Flash Reports on Labour Law August 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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Executive Summary

National level developments

In August 2022, 27 countries (all but **Croatia**, **Iceland**, **Latvia** and **Slovakia**) reported some labour law developments. The following were of particular significance from an EU law perspective:

Developments related to the COVID-19 crisis

In contrast to previous months, extraordinary measures to mitigate the COVID-19 crisis did not play a role in the development of labour law in many Member States and European Economic Area (EEA) countries. The situation of alert due to the COVID-19 crisis was only renewed and extended until 30 September 2022 in **Portugal**.

Transposition of EU law

Directive (EU) 2019/1158 on work-life balance for parents and carers has been transposed in **Bulgaria**, **Italy** and **Romania**. In **Finland**, a family leave amendment has increased the number of parental leave days and the flexibility for parental leave.

Directive (EU) 2019/1152 on transparent and predictable working conditions has been transposed in **Bulgaria**, **Estonia**, **Italy**, **Luxembourg** and the **Netherlands**.

Temporary agency work

In **Denmark**, the Maritime and Commercial Court ruled on the concept of 'temporary' work in the context of the Temporary Agency Work Act.

In **Hungary**, an amendment to the Labour Code introduced the notion of 'classified temporary work agency' to allow the employment of third-country nationals.

Working time and annual leave

In **Germany**, the Federal Labour Court has requested the CJEU to give a preliminary ruling in a case concerning the overlap of a domestic quarantine order with a period of paid annual leave. The same Court also issued a communication on the situation of the proceedings pending before it, following the CJEU's decision in C-257, 258/21, 07 July 2022, *Coca-Cola European Partners Deutschland*.

In **Greece**, a ministerial decision provides for fines in the event of violation of the provisions concerning the mechanism of measuring the working time of employees.

In **Ireland,** the Labour Court has issued two decisions asserting that regular and rostered overtime need not be included in the calculation of holiday pay.

In **Poland**, the working time limits of professional drivers were temporarily extended.

Platform work

In the **Netherlands**, the Court of Amsterdam ruled that unions that do not represent all workers and interests within a company can still be admissible in a case regarding platform work.

In **Slovenia**, the legal basis for digital platforms in passengers transport has been repealed.

Other developments

In **Belgium**, the Court of Cassation ruled on a law requiring employers to communicate information concerning the employer, the employee and his or her employment to the institution responsible for the collection of social security contributions.

In **Luxembourg**, minor legislative changes adapt the implementation of Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels.

In **France**, the Social Chamber of the Court of Cassation ruled on the concept of transfer of undertakings.

Table 1: Major labour law developments

Topic	Countries
Transparent and predictable working conditions	BG EE HU IT LU NL
Work-life balance	BG FI HU IT RO
Collective bargaining	AT LT NO SI
Temporary agency work	DK HU UK
Occupational health and safety	FR FI LU
Annual leave	DE IE
Foreign workers	MT PT
Platform work	NL SI
Working time	EL PL
COVID-19 / state of emergency	PT
Social security	BE
Worker representation	SI
Transfer of undertakings	FR

Austria

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Collective bargaining

High inflation, the substantial increase in energy costs and shortage on the labour market are expected to influence the coming negotiations between the social partners on pay raises in collective bargaining agreements. The government is advocating one-off tax-free payments instead of significant pay raises; experts expect an average increase of 6 per cent.

Belgium

Summary

(I) A regulation establishing a premium for inhabitants of Flanders who earn a low income from work has entered into force.

(II) The Court of Cassation has ruled on the law which requires the employer to submit information to the institution responsible for the collection of social security contributions about the employer, the employee and his or her employment.

1 National Legislation

1.1 Flemish job bonus

The decision of the Flemish government of 01 July 2022 to implement the Decree of 20 May 2022 regulating job bonuses has been issued, *Moniteur belge* 12 July 2022 (see here for further information).

The decree on the Flemish job bonus for low-income workers was described in the June 2022 Flash Report.

The decree of the Flemish regional government, which further concretises the legislation on the Flemish job bonus, has been published. The new regulation entered into force on 01 July 2022.

2 Court Rulings

2.1 Social security

Cour de Cassation, Journal des tribunaux de travail 2022, 253, 19 April 2022, The social security Dimona declaration (Déclaration Immédiate / Immediate Declaration)

The DIMONA (*Déclaration Immédiate* / Immediate Declaration) is the electronic message by which the employer notifies the National Social Security Office (NSSO) that an employee is entering or leaving employment. The declaration is compulsory and is made via the secure online service DIMONA (Article 38 of the Act of 26 July 1996 modernising social security; Royal Decree DIMONA of 05 November 2002).

In its judgement of 19 June 2022, the Court of Cassation refers to the Court of Justice's ruling C-17/19, 14 May 2020, *Bouyges travaux publics, Elco construct Bucarest, Welbond armatures* (paragraphs 42-54), which held that although the A1 declarations have binding effects, they only apply to the obligations imposed by the national social security legislation coordinated by Regulation No. 883/2004.

The Court of Cassation ruled in its judgement of 19 April 2022 (*Journal des tribunaux de travail* 2022, 253) that the DIMONA obligation is not merely intended to ensure the proper application of social security law but also pursues the objective of the effective enforcement of labour law. In view of the CJEU's case law, it follows that an A1 certificate issued by the competent foreign authority does not exclude the application of the DIMONA obligation.

Thereby, the Court of Cassation at least partly reverts to its case law. After all, the reasoning was that the DIMONA regulation aims to apply the Belgian social security legislation. As a rule, it is followed by a declaration of services/wages, a so-called '*DmfA-declaration Multifonctionnelle'* (Multi-functional Declaration), which leads to the payment of social security contributions. In this sense, the DIMONA declaration obligation cannot apply to persons to whom Belgian social security legislation does not apply (Court of Cassation 02 February 2016, *Journal des tribunaux de travail* 2016, 470,

case note Y. STOX, who concludes that the Court of Cassation thus deprives the DIMONA declaration of any labour law character).

The new judgement of the Court of Cassation is important in the fight against social dumping. The finding of a DIMONA infringement and the sanctions attached to it are a powerful weapon in the hands of the public prosecutor in cases of foreign employers, who sometimes are not much more than P.O. box companies, feigning temporary employment of foreign workers in Belgium, while in reality these workers are usually employed in or from Belgium.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Labour law reform

On 07 July 2022, the Draft Law containing various labour provisions was introduced in the Chamber of Representatives.

This law is the implementation of the so-called 'labour deal', which is an agreement on labour market reforms already reached by the Federal Government in February 2022.

The draft law still needs to be discussed and approved in the Chamber of Representatives, but the main topics included are the following:

- the extension of the period in which an employee employed with a variable part-time work schedule must be informed of his/her work schedule from 5 to 7 working days;
- the introduction of the possibility for the employee to perform normal full-time work 4 days a week;
- the introduction of the possibility for the worker to perform his/her work duties according to a varying weekly schedule;
- the introduction of a rebuttable presumption that employment relationships in 'the platform economy' have been conducted within the framework of an employment contract, when a number of criteria are met;
- the possibility of facilitating the transfer of an employee who has been dismissed by his/her employer with a period of notice to a new employer by means of a 'transition path';
- the measures to promote 'the employability' of an employee who has been dismissed by his/her employer with at least 30 weeks' notice;
- the relaxation of possibilities to introduce 'night work for e-commerce activities';
- the obligation for employers with 20 or more workers to include 'the right to disconnect' in a collective bargaining agreement at company level or in the work rules;
- the obligation for employers with 20 or more employees to establish an annual training plan;
- the establishment of an individual training right for employees in a company with at least 10 employees (5 days in a company with at least 20 employees; 1 day in a company with at least 10 and less than 20 employees).

See here for Memo of Understanding Draft Law containing various labour provisions, *Parl. Documents*, Chamber of Representatives, 2021-2022, No. 55 2810/001.

Bulgaria

Summary

The National Assembly has adopted several amendments to the Labour Code, implementing the Directive on transparent and predictable working conditions and the work-life balance Directive.

1 National Legislation

1.1 Implementation of EU directives

The Law amending and supplementing the Labour Code (LC) has been adopted by the National Assembly (Parliament) on 05 August 2022 (State Gazette No. 62 of 05 August 2022).

Amendments to the employment contract

The new paras 2-4 to Article 119 LC provide that when the employment contract is concluded for a fixed-term and/or for part-time work, the worker is entitled to request the employer in writing to transform his/her employment contract into one of indefinite duration and/or for full-time work. If a probationary period has been agreed upon, the worker is entitled to this right until the expiration of the probationary period. If the employer refuses to amend the employment relationship, he/she must present the worker with a reasoned written response within one month, unless such a request is submitted more than twice annually.

Work-life balance

The amendments to Article 167b LC introduce several rights concerning the balance of work and family life. Pursuant to these amendments, a worker who is a parent (adoptive) of a child up to the age of eight years has the right to submit a request in writing to the employer to adapt the duration and distribution of his/her working time for a certain period, to switch to remote working and other amendments to the employment relationship to facilitate the reconciliation of work and family obligations. A worker who takes care of a parent, child, spouse, brother, sister or parent of his/her spouse or other direct relative due to serious medical reasons is also entitled to this right. An amendment to the employment relationship in such cases is based on mutual agreement between the parties and expressed in writing when such a possibility exists in the enterprise. The worker may, prior to the expiration of the specified time, request his/her employment relationship to continue in accordance with the conditions that were in place prior to the amendment. If the employer refuses to amend the employment relationship, he/she is required to present the worker with a reasoned written response within 14 days.

The new Article 164c LC entitles the father (adopted) of a child up to the age of eight years to a new type of parental leave. This leave reflects the father's right (adoptive parent) to raise his child for two months before he/she reaches the age of eight years, if he has not used other leaves related to childbirth. If he has already made use of such a leave for a period shorter than two months, he is entitled to leave in the amount of the difference between the two months and the leave already used. A father (the adoptive parent) who wants to make use of this leave must notify his employer at least 10 working days in advance. The leave is not used in the event of the death of the child, deprivation of the father's parental rights or their limitation, for giving the child up for adoption, termination of the adoption, as well as when the child is placed in a state institution or is placed elsewhere in accordance with the Child Protection Act. During the leave, which is granted until the child turns eight years, the father (adoptive parent) is

paid monetary compensation under the conditions and in the amounts specified in the Social Insurance Code. The leave is counted as working time.

