Flash Reports on Labour Law February 2023

Summary and country reports

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

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Table of Contents

Executive Summary

National level developments

In February 2023, 27 countries (all but **Bulgaria**, **Hungary**, **Latvia,** and **Norway**) 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 **Portugal**, the Appeal Court of Guimarães ruled that an employee may terminate her employment contract with invocation of just cause in case of infraction of health guidelines and rules related to COVID-19 by the employer.

Whistleblower protection

In **Austria** and **Spain**, Directive 2019/1937/EU on the protection of persons who report breaches of Union law has been transposed into law. Conversely, in **Germany**, the Whistleblower Protection Act has not yet received Bundesrat approval.

Working time

In **Germany**, according to a ruling of the Federal Administrative Court, breaks during the obligation to be on-call do not automatically constitute working time. Furthermore, the Federal Labour Court has ruled that a provision in a collective agreement which provides for a higher supplement for irregular than for regular night work does not violate the principle of equality if an objective reason exists for unequal treatment.

In **France**, the Court of Cassation ruled that any agreement establishing a fixed annual working time in days must be provided for by a collective agreement, ensuring that reasonable working hours and daily and weekly rest periods are respected.

In the **Netherlands**, overtime has been included in the calculation of holiday pay.

Work-life balance

In the **Czech Republic**, a bill amending the Labour Code will transpose the Work-life Balance Directive and the Directive on Transparent and Predictable Working Conditions.

Similarly, in **Poland**, an act implementing the Work-Life Balance Directive was enacted by Parliament and is waiting for approval by the Senate.

Working conditions of seafarers

In the **Czech Republic**, a decree implementing Directive (EU) 2017/2397 on the recognition of professional qualifications in inland navigation has been adopted.

In **Greece**, a new Code of Private Maritime Law concerning the regulation of the employment contract of seafarers has been enacted.

In the **Netherlands**, the Court of Rotterdam ruled that a seafarer could not rely on Dutch legislation on pay during illness, as the social security legislation of his home Member State was applicable.

Fixed-term work

In **Croatia**, the new Theatres Act regulates the conclusion of successive fixed-term employment contracts with artists employed in theatres. Similarly, In **Italy**, the Court of Cassation dealt with fixed-term contracts in Symphonic-Opera Foundations.

In **Finland**, the Labour Court ruled on the exclusion of fixed-term employees from an incentive system based on the general collective agreement for municipal civil servants and employees in municipalities.

Other forms of atypical work

In the **Netherlands**, as a company posting workers was ruled to be hiring-out temporary agency workers, the posted temporary agency workers were entitled to the employment conditions laid down in the generally binding collective agreement of the temporary agency work sector.

In **Slovenia**, the Supreme Court ruled on the problem of outsourcing of workers, disguised employment relationships and the question of the existence of an employment relationship.

Teleworking

In **Italy**, the 'Milleproroghe' Act extends smart working until 30 June 2023.

In **Poland**, an act introducing remote working and sobriety checks came into force on 06 February 2023.

Other developments

In **Belgium**, an employee with an employment contract on the date of the bankruptcy of the employer, whose activity was interrupted as a result of the bankruptcy and who, at the time of the takeover of the transferor's assets, was bound by the contract with the employer (transferor), is entitled to transitional compensation for the period of interruption.

In **Croatia**, the Amendment to the Act on Guarantees of Employees' Claims has been adopted.

In **France**, the Court of Cassation ruled on the contestation of the appointment of a local representative on the conditions under which the negotiation of an agreement on the number and scope of separate establishments must be conducted.

In **Ireland**, the Labour Court ruled on the possibility of a transferee to rely on a 'variation clause' to alter the terms and conditions of employment of a transferred worker.

In **Liechtenstein**, a draft law aims to implement Directive (EU) 2020/1057 concerning the posting of drivers in the road transport sector.

Table 1: Major labour law developments

Topic	Countries
Collective bargaining and collective action	BE EE FR IS SI
Working time	DE FR NL
Whistleblowing	AT ES DE
Seafarers' work	CZ EL NL
Fixed-term work	IT FI HR
Posting of workers	LI NL
COVID-19	LT PT
Teleworking	IT PL
Insolvency of the employer	BE IE
Transparent and predictable working conditions	CZ UK
Work-life balance	CZ PL
Occupational health and safety	PT SI
Temporary agency work	NL
Information and consultation	FR
Third-country nationals	CY
Volunteer work	SK
Transfer of undertakings	IE
Minimum wage	NL

Austria

Summary

The Directive on the protection of whistleblowers has been transposed into law.

1 National Legislation

1.1 Whistleblower protection

Directive 2019/1937/EU on the protection of persons who report breaches of Union law has finally been transposed into Austrian law: The Act on Protection of Person who Report Breaches of Law (*HinweisgeberInnenschutzgesetz*, BGBl. I Nr. 6/2023) passed the National Assembly on 01 February 2023, and the Federal Assembly on 16 February 2023. It entered into force on 25 February 2023.

The Act barely goes beyond the minimum requirements of Directive 2019/1937/EU. It covers reports on money laundering and terrorist financing, infringements on environmental protection, public health, consumer protection, protection of privacy and personal data, security of network and information systems as well as on infringements to the detriment of the EU's financial interests, internal market rules, rules on competition and state aid and corporate taxation rules.

Reports on other infringements are not covered by the Act. If a company's whistleblowing system is to cover other infringements beyond the Act's requirements, such as discrimination and harassment claims, it needs to be implemented through a works council agreement (in businesses with a works council).

The Act ensures that retaliation measures taken against employees for a justified indication are invalid. It lists a number of retaliation measures in a non-exhaustive manner, such as suspension, dismissal or comparable measures, non-renewal or early termination of a fixed-term employment contract, demotion or denial of promotion, the transfer of tasks, change of workplace of work, reduction in remuneration, change in working hours, exclusion from participation in training measures, negative performance appraisal or issuance of a poor report card, or any disciplinary action, reprimand or other sanction.

The concerned employee needs to plausibly demonstrate that such measures were taken in retaliation for a tip-off. Only when all of the circumstances are weighed, and it is more likely than not that a different motive was decisive for the measure, it should not be considered a retaliation measure.

Companies that employ between 50 and 249 employees are required to implement a whistleblowing system by 18 December 2023, while companies that employ over 250 employees are required to implement a whistleblowing system by 25 August 2023.

A press article can be found here.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) Entitlement to career break benefits has been restricted.

(II) According to the Constitutional Court, the victim of an act of violence at work must be able to claim compensation not only before labour courts, but also before criminal courts which are competent to rule on civil compensation for victims.

(III) The public company in charge of air traffic control may be held civilly liable for the strike of its air traffic controllers, which violated a valid limitation on the right to collective action.

(IV) An employee who had an employment contract on the date of the employer's bankruptcy, and whose activity was consequently interrupted and who at the time of the takeover of the employer's assets, was bound by the contract with the transferor, is entitled to transitional compensation for the period of interruption.

1 National Legislation

1.1 Career break benefits

Entitlement to benefits during career breaks, time credit and thematic leave has been restricted (Decree of 26 January 2023 amending various Royal Decrees on time credit, thematic leave, and career breaks, *Moniteur belge,* 31 January 2023).

In the 2023–2024 budget preparation, the Federal Government has decided to restrict time credit, thematic leave and career breaks (see also Advice No. 2.331 of the National labour Council of 29 November 2022). Hence, the Royal Decree of 26 January 2023 amending various Royal Decrees on time credit, thematic leave and career breaks now provides for a series of restrictive measures for career break benefits paid by the National Employment Office, applicable (subject to exceptions) to applications submitted to the employer from 01 February 2023 onwards.

As regards time credit for childcare, the amendment stipulates that the child's age limit has been reduced from 8 years to 5 years at the time of application for career break benefits as full-time time credits. Furthermore, entitlement to career break benefits will be limited to 48 months instead of 51 months for both full-time time credits and half-time or one-fifth time credits. This also applies to time credits for childcare of children up to the age of 8 years, which started no later than 31 January 2023, to the extent that the employee has taken less than 30 months of time credit to care for his/her child up to the age of 8 years by 01 February 2023. That requested period of time credit may be shortened by the number of months for which the employee will not be entitled to career break benefits. The employer cannot reject early unilateral termination of this time credit.

Moreover, from 01 June 2023 onwards, employment with the same employer will be increased to at least 36 months, instead of 24 months, prior to the application for time credit.

An employee who applies for full-time time credit benefits must have been employed full-time during the 12 months preceding the written notification to the employer or in a part-time employment relationship during the 24 months preceding such notification.

An employee who applies for half-time time credit benefits must have been employed full-time during the 12 months preceding the written notification. This applies in particular to part-time employees (e.g. 3/4) who apply for a half-time time credit.

The employment condition for the 1/5th time credit and for the end-of-career time credit (the so called 'landing jobs') will not change.

Seniority bonuses and age-related supplements have been abolished. The increased amount of the career break benefits linked to seniority of at least 5 years with the employer provided to employees who apply for full-time or half-time time credit benefits and to employees of autonomous public enterprises who apply for full-time or half-time time credit benefits has been abolished.

The increased amount of benefits provided to employees aged 50+ who take a half-time, 1/5th or 1/10th career reduction as part of a thematic leave has also been abolished in all sectors.

This Royal Decree does not change in terms of entitlement to leave, with the result that in certain situations, the employee will be entitled to leave or career breaks, but will no longer be entitled to career break benefits from the National Employment Office.

2 Court Rulings

2.1 Compensation for damages

Constitutional Court, No. 8/2023, 19 January 2023

The Constitutional Court had to answer two preliminary questions submitted by the Court of Appeal of Liège on a criminal case. The question concerned the compatibility of Article 32decies, §1/1 of the Health and Safety at Work Law of 04 August 1996, with the non-discrimination Articles 10 and 11 of the Constitution and Article 6 of the ECHR when it is interpreted as allowing the victim of an act of violence at work to choose between full compensation of his damage or a lump-sum compensation for the damage before the labour court, while the victim would no longer have that choice if a claim was brought against the perpetrator before the criminal court.

The case the Liège Court of Appeal dealt with involved an act of violence at work against a labour inspector during an inspection. Pursuant to Article 32decies, §1/1 of the Health and Safety at Work Law of 04 August 1996, the inspector claimed a lump-sum compensation equal to six months' gross pay for the damage suffered as a result of the act of violence at work. The Court of Appeal in Liège refused to apply the aforementioned article of the Health and Safety at Work Law to a civil claim, thus preventing the victim from receiving the lump-sum compensation. The Court did, however, award compensation *ex aequo et bono*. On appeal, the Appeal Court confirmed the perpetrator's culpability. On the civil side, the Court stated that a criminal court had no jurisdiction to award a lump-sum compensation under the Health and Safety at Work Law but decided to submit a preliminary question to the Constitutional Court.

It appears that the referring criminal Appeal Court in Liège deduces from Article 3 of the Preceding Title of the Code of Criminal Procedure and Article 578, 7°, of the Judicial Code that criminal courts have jurisdiction to rule on acts of violence at work committed in violation of the Health and Safety at Work Law of 04 August 1996, and to rule on civil actions relating thereto. In addition, the referring court interprets Article 32decies, §1/1 of the Health and Safety at Work Law to mean that it only applies to labour courts, so that under that interpretation, criminal courts cannot, by virtue of the provision at issue, award a lump-sum compensation to victims of an act of violence at work.

The Constitutional Court examined whether this interpretation of Article 32decies, §1/1 of the Health and Safety at Work Law corresponds to the non-discrimination Articles 10 and 11 of the Constitution. The Court determined that the Court of Appeal's interpretation created a difference in treatment between the person claiming compensation for his damage caused by an act of violence at work before the labour court and the person claiming compensation for the same damage before a criminal court in the context of a civil action. The first claimant is exempt from proving the extent of his damage, while the second claimant has to prove the extent of his real damage to be eligible for compensation. The parliamentary preparations indicate that the legislator sought to ease the victim's burden of proof and create a dissuasive effect. Thereby, the

legislator did not want to infringe on the victim's ability to claim damages before a criminal court. To correspond to Articles 10 and 11 of the Constitution, the provision in Article 32decies, §1/1 of the Health and Safety at Work Law must thus, according to the Constitutional Court, be interpreted as allowing the victim of an act of violence at work to also claim a lump-sum compensation before a criminal court on the basis of Article 32decies, §1/1 of the Health and Safety at Work Law.

2.2 Collective action

Cour de Cassation, C.18.0533, Skeyes v. Ryan Air, 12 December 2022

The present case concerned a civil action for damages brought by the airline Ryan Air against Skeyes, the public company in charge of air traffic control. Specifically, the employees of Skeyes had not followed the prescribed procedure for a strike notice laid down in the trade union regulations. Instead of respecting a 15-day notice, the staff announced a wildcat strike on 27 September 2010, which would start the following day. As a result, Ryan Air had to cancel all its flights on 28 and 29 September 2010 on 27 September. To compensate for this loss, it brought an action for damages against Skeyes on the grounds that it was responsible for its staff's mistake. Skeyes disputed that the strike constituted any fault, and that the employer could be held liable for such a fault, given that the strikers had placed themselves outside the subordinate context *vis-à-vis* Skeyes with their action.

The Belgian Cour de Cassation ruled that the right to collective action follows from Article 6.4 Revised European Social Charter (HESH). Under Article G HESH, restrictions to this fundamental right are possible if they are prescribed by law, which is necessary in a democratic society in terms of respect for the rights and freedoms of others or to protect public order, national security, public health, or morals. This, therefore, allows States to regulate the right to strike if certain conditions are met. Trade union law is a 'regulated restriction' on the right to strike in the public sector and failure to follow the strike notice may therefore constitute a fault. This fault on the part of staff members may compromise the employer's responsibility if the conditions of Article 1384, paragraph 3 of the (former) Civil Code on civil liability of the principal for his/her appointees and the Law of 10 February 2003 are met. This also refers to Article 3 of the Law of 10 February 2003 on the liability of the public company for the faults of staff employed by public legal persons. The plea of the public company for air traffic, arguing that any strike, even if erroneous, constitutes the exercise of a fundamental right and that this excludes the subordinate relationship between the appointed and the appointee is not justified in law.

