Flash Reports on Labour Law August 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 August 2023, 21 countries (all but **Austria**, **Cyprus**, **Denmark**, **Germany**, **Iceland**, **Ireland**, **Italy**, **Latvia**, **Lithuania** and **Malta**) reported some labour law developments. The following were of particular significance from an EU law perspective:

Occupational health and safety

In **Croatia**, the regulations on psychosocial protection, standards and procedures to assist firefighters has been issued.

In **Liechtenstein**, according to Decision No. 165/2023 of the EEA Joint Committee, Directive (EU) 2022/431 of the European Parliament and of the Council of 09 March 2022 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work is to be incorporated into the EEA Agreement.

In **Slovenia**, the Ministry of Labour has issued new rules on ensuring safety and health of workers in the field of manual handling of loads.

Transposition of EU directives

In **Greece**, the government has presented and opened for public consultation the draft bill implementing the Directive on Transparent and Predictable Working Conditions.

In **Luxembourg**, a bill concerning parental leave and implementing Article 4 of the Work-life Balance Directive has been adopted.

In **Poland**, the final wording of the Law on Employee Participation in the Company Created as the Result of Cross-border Conversion, Merger or Division of Companies has been accepted by Parliament. Similarly, in **Romania**, the Directive on Cross-border Conversions, Mergers, and Divisions has been transposed into legislation.

In **Poland**, the Law on Posting of Drivers in Road Transport has taken effect.

Third-country nationals

In **Bulgaria**, the Law on Foreigners has been amended.

In **Luxembourg**, the rules on the employment of third-country nationals have been amended.

In **Spain**, the catalogue of occupations that are not adequately covered by Spanish workers has been expanded to allow for the recruitment of foreign workers.

Transfer of undertakings

In the **Netherlands**, two district courts have interpreted Directive 2001/23/EC.

In the **United Kingdom**, the Inner House of the Court of Session ruled on the right to participate in a share incentive plan transferred to a new employer after a transfer of undertaking.

Other developments

In the **Czech Republic**, the Whistleblowing Act entered into force on 01 August.

In **Finland**, the government has adopted a statement to be submitted to Parliament on measures to promote equality, gender equality and non-discrimination in Finnish society.

In **France**, an Administrative Court of Appeal has ruled against the French government for failing to comply with European Union law on the right to paid leave during sick leave.

In the **Netherlands**, a court ruled that raining costs clauses are null and void in line with Article 13 of the Directive on Transparent and Predictable Working Conditions.

In **Slovakia**, a decision of the Supreme Court of the Slovak Republic on a fixed-

term employment relationship has been published.

Table 1: Major labour law developments

Topic	Countries
Third-country nationals	BG LU ES SE
Occupational health and safety	HR FI LI SI
Collective bargaining and collective action	HR SI
Transparent and predictable working conditions	EL NL
Cross-border conversions	PL RO
Social security	FR PT
Posting of workers	PL
Working time	BE
Fixed-term work	SK
Whistleblowing	CZ
Sick leave	FR
Parental leave	LU
Minimum wage	HU
Equal treatment	FI
Long-term care	SI
Dismissal	NL

Implications of CJEU Rulings

Collective redundancies

This Flash Report analyses the implications of a CJEU ruling on collective redundancies.

CJEU case C-134/22, 13 July 2023, G GmbH

The CJEU ruled on the interpretation of Article 2(3) of Directive 98/59/EC on collective redundancies: in this regard, it held that the obligation of an employer who is planning collective redundancies to forward to the competent public authority a copy of, at least, certain elements of the written communication which the employer sent to the workers' representatives for consultation purposes is not intended to confer individual protection on the workers concerned.

In **Germany**, the ruling corresponds to courts' existing case law. Similarly, most reports noted that national legislation and case law appear to be consistent with the CJEU's decision, as the employer's failure to follow the procedure set out for collective redundancies does not affect the legality of the dismissals. However, the **Austrian** report pointed out the lack of an appropriate provision requiring the employer to submit to the competent public authority a copy of at least the elements of the written communication to the works council.

Similarly, in **Romania**, the violation of procedural obligations may render the entire collective dismissal null and void: as such, the ruling was reported to entail implications for the interpretation of Romanian law.

Austria

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

In Austria, the Collective Redundancy Directive 98/59/EC has been transposed in two acts. The Labour Constitution Act (*Arbeitsverfassungsgesetz* – ArbVG) deals in § 108 with the relevant information that must be provided to the works council, and the Act on the Promotion of the Labour Market (*Arbeitsmarktförderungsgesetz* – AMFG) specifies the information that must be provided to the competent public authority (the employment services, *Arbeitsmarktservice* – AMS) in § 45a.

Although the procedure consists of two steps, i.e. first providing the relevant information to the works council and subsequently to the employment services, it does not provide for sharing information of the latter at the same time the works council is informed. It only requires the employer to provide the works council with a copy of the notification of the employment services (§ 45a (4) AMFG). The employment services must also be provided with evidence that consultations have taken place (§ 45 (3) AMFG). There is no obligation of the employer to inform the employment services at an earlier stage, especially at the time the works council is informed in writing about the key considerations related to the planned collective redundancy as provided for in § 109 (1a) ArbVG.

It therefore seems that Austria has not properly transposed the provision in the second subparagraph of Article 2(3) of the Collective Redundancies Directive 98/59/EC. The decision does not have any implications for Austrian labour law aside from pointing out the lack of an appropriate provision requiring the employer to submit to the competent public authority a copy of at least the elements of the written communication to the works council.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

A draft law will generate the possibility for workers to work 120 additional overtime hours without having to be compensated with catch-up rest and without being entitled to overtime pay.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G. GmbH

In this German case, the procedure for consultation of the works council relating to collective redundancies, acting as the workers' representative, was initiated on the same date. In the context of that consultation, the information referred to in Article 2 (3) of Directive 98/59 Collective Redundancies was communicated to the works council. However, no copy of that written communication was forwarded to the competent public authority. Following notification of the projected collective redundancy to the competent public authority, an affected employee argued that that non-communication to the competent authority of a copy of the information submitted to the works council was a condition for the validity of the dismissal. For the purposes of the analysis to be carried out by the German courts, it is essential to determine whether the rule in question is intended to give workers individual protection. In its ruling, the CJEU replied in the negative: the obligation of an employer who is planning collective redundancies to forward to the competent public authority a copy of, at least, certain elements of the written communication which the employer sent to the workers' representatives for consultation purposes is not intended to confer individual protection on the workers concerned.

In Belgium, Article 2 (3) of the Collective Redundancy Directive was transposed in Article 6 of the Royal Decree of 24 May 1976 on collective redundancies. The RD was issued under the so-called Unity Law of 14 February 1961. Failure to comply with the obligation to provide a copy of the notification to the works council to the competent authority being the director of the sub-regional employment service, is punishable by administrative fines under Article 197 Social Penal Code.

The specific legislation relating to the submission of the copy does not provide for civil sanctions, and certainly not in relation to a dismissal in the context of collective redundancy. To that extent, ruling C-134/22 is relevant. Belgian labour law is in line with this CJEU ruling. Proceedings like in Germany on the validity of dismissals have never occurred in Belgium.

4 Other Relevant Information

4.1 Extra overtime

The Labour Code of 16 March 1971 allows 100 voluntary overtime hours to be performed per calendar year. Such overtime can be performed at the initiative of the employee, with his/her agreement and if the employer requests these additional hours to be performed.

Collective Bargaining Agreement No. 129 concluded in the National Labour Council on 23 April 2019 raised the maximum number of voluntary overtime hours to 120 hours and the maximum overtime can be further increased to 360 hours with a generally binding sectoral collective bargaining agreement.

During the COVID-19 pandemic, "*additional voluntary overtime corona*" could be performed in addition to regular voluntary overtime. This exception was introduced to meet the increased workload due to the pandemic. After the end of the pandemic, "voluntary relaunch hours" were allowed to facilitate the restart of the economy. That arrangement expired on 31 December 2022.

A Law Proposal was introduced on 23 June 2023 in the House of Representatives that includes the reintroduction of additional voluntary 'relaunch' hours and that from 01 July 2023 (*Parl. Documents*, Chamber of Representatives, 2022-23, No. 55 3446/001). The law will amend 2rticle 25bis of the Labour Code and implements the framework agreement of the social partners under the inter-professional negotiations for the period 2023–2024. An additional of 120 overtime hours are permissible, and may not be compensated with catch-up rest. These overtime hours do not entitle employees to additional overtime pay.

Bulgaria

Summary

The Law on Foreigners has been amended.

1 National Legislation

1.1 Law on Foreigners

The National Assembly (Parliament) adopted the Law on Amendments and Supplements to the Law on Foreigners in the Republic of Bulgaria (promulgated State Gazette No. 67 of 04 August 2023). This law provides measures for the implementation of Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018; Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018; Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017; Regulation (EU) 2016/399 of the European Parliament and of the Council of 09 March 2016; Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018; Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018; Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018; Council Regulation (EC) No. 1030/2002 of 13 June 2002; Regulation (EU) 2021/1152 of the European Parliament and of the Council of 07 July 2021.

Some of the most important amendments are as follows:

Different types of documents (Article 9i—9k) -- travel authorisation, travel permit (date of issuance, rejection, cancellation, revocation). These issues are also regulated by amendments and supplements to the Law on Entry, Residence and Departure of Citizens of the European Union and their Family Members from the Republic of Bulgaria (Article 4a—4c).

Access to the 'International Operational Cooperation' Directorate, access to the ETIAS information system (Article 9l) are granted to border control authorities; the Directorate 'Migration' and the units 'Migration' at the regional directorates of the Ministry of Internal Affairs.

SVI biometric data (§ 1, item 17 of the additional provisions) - a definition of 'SVI' biometric data includes fingerprints and a portrait photograph, as defined in Article 3, paragraph 1, items 16--18 of Regulation (EU) 2017/2226.

Supplements to the Family Code have also been introduced. They concern the prohibition of leaving the country if involves exposure of a child to the risk of removal from the country within the meaning of Article 32, paragraph 1, letter 'c' of Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, functioning and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal law matters, amending and repealing Decision 2007/533/JHA of the Council and repealing Regulation (EC) No. 1986/2006 of the European Parliament and of the Council and Decision 2010/261/EU of the Commission (OJ, L 312/56 from 07 December 2018). In such cases, the district court of the child's current address shall review a request to impose a ban on the child leaving the country in case of a concrete and clear risk of illegal removal of the child by a parent, guardian or relative. It is illegal to remove a child that has its habitual residence in the Republic of Bulgaria, when this is in violation of the right to the effective exercise of parental rights and obligations acquired by virtue of a decision, the law or an agreement. The court shall immediately notify the border control authorities at the Ministry of the Interior of the initiated proceedings. Until the court decision enters into force, the child may only leave the country with a court order.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

The decision in case C-134/22 of the CJEU of 13 July 2023 does not have any implications for Bulgarian legislation and national practice in relation to the interpretation of Article 2 (3), second subparagraph of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies in terms of the employer's obligation to forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph of Article 2(3), point (b), subpoints (i) to (v) of that Directive which is not intended to confer individual protection on the workers affected by collective redundancies.