Conflict of interest

The amendments to Article 111 LC provide that the main individual employment contract may prohibit the conclusion of additional employment contracts with another employer to protect trade secrets and/or prevent conflicts of interest.

Probationary period

Supplement to Article 70, para. 1 LC provide for a new probationary period for fixed-term employment contracts of less than one year. This period may not exceed one month or six months for other types of employment contracts.

Information

Several changes have been introduced to the legal regulation of employers' obligation to inform the worker.

The term of the employer's obligation to inform the worker about any changes to the employment relationship may not be 'later than one month' instead of 'as soon as possible or no later than one month' (Article 66, para. 5 LC).

Pursuant to supplements to Article 127, para. 1, items 5-7 LC, the employer has several new information obligations towards the worker, namely the internal rules for salaries; the terms and conditions for termination of the employment contract according to the provisions of the LC; training provided by the employer related to maintaining and increasing professional qualifications and improving professional skills.

Training

The new para. 2 to Article 228a LC establishes a new employer obligation. If, by virtue of a legal act, a collective labour agreement or an agreement to the individual labour contract, the employer is required to provide training to maintain and improve the employees' professional qualifications for the effective performance of their duties in accordance with the requirements of the work being performed, training time is counted as working time. Whenever possible, the training shall take place during the worker's established working hours. All costs related to the training shall be paid by the employer.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Cyprus

Summary

The government has announced the introduction of a 'universal' minimum wage.

1 National Legislation

1.1 Minimum wage

The most important development is the Council of Ministers' decision setting the 'universal' minimum wage, to implement the relevant EU Directive. There have been debates in Cyprus about introducing a universal minimum wage considering that the European Commission has proposed an EU Directive to ensure that workers in the Union are protected by earning an adequate minimum wage, allowing for a decent living regardless where they work.

The government has published its decision to introduce a national minimum wage from January onwards, set at EUR 940 after six months of employment. In the first six months of employment, the wage is set at EUR 885, and will subsequently be increased to the minimum threshold of EUR 940. The Minister of Labour stated that the minimum wage resulted from a compromise between the 'opposing views of the social partners'.

The minister also announced that the government estimates that about 40 000 people will benefit from the introduction of a minimum wage.

One controversial issue is the fact that a large number of sectors of the economy will be excluded from the minimum wage regulations, with trade unions and NGOs asserting that their exclusion amounts to unlawful racial discrimination, as most of the workers in these sectors are third-country migrants. The workers that will not be covered by the minimum wage are:

- domestic workers;
- workers involved in livestock handling;
- workers in farming and agriculture;
- shipping workers; and
- workers participating in training for a degree or professional qualification.

Moreover, seasonal workers under the age of 18 years will be subject to a 25 per cent reduction, because they will not be able to work for the same employer for six months. Deductions for food and housing should not amount to 25 per cent.

When an employer provides food and/or accommodation to employees, 15 per cent of the employee's starting salary and 10 per cent of his/her salary after six months shall be deducted. This is only permissible in case of an agreement between the employer and employee. The latter can be exempt from this part of the agreement by submitting 45 days' notice.

The disputed methodologies and surveys in relation to the determination of the ECM rate, i.e. those of the domestic statistical service and the corresponding surveys of household income and living conditions (Survey on Income and Living Conditions) of the EU-SILC, seem to have been bypassed and will therefore not form part of the decree.

Another controversial point between the employers and trade unions are the weekly working hours. One key point is the determination of the ECM on the basis of weekly working hours, i.e. whether this entails 38 hours or 40 hours.

Trade unions have criticised the decision and the provisions. In negotiations with the previous Labour Minister, trade unions had been told that the minimum wage (of around

EUR 1 000) would apply to a 40-hour work week. The proposed minimum wage of EUR 940 is insufficient as it does not ensure a decent standard of living. The General Secretary of the trade union PEO argued that this decision would be a timebomb for the foundations of industrial peace, as the minimum wage is lower than the wage established in collective agreements in certain sectors such as hotels. She argued that "*the decree on the minimum wage comes as a reward for the phenomena of deregulation and cheap labour*." She also asserted that minimum protection of workers' basic rights, which have been deregulated in recent years, is necessary, but the government, instead of dealing with these problems, leaves workers without protection. Moreover, the decree on minimum wage leaves collective agreements without protection, as employers could use them to scuttle deals already in place.

The Minister of Labour has refuted accusations by trade unions that the minimum wage would allow employers to push collective agreements aside: newcomers will be paid according to agreements that are already in place and not in accordance with the decree on minimum wage. He also explained that those who receive more favourable terms through a contract would be excluded from the decree.

A nine-member committee will be formed consisting of three trade union representatives, three employers' association representatives and three academics or experts on labour issues, who will advise the Labour Advisory Board, which in turn will advise the Minister of Labour, who will submit a reasoned report to the Council of Ministers on the adjustment of the national minimum wage.

The minister also explained that the criteria for the adjustment are included in the draft directive expected to be implemented next October and take account of the national minimum wage's purchasing power, trends in employment levels and unemployment rates, the difference in economic growth and productivity levels, the differentiation and trends in earnings and their distribution, the impact that any change in the minimum wage will have on employment levels, the impact on the level of income and the impact on the distribution of earnings, and the impact on the level of income.

The minimum wage provisions currently in force only cover specific occupations, i.e. there is no national minimum wage that applies to all occupations. At present, the Minimum Wages Ordinance of 2012 is in force. Based on the provisions of this decree:

Every salesperson, clerk, nursing assistant, childcare assistant, babysitting assistant, school assistant and carer who works full time must earn an initial monthly salary of at least EUR 870 gross, and after a 6-month continuous period of employment with the same employer, this salary shall increase to at least EUR 924 gross.

Each security guard must earn an initial hourly wage of at least EUR 4.90 gross, and after a 6-month period of continuous employment with the same employer, this wage must increase to EUR 5.20 gross.

Each cleaner must receive an initial hourly wage of at least EUR 4.55 gross, and after 6 months of continuous employment with the same employer, this salary must increase to EUR 4.84 gross.

The Decree on Minimum Wages is mandatory by Law and has been applicable since 01 April 2012. The minimum wage shall be paid for employees in professions (e.g. nursery school teachers/babysitters) covered by said decree.

The Minimum Wage in the Hotel Industry Decree of 2020 (K.D.P. 6/2020) entered into force on 01 January 2020. For more information on the amount of wages for each professional category covered by the relevant Decree, see here.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Czech Republic

Summary

A decree increasing the rate of compensation for fuel prices and another increasing compensation for the loss of earnings for temporary incapacity for work have entered into effect.

1 National Legislation

1.1 Reimbursement of travel expenses

Seeing that fuel and food prices are continuing to rise, the Ministry of Labour and Social Affairs has increased the established catering fee for employees on business trips and, in addition, has increased the average fuel prices established for the purpose of reimbursement of expenses incurred by employees.

Decree No. 237/2022 Coll., amending Decree No. 511/2021 Coll., on the change of the rate in basic compensation for motor vehicle use, per diems, and on setting the average price of fuel for the purpose of travel compensation has been adopted, published and entered into effect on 20 August 2022.

The text of the Decree is available here.

This piece of legislation was discussed in the July 2022 Flash Report.

1.2 Incapacity for work

Government Regulation No. 256/2022 on the adjustment of compensation provided in case of loss of earnings after the end of a period of temporary incapacity for work resulting from a work accident and/or occupational disease and on the adjustment of compensation of survivors pursuant to labour law regulations has been adopted, published and will enter into effect on 01 September 2022.

The Regulation is available here.

The Regulation governs the calculation of the following types of compensation:

- compensation for loss of earnings after the end of a period of temporary incapacity for work resulting from a work accident and/or an occupational disease;
- compensation of survivors (provided to eligible survivors of the employee).

The above compensations have been valorised based on the rate of inflation in the national economy. The amount of compensation is calculated on the basis of the amount of average earnings. For the purposes of the calculation, the amount of average earnings is now increased by 5.2 per cent and by CZK 300.

The above only applies to claims that arose before 01 September 2022.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

The Danish Maritime and Commercial Court has ruled on the concept of 'temporary' work in the context of the Temporary Agency Work Act.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Temporary agency work

Maritime and Commercial Court, BS-13671/2021-SHR, 15 August 2022

The case concerned a temporary agency worker, who was employed by a temporary work agency, and sent to perform work for the same user undertaking for four consecutive periods for a total of 3 years and eight months. The first contract was concluded for 1 year, and then extended by 1 year at a time, until 2020, when it was not extended due to the coronavirus. The contract expired on 31 July 2020.

The employee claimed that the work performed for the user undertaking was not 'temporary', and that the Danish Temporary Agency Work Act (TAW Act), therefore, did not apply to the work that was being performed. Instead, he claimed to be covered by the Danish Salaried Employees Act granting rights on termination periods, sick pay, etc. as well as entitling him to compensation for unjustified successive fixed-term employment contracts according to the Danish Act on Fixed-term Employment.

The defendant (the temporary work agency) denied all claims, stating that the work was indeed "*temporary, that there had been objective reasons for each extension of the contract, and that the contract expired as expected on 31 July 2020, when it was not extended*".

Section 3(4) of the TAW Act states that a temporary work agency cannot use successive postings without objective grounds. Section 3(5) allows for Section 3(1-4) to be derogated from, if the agency is covered by or has acceded to a collective agreement (certain requirements for the agreement apply). The employment in question was covered by the Collective Agreement for Salaried Employees, which was not disputed to be a collective agreement in the meaning of Section 3(5), i.e. the collective agreement could derogate from the provisions in Section 3(4).

The Maritime and Commercial Court consisted of one judge and two lay judges appointed by the parties involved. The ruling ended in dissent (2:1).

Two of the judges found that the employment relationship was covered by the TAW Act. They underlined that the assessment whether the work was 'temporary' in nature was to be carried out by including the TAW Act Section 3 (4-5).

