Flash Reports on Labour Law November 2022

Summary and country reports

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

November 2022

EUROPEAN COMMISSION

Directorate DG Employment, Social Affairs and Inclusion

Unit C.1 – Labour Law

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Flash Report 11/2022 on Labour Law

Manuscript completed in November 2022

Luxembourg: Publications Office of the European Union, 2022

PDF ISSN 2600-3252 KE-CC-22-011-EN-N

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Executive Summary

National level developments

In October 2022, 26 countries (all but **Croatia**, **Denmark**, **Iceland**, **Latvia** and **Malta**) reported some labour law developments. The following were of particular significance from an EU law perspective:

Developments related to the COVID-19 crisis

This month, the extraordinary measures to mitigate the COVID-19 crisis played only a minor role in the development of labour law in many Member States and European Economic Area (EEA) countries.

In the **Netherlands**, a labour court held that the employer does not need to grant an unvaccinated employee access to work.

Working time

In **Slovenia**, the Higher Labour and Social Court decided that stand-by time spent at home by a worker is in fact working time.

In **Ireland**, following CJEU case C-214/20, *MG v Dublin City Council*, the Labour Court established that time spent on-call by a retained firefighter was not 'working time'.

In **Germany**, the Federal Labour Court followed up on the CJEU's judgment in case C-514/20, *Koch* to define the threshold above which overtime pay must be recognised.

Work-life balance

In **Greece**, the special maternity leave recognised to mothers once mandatory maternity leave has been completed was extended from six to nine months.

In the **Czech Republic**, the Act extending paternity leave and leave entitlements, as well as the introduction of the digitisation of quarantine procedures entered into effect on 01 December 2022.

In **Slovenia**, the amendments to the Parental Protection and Family Benefits Act were adopted by the National Assembly, thus transposing the Work-life Balance Directive 2019/1158 into Slovenian law. Similarly, in **Germany**, the Bundestag passed the Act transposing the EU Directive on Work-life Balance.

Transposition of EU law

In **Hungary**, the government submitted a Bill to Parliament on 02 November 2022, which aims to transpose the EU Directive on Transparent and Predictable Working Conditions and the EU Directive on Work-life Balance, which would also amend other articles of the Labour Code.

In **Germany**, the Legal Affairs Committee of the Bundestag adopted the draft law on the implementation of EU Directive concerning cross-border conversions, mergers and divisions.

Part-time work

In **Greece**, a new law will provide financial incentives to companies that convert part-time employment contracts into full-time ones. Similarly, in **Norway**, the Working Environment Act has been amended to strengthen full-time employment as the standard form of employment and discourage the unnecessary use of part-time employment.

Other forms of atypical work

In **Sweden**, the Labour Court has ruled that the written contract is what primarily determines whether an employee is employed by a temporary work agency or by the user undertaking.

In **Spain**, two judgments of the Supreme Court ruled on the differential

treatment of fixed-term workers working for the public administration.

In **Ireland**, the Supreme Court granted leave to appeal a case concerning the status of food delivery couriers.

In the **Netherlands**, a labour court held that not calling on an on-call employee for two months constitutes a termination of the employment contract.

Other developments

In **Liechtenstein**, following the amendment of the Posting of Workers Act in October 2022, the government amended the Posting of Workers Ordinance, with effect as of 01 January 2023.

In **Finland**, the pay security legislation, ensuring employees' protection in case of employer's insolvency, has been amended.

In **Italy**, a court has requested the CJEU for a preliminary ruling on the compatibility with EU law of the Italian regulation on the citizenship income, according to which it is necessary to have resided in Italy for ten years to be eligible for this measure.

Table 1: Major labour law developments

Topic	Countries
Work-life balance	CZ DE EL HU SI
Working time	DE IE SI
Labour law reform	BE HU RO
Public employment	CZ LI
Part-time work	EL NO
Teleworking	RO PL
Temporary agency work	SE
Employment status	IE
Posting of workers	LI
Minimum income	IT
Employer insolvency	FI
Fixed-term work	ES
Transparent and predictable working conditions	HU
Freedom of establishment	DE

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

During autumn and early winter, negotiations on sectoral collective bargaining agreements take place in Austria. This year, the negotiations have been particularly taxing due to the high inflation rate and the energy crisis. The metal industry—which is typically the first CBA to be concluded, setting the 'season's standard'—agreed on a wage average increase of 7.4 per cent. The retail sector agreed on a pay raise of, on average, 7.31 per cent. Generally, lower income levels were raised at a significantly higher percentage than higher incomes.

No agreement was reached in the railway, leading to a 24-hour railway strike on 28 November 2022, which is quite unusual in the tradition of the Austrian social partners (the last railway strike in 2018 lasted two hours, in 2003, there was a 66-hour strike – see here). Before the strike, the employers' union reportedly offered an average pay raise of 8 per cent, but the unions are demanding an average raise of 12 per cent. So far, no agreement has been reached.

Belgium

Summary

(I) A comprehensive set of measures to reform the labour market were adopted with the Law of 03 October 2022, published on 10 November 2022. The reform includes several measures, including i.a. measures relating to working hours and work-life balance, the right to disconnect, the legal presumption of employment for platform workers, and the training of workers.

(II) A new law that amends the regulation of work of employees with disabilities entered into force on 28 November 2022.

1 National Legislation

1.1 Labour law reform

The Law of 03 October 2022 containing various labour provisions was published in the Belgian Official Gazette (*Moniteur belge*) of 10 November 2022, p. 81963. This law implements the measures decided by the federal government as part of the so-called 'labour deal'.

Recent years have seen a shift in the new way people work with new modes of working such as teleworking, e-commerce, and the platform economy. The objective of the legal transposition of the so-called labour deal is twofold:

- to reform labour law to respond to these new modes of working while allowing more flexibility for both employers and employees, ensuring a better work-life balance;
- contribute to the government's aim to raise the employment rate to 80 per cent by 2030.

For a detailed explanation of this law, see Memorandum of Understanding, Parliamentary Documents, Chamber of Representatives, 2021-22, No. 55-2810/001, p. 1-548.

A summary of the main measures is provided below.

Measures relating to working hours and work-life balance

First, the minimum deadline for the publication of the work schedules of part-time workers with variable work schedules has been increased from five to seven working days in advance. This deadline of seven working days may be modified by a Collective Bargaining Agreement (CBA) declared generally binding by Royal Decree, but may not be less than three working days (Article 3, §1).

For a limited number of sectors, however, the law provides for a specific, derogatory transitional arrangement (Article 3, §2 and 3).

Existing work rules or labour regulations at company level that provide for a period of five working days must be adapted within a period of nine months ("transitional period" during which the five-day period remains in force) (Article 4).

Secondly, full-time employees have the opportunity to now perform a four-day week if provided for in the company's labour regulations or work rules (Article 5, introducing Article 21bis in the Labour Law of 16 March 1971). Where the effective weekly working time is equal to or less than 38 hours, the maximum daily working time may be increased to 9h30 hours per day based on an amendment to the work rules at company level.

When the actual weekly working time exceeds 38 hours (with a maximum of 40 hours), a CBA may provide that the daily working time is equal to the actual weekly working time divided by four.

The employee has the right to request the application of this measure and in case the employer rejects the request, must justify this. The employee may not be adversely affected by submitting such a request.

Thirdly, a full-time employee has the possibility of arranging his/her working time over a period of two consecutive weeks if the labour regulations or work rules provide for such a possibility. During that period, the employee can work up to nine hours per day and up to 45 hours per week, provided that the performance in the first week is directly compensated by the performance in the second week to comply with the regular weekly working hours. For example, if a full-time employee works 45 hours in the first week, he or she will only have to work 31 hours in the second week.

The employee is entitled to request application of this measure and the employer is required to justify a rejection of the employee's request. The worker may not be adversely affected by submitting such a request (Article 6, adding Article 20quater in the Labour Law of 16 March 1971).

Measures to improve the employment relationship of platform workers

There is a rebuttable presumption of the existence of an employment contract for platform workers. For this presumption to apply, a number of criteria must be met (Articles 13-17).

Moreover, independent platform workers must be insured against accidents at work (Article 19-20). In this context, the Memorandum of Understanding on the law refers to the proposed EU Directive on improving working conditions in platform work (Memorandum of Understanding, Parliamentary Documents, Chamber of Representatives, 2021-22, No. 55-2810/001, p. 8-13).

Role of the Administrative Commission for Regulation of Labour Relations

The operation, procedure and role of the current Administrative Commission for the Regulation of Labour Relations in the Labour Relations Law of 27 December 2006 have been clarified.

In addition to its current role of taking decisions on preventive social security regularisation, the Commission's new task will be to issue opinions at the joint request of the parties or at the unilateral request of one of the parties. These opinions do not bind the social security institutions (Articles 70-80).

Measures related to the activation of dismissal

Articles 22 and 23 regulate the transitional period. Redundant workers may start working for another employer (user) during their notice period. Such a transition period always entails the intervention of an employment agency or a regional public employment service (VDAB in Flanders, Actiris in Brussels, and Forem in Wallonia).

During the posting, the employer who dismissed the worker continues to pay his/her wage, which corresponds to the wage applicable at the user undertaking for the job the worker performs there.

However, if this wage is lower than the current wage to which the employee is entitled under his or her notice period, the employer must continue to pay the employee's current wage through a compensation system with the user.

Articles 24-26 cover the promotion of employability. When an employee is dismissed with a notice period of at least 30 weeks, the notice period is converted into a package

of measures consisting of two parts that allow for the promotion of employability (training, coaching...).

The first part consists of a notice period or severance payment representing two-thirds of the normally applicable notice period, but with a minimum of 26 weeks.

The second part consists of a severance payment that corresponds to the remaining part of the normally applicable notice period or severance pay corresponding to the remaining part of the notice period that normally applies.

In case of dismissal with a notice period, the employee is entitled to be absent from work, with retention of his/her salary, to participate, from the beginning of the notice period, in activities promoting his/her employability.

In case of termination of the employment contract with severance pay, the employee must remain available to participate in employability-promoting measures.

Those measures are financed by the employer's contribution due during the second part. This measure does not apply when a transition process has been initiated.

Night work in e-commerce

Night work in e-commerce, namely between 8 p.m. and midnight and from 05 a.m. onwards, can be introduced in the company by collective bargaining agreement (with the agreement of only one trade union) without the need to amend the labour regulations (Articles 27-28).

In addition, as part of an 18-month pilot project, employers can ask their employees to perform night work between 8 pm and midnight and from 5 am onwards on a voluntary basis. This does not require a collective labour agreement or amendment of the labour regulations (registration is necessary with the General Directorate of Social Law Supervision of the Federal Ministry of Labour).

Right to disconnect

By 2023, companies with more than 20 employees will have to conclude agreements on the right to disconnect through a collective agreement or an amendment to the work regulations (Articles 29-32, amending the Law of 26 March 2018 on strengthening economic growth and social cohesion).

These agreements must specify the details of the right to disconnect on the part of the employee and the introduction by the company of mechanisms to regulate the use of digital tools.

Measures aimed at training

Companies with more than 20 employees must draw up an annual training plan by 31 March each year (Articles 34-41).

This training plan must define training for persons belonging to high-risk groups such as the over-50s and workers with disabilities. In addition, the plan must include training to address the lack of candidates for bottleneck occupations in the sector the employer operates in.

The social partners, through a CBA, will be able to set the minimum requirements that a training plan must meet.

When the social partners conclude such a CBA, it must be deposited at the General Directorate of Collective Labour Relations of the Federal Ministry of Labour no later than 30 November 2022.

The right to individual training has also been amended (Articles 50-60). Until now, the right to training was collective and consisted of an average number of days of training

per full-time equivalent distributed in the company. Henceforth, it is an individual right that applies to every employee.

In a company with at least 20 employees, the number of training days will be 5 per year and per full-time employee. This quota of 5 days will effectively apply from 2024 and be 4 days in 2023. If the company has between 10 and 20 employees, this entitlement will be equal to one day per full-time employee and year.

The social partners may, by means of a generally binding CBA, change the number of training days with no possibility of it being less than two and no possibility of reducing the number of days in the development path.

