Flash Reports on Labour Law March 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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Executive Summary

National level developments

In March 2023, 31 countries reported developments in labour law. The following were of particular significance from an EU law perspective:

Developments related to the COVID-19 crisis

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

In **The Netherlands**, the Court of The Hague ruled that compensation from the State for post-COVID syndrome for all affected healthcare workers could not be claimed by means of a class action because the post-COVID complaints were not the same for every person and the damages were therefore also not the same. If the interests represented in a class action are not sufficiently similar, a case-by-case approach must be taken to determine entitlement to compensation.

Whistleblower protection

In **Italy**, Directive 2019/1937/EU on the protection of persons who report breaches of Union law has been transposed into law. It will enter into force on 15 July 2023 and modifies dismissal protection law (nullity of the dismissal not only in case of discrimination, but also in case of reports or complaints to public authorities).

Working time

In **Norway**, the government has announced to the media that the Holiday Act will be amended to ensure compliance with the right to paid annual leave in the Working Time Directive.

In **Spain**, according to a ruling of the Supreme Court, there are numerous systems that require direct participation of workers for recording working time (such as digital fingerprints or clocking in and out), so the fact that the workers were responsible for entering all of the relevant information into the system (in this particular case, introduction of the relevant information on working time in an app: start time, end time and total duration of the working day) cannot be considered unreliable in itself. Nevertheless, the Court cautioned that the undertaking must provide detailed instructions to prevent any ambiguities and errors concerning the concept of working time.

In **Belgium**, the recent amendments to the laws on annual leave of employees aim to bring Belgian legislation in line with European case law and with the Working Time Directive 2003/88, in particular Article 7, which requires Member States to take necessary measures to ensure that all workers are granted paid annual leave of at least four weeks.

In the **Czech Republic**, a Supreme Court decision on the legality of the performance of work for one employer on the basis of an employment contract and an agreement to simultaneously perform work (agreement provided for in the Labour Code, similar to so-called zero-hours contracts) confirmed that such widespread practice of attempting to circumvent the legal rules on working time (used extensively in the medical profession but in other occupations as well with agreements to perform work and agreements on work activity often used to avoid obligations arising from national and EU legislation) violates Czech law.

In **Estonia**, the Ministry of Social Affairs has started evaluating how the variable hours agreement in retail (i.e. an employer engaged in retail has the right to conclude a variable hours' agreement in writing with an employee who works part-time (12 hours or more) over a period of seven days) has been applied.

In **Finland**, in four interlocutory judgments, the Labour Court dealt with the question whether the stand-by time of firefighters, who performed crew stand-by time and unit leader stand-by time, was to be considered working time. In its reasoning, the Court referred to the Working Time Directive 2003/88/EC and ruled that the stand-by time had to be considered working time in its entirety, considering that an assessment of the circumstances as a whole and the obligations imposed on the firefighter during his stand-by duty had an objective and very significant effect on the firefighter's ability to freely use his time during his stand-by duties when the firefighter was not required to perform work duties, and to use this time to pursue his own interests.

In **France**, labour law has been modified to consider the duration of paternity and childcare leave as actual working time for determining the employee's rights based on his/her seniority.

In **Ireland**, the Labour Court has found that the claimant's stand-by time (in the context of whether 'regular and rostered' overtime should be included as part of a worker's holiday pay) in CJEU case C-214/20, 11 November 2021, *MG vs. Dublin City Council* was not working time.

In **Romania**, legislation has introduced new public holidays and extended leave for child adoptions.

In **The Netherlands**, two courts confirmed that overtime should be included in the calculation of holiday pay if three conditions are met: (1) the overtime results from the obligations arising from the employment contract, (2) overtime work is performed on a regular basis, and (3) remuneration for overtime constitutes a significant part of the employee's total remuneration.

Work-life balance

In the **Czech Republic**, a bill amending the Labour Code will transpose the Work-life Balance Directive.

Similarly, in **Poland**, Parliament has enacted amendments to the Labour Code, which now implement the requirements of the Work-Life Balance Directive (the new law will enter into force on 26 of April 2023).

In **France**, a law was adopted to align French labour law with the provisions of the Work-life Balance Directive.

PIL - International transport sector

In the **United Kingdom**, a new Act requires seafarers working on ships that use UK ports at least 120 times a year to be paid a rate at least equivalent to the UK national minimum wage for their work in UK waters. This applies irrespective of the ship's flag or the seafarers' nationality.

In **Lichtenstein**, the government has published a decision to incorporate into the EEA Agreement Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention (2006 text with EEA relevance).

In **The Netherlands**, the Supreme Court ruled on the law applicable to employment contracts in the international road transport sector.

Fixed-term work

In **France**, the current amendments to the labour law have introduced the employer's obligation (or the user undertaking's in the case of a temporary worker) to inform the fixed-term employee or the temporary worker, who has seniority of at least six months, about available permanent positions in the company (modalities to be determined by decree).

Other forms of atypical work

In **Italy**, a decree transposing Directive (EU) 2020/1057 for posting drivers in the road transport sector and amending Directive 2006/22/EC on enforcement requirements and Regulation (EU) No.

1024/2012, provides for specific rules on the posting of drivers.

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

In **Slovenia**, the National Assembly has adopted a new law on posting of workers. Moreover, the minimum hourly rate for occasional and temporary work in agriculture was adjusted.

In **Austria**, the Supreme Court has dealt with temporary agency work, *in concreto* with the question whether the user undertaking or the temporary work agency must be informed of the worker's incapacity for work due to sickness.

In the **Czech Republic**, a bill amending the Labour Code intends to abolish compulsory insurance for temporary work agencies in the event of insolvency and to increase their compulsory deposits and introduce measures to protect agency workers by prohibiting temporary assignments to a user undertaking for a period of more than three years and allowing for the conclusion of an employment relationship with an agency worker for the period of the temporary assignment only, as well as measures to prevent abuse of the possibility of assigning an agency worker to only one user undertaking.

In **Norway**, the EFTA Surveillance Authority (ESA) has requested information from the government to assess the newly adopted measures in Norway that restrict the use of temporary agency workers.

In **The Netherlands**, the Supreme Court has ruled on the legal qualification of the employment relationship of Deliveroo riders as employees.

Remote working / teleworking

In **Poland**, regulations amending the rules on employee documentation in relation to remote working have been published.

In **The Netherlands**, a non-competition clause does not prevent an employee from working from home for a foreign employer.

Concept of employee

In **Latvia**, the Supreme Court held that a board member and the owner of a company cannot be considered an employee because of lack of subordination.

In **Norway**, the definition of employee has now been amended, with an aim to clarify the employment status of workers in the grey area between employees and independent contractors. The new definition is supplemented by a presumption of the employee status: a work relationship shall be assumed to be an employment relationship.

GDPR

In **France**, the Court of Cassation clarified its position on protection granted by the GDPR against the right to evidence (right of the judge to grant the employee's request for the submission of documents allowing a comparison of entitlements of comparable colleagues). In compliance with recital 4 of the GDPR, the Court of Cassation recalled that the right to protection of personal data is not an absolute right: it must be considered in relation to its function in society and be balanced against other fundamental rights in accordance with the principle of proportionality.

In **Sweden**, in the CJEU judgment *case C-268/21, 02 March 2023, Norra Stockholm Bygg AB,* concerning a court's procedural order, a defendant was requested to produce a staff register for evidence purposes. The CJEU held that GDPR requires proportionality and that the third-party employee's interest of protection of their personal data must be considered. From a Swedish perspective, the judgment is an important clarification of the GDPR implications for procedural rules.

Other developments

In **Denmark** and in the **Czech Republic**, legislative proposals to implement the Directive on Transparent and Predictable Working Conditions have been put forward.

Similarly, in **France** and **Poland**, laws were adopted to adjust labour law to the provisions of the Directive on Transparent and Predictable Working Conditions.

In the **Czech Republic**, an act on employment and social security measures in response to the armed conflict on the territory of Ukraine caused by the invasion of the Russian Federation's Army has been adopted and introduces an obligation for employers to register employees with temporary protection under a special legal regulation (provided to Ukraine war refugees).

In **Iceland**, a new provision was added to the Act on Employment Rights of Foreigners, allowing citizens from outside the EU/EEA easier access to the Icelandic labour market targeting jobs that require specialised knowledge and for which there is a shortage in the Icelandic labour market.

In **The Netherlands**, the government is planning measures to help status holders (refugees with a temporary residence permit) to start working sooner.

Implications of CJEU Rulings

Working time

This Flash Report analyses the implications of a CJEU ruling on working time.

CJEU, case C-477/21, 02 March 2023, MÁV-START

In the present case, the CJEU ruled that daily and weekly rest periods represent two separate rights that pursue different objectives. Daily rest gives the employee the opportunity to remove him-/herself from the working environment for a specific number of hours, which must not only be consecutive but must follow a period of work. The weekly rest period allows workers to rest over a 7-day period. Consequently, employees must be guaranteed both of these rights. Thus, a situation whereby the daily rest period forms part of the employee's weekly rest period would render the right to daily rest meaningless, by depriving the employee of his or her entitlement to the weekly rest period. In that regard, the CJEU concluded that the WTD does not merely specify, as a whole, a minimum period for the employee's right to weekly rest, but expressly states that that period is additional to the employee's entitlement to the daily rest period. It follows that the daily rest period does not form part of the weekly rest period but is additional to it, even if the daily rest period directly precedes the latter. The CJEU also noted that the more favourable provisions laid down in Hungarian law in comparison with the WTD in respect of the minimum weekly rest period cannot deprive an employee of other rights which that Directive confers on him or her, in particular of the right to daily rest. Therefore, the daily rest period must be granted, irrespective of the duration of the employee's weekly rest period provided for in the applicable national legislation.

A large majority of countries indicated that the ruling does not have significant implications for their national legal systems. This is the case in countries where daily and weekly rest periods are separate, autonomous or distinct rights and daily rests periods are additional/cumulative to weekly rest periods, such as in **Bulgaria**, **Croatia**, **Denmark**, **France**, **Iceland**, **Italy**, **Finland**, **Ireland**, **Lichtenstein**, **Luxembourg**, **Slovenia**, **Spain**, **Norway**.

In other countries, such as **Belgium**, there is no evidence that daily rest periods are counted against weekly rest periods. Nevertheless, the ruling implies a warning for Belgian case law.

Interestingly, in the **Czech Republic**, it is common practice that when an employee is granted a weekly rest period, he or she is not in addition entitled to a daily rest period (long accepted practice by both doctrine and settled Supreme Court case law). To ensure compliance with this CJEU judgment, it will probably be necessary to change this practice or to amend the legislation. Moreover, compliance with continuous rest periods already poses a major problem for many employers, even with the use of statutory reductions. Applying this judgment will therefore be difficult for a large number of employers; for some it could even mean abandoning long-established patterns of regular working time, as these simply do not include such extended weekly rest periods.

In addition, in **Estonia**, the regulations do not include specific rules on how the daily and weekly rest periods must be calculated together after the end of the working day. Therefore, the Employment Contracts Act does not directly contradict the interpretation of the CJEU. However, Estonian practice does not correspond to the Court's decision. In general, the approach is that if a working day is followed by a weekly rest period, the daily rest period is not taken into account. Estonian law does not need to be amended, but efforts must be made and the public informed (by the State) about how to interpret the relevant Estonian Employment Contracts Act.

In **Greece**, legislation provides that the minimum daily rest period shall be provided in addition to the weekly rest

period, which corresponds to the Court's judgment. Nevertheless, the ruling has implications for Greece as it clarifies other important issues of the working time regulation, such as that the daily rest period shall precede the weekly rest period and that the daily rest period must be granted, irrespective of the duration of the weekly rest period.

In **Hungary**, the practical problem is that when considering the general rule of a 48-hour weekly rest period and an 11-hour daily rest period, it is not possible to schedule working time after 1 pm on Fridays. Even if the minimum 40-hour weekly rest period is considered, working time scheduling on Fridays will be limited. This may be resolved by Parliament, most likely by amending the Labour Code. The provisions of the **Lithuanian** Labour Code are very similar to those of Hungary. There is no provision that the daily rest period provided for in Article 3 of Directive 2003/88 forms part of the weekly rest period referred to in Article 5 of that Directive, but the 'new independent right to a weekly rest period' is not envisaged. For **Sweden**, this judgment will also have implications. Just like in Hungary, the Swedish weekly rest period is longer than the combined EU minimum periods for weekly and daily rest. It does not explicitly follow from the legislation that the longer weekly rest period is meant to include the daily rest period, nor does the legislation explicitly grant a daily rest period in combination with a weekly rest period. The clarification by the CJEU in this regard will probably have implications for Sweden. The same applies to **Romania**. The issue of combining the daily with the weekly rest period has been raised before the Romanian courts. The courts have consistently ruled (in line with previous CJEU decisions) that the daily rest period is cumulated with the weekly rest period, resulting in a period of at least 35 consecutive hours of rest every week. But the problem was how to apply this solution in relation to national law, which provides for a daily rest period of 12 hours (instead of 11 hours) and a weekly rest period of 48 hours (instead of 24 hours). The national rules therefore provide for rest periods that exceed those specified in the Directive.

In **Latvia**, the CJEU's decision has implications for law because the latter does not explicitly envisage that a weekly rest period must be granted in addition to a daily rest period.

In **Portugal**, the law does not establish the weekly rest period in hours but stipulates that it may correspond to one or two days per week. This interpretation may imply several constraints to the organisation of work schedules, as it seems that according to the interpretation of the CJEU, a daily rest period of at least 11 hours should be granted in addition to the weekly rest period. Portuguese labour law does not seem to be aligned with this interpretation of the CJEU concerning the cumulation of the daily and weekly rest periods, in cases where a complementary weekly rest day is granted.

Table 1: Major labour law developments

Topic	Countries
Collective bargaining and collective action	BG FR LU RO SI SE
Working time	BE CZ EE ES FI FR IE NL NO RO
Whistleblowing	IT
Seafarers' work	LI UK
Fixed-term work	FR
Posting of workers	IT LI SI
COVID-19	NL
Tele/Remote working	NL PL
Insolvency of the employer	CZ
Transparent and predictable working conditions	DK CZ FR PL
Work-life balance	CZ FR PL
Occupational health and safety	DK FI
Temporary agency work	AT CZ FR NO
Information and consultation	NO
Third-country nationals	CZ EL FR IS LN
Minimum wage	EE MT SI UK

Austria

Summary

The Austrian Supreme Court has dealt with temporary agency work, *in concreto* with the question whether the user undertaking or the temporary work agency has to be informed of the worker's incapacity for work due to sickness.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Recipient of sick note in case of temporary agency work

Supreme Court, 9 ObA 100/22d, 16 February 2023

In a rather complicated constellation, i.e. the employee provided the user undertaking with a sick note after the employment relationship with the temporary work agency had been terminated by mutual consent the day before, among others, the question was raised whether it is sufficient to inform the user undertaking and not the temporary work agency of an incapacity for work due to sickness. The Supreme Court pointed out that this was the case due to the division of the employer functions in case of temporary agency work. The user undertaking must be informed as it makes use of the temporary agency worker's services, and the temporary work agency must be informed because of its duty to continue payment of wages in such cases. The Court pointed out that a double obligation to provide a sick note would be too burdensome on the employee and therefore informing the user undertaking of his or her incapacity for work was sufficient. This was even considered the case when the employment relationship was terminated the day before.

This ruling illustrates how the Austrian Supreme Court deals with constellations of divided employer functions in case of temporary agency work. It relieves the employee from any additional burdens that may be the result of such situations. This is very much in line with the general principle of equal treatment stipulated in the Temporary Agency Work Directive 2008/104/EC in Article 2 and 5. The basic working and employment conditions of temporary agency workers shall, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job. Employees directly employed by the user undertaking only have to inform one entity of their incapacity for work due to sickness and temporary agency workers should not be burdened with double information obligations.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

In Austria, the daily and weekly rest periods are regulated in two different acts. The relevant passages read as follows (unofficial translation by the author):

§ 12 (1) Working Time Act (*Arbeitszeitgesetz* – AZG):

> *"At the end of the daily working time, workers shall be entitled to an uninterrupted rest period of at least eleven hours."*

Para 3 provides that employees are entitled to an uninterrupted weekly rest period of at least 36 hours once a week. This provision no longer has any practical relevance as the provisions of the Rest Period Act (*Arbeitsruhegesetz*) prevail (see Pfeil, in Auer-Mayer/Felten/Pfeil, AZG4 § 12 para 14).

§ 3 (1) Rest Period Act *(Arbeitsruhegesetz* – ARG):

> "*The employee shall be entitled to an uninterrupted rest period of 36 hours in each calendar week, which shall include a Sunday (weekend rest)*. […]"

§ 4 ARG

> *"An employee who has to work during the weekend rest period in accordance with the working time schedule applicable to him/her shall be entitled to an uninterrupted rest period of 36 hours (weekly rest) in each calendar week in lieu of weekend rest. The weekly rest period shall include a full weekday."*

There have been no rulings on whether the daily rest period must be provided in case a weekly rest period is to be observed. This is very likely due to the fact that up to now it was common practice to not provide a daily rest period if the weekly rest period was observed. This was considered so obvious that it was not even mentioned in the main commentaries on the working time legislation.

At second glance, this unanimously applied interpretation is not so obvious, however, as the two mentioned acts do not address the question of a potential cumulation of daily and weekly working time at all. It could therefore be argued that the European legal duty of interpreting laws in conformity with CJEU obligates courts and administrative bodies to now apply a cumulative approach, i.e. the daily rest period according to the Working Time Act must be granted in addition to the weekly rest period pursuant to the Rest Period Act (as argued in the media by employment lawyers (see Kary, *Mehr Freizeit: EuGH spricht Dienstnehmern längere Ruhezeiten zu,* Die Presse, 09 March 2023). Otherwise, a direct application of the Working Time Directive will produce a similar result. The ruling therefore has significant implications for Austria. Employer organisations will definitely oppose an extension of the rest periods that must now be provided; it is likely that the relevant acts will be amended in line with the given judgment.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

Employees who fall sick during their annual leave no longer 'lose' those days. From now on, those days can be converted into sick leave days with guaranteed pay. The 'lost' holidays can then be taken at a later date (up to 24 months later). To this end, the King has amended the Royal Decree on the general implementation of annual leave laws. The amendment ensures that Belgian rules are in line with European case law and the requirements of Directive 2003/88/EC on working time.

1 National Legislation

1.1 Annual leave

Substitute leave possible in certain circumstances

The Royal Decree of 08 February 2023 amending Articles 3, 35, 46, 60, 64, 66 and 68 and introducing Article 67bis in the Royal Decree of 30 March 1967 determines the general implementation modalities of the laws on annual leave of employees, *Moniteur belge* 16 March 2023.

The Royal Decree gives effect to Articles 8 and 16 of the laws on annual leave of workers of 28 June 1971.

The amendments of Articles 3, 35, 46, 60, 64, 66 and 68 and the introduction of Article 67bis of the Royal Decree of 30 March 1967 determining the general arrangements for implementing the law on annual leave of employees aim to bring Belgian legislation in line with European case law and with the Working Time Directive 2003/88, in particular Article 7, which requires Member States to take necessary measures to ensure that all workers are granted paid annual leave of at least four weeks. The right to annual leave must allow the worker to rest from the performance of his or her duties specified in the employment contract, and to be granted a period of relaxation and leisure.

In addition, in case of an accident at work, occupational disease, ordinary illness, ordinary accident, maternity rest or paternity leave referred to in Article 39 of the Labour Code of 16 March 1971, paternity leave referred to in the Law of the Employment Contracts Law of 03 July 1978 on employment contracts, adoption leave, prophylactic leave, foster care leave or foster parent leave may take holidays up to the expiry of 24 months following the end of the holiday reference year.

Finally, any days of work interruption due to an accident at work, occupational disease, ordinary illness, ordinary accident, maternity or paternity leave, referred to in Article 39 of the Labour Code of 16 March 1971, paternity leave referred to in the Employment Contracts Law of 03 July 1978, prophylactic leave, adoption leave, foster care leave or foster parent leave shall not be counted as annual leave, even if these causes occur during the employee's holidays.

As regards the comment in paragraph 8 of Opinion No. 72.655/1 of the Council of State on the difference in treatment of full work removal within the scope of maternity protection, the following is noted.