In Bulgaria, the legal regime of collective redundancies is established in the Labour Code (Article 130a), the Employment Promotion Act (Article 24 and 25) and the Rules on the Implementation of the Employment Promotion Act (Article 18 and 19). An employer's failure to follow the procedure for mass dismissals (to consult and provide written information to trade unions and workers' representatives in advance and to inform the competent state authority) does not affect the legality of the dismissals. National legislation does not provide for the possibility to justify a conclusion of illegality of a dismissal only on the basis of a violation of the obligation to submit preliminary information to a state authority. An employer who carried out a mass dismissal without prior notification to the competent authority -- the Employment Agency (executive agency under the Ministry of Labour and Social Policy), as well as if the dismissal was carried out before the expiration of 30 days from the date of submission of the notification, shall be subject to an administrative penalty of a fine in the amount of BGN 200 (EUR 100.50) for each individual case of dismissal. Penalties are imposed by the labour inspectorate as a specialised body for overall control of compliance with labour legislation in all sectors and activities.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

(I) The regulations on psychosocial protection, standards and procedures to assist firefighters has been issued.

(II) A collective agreement for seafarers on ships carrying out transport activities in liner coastal maritime transport has been concluded for a three-year period. The Minister of Labour has extended the application of the Annex to the Collective Agreement to all employers and employees in the construction sector.

1 National Legislation

1.1 Psychosocial protection, standards and procedures to assist firefighters

Based on the Act on Firefighting (Official Gazette No. 125/19 and 114/22), the Chief Fire Commander has issued the regulations on psychosocial protection, standards, and procedures to assist firefighters. It regulates the psychosocial protection for firefighters at all levels of firefighting organisations, determines the holders, implementation and coordination of psychosocial protection, prescribes the criteria, the implementation procedure of the holders and the financing of the costs of psychosocial protection for firefighters (Article 1).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

The procedure related to collective redundancies in Croatia is regulated in Articles 127 and 128 of the Labour Act of 2014 (last amended in 2023).

More precisely, Article 127(5) of the Labour Act has transposed the second subparagraph of Article 2(3) of Council Directive 98/59/EC into Croatian law. According to this Article, the employer is required to notify the competent public authority that is responsible for holding consultations with the works council on the collective redundancy, and the notification must contain the appropriate information in writing, namely the reasons why the workers' activity might cease, the total number of workers employed, the number, title and jobs of the workers whose work is expected to cease, the criteria for the selection of such workers, the amount and method of calculation of severance pay and other benefits to workers, and the measures taken to deal with redundant workers, information on the duration of the consultations with the works council, the results and conclusions of the consultations, and to attach the written statement of the works council, if it has been delivered to her/him.

The Labour Act does not contain any provision on the effects of the employer's failure to notify the competent public authority in line with this provision. Therefore, the failure of the employer to notify the competent public authority in line with this provision should be read in line with the judgment of the CJEU in case C-134/22.

4 Other Relevant Information

4.1 Collective agreement for seafarers on ships carrying out transport in liner coastal maritime transport

The collective agreement for seafarers on ships carrying out transport activities in liner coastal maritime transport has been concluded for a three-year period (Official Gazette No. 93/2023).

4.2 Extended application of the Annex to the Collective Agreement for the Construction Sector

The Minister of Labour has extended the application of the Annex to the Collective Agreement to all employers and employees in the Republic of Croatia in the construction sector (Official Gazette No. 100/2023).

Cyprus

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

In the present case, the CJEU ruled that the second subparagraph of Article 2(3) of Directive 98/59 must be interpreted as meaning that the employer's obligation to forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph of Article 2(3), point (b), subpoints (i) to (v) of that Directive is not intended to confer individual protection on the workers affected by collective redundancies.

The Republic of Cyprus regulates collective redundancies through a combination of the general Law on Termination of Employment and the Cypriot law providing for mass dismissals, No. 28 (I)/2001 (hereinafter referred to as the 'Collective Redundancies Law'), enacted prior to the accession of Cyprus to the EU on 01 May 2004, in force since 09 March 2001. As enterprises tend to be small in Cyprus, the possibility of meeting the specifications of dismissing the number of employees required to fall within the definition of collective dismissals is rather slim.

The legislative provisions governing 'collective redundancies' contained in Cypriot Law No. 28 (I)/2001 were part of the process of the approximation of the laws of the Republic of Cyprus prior to the accession of the country to the EU in 2004. Most laws, including on labour, were swiftly enacted prior to accession without proper debate or little scrutiny leading up to the eve of EU accession. The issue of collective redundancies and dismissals must be placed in the context of the broader termination regulations of Cypriot Employment Law, which sets out the broader framework for legitimate dismissals. In 2001, in the run up to accession, significant changes were introduced to regulate collective redundancies in the legislative provisions contained in the Collective Redundancies Law 28 (I)/2001. However, the specific law does not state that it purports to transpose Directive 98/59/EC for harmonising legislation enacted prior to Cyprus' accession to the EU (Ο Περὶ Ομαδικών Απολύσεων Νόμος του 2001 (28(I)/2001)). The Cypriot law on Collective Redundancies copied verbatim the Collective Redundancies Directive. It must be noted that there was no debate on the subject, despite the fact that an important Supreme Court decision was issued in 2003, which will be discussed further below.

According to Article 2 of the Collective Redundancies Law, 'competent authority' means the Minister of Labour and Social Insurance; 'representatives of the employees' refers to the representatives of any employees provided for in legislation or practice and 'workers' representatives' signifies the workers' representatives provided for in legislation or practice. The law in Article 2 of the Collective Redundancies Law defines

'collective dismissals' as dismissals for one or more reasons unrelated to the employee in person where the number of employees dismissed within a 30-day period is as follows:

- at least ten employees where the organisation normally employs more than 20 but fewer than 100 employees, provided that for the purpose of calculating the number of redundancies referred to above, all individual contracts of employment that are terminated by reason of expiry shall be included, if the number of actual redundancies is at least five;
- at least 10 per cent of the number of employees in undertakings that normally employ at least 100 and fewer than 300 employees; and
- at least 30 employees in undertakings that normally employ at least 300 employees.

There are a number of exclusions and exceptions to the application of the Law. Article 5 of the Law explicitly stipulates that this Law shall not apply:

(a) to any collective redundancies effected in relation to contracts of employment made for a specific period of time or for a specific task, unless such redundancies are made prior to the expiry or prior to the completion of these contracts;

(b) in relation to persons employed by the government, by semi-governmental organisations, by local authorities and by legal entities governed by public law; and

(c) in relation to crews of sea-going vessels.

No case has ever been reported on the implementation of collective redundancies since accession to the EU. There has generally been no debate on the subject and no case has gone before the court on any of the provisions of this Law. Enterprises tend to be smaller and family-run in Cypriot; with the exception of publicly owned corporations and government owned companies in general, few others are larger, mainly in the field of banking, education and services and the light industry sector. In general, trade unions report an overall lack of mechanisms to monitor implementation as is the case with most labour law directives.

In the wake of EU accession, the Supreme Court dealt with the issue of redundancies in the leading cases of *UNITED HOTELS (LORDOS) LTD v. ΑΝΔΡΟΥΛΑΣ ΣΤΑΥΡΟΥ ΚΑΙ ΑΛΛΩΝ (Case No. 301 and others) and LORDOS HOTELS (HOLDINGS) LTD., v. ΓΙΩΡΓΟΥ ΓΟΥΑΣΕΦ ΚΑΙ ΑΛΛΩΝ, (Case No. 301 274 and others), Appeal civil case No. 11234, (2003) 1 Α.Α.Δ. 515, 21 April 2003,* which were decided unanimously. The cases involved an appeal by two hotel-owning companies against a decision of the Employment Disputes Court.

The Termination of Employment Law (Article 22) stipulates a duty for the employer who, following a redundancy, seeks to increase his/her workforce again within eight months from the redundancy to hire back as a matter of priority the employees that were dismissed due to redundancy. This duty is subject to 'the operational needs of the undertaking'. Collective agreements have been the norm in unionised industries. Where the employer seeks to terminate a collective agreement, all three actors of the tripartite system will inevitably have to be involved: the union(s), the employer and/or the employers' union, and the Ministry of Labour. In the case of private contracts, where an employer seeks to terminate an employee's contract, there is no involvement from any government authority. In such a case, the employee is ordinarily left to his/her devices to resolve the problem and pursue his/her rights, usually with assistance of a privately paid lawyer. If the employee is a union member, s/he may request union assistance, however, there is little the union can do under these circumstances beyond providing basic advice to the employee and lobbying with the employer. In many services sectors, as well as others such as the agricultural sector, cleaning and caring and services in the hotel and catering sector, etc., which mostly employ migrant workers from third

countries and some EU nationals, the basic tools used are private contracts, mostly standard contracts.

The basic rule of termination of employment is that a dismissal is unlawful and therefore gives rise to compensation, if the employer terminates the employment for any reason other than the six legitimate grounds stipulated in the law; one of the legitimate reasons is redundancy, Article 5, Part II of Law on Termination of Employment No. 24 of 1967, as amended. In the procedure for termination of employment before the Industrial Disputes Court, there is a presumption that the dismissal was not carried out for any of the legitimate reasons listed above, and the burden of proof is on the employer to prove that the dismissal falls within the above provisions and thus does not give rise to compensation, Article 6(1), Law on Termination of Employment No. 24 of 1967, as amended. The Law lists a number of specific circumstances that shall *not be deemed* to fall within the legitimate reasons for dismissal, according to Article 6 (1), Law on Termination of Employment No. 24 of 1967. These include membership in a trade union or in a committee for safety at work; acting as a workers' representative or seeking to acquire such an office; bona fide submission of a complaint against the employer alleging violation of civil or criminal legislation; race, colour, gender, family status, religion, political belief, ethnic origin, social descent; pregnancy or motherhood and taking parental leave or leave for reasons of force majeure. According to Article 9(1), Law on Termination of Employment No. 24 of 1967, as amended, the duration of notice that an employer must give to an employee depends on the employee's length of continuous service:

- one week for a worker employed continuously for 26-52 weeks;
- two weeks for a worker employed continuously for 52-104 weeks;
- four weeks for a worker employed continuously for 104-150 weeks;
- five weeks for a worker employed continuously for 105-208 weeks;
- six weeks for a worker employed continuously for 208-259 weeks;
- seven weeks for a worker employed continuously for 260-311 weeks;
- eight weeks for a worker employed continuously for 312 or more weeks.

Notice time is paid by the employer who may require the employee to accept payment in lieu of notice. No notice (or payment in lieu of notice) needs to be given to employees who are under probation. Probation shall not exceed 26 weeks, unless there is a written agreement concluded at the time of the commencement of the employment extending probation to a maximum of 104 weeks. According to Article 18, Law on Termination of Employment No. 24 of 1967, as amended, dismissal for redundancy is justified only on the following grounds:

- The employer has ceased or intends to cease the operation of its business (where the employee is employed);
- Modernisation or other change in the method of production or organisation that necessitates a reduction in the number of employees;
- Change in the products, method of production or the expertise required by the employees;
- Abolition of a specific department;
- Difficulties in placing products on the market or credit difficulties;
- Lack of orders or lack of raw materials;
- Shortages in the means of production;
- Contraction in the volume of the business's work.

