay grade which is determined based on the number of years of relevant experience. For the purpose of determining the pay class and pay grade, there is no distinction made between civil servants serving on a fixed-term basis and those with an indefinite contract. The experience gained as a fixed-term civil servant is counted in the same way as that gained working under a contract of indefinite duration.

To summarise, this CJEU ruling has no implications for the Czech Republic, as Czech legislation is fully in line with the CJEU's conclusions.

4 Other Relevant Information

4.1 Travel compensation

As fuel and catering prices continue to rise, the Ministry of Labour and Social Affairs has proposed raising the catering fee for employees on business trips and in addition, proposes to once again increase the average fuel prices set for the purpose of reimbursement of expenses incurred by employees.

Therefore, a Proposal for a new Decree amending Decree No. 511/2021 Coll. on the change of the rate of basic compensation for use of motor vehicles, per diems, and on setting the average price of fuel for the purposes of travel compensation has been submitted into the comment procedure.

This proposal, in response to the increase in the public catering price index, proposes to increase the catering fee to which employees are entitled from their employer during business trips, as follows:

- CZK 120, i.e. approx. EUR 4.90, if the business trip lasts between 5 and 12 hours (previously CZK 99, i.e. approx. EUR 4.00);
- CZK 181, i.e. approx. EUR 7.35, if the business trip lasts longer than 12 hours, but no longer than 18 hours (previously CZK 151, i.e. approx. EUR 6.15);
- CZK 284, i.e. approx. EUR 11.55, if the business trip lasts more than 18 hours (previously CZK 237, i.e. approx. EUR 9.65).

As regards employers who remunerate their employees with public sector pay, the catering fees will be as follows:

- CZK 120 – 142, i.e. approx. EUR 4.90 – 5.80, if the business trip lasts between 5 and 12 hours (previously CZK 99-118, i.e. approx. EUR 4.00-4.80);
- CZK 181 – 219, i.e. approx. EUR 7.35 – 8.90, if the business trip lasts longer than 12 hours, but no longer than 18 hours (previously CZK 151-182, i.e. approx. EUR 6.15-7.40);
- CZK 284 – 340, i.e. approx. EUR 11.55 – 13.80, if the business trip lasts more than 18 hours (previously CZK 237-283, i.e. approx. EUR 9.65-11.50).

The proposal also aims to valorise the average fuel prices set for the purpose of reimbursement of expenses incurred by employees as follows:

- Gasoline (98 oct): CZK 51.40 per litre, i.e. approx. EUR 2.10 per litre (previously CZK 40.50 per litre, i.e. approx. EUR 1.65 per litre).

Denmark

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

The ruling does not have any immediate implications for Danish law, as national law for calculating seniority in relation to remuneration for civil servants already addresses how to take into account any atypical periods of work.

Only very few public servants in Denmark work as civil servants, for whom the working terms are regulated in the Civil Servants Act.

Ministerial Circular No. 6633 of 16 July 1987 concerns civil servants and seniority in relation to remuneration scales. The circular describes in Section 2 the principle that a civil servant accrues seniority with reference to the remuneration scale according to the period of time in which he/she has been in his/her position. This includes all relevant periods, as well as a number of absences. There is no legal basis to exclude periods worked under a fixed-term contract.

In Chapter 2, Sections 5-6 address how to calculate seniority from previous periods of employment as a civil servant as well as periods employed outside the State service, which are of particular relevance for the position of civil servant. This includes the time and duration of service with previous employers. This does not explicitly address fixed-term contracts as civil servants but aims to provide a legal basis—when being re-appointed—to include any earlier period of employment that is of relevance to the new position as civil servant. The decision on how to—and how much of earlier employment relationships to include within and outside the State—rests with the employing authority as a discretionary power.

According to Section 7, periods of employment on terms similar to civil servants or on terms governed by a collective agreement for public employees, are transferred as seniority to the new position as civil servant. The same applies to the right to be eligible for additional seniority/age-related salary additions, where explicitly earlier periods under different employment terms are included in the calculation.

Sections 8-11 describe that seniority follows the position as civil servant, not the specific function. When a civil servant is transferred from one position to another, the seniority in relation to payment scales continues and is transferred to the new position.

In the circular on seniority in relation to salaries, there is no explicit or implied legal basis to not include seniority from periods working on fixed-term contracts as a civil servant. Fixed-term work as a civil servant is considered work periods that count.

This question of how to count periods of fixed-term work has not been assessed by the courts.

For other groups of public servants not working as civil servants but as public employees governed by collective agreements, the rules for calculating seniority are described in the collective agreements. The overall principle in agreements follow the general principle in the Civil Servants Act, Section 2, that seniority follows the position, and includes seniority of periods working under fixed-term contracts. The decisive factor is that the position and function is the same as before.

The same applies to the rights of public servants derived from statutory acts – outside the question of salaries. For public servants working as salaried employees (office work, trade, clinical and technical services, managers), their seniority in relation to the rights provided in the Act is uninterrupted and transferred if a person is transferred from one position to another, as long as the status as salaried employee is not changed. By contrast, if a person transfers from a position not covered by the Act of Salaried Employees, e.g. as a seafarer governed by the Act on Employment Terms of Seafarers, to a position as a salaried employee for the same employer, the seniority as a seafarer does not count in relation to rights under the Act on Salaried Employees. This was reiterated and clarified by the Maritime and Commercial Court (case BS 32933/2020-SHR, 01 March 2021). This principle does not concern salary rights, but the overall issue of rights.

The Danish state of law on non-discrimination on grounds of fixed-term employment in relation to payment scales for civil servants and public employees is in line with the CJEU ruling.

Periods of work as temporary agency workers do not, on the other hand, count as seniority, if the temporary agency worker is later employed by the user entity. This has been clarified several times and is based on the notion that a temporary agency worker is not employed by the user entity but by the temporary work agency.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

This CJEU ruling deals with equal treatment between fixed-term and permanent civil servants in terms of pay.

The implications of this decision is modest for Estonian legislation. In the Estonian legal system, the relationship of civil servants is regulated in the Civil Service Act. Accordingly, there are only civil servants who are recruited on the basis of an administrative act. Employees in the public service instead work on the basis of an employment contract. When a person starts the service as a civil servant, there is no provision for the concept of an interim civil servant. Consequently, the factors stated in the CJEU's decision do not apply. A civil servant can also be appointed for a fixed term, but even in that case it is a civil servant who does not enjoy special status. There are no differences in treatment between fixed-term and permanent civil servant positions.

The situation dealt with by the CJEU could arise if a person who worked under an employment contract is appointed a civil servant. In that case, the question may arise whether the tasks he or she performed under the employment contract are comparable with those performed by a civil servant. The CJEU's ruling would not apply because the tasks related to public authorities are not performed on the basis of an employment contract. A civil servant is distinguished from an employee based on the difference in function, according to which a civil service exercises public authority, but an employee working under an employment contract only performs supporting tasks. Even in such a case, the tasks performed on the basis of an employment contract are not taken into account.

Hence, the implications of the CJEU's ruling for Estonian law is modest.

4 Other Relevant Information

4.1 Platform economy

Estonia plans to require several service platforms to provide the tax office (hereinafter MTA) with data about their employees and their income. Currently, only about one-fifth of companies voluntarily submit data, and a large share are likely not covered by tax regulations.

Various service platforms belong to a fairly new and unregulated sector, which the State does not have a clear overview of. Persons who work for platforms often have to declare their income and pay taxes on their own.

According to the Ministry of Finance, the platform economy has grown tremendously, and several countries have conducted analyses and have concluded that only about one-fifth of people who earn an income from platform work declare their income correctly.

To gain a better overview, the Ministry of Finance has presented a draft according to which platform managers will be required to inform the MTA about their employees and the income they earn.

The collection of information will start in 2023, and will have to be submitted annually thereafter.

Another option for platform workers is to use an entrepreneur account. Over 6 000 people in Estonia have an entrepreneur account, which simplifies the taxation of private businesses. Last year, an average of EUR 2 339 was linked to each existing entrepreneur account.

An entrepreneur account is a separate bank account that can be created by a natural person who sells goods or services. The amount transferred to the entrepreneur account is automatically taxed at 20 per cent. Entrepreneur account users do not have to submit any separate reporting on their income.

As of the end of 2020, there were a total of 3 470 entrepreneur accounts in Estonia, while at the end of last year, 6 147 people had a total of 6 189 entrepreneur accounts according to the data of the MTA.

There were 3 997 accounts that were actively being used. A total of EUR 9.3 million was transferred to entrepreneur accounts, i.e. an average of EUR 2 339 was received in taxes annually for each entrepreneur account in use.

When Parliament (*Riigikogu*) introduced the law establishing the entrepreneur account, it also determined annual limits. If the amounts transferred to an entrepreneur account exceed EUR 25 000 per year, the amount exceeding that limit is taxed at 40 per cent. In 2021, there were 40 entrepreneur accounts which received over EUR 25 000 annually.

Finland

Summary

Labour legislation was amended to improve the stability of working hours in variable hours contracts clause and to transpose Directive EU 2019/1152 on transparent and predictable working conditions.

1 National Legislation

1.1 Transparent and predictable working conditions

On 08 July 2022, the President of the Republic approved a series of amendments to labour legislation which aims to improve the position of employees working on the basis of variable hours contracts and to transpose Directive EU 2019/1152 on transparent and predictable working conditions.

The amendments include changes to the Employment Contracts Act (*Työsopimuslaki*, 55/2001), as regards provisions on variable hours contracts clause (Chapter 1, Section 11) and on the information on working conditions (Chapter 2, Section 4).

Employers will have a stronger obligation to review their use of variable working hours contracts in view of their labour needs. A working hours condition is the number of hours agreed in an employment contract. Employers must review their practices at least every 12 months. In addition, the amendments introduced to transpose Directive 2019/1152 on transparent and predictable working conditions in the EU, which requires employers to quickly provide employees with more extensive information on their employment conditions, have been approved.

Finally, the Employment Contracts Act was amended to include a provision qualifying mandatory education as working time and about the free nature of such education (Chpater 2, paragraph 19). The amendments concerned the Working Time Act (*Työaikalaki*, 872/2019), the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (*Laki työsuojelun valvonnasta ja työpaikan työsuojeluyhteistoiminnasta*, 44/2006) and the Seafarers' Employment Contracts Act (*Merityösopimuslaki*, 756/2011).

The amendments entered into force on 01 August 2022.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

In Finland, the statutory rule of equal treatment must be adhered to. An employer must treat all civil servants equally, unless deviating from this is justified in view of their duties and positions.

4 Other Relevant Information

4.1 Annual leave

The report on increased flexibility in annual holiday arrangements was published on 13 July 2022 by the Ministry of Economic Affairs and Employment of Finland (Publications of the Ministry of Economic Affairs and Employment 2022:45). The report presents opportunities to increase flexibility in the use and transfer of holidays when employees change jobs and, in particular, in consecutive fixed-term employment relationships.

According to the report, the need to reform the provisions on granting annual leave should be viewed as a general issue concerning all types of employment contracts. In their responses, the social partners did not support a separate annual holiday legislation based on the nature of the employment contract. Based on the responses received from the social partners, the report proposes only minor amendments to the provisions on granting annual leave. The key reform proposal would expand the right to conclude agreements on granting annual leave. In addition, the report proposes the provision in Section 5(2) of the Annual Holidays Act (*Vuosilomalaki*, 162/2005) to be expanded to also apply to provisions on granting annual leave and, in cases of temporary agency work, that the user undertaking is required to accept the employer's decisions on annual leave.

According to the report, the purpose of the annual holiday bank would be to ensure that employees have paid leave when entering the service of a new employer for the next holiday season. The report describes the starting point for the planning of an annual holiday bank and its functions. Labour market organisations and other stakeholders were of the view that an annual holiday bank would be an expensive and administratively burdensome system. The annual holiday bank would be linked to other information systems in several ways, which would require not only legislative amendments but also operational changes. There is a risk that only very few employees would use the voluntary scheme. The report proposes that the planning and implementation of an annual holiday bank should be discontinued.