The Court cited CJEU cases C-681/18, 14 October 2020 (KG) and C-232/20, 17 March 2022 (Daimler) regarding the term 'temporary', and concluded that Section 3(4) of the Danish TAW Act regulates the protection sought by the employee in question. The Court stated:

> *"As the relevant parties in the Danish labour market have chosen a model whereby the protection provided in Section 3 (4) is derogated from to establish the protection of temporary agency workers in a collective agreement, which means that the employee in this case must seek protection against the consequences of successive postings as a temporary agency worker in the*

> *Collective Agreement for Salaried Employees, which undisputedly has not been breached."*

Against that background, the Court concluded that the employee was covered by the TAW Act.

Regarding the status as a salaried employee (in the meaning of the Danish Salaried Employees Act), the Court stated that temporary workers are not regarded as salaried employees, as they are not in a subordinate position ('*tjenestestilling*') to the temporary work agency. The Court relied on older Supreme Court case law (U 1997.1495 H) and the preparatory works to the Danish TAW Act. Finally, the Act on Fixed-term Work did not apply, as the Act does not apply to temporary agency workers according to the Act itself.

The dissenting judge gave a different ruling. First, by relying on the abovementioned Supreme Court ruling (U 1997.1495 H), he found that the employee was to be regarded as a salaried employee due to the nature of the relationship between the employee and the user undertaking and was in a subordinate position (right to instruct, etc.). Second, he found that the duration of employment at the user undertaking could not be considered 'temporary' and the employee was thus to be considered a temporary agency worker. Third, the employee could rely on the Act on Fixed-term Work as he was not a temporary agency worker and was granted one month's compensation according to this Act.

The concept of 'temporary' in the context of temporary agency work has surfaced in recent years, both in Danish courts as well as in the CJEU. The CJEU has clarified this concept in recent rulings (see March 2022 Flash Report for an analysis of the CJEU's ruling in Daimler in a Danish context).

In the ruling by the Danish Maritime and Commercial Court, the Court also relied extensively on recent CJEU case law and made an EU-conform interpretation of the Danish rules. Against that background, the main question that arose was whether the work was temporary and was examined with reference to the rules on successive postings to user undertakings. However, the case raised some questions on derogations by collective agreements, which has not yet been extensively dealt with in CJEU case law.

The outcome of the case—according to the two judges—was that the employee had to seek protection in the collective agreement, not in the TAW Act Section 3(4) on the requirement of objective reasons for each extension of a posting to the user undertaking. The ruling is not very clear as to the implications hereof. The Court does not explicitly state that the employee may challenge any misuse or circumvention in front of another judicial body (that would be seeking protection within the system of the collective agreement), but the ruling could perhaps be read in that sense.

In essence, the Court does not seem to refute that the long-term successive posting of an employee may be challenged as abuse. But where the parties have derogated from the Act and instead rely on a collective bargaining agreement, such a challenge must be brought forward as a case of breach or erroneous interpretation of the collective agreement in force, not as a breach of the principle in the TAW Act. This, however, is not clearly stated in the majority's reasoning.

Such a reading of the case also corresponds to existing Danish case law, according to which the courts—and industrial arbitration—generally closely scrutinise any violation of labour law (see examples in the March 2022 Flash Report).

The case is another example of the implications of being covered by a collective bargaining agreement that derogates from the Danish TAW Act.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

The amendments to the Employment Contracts Act have entered into force, transposing the Directive on transparent and predictable working conditions.

1 National Legislation

1.1 Transparent and predictable working conditions

The Directive on transparent and predictable working conditions entered into force with amendments to the Employment Contracts Act (ECA) on 01 August 2022, which focuses on labour relationships, the basis of which is mutual respect.

An employer can no longer prohibit an employee from working for another employer outside of his/her working hours. Moreover, the employee may not be treated unfavourably because of it. Working for another employer can only be limited by a non-competition agreement in accordance with the terms of the Employment Contracts Act.

From 01 August 2022, the Occupational Health and Safety Act (TTOS § 14 (1) p. 10) added the employee's obligation to ensure, among other things, that working or providing services for another employer does not endanger his or her own or others' life and health. For example, in a situation where an employee performs full-time office work and, in addition, provides taxi services at night, the employee must ensure that overtiredness does not endanger him/her or others. The employer shall only be responsible for observing the working time and rest period requirements while the employee is working for him/her. The employee must also adhere to the requirements of working time and rest periods to help prevent occupational diseases and work accidents.

An employee may not be treated unfavourably because he/she wants to make use of his/her rights or if he/she draws attention to the violation of these rights, as well as when he/she supports another employee in the protection of his/her rights (including trustees, working environment commissioners). To identify unfavourable treatment, the employee is not compared with other persons or groups, but the employee's situation is compared with his/her previous situation.

The employee has the right to request more suitable working conditions and to receive a reasoned written response from the employer within two weeks. For example, an employee can request a full-time contract instead of a part-time one or request a fixed-term contract to be drawn up for an indefinite period. The employer is not required to provide suitable working conditions, but the employee and employer can agree on a suitable and satisfactory solution for both parties. If the employee has submitted more than one request within four months, the employer is only required to respond to one of the requests. In the event of rejection, the employer's justification must specify why the request cannot be met.

Upon returning from a child-related leave or once the care leave expires in accordance with the Health Insurance Act, the employee has the right to benefit from the improved working conditions, for example, to demand a salary increase to which he/she would have been entitled had he/she not been absent.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Monthly average wage

According to Statistics Estonia, the average monthly gross wages and salaries amounted to EUR 1 693 in the second quarter of 2022, which is 10.1 per cent higher than at the same time last year.

One reason for the wage increase is the wage pressures related to the general price hikes.

In terms of economic activity, the average monthly gross wages and salaries were highest in information and communication (EUR 3 034), financial and insurance activities (EUR 2 746), and energy (EUR 2 337). Average gross wages were the lowest in accommodation and food services (EUR 1 048), real estate (EUR 1 183), and other service activities (EUR 1 255).

Finland

Summary

The family leave reform, which has increased the number of parental leave days and increased the flexibility for parental leave, has entered into force.

1 National Legislation

1.1 Parental leave

The family leave reform has increased the number of parental leave days and flexibility for parental leave. The reform aims to increase equality in working life and between parents and to take better account of different types of families. The new types of parental leave primarily apply to parents expecting a child on or after 04 September 2022.

The amendments introduce changes to the Health Insurance Act (*Sairasvakuutuslaki*, 1224/2004) and the Employment Contracts Act (*Työsopimuslaki*, 55/2001) and some other acts.

Both parents are now entitled to an equal quota of parental leave. Parents may take leave over several periods until their child reaches the age of two years, and can transfer some of their own leave days to the other parent, other custodian, their spouse or the spouse of the other parent. The family leave reform gives both parents a quota of 160 parental allowance days. Parents are allowed to transfer up to 63 parental allowance days of this quota to the other parent, other custodian, their spouse or the spouse of the other parent. During the final stage of pregnancy, there is a pregnancy allowance period of 40 daily allowance days. There are six daily allowance days per week. In total, the allowance days for parents within the scope of family leave amount to over 14 months. Single parents will have the right to use the quotas of both parents. Twins, triplets and other multiple birth children are an exception to this scheme; the quota of parental allowance days for parents increases by 84 daily allowance days for the second child and every child thereafter.

Parents can use parental allowance days until the child reaches the age of two years. Daily allowance days can be used in several parts. Parents in employment relationships are entitled to divide the leave into maximum four parts. Only pregnancy allowance days must be used during a single continuous period and start 14–30 days before the estimated date of birth.

Parents may also take part-time parental leave. In such cases, one partial parental allowance day takes up half a day of the quota. The amount of partial parental allowance is also half the amount of full parental allowance.

Parents who have custody of their child have an equal right to daily allowance, regardless whether they are biological or adoptive, custodial or non-custodial and regardless of the gender of the parent.

The duration and time of leaves laid down in the Employment Contracts Act have been adapted in a similar manner.

In addition, the amendment includes the right to take unpaid carers' leave for up to five days per year based on the Work-life Balance Directive.

The Acts entered into force on 01 August 2022.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Study leave

The Ministry of Economic Affairs and Employment has launched a survey to collect information to develop the Act on Study Leave (*Opintovapaalaki*, 273/1979). The survey will focus on the current state of study leave, legislation in other countries and opportunities of more flexible use of study leave.

4.2 Pay transparency

The government parties have not reached consensus on the content of legislative changes that would have increased pay transparency. The preparation of the legislative changes was discontinued. Positions on the right to better access to information regarding pay diverged significantly.

The purpose was to prepare amendments to the Act on Equality between Women and Men (*Laki naisten ja miesten välisestä tasa-arvosta*, 609/1986) based on proposals on pay transparency in the Programme of Prime Minister Sanna Marin's government. The objective behind increasing pay transparency is to prevent gender-based pay discrimination and to promote equal pay.

4.3 Occupational safety and health

A draft legislative proposal related to expanding the competence of occupational and health authorities concerning supervision of underpaid work has been circulated for comments by the Ministry of Social Affairs and Health. According to the draft proposal, 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) will be modified so that compliance with the provisions on minimum wage is enhanced.

According to the draft proposal, a written request and administrative decision could be provided on the employer's obligation to pay wages set out by law and generally applicable collective agreements when the grounds and amount of the wages are unambiguously verifiable.

France

Summary

(I) The Act on emergency measures to protect purchasing power has been promulgated.

(II) The Court of Cassation ruled on a work-related accident, on the dismissal of a protected employee and on a transfer of employment contracts.

1 National Legislation

1.1 Purchasing Power Act

The so-called 'Emergency Purchasing Power Act' was finally adopted by the French Parliament on 03 August 2022 and promulgated on 16 August 2022, promoting various measures; the main ones are outlined below.

The Act provides for an exceptional buying power bonus, now known as the 'value sharing bonus'. This scheme encourages employers to pay an additional annual sum to their employees who benefit from a preferential social scheme. The amount of the bonus paid can be fully deducted from all social contributions of legal or conventional origin, payable by the employee and the employer if its amount remains below EUR 3 000 (Act of 16 August 2022, No. 2022-1158, *Official Journal* 17 August 2022, Article 1, V).