The current measure for full work removal as a measure of maternity protection, which stipulates that annual leave can be taken until 12 months after the end of the holiday reference year, remains in force. In their opinion No. 2268 of 21 December 2021, the social partners stated that this ground for suspension does not in itself prevent the theoretical exercise of holiday entitlement for reasons related to work organisation. However, if the worker who makes use of full work removal proves through a medical certificate submitted to the employer that she is unable to take her holidays for health

reasons during her period of work removal, she should be able to qualify for a 24-month carryover of that leave.

The Decree was adapted to include the observations of the Council of State in its opinion No. 72.655/1 of 29 December 2022. Article 1 supplements Article 3 of the Royal Decree of 30 March 1967 determining the general implementing procedures of the laws on employees' annual leave so that with regard to the application of the articles on the carry-over of leave, it does not affect the definition of the terms 'holiday reference year' and 'holiday year'.

Article 2 supplements Article 35 of the same Royal Decree, stipulating that any unused holidays due to an accident at work, occupational disease, ordinary illness, ordinary accident, maternity rest or paternity leave referred to in Article 39 of the Labour Code of 16 March 1971, paternity leave referred to in the Law of 03 July 1978 on employment contracts, prophylactic leave, adoption leave, foster care leave may exceed statutory leave by four weeks.

In the exhaustively listed cases, the carry-over of holidays after 31 December of the holiday reference year is mandatory.

Article 4 supplements Article 60 of the same Decree, specifying that in case of unused leave due to an accident at work, occupational disease, ordinary illness, ordinary accident, maternity or paternity leave referred to in Article 39 of the Labour Code of 16 March 1971, paternity leave, prophylactic leave, adoption leave, foster care leave or foster parent leave may exceed statutory leave by four weeks.

In the exhaustively listed cases, the carry-over of holidays after 31 December of the holiday reference year is mandatory.

Article 5 replaces Article 64 of the same Decree, stipulating that any unused holidays due to an accident at work, occupational disease, ordinary illness, ordinary accident, maternity rest or paternity leave, referred to in Article 39 of the Labour Code of 16 March 1971, paternity leave, prophylactic leave, adoption leave, foster care leave or foster parent leave must be granted within the 24 months following the end of the holiday reference year.

Article 6 replaces Article 66 of the same Royal Decree, specifying that any unused holidays due to an accident at work, occupational disease, ordinary illness, ordinary accident, maternity or paternity leave, paternity leave referred to in the aforementioned Law of 03 July 1978, prophylactic leave, adoption leave, foster care leave or foster parent leave must be granted within the 24 months following the end of the holiday reference year.

Article 7 stipulates that Article 67bis to be introduced shall provide for an advance payment of the holidays that have yet to be taken when the employee is unable to take his or her holidays during the holiday reference year in the cases provided for in Article 64, 1°/1. This Article only applies to white collar employees. The employer must pay the white collar employee no later than 31 December of the holiday reference year the holiday pay for holidays that need to still be taken within the 24-month timeframe.

Article 8 updates Article 68, 2°, a) and b) of the same Decree and specifies that the days of work interruption due to an accident at work, occupational disease, ordinary illness, ordinary accident, maternity rest or paternity leave, referred to in Article 39 of the Labour Code of 16 March 1971, paternity leave referred to in the Employment Contracts Law of 03 July 1978, prophylactic leave, adoption leave, foster care leave or foster parent leave may not be counted as annual leave, even if these causes occur during the holidays.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The CJEU ruled that daily and weekly rest periods represent two separate rights that pursue different objectives. Daily rest gives the employee the opportunity to remove him-/herself from the working environment for a specific number of hours, which must not only be consecutive but must follow a period of work. The weekly rest period allows workers to rest over a 7-day period. Consequently, employees must be guaranteed both of these rights. Thus, a situation whereby daily rest period forms part of the employee's weekly rest period would render the right to daily rest meaningless, by depriving the employee of his or her entitlement to the weekly rest period. In that regard, the CJEU concluded that the WTD does not merely specify, as a whole, a minimum period for the employee's right to weekly rest, but expressly states that that period is additional to the entitlement to the daily rest period. It follows that the daily rest period does not form part of the weekly rest period but is additional to it, even if the daily rest period directly precedes the latter. The CJEU also noted that the more favourable provisions laid down in Hungarian law in comparison with the WTD in respect of the minimum weekly rest period cannot deprive an employee of other rights which that Directive confers on him or her, in particular of the right to daily rest. Therefore, the daily rest period must be granted irrespective of the duration of the employee's weekly rest period provided for in the applicable national legislation.

In Belgium, there is no evidence that daily rest periods are counted against weekly rest periods (see W. van Eekhoutte, *Sociaal Compendium Arbeidsrecht 2022-23,* Kluwer, 2023, No. 1712, 1734 and 1735). Nevertheless, the ruling implies a warning for Belgian case law.

4 Other Relevant Information

Nothing to report.

Bulgaria

Summary

The only two legislative acts in March in Bulgaria concern payments for business trips.

1 National Legislation

The Council of Ministers adopted Decree No. 44 of 22 March 2023, amending and supplementing the Ordinance on Business Trips in the Country (promulgated, State Gazette No. 27 of 24 March 2023). It has doubled the daily allowances for business trips. At the discretion of the seconding party or of another collective body representing the enterprise's management or when this is agreed in a collective labour agreement or in an agreement with a trade union organisation of civil servants, the seconded persons may be paid a daily allowance in the amount of up to 200 per cent. Some amendments for reporting travel, daily and lodging costs have been introduced.

The Council of Ministers adopted Decree No. 45 of 22 March 2023 amending and supplementing the Ordinance on Business and Technical Trips Abroad (promulgated, State Gazette No. 27 of 24 March 2023). It increases daily allowances and accommodation costs depending on the state the employee is seconded to. In case the costs of transportation from the airport to the accommodation abroad or vice versa exceed 30 per cent of the amount of daily allowance for the respective trip, these costs shall be covered by the department or enterprise and shall be reported against a submitted expense justification document. The means of intercity transport are determined together with the route and mode of transport used in the business trip.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

Under Bulgarian legislation, the daily (Article 152 LC) and weekly (Article 153 (1) LC) rest periods are separate rights and apply to every worker.

The daily rest period refers to the period from the end of the working day until the start of the next working day according to the allocation of working time established by the establishment's internal works rules (Article 139 (1) LC). The minimum duration of this rest period is 12 hours uninterrupted (Article 152 LC). Civil servants are also entitled to an uninterrupted daily rest period which may not be shorter than 12 hours (Article 53 of the Civil Servants Act and the special laws for persons employed in the Army and state security).

The right to weekly rest periods is regulated in Article 153 LC. As a general rule, it is 48 uninterrupted hours. This rest period applies to every period of seven consecutive calendar days. If the maximum work week (max. 56 hours) is reached, the uninterrupted weekly rest period may be decreases (in cases where the employee's working day has exceeded the normal working time, for instance, 12 hours in one day). Upon the calculation of working time on a weekly or longer basis, the uninterrupted weekly rest period shall be no less than 36 hours (Article 153 (2) LC). In case of changes to work shifts based on the calculation of working time on a weekly or longer basis, the uninterrupted weekly rest period of 48 hours may be decreased, but to no less than 24

hours, provided this is required by the actual and technical work organisation at the enterprise (Article 153 (3) LC). The 24-hour weekly rest period may not be used for the calculation of the entire period of working time on a weekly or longer basis, but only as an exception.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

(I) Amendments to several pieces of legislation have been adopted: the Amendment to the Act on Trainees in Judicial Bodies and the Bar Exam, the Amendment to the Trade Act (which regulates the work of employees in the trade sector on Sundays) and the Amendment to the Health Care Sector (which prescribes the obligation of employees in the health care sector to provide emergency medical assistance outside of his/her workplace or in the immediate vicinity of the workplace, under certain circumstances).

(II) The amounts of average net and gross salaries in Croatia in 2022 have been published.

1 National Legislation

1.1 Amendment to the Act on Trainees in Judicial Bodies and the Bar Exam

The Amendment to the Act on Trainees in Judicial Bodies and the Bar Exam has been adopted (Official Gazette No. 30/2023).

Among other novelties mostly related to the bar exam, it prescribes that the time spent practicing as a lawyer or notary and the time spent working on other legal tasks outside judicial bodies and on jobs in scientific-teaching, teaching and associate degrees in legal sciences before the traineeship in judicial bodies are not recognised and are not included in the necessary time of trainees' practice (Article 23 (2)).

1.2 Amendment to the Trade Act

The Amendment to the Trade Act has been adopted (Official Gazette No. 33/2023). It refers to the work of employees in the trade sector on Sundays. Until the Amendment, the merchant independently determined the store's working hours; now the stores are mostly closed on Sundays. Exceptions are related, for instance to the purchase of products related to basic daily needs and to tourism, etc. The obvious consequence of this Amendment to the Trade Act will be the fact that the majority of employees employed in the trade sector will not work on Sundays.

The new provision (Article 57) states:

> (1) The working hours of sales facilities are determined by the trader in the period from Monday to Saturday for a total duration of up to 90 hours per week, which the trader can distribute independently.
>
> (2) Sales facilities are closed on Sundays.
>
> (3) Sales facilities are closed on holidays. The Government of the Republic of Croatia may, by decision, determine sales facilities that are required to work on public holidays in the Republic of Croatia in accordance with the law regulating public holidays, memorial days and non-working days in the Republic of Croatia.
>
> (4) The trader can independently designate 16 Sundays of the year as working days, with the provision that 15 hours are added to the working hours of sales facilities from paragraph 1 of this Article, which are allocated from Monday to Sunday.
>
> (5) The provisions of paragraphs 1 to 4 of this Article do not apply to sales facilities that are located within or are an integral part of:

- railway and bus stations, airports, ports open to public traffic, ports of inland navigation of ships, airplanes and ferries for the transport of people and vehicles;
- gas stations;
- hospitals;
- hotels, areas of cultural and religious institutions and other cultural entities, museums, visitor centres or interpretation centres, nautical marinas, camps, family farms;
- declared protected nature areas in accordance with special regulations.

(6) The provisions of paragraphs 1 to 4 of this Article do not apply to the purchase of primary agricultural products, the sale of one's own agricultural products at retail stands and benches at markets and the sale of one's own agricultural products at stands and benches at wholesale markets, occasional sales at fairs and public events, vending machines, and remote sales.

(7) Press distribution through kiosks as a special form of sales outside stores may be open on Sundays and holidays from 7:00 a.m. to 1:00 p.m.

(8) The trader must keep records of working hours for each working Sunday during the current year in the form of a written document or an electronic record.

(9) The trader must provide the competent inspector with access to the records referred to in paragraph 8 of this Article during an inspection.

(10) To implement the inspection procedure, the Ministry of Finance and the Tax Administration must submit to the competent inspector, at his or her request, data from the fiscal system of the merchant's work week.

1.3 Amendment to the Health Care Act

The Amendment to the Health Care Sector has been adopted (Official Gazette No. 33/2023). It prescribes the obligation of every health care employee to provide emergency medical assistance to any person who needs such assistance, outside of his or her workplace or in the immediate vicinity of the workplace, within the scope of the employee's competences, if he or she is exceptionally requested to do so, and in case of life-threatening situations.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

According to Article 75 (1) of the Labour Act of 2014 (last amended in 2022), a worker has the right to a weekly rest period of at least 24 continuous hours, to which a daily rest period is added. There is an exception to this rule, in line with Article 5 (2) of 2003/88/EC: workers who, due to performing work in different shifts or for objectively necessary technical reasons or due to the organisation of work, cannot take a weekly rest period of at least 24 continuous hours, the right to a weekly rest period can be determined for a continuous duration of at least 24 hours, which does not include the daily rest period (Article 75 (5) of the Labour Act).

The aforementioned provisions of the Labour Act are in line with 2003/88/EC and the ruling in CJEU, case C-477/21, 02 March 2023, *MÁV-START*. The judgment of the CJEU in this case has no implications for Croatian law.

4 Other Relevant Information

4.1 Average salary

The amounts of the average net and gross salaries in Croatia in 2022 have been published (Official Gazette No. 24/2023).

The State Bureau of Statistics published the average monthly net salary per employee in legal entities of the Republic of Croatia for 2022. It amounted to HRK 7 653 00. The average monthly gross salary per employee in legal entities in the Republic of Croatia for 2022 amounted to HRK 10 400.

Cyprus

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

This is an important decision that clarifies the meaning of Articles 3, 5 and 6 Directive 2003/88/EC of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time.

The Court ruled that Article 5, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the daily rest period provided for in Article 3 of that Directive does not form part of the weekly rest period referred to in Article 5 of that Directive, but is additional to it. Secondly, it ruled that Articles 3 and 5 of Directive 2003/88, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that where national legislation provides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, the daily rest period guaranteed in Article 3 of that Directive. Thirdly, it ruled that Article 3 of Directive 2003/88, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that where a worker is granted a weekly rest period, he or she is also entitled to a daily rest period preceding that weekly rest period.

The Republic of Cyprus regulates working time in the Laws on Annual Leave with Pay *(Ετήσιων Αδειών με Απολαβές Νόμος του 1967*, No. 8/1967) which regulates the general framework for paid leave and the law purporting to transpose the WTD, the Law on Organisation of Working Time *(*Law 63(I)/2002 as amended, *Ο Περί της Οργάνωσης του Χρόνου Εργασίας Νόμος του 2002 (63(I)/2002))*, herein referred to as WTL.

The text of the Cypriot law seems to be in compliance with the Directive, as defined in this case. Case law on firefighters who perform on-call duties also referred to Articles 31 and 33 of the Charter of Fundamental Rights of the European Union. In the case of *Nicoli and others vs. Republic*, case number 1471/2015, 15 April 2020, the Administrative Court allowed an appeal of firefighters pertaining to the recognition and compensation for their on-call waiting time (see Nicoli and others vs. Republic, case number 1471/2015, 15 April 2020). The reasons for allowing the appeal were insufficient justification by the authorities, i.e. by the Chief of Police. The Court commented on the implementation of the WTD. On 12 November 2015, the applicants appealed against the decision of the Chief of Police to compensate them for their on-call time. The Court also referred to the established practice that on-call duty had been in force for over 20 years, where there had been adverse discrimination in the treatment of two different groups of fire brigade officers, i.e. duty officers, on the one hand, and the district/assistant

district officers, on the other. Until 29 July 2015, duty officers were not expected to be on duty after completing their service due to a change in their working hours to 11 hours, and 24 hours of rest after 13 hours of work, and 48 hours of rest, while the district/assistant district officers continued to perform on-call duties. Furthermore, in addition to the complaint of non-payment of compensation, the Court reviewed the problems created by the way the on-call duty was managed: the maximum average weekly work duration of 48 hours concerned firefighters and within this limit, on-call duty was considered overtime, as established by the relevant case law. There was no derogation for firefighters. The Court referred to the wording of the concept of 'rest period' during which the employee has no obligation to his or her employer that prevent him/her from pursuing his/her interests freely and without interruption to neutralise the effects on his/her safety and health. The Court considered the applicants' claim that non-observance of the obligations and deadlines imposed on Member States by a Community Directive cannot be justified by any provisions or practices of national law. The Administrative Court decided that the decision of the Chief of Police was insufficiently justified and allowed the Appeal.

Following the successful appeal, the matter was referred back to the Chief of Police to properly justify his decision to not compensate the appellants. The Chief of Police again rejected the claim. The firefighters appealed to the Administrative Court, seeking to annul the Chief of Police's decision (see *Nicoli and others vs. Republic*, ECLI:CY:DD:2021:614, Case number 666/2020, 21 December 2021). The grounds for annulment put forward were:

- Breach of the Court's decision and findings of the Court of Justice;
- Breach of Directive 2003/88;
- Breach of Articles 31 and 33 of the Charter of Fundamental Rights of the European Union, Article 24 of the Universal Declaration of Human Rights; and
- Breach of the principle of a fair trial.

The Court decided that the Directive allowed for derogations from Article 3, 4, 5, 8 and 16; Article 17 may allow for derogations for fire services, daily rest periods are provided (Article 3), breaks (Article 4), weekly rest periods (Article 5), the duration of night work (Article 8) and reference periods (Article 16). Also, the Court referred to paragraph 38 of C- 158/15, 21 February 2018, *Ville de Nivelles vs. Rudy Matzak*, as being directly relevant. It also considered the third question referred by the Court of Justice in the above case, as set out in paragraphs 48 to 52.

The Court stated that the claim submitted by the applicants concerned the payment of compensation for their time on stand-by duty from 2006 to 29 July 2015, which did not concern a reduction or termination of the stand-by duty status or its adaptation to the framework provided by the Directive. The Court, citing the CJEU's decision in *Ville de Nivelles vs. Rudy Matzak*, noted that the Directive does not regulate the question of remuneration of workers and, although it is possible for Member States to determine the remuneration of workers that fall within the scope of the Directive, they are not required to do so.

Consequently, the Court ruled that since the request submitted and the decision rejecting it did not relate to an adjustment or reduction of on-call time as provided for in the Directive but to the payment of compensation, a matter which is expressly outside the scope of the Directive, it was not possible to consider the grounds for annulment as relating to a breach of the Directive. Similarly, the other grounds for annulment could not be raised either, since they did not relate to compensation in line with the applicants' claim, but to the organisation of working time. For the above reasons, the Court rejected the appeal and upheld the authorities' decision.

There is earlier case law pertaining to on-call duties of firefighters who are covered by Police Law and are under the command of the Police. There is no reference to the on-call time of Police, except for firefighters, who fall under the organisation of the Police,

and are excluded under Article 3(4)(b) Cypriot WTL. This distinction was examined in a Cypriot court case on the fire brigade: *Attorney General vs. Michalis Kongorizi (see* 22 May 2006, No. 34/2005, 55/2005*, Γενικός Εισαγγελέας της Δημοκρατίας και Άλλος vs. Μιχάλη Κογκορόζη και Άλλου (2006) 1 ΑΑΔ 457 (cylaw.org)*), on-call time, i.e. periods during which a worker is required to remain at the workplace, ready to carry out his or her duties if requested to do so. The Supreme Court (the unanimous Court judgment was delivered by Constantinides J., on behalf of the three member judiciary consisting in addition of *Gavriilides* and *Papadopoulou*), which cited relevant CJEU case law (CJEU case, C-303/98, 03 October 2000, *Sindicato de Médicos de Asistencia Pública (Simap) vs. Conselleria de Sanidad y Consumo de la Generalidad Valenciana*, and CJEU case, C-151/02, 09 September 2003, *Landeshauptstadt Kiel v. Norbert Jaeger*), ruled that remuneration is not an issue the CJEU has ruled on or, for that matter, any rule of EU or Cypriot labour law has dealt with, therefore this is an issue to be dealt with entirely on the basis of the contract agreed to between the two parties. Based on the contract between the parties, the Supreme Court ruled that on-call time must be considered working time. The Supreme Court ruled that the two cited CJEU cases:

> *"were not concerned with the issue of remuneration but with matters of labour law" (the Greek text of the Supreme Court's judgment reads as follows: "στις αναφερθείσες αποφάσεις του ΔΕΚ που και εκείνες, [..] δεν αφορούσαν σε ζητήματα αποζημίωσης της εργασίας αλλά σε ζητήματα εργατικού δικαίου.")*

and that the relevant provisions of the law transposing the Working Time Directive do not interfere in any way in the issue of remuneration, nor do they impose a duty to remunerate on-call time as equal to the actual performance of duties by the employee.

4 Other Relevant Information

Nothing to report.

Czech Republic

Summary

(I) A bill amending the Employment Act is currently in the legislative process.

(II) An act on employment and social security measures in response to the armed conflict on the territory of Ukraine caused by the invasion of the Russian Federation's Army has been adopted and published.

(III) The average annual salary for the purpose of issuing blue cards has been communicated.

(IV) The Supreme Court has ruled on the termination of employment of a disabled employee without properly considering the issue of reasonable accommodation.

(V) The Supreme Court has also ruled on the possibility of a concurring employment relationship and agreement to perform work.

1 National Legislation

1.1 Transposition amendments to the Labour Code

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

The Bill is available here.

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

The Bill will introduce a number of important changes, in particular as regards the Labour Code.

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

1.2 Planned changes to the Employment Act

The Bill amending Act No. 435/2004 Coll., on Employment, as amended, and other related acts submitted by the Ministry of Labour and Social Affairs is in the inter-ministerial comment procedure. Many stakeholders have the opportunity to comment on the proposal. Once these comments have been addressed, the government will vote on the amendment and, if it is approved, the proposal will be referred to Parliament for approval.

The Bill is available here.