4.2 Transposition of EU law

A draft government proposal on the implementation of Directive (EU) 2019/2121 of the European Parliament and of the Council amending Directive (EU) 2017/1132 on cross-border conversions, mergers and divisions has been circulated for comments by the Ministry of Economic Affairs and Employment. Comments can be submitted until 16 August 2022.

France

Summary

(I) The Court of Cassation has ruled on organisational difficulties and compulsory paid annual leave in the context of the COVID-19 pandemic, holding that purely financial difficulties do not justify an application of the extraordinary COVID-19 rules.

(II) The Court of Cassation confirmed its case law on the time limitation of wage claims in the context of an action for requalification of a part-time contract as a full-time one.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Measures to respond to the COVID-19 crisis

Social Division of the Court of Cassation, No. 21-15.189, 06 July 2022

In the present case, several companies of a pharmaceutical group had made use of the possibilities opened up by the Decree of 25 March 2020. This Decree temporarily allowed employers to unilaterally impose on employees to take days of reduced working time on a given date, rest days provided for in a fixed work schedule or resulting from the use of rights allocated to the time savings account, up to a limit of ten days. The use of these mechanisms was the subject of two internal notes:

- a first note, requiring employees to take up to ten days of reduced working time between 30 March and 17 April 2020, and providing for the possibility of the employer to position days saved in the time savings account when they no longer have enough rest days to take;
- and a second one providing for the same measures for employees forced to stay at home to look after a child under the age of 16, and for vulnerable employees or employees sharing the same home with a vulnerable person, whose activity could not be carried out through teleworking.

A trade union brought an application for interim relief before the court, mentioning a manifestly unlawful disturbance. Two arguments were put forward:

- under the terms of the above mentioned Decree, which created the rest day scheme, it was only available when the employer's interest justified it in view of the economic difficulties linked to the spread of COVID-19 and, in the union's view, such difficulties were not justified by the employer;
- furthermore, the employer could not choose to exclude the application of the partial activity mechanism set up for vulnerable employees or for employees with childcare duties, as this was binding on him.

The union's claims were dismissed in first instance and later upheld by the Court of Appeal, before the Court of Cassation partially sanctioned the solution.

The Court of Cassation addressed the question of the interpretation of the notion of 'economic difficulties linked to the spread of COVID-19' mentioned in the Decree. The Court thus considered that recourse to the measures provided for in Articles 2 to 4 of the Decree is not limited solely to a situation of economic difficulty, in particular as

defined in relation to economic redundancies or to cash flow problems. More broadly, the Court of Cassation held that these could be used by the employer if the health crisis had an impact on the company's operations. In this case, to justify their recourse to the system, the defendant companies mentioned

> *"the need to adapt their organisation, faced with an unexpected increase in absenteeism due to the fact that some of their employees were at home without being able to carry out their activity from home, to adapt the workspaces and to adapt the occupancy rate of the premises due to the sanitary conditions."*

For the Court of Cassation, these difficulties in organising work in connection with the health crisis could constitute sufficient grounds to resort to these derogatory measures.

In other words, purely financial difficulties do not justify an application of the specific COVID-19 rules.

2.2 Part-time work

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

In the present case, a part-time employee, who was dismissed on 16 October 2015, brought an action before the labour court on 12 December 2016. He sought requalification as a full-time employee from September 2013 and claimed back pay for the period between November 2013 and December 2015. He argued that he had worked 182 hours in August 2013, beyond the legal time limit of 151.67 hours.

In principle, overtime cannot have the effect of bringing the working time of a part-time employee to the level of the legal working time (French Labour Code, Article L. 3123-9). Otherwise, the contract will be requalified as a full-time contract from the date on which the overtime was exceeded, and will give rise to the right to the related salary arrears, calculated on the basis of full-time working time (see Social Division of the Court of Cassation, 12 March 2014, No. 12-15.014).

The Court of Appeal granted the employee's request and concluded that the contract had been requalified as a full-time contract as of September 2013. The employer appealed to the Supreme Court, arguing that the employee's action was time-barred. The latter had indeed been aware of the irregularity justifying the requalification of his contract upon receipt of his pay slip in September 2013. Taking this date as the starting point for the limitation period, the employer considered that the employee had until September 2016 to take action. The referral to the labour court on 12 December 2016 was therefore too late.

The Court of Cassation rejected this reasoning and confirmed the decision of the Court of Appeal. After recalling that the claim for back pay based on the requalification of a part-time employment contract into a full-time employment contract is subject to the three-year statute of limitations applicable to wages, the Court of Cassation recalled the letter of Article L. 3245-1 of the French Labour Code. Firstly, the article sets out the rules relating to the time limit for admissibility of the action:

> *"the action for payment or recovery of wages shall be barred after three years from the day on which the person bringing the action knew or should have known the facts enabling him to bring it".*

Secondly, the article determines the temporal scope of the claim:

> *"the claim may relate to the sums due for the last three years from that day or, where the employment contract is terminated, to the sums due for the three years preceding the termination of the contract."*

In this context, the Court of Cassation ruled that the limitation period for wages runs from the date on which the wage claim became due. For employees paid on a monthly basis, the date on which the salary is due corresponds to the usual date of payment of salaries in force in the company and concerns the entirety of the salary relating to the month in question. It is therefore not the irregularity mentioned by the employee that constitutes the starting point of the statute of limitations, but each month's insufficient salary on a full-time working time basis as a result of the requalification, which delays the starting point of the statute of limitations for the action each time if the situation is spread over several months or years. If the action is admissible under these rules, it may relate to the wages due for the last three years from the starting point of the limitation period or, where the employment contract is terminated, to the sums due for the three years preceding the termination of the contract.

This solution in in line with the usual case law of the Court of Cassation in terms of limitation of wage claims, which it applied here for the first time to an action for requalification of a part-time contract as full-time one.

2.3 Dismissals

Social Division of the Court of Cassation, No. 20-22.220, 29 June 2022

In the present case, an employee was dismissed for gross misconduct on 02 February 2018 due to acts of moral harassment. Challenging the validity of this dismissal and arguing that the letter of dismissal was not sufficiently motivated, she was dismissed on appeal on the grounds that the letter of dismissal was sufficiently motivated, and the dismissal justified. The Court of Appeal pointed out that the employee had not mentioned the provisions of Article R. 1232-13 of the French Labour Code to ask her employer to specify the reasons for the termination within the time limit.

In principle, when the employer decides to dismiss an employee, s/he must notify him or her of this decision by registered letter with acknowledgement of receipt, stating the reasons for the dismissal (French Labour Code, Article L. 1232-6). Within 15 days of notification of the dismissal, the employee may, by registered letter with acknowledgement of receipt or by letter delivered against a receipt, ask the employer for clarification of the reasons given in the letter of dismissal (French Labour Code, Article R. 1232-13).

In support of her appeal to the Supreme Court, the employee argued that it was the employer's responsibility to specify in the letter of dismissal that the employee could, by virtue of the aforementioned provisions, ask him to provide details of the reasons for the termination. In the absence of such a statement, the absence of a request for clarification could not be an obstacle for the employee to a request recognition of the absence of real and serious cause based on the vagueness of the reasons stated in the letter of dismissal.

The Court of Cassation rejected the appeal and confirmed the decision of the Court of Appeal. The Court of Cassation noted that there was no provision in the French Labour Code requiring the employer to inform the employee of his right to request that the grounds in the letter of dismissal be specified.

With this decision, the Court of Cassation agrees with the position taken by the Ministry of Labour in a question-and-answer on terminations of the employment contract, which stated that "the procedure for specifying the reasons (...) does not have to appear in a letter of dismissal", since the indication of this option is purely informative, and therefore not mandatory. Prior to the entry into force of the Decree of 22 September 2017, case law considered that an imprecise reason for dismissal in the letter of dismissal was equivalent to an absence of reason, meaning the dismissal was without real and serious cause. Today, as confirmed by the Court of Cassation, if the employee has not activated

this mechanism for specifying the grounds for dismissal, any inadequate reasoning in the letter of dismissal that is subsequently found by a judge is merely a formal irregularity, compensated by an indemnity capped at one month's salary. In other words, if it is judicially established that the letter of dismissal did not mention the precise reasons for the dismissal, the employer will still be able to justify the dismissal by specifying the relevant reasons before the judge.

2.4 Harassment

Social Division of the Court of Cassation, No. 21-11.437, 29 June 2022

In the present case, two employees had reported acts of moral and sexual harassment by their superior. One reported 'recurrent remarks with sexual connotations', in particular 'gravelly and inappropriate' remarks about her appearance or her clothing or that of her colleagues, while the other reported daily pressure and constant reproaches due to aggressive management. Taking the necessary steps, the employer initiated an internal investigation and questioned the employees directly involved in these facts. During the investigation, the line manager acknowledged the facts. As a result, on 11 March 2015, he was dismissed for gross misconduct.

The Court of Appeal considered this dismissal without real and serious cause. The investigation on the basis of which the dismissal had been pronounced had been conducted in an unfair manner, so that the investigation report had to be set aside from the debate. Among the grievances retained:

- The duration of the employee's interrogation was not specified, nor was the rest period;
- Only the two employees who complained were heard, without hearing all the employees who witnessed or were involved in the events;
- the hearing of the employees took place jointly;
- the elected staff representatives had not been informed or referred to.

For the Court of Cassation, the elements retained by the Court of Appeal were, however, not sufficient to remove from the debates the investigation report

> "*which it noted mentioned facts likely to characterise sexual harassment or moral harassment by the dismissed employee*."

Recalling that evidence is free in labour matters, the Court of Cassation established the principle that

> "*the report of the internal investigation, to which the employer has recourse, may be produced by the employer to justify the misconduct attributed to the dismissed employee* - and - *it is up to the judges of the court, as long as no illicit investigations have been carried out by the employer, to assess its probative value in the light of any other evidence produced by the parties."*

It was therefore possible that the investigation had certain shortcomings with regard to the number of employees questioned or the role of the staff representatives. The judge should therefore have taken the content of this report into account to assess the reality of the fault, without being able to reject it out of hand on the grounds of blunders in the conduct of the investigation.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

In its decision of 30 June 2022, the CJEU ruled on the retention of seniority acquired by a contractual civil servant after his establishment and considered, in the light of its legislation, that this seniority should be taken into account.

In France, regardless of the category in which they are classified (A, B, C or D depending on the responsibilities they have assumed), contract workers within the civil service who are eligible for tenure retain the seniority acquired during their contract following their tenure as a civil servant (Decree of 12 October 1988, No 88-974, Article 3; Decree of 21 January 1992, No. 92-75, Article 3; Decree of 09 January 1986, No. 86-41, Article 3; Decree of 18 February 1986, No. 86-227, Article 5).

4 Other Relevant Information

Nothing to report.

Germany

Summary

(I) The Federal Cabinet adopted the draft law implementing Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law.

(II) The Federal Constitutional Court has not accepted the constitutional complaints directed against the prohibition of civil law contracts and temporary agency work in the meat industry.

(III) The Federal Institute for Occupational Safety and Health published a report on climate change and occupational safety.

1 National Legislation

1.1 Protection of whistleblowers

On 27 July 2022, the Federal Cabinet adopted the draft law for improving the protection of whistleblowers and for the implementation of Directive (EU) 2019/1937.

The personal scope of application of the new law is to be broadly defined in accordance with the requirements of the Directive. It includes all persons who have obtained information about infringements in connection with their professional activities. In addition to employees and civil servants, this can also include self-employed persons, shareholders or employees of suppliers. The essence of the whistleblower protection system are the internal and external reporting points available to whistleblowers for reporting violations. Employers must establish internal hotlines. This obligation applies to the private sector as well as to the public sector as a whole, provided that the entity in question usually employs at least 50 people.

2 Court Rulings

2.1 Temporary agency work

Federal Constitutional Court, 1 BvR 2888/20 a.o., 25 May 2022

The Federal Constitutional Court has not accepted the constitutional complaints of a meat industry company and several temporary employment agencies.