The bonus is also excluded from income tax if it is paid between 01 July 2022 and 31 December 2023, and if it is paid to employees who earned a remuneration lower than three times the annual value of the rise in minimum wage in the preceding 12 months (Act of 16 August 2022, No 2022-1158, *Official Journal* 17 August 2022, Article 1, VI).

The Act also 'facilitates the dissemination of profit-sharing' by allowing companies to set up a profit-sharing scheme by means of a collective agreement or a unilateral decision by the employer for a maximum period of five years as opposed to the previous period of one to three years maximum.

The Act also allows employees to exceptionally unlock their employee savings before the expiry of the common law periods, until 31 December 2022 up to an overall ceiling of EUR 10 000 net of social security contributions.

2 Court Rulings

2.1 Occupational safety and health

Criminal Division of the Court of Cassation, No. 21-85.691, 21 June 2022

In the present case, a mechanic on a fishing boat suffered a work-related accident while manoeuvring with a winch. His full incapacity for work was assessed at 60 days. At the end of the investigation, the company and its representative were referred to the criminal court on charges of unintentional injury resulting in a full incapacity for work of up to three months, for a manifestly deliberate violation of an obligation of safety or prudence in the context of work, employment of an unorganised worker, and failure to provide appropriate practical information and training in health and safety.

The employer is bound by an obligation of safety towards his/her employees, which must be ensured in particular by training. If, in order to be constituted as such, an offence must be committed with the intention of the perpetrator, the law also provides that an offence is constituted as such in the event of deliberate endangerment of others or in the event of recklessness, negligence or failure to comply with an obligation of prudence or safety provided for by the law. The fact that it caused the full incapacity for

work for more than three months under these conditions is punishable by two years' imprisonment and a fine of EUR 30 000.

To declare the employer culpable of unintentional injury resulting in a total incapacity for work of three months or less, the appeal decision held that the worker had not received any practical and appropriate training for the operation during which his accident occurred, and that this lack of training had been the cause of his accident, with one of his arms being caught up in the winch he had activated.

The defendants appealed against the decision fining them for unintentional injury and for breach of the regulations on workers' health and safety.

The Court of Cassation censured the appeal decision on this point. According to the Court, the provisions of the French Labour Code (L 4141-1 and L 4141-2) relating to the employer's general obligation to inform and train only contain general obligations and not to a particular obligation of prudence and safety. However, the provisions of the French Criminal Code only classify unintentional injuries resulting in a total incapacity for work of three months or less as an offence in the event of a deliberate breach of a particular duty of care or safety imposed by law. Consequently, for the Court of Cassation, it was not possible to hold that the breaches observed constituted a serious fault. Consequently, the Court of Appeal's decision holding that the absence of safety training constitutes a characterised fault that exposed the employee to the work-related accident, i.e. a dangerous situation, demonstrating a deliberate will to violate a particular safety obligation is liable to be quashed.

On the other hand, the Criminal Division of the Court of Cassation has considered the so-called reinforced safety training that the employer must provide to temporary employees assigned to workplaces presenting particular risks to their health or safety as a particular obligation of prudence or safety imposed by the law. Thus, a criminal conviction for the offence of unintentional injury is not excluded if the failure to comply with this obligation is recognised as being the cause of a work-related accident (see Criminal Division of the Court of Cassation, No. 15-85.890, 25 April 2017).

2.2 Dismissal of protected employee

Council of State, Combined Chambers, No. 438076, 19 July 2022

In the present case, a protected employee challenged the labour inspectorate's decision to authorise his dismissal for inability. He argued that

> *"the terms and conditions of the use of temporary work within the company revealed that positions would, in fact, be available and should have been offered to him with a view to his reclassification".*

Insofar as he had not received any offer corresponding to these positions, the termination could therefore not be subject to administrative validation.

The employer is required to offer the employee who is dismissed for inability is envisaged for another job that matches his abilities.

Neither the Administrative Court of Appeal nor the Council of State to which the protected employee referred admitted his claims.

The Council of State in Case No. 387338, of 30 May 2016 allowed the administration to approve an employee's dismissal for inability: it can only be authorised, it was recalled, if the employer has been unable to reclassify the employee in a job that matches his abilities following an extensive search. For the Council of State, it is incumbent on an employer, who is considering the dismissal of a protected employee for inability, to perform a serious search for available positions with a view to reclassifying him/her, regardless of the duration of contracts likely to be offered to fill these positions. The search for redeployment must therefore include positions under permanent contracts as well as temporary positions under fixed-term contracts. This solution follows the case

law of the Court of Cassation, No. 12-24.456, 05 March 2014 and Court of Cassation, No. 14-16.156, 10 February 2016. As regards positions filled by temporary workers, the Council of State considered that positions to be filled by temporary workers are in principle no exception and must be included in any reclassification proposals, provided that these positions correspond to 'available positions'. If this is not the case, they should not be considered jobs that can be considered an outplacement solution. The notion of 'available post' refers to a vacant post waiting to be filled.

In this decision, the Council of State provides an example of the use of temporary work that does not reveal the existence of available jobs. The appeal judges noted that the contracts for the provision of temporary employees were concluded 'for very short periods' from two to three days to make up for occasional absences of employees or to cope with seasonal peaks in 'activity' and were 'of a random nature'. Under these circumstances, the judges were able to decide that they did not reflect the presence of vacant jobs that had to be identified for the reclassification of the unfit employee.

The Court of Cassation, No. 16-12.191, 11 May 2017 had already clarified the contracts that could correspond to an 'available post' by stating that:

> *"all the tasks entrusted to trainees who are not employees of the company, but who are undergoing training within the company"*

could not be considered as such.

2.3 Transfer of undertakings

Court of Cassation Social Chamber, No. 17-24.129, 12 July 2022

According to the judgments under appeal (Bastia, 28 June 2017), following the termination, on 31 May 2013, of the distribution contracts for Iveco vehicles between the company (*Localité 2*) Diesel and the company Iveco France, the company (*Localité 2*) Diesel informed Mr [U] and his eight other employees on 30 July 2013 of the transfer of their employment contracts to the company SN VIC, which had also been the holder of a distribution contract for Iveco vehicles since 2010. SN VIC refused to take over the employment contracts. On 07 September 2013, the employees acknowledged the termination of their employment contracts.

The employees brought an action before the labour court seeking a ruling that the termination of their employment contract had produced the effects of a dismissal without real and serious cause and ordering the company (Locality 2) Diesel to pay them various sums as a result.

According to the Social Chamber of the Court of Cassation

> *"Article L. 1224-1 of the Labour Code, interpreted in the light of Directive 2001/23/EC of 12 March 2001, only applies to the transfer of an autonomous economic entity which retains its identity and whose activity is continued or taken over. An autonomous economic entity is an organised group of persons and tangible or intangible assets pursuing a specific economic objective. The transfer of such an entity shall take place only if significant tangible or intangible assets necessary for the operation of the entity are taken over, directly or indirectly, by another operator."*

The Court of Appeal first noted that SN VIC had entered into a distribution contract with Iveco France for Iveco brand products since 31 November 2010, and that it had carried on this activity in competition with (Locality 2) Diesel until 31 May 2013, the date of the termination of the distribution contracts between Iveco France and (Locality 2) Diesel, and that it had continued its activity beyond that date, without its rights being affected by the termination of the concession contract with (Locality 2) Diesel.

It then noted that (*Localité* 2) Diesel's business had continued after the date of termination of the distribution contracts linking it to Iveco France.

Having thus highlighted the absence of any takeover of significant tangible or intangible assets of the company (*Localité* 2) Diesel by the company SN VIC, which already held the right to distribute Iveco brand products, the Court of Appeal, on these grounds alone, legally justified its decision. The Court dismissed the appeal.

2.4 Harassment and dismissal

Court of Cassation Social Chamber 12-17-2022, 12 July 2022

An employer cannot accuse an employee of serious misconduct for which moral harassment is alleged, when his managerial methods were known, carried out in consultation with the hierarchy and encouraged.

Any employee guilty of moral harassment is liable to disciplinary action (C. trav. Art. L 1152-5). In other words, an employee who harasses another colleague commits a fault which the employer, who is bound by a safety obligation towards the victim, must put an end to it by using his/her disciplinary power. But how serious is such misconduct? Does harassment systematically justify dismissal? Can the harassing employee rely on extenuating circumstances that would disqualify the misconduct committed?

These questions were put forward to the Court of Cassation in the case that gave rise to the judgement of 12 July 2022.

Serious misconduct is that which, due to its significance, makes it impossible for the employee to remain in the company (established case law, in particular Cass. soc. 27-9-2007 No. 06-43.867). It is generally accepted in matters of moral harassment (see, for example, Cass. soc. No. 11-20.085, 24 October 2012), but not systematically.

The Court of Cassation adopts a different position in matters of moral harassment and sexual harassment.

It judges more severely the perpetrator of sexual harassment, whose behaviour is systematically qualified as serious misconduct (Cass. soc. No. 06-46.517, 24 September 2008), regardless of the employer's previous attitude (Cass. soc. No. 12-17.557, 18 February 2014).

Indeed, to be able to invoke a serious fault against an employee who is guilty of moral harassment, the employer must prove the seriousness of the facts and the impossibility of maintaining the employee in the company. According to the Court of Cassation, the latter does not automatically follow from the employer's obligation of prevention in terms of workers' health and safety (Cass. soc. No. 13-18.862, 22 November 2014).

In other words, the context in which the harassing employee's misconduct was committed can be taken into account to assess its degree of seriousness. In the event of a dispute, this factual element is left to the sovereign appreciation of the trial judges, as shown by the decision of the Court of Cassation of 12 July 2022.

In the present case, an employee employed as the director of information systems, was dismissed for gross misconduct. The employer accused him of disrespectful behaviour, moral harassment of a subordinate and the creation of a climate of tension and fear "*with a clear desire to eliminate the former team in favour of employees hired by himself"*.

The employee contested this decision, stating that his employer, who was informed of his managerial methods, did not condemn them. On the contrary, he was supported in his decisions by his hierarchy.