2.3 Bankruptcy of the employer

Cour de cassation, 30 January 2022

A service cheque company declared bankruptcy on 18 December 2017. Under a transfer of undertaking agreement dated 22 December 2017, the company was taken over on 02 January 2018. A permanent employee with a part-time employment contract with the transferred company was also taken over. She received no compensation or pay for the period from 18 December 2017 to 01 January 2018. She applied to the Enterprise Closure Fund for a bridging allowance for that particular period. Her request was rejected by the Fund. The employee challenged this rejection before the Hainaut Labour Court, which ruled that the request was admissible and well-founded and ordered the Fund to pay the bridging allowance. Upon appeal, the Mons Appeal Labour Court upheld this ruling.

According to Article 41 of the Law of 26 June 2002 on company closures, if a company's assets are taken over within a period of six months from the date of bankruptcy, workers whose activity has been interrupted as a result of the bankruptcy and who are then re-

employed by the employer that has taken over the assets of the transferred company are entitled to a transitional allowance paid by the Compensation Fund for workers made redundant in the event of company closures for the period starting on the date on which their activity was interrupted as a result of the total or partial interruption of the company's activity and ending on the day on which they are hired by the new employer.

Article 42, paragraph 1 of this Law provides that in order to be entitled to the transitional allowance, the workers must first, either be bound by an employment contract on the date of bankruptcy or have been dismissed during the month preceding that date, and be entitled to a severance allowance which has not been paid in full by that date; and secondly, must have concluded an employment contract after the bankruptcy with the employer who took over the transferor's assets, either before the asset takeover took place, or at the time of asset takeover, or within a further period of six months after the asset takeover.

According to the *Cour de Cassation*, it follows from those applicable legal provisions that an employee with an employment contract on the date of the bankruptcy, whose contract is not terminated but whose activity is interrupted as a result of the bankruptcy and who, at the time of the takeover of the assets, is bound by the contract with the employer (transferor), is entitled to transitional compensation for the period of interruption. The *Cour de Cassation* therefore dismissed the cassation appeal.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

(I) The Amendment to the Act on Guarantees of Employees' Claims has been adopted.

(II) The new Theatres Act has been concluded and contains provisions on employment protection of artists employed in theatres

1 National Legislation

1.1 Insolvency protection

The Amended to the Act on Guarantees of Employees' Claims (Official Gazette No. 18/2023) extends access to protection to employees whose employment ended 12 months before the opening of insolvency proceedings.

The protection of employees has been expanded to enable access to protection for those employees whose employment relationship ended 12 months before the opening of insolvency proceedings (previously, employees were protected when their employment relationship ended 6 months before the opening of insolvency proceedings), and the period of payment of minimum wages has been extended from previously three to five months. Article 3(1)(5) defines the period of protection as 'the period for which the protection and guarantees of rights applies in the event of the opening of insolvency proceedings against the employer, and represents the period of the last five months before the opening of insolvency proceedings against the employer, i.e. the last five months before the termination of the employment relationship if it was terminated within 12 months before the opening of insolvency proceedings.'

Among the functions of the Guarantee Institution is its authority to inform the European Commission and other Member States of any relevant information in the event of the opening of insolvency proceedings against the employer (Article 17(1)(8)).

The amendments also impose an obligation on insolvency trustees to open a special account for the payment of employee claims if the open insolvency procedure is not carried out and the employer has employed employees (Article 31(2)).

1.2 Employment protection of workers employed in theatres

The new Theatres Act has been adopted (Official Gazette No. 23/2023). Among others, it regulates the protection of artists employed in theatres (Articles 34–54). It regulates the conclusion of successive fixed-term employment contracts with the artists employed in theatres (Articles 35 and 36). The new Theatres Act also regulates the retraining of ballet and dance theatre artists who are no longer able to work as artists (Articles 39–42).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Collective agreements in the maritime sector

Two collective agreements in the maritime sector have been concluded: the Collective agreement for Croatian seafarers on ships in international navigation (2023-2024) and the Collective agreement for seafarers who are third-county nationals on ships in international navigation registered in the Croatian ship register (2023-2024) (both published in Official Gazette No. 21/2023).

Cyprus

Summary

The outgoing Minister of Labour has announced a new strategy for the employment of third-country migrant workers.

1 National Legislation

1.1 Employment of third-country migrants

The outgoing Minister of Labour has announced a new strategy for the employment of third-country migrant workers (referred to as 'foreign workers'). The outgoing government's motive for the reforms is to ease the regulations to primarily benefit the hospitality industry which has complained about looming staff shortages.

The employment of third-country nationals is regulated in the Aliens and Immigration Law. This legislation stipulates that:

- Employment of a foreigner without the relevant permit required by law or employment in violation of the terms of an employment permit or of any other law or regulation constitutes an offence that is punishable by imprisonment and/or a fine. In addition, the court may order the employer to pay all applicable contributions to the various funds in case of lawful employment of a foreigner for any period of time it deems appropriate.
- A temporary residence permit for employment purposes entitles the foreigner to be employed in the specified post and for a specified period of time as stipulated in the permit in writing, and if the permit holder takes up other employment, his/her employment permit shall be void and shall be deemed to be cancelled.
- The responsibility for the implementation of this law and the issuance of a temporary residence and employment permit shall be the responsibility of the Department of Population and Immigration Records of the Ministry of Interior.
- The Ministry of Labour, Welfare and Social Insurance, as the Ministry responsible, inter alia, for employment policy, the proper functioning of the labour market and labour (employment) issues, is in charge of defining policies on the employment of foreigners and of granting authorisations to employers or enterprises for the employment of foreigners from third countries. The first attempt to define policies in this area was made in 1991 with the definition of criteria and procedures for the employment of foreigners following consultations with employers' and workers' organisations. These criteria and procedures were adopted in 1992 by the Council of Ministers. In 2007, a decision of the Council of Ministers (Resolution 65.886 dated 25/7/2007) approved the modernisation of this policy by adopting a comprehensive strategy entitled 'Strategy for the Employment of Foreign Workers'.

The outgoing government claims that 15 years later, a modernisation and redefinition of the policy is necessary to promote 'rational support for the production process with positive economies of scale and impact on all sectors of economic activity'. The government claims that the basic prerequisites for the employment of foreigners continues to remain the documented shortage of local or national labour force that is capable and available for work to meet the labour market's specific needs as well as the documented law-abiding behaviour of the employer concerned in terms of compliance with labour legislation and, more generally, with the regulatory labour framework governing labour issues.

The Strategy is an employment policy measure to address labour market shortages and applies to the employment of third-country nationals with temporary residence permits. 'Third countries' means all states other than the Member States of the European Union and the States of the European Economic Area, i.e. Norway, Iceland, Liechtenstein and Switzerland.

- The Strategy proposes to broaden the list of businesses that can employ individuals from non-EU countries, effectively abolishing the decree that limits this practice to certain professions.
- At the same time, the revised Strategy will introduce a 30 per cent quota on the employment of foreigners in businesses that are not party to collective agreements, while raising the quota to 50 per cent from currently 30 per cent for businesses that are party to collective agreements.

The outgoing minister asserted that the Strategy would contribute to the eradication of hiring illegal workers.

Trade unions strongly oppose the new Strategy. The SEK trade union stated that it is a unilateral decision and is unacceptable, and that its implementation will further contribute to the deregulation of the labour market. Another large trade union, PEO, also opposes the new Strategy. In a statement, the PEO trade union called on the new government to abandon the revised Strategy announced by the outgoing administration one week ago, claiming that it would wreak havoc on the labour market and warned that 'dynamic measures' would be taken, if necessary (see Elias Hazou, '*PEO says strategy on foreign workers 'modern-day slave trade*'', Cyprus Mail, 28 February 2023). The trade union claims that:

- The proposed changes will result in a major deregulation of the labour market;
- The new Strategy does not address the concerns and documented positions of the trade union movement, but instead exacerbates the existing problems;
- The revised Strategy undermines the very concept of what constitutes a collective agreement.

The union asserted that a collective labour agreement is drawn up and signed by the stakeholders. No other document or contract is acceptable. This must also apply at the operational level. The new mechanisms introduced would severely downgrade the role of stakeholders in assessing applications for the hiring of non-EU nationals. Moreover, there is no representative mechanism that can deliberate and substantiate actual workforce needs:

- Who, and based on what criteria, decides, and how will any labour shortages be documented?
- Who will confirm whether a shortage is related to genuine facts or whether it is the result of downgraded terms of employment and, consequently, is a breach of collective agreements?

The union also criticised the sweeping discretionary powers afforded to the minister of labour under the new Strategy, i.e. that the minister can decide, as he/she deems fit, the issuance of work permits. Another issue flagged relates to companies hiring temporary workers. Under the revised Strategy, businesses will be able to 'loan out' staff to other companies for short-term work.

According to PEO, 'essentially, the labour ministry is promoting modern-day slave trade'. It considers that setting a 30 per cent quota for businesses not implementing a collective agreement, coupled with the abolition of the quota per economic sector—which applied in the previous strategy—opens up the entire labour market, and in a way rewards or encourages poor employment practices since the terms of employment they offer are presumably worse than those provided for in collective agreements.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Cost of Living Allowance

Following the general strike/stoppage of work on 26 January 2023, just a few days before the presidential elections, demanding the restoration of the Cost Of Living Allowance (COLA), trade unions coordinated their actions in February 2023 to further their cause, as the new President was elected and has announced his ministers. The new Minister of Labour is 42-year old Yiannis Panagiotou who has to deal with the issue.

Dialogue initiated with the social partners by the former Minister of Labour, Kyriakos Kousios, ended in a deadlock, since it was not possible to reach a consensual agreement between the employers and trade unions. This is because the trade unions insisted on their claim for a full restoration of COLA (currently at 50 per cent) while the employers' side defended their position of abolishing the institution and introducing more modern practices.

It is worth noting, however, that the employers' organisations, OEV and KEVE, now seem to be prepared to back down on their position of completely abolishing COLA, provided that the trade unions do not insist on a full reintroduction. This is a development that is creating more fertile ground for a resumption of dialogue and gives scope for the prospect of successful negotiations on a common ground.

This development may well be connected to the position of the new President of the Republic, Nikos Christodoulides during the pre-election period for COLA to not be abolished.

OEB Director General Michael Antoniou indicated that it is not possible to engage in a productive dialogue unless both sides leave behind their fixed positions and said that for a productive dialogue with the new Minister of Labour, OEV is prepared to abandon its 'principal position of a complete abolition of COLA', provided that the other side does not insist on a full reintroduction. He said that he expects the new minister to take a balanced approach to the issues and suggested the way forward must ensure labour peace without mortgaging the future of the economy with rigid regulations, so that businesses can be competitive, and workers are satisfied.

The Chamber of Commerce's, KEVE, General Secretary, Marios Tsiakkis, stressed that the COLA institution is flawed and KEVE will not negotiate. However, he said that some concessions could be made to not abolish it, but under no circumstances can a 100 per cent reinstatement be accepted, indicating that the guilds should also make similar concessions on their part.

He stated that the Chamber understands that during the pre-lections the debates and positions of Nikos Christodoulides did not favour an abolition of COLA, but called for 'a middle ground' to be found, as businesses cannot afford a restoration of 100 per cent of COLA. He called for a common line to be found that will protect workers from inflation but also that businesses can respond, and that their competitiveness would not bw affected.

In addition to COLA, the Minister of Labour is facing numerous other challenges at the same time, such as pension reform, for example.

At the same time, the new strategy for the employment of workers from third countries recently approved by the former Council of Ministers is causing strong opposition among the trade unions, which are demanding that it must be withdrawn. In addition, on the trade unions' side, the issue of re-examining minimum wage continues to be important for them, which is of course rejected by the employers' side.

Czech Republic

Summary

(I) A bill amending the Labour Code will transpose the Work-life Balance Directive and the Directive on Transparent and Predictable Working Conditions.

(II) A Decree implementing the Directive on the recognition of professional qualifications in inland navigation has been adopted.

1 National Legislation

1.1 Transposition of EU directives

The Bill amending Act No. 262/2006 Coll., the Labour Code, will be deliberated by the government. Following approval, the Bill will proceed to Parliament.

This amendment primarily aims to implement two European directives, namely Directive 2019/1152 on transparent and predictable working conditions and Directive 2019/1158 on work-life balance of parents and carers.

The Bill is available here.

The Bill was discussed in the July 2022 and January 2023 Flash Reports.

It will introduce several important changes, in particular in relation to the Labour Code. The most important changes are mentioned below.

Conclusion of employment-related agreements through electronic means

The Bill sets forth specific rules regulating the conclusion of standard employment contracts, agreements on work activity (so-called 'DPČ'), agreements on the performance of work ('DPP'), as well as termination agreements using electronic means. In such cases, the employer is required to send the agreement to the employee's personal (private) e-mail address. This e-mail address should be the employee's exclusive e-mail address (i.e. it should not be the employer's e-mail address) and the employee must provide this e-mail address to the employer.

The employee then has the possibility to withdraw from the agreement within 7 days from its delivery to the employee's personal e-mail address, unless the performance of work has already started. The withdrawal must be made in writing, otherwise it is ineffective.

Obligation to provide information

Among other things, the Bill aims to transpose Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union ('Directive 2019/1152'), as well as Directive (EU) 2019/1158 on work-life balance for parents and carers ('Directive 2019/1158').

The Bill amends the current text of Section 37 of the Labour Code, which regulates employers' obligation to provide information under standard employment contracts to conform to the requirements of Article 4 of Directive 2019/1152. As regards the scope of the obligation to provide information, the new provision covers the scope set forth in Directive 2019/1152 – it now includes mandatory information on the probation period, training entitlement, relevant social security institutions, etc. The information must be provided within 7 days from the commencement of employment in writing. Any changes must, at the latest, be communicated to the employee on the day the changes enter into effect. One aspect that might be problematic is that the employer does not have the obligation to inform employees of any changes that result from modifications to

collective agreements. Although Article 6(2.) of Directive 2019/1152 states that in case of any changes to relevant information, the employee must, at the latest, be informed on the date the change goes into effect, with the exception of 'changes in the laws, regulations and administrative or statutory provisions or collective agreements', in the Czech context, the employer is not required to inform employees of any changes to collective agreements, hence, the obligation would likely not fulfil its purpose.

The Bill transposes Article 7 of Directive 2019/1152 on additional information for workers posted to another Member State or to a third country (Section 37a of the Labour Code).

For employees employed under DPP and DPČ, the obligation to provide information will apply proportionately.