The constitutional complaints were directed against the prohibition of using staff in the meat industry as employees under so-called contracts for work and services or as temporary agency workers. The complainants felt that their fundamental right to freedom of occupation had been violated. The company producing sausages also complained of unjustifiable unequal treatment with other sectors. The Federal Constitutional Court considered the grounds of the constitutional complaints to be insufficient.

Section 6a (2) of the Act to Safeguard Workers' Rights in the Meat Industry (*Gesetz zur Sicherung von Arbeitnehmerrechten in der Fleischwirtschaft*) prohibits companies in the meat industry as of 01 January 2021 from having slaughtering, cutting and meat processing performed by self-employed workers, i.e. with the help of work contract companies that have been widely used up to now. Due to the 'ban on external staff', the work can only be carried out by the company's own staff.

Since 01 April 2021, Section 6a (3) of the GSA Meat also restricts temporary work in these areas of the meat industry and will prohibit it entirely from 01 April 2024. Fines are provided for in the event of a violation.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

According to the CJEU, Clause 4(1) the Framework Agreement on Fixed-term Work precludes national legislation under which, for the purposes of consolidating a personal grade account, the services a career civil servant provided as an interim civil servant before he or she acquired the status of career civil servant are not taken account of.

The ruling is unlikely to have any major implications in Germany. According to section 6 (2) of the Federal Civil Service Act (*Bundesbeamtengesetz*), temporary civil service is permissible in cases specifically defined by law. The provisions on civil service for life apply accordingly to civil service for a fixed term, unless otherwise provided by law.

3.2 Night work

CJEU Joined Cases C-257/21 and C-258/21, 07 July 2022, Coca-Cola European Partners Deutschland GmbH

On the basis of a request for a preliminary ruling by the Federal Labour Court under Article 267 TFEU, the CJEU ruled on 07 July 2022 that a provision in a collective agreement which provides for a higher pay supplement for irregular night work than for regular night work does not implement Directive 2003/88/EC within the meaning of Article 51(1) of the Charter of Fundamental Rights of the European Union.

It should be noted that there are also proceedings pending before the Federal Constitutional Court concerning the constitutionality of interventions in the autonomy of collective bargaining by a judgement in connection with collectively agreed night work bonuses (Federal Constitutional Court, 1 BvR 1109/21).

4 Other Relevant Information

4.1 Posting of workers

According to the Federal Government, the reform of the EU Directive on the posting of workers between Member States in 2018 has not led to more bureaucracy and workload for small and medium-sized enterprises and the skilled crafts sector.

In an answer to a question by the German Bundestag, the government states that there is no additional compliance burden for citizens. There would also be no additional costs for employers based in Germany who employ their workers in Germany, as they have to apply the German regulations either way. For employers based abroad who post employees to Germany, however, the implementation could entail one-off costs with regard to familiarisation with the new regulations.

4.2 Climate change and occupational safety

The Federal Institute for Occupational Safety and Health (*Bundesanstalt für Arbeitsschutz und Arbeitsmedizin*) has documented the current state of knowledge on the subject of 'climate change and occupational safety' in a comprehensive analysis. In it, it takes a look at relevant risk factors and points to possible future challenges and research needs for occupational safety and health.

Greece

Summary

A new regulation provides that private companies, including digital platforms, must provide sufficient and clear information to each employee or candidate employee before installing an AI system that would have an impact on their working conditions.

1 National Legislation

1.1 Impact of AI on working conditions

Article 9 of Law 4961/2022 provides that any private company that uses an artificial intelligence (AI) system that affects any decision-making process concerning employees or candidate employees and has an impact on their working conditions, the selection, recruitment or evaluation of employees, shall, prior to the instalment of such a system, provide sufficient and clear information to each employee or candidate employee.

This information shall include the parameters on which this decision is based. The principle of equal treatment and the prohibition of discrimination in employment based on sex, race, colour, national or ethnic origin, religious or other beliefs, disability, etc., shall in any case be guaranteed.

This obligation also applies to digital platforms employing persons under any kind of contract, such as a dependent employment contract or a contract for independent services.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

This judgement has no implications for Greece's legislation.

Greek legislation provides that all types of services a career civil servant performs as an interim civil servant before he or she acquired the status of career civil servant shall be taken into account (Article 11 of Law 4354/2015, Article 26 of Law 4369/2016).

4 Other Relevant Information

Nothing to report.

Hungary

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

Act 199 of 2011 regulates the employment of civil servants. Annex 1 of this Act contains the conditions relating to personal grades, which determine basic pay.

The number of years worked in civil service is one of the conditions of the personal grading system. However, the condition of 'years worked in civil service' is not restricted to permanent civil service contracts, hence it also includes fixed-term appointments.

Therefore, the Hungarian provisions are in line with the judgement.

4 Other Relevant Information

Nothing to report.

Iceland

Summary

An advisory opinion of the EFTA Court to the Reykjavík District Court has clarified that time worked in another EU/EEA State must be taken into account in the calculation of the amount of maternity leave benefits, with implications on Icelandic legislation.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Maternity leave

EFTA Court, Case E-5/21, 29 July 2022, Anna Bryndís Einarsdóttir v the Icelandic Treasury

On 29 July, the EFTA Court issued an Advisory Opinion to the Reykjavík District Court in Case E-5/21. The case concerned a woman who had lived and worked in Denmark and moved to Iceland while pregnant and began working at the National University Hospital in Iceland. When she took maternity leave, the Maternity/Paternity Leave Fund did not take her salary in Denmark into account, which resulted in her benefits being very low, as she had only worked a limited time in Iceland before taking leave.

The Court reasoned that Articles 6 and 21(2) and (3) of Regulation (EC) No. 883/2004 on the coordination of social security systems does not require the competent institution of an EEA State to calculate the amount of a benefit, such as that at issue in the main proceedings, on the basis of income received in another EEA State.

Nevertheless the Court deemed that Article 21(2) and (3) of Regulation (EC) No. 883/2004, interpreted in accordance with the objective set out in Article 29 of the EEA Agreement, requires that the amount of a benefit granted to a migrant worker who, during the reference period set out in national law, had only received an income in another EEA State, must be calculated by taking into account the income of an individual who has comparable experience and qualifications and who is similarly employed in the EEA State in which that benefit is sought.

The judgement means that the interpretation of the current Article 21(2) of Act No. 144/2020 on Maternity, Paternity and Parental Leave will need to change with regard to migrant workers who move to Iceland whilst pregnant or shortly before becoming pregnant. Potentially, the provision needs to be changed to reflect the interpretation of the EFTA Court.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

This ruling will have no implications for Icelandic law.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

(I) Legislation has been enacted to implement Directive EU 2019/1937 on the protection of persons who report breaches of Union law, Directive EU 2020/1057 on the posting of workers in the road transport sector, and Directive 2014/112/EU concerning certain aspects of the organisation of working time in inland waterway transport.

(II) A new Act establishes a scheme of statutory sick leave for employees who have completed 13 weeks of continuous service with their employer

(III) The Labour Court has issued a significant decision on the calculation of holiday pay and the extent of its powers of redress.

1 National Legislation

1.1 Protection of whistleblowers

The Protected Disclosures (Amendment) Act 2022 (the 2022 Act) implements and gives effect to Directive 2019/1937/EU on the protection of persons who report breaches of Union law. For that purpose, this Act amends and extends the Protected Disclosures Act 2014 (the 2014 Act).

The 2014 Act provides that employers may not dismiss or otherwise penalise workers for having made a 'protected disclosure', which is defined as a disclosure of 'relevant information' made in a specified manner. The term 'relevant information' is in turn defined as information which, in the reasonable belief of the worker, tends to show one or more relevant 'wrongdoings' and which came to the worker's attention in connection with his or her employment.

The 2022 Act amends the 2014 Act by introducing, inter alia, new definitions of 'worker' and 'penalisation'. The former now includes not just employees, agency workers and independent contractors, but also volunteers and persons on 'work experience'. The latter is defined as

> *"any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment to a worker"*

and, in particular, includes not just dismissal, demotion, transfer of duties or negative performance assessments, but also harm to the worker's reputation and psychiatric/medical referrals. The word 'report' is defined as 'the oral or written communication of information on relevant wrongdoings'.

Employers with 50 or more employees are required to establish, maintain and operate 'internal reporting channels and procedures' for the making of such reports. The 2022 Act also establishes the Office of the Protected Disclosures Commissioner, one of whose functions will be to ensure that 'external reporting channels and procedures' are 'independent and autonomous'. The Act has not yet been brought into operation.

1.2 Posting of workers

The European Union (Posting of Workers) (Amendment) Regulations 2022 (S.I. No. 320 of 2022) give effect to Directive 2020/1057/EU (the Posted Drivers Directive) laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.

The Regulations were published on 05 July 2022.

1.3 Working time

The European Union (Organisation of Working Time in Inland Waterway Transport) Regulations 2022 (S.I. No. 392 of 2022) transpose Council Directive 2014/112/EU and, inter alia, prescribe maximum hours of work and minimum hours of rest for mobile workers on board a craft operating in the commercial inland waterway transport sector.

1.4 Social security

The Sick Leave Act 2022 was adopted on 15 July 2022.

The Act establishes a scheme of statutory sick leave for employees who have completed 13 weeks of continuous service with their employer. It provides that an employee is entitled up to and including three statutory sick leave days per year. The number of days can be increased by ministerial order and the Minister has indicated that the number will rise to five in 2024, to seven in 2025 and to ten in 2026. Employers are to pay a prescribed daily rate of payment and the Minister has indicated that this will be set at 70 per cent of wages, subject initially to a daily cap of EUR 110. Employees wishing to avail of the scheme must provide their employer with a medical certificate signed by a registered medical practitioner stating that the employee is unable to work, presumably by reason of illness or injury.

The Act has not yet been brought into operation.

2 Court Rulings

2.1 Annual leave

Labour Court, DWT2228, 12 June 2022, Carlow County Council v. Coughlan

In the present case, the employee claimed that his employer had undercalculated his annual leave payment for the duration of his employment, since 06 June 1999, insofar as his regular and rostered overtime was not included in the calculation. His statutory annual leave entitlement was 20 days, and he had a further contractual entitlement of five days. He referred his complaint on 08 March 2021.

The Labour Court confirmed that it had no jurisdiction under the Organisation of Working Time Act 1997 with regard to an employee's extra-statutory annual leave entitlements. Notwithstanding the employee's reliance on CJEU case C-539/12, 22 May 2014, *Lock* and Case C-214/16, 29 November 2017, *Sash Window Workshop v King*, the Labour Court ruled that, in light of the express and unambiguous exclusion of overtime from the calculation of holiday pay in S.I. No. 475 of 1997, the complaint had not been made out.

The Labour Court added that, in any event, its jurisdiction was limited temporally to the six-month period preceding the referral of the complaint.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

This case concerned the interpretation of Clause 4(1) of the Framework Agreement annexed to Directive 99/70/EC. This Directive was implemented in Ireland by the Protection of Employees (Fixed-Term Work) Act 2003 ('the 2003 Act').

The decision has no implications for Ireland. In the first place, there is no equivalent legislation in Ireland comparable to that at issue here. Secondly, an 'unestablished' civil servant on a fixed-term contract is comparable to an 'established' civil servant for the purposes of the 2003 Act. Thirdly, the fact that a fixed-term worker subsequently acquires the status of a permanent worker does not prevent him or her from relying on the principle of non-discrimination in respect of matters before he or she acquired that status.

See the decision of the High Court, IEHC 98, 22 March 2007, *Minister for Finance v McArdle* on these last two points.

4 Other Relevant Information

Nothing to report.

Italy

Summary

A ruling of the Court of Cassation held that the dismissal of a worker who refused to undergo a compulsory medical examination was legitimate.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Compulsory medical examination

Corte di Cassazione, No. 22094, 13 July 2022

In this judgement, the Court of Cassation held that the dismissal of a worker who refused to undergo the medical examination arranged by the company in view of the assignment of new tasks was legitimate.

The case concerned an employee, who refused to undergo the medical examination organised by her employer in order to assign her to perform new tasks on the basis of the fact that the new position did not respect her professionalism. Due to her refusal to participate in the medical exam, she was terminated.