ILO Convention No. 158 is also relevant. Article 13 of ILO Convention No. 158 provides for the obligation of the employer who intends to dismiss workers for economic, technological, structural, or other reasons, to provide the necessary information and opportunity to the workers' representatives for consultation on measures to limit the unfavourable impact of the dismissal, including the search for alternative employment.

4 Other Relevant Information

Nothing to report.

Czech Republic

Summary

The Whistleblowing Act entered into force on 01 August 2023.

1 National Legislation

1.1 Whistleblowing

The Whistleblowing Act (Act 171/2023 Sb.) entered into force on 01 August 2023. The content of the Act has been discussed in previous Flash Reports.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

In the Czech Republic, collective redundancies and the protection of employees against the consequences of redundancies are regulated in sections 62 to 64 of Act 262/2006 Sb., Labour Code ('LC').

As set out in Article 2(3) of the Directive, the employer is required to inform the trade union organisation and the works council in writing at least 30 days in advance of its intention to make collective redundancies. The written information must lay down the facts referred to in Section 62(2) LC.

Section 62(4) LC also requires the employer to notify in writing the regional branch of the Labour Office, i.e. the government agency responsible for government's employment policy. The subject matter of the written information is therefore the same as that of the written information provided to the employees' representatives (see above). The employer is also required to inform the regional branch of the Labour Office about the redundancy scheme's employee selection criteria and that negotiations with the social partners on the matter pursuant to section 62(3) LC have been initiated.

Thus, the Czech legislator addresses the duty to inform the relevant government agency not only by requiring the employer to forward a copy of the written information sent to the employees' representatives to the relevant government agency, but also by requiring the employer to prepare and submit a written report containing the same information and sharing details about the dialogue initiated with the employees' representatives to the government agency.

Under Czech labour law, failure to comply with this obligation does not invalidate the notice of termination, nor does it affect the extension of the notice period. Czech legislation therefore does not derogate from CJEU case law or the Directive in this matter.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

The case concerned an interpretation of Article 2 (3) of the Collective Redundancies Directive (98/59/EC), which requires an employer to forward information to the competent public authority in case of planned collective redundancies.

The question forwarded by a German court was whether the said Article is intended to confer individual protection on the workers affected by the collective redundancies. This assessment was decisive for the question of sanctions for non-compliance with the obligation under German law.

The CJEU dismissed that Article 2 (3) confers individual protection. The purpose of the obligation is to give the public authority an 'overall understanding of the projected collective redundancies' and the public authority 'is not given any active role during the consultation procedure'.

In Denmark, procedures in relation to dismissals on a larger scale are regulated in Act No. 291 of 22 March 2010, the Act on Notification etc of employees in relation to dismissals of a larger scale (*Lov om varsling m.v.i forbindelse med afskedigelser af større omfang*).

According to section 7, the competent public authority in Denmark is the Regional Labour Market Council (*Det Regionale Arbejdsmarkedsråd* - RAR), as specified in the amended Act No. 1482 of 23 December 2014, section 63. The RAR must be notified four times.

Section 11 in the Danish Act stipulates economic sanctions for breach of any of the duties to notify the RAR in section 7. According to the preparatory works/comments to the provision in 1993-94, the purpose of the compensation payable in section 11 is to motivate the employer to adhere to the duty to notify (and the duty to negotiate). Compensation of 30 days' salaries are payable to the affected employees, and any remuneration received during the notice period for termination must be deducted. This means that in reality, only employees with less than 30 days' notification period for termination will receive compensation. Very few groups of employees in Denmark have less than 30 days' notice period, hence very few individual employees will receive compensation for breach of the duty to notify.

The purpose of the provision is to deter the employer from violating the duty of notification – as is made clear in the preparatory works as well as from the mechanism of deduction of the notice periods with pay.

In addition, the employer can be fined for not adhering to section 7, as outlined in section 12. The fines are quite limited amounts.

The new CJEU ruling confirms the existing legal framework in Denmark, where the duty to notify the RAR is not an individual right of the affected employees, but rather an incentive with the purpose of motivating the employer to adhere to its duties.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

This case concerned the interpretation of EU Directive 98/59/EC on collective redundancies. In Estonia, the rules on collective redundancies are regulated in the Employment Contracts Act. The rules on collective redundancies reflect those stipulated in the Directive. The CJEU's interpretation in case C-134/22 is therefore of relevance. It clarifies the procedure of notification about collective redundancies to the competent authorities. In Estonia, the notification of mass redundancy must be forwarded to the Unemployment Insurance Fund. Neither Estonian labour legislation nor case law has touched on the notification of the Unemployment Insurance Fund. The present case clarifies that if the notification was not also forwarded to the competent authority (Unemployment Insurance Fund), it will have no implications for the termination of the employment contract. This interpretation is also in line with Estonian labour legislation.

4 Other Relevant Information

4.1 Average wage has increased

According to Statistics Estonia, the average monthly gross wages and salaries in the second quarter of 2023 amounted to EUR 1 873, which is 12.4 per cent higher than in the same quarter last year. The median wages were EUR 1 524 in the second quarter of this year.

In the second quarter, the average monthly gross wages and salaries were highest in the information and communication sector (EUR 3 257), financial and insurance activities (EUR 2 953), and energy supply (EUR 2 946). The average gross wages were lowest in accommodation and food service activities (EUR 1 178), other service activities (EUR 1 191), and real estate activities (EUR 1 268).

In the second quarter of 2023, the median wages, i.e. the point at which half of the employees earn more and half earn less than the average, were highest in the information and communication sector (EUR 2 768) and financial and insurance activities (EUR 2 450). The median wages were lowest in real estate activities (EUR 867) and other service activities (EUR 934).

Finland

Summary

The government has adopted a statement to be submitted to Parliament on measures to promote equality, gender equality and non-discrimination in Finnish society.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

The new Co-operation Act (*Yhteistoimintalaki*, 1333/2021) entered into force on 01 January 2022. Section 19 of the Act requires a written proposal for negotiations to be prepared, which must include information specified in this Section, to be delivered to the Employment and Economic Development Office (TE office) no later than on the date of commencement of the negotiations on the planned impending changes (change negotiations). The Act also contains provisions (Section 44) on the right of an employee to indemnification. Indemnification applies, among others, when the employer has failed to observe the provisions of Section 19 for employees whose contract has been terminated or reduced to a part-time contract, or who have been laid off, or when the employer has unilaterally changed an essential term of the employment contract.

4 Other Relevant Information

4.1 Occupational safety and health

The framework plan for 2024–2027 (Healthy Work Framework Plan for Occupational Safety and Health Divisions 2024–2027, Publications of the Ministry of Social Affairs and Health 2023:21) establishes the strategic goals of the occupational safety and health divisions of regional state administrative agencies. The content of the Framework Plan is influenced by the Government Programme, the Ministry of Social Affairs and Health Strategy and the related supplementary policy for the work environment and well-being at work until 2030. In addition, an operating environment analysis of changes in working life that influence occupational safety and health enforcement and an analysis of own activities were carried out. The views of key stakeholders and employees were surveyed through questionnaires.

The 'healthy work' vision will be implemented using the strategic objectives established in the Framework Plan in 2024–2027. The impact objectives and concrete measures with indicators are described in the annual performance agreement. The vision of occupational safety and health divisions identifies working conditions, fair working life, mental workload, continuous renewal, information and digitalisation as the key phenomena that influence the operations of occupational safety and health divisions. The development of operations supports the strategic objectives based on the vision of occupational safety and health and promotes their implementation. The planning and

development of operations uses information and digitalisation and involves cooperation with stakeholders.

4.2 Equality and non-discrimination

On 31 August 2023, the government adopted a statement to be submitted to Parliament on measures to promote equality, gender equality and non-discrimination in Finnish society. The statement emphasises that the Government Programme's policy is for people to integrate into Finnish society through work. Non-discrimination at work will be promoted in cooperation with the labour market organisations: for example, services that fight recruitment discrimination will be incorporated into business services. The transition of female immigrants into the labour market will be promoted. The ability of organisations to support the workplace well-being of employees who face discrimination and racism will be improved, for example, by making use of training for professionals.

As regards legislation, sanctions for the exploitation of employees will be intensified and supervision will become more effective. The government has submitted its proposal to Parliament, which will be debated in the autumn session.

France

Summary

(I) In the wake of the French government's pension reform, decrees have set out the new arrangements for progressive early retirement and the continuation of employment during retirement.

(II) An Administrative Court of Appeal has ruled against the French government for failing to comply with the European Union law on the right to paid leave during sick leave.

1 National Legislation

1.1 Progressive early retirement

The decrees implementing the new measures on progressive early retirement were published on 11 August 2023 (see Decrees nos. 2023-751 and 2023-753 of 10 August 2023).

In addition to adapting the system to take account of the gradual increase in the legal retirement age, the decrees specify the procedures for extending progressive early retirement to certain groups such as liberal professions, civil servants and contract civil servants.

Decree No. 2023-753 of 10 August 2023 provides that progressive early retirement will remain an option as is currently the case, namely two years before the legal retirement age, i.e. at 62 years as opposed to 60 years before the reform. The age for entitlement to progressive early retirement will be gradually raised from 01 September 2023 for insured persons born between 01 September 1961 and 31 December 1967, at the same rate as for the statutory retirement age, reaching 62 in 2030 for insured persons born on or after 1 January 1968.

In addition, Decree No. 2023-751 of 10 August 2023 maintains the minimum period of insurance, including equivalent periods, required to be entitled to progressive early retirement, which is 150 quarters in one or more compulsory pension schemes.

Moreover, the decrees also provide a framework for the employer's rejection of the application for progressive early retirement, the conditions for cancelling or suspending progressive early retirement and determination of the minimum pension amount.

The two decrees will come into force on 01 September 2023. However, the regulatory provisions prior to the entry into force of these future decrees continue to apply and will be gradually phased out on that date.

1.2 Continuation of employment during retirement

The above-mentioned decrees also contain provisions on the continuation of employment after retirement.

To encourage the use of this scheme, the law on pension reform (see April 2023 Flash Report) has created additional pension rights for persons who combine work and retirement. The conditions for these new rights are set out in decrees.

The decrees determine how the second old-age pension is to be calculated, how the second application for a retirement pension is to be submitted and processed in the light of the new acquired rights, and the conditions for calculating and drawing the pension.

2 Court Rulings

2.1 Right to paid leave during sick leave

Administrative Court of Appeal of Versailles, No. 22/VE00442, 17 July 2023

In the present case, trade unions brought an action before the Administrative Court alleging that certain provisions of the Labour Code wrongfully infringed workers' right to paid leave under European Union law.

According to Article L. 3141-3 of the French Labour Code, employees are entitled to 2.5 working days of paid leave for each month worked for the same employer and that the total amount of paid leave may not exceed 30 working days.

Many absences are treated as time actually worked, particularly those listed in Article L. 3141-5 of the French Labour Code. For instance, it applies to sick leave due to an accident at work or an occupational disease.

On the other hand, the period during which the employee's employment contract is suspended due to sick leave for non-occupational reasons does not entitle the employee to paid leave, as this case is not mentioned in Article L. 3141-5 of the French Labour Code.

On that basis, trade unions were requesting the French State to pay them each the sum of EUR 50 000 as compensation for the damage suffered by the employees they are defending.