DPP and DPČ

The Bill amends the provisions relating to DPP and DPČ, which are a special form of employment agreement with a distinct scheme, similar to so-called zero-hours contracts. Under DPP, an employee can work for up to 300 hours per calendar year. Under DPČ, an employee may perform work up to half of the statutory weekly working hours (up to 20 hours per week) on average within a reference period of up to 52 weeks.

DPP and DPČ are, as a rule, subject to the same regulations as standard employment contracts, with the following exceptions (as they would be amended by the Bill):

- transfers to a different post;
- temporary assignments;
- severance pay;
- termination of employment;
- remuneration, with the exception of rules on minimum salary and most mandatory extra payments (such as extra payment for night work, weekend work, etc. – but not extra payment for overtime);
- travel compensation and compensation provided for remote working.

The employer is not required to assign work to the employee. The only rule adopted to limit uncertainty in relation to DPP and DPČ would be the new rule to be introduced by the Bill that the employer must schedule any work assignment at least 3 days in advance, i.e. 3 days prior to the start of the work shift or prior to the period for which the working hours are scheduled, unless a different advance notice procedure is explicitly agreed with the employee (which can be shorter than 3 days).

Given the short 3-day prior notice period for the assignment of work, which can be further reduced upon the parties' agreement, the employer would be able to schedule the working hours in such a way that DPP and DPČ employees could be effectively prevented from receiving compensation from the employer for the first 14 days of a temporary incapacity for work. Although the official documentation states that this should be subject to the principle of public order and good morals, there is a risk that employers might abuse it.

As stated above, for employees employed under a DPP and DPČ, the obligation to provide information will apply proportionately. Apart from the above, the employer must also inform the employee of the 'expected extent of working hours per day or per week'. However, this 'expected extent' does not have to be complied with and is not strictly binding for the employer.

Employees employed under a DPP and DPČ are further excluded from entitlement to compensation for the duration of certain types of leave otherwise provided to employees employed under standard employment contracts, e.g. for important personal reasons, such as a wedding, medical exam, etc. This is the case without sufficient justification.

An employee employed under a DPP and DPČ may request the employer to employ him/her under a standard employment contract, if their DPPs and DPČs with the employer amounted to at least 180 hours over the past 12 months. The employer is required to respond in writing within 1 month after receipt of the request and must provide reasons for his/her decision.

Should the employee be of the opinion that their employment relationship was terminated by notice—which is 15 days as opposed to the 2-months' notice period of 'standard' employees—they may request the employer to provide reasons for the notice. The employer is then obligated to respond – the period within which the employer must respond is not mentioned.

When the Bill goes into effect, employees employed under a DPP and DPČ will be entitled to annual paid leave. The rules applicable to employees employed under a standard employment contract would apply. However, with effect as of 01 January 2024, a special rule would be introduced, whereby distinct rules for the calculation of paid annual leave would apply, stating that for the purposes of this calculation, these employees have working hours in the extent of 20 hours per week. This is to ensure some standard of annual paid leave due to the fact that these employees do not have to be assigned work in a standard way, a rule that has been criticised as well.

Compensation for remote working

The Bill introduces compensation for remote working. Under the new provision of Section 190a of the Labour Code, the employer is required to provide compensation to the employee for all costs incurred in connection with remote working.

The compensation should consist of the following:

- costs demonstrably incurred in direct connection with the performance of work by the employee;
- flat-rate compensation – it is, however, to only be provided if set in the employer's regulations or agreed in writing, and for enumerated items (such as power and electricity, water supply, etc.). The basic amount of the flat-rate compensation is based on statistical data, and at the beginning should be set to CZK 2.80 per hour (approx. EUR 0.12). To the extent covered by the flat-rate compensation, the employee will not be entitled to costs demonstrably incurred in direct connection with the performance of work (see above). The flat-rate compensation can be higher than the basic amount stated above, but would then be subject to tax.

Request for parental leave

The employee would have to re-request parental leave at least 30 days in advance, if possible under the circumstances, i.e. if not prevented by important reasons on the part of the employee or employer. The request must include the length of the requested leave.

Right to adjustment of working hours

Employees who are taking care of a child that is younger than 15 years, pregnant employees, employees who are able to prove that they are taking care of a person with a level II or higher dependency have a right to request shorter working hours in writing or other adequate adjustments of their working hours, and the employer is require to allow such an adjustment, unless this is not possible for serious operational reasons. These employees may request in writing a renewal or partial renewal of the extent of their original working hours.

Employees who are taking care of a child that is younger than 9 years, pregnant employees, or employees who are able to prove that they are taking care of a person with a level II or higher dependency may request in writing to perform remote work (see above). The employer must give a reasoned written reply in case of rejection of the request.

If the employer rejects the request, the employer must give a written reasoned rejection.

Remote working arrangements

The new Section 317 of the Labour Code regulates the conditions under which remote working is to be performed.

Remote working is to always be performed based on agreement – the only exceptions to this rule, i.e. when the employer can unilaterally order remote working are situations when the state authorities recommend this as a special measure (e.g. due to a pandemic), but only for a specific period of time, if the nature of the work allows it, and on the condition that the place of performance of remote working is suitable.

The new provision retains special rules for employees who perform remote working but who at the same time schedule their own working hours.

Delivery of employment-law documentation

The Bill further amends rules on the delivery of enumerated employment-law documentation (in particular, notices of termination, immediate terminations, including during the probation period, etc.).

The relevant documentation must be delivered to the employee directly in the following way:

- at the employer's workplace;
- via data box;
- via other electronic means;
- wherever the employee is encountered.

If delivery at the employer's workplace or via data box is not possible, the documentation may also be delivered by postal services – which must comply with the requirements set by the Labour Code.

In case delivery takes place at the employer's workplace or elsewhere directly by the employer, the documentation will be considered to have been delivered even if the employee does not accept the delivery.

Delivery via other electronic means (see above) is possible if the employee provides explicit consent in writing, listing the employee's own personal e-mail address (not an e-mail address belonging to the employer). The consent may be revoked by the employee. The documentation is considered as having been delivered if the employee does not confirm delivery within 15 days.

Several changes have also been introduced for the delivery of documentation by the employee to the employer. Specifically, the Labour Code explicitly specifies that the documentation is considered to have been delivered when the employer received it. If the employer refuses to accept delivery of the documentation or makes delivery at the employer's headquarters impossible, the documentation is considered as having been delivered. The documentation delivered via electronic means is delivered on the day on which the employer confirms receipt. If the employer does not confirm receipt, the documentation is considered as having been delivered on the last day of said deadline.

Sanctions and shared burden of proof

The Bill also introduces sanctions (fines) for failure to comply with the new rules and obligations.

The Bill will further extend the so-called shared burden of proof in civil proceedings. In case the employee as a plaintiff makes claims from which it can be concluded that the employer as a defendant gave the employee notice of termination or immediate termination because the employee demanded his or her rights as enumerated in Section 133a(2) of Act 99/1963 Coll., the Civil Procedure Code, as amended (including the fulfilment of the information obligation, probation period obligations, certain flexible arrangements, etc.), then the employer needs to prove that the notice of termination or immediate termination were given for lawful reasons to succeed in the proceedings.

Transposition of Directive 2019/1152

Under Article 8 of Directive 2019/1152, in case of renewal of a contract for the same function and tasks, the employment relationship shall not be subject to a new probation period. According to the Czech Labour Code, as well as the related case law (see judgment of the Supreme Court, No. 21 Cdo 3480/2016, 21 February 2017), it is possible to agree on a probation period when concluding an employment contract, even if the same activities had been previously performed by the employee under a DPP or DPČ (see above) – the argument is that the standard employment contract substantially differs from a DPP and DPČ.

Under Article 9 of Directive 2019/1152, Member States shall ensure that an employer neither prohibits a worker from taking up employment with another employer outside the work schedule established with that employer, nor subjects a worker to adverse treatment for doing so. Member States may lay down conditions for the use of incompatibility restrictions by employers on the basis of objective grounds, such as health and safety, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interests. However, under Section 304 of the Labour Code, employees may not engage in gainful activities that are identical to the employer's business scope without the employer's prior written consent. The business scope is interpreted as denoting activities that the employer has listed in public registers (commercial register, trade register, etc.), whilst this is purely formal and the employer does not even have to perform them (see, e.g. resolution of the Supreme Court, No. 21 Cdo 3980/2016, 12 July 2017). Is such cases, there would be no objective grounds for the restriction in light of Directive 2019/1152 – as there is not necessarily a genuine need to protect the business. Therefore, in this regard, Section 304 of the Labour Code may not fully conform to the requirements of Directive 2019/1152.

Under Article 10 of Directive 2019/1152, Member States shall ensure that where an employee's work pattern is entirely or mostly unpredictable, he/she shall not be required to work unless both of the following conditions are fulfilled: a) the work takes place within predetermined reference hours and days, and b) the worker is informed by his or her employer of a work assignment within a reasonable notification period. Where these requirements are not met, a worker shall have the right to refuse a work assignment without adverse consequences. Although the DPP and DPČ scheme could qualify as unpredictable, reference hours and days would not be set. As regards the notice period for assignments of work, it is 3 days, unless the parties agree otherwise (upon agreement, this period can be even shorter than 3 days – see above).

Under Article 11 of Directive 2019/1152, where Member States allow for the use of on-demand or similar employment contracts, they shall take one or more of the following measures to prevent abusive practices, i.e. a) limitations to the use and duration of on-demand or similar employment contracts; b) a rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours based on the average hours worked during a given period; c) other equivalent measures that ensure effective prevention of abusive practices. This has not been fully transposed. DPP and DPČ are

essentially on-demand contracts. There are no special restrictions as to when these can be used within the meaning of Directive 2019/1152 (under the Labour Code, the employer has the obligation to ensure that employees are preferentially hired under a standard employment contract, not on the basis of DPP or DPČ, however, this obligation is not enforceable and employers are not sanctioned). There is no rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours based on the average hours worked during a given period or similar measure.

Transposition of Directive 2019/1158

According to Article 5 para. 2 of Directive 2019/1158, Member States shall ensure that two months of parental leave cannot be transferred. Under Czech law, each employee has the right (not obligation) to draw parental leave until the child is 3 years old, i.e. both parents can take leave at the same time. However, this leave is not paid by the employer, and employees must apply to receive a parental allowance from the State. The maximum total amount of parental allowance that can be paid out is CZK 300 000 (i.e. approx. EUR 12 708) for a single child, and CZK 450 000 (i.e. approx. EUR 19 058) in case of multiple births/adopted children – this amount is drawn in instalments which are mostly determined by the parents for a period that is also determined by the parents. The parental allowance can only be drawn by one of the parents at any one time, but they can rotate in drawing the allowance – even if both parents are able to take parental leave, only one can draw parental allowance, which means that one of the parents would not be earning an income, thus discouraging this parent from taking parental leave. Nevertheless, there is no obligation for an employee to take parental leave and no obligation to draw parental allowance. This means that one of the parents does not have to choose either of these (this would most likely be the father) and leave the entitlements to the other parent (this would most likely be the mother). In other words, no measure has been introduced that ensures that the entitlements are not fully transferred to the other parent and Article 5 para. 2 of Directive 2019/1158 has therefore not been transposed.

According to Article 8 para. 3 of Directive 2019/1158 on parental leave, the payment or allowance shall be set in such a way as to facilitate the take-up of parental leave by both parents. Although it is possible for parents to rotate in taking parental leave allowance under Czech law, no specific measure is being adopted to promote the taking of such leave by both parents – (for more details, see above).

1.2 Inland navigation

Decree No. 48/2023 Coll., delineating the activities of crew members of a vessel and stipulating details on the verification of professional capacity of persons to navigate vessels, to operate vessels and to perform other activities in inland navigation, has been adopted, published and will enter into effect on 01 March 2023.

The Decree replaces the previous Decree No. 45/2015 Coll. on the capacity of persons to navigate and operate vessels in light of Directive 2017/2397 and Directive 2020/12.

The Decree is available here.

It aims to transpose Directive (EU) 2017/2397 of the European Parliament and of the Council of 12 December 2017 on the recognition of professional qualifications in inland navigation and repeals Council Directives 91/672/EEC and 96/50/EC (the 'Directive 2017/2397'), as well as the Commission Delegated Directive (EU) 2020/12 of 02 August 2019 supplementing Directive (EU) 2017/2397 of the European Parliament and of the Council on standards for competences and corresponding knowledge and skills, for practical examinations, for approval of simulators and for medical fitness (the 'Directive 2020/12').

The Decree regulates the activities that are to be performed in different roles by crew members of vessels in inland navigation and sets out the required qualifications and their examination in accordance with Directive 2017/2397 and Directive 2020/12.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

The government has put forward a proposal that aims to strengthen efforts against sexual harassment, which is based on a tri-partite agreement from 2022.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Initiatives to fight sexual harassment at the workplace

This legislative proposal is the result of a tri-partite agreement from 2022 between the (former) government and social partners. The purpose of the proposal is to strengthen efforts against sexual harassment at the workplace, and entails amendments to both the Equal Treatment Act, Occupational Health and Safety Act, and Act on Vocational Education.

It proposes, amongst others, that in grave cases of sexual harassment, an employee should be entitled to higher compensation. In addition, the victim should be able to seek compensation under the Equal Treatment Act.

With regard to the work environment, the proposal clarifies the duties of the employer and employees and stipulates that the duty to inform of any problems at the workplace also applies to the psychological working environment, and extends to sexual harassment at work.

The link to the tripartite agreement (agreement and explanatory provisions) of March 2022 is available here.

The link to the legislative proposal, L 31 of 01 February 2023 is available here.

Estonia

Summary

(I) The government has adopted a development plan for well-being, which includes activities for the legal regulation of labour relationships.

(II) The Transport Trade Union has reached an agreement on raising the wages of bus drivers.

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 Development plan for well-being

The Government of the Republic of Estonia has approved the development plan for well-being prepared by the Ministry of Social Affairs, which sets strategic goals for the balance between family and work for the period 2023–2030.

The development plan focusses on the well-being and livelihood of children and families, employment and work life, the livelihood of the elderly and their inclusion in society, the functioning of the social welfare system, and the promotion of gender equality and ensuring equal treatment of minority groups.

The development plan is generally based on the needs of Estonian society with the aim of increasing well-being on the whole. The best defence against poverty is a decent wage from work. From the perspective of labour law, it is important for the State to support employers in adapting to rapid changes, including the continuously changing labour market situation, but any flexibility (including platform work) may not lead to a decline in people's rights (salary, vacation, protection).