The Court of Cassation deemed her dismissal legitimate, because in the event of a change of tasks, a medical examination is compulsorily required by law to protect the health and safety of workers. If there had been a demotion, the employee could have appealed against it.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

In Italy, public administrations can use fixed-term contracts only in case of 'temporary or exceptional needs' (Article 36 Legislative Decree 30 March 2001, No. 165). This limit does not apply to public school employees (teachers and administrative and technical workers) and the Court of Justice has already dealt with the classification of an Italian teacher in a salary grade at the time of her recruiting on the basis of the service completed under fixed-term contracts.

According to CJEU case C-466/17, *Motter*,

> *"Clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999, annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding, in principle, national legislation, such as that at issue in the main proceedings, which for the purpose of classifying a worker in a salary grade at the time of his recruitment on the basis of qualifications as a career civil servant, takes full account only of the first four years of service completed under fixed-term contracts, only two thirds of subsequent periods of service taken into consideration".*

In other sectors, collective bargaining provides for the employee's classification in a salary grade scale, taking account of the periods of service completed under fixed-term contracts. For instance, Article 84, paragraph 7, of research institutions' collective bargaining agreement provides that

> *"in case of hiring under a permanent contract, the periods of work under fixed-term contracts already performed by the employee at the same institution, with the same tasks, are useful to determine the duration of service"*.

4 Other Relevant Information

Nothing to report.

Latvia

Summary

(I) New amendments to the labour law aim to transpose Directive EU 2019/1152 on transparent and predictable working conditions, Directive EU 2019/1158 on work life balance, and Directive 2014/67/EU on posting of workers into Latvian law.

(II) A national court, referring to the CJEU's decision in case C-147/17, *Sindicatul Familia Constanta,* confirmed the applicability of working time regulations to certain activities performed by national military forces.

1 National Legislation

1.1 Transposition of EU law

On 16 June 2022, Parliament adopted amendments to the labour law which, among others, transpose EU law, in particular Directive EU 2019/1152 on transparent and predictable working conditions, Directive EU 2019/1158 on work life balance, and some aspects in relation to the implementation of Directive 2014/67/EU on the posting of workers following formal notice from the European Commission on the infringement procedure.

In relation to the implementation of Directive 2019/1152, the amendments envisage more detailed legal regulations in relation to information on employment conditions as provided by collective agreements or the internal regulatory acts of an employer. The amendments to the legal regulation on informing employees of employment conditions do not introduce any significant change as the obligation of information on employment conditions in written form prior to the commencement of the employment relationship for all categories of employees covered by Labour Law existed long before Directive 2019/1152.

The amendments entered into force on 01 August 2022.

2 Court Rulings

2.1 Working time of military forces

Supreme Court, SCA-182/2022, 08 July 2022

On 08 July 2022, the Senate of the Supreme Court delivered a decision concerning the calculation of remuneration for national guards in the context of legal regulations applicable in relation to working time.

National guards represent part of the national military forces. Latvian legal regulations on the organisation of armed forces do not reflect any measures required by Directive 2003/88/EC. Consequently, the Law on National Guards of the Republic of Latvia provides that the Labour Law transposing Directive 2003/88/EC is not applicable. According to internal regulations adopted by the Ministry of Defence, it is the commander of national guards who determines the procedure of service of national guards, including service time and time spent on related services (for example, surveillance of military objects).

The claimant in the present case contested the method of calculation of remuneration for additional work (surveillance of military objects), which, according to the claimant, should be based on the time worked. The Ministry of Defence insisted that the general legal regulation of working time is not applicable in relation to military service, thus the

calculation of remuneration and time spent in the service is a matter for the commander of the national guards to determine.

The Senate of the Supreme Court disagreed with the Ministry of Defence by referring to the CJEU's decision in case C-147/17, *Sindicatul Familia Constanta,* where the CJEU held that Directive 2003/88/EC is not applicable only to certain aspects of the organisation of military service. The Senate considered that surveillance of military objects does not qualify as military activity that falls outside the scope of Directive 2003/88/EC according to the interpretation of the CJEU. Therefore, in the present case, the legal regulation on working time as provided for in the Labour Law is applicable and the remuneration must be calculated on the basis of time actually worked.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

The CJEU's decision in case C-192/21 has no implications for Latvian law as the system in place for the evaluation of state officials differs.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

Following the decision of the EEA Joint Committee No. 19/2022 of 04 February 2022 to incorporate Directive (EU) 2018/957 into the EEA Agreement, the legislative process to amend the Posting of Workers Act continues.

1 National Legislation

1.1 Posting of Workers

In the February 2022 Flash Report, a legislative project was discussed in detail, which seeks to transpose Directive (EU) 2018/957 of the European Parliament and of the Coun-cil of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers with-in the framework of the provision of services. Directive (EU) 2018/957 amends the Post-ing of Workers Directive in a number of key areas. For this purpose, the Liechtenstein government submitted a draft law with an accompanying report for consultation. The consultation lasted until 23 June 2022. The government evaluated the comments re-ceived, and based on the results of the consultation, produced a Report and Motion for Parliament on the amendment of the Posting of Workers Act (*Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend die Abänderung des Entsendegesetzes*, BuA 2022/15).

The Decision of the EEA Joint Committee No. 19/2022 of 04 February 2022 incorporates Directive (EU) 2018/957 into the EEA Agreement. The entry into force of this decision is subject to the completion of the consent procedure by the national legislator in the EEA/EFTA States.

Hence, the government has produced a report and motion to seek parliamentary approv-al (*Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein be-treffend den Beschluss Nr. 19/2022 des Gemeinsamen EWR-Ausschusses*, BuA 2022/71).

The next step is the consultation in Parliament.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

According to Article 13 of the State Personnel Act (*Gesetz über das Dienstverhältnis des Staatspersonals, Staatspersonalgesetz*, StPG, LR 174.11), a fixed-term employment re-lationship shall be established for a maximum period of three years. In justified cases, the government may extend the fixed-term employment relationship by a maximum of two additional years. Fixed-term employment contracts end without notice upon expiry of the term specified in the employment contract (Article 19 of the State Personnel Act). In addition thereto, fixed-term employment relationships may be terminated in writing by either contracting party in the same way as permanent employment relationships (Ar-ticle 21(1) of the State Personnel Act).

Liechtenstein law does not seem to contain any provision that is comparable to the regulation in Spanish law dealt with in the main proceedings of the present CJEU case. At any rate, this applies to the following legal sources:

- State Personnel Act (*Gesetz über das Dienstverhältnis des Staatspersonals, Staatspersonalgesetz*, StPG, LR 174.11);
- State Personnel Ordinance (*Verordnung über das Dienstverhältnis des Staatspersonals, Staatspersonalverordnung*, StPV, LR 174.111);
- Salaries Act (*Besoldungsgesetz*, BesG, LR 174.12);
- Salaries Ordinance (*Besoldungsverordnung*, BesV, LR 174.120).

An example of explicit equal treatment of fixed-term and permanent employment relationships in terms of accounting for years of service is Article 20f(1)(a) of the Salaries Ordinance. According to this provision, years of service within the scope of permanent and fixed-term employment relationships are considered years of service for the payment of the special bonus for service anniversaries.

4 Other Relevant Information

Nothing to report.

Lithuania

Summary

The Labour Code was amended to include the possibility, as of 01 August 2022, of electing works councils at the level of establishment (workplace, subdivision).

1 National Legislation

1.1 Workers' representation

On 28 June 2022, the Lithuanian Parliament (*Seimas*) with Law No. XIV-1189, adopted an amendment to the Labour Code to promulgate nearly 30 provisions of the Code (Registry of Legal Acts, 2022, No. 15178). As reported in the June 2022 Flash Report, some of the provisions are of relatively minor technical importance (amelioration of the text for the sake of unity and clarity), while others relate 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).

Among the novelties that will enter into force from 01 August 2022 onwards are the possibility to elect a works council at the level of the workplace (subdivision) (new Article 169 (2) of the Labour Code), if the number of employees at the respective workplace is 20 or more. Prior to this amendment, the right to elect a works council, which is entitled to information and consultation rights, was reserved for the entire enterprise (a legal person) only if it employs 20 and more employees.

This amendment allows for the creation of worker representative structures at the lower level of an employer's organisation. Yet, the competences and interactions between the different level of works councils have not been defined, and the election (or non-election) of works councils at certain workplaces may create problems of unity, quality and equality of representation. The functions and competences of the joint works council have also not been defined by law.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

In Lithuanian Public Service Law (Law No. VIII-1316 of 08 July 1999 on Public Service, State Gazette, 1999, No. 66-2130), there is only one category of civil servants that can be considered fixed term, namely substitute civil servants (*pakaitinis valstybės tarnautojas*). Such a civil servant has been temporarily accepted into the position of a career civil servant until a career civil servant is accepted into the position in accordance with the procedure established by law, as well as a civil servant who replaces a civil servant who is temporarily unable to perform his or her duties (Article 2 (4) of the Law on Public Service).

Generally, the substitute civil servant has the same legal status as a career civil servant. Neither Article 22 of the Law on Public Service (transfer of a substitute civil servant to another civil servant position after winning a selection or competition), nor Article 27 of

the Law of Public Service (evaluation of civil servants' service activities) establishes the possibility to evaluate the years of public service differently in the capacity of substitute public servant from those worked in the capacity of career public servant.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

This case does not seem to have any implications for Luxembourg. There are no part-time or 'interim' civil servants as such. Public service distinguishes between:

- civil servants (*fonctionnaires*), whose posts are indefinite; their first two years are a form of probationary period (*stage*);
- public employees (*employés d'Etat)*, who have an indefinite contract; the first two years are also probationary (*période d'initation*). After a certain period, their contract can be converted to achieve civil servant status.

Another category are 'State employees' (*salariés de l'Etat*), who have a contractual status based on the Labour Code and are covered by a special collective agreement. Their contracts can be fixed term, but there is no mechanism for converting these contracts into ones that confer civil servant status.

Discrimination between fixed-term and permanent workers in relation to the consolidation of a personal grade can therefore not arise.

Furthermore, by principle, civil servants have the right to maintain their remuneration (*droit acquis au traitement*), basically implying that their grade cannot be reduced, except in case of disciplinary sanctions (Article 21, *Statut général des fonctionnaires*).

This 'consolidation' is not 'absolute', however, as the grade and revenues remain linked to the function and may thus change, notably when a civil servant voluntarily changes position (e.g. *Tribunal administratif*, case No. 43507, 15 September 2021).

4 Other Relevant Information

4.1 Harassment

On 20 June 2022, Bill No. 8032 was published with the aim of amending the Criminal Code to introduce a general aggravating circumstance for hate crimes, i.e. crimes committed because of certain characteristics of the victim, such as gender, age, sexual orientation, religious views, etc.

This general aggravating circumstance would double the maximum penalty in case the offender is found guilty of a criminal offence.

Since some areas of labour law are subject to criminal penalties, it is possible that this text will be applied in a professional context, for example, in cases of harassment, and could thus have some impact on labour law.

Malta

Summary

Directive EU 2019/1158 on work-life balance of parents and carers has been transposed into Maltese legislation.

1 National Legislation

1.1 Work-life balance

The Work-life Balance for Parents and Carers Regulations, 2022 (hereinafter: the Regulations) transposes Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repeals Council Directive 2010/18.

Regulations 2(1) and (2) of the Regulations clarifies that the scope of the Regulations is to transpose the relevant provisions of Directive (EU) 2019/1158 and sets out its applicability.

Regulation 2(3) states that the Regulations apply indiscriminately to all workers, irrespective of the nature of their employment contract and gender.

Regulation 4 establishes paternity leave as follows:

> *"4(1) Fathers or equivalent second parents have the right to paternity leave of ten (10) working days, to be taken on the occasion of the birth or adoption of the worker's child, immediately after the birth or the adoption of a child, without loss of wages.*
>
> *(2) The right to paternity leave shall not be subject to a period of work qualification or to a length of service qualification.*
>
> *(3) The right to paternity leave shall be granted, irrespective of the worker's marital or family status."*

Regulation 5 establishes parental leave. Parental leave in Malta has been stipulated as follows:

- four months per worker per child, whether the employment is full-time or part-time and whether the worker is employed under a fixed-term contract or contract of indefinite duration.
- subject to the qualification of the worker having been employed with the same employer for a continuous period of at least twelve months;
- subject to the employee giving notice of at least two weeks specifying the beginning and end of parental leave.