Specifically, the purpose of this proposal is to abolish compulsory insurance for temporary work agencies in the event of insolvency and to increase their compulsory deposits. According to the amendment, temporary agency workers should receive the same protection as regular employees in accordance with Act No. 118/2000 Coll., on the Protection of Employees in the Event of Employer Insolvency. A proposal for amendments to the requirements of responsible persons at employment agencies has also been submitted.

The amendment also introduces measures to protect agency workers by prohibiting temporary assignments to a user undertaking for a period of more than three years and allowing for the conclusion of an employment relationship with an agency worker for the period of the temporary assignment only, as well as measures to prevent abuse of the

possibility of assigning an agency worker to only one user undertaking. The formulation is currently as follows:

> *"The temporary work agency and the user undertaking must ensure that the temporary assignment of an employee to perform work for the same user undertaking does not exceed 3 years within a 5-year period. For the purpose of determining the 3-year period, the periods of the temporary assignments shall be cumulative; this shall not apply if a period of 3 years has elapsed since the end of the previous temporary assignment of the worker to the same user undertaking."*

Furthermore, to protect temporary agency workers, the following rule has been included in the Bill:

> *"If the employment contract or agreement between the temporary work agency and the employee, which includes an arrangement for the temporary assignment of the employee to the user undertaking, is concluded for a fixed term, which is defined by the duration of the employee's temporary assignment to the user undertaking, and if the temporary assignment terminates early, the employment relationship shall not end until at least 14 calendar days after the date on which the employee has been notified of its termination."*

Another important change is the definition of illegal work, which is currently formulated as follows: illegal work refers to, among other things,

> *"work performed in a relationship of superiority of the employer and subordination of the employee, on behalf of the employer, according to the employer's instructions, and performed by the employee personally for the employer, performed outside the employment relationship; these characteristics are decisive for concluding whether the work is illegal and that the duration of the work is irrelevant; this does not apply if the characteristics referred to in the first sentence relate to the performance of work outside the employment relationship permitted by special legislation"*.

The Bill might—and will likely—be amended in the legislative process.

The abolition of the obligation for temporary work agencies to be insured in the event of insolvency is proposed because this obligation has not had the intended effect, i.e. greater legal certainty and protection of agency workers. The protection of temporary agency workers in the event of insolvency of the temporary work agency is lower than that provided under the Act on the Protection of Employees in the Event of Employer Insolvency. Any claim against the employer (e.g. unpaid wages) are finalised sooner for employees protected under this Act.

Rules are also being proposed to protect agency workers when they are assigned to user undertakings to bring the regulation in line with CJEU case law.

1.2 New obligation for employers to register employees with temporary protection

Act No. 75/2023 Coll., amending Act No. 66/2022 Coll., on employment and social security measures in response to the armed conflict on the territory of Ukraine caused by the invasion of the Russian Federation's Army, as amended, and other related laws have been published in the Collection of Laws; their effective date is set for 01 April 2023.

The Act is available here.

In relation to the reporting obligations to the Czech Social Security Administration under Section 94 of Act No. 187/2006 Coll, on sickness insurance, a legal or natural person as an employer will be required to report the entry into employment of any employee who

is a foreigner and is entitled to temporary protection under a special legal regulation (provided to Ukraine war refugees), employed or working on the basis of an agreement on the provision of services, whose employment is deemed minimal employment under the Act on Sickness Insurance (who therefore does not need to be insured), or an employee entitled to temporary protection who works on the basis of an agreement to perform work. Notification of the start of employment must be made regardless whether participation in sickness insurance has been established – thus, even persons who have not yet been insured must be registered.

Employers who only employ uninsured persons and were not otherwise subject to registration with the CSSA for this reason until the amendment came into force will also have to register their enterprise. They will now be required to register.

The aim of the new reporting and registration obligation is to protect employees entitled to temporary protection from unlawful practices by employers. Another reason for this amendment is an effort to increase the efficiency of spending on specific social security benefits for persons entitled to temporary protection.

1.3 Blue card issuance – long-term residence permits for highly skilled workers

Communication No. 74/2023 Coll. of the Ministry of Labour and Social Affairs on the average gross annual wage in the Czech Republic for the year 2022 for the purposes of issuing blue cards pursuant to Act No. 326/1999 Coll., on the Residence of Foreigners in the Czech Republic, has been adopted and published.

The Communication is available here.

The Ministry determined that the average annual salary for the period from 01 May 2023 to 30 April 2024 was CZK 484 236 (i.e. approx. EUR 20 493).

One of the requirements for the issuance of a blue card is the negotiation of an employment contract with a gross salary corresponding to at least 1.5 times the average gross annual salary determined by the Ministry of Labour and Social Affairs. This communication from the Ministry is issued every year.

2 Court Rulings

2.1 Reasonable accommodation for persons with disabilities

Supreme Court, No. 21 Cdo 2536/2023, 07 February 2023, Employing persons with disabilities

The Supreme Court confirmed its settled case law according to which an employer may dismiss a disabled employee on medical grounds, even if the employer has the possibility of transferring them to another suitable position.

In the present case, the employee whose health condition was adversely affected by her partial disability, had concluded an employment contract as a 'security guard for property and persons'. In practice, she actually worked a daily single shift at an indoor post in a heated gatehouse for several years. The employer then unilaterally decided to change the organisation of work in such a way that every guard had to perform additional activities, i.e. night shifts as well as patrolling the guarded area, which meant working in outdoor areas. Due to this change, the employer sent the employee to undergo a special medical examination. After the examination, a medical report was issued according to which the employee had lost her long-term medical capacity to perform night work, work standing up or patrolling, among other things. What she had not lost, however, was her ability to work in a single-shift regime in a heated room. That meant that the employee was still capable of performing the work she had performed until the change of the organisation of work. Following the change in the organisation

of work in combination with the employee's medical report, she was served a notice of termination for medical reasons.

The Supreme Court overturned the lower courts' decisions. It ordered them to re-examine whether or not a valid bilateral agreement had been concluded between the employer and the employee for a change in working hours prior to the change in the organisation of work, which the employer would not have then been able to unilaterally change.

However, none of the courts that dealt with the case addressed the issue of reasonable accommodation for disabled persons within the meaning of Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, and Article 3 (2) of the Czech Act No. 198/2009 Coll. on equal treatment and legal remedies against discrimination and on amendments to certain acts (Anti-Discrimination Act).

Moreover, the Supreme Court reiterated its earlier legal opinion according to which in the event that an employee becomes incapacitated for performing his/her current job due to health reasons, it is solely at the employer's discretion whether the employee will be transferred to another suitable job or whether the employment relationship will be terminated by notice.

It seems that this conclusion is contrary to the CJEU's case law, in particular the judgment in CJEU case C-485/20, 10 February 2022, *HR Rail SA*.

2.2 Concurrence of an employment relationship and agreement to perform work

Supreme Court, No. 21 Cdo 1929/2021, 10 March 2023

The Supreme Court ruled on the legality of performing work for one employer on the basis of an employment contract and an agreement to simultaneously perform work (agreement provided for by the Labour Code, similar to so-called zero-hours contracts). Such arrangements are only legal if the scope of work performed under the two contracts differs.

In the present case, an employee and an employer had concluded an employment contract, with the employee working as a 'physician without hospital emergency care'. They had also concluded an agreement for the employee to perform work in 'hospital emergency care'. The employee claimed that the agreement to perform work was invalid because he had actually performed work as a physician under both contracts. Concluding two employment law relationships for the same type of work is prohibited under Czech law. The employee stated that because the agreement to perform work was invalid, any work he had performed based on this agreement ought to actually be considered overtime work and be compensated accordingly.

The Supreme Court sided with the employee and ruled that the respective arrangement was indeed illegal under Czech law. Any work an employee is to perform under a separate employment law relationship must differ from the work performed under the original employment relationship.

In delivering this judgment, the Supreme Court confirmed that this widespread practice of attempting to circumvent the legal rules on working time (used extensively in the medical profession but in other occupations as well) violates Czech law.

This is yet another example of how agreements to perform work and agreements on work activity are often used to avoid obligations arising from national and EU legislation. In this case (among others), the provisions of Czech Labour Code on working time (especially overtime), which transpose the provisions of Directive 2003/88/EC of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time, apply.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The CJEU ruled that

> *"Article 5 of 2003/88/EC of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time, read in the light of Article 31 (2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the daily rest period provided for in Article 3 of that directive does not form part of the weekly rest period referred to in Article 5 of that directive, but is additional to it."*

The Court further ruled that:

> *"Articles 3 and 5 of 2003/88/EC, read in the light of Article 31 (2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that where national legislation provides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, the daily rest as guaranteed by Article 3 of that directive."*

Finally, the CJEU ruled that:

> *"Article 3 of Directive 2003/88/EC, read in the light of Article 31 (2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that where a worker is granted a weekly rest period, he or she is also entitled to a daily rest period preceding that weekly rest period."*

Czech legislation entitles employees to a daily rest period of at least 11 hours. This can, under certain conditions, be reduced to eight hours, but the next daily rest period must be extended accordingly. The Czech Labour Code also provides for a minimum weekly rest period of 35 hours for each seven-day period. This can, under certain conditions, be reduced to 24 hours, but for a two-week period, the weekly rest period must be at least 70 hours in total. That means that the standard weekly rest period is 11 hours longer than that stipulated in Directive 2003/88/EC. The aim of the legislation was most likely to include the daily rest period within the scope of the weekly rest period.

In view of the above, it is common practice in the Czech Republic that when an employee is granted a weekly rest period, he or she is not in addition entitled to a daily rest period. This practice has long been accepted by both doctrine and settled Supreme Court case law. To ensure compliance with this CJEU judgment, it will probably be necessary to change this practice (to basically provide 46 consecutive hours for every 7-day period) or to amend the legislation. This will, in a sense, cause a 'revolution' in Czech labour law.

Unfortunately, compliance with continuous rest periods already poses a major problem for many employers, even with the use of statutory reductions. Applying this judgment will therefore be difficult for a large number of employers; for some it could even mean abandoning long-established patterns of regular working time, as these simply do not include such extended weekly rest periods.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

The Danish Parliament has put forward a proposal for a statutory act on an employment certificate and certain working conditions with a view to implementing Directive (EU) 2019/1152 on transparent and predictable working conditions in the EU.

1 National Legislation

1.1 Proposal for Statutory Act on an Employment Certificate and Certain Working Conditions

A legislative proposal to implement Directive (EU) 2019/1152 has now been put forward by the government. The proposed statutory act will replace the existing Act on Employment Certificates.

If the new Act is adopted as proposed, the changes will come into force from 01 July 2023. Those already employed can have their employment contracts updated with the new rules. A request for an update must be fulfilled by the employer no later than eight weeks after it has been put forward by the employee.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The case establishes that the rights to daily and weekly rest periods are two separate concepts and two separate rights laid down in Directive 2003/88/EC, which must be read in light of the EU Charter of Fundamental Rights. The right to a daily rest period does not form part of the weekly rest period but is provided in addition to it.

Under Danish law, the provisions on daily and weekly rest periods are implemented in the Act on Occupational Health and Safety, L No. 2062 of 16 November 2021. An Executive Order on Daily and Weekly Rest Periods, Order No. 324 of 23 May 2002, supplements the Act.

The Act on Occupational Health and Safety, Section 50 (1), states that working time must be scheduled, with employees being granted a daily rest period of at least 11 hours for every 24-hour period.

Section 51 regulates the right to weekly rest periods, stating that

> *"Within every seven-day period, employees shall have one weekly rest day, which must occur in immediate connection with a daily rest period. The weekly rest day shall, to the extent possible, include Sundays and to the extent possible apply at the same time for all employees in the company."*

Under Danish law, it is thus clear that the right to daily and weekly rest periods are two distinct rights, and that daily rest periods are provided in addition to the weekly rest period. The Danish statutory rules conform with the interpretation laid down by the CJEU in its recent ruling.

4 Other Relevant Information

4.1 Working environment protection

A broad political majority of the Danish Parliament has concluded an agreement on the working environment, which entails a contribution of DKK 1.3 billion over four years to improve working environments.

The agreement targets three main areas. First, securing the working environment in the future, which includes, inter alia, efforts to enhance the protection of the psychological working environment. Second, a strong focus on fighting social dumping, which includes, inter alia, blacklisting companies from public tenders, if they have used illegal employment of foreign workers. Third, an improved effort in prioritised areas such as work-related stress.

It is expected that the agreement will entail new legislation.

The press release of the Ministry of Employment is available here.

Estonia

Summary

(I) The Estonian Parliament has modified the rules for payment of compensation in case of wrongful dismissal. The compensation may not be reduced by benefits and allowances paid by the State to the dismissed employee.

(II) The Estonian Supreme Court in its recent case law clarified how overtime work should be reimbursed and what information must be provided to the employee.

(III) The Ministry of Social Affairs has started evaluating how the variable hours agreement in retail has been applied in Estonia.

1 National Legislation

1.1 Employment Contracts Act

On 17 March 2023, amendments to the Employment Contracts Act (hereby ECA) came into force, which regulates compensation for the termination of an employment contract and related disputes.

According to Article 109 of ECA, if the court or labour dispute committee terminates an employment contract in the case specified in subsection 2 of § 107 of this Act, the employer must pay the employee compensation in the amount of three months' average wages of the employee. It has now been clarified how the amount of the compensation should be calculated: the compensation is not subject to the provisions of Chapter 7 of the Law of Obligations Act. The court or labour dispute committee may change the amount of compensation by considering the circumstances of the termination of the employment contract. The amount of compensation may not be reduced by any benefits and allowances paid by the State .

In essence, the legislator found that the employee does not always have the obligation to prove his or her (proprietary and non-proprietary) loss in case of illegal termination of the employment contract, but that the amount of compensation must have a preventive role and restore fairness, i.e. it must be punitive in nature, taking the circumstances of the termination of the employment contract into account.

The same principle applies to persons who have the right to maternity leave or who have been elected as employee representatives. The amount of compensation for such employees is his or her 12 months' salary.

In practice, questions have arisen as to how the compensation should be calculated if the party does not comply with the notice period when terminating the employment contract. This is specified in TLS § 100 (5), according to which if an employer or employee gives advance notice which is less than the period specified in law or a collective agreement, the employee or employer has the right to receive his or her average daily wages for every working day that the minimum advance notice of termination of the employment contract was reduced.

2 Court Rulings

2.1 Compensation for night work and overtime work

Supreme Court, No. 2-21-9335/18, 15 March 2023

On 15 March 2023, the Supreme Court issued Regulation No. 2-21-9335/18, which deals with the rules for remuneration for night work and compensation for overtime work.

The parties had agreed on an hourly rate, which includes payment for working evenings and at night. In addition, the employee's employment was subject to a collective agreement, according to which the employer was to pay the employee a bonus of 30 per cent of the hourly wage for night work; the bonus was included in the hourly wage and was specified in the employment contract. The employee claimed that the employer had to pay the minimum rate of the 'hourly wage × 30 per cent' for night work, but the employer rejected this claim.

The Court decided on the payment of night work based on the following: ECA does not allow agreements that include the remuneration for night work in the minimum wage established by the Government of the Republic of Estonia. In a situation in which the salary agreed in the employment contract is lower than the minimum salary and the night work rate combined, but the salary is higher than the minimum salary, the employer must prove the employee's working hours during the day and at night, and by comparing these two, it must be determined whether the employee is guaranteed both the minimum salary and the higher rate of pay for night work (see Sections 11.1 and 11.3 of the Court's decision).

The employer calculated the employee's overtime pay based only on the employee's base salary, without taking the bonus paid to the employee into account. The employee also filed a claim for overtime pay.

The Court ruled that the employee and the employer could agree on what parts the employee's salary shall consist of and that the salary may, for example, include payments of bonuses, performance bonuses, etc. The bonuses paid to the employee become part of the salary, e.g. if the employer has made the payment of bonuses part of the salary arrangement and the employee has met the conditions established by the employer to be granted the bonus. The salary may be increased by agreement of the parties by payment of a bonus. Overtime pay must be based on all fees that have become part of the employee's salary, and the employer is responsible for proving the composition of the salary (see Sections 12.1 and 12.2.).

In addition, the Court reiterated an important principle in labour disputes. To balance the employee's position as the weaker party in the employment relationship, the Court has a heightened obligation to explain its approach to resolving an employment dispute, and the employee has a lower burden of proof in some cases compared to the employer (see Section 11.3.).

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

According to the judgment, Article 5 of Directive 2003/88/EC of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the daily rest period provided for in Article 3 of that Directive does not form part of the weekly rest period referred to in Article 5 of that Directive, but is additional to it. The Court also determined that where national legislation provides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, the daily rest period guaranteed in Article 3 of that Directive. The Court provided a clear explanation of Article 3 of Directive 2003/88, read in light of Article 31(2) of the Charter. Namely, where a worker is granted a weekly rest period, he or she is also entitled to a daily rest period preceding that weekly rest period.

In Estonia, working and rest times are regulated by the ECA. Daily rest periods are regulated in Article 51 of ECA. An agreement by which an employee has fewer than 11 hours of consecutive rest over a 24-hour period is void, unless otherwise provided by

law. The law also stipulates exceptions for a longer daily rest period for minors as well as other exceptions, taking specific conditions into account (e.g. Article 17(3) of Council Directive 2003/88/EC concerning certain aspects of the organisation of working time (OJ L 299, 18 November 2003, pp. 9–19).

The weekly rest period is regulated in Article 52 of ECA. An agreement by which an employee has fewer than 48 hours of consecutive rest over a 7-day period is void, unless otherwise provided by law. An agreement by which an employee has fewer than 36 hours of consecutive rest over a 7-day period is void when calculating the employee's summarised working time, unless otherwise provided by law.

The Estonian regulation does not include specific rules on how the daily rest period and weekly rest period must be calculated together after the end of the working day. Therefore, the ECA does not directly contradict the interpretation defined in the decision of the European Court.

However, Estonian practice does not correspond to the Court's decision. In general, the approach is that if a working day is followed by a weekly rest period, the daily rest period is not taken into account. In other words, the approach to date has essentially been as elaborated in point 21 of the ruling:

> "*daily rest period must be granted between two successive periods of work within the same 24-hour period, and not when no new period of work is scheduled, for example when a weekly rest period or leave is granted. In its view, that is justified by the purpose of the daily rest period, which is to enable the worker to regain his or her strength between two periods of work. In addition, during each seven-day period, it is necessary to provide a longer weekly rest period that replaces the daily rest period*".

The labour inspectorate uses this principle in its trainings and has explained it to the public. The brochure of the labour inspectorate only states the following:

> "*The employer may consider the starting time of the first work shift of the period in question as the starting point of the seven-day period. It is important that over any seven-day period, the employee is guaranteed 48 or 36 consecutive hours of rest. The accuracy of the weekly rest period over the seven-day period can be checked from the end of the previous weekly rest period*." (see p. 20).

An example is also given whereby the employee has 48 consecutive hours of weekly rest over a seven-day period. In other words, a specific period is referred to as the weekly rest period throughout the brochure, but it is not indicated that part of this period covers the daily rest period. In addition, the brochure points out that the purpose of weekly and daily rest periods is the same:

> "*The daily and weekly rest periods prescribed in TLS is intended to preserve and restore the health of the employee, and the established rules may not be violated, even if the employee agrees to it or request it on the pretext of his own convenience*."

Such an overlap is also not explained in the manual of employment contract law, which is generally applied in practice (see Käärats, E. et al. Ministry of Social Affairs. *Selgitused töölepingu seaduse juurde*. Explanations to the Employment Contract Act, p 123-124).

One of the authors of this report asserts that during the supervision of labour relations, the labour inspectorate has supported the previously mentioned perspective: the employee must be guaranteed at least one 36-hour rest period over a seven-day period (Elina Soomets has worked in the labour inspectorate for about 19 years, and for some time also prepared instructions for employers that agreed with the stated position).

In summary, Estonian law does not need to be amended, but efforts must be made and the public informed (by the State) about how to interpret Article 51 and 52 of the Estonian Employment Contracts Act.

4 Other Relevant Information

4.1 Variable hours agreement in retail

The Ministry of Social Affairs has started evaluating how the variable hours agreement in retail has been applied in Estonia.

On 15 December 2021, temporary amendments to the Employment Contracts Act came into force, which allow for an agreement on variable hours in retail (Article 43[1] of ECA). An employer engaged in retail has the right to conclude a variable hours' agreement in writing with an employee who works part-time (12 hours or more) over a period of seven days. According to a variable hours' agreement, in addition to the agreed working time, the employee may perform up to eight hours of work over a period of seven days (variable hours). The agreed working time and variable hours combined may not exceed full working time, however.