Labour relationships and their legal regulation are also covered by the development plan. The major developments on the labour market are described as follows:

- Working under various contractual relationships and non-traditional forms of work has become increasingly common. The share of employment and agency contracts has grown, project-based work is widespread.
- The use of digital tools in the labour market and the need for flexible working hours and workplaces are on the rise. The number of employees working remotely is increasing.
- Flexible work arrangements can help different groups of workers participate in the labour market (e.g. parents of young children, workers with special needs), but may also lead to higher workloads, a blurring of the boundaries of work and rest time, a deficient working environment and an increase in inequality (e.g. in income, by region, by language).

Taking these developments into account, the following actions are planned:

- raise employers' and employees' awareness of occupational safety and labour relationships;
- develop a legal framework for labour relationships and occupational safety, taking the expectations of workers and employers into account;
- support flexible ways of performing work, creating suitable opportunities to use remote working and the flexible organisation of working time;
- support and recognise opportunities for working persons to participate in collective labour relationships, support social dialogue and collective negotiations and the conclusion of collective agreements;
- resolve disagreements related to work-life balance quickly and satisfactorily in case of disputes.

4.2 Collective agreement for bus drivers

The social partners Transportation Trade Union and the Association of Automobile Companies have agreed on amendments to the passenger transport general collective agreement, according to which the salary of bus drivers will increase at a faster pace than previously planned.

According to the agreement, from 01 October of this year, the minimum monthly salary of a bus driver will increase to EUR 1 300, from 01 April 2024 to EUR 1 350 and from 01 October 2024 up to EUR 1 400. Today, the minimum wage for full-time bus drivers is EUR 1 250 per month. The general monthly minimum wage in Estonia is EUR 725 gross.

An agreement was also reached on the new minimum salary, which will apply from 01 February 2025 to bus drivers who drive on bus routes operating after the conclusion of new public service public procurement contracts. According to the agreement, the goal is to apply wages at the level of the Estonian average wage to bus drivers who are driving on routes under the new contracts.

According to the Transport Trade Union, it is crucial to ensure the future growth of employees in the entire bus sector, and the proposed change creates conditions for better salary agreements for bus drivers in the future as well.

This collective agreement is one of the most important ones in Estonia that has been concluded in the private sector.

Finland

Summary

(I) The amendment to improve the status of foreign berry pickers and amend the Seasonal Work Decree has been postponed.

(II) The Labour Court has ruled on the exclusion of fixed-term employees from an incentives system based on the general collective agreement for municipal civil servants and employees in municipalities.

1 National Legislation

1.1 Seasonal work

The Ministry of Economic Affairs and Employment has been preparing an amendment to the Seasonal Work Decree (*Valtioneuvoston asetus maatalouden ja matkailun alaan kuuluvista kausiluonteista toimintaa sisältävistä toimialoista*, 966/2017) that would improve berry pickers' status. In the future, entry into the country would require the establishment of an employment relationship between the picker and the company. The draft amendment to the Decree was submitted for comment. Once comments were received, the Ministry decided to postpone the preparation of legislative amendments due to legal problems that were addressed, for example by the Ministry of Justice and the Ministry of Social Affairs and Health in their comments on the draft.

2 Court Rulings

2.1 Fixed-term work

Labour Court, TT 2023:4, 07 February 2023

The case entailed the application of an incentives system based on the general collective agreement for municipal civil servants and employees in municipalities and whether the city in question could exclude its two fixed-term employees from the incentives system. The Court referred to Clause 4 of Directive 1999/70/EC and held that the purpose of the ban of discrimination is to prevent employers from using fixed-term contracts to deny rights that apply to permanent employees. The Court also referred to the CJEU, case C-677/16, 05 June 2018, *Montero Mateos* as an example. Moreover, among others, the regulation of equal pay in Directive 2006/54/EC was referred to as was Article 157 of the Treaty on the Functioning of the European Union. According to the Court, it was not possible to exclude the two employees in question from the incentives provided by the incentives system in the collective agreement.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Assessment of the Equal Pay Programme

An overall assessment of the tripartite Equal Pay Programme and the equal pay measures included in the Programme of Prime Minister Sanna Marin's government has been made on the basis of the available background material and a round of interviews. The report was published by the Ministry of Social Affairs and Health (Reports and Memorandums of the Ministry of Social Affairs and Health 2023:1).

The main objective of the Equal Pay Programme is to reduce the gender pay gap. The parties to the Programme agree on the importance of the main objective and the need to maintain the Equal Pay Programme. In the report published on 02 February 2023, the rapporteur presented 11 recommendations. With regard to the main objective, the rapporteur recommended conducting a long-term economic impact analysis to examine the effects of the Equal Pay Programme, legislative amendments, economic cycles, structural changes in the labour market and labour market measures on changes concerning the difference in average earnings between women and men. The rapporteur recommended that due to changes in collective bargaining in the labour market, efforts be made to encourage parties to collective agreements to actively participate in the Equal Pay Programme. In addition, the rapporteur recommended that a system assessing the Equal Pay Programme be developed so that a measure-specific ex-ante evaluation could be made in addition to an external assessment when agreeing on measures.

France

Summary

(I) The government has specified the conditions of collective bargaining agreements related to emergency measures to protect purchasing power.

(II) The Court of Cassation has ruled on the contestation of the appointment of a local representative on the conditions under which the negotiation of an agreement on the number and scope of separate establishments must be conducted, and on the nullity of an agreement on fixed annual working time in days.

1 National Legislation

1.1 Collective bargaining and measures to protect purchasing power

Decree No. 2023-98 of 14 February 2023 implements Law No. 2022-1158 of 16 August 2022 on emergency measures to protect purchasing power in relation to collective bargaining and employee savings (see also September 2023 Flash Report).

It specifies the provisions on the extension procedure for collective bargaining agreements on wages, the criteria to be used by the Ministry of Labour to decide on a merger of collective bargaining agreements and the online procedure for filing profit-sharing agreements and employee savings plans.

Extension procedure for collective bargaining agreements on wages

An extension procedure is subjected to an accelerated procedure when the minimum wage has increased at least twice in the 12 months prior to the conclusion of the collective bargaining agreement in compliance with Articles L. 3231-5, L. 3231-6 to L. 3231-9 or L. 3231-10 of the French Labour Code. The Minister of Labour has two months from receipt of the request for extension to extend the agreement. At the end of this period, in case no response is submitted by the Minister of Labour, the extension will be considered to have been rejected.

These provisions shall apply to agreements concluded as of 17 February 2023.

Criteria to decide on a merger of collective bargaining agreements

The criteria set out in Article L. 2261-22 of the French Labour Code are specified to enable the Minister of Labour to assess the weakness of a branch's contractual activity and, if necessary, to proceed with a merger.

Thus, the Ministry of Labour will assess the low number of agreements concluded over the last two years, the low number of topics covered by compulsory negotiation (see Articles L. 2241-1 to 2 and L. 2241-7 to 17 of the French Labour Code) and the number of topics covered over the last three years. The absence of a meeting of the joint negotiating and interpretation committee in a branch may also be a criterion for a decision to dismiss a merger decision. The decree specifies that this decision may be taken if the committee has not met in the previous year.

Online procedure for filing profit-sharing agreements and employee savings plans

The decree also sets out the conditions under which a profit-sharing agreement drafted through the online procedure can benefit from social and tax exemptions.

2 Court Rulings

2.1 Appointment of local representatives

Social Division of the Court of Cassation, No. 21-13.206, 01 February 2023

In the present case, a collective agreement concluded within a major retailer provided for the establishment of a Social and Economic Council and four local representatives in sites with more than 11 employees. Following the resignation of one of the four representatives of a Parisian site, all of whom had been nominated by a trade union on the basis of the trade union representativeness criterion laid down in the agreement, the Social and Economic Council designated his replacement from among two candidates during a video-conference meeting and chose the one who did not belong to the trade union.

The trade union challenged the appointment before the Paris Court of Justice by petition and without being represented by a lawyer.

According to the French Labour Code, local representatives may be set up if a company agreement, determining the number and scope of separate establishments provides for this (see Article L. 2313-7 of the French Labour Code). It is up to this agreement to lay down the procedures for their appointment, though it is specified that the local representatives must be members of the Social and Economic Council or appointed by it.

The Court of Justice declared itself competent and annulled the appointment. The Social and Economic Council and the employees appealed.

According to the Social and Economic Council, which argued on the basis of Article 750 of the French Civil Procedure Code, the Court, in ruling on the appointment of a local representative, must be seized by writ of summons. According to this article, referral is made by writ of summons, but it may also be made by petition, particularly in certain matters set by the law or regulations.

The Court of Cassation ruled against the Social and Economic Council and approved the Court of Justice's referral by petition on the basis of Article R. 2314-24 of the French Labour Code, which provides for referral by petition when professional elections or the appointment of trade union representatives to the Social and Economic Council are disputed. Admittedly, this text does not refer to the appointment of a local representative, but since local representatives are members of the Social and Economic Council or appointed by it, this text applies, according to the Court of Cassation. Using the same argument, namely that the local representatives are members of the CSE or appointed by it, the Court of Cassation considered that the parties are exempt from the requirement to be represented by a lawyer as provided in Article 761, 2° of the French Civil Procedure. This article provides for the requirement to hire a lawyer for particular matters listed in Articles R. 211-3-15 and R. 211-3-16 of the French Judicial Code. These latter texts specifically exempt hiring a lawyer for disputes on the regularity of electoral operations and the appointment of trade union representatives to the CSE.

The decision of the Court of Cassation also specifies that the legal action to contest the appointment of a local representative is under the responsibility of the judicial court of the place where the appointment of the representative is intended to take effect.

Hereby, the Court of Cassation provides a better understanding of local representatives, created by Ordinance No. 2017-1387 of 22 September 2017. Criteria related to their appointment are similar to those of members of the Social and Economic Council.

This decision of the Court of Cassation is the first to remedy the lack of provisions on local representatives in the French Labour Code.

Moreover, this decision can be considered a step forward in clarifying procedural standards. It appears to comply with Directive 2002/14/EC of 11 March 2002

establishing a general framework for informing and consulting employees in the European Community.

2.2 Information and consultation

Social Division of the Court of Cassation, No. 21-15.371, 01 February 2023

In the present case, the airline company signed a company agreement with trade unions representing 74.41 per cent of the votes in the last professional elections. This agreement provided for the division of the company into seven establishments, each having their own Social and Economic Council, and a central Social and Economic Council.

According to Article L. 2313-4 of the French Labour Code, in the absence of an agreement concluded under the conditions mentioned in Articles L. 2313-2 and L. 2313-3 of the French Labour Code, the employer sets the number and scope of separate establishments, taking the management autonomy of the head of the establishment into account, particularly in terms of personnel management.

According to Article 5 of Directive 2002/14/EC of 11 March 2002, establishing a general framework for informing and consulting employees in the European Community, Member States may entrust the social partners at the appropriate level, including at the undertaking or establishment level, with the task of freely defining at any time by way of negotiated agreement the arrangements for informing and consulting employees. These agreements, and agreements that exist on the date referred to in Article 11, as well as any subsequent extensions of such agreements, may, with due regard for the principles set out in Article 1 and subject to conditions and limits laid down by the Member States, specify provisions that diverge from those referred to in Article 4.

According to Article 4.4 of the Directive, consultations shall take place at the relevant level of management and representation, depending on the subject matter.

On 02 August 2018, the pilots' union summoned the company and signatory unions before the tribunal to request the cancellation of the company agreement of 22 June 2018, as well as the setting up of a separate establishment and a Social and Economic Council specific to airline pilots in compliance with Articles L. 2313-2 and following of the French Labour Code.

The Court of Cassation considered that the signatories of an agreement concluded under the conditions mentioned in Articles L. 2313-2 and L. 2313-3 of the Labour Code freely determine the criteria for setting the number and scope of separate establishments within the undertaking, provided, however, in view of the principle of participation enshrined in paragraph 8 of the Preamble to the Constitution of 27 October 1946 and the Directive mentioned above, that they are such as to allow the representation of all employees.

Hereby, the Court of Cassation specifies the conditions under which the negotiation of an agreement on the number and scope of separate establishments must be conducted. While granting broad freedom, minimum requirements for contractual freedom can be found in the basic norms of the negotiating parties.

Just like the previous decision (see Social Division of the Court of Cassation, No. 21-13.206, 01 February 2023), this decision complies with Directive 2002/14/EC of 11 March 2002. Thus, a general trend stands out in French case law aiming to further implement European legislation on staff representation and its new forms since the introduction of Ordinance No. 2017-1387 of 22 September 2017.

2.3 Agreement on fixed annual working time in days

Social Division of the Court of Cassation, No 21-19.512, 08 February 2023

In the present case, an employee working on a fixed annual working time in days contract had been dismissed and claimed overtime pay, holiday pay and compensation for concealed work.

He claimed that his fixed-term contract (in other words, fixed annual working time in days contract) was null and void because the company agreement had not established sufficient control of his workload to verify whether it was compatible with a reasonable scope and duration.

The agreement, which was dated 29 June 2016 and therefore preceded the reform of 10 August 2016, provided as follows:

- that employees with an annual day package had to submit a monthly statement to human resources indicating the number and date of days worked, as well as the dates and qualification of days not worked, including a statement on the duration of daily and weekly rest periods;
- that an interview should take place annually with each employee working under a fixed-term contract (to discuss workload, length of working days, organisation of work, work/personal and family life balance);
- that the employee had to explicitly state that he felt overworked and to alert the employer, thus initiating a meeting between the worker and his superior to remedy the situation, and that if the employer noted that the organisation of the employee's work and/or his workload resulted in a breach of the daily and weekly rest periods, he/she had to call for a meeting with the employee.

Having brought an action before the Employment Tribunal, the employee appealed its decision before the Court of Appeal.

The Court of Appeal rejected the employee's request. It stated that the monitoring mechanism that had been set up by this agreement appeared satisfactory, since it provided for both systematic annual monitoring and the possibility of an alert at the employee's initiative.

For the Court of Cassation, the company agreement was insufficient in the absence of a workload monitoring mechanism. Recalling that the right to health and rest is a constitutional requirement and that adaptations relating to working time must respect the general principles of the protection of the safety and health of workers (Dir. 2003/88/EC of 04 November 2003; Charter of Fundamental Rights of the European Union, Article 31).