During the initial trial, the Montreuil Administrative Court, approved by the Versailles Administrative Court of Appeal on 30 June 2020, rejected the request. It held that the trade unions had not established the existence of any specific pecuniary loss.

However, in a decision of 15 December 2021, the Administrative Supreme Court overturned this ruling. It clarified that a trade union may apply to the Administrative Court for compensation for damage resulting from a breach by the administration of the interest of the profession it represents without having to prove the existence of its own non-material damage. The case was then referred back to the Versailles Administrative Court of Appeal.

In its decision handed down on 17 July 2023, the Versailles Administrative Court of Appeal ruled that the French legislation clearly contradicts the European Working Time Directive of 2003, which provides for entitlement to paid leave of at least four weeks (Dir. 2003/88/EC of 04 November 2003, Article 7), without distinguishing according to the origin of the absences and therefore including sick leave for non-occupational illness (CJEU, case C-282/10, 24 January 2012, aff.).

Yet the aforementioned European Directive cannot be invoked in a dispute between an employee and a private law employer. This means that judges cannot refer to it to override national provisions to the contrary, if an employee invokes it to claim paid leave in respect of a period of absence due to a non-occupational illness (see: Social Division, Court of Cassation, No. 11-22.285, 13 March 2013).

On the contrary, this Directive is directly applicable and may be invoked by employees of employers assimilated to a public authority (see: Social Division, Court of Cassation, No. 15-20.111, 22 June 2016).

However, the employee may hold the State liable for failing to bring national law into line and receive compensation for the damage suffered.

The Versailles Administrative Court of Appeal ruled in favour of the trade unions and ordered the French State to pay them each EUR 10 000.

More precisely, the Versailles Administrative Court of Appeal ruled that the trade unions had grounds to argue that Article 7 of Directive 2003/88/EC, codifying Article 7 of Directive 93/104/EC has not been fully transposed by the legislative provisions of the

Labour Code, which left provisions incompatible with this article and with Article 31 of the Charter of Fundamental Rights of the European Union.

In the view of the Administrative Court of Appeal, this delay in transposition is likely to make the State liable for the non-material damage suffered by the employees represented by the trade unions.

The administrative judge recognised that the trade unions were entitled to bring an action before the court because they could prove that they had suffered non-material damage as a result of the infringement of the collective interest that the law gave them the purpose of defending.

This decision by the Versailles Administrative Court of Appeal is in line with the position of the Court of Cassation. Since 2013the Court has called on the legislature in its annual reports to amend the Labour Code by introducing the principle that paid leave entitlements are acquired during work-related sick leave. This amendment would prevent a proliferation of liability claims against the French government for failure to transpose the 2003 Directive, and would put an end to 20 years of non-compliance with European law. However, amendments have yet to be made to the Labour Code.

The French Labour Code does not preclude the organisation of appraisal and professional interviews on the same date, provided that appraisal issues are not raised during the latter (Cass. soc., No. 21-24.122 FS-B, 05 July 2023). The seniority of employees may justify a difference in treatment when a seniority bonus that is distinct from the basic salary is not considered (Cass. soc., No. 22-18.155 F-D and No. 22-17.250 F-D, 05 July 2023). The new distribution of working hours, which deprives the employee of a Sunday rest day and leads to a change from a fixed weekly schedule to a variable cycle schedule, constitutes a modification of the employment contract which cannot be imposed without the employee's express agreement (Cass. soc., No. 22-12.994 F-D, 05 July 2023).

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

In its case C-134/22, the Court interpreted the second subparagraph of Article 2(3) of Directive 98/59. This obligation of the employers

> *"occurs only for information and preparatory purposes so that the competent public authority can, if necessary, exercise the powers provided for in Article 4 of that directive effectively. Thus, the obligation to forward information to the competent public authority is intended to enable that authority to anticipate as far as possible the negative consequences of projected collective redundancies in order to be able to seek solutions effectively to the problems raised by those redundancies when it is notified of them"* (point 36)

and consequently ruled that this article

> *"must be interpreted as meaning that the employer's obligation to forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph of Article 2(3), point (b), subpoints (i) to (v) of that directive is not intended to confer individual protection on the workers affected by collective redundancies"* (point 39).

Any employer must notify the labour inspectorate of each collective redundancy plan affecting a minimum of 10 or more employees over a 30-day period. In companies with less than 10 employees, the employer must notify the labour inspectorate maximum 8 days after sending the dismissal letters to the redundant employees.

A collective redundancy is an inherently administrative process, meaning that companies must obtain the approval of the local labour administration to be able to proceed with the restructuring.

In companies with fewer than 50 employees, administrative authorities have 21 days to ensure that existing employee representatives have been informed and consulted in compliance with legal provisions and collective agreements, that worker representatives have been informed of any measures to avoid forced dismissals, or to reduce the number of job reduction and to facilitate employees' redeployment. Finally, the administrative authorities must verify that these measures are properly implemented.

If employee representative bodies are present within the company, the labour inspectorate must be notified the day following the first meeting with the employee representatives. The information provided to the employee representatives is shared at the same time with the regional labour authorities (*'Direccte'*). On or before the same day, the employer must notify its intention to launch negotiations on an employment security plan (*'Plan de sauvegarde de l'emploi'*).

If the redundancy plan is adopted through a collective bargaining agreement with the trade unions, the administration will only verify that the works council has been properly informed and consulted, that the collective bargaining agreement is valid (*e.g*. that the signatories had the power to sign the agreement) and that the agreement does not contain any illegal provisions (*e.g*. provisions that discriminate unfairly based on age).

If the redundancy plan is drawn up unilaterally, the administration will also verify that every measure contained in the redundancy plan is appropriate in terms of both duration and budget. If the administration considers the measures contained in the redundancy plan to be insufficient, it can refuse to approve the plan, thereby making redundancies impossible. The labour administration may also challenge the criteria applied by the company to select the employees to be terminated.

This makes negotiating the redundancy plan through collective bargaining particularly useful, given that by law, it considerably limits the powers of the administration to prevent the company from implementing the contemplated collective redundancies.

In addition, the labour administration can issue injunctions during the consultation of the works council process requiring employers to provide the works council or the expert it appointed with additional information or documents pertaining to the restructuring.

Paragraphs 1 and 2 of Article L. 1235-7-1 state:

> *"….decisions taken by the administration under Article L. 1233-57-5 and the regularity of the collective redundancy procedure may not be the subject of a dispute separate from that relating to the validation or homologation decision mentioned in Article L. 1233-57-4. Such disputes are subject to the jurisdiction in the first instance of the administrative court, to the exclusion of any other administrative or contentious appeal".*

Under French law, if dismissals are carried out without the labour authorities' approval/ validation or if the administrative tribunal can cancel an approval/ validation decision on the grounds that no collective redundancy plan has been established or that the plan is insufficient, the dismissals are considered null and void and the employee may be reinstated or may receive compensation of at least their salary over the last six months (Articles L. 1235-10 to L.1235-17 Labour Code). An employee can turn to the competent Administrative Court but must prove that he or she has an interest in taking action, which does not depend solely on his or her status as an employee, by establishing that he or she is affected by the social plan.

The consequences of a court's annulment of the administration's validation or homologation decision are described below.

First, the cancellation by the judge of a validation or homologation decision due to the absence or inadequacy of the PSE (Article L.1235-10 paragraph 2):

In the event of annulment by the judge of a validation or homologation decision due to an inadequacy of the PSE in companies in bonis, the collective redundancy procedure is null and void, as are all the redundancies the employer has notified the administration about. The employer must then draw the consequences of the administrative judge's decision.

Failing this, employees can take their case to the *Conseil de Prud'hommes* (labour tribunal), which can either :

- order the continuation of the employment contract, if requested by the employee and if he or she has not yet been dismissed;
- declare the dismissal null and void and order the employee's reinstatement at his or her request, unless such reinstatement has become impossible, in particular due to the closure of the establishment or site or the absence of available employment (for employees with at least two years' seniority).
- grant the employee an indemnity to be paid by the employer, which may not be less than his or her salary

in the last 12 months' for employees with at least two years' seniority, if the employee does not request the continuation of his or her employment contract, or when reinstatement is impossible.

Second, the cancellation by the judge of a validation or homologation decision for a reason other than the absence or inadequacy of the PSE (Article L.1235-16 of the French Labour Code):

The decision may be annulled by the administrative judge on the grounds of an irregularity relating to the decision or its formalities, as well as for irregularities in the procedure to inform and consult. Subject to the agreement of the parties, this annulment gives rise to the reinstatement of the employee in the company, with the maintenance of his or her acquired benefits. Failing this, the employee is entitled to compensation to be paid by the employer, as determined by the *Conseil d'Etat* which cannot be less than the employee's last six months' salary, regardless of seniority.

Third, the employee's seniority. It is due without prejudice to the severance pay provided for in Article L.1234-9.

4 Other Relevant Information

Nothing to report.

Germany

Summary

Nothing to report.

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1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

The CJEU ruled that

> *"the second subparagraph of Article 2(3) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as meaning that the employer´s obligation to forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph of Article 2(3), point (b), subpoints (i) to (v) of that directive is not intended to confer individual protection on the workers affected by collective redundancies".*

In January 2022, the Federal Labour Court (6 AZR 155/21 (A), 27 January 2022) submitted a question to the CJEU whether Article 2 para. 3 subpara. 2 of Directive 98/59/EC has an 'individual-protective character'. This question was related to the purpose of section 17 (3) sentence 1 of the Dismissal Protection Act (*Kündigungsschutzgesetz*, *KSchG*). Accordingly, the employer must submit a copy of the notification of the intended mass dismissal to the works council to the employment agency at the time the works council is notified. The question was whether a violation of this obligation to transmit a copy to the employment agency resulted in the invalidity of the subsequent mass dismissal notices pursuant to section 134 of the German Civil Code. The application of this provision would require that section 17 (also) aims to protect the individual employee.

The CJEU's ruling corresponds to the German courts' existing case law. In its order for a preliminary ruling, the Federal Arbitration Court had put forward a number of reasons which, in its view, speak against the 'individual-protective character' of section 17 (3) sentence 1 of the *KSchG* (Federal Labour Court, 6 AZR 155/21 (A), 27 January 2022 – paras 26 et seqq). In practice, the notification of the works council to the employment agency is often omitted.

Section 17(3) 1 of the KSchG reads as follows:

> *"The employer must at the same time forward a copy of its notification to the works council to the Employment Agency; it must contain at least the information prescribed in subsection 2, sentence 1, nos. 1 to 5."*

4 Other Relevant Information

Nothing to report.

Greece

Summary

The government has presented and opened for public consultation the draft bill implementing the Directive on Transparent and Predictable Working Conditions.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

The judgment has implications for Greek law. Greek jurisprudence does not specify what form of omission leads to the invalidity of collective redundancies. It states (i.e. Areios Pagos, Supreme Court No. 214/2020) in a general manner that any failure to comply with the formalities prescribed by law renders collective redundancies null and void.

The CJEU's decision seems to be well-reasoned as it adopts a purpose-based approach.

4 Other Relevant Information

4.1 Transparent and predictable working conditions

The Greek government has presented and opened for public consultation the draft bill implementing the Directive on Transparent and Predictable Working Conditions.

The draft was only finalised after the European Union threatened to fine Greece for non-compliance with the Directive.