Other measures

First, the social partners will be further involved in the monitoring of so-called bottleneck occupations (Articles 42-44). Bottleneck occupations are those occupations for which employers have difficulty finding suitable staff.

Given the specific characteristics of each business sector, the involvement of joint committees and subcommittees in the process of identifying bottleneck occupations and the causes of these shortages will make it possible to assess the real situation on the labour market.

It is also intended that the joint committees and subcommittees will make recommendations on measures to address these labour shortages.

Secondly, the National Recovery and Resilience Plan calls for 'scientific monitoring' of diversity and discrimination in the labour market at the sector level. The intention is to involve the sectors through the joint committees and subcommittees in even more close monitoring. Specifically, the social partners will be asked to prepare a report on these issues based on briefs prepared by the relevant departments (Articles 45-49).

Third, the Law on Subsistence Security Funds of 07 January 1958 has been amended with the objective of allowing joint committees and subcommittees to establish intersectoral funds (Articles 64-67). In the original law, those funds were only created at sectoral level for payment of extra-legal social security benefits.

The aim is to facilitate the intersectoral mobility of workers from one sector to bottleneck occupations to another through joint actions, for example by facilitating training outside the competence of their own fund.

This should also be a tool for harmonising the joint landscape in sectoral consultations and for developing intersectoral cooperation to address issues related to lifelong learning, workable work and longer careers on a common basis.

1.2 Workers with disabilities

The Law of 30 October 2022 containing various provisions on incapacity for work, was published in the *Moniteur belge* of 18 November 2022, p. 82907. The law entered into force on 28 November 2022.

This law contains three labour law measures relating to an employee's incapacity for work due to illness or accident. These measures are included in the Employment Contracts Law of 3 July 1978 and therefore apply to employees employed in the private sector and to public sector with an employment contract, not on the civil agents with a public law statute.

Firstly, this Law modifies the regulation on submitting a medical certificate.

Insofar as there is an obligation in the company to submit a medical certificate—either on the basis of a collective bargaining agreement or on the basis of work rules at company level—the employee will be exempt from this obligation three times per

calendar year for the first day of incapacity for work. The employee making use of this exemption is also not required to present a medical certificate at the employer's request.

This exemption applies both to a one-day leave of disability and to the first day of a longer period of disability.

However, the employee making use of this exemption has the obligation to immediately inform his/her employer of his/her incapacity for work. If the employee does not reside at his/her usual place of residence during the first day of his/her incapacity for work, he/she must also immediately inform his/her employer of the address where he/she will be staying.

Companies that employ fewer than 50 employees on 01 January of the calendar year in which the work disability occurs may derogate from this exemption by means of a collective bargaining agreement or the labour regulations/work rules at company level.

Secondly, this Law amends the conditions for invoking medical force majeure to terminate the employment contract (Article 3 amending Article 34 of the Employment Contracts Law of 03 July 1978).

Employees or employers wishing to invoke medical force majeure will have to follow a new procedure. This procedure will be separated from the reintegration process for incapacitated workers.

Moreover, to give every employee the opportunity of re-employment and reintegration, whether or not with adapted or other type of work, it is only possible to initiate the medical force majeure procedure after at least nine months of work disability and insofar as there is no ongoing reintegration process for the employee.

This nine-month period is only interrupted by an effective resumption of work by the employee that is not followed by a new work disability within a fortnight.

Both the employee and the employer can initiate this procedure by notifying the other party by registered mail, as well as the company's prevention advisor-occupational doctor, of the intention to verify that it is definitively impossible for the employee to perform the agreed work.

After receiving the notification, the prevention advisor-occupational doctor has to go through a number of steps set out in a special procedure in the Codex on well-being at work of 28 April 2017. As part of this special procedure, the prevention advisor-occupational doctor will examine the employee to ascertain whether it is definitively impossible for the employee to perform the agreed work, and if the employee so requests, also examine the possibilities for adapted or different work. In this regard, the explanatory memorandum refers to the case law of the Court of Justice, as permanently disabled workers are indeed considered to be persons with disabilities (see, inter alia, CJEU case C-335/11 and C-337/11, *Ring and Skouboe Werge*) and the prohibition of discrimination on the grounds of disability requires reasonable accommodation of work (*Parliamentary Documents*, Chamber of Representatives, 2021-22, No. 55-2875/001, p. 6).

The prevention advisor-occupational doctor shall communicate his/her determination to the employee and the employer by registered mail. An appeal procedure is provided for employees who disagree with the determination of their final incapacity for the agreed work.

If the employee has requested it, the employer will then, in accordance with the conditions and modalities determined by the prevention advisor-occupational doctor, examine whether adapted or other type of work for the employee is practically possible in the company, and, if necessary, propose a plan to the employee.

The employment contract can be terminated for medical force majeure if the determination of the prevention advisor-occupational doctor (against which no further

appeal is possible) or the result of the appeal procedure shows that it is indeed definitively impossible for the employee to perform the agreed work and:

- the employee has not asked for the possibility for adapted or other type of work to be explored; or
- the employee requested a review of the possibilities for adapted or alternative work but the employer cannot offer adapted or alternative work to the employee. In concrete terms, this requires that the employer, in accordance with the aforementioned special procedure, has explained in a reasoned letter why the drawing up of a plan for adapted or alternative work is technically or objectively impossible or cannot be reasonably required for sound reasons, and has submitted this document to the employee and the prevention advisor-occupational doctor; or
- the employee requested a review of the possibilities for adapted or other work and the employee has rejected the adapted or other work offered by the employer. Specifically, this requires that, in accordance with the aforementioned special procedure, the employer has provided the plan rejected by the employee to the prevention advisor-occupational doctor.

If this procedure cannot establish that it is definitively impossible for the employee to perform the agreed work, this procedure ends without effect.

This procedure can then only be restarted if the employee is again uninterruptedly incapacitated for work for a period of nine months as explained above, counting from either the day after receipt of the determination of the prevention advisor-occupational doctor, or if the employee has lodged an appeal against this determination, from the day after receipt of the conclusion of the appeal procedure.

This Law also modifies the conditions for the neutralisation of the guaranteed salary in the context of a partial return to work. This neutralisation will be limited in time to a period of 20 weeks. These articles stipulate that no guaranteed salary is due during the period of performance of adapted or other work pursuant to Article 100, §2 of the Law of 14 July 1994 on compulsory social security insurance for medical care and benefits. Reference is made to authorised work by the advisory doctor of the health insurance fund. The neutralisation therefore applies only to partial resumption of work within this framework Memorandum of Understanding, Parliamentary Documents, Chamber of Representatives, 2021-22, No. 55-2875/001, p. 7). The neutralisation applies both when the employee resumes work with his/her original employer with whom the incapacity underlying the partial work resumption occurred, and when he/she resumes work with another employer under a new employment relationship (Memorandum of Understanding, Parliamentary Documents, Chamber of Representatives, 2021-22, No. 55-2875/001, p. 13).

In derogation from the former regulation, the employer will be exempt from the obligation to pay the guaranteed salary during a period of 20 weeks from the start of the performance of the adapted or other work, authorised by the doctor of the health insurance fund in case of illness, other than an occupational illness or accident, other than an accident at work or an accident on the way to or from work that occurs during this period.

After this 20-week period, the normal rules on guaranteed pay in case of incapacity for work apply again. During the performance of the adapted or other work, the employee will be entitled to guaranteed pay for his/her services in this context, supplemented by disability benefits at the expense of the health insurance fund.

2 Court Rulings

2.1 Recognition scheme for port workers

Council of State, no. 254.891, 26 October 2022

With this judgment, the Belgian Council of State annulled the Royal Decree of 10 July 2016 'amending the Royal Decree of 5 July 2004 on the recognition of dockworkers in the port areas falling within the scope of the Law of 8 June 1972 on dock work'. It is held that the Royal Decree infringes the EU freedom of establishment, and the freedom to provide services according to Articles 45, 49 and 56 TFEU. This Royal Decree was amended by the Royal Decree of 26 June 2020 'amending the Royal Decree of 5 July 2004 on the recognition of dockworkers in the port areas falling within the scope of the Law of 8 June 1972 on dock work'.

The Council of State referred to the CJEU ruling in the joined cases C-407/19 and C-471/19 that Articles, 45, 49 and 56 TFEU must be interpreted as not precluding a national recognition scheme for dockworkers with the aim of ensuring safety in port areas and preventing accidents at work, provided that the conditions and provisions elaborated by that scheme are necessary for the aim thus pursued and proportionate to that aim (*Rechtskundig Weekblad*, 2021-22, 1265, case note L. De Meyer).

The Council of State concluded that the contested and annulled Royal Decree fails that test. First, it found that the composition of the approval committees, whose members are appointed by operators already active on the labour market, does not provide sufficient guarantees of impartiality. Furthermore, it remains unclear how the 'manpower needs' criterion assessed by those panels, which is the determining factor for a dockworker to have access to a pool, is taken into account with regard to safety aspects on the basis of objective, non-discriminatory, identifiable and verifiable criteria. Nor is it clear on the basis of which such distinguishing criteria a recognised dockworker who thus meets the safety requirements is or is not eligible for admission to the pool in question. Finally, it is not clear how this will be communicated in an appropriate and transparent manner and in the light of the cross-border importance of the port sector and the requirements of free movement guaranteed by the TFEU.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Bulgaria

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 Measures to promote employment

The Bulgarian Chamber of Commerce and Industry hosted a job fair for women (migrants and refugees), which was organised in cooperation with the Chamber's partners from the United Nations High Commissioner for Refugees, Caritas Sofia, the #ForGood Foundation, 'Humans in the Loop' Foundation, CATRO Bulgaria, and Sofia Development Association. Fourteen employers from veterinary medicine, the textile industry, agriculture, metallurgy and the services sector participated in the fair. Over 60 women from Ukraine and Syria with interest in medical services, hospitality and catering, translation services, trade and sales, finance and accounting, tailoring, IT and other sectors participated online and in person at the fair.

Cyprus

Summary

A decision of the Commission for Administration on age discrimination may affect the internal organisation of all major trade unions in Cyprus.

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 Trade union organisation

A controversial decision of the Commissioner for Administration (*Έκθεση Επιτρόπου Διοίκησης,* 18 November 2022 Α/Π 4/2020), which is the designated Equality Body (EB), declared that the provision in the constitutive act of the Union of Cyprus Journalists (UCJ) that bars retired journalists, who longer practice as journalists from standing for elections in the board of the leadership of the UCJ, amounts to unlawful age discrimination. The UCJ strongly disputes the decision. The matter affects all major trade unions in Cyprus, whose constitutive acts contain similar provisions.

The Commissioner's report states: "*According to Article 6(1) of Directive 200/78/EC, as specifically interpreted by the CJEU, derogation from the principle of non-discrimination on grounds of age is only possible for a legitimate aim linked 'to employment, labour market or vocational training policy'*" (see page 18, paragraph 1). However, Article 6(1) of the Directive does not state this. It asserts that differentiated treatment is permitted if it is objectively and reasonably justified and that this may (but need not) include labour market-related objectives, etc. The Directive's text verbatim states:

> "*[M]ember States may provide that a difference of treatment on grounds of age shall not constitute discrimination where it is objectively and reasonably justified under national law by a legitimate aim, in particular by legitimate employment, labour market and vocational training policy objectives, and where the means of achieving that aim are appropriate and necessary.*"

The Directive lists examples of such treatment under the heading 'Differential treatment may in particular include...', which makes it clear that the list is not exhaustive and not limited to these grounds alone. In the case of differential treatment on the grounds of age, the legislature recognised that there are grounds that on occasion make it legitimate, hence the exception for both indirect and direct discrimination, unlike other grounds of discrimination where an exception is only possible for indirect discrimination.