This Regulation makes it clear that during the actual parental leave period, the employer cannot simply suspend the parental leave and request the employee to return to work before the agreed date of resumption of duties, and the employee shall have no right to return to work prior to the agreed date of resumption of duties.

Workers have the right to request parental leave in flexible ways but there is no obligation on the part of the employer to approve the request. However, the employer does have the obligation to consider and respond to such requests, taking the exigencies on both sides into consideration. The employer must provide reasons for any refusal to approve such a request within two weeks from submission of the request but, oddly, there is no obligation on the part of the employer to approve the request within any specific period of time.

Regulation 6 provides:

> *"6.(1) It shall be the individual right of each parent to be granted paid parental leave on the grounds of birth, adoption, child fostering in the case of foster parents, or legal custody of a child, to enable them to take care of that child for a period of four (4) months until the child has attained the age of eight (8) years: Cap 318. Provided that parental leave shall be paid for a period of two (2) months at the same rate established for the sickness benefit entitlement under the Social Security Act, and parental leave shall be paid as follows:(a) fifty per cent (50 per cent) of entitlement will be paid, where the child or children for whose care parental leave was granted has or have not attained the age of four (4) years; (b) twenty five per cent (25 per cent) of entitlement will be paid where the child or children for whose care parental leave was granted has or have attained the age of four (4) years but has or have not yet attained the age of six (6) years; and(c) twenty five per cent (25 per cent) of entitlement will be paid where the child or children for whose care parental leave was granted has or have attained the age of six (6) years but has or have not yet attained the age of eight (8) years; provided further that in the case of parental leave granted to foster parents, the rate of payment shall be the same as that established for 'regular' parents as stipulated in the first proviso, on condition that payment of allowance will be given to each parent that applies for parental leave and not for each child fostered: Provided further that two (2) months of parental leave cannot be transferred: Provided further that parental leave shall be availed of in established periods of at least two (2) weeks each, without prejudice to any agreement reached by the employer and employee or collective agreement."*

Regulation 7 states that a worker applying for parental leave must give a minimum of two weeks' notice in writing, specifying the beginning and end of the period.

Regulation 8 (1) covers the postponement of parental leave. The Regulations state that an employer who receives a request for parental leave may temporarily postpone the granting of parental leave for justifiable reasons related to the operation of the place of work. Regulation 8 (2) specifies what the term 'justifiable reasons' may amount to:

- where work carried out at the place of business is of a seasonal nature;
- where a replacement cannot be found within the notice period given by the worker;
- where the specific employment of the worker requesting parental leave is of strategic importance to the undertaking or place of business;
- where the place of business is a small enterprise which has no more than ten (10) employees, provided that the employer consults the worker to establish alternative dates when such leave may be availed of in such a way as to avoid indefinite postponement of the requested parental leave;
- where a significant share of the workforce applies for parental leave at the same time;

Again, in this case, if the employer decides to postpone parental leave, he/she must advise the employee accordingly within two weeks of receipt of the workers' notice. Furthermore, either way, parental leave shall not be postponed indefinitely and, eventually, must be granted to the employee. The employer also has the obligation to consider offering flexible ways of taking parental leave before postponing it.

Regulation 9 establishes that the carers' leave of five working days shall be unpaid.

Regulation 10 (1) establishes that workers and carers have the right to request flexible working arrangements for the purpose caretaking which may be limited in duration and cut short the employee's request and the agreement of the employer (taking into

account the needs of both parties). Regulation 10 (3) gives employers the possibility to refuse such requests or to postpone such arrangements.

Regulation 11 (1) states that the employment rights applicable on the date the leave covered by the Regulations commences, shall be maintained and hence the employee benefitting from such leave allowances shall not forfeit the rights accrued in his/her favour. Regulation 11(2) also states that at the end of paternal, parental and carers' leave, workers are entitled to return to their jobs or to equivalent posts under terms and conditions that are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled had they not taken leave.

Discrimination against workers on the ground that they availed themselves of the benefits provided by the Regulations, including time off from work on grounds of *force majeure* or any flexible arrangement is prohibited, as is adverse treatment or consequences for taking legal proceedings against the employer (or complaining thereto) for the enforcement of provisions against the employer and protection against dismissal (or preparation thereof) for employees who have applied for or have taken paternal, parental or carers' leave or time off from work on grounds of force majeure or have exercised their right to request flexible working arrangements.

The Regulations have been heavily criticised in the local press (*Times of Malta*, 14 June 2022). From a purely legal perspective, it must be noted that the Regulations appear to be unclear in some aspects. For instance, it is still to be clarified from which source the two months of parental leave will be funded, whether a worker who avails herself of maternity leave can then take her parental leave immediately after, and which provisions will apply in the transitory period.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

Under Maltese law, there is no concept of 'interim civil servant'. The Public Service Management Code does not make any reference to the concept of interim civil service.

Reference must also be made to the Extension of Applicability to Government Service (Contracts of Service for a Fixed Term) Regulations of 2007 have extended the applicability of the Contract of Service for a Fixed Term regulations (2007) to government employees. It would therefore appear that there is no real implication of the judgement on Maltese law.

However, the judgement of the CJEU is quite important because it also addresses situations whereby the fixed-term worker's rights are preserved in full, even in case the employment relationship is converted into one of indefinite duration.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

(I) A Draft Bill to implement Directive EU 2020/1057 on posting of workers in the road transport sector has been published.

(II) A court held that the seafarers 'dockers' clause falls within the scope of the Albany exception, and thus falls outside the scope of application of Article 101 TFEU.

(III) The Supreme Court held that a labour market shortage is not a valid legal reason for an employer to be able to enforce a non-compete clause.

1 National Legislation

1.1 Posting of workers

On 07 July 2022, a Draft Bill was published with the aim of implementing Directive 2020/1057 on posting in the road transport sector. If adopted, the bill will change the national legislation on working conditions for posted workers and national legislation declaring collective labour agreements universally binding.

2 Court Rulings

2.1 Collective bargaining

Court of Rotterdam, ECLI:NL:RBROT:2022:5474, 06 July 2022

The Court of Rotterdam ruled in a case involving seafarers.

In the context of collective labour negotiations, it was agreed in a so-called 'Dockers Clause' that the crews of container ships that meet certain criteria will no longer carry out a part of the work themselves. Instead, this type of work will be assigned to port workers. However, a number of shipowners have disregarded this clause.

According to the court, Article 101 TFEU does not lead to the nullity of the Dockers Clause because it meets the 'Albany exception', since the clause stems from a social dialogue in the context of a new collective agreement for seafarers. Indeed, the so-called Albany exception provides that collective agreements do not fall within the scope of Article 101 TFEU when two cumulative conditions are met:

(i) they are entered into in the framework of collective bargaining between employers and employees, and
(ii) they contribute directly to improving the employment and working conditions of workers.

The fact that the shipowners have no control over the actual course of events on board does not mean that its obligations under the clause are limited to concluding employment contracts that comply with the clause. When concluding crew agreements, the shipowners must stipulate and record that the ship operators to whom it entrusts its employees will respect the terms of employment, as follows from the requirements of good employment practices. Additionally, the shipowner must monitor and insist on compliance with the Dockers Clause, especially if it receives signals that proper compliance is lacking.

2.2 Non-competition clause

Dutch Supreme Court, 17 June 2022, ECLI:NL:HR:2022:894

This ruling of the Dutch Supreme Court concerns a non-competition clause as described in Article 7:653 Dutch Civil Code.

According to the employer, the employer's interest in retaining the employee for a certain period of time must be taken into account. This would give the employer the opportunity to find replacement staff in a tight labour market. Otherwise, business operations and the continuity of the company could be jeopardised. The employer argued that a non-competition clause also serves to safeguard this interest of the employer.

The Supreme Court, however, did not agree with these arguments, and held that a shortage on the labour market is not a legally valid reason for the employer to enforce a non-competition clause.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

The CJEU ruled that the Spanish legislation stipulating that periods worked on a fixed-term contract are not considered equal to periods worked on a contract of indefinite duration when it comes to calculating the level of remuneration is not in accordance with Directive 1999/70.

Dutch labour regulation does not contain similar rules and this decision therefore has no implications for Dutch law.

4 Other Relevant Information

4.1 Labour law reform

The Minister of Social Affairs and Employment has published a letter which outlines the government's plans to make the labour market more resilient for the future. Together with workers, employers and entrepreneurs, the government is currently working on a resilient future labour market based on 5 themes:

1. Encouraging sustainable employment relationships within agile companies and better regulation of temporary contracts and triangular relationships.
2. A more level playing field between employees and self-employed workers, clearer rules and enforcement.
3. The prospect of continuous new work opportunities (through life long development and a good labour market infrastructure).
4. Adjustments to the disability legislation (WIA).
5. Ensuring that everyone is able to participate in the labour market.

The letter concerns all of these aspects, but mainly deals with the first two themes: the promotion of sustainable employment relationships and the regulation of flexible employment. The plans described in the letter can be used to develop future legislation. They are currently not yet binding. The main points of interest in the letter are described below.

To offer employees with flexible contracts more security, the government states that structural work should usually be carried out on the basis of employment contracts of indefinite duration (p. 9 of the letter), in line with the advice provided by the SER (Social and Economic Council). This is also meant to achieve more sustainable employment relationships. That is why the following measures are being developed:

- Abolition of zero-hours and min-max contracts (on-call contracts, p. 10 of the letter):

  The government has decided to abolish zero-hours and min-max contracts in their current form, with an exception for school children and students. These contracts will be replaced by a basic contract, which will be decided on in more detail in collaboration with the social partners. With this decision, the government is following the principles of the advice provided in 2021 by the SER.

- Temporary agency work contracts (p. 11 of the letter):

  Temporary employment contracts will be further regulated to improve the position of temporary agency workers. The labour conditions of temporary agency workers must be at least equivalent to those of employees who work directly at the user undertaking. The government is developing the framework to establish this, taking into account the European legal framework on temporary agency work.

- Chains of contracts (p. 12 of the letter):

  The Dutch government wants to abolish the so-called 'breakthrough rule' to prevent successive temporary employment contracts. This rule means that an employee can start working on the basis of a temporary employment contract for the same employer again after an interval of six months. Exceptions will be made for students and scholars, and exceptions for seasonal work are being considered.

- Labour Committee (p. 13 of the letter):

  A low-threshold form of conflict resolution (Labour Committee) is proposed to ensure better implementation of labour rights for vulnerable employees, including migrant workers.

Other measures concern the need for entrepreneurs to be able to deal with fluctuations and innovations. It is important that this agility does not automatically come at the expense of the security of employees. In light of this, the government is discussing the following measures:

- Providing guidance to employees about working after the termination of the employment contract (p. 15 of the letter);
- Part-time unemployment benefits (p. 16 of the letter);
- Improving the scheme for continued payment of wages in the event of illness by focussing on returning to another employer in the second year (p. 17 of the letter).

However, many of these proposed measures are difficult to implement, for example, because of their technical implementation or budget problems. The solutions for this will be further explored in consultation with the social partners.

Lastly, the government aims to provide an adequate level of protection for all workers, fight against unfair competition on employment conditions, ensure solidarity within social security and improve the tax system, legislation and regulations so that there is more clarity about contract types. That is why the following measures are proposed:

- Equal playing field (p. 20 of the letter):

A more equal playing field for all contract types related to social security and taxation. There will be a disability insurance for the self-employed, tax benefits are being phased out and the possibility for a compulsory pension is being discussed. This also includes opportunities to collectively negotiate and attain a firmer place in the SER for self-employed workers.