According to Article 139[7] of ECA, in collaboration with its social partners, the Ministry of Social Affairs will evaluate the impact and efficiency of the implementation of variable hours agreements no later than 2024.

The Estonian Chamber of Commerce and Industry, which represents employers, shared its position with the Ministry of Social Affairs about the relaxation of the rules (see four proposals for amending the regulation of variable hours agreements, Estonian Chamber of Commerce and Industry, 01 March 2023).

4.2 Daily allowances for business travel to be updated

The Estonian Chamber of Commerce and Industry together with the Estonian Association of International Motor Carriers, the Estonian Employers' Union and the Estonian Construction Entrepreneurs' Union appealed to the coalition partners of the new government and the leaders of the political parties with a proposal to update the regulation of the tax-free daily allowance for foreign assignments, which has remained unchanged since 2016.

The authors of the proposal consider that the maximum tax-free daily allowances established by the regulation no longer meet the needs of entrepreneurs, and the aforementioned regulation should be updated and, in case the distinction of tax-free days is to continue, new rates should be established, i.e. up to EUR 75 per day for the first 15 days, EUR 50 per day for the remaining 16-31 days. An alternative option is to eliminate the distinction between tax-free days and establish a single limit of EUR 65 per day for all days of the entire month, i.e. up to 30 days.

The proposal is justified by the goal of remaining competitive in the common market and promoting successful economic activity. The economy has undergone significant changes over the last seven years due to crises.

Finland

Summary

(I) The stand-by time of firefighters who perform crew stand-by and unit leader stand-by time was considered to be working time by the Labour Court.

(II) The Ministry of Economic Affairs and Labour has published a memo of potential means to be used to determine whether work has been carried out on the basis of an employment relationship or as an entrepreneur.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Stand-by time

Labour Court, TT 2023:13; TT 2023:14; TT 2023:15 and TT 2023:16

In the four interlocutory judgments of the Labour Court, TT 2023:13; TT 2023:14; TT 2023:15 and TT 2023:16, the Court dealt with the question whether the stand-by time of firefighters, who performed crew stand-by time and unit leader stand-by time, was to be considered working time. In its reasoning, the Court referred to the Working Time Directive 2003/88/EC.

In the interlocutory judgment TT 2023:16, the question was raised whether the stand-by time of a firefighter who performed crew stand-by should be considered working time. The Court noted that the Working Time Directive sets the minimum requirements for what must be considered working time. Based on the case law of the CJEU, the scope of the concept of working time referred to in the Directive includes periods of stand-by time during which the employee is subject to obligations of such a nature that they as a whole objectively and very significantly affect the employee's opportunities to freely use the time during such periods, when he or she is not required to perform work duties, and to use this time to pursue his or her own interests. On the other hand, when the obligations imposed on the employee during a certain on-call period allow him or her to organise his or her time freely and to pursue his or her own interests without the interference of any major obligations, only the time specifically related to the performance of work, which, if necessary, has actually been performed during such a period, shall be considered working time under the Directive. The Labour Court referred to CJEU case C-580/19, 09 March 2021 as an example. In the interlocutory judgment, the Court considered that an assessment of the circumstances as a whole, the obligations imposed on the firefighter during the stand-by period had an objective and very significant effect on the firefighter's ability to freely make use of the time during these stand-by times when the firefighter was not required to perform work duties, and to use this time to pursue his own interests. Thus, the stand-by time had to be considered working time in its entirety.

In the interlocutory judgments TT 2023:15 and TT 2023:13 of the Labour Court, the question arose whether the time counted as stand-by time for firefighters who perform unit leader stand-by time should be considered working time. In the judgments that also referred to the minimum requirements of the Working Time Directive, it was considered that an assessment of the circumstances as a whole, the obligations imposed on the firefighters during their stand-by times had an objective and very significant effect on their ability to freely use the time during these periods when they were not required to perform work duties, and to use this time to pursue their own interests. Thus, the stand-by time had to be considered working time in its entirety.

In the interlocutory judgment TT 2023:14, the question arose whether the time counted as stand-by time of firefighters who performed unit leader and crew stand-by time ought to be considered working time. In the judgment, which also referred to the minimum requirements of the Working Time Directive, the Court considered that an assessment of the circumstances as a whole, the obligations imposed on the firefighters during their stand-by times had an objective and very significant effect on their ability to freely use the time during these periods when they were not required to perform work duties, and to use this time to pursue their own interests. Thus, the stand-by time had to be considered working time in its entirety.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

In the Finnish working time legislation, the daily rest and weekly rest periods are treated separately. Section 28 of the Working Time Act (*Työaikalaki*, 872/2019) contains provisions that allow deviations from the weekly rest periods but they may not reduce the weekly rest period, i.e. the daily rest period is not counted as a part of it. Section 27 of the Act sets out that working time shall be organised in such a manner as to grant the employee an uninterrupted rest period of at least 35 hours over a 7-day period. Whenever possible, this rest period shall include a Sunday.

4 Other Relevant Information

4.1 Memo of how to determine whether work is performed in an employment relationship is published

The memo mapping out how to determine 'at a low threshold' whether work is performed under an employment relationship or as an entrepreneur was published by the Ministry of Economic Affairs and Labour on 31 March 2023.

According to the memo, the question about the nature of the legal relationship should be resolved as early as possible to improve the legal certainty of the parties and to prevent abuses and related harmful consequences. As the threshold for the worker to seek a solution regarding the nature of his or her legal relationship can be very high, the memorandum also considers which other parties should have the right to submit the case to a low-threshold legal protection body. In addition, according to the memo, the goal should be that the establishment and use of the mechanism should be a cost-effective and expedient way to resolve problems related to the misclassification of the legal relationship.

The memorandum presents four different possibilities for developing 'low-threshold' legal protection. In the first option, the Labour Council could issue a statement on the nature of the legal relationship on the basis of an application and submit it to the occupational health and safety authority for information. The occupational safety and health authority could, in accordance with its existing power, use the statement, for example in the targeting of supervision.

In the second option, a separate procedure could be created and connected to the occupational safety and health authority. In this procedure, a statement could be made on the nature of the legal relationship. The position adopted would bind the occupational health and safety authority itself in future supervisory activities but could de facto have a wider impact.

The third option could be for the occupational health and safety authority to be given the right to issue a written request in a situation where an employment relationship has

been illegally assigned a wrong form of legal relationship. The legal effects related to the request would correspond to the current law.

In the fourth option, a special authority could be created. However, according to the memorandum, it is not meaningful to create a new authority solely to solve the question about the existence of an employment relationship, so this option would only be considered appropriate if there is a need to bring together other issues of working life to be resolved by the same new authority.

France

Summary

(I) Directive (EU) 2019/1152 and Directive (EU) 2019/1158 have now been transposed into French labour law.

(II)The French legislator has adopted the government's retirement reform plan and will review the Bill on immigration next.

(III) The Court of Cassation ruled on the granting of paid leave during the eviction period, and the possibility for judges to order the communication of pay slips to prove unequal treatment despite the GDPR.

1 National Legislation

1.1 Adjustment of French labour law to European Union law

The Law of 09 March 2023 (Law No. 2023-171 on various provisions for adapting to European Union law in the fields of the economy, health, labour, transport and agriculture, known as the 'DDADUE'), adjusts French labour law to the provisions of Directive (EU) 2019/1152 on transparent and predictable working conditions and Directive (EU) 2019/1158 on work-life balance. Until now, they had not been transposed into French law.

This law modifies French labour law related to parental leave for education, paternity leave, parental leave, family solidarity leave and leave for caregivers, information to be provided to employees, probation periods, fixed-term contracts and temporary employment contracts and employment cheques.

The amendments are as follows:

- Parental leave for education

The condition of one year of seniority for entitlement to parental leave is no longer necessary on the date of the birth of the child or the child's arrival in the home, but from the date of the leave request (Article L. 1225-47 of the French Labour Code is modified).

The duration of parental leave is now considered as a period of actual work for determining the employee's seniority rights (Article L. 1225-54 of the French Labour Code is modified).

Individually acquired rights accumulated before the start of the leave remain.

- Paternity leave

The duration of paternity and childcare leave is considered actual working time for determining the employee's rights based on his seniority (Article L. 1225-35-2 of the French Labour Code is created).

Individually acquired rights accumulated before the start of the leave remain.

The period of paternity leave is considered a period of presence in the company for the distribution of the profit-sharing scheme (Article L. 3324-6 of the French Labour Code is modified).

- Parental leave to care for a sick child (*Congé de présence parentale*)

Individually acquired rights accumulated before the start of the leave remain (Article L. 1225-65 of the French Labour Code is modified).

- Family solidarity leave and leave for caregivers

Extension of the benefit of family solidarity leave and leave for caregivers to employees of private households and childcare assistants (Article L. 7221-2 of the French Labour Code is modified).

- Information to be provided to employees

The obligation of the employer to provide employees with a document on key information relating to the employment relationship: a list of 15 pieces of information which are to be included in the forthcoming decree (Article L. 1221-5-1 of the French Labour Code) is created.

The employer's obligation to give notice before bringing the matter to court in the event of a failure to provide the required information.

For contracts in force on the date of promulgation of the law, the employer is required to hand over the above-mentioned information only in the event of a request from the employee in accordance with procedures to be laid down by decree.

- Probation period

Abolition before 09 September 2023 (six months after the promulgation of the law) of probation periods longer than those provided for by the French Labour Code, set by Collective Bargaining Agreements (CBA) concluded before 25 June 2008 (Article L. 1221-22 of the French Labour Code is modified).

- Fixed-term contracts and temporary employment contracts

The obligation of the employer (or the user undertaking in the case of a temporary worker) to inform the fixed-term employee or the temporary worker who has a seniority of at least six months, about available permanent positions in the company. The modalities are to be determined by decree (Articles L. 1242-17 and L. 1251-25 of the French Labour Code are modified).

- Employment check

Exclusion of the obligation to submit a fixed-term contract or a temporary employment contract when using a service voucher for jobs that do not exceed three hours over a reference period of four weeks (previously: jobs of less than four consecutive weeks or eight hours per week).

Exclusion of the employer's obligation to submit information that is relevant to the employment relationship (Article L. 1271-5 of the French Labour Code is modified).

1.2 Retirement reform plan: adoption of the bill

As discussed in the January 2023 Flash Report, the French government has presented its proposal for the future of the public pension system (see Bill Rectifying the Social security finance Act for 2023).

On 20 March 2023, the French Prime Minister engaged government to vote on the pension reform. In application of a specific process provided for by Article 49.3 of the French Constitution, a bill presented by the Prime Minister is deemed to be adopted unless a motion of no confidence (*motion de censure*), presented within 24 hours is voted on by Parliament. Two motions of no confidence were presented. Nevertheless, since neither of these two motions had collected a sufficient number of votes, the text was deemed to have been adopted.

The key reforms are as follows:

- Increase in the retirement age from 62 years to 64 years and an increase in the duration of pension contributions (increased number of quarters, depending on the year of birth);
- Confirmation and amendment to current exceptions for long careers and medical disability;
- Specific measures to improve and extend care granted to workers facing "*difficult working conditions*";
- Increase in the cost of mutually agreed terminations or forced retirement through the increase of social security contributions to be paid by the employer in such cases;
- Improvement of the possibility to cumulate pension and professional activity;
- Promotion of the employment of senior employees through (i) the creation of a specific index designed to assess the employment of seniors and the implementation corrective measures, and (ii) experimental contract for 'senior' employees.

The text is now under review by the French Constitutional Court, which has one month to issue its decision. Should the Constitutional Court deem some measures incompatible with the Constitution, they would not enter into force.

There is, in any case, a strong likelihood that most of the provisions will apply, but will be supplemented by decrees.

1.3 Proposed Bill on Immigration

The government's proposal on immigration was deposed to the French Senate on 01 February 2023 (see Bill on Immigration). It is worth noting that Senators were supposed to review the Bill from the 28 March 2023, yet the review has been postponed for the time being.
The Bill aims to undertake a structural reform of the asylum system and to reinforce the requirements for successful integration through "*language, respect for the values of the Republic and work*".

The following measures are planned:

- Creation, on an experimental basis, of a residence visa for "*jobs affected by labour shortages*".

The residence visa for "*jobs affected by labour shortages*" would be granted automatically to any foreigner who can prove:

- the exercise of a professional activity included in the list of jobs and geographical areas experiencing recruitment problems as defined in Article L. 414-13 of the French Code of Admission and Residence of Foreign Persons and the Right to Asylum (CESEDA) (which should be updated annually according to the Council of State) for at least eight months, consecutive or not, over the last 24 months;
- an uninterrupted period of residence of at least three years on national territory, which, as the impact assessment points out, excludes seasonal workers (Bill, Article 3, I, 1°; CESEDA, Article L. 421-4-1, para. 1, to be published).

The 'seasonal worker' residence visa (CESEDA, Article L. 421-34) and the asylum application certificate (CESEDA, Article L. 521-7) would not be considered for obtaining the "*jobs affected by a labour shortage*" residence visa. The employer would not have to take any action according to the impact assessment. The "*labour*

shortage occupations" residence visa would thus be the exclusive responsibility of the foreign worker.

- Immediate access to the labour market for asylum seekers

For asylum seekers who are nationals of countries for which the level of international protection granted in France is higher than a given threshold (to be set by decree) and appear on a list set annually by the administrative authority, access to the labour market could be authorised as soon as their application is lodged, under the conditions set out in the French Code of Admission and Residence of Foreign Persons and the Right to Asylum (Bill, Article 4; CESEDA, Article L.554-1-1, I, para. 1, to be published). The common law time limit of six months would therefore not apply.

- Administrative fines for employing foreigners not authorised to work

Article 8 of the Immigration Bill provides for the creation of an administrative fine for the employment of foreigners who are not authorised to work on national territory.
According to the French Administrative Supreme Court, in its opinion of 26 January 2023, this provision does not disregard the principles of necessity, legality and proportionality of offences and penalties.

- French language training for foreign workers

Article 2 of the Immigration Bill aims organise the contribution of employers to training in the French language for foreign allophone workers to promote their professional and social integration in France.

2 Court Rulings

2.1 Dismissal protection

Social Division of the Court of Cassation, No. 21-16.008, 01 March 2023

In the present case, an employee working as a customer adviser was dismissed on 28 January 2013 for professional incompetence.

By an irrevocable decision of 30 June 2020, the Court of Appeal ruled that the dismissal was null and void because of the employee's health status and ordered his reinstatement while reopening the debate on the calculation of compensation for the period after the unlawful dismissal up to reinstatement.

According to Article L. 1132-1 of the French Labour Code, dismissal e of an employee due to his or her health status is null and void.

The employee appealed to the French Supreme Court criticising the Court of Appeal's decision of 31 December 2020 for violation of the full reparation principle.

Indeed, the Court of Appeal considered that the sums related to profit-sharing schemes (mandatory and compulsory) and compensation in lieu of paid leave had to be excluded from the indemnity due to the employee following the unlawful dismissal.

In its decision, the Court of Cassation recalled the provisions on compensation due to an employee whose dismissal is null and void because it was based on grounds of his health condition.

The Court of Cassation agreed with the Court of Appeal about the sums related to profit-sharing schemes (mandatory and compulsory) as they are not part of the wage in nature, but not for the sums related to compensation in lieu of paid leave.

According to the Court of Cassation, since the employee was dismissed due to his health status, his right to protection of health, guaranteed by [paragraph] 11 of the preamble of the Constitution of 27 October 1946, confirmed by the Constitution of 4 October 1958, had been violated. The dismissed employee, who requested reinstatement, was entitled to compensation for the entirety of the damage suffered during the period between his unlawful dismissal and his reinstatement, up to the amount of the salaries of which he was deprived, regardless whether or not he received wages or a replacement income during this period (as ruled in: *Social Division of the Court of Cassation, No. 10-15.905, 11 July 2012*).

Hereby, the Court of Cassation affirms that the employee may claim paid leave rights corresponding to the period between the date of the unlawful dismissal and the date of reinstatement in his job, unless he held another job during that period.

This solution is based on the case law of the CJEU (*CJEU, case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria and CJEU, Case C-37-19, Iccrea Banca*, pt 69) according to which

> *"the period between the date of the unlawful dismissal and the date of the reinstatement of the worker in his job, in accordance with national law, following the annulment of that dismissal by a judicial decision, must be treated as a period of actual work for the purposes of determining entitlement to paid annual leave".*

This solution is in line with that applied to employees who are absent due to sick leave during the reference period used for the calculation of paid annual leave: they are assimilated to those who have actually worked during that period (see September 2022 Flash Report).

Besides, the CJEU stated that

> *"like the occurrence of incapacity to work due to illness, the fact that a worker has been deprived of the possibility of working because of a dismissal subsequently deemed unlawful is, in principle, unpredictable and independent of the worker's will" (see CJEU, case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria and CJEU, case C-37-19, Iccrea Banca, pt 67)"*

which justifies his being treated in the same way as an employee who has fallen sick or suffered an accident. Consequently, the amount of the indemnity necessarily includes compensation in lieu of paid leave earned by the employee during the period between the date of his dismissal and the date of his reinstatement, which he was not, in principle, able to take.

With this decision, the Court of Cassation applied the principles arising from the CJEU's case law.

2.2 Equal treatment and GDPR

Social Division of the Court of Cassation, No. 21-12.492, 08 March 2023

Hired on 05 January 2009, the employee held the position of cross-functional project manager between 2013 and 2017 before being appointed strategy and project manager. Dismissed on 22 February 2019, she claimed that she had received unequal pay, i.e. less pay than male colleagues in identical positions.

She brought an action by emergency proceedings before the Employment Tribunal on the basis of Article 145 of the French Civil Procedure Code to obtain a copy of their pay slips to compare her remuneration with that of her male colleagues.

According to Article 145 of the French Civil Procedure Code, if there is a legitimate reason to preserve or establish proof of facts before a trial on which the solution of a

dispute may depend, investigative measures may be ordered at the request of any interested party on petition or in emergency proceedings.

The establishment of proof in matters of discrimination is regulated by rules specifically designed to benefit the employee. The employee presents factual elements suggesting the existence of direct or indirect discrimination. It is up to the employer to prove, in the light of these elements, that his/her decision is justified by objective factors (see Article L. 1134-1 of the French Labour Code). This same system applies in the event of professional inequality or pay inequality between women and men (see Articles L. 1144-1 and L. 3221-8 of the French Labour Code) and in case of infringement of the principle of equal treatment of men and women (see: *Social Division of the Court of cassation, No. 03-41.825, 28 September 2004*).

The Employment Tribunal granted the employee's request by ordering, under penalty, the submission of the pay slips of eight male employees for the period from February 2013 to January 2017 for some, and from January 2017 to May 2019 for the others. The documents were to be transmitted after deletion of personal data, with the exception of surnames and first names, the contractual classification, detailed monthly remuneration and total gross remuneration per calendar year.

The Court of Appeal confirmed the Employment Tribunal's decision. Therefore, the employer appealed to the Court of Cassation on the grounds that the communication of the personal data of the employees in question was contrary to the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation - RGPD), but also that the employee was already in a position to present factual elements likely to suggest the existence of the alleged discrimination, such as the gender equality reports submitted to the proceedings or the equality index for 2018, so that the submission of the pay slips requested was not essential to the right of proof and proportionate to the right to privacy.

In its decision, the Court of Cassation agreed with the Court of Appeal's decision and rejected the appeal. Firstly, it stated that under the GDPR, the right to protection of personal data is not an absolute right and must be considered in relation to its function in society and balanced against other fundamental rights in accordance with the principle of proportionality.

It then recalled on the basis of Article 145 of the French Civil Procedure Code that it is up to the judge whether the information, the submission of which is requested, is of a nature to infringe on the personal life of other employees, to verify which measures are essential to the exercise of the right to evidence and proportionate to the aim pursued, if necessary by limiting the scope of the production of documents requested.

In this case, the Court considered that in light of the findings of the trial judges, the submission of the pay slips of the eight male employees was essential to exercising the right to evidence and proportionate to the aim being pursued, i.e. the defence of the employee's legitimate interest in equal treatment between men and women in employment and work, so that the employee's request was well-founded.

It is worth noting that it had already been ruled that in matters of discrimination, the procedure provided for in Article 145 of the French Civil Procedure Code cannot be set aside on the grounds of the existence of a specific evidentiary mechanism resulting from the provisions of Article L 1134-1 of the French Labour Code (see *Social Division of the Court of cassation, No. 19-26.144, 22 September 2021*).