The UCJ's constitutional provision does not necessarily affect older members as such, although it potentially affects many of the older journalists, but not exclusively. This is not commented on in the EB report, where the new provision was seen as affecting older members only. The provision separates members according to whether the person is an

engaged or active journalist in a professional capacity, even though this may also affect older people, as there are persons who may have been journalists in the past but have switched jobs and no longer practice journalism. This is a key element in the protected characteristic by the EU and Cypriot law, according to Article 6 of Directive 2000/78. To the extent that older persons are affected, the UCJ claims that the provision serves 'a legitimate objective', i.e. that decisions on the employment status of members should not be taken by persons who do not work as journalists, which is 'objectively and reasonably justified' and satisfies the test of 'proportionality' in the way it is implemented: journalists who retire are not prevented from participating as members but cannot stand and be elected in the board of leadership of the UCJ. The most important distinguishing feature here from age limits is that the UJC's constitution has no upper age limits as such, but a provision that aims to ensure proper representation by actively electing engaged journalists and not those who have left the profession to pursue other occupations or due to retirement. A journalist who has reached retirement age but who continues to be employed as a journalist after retirement age is entitled to stand in elections. Therefore, the specific provision cannot be deemed to be discriminatory.

The standard practice in Cypriot trade unions is that retired workers are not allowed to participate in the leadership or administrative councils. Therefore, any decision that requires unions to allow retired professionals to participate in boards of directors will affect almost all trade unions and professional organisations in Cyprus, apart from the UCJ. The established practice in Cyprus with regard to the participation of retired members in the boards of trade unions was ignored by the decision of the Commissioner. Indicative of the Cypriot practice are the provisions contained in the constitutive act of SEK, one of the largest trade union federations in the country, which provide that any member of the outgoing General Council, as well as any member of the local council as shop-steward may only be elected as a member of the General Council if he/she has been elected as a delegate for the forthcoming Pancyprian Congress, who is 'under the year of retirement of the branch from which he/she comes'.

Also, the SEK constitution expressly prohibits those who have retired from standing for any post in the General Secretariat (*ΣΕΚ, άρθρο 20(α) Καταστατικό, σελ.* 20), or in the District Council (*ΣΕΚ, άρθρο 33(θ) Καταστατικό, σελ.* 38). It also provides that a Member of the General Council shall be automatically 'removed from office when he reaches the year of retirement of the branch from which he came', whereupon 'the body from which he came shall appoint his replacement' (*ΣΕΚ, άρθρο 15(ζ) Καταστατικό, σελ. 17*).

The Commissioner erroneously cites the practice of trade unions in Greece and France. The claim that Greece has established the right of retired journalists to be elected to the board of directors does not appear to apply, at least not to the Greek Association of Editors of Daily Newspapers, whose statutes make it a condition of membership that one must not be a pensioner of any fund (Article 6(i) of the statutes) (*Άρθρο 6(θ) του καταστατικού*).

In any case, considering upper age limits as discrimination must be approached with caution as the Directive allows for specificities of countries. Also, the general principle of equality when dealing with upper age limits is *not* absolute, but must be balanced with crucial issues of proper and fair representation of workers on the job in democratic structures and the established practice of trade unions. Even if the Commissioner is correct that upper age limits in France and Greece were found to be unconstitutional, some disputing that the citations in the report do not demonstrate such a decision, this is neither binding for Cyprus, nor has the Commissioner claimed that such provisions were found to be in breach of European Directive 2000/78, and this is the crux of the matter. The Cyprus Constitution (Article 28) prohibits all kinds of discrimination, but the settled case law of the Supreme Court makes it clear that this principle only applies when comparing like with like, and when the subjects are dissimilar, then differentiated treatment is reasonable and permissible.

As is the case in Cyprus, it is common for trade unions internationally to give pensioners the right to remain members, but at the same time to prohibit them from participating in elections and governing bodies. The statutes of the British trade union UNITE (Rules of Order, No. 3.3) explicitly state:

> *"Members of the union who upon retirement wish to remain in membership but not as Retired Members Plus shall be organised as 'ordinary' retired members. Such 'ordinary' retired members shall not be afforded any entitlement to vote in any ballot or election held by the Union."*

The same applies in Greece to retired members of the GSEE, who are expressly excluded from the right to vote and to be elected.

The issue was also considered by a court in India which has a similar system, history and legislation as Cyprus, being part of the British colonial administration before independence. In 2013, in the case of S. Valaiyapathy v. Indian Overseas Bank in the High Court of Matras, 11 October 2013 (Writ petition No.23609 of 2013 & M.P.Nos.1 to 3 of 2013), N Kirubakaran ruled:

> *"20. Even after retirement, if a person is allowed to continue as leader, it will only be arrogating the powers of the Trade Union, which is meant for collective bargaining. If the serving workers / employees, of the industry or establishment alone are made as Union Leaders, it will go in a long way to improve the healthy atmosphere in the industry, promote cordial relationship between the employer-employee and build better understanding and promotion measures. It will lay foundations to increase the productivity, secure better administration, welfare measure and safety measure. If the retired persons are allowed to act as Trade Union Leaders, it will create unnecessary power centres which will not ensure smooth functioning of the establishment. Only if the serving members are elected as office bearers of the Union, as insiders, they would act after taking stock of the entire situation in the establishment and negotiate with the Management in a peaceful manner. The serving members alone are in a better position to understand the actual and practical difficulties faced by the employees in the changed scenario and not by the outsiders. That apart, the outsiders may thrust their views according to their policy. Therefore, the Membership of any Union should be restricted only to the serving members of the industry / establishment. This court is aware of the excellent services rendered by the Trade Union leaders in protecting the interest of the workers in the industries. By suggesting that only the serving employees alone should be made as Office Bearers of the association/union, this Court is not underestimating the contribution of the outside union leaders who genuinely continue to safeguard the interest of the workmen."*

The reference to the phrase '...any form of deprivation of the right to vote and to be elected by anyone is an extreme form of fascism, unacceptable in any democratic society' allegedly uttered in a parliamentary session in the Greek Parliament, apart from being extreme, is not a source of legislation and as such was unnecessary and disproportionate to the circumstances.

The report also erroneously refers to the European Racial Equality Directive 2000/43, which relates exclusively to racial/ethnic origin and is not applicable to the present case. Although this may be attributed to ignorance, it also makes it clear that an effort was made from the outset to identify the tools that would support the prima facie decision that the contested provision of the statute is unlawful, rather than following the course of investigation first and then reaching a conclusion.

The legislation setting out the Commissioner's powers as an equality authority gives the Commissioner authority to make an order, provided certain conditions are met or to impose a fine not exceeding GBP 350 (EUR 407). It does not provide for the Commissioner to take the victim to court on behalf of the victim. As there is no express provision in a harmonisation law providing for the Commissioner's right to apply to the

Court, the Commissioner has no legal interest. Conversely, the party against whom the Commissioner has issued a recommendation or fine to challenge the Commissioner's decision has a right of appeal to the Court. Since the establishment of the Equality Authority in 2004, no fine or binding order has ever been imposed or issued in any case and if the Commissioner does so in this case it will be the first time. The Law prohibits the Commissioner from conducting an inquiry into a matter in respect of which any proceedings are pending before any court (N. 42(I)/2004, άρθρο 49(στ)).

Czech Republic

Summary

(I) The Act on Civil Service has been amended to simplify and accelerate the procedure of entering the civil service and to introduce new work-life balance rights for civil servants.

(II) The Act extending paternity leave and leave entitlements, as well as introducing digitisation of quarantine procedures entered into effect on 01 December 2022.

1 National Legislation

1.1 Civil servants

A Bill amending Act No. 234/2014 Coll., on Civil Service, has been passed by both chambers of Parliament. The President vetoed the Bill and it returned to the Chamber of Deputies. The Chamber of Deputies passed the Bill without changes. The Bill will be published in the Collection of Laws and enter into effect on 01 January 2023.

The Act, which is based on the principles of de-politicisation, professionalisation and greater transparency, amends the Act on Civil Service. Its purpose is to simplify and accelerate the procedure of entering the civil service, to broaden the group of civil employees who can apply for high level posts, to merge two 'Deputy' positions into one, to introduce a term of office for high level civil servants (to make them more competitive) and some other modifications.

Ministries are run by a political apparatus consisting of ministers and their deputies. Currently, there is a duplicity as there are both 'Ministry Deputies' as well as 'Deputies of the Government Office'. The Bill proposes introducing one type of deputy only, namely the 'Deputy to a Member of the Government'. Accordingly, this Deputy would represent a bridge between the political apparatus and the civil (a-political) apparatus. Where there now are 'Deputies for Ministry Section Management', there shall now be Chief Directors (civil servants).

Moreover, the Act contains cases where a tender procedure to enter a civil service position, and further adjusts and simplifies tender procedures. It also introduces a definite period (term of office) for high level civil servant positions.

Lastly, the Act focuses on study-leaves of civil servants, their work-life balance and more.

1.2 Work-life balance

Act No. 358/2022 Coll., amending the Act on the Provision of Benefits to Persons with Disabilities and amending some other acts, was published and entered into effect on 01 December 2022.

As reported in the September 2022 Flash Report, among others, the Act expands the entitlement to paternity benefits and leave, including for persons who had a stillborn child or whose child died within 6 weeks of birth. The Act is based on the assumption that the death of a new-born (or stillborn) child causes a similar psychological state in the father as it does in the mother of the child. Such a psychological state, as a rule, does not allow for proper performance of employment, and it is therefore important to ensure that the father is also able to take leave of absence with compensation of salary.

The Act also introduces digitisation of quarantine procedures.

1.3 Transposition of EU law

A new Bill amending Act No. 262/2006 Coll., the Labour Code, is in the legislative process at the level of the Ministry of Labour. The Bill primarily aims to implement two European directives. The first is Directive (EU) 2019/1152 on Transparent and Predictable Working Conditions in the European Union and the second is Directive (EU) 2019/1158 on Work-life Balance for Parents and Carers, repealing Council Directive 2010/18/EU (see September 2022 Flash Report).

The comment procedure has been completed and it will now be transferred to the government.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Work-life balance

A draft law amending the Family Benefits Act, the Family Act and the Employment Contracts Act has entered the parliamentary process in Estonia.

Among others, a new provision was added to complement Paragraph 62 of the Employment Contracts Act concerning the parental leave regulation (see here for Draft Act on Amendments to the Family Benefits Act, the Family Act and the Employment Contract Act, nr 703 SE. 2022).

According to the explanatory note to the Draft, the proposal arose from the need to specify the regulation of parental leave in the event that the child dies before reaching the age of three. In this case, both parents have the right to parental leave for 30 calendar days from the day following the child's death.

4.2 Minimum wage

The Ministry of Social Affairs has prepared a draft regulation of the Government of the Republic according to which from 01 January 2023 onwards, the minimum hourly wage would be EUR 430 and the minimum monthly wage for full-time employment would be EUR 725.

The preparation of the draft regulation was motivated by the collective agreement concluded between the Central Union of Estonian Trade Unions and the Central Union of Estonian Employers on 29 September 2022, with whom the main social partners agreed to raise the minimum wage in 2023. The agreement increases the minimum wage in the sense of § 4(1) of the Collective Agreement Act and establishes a mandatory minimum wage for all Estonian employers operating in the Republic and all employees.

4.3 Minimum wage setting

Discussions on adapting the minimum wage rates have been ongoing in Estonia.

The Social Democrats have proposed increasing the minimum wage with an extraordinary measure to EUR 1 200 over the next years.

According to the Central Union of Estonian Employers, such a rapid increase in minimum wage will have a substantial negative impact on employment. The union claims that

> "*temporary compensation of the minimum wage would require hundreds of millions of euros from the state budget, would leave tens of thousands of people unemployed and lead to a wave of bankruptcies in rural areas. It would also dramatically increase the price of many services and products, i.e. accelerate the already high inflation*".

In line with European practice, the minimum wage in Estonia is agreed on by the social partners, i.e. the Central Union of Employers and the Central Union of Trade Unions. These organisations, which balance each other, are a-political and base the minimum wage agreement on the state of the labour market, price increases, labour productivity, the competitiveness of companies and wage levels. The role of the government and of Parliament is to respect this agreement and formalise it into law.

During the adoption of the European Union's minimum wage directive, the Estonian Ministry of Social Affairs advocated to keep the customary local minimum wage model, because it has been effective thus far.