On appeal, the judges agreed with him and considered that the facts did not constitute serious misconduct or even a real and serious reason for dismissal.

The analysis of the first instance judges was approved by the Court of Cassation. Indeed,

- the managerial methods of the employee in question were known to the employer and had not been condemned by his hierarchy;
- he had regularly shared his observations with his hierarchy and conducted a reorganisation process in conjunction with it;
- the employer had defended the decisions he had taken.

Consequently, the employee's behaviour was indeed the result of a managerial position shared and encouraged by all the hierarchical superiors. The judges could therefore rule out serious misconduct and consider that the facts were not such as to justify the termination of the employment contract.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Germany

Summary

(I) The Federal Labour Court has requested the CJEU to give a preliminary ruling in a case concerning the overlap of a domestic quarantine order with a period of paid annual leave.

(II) The Federal Labour Court has issued a communication on the situation of the proceedings pending before it, following the CJEU's decision in C-257, 258/21, 07 July 2022, *Coca-Cola European Partners Deutschland*.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Holiday leave and domestic quarantine

Federal Labour Court, 9 AZR 76/22, 16 August 2022

The Federal Labour Court has requested the CJEU to give a preliminary ruling on the following question

> *"Are Article 7 of Directive 2003/88/EC and Article 31(2) of the Charter of Fundamental Rights of the European Union to be interpreted as precluding a national rule or practice according to which paid annual leave requested by the employee and granted by the employer which overlaps in time with a domestic quarantine ordered after leave has been granted by the competent authority on account of suspected infection is not to be granted, where the employee is not incapacitated for work on account of illness during the quarantine?"*

In the underlying case, the plaintiff had taken holiday leave for the period from 12–16 October 2020. By decision of 14 October 2020, the competent authority ordered the plaintiff to be placed in domestic quarantine for the period from 09–21 October 2020 because he had contact with a person infected with the coronavirus. Subsequently, the employer deducted eight days from the plaintiff's leave account and paid him the leave remuneration. The plaintiff then filed a lawsuit and requested that the days of leave be credited back to his leave account. In support of his claim, he argued that it had not been possible for him to organise his leave in a self-determined manner. The situation in the case of a quarantine order was comparable to that resulting from an incapacity for work due to illness. The employer was therefore required to grant him leave in accordance with section 9 of the Federal Leave Act (*Bundesurlaubsgesetz*, BUrlG), according to which periods of illness during leave certified by a doctor may not be counted towards annual leave. The State Labour Court Hamm (of 27 January 2022 – 5 Sa 1030/21) had followed this opinion and had upheld the action.

2.2 Collectively agreed night work bonuses

Federal Labour Court, 26/22, 12 July 2022

On 12 July 2022, the Federal Labour Court made the following announcement:

> *"The Tenth Senate of the Federal Labour Court, by decisions of 9 December 2020 in the proceedings – 10 AZR 332/20 – and – 10 AZR 333/20 – referred questions to the Court of Justice of the European Union within the framework of preliminary ruling proceedings on the scope of application and reach of Union law in*

connection with night work bonuses under collective agreements. The CJEU ruled on this in its judgement of 7 July 2022 – C-257, 258/21 –the reason for the suspension of the legal proceedings has thus ceased to exist. The Tenth Senate therefore intends to decide the cases – 10 AZR 332/20 – and – 10 AZR 333/20 – as well as other pending cases concerning about 30 different collective agreements with similar issues on collectively agreed night work bonuses as of the first quarter of 2023."

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Work-life balance

The German Women Lawyers' Association (*Deutscher Juristinnenbund*) has criticised that the transposition deadline of Directive 2019/1158 on reconciliation of work and private life for parents and carers expired on 02 August 2022 without having been fully implemented in German law. The German Women Lawyers' Association demands the following: introduce, analogous to maternity protection, a two-week paid leave obligation for the partner after the birth of the child; ensure non-discriminatory use of the right to leave after birth also for same-sex partnerships; orientate the remuneration for leave after the birth to the second parent's continued payment of wages in case of illness or to maternity benefits; extend the second parent's right to leave on the occasion of the birth to self-employed persons and generally improve the financial security of self-employed parents; improve the possibilities for employees to take time off to care for relatives or persons living in the same household; strengthen protection against dismissal when taking parental and care leave; include teleworking in the right to apply for flexible working arrangements.

Greece

Summary

A ministerial decision provides for fines in the event of violation of the provisions on the mechanism of measurement of working time of employees.

1 National Legislation

1.1 Working time

Bank and supermarket employees have started clocking in and out using the digital employment card, a measure aimed at safeguarding the working hours of employees. The Ministry of Employment has announced a ministerial decision providing for fines in the event of violation of the provisions concerning the use of the digital employment card.

Fines for violations in the event that an employer refrains from implementing the system or does not properly apply it will be high. A fine of EUR 3 000 will be imposed for each case of deviation of the recording of working time. If the employer refuses to provide evidence of real working time by eliminating the data, the fine amounts to EUR 4 000. If the digital employment card is not activated, the fine amounts to EUR 10 500.

The above decision will be published in the Official Gazette soon.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

An amendment to the Labour Code has introduced the concept of 'classified temporary work agency' to allow the employment of third-country nationals who do not have a work permit.

1 National Legislation

1.1 Temporary work agency

An amendment to the Labour Code has introduced a new Article 214, Subsection (1) Point f) with the following text:

> *"2014 (1) In the application of this Act:*
>
> *f) classified temporary work agency: any temporary work agency in accordance with Point b) of this Subsection and with Article 215, which employs third-country nationals in accordance with the conditions contained by other laws."*

The detailed rules of classified temporary work agencies are contained in Government Decree 226/2022. The substance of this new category of temporary work agency is to allow registered temporary work agencies with a permission from the Budapest Government Office (based on the criteria laid down in the Decree) to employ and lease temporary agency workers from third countries who do not have a work permit. The number and professions of the permissible third-country nationals is contained in Annex 1 of Government Decree 226/2022.

1.2 Implementation of EU Directives

The deadline of 01 August 2022 for implementation of two Directives (2019/1152/EC and 2019/1158) has not been met. There has thus far not been any dialogue with the social partners on the Draft.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

The Labour Court issued two decisions holding that regular and rostered overtime need not be included in the calculation of holiday pay.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working time

Labour Court, DWT228, 12 July 2022, Carlow County Council v Coughlan

When calculating an employee's holiday pay, is the employer required to include 'regular and rostered' overtime? If the employer is so required, is the employee entitled to retrospective payment of the shortfall back to the date of commencement of employment?

The Labour Court addressed both these questions in *Carlow County Council v Coughlan*, DWT2228.

Article 7 of Directive 2003/88/EC is implemented in Ireland by sections 19 and 20 of the Organisation of Working Time Act 1997 and the Regulations made thereunder. Regulation 3(2) of the Organisation of Working Time (Determination of Pay for Holidays) Regulations 1997 (S.I. No. 475 of 1997) expressly and unambiguously excludes overtime from the calculation of holiday pay.

The employee, however, relied on the decision of the CJEU in Case C-539/12, 22 May 2014 *Lock v British Gas* in support of his submission that, notwithstanding the wording of reg. 3(2), overtime payments were reckonable for the purpose of calculating his holiday pay. *Lock*, of course, concerned commission payments. Unfortunately, it would appear that the Labour Court's attention was not drawn to the subsequent CJEU decision in Case C-385/17, 13 December 2018, *Hein v Albert Holzkamm.* Here the CJEU ruled that when the obligations arising from the employment contract require the worker to work overtime 'on a broadly regular and predictable basis' and the corresponding pay constitutes 'a significant element of the total remuneration', the pay for that overtime should be included in the calculation of holiday pay. This was to ensure that the worker might enjoy, during annual leave, economic conditions which were comparable to those he or she enjoyed when working.

In Coughlan, the employee received basic weekly pay of EUR 653.83. His contract also provided for payment of daily 'regular and rostered' overtime of a half-hour at time-and-a-half and a further half-hour at double time. The question was whether the payment for these hours was a 'significant' element of his total remuneration?

In any event, the Labour Court distinguished Lock and ruled that regular and rostered overtime was not reckonable in applying the formula for calculating holiday pay set out in regulation 3(2) of S.I. No. 475 of 1997.

This decision was then followed and applied by a different division of the Labour Court, DWT2230, 18 July 2022, *Tipperary County Council v O'Donoghue*.

Notwithstanding the employees' reliance on the CJEU decision in Case C-214/16, 29 November 2017, *Sash Window Workshop v King* in support of their claim for retrospective payment of alleged underpayments back to the date of commencement of

employment, the Labour Court ruled that its jurisdiction was limited temporally to the six-month period prior to lodgement of the complaint prescribed by section 41(6) of the Workplace Relations Act 2015.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Labour Force Survey

The results of the CSO's Labour Force Survey for Q2 2022 reveal that there were 2 554 600 persons in employment, of which 2 010 500 were in full-time employment and 554 100 in part-time employment. This is an increase of 8.7 per cent since Q2 2021, providing an employment rate of 73.5 per cent. The largest increase was in the accommodation and food services sector (39.2 per cent) but employment in this sector remains below the Q2 2019 level. When the figures are broken down by gender, they reveal that of the 1 360 200 males in employment, 169 800 were in part-time employment of which 43 800 regarded themselves as under-employed. Of the 1 194 400 females in employment, 374 300 were in part-time employment of which 70 900 regarded themselves as under-employed.

Italy

Summary

(I) Two Legislative Decrees implement the Directive on Transparent and Predictable Working Conditions and the Work-life balance Directive.

(II) A reform law about show business workers was published in August.

1 National Legislation

1.1 Transparent and predictable working conditions

The Italian Law Journal of 30 July 2022 published the Legislative Decree of 29 June 2022 No. 104 (*Decreto Trasparenza* – Transparency Decree), implementing Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.

The Italian legislator is seeking to rationalise employment conditions in Italy, making them more predictable and safer, and to improve the transparency of the labour market by establishing new minimum requirements, strengthening the protection of workers and amending some rules on working conditions.