The draft provides that an employer shall not prohibit a worker from taking up employment with other employers outside the work schedule established with the initial employer.

Even if the draft provides for a minimum daily rest period of 11 hours and sets the maximum weekly working time, it does not provide for a maximum daily working time as stipulated in Greek legislation.

The draft also recognises on-call work without providing a minimum number of fixed working hours. However, it provides for a notification period of at least 24 hours.

Another provision reduces the maximum probationary period from 12 months to 6 months.

The draft, which contains many other provisions, is expected to be voted on after the end of the public consultation in September.

Hungary

Summary

The social partners and government have started negotiations on a mid-term increase of the minimum wage in August 2023.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

In Hungarian law, the breach of the given information obligation does not confer individual protection on the workers affected by a collective redundancy. Article 74 (1) of the Labour Code complies with the second paragraph of Article 2 (3) of the Directive, which states:

“The employer shall notify the government employment agency of its intention regarding collective redundancies, and of the details and aspects defined in subsection (2) of section 72, and shall supply a copy thereof to the works council.”

Article 72 (2) contains the minimum contents of information.

The Labour Code does not contain any sanction in relation to the breach of this information obligation. Moreover, the labour inspectorate is not entitled to investigate the violation of this obligation (see Government Decree No. 115/2021 on the employment supervision authority). However, Article 56/A of Act 4 of 1991 on the promotion of employment contains the sanction against violating the information obligations set out in Article 72 of the Labour Code. Disciplinary fine (up to HUF 500 000 / EUR 1 300) shall be levied on employers that fail to meet these information obligations.

Since the sanction is a public fine, the violation of the obligation to submit information to the employment agency is not related in any way to the lawfulness of the termination of the employment relationship of an employee. Therefore, the Hungarian Labour Code and the related law comply with the EU law requirements set out in the judgment.

4 Other Relevant Information

4.1 Potential mid-year increase in minimum wage

As indicated in the July 2023 Flash Report, the minimum wage for 2023 was based on the tripartite agreement concluded in the main tripartite body for social dialogue, the Permanent Consultation Forum of the Private Sector and the Government (‘VKF’). The government, the employer organisations and the trade unions committed in this agreement to renegotiate it, if the inflation exceeds 18 per cent in July. This would mean that the minimum wage increase is 2 per cent lower than inflation in mid-year (July).

The inflation was 17.6 per cent in July according to preliminary official data. There is no obligation in the 2023 Agreement to renegotiate the minimum wage. However, inflation exceeded the 2023 minimum wage increase by 1.6 per cent in July. According to unofficial news, the parties have started negotiations on a mid-year increase of the minimum wage (for the first time since 1988), despite the lack of an obligation to keep the real value of wages. However, the first discussion ended without real negotiations due to the lack of fresh official data on inflation and GDP growth on 30 August 2023.

Iceland

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

This CJEU judgment is not likely to have any implications for Iceland's legislation.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

Directive 98/59/EC has been transposed in Ireland by the Protection of Employment Acts 1977 to 2014 ('the Act'). Article 2(3) is transposed by section 10 of the Act, subsection (1) which requires the employer to supply the employees' representatives with all 'relevant information' relating to the proposed redundancies as prescribed by subsection (2). Section 10(3) requires the employer to supply the Minister for Enterprise, Trade and Employment ('the Minister'), being the competent public authority, with copies of all information supplied to those representatives. Failure to comply with section 10 gives rise to both civil and criminal sanctions. Compensation of up to four weeks' remuneration may be awarded by the Workplace Relations Commission. Additionally, the employer is guilty of an offence and is liable on summary conviction to a fine not exceeding EUR 5 000.

A separate notification obligation is imposed on employers by section 12(1). This subsection requires an employer who plans collective redundancies to notify the Minister

> *"in writing of his proposals at the earliest opportunity and in any event at least 30 days before the first dismissal takes effect".*

Section 12(3) requires the employer to supply a copy of this notification to the affected employees' representatives

> *"who may forward to the Minister in writing any observations they have in relating to the notification".*

An employer who contravenes section 12 is guilty of an offence and is liable on summary conviction to a fine not exceeding EUR 5 000. Where collective redundancies are effected before the expiry of the 30-day period, the employer is guilty of an offence and is liable on conviction on indictment to a fine not exceeding EUR 250 000; see section 14(2).

The Act does not expressly state that a dismissal effected in breach of either section 10 or section 14 is legally null and void. The decision of the CJEU supports the proposition that failure to comply with section 10 has no impact on the validity of any subsequent dismissals. Failure to comply with section 14, however, involves different considerations.

4 Other Relevant Information

Nothing to report.

Italy

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

In Italy, collective redundancies are regulated in Act 23 of July 1991 No. 23.

According to Article 4, employers who plan collective redundancies must inform the workers' representatives by sending a written notice to the trade unions. The information to be communicated covers: the reasons for the redundancy; the technical, organisational and productive reasons for the collective dismissal, which cannot be prevented in whole or in part; the number and categories of workers to be made redundant and the number of workers normally employed; the period over which the projected redundancies are to be effected; any measures planned to address the social consequences of the redundancy programme; the method for calculating any redundancy payments other than those arising from national legislation and/ or practice. The notification must be accompanied by a copy of the receipt of the payment to the INPS (National Institute for Social Security) of an amount equal to the maximum monthly 'Cassa Integrazione' allowance multiplied by the number of workers affected by the redundancy. A copy of the communication and receipt must at the same time be forwarded to the Provincial Labour Office, the competent public authority.

In addition, if no agreement has been reached between the company and unions, the director of the Provincial Labour Office shall convene the parties for further negotiations on the issue, possibly formulating proposals for an agreement.

Only after these steps have been completed can the employer proceed with the dismissals.

According to Italian jurisprudence (Court of Cassazione, 13 March 2018, No. 5950), the purpose of the communication is to allow for discussion between the company and trade unions, so that the latter can exercise effective control over the redundancy programme in a transparent and conscientious way.

4 Other Relevant Information

Nothing to report.

Latvia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

The CJEU decision in case C-134/22 MO does not have implications for Latvian legal regulations and their application in practice. According to a decision of the Senate of the Supreme Court in case SKC-1106/2013, 26 April 2013 (not published Compilation of the court practice of the Senate of the Supreme Court in labour disputes (2012 – 2021), page 65), non-compliance with an obligation to provide information and consultations in case of collective redundancy provide collective rights, not individual ones, and does not restrict the employer's freedom to organise its entrepreneurship. Consequently, failure to provide information and consultations may not serve the basis for recognition of a dismissal notice as being void or for claiming reinstatement.

It follows that the CJEU's decision in case 134/22 has no implications for Latvian law and its application in practice.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

According to Decision No. 165/2023 of the EEA Joint Committee, Directive (EU) 2022/431 of the European Parliament and of the Council of 09 March 2022 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work 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 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

In case C-134/22, the CJEU (Second Chamber) ruled as follows:

The second subparagraph of Article 2(3) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as meaning that the employer's obligation to forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph of Article 2(3), point (b), subpoints (i) to (v) of that directive is not intended to confer individual protection on the workers affected by collective redundancies.

The information and consultation procedure involving workers' representatives in the case of collective redundancies is regulated in Liechtenstein law in § 1173a Article 59b of the Civil Code *(Allgemeines bürgerliches Gesetzbuch,* ABGB, LR 210.0). The subsequent Article 59c of the Civil Code regulates the participation of the competent authority. Para. 1 thereof provides as follows: The employer shall notify the Office of National Economy of a planned collective redundancy and shall submit a notice on the result of the information and consultation procedure within the meaning of Article 59b of the Civil Code. This notification shall contain all the information referred to in Article 59b, para. 2 of the Civil Code as well as any other relevant information on the planned collective redundancy.

Since Liechtenstein is a relatively small country, doctrine and case law are also correspondingly limited. In addition, Liechtenstein has essentially adopted Swiss employment law. As a result, the courts regularly follow Swiss doctrine and case law. In Switzerland, Article 335f of the Code of Obligations *(Obligationenrecht, OR, SR 220)* provides as follows: The employer must provide the workers' representatives or if there is no such body, the employees, with all relevant information and, in any event, notify them in writing of the reasons for the collective redundancy, the number of employees to be dismissed, the number of employees normally employed, and the period during which the notices will be issued (para. 3). The employer shall provide the employment office with a copy of the notification under para. 3 (cf. para. 4).

According to prevailing doctrine, the obligation to provide the employment office with a corresponding copy is a labour market-related obligation towards the employment office

and not a private law obligation towards the employees (cf. Streiff/von Kaenel/Rudolph, *Arbeitsvertrag, Praxiskommentar zu Article 319–362* OR, 7th edition, Zurich/Basel/Geneva 2012, Article 335f OR no. 8, with further references).

Thus, there is consistency between national law and European law according to the interpretation of the CJEU in judgment C-134/22.

4 Other Relevant Information

4.1 Decision No. 165/2023 of the EEA Joint Committee

The government has notified of Decision No. 165/2023 of the EEA Joint Committee amending Annex XVIII to the EEA Agreement (see *Liechtenstein Landesgesetzblatt* no. 319 of 18 August 2023). According to this Decision, the following Directive is to be incorporated into the EEA Agreement: Directive (EU) 2022/431 of the European Parliament and of the Council of 09 March 2022 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.

Lithuania

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

Lithuanian labour law assigns the competent public authority with a less significant role in the assessment (and, eventually, possible control) over the employer's duty to provide information to the works council within the framework of the information and consultation procedure. However, it attributes more significance to the fact of failure to provide the competent public authority with the relevant information, as far as the implications on the dismissal of a single employee is concerned. In fact, Article 63 (5) of the Labour Code states that contracts of employment 'may not' be terminated in violation of the duty to notify a local labour exchange office of the projected redundancy or the duty to hold consultations with employees' representatives. This proviso explicitly prohibits dismissals without prior notification of the competent public authority and grants the employee concerned the right to dispute the legality of his or her dismissal solely on the fact of failure by the employer to notify the public authority. A breach of the procedure committed by the employer is considered a serious one and the employee must be reinstated. The purpose of this serious consequence is to sanction the employer, as other sanctions (e.g. administrative fines of EUR 50 – 200) would not be effective.

(Non)-adherence to the information and consultation procedure with the works council does not have to be notified to (and, eventually, controlled by) the competent public authority, notification is perceived as an independent procedure with a different goal, as was stated by the CJEU in its ruling, compared with the information and consultation procedure vis-à-vis the works council. Consequently, the content of the notification (information to be provided to the competent public authority) is regulated by the authorities (and requires quite formal statistical data), but the content of information to be provided to the works council is not regulated by law.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

The most important new laws deal with work permits and the implementation of Directive 2019/1159 on work-life balance. Other laws deal with more specific questions of wage indexation and the elections to professional chambers.

1 National Legislation

1.1 Employment of third-country nationals

Bill No. 8227 mentioned in June 2023 Flash Report has been adopted.

Although the State Council (*Conseil d'Etat*) flagged three major issues (*opposition formelle*), only minor changes have been made to the law.

This law concerns immigration in the broadest sense, but also includes changes to the Labour Code.

First, the rules have been adapted to close a loophole. The Code penalised the employment of third-country nationals who reside illegally in Luxembourg, but not third-country nationals who reside in the country legally but without a work permit.