Finland

Summary

The pay security legislation, ensuring employees' protection in case of employer insolvency, has been amended.

1 National Legislation

1.1 Employer's insolvency

The purpose of the pay security system is to ensure that employees receive their pay and other claims arising from an employment relationship in the event of employer insolvency.

From 2023, victims of serious work-based exploitation will have a longer period of time to apply for pay security. In addition, the amendments to the pay security system streamline the pay security process and fight the shadow economy. The amendments were prepared on a tripartite basis.

The President of the Republic approved the amendments on 11 November 2022. The amendments to the Pay Security Act (*Palkkaturvalaki*, 866/1998) and Seamen's Pay Security Act (*Merimiesten palkkaturvalaki*, 1108/2000) will enter into force on 01 January.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Employees' incentives

The government has proposed amendments to the Act on Personnel Funds (*Henkilöstörahastolaki*, 934/2010). The purpose of the Act on Personnel Funds is to promote the use of remuneration schemes covering all of an organisation's staff with a view of enhancing productivity and competitiveness. The Act also aims to improve cooperation between the employer and staff, as well as the employees' opportunities for economic participation. According to Government Proposal (HE 265/2022), which was submitted to Parliament on 10 November 2022, a personnel fund could be established if the company or its profit unit regularly employs at least five people, and the net sales or comparable revenue is EUR 100 000.

4.2 Occupational health and safety

The government has proposed amendments to 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*). Government Proposal (HE 303/2022), which was submitted to Parliament on 17 November 2022, would extend the occupational safety and health authorities' power on the enforcement of the provisions related to wage dumping. The authorities would also

acquire new duties on the notification of other authorities regarding problems with indoor air quality.

The government proposes the powers of the occupational safety and health authorities to enforce the provisions related to wage dumping to be extended to issuing employers with a written improvement notice, a binding administrative decision and a notice of a conditional fine. These authorities could introduce measures when the situation concerns the employer's duty to provide clear grounds for the payment and amount of wages and to pay wages in accordance with the law and a generally binding collective agreement. However, the authorities would not have the power to resolve disputes of interpretation arising from employees' pay.

In addition to extending the improvement notice procedure, the government proposes that to better fight wage dumping, the duty of occupational safety and health authorities to notify police would be extended to cover fraud and extortion offences under the Criminal Code (*Rikoslaki*, 39/1889). Extending the duty of notification would help police to better take into account all constituent elements of a crime that may be applicable to a case under criminal investigation.

Extending the enforcement power of the occupational safety and health authorities aims to improve compliance with the provisions on minimum pay and to safeguard the position of employees. The legislative amendments also aim to prevent the creation of a labour market where compliance with the minimum level of pay is often neglected, and to fight the grey economy more effectively.

France

Summary

(I) The Court of Cassation ruled that an airline company's prohibition of male employees wearing a certain hairstyle that female employees can wear constitutes gender discrimination.

(II) The Court of Cassation held that the principle of independence of a Data Protection Officer (DPO) does not prevent his/her dismissal, and that an executive who disagreed with the company's values is exercising his/her freedom of opinion.

1 National Legislation

1.1 Occupational health and safety

Decree No. 2022-1434 of 15 November 2022 on employees' medical file in occupational health outlines the conditions under which it is to be registered and retained by the occupational health and prevention service. Each worker has a right to prohibit another occupational health service or professionals to access his or her medical file.

Moreover, in case of a plurality of occupational health services, the occupational health service best suited for the worker's health-related needs can request the transmission of his or her medical file, unless the worker has already expressed his or her opposition to such a transmission. The worker may request all communication of his or her medical file.

Decree No. 2022-1435 of 15 November 2022 on the approval and activity reports of occupational health and prevention services establishes the conditions under which an employer may join an inter-company occupational health service. More significantly, it specifies how such an occupational health service is to be approved by the labour administration. Finally, this Decree comprises dispositions related to activity reports requested by occupational health services.

2 Court Rulings

2.1 Equal treatment

Social Division of the Court of Cassation, No. 21-14.060, 23 November 2022

In the present case, a flight attendant hired in 1998 was denied entry on board in 2005 because he wore his hair in braids tied in a bun. He was informed that the company's uniform rules prohibit this hairstyle for men (although it is allowed for women). The employee continued to perform his duties until 2007 wearing a wig to conceal his hairstyle.

At the beginning of 2012, the employee, who claimed he was a victim of discrimination on the grounds of sex, brought a discrimination action before the Employment Tribunal. In April 2012, he was disciplined for five days without pay for not wearing his uniform properly. In February 2016, he was definitively declared unfit to work as a flight attendant due to depression. Finally, after a professional retraining leave, the employee confirmed that he did not wish to be reclassified and was dismissed on 05 February 2018 for permanent incapacity and impossibility of reclassification.

According to Articles L. 1121-1, L. 1132-1 and L. 1133-1 of the French Labour Code, in the light of Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, Art. 2(1) and 14(2), differences in treatment on the grounds of sex must

be justified by the nature of the task to be performed, meet a genuine and determining professional requirement and be proportionate to the aim sought.

All of the employee's claims were rejected by the Court of Appeal, which ruled out discrimination. For the Court of Appeal, the appearance of the cabin crew is an integral part of the company's brand image. As the employee was in contact with customers, he represented the company and the company's desire to safeguard its image, which was a valid reason for limiting the employees' freedom of appearance. If the wearing of African braids tied in a bun was authorised for female flight personnel and not for males, the acceptance of such a difference in appearance (which at a given time was accepted between men and women in terms of clothing, hairstyle, shoes and make-up, and which reflected the codes in use) could not be qualified as discrimination. Hence, such a bun could be allowed for women but not for men.

In its decision of 23 November 2022, the Court of Cassation overturned the decision of the Court of Appeal. The Court of Cassation referred to the dispositions mentioned above, interpreted in the light of Directive 2006/54/EC. It also stated that the notion of a genuine and determining occupational requirement refers to a requirement objectively dictated by the nature or conditions of exercise of the professional activity in question (CJEU, case C-188/15, *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA*; Directive 2000/78/EC).

As the Court of Cassation pointed out, the social perception of the physical appearance of the male and female genders cannot constitute a genuine and determining professional requirement justifying a difference in treatment relating to hairstyles in the performance of the duties of a flight attendant.

The prohibition of wearing a hairstyle despite the fact that it is permitted for female staff therefore constituted discrimination based directly on physical appearance in relation to gender.

The Court has placed an important limit to the rules on appearance in force within a company, particularly when these rules differ between men and women. The Court of Cassation rejected the employee's argument that the overall requirements imposed on men and women by the company's uniform rules were discriminatory in nature.

It will be interesting to follow how the Court of Cassation will position itself on different rules between men and women in terms of appearance and clothing in the future.

2.2 Dismissal

Conseil d'Etat (Administrative Supreme Court), No. 459254, 21 October 2022

In the present case, an employee had been recruited by a company to perform the duties of Data Protection Officer (DPO).

She subsequently lodged a complaint with the *Commission Nationale de l'Informatique et des Libertés* (*CNIL*), the French national data protection authority (the *CNIL* is an independent administrative authority; according to Article R. 311-1, 4° of the French Administrative Justice Code, appeals against its decision fall under the authority of the Administrative Supreme Court). She accused her employer of having infringed her independence and had ultimately dismissed her. As the CNIL did not respond to her complaint, she challenged this decision before the Administrative Supreme Court.

Created by the General Data Protection Regulation (GDPR) of 27 April 2016, the Data Protection Officer is in charge of data protection compliance within the organisation that has appointed him/her. According to Article 38 of the GDPR, while the GDPR grants the DPO independence in the exercise of his/her duties, the question about the scope of this special status on the employer's authority over him/her arises.

In its decision of 21 October 2022, the Administrative Supreme Court recalled the provisions of the GDPR which guarantee the independence of the DPO: the Regulation, on the one hand, provides that the controller or subcontractor must ensure that the DPO does not receive instructions concerning the performance of his/her duties and on the other, that the DPO may not be relieved of his or her duties or penalised for performing them (Article 38(3) of the GDPR). Furthermore, in its recitals, the GDPR states that the DPO must be able to perform his/her duties completely independent. Quoting the clarification provided by the CJEU judgment, the Administrative Supreme Court stated that Article 38 of the GDPR protects the DPO against any decision that would terminate his/her functions, place him/her at a disadvantage or constitute a sanction, where such a decision is related to the performance of the DPO's duties. These provisions are thus essentially aimed at preserving the DPO's functional independence, thus guaranteeing the effectiveness of the GDPR's provisions.

However, these provisions do not prevent the dismissal of a DPO who no longer possesses the professional qualities required to carry out his or her duties or who does not carry out his or her duties in accordance with the GDPR.

The Administrative Supreme Court also deduced that the GDPR's provisions for the DPO are not intended to govern the overall employment relationship between a controller or subcontractor and the members of its staff, which are only affected in an incidental manner to the extent strictly necessary to achieve the objectives of the GDPR.

Consequently, Article 38 of the GDPR does not prevent the 'employee-DPO' from being sanctioned or dismissed on the basis of internal company rules applicable to all employees, provided that these rules are not incompatible with the functional independence guaranteed by the GDPR.

Hereby, the Administrative Supreme Court has issued insights on the question of sanctioning and dismissing DPOs for the first tme.

It is interesting to examine this decision in conjunction with the case law of the CJEU. Indeed, in a recent judgment, the CJEU (CJEU, case C-534/20, *Leistritz AG v LH*) interpreted these provisions, more specifically the second sentence of Article 38(3) of the GDPR according to which the DPO may not be relieved of his/her duties or penalised for the performance of his/her duties. According to the CJEU, this provision does not preclude national legislation (such as the German law, which was the subject of the preliminary question) providing that a controller or a processor may dismiss a DPO who is a member of their staff for serious reasons only, even if the dismissal is not related to the performance of his/her duties.

The CJEU makes this enhanced protection subject to the condition that it does not jeopardise the achievement of the GDPR's objectives, for example by preventing the dismissal of a DPO who no longer possesses the professional qualities required to perform his/her duties or who does not perform them in accordance with the GDPR.

2.3 Freedom of speech

Social Division of the Court of Cassation, No. 21-15.208, 09 November 2022

In the present case, an employee, who had been promoted to director, was dismissed for professional incompetence. In his letter of dismissal, his employer reproached him for refusing to accept the company's policy and the 'fun and pro' values described on the company's website by participating in the celebration of successes, attending the annual seminar and sharing his personal passions.

According to Article L. 1121-1 of the French Labour Code, one cannot impose restrictions on the rights of individuals and on individual and collective freedoms that are not justified by the nature of the task to be performed or that are not proportionate to the aim sought.

The employee claimed that his refusal was an exercise of his freedom of speech. He therefore requested that his dismissal be annulled on this ground, as it infringed a fundamental freedom.

Yet, while noting the excesses to which the implementation of these 'fun and pro' values gave rise (excessive drinking encouraged by the partners, promiscuity, bullying, various excesses), the Court of Appeal did not agree with the employee. Indeed, for the Court of Appeal, the employee could not be reproached for refusing to integrate the company's 'fun and pro' values in view of these excesses. However, the reproaches made in connection with his refusal to accept the company's policy and to comply with its operating procedures (small team and sharing of 'fun' and 'pro' values by all employees) constitute criticism of his professional conduct, but do not challenge his personal opinions. Therefore, these criticisms did not constitute a violation of freedom of speech. The Court of Appeal therefore ruled that the reason given constituted real and serious grounds for dismissal.

In its decision of 09 November, the Court of Cassation did not follow the reasoning of the Court of Appeal and positioned itself immediately on the assessment of freedom of speech. It recalled, firstly, the principles already established by case law according to which—unless abused—the employee enjoys freedom of speech inside and outside the company. The Court of Cassation also confirmed that the unlawful nature of the reason for the dismissal, even in part due to the employee's exercise of his freedom of expression, a fundamental freedom, in itself entailed the nullity of the dismissal.