The rules apply to permanent and fixed-term employment contracts (in the agricultural sector as well) and part-time contracts; agency work; on-call jobs; collaborations organised by the employer; coordinated and continuous collaboration contracts; and voucher-based work.

The decree also applies to employment relationships of civil servants.

The provisions of this Decree also applies to seafarers and fishery workers without prejudice to their special rules; and domestic workers (with some exceptions).

The Decree shall not apply to self-employment; employment relationships which working time is equal to or less than an average of three hours per week in a four-week period (this exclusion does not operate in employment relationships in which the quantity of paid work has not been established before the start of work); agency and commercial representation contracts; collaborations provided in the employer's undertaking by relatives (in the third degree) living together with him/her; employment relationships of public servants working abroad; employment relationships of staff members in political bodies.

The employer must communicate to each worker in a clear and transparent manner the information provided for in the Decree, in paper or electronic format. The same information is maintained and made accessible to the worker for five years from the end of the employment relationship.

The public and private employer must provide the worker with the following information:

1. the identity of the parties, including any co-employers;

2. the workplace. In the absence of a fixed or predominant workplace, the employer shall communicate that the worker is employed in different places, or is free to determine his/her own workplace;

3. the employer's registered office or domicile;

4. the worker's classification, level and qualification or, alternatively, the characteristics or brief description of the work;

5. the date of beginning of the employment relationship;

6. the type of employment relationship;

7. in case of workers employed by work agencies, the identity of the user undertaking, when and as soon as it is known;

8. the duration of the probationary period;

9. the right to receive training provided by the employer, if applicable;

10. the duration of leave the worker is entitled to, or the methods of their determination and use;

11. the procedure, form and terms of notice in the event of termination by the employer or the worker;

12. the initial amount of remuneration or, in any event, the remuneration and its components, with an indication of the period and method of payment;

13. the normal working time planning and any working conditions such as overtime and its remuneration, and any conditions related to changes in shifts, if the employment contract provides for an organisation of working time that is fully or in large part foreseeable;

14. whether the employment relationship, characterised by organisational arrangements that are largely or entirely unpredictable, does not provide for a scheduled normal working time, the employer informs the worker about:

> a. the variability of work scheduling, the minimum amount of paid hours guaranteed and remuneration for work performed in addition to guaranteed hours;
>
> b. the hours and days on which the worker is required to perform his/her job;
>
> c. the minimum period of notice to which the worker is entitled before the start of the work and, where this is permitted by the type of contract in use and has been agreed, the period within which the employer may cancel the assignment;

15. the collective agreement, including the company contract, applied to the employment relationship, with the indication of the parties who have signed it;

16. the institutions that receive social security and insurance contributions due from the employer and any form of social security protection provided by the employer him-/herself.

The essential components of the employment relationship must be made known to each worker, in writing, by obtaining them before the beginning of the employment activity, or the written individual contract of employment, or a copy of the communication of the relationship (so called 'obligatory communication'). If some information is missing, it must be completed within seven days (one month for non-essential information).

The probationary period may not exceed six months. In the fixed-term employment relationship, the probationary period shall be established in proportion to the duration of the contract and the tasks to be performed, in relation to the nature of the employment. In the event of renewal of a contract of employment for the performance of the same tasks, the employment relationship may not include a new probationary period. Suspension of the work, such as illness, accident, maternity leave or compulsory paternity leave, determine the automatic extension of the period deducted in the contract to an extent corresponding to the total duration of absence.

In addition to the information explicitly required by the European directive, the Italian legislator provides for the obligation to also communicate the component previewed in the cases in which the modalities of the performance is organised through the use of decision-making or monitored using automated systems to empower the employer in their use. In line with the provisions on the protection of personal data, the Decree reiterates the worker's right to not be subject to decisions based solely on automated processing. The employer is also required to indicate the purposes, aims, logic and operation of the systems, the categories of data and the main parameters used for

programming or training systems in the contracts, including performance assessment mechanisms, control measures taken for automated procedures, corrective processes, the quality manager and the level of accuracy, robustness and cybersecurity of systems.

Workers with at least six months' service, whether or not continuous, may request their employer in writing to provide a 'form of work with more predictable conditions, safety and stability' within one year of the termination of the previous employment relationship (right of priority). The employer must respond within one month with a reasoned written response (orally in companies employing up to 50 employees). The request, if denied, can be resubmitted, but only once, after a minimum six-month waiting period.

This provision does not apply to public servants.

Workers can perform another job outside of the established working hours. The employer/client cannot prohibit this or even treat the worker less favourably, just because he/she performs another job as well, unless the second job is detrimental to the employee's health and safety, including non-compliance with the law on the duration of rest periods; the integrity of the public service must be ensured; the different and additional work activity may represent a 'conflict of interest' with the employee's main job, although it does not violate the obligation of loyalty (Article 2105 of the Civil Code).

To align the regulations with the provisions in force, the Decree adjusts and harmonises the provisions on voucher-based work, on-call work, agency work, work via digital platforms, working abroad, etc.

1.2 Work-life balance

The Italian Law Journal of 30 July 2022 published the Legislative Decree 29 June 2022 No. 105 (*Decreto Equilibrio* – Balance Decree), implementing 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 repealing Council Directive 2010/18/EU.

The Decree aims to optimise the reconciliation between work and family life for parents and carers to achieve a more equitable sharing of responsibilities and care tasks between men and women, promoting effective gender equality both in the workplace and in the family and supporting the elimination of stereotypes.

Compulsory paternity leave (10 days) has become a permanent measure and is no longer an experimental one. The allowance for this leave amounts to 100 per cent of the father's salary and will be available continuously (but not divisible in hours) to the working father as well as to adoptive or foster fathers within the first 5 months of birth, from entry into the family (for national adoptions) or from the entry of the child into Italy (for international adoptions). This deadline remains fixed even in case of premature birth and in the event of perinatal death of the child. The leave can also be used in the two months preceding the birth/ entry into the family / entry into Italy. In the case of multiple births, the 10 working days can be doubled. To exercise this right, the working father must communicate his request to his employer in writing, at least five days in advance (no longer 15 days, as was the case in the past)based on the estimated date of childbirth. Better conditions can be provided for in the collective bargaining agreement.

The prohibition of dismissal up to one year from the child's birth has also been extended to working fathers, as already provided for working mothers.

Furthermore, compulsory paternity leave, thus far only provided to private employees, has now also been extended to employees of public administrations.

Parental leave has also been amended. The age of the child (or his/her entry into the family/Italy) within which the parents can take advantage of compensated parental leave has been increased to 12 years. The months of compensated parental leave for

each parent has increased from six to nine months. The leave increases from ten to 11 months for single parents or parents who have exclusive custody of the child.

In the event of a serious disability, the special leave of 2 years does not only belong to the spouse, but also to part of a 'civil union' and to the *de facto* partner.

Paid daily leave to assist a person with a severe disability (Act 104/1992) can be divided among several people for more balanced sharing of care tasks.

The right to maternity benefits for risky pregnancies has been extended to self-employed workers in case of serious pregnancy-related complications or persistent disease that is presumed to be aggravated by the state of pregnancy to a period of 2 months before childbirth.

If a family member suffers from an oncological or serious chronic-degenerative disease, the priority in the transformation of full-time to part-time employment contracts belong not only to the spouse, but also to the part of a civil union and the *de facto* partner.

Public and private employers, who offer flexible work agreements, must give priority to those applying for: workers with children up to the age of 12 years or disabled children; disabled workers in a situation of ascertained seriousness; and 'caregiver' workers.

A worker who wants to make use of flexible work arrangements or work part time cannot be sanctioned, assigned, dismissed, transferred or submitted to other organisational measures that have a direct or indirect adverse effect on working conditions. Any action taken in breach of those rights shall be considered to be retaliatory or discriminatory and shall therefore be void.

1.3 Show business workers

The Italian Law Journal of 03 August 2022 published the Act of 15 July 2022 No., 106, which stipulates that the government shall reorganise the legal provisions on entertainment and modify the rules for the protection of show business workers.

The government must issue one or more decrees within 9 months on: a) employment contracts in the entertainment sector, recognising the specificities of work and the structurally discontinuous nature of work performance in the entertainment sector; b) fair compensation for the self-employed, including the agents and representatives of the live show; c) the reorganisation and revision of the allowances and the introduction of a discontinuity allowance as a structural and permanent allowance for workers engaged in artistic or technical activities, connected with the production of shows.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

The Free Trade Agreement between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland has entered into force on 01 September 2022.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Free Trade Agreement

The Free Trade Agreement between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland was concluded in London on 08 July 2021 (*Freihandelsabkommen zwischen Island, dem Fürstentum Liechtenstein, dem Königreich Norwegen und dem Vereinigten Königreich von Grossbritannien und Nordirland, LR 0.632.62*). The Liechtenstein Parliament approved the agreement on 05 November 2021. It has been provisionally applied since 01 January 2022, with the exception of Chapter 6 (Public Procurement) and Annex XXI.

With the agreement, in addition to the trade in goods, which was already seamlessly continued from 01 January 2021 via the supplementary agreement to the trade agreement between Switzerland and the UK, other areas such as, in particular, cross-border trade in services, including financial services, are now also regulated in a preferential agreement. The agreement prevents discrimination against companies from the EU and offers Liechtenstein companies preferential market access compared to countries that do not have a free trade agreement with the UK.

The agreement entered into force on 01 September 2022.

Lithuania

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Limitations to the right to strike

The social partners have started discussing the provision of labour law which is related to the general prohibition of strikes during states of emergency. The state of emergency was declared by the Parliament of Lithuania on 24 February 2022 in response to the Russian Federation's invasion of Ukraine. Article 248 (2) of the Labour Code contains the general prohibition of all strikes during states of emergency declared by the Parliament, without any exception. This restriction prevents the resolution of long-lasting industrial disputes in some major companies and members of Parliament have come forward with legislative proposals to support the trade unions' demands to lift the restrictions. However, the debate on potential amendments continues in the Tripartite Council which is expected to reach an agreement before the legislator. The government proposes that Parliament or the president should decide on strike restrictions in each individual case during states of emergency. The employers did not support any changes, while the trade unions did not agree with the proposal of either the government or the members of Parliament and stated that strikes should be allowed in all cases.