- Clarity about the qualification of contracts (p. 22 of the letter):

  More clarity about the question whether work is being performed as an employee or as a self-employed person, as well as supporting workers to claim their legal position. Efforts are being made to adapt the term 'authority' (Dutch: *gezag*). Standards in labour law such as these will remain open to a certain extent. This is also desirable. After all, not all situations can be envisaged by the legislator and rules must be flexible to move along with the dynamic practice on the labour market. However, the 'grey area' should be minimised. As part of this plan, more legal presumptions on the qualification of an employment relationship will be used (p. 24 of the letter). This means that the employer must provide proof that no employment relationship has been established instead of the worker having to prove that an employment relationship exists.

- Supervision and enforcement (p. 25 of the letter):

  Improvement of supervision and enforcement to prevent and end bogus self-employment. The government will be working towards a situation in the near future in which the rules surrounding work and the assessment of employment relationships are being complied with.

Norway

Summary

A new Transparency Act entered into force on 01 July 2022 with the aim of promoting enterprises' respect for basic human rights and decent working conditions and ensuring public access to information.

1 National Legislation

1.1 Fundamental rights at work

A new Act on enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act) entered into force on 01 July 2022 (LOV-2021-16-18-99).

The purpose of the Act is to promote enterprises' respect for basic human rights and decent working conditions, and to ensure public access to information. The Act applies to larger enterprises located in Norway that offer goods and services in or outside Norway, cf. Section 2.

A 'larger enterprise' is defined as an enterprise covered by Section 1-5 of the Accounting Act (LOV-1998-07-17-56), or that exceed a certain threshold or meet two of the three following conditions: sales revenues of NOK 70 million; balance sheet total of NOK 35 million and average number of employees in the financial year of 50 full-time equivalents (cf. Section 3, a). Parent companies shall be considered larger enterprises if the both the parent company and subsidiaries as a whole fulfil the conditions.

Fundamental human rights refers to internationally recognised human rights enshrined in the International Covenant on Economic, Social and Cultural Rights of 1966, the International Covenant on Civil and Political Rights of 1966 and the ILO's core conventions on fundamental principles and rights at work (cf. Section 3, b).

Decent working conditions means work that safeguards fundamental human rights pursuant to the abovementioned conventions and health, safety and the environment in the workplace, and provides a living wage (cf. Section 3, c).

The Act stipulates three main obligations. First, enterprises shall regularly carry out due diligence in accordance with the OECD's Guidelines for Multinational Enterprises (see further Section 4). Second, enterprises shall publish an annual account of due diligence, cf. Section 5. Third, enterprises shall, upon written request and as a main rule, provide information on how the enterprise addresses actual problems and potential adverse impacts pursuant to Section 4 (cf. Section 6).

Compliance with the Act will be monitored by the Consumer Authority, which may impose prohibitions and orders, and, in certain cases, enforcement and infringement penalties (cf. Sections 9–14).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

In Norwegian law, civil servants are covered by the general framework of employment law, i.e. the Working Environment Act (the WEA, LOV-2005-06-17-62). The WEA in Chapter 13 prohibits discriminatory treatment of fixed-term employees. The non-discrimination principle of the Framework Agreement (Directive 1999/70/EC) is implemented in WEA Chapter 13, which applies to all civil servants.

The general rule is that employment shall be permanent, cf. WEA Section 14-9 (1). Fixed-term employment is only prohibited when certain conditions are met, cf. Section 14-9 (2). These rules apply to civil servants employed in municipalities, while special rules in the Act on State Employees (Civil Service Act, LOV-2017-06-16-67) apply to civil servants employed by the State. The rules on permanent and fixed-term employment in the Civil Service Act are similar to the WEA, but provide for a slightly broader possibility for fixed-term work, cf. Section 9.

Apart from this, neither the WEA nor the Civil Service Act distinguish between interim or permanent civil servants, as Spanish law does in the present case. Norwegian law does not have regulations similar to the Spanish system of personal grades, and the consolidation of personal grades. Renumeration for civil servants is regulated in collective agreements where the levels of pay are differentiated for different types of position, but the agreements do not set different levels of pay based on whether the person is employed permanently or under a fixed-term contract in the relevant position.

Furthermore, there is no formal civil servant career progression arrangement system that separates permanent and fixed-term work. As regards selection processes, the qualification principle applies to the appointment of all civil servants. This principle requires the most qualified candidate to be appointed, based on education, experience and personal aptitude, cf. the Civil Servants Act, Section 3. No guidelines on how to assess previous work experience in permanent vs fixed-term posts are provided.

Therefore, the ruling does not seem to have any clear and direct implications for Norwegian law.

4 Other Relevant Information

Nothing to report.

Poland

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

There are three legal statuses of civil servants and employees in public service in Poland, enshrined in:

- The Law of 16 September 1982 on employees of government agencies (*pol. Ustawa o pracownikach urzędów państwowych*), consolidated text: Journal of Laws 2020, item 537, with further amendments;
- The Law of 21 November 2008 on civil service (*pol. Ustawa o służbie cywilnej*), consolidated text: Journal of Laws 2021, item 1233, with further amendments);
- The Law of 21 November 2021 on self-employed employees (*pol. Ustawa o pracownikach samorządowych*, consolidated text: Journal of Laws 2022, item 530).

There are no explicit statutory provisions that would refer to the consolidation of civil servants' personal grade. There are different groups of employees in public administration. As a rule, promotion to the higher grade (and salary) is determined, inter alia, by the duration of service. As a rule, the service in any post in public administration is taken into account, regardless of the post the public employee occupies, as well as the temporary or indefinite nature of his/her employment. In other words, vertical career progression of public administration employees is connected to any duration of service in that sector. The issue dealt with by the CJEU has not been reported in practice in Poland.

Therefore, the CJEU ruling does not imply the need to amend national legislation.

4 Other Relevant Information

4.1 Transposition of EU law

In February, the government presented the draft of the amendments to the Labour Code which aims to transpose both Directive 2019/1152 on transparent and predictable working conditions, and Directive 2019/1158 on work-life balance. The draft was extensively described in the February and June 2022 Flash Reports (sections 'National Legislation').

Draft No. UC118 and its substantiation is available on the government's website.
The draft has not yet been submitted to Parliament.

Portugal

Summary

(I) A transitional regime on the remuneration of overtime work performed by medical workers necessary for the operation of emergency services, as well as changes to the remuneration of certain careers and categories of workers in public administration have been approved.

(II) A ruling clarifies the concept of transfers of an economic unit for the purpose of Portuguese labour law.

(III) The state of alert due to the COVID-19 crisis was extended until 31 August 2022.

1 National Legislation

1.1 Health professionals

Decree Law No. 50-A/2022, of 25 July 2022, establishes a transitional remuneration regime for overtime work carried out by medical workers necessary to ensure the operation of emergency services.

To ensure the operation of emergency services while negotiations between the government and trade unions representing medical workers are underway, this decree allows for the management bodies of public hospitals to remunerate the overtime work of employees carried out in the emergency services with a higher amount than the one corresponding to the worker's category and post. The maximum amount of overtime remuneration defined in the decree depends on the number of hours of overtime work already provided by the worker, varying between EUR 50 (from the 51st and up to the 100th hour of overtime work) and EUR 70 (from the 151st hour of overtime work onwards).

This decree also establishes that the conclusion of agreements for the provision of medical services is only admissible when the service cannot be provided by the doctors included in the respective staff structure, and those agreements are subject to a maximum amount per hour of service that cannot exceed the highest amount of the base salary provided for in the remuneration table applicable to medical workers. This temporary regime started on 26 July 2022 and will be in force until 31 January 2023.

1.2 Public employees

Decree Law No. 51/2022, of 26 July 2022, provides for the remuneration of certain careers and categories of public administration. This measure aims to stimulate the strengthening of qualifications in the public administration and to contribute to the improvement of the attractiveness of public sector employment. This regime shall take effect on 01 January 2022.

2 Court Rulings

2.1 Transfer of undertaking

Évora Court of Appeal, No. 2082/20.0T8FAR.E1, 30 June 2022

This ruling concerns the concept of transfers of an economic unit for the purpose of Portuguese labour law.

According to Article 285 (1) of the Portuguese Labour Code, in the event of an assignment by any means or form of ownership of the undertaking, the establishment of part of the undertaking or establishment that constitutes an economic unit, the transferee company is assigned the legal position of employer in the employment contract in relation to the respective employees.

For this purpose, an 'economic unit' is deemed to be the aggregate of organised units that constitute a productive unit with technical and organisational autonomy which retains its own identity, with the purpose of carrying out an economic activity, in a principal or subsidiary manner (Article 285 (5) of the Portuguese Labour Code). As mentioned by the Portuguese court, this concept consists of a transposition into Portuguese law of the regime envisaged in Directive 2001/23/EC.

In case of acquisition of an undertaking, establishment or economic unit, the transferee assumes, by automatic effect of the law, the position of employer occupied by the transferor as regards the employment contracts entered into with the respective employees.

The present case dealt with the question whether a transfer of an economic unit had effectively occurred On 17 January 2019, a company (Securitas) entered into a contract for the provision of surveillance and security services with *Centro Hospitalar Universitário do Algarve* (hereinafter referred to as 'CHUA') to cover several medical/hospital units belonging to CHUA. This contract was in force until 31 July 2020. The plaintiff worked at Securitas as a security guard within the scope of the abovementioned service contract. In the execution of their functions, the plaintiff and his colleagues opened and closed the premises, patrolled the premises, controlled access to the premises, provided information and gave guidance to the users, attendance and telephone support, carried out shift reports and provided all security so that both the staff and patients, visitors and other users were safe, and goods and equipment were protected. For this purpose, they used the client's facilities as well as a desk, chair and telephone that had been installed at each gate, locker and key fob belonging to CHUA. On 28 February 2020, CHUA announced a public tender for the provision of security and surveillance services for a period of nine months. The company Comansegur won the public tender and entered into a contract with CHUA for the provision of safety and surveillance services on 31 July 2020. On 01 August 2020, Comansegur began performing the referred services at the client's premises, as Securitas had previously done, using the desk, chair and telephone available at each gate for this purpose, as well as the locker and key fob. This equipment started to be used by guards hired by Comansegur under the same terms in which they had been used by guards in the service of Securitas. Twenty-nine of the guards who worked at CHUA's facilities until 31 July 2020 continued to work for Comansegur without interruption and performed the same functions after that date.

Taking this context into account, the Évora Court of Appeal stated that the performance of the surveillance and security services necessarily implies a set of organised means that constitute an autonomous productive unit with its own identity, and with the objective of pursuing the establishment of an economic unit. This unit consisted of guards whose work had to be coordinated and organised among themselves (e.g. schedules, days off, vacations, passing on information), who used tangible assets intended for the exercise of surveillance functions that were in the client's facilities, and the organised set of all these means aimed to generate the performance of a service considered necessary for society and to which market value is attributed. Therefore, the Court declared the existence of an economic unit within the purpose of Article 285 of the Portuguese Labour Code.

Subsequently, the Court analysed whether the referred economic unit had been transferred to the new provider. Concerning this issue, the Court stated that the economic unit that allowed the execution of surveillance and security services at the

client's premises passed, without interruption, to the legal sphere of Comansegur, by virtue of the contract for the provision of surveillance and security services, which began on 01 August 2020. From that date onwards, Comansegur assumed responsible for the operation, management and organisation of the aforementioned economic unit. According to the Court, the fact that Comansegur took electronic batons, mincing controllers and a system for recording and controlling entrances, radios, mobile phones and flashlights to the CHUA premises does not distort the transfer of the economic unit, since such instruments do not integrate the respective essential identifying elements. It is normal that each security company reinforces existing equipment not due to necessity but to enhance the exercise of its operations in the field, and at the end of the service agreement they collect this equipment, which reveals the non-essentiality of the same for the identification of the economic unit.

Considering that the plaintiff was able to prove that he had performed the functions of a guard in one of the premises of CHUA since the first quarter of 2020 as a subordinate employee of Securitas, within the scope of the contract for the provision of services that such company entered into with CHUA, the Évora Court of Appeal concluded that his employment contract could be considered to have been transferred to Comansegur from 01 August 2020.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

Portuguese law enshrines the principle of equal treatment of workers, both in the context of private and public employment relationships, establishing that the worker hired under a fixed-term employment contract is entitled to the same rights and is subject to the same duties as a permanent worker in a comparable situation, unless objective reasons justify differentiated treatment (see Article 146 of the Portuguese Labour Code and Article 67 of the legal framework applicable to employment relationships in public functions (*Lei Geral do Trabalho em Funções Públicas*).