With this decision, which is based not only on the French Labour Code but also on Article 11 of the Charter of Fundamental Rights of the European Union, the Court of Cassation specifies what the liberty of speech entails. It does so in compliance with CJEU case law.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Whistleblower protection

Law No. 2022-401 of 21 March 2022, aiming to improve the protection of whistleblowers, entered into force on 01 September 2022, following its enactment in March 2022 (see April 2022 and September 2022 Flash Reports).

An implementation decree that further clarifies the provisions for French companies on internal and external reporting was adopted on 03 October 2022. The decree took effect on 05 October 2022.

Germany

Summary

(I) The Bundestag has passed the Act transposing the EU Directive on Work-life Balance.

(II) The Legal Affairs Committee of the Bundestag has adopted the draft law on the implementation of the EU Directive concerning cross-border conversions, mergers and divisions.

(III) The Federal Labour Court has followed up on the CJEU's ruling in case C-514/20, *Koch* to define the threshold above which overtime pay must be applied.

(IV) The Federal Labour Court has ruled that the employer may instruct the employee to work at one of the company's locations abroad on the basis of its right to issue instructions under the employment contract.

1 National Legislation

1.1 Work-life Balance

On 01 December 2022, the Bundestag passed the Act on the Further Implementation of Directive (EU) 2019/1158 on Work-life Balance for Parents and Family Carers, repealing Council Directive 2010/18/EU.

Through this law, new obligations come into force, especially for small businesses.

So-called paternity leave was not implemented by the law, as authorised by the suspension clause in Article 20(7) of the Directive.

1.2 Freedom of establishment

On 30 November 2022, the Legal Affairs Committee of the Bundestag adopted a draft intended to implement Directive (EU) 2019/2121, amending Directive (EU) 2017/1132 on cross-border conversions, mergers and divisions.

According to the government, the implementation of the Directive shall be carried out 'while preserving the proven principles and the established system of German transformation law'. Accordingly, the provisions on cross-border mergers, demergers and changes of legal form are to be combined in a Sixth Book of the Transformation Act (*Umwandlungsgesetz*, UmwG). Within this book, the provisions on cross-border mergers serve as a 'regulatory model for the procedure of demergers and changes of legal form'.

2 Court Rulings

2.1 Working time

Federal Labour Court, 10 AZR 210/19, 16 November 2022

In this decision, the Federal Labour Court ruled that to reach the threshold above which an employee is entitled to overtime pay under the provisions of the collective bargaining agreement for temporary agency work, not only the hours actually worked but also the hours of leave taken must be taken into account.

The lower courts had dismissed the claim.

Following a request for a preliminary ruling by the Federal Labour Court (10 AZR 210/19 (A), of 17 October 2020), the CJEU had ruled in its judgment in case C-514/20, *Koch Personaldienstleistungen* that Article 7(1) of Directive 2003/88/EC precludes a collective

bargaining provision under which, for the purpose of calculating whether and for how many hours an employee is entitled to overtime pay, only the hours actually worked are taken into account and not the hours during which the employee takes paid annual leave.

2.2 Employer's instruction

Federal Labour Court, 5 AZR 336/21, 30 November 2022

In its decision, the Federal Labour Court ruled that the employer may instruct the employee to work at one of the company's locations abroad on the basis of its right to issue instructions under the employee's employment contract, unless expressly or indirectly agreed otherwise in the employment contract.

Section 106 of the Industrial Code (*Gewerbeordnung*, GewO) does not limit the employer's right to issue instructions for the territory of the Federal Republic of Germany. However, the exercise of the right to issue instructions in individual cases is subject to an equitable review under this provision. Section 106 of the GewO reads as follows:

> *"The employer may determine the content, place and time of work performance in more detail at his reasonable discretion, insofar as these working conditions are not stipulated by the employment contract, provisions of a works agreement, an applicable collective agreement or statutory provisions. This shall also apply with regard to the order and conduct of the employees in the enterprise. In exercising its discretion, the employer shall also take into account the employee's disabilities."*

In the present case, the Appeals Court affirmed the applicability of German law pursuant to Article 8 of the Rome I Regulation. In the revision procedure before the Federal Labour Court, the parties did not raise any procedural objections to this and no errors of law that could be reviewed by the Federal Labour Court were apparent.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 European Pillar of Social Rights

The Federal Government has explicitly committed itself to the goals, strategy and implementation of the European Pillar of Social Rights. This is emphasised in an answer to a question from the Bundestag.

4.2 Number of temporary agency workers

According to the employment statistics of the Federal Employment Agency, there were around 822 000 temporary agency workers in March of this year. Of these, around 653 000 were employed full time and 128 000 part time, subject to social security contributions, as the government further explains in its response to a question from the Bundestag.

4.3 Sick leave

The government explained that in 2021, employees with the option of working from home have taken fewer sick leave days than employees without this option.

According to statistics from the year 2021, home office workers had an average of 7.9 days of absence in the past 12 months. Employees who did not have a work from home option had 12.9 days of sick leave.

Greece

Summary

(I) A new law provides financial incentives to companies that convert part-time employment contracts into full-time ones.

(II) The special maternity leave that applies to mothers following mandatory maternity leave has been extended from six to nine months.

1 National Legislation

1.1 Measures to promote employment

Greek Parliament has passed the Law 4997/2022 (Official Gazette A/219), which establishes a programme to subsidise social security contributions for private sector companies that convert part-time employment contracts into full-time ones between 01 January 2023 to 31 December 2023. The programme covers all types of businesses with over 50 per cent part-time employees with on 09 September 2022.

Forty per cent of the social security contributions (of both the employer and employee) for employment relationships converted into full-time contracts will be paid from the state budget for a period of one year.

1.2 Maternity leave

Once a working mother's maternity leave of 17 weeks comes to an end, she is entitled to an additional maternity leave during which she is paid an amount equal to the minimum wage by her respective social security organisation for a duration of six months.

Article 43 of the above-mentioned Law 4997/2022 increases the duration of this special leave to nine months.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

On 02 November 2022, the government submitted a Bill to Parliament which aims to transpose the EU Directive on Transparent and Predictable Working Conditions and the EU Directive on Work-life Balance, and to amend other articles of the Labour Code.

1 National Legislation

1.1 Transposition of EU law

The government submitted a Bill to Parliament on the Amendment of the Labour Code on 02 November 2022, as part of the amendment of employment-related laws (Bill No. T/1845). Article 111-156 of the Bill significantly amends the Labour Code, comprising around 45 of the 300 articles of the Labour Code.

According to Article 256 of the Bill, the amendments (including the Labour Code amendments) will come into force on 01 January 2023.

The amendment focuses on the harmonisation of the two Directives 2019/1152/EC and 2019/1158. The amendment also contains clarification of existing provisions and substantial amendments of other provisions unrelated to the two Directives. The proposed amendments are summarised below.

Transposition of Directive 2019/1152/EC on Transparent and Predictable Working Conditions

- Article 38: provides rules on the information to be provided in case of transfers of undertakings;
- Article 45: provides rules on the designation of the workplace (see further *below*);
- Articles 46-47: provide detailed rules on information duties;
- Article 51: clarifies the rules on reimbursement of expenses;
- Article 54: regulates the consequences of an employee's refusal to be at the disposal of the employer when ordered by the employer;
- Article 55: regulates cases in which a worker may be exempt from work (see further *below*);
- Article 57: regulates deviations in collective agreements;
- Article 61: excludes the first six months of employment from the right to propose an amendment to the employment contract. Prior to this adaptation, there was no such limit in similar cases;
- Article 64: requires the employer to justify his/her decision on the employee's request for amendment of the employment contract;
- Article 83: abuse of law has been added to the list of violations in which case the employment contract shall be reinstated (see details on substantial changes);
- Article 85: regulates deviations in collective agreements;
- Article 93: supplements the information on working time banks with the working hours;
- Article 96: provides that the employee must be informed about the working time schedule and its system;

- Article 135: regulates deviations in collective agreements;
- Article 192: prohibits probation periods in new fixed-term contracts of less than six months, and provides for the proportional calculation of the maximum period of probation in case of fixed-term contracts of up to one year;
- Article 193: clarifies the existing rule on information about the working time schedule of on-call workers;
- Article 287: provides that a court procedure may be initiated within 30 days in case of an employer's decisions affected by the Directive;
- Article 299: implementation clause.

Transposition of Directive 2019/1158 on Work-life Balance

- Article 61: concerns the amendment of the contract;
- Article 64: requires the employer to justify his/her decision regarding the employee's request to amend the employment contract;
- Article 65: extends the period of protection from dismissal;
- Article 80: concerns certifications of leave;
- Article 83: abuse of law has been added to the list of violations in which case the employment contract shall be reinstated;
- Article 115: amends the calculation basis of paid leave;
- Article 118: increases duration of paternity leave to ten days;
- Article 118/A: recognises 44 working days of parental leave for children up to the age of three;
- Article 122: concerns the allocation of parental leave on the request of the employee;
- Article 123: provides that parental leave may be postponed to another year, that the employer must not interrupt parental and paternity leave, and that the employer may refuse the employee's request for allocation, which must be accompanied by a reasoned opinion;
- Article 125: provides that paternity and parental leave shall not be redeemed in case of termination of employment;
- Article 135: regulates the deviation in a collective agreement or in an employment contract;
- Article 146: provides rules on payments, according to which
    - as regards paternity leave, the employee is entitled to 100 days of leave of absence pay (average wage) for the first five days, but only 40 per cent of absence pay for the following five days;
    - as regards parental leave, employees are entitled to 10 per cent of absence pay.
- Article 147: clarifies pay levels for periods of absence;
- Article 209: states that for executive employees, deviations from the rights ensured by the Directive as implemented in the Labour Code are prohibited;
- Article 287: provides that a court procedure may be initiated within 30 days in case of employer decisions affected by the Directive;
- Article 294: provides for a definition of a 'father' and an 'employee taking care of someone';

- Article 298: authorises the government to further regulate paternity leave, pay for maternity leave and related reimbursement of expenses in a Government Decree.
- Article 299: implementation clause.

Clarification of existing provisions

- Articles 25-26: clarifies rules on deadlines;
- Article 54: clarifies the rules on refusal of the employer's order;
- Article 55: clarifies the rules on exemption from work;
- Article 104: clarifies the rules on lack of scheduled daily rest periods if there is no work on the day after finishing work;
- Article 113-114: clarify the rules on restrictions to working time for vulnerable workers, including young workers;
- Article 147: clarifies the rules on pay for periods of absence;
- Article 180: clarifies the rules on liability for safeguarding;
- Article 204: widening the circle of public employers;
- Article 205: clarifies the termination provision of public employers;
- Article 294: clarifies the definition of a 'child' in accordance with changes in civil law, and of a 'child with disability';
- Article 295: amends the provision on posting to fully comply with Directive 96/71/EC;
- Article 296: amends the provision on posting to fully comply with Directive 96/71/EC.

Other substantial amendments:

- Article 7: on abuse of law, it introduces a shared (partly reversed) burden of proof, improving the procedural position of workers;
- Article 45: provides that 'if the parties do not agree on the place of work, it will be the usual place for the given position'. The former text instead referred to the employee's usual workplace.
- Article 55: provides that an employee will be exempt from work if, due to medical reasons, he/she is unable to perform work in his/her former position.
- Article 83: adds abuse of law to the list of violations in which case the employment relationship shall be reinstated, increasing the possibility for workers to get unlimited compensation in such a case;
- Article 106: provides that the weekly rest period of minimum 40 hours to be provided to workers no longer applies once a week but only once a month.
- Article 146: provides that employees who are incapacitated for work for medical reasons are to be excluded from absence pay;
- Article 158: provides that wage must be paid by bank transfer, unless otherwise agreed by the parties in writing.
- Article 203: excludes stand-by work in simplified employment contracts;
- Article 294: inserts a labour safety representative in the definition of employee representative, thus allowing labour safety representatives to demand reinstatement in case of unlawful dismissals (with unlimited compensation).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

(I) Following CJEU case C-214/20, *MG v Dublin City Council*, the Labour Court established that the time spent on-call by a retained firefighter was not 'working time'.