As regards the presumption that the employment relationship has lasted for at least three months, proof to the contrary can now only be provided in 'writing'; this means that an employer who has not drawn up a contract in due and proper form will in practice be unable to rebut this presumption.

The penalty becomes criminal when certain aggravating circumstances are present. To put an end to uncertainties in case law, the aggravating circumstances will be clarified.

Administrative and criminal penalties have been increased to reinforce deterrence.

The Labour and Mines Inspectorate (*Inspection du travail et des Mines)* will explicitly be empowered to record such offences.

The bill also changes the procedures for applying to the Job Administration (ADEM) for authorisation to recruit a third-country national. The one-month waiting period will be removed if ADEM has already established that no jobseeker is available for the profile sought. The aim is to reduce the amount of time lost by companies and to provide better guarantees for recruitment planning. Another objective is to attract talents to Luxembourg at a time when there is a shortage of labour in all sectors, but especially for the official list of occupations declared to be in 'very short supply of labour'. Ultimately, the aim is to remain competitive and attractive to employers and to facilitate the recruitment process so as to not slow down the development of businesses and the establishment of new companies in Luxembourg.

Legislation on obtaining residence permits will also be simplified to deal with the shortage of labour and talent.

The final section of the bill concerns the reception of applicants for international protection, with a view to bringing it into line with European law.

Reference: *Loi du 7 août 2023 portant modification: 1° du Code du travail; 2° de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration; 3° de la loi modifiée du 18 décembre 2015 relative à l'accueil des demandeurs de protection internationale et de protection temporaire.*

1.2 Paternity leave

Bill No. 8017 announced in the June 2023 Flash Report has been adopted; it implements Article 4 of Directive 2019/1158 which deals with paternity leave.

As a reminder, in anticipation of Directive 2019/1158, Luxembourg had already previously increased the right to paternity leave for fathers (*congé de paternité)* from two days to ten days.

The Directive also grants this right 'insofar as recognised by national law', to equivalent second parents. Luxembourg's law does not recognise second parents at present. However, the legislator implements this right in situations where, due to the application of another legislation, a person is legally recognised as a second parent. Thus, in the initial bill, paternity leave has also been made available to equivalent second parents, 'insofar as recognised by national law'. The State Council formally objected to this wording, considering that it was simply copied from the Directive and that in the context of Luxembourg law, it was unclear what 'national law' means. This is a good example of a situation where a textual reproduction of a Directive is in fact poor implementation of EU law.

Thus, the text was amended and paternity leave is now also granted to

> *"the person recognised as the equivalent second parent by the national law applicable by virtue of the place of residence or the nationality of the child or of the parent concerned and who authorises him or her to establish affiliation in respect of the child without having to resort to the adoption procedure".*

The parliamentary documents list four typical cases in which there may be an entitlement to paternity leave for second parents.

Especially for part-time employees or those with several employers, it has been clarified that the hours of leave will be set in proportion to the individual's weekly working time and must be taken within two months of the birth of the child or adoption.

The 2-month notice period for requesting paternity leave had been problematic in cases of premature birth. It has now been clarified that this period does not apply if the birth takes place two months before the expected date of birth. In this case, paternity leave will have to be taken immediately after the birth of the child and without interruption.

Furthermore, to comply with the Directive, failure to respect the 2-month notice period will no longer result in the reduction of paternity leave from ten days to two days, but simply in the fact that the leave must all be taken at once immediately after the child's birth, unless otherwise agreed with the employer.

The law also introduces procedural clarifications on the application for adoption leave.

Going beyond the requirements of the European text, paternity leave is also made available to self-employed persons. Based on his or her income subject to social security contributions, the independent worker will be entitled to an indemnity equivalent to eight days of his or her remuneration.

The law also specifies that paternity leave and adoption leave is exclusive for the same child and cannot be accumulated. The difference between adoption and recognition as a parent is not always obvious for equivalent second parents.

Reference: *Loi du 29 juillet 2023 portant modification: 1° de l'article L.233-16 du Code du travail; 2° de l'article 28-5 de la loi modifiée du 16 avril 1979 fixant le statut général des fonctionnaires de l'État.*

As stated in the July 2023 Flash Report, bill No. 8016 has been adopted, but the law was not yet published. For the sake of completeness, it is mentioned here to provide final reference to this law. The content was already described in the previous Flash Report.

Reference: *Loi du 15 août 2023 portant modification : 1°du Code du travail ; 2° de la loi modifiée du 16 avril 1979 fixant le statut général des fonctionnaires de l'État ; 3° de la loi modifiée du 24 décembre 1985 fixant le statut général des fonctionnaires communaux, en vue de la transposition de la directive (UE) 2019/1158 du Parlement européen et du Conseil du 20 juin 2019 concernant l'équilibre entre vie professionnelle et vie privée des parents et des aidants et abrogeant la directive 2010/18/UE du Conseil.*

1.3 Compensation for employers for the impact of a 3rd index band

Bill No. 8260 mentioned in the July 2023 Flash Report has been adopted. As already mentioned, it implements a tripartite agreement in the context of Luxembourg's automatic wage indexation system. Although Luxembourg's inflation rate is the lowest in the EU, it is still higher than it has been during the last decade. As with every increase of 2.5 per cent in the cost of living, all salaries must automatically be increased. Several consecutive pay raises have already been introduced. At the beginning of 2023, there were two pay raises of 2.5 per cent each and it was expected that a third one would follow in autumn. Because employers objected that they could not carry the costs, the social partners tried to arrive at an agreement. The trade unions did not agree to postponing the pay raise again. It was thus decided that the pay raise would apply, but that the costs will be compensated by the State for 2023. As of 2024, the employers will have to carry the full costs.

From a purely technical perspective, the employers will have to advance the money. However, over the period 2024 to 2026, their contribution rate to the 'Employer's Mutuality' (*Mutualité des Employeurs*; a body that collectivises amongst employers the costs of maintaining the remuneration of sick employees) will be below the standard rates, and the State will compensate the loss for the Mutuality. This is the easiest way to compensate the additional costs.

The law was adopted just in time, as the national statistical institute, STATEC announced that the next 'index' applies as of 01 September 2023.

1.4 Professional chambers and social elections

Bill No. 8233, mentioned in June 2023 Flash Report, has been adopted. For details concerning the purpose of this law, we refer to this particular Flash Report.

Elections for professional chambers

Professional chambers (*chambres professionnelles*) have existed in Luxembourg since 1924 to defend socio-professional interests. People who meet the criteria are members of the chamber; employed workers are members of the '*Chambre des salaries*'.

This law only slightly adapts the rules regarding electoral lists, as certain people had been excluded, such as apprentices or jobseekers in special employment relationships, as well as employees and apprentices on parental leave. It has now been clarified that they are also considered members.

The voting age has been lowered to 16 years to include apprentices.

As additional information, on 01 July 2023, the amended Constitution entered into force. The professional chambers now have a constitutional basis.

Social elections for employees' delegates

Concerning the social elections within companies, i.e. elections for employee delegates (*délégation du personnel*), the law specifies that persons whose contract has been suspended (e.g. parental leave) are eligible. Indeed, there was a legal uncertainty on this point.

Reference*: Loi du 29 juillet 2023 portant modification: 1° de l'article L.413-4 du Code du travail; 2° de la loi modifiée du 4 avril 1924 portant création de chambres professionnelles à base élective.*

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

This ruling should not have any major impact. The employer's obligation under discussion has been transposed into Article L. 166-4 (1) of the Luxembourg Labour Code. The employer must notify the National Job Centre (ADEM) in writing of all plans for projected collective redundancies no later than the start of the negotiations, which will submit a copy to the labour inspectorate.

Could a breach of this formality lead to the dismissal being declared null and void in Luxembourg or to some other sanction?

Article L. 166-5 (1) only provides for the dismissal to be null and void if it takes place before a social plan has been concluded, or before the conciliation procedure on a social plan has failed. The information to be submitted to the Job Centre is not mentioned as a cause for nullity.

More generally, failure to comply with the rules on dismissal does not mean that the dismissal is null and void, but that it is unfair. Consequently, the employee is not entitled to reinstatement, but to damages. A dismissal is only null and void an explicit text exists.

The question might then arise whether failure to inform the authorities would render the dismissal unfair. Here again, the answer is negative since a simple breach of the procedural formalities for dismissal only leads to a 'formal irregularity'. Such irregularity gives the employee the right to compensation of up to one month's salary.

Therefore, the relevant question for Luxembourg would be whether failure to notify the Job Centre of the collective redundancy project would render the subsequent redundancies irregular in form. There is no case law on this subject. In the light of this CJEU ruling, however, it can be assumed that this is not the case, since the purpose of the formality is not to protect the individual worker. By analogy, the same conclusion can also be drawn from a Court of Appeal judgment (No. 38726, 02 October 2014,) handed down in relation to individual economic redundancies. Such redundancies must be notified to a national authority (*Comité de conjoncture*), and it had been decided that the employer's failure to do so is not sanctioned by a formal irregularity, nor by any other means.

4 Other Relevant Information

Nothing to report.

Malta

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

The Court's interpretation of the relative obligation contained in the second subparagraph of Article 2(3) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies is a very interesting example of obligations in law that have no corresponding right for any particular party. It is indeed a way of keeping the public authority informed and privy to all intended changes so it is prepared for future developments.

In other words, this is an obligation which in itself, is not intended to bestow any rights on the workers themselves, otherwise the Directive would have been more taxing.

Ironically, if one were to argue it the other way round, i.e. that the obligation in question is indeed necessary to ensure that the workers enjoy more rights, the following question would need to be answered: what additional rights would workers gain as a result of that particular obligation?

It is difficult to argue that the obligation in question would bestow more rights on workers and hence, the Court's interpretation is one which, it is submitted, reflects the spirit of the Directive.

The Collective Redundancy (Protection of Employment) Regulations, 2003, maintain the same spirit and do not confer on workers any rights as a result of failure by the employer to properly notify the Director of Industrial and Employment Relations (in terms of Regulation 8), which transposes the obligation in question. However, it must be submitted that should an employer breach this obligation, a penalty may be imposed. In fact, Regulation 11 states the following:-

> *"Any person contravening the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (EUR 1 164.69) for every employee that is declared redundant."*

The Maltese transposition does not exclude the obligation to notify the Director of Industrial and Employment Relations from the application of Regulation 11 and hence, it is clear that the Regulations expect employers to submit such a notification—even if the Regulations impose a corresponding right on the workers—and should they fail to do so, pay a penalty if declared guilty by a court of law. Hence, the Maltese transposition does not want to run any risks, irrespective of not bestowing any additional rights on workers.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

(I) Two district courts have interpreted Directive 2001/23/EC.

(II) One district court applies an overdue salary calculation based on an all-in wage, while the Court of Appeal follows the approach adopted by the ECHR to conclude that a restriction of the freedom of expression of an employee by the employer is permitted.

(III) Training costs clauses are, in line with Article 13 of Directive (EU) 2019/1152, null and void.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Unlawful termination of an employment contract

Rechtbank Midden-Nederland, ECLI:NL:RBMNE:2023:1255, 15 March 2023 (published 17 August 2023)

This case concerned a dispute regarding the unlawful termination of an employment contract and the applicability of the so-called 'all-in wage' in a salary claim.