This CJEU ruling is relevant, as it may contribute to the interpretation of the national provisions on equal treatment of fixed-term workers, namely in the case of civil servants.

In fact, taking into account that in public administration careers workers are usually classified in grades/levels, this ruling provides important guidelines for solving potential problems related to the determination of the grade to be assigned to a civil servant who was previously hired under a fixed-term employment contract and subsequently appointed on a permanent basis.

4 Other Relevant Information

4.1 Measures to respond to the COVID-19 crisis

By the Resolution of the Council of Ministers No. 67-A/2022, of 29 July 2022, the state of alert in the Portuguese mainland due to the COVID-19 crisis was extended until 31 August 2022.

4.2 Labour law reform

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

This proposal transposes Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union, and Directive (EU) 2019/1158 on work-life balance for parents and carers into Portuguese law.

In addition, this proposal includes several amendments to labour law, namely regarding the misclassification of independent contractors, probation periods, digital platform workers, temporary work, fixed-term employment contracts, collective bargaining agreements and the reinforcement of the Employment Authority powers.

This proposal will be subject to the different phases of the legislative process and is expected to be voted on by Parliament in the coming months.

Romania

Summary

The government has adopted various measures aimed at increasing revenues to the State budget and limiting expenses, including a measure raising the taxes paid by part-time workers to reduce the use of underdeclared work.

1 National Legislation

1.1 Part-time work

The Government Emergency Ordinance No. 16/2022 (published in the Official Gazette of Romania No. 716 of 15 July 2022) amends the Fiscal Code, providing for a surcharge on the wages of part-time employees. Thus, the contributions owed by part-time workers to the health and pension funds cannot be lower than those owed by a full-time employee who is paid the minimum wage. There are exceptions to this surcharge regime if the part-time employees are pupils or students; employees who benefit from an old-age pension; underage apprentices; or disabled persons. Employees who work under several employment contracts are also exempt if the total remuneration exceeds the level of the national minimum gross salary.

The government thus aims to reduce the use of full-time contracts disguised as part-time contracts. In the same regulatory framework, the administrative sanctioning of the use of underdeclared work, i.e. the granting of a higher salary than that declared, was introduced into the Labour Code last year (Emergency Government Ordinance No. 117/2021, published in the Official Gazette No. 951 of 05 October 2021. See October 2021 Flash Report)

The Ordinance also provides for a series of other fiscal measures (increases in taxes and contributions due on income from work) aimed at attracting more revenue to the state budget in the current period of crisis.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

In Romania, the employment relationships of civil servants and contract staff of public institutions and authorities are regulated in Emergency Ordinance No. 57/2019 on the Administrative Code (published in the Official Gazette of Romania No.555 of 5 July 2019).

In their first year of activity, civil servants work as interim (junior) civil servants. This period does not form the object of a fixed-term contract, but is the first part of the open-ended employment relationship. If the civil servant's performance is assessed at least as 'satisfactory' at the end of the interim period, this legal relationship continues.

Participation in both the recruitment competition for public office and in the promotion competition require the fulfilment of certain conditions of seniority in work and in the specialised function. The period during which the civil servant had the status of interim

civil servant or performed work under a fixed-term contract is taken into account to determine seniority.

In the education system, where legal relationships are regulated by Law No. 1/2011 (published in the Official Gazette of Romania No. 18 of 10 January 2011), the applicable rules are similar. For example, for doctoral students who perform an activity based on a fixed-term contract, this period is listed as seniority in their service and specialisation.

To conclude, Romanian legislation is consistent with Clause 4 (1) of the Framework Agreement on Fixed-term Work in the interpretation conferred by the Court of Justice of the European Union in case C-192/21.

4 Other Relevant Information

4.1 Public employees

As a result of the recommendations of the Council of the European Union for the correction of the excessive budget deficit, by Emergency Ordinance No. 80/2022 on the regulation of certain measures in the field of employment in the public sector (published in the Official Gazette of Romania No. 593 of 17 June 2022), employment in the public sector is suspended until the end of the year. Exceptions are made for employment on single, vacant positions, as well as employment in the undergraduate and graduate education system.

Slovakia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

The remuneration of employees employed in the public service is regulated (*öffentlichen Dienst, fonction publique*) in Act No. 553/2003 Coll. (Collection of Laws) on the remuneration of certain employees for the performance of work in the public interest and on the amendment of certain acts, as amended. The legal regulation in this Act does not distinguish between employees with a fixed-term or permanent contract.

Salary grades and classification of employees into salary grades is regulated in Article 5 of this Act. The employer assigns the employee to the salary grade according to the most demanding work activity in terms of its complexity, responsibility, physical load and mental load, which he/she has to perform according to the type of work agreed in the employment contract, and according to the fulfilment of the qualification prerequisites necessary for its performance (paragraph 1). The employer assigns the senior employee to the salary grade according to the most demanding work activity performed by him or her, at least to the salary grade in which the most demanding work activity performed in the organisational unit managed by him/her is included. The same procedure applies to a senior employee who is a statutory body of the employer (paragraph 2). If the employee is to perform work activities that predominantly entail intellectual work, the employer will place him in one of the salary grades 2 to 11 (paragraph 3).

Act No. 553/2003 Coll. also contains several annexes that define some terms in more detail. Salary degrees and the classification of employees in salary degrees is regulated in Article 6 of this Act. The employer determines the amount of the employee's work experience and, accordingly, assigns him/her to one of 14 salary degrees (paragraph 1).

According to Article 6 (2) of this Act, the duration of service takes into consideration:

a) professional work experience
b) experience in performing work activities that are of a different nature than the work activity the employee is supposed to perform for the employer; the employer will include this work experience depending on the degree of its applicability for the successful performance of the work activity, at most in the scope of two-thirds.

Professional work experience for the purposes of this Act refers to the summary of knowledge and experience gained during the performance of work activities that are of the same or similar nature as the work activity the employee is to perform for the employer (Article 6(3) of the Act).

Other periods, such as childcare periods and time assessed as periods of employment for pension insurance purposes according to special regulations, is also calculated in the duration of service (Article 6(4)(a)-(f)).

As already mentioned, the legal regulation in this Act does not distinguish between an employee with a fixed-term contract or a contract of indefinite duration. Article 40(9) of the Slovak Labour Code, transposing Clause 4(1) of Directive 1999/70/EC, also applies here.

Situations such as the one dealt with in this judgement should therefore not arise.

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

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

This case is of no particular relevance for Slovenian law, since in Slovenia, services provided as a fixed-term civil servant are taken into account and follow the same regime as those provided by permanent civil servants.

4 Other Relevant Information

4.1 Collective bargaining

Annex No. 16 of the Collective Agreement for the Newspaper, Publishing and Bookselling Sector (‘*Aneks št. 16 k Tarifni prilogi h Kolektivni pogodbi časopisno-informativne, založniške in knjigotrške dejavnosti’*, OJ RS No. 103/22, 29 July 2022, p. 7773-7774) and Annex No. I to the Collective Agreement for the Agriculture and Food Processing Industry (‘*Aneks št. 1 k Tarifni prilogi Kolektivne pogodbe za kmetijstvo in živilsko industrijo Slovenije*’ OJ RS No 94/22, 13 July 2022, P. 7129) were published (adjusting wages and/or other payments).

Spain

Summary

(I) A new law on equal treatment was adopted on 12 July 2022, with implications for employment relationships.

(II) Regulations on employing foreign workers have been modified to make it easier to hire workers who are already in Spain without possessing the relevant permits to work and live in the country.

(III) A Royal Decree provides further rules on fixed-term employment contracts in the health sector, in line with EU law.

1 National Legislation

1.1 Equal treatment

A new Law 15/2022 to guarantee equality and non-discrimination was adopted on 12 July 2022 with the aim of providing a more comprehensive regulation.

The principles of equality and non-discrimination are recognised in Article 14 of Spanish Constitution, and there are specific laws on some of the most typical causes of discrimination. One of the most significant laws is Organic Law 3/2007, of 22 March 2007, which establishes effective equality of women and men. Article 17 of the Labour Code also prohibits discrimination at work.

In this context, the new law aims to provide a more comprehensive regulation. It is not a labour law provision and does not substitute other previous regulations (e.g. the aforementioned Organic Law 3/2007), but all of them coexist. It does not implement any specific EU Directive, but mentions the relevant ones and intends to be fully in line with EU law.

The scope of application is broad (education, transport, health, justice, sports, Internet access, etc.) and employment is expressly mentioned. One of the most relevant features is the catalogue of causes of discrimination, which includes: birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, illness or health condition, serological status and/or genetic predisposition to suffer pathologies and disorders, language, socio-economic situation, or any other personal or social condition or circumstance (Article 2(1)).

Most of them have already been included in Article 14 of the Constitution or in previous provisions, but some are brand new and will have an impact on labour law. Specifically, the mention of 'illness or health condition' should be considered a breakthrough, because according to Constitutional Court case law, illness was not a cause of discrimination (except in case of stigmatised diseases, such as AIDS). This is the starting point for CJEU case C-395/15, *Daouidi*, but the effects of that ruling have been very limited, because not all illnesses result in a disability. The inclusion of 'illness' among the causes of discrimination leads to a different—and more protective—scenario.

The intention of citing 'serological status and/or genetic predisposition to suffer pathologies and disorders' is to prevent an incipient cause of discrimination and clearly reflects the purpose of the Law.

Article 9 refers to discrimination at work, which is prohibited. For the first time, the Law does not allow the employer to ask about an employee's health status during the job interview (Article 9(5)). Article 10 expressly prohibits collective agreements from containing any discrimination and encourages positive actions.

Article 11 also extends this prohibition of discrimination at work to include self-employed workers.

1.2 Foreign workers

The government has amended the relevant regulations of foreign work to facilitate the hiring of foreigners who are already in Spain. The ordinary procedure to hire a foreign worker is quite difficult. It is assumed that the worker resides outside of Spain and receives an offer to work in Spain. There is no easy way of obtaining the relevant permits to work and live in Spain once the individual is already in Spain. In the first decade of this century, there were some exceptional processes of 'regularisation', which allowed third-country nationals who could prove 'social and labour roots' to regularise their administrative status, but the situation has changed since the economic crisis of 2008 and the increase in unemployment rates.

This amendment aims to make it easier for foreign workers already in Spain to obtain the relevant authorisations if they are offered a job. To achieve this goal, the procedure to elaborate the catalogue of 'difficult to fill jobs' will be amended. As reported in previous Flash Reports, Spanish employers do not have full freedom to hire foreign workers, because it depends on the 'domestic employment situation', and people who are already in Spain (Spaniards or not) have priority. The hiring of new foreign workers who want to enter Spain is only possible if they are to perform work in the activities mentioned in that catalogue. If the activity is not listed, it is assumed that there are unemployed people who are already in Spain who can perform the job.

This catalogue of 'difficult to fill jobs' has to be approved by the government every quarter of the year. For several years (since the start of the economic crisis in 2008), these occupations were very few, and have currently been reduced to professional sports (both for athletes and coaches) and to work at sea. This new amendment aims to make the procedure less rigid.

Moreover, foreign students can get a job with fewer limitations than before.

1.3 Fixed-term work

As reported in many past Flash Reports, fixed-term employment in public administration has been and continues to be a controversial issue in Spain.

Interim contracts (replacement contracts) are frequent, and could be used in two situations according to the relevant legal provisions. Firstly, when the employer needs to substitute workers who have a right to keep their jobs. These contracts end when the substituted worker returns. Secondly, the employer can hire an interim worker while a selection process for a vacancy is being carried out. Labour law sets down a maximum duration for interim contracts in this latter case (three months), but it only applies to private sector employers. Thus, this type of interim (replacement) contract in public administration had no limit of duration and could last for years. There was no strict obligation for the public administration employer to initiate the selection process at any particular moment, because the Supreme Court had provided for a lot of flexibility.