By this decision, the Court of Cassation pronounced a solution in line with its case law. The Court of Cassation has ruled on several occasions on the right of the judge to grant the employee's request for the submission of documents allowing a comparison with certain colleagues (see Social Division of the Court of cassation, No. 10-20.526, 19 December 2012; Social Division of the Court of cassation, No. 19-17.637, 16 December

2020*)*. Yet, this decision clarifies the Court of Cassation's position when it comes to the protection granted by the GDPR against the right to evidence. Thus, in compliance with recital 4 of the GDPR, the Court of Cassation recalled that the right to the protection of personal data is not an absolute right: it must be considered in relation to its function in society and be balanced against other fundamental rights in accordance with the principle of proportionality.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

In a ruling issued on 02 March 2023, the CJEU developed the content of key elements in the Working Time Directive, precisely the notions of the weekly and daily rest periods and their interaction. The CJEU stated that the daily rest and weekly rest periods are two separate and additional rights, even if the daily rest directly precedes the weekly rest period, even if national legislation grants workers a period of weekly rest that is greater than that required by European law.

After an overview of the French legislation on daily rest and weekly rest periods (1), the case law of the Court of Cassation will be discussed (2).

French legislation on daily rest and weekly rest periods

The French Labour Code provides for the organisation of working time, daily rest and weekly rest periods. Yet since a Law of 08 August 2016 (Law No. 2016-1088 on work, the modernisation of social dialogue and the securing of professional careers), French companies may derogate from these provisions on daily rest and weekly rest periods by respecting certain conditions.

- Provisions on daily rest periods:
  - According to Article L. 3131-1 of the French Labour Code, all employees shall benefit from a daily rest period of at least 11 consecutive hours.
  - However, as provided in Article L. 3131-2 of the French Labour Code, a company or establishment agreement or, failing that, a branch agreement or convention may derogate from the minimum daily rest period provided for in Article L. 3131-1 under conditions determined by decree, in particular for activities characterised by the need to ensure continuity of service or by shift work.
  - In the absence of an agreement, in the event of an exceptional increase in activity, the minimum daily rest period may be waived under conditions defined by decree (Article L. 3131-3 of the French Labour Code).
- Provisions on weekly rest periods:
  - No employee may work more than six days a week (Article L. 3132-1 of the French Labour Code).
  - Article L. 3132-2 of the French Labour Code provides that the weekly rest period shall be at least 24 consecutive hours plus consecutive hours of daily rest (minimum eleven hours). Thus, it leads to a minimum period of rest of thirty-five hours.
  - Yet under certain conditions, weekly rest periods can be suspended, reduced or postponed in case of urgent works (Article L. 3132-4 of the French Labour Code), for works in ports, landing stages and stations (Article L. 3132-6 of the French Labour Code), seasonal activities (Article L. 3132-7 of the French Labour Code), industrial cleaning and maintenance

work (Article L. 3132-8 of the French Labour Code), work relating to national defence (Article L. 3132-9 of the French Labour Code), continuously operating industrial plants (Article L. 3132-10 of the French Labour Code), guards and caretakers in industrial and commercial establishments (Article L. 3132-11 of the French Labour Code).

Case law of the Court of Cassation

The case law of the Court of Cassation on the combination of daily rest and weekly rest periods is scarce and limited.

The combination of daily rest and weekly rest periods, as laid down in the French Labour Code, does not appear to cause any problems. In the relevant cases, any difficulties are mostly related to evidence. The principle itself of combining the two rest periods is not contested. It is worth noting that under French labour law, the burden of proof rests on the employer with regard to respect of the provisions on daily rest and weekly rest periods (Article L. 3171-4 of the French Labour Code).

Yet French labour law allows trade unions and employers to conclude collective bargaining agreements that adjust the combination of daily rest and weekly rest periods and even their duration. It is often in such situations that the Court of Cassation is called upon to rule on daily rest and weekly rest periods (see: *Social Division of the Court of Cassation, No. 13-27.289, 12 May 2015 ; Social Division of the Court of Cassation, No. 13-21.586, 16 December 2015; Social Division of the Court of Cassation, No. 16-12.175, 12 July 2017*).

Thus, if decisions of the Court of Cassation appear very limited, in a decision of 12 May 2015, the Court of Cassation stated that

> *"weekly rest periods have to be understood as a minimum weekly rest period of 24 hours, plus a daily rest period of 11 hours as provided in Article L. 3132-2 of the French Labour Code".*

Unfortunately, decisions handed down by the Court on this matter still lack clarity, as the Court of Cassation has rejected employees' claims on failure of their employer to comply with the provisions provided for by the collective bargaining agreement on the combination of weekly rest and daily rest periods. The Court of Cassation considered that the applicable CBA (*Convention collective nationale de travail des établissements et services pour personnes inadaptées et handicapées du 15 mars 1966 ; Accord collectif n°2002-01 du 17 avril 2002 sur le travail de nuit dans le secteur sanitaire, social et medico-social à but non-lucratif (Article 3)*) did not create new provisions on weekly rest and daily rest periods. Thus, as the employers had respected the provisions of Article L. 3132-2 of the French Labour Code, the employees' claims were rejected.

French legislation and French case law indicate that the CJEU's decision of 02 March 2023 is not likely to have a significant impact on the French provisions on weekly rest and daily rest periods. It appears from its decision of 12 May 2015 that the Court of Cassation demands for respect of the weekly and daily rest period as two separate and different periods of rest, regardless of the duration of each period.

Yet the position of the Court of Cassation is still uncertain, as for now, no cases in which CBA correctly adjusted the provisions on the combination of weekly and daily rest periods were brought before the Court of Cassation.

4 Other Relevant Information

Nothing to report.

Germany

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

CJEU, case C-477/21, 02 March 2023, MÁV-START

The CJEU's ruling corresponds to the clear-cut wording of Article 5 of the Working Time Directive. National law can exceed the minimum standard of the Directive and determine a longer weekly rest period or a longer daily rest period. However, this does not change the fact that the weekly rest period must be granted 'in addition' to the daily rest period (see also Zeh, ArbRAktuell 2023, 152).

4 Other Relevant Information

Nothing to report.

Greece

Summary

The new Immigration Code simplifies the procedure of granting a work permit to third-country nationals.

1 National Legislation

1.1 Immigration Code

A new Immigration Code has been voted on in the Greek Parliament (Law 81/2023). In most instances, it repeats the regulations of the former Code of 2014 concerning the admission to employment of third-country nationals. In other instances, it simplifies the procedure of granting a work permit to third-country nationals.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

Greek legislation (Article 5 of Presidential Decree 88/1999) provides that the minimum daily rest period shall be provided in addition to the weekly rest period. This corresponds to the Court's judgment.

On the other hand, the ruling has implications for Greece as it clarifies some other important issues of the working time regulation, such as that the daily rest period shall precede the weekly rest period and that the daily rest period must be granted, irrespective of the duration of the weekly rest period.

Therefore, the judgment has implications for Greece.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

The government has published the Draft of the new Act on the Legal Status of Employed Persons in Public Education and the Amendment of Related Acts.

1 National Legislation

1.1 Draft on the legal status of workers in public education

The government has published the Draft of the new Act on the Legal Status of Employed Persons in Public Education and the Amendment of Related Acts. The deadline of comments on the Draft consisting of 200 articles was 10 March 2023.

The draft is a full employment code for teachers and other workers engaged in public education. The new employment code, consisting of 158 Articles, excludes workers in public education from the scope of Act 33 of 1992 on Public Employees (Public Employee Act).

If this Act is passed by Parliament, workers in public education will exclusively fall within the scope of this new Act. It will introduce a series of fundamental changes in working conditions, such as a new pay system based on personal performance.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The Constitutional Court determined the unconstitutionality of Decision No. Mfv.II.10.279/2018/13 of the Supreme Court (Curia) and repealed it in May 2020. In the present case, the employer merged the daily rest period (11 hours) with the weekly rest period (48 hours), thus, these periods overlapped. The Curia stated that the daily rest period and the weekly rest period were separate labour law concepts, however, this does not mean that they cannot overlap or fall at the same time. In case of an overlap, the functions of both rest periods are fulfilled.

By contrast, the Constitutional Court stated that the Constitution contains two separate rights. Hence, the two periods may not overlap and must be provided in addition to each other, namely an 11-hour daily rest period and two weekly rest days (weekly rest period).

As a result of the Constitutional Court's decision, Article 104 of the Labour Code was supplemented by the following Subtitle (5) from 01 January 2023:

> *"The daily rest period shall not be allocated, if the employee is not required to work on the day after the workday ends, or if there is no extraordinary working time on that respective day."*

The practical problem is that when considering the general rule of a 48-hour weekly rest period (Article 106) and an 11-hour daily rest period (Article 104), it is not possible to schedule working time after 1 pm on Fridays. Even if we consider the minimum 40-hour weekly rest period, working time scheduling on Fridays will be limited.

4 Other Relevant Information

Nothing to report.

Iceland

Summary

A new provision on employment rights of foreigners allows experts easier access to the labour market.

1 National Legislation

1.1 Employment rights of third-country citizens

At the end of March, a new provision was added to Act No. 97/2002 on Employment Rights of Foreigners, allowing citizens from outside the EU/EEA easier access to the Icelandic labour market. The provision is meant to target jobs that require specialised knowledge and for which there is a shortage on the Icelandic labour market. This allows the Directorate of Labour to grant a temporary work permit in those fields as well as certain derogations for those who have specialised knowledge, not solely a university education.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

Act No. 46/1980 on Facilities, Hygiene and Safety at Workplaces in Article 53 guarantees at least 11 hours of rest for every 24 hours of work, calculated from the beginning of the workday. Employees are additionally guaranteed a weekly rest day in direct connection with the daily rest period as stipulated in Article 54(1).

As the author views these provisions as guaranteeing 11 hours of daily rest preceding a 24-hour weekly rest period and is not aware of any case law stating otherwise, it does not seem that this judgment will have direct implications for Icelandic law.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

(I) The Labour Court has found that the stand-by time of the claimant in CJEU case C-214/20, 11 November 2021, *MG vs. Dublin City Council* was not working time.

(II) The Workplace Relations Commission characterises the non-inclusion of regular overtime in holiday pay as a national level issue that must be addressed.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working time

The Labour Court, ADJ-00020012, 2 March 2023, Gilbert vs. Dublin City Council

In May 2020, the Labour Court made a request for a preliminary ruling under Article 267 TFEU concerning the classification of the claimant's stand-by time: CJEU case C-214/20, 11 November 2021, *MG vs. Dublin City Council*. The CJEU reiterated that the concept of 'working time' covered the entirety of periods of stand-by time during which the constraints imposed on a worker are such as to objectively and very significantly restrict the ability that he/she must freely manage the time during which his/her services are not required.

When the case returned to the Labour Court, the court ruled that the constraints imposed on the claimant did not fall into this category and dismissed the appeal: *Gilbert vs. Dublin City Council,* DWT238.

The issue whether 'regular and rostered' overtime should be included as part of a worker's holiday pay has once again come before the Workplace Relations Commission (WRC): *McEneany vs. Kilkenny County Council* ADJ-00038192. The trade union representing the claimant submitted that the Council was in breach of EU law in confining holiday pay to basic pay and relied on CJEU case law such as case C-539/12, *Lock vs. British Gas* and case C-214/16, *The Sash Window Workshop vs. King.* The Council interpreted those decisions differently but relied on Regulation 3 of the Organisation of Working Time (Determination of Pay for Holidays) Regulations 1997 (S.I. No. 475 of 1997), which expressly excludes 'any pay for overtime' from the calculation of a worker's 'normal weekly rate of pay', and previous Labour Court decisions on the point.

The WRC adjudication officer characterised the non-inclusion of regular and rostered overtime in holiday pay as 'a National Level Industrial Relations issue that requires addressing' but felt constrained by those Labour Court decisions to reject the complaint.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The obligations on an employer to grant daily and weekly rest periods are provided for in sections 11 and 13, respectively, of the Organisation of Working Time Act 1997, thus recognising that these are autonomous and distinct rights.

The former section provides that an employee "*shall be entitled to a rest period of not less than 11 consecutive hours in each period of 24 hours during which he or she works for his or her employer*". Section 13(2) then provides that, subject to subsection (3), an employee "*shall, in each period of 7 days, be granted a rest period of at least 24 consecutive hours; subject to subsections (4) and (6), the time at which that rest period commences shall be such that that period is immediately preceded by a daily rest period*".

Section 13(3) provides that an employer may, in lieu of granting to an employee in any period of seven days the first-mentioned rest period in subsection (2), grant to him or her in the next following period of seven days two rest periods, each of which shall be a period of at least 24 consecutive hours and subject to subsections (4) and (6):

> (a) if the rest periods so granted are consecutive, the time at which the first of those periods commences shall be such that that period is immediately preceded by a daily rest period, and
>
> (b) if the rest periods so granted are not consecutive, the time at which each of those periods commences shall be such that each of them is immediately preceded by a daily rest period.

Section 13(4) provides that if considerations of a technical nature or related to the conditions under which the work concerned is organised or otherwise of an objective nature would justify the making of such a decision, an employer may decide that the time at which a rest period granted by him or her under subsection (2) or (3) shall commence and shall be such that the rest period is not immediately preceded by a daily rest period.

Section 13(6) provides the requirement in subsection (2) or paragraph (a) or (b) of subsection (3) as to the time at which a rest period under this section shall commence shall not apply in any case where, by reason of a provision of this Act or an instrument or agreement under, or referred to in this Act, the employee concerned is not entitled to a daily rest period in the circumstances concerned.

4 Other Relevant Information

Nothing to report.

Italy

Summary

(I) European Directives on posting drivers in the road transport sector and on whistleblowing have been transposed in Italy.

(II) A ruling of the *Corte di Cassazione* deals with a case of discrimination and harassment.

1 National Legislation

1.1 Posting of drivers in the road transport sector

Legislative Decree 23 February 2023, No. 27

On 20 March 2023, the Legislative Decree 23 February 2023 No. 27, transposing 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, was published in the Italian Law Journal.

The Decree provides for specific rules on the posting of drivers. The undertaking must submit a posting declaration to the Italian authority with in-depth information, such as the identity of the operator or the number of the Community licence where this number is available; the contact details of a transport manager or other contact person in the Member State of establishment; the identity, address of the residence and the number of the driving licence of the driver; the start date of the driver's contract of employment, and the law applicable to it; the start and end date of the posting; the number plates of the motor vehicles; whether the transport services performed include the transport of goods, passengers, international goods or cabotage operations. In case of changes, the information must be updated within 5 days.

The operator must also ensure that the driver has at his/her disposal the declaration in paper or electronic form.

1.2 Whistleblowing

Legislative Decree 10 March 2023, No. 24

The Legislative Decree 10 March 2023 No. 24 implements 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.

The Decree provides for some rules aimed at protecting persons who work in the private or public sector and who report information on breaches of Union law in a work-related context. Protection of the confidentiality of the identity of the whistleblower and the prohibition of retaliation are guaranteed, as already established in previous law. Article 4, Act of 15 July 1966 No. 604, on dismissals has been modified. This article now provides for the nullity of the dismissal not only in case of discrimination, but also in case of reports or complaints to public authorities.

The Decree will enter into force on 15 July 2023.

2 Court Rulings

2.1 Harassment and discrimination

Corte di Cassazione, No. 7029, 09 March 2023

The dismissal of a worker who has publicly called a colleague 'lesbian' might be legitimate, because it violates the colleague's privacy in relation to sensitive data, such as sexual orientation. In the manner in which the incident occurred, it may also be considered harassment and discrimination and the dismissal may thus be justified.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

According to Article 36 of the Italian Constitution,

> "*Maximum daily working hours are established by law. Workers have a right to a weekly rest period and paid annual holidays. They cannot waive this right*".

Working time is specifically regulated in Legislative Decree 08 April 2003 No. 66. According to Article 7, the daily rest period must be at least 11 consecutive hours over every 24-hour period. According to Article 9, the weekly rest period must be at least 24 consecutive hours over a 7-day period and is added to the daily rest period. The daily rest period is thus not included in the weekly rest period, but is additional to it. Therefore, Italian law on daily and weekly rest periods is compliant with the CJEU ruling.

4 Other Relevant Information

Nothing to report.

Latvia

Summary

The Supreme Court has held that a board member and the owner of a company cannot be considered an employee because of lack of subordination.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Status of board members

Supreme Court, case SKC-86/2023, 22 March 2023

On 22 March 2023, the Senate of the Supreme Court delivered a decision in case SKC-86/2023 which dealt with the status of a board member, i.e. whether a person in charge of a company's management can be considered to be an employee for the purposes of the right to paid annual leave or compensation for leave not taken. In the present case, the claimant was recalled from her post as board member of a company and in this context, she claimed compensation for unused annual leave. The Senate assessed whether the claimant's post corresponded to the concept of employee. It referred to the CJEU's decision in case C-232/09, 11 November 2010, *Danosa* which reviewed whether a relationship of subordination existed. The Senate found that unlike in *Danosa*, where the claimant was only a board member and thus was subordinated to the owners of the company, the ex-board member in the present case was also the owner of 50 per cent of the company's shares, thus there was no situation of subordination and the claimant was herself in charge of ensuring the right to paid annual leave.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The CJEU's decision in case C-477/21 has implications for Latvian law because it does not explicitly envisage that a weekly rest period must be granted in addition to a daily rest period.

According to Article 142(1) of the Labour Law (see *Darba likums*, OG No. 105, 06 July 2001), the daily rest period may not be shorter than 12 consecutive hours over a 24-hour period, while Article 143(1) provides that the weekly rest period may not be shorter than 42 hours over a 7-day period. This means that according to the CJEU in case C-477/21 and Latvian labour law, each employee must be granted a rest period of at least 54 consecutive hours (12 hours of daily rest + 42 hours of weekly rest).

There is no relevant national case law on how the two rest periods must be granted (see The Senate of the Supreme Court, The Court Practice in Labour Disputes (July 2012-2021) (*Tiesu prakse darba lietās* (2012.*gada jūlijs* – 2021.gads)). Meanwhile, the commentaries on labour law provide an example of how the weekly rest period should be granted from which may be concluded that it is understood that the weekly rest period should be granted separately, without granting a preceding daily rest period. The example presented in the commentaries on labour law provides that a worker who finishes work on Saturday at 16:00 cannot be employed earlier than on Monday starting at 11:00.

It follows that the CJEU's decision, case C-477/21, 02 March 2023, *MÁV-START* has implications for Latvian law as it does not explicitly grant employees a right to a weekly rest period which is preceded by a daily rest period.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

According to Decision No. 28/2020 of the EEA Joint Committee, published by the Liechtenstein government on 09 March 2023, Directive 2013/54/EU is to be incorporated into the EEA Agreement.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

In case C-477/21, the CJEU (Second Chamber) ruled as follows:

> 1. Article 5 of Directive 2003/88/EC of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the daily rest period provided for in Article 3 of that Directive does not form part of the weekly rest period referred to in Article 5 of that Directive, but is additional to it.
>
> 2. Articles 3 and 5 of Directive 2003/88, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that where national legislation provides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, the daily rest period as guaranteed by Article 3 of that Directive.
>
> 3. Article 3 of Directive 2003/88, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that where a worker is granted a weekly rest period, he or she is also entitled to a daily rest period preceding that weekly rest period.

The key to understanding the present case derives from paragraphs 55 and 57 of the judgment. From this it follows that the employer only granted a daily rest period if a new period of work was scheduled within 24 hours of the end of a given period of work. If no new period of work was scheduled, for example when a weekly rest period or leave had been granted, the employer considered that there no longer was an obligation to grant the daily rest period. The Court asserted that after a period of work, every worker must immediately be granted a daily rest period, irrespective whether or not that rest period is followed by a period of work. In addition, when the daily rest period and the weekly rest period are granted concurrently, the weekly rest period cannot start to run until the worker has benefited from the daily rest period.

Liechtenstein law contains the following principle under the heading 'Daily Rest Period': Employees must be granted a daily rest period of at least 11 consecutive hours, see Art. 15a(1) of the Employment Act *(Gesetz über die Arbeit in Industrie, Gewerbe und Handel, Arbeitsgesetz*, ArG, LR 822.10).

The weekly rest period is regulated, in principle, in such a way that employees must be granted one and a half days off per week. Section 1173a Art. 29(1) of the Civil Code *(Allgemeines bürgerliches Gesetzbuch, ABGB*, LR 210.0) provides as follows: the employer shall grant the employee one and a half days off every week, which usually include Saturday afternoon and Sunday, or, where circumstances do not permit, one and a half full working days. In a similar vein, Article 20(1,2) and Article 21(1) of the Employment Act, in principle, provide for a Sunday off and an additional half-day off if the weekly working time is distributed across more than five days (remark: the Civil Code and the Employment Act have slightly different scopes of application).