(II) The Supreme Court granted leave to appeal in a case concerning the status of food delivery couriers.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working time

Labour Court, No. DWT2252, 08 November 2022, Kerry County Council v Walsh

The issue of 'stand-by' or 'on-call' time has again been considered by the Labour Court. In the present case, the claimant was a retained firefighter who contended that he was on call 168 hours a week, 52 weeks of the year. The evidence was that the claimant ran a bed & breakfast establishment and organised golf tours. He was required to be at the fire station within ten minutes of the call, and that the average number of call-outs a year, since he had commenced employment as a firefighter, was 52. It was also established that there was a 75 per cent minimum attendance requirement.

The Labour Court considered the relevant CJEU jurisprudence, including case C-518/15, *Matzak*; case C-344/19, *Radiotelevizija Slovenija*; case C-590/19, *Stadt Offenbach*; and case C-214/20, *MG v Dublin City Council*.

In its decision, the Court held that the claim was different to that in *Matzak,* in that the claimant was not required to remain at a place determined by the employer nor was he required by his employer to participate in all call-outs. The claimant was able to pursue other activities for a significant portion of his on-call time 'including running his own business'. There was no 'discernible difference', however, in the constraints under which the claimant operated and those under which the claimant in case C-214/20, *MG v Dublin City Council* operated. Consequently, the Court found that the time spent on-call was not 'working time' because the claimant was not subject to 'major constraints' which had a significant impact on the management of his time.

2.2 Employment status

Supreme Court, [2022] IESCDET 121, 04 November 2022, Karshan Midlands Ltd t/a Domino's Pizza v the Revenue Commissioners

The present case concerned an application by the Revenue Commissioners to appeal a decision of the Court of Appeal concerning the status of drivers delivering pizzas, etc. as having the status of either independent contractors or employees for the purposes of taxation.

In its decision, the Supreme Court granted the Revenue Commissioners leave to appeal from a majority decision of the Court of Appeal that Domino's pizza delivery drivers were self-employed, independent contractors.

The Supreme Court held that the respondent had identified a matter of general public importance and noted that it had 'not yet had an opportunity to clarify the law in this area, specifically in relation to the gig economy'.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Tips and gratuities

The Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 prohibits employers from using tips or gratuities to make up contractual rates of pay; requires employers to distribute tips and gratuities paid in electronic form to their workers in a fair and transparent manner; and requires employers to clearly display their policy on how tips, gratuities and mandatory charges are distributed. Such legislation had been long sought by trade unions in the restaurant/hospitality sector. Regulations have now been made, with effect from 01 December 2022, bringing the relevant sections of the Act into operation: see S.I. No. 544 of 2022 and S.I. No. 545 of 2022.

The services prescribed by the former include the sale of beverages or food, the accommodation of overnight guests in a hotel, providing guided tours, carrying out non-surgical cosmetic procedures, the provision of authorised gambling services and providing certain transport services.

Section 4F of the 1991 Act (inserted by section 3 of the 2022 Act) addresses the entitlements of 'contract workers', who are defined as natural persons who 'carry out work other than an as an employee, including on a contract for service (sic), for a person to whom this section applies'. Regulation 5 prescribes, as a person to whom this section applies, a person who manages, directs or is otherwise responsible for an 'online digital platform' by which persons may access a service referred to in Part 2 of the Schedule and who allows such persons to use the platform to pay a tip or gratuity. These services are ordering beverages or food for delivery to a place other than the premises at which such beverage or food is prepared or stocked.

The latter regulations prescribe the manner by which a 'tips and gratuities notice' must be displayed. Considerable discretion is afforded to employers as to where the notice is to be displayed, subject to the requirement that it must be 'in such a position, form and manner as to be capable of being easily read by consumers'. There is no express requirement that the notice be displayed either on the menu or on the bill.

Regulation 5 requires a person to whom s. 4F of the 1991 Act applies to display a 'contract workers tips and gratuities notice' on each platform and 'in such form and manner as to be capable of being easily read' by consumers using the platform.

Italy

Summary

An Italian court has requested the CJEU to make a preliminary ruling on the compatibility with EU law of the Italian regulation on citizenship income, according to which it is necessary to have resided in Italy for 10 years to be eligible to this measure.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Guaranteed minimum income

Court of Bergamo, 16 November 2022

The Court of Bergamo has remitted to the CJEU for a preliminary ruling on the compatibility with EU law of the requirements to be eligible for the so-called citizenship income (*reddito di cittadinanza*), the guaranteed minimum income introduced by Law Decree 28 January 2019, No. 4 (conv. into Act 28 March 2019, No. 26).

In particular, the Court questioned the compatibility of the requirement of ten years of residence in Italy for a foreign citizen who is covered by international protection.

According to Law 26/2019, to apply for the citizenship income, a person must have resided in Italy for at least 10 years. However, according to Article 29, Directive 2011/95/EU,

> *"Member States shall ensure that beneficiaries of international protection receive, in the Member State that has granted such protection, the necessary social assistance as provided to nationals of that Member State".*

Moreover, since citizenship income is also an active labour market policy, Article 26 of the Directive is relevant as well. The Article provides that

> *"Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience and counselling services afforded by employment offices, are offered to beneficiaries of international protection, under equivalent conditions as nationals.*
>
> *Member States shall endeavour to facilitate full access for beneficiaries of international protection to the activities referred to in paragraph 2".*

Against this background, the Court asked the CJEU whether Article 26 and Article 29 of the Directive 2011/95/EU should be interpreted as precluding national legislation which provides for 10 years of residence to qualify for a benefit to fight poverty and to support employment and social integration.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

Following the amendment of the Posting of Workers Act in October 2022, the Liechtenstein government has amended the Posting of Workers Ordinance, with effect as of 01 January 2023.

1 National Legislation

1.1 Posting of workers

The October 2022 Flash Report reported that the Liechtenstein Parliament, with approval of the Prince, enacted an amendment of the Posting of Workers Act, which serves to transpose Directive (EU) 2018/957 concerning the posting of workers within the framework of the provision of services. Posted workers shall not only be granted the minimum wage applicable in the host member state, but are entitled to the full remuneration arising from the law applicable in the host member state. Postings of a duration of more than 12 or 18 months shall, in principle, be fully subject to the host member state's labour law regulations. The obligations of the parties involved in temporary agency work have been clarified. The changes have been introduced in the Posting of Workers Act (*Gesetz über die Entsendung von Arbeitnehmern im Rahmen der grenzüberschreitenden Erbringung von Dienstleistungen, Entsendegesetz*, EntsG, LR 823.21).

Following the adoption of the Act in October 2022, the government modified the expected amendment of the Posting of Workers Ordinance on 15 November 2022 (see the Ordinance on the amendment of the Posting of Workers Ordinance (Verordnung über die Abänderung der Entsendeverordnung, EntsV, LR 823.211.1), which has been published in the Liechtenstein Landesgesetzblatt No. 328 of 18 November 2022).

The Ordinance covers the following issues:

- reimbursement of expenses (Art. 4a);
- duration of posting (Art. 6);
- collective notification (Art. 8);
- execution of controls (Art. 9); and
- publication of sanctions (Art. 11).

The annex, which contains a list of penalties, has also been amended. It explicitly states that this Ordinance serves to implement Directive (EU) 2018/957.

The amended Posting of Workers Ordinance will enter into force on 01 January 2023.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Lithuania

Summary

A proposed reform of the public service will amend the rules on the remuneration of public servants and will regulate the participation of employees in the supervisory boards of budgetary institutions.

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 Public employment

The Government of the Republic of Lithuania intends to introduce a package of amendments to the current legislation on public sector employees, civil servants and special legal persons in budgetary institutions (in Lithuanian: *biudžetinė įstaiga*).

First, Law Proposal No. XIVP-2066(2), which amends the Law on Public Service, aims to create a new system of remuneration allowing for more flexibility and wider competence of the heads of the institutions in terms of remuneration and bonuses. In addition, the long-term service supplement will be abolished.

From the collective labour law perspective, the proposed novelties introduced by Law Proposal No. 22-11289(3), amending the governance of the budgetary institutions, are interesting, as they introduce the possibility of participation of employee representatives (works councils) in the supervisory boards of these institutions, the establishment of which is being proposed.

Luxembourg

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 Minimum wage

A 3.3 per cent increase in the minimum wage has been decided, taking effect on 01 January 2023. The regular re-evaluations of the minimum wage are generally based on the development of salaries in Luxembourg.

Netherlands

Summary

(I) A labour court has held that an employer does not need to grant a non-vaccinated employee access to work.

(II) A labour court has ruled that not calling on an on-call employee for two months constitutes a termination of the employment contract.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 COVID-19 vaccination

Court of Rotterdam, ECLI:NL:RBROT:2022:9414, 24 October 2022

This court ruling concerned an employee who works on ships for the firm Boskalis. The employee was not deployed on foreign projects because he has not been vaccinated against COVID-19. This has to do with the entry conditions that other countries have set for workers, which makes it very difficult or even impossible to deploy the employee there. However, the employee did not agree with this policy and demanded that he be allowed to perform the agreed work activities on a ship.

There was one Boskalis ship on which the employee could perform his regular work activities, however, the positions on this ship were already filled by the crew who regularly work on that ship. If the employer were required to exchange one of the regular workers of the qualifying ship to allow the unvaccinated employee access to work, it would impact the regular worker's salary as he would then receive a so-called 'waiting fee' until he can work on another ship.

According to the court, the employer is not required to replace one of the workers on the respective ship with the unvaccinated employee, simply because the latter cannot work abroad as a result of his choice to not get vaccinated. Article 7:611 Dutch Civil Code, which entails that an employer must act as a good employer towards its employee and vice versa was relevant to the discussion. Boskalis had, in the present case, offered other types of work to the employee in The Netherlands during the time in which he cannot work on a ship. One of these offers was rejected by the employee, while he took the other offer into consideration.

The employee also claimed a higher salary with retroactive effect based on Article 7:628 Dutch Civil Code, which states that employees should receive their salary, even if they are not working (unless the situation can reasonably be seen as being the employee's responsibility). The employee was being paid a waiting fee for the period during which he was not performing his regular work. The amount of the salary depends on whether or not the employee is currently working on a ship and is explained in the relevant collective labour agreement. Although the waiting fee is not as high as the salary received when working on a ship, it is still a salary. The requirements of Article 7:628 Dutch Civil Code were therefore met by the employer. If the employee demands a different salary, further evidence is needed, which must be submitted in a different type of court procedure.

The court rejected the employee's claims.

2.2 On-call contract

Court of Rotterdam, ECLI:NL:RBROT:2022:9286, 14 October 2022

This case concerned an on-call contract. The court ruled that not calling on an on-call employee for two months due to the employee not performing his/her job well enough is in fact a termination of the employment contract. Based on Article 7:667 paragraph 3 of the Dutch Civil Code, a temporary employment contract can only be terminated prematurely if that right has been agreed in writing for each of the parties. This was not the case. Therefore, based on Article 7:628 Dutch Civil Code, the employee is entitled to wages for the remaining duration of the on-call contract. The employee's average working hours are determined in line with Article 7:610b of the Dutch Civil Code. Because the employee had not yet worked for the employer for three months, which is the reference period according to Article 7:610b Dutch Civil Code, the average of the two months in which the employee had worked was taken to determine his average working hours.

The ruling is in line with a change in Dutch law of 01 January 2020. According to the former legislation, the main principle was 'no work, no pay' (unless the failure to work was reasonable for the account and risk of the employer). The disadvantage of this rule was that an employee had to prove that he/she was entitled to wages. The legislator thus turned this rule around. As of 01 January 2020, the main principle has been: no work, still pay, except if the failure to work is reasonable for the account and risk of the employee (Article 7:628 Dutch Civil Code).

The Working Time Directive 2003/88/EG defines working time in Article 2(1) as "*any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice*". In the case of an on-call employee, the employer will not initially be required to allow an on-call employee to work. Therefore, the working time of an on-call employee in The Netherlands consists of the hours for which the on-call employee has been called on to work, with a minimum payment of three hours per call. This minimum of three hours is based on Article 7:628a Dutch Civil Code. If the on-call worker has not been called on to work, no wages need be paid.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Pension age

The age at which Dutch citizens are entitled to the state old age pension (AOW) will be increased by three months in 2028, to 67 years and three months. This automatic increase in the state pension age is linked to an increase in life expectancy as calculated by Statistics Netherlands (CBS). For the years 2024 through 2027, the state pension age will remain at 67.