The employee entered into employment with a delivery company on 04 January 2021 under an employment contract for a period of one year in the position of delivery driver. On 20 October 2021, the employee became incapacitated for work as a result of a traffic accident during his working hours. Subsequently, on 01 November 2021, the employee signed a letter, with which he terminated his employment relationship on the same date. A few months later, the employee claimed that the termination of his employment contract was unlawful, since he had not understood what he was signing at the time and what the consequences would be. Therefore, he requested the employer to continue to pay his salary for the period from 01 November 2021 until 04 January 2022, and claimed that the employment contract continued to exist.

The district court ruled that the termination of the employment contract had indeed been unlawful and that the employer had to therefore continue to employ the employee. However, according to the district court, the employee claimed an incorrect amount of overdue salary, since his claim was not based on the agreed all-in wage. With reference to the CJEU, case C-131/04, 16 March 2006, Robinson Steele, the district court ruled that the amount of overdue salary was to be based on the agreed all-in wage, since the elements of the pay had been formulated in a transparent and comprehensible manner. For that reason, the district court made a new calculation of the amount of overdue salary that the employer is required to pay to the employee.

2.2 Transfer of undertaking

Rechtbank Midden-Nederland, ECLI:NL:RBMNE:2023:3397, 19 July 2023 (published 07 August)

This case concerned the interpretation of Directive 2001/23/EC, more specifically, the question whether the transferee could be required to pay wages for the period—after the transfer of undertakings—during which the employee was not yet performing work.

On 01 March 2021, the employee (re)joined a restaurant owned by Company A under an employment contract for a fixed period until 28 February 2023. The employee held the position of bartender. At the end of July 2022, Company A closed its restaurant for financial reasons. Subsequently, on 20 October 2022, Company A notified the employee of the restaurant's sale, and on 09 November 2022, it was communicated that Company B had become the employee's new employer. Thereafter, on 25 November 2022, Company B extended an offer of employment to the employee, maintaining the existing terms and conditions.

Disagreement, however, arose when the employee claimed unpaid wages from Company B. According to Company B the employee was not entitled to wages from 20 October to 25 November 2022, since the employee had not shown any intention to work at that time, while he had been informed about the transfer of undertaking.

The district court pointed out that the transferee was responsible for taking the initiative to inform employees not only about the transfer of undertaking, but also about the activities expected from them in the context of their employment contract. The court ruled that the moment the employee had received a concrete offer from Company B to return to work (25 November 2022) was to be considered the turning point. From that moment on, the employee had been sufficiently informed about his new employer and could be expected to resume his work. In the period prior to that point, the employee's absence could not be attributable to the employee. Therefore, the district court awarded the claimed wages for the period 20 October 2022 to 25 November 2022.

District Court Zeeland-West-Brabant, ECLI:NL:RBZWB:2023:5417, 26 July 2023 (published 04 August 2023)

This case concerned the interpretation of Directive 2001/23/EC. On 14 January 2016, the employee joined Company A in the position of delivery driver. In operating its business, Company A uses transport agreements with Company B. This concerns the collection of medicines from pharmacies that are part of Company B's group. Company B has divided the Netherlands into nine work areas, including the Oosterhout work area. The employee worked in this area for company A together with four colleagues. As of 01 November 2022, Company B had assigned this work area to Company C. Subsequently, Company C (hereafter: the employer) offered employment contracts to all employees working in the Oosterhout area, except for the employee in question. Thereafter, Company A terminated the employee's employment contract. The employee was of the opinion that a transfer of undertaking had occurred on 01 November 2022 and claimed that the employer had to continue employing him.

On the basis of the circumstances above, and in line with the CJEU's standing case law, the district court determined that a transfer of undertaking had indeed taken place. The employer must therefore pay the applicable wages under the employment contract with effect from 1 November 2022 onwards and to continue employing the employee.

2.3 Suspension of a member of the board of directors

Court of Appeal Amsterdam, ECLI:NL:GHAMS:2023:1469, 27 June 2023 (published 02 August 2023),

This case concerned a member of the board of directors of a company, who was suspended after sending several critical e-mails from his business email address to various members of the Senate about the government's COVID-19 policy. After several meetings on how he planned to regain the trust of his colleagues, no consensus was found and the director was relieved of his duties. In court, the employer requested the dissolution of the employment contract with the employee based on Article 7:669 (3)(e), (g), (h) or (i) of the Dutch Civil Code, which contains several reasonable grounds for dismissal. The lower court dissolved the employment contract between the parties with effect from 1 May 2022 due to culpable actions by the employee.

In appeal, the employee contended that his statements fell within the scope of freedom of expression and the lower court wrongly failed to assess whether the criteria of the Herbai judgment of the European Court of Human Rights of 05 November 2019 were met. In *Herbai v. Hungary*, the ECHR took four aspects into consideration when assessing freedom of expression in an employment relationship: (1) the nature of the expression; (2) the employee's motives; (3) the damage suffered by the employer as a result of the disclosure; and (4) the severity of the sanction imposed. To assess the case, the Court of Appeal tested the facts of the case against these four aspects.

Regarding the nature of the expression, the Court of Appeal considered that the tone and manner in which the employee expressed his opinion regarding COVID-19 had not been acceptable. A critical opinion about the COVID-19 policy was allowed, but the employee could and should have chosen more neutral and less provocative terms to convey his message. In addition, the employee did not send the e-mails in a personal capacity, but from his business e-mail address. The employee should have been expected to refrain from such statements. According to the Court, the employee's motives for his statements were mainly in his personal conviction that the COVID-19 measures applied by the government were too far-reaching and contrary to fundamental rights. By not allowing the employee to express this conviction in his capacity as an employee and director, the employer had not impermissibly restricted the employee's freedom to express his opinion. The Court considered that the employer believes that he suffered reputational damage due to the e-mails sent by the employee. As the employee worked as a manager and director of the employer, extra weight was attached to his statements both internally and to third parties. The Court deemed it plausible that this may have caused reputational damage. Finally, the Court considered the events following the sending of the e-mails and deemed the sanction of dissolution of the employment contract to be appropriate.

The Court of Appeal concluded that the employer's restriction of the employee's right to express his opinion in this way is permitted. This approach of the Court of Appeal appears to be in line with the requirements from the Herbai case.

2.4 Training cost clauses

District Court Midden-Nederland, ECLI:NL:RBMNE:2023:3415, 28 June 2023 (published 22 August 2023)

This case concerned the interpretation of Article 13 of Directive (EU) 2019/1152. The employer concluded training costs clauses (*studiekostenbeding*) with two employees for two trainings: (1) an external training (not specified) for EUR 2 060.21 and (2) an internal training (asbestos inventor) for EUR 15 000. Both employees terminated their employment contracts after which their employer requested a reimbursement (pro rata) for the trainings costs. With a view to the validity of the training costs clauses in light of Article 13 of Directive (EU) 2019/1152 (implemented in Article 7:611a(2) Civil Code), the court ruled that the trainings offered by the employer, including those offered with a view to performing the job, were to be considered mandatory (as was confirmed by the employer) and the clauses must therefore be considered null and void as follows from Article 7:611a(4) Civil Code (*Kamerstukken I* 2021/22, 35962, No. C, p. 4). According to the court, these trainings are not exempt as they are not listed in the annex to the Regulation establishing the list of regulated professions, so that it must be assumed that this presented an exception to the provision of free training necessary for the performance of the job, which follows from recital 37 of Directive (EU) 2019/1152. The employer emphasised that these trainings were offered before the entry into force of the Directive. Yet, as follows from the parliamentary documents, the Directive does not allow for a transition period, meaning that training costs clauses have been null and void since 01 August 2022, even if they were concluded before and where the training has already been undertaken (*Kamerstukken II* 2021/22, 35962, No. 3, p. 8, 11 and 12).

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

Unlike German law, Dutch law provides for an express penalty for an infringement of the obligation to forward a copy of the information mentioned in Article 2(3) of Directive 98/59/EC to the competent public authority. The notification obligation and connected penalties are implemented in the Collective Redundancy Notification Act (*Wet melding collectief ontslag; WMCO*). The notification obligation encompasses, *inter alia*, the requirement to submit to the competent Dutch public authority (the Employee Insurance Agency; *UWV*) the information provided for in Article 2(3) of Directive 98/59/EC (Article 4(2) jo. 4(3) WMCO). As long as this information is not provided in full, the UWV will deem the notification to not have taken place (Article 5 WMCO). Put differently, a flawed notification is not considered a notification at all. If the employer has failed to notify the UWV, the UWV will not consider the employer's request for permission to terminate the employment contract on economic grounds (Article 6(1)(a) WMCO). Without this permission, the employer cannot, in principle, legally terminate the employment contract (Article 7:671(1)(a) jo. 7:671a Dutch Civil Code). Moreover, if the UWV has given permission to terminate the employment contract even though the employer has not complied with the notification obligation, the employee can request the district court to annul the employer's termination (Article 7(1)(a) WMCO). In other words: if the employer has not submitted the necessary information to the UWV, the employment contract cannot be terminated legally.

As Article 6 of Directive 98/59/EC leaves the sanctions to the Member States, the Dutch penalty system seems to be in line with the G GmbH case and Directive 98/59/EC. However, on the basis of the G GmbH case, some discussion could be possible on the question whether the relatively far-reaching individual dismissal protection granted by the WMCO is a disproportionate sanction within the meaning of the CJEU's case law (e.g. G GmbH, point 18).

4 Other Relevant Information

Nothing to report.

Norway

Summary

The government has implemented new measures against social dumping and work-related crimes.

1 National Legislation

1.1 Measures against social dumping and work related-crimes

The government has introduced amendments to different regulations on public procurement. The goal is to prevent social dumping and work-related crimes in the construction and the cleaning industries. The new regulation includes, among others, that the contracting authority shall stipulate contractual terms for payment and salary and other remuneration via a bank or other enterprise entitled to operate payment services and set requirements for compliance with the legislation on mandatory occupational pensions and HSE cards.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

Council Directive 98/59/EC of 20 July 1998 has been transposed in the Working Environment Act of June 17 2005, Section 15-1. The employer's obligation to provide a written notification to the competent public authority (the Labour and Welfare Service) is specified in the third paragraph of this section. The provision does not confer individual protection on the workers affected by collective redundancies; the legal understanding of the provision is thus in line with the CJEU case.

4 Other Relevant Information

Nothing to report.

Poland

Summary

(I) The Law on Posting of Drivers in Road Transport has taken effect.

(II) The final wording of the Law on Employee Participation in the Company Created as the Result of Cross-border Conversion, Merger or Division of Companies has been accepted by Parliament.

1 National Legislation

1.1 Posting of drivers in the road transport sector

The Law of 28 July 2023 on Posting of Drivers in the Road Sector was signed by the President on 31 July 2023, and subsequently promulgated in the Journal of Laws (No. 1523).

The text of the Law is available here.

The abovementioned Law transposes Directive 2020/1057 which lays down rules with respect to Directive 96/71 and Directive 2014/67 for the posting of drivers in the road sector. It took effect on 19 August 2023. The Law was discussed and analysed in the July 2023 Flash Report, section 1.2.