For further information, see: 'Tripartite Council hopes to agree on strikes during the status of emergency'.

Luxembourg

Summary

(I) A bill implementing the Directive on transparent and predictable working conditions has been adopted.

(II) Legislative changes adapt the implementation of Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels.

1 National Legislation

1.1 Transparent and predictable working conditions

The government has adopted a bill to transpose the Directive on transparent and predictable working conditions.

The mandatory information within the scope of private law relationships may not be provided in a unilateral document, but must be part of the mandatory clauses of the employment contract.

The repealed Directive 91/533/EEC had only been transposed for classical employment contracts. For these, the bill only implements a few additional clauses required by the new Directive; this does not represent a major amendment. The main changes introduced by the new Directive is its broader personal scope of application. Beyond classic employment contracts, the bill will apply to:

- Interim contracts;
- Apprenticeships;
- Specific temporary contracts for students and pupils;
- Seafarers.

The amendment has implications for these types of contracts because the number of mandatory clauses is currently limited.

The bill does not amend the rules on internship contracts; however, in terms of EU case law, the rule may also be covered by the scope of the Directive.

Civil servants do not have a contractual relationship. Therefore, the bill introduces the right to claim a document confirming civil servants' working conditions.

A general protection against adverse treatment has been introduced, which covers many aspects of labour law and thus goes beyond the Directive's scope. Employees will be protected against any retaliation, including dismissals, if they claim their essential rights.

Some aspects of the Directive have not been explicitly implemented, supposedly because the authors of the bill consider that these types of employment relationships do not exist in Luxembourg, e.g. unpredictable work patterns (Art. 10) and on-demand contracts (Art. 11).

To comply with the Directive's proportionality requirement, the bill limits the duration of probationary periods in fixed-term contract. A full transposition of the Directive would also require changes in probationary periods in open-ended contracts.

The rules on parallel employment have been literally implemented; it will be interesting to see whether this induces a change in case law on exclusivity clauses.

1.2 Health and safety on board vessels

A Grand-Ducal Decree introduces a minor change which affects the implementation of Directive 92/29/EEC of 31 March 1992 on minimum safety and health requirements for improved medical treatment on board vessels. The purpose is to clarify that the model medical report to be used by the captain and medical staff is the one included in the International Medical Guide for ships established by the World Health Organization.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Wage indexation

Luxembourg has a system of automatic adaptation of all wages in case the cost of living index raises.

Due to inflation, many of these indexations (salary increase by 2.5 per cent) would usually apply within a short period of time.

As stated in previous Flash Reports, after the index of April, an agreement was concluded between (some) social partners to postpone the indexation that would normally be due in July. It is likely that by the end of the year, an additional and thus third annual indexation will be applied. The social partners had meetings with the government and there will be additional tripartite discussions to find a balance between employers' and employees' interests. It is thus likely that a law will be adopted in coming months to further modify or postpone wage indexation.

Malta

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Third-country nationals

On Sunday, 28 August 2022, the Sunday Times of Malta uncovered an illegal practice involving third-country nationals who come to work in Malta as food couriers/delivery persons.

The article states that:

> "*Whereas the salary in the first contract was based on 40 hours of work as per Maltese law, the second stipulated that 'hours of work' is limited to the hours during which the courier drives from his current location to the restaurant, until the moment the order is delivered to the customer. The courier would not be paid for the idle time they spent waiting outside restaurants between deliveries.*"

According to the article, there is a serious breach of the entire concept of organisation of working time and on-call time. The time the food courier spends outside restaurants waiting to be assigned a delivery falls within the ambit of the CJEU's in case C-580/19, 09 March 2021, *R.J. vs Stadt Offenbach am Main* and CJEU Case C-344/19, 09 March 2021, *D.J. v Radiotelevizija Slovenija*.

Netherlands

Summary

(I) A law implementing the Directive on transparent and predictable working conditions has entered into force.

(II) According to the Court of Amsterdam, unions that do not represent all workers and interests within a company can still be admissible in a case regarding platform work.

1 National Legislation

1.1 Transparent and predictable working conditions

A new law implementing the EU Directive on transparent and predictable labour conditions entered into force on 01 August 2022. The most important changes have been introduced in the field of training, ancillary activities, (un)predictable working hours and the obligation to provide information.

Education

If an employee participates in compulsory training, the employer must provide it free of charge. Employees cannot be required to refund these costs at a later time. Furthermore, the duration of compulsory training should be considered working time and should, to the extent possible, take place during working hours.

Ancillary activities

A general ban on ancillary activities will no longer apply from 01 August 2022. An employer may only prohibit ancillary activities if they have an objective reason for doing so.

(Un)predictable working hours

Employers must give employees who have unpredictable working hours more clarity about the days and times on which they can be scheduled to work. The employment contract or employee handbook must contain reference days and times on which the employee can be scheduled to work. In addition, employees with an unpredictable work schedule can submit a request for their employer to create a 'more predictable' schedule. Employers are not required to agree but must respond within a month.

Information obligation

In addition, employers' information obligation has been expanded to include employees who enter into an employment contract after 01 August 2022. The employer must now provide more details to the employee about his/her work conditions. These details include:

- The workplace, if it is not one fixed place;
- Right to education;
- Right to paid leave;
- Wages and the payment of wages;
- Working hours;
- The workplace in case of temporary agency work;

- The procedure for termination of the employment contract;
- The duration and conditions of the probation period.

Employees who were employed before 01 August 2022 can submit a request for the missing information in the employment contract.

2 Court Rulings

2.1 Platform work

Court of Amsterdam, C/13/692040/HA ZA 20-1079, 19 July 2022, FNV/CNV vs. Temper B.V

This court ruling concerned Temper, a platform for contractors to advertise work and for clients to find work. In a letter dated 22 June 2020, the trade unions FNV and CNV asserted that Temper contractors must be qualified as employees. According to the court, the proceedings against Temper by FNV and CNV were admissible.

In its judgement, the court considered that the objective of 'a fair labour market' leads to a transparent regime of Section 3:305a of the Dutch Civil Code, meaning that some of the requirements in this article can be set aside. The fact that CNV/FNV did not represent all workers and interests of the Temper workers did not alter their admissibility.

A foundation of interested parties joined the dispute between Temper and CNV/FNV. The court ruled that the foundation was not representative enough in this particular case, partly due to the fact that the foundation was financed by Temper.

2.2 Working conditions

Court of The Hague, ECLI:NL:GHDHA:2022:1237, 22 July 2022

The Court of The Hague ruled in a case on working conditions. An amateur football player claimed payment of wages due based on 'annual wages' which were agreed upon on a beer mat. The beer mat contained the signature of the technical director who was allowed to conduct wage discussions on behalf of the foundation. Much lower monthly wages were agreed upon in the employment contract.

According to the employee, the difference between the two wages was due to the fact that part of the wage would be paid under the table. The court ruled that the employee had succeeded in proving his claim and upheld the wage claims.

This ruling is in line with the objective of the Directive on transparent and predictable working conditions of workers as it upholds agreements made on wages, even if this was done in a non-traditional way. This gives the employee more certainty on his/her working conditions.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Social Impact Team

In case measures need to be taken to respond to the COVID-19 crisis in the future, the government will be able to rely on the advice of a new committee called the Social Impact Team (*'Maatschappelijk Impact Team'*, MIT). This new committee will advise on

the broader social and economic impact of the proposed measures and will support the Outbreak Management Team (OMT).

Norway

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Compulsory arbitration

The government has intervened in two industrial conflicts and decided, in form of interim legislation, that the disputes shall be settled by compulsory arbitration.

The first dispute was between The Norwegian Aircraft Engineer Organisation and the Confederation of Norwegian Enterprise and the Federation of Norwegian Aviation Industries. The government justified the decision to interfere in the industrial conflict because it posed a danger to life and health, in particular due to reduced capacity in air ambulance service (see June 2022 Flash Report). The interim legislation (FOR-2022-08-12-1433) is available here.

The other dispute was between The Norwegian Organisation of Managers and Executives (Lederne) and Offshore Norway. The union went on strike on 05 July 2022, and announced an expansion of the strike from 06 July 2022 and 09 July 2022. The latter escalation, according to the government, implied that over half of Norway's gas export would be lost. The government justified its decision to interfere in the industrial conflict with such consequences for gas export being critical in light of the situation on the European energy market. Further information on the decision is available here and the interim legislation can be found here (FOR-2022-08-12-1434).

Poland

Summary

The Ministry of Infrastructure has issued an announcement on the temporary modification of working time limits for lorry drivers.

1 National Legislation

1.1 Implementation of EU directives

As indicated in the July 2022 Flash Report (section 1, with further references), Poland has not transposed Directives 2019/1152 on transparent and predictable working conditions and 2019/1158 on work-life balance on time. In August, there was no legislative development on the implementation of the abovementioned legal instruments.

1.2 Working time of professional drivers

On 10 August 2022, the Ministry for Infrastructure issued the Announcement on temporary derogations from the application of provisions concerning driving time of vehicles, breaks and drivers' rest periods (*Monitor Polski 2022, item 789*). It is available here.

Through this act, the Ministry temporarily modifies the regulations on working time limits of professional drivers, as provided for in Regulation 561/2006 on the harmonisation of certain social legislation relating to road transport (the modification is based on Article 14 item 1 of Regulation 561/2006), and the Law of 16 April 2004 on working time of drivers (consolidated text: Journal of Laws 2022, item 1473). The law can be found here.

According to these temporary provisions, from 12 August 2022 until 30 September 2022, the working time limits of lorry drivers have been extended. The Ministry justifies the exceptions from regular provisions by the need to safeguard cargo transport, which could be jeopardised by the war in Ukraine and the EU sanctions against Russia and Belarus.