Consequently, any agreement on a fixed number of working days must be provided for by a collective agreement whose stipulations ensure that reasonable working hours and daily and weekly rest periods are respected.

However, the various 'stages' provided for in the company agreement (alert by the employee or observation of non-compliance with daily or weekly rest periods initiating an appointment with the superior) did not establish effective and regular monitoring that enabled the employer to remedy in good time any workload that might be incompatible with reasonable working hours.

These provisions were therefore not such as to ensure that the working hours and workload remained reasonable. The fixed-term contract was therefore null and void.

The case was quashed and referred back to the Court of Appeal composed otherwise.

In this decision, in line with the jurisprudence of the Court of Cassation, the Court of Cassation is once again quite demanding as regards the monitoring of workload of an employee under a fixed-term agreement. Invoking principles from European legislation, the Court of Cassation once again underlined the difficult conciliation between this

French particularity, fixed-term agreements, and the protection offered by the European legislation on employees' right to health and rest.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Germany

Summary

(I) The Whistleblower Protection Act has not been approved by the *Bundesrat* and cannot enter into force for now.

(II) According to a ruling of the Federal Administrative Court, breaks taken during the obligation to be on-call do not automatically constitute working time.

(III) The Federal Labour Court has ruled that a provision in a collective agreement, which provides for a higher supplement for irregular night work than for regular night work, does not violate the principle of equality if an objective reason exists for unequal treatment.

(IV) The Administrative Court of Hanover has declared the permanent data collection of employee activities at a logistics centre permissible.

1 National Legislation

1.1 Whistleblower protection

The Whistleblower Protection Act, which was passed by the *Bundestag*, has not received the necessary approval in the *Bundesrat*. The new regulation can therefore not enter into force.

2 Court Rulings

2.1 Working time

Federal Administrative Court, 2 C 7.21, 13 October 2022

According to a ruling of the Federal Administrative Court, breaks taken during the obligation to be on-call do not automatically constitute working time within the meaning of Article 2 No. 1 of Directive 2003/88/EC. In the court's opinion, an overall assessment of all relevant circumstances of the individual case is necessary to determine whether the restrictions imposed on the employee are of such a nature that, objectively speaking, they significantly limit his or her ability to freely organise his/her time and pursue his or her own interests. The court explicitly referred to the decision of the CJEU in case C-107/19, *Dopravní podnik hl. m. Prahy*, 09 September 2021.

2.2 Bonuses for night work

Federal Labour Court, 10 AZR 332/20, 22 February 2023

The Federal Labour Court has ruled that a provision in a collective agreement, which provides for a higher supplement for irregular night work than for regular night work, does not violate the general principle of equality if an objective reason exists for unequal treatment and if this reason is identifiable in the collective agreement. Such a reason could also be the more difficult plannability of occasional night work.

The defendant is a company in the beverage industry. During the period in dispute, the plaintiff worked night shifts within the framework of a rotating shift schedule. The applicable collective agreement contained the provision that the supplement to hourly pay for regular night work was 20 per cent and 50 per cent for irregular night work. Workers who perform permanent night work or are assigned to a three-shift rotation are also entitled to one day off for every 20 night shifts worked. The plaintiff received the 20 per cent supplement for her regular night shift work.

The plaintiff argued that the different levels of night work bonuses violated the general principle of equality under Article 3 (1) of the Basic Law (*Grundgesetz*). There was no objective reason for the difference in treatment from the perspective of occupational health and safety, which was the only relevant aspect. Entitlement to time off for regular or irregular night shifts did not eliminate the unequal treatment, as it did not compensate for the specific burdens caused by night work. She demanded further night work bonuses amounting to the difference between the bonus for regular and irregular night work.

The Labour Court dismissed the action. The Regional Labour Court upheld the action in part. Following a request for a preliminary ruling by the Federal Labour Court, the CJEU (in cases C-257/21 and C-258/21, 07 July 2022, *Coca-Cola European Partners Deutschland*) ruled that the regulation of night work bonuses in collective agreements was not an implementation of Union law.

According to the Federal Labour Court, the regulation in the collective agreement does not violate the principle of equality of Article 3 (1) of the Basic Law. Employees who perform regular or irregular night work within the meaning of the collective agreement are comparable to each other. They were also treated unequally in that a higher supplement was paid for irregular night work than for regular night work. In the present case, however, there was an objective reason for such unequal treatment, and it was identifiable in the collective agreement. First, the collective agreement contained an appropriate compensation for the health burdens caused by both regular and irregular night work. In addition, the collective agreement also aimed to compensate for the burdens on workers who perform irregular night work because it is more difficult to plan this type of work. Within the framework of the autonomy of collective bargaining guaranteed by Article 9 (3) of the Basic Law, the parties to the collective agreement were not precluded from pursuing other purposes with a night work bonus in addition to the protection of health. This additional purpose resulted from the content of the collective agreement's provision. It was at the discretion of the parties to the collective agreement as to how they financially assessed and compensated for the aspect of more difficult plannability for employees who performed irregular night work.

2.3 Employee surveillance

Administrative Court of Hanover, 10 A 6199/20, 09 February 2023

The Administrative Court of Hanover has declared permanent data collection of employees' activities at Amazon Logistik Winsen GmbH to be permissible and has upheld the action against its prohibition by the State Commissioner for Data Protection in Lower Saxony. The procedure was not objectionable. The purpose of the checks was to control logistical processes; no personal data were monitored. The defendant argued in particular that there was a legitimate interest in the collection and processing of data. The individual performance values were collected to be able to respond to fluctuations in individual process paths when controlling logistics processes. On the basis of performance values, the plaintiff could determine whether the employees worked particularly quickly or particularly slowly on a given day and respond by redistributing the workload. In the medium term, the values would be necessary to reliably record the strengths and weaknesses of the employees and to take them into account in flexible scheduling. In addition, the procedure would enable the creation of objective and fair assessments for feedback and personnel decisions. The court agreed to the applicant's argumentation but allowed an appeal to the Higher Administrative Court.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Working time of lawyers

In an own-initiative opinion, the German Bar Association (*Deutscher Anwaltverein*) has pointed out that the requirements of working time law for salaried and in-house lawyers could lead to an irresolvable collision with the professional duties of lawyers because intervention may be necessary immediately and at any time. In the German Bar Association's view, the protection of clients' interests often requires immediate action without delay, regardless of the law firm's size and organisational form and regardless of professional field of law. The Association does not consider the existing exception in section 14 of the Working Time Act (*Arbeitszeitgesetz*) to be sufficient. Section 14(1) refers to "*temporary work in emergencies and in exceptional cases that occur independently of the will of the persons concerned and the consequences of which cannot be eliminated in any other way*". Section 14 (2) does not allow, for example, any deviation from the prohibition of work on Sundays and public holidays. The Association called on the legislator to find a suitable solution.

4.2 Statutory minimum wage and bonuses

In a motion, the AfD parliamentary group in the German Parliament called for an amendment to the Minimum Wage Act (*Mindestlohngesetz*) so allowances and special payments are not counted towards the minimum wage. The parliamentary group argued that the minimum wage limit is only reached in many employment relationships if allowances or supplements are included. This leads to a situation where, despite the increase in minimum wage, no higher total remuneration is actually paid. In addition, the idea of performance would be thwarted. The reason given by the MPs is that the legislator at the time 'did not clarify the definition of minimum wage and the eligibility of bonuses, supplements and special payments for minimum wage'. Thus, the question of eligibility was left to the courts. The parliamentary group has called on the Federal Government to draft a law that would clarify the minimum wage law and refers to the regulation on night bonuses, which are not taken into account.

Greece

Summary

A new Code of Private Maritime Law has been enacted.

1 National Legislation

1.1 Code of Private Maritime Law

A new era in Greek national maritime legislation is set to begin with the enactment of a new Code of Private Maritime Law (the 'New Code'). The New Code, which comes into force on 01 May 2023, replaces the existing code which dates back to 1958. A part of the new Law (Law 5020/Of. Gaz 29A/2023) concerns the regulation of the employment contract of seafarers.

In particular, the conclusion of seafarers' employment contracts has been newly regulated and the conditions for terminating such contracts have been restated.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Iceland

Summary

The Court of Appeal ruled that the State Mediation Officer did not have the authority to order a trade union to hand over its membership list.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Collective bargaining

Court of Appeal, No. 95/2023, 13 February 2023

On 13 February, the judgment of the District Court of Reykjavík ordering a trade union to hand over its membership list to the State Mediation Officer (see January 2023 Flash Report) was overturned by the Court of Appeal in case No. 95/2023. The Court stated that the State Mediation Officer did not have clear authority in law to demand the membership list. Since the right to collective bargaining and industrial action is protected by the Constitution and a mediation proposal constitutes a limitation to those rights, the law could not be interpreted broadly and therefore, the State Mediation Officer 's demand was rejected. Shortly thereafter, the State Mediation Officer stepped back from that specific dispute and another official was instated.

In addition to the trade union calling for more strikes, the main employers' organisation, the Confederation of Icelandic Enterprise (SA), called for a lockout of all of the trade union's members, namely approx. 20 000. However, industrial action was postponed once talks resumed and after ending and commencing again, the newly instated State Mediation Officer put forth a new mediation proposal on 01 March, which is expected to pass and become the next collective agreement.

However, the Icelandic Confederation of Labour (ASÍ) brought the issue of SA's lockout vote to the Labour Court, citing certain issues, for instance what companies were allowed to vote on the lockout and the weight of the votes. On 06 March, the Labour Court ruled in favour of SA in case no. 5/2023, as it was within its discretion to conduct the vote in accordance with the organisation's rules.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

The Labour Court has ruled on the possibility of a transferee to rely on a 'variation clause' to alter the terms and conditions of employment of a transferred worker after the transfer.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Transfer of undertakings

The Labour Court, ADJ-00026709, 27 January 2023, Farrell v Bidvest Noonan.

To what extent can a transferee rely on a 'variation clause' in the contract of employment of a transferred employee to alter his or her terms and conditions of employment after the transfer?

In *Farrell v Bidvest Noonan* ADJ-00026709, the claimant's contract of employment with the transferor provided that he was employed as a 'Parking Host' and set out his duties. The contract also contained a clause providing that it might be necessary to 'expand' his duties within the 'general scope' of his position or 'change' his functions. The clause further provided that the transferor reserved the right to assign other duties to the claimant, which right was subject to the express qualification that he would not be assigned duties which he could not 'reasonably perform'.

Following the transfer, the transferee insisted that the claimant take up the duties of a security guard. This was a role that the claimant could not perform as he did not hold the requisite licence from the Private Security Authority (PSA). The claimant submitted a complaint under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) to the Workplace Relations Commission (WRC). He submitted that the variation clause was not open-ended and required consideration of the extent of the variation, bearing in mind that he could not perform the duties of a security guard as he did not hold a PSA licence.

The WRC adjudication officer agreed and ruled that the transferee was in breach of the 2003 Regulations. She held that the variation clause did not provide the transferee with the scope to expand the claimant's role to such an extent as to fundamentally alter his terms and conditions of employment.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 European Works Councils

The Oireachtas Joint Committee on Enterprise, Trade and Employment held a hearing on the 08 February 2023 on the European Works Councils and Legislative Provisions for Dispute Procedure. The Committee heard from Dr Werner Altmeyer of the EWC Academy, who estimated that there were now between 140 and 180 multinational

companies using Ireland as the legal base for their EWCs, of which only 11 were Irish companies. Dr Altmeyer doubted whether the sanctions for infringement of the Irish law transposing Directive 2009/38/EC—the Transnational Information and Consultation of Employees Act 1996—could be regarded as 'effective, dissuasive and proportionate'. He pointed out that in Northern Ireland, a EWC could ask the High Court to impose a penalty of up to EUR 100 000. In Ireland, however, the maximum fine that could be imposed following a criminal trial on indictment before a judge and jury brought by the Director of Public Prosecutions, was EUR 22 219.75.

The Committee also heard from Philip Sack of EWC Legal Advisers, who was firmly of the view that there was a manifest problem with the transposing legislation which, in his view, would only be addressed when the European Commission issued further infringement proceedings.

Italy

Summary

(I) The '*Milleproroghe'* Act extends smart working until 30 June 2023.

(II) The *Sezioni Unite* of the *Corte di Cassazione* dealt with fixed-term contracts in the Symphonic-Opera Foundations.

1 National Legislation

1.1 Smart working

The Act of 27 February 2023 No. 14 converts the Legislative Decree of 29 December 2022, No. 198 (so called '*Milleproroghe'*) into law. The Act provides that fragile workers have the right to smart working until 30 June 2023, both in the private and public sectors (the Budget Law provided that smart working had to end by the end of March). Only private sector employees have the right to smart working if they have children under the age of 14 years.

2 Court Rulings

2.1 Fixed-term work

Corte di Cassazione, Sezioni Unite, No. 5542, 22 February 2023

The present case concerned a worker who had been repeatedly hired between 2006 and 2011 by a Symphonic-Opera Foundation for a series of performances that actually covered the entire theatre season. He claimed nullity of the fixed-term contract and requested the conversion of his contract into one of indefinite duration.

The Sezioni Unite examined the complex regulatory framework provided for the staff of Symphonic-Opera Foundations. Specifically, the law prohibited any form of new recruitment for a certain period. Any violation of this framework not only nullifies permanent employment contracts, but also the possibility of converting any contracts illegitimately concluded for a fixed term. In case of abusive succession of fixed-term contracts with the Opera-Symphonic Foundations, the worker can claim compensation for damage as well as for further prejudices, if adequately proven.

The Court recalled the CJEU's case law on fixed-term contracts, above all, CJEU, case C-331/17, 25 October 2018, *Sciotto,* and CJEU case C-494/16, 07 March 2018, *Santoro.*

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

A draft law seeks to implement Directive (EU) 2020/1057 concerning the posting of drivers in the road transport sector.

1 National Legislation

1.1 Posting of drivers in the road transport sector

Background information

The present project aims to implement Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No. 1024/2012.

Directive (EU) 2020/1057 defines in particular the conditions under which a driver is to be regarded as a posted worker within the meaning of Directive 96/71/EC and specifies the exceptions to the general rules on posting that apply to such workers. Furthermore, the Directive introduces a uniform Europe-wide reporting system for postings in the road transport sector. The road transport sector is to be made fair, efficient and socially accountable, while at the same time providing more legal certainty, reducing the administrative burden on transport companies and preventing distortions of competition.