In 2019, it was agreed that the state pension age would rise less rapidly than before. Until this agreement, the rise in the state pension age was the same as the increase in life expectancy. Since the agreement, the state pension age has increased by 3 months for every 4.5 months that Dutch people are expected to live longer. This is done on the basis of the annual CBS calculations for the remaining life expectancy of 65-year olds. The current state pension age can be found in Article 7 of the Act on AOW.

Norway

Summary

The Working Environment Act has been amended to strengthen full-time employment as the standard form of employment and discourage the unnecessary use of part-time employment.

1 National Legislation

1.1 Part-time work

The Working Environment Act (LOV-2005-06-17-62, WEA) has been amended to include a 'right' to full-time employment. The amendment act was passed in Parliament (*Stortinget*) on 24 November 2022, Act 4 (2022–2023) but has not yet been formally published.

The amendment act introduces a new Section 14-1b on full-time and part-time employment. The provision stipulates that an employee, as a general rule, shall be employed full time. Furthermore, the provision introduces a duty for the employer to document in writing the need for part-time employment before such a decision is made. The documentation shall be available to shop stewards, and the issue of part-time employment must be discussed with the shop stewards.

This amendment establishes an explicit full-time norm in the WEA and is thus referred to by the government as a 'right' to full-time employment. However, according to the preparatory works, the norm does not in itself imply any prohibition or legal restriction to the employer's right to hire part-time employees. The purpose of the full-time norm is primarily to promote a full-time work culture, contribute to awareness among employers and discourage the unnecessary use of part-time employment, cf. Prop. 133 L (2021–2022) p. 34.

Amendments have also been made to WEA Section 14-3 on preferential rights of part-time employees. According to this provision, part-time employees have a preferential right to an extended post rather than that for employer to create a new post in the undertaking. This right shall now also give rise to the right to additional working hours and apply when the employer hires temporary agency workers.

It is not yet decided when the amendment will enter into force.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Poland

Summary

The draft regulation on remote working is currently under discussion in Parliament.

1 National Legislation

1.1 Remote working

In November 2022, the draft of the amendment to the Labour Code on remote working was the subject of parliamentary proceedings. Currently, remote working is regulated by the 'anti-COVID shield' and could be performed during the pandemic. The amendment will introduce a permanent legal framework for the performance of remote work. Some substantial modifications will be introduced.

Remote working is regulated by the Law of 02 March 2020 on specific measures to prevent, countervail and fight COVID-19, other infectious diseases and crisis situations caused by them (*Ustawa o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych,* Journal of Laws 2021, item 2095), with further amendments.

In short, under Art. 3 of this Law (i.e. 'anti-COVID shield'), remote working can be ordered by the employer. The work agreed in the employment contract can be performed outside the normal workplace if the particular type of work can be carried out remotely. The employee should possess the relevant skills and technical possibilities to perform remote work. For further analyses, see the March 2020 and June 2020 Flash Reports.

Chapter IIa of the Labour Code (Art. 67^5 – Art. 67^{17}) regulates teleworking.

The abovementioned draft intends to introduce a permanent legal basis for remote working (not only during the pandemic), and to repeal the Labour Code provisions on teleworking.

The solutions provided by the draft are as follows (new Art. 67^{18} – Art. 67^{33} LC):

According to Art. 67^{18} LC, work can be fully or partly performed in the location designated by the employee and shall be agreed with the employer (it includes the employee's address, in particular by means of direct distance communication (remote working)). Thus, the definition of remote working does not expressly refer to the type of work. It does not necessarily require recourse to modern technologies, although such an option is covered by the new definition. The proposed provision introduces the admissibility to work remotely from home, although the expression 'employee's address' is used.

Consent of the parties to the employment contract is required. Remote work can be performed upon the employer's instruction in case of extraordinary circumstances (e.g. the pandemic), where the employer does not have the possibility to provide health and safety at work. The employee should declare that he/she is able to perform remote work (i.e. has relevant skills and technical possibilities). In such a situation, the employer can withdraw the instruction on remote working with a one-day notice (Art. 67^{19} LC).

Conditions to perform remote work should be regulated in a collective agreement between the employer and trade union(s) or workplace regulations issued by the employer (Art. 67^{20} LC).

In comparison to 'regular' work, the employer will have additional duties, e.g. providing information on working conditions, health and safety training, work tools and equipment, technical support for employees, and costs directly connected to the

performance of remote work. The employer will have the right to control the employee at the location at which the remote work is being carried out.

Both parties may request a return to the 'traditional' performance of work. The employee cannot be discriminated because he/she performs remote work or refuses to work remotely.

Remote work can also be performed on an *ad hoc* basis upon the employee's request, but not more than 24 days per calendar year (Art. 67[33] LC). In such a situation, the abovementioned organisational requirements do not apply.

In the present reporter's view, the amendment to the Labour Code on remote working should be highlighted, although it does not aim to transpose EU directives. It can be expected, however, that the permanent regulation on remote working will have an impact on the labour market, employee rights and the development of new forms of employment.

The new regulations should be evaluated positively since there is a need to set down the legal framework on remote working. It should be emphasised that the material scope of application of the planned regulations is broad. The provisions on remote working will replace those on teleworking. Remote working will not be limited to the performance of work with recourse to modern technologies.

It can be expected that the new regulations will be enacted soon. Therefore, *ad hoc* remote working will likely be widely used.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Portugal

Summary

A recent ruling of the Supreme Court of Justice clarifies the cases in which a dismissal may be motivated on the ground of redundancy of the job.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Reasons for dismissal

Supreme Court of Justice, No. 10764/18.0T8SNT.L2.S1, 02 November 2022

In the present case, the Supreme Court of Justice ruled that the validity of a dismissal due to the redundancy of the job must be assessed according to the business criteria applied by the employer. The judge may only verify the accuracy or authenticity of the market, structural or technological reasons that were invoked by the employer to dismiss the employee and the existence of a link between those motives and the dismissal, so that it can be concluded that, in accordance with reasonable judgment, those motives justified such dismissal.

In this ruling, it was also stated that when assessing the grounds for dismissal due to redundancy of a job carried out by a company integrated into an economic group, the court must take into account not only the employer's economic and financial dimensions and the operating model but also the implications of the global situation for the economic group.

Dismissals due to the redundancy of the job are covered in Articles 367 to 372 of the Portuguese Labour Code. This dismissal must be grounded by objective reasons (market, structural or technological motives, as defined in Article 359 (2) of the Portuguese Labour Code).

This ruling contributes to the interpretation of the said provisions and defines the limits of the judge's power to assess the existence of the grounds invoked by the employer to proceed with the dismissal.

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 still ongoing, and the proposal will likely be voted (and approved) by Parliament in coming months.

4.2 Increase in meal allowance

Ordinance No. 280/2022, of 18 November 2022, updated the amount of meal allowance due to public administration workers to EUR 5.20 as of 01 October 2022.

Romania

Summary

(I) Parliament has voted on a new draft law on social dialogue, which is in the final phase of the legislative procedure.

(II) As of November 2022, civil servants have the possibility to work remotely.

1 National Legislation

1.1 Social dialogue

After years of negotiations, the draft of the new social dialogue law was finalised. The new legislation constitutes an objective established by the National Plan of Recovery and Resilience. The draft law includes a number of major changes in the field of collective labour relations, such as:

- unemployed or self-employed workers will also be able to join a union;
- the number of employees required to establish a union will be adapted to include at least 10 employees from the same unit or at least 20 employees from different units from the same sector of activity. Currently, a trade union consists of at least 15 members who all work in the same unit;
- the collective bargaining initiative shall belong to any social partner, not just the employer or employers' organisation;
- the employer will have the obligation to organise an information session at least once a year on the individual and collective rights of employees, which the representatives of the trade union federations will also participate in;
- the trade union's representativeness threshold will be reduced to 35 per cent of the unit's employees. Currently, a union becomes representative at the unit level if more than half of the employees are members. The representativeness thresholds at the higher levels will also be reduced;
- collective bargaining will become mandatory in units that have at least 10 employees (compared to 20, as is currently the case);
- it will be possible to negotiate a collective labour agreement at the national level;
- the procedure for starting a strike and its conditions will be simplified. Legal strikes will also be possible against the government's social and economic policy;
- the attributions of the Tripartite National Council have been completed.

1.2 Teleworking

Starting from 11 November 2022, civil servants have the possibility of working remotely. This right was introduced by Law 283/2022 for the amendment and completion of Law No. 53/2003 (Labour Code), as well as Government Emergency Ordinance No. 57/2019 regarding the Administrative Code, published in the Official Gazette No. 1013 of 19 October 2022. Civil servants can work remotely for a maximum of 5 days per month if certain legal conditions are met.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 New minimum wage

The gross minimum salary will increase to RON 3 000 per month, starting from 01 January 2023, for a normal work schedule. It is an increase of 17.6 per cent compared to December 2022. The minimum wage for the construction sector is to increase to RON 4 000.

Slovakia

Summary

On 09 November 2022, Parliament adopted an act regulating the employment relationship of professional surrogate parents.

1 National Legislation

1.1 Professional surrogate parents

On 04 October 2022, the National Council of the Slovak Republic (Parliament) adopted the Act on Professional Surrogate Parents and on the Amendment of Certain Acts.

The Act was returned by the President and was discussed again at the 75th meeting of the National Council of the Slovak Republic and adopted again on 09 November 2022.

In Part I of the Act, according to Article 1, this Act regulates the legal relationships in connection with the performance of the work of a professional surrogate parent, the record of natural persons who are interested in information about the vacancies of a professional surrogate parent and the record of professional surrogate parents whose employment relationship has ended.

Among other things, the Act also regulates the employment relationship of a professional surrogate parent (mainly as regards employment contracts, termination of employment, duties, working hours, remuneration). Part II supplements Article 3, paragraph 2 of the Labour Code on professional surrogate parents. According to this provision, the labour relationships of professional surrogate parents are also governed by this Act (Labour Code), unless a special regulation provides otherwise.

With regard to European Union law, according to the explanatory report to the Act, it mainly concerns compliance with Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on fighting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

This new Act No. 376/2022 Coll., which also amends the Labour Code, entered into force on 01 December 2022 (some provisions in Part I and Part III will take effect on 01 January 2023 or on 01 July 2023.)

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 amendments to the Parental Protection and Family Benefits Act have been adopted by the National Assembly, thus transposing the Work-life Balance Directive 2019/1158 into Slovenian law.

(II) The Higher Labour and Social Court has decided that the stand-by time spent at home by a worker is working time.

1 National Legislation

1.1 Work-life balance

On 24 November 2022, the amendments to the Parental Protection and Family Benefits Act were adopted by the National Assembly transposing an important part of the EU Directive 2019/1158 on Work-life Balance into Slovenian law (Act amending the Parental Protection and Family Benefits Act, '*Zakon o spremembah Zakona o starševskem varstvu in družinskih prejemkih*', the draft proposal can be found here, the final (adopted) text has not yet been published in the Official Journal). The transposition deadline expired on 02 August 2022 and Slovenia received a letter of formal notice in September 2022.

The amendments concern the right to parental leave (each parent is now entitled to 160 days of parental leave in contrast to the 130 days parents were previously entitled to each), with 60 days being non-transferable for both parents) and other rights of working parents and follow the requirements of the Directive EU on Work-life Balance. The new rules will apply as of April 2023.

As the legislative procedure had not yet been concluded at the end of November 2022, the adopted solutions will be described in detail in the December 2022 Flash Report, after the promulgation of the respective Act and its publication in the Official Journal.

2 Court Rulings

2.1 Working time

Higher Labour and Social Court, No. Pdp 255/2022, 15 September 2022

In its decision, the Higher Labour and Social Court's reviewed the definition of working time and, in particular, on whether and under what conditions stand-by time at home can be considered as working time.