These temporary derogations are as follows:

- the extension of maximum daily driving time from 9 hours to 11 hours (derogation from Article 6 item 1 of Regulation 561/2006);
- the extension of maximum weekly driving time from 56 hours to 60 hours (derogation from Article 6 item 3 of the Regulation 561/2006);
- the extension of maximum driving time within a two-week period from 90 hours to 96 hours (derogation from Article 6 item 3 of Regulation 561/2006);
- the extension of maximum driving time, thereafter, the driver should take an uninterrupted break of not less than 45 minutes, from 4 hours and 30 minutes to 5 hours and 30 minutes (derogation from Article 7 of Regulation 561/2006);
- the admissibility to spend drivers' regular weekly rest periods in the vehicle, provided that this vehicle has suitable sleeping facilities and the vehicle is stationary (Article 8 item 8 of Regulation 561/2006);
- the application of these temporary derogations may not deteriorate the working conditions of truck drivers and may not reduce road transport safety.

It should be remembered that the abovementioned derogations will only remain in force until the end of September.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Portugal

Summary

Several amendments to the legal framework of entry, stay, departure and removal of foreigners from the national territory have been approved.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

By the Resolution of the Council of Ministers No. 73-A/2022, of 26 August, the state of alert on the Portuguese mainland territory due to the COVID-19 crisis has been extended until 30 September 2022.

In addition, Decree Law No. 57-A/2022, of 26 August, amends some measures that are applicable within the context of the COVID-19 pandemic. Specifically, this decree eliminates the obligation to use masks in certain places (including for employees working in these places), such as public transport and pharmacies. This obligation remains in force in health establishments and residential facilities or home support services for vulnerable populations, elderly people or people with disabilities.

1.2 Third-country nationals

Law No. 18/2022, of 25 August, creates conditions for the implementation of the Mobility Agreement between the Member States of the Portuguese Speaking Countries Community, signed in Luanda on 17 July 2021, and amends the legal framework of entry, stay, departure and removal of foreigners from the national territory.

Among other aspects, this law introduces the following measures with impacts on or relevance for employment: *(i)* simplification of the procedure related to the issuing of visas for citizens from the Member States of the Portuguese Speaking Countries Community; *(ii)* creation of a new visa for searching for a job in Portugal, with a duration of 120 days, renewable for an additional period of 60 days, allowing its holder to enter and stay in Portugal for the purpose of looking for a job; *(iii)* possibility of issuing a temporary stay or residency visa for the performance of a professional activity remotely from Portugal under an employment contract or as a self-employed person, to an individual or legal person located in another country; *(iv)* possibility of performing a professional activity while the residency permit is pending, since such a situation is not imputable to the applicant; *(v)* possibility of performing a professional activity for holders of research, study, professional internship and volunteering visa; *(vi)* extension of the validity of the duration of residency permits for internships; *(vii)* extension of the duration of the EU blue card; *(viii)* elimination of the regime of *quotas* which was in place in relation to the visa for the exercise of a subordinated professional activity.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Future amendments to labour law

The Proposal of Law No. 15/XV/1, containing several changes to the labour legislation, was presented to the Portuguese Parliament by the government on 06 June 2022 (see July 2022 Flash Report). The legislative procedure is ongoing, and it is likely that the proposal will be voted on (and approved) by Parliament in the coming months.

Romania

Summary

The legal regime of paternity leave has been amended to transpose the Work-life balance Directive.

1 National Legislation

1.1 Paternity leave

The legal regime of paternity leave has been amended to transpose 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 repealing Council Directive 2010/18/EU.

Previously, the duration of paternity leave was only 5 days, its extension being dependent on the completion of a childcare course. Emergency Government Ordinance No. 117/2022 for the amendment and completion of the Law on Paternity Leave No. 210/1999 (published in the Official Gazette of Romania No. 845 of 29 August 2022) currently provides for the right of employees to paternity leave of 10 working days. The compensation for paternity leave is paid by the employer and is equal to the salary corresponding to the respective period. In addition, the dismissal of an employee who is on paternity leave is prohibited.

However, it should be noted that other aspects provided for in Directive 2019/1158 have not yet been transposed, such as the non-transferable two-month leave from parental leave (Article 5.2). This leave is currently one month.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) The share of worker representatives in the councils of public educational institutions has been increased.

(II) The legal basis for digital platforms in passengers transport has been repealed.

1 National Legislation

1.1 Workers' representatives in public educational institutions

The number/share of worker representatives in the councils of public educational institutions (primary and secondary schools, kindergartens, etc.) – regulated in Article 46 of the Organisation and Financing of Education Act ('*Zakon o organizaciji in financiranju vzgoje in izobraževanja (ZOFVI)*', OJ RS No. 12/96 et subseq.) – has been amended.

ZOFVI is one of the laws affected by an omnibus act – the Act on reducing inequalities and harmful political interference and ensuring respect for the rule of law ('*Zakon za zmanjšanje neenakosti in škodljivih posegov politike ter zagotavljanje spoštovanja pravne države (ZZNŠPP)*', OJ RS No. 105/22, 03 August 2022, p. 7913-7916) which was submitted to Parliament with the voters' signatures to modify 11 laws that were passed by the previous government in fast-track procedures or without consulting experts, and deemed by NGOs to be detrimental to equality, human rights and the rule of law (see here, for example).

According to Article 2 of ZZNŠPP, the number of worker representatives was raised from three to five to restore the situation to before the amendments of December 2021 (see December 2021 Flash Report).

1.2 Platform work

Another law affected by the above-mentioned ZZNŠPP is the Road Transport Act ('*Zakon o prevozih v cestnem prometu (ZPCP-2)*', OJ RS No. 131/06 et subseq.).

The amendments to the ZPCP-2 from June 2021 (see June 2021 Flash Report) introduced the legal basis for digital platforms in passenger transport such as, for example, Uber. According to Articles 19-22 of ZZNŠPP, the provisions introduced by the amendments of June 2021 have been repealed.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Collective bargaining

The '*Sindikat finančno računovodskih uslužbencev plačne skupine J*' (the Trade Union of Financial Accountants) acceded to the already concluded collective agreement: the

collective agreement for the state administration, judicial authority administrations and local self-governing administrations (*'Pristop h Kolektivni pogodbi za državno upravo, uprave pravosodnih organov in uprave samoupravnih lokalnih skupnosti')*, published in the OJ RS No. 108/2022, 12 August 2022, p. 8021).

The two police trade unions have reached a temporary agreement with the government on the implementation of certain provisions of the collective agreement (*'Začasni dogovor o izvajanju 4. točke prvega odstavka 22.n člena Kolektivne pogodbe za policiste in zagotavljanju fonda plačanih ur za sindikalno delo sindikalnih zaupnikov, ki delujejo v stalnem organu sindikata',* OJ RS No. 114/22, 31 August 2022, p. 8296-8297)) concerning the number of paid hours for trade union representatives for their trade union activities. This agreement was concluded within the framework of the peaceful resolution of collective labour disputes.

Spain

Summary

A ruling of the Supreme Court deals with video surveillance in the workplace.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Video surveillance

Supreme Court, ECLI:ES:TS:2022:3160, 22 July 2022

Traditionally, Spanish law allowed for the use of video surveillance to obtain evidence of possible infringements by the worker. Dismissals have often been based on video surveillance. The rules on data protection (the GDPR and the internal ones) and ECHR case law have modified the approach because the workers had usually not consented or had not even known that they were being recorded. First, the Constitutional Court and later the Supreme Court stated that the worker must be informed about the use of video surveillance for these purposes. If not, the dismissal is null and void because video surveillance violates a fundamental right.

This situation has recently changed because the Supreme Court has modified its doctrine according to the ruling of the European Court of Human Rights in case 1874/13 and 8567/13, 17 October 2019, *López Ribalda*. According to this new approach, if the employer has a reasonable suspicion of infringement and if there are no other measures to prove it, video surveillance is permissible, even if the worker is not aware of the video surveillance. This case was a very particular situation because the worker was a domestic servant who had stolen money and jewellery from a safe in her employer's house.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Unemployment rate

Unemployment rose in July (an increase of 3 230 people). There are currently 2 883 812 unemployed persons, the lowest number in August since 2008, but there are growing fears of an economic crisis in the coming months.

4.2 Collective bargaining

The collective agreement for the construction industry has been amended. One of the purposes of this modification is to adapt it to the labour reform of December 2021. Specifically, the sector's collective agreement created a special type of fixed-term employment contract (long ago), linked to a specific project or building (*contrato fijo de obra*). The labour reform of 2021 eliminated this type of contract, i.e. the collective agreement for the construction industry now regulates a permanent discontinuous contract. This employment contract does not terminate when the specific work or

building is completed, that is, the worker has the right to be called on again to perform future work. In particular, the collective agreement regulates the order of priority in the call among all the workers concerned. It is worth noting that workers do not receive wages and do not pay social security contributions during the periods of inactivity.

Sweden

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Atypical work

The Swedish government has initiated a modified working environment structure for self-employed, 'gig'-workers and platform workers. A public enquiry SOU 2022:45 *Steg framåt, med arbetsmiljön i fokus*, with draft proposals was presented in August, proposing increased responsibility of employers and contractors for the working environment. The extended responsibility implies that the employer or contractor shall take responsibility of the working environment of subcontractors, agency workers, or any legal person performing labour in the organisation or at the workplace. The proposal monitors the precarious situation of workers and self-employed persons in different capacities engaged under poor working conditions without being employed as typical workers with an employer. The current law makes less explicit references to these situations. If passed into law, the proposal would provide higher protection and a less employer-employee focused structure of the Work Environment Act (*arbetsmiljölagen* [1977:1160]).

United Kingdom

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Retained EU law and the Northern Ireland Protocol Bill (NIPB)

For the last couple of months, Flash Reports have reported on the UK government's desire to speed up the process of the removal of retained EU law (REUL). The country is still waiting for the Brexit Freedoms Bill to do this. Much has been put on hold pending the outcome of the Tory leadership contest (results published on 05 September 2022), but September is likely to be busy. The Northern Ireland Protocol Bill (NIPB) may be due back in the Lords on 25 October 2022, but this might change.

4.2 Temporary agency work

Last month, the UK government anticipated considerable strike actions in coming months (See July 2022 Flash Report). 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. This has now happened. The legislation is available here Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022 (SI 2022/699) (the Order) and Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022 (SI 2022/852).

Strike actions over inflation and the cost of living are being witnessed in the rail industry, among postal workers and elsewhere. According to CNN, at least 155 000 people are on strike in the UK at the moment.

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