Summary of major points

The aim of the draft law is, as mentioned, to adapt Liechtenstein's law to Directive (EU) 2020/1057. This shall be achieved through amendments to the Posting of Workers Act, concerning in particular the following points:

- Definition of the term 'mobile worker';
- Scope;
- Determination of competence of the enforcement authorities;
- Notification of mobile workers;
- Specification of controls;
- Information and cooperation obligations of involved companies;
- Infringements and penalties;
- Cooperation with competent authorities of other EEA Member States in road transport.

The enactment of the proposed amendments requires the adaptation of the Posting of Workers Act *(Gesetz über die Entsendung von Arbeitnehmern im Rahmen der grenzüberschreitenden Erbringung von Dienstleistungen, Entsendegesetz,* EntsG, LR 823.21).

It is expected that the government—after Parliament enacts the Posting of Workers Act—will also adjust the following Ordinance: Posting of Workers Ordinance (*Verordnung über die Entsendung von Arbeitnehmern im Rahmen der grenzüberschreitenden Erbringung von Dienstleistungen, Entsendeverordnung,* EntsV, LR 823.211.1).

Stage of the adoption process and next steps

The Liechtenstein government has submitted a draft law with an accompanying report, which has been submitted for consultation. The consultation will last until 14 April 2023, after which the government will evaluate the comments received and submit a report and motion to Parliament.

The draft law is available at: *Vernehmlassungsbericht der Regierung betreffend die Abänderung des Entsendegesetzes (Umsetzung Richtlinie (EU) 2020/1057).*

See here for the relevant EU Directive: Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012.

Importance of the development

Overall, the amendment is of minor significance. Nevertheless, it has some important implications for the economy, labour market, workers and employers. In the area of posting of workers, some important issues have been newly regulated.

Departing from previous lines of reasoning

The amendment departs from previous lines of reasoning because no new laws are being created, rather the existing structures are being used to implement the changes.

The Posting of Workers Act was already enacted over 20 years ago and has since become an important component of Liechtenstein's labour law.

Likely implications in the legal and political area

The purpose of the consultation of municipalities, courts, business and employers' associations, the Liechtenstein Trade Union and other organisations is precisely to give the government an idea of the likely implications in the legal and political area. For this reason, the government always adapts, depending on the outcome, the original draft law to the results of the consultation process where necessary before it is submitted to Parliament.

Likely implications for the EU acquis

The main purpose of the amendments is to implement Directive (EU) 2020/1057. An initial review of the draft law has revealed that the government is seeking transposition in line with the mentioned Directive.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Lithuania

Summary

The Constitutional Court held that the COVID-related government decision to temporary prohibit the provision of beauty and dental services was in line with the principles of the Constitution.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Pandemic-related restriction of economic activities

Constitutional Court, Case No. KT8-N1/2023, 24 January 2023.

By its ruling (Case No. KT8-N1/2023) of 24 January 2023, the Constitutional Court has recognised that the government's decision on the prohibition of the provision of beauty and dental services was not in breach of the Constitution of the Republic of Lithuania and Article 21 (1) of the Republic of Lithuania's Law on the Prevention and Control of Communicable Diseases in Humans. The Constitutional Court held that the impugned legal regulation was established to fight the COVID-19 disease (coronavirus infection) and that the legal regulation sought to implement the constitutional objective of public interest, namely the protection of human and public health.

The Constitutional Court further stated that in order to protect individuals from health threats (i.e. to reduce health risks and, in certain cases, where possible, to prevent such risks), following the order of quarantine due to the epidemic of COVID-19 , it was necessary to establish, *inter alia*, a legal regulation restricting the freedom of economic activity to prevent and manage the spread of the communicable COVID-19 disease. In this context, the Constitutional Court noted that on the basis of the special information available at that time, as well as taking into account the novelty and unpredictability of the situation as a result of the threat of the spread of a new communicable disease, there were grounds to believe that a situation could arise where failure to take effective measures in time would have caused irreparable damage to the values enshrined in the Constitution, including human health and life. The Constitutional Court held that the government, when establishing the impugned legal regulation, had no reason to believe that to achieve the constitutional objective and to safeguard the public interest, namely to protect human and public health, among others, by ensuring the provision of health care services not only to COVID-19 patients, but also to other persons who may have needed such services (i.e. employees), would have been possible with less restrictive measures than those established in the challenged Resolution.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

A new bill aims to amend the legislation of job retention plans. Another bill will regulate Sunday work in museums.

1 National Legislation

1.1 Bill on job retention plans

Introduced by a law in a law in 2006 inspired by French law, the aim of the employment maintenance plans (*plans de maintien dans l'emploi* - PME) is to intervene at an early stage, namely as soon as the company's difficulties become apparent. These plans are negotiated between the employer and staff representatives and as well as the unions. The social partners' initiative can be spontaneous. The *Comité de conjoncture* (CDC) monitors the development of economic redundancies and invites the parties concerned to negotiate when certain thresholds are exceeded (five redundancies over 3 months or eight redundancies over 6 months).

The PME is thus supposed to intervene upstream of a social plan and collective redundancy to reinforce the preventive character and ensure an anticipatory management of the effects of restructurings.

The PME is not very restrictive for the employer and does not prohibit dismissals. In principle, the employer agrees to implement the measures contained in the plan. However, its main advantage is that it gives access to certain aids and facilities financed by the State (Employment Fund): payment of training and retraining costs, higher rate of participation in early retirement, subsidies for recruitment, etc.

Since the State has always largely financed these measures, approval (*homologation*) of PME by the Minister was necessary. The aim of the bill is to thus strengthen State control and ensure proper allocation of resources.

To enable the CDC to monitor the development of the various measures and to control their effectiveness and efficiency, the social partners are required to provide, upon request, certain information listed in the law within one month. Refusal to do so or the provision of false information may lead to the withdrawal of the approval.

The rate of co-financing of training costs with a double ceiling of 480 hours and EUR 20 000 per employee is set at 50 per cent if the training is aimed at the creation of a new (internal) position and 100 per cent if it is aimed at the creation of an external position with an employer who has signed a pledge to hire employees. Only training provided by certain listed organisations is eligible.

If the employee resigns (unless the employer has engaged in serious misconduct) before the end of the training, he or she must reimburse the training costs. The employer will have to reimburse the costs if he/she dismisses the employee for economic reasons before the end of the training.

The law also sets out the formalities for applying for this co-financing and the deadlines to be respected.

Reference: *Projet de loi n°8153 portant modification du Chapitre III du titre Premier du livre V du Code du travail.*

1.2 Bill on Sunday work in museums

A bill aims to complete the list of activities exempt from the prohibition of Sunday work (Article L. 231-6 C.T.) by adding museums. The change is justified, in particular because

until now, the legal basis was uncertain (exception for 'public performance enterprises' was used), the cultural role of museums is important and Sunday opening is necessary to fulfil its mission.

Reference: *Projet de loi n° 8152 portant modification de l'article L. 231-6 du Code du travail.*

1.3 Ban on zero-hours contracts

A bill has been tabled to explicitly prohibit so-called ''zero-hours' employment contracts', as used in some European countries. The employee is hired for a variable weekly working time, which can be unilaterally reduced by the employer to zero hours per week.

Luxembourg law excludes such flexibility in any case. While the weekly working time of a part-time employee may vary within certain limits, an average number of working hours (and thus remuneration) must be guaranteed. Case law does not support flexible working time clauses (e.g. from 20 to 30 hours per week).

This bill has been introduced by a small minority political party which has little chance of success. It is based on the observation that despite their illegality, such contracts are nevertheless used in Luxembourg.

The bill aims to prohibit the minimum working time of zero hours and adds that

> "*If the working time is expressed in time intervals, the minimum working time may not be less than ten hours*."

Reference: *Proposition de loi n° 8147 portant modification de l'article 211-4 du Code du travail.*

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Cost of living index

In accordance with Luxembourg's system of automatic adjustment of salaries to the cost of living index (*échelle mobile des salaires)*, following the triggering of a threshold, all salaries were increased by 2.5 per cent on 01 February 2023 and will increase again by 2.5 per cent in April 2023.

According to the forecast of the Statistical Institute (STATEC), another 2.5 per cent increase will be due this year. To discuss the impact on companies (3 x 2.5 per cent wage increase in one year), the government will engage in tripartite discussions with the employers' organisation and trade unions. Possibly, the State will intervene to compensate the cost for the third wage increase. Trade unions furthermore insist that tax thresholds must be adjusted to inflation.

Malta

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Abusive work practices

There have been reports in the local press which make it clear that some workers are being subjected to real abuse and the current legislation is being blamed for this abuse. One such article is available here.

The report referred to in the article above (InclusRation) is available here.

The report deals with homelessness but addresses issues that lead to homelessness, including serious and systematic abuse of workers' rights (see Part 3 of the report).

Netherlands

Summary

(I) A legislative proposal has been submitted to introduce an hourly instead of a monthly statutory minimum wage.

(II) The reporting obligation for employers posting workers to the Netherlands has been evaluated, and certain improvements on that obligation have been proposed.

(II) As a Romanian company posting workers was ruled to be hiring-out temporary agency workers, the posted temporary agency workers were entitled to the employment conditions laid down in the generally binding collective agreement of the temporary agency work sector.

(IV) Following the three conditions determined in the *Hein v Albert Holzkamm GmbH & Co. KG* case, overtime has been included in the calculation of holiday pay.

(V) A seafarer could not refer to Dutch legislation on pay during illness as the social security legislation of his (Member) State is applicable.

1 National Legislation

1.1 Hourly statutory minimum wage

On Tuesday, 14 February 2023, the Senate *(Eerste Kamer)* agreed to the House of Representatives' *(Tweede Kamer)* initiative proposal to introduce a minimum hourly wage. It was considered high time to introduce a minimum hourly wage in the Netherlands instead of the current minimum monthly wage. This would be fairer because an hourly minimum wage differentiates whether people have to work 36 hours, 38 hours or 40 hours for the same minimum monthly wage. So far, the monthly minimum wage (level) varied depending on the weekly work week of 36, 38 or 40 hours. However, concerns were raised about the additional financial burden the increase in minimum wage will place on employers, especially SMEs. In a motion submitted on 07 February 2023, the government was asked to assess the economic situation of SMEs and to explore opportunities for reducing their financial burden, exploring the possible scope offered by the unemployment funds *(UWV-fondsen).*

Following the initiative proposal, the hourly statutory minimum wage will be fixed at EUR 10.60. The monthly statutory minimum wage will remain relevant for laws that refer to the Minimum Wage Act, the monthly wage being set at EUR 1 653.60. Insofar as wages are not fixed by time but depend on the performance of work for the purposes of the provisions under or pursuant to the Minimum Wage Act, the actual time spent by the employee performing work shall be regarded as working time.

1.2 Posting of workers

On 31 January 2023, the Final Report on the evaluation of the duty to notify under the Act on Working Conditions for Posted Workers in the EU *(Eindrapport Evaluatie meldingsplicht WagwEU)* was published.

As follows from the Letter of the Minister of Social Affairs and Employment, dated 30 January 2023, employers who post employees, including temporary work agencies have, according to the Act, been required to report the temporary posting of workers to the Netherlands since 01 March 2020. The reporting obligation was introduced to gain more insight into which companies operate in the country and who their employees are. It also provides inspectorates the tools to more effectively monitor compliance with labour laws and detect labour market fraud and abuse of this group of labour migrants.

Article 19 of the Act stipulates that the reporting obligation will be evaluated two years after its introduction.

In the study conducted, the following conclusions were drawn and recommendations made, which are endorsed by the Minister of Social Affairs and Employment in the aforementioned Letter:

- Increase awareness of the reporting obligation among contractors/service recipients and posted workers, giving them a proactive role in the monitoring process;
- Check reported entries frequently to prevent erroneous registrations;
- Introduce explicit registrations for temporary agency workers and temporary work agencies (intermediaries) to better understand the role of these actors around the duty to report;
- Visibly monitor the reporting obligation to emphasise that avoiding the obligation does not pay off;
- Clarify the applicable terms of employment by providing accessible communication about relevant collective agreements;
- Resolve ambiguities around access from social partners' enforcement bodies to data;
- Develop risk assessments that inform about the level of principals, contractors and workplaces that use reporting data;
- Continue monitoring developments to improve compliance with the reporting requirement.

2 Court Rulings

2.1 Temporary agency work

Court of Appeal Amsterdam, ECLI:NL:GHAMS:2023:189 and ECLI:NL:GHAMS:2023:190, 31 January 2023 (published 09 February 2023)

These cases concerned a dispute between the Dutch Foundation for Compliance with the collective labour agreement for temporary agency workers (*Stichting Naleving Cao voor Uitzendkrachten*; hereafter: SNCU) and the Romanian company Lugera & Makler Romania SRL (hereafter: Lugera). The case dealt with Lugera's non-compliance with the Dutch collective labour agreement for temporary agency workers (hereafter: the collective agreement) with regard to Romanian and Slovakian workers posted by Lugera to the Netherlands. According to the Court of Appeal, it had jurisdiction on the basis of the Act on Working Conditions for Posted Workers in the EU (*Wet arbeidsvoorwaarden gedetacheerde werknemers EU*; hereafter: WagwEU), implementing Directive 96/71/EC and Directive 2014/67/EU, as SNCU's activities are aimed at ensuring compliance with obligations towards employees that must be observed on the basis of the WagwEU. Therefore, Article 6(c) of the Dutch Civil Procedure Code (*Wetboek van Burgerlijke Rechtsvordering*) must be interpreted as providing jurisdiction to the Dutch court in case of claims, such as those brought by SNCU, to ensure compliance with the provisions of collective agreements that have been declared generally binding and that apply to employees temporarily employed in the Netherlands.

According to the Court of Appeal, the Romanian and Slovakian workers posted by Lugera were working under the supervision of the Dutch user undertakings (and not Lugera). Therefore, the workers were temporary agency workers within the meaning of Article 7:690 Dutch Civil Code and, as a result, the generally binding ABU collective agreement applies. According to WagwEU, the workers—although their employment contract is in principle governed by Romanian or Slovakian law—are subject to the so-called hardcore

employment conditions of the generally binding collective agreement, including payment of the minimum wage, holiday pay and holiday allowance. Lugera was ordered to pay the arrears (over EUR 300 000) to SNCU, as a well as a claim for damages (over EUR 90 000) for failing to meet its obligations on the basis of WagwEU. A claim on the basis of personal liability (Article 6:162 Dutch Civil Code) against the sole director of Lugera was, however, denied, since SNCU did not make sufficiently clear, let alone prove, that Lugera had failed to comply with the obligations in question due to mismanagement or intent on the part of the director.