The claimant worked as a security guard. He carried out his work in shifts. In addition to his 'normal work' which required his presence at the workplace, he was required during the defined period of time to be on stand-by: he could stay at home, but had to be contactable if called on and he had to arrive to the workplace within 15 minutes (so-called interventions); only periods when he was called upon to work (interventions) were counted as working time; on average, there were 2-3 interventions a day.

In its reasoning, the court extensively referred to the CJEU's case law on working time and stand-by time (see, in particular, paras. 8, 10-11 of the Higher Labour and Social Court decision). In particular, the court explicitly referred to the CJEU judgments in C-151/02, *Jaeger*; C-518/15, *Matzak* and C-344/19, *Radiotelevizija Slovenija*.

The court emphasised that it is incorrect to only count stand-by time spent at the employer's premises as working time. The court emphasised that periods spent at home, when a worker is required to respond to the employer's calls and be able to arrive at

the workplace within a short period of time, should also be considered as working time, if this significantly limits the possibilities to engage in other activities. It emphasised that, according to the CJEU's case law, if the time limit within which a worker is required to arrive at the workplace within a few minutes must, in principle, be regarded in its entirety as 'working time' (C-344/19, *Radiotelevizija Slovenija*, par. 48), and that if the worker is, on average, frequently called upon to provide services during his or her periods of stand-by time and, as a general rule, those services are not of a short duration, the entirety of those periods constitutes, in principle, 'working time' (C-344/19, *Radiotelevizija Slovenija*, para. 53). The court explained that in the present case, a short response time of 15 minutes and several calls (interventions) per day are such constraints imposed on the worker, which significantly limit his/her ability to freely manage his/her time during this period.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Collective bargaining

A new collective agreement covering a specific profession has been concluded and was published in the official journal: Collective Agreement for Veterinary Medicine (*'Kolektivna pogodba za dejavnost veterinarstva'*, OJ RS No. 142/22, 11 November 2022, p. 10746-10748). Veterinary medicine has not yet been covered by a collective agreement. The new collective agreement will start to apply after 6 months from its publication, i.e. in May 2023. Its personal scope is very broad, as it covers not just the employed veterinary doctors with a contract of employment, but also self-employed veterinary doctors performing work for the veterinary organisations on the basis of a civil law contract.

Annex No. 2 to the Collective Agreement for the textile, clothing and leather industry (*'Aneks št. 2 k Tarifni prilogi Kolektivne pogodbe za tekstilne, oblačilne, usnjarske in usnjarsko predelovalne dejavnosti*', OJ RS No. 148/22, 30 November 2022, p. 11432) was published. It concerns the adjustment of payments for lunch allowances and travel expenses.

Spain

Summary

Two judgments of the Supreme Court have ruled on the differential treatment of fixed-term workers employed with the public administration.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Fixed-Term work

Supreme Court, STS 4187/2022, 15 November 2022

The principles of equality and non-discrimination apply to fixed-term employment contracts and to the wages they earn.

In the present case, a public administration had hired temporary workers within the scope of a programme to foster the employment of persons from vulnerable groups. The public administration decided not to apply the collective agreement, arguing that these workers were not to be considered part of the staff, but were external workers in accordance with the particular features of the programmes.

In its judgment, the Supreme Court stated that these workers had been hired on the basis of an employment contract and were temporary workers of the public administration. If their functions match those established in the job classification provided for in the collective agreement (which was the case), the worker has the right to receive the salary established in that collective agreement.

Therefore, the Supreme Court concluded that the worker had been discriminated against and referred explicitly to Directive 1999/70/EC.

Supreme Court, STS 4187/2022, 26 October 2022

According to the collective agreement applicable to a public administration, when a permanent worker is transferred to another post, he/she should retain any special salary supplement he/she was entitled to in his/her former post. However, when that transfer involved a temporary worker, he/she was no longer entitled to the salary supplement linked to his/her former post, but the one linked to his/her new post.

In this judgment, the Supreme Court stated that this differentiation was not unreasonable, because according to the relevant collective agreement, such transfers are temporary, i.e. permanent workers have the right to return to their original post. Therefore, they retain the respective salary supplement, even if their post changes for a limited period of time. However, the collective agreement contains different rules for temporary workers, because once their contract ends, they do not return to their previous job, but to the 'job bank' (which is very popular in this field of public administration), waiting for another opportunity to work.

The Supreme Court confirmed that this difference is of relevance, because if a temporary worker does not return to his/her previous job, there is no reason to maintain the salary supplement linked to that job.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Unemployment

Unemployment decreased in October (27 027 people) following several difficult months.

Data from November estimate that a total of 2 914 892 persons are unemployed in Spain.

4.2 Equality and non-discrimination

Article 28 of the Labour Code enshrines the principle of equal pay for work of equal value. To achieve that goal, Royal Decree 902/2020 requires an adequate evaluation of jobs, taking the gender perspective into account. In fact, the principle of wage transparency is mandatory for undertakings and collective agreements.

The Royal Decree of 2020 gave the government a six-month period to elaborate an instrument that helps undertakings implement 'gender-sensitive' job evaluation procedures.

With some delay, the government approved and published the procedure to evaluate jobs with a gender approach on 01 November 2022. The instrument and a user guide are now available here.

Sweden

Summary

(I) The Labour Court has ruled that the written contract is what primarily determines whether an employee is employed by a temporary work agency or by the user undertaking.

(II) The Labour Court has granted state immunity from Swedish jurisdiction in a case concerning employment with a diplomatic embassy.

(III) The Labour Court has held that the Police Authority had no legitimate cause for terminating an employment contract due to the employee's loss of security clearance.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Temporary agency work

Labour Court, AD 2022 No. 45, 16 November 2022

A food delivery worker was temporarily employed by the food delivery company Foodora up until 26 June 2019. For the next two years, he continued to work for Foodora. From 26 June 2021, he no longer received any work assignments from Foodora and was locked out from the software programme (the app). The food delivery worker's trade union claimed in court that the termination of the employment relationship was a summary dismissal of a permanent employment contract. The defendant company Foodora objected that no employment relationship had been concluded. Instead, Foodora invoked that the food delivery worker had been employed by the temporary work agency Pay Services and assigned to Foodora as a user undertaking.

The main issue for the Labour Court was to assess whether the food delivery worker had been employed by the temporary work agency Pay Services or by Foodora directly. In its judgment, the court stated that a person is usually considered as being employed by the company for which he/she performs work and is subordinated to. An exception to that rule is when the employee is employed by a temporary work agency and assigned to a user undertaking. In such a situation, the employee is considered to be employed by the temporary work agency. The assessment of whether the temporary work agency or the user undertaking is the actual employer depends, according to the court, on the formation of the employment contract.

In the present case, the court held that it was clear that an employment contract had been established between the food delivery worker and Pay Services. The Labour Court therefore held that it must have been clear for the employee that he was employed by the temporary work agency Pay Services and assigned to Foodora as a user undertaking.

The judgment clearly emphasises the role of the written employment contract in multiparty relationships. This conclusion will probably have an impact on the 'gig economy' and other multiparty work relationships.

It seems that the Labour Court criticised the plaintiff employee's procedural tactics. First, the court explicitly stated that it was limited not to assess whether the multiparty arrangement was a fraudulent evasion of the purpose of the law ['*fraus legis*']. Second, the court explicitly stated that it could not assess the relationship between the employee and the temporary work agency. A third party that has not been sued cannot be subject to a judgment in which it is not a party. The court was unfortunately limited and could

not assess the entire legal issue. On the other hand, it also highlights one of the complex consequences of a split employer notion in multiparty employment relationships.

2.2 Jurisdiction over labour disputes

Labour Court, AD 2022 no 47, 16 November 2022

An employee at the Qatari Embassy in Stockholm, Sweden, was summarily dismissed in September 2021. He filed a lawsuit against the State of Qatar in the Stockholm District Court claiming nullity of and compensation for unfair dismissal. Qatar objected Swedish jurisdiction by invoking state immunity.

The Stockholm District Court dismissed the part on compensation on its merits and held that customary international law principles on state immunity meant that Swedish courts could not adjudicate the nullity of the dismissal. The Labour Court agreed with the District Court's conclusion.

The Labour Court did not take the Brussels I Regulation (1215/2012) into consideration. Instead, it presumed that both the matter of jurisdiction and the matter of state immunity were national issues. The method for determining international customary law as applied by the Labour Court is also questionable. The Labour Court heavily relied on the United Nations' Convention on Jurisdictional Immunities of States and their Property (State Immunity Convention). The State Immunity Convention was intended to reflect international customary law when it was drafted, but it has not entered into force and nearly 20 years have passed since the Convention was drafted. Therefore, it is noteworthy that the Labour Court did not take more recent CJEU decisions on state immunity and the Brussels I Regulation into consideration. In its judgment in CJEU case C-641/18, *RINA*, the CJEU made it clear that the application of the Brussels I Regulation coincides with international customary law's understanding of state immunity from jurisdiction. Also, international customary law is, at least in theory, meant to be uniform.

2.3 Dismissal

Labour Court, AD 2022 No. 49, 23 November 2022

An employee of the Police Force lost her security clearance due to alleged affiliation with criminal organisations. Consequently, she was suspended from work which included classified tasks. When the employee rejected the employer's offer to relocate to the Police Museum, the employer terminated her employment contract. The employee claimed in court that the termination of the employment contract lacked legitimate cause.

With reference to its own case law (e.g. case AD 2021, No. 63, reported in the December 2021 Flash Report) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Labour Court held that an employee is entitled to be informed of the cause for the termination of his/her employment contract.

As the employer could not prove that the employee was affiliated with criminal organisations, the court held that there was no legitimate cause for terminating her employment contract.

A security clearance is a highly topical problem in Swedish employment law. It seems to be a conflict between employment protection law and state security interests. This problem is probably accentuated by the traditionally extensive use of security clearances in Sweden. Some authorities, e.g. the Police, reportedly require security clearances for all employees.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

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 Brexit

Retained EU Law (Revocation and Reform) Bill (REUL)

The Retained EU Law Bill (REUL), which was published in September (see September 2022 Flash Report), was published on 29 November 2022 as amended following report stage. No major changes have been made.

It is anticipated there will be considerable resistance to the Bill in the House of Lords.

Specifically on employment law issues, Westlaw reports:

> *"The ECJ judgments in Grenville Hampshire v The Board of the Pension Protection Fund [2018] (Case C-17/17) and Pensions-Sicherungs-Verein VVaG v Günther Bauer [2019] (Case C-168/18) relate to the pension protection to which members are entitled on the insolvency of their employer by virtue of Article 8 of the EU Insolvency Directive (Directive 2008/94/EC). …"*

Urging the House of Commons Public Bill Committee to reject the amendment, Nusrat Ghani, Minister of State for Business, Energy and Industrial Strategy (BEIS), stated that:

> *"[T]he Department for Work and Pensions does not intend to implement the Bauer judgment through the benefits system, as it is a European Court judgment that does not fully align to the UK private pension protection scheme. … The Hampshire judgment is a clear example of where an EU judgment conflicts with the United Kingdom Government's policies. Removing the effect of the judgment will help to restore the system to the way it was intended to be." (At column 169.)"*

The minister also said that each government department will put together a delivery plan of pieces of retained EU law that they will assimilate, update or remove.

4.2 Collective action

Strikes in the public sector continue as a major issue facing the country: nurses, ambulance drivers, railway workers, and academics are all taking or proposing to take strike over declining pay in the face of the cost of living crisis.

The government has now set up a unit to manage this way of strike action.

4.3 Occupational safety and health

A proposal has been submitted to the Scottish Parliament. According to the news report:

> *"Scottish Greens MSP Maggie Chapman is working with Unite Hospitality and others to prepare a members' bill which would require companies to include 'a safe transport home' obligation to workers as part of their licensing applications to local authorities."*

The bill is expected to apply to

> *"all new liquor licences and focus primarily on hospitality workers, but the intention is to extend this to other industries with a high demand for late shift workers, such as the NHS and social care. The safeguards would apply to all workers of all genders."*

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