The CJEU had stated several times that Spanish law was not in line with EU law. Following the CJEU case C-726/19, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, the Supreme Court modified its previous doctrine with the aim to adapt to CJEU case law, and the government amended the relevant regulations.

Specifically, the Royal Decree Law 14/2021, of 06 July 2021, introduced three main rules:

- Replacement contracts may not last longer than three years.

- If the replacement contract lasts more than three years, the worker is entitled to severance pay at the end of the contract (in the same amount as for a dismissal on objective grounds).
- In case of a vacancy-based interim contract, the public administration employer will have the obligation to initiate the selection process once the interim employee has occupied the post for three years.

In this context, the new Royal Decree Law 12/2022 clearly specifies these rules for health workers in particular.

It must be noted that since the organisation of health services is a competence of Spain's Autonomous Communities, the government had to negotiate with them in advance to adopt the proper measures and avoid a political conflict.

The purpose of Royal Decree Law 12/2022 is to prevent abuse of fixed-term contracts in the health sector. It aims to provide more precise rules to identify temporary needs and also establishes maximum durations for each contract, in line with the general regulations for public employment passed in 2021.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

This ruling, raised by a Spanish court, will have implications for Spain, but similar problems are likely to arise in the future.

As reported above (Section 1.3), fixed-term employment in public administration has been a controversial issue in Spain. Civil servants have enjoyed more and better rights than fixed-term employees, and this is not the first time the CJEU has stated that Spanish law does not comply with EU law (among others, see case C-444/09, *Gavieiro and Iglesias Torres;* case C-273/10, *Montoya Medina*; and case C-177/14, *Regojo Dans*).

As regards this particular situation, there are other examples of civil servants who lost certain rights they had enjoyed while working as fixed-term employees. For instance, university professors had the right to salary supplements if their research activity was evaluated positively (every six years). Firstly, only permanent university teachers had the opportunity to receive these supplements. Fixed-term staff were excluded. After the CJEU rulings, fixed-term university professors could also apply to get supplements. However, even if they received the supplement for years following a positive evaluation (based on the same criteria as civil servants), they automatically lost their entitlement to the supplement when they became civil servants. The law requires such employees to reapply for the same supplement, with the risk of them not getting it because it is a new evaluation process and there are no guarantees that the new commission will evaluate the same research period positively. Therefore, it appears likely that a similar issue will arise in the future.

4 Other Relevant Information

4.1 Unemployment rate

Unemployment dropped again in June (42 409). There are now 2 880 582 registered unemployed people, the lowest number since 2008. Around 50 per cent of new employment contracts are permanent due to the most recent labour reform. Previously, over 80 per cent of new contracts in the summer months were fixed-term ones.

Sweden

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

The judgement confirms that a permanent worker can be subject to the rules of non-discrimination of fixed-term employment workers if the discrimination is based on work that was conducted under a fixed-term contract, resulting in a fixed wage level based on abstract and general features (in the case of a lower pay grade than that during the fixed-term contract).

From a Swedish perspective, the judgement is not surprising. The Swedish Act on Non-discrimination of Fixed-term Employees (*Lag (2002:293) om förbud mot diskriminering av deltidsarbetande arbetstagare och arbetstagare med tidsbegränsad anställning*), which transposed Directive 1999/70, also covers situations when discrimination is based on a former fixed-term employment relationship.

4 Other Relevant Information

Nothing to report.

United Kingdom

Summary

(I) The temporary agency work regulation has been amended to enable agency workers to be used to replace strikers.

(II) The government has issued a guidance on employment status.

(III) The Supreme Court held that the statutory holiday entitlement for a 'part-year' worker must not be calculated following the pro–rata temporis principle.

1 National Legislation

1.1 Temporary agency work

As reported in the June 2022 Flash Report, the UK government is anticipating considerable strike actions in coming months. Following a strike called by the RMT (Rail, Maritime and Transport union) in the week of 20 June, the government decided that it would change the current law which does not allow agency workers to be used to replace strikers. The agency work regulation has now been amended accordingly through the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022 (SI 2022/852).

According to the government:

> *"Thanks to a change in the law coming into force today, businesses can now provide skilled agency workers to fill vital staffing gaps caused by industrial strike action.*
>
> *With industrial action across a range of sectors threatening to disrupt crucial public services, the government has worked at speed to repeal trade union laws that restrict employment businesses from providing temporary agency workers to fill vacant positions caused by staff striking.*
>
> *From today, businesses most affected by industrial action will be able to call upon skilled, temporary staff at short notice to plug essential positions. This will help to mitigate the disproportionate impact strike action can have both on the UK economy and society by allowing crucial services, that we all use on a daily basis, to continue functioning.*
>
> *Today's change in the law will apply across all sectors, for example, in education where strike action can force parents to stay at home with their children rather than go to work.*
>
> *Business Secretary Kwasi Kwarteng said:*
>
> 'In light of militant trade union action threatening to bring vital public services to a standstill, we have moved at speed to repeal these burdensome, 1970s - style restrictions. From today, businesses exposed to disruption caused by strike action will be able to tap into skilled, temporary workers to provide the services that allow honest, hardworking people to get on with their lives. That's good news for our society and for our economy.'
>
> *Secretary of State for Transport, Grant Shapps said:*
>
> 'While next week's rail strikes will come too soon to benefit from this legislation, it's an important milestone reflecting the government's determination to minimise the power of union bosses. For too long unions have been able to hold the country to ransom with the threat of industrial action but this vital reform

means any future strikes will cause less disruption and allow hardworking people to continue with their day to day lives.'

While this law change will provide greater flexibility to businesses, companies will still be required to abide by broader health and safety rules that keep employees and the public safe. In addition, it will be the responsibility of individual businesses to hire temporary workers with the correct and suitable skillset and/or qualifications to meet the obligations of the role."

On 21 July 2022, the government also amended the law to raise the maximum damages that courts can award against a union, when strike action is found by the court to be unlawful. For the biggest unions, the Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022 (SI 2022/699) (the Order) now provides that the maximum award will rise from GBP 250 000 to GBP 1 million.

The changes apply across England, Scotland and Wales.

1.2 Employment status

Following the Taylor Review in 2018, the government consulted on the issue of employment status. It has decided not to take any legislative action. It has, however, published guidance. According to the government:

- New government guidance will act as a one-stop-shop for individuals and businesses to understand which employment rights apply to them;
- gig economy workers set to benefit the most, as fresh guidance enables them to check whether their workplace is treating them fairly;
- Business Minister Jane Hunt said: "*Today we are tidying up the rules, helping workers to find out if they are being treated fairly by their workplace*."

Businesses and workers, particularly those in the gig economy, will benefit from greater clarity about their employment status due to the new guidance published by the government on 26 July 2022.

A person's employment status is what defines the rights and employment protections they are entitled to at work, including pay, leave and working conditions, and therefore dictates the responsibilities an employer has towards that worker.

The new guidance brings together employment status case law into one place for businesses and individuals to access. This will support workers by improving their understanding of what rights they are entitled to at work, enabling them to have informed discussions with their employer and take steps to claim or enforce them where necessary.

Crucially, the guidance also clarifies the rights that gig economy workers are entitled to—from the national minimum wage to paid leave—while offering them the same degree of flexibility to take on additional work to top up their income, if they choose. This clarity comes following the landmark Uber Supreme Court judgement, which held that individuals in the gig economy can qualify as 'workers', meaning they are entitled to core employment protection.

The new guidance includes advice for micro businesses, start-ups and SMEs that have less capacity and legal expertise to understand the law. By reducing the risk of companies being fined by rules they have broken unknowingly, it will inject confidence into businesses to support their staff and stimulate economic growth. Equally, the guidance will help curb unscrupulous employers from attempting to exploit the system to save on employment costs.

Business Minister Jane Hunt said:

> *"Today we are tidying up the rules, helping workers understand their employment rights and find out if they are being treated fairly by their workplace.*
>
> *Importantly, this one-stop shop guidance is not just for workers – it will also give businesses the confidence and the tools to better support their staff, helping to increase productivity and drive growth.*
>
> *By featuring real world examples of what an individual's working day or contract may involve - and how that translates into their employment status - this new one stop shop guidance will help to ensure that work pays fairly."*

Getir General Manager Kristof Van Beveren said:

> *"Getir employs thousands of people in the UK in the superfast grocery delivery sector. Our growth plans will see us employ thousands more in the coming months and years and we welcome any guidance, such as this, that can help us contribute further to the UK's economic growth and create more jobs."*

The guidance is being published alongside a response to a consultation on employment status, where many respondents called for additional clarity around the employment status boundaries and examples of how to apply the rules to different scenarios.

The UK has a '3-tiered' employment status framework, broken down by employee, worker and those who are self-employed. This system helps create a flexible and dynamic labour market but has led to some individuals not understanding their employment status.

The guidance encourages workers to contact ACAS for further advice should they think their employment status is incorrect, and to engage their employer in conversations about their rights before taking further steps to hold them to account if needed.

2 Court Rulings

2.1 Annual leave

Supreme Court, [2022] UKSC 21, 20 July 2022, Harpur Trust v Brazel

In this ruling, the Supreme Court had to consider how to calculate the statutory holiday entitlement for 'part-year workers', like Ms Brazel, who was a part-time music teacher in a school where she worked only during term time despite being employed for the whole year. It was accepted that Ms Brazel was a 'worker' within the meaning of the Working Time Regulations 1998, entitling her to 5.6 weeks of paid annual leave. She took this leave during the school holidays (the following explanation draws on this).

Before September 2011, Ms Brazel's holiday pay for the 5.6 weeks was determined by calculating her average week's pay in accordance with section 224 of the Employment Rights Act 1996 and multiplying that by 5.6. At the relevant time, section 224 defined a 'week's pay' as the amount of a worker's average weekly pay in the period of 12 weeks ending with the start of their leave period, ignoring any weeks in which they did not receive any pay ('the Calendar Week Method').

From September 2011, however, the Harpur Trust changed its calculation method. In line with the Acas guidance (now re–written), Ms Brazel's hours worked were calculated at the end of each term, taking 12.07 per cent of that figure and then paying Ms Brazel her hourly rate for that number of hours as holiday pay ('the Percentage Method'). 12.07 per cent is the proportion that 5.6 weeks of annual leave bears to the total working year of 46.4 weeks. The Harpur Trust therefore treated Ms Brazel as entitled to 12.07 per cent of her pay for the term, reflecting only the hours she actually worked. The effect of this change was that Ms Brazel received less holiday pay.

She brought a claim before the Employment Tribunal for unlawful deductions from her wages by underpayment of holiday pay. The Employment Tribunal dismissed her claim but the Employment Appeal Tribunal allowed her appeal, holding that the statutory regime required the use of the Calendar Week Method. The Court of Appeal dismissed the Harpur Trust's appeal, as did the Supreme Court.

The Harpur Trust argued that a part–year worker's leave must be pro–rated to account for weeks not worked. As the Working Time Regulation was enacted in part to implement the EU Working Time Directive, which remains 'retained EU law' following Brexit, the Harpur Trust contended they must apply what they refer to as the 'conformity principle' arising from EU case law on the Directive. They argued that this principle required that the amount of annual leave (and therefore holiday pay) should reflect the amount of work Ms Brazel actually performed.

The Supreme Court concluded, however, that EU law did not prevent a State from making a more generous provision than the 'conformity principle' would produce. The amount of leave to which a part–year worker under a permanent contract is entitled is therefore not required to be, and under domestic law must not be, pro–rated to be proportional to that of a full–time worker.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-192/21, 30 June 2022, Comunidad de Castilla y León

In the present ruling, the CJEU held that the period of service provided as an interim civil servant must be taken into consideration for the purpose of consolidating a personal grade.

The issue has not arisen in this context in the UK. However, it is likely that UK courts would take this approach.

4 Other Relevant Information

4.1 Retained EU law

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

The Brexit Freedoms Bill, which will have a significant impact on employment law, is still being discussed. At the moment, 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. In this dashboard there is no reference to some relevant acts, e.g. the Equality Act 2010.

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