2.2 Transfer of undertaking

Court of Appeal Arnhem-Leeuwarden, ECLI:NL:GHARL:2023:1050, 07 February 2023 (published 09 February 2023)

The present case concerned the interpretation of Directive 2003/88/EC and Directive 2001/23/EC. The employee, a truck driver, joined Travenol BV on 20 March 1984. Several transfers of undertaking took place, eventually to Omega Logistics BV (hereafter: Omega) in 2013. After the transfer, the employee received a personal allowance of EUR 777.04 (gross) for four weeks. The employee and Omega signed a new employment contract which contained a so-called 'phase-out clause': the personal allowance would be phased out as the normal salary of the employee increased. The employee's normal salary was determined by the collective labour agreement on road haulage and mobile crane hire (hereinafter: the collective agreement), which became applicable to the employment contract after (and: because of) the transfer.

As a result of CJEU case law, the unions and employers involved held consultations on the calculation of holiday pay. As of 01 January 2019, the collective agreement was amended in this respect and structural bonuses and overtime hours were taken into account when calculating holiday pay. For the holiday pay for the period before 01 January 2019, Omega made a proposal to the employee, which the employee rejected. He wrote a letter to Omega on 03 May 2019, claiming EUR 5 306.16 in holiday pay. The District Court granted the claim. In appeal, the Court of Appeal addressed the question whether the remuneration paid for overtime had to be included in the calculation of holiday pay. It follows from the CJEU, case C-385/17, 13 December 2018, *Hein v Albert Holzkamm GmbH & Co. KG* that overtime should be included in the calculation of holiday pay if three conditions are met: (1) the overtime resulted from the obligations arising from the employment contract, (2) overtime was performed on a regular basis, and (3) the remuneration for overtime constitutes a significant part of the employee's total remuneration. The employee worked overtime on the basis of (implicit) agreements and his schedule and the parties always assumed the possibility of working overtime. Finally, overtime pay constituted a significant share of the employee's total annual salary. The employee's overtime pay therefore met the requirements to be included when calculating holiday pay.

With regard to the personal allowance, the Court of Appeal considered that the phase-out clause results in a deterioration of the employee's terms of employment, since he had earned more than the salary specified in the collective agreement before the transfer, and after the transfer, his salary will eventually become equal to the collective agreement salary. This is a substantial loss of salary that is directly related to the transfer and is therefore incompatible with Article 7:663 Dutch Civil Code, implementing Article 3(1) Directive 2001/23/EC. Interestingly, the Court of Appeal also mentioned CJEU case C-108/10, 06 September 2011, *Scattolon*, in which the CJEU held that applying an existing collective agreement directly after the transfer may not lead to a substantial loss of salary. Although the *Scattolon* case concerned the alteration of collective employment conditions after the transfer (as regulated in Article 3(3) Directive 2001/23/EC), it can be argued that the limitation imposed by the CJEU also applies to the alteration by collective agreements of individual employment conditions.

2.3 Seafarers' employment contract

Court of Rotterdam, ECLI:NL:RBROT:2023:938, 17 January 2023 (published 13 February 2023).

A Spanish employee had a seafarer's employment contract under Article 7:694 Dutch Civil Code with a service provider based in the Netherlands, and worked on a ship that sailed under the Russian flag. He had a fixed-term contract for the duration of his assignment. On 11 February 2021, the employee called in sick after slipping during the night shift. On 30 September 2021, the employment contract ended legally due to the termination of the assignment. In court, the employee claimed continued payment of wages under Article 7:734d Dutch Civil Code and Article 7:734f Dutch Civil Code and the payment of back wages.

The Court ruled that a seafarer's employment contract had indeed been concluded and that therefore, Article 7:734d Dutch Civil Code might apply, depending on the circumstances. This article provides that a seafarer who is not insured under the Dutch Sickness Benefits Act and to whom a corresponding statutory regulation of another EU Member State does not apply, is entitled to 80 per cent of wages for a maximum of 52 weeks as long as he has not recovered. Article 7:734f Dutch Civil Code regulates seafarers' entitlement to benefits referred to in Article 7:734d Dutch Civil Code in the event of temporary total incapacity for work after the end of the aforementioned period of 52 weeks.

However, as the employee still resided in Spain, Spanish social security law applied to him. This means that an EU Member State's statutory regulation that corresponds to the Dutch Sickness Benefits Act applies, preventing the employee from relying on Article 7:734d Dutch Civil Code and Article 7:734f Dutch Civil Code. This is consistent with the CJEU's ruling in 2019 that Article 11(3)(e) of Regulation No. 833/2004 should be interpreted to mean that in a situation such as that at issue in the main proceedings, where a person has retained his or her residence in his/her Member State of origin while working as a seafarer for an employer established in another Member State, on a ship operating outside the territory of the European Union and flying the flag of a third country falls within the scope of that provision, so that the applicable national law is that of the Member State of residence of that person. This ruling by the CJEU was confirmed by the Dutch Supreme Court as well.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 STAP learning budget

the STAP learning budget has become available for workers and those looking for work since March 2022. Thereby, they can make use of EUR 1 000 annually for labour market-oriented training. The Minister of Social Affairs and Employment has emphasised that the STAP budget will be continually researched so that the budget is spent in a targeted way, and abuse and improper use are thwarted.

At the end of last year, the decision was made to not make the STAP learning budget available in January to prevent misuse of the budget. After research was conducted on this misuse, new conditions for the budget were published on 06 February 2023, allowing the STAP budget to be applied again from 28 February 2023.

The measures will take effect on two dates. The first measures will apply from 28 February 2023 and are:

- A cap of 300 allocations per training activity of a trainer. This will apply per calendar year.
- The Minister of Social Affairs and Employment can exclude training courses and trainers from STAP in case of misuse.
- Trainers are actively informed in advance about the conditions for STAP accounts and must declare that the training activities they list meet the STAP conditions.
- Trainers who offer trips or gifts to convince people to choose them are asked (on the basis of risk-oriented research or reports) to cease their activities. If this is not complied with, a course is removed from the training register.
- After each application period, the selected training activities, the number of grants and the total grant amount per training activity are made public.
- The definition of 'teaching material' is replaced in the regulation by 'literature or resources'. Only literature and safety materials can be subsidised with this.

Measure to take effect from 01 May 2023:

- The training definition will be tightened. From now on, only training with a predetermined programme to which a teacher is attached and in which the knowledge (or skills) acquired are tested, will be eligible for STAP funding. Lectures, for example, do not fall under this definition.

4.2 Dutch state pension (AOW)

A proposed bill on the Dutch state pension (AOW) was presented on 21 February 2023. The bill states that those who do not pay sufficient contributions for their old age pension will not have a reduced pension benefit later. The aim of this proposed bill is to prevent disproportionate pension cuts in cases in which those affected did not fully meet their contribution obligations in the past.

Anyone who resides in the Netherlands builds up their state old age pension, regardless of whether or not they have an income. Residents that have an income pay contributions for the state pension. If a contribution that is due is not (fully) paid, the resident will have to pay this later and is fined. Additionally, those who have not (fully) paid their contributions when they reach the statutory retirement age, will have their state pension cut by 2 per cent or more. The proposed bill will remove this penalty for existing and future pensioners. At the moment, approximately 15 000 pensioners are affected by this penalty, with more pensioners to follow in the future. Although the measure will cost an additional EUR 7.1 million in state pension expenditure, it will also save EUR 1.4 million which would otherwise be spent on the Supplementary Income Provision for the Elderly (AIO). The AIO provision ensures that pensioners whose pension is reduced can still live on a subsistence minimum.

Poland

Summary

(I) The Act introducing remote working and sobriety checks came into force on 06 February 2023.

(II) An Act implementing the work-life Directive was enacted by Parliament on 09 February 2023. The new law will be now decided by the Senate.

1 National Legislation

1.1 Amendment of Labour Code on remote working

On 06 February 2023, the Act of 01 December 2022 amending the Labour Code and certain other legislation (Journal of Laws 2023, item 240) was published in the Journal of Laws. The provisions on sobriety checks entered into force 14 days from the date of publication, i.e. on 21 February 2023. According to the Act, the provisions on remote working will enter into force two months after the date of publication, i.e. on 07 April 2023.

A detailed overview of the new law was presented in the January 2023 Flash Report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Work-life balance

The draft bill on an amendment regulation related to parental rights and employment contracts was announced on 20 February 2022. The Act has entered the third reading in the Sejm. On 09 February 2023, it was submitted to the Speaker of the Senate. The proposed changes are expected to enter into force later this year.

The draft covers the following issues:

Carer's leave

A carer's leave of up to 5 days per calendar year will be introduced for workers to be able to provide personal care or support for a relative (son, daughter, mother, father or spouse/cohabitant) or for a person who resides with the employee in the same household. These individuals must, however, be in need of substantial care or substantial support for serious medical reasons. The employee will not be entitled to remuneration for the duration of this leave.

Parental leave

Some changes to parental leave are planned, e.g. the total amount of parental leave for both parents will be up to 41 weeks (in the case of a single birth) or up to 43 weeks (in the case of multiple births). Within the scope of parental leave, a non-transferable part

of leave of up to 9 weeks is to be provided for each parent (this means that each parent may take up to 32/34 weeks of leave). Additionally, the right to parental leave will be made irrespective of whether the child's mother is employed (insured) on the day of the child's birth. The amount of maternity benefits for the period of parental leave is also planned. For the entire period of parental leave, the benefit is to be set at 70 per cent of the assessment basis for the benefit. However, where a female employee submits a request for parental leave no later than 21 days after giving birth, the monthly maternity benefit for the period of maternity and parental leave will amount to 81.5 per cent of the benefit's assessment basis. In any case, the employed father of the child will be entitled to 70 per cent of the assessment basis for the benefit for a non-transferable 9-week part of the leave.

Paternity leave

The period during which it will be possible for an employed father to take paternity leave will be reduced, namely from 24 months to 12 months from the date of the child's birth. The period of paternity leave by an employee who has adopted a child at the age specified by law will be shortened accordingly.

Time off from work on grounds of force majeure

The bill provides for the introduction of time off from work due to force majeure in urgent family matters caused by illness or accident, if the employee's immediate presence is necessary. It is assumed that this will be 2 days or 16 hours per calendar year, with the right to 50 per cent remuneration for the duration of such time off (calculated as remuneration for annual leave).

Fixed-term employment contracts

Employers will be required to justify the termination of fixed-term employment contracts and consult trade unions and provide fixed-term employees with the possibility to apply for re-employment.

Additionally, the following expected changes should also be noted:

- Implementation of changes to the probationary employment contract, including the possibility to conclude such contracts again with the same employee only if he/she is hired to perform different types of work;
- Providing for a ban on prohibiting employees from being simultaneously employed by another entity and banning employees' unfavourable treatment on account of this.

The age of a child according to which the employer may order the employee—only with his/her consent—to work overtime or at night, to undertake work within the scope of an intermittent working time system and to request the employee to work outside his/her regular place of work has been increased from 4 years to 8 years.

Portugal

Summary

(I) The Appeal Court of Guimarães has ruled that the employee may terminate her employment contract with invocation of just cause in case of infraction of health guidelines and rules related to COVID-19 by the employer.

(II) The proposal on amendments to labour law was approved by the Portuguese Parliament.

1 National Legislation

1.1 Minimum wage in Madeira

Regional Legislative Decree No. 11/2023/M, of 14 February 2023, approves the amount of the minimum monthly wage guaranteed for the Autonomous Region of Madeira. As of 01 January 2023, the amount of this minimum wage corresponds to EUR 785.

2 Court Rulings

2.1 Occupational safety and health

The Appeal Court of Guimarães, Process No. 1556/20.7T8VCT.G1, 16 February 2023

In this judgment, the Appeal Court of Guimarães ruled that the infraction of health guidelines related to COVID-19 aiming to protect the safety and health of employees and to prevent transmission of the virus, such as the lack of control of customers' access to a commercial establishment selling food and other products, as well as the lack of protective equipment for employees working as cashiers at those places (such as acrylic barriers), may constitute just cause for the termination of the employment contract by the employee's initiative under Portuguese labour law.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Approval of amendments to labour law

The Proposal of Law No. 15/XV/1, containing several changes to the labour legislation, was approved by the Portuguese Parliament on 10 February 2023 (for further information on this Proposal of Law, see the July 2022 Flash Report) and is expected to be published in the Official Gazette in March 2023. These amendments to the labour law will enter into force 60 days after their publication.

Romania

Summary

The removal of special rules regarding the competence of courts to settle labour disputes has created a deadlock in the functioning of the courts.

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 Labour jurisdiction

Traditionally, the courts competent to rule on labour law disputes in the first instance were tribunals. The specialised panels also included judicial assistants (lay judges appointed by the social partners).

The new Law of Social Dialogue No. 367/2022 (published in the Official Gazette of Romania No. 1238 of 22 December 2022, see also December 2022 Flash Report) repealed the previous Law No. 62/2011. On this occasion, the chapter dedicated to labour jurisdiction was completely removed. The legislator thus left the special labour jurisdiction unregulated, with the consequence that the general rules contained in the Code of Civil Procedure became applicable. According to the Code of Civil Procedure, disputes that cannot be assessed in financial terms and those that can in the amount of up to RON 200 000 fall under the jurisdiction of the basic courts (inferior courts), not the tribunals (superior courts). However, the basic courts have never ruled on labour disputes before and do not have specialised labour law panels. In addition, there are no judicial assistants at the inferior court level. This situation has created a deadlock in the functioning of the courts.

Several draft laws have been proposed to amend the existing legislation, which would re-introduce the derogatory rules specifically for the labour jurisdiction, but so far, the problem has not been resolved.

Slovakia

Summary

In connection with the amendment of Act No. 406/2011 Coll. on volunteering, the National Council of the Slovak Republic has also amended the Labour Code.