Just as Directive 2003/88/EC, Liechtenstein law also makes a clear distinction between daily and weekly rest periods. This is a good prerequisite that Liechtenstein law will be interpreted in line with CJEU case C-477/21. To date, there does not seem to be a case that is similar to the Hungarian case in C-477/21.

4 Other Relevant Information

4.1 Decision No. 28/2020 of the EEA Joint Committee

The government has published Decision No. 28/2020 of the EEA Joint Committee amending Annex XVIII to the EEA Agreement (see Liechtenstein Landesgesetzblatt, No. 87 of 09 March 2023). According to this Decision, the following Directive is to be incorporated into the EEA Agreement: Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention (2006 text with EEA relevance).

Lithuania

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The provisions of the Lithuanian Labour Code are very similar to those of Hungary. There is no provision that the daily rest period provided for in Article 3 of Directive 2003/88 forms part of the weekly rest period referred to in Article 5 of that Directive, but the 'new independent right to a weekly rest period' is not envisaged. Article 122 No. 3 of the Lithuanian Labour Code stipulates that the duration of a daily uninterrupted rest period between working days (shifts) may not be shorter than 11 consecutive hours, and over a period of seven consecutive days, the employee must be granted at least 35 hours of uninterrupted rest. When formulating this provision, the Lithuanian legislator took 24 hours of the required minimum weekly rest period (Article 5 of the Directive) and added 11 hours of the required daily rest period (Article 5 of the Directive). Apparently, this purely technical solution to meet the requirements of the Directive was not successful as the CJEU has applied a different logic to the provision of Article 5 of the Directive. To date, however, there has been no case pointing to problems in relation to the lack of provision of a daily rest period before or after a weekly rest period.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

Nothing to report.

1 National Legislation

1.1 Inflation

No major new laws or decrees have been passed.

The rates of transferability (*cessibilité*, used notably for mortgage loans) and seizability (*saisissabilité)* of labour remuneration (and other regular income) have been adjusted to take account of inflation.

Reference*: Règlement grand-ducal du 1er mars 2023 fixant les taux de cessibilité et de saisissabilité des rémunérations de travail, pensions et rentes.*

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working Time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The provisions of Directive 2003/88/EC at issue have been implemented almost verbatim in Luxembourg. Thus, according to Article L. 211-16(3) of the Labour Code, every employee shall benefit, during each 24-hour period, from a rest period of at least 11 consecutive hours. According to Article L. 231-11, every employee shall benefit, during each seven-day period, from a minimum uninterrupted rest period of 48 hours.

These texts have always been interpreted as being cumulative and applicable, in particular, consecutively to a weekly rest period.

No relevant case law on problems with the application of these provisions exist, as was the case in the judgment in C-477/21.

4 Other Relevant Information

4.1 Tripartite agreements

As announced under this heading in the February 2023 Flash Report, tripartite negotiations have taken place to address the inflation. Due to the automatic indexation of wages, remuneration is in principle automatically adjusted; measures are thus also taken in favour of employers.

A tripartite agreement has been reached. It provides for an adjustment of the tax tables to inflation (2.5 index brackets, i.e. 6.25 per cent from 2024 onwards), a retroactive tax credit for 2023 (2 index brackets, i.e. 5 per cent) and compensation for employers in the event of an additional new index bracket (2.5 per cent over the year, after the one that occurs on 01 April 2023).

Measures such as the gas price cap have been extended until the end of the year.

The government has just adopted the necessary draft transpositions and the draft law will be published shortly. Therefore, the next Flash Report will detail the measures of this bill in relation to labour law.

4.2 Representative trade unions

The trade union landscape in Luxembourg remains fairly limited. Legal criteria define trade union representativeness, which is a condition for participation in collective bargaining. The law distinguishes between nationally representative unions (present in all sectors) and sectoral unions.

The two nationally representative unions, the OGBL and the LCGB, have been active for a long time.

A third union, ALEBA, has established itself in the banking and insurance sector. It had to go to court and before the ILO Committee on Freedom of Association (Case No. 1980) for its representativeness to be recognised, which led to a change in legislation in 2004. Three years ago, following the last social elections, it was again deprived of its representativeness, having failed to achieve the required 50 per cent in its sector. In the meantime, it has won its case again before the ILO Committee (Case No. 3408), and the national case is still ongoing.

In this context, ALEBA has just announced its ambition to stop limiting its scope to banks and insurance companies and to become a multi-sectoral union.

However, the legal conditions for national representativeness are strict, and it remains to be seen whether ALEBA will succeed over time in obtaining this status.

For the record, the name has changed, but the acronym ALEBA has remained. The *Association luxembourgeoise des Employés de Banque et d'Assurance* has become the *Association Luxembourgeoise des Employés en Besoin d'Assistance*.

Malta

Summary

The Low Wage Commission is established by law.

1 National Legislation

1.1 Low Wage Commission Regulations

The Low Wage Commission Regulations, 2023 have been promulgated in Malta by virtue of Legal Notice 66 of 2023. These Regulations establish the Low Wage Commission (see Regulation 4), with the following objectives:

> (a) to determine whether the minimum wage needs to be reviewed;
>
> (b) to ensure that minimum wages are set at adequate levels;
>
> (c) to define national criteria components of the minimum wage;
>
> (d) to take trends in the price level and increases in a number of selected collective agreements for employees on low level grades into consideration;
>
> (e) to specifically ascertain that any change in minimum wage is affordable in terms of sectoral vulnerabilities, competitiveness and productivity gains; and
>
> (f) to ensure minimum wage adequacy and the timely and effective involvement of the social partners in the process of reviewing and evaluating the adequacy of the minimum wage (see Regulation 5).

Only time will tell whether this law will be effective. However, this may very well prove to be another talking shop with the objectives not achieved.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The Organisation of Working Time Regulations, 2004 (Subsidiary Legislation 452.87) clarify that:

(1.) Every worker shall be entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period during which the worker performs work for his or her employer (see Regulation 4); and

(2) Every worker shall be entitled to a minimum uninterrupted weekly rest period of 24 hours, in addition to the daily rest period of eleven hours referred to in regulation 4, for each seven-day period during which the worker works for the employer (see Regulation 6 (1)).

(3) If the reference period is fourteen (14) days, then the weekly uninterrupted rest period shall either be an uninterrupted rest period of no less than 48 hours preceded by a daily rest period, in each period during which the worker works for the employer (see Regulation 6 (2) (b)) or two uninterrupted rest periods each of not less than 24 hours, each preceded by a daily rest period, over each 14-day period during which the worker works for the employer (see Regulation 6 (2) (a)).

Maltese law does not allow for the reduction of the daily rest period and it would be fair to say that no collective agreement would fall below the minimum established by law.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

(I) Measures are being planned to help status holders find employment.

(II) The Supreme Court has annulled a decision of the Court of Appeal concerning the law applicable to employment contracts in the international road transport sector. Two courts applied the criteria of the Hein Holzkamm case.

(III) Deliveroo riders are employees and not self-employed workers.

(IV) A non-competition clause does not prevent an employee from working from home for a foreign employer.

(V) Compensation for post-COVID syndrome could not be claimed by means of a class action.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Interpretation of a non-competition clause

Court of Rotterdam, ECLI:NL:RBROT:2023:1397, 24 February 2023 (published 01 March 2023)

The present court ruling interpreted a non-competition clause. The case concerned a worker from the Netherlands, whose employer was located in Antwerp, Belgium. However, part of the work was performed from the worker's home in the Netherlands.

The geographical demarcation of the non-competition clause stated that the worker was not allowed to enter into the service of a competitor in the Netherlands. According to the Court of Rotterdam, this implies that entering an employment contract with a competitor in Belgium does not fall within the scope of this clause. The fact that the employee occasionally performed work for a competitor from his home in the Netherlands also did not mean that he breached the non-competition clause. A reasonable interpretation of the non-competition clause entails that the place of establishment of a company determines whether that company falls within the scope of the non-competition clause, and not the actual place where the employee performs his or her work.

2.2 Healthcare workers

Court of The Hague, ECLI:NL:RBDHA:2023:2686 08 March 2023

The present case concerned a class action involving healthcare workers who are suffering from post-COVID health problems (previously known as long-COVID). In this class action lawsuit, the trade unions CNV and FNV claimed compensation of EUR 22 839 per person from the State for all affected healthcare workers with post-COVID syndrome. The ground for this claim was that according to the trade unions, the State had acted in violation of its duty of care and had therefore unlawfully requested healthcare workers to continue working despite the COVID-19 pandemic and the subsequent lockdowns, without taking sufficient measures to protect them against the risks of COVID-19, and even issued guidelines that conflicted with previous guidelines and international standards. However, the claim was denied. The trade unions were

deemed inadmissible because the requirements for such a class action had not been met. According to Dutch law, a class action requires the interests represented to be sufficiently similar. If that is not the case, a case-by-case approach must be taken to determine entitlement to compensation.

According to the Court, the post-COVID complaints are not the same for every person and the damages are therefore not the same. The State noted that the group of claimants was in fact very diverse; they are or were employed in many different subfields of the healthcare sector and in various departments and jobs. Whether and to what extent they were exposed to the risk of contamination while performing their work cannot be generally determined. In addition, there has also not been a uniform policy in the context of fighting COVID-19, and different guidelines were issued at different times for different sub-areas within the healthcare sector. These have been translated by employers into their own protocols and measures. In the Court's opinion, this means that the circumstances under which the healthcare workers performed their activities and the policy that applied to them are not suitable for a collective treatment in court.

Therefore, the claim does not meet the requirements of Article 3:305a of the Dutch Civil Code (sufficient similarity). The effect of this ruling is that healthcare workers will need to claim damages individually basis. As mentioned in the January 2023 Flash Report, there is already a case in which an individual healthcare worker has won such a claim, although it must be noted that this was a case that was won against the employer and not against the State.

2.3 Overtime

Court of Appeal's-Hertogenbosch, ECLI:NL:GHSHE:2023:839, 14 March 2023 and Court of Gelderland, ECLI:NL:RBGEL:2023:1239, 26 January 2023 (published 10 March 2023)

In these cases, both Courts applied the criteria that follow from the *Hein v Albert Holzkamm GmbH & Co. KG* case, namely that overtime should be included in the calculation of holiday pay if three conditions are met: (1) the overtime results from the obligations arising from the employment contract, (2) overtime work is performed on a regular basis, and (3) the remuneration for overtime constitutes a significant part of the employee's total remuneration. Both Courts concluded that these criteria had been met. In addition, in the latter case, the Court of Gelderland considered that holiday pay must be calculated on the basis of the hourly rate of pay for periods in which work was actually performed under an employment contract, i.e. without considering any reductions in pay due to the employee's incapacity for work.

2.4 Employment contracts in the international road transport sector

Supreme Court, ECLI:NL:HR:2023:408, 17 March 2023

In the present case, the Supreme Court ruled (once again) on the law applicable to employment contracts in the international road transport sector. The case concerned international truck drivers employed by a Hungarian transport company (H) who were posted to H's Dutch sister company (N). On the basis of the *Koelzsch* case, the Supreme Court considered that in assessing the country in or from which the employee habitually carries out his or her work within the meaning of Article 8 Rome I Regulation, the court should examine in particular the country from where the employee carries out his or her transport assignments, receives instructions for his or her assignments and organises his or her work. According to the Court of Appeal, the instructions for the transport orders were given and the work was organised from Erp (the Netherlands). According to the Supreme Court, what matters is not from which place the employer gave instructions for the transport assignments or from which place the employer organised the work, but where the drivers received the instructions for their assignments and

where they organised their work. Furthermore, the Court of Appeal has not motivated why three additional elements (wages were paid from an account for which the bank licence was in N's name; sick notes and leave requests from the drivers were also made to N; the fuel cards used by the drivers were in N's name) point to the Netherlands as the habitual place of work. Therefore, the Court of Appeal's finding that the Netherlands is the habitual place of work cannot stand.

Additionally, the Court of Appeal misapplied Article 9 Rome I Regulation. Firstly, the it wrongly assumed that wages were determined by N (and therefore in the Netherlands). Secondly, by considering the fact that the employees paid taxes and social security contributions in Hungary was only related to the fact that they lived there, the Court of Appeal failed to recognise that the mere fact that taxes and social security contributions are paid in a specific country is, as such, relevant for the purpose of answering the question whether there is a closer connection with a country other than the usual country of employment on the basis of the *Schlecker* case. As a result, the Court of Appeal's finding that there are no factors that link the employment contracts more closely to a country other than the Netherlands cannot stand.

The Supreme Court annulled the decision of the Court of Appeal and (once again) referred the case to a (different) court.

2.5 Deliveroo drivers

Supreme Court, ECLI:NL:HR:2023:443, 24 March 2023

On 24 March 2023, the Supreme Court ruled on the legal qualification of the employment relationship of Deliveroo riders. More specifically, the Supreme Court answered the question whether or not these meal deliverers worked on the basis of an employment contract (Article 7:610 of the Dutch Civil Code).

According to their contracts, Deliveroo riders were self-employed. The trade union FNV claimed that these contracts did not match reality and claimed that a court ruling stating that Deliveroo riders were in fact employees. Following rulings by the Court of Amsterdam and Court of Appeal confirming FNV's claim, Deliveroo brought the case before the Supreme Court. During these proceedings, Deliveroo terminated its operations in the Netherlands. However, the procedure before the Supreme Court was not withdrawn.

The existence of an employment contract can be determined on the basis of Article 7:610 Dutch Civil Code. The Supreme Court stated that whether a contract is to be regarded as an employment contract depends on all of the circumstances of the case in relation to each other (para. 3.2.5). When assessing the potential existence of an employment contract, the following circumstances may—among other things—be important:

- the nature and duration of the work;
- the way in which the work and working hours are determined;
- the integration of the work and the person performing the work in the organisation and business operations;
- the existence or non-existence of the obligation to perform the work personally;
- the way in which the contract between the parties was concluded;
- the manner in which the remuneration is determined and the manner in which it is paid;
- the amount of bonuses;
- whether the person performing the work is at commercial risk; and
- whether the person performing the work behaves as an entrepreneur.

It should be noted that it is not important whether or not the parties intended to qualify the agreement as an employment contract (para. 3.2.4). In 2020, the Supreme Court already considered in the *X/Gemeente* Amsterdam judgment that the intention of the parties is (much) less relevant. Instead, the legal qualification of a contract follows from the actual rights and obligations agreed upon.

In the present case, based on all of the circumstances, the Supreme Court upheld the Court of Appeal's decision that Deliveroo's riders worked on the basis of an employment contract. Regarding the freedom of Deliveroo riders to work when they wanted to and to be replaced, the Supreme Court agreed with Deliveroo that these circumstances point to self-employed work. However, based on the other circumstances of the case, including the fact that the practical importance of the substitution option for the riders was only minimal, the Court of Appeal was correct in ruling that Deliveroo's riders were employees.

The Supreme Court deliberately does not provide additional clarity about the qualification of employment contracts. According to the Supreme Court, that is the task of the legislature (para. 3.2.6) and the Dutch government is in fact working on this: in December 2022, the Minister of Social Affairs and Employment presented her plan to clarify the rules for hiring freelancers. The Minister plans to explain the 'authority' criterium from Article 7:610 of the Dutch Civil Code in a modern way by adding the concept of 'integration'. If someone performs work that is 'integrated' in the employer's organisation, an employment contract is presumed.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The CJEU was asked several preliminary questions.

First, the CJEU was asked to clarify the notion of minimum weekly rest period as laid down in Article 5 of Directive 2003/88/EC. The CJEU ruled that the daily rest period (Article 3) does not form part of the weekly rest period (Article 5), but is additional to it.

Second, the CJEU was asked to determine whether in case national legislation provides for a weekly rest period exceeding 35 consecutive hours (Article 5), the worker must be granted an additional daily rest period (Article 3). The CJEU ruled that where national legislation provides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, the daily rest period (Article 3).

Third, the CJEU was asked whether a worker who is granted a weekly rest period is also entitled to a daily rest period preceding that weekly rest period. According to the CJEU, every worker must benefit from a daily rest period, irrespective of whether that rest period is followed by a period of work. Also, where a worker is granted a weekly rest period, he/ she is also entitled to a daily rest period preceding that weekly rest period.

In the Netherlands, the Working Time Act implements Directive 2003/88/EC. Following Article 5:3(2) Working Time Act on the daily rest period, the employer organises work in a way that any employee aged 18 years or older benefits from an uninterrupted rest period of at least 11 hours for each continuous 24-hour period. That means that for every 24 hours, the employee is entitled to at least 11 hours of daily rest. With a view to the weekly rest period, laid down in Article 5:5(2) Working Time Act, the employer shall organise the work in a way that any employee aged 18 years or older benefits from an uninterrupted rest period of at least 36 hours in each consecutive period of seven times 24 hours. Based on these provisions, it seems that Dutch law grants each worker a daily period of rest of at least 11 hours, plus a weekly rest period of 36 hours, i.e. a total of 47 hours. Each start of the working day shall constitute a measuring point to

determine whether the prescribed uninterrupted daily and weekly rest periods are met. The legal provisions as they are formulated, therefore, seem to be in line with Directive 2003/88/EC and the CJEU's ruling.

However, it is unclear due to a lack of case law and specificity of the parliamentary documentation as well as literature, whether under Dutch law the daily rest period is topped up with the weekly rest period, resulting in a consecutive period of rest of a total of 47 hours (36 hours plus 11 hours). In case the daily and weekly rest periods are treated as two separate rights that entitle employees to a consecutive period of rest of 47 hours, the CJEU ruling seems to have no implications on Dutch law.

Apart from the general rule, Dutch working time law allows for exceptions. With regard to the daily rest period, Article 5:3(2) Working Time Act determines that the daily rest period may, once in each consecutive period of 7 times 24 hours, be reduced to at least 8 hours, if the nature of the work or the working conditions require this. This exception is based on Art 17(3)(c) of Directive 2003/88/EC ('activities involving the need for continuity of service or production') (see *Kamerstukken II* 2005/06, 30532, No. 3, p. 24). Further derogations can be found for specific work and sectors in the Working Hours Decree. An exception is also allowed for the weekly rest period, meaning that any employee aged 18 years or older benefits from an uninterrupted weekly rest period of at least 72 hours in each continuous period of 14 times 24 hours, which means that the rest period can be divided into uninterrupted rest periods of at least 32 hours each. Apart from that, collective agreements may not deviate from the weekly rest period determined in Article 5:5 Working Time Act.

4 Other Relevant Information

4.1 Measures to accelerate the employment of status holders

The Dutch government believes that working helps newcomers in the country integrate faster. Therefore, measures are being planned to help status holders (refugees with a temporary residence permit) to start working sooner. Municipalities will be responsible for linking status holders to entry-level jobs. The action plan will be implemented in several selected municipalities. If this works well, it will be expanded to more municipalities.

The action plan of the Minister of Social Affairs and Employment describes what type of measures the government wants to take. The idea is for status holders to start working from the moment they come to live in a municipality. This will involve an entry-level job combined with integration. This should make it easier for status holders to move on to more sustainable work and at the same time to fulfil their obligation to integrate in the country. In addition, the talents, education and work experience that status holders offer will already be assessed at the asylum centre. This should help status holders find paid work as soon as possible. Finally, the government wants to encourage practical learning in secondary vocational education (MBO) by status holders. Employers will receive more information about the possibilities to support and finance training and to employ status holders.

Norway

Summary

(I) The Working Environment Act has been amended with significant changes, i.e. a clarification and a presumption rule related to the definition of employee and extended employer responsibility in group corporate structures concerning dismissal protection.

(II) The EFTA Surveillance Authority (ESA) has requested information from the Norwegian government to assess the newly adopted measures in Norway that restrict the use of temporary agency workers.

(III) The Norwegian government has announced to the media that the Holiday Act will be amended to ensure compliance with the right to paid annual leave in the Working Time Directive.

1 National Legislation

1.1 Amendments to labour law

An amendment act to the Working Environment Act has been passed in Parliament (LOV-2023-03-17-3). The Act introduces several significant changes and is mainly a follow-up of the report and proposals of an independent committee appointed by the government to investigate a number of issues related to new labour relations and the organisation of work, see NOU 2021: 9: 'The Nordic Model and the Future of Work'.

The amendments will enter into force on 01 January 2024.