1 National Legislation

1.1 Volunteering and wage compensation in the Labour Code

On 02 February 2023, the National Council of the Slovak Republic (Parliament) adopted an Act amending Act No. 406/2011 Coll. on volunteering and on the amendment of certain Acts, as amended, and by which certain Acts are amended. Within this Act, the following were amended

- Act No. 406/2011 Coll. on volunteering and on the amendment of certain Acts, as amended (Part I);
- Labour Code (Act No.311/2001 Coll., as amended) (Part II);
- Act No. 305/2005 Coll. on Social and Legal Protection of Children and on Social Guardianship, as amended (Part III);
- Act No 526/2010 Coll. on the Provision of Subsidies within the Competence of the Ministry of Interior of the Slovak Republic, as amended (Part IV).

According to the explanatory report to the draft amendment, the intention of the proposed legal amendments is to respond to problematic points in the application practice of Act No. 406/2011 Coll. on volunteering and other legal regulations in order to enable the development of volunteering in various areas of society. At the same time, the proposed adjustments create a framework for financial support of volunteerism from the State in the future.

According to the explanatory report to the amendment to the Labour Code (Part II – Article 138a), the performance of volunteer activities is an activity in the general interest – the subjects to whom volunteer assistance is addressed are subjects who fulfil public benefit purposes. In practice, at the same time, companies are interested in supporting employees pursuing fulfilment in the area of social responsibility and are ready to provide compensation for such activity as well - that is, to follow the conditions of other activities in the general interest. The conditions and scope of wage compensation can be negotiated in a collective agreement or within the framework of working conditions such as so-called employee benefits. It will thus remain up to the employer whether and to what extent he/she supports the involvement of employees in socially beneficial activities, which in practice they also organise themselves, while the basic framework remains untouched, i.e. the compensation of wages does not belong to the employee, unless otherwise agreed with the employer.

In terms of the Labour Code, the amendment modifies the provision of Article 138a paragraphs 1 and 2 (obstacle to work due to volunteering activity).

The original wording of paragraph 1 stated:

> "*(1) An employer may provide an employee, upon his/her request, time off from work to perform, during working time, activity by virtue of an agreement on volunteering activity pursuant to special regulation; the employee shall not be entitled to a wage or wage compensation for this time off from work. Time off from work provided pursuant to the first sentence shall not be deemed performance of work*".

The new wording of paragraph 1 states:

> *"An employer may provide an employee, upon his/her request, time off from work to perform, during working time, activity by virtue of an agreement on volunteering activity pursuant to special regulation; the employee shall not be entitled to a wage or wage compensation for this time off from work, unless the employer and employee agree otherwise. Time off from work provided pursuant to the first sentence shall not be deemed performance of work"*.

The amendment has added the words 'unless the employer and employee agree otherwise'.

The original wording of paragraph 2 stated:

> "*Conditions for the provision of time off from work for employees to perform volunteering activities pursuant to special regulation may also be agreed with employee representatives; it is not possible to agree on wage or wage compensation for this time off from work*".

The new wording of paragraph 2 states:

> "*Conditions for the provision of time off from work for employees to perform volunteering activities pursuant to special regulation may also be agreed with employee representatives*".

The amendment has deleted the words 'it is not possible to agree on wage or wage compensation for this time off from work'.

This Act will enter into force on 01 April 2023. It was published in the Collection of Laws – No. 50/2023 Coll.

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 new rules on occupational diseases were issued and will start to apply in May 2023.

(II) The minimum hourly rate for occasional and temporary work of pensioners was adjusted.

(III) The Supreme Court has ruled on the problem of outsourcing of workers, disguised employment relationships and the question of the existence of an employment relationship.

1 National Legislation

1.1 Rules on occupational diseases

The Minister of Health issued the Rules on Occupational Diseases (*'Pravilnik o poklicnih boleznih'*, Official Journal of the Republic of Slovenia (OJ RS) No. 25/23, 24 February 2023, p. 1377-1391). The rules govern the notification of occupational diseases and will start to apply as of May 2023 and will replace the existing rules on the list of occupational diseases from 2003.

This is a huge success for trade unions which had called for such rules for years and even lodged a complaint with the ILO against Slovenia. Trade unions claimed that Slovenia had not acted in accordance with Article 11 of ILO Convention No. 155 (Occupational Safety and Health Convention, 1981), as it had not established and applied the necessary procedures for the notification of occupational accidents and diseases by employers and/or insurance institutions and others directly concerned. Despite the legislation, which introduces general rules on occupational diseases (in particular, the Pension and Disability Insurance Act (*'Zakon o pokojninskem in invalidskem zavarovanju* (ZPIZ-2)', the Health Care and Health Insurance Act (*'Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju* (ZZVZZ)'and the Health and Safety at Work Act (*'Zakon o varnosti in zdravju pri delu* (ZVZD-1)), and the Rules on the list of occupational diseases from 2003 (*'Pravilnik o seznamu poklicnih bolezni'*), none of these acts established adequate procedures for notification of occupational diseases and the rules that had to be issued in accordance with Article 68 of ZPIZ-2 have not been issued up until now. Consequently, workers who became ill because of an occupational disease were treated as though their disease was not work-related. The only exceptions were the established procedures for occupational diseases related to asbestos.

The employers' representatives partly criticised the new rules on occupational diseases and demanded a greater role for employers in the procedures for notification of occupational diseases.

1.2 Adjustment of the minimum hourly rate for occasional work

Following the adjustment of the minimum wage in January 2023 (see January 2023 Flash Report) and on the basis of Article 27.c of the Labour Market Regulation Act (OJ RS No 80/10 et subseq.), the minimum hourly rate for occasional and temporary work of pensioners was adjusted by the Minister of Labour (Order on the adjustment of the minimum hourly rate and maximum income for temporary or occasional work, '*Odredba o višini urne postavke in višini dohodka za opravljeno začasno ali občasno delo upokojencev'*, OJ RS No. 20/23, 15. 2. 2023, p. 1159). The minimum hourly rate for

occasional and temporary work of pensioners was raised from EUR 5.77 EUR to EUR 6.92 (from 01 March 2023 until 29 February 2024).

2 Court Rulings

2.1 Existence of an employment relationship

Supreme Court of the Republic of Slovenia, No. VIII Ips 20/2022, 20 December 2022

The judgment of the Supreme Court of the Republic of Slovenia No. VIII Ips 20/2022, delivered on 20 December 2022, was published in the database of case law on 15 February 2023 (ECLI:SI:VSRS:2022:VIII.IPS.20.2022). It is an important judgment that deals with the problem of outsourcing of workers, disguised employment relationships and the question of the existence of an employment relationship. It concerns the 'business model' of Luka Koper (Port of Koper) criticised in the theory and by the trade unions for a long time.

The workers were employed by 'port service providers' (the so-called 'IPS'), companies whose only business partner was Luka Koper. These companies concluded contracts with Luka Koper for the provision of various port services (outsourcing, subcontracting). The Court determined that these contracts were fictitious, that the IPS companies (i.e. the so-called 'port service providers') never provided any services to the Port of Koper, but merely provided the Port of Koper with the workforce, i.e. the workers they formally employed and assigned to Luka Koper. The Supreme Court found that these workers were in fact working for the Port of Koper, under its full supervision, were part of its working process, in its premises and with its equipment, and over a long period of time, continuously, for minimum wages and long shifts. There were around 700 such 'outsourced' workers each day who worked at the Port of Koper. The Supreme Court found that this business model was illegal. The port service providers did not comply with the conditions and rules for temporary work agencies. The Supreme Court determined that Luka Koper and the port service providers had abused the workers to increase profits by reducing the labour costs in a way that does not respect existing labour law rules. The workers worked on an on-call basis, they were told just one day in advance what and how many hours they would have to work, their working schedule was highly irregular, without respecting the rules on rest periods, their wages were lower than those of workers directly employed by Luka Koper. The Supreme Court stated that the Port of Koper actually retained a decisive influence on workers' activities and employment, and in fact acted as the employer of these workers.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Collective bargaining

Annex No. 2 to the collective agreement between workers and small business companies ('*Aneks št. 2 h Kolektivni pogodbi med delavci in družbami drobnega gospodarstva*', OJ RS No. 23/23, 22 February 2023, p. 1342-1343) has been concluded. It concerns the adjustment of basic pay and other payments, such as reimbursement of work-related costs, among others.

4.2 Strike of medical doctors and dentists

An agreement on the settlement of strike demands ('*Sporazum o rešitvi stavkovnih zahtev*') has been published (OJ RS No 14/23, 03 February 2023, p. 934). This agreement between the government and FIDES, the trade union of medical doctors and dentists, concluded in January 2023, following difficult negotiations and the announcement of strikes (see December 2022 Flash Report, under 4.1), also sets the dates for further negotiations; the main and most difficult issue at stake is the new salary system in the public sector and demands for special rules for medical doctors and dentists which would allow higher increases of their salaries. With this agreement, the strike announced by FIDES in December 2022 was also formally cancelled.

Spain

Summary

(I) The EU Whistleblowing Directive has been transposed and a new employment law has been adopted.

(II) The protection of LGBTI was reinforced and new rights have been granted to women in case of abortion and painful menstruation.

1 National Legislation

1.1 Whistleblower protection

Law 2/2023, of 20 February 2023, has transposed Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, on the protection of persons who report breaches of Union law. These two are not labour law provisions in a strict sense, but apply to employment relationships, both in the private and public sectors.

Spanish law aims to comply with the terms and spirit of EU Directives, hence it has granted undertakings that employ more than 50 workers and all public administrations a period of three months to create procedures for internal reporting and follow-up.

In addition, a new body has been created (the Independent Whistleblower Protection Authority) which carries out different functions. Among them, it will manage the procedures for external reporting and follow-up.

Whistleblowers are protected against retaliation, i.e. an eventual dismissal would be null and void. Article 36 of the Law also mentions non-renewal of a fixed-term employment contract, a substantial change in working conditions, any disciplinary measure and the non-conversion of a temporary employment contract into a permanent one if there were legitimate expectations of such a conversion as potential retaliatory measures, provided that those harmful measures are revenge due to the fact that the employee leaked information.

It is too early to detect any potential loopholes, because it will take some time before the law is applied in practice.

1.2 Employment Law

The new Employment Law (Law 3/2023, 28 February 2023), which has been approved within the framework of the Next Generation EU and the Recovery and Resilience Facility, aims to significantly reduce unemployment rates, which have historically been very high in Spain compared to other EU countries.

The Law seeks to modernise employment policy and to improve the opportunities of unemployed persons to find a job. Obviously, these objectives have been one of the purposes of employment policies for decades, hence this law focuses in two specific aspects. Firstly, the coordination between the State, the regions and the municipalities, because the employment measures of these public administrations are not always in line.

Secondly, 'employability' is a new focus and is linked to vocational training. This new employment law aims to connect the dots. The employment services have to use all of the data and stats available to them to design the different strategies to improve employability.

The employment laws in recent decades provide a framework that requires further development through different 'strategies' and 'plans'. This is also the case with the new

Law. In coming months, the government will approve those strategies and plans, which will include more specific measures. The truth is that public employment services have not been very effective so far in Spain and neither the employment laws nor the different governments have succeeded in figuring out how to transform them to achieve better results.

1.3 Sexual and reproductive health law

A new law on sexual and reproductive health has been introduced. This law does not target workers or employment, but introduces three new grounds for temporary leave for women:

- Painful menstruation;
- Pregnancy from day one of week 39;
- Abortion, while the women cannot return to work due to their health status.

These leaves aim to promote equality and non-discrimination on grounds of sex.

1.4 Equality and non-discrimination (LGBTI)

A new law to reinforce the protection of LGBTI people has passed, Law 4/2023, 28 February 2023. It is not a law explicitly intended for employment or labour purposes, but contains explicit measures in this area. Article 14 requires taking LGBTI people into account in the design of employment policies to prevent any form of discrimination.

Undertakings that employ more than 50 workers are required to elaborate measures to promote effective equality of LGBTI people. Those measures must include protocols in case of harassment at work. Collective bargaining will play a major role.

Discrimination is, of course, prohibited.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Unemployment rate

Unemployment grew again in January 2023 (70 744 people), so there are currently 3 million unemployed people.

4.2 Minimum wage

Minimum wage has been increased up to EUR 1 080 per month.

Sweden

Summary

The Swedish government has amended the ongoing enquiry into labour migration.

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 enquiries for future legislative changes

The new Swedish government, which consists of three parties, the Conservatives, the Christian Democrats and the Liberals with active support from the nationalist Sweden Democrats, announced amendments in February 2023 to the ongoing public enquiry investigating future legislative changes with new inputs on the enquiry into labour migration, which has been asked to investigate stricter provisions with the aim of making it more difficult to obtain a work permit in Sweden. The Swedish provisions have been very inclusive over the last 15 years, with a significantly lower salary threshold than established under the EU Blue Card Directive. The suggested threshold, now to be investigated, will aim at a minimum wage in par with the median income (roughly EUR 3 300 – 3 400 per month).

United Kingdom

Summary

The Retained EU Law (REUL) Bill is being debated in the House of Lords.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

4.1 Retained EU Law (Revocation and Reform) Bill

The Bill is now being debated in the House of Lords where it is facing significant opposition. The Lords are currently considering about 150 amendments. A summary of the issues can be found here.

4.2 The Strikes (Minimum Services Levels) Bill

The Strikes (Minimum Service Levels) Bill was introduced in January 2023 following a period of prolonged industrial action across a number of sectors. The government had already introduced a Bill on minimum service levels, the Transport (Minimum Service Levels) Bill. The Strikes (Minimum Service Levels) Bill replaces this. The Bill passed through the Commons unamended. It is not being vigorously debated in the Lords. The Regulatory Policy Committee has 'red-rated' the Bill. It says 'The IA is not fit for purpose'. The Department has sufficiently considered the impacts of the primary legislation, in line with RPC guidance, given that the specific choice of sector and minimum service levels will be defined by later secondary legislation. The RPC would expect detailed analysis to be conducted at the secondary legislation stage. The IA [impact assessment] of the impact on small and micro businesses (SMBs) does not adequately address whether SMBs will face disproportionate impacts and whether exemption or mitigation for disproportionately affected SMBs has been considered.

4.3 Predictable working conditions

Post-Brexit, the government is not bound to implement new EU Directives. It has, however, said that it will support the Workers (Predictable Terms and Conditions) Bill, a Private Members' Bill to give workers and agency workers the right to request a predictable work pattern. Where a worker's "*existing working pattern lacks certainty in terms of the hours they work, the times they work or if it is a fixed term contract for less than 12 months, they will be able to make a formal application to change their working pattern to make it more predictable*".

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