1.2 The concept of employee

WEA Section 1-8 (1) defines an employee as anyone who performs work in the service of another, and the wording has been unchanged for decades. This definition has now been amended, with an aim to clarify the employment status of workers in the grey area between employees and independent contractors.

Now, an employee is defined as anyone who performs work for and is subordinated to another. Furthermore, the new provision provides guidance for the overall assessment of whether a person is an employee: it must be emphasised whether the person provides personal labour, and whether he or she is subordinated to management and control.

The new definition is supplemented by a presumption of employee status: A work relationship shall be assumed to be an employment relationship. The presumption can be rebutted if the other party makes it 'highly probable' that the relationship is one of independent work.

1.3 Employer responsibility in corporate group structures

The clear starting point in Norwegian law is that the employer's responsibilities rest on the legal undertaking that is party to the employment contract. Certain employer duties are, however, extended by statutory provisions in the WEA, resulting in several responsible undertakings in certain situations. These statutory extensions are mainly related to the responsibility for the work environment, protection against discrimination and the context of agency work. A doctrine on joint employer responsibility has been acknowledged in case law and may apply to corporate group structures, but has a rather limited scope.

The new amendments stipulate extended employer responsibility for dismissal protection in group corporate structures.

First, the requirement of just cause (*saklig grunn*) for dismissal has been extended. Today, dismissal due to reduced operations or rationalisation measures will not have just cause if the employer can offer the employee other suitable work in the undertaking, cf. WEA Section 15-7. Now, it is added that dismissal will not have just cause if there is other suitable work available in another undertaking within the same corporate group.

Second, an employee who has been dismissed on the basis of circumstances related to the undertaking has a preferential right to new employment in the same undertaking, cf. WEA Section 14-2. This right has now been extended to also apply to new employment in other undertakings within the same corporate group.

In addition, there is a new provision with minimum requirements to information and consultation in corporate group structures, cf. WEA Section 8-4.

1.4 Time limitations on temporary employment

Permanent employment is the main rule in Norwegian law, and temporary employment is only allowed when certain conditions are met. There are also time limits for temporary employment. The time limits according to the WEA Section 14-9 (7) are three or four years, depending on the legal basis for the temporary employment.

The amendment has tightened the time limitations. The four-year rule has been removed, widening the scope of the three-year rule accordingly.

1.5 Consultation duties

The WEA stipulates duties for the employer to consult with workers' representatives on several issues, such as the use of temporary employment, part-time employment and agency work.

These duties have now been subsumed in one provision, cf. WEA Section 14-14 a. The duty has also been extended to include decisions to make use of independent contractors and purchase services from other businesses that have an impact on staffing.

1.6 Organised cooperation regarding the work environment

The WEA requires employers to ensure internal supervision and control of the work environment with the participation of and cooperation of employees. Safety representatives (*verneombud*) and work environment committees (*arbeidsmiljøutvalg*) are key in this regard.

The main rule is that all undertakings covered by the WEA shall have safety representatives and work environment committees, but there have been some exceptions for small undertakings. These exceptions have now been limited in WEA Section 6-1 and 7-1. From now on, safety representatives may only be excluded in undertakings that employ less than five employees (at present, 10 employees). As regards work environment committees, the threshold has now been reduced from 50 to 30 employees.

Furthermore, the mandate of the safety representatives in WEA Section 6-2 has been extended, from including the interests of employees in matters concerning the work environment to also including agency workers and independent contractors who perform work in close connection with the undertaking.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

In the WEA, the minimum requirements to daily and weekly rest is implemented in Section 10-8. The first paragraph implements the minimum daily rest period in Article 3 of Directive 2003/88/EC by stipulating that an employee shall have at least 11 hours of continuous off-duty time per 24 hours, which shall be placed between two main periods of work.

The second paragraph stipulates that an employee is entitled to a continuous off-duty period of 35 hours per seven days. This provision is not based on the assumption that the right to daily rest forms part of the weekly rest period referred to in Article 5.

Rather, the provision builds on the view that the right to daily and weekly rest are two autonomous and separate rights. The provision is clearly not intended to provide a weekly rest period beyond the minimum requirement of 24 hours. It is stated in the preparatory works that according to the Directive, the weekly rest period must be a continuous period of at least 24 hours in addition to the daily rest period of 11 hours, i.e. a total of 35 hours (NOU 2004: 5 p. 233).

It must also be noted that the provision does not use the term 'weekly rest', but rather 'continuous off-duty period'. As this term is neutral to the concepts of daily and weekly rest periods in the Directive, it may well encompass the minimum requirements of both rights.

Consequently, the national implementation of the right to weekly rest differs significantly from the present case. The judgment therefore does not seem to have any clear implications for Norwegian law.

4 Other Relevant Information

4.1 Request for information in ESA on restrictions to the use of temporary agency workers

In January 2023, the EFTA Surveillance Authority (ESA) opened an own initiative case to examine newly adopted measures in Norway, which restrict the use of temporary agency workers (see December 2022 Flash Report). ESA, in particular, intends to assess whether the prohibition of the use of temporary agency workers in the construction sector in Oslo, Viken and Vestfold, and the removal of the possibility to use temporary agency workers when the work is of a temporary nature, are compatible with Directive 2008/104 on temporary agency work and Article 36 of the EEA Agreement on the Freedom to Provide Services.

In a letter to the Norwegian government of 10 February 2023, ESA requested information about these restrictions (see the full letter here).

4.2 Amendment of the Holiday Act

The Norwegian government announced to the newspaper Aftenposten on 29 March 2023 that the Holiday Act would be amended. The background of the announced amendment is the dialogue over several years with ESA. ESA has questioned whether the Norwegian implementation of the right to paid annual leave is in line with Directive 2003/88/EC Article 7.

In the Holiday Act, the right to annual leave and the right to pay during annual leave are treated as two separate rights. As a result, employees are not always ensured pay

during annual leave. With this amendment, the government aims to correct this structural challenge with the Norwegian system of holiday rights. It remains to be seen when and how the amendment will be conducted.

Poland

Summary

(I) Regulations amending the rules on employee documentation in relation to remote working have been published.

(II) Parliament has enacted amendments to the Labour Code, which now implement the requirements of the Work-Life Balance Directive and Transparent and Predictable Working Conditions (the new law will enter into force on 26 of April 2023).

(III) Drafts of new regulations related to employment documentation have been published.

1 National Legislation

1.1 Remote working

The regulation of the Minister of Family and Social Policy, dated 06 March 2023, amending the regulation on employee records has been published (Journal of Laws 2023, item 471).

This regulation adapts the rules on employee documentation to the regulations on monitoring sobriety and remote working, which were introduced in the Labour Code. A new 'Part E' will be added to personnel files to keep documents associated with checks on employee sobriety and tests for the presence of substances that have a similar effect as alcohol. The new rules will enter into force on 21 March 2023.

As for the employees' records relating to remote working, these will be kept in 'Part B' of their personnel files. These provisions will come into force on 07 April 2023.

1.2 Directive on Transparent and Predictable Working Conditions and Work-life Balance Directive

On 09 March, the Sejm, approving some of the Senate's changes, enacted amendments to the Labour Code to implement two EU directives into Polish legislation:

- Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union;
- Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

The main amendments of the Senate adopted by the Sejm include:

- to receive maternity allowance at the new rate, an application must be submitted within 21 days of the entry into force of the law (instead of within 14 days);
- transitional provisions relating to parental leave will apply to all employees taking or applying for parental leave on the date the amendment comes into force (and not just parents);
- the personal scope of parental leave provisions has been extended, so that those employees who would have been deprived of it due to the lengthy legislative process will also have the right to extended parental leave.

The Senate additionally proposed, among others, that the monthly maternity allowance for the period set by the Labour Code as the period of parental leave should amount to

100 per cent of the allowance assessment basis (instead of 70 per cent or 81.5 per cent). However, the *Sejm* rejected this proposal.

The law will come into force on 26 April 2023.

For a detailed description of the new law, see the February 2023 Flash Report.

For the legislative process, see Druk nr 2932 – *Sejm Rzeczypospolitej Polskiej*.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

According to Article 132 § 1 of the Labour Code, an employee is entitled to at least 11 hours of uninterrupted rest every day when a day means consecutive 24 hours, starting from the hour the employee starts working in accordance with the applicable work schedule. However, this does not apply to all employees. Employees managing the establishment in the name of the employer who, for the purposes of Chapter VI of the Labour Code and pursuant to Article 128 § 2 (2) of the Labour Code, are employees who individually manage the establishment and their deputies or employees who are members of collegial managing bodies and chief accountants, as well as employees who work overtime in the event of rescue operations or to carry out emergency repairs, should be granted an equivalent rest period by the end of the reference period.

Employees are also entitled to a weekly rest period. According to Article 133 of the Labour Code, an employee shall have the right to at least 35 hours of uninterrupted rest covering at least 11 hours of uninterrupted daily rest.

However, the weekly uninterrupted rest period of employees:

- Who manage the establishment in the name of the employer, as defined above;
- employees who work overtime in the event of rescue operations to protect human life or health, to protect property or the environment or to carry out emergency repairs;
- who change shifts in accordance with an established work schedule

should amount to no less than 24 consecutive hours.

The weekly rest period should fall on Sundays. However, the rest period for an employee who performs permitted work on Sundays can be scheduled for another day.

The Polish regulations seem to comply with the Directive and its interpretation presented in the ruling.

4 Other Relevant Information

4.1 Drafts of regulations amending the rules on employment documentation

On 28 March 2023, three new draft regulations of the Minister of Family and Social Policy were published on the website of the Government Legislation Centre.

The first of the proposed regulations (list number: 121) is to amend the regulations on employment certificates. The proposed amendments intend to adapt the content of the certificate of employment to changes resulting from the remote working regulation and the implementation of two EU directives: Directive 2019/1152 and Directive 2019/1158.

It is proposed to extend the certificate of employment to include information relating to the calendar year in which the employment relationship ceased and concerning:

- the employee's use of the new type of leave specified in Article 148^1 Labour Code (time off from work due to force majeure in urgent family matters caused by illness or accident);
- the employee's use of care leave specified in Article 173^1 Labour Code (leave granted to provide personal care or support to a family member or to a person who lives in the same household and who requires care or support for serious medical reasons);
- days of 'occasional' remote working specified in Article 67^{33} Labour Code.

The second proposed regulation (list number: 122) is to amend the regulation on employee records. The proposed changes intend to adapt the content of employee records to the changes resulting from the implementation of two EU directives: Directive 2019/1152 and Directive 2019/1158.

The following changes are proposed:

- extending the content of Part B of employees' personnel file with the following components;
- the employee's request for a change in the type of employment contract to a contract of indefinite duration or for more predictable and secure working conditions, including a change in the type of work or full-time employment and the employer's response to this request (this results from the newly introduced Article 29^3 1 and 3 Labour Code);
- the employee's request to indicate the reason justifying the termination of a probation contract by notice or taking an action which has the equivalent effect of a termination of the employment contract and the employer's response to this request (this results from the newly introduced Article 29^4 3 and 4 Labour Code);
- documents concerning the application of flexible work organisation (Article 188^1 Labour Code);
- extending the records on matters relating to the employment relationship;
- the employee's request to apply for and take time off work due to force majeure (Article 148^1 Labour Code);
- the employee's applications for and use of care leave (Article 173^1 Labour Code);
- consent of an employee raising a child up to the age of 8 years to work overtime, at night, for intermittent working hours and to be posted away from his or her permanent place of work (Article 178 § 2 Labour Code).

The third proposed regulation (list number: 123) addresses the application of employees' rights in relation to parenthood. The regulation takes the changes introduced in the Labour Code by the Act of 09 March 2023 into account, amending the Act – Labour Code and certain other acts.

Portugal

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

This ruling concerned the interpretation of Articles 3 and 5 of Directive 2003/88/EC, respectively, related to the daily rest period and the weekly rest period, and provides important contributions to clarifying both concepts and the articulation between them.

Firstly, the CJEU analysed whether Article 5 of Directive 2003/88, read in the light of Article 31 (2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the daily rest period provided for in Article 3 of the said Directive forms part of the weekly rest period referred to in Article 5 or whether Article 5 lays down only the minimum duration of that weekly rest period.

According to Article 3 of Directive 2003/88, every worker should be entitled to a minimum daily rest period of 11 consecutive hours for each 24-hour period. Furthermore, Article 5 of the said Directive envisages that for each 7-day period, every worker should be entitled to a minimum uninterrupted rest period of 24 hours in addition to the 11 hours of daily rest referred to above.

The CJEU explained that the Directive 2003/88 provides the right to a daily rest period and the right to a weekly rest period in two different provisions, which indicates that *"they are two autonomous rights"* that pursue different objectives,

> *"consisting, for the daily rest period, in enabling the worker to remove himself or herself from his or her working environment for a specific number of hours which must not only be consecutive but must also directly follow a period of work and, in the case of the weekly rest period, in allowing the worker to rest during each seven-day period".*

Therefore, both of those rights must be guaranteed.

According to the CJEU,

> *"an interpretation according to which the daily rest period formed part of the weekly rest period would render meaningless the right to daily rest referred to in Article 3 of that directive, by depriving the worker of the actual enjoyment of the daily rest period provided for in that provision, where he or she is entitled to a weekly rest period".*

Consequently,

> *"the right to weekly rest is not intended to include (…) the period corresponding to the right to daily rest but must be recognised in addition to that right".*

This interpretation also applies in case the national legislation provides for a weekly rest period exceeding 35 consecutive hours (as was the case of the Hungarian law at issue in this ruling). In that case, the worker must be granted, in addition to that period, the daily rest period enshrined in Article 3 of Directive 2003/88.

The CJEU also stated that Article 3 of Directive 2003/88

> *"must be interpreted as meaning that where a worker is granted a weekly rest period, he or she is also entitled to a daily rest period preceding that weekly rest period".*

This implies that after a period of work, every worker is entitled to a daily rest period, irrespective of whether or not that rest period is followed by a period of work. According to the CJEU,

> *"when the daily rest period and the weekly rest period are granted concurrently, the weekly rest period cannot begin to run until the worker has benefited from the daily rest period".*

This ruling may have significant implications for Portuguese law, as explained below.

According to Article 214 (1) of the Portuguese Labour Code (hereinafter referred to as 'PLC'), the worker is entitled to a minimum daily period of rest of 11 consecutive hours between two daily consecutive periods of work, except in some exceptional situations stipulated in Article 214 (2) of PLC.

According to Articles 232 (1) and 233 (1) of PLC, the worker is entitled to one day of rest per week (the compulsory weekly day of rest), which must be taken in continuity with the period of 11 hours corresponding to the daily rest period, except in cases referred to in Article 233 (3) of PLC.

In addition, the law stipulates that a complementary weekly rest period may be granted by means of a collective bargaining agreement or contract of employment (Article 232 (3) of PLC). According to Article 233 (2) of PLC, the 11-hour period shall be deemed to have been completed, in whole or in part, by the complementary weekly rest period that is taken in continuity with the compulsory weekly day of rest. This provision does not seem to be compatible with the CJEU's recent case law, which interpreted Articles 3 and 5 of Directive 2003/88 as meaning that the daily rest period of at least 11 hours must added to the weekly rest period, even if the latter exceeds 35 hours. In fact, the CJEU mentioned that the right to a daily rest period and the right to a weekly rest period are separate and, therefore, the first right cannot form part of the second right, as seemingly to results from the provision of Article 233 (2) of PLC.

Considering that Portuguese law does not establish the weekly rest period in hours but stipulates that it may correspond to one or two days per week, this interpretation may imply several constraints to the organisation of work schedules, as it seems that, according to the interpretation of the CJEU, a daily rest period of at least 11 hours should be granted in addition to the weekly rest period.

As explained above, Portuguese labour law, namely Article 233 (2) of PLC, does not seem to be aligned with this interpretation of the CJEU concerning the cumulation of the daily and weekly rest periods, in cases where a complementary weekly rest day is granted.

4 Other Relevant Information

4.1 Amendments to Portuguese labour law

The Proposal of Law No. 15/XV/1, containing several changes to the labour legislation, which was approved by the Portuguese Parliament on 10 February 2023 and promulgated by the President of the Republic on 22 March 2023, will be published in the

Official Gazette. It is expected that the amendments to the labour law will enter into force on 01 May 2023.

Romania

Summary

(I) Romanian legislation has introduced new public holidays and has extended the leave for the adoption of a child.

(II) Secondary legislation necessary for collective bargaining at sector level has been adopted.

1 National Legislation

1.1 Holidays

Law 52/2023, which supplements Article 139 of Law No. 53/2003 – Labour Code, (published in the Official Gazette of Romania No. 186 of 06 March 2023), 06 January and 07 January have been declared as non-working legal holidays. These two days (which mark religious holidays) have been added to the other 15 public holidays provided for in Romanian law. However, if a public holiday coincides with a Sunday or an ordinary day of inactivity in the undertaking, it does not carry over to another working day.

1.2 Adoption leave

Law No. 70/2023 on the amendment of Article 50 of Law No. 273/2004 on the adoption procedure (published in the Official Gazette of Romania No. 265 of 30 March 2023) extended the so-called 'accommodation' leave from one year to two years. Employees who adopt a child benefit from this leave under certain conditions. The leave is paid from the State budget. With this provision, the duration of the accommodation leave becomes the same as the duration of the child-rearing leave, both longer than the minimum of four months set by European legislation.

1.3 Collective bargaining

For the first time, the new Law on Social Dialogue No. 367/2022 (published in the Official Gazette of Romania No. 1238 of 22 December 2022; see December 2022 Flash Report) has made collective bargaining compulsory at the sector level. The collective bargaining sectors were to be determined by government decision.

In application of the law, the government adopted Decision No. 171/2023 on the determination of collective bargaining sectors and their NACE codes (published in the Official Gazette of Romania No. 190 of 07 March 2023). By Order No. 798/2023 on the approval of the procedure for the classification of undertakings in collective bargaining sectors (published in the Official Gazette of Romania No. 259 of 29 March 2023), the Ministry of Labour laid down the procedure for undertakings to express their choice of classification in a collective bargaining sector.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The decision of the Court of Justice of the European Union appears to be particularly relevant for the Romanian system.

The issue of combining the daily rest period with the weekly rest period has been raised before the Romanian courts. The courts have consistently ruled (in line with previous CJEU decisions) that the daily rest period is cumulated with the weekly rest period, resulting in a period of at least 35 consecutive hours of rest every week. But the problem was how to apply this solution in relation to national law, which provides for a daily rest period of 12 hours (instead of 11 hours) and a weekly rest period of 48 hours (instead of 24). The national rules therefore provide for rest periods that exceed those laid down in the Directive.

In its decision in case C-477/21, the Court of Justice of the European Union ruled that where national legislation provides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, the daily rest period guaranteed in Article 3 of the Working Time Directive.

This means that in Romania, a worker is entitled to a rest period of at least 60 consecutive hours each week.

The problem is even more challenging, however. In addition to the fact that Romanian law provides for an even longer weekly rest period than specified in the Hungarian national rules; Article 115 (2) Labour Code also provides that the daily working time of 12 hours shall be followed by a rest period of 24 hours. When working hours are organised under this system, how many consecutive hours of rest will workers enjoy? The 24-hour rest period has the quality of a 'daily rest period' in the view of the Romanian legislator.

This question arose precisely in the railway sector (as in case C-477/21), where the employer argued that 'the cumulation of the daily rest period with the weekly rest period would lead to a work week of four days, which would make it impossible to ensure a weekly working time of 40 hours'. The Craiova Court of Appeal ruled that:

> "*the establishment of a 12-hour work schedule with a 24 hour rest period does not automatically imply the existence of 72 consecutive hours of rest, 24 daily hours of rest and a 48-hour weekly rest period. A period of 48 hours of rest ensures the possibility of restoring the work capacity, which is the purpose for which the legislator has regulated the daily and weekly rest periods"* (see *Decision No. 1675/2021 of 17 May 2021*).

However, it follows from the CJEU's decision in case C-477/21 that the accumulation concerns daily and weekly rest periods as laid down in national legislation, i.e. even if they are longer than provided for in the Working Time Directive. In the case of the Romanian system, this results in an uninterrupted period of 60 hours of rest for regular employees and not less than 72 hours in the case of an employee with a special schedule (under Article 115 (2) of the Labour Code).

Granting a daily rest period of 24 hours in addition to a weekly rest period of 48 hours means that workers with a special work schedule (such as those in the railway sector) can only work a maximum of 36 hours per week, although under Romanian law, the normal working time is 40 hours per week.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The Labour Code is the basic labour law regulation in the private sector (Act No. 311/2001 Collection of Law- Coll.). The Labour Code specifically regulates the daily rest period (Article 92 paragraphs 1-3) and the weekly rest period (Article 93 paragraphs 1-5).

As mentioned above, the Labour Code specifically regulates the daily rest period and the weekly rest period.

According to Article 92 paragraph 1 of the Labour Code, an employer shall be required to arrange the working time in such a way that, between the end of one shift and start of the next one, an employee is granted the minimum rest period of 12 consecutive hours over a 24—hour period, while a minor should be granted at least 14 consecutive hours of rest over a 24-hour period.

Such rest periods may be reduced to eight hours for an employee above the age of 18 years in case of continuous operations and with work batches when performing urgent agricultural work, in the provision of universal postal services, when performing urgent repair works to avert a threat that endangers the lives or health of employees and in case of extraordinary events. If an employer shortens the minimum rest period, he/she is required to provide the employee with a continuous equivalent rest period in compensation within 30 days (Article 92 paragraph 2 of the Labour Code).

An employee who has returned from a business trip after 24:00 hours shall be granted time for rest (eight hours from completion of the business trip until taking up work again), and where such a period falls within the employee's working time, they shall also be granted wage compensation in the amount of their average earnings (Article 92 paragraph 3 of the Labour Code).

As regards the weekly rest period according to Article 93 paragraph 1 of the Labour Code, an employer shall arrange working time in such a way that an employee has two consecutive days of continuous rest once every week, which shall fall on Saturday and Sunday or on Sunday and Monday.

Where the nature of the work and the conditions of operation do not allow for the scheduling of an employee's working time, who is above the age of 18 years pursuant to paragraph 1, two consecutive days of continuous rest every week shall be granted on other days of the week (Article 93 paragraph 2 of the Labour Code).

If the nature of the work and the operation conditions do not allow for the scheduling of working time pursuant to paragraphs 1 and 2, the employer may, upon agreement with the employee representatives or, if there are no employee representatives in the workplace, upon agreement with the employee, grant an employee above the age of 18 years at least 24 hours of continuous rest, which should be on Sundays, provided that the employer offers the employee an alternative continuous rest period during the week within eight months of the date when continuous rest should have been provided (Article 93 paragraph 3 of the Labour Code).

If the nature of the work and the operational conditions do not allow for the scheduling of working time in accordance with paragraphs 1 to 3 and the employee is above the age of 18 years, the employer can schedule the working time in such a way that the employee has a rest period of at least 35 continuous hours once a week; such continuous rest shall fall on a Sunday and a part of either the day preceding or following the Sunday; such a schedule shall be agreed with the employee representatives or, if there are no employee representatives in the workplace, with the employee (Article 93 paragraph 4 of the Labour Code).

If the nature of the work and the operational conditions do not allow for the scheduling of working time in accordance with paragraphs 1 to 3, an employer may schedule the working time of an employee above the age of 18 years upon agreement with the employee representatives or, if there are no employee representatives in the workplace, upon agreement with the employee in such a way that the employee has at least once 24 hours of continuous rest every two weeks, which should fall on Sundays provided that the employer additionally offers the employee a substitute continuous rest period during the week within four months of the date when the continuous rest period should have been provided (Article 93 paragraph 5 of the Labour Code).

(According to Article 85 paragraph 3 of the Labour Code, for the purposes of determining the extent of working time and the planning of working time, one week shall be seven consecutive days (Article 85 paragraph 3 of the Labour Code).)

It follows from the cited provisions that the daily rest period set in Article 3 of the Directive is not part of the weekly rest period regulated in the aforementioned Article 5 of the Directive.

As regards points 2 and 3 of the Court’s (Second Chamber) decision: the cited provisions of the Labour Code do not explicitly state what is stated in these points of the decision. It is therefore a question of practical application of the valid provisions of the Labour Code, which should respect the Court’s decision.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) The minimum hourly rate for occasional and temporary work in agriculture was adjusted and raised to EUR 6.92.

(II) The National Assembly has adopted a new law on posting of workers.

1 National Legislation

1.1 New law on posting of workers

On 22 March 2023, the National Assembly adopted a new law on the posting of workers which will replace the previous one (Transnational Provision of Services Act, '*Zakon o čezmejnem izvajanju storitev – ZČmIS-1*'); however, since it has not yet been published, it will be discussed in more in detail in the next (April) Flash Report. In its entirety, it will begin to apply as of 01 January 2024.

1.2 Adjustment of the minimum hourly rate for occasional work in agriculture

Following the adjustment of the minimum wage in January 2023, and the adjustment of the minimum hourly rate for occasional work of students and retired persons (see January 2023 Flash Report, 1.2 and 1.3 and February 2023 Flash Report, 1.2) and on the basis of Article 105.d of the Agriculture Act ('*Zakon o kmetijstvu – ZKme*-1', OJ RS No. 45/08 et subseq.), the minimum hourly rate for occasional and temporary work in agriculture was adjusted as well (Order on the adjustment of the minimum gross hourly rate for temporary or occasional work in agriculture, '*Odredba o uskladitvi najnižje bruto urne postavke za opravljeno začasno ali občasno delo v kmetijstvu*', OJ RS No. 34/23, 24 March 2023, p. 2894).

The minimum hourly rate for occasional and temporary work in agriculture was increased to EUR 6.92.

2 Court Rulings

2.1 Retirement of judges and termination of their judicial functions

The Constitutional Court, Decision No. U-I-159/19, 23 February 2023

The Constitutional Court published Decision No. U-I-159/19, 23 February 2023 (ECLI:SI:USRS:2023:U.I.159.19) which concerned the retirement of judges and the termination of their judicial functions as regulated in Articles 74 and 76.a of the Judicial Service Act ('*Zakon o sodniški službi (ZSS)*).

Articles 74 and 76a of the Judicial Service Act stipulate that a judge's judicial service is terminated by retirement, but no later than when the judge reaches the age of 70 years. Nevertheless, the possibility is provided for a retired judge to be reactivated and to continue working as a judge, to perform official supervisions of the work of judges and the tasks of court administration and to head the supervision of the organisation of court operations. The amendments to the Judicial Service Act of 2007 separated the termination of the judicial service (which terminates upon retirement) and the judicial functions (which terminates upon the judge's death). The Constitutional Court decided that such a regulation is inconsistent with the Constitution, since according to the Constitution, the law must determine the age limit at which a judge shall retire and at the same time that their judicial functions cease.

2.2 Non-competition clause in the healthcare sector

The Constitutional Court, Decision No. U-I-52/18, 16 February 2023

The Constitutional Court also decided (in Decision No. U-I-52/18, 16 February 2023, ECLI:SI:USRS:2023:U.I.52.18, published in OJ RS No 28/23, 03 March 2023, p. 1602-1604) that the third paragraph of Article 53a of the Health Services Act *('Zakon o zdravstveni dejavnosti* (ZZDej)), which regulates supplementary work and the non-competition clause for workers in the healthcare sector, is in conformity with the Constitution. When comparing the statutory regulations of the different groups of workers (in public healthcare institutions, in private healthcare institutions, in comparison to other workers to whom the general labour legislation applies), it was established that all groups of workers can be subject to the termination of an employment contract without notice in the event of a violation of the non-competition prohibition or of provisions on supplementary work if an additional condition determined equally that all general labour law regulations have been fulfilled, namely that it is not possible for the employment relationship to continue until the end of the notice period. Therefore, it depends on the fulfilment of an additional criterion in concrete circumstances whether an employer, once it establishes a violation, will terminate the employment relationship of a healthcare worker without notice or will choose some other, milder measure under the labour law regulation in line with the profundity of the violation, i.e. the termination of an employment contract with notice or a disciplinary sanction (English summary of the decision is available here).

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

The CJEU decided that the daily and weekly rest periods constitute two separate rights. It emphasised that the daily rest period provided for in Article 3 of Working Time Directive (WTD) does not form part of the weekly rest period referred to in Article 5 of that Directive, but is additional to it, and that even if national legislation provides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, also the daily rest period; and that where a worker is granted a weekly rest period, he or she is also entitled to a daily rest period preceding that weekly rest period.

Slovenian law is in line with this decision. According to Article 155 of the Employment Relationships Act ('*Zakon o delovnih razmerjih* (ZDR-1)', OJ RS No. 21/13 et subseq.), workers shall have the right to a rest period of at least 12 uninterrupted hours over a period of 24 hours, or at least 11 hours over a 24-hour period if working time is irregularly distributed or temporarily redistributed, whereby, according to Article 156 of the ZDR-1, in addition to the right to a daily rest period referred to in Article 155, workers shall have the right to a rest period of at least 24 uninterrupted hours over a period of seven successive days.

Provisions of the ZDR-1 clearly stipulate that daily and weekly rest periods are two separate rights and that the worker must be entitled to both of them.

4 Other Relevant Information

4.1 Collective bargaining

Several annexes to collective agreements have been concluded and published in the Official Journal; they predominantly concern the adjustment of wages and some other

payments, such as the reimbursement of work-related costs, and some other issues: Annex No. 7 to the Collective Agreement for Professional Journalists (‘*Aneks št. 7 h Kolektivni pogodbi za poklicne novinarje*’, OJ RS No 39/23, 31 March 2023, p. 3489 et subseq.); Annex No. 15 to the Collective Agreement for the Public Institution *Radiotelevizija Slovenija* (‘*Aneks št. 15 h Kolektivni pogodbi javnega zavoda RTV Slovenija*’, OJ RS No. 39/23, 31 March 2023, p. 3478 et subseq.).

A sectoral collective agreement for the activity of private security was terminated with an expiry period of six months (‘*Sklep o odpovedi Kolektivne pogodbe za dejavnost zasebnega varovanja*’, OJ RS No. 30/23, 10 March 2023, p. 1959).

4.2 Announcement of strikes in the public sector

Several strikes in the public sector have been announced, but later cancelled or frozen. In general, demands have been made for higher wages and a correction of the wage system in the public sector. Since the government announced a reform of the public sector wage system, many trade unions in various sectors have intensified their pressure and demands. The negotiations have been intense and difficult, but most of the strikes were cancelled or frozen. For example, the Strike Agreement was concluded between the government and the Union of Customs Officers of Slovenia (‘*Sindikat carinikov Slovenije*’) and published in the Official Journal (‘*Sporazum o načinu reševanja stavkovnih zahtev in o odložitvi začetka stavke*’, OJ RS No. 34/23, 24 March 2023, p. 3049), as well and the Strike Agreement between the government and the SVIZ – the trade union in education and science *(‘Stavkovni sporazum’*, OJ RS No. 34/23, 24 March 2023, p. 3049). The FIDES – the doctors’ and dentists’ trade union announced a continuation of the strike, but at the last moment called it off (English version is available here). It was unclear whether they announced it properly or not (at least 10 days in advance, however, according to the trade union, this was not necessary since it was not a ‘new’ strike).

Spain

Summary

(I) A new university law regulates the types of employment contracts for university professors.

(II) Supreme Court rulings continue to be consistent with CJEU case law.

1 National Legislation

1.1 University professors

A new law on universities has been passed. University staff can be hired under administrative law (as civil servants) or under labour law (as employees under an employment contract). This law establishes the relevant legal framework. The employment contracts for university professors under this University Law can either be temporary or permanent, but they differ from employment contracts regulated by the Labour Code.

2 Court Rulings

2.1 Recording of working time

Supreme Court, STS 85/2023, 18 January 2023

The Royal Decree-Law 8/2019 required employers to record working time, i.e. undertakings were to implement a system that ensures compliance with working time rules, including recording the start and end times of each worker's workday. Collective bargaining plays a key role in determining the features of those systems. In this particular ruling, the undertaking and the workers' representatives had agreed on a system that involved the workers themselves, because every worker was to introduce the relevant information on working time in an app (start time, end time and total duration of the working day).

The Supreme Court referred to CJEU case C-55/18, 14 May 2019, *CCOO vs. Deutsche Bank SAE* to assess whether such a system could be considered objective and reliable, although the issue of easy access was not discussed in the present case. The Supreme Court concluded that no evidence had been provided to demonstrate that the system could be tampered with. From a technical point of view, the system seemed to be reliable, so the only issue was how to enter the information into the system. The Supreme Court noted that there are many systems that require direct participation of workers for that purpose (such as digital fingerprints or clocking in and out), so the fact that the workers were responsible for entering all of the relevant information into the system cannot be considered unreliable in itself. The Supreme Court cautioned that the undertaking must provide detailed instructions to prevent any uncertainties and errors concerning the concept of working time.

2.2 Severance pay (collective dismissal)

Supreme Court, STS 337/2023, 24 January 2023

Severance pay in case of dismissal is established by law. The parties may agree on a higher severance pay, as the aim in collective dismissals is often to prevent lawsuits and to simplify the procedure. That was the case in this ruling, but with a particular feature. The amount of agreed severance pay was lower for dismissed workers aged 60+ years. The Supreme Court, referring to Directive 2000/78, stated that this

difference in treatment could not be considered discrimination on grounds of age, because younger workers faced a more uncertain future following dismissal, while workers who are close to retirement age not only enjoy better social security protection, but in this particular case, the undertaking also granted them other financial advantages.

2.3 Annual leave

Supreme Court, STS 369/2023, 25 January 2023

The Supreme Court applied the doctrine of the CJEU ruling of 25 June 2020 (joined cases C-762/18 and C-37/19). Hence, the worker who was unlawfully dismissed but later reinstated after the annulment of the dismissal by a decision of a court is entitled to paid annual leave for the period between the date of dismissal and of reinstatement.

2.4 Collective dismissal

Supreme Court, STS 397/2023, 30 January 2023

The CJEU (for instance, CJEU case, C-422/14, 11 November 2015, *Cristian Pujante Rivera vs. Gestora Clubs Dir SL, Fondo de Garantía Salarial*) established that substantial changes to essential elements of the employment contract decided unilaterally by the employer to the detriment of the employee and for reasons not related to the individual employee concerned fall within the definition of 'redundancy'. Therefore, those decisions could be considered 'dismissals' to which the rules on collective dismissals apply.

The Spanish Supreme Court referred to that doctrine, but stated that it was not applicable in this particular case, because the employer did not make a decision to the detriment of the employee and the changes decided were not substantial. In particular, after the end of a subcontracting agreement, the employer decided to transfer the worker to another workplace, which entailed changes in working time and shift work.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

This case will not have any implications in Spain. According to Article 34 (2) of the Labour Code, workers have the right to a daily rest period of 12 hours. Weekly rest periods are regulated in Article 37 (1) and extends to 36 hours (two days for minors).

There are no particular legal rules on the articulation of both rights, but the Supreme Court (Supreme Court judgment of 10 October 2005, available here) has stated that these rest periods are separate rights, i.e. the right to the daily rest period must be guaranteed and cannot be absorbed or subsumed under the weekly rest period. A clause in a collective agreement in that sense would be null and void.

4 Other Relevant Information

4.1 Unemployment

Unemployment increased again in January, so there are currently 2 911 015 unemployed persons.

Sweden

Summary

(I) Legislative changes have been proposed to strengthen the rule of law and the independence of the court system.

(II) The CJEU has held that GDPR must be considered when a defendant is ordered to produce a staff register as evidence.

(III) The annual salary increase level has been set to 4.1 per cent by the social partners.

1 National Legislation

1.1 Swedish employment dispute resolution mechanisms for judges

A government inquiry entitled 'Strengthened protection for democracy and the rule of law' (SOU 2013:12: *'Förstärkt skydd för demokratin och domstolarnas oberoende'*) was published on 17 March 2023. With references to CJEU case law on the rule of law, the inquiry concluded that the current Swedish employment dispute resolution mechanisms for judges are insufficient as they do not observe the independence of the judges. The inquiry therefore proposes a separate employment dispute tribunal consisting of judges and former judges. Furthermore, the inquiry proposes better employment protection for judges as well as more foreseeable rules on the retirement of judges.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

In its judgment, the CJEU held that weekly and daily rest periods are two separate rights, which must both be granted to the employees, even if the national weekly rest period is more favourable than the combined EU minimum periods for weekly and daily rest periods.

For Sweden, this judgment will have implications. Just like in Hungary, the Swedish weekly rest period is longer than the combined EU minimum periods for weekly and daily rest. It does not explicitly follow from the legislation that the longer weekly rest period is meant to include the daily rest period, nor does the legislation explicitly grant a daily rest period in combination with a weekly rest period. The clarification from the CJEU in this regard will probably have implications for Sweden.

Even if it is clear from the judgment that an over-implemented weekly rest period does not undermine the open question of how to interpret an over-implemented weekly rest period in practice. Advocate General Pitruzzella declared that the national courts must comply with EU law but that they can combine the two in case the national rights are more beneficial than the EU minimum rights (para. 71-80). This line of argumentation is not echoed by the Court. From a dispute perspective, this silence is difficult to interpret. It is therefore likely that the judgment's implications will primarily be of importance for the national legislator and the social partners' collective bargaining procedures.

3.2 GDPR

CJEU, case C-268/21, 02 March 2023, Norra Stockholm Bygg AB

In a judgment concerning a court's procedural order, a defendant was requested to produce a staff register for evidence purposes. The CJEU held that GDPR requires proportionality and that the third-party employee's interest of protection of their personal data must be considered.

From a Swedish perspective, the judgment is an important clarification of the GDPR implications for procedural rules.

4 Other Relevant Information

4.1 Collective bargaining

As several collective agreements expired on 31 March 2023, the procedure of negotiating future employment conditions is ongoing. By tradition, the salary increases are set by the social partners in the industrial sector. On 31 March 2023, the social partners announced that they had agreed on a salary increase of 4.1 per cent for the coming year and 3.3 per cent for the following year.

United Kingdom

Summary

There have been Retained EU Law (REUL) developments.

1 National Legislation

1.1 The Seafarers' Wages Act 2023 (SWA 2023)

The SWA 2023 has received royal assent. This was passed against the backdrop of mass redundancies by P&O last year. The National Minimum Wage (Offshore Employment) (Amendment) Order 2020 applies the National Minimum Wage (NMW) to all seafarers on vessels on domestic UK routes, irrespective of whether the vessels are UK-registered and whether seafarers are not ordinarily resident in the UK, but does not apply to seafarers working on international routes, unless their ship is registered in the UK and they are ordinarily resident in the UK. This is a 'key strand of the government's 9-point plan for seafarers, the new law is designed to protect those working on vessels operating an international service from being paid less than the National Minimum Wage'. The Act requires seafarers working on ships that use UK ports at least 120 times a year to be paid a rate at least equivalent to the UK NMW for their work in UK waters. This applies irrespective of the ship's flag or the seafarers' nationality. Harbour authorities have the power to request ship operators to provide a declaration that their seafarers are paid a rate at least equivalent to the NMW for their work in the UK or its territorial waters.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Working time

CJEU, case C-477/21, 02 March 2023, MÁV-START

In this case, the Court ruled:

1. Article 5 of Directive 2003/88/EC of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the daily rest period provided for in Article 3 of that directive does not form part of the weekly rest period referred to in Article 5 of that directive, but is additional to it.
2. Articles 3 and 5 of Directive 2003/88, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that where national legislation provides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, the daily rest as guaranteed by Article 3 of that directive.
3. Article 3 of Directive 2003/88, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that where a worker is granted a weekly rest period, he or she is also entitled to a daily rest period preceding that weekly rest period.

It does not seem that these issues have been considered as such by the British courts. The British courts are not bound to follow these rulings, but they will consider them to guide their interpretation of equivalent UK rules.

4 Other Relevant Information

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

The Bill which sunsets all 3 745 pieces of retained EU legislation is due for debate in the Lords where it is facing significant opposition. However, the Bill has now been removed from the House of Lords' lists, but the reason is not clear. 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. The Bill is now at the Reporting Stage in the House of Lords.

4.3 National minimum wage rates

These have just been increased:

With effect from 01 April 2023, the Regulations amend the National Minimum Wage Regulations 2015 to change the hourly rates of the national minimum wage (NMW) and national living wage (NLW) as follows:

- The NLW for workers aged 23 and over increases from GBP 9.50 to GBP 10.42 per hour.
- The NMW for 21- to 22-year-olds increases from GBP 9.18 to GBP 10.18 per hour.
- The NMW for 18- to 20-year-olds increases from GBP 6.83 to GBP 7.49 per hour.
- The NMW for 16- to 17-year-olds increases from GBP 4.81 to GBP 5.28 per hour.
- The apprentice rate increases from GBP 4.81 to GBP 5.28 per hour.

4.3 CPTPP

The UK has joined the CPTPP. There is a labour chapter (Chapter 19).

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