1.2 Employee participation in cross-border companies

On 16 August 2023, the Sejm (lower chamber of Parliament) accepted the final text of the Law of 26 May 2023 on Employee Participation in the Company Created as the Result of Cross-border Conversion, Merger or Division of Companies, after it had rejected the amendments suggested by the Senate (higher chamber of Parliament).

On 22 August 2023, the Law was signed by the President. It will be promulgated in the Journal of Law. It has been determined that the new Law will take effect on 15 September 2023.

The final text of the Law is available here.

The information on the legislative process is available here.

The new Law transposes Directive 2017/1132 relating to certain aspects of company law (codification), and Directive 2019/2121 on cross-border conversions, mergers and divisions. It was discussed and analysed in the July 2023 Flash Report, section 1.3.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

In Poland, Directive 98/59 has been transposed by the Law of 13 March 2003 on specific conditions of terminating employment relationships for reasons not related to employees, the so-called ‘Law on Collective Redundancies’ (consolidated text: *Journal of Laws 2019, item 1969*, with further amendments)

The Law reflects the scheme and provisions of Directive 98/59.

According to Article 1 item 1 of the Law, it applies to employers who employ at least 20 employees, who plan to terminate employment relationships for reasons not related to the individual employees, with notice or upon the agreement of the parties, and where, over a period not longer than 30 days, the redundancy includes at least:

1) 10 employees if the employer employs fewer than 100 employees;

2) 10 per cent of the employees if the employer employs between 100 and 300 employees;

3) 30 employees if the employer employs 300 employees or more.

Article 2 of the Law imposes the duty to discuss the planned redundancies with the established trade union organisation. Article 2 item 6 of the Law requires the employer to submit the local employment office in writing with the information referred to in Article 2 item 3 of the Law, i.e. about the reasons for the proposed collective redundancy, the number of employees normally employed and occupational categories to which they belong, the occupational categories of employees covered by the planned collective redundancy, the time period during which the collective redundancy will be executed, the criteria proposed for selecting employees for collective redundancy, the order of carrying out collective redundancies, and suggestions on resolving employment matters connected with the planned collective redundancy.

Article 3 of the Law pertains to the agreement on collective redundancies with the established trade union(s), or the employer's duty to issue regulations on the redundancies.

Under Article 4 item 1 of the Law, the employer—after concluding an agreement or issuing regulations—should inform the local employment office in writing about the adopted arrangements on the collective redundancy, including the number of employees normally employed and the number of employees that will be made redundant, as well as the reasons for their redundancy, the time during which the redundancy will be executed, and of the consultations on the proposed collective redundancy with the established trade unions or employee representatives chosen in the manner adopted at the given employer. Under Article 4 item 2 of the Law, the employer is required to submit a copy of the abovementioned notification to the established trade unions. The trade unions may share their opinion on the collective redundancy to the local employment office. Article 4 item 4 of the Law provides that where an employer ceases to conduct its business activity as a result of a final court decision, the notification is only required at the request of the local employment office.

Article 6 item 1 determines that an employment relationship may be terminated through a collective redundancy only after the employer notifies the local employment office, and if no notification is required, only after concluding an agreement or informing the employees' representatives at the given employer of the intention to introduce collective redundancies. Under Article 6 item 2 of the Law, the employment relationship may be terminated with notice as part of a collective redundancy only after the lapse of 30 days following the date of the notification of the local employment office, and if no notification is required, then only after 30 days following the conclusion of the agreement or consulting the employees' representatives about the planned redundancies. This regulation does not apply to the termination of employment relationships because of the cessation of the employer's activity as a result of a final court decision.

Thus, under Polish law, the employer is required to inform the local employment office about the planned collective redundancy, as well as its terms and conditions. The notification should be submitted during the consultations with the established trade union(s) or another employee representative. The termination of employment contracts is only admissible after such a notification has been made.

In other words, the employer is required to forward a copy of the information submitted to the trade union during the negotiations on the proposed collective redundancy the local employment office (i.e. the competent public authority) (Article 2 item 6 of the Law), as required by Directive 98/59. At the same time, this provision does not automatically confer individual protection on the workers affected by collective redundancies. Polish law meets the requirement

> *"to enable that authority to anticipate as far as possible the negative consequences of projected collective redundancies in order to be able to seek solutions effectively to the problems raised by those redundancies when it is notified of them"*

(para 36 of the judgment), and to make it possible for the local employment office *"to gain an overall understanding of the projected collective redundancies"* (para 37 of the judgment).

4 Other Relevant Information

Nothing to report.

Portugal

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

This *case* concerned the interpretation of the second subparagraph of Article 2(3) of Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

According to the provision of said Directive, an employer who plans a collective redundancy shall forward a copy of certain elements of the written communication provided to the workers' representatives (such as the reasons for the projected redundancy, the number and category of the workers to be made redundant, the number and categories of the workers normally employed, the period over which the projected redundancy is to be effected and the criteria proposed for the selection of the workers to be made redundant) to the competent public authority.

In the present case, the employer had not complied with this requirement and the applicant argued that the submission of this communication was a condition for the validity of the dismissal. As a result, the CJEU was asked to analyse what the purpose of the abovementioned requirement is and, in particular, whether Article 2(3) of Directive 98/59/EC must be interpreted as meaning that the employer's obligation to forward a copy of the information communicated to the workers' representatives to the competent public authority is intended to confer individual protection on the workers affected by collective redundancies.

In this judgment, the CJEU concluded that

> *"the competent public authority is not given any active role during the consultation procedure involving workers' representatives".*

According to the Court,

> *"the forwarding of information to the competent public authority, as referred to in the second subparagraph of Article 2(3) of Directive 98/59, occurs only for information and preparatory purposes so that the competent public authority can, if necessary, exercise the powers provided for in Article 4 of that directive effectively. Thus, the obligation to forward information to the competent public authority is intended to enable that authority to anticipate as far as possible the negative consequences of projected collective redundancies in order to be able to seek solutions effectively to the problems raised by those redundancies when it is notified of them".*

Consequently, the action of the competent public authority

> *"is intended not to deal with each worker's individual situation but to gain an overall understanding of the projected collective redundancies".*

As previously held by the CJEU, the right to information and consultation provided for in Article 2 of Directive 98/59/EC is intended to benefit workers as a collective group. Based on this, the CJEU concluded that

> *"the second subparagraph of Article 2(3) of that directive gives workers collective, not individual, protection".*

Under Portuguese law, an employer who intends to carry out a collective dismissal shall communicate this intention in writing to the workers' representatives, providing the following information: i) a description of the legal grounds; ii) the company's personnel chart, organised by sectors of activity; iii) the criteria that determined the selection of the employees to be dismissed; iv) the number of employees to be dismissed and their professional categories; v) period of time during which the collective dismissal procedure will be rolled out; and vi) the criteria for calculation of the compensation to be granted (Article 360(1) to (4) of the Portuguese Labour Code). On the same date, the employer shall deliver a copy of the communication of the intention to dismiss employees, including the aforementioned information, to the relevant department of the Ministry of Employment (the so-called *'Direção-Geral do Emprego e das Relações de Trabalho'* or 'DGERT') in compliance with Article 360(5) of the Portuguese Labour Code. The referred competent labour authority participates in the negotiation with the workers' representatives to promote the regularity of the procedure and to conciliate the interests of the parties (Article 362(1) of the Portuguese Labour Code). After the conclusion of the negotiations and on the same day the communication of dismissal is forwarded to the workers, the following elements shall be delivered to the relevant department of the Ministry of Employment (DGERT): a) copy of the minutes of the information and negotiation meetings containing the parties' positions and the potential agreement (or a justification for the non-existence of such minutes); and b) a list containing several personal data of the affected workers, as well as the individual measure applied and the foreseen date of its application (Article 363(3) of the Portuguese Labour Code).

Under Portuguese law, non-compliance with the aforementioned obligations before the competent labour authority does not affect the lawfulness of the dismissal (Article 383 of the Portuguese Labour Code), which is aligned with the interpretation of the CJEU according to which this formality intends to give workers collective, but not individual, protection. Therefore, this ruling does not seem to have any implications for Portugal.

4 Other Relevant Information

4.1 Social Security Multilateral Convention of Portuguese Language Countries Community

On 25 August 2023, Decree No. 24/2023 it was published in the Official Gazette, which approves the Multilateral Convention on Social Security of Portuguese Language Countries Community ('CPLP'), signed in Dili on 24 July 2015. The signatory states of this Multilateral Convention are Portugal, Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, São Tomé and Príncipe and East Timor ('Signatory States').

The aim of this Multilateral Convention is to develop social protection policies and to strengthen cooperation between the Signatory States in their social security systems, considering existing similarities and growing labour mobility in the CPLP area.

Among other aspects, the Convention establishes rules for determining the applicable social security legislation, in particular in cases of mobility of citizens between the different Signatory States or carrying out professional activity in the territory of more than one Signatory State. This Convention also establishes an equal treatment principle, according to which those to whom the Convention applies benefit from the rights and are subject to the obligations foreseen in the legislation of any Signatory State, in the

same conditions as the nationals of that Signatory State, except when otherwise is established in this Convention.

Romania

Summary

The Directive on Cross-border Conversions, Mergers, and Divisions has been transposed into Romanian legislation.

1 National Legislation

1.1 Cross-border conversions, mergers, and divisions

Directive (EU) 2121/2019 amending Directive (EU) 2017/1132 on Cross-border Conversions, Mergers, and Divisions has been transposed into Romanian law through Law No. 222/2023 amending and supplementing Law No. 31/1990 on companies, as well as Law No. 265/2022 on the trade registry and amending and supplementing other normative acts related to trade registry registration, published in Official Gazette No. 667 on 20 July 2023. The new law includes, among others, a series of provisions on the status of employees in the case of cross-border mergers and divisions, in line with the Directive's provisions.

Thus, the right to information and consultation of employees is provided, correlating with the obligation of merging companies to provide them with a report, which employee representatives can express their opinion about. The report includes: a) the implications of the cross-border merger on employment relationships, as well as where applicable the necessary measures to maintain these employment relationships; b) any substantial change to the terms of employment/ work applicable or concerning the registered offices of the merging companies; c) how the elements referred to in points a) and b) affect the branches of the merging companies.

If the absorbing or newly established company is a European company with its registered office in Romania, the administrators of the merging companies ensure respect for employees' involvement rights in the company's activities, according to the provisions of Government Decision No. 187/2007 on procedures for informing, consulting and other means of involving employees in the activities of a European company.

Similar provisions are included with regard to cross-border transformations and the division of companies.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

The Romanian Labour Code has transposed Article 2(3) second paragraph of Directive 98/59 into Article 70, which states:

> *"The employer is required to submit a copy of the notification provided for in Article 69(2) to the territorial labour inspectorate and the territorial employment agency on the same date on which it communicated it to the trade union or, as the case may be, to the employee representatives."*

The text does not include elements that clarify the purpose of the transmission obligation. The Labour Code does not provide a specific sanction for non-compliance with the provisions of Article 70, but Article 78 states:

> "*Dismissal ordered in violation of the legal procedure is null and void*."

From the perspective of Romanian courts, the obligation set out in Article 70 is considered a procedural obligation, the breach of which is capable of rendering the entire collective dismissal null and void. It should be noted that the Labour Code does not contain separate chapters for information, consultation, on the one hand, and the collective dismissal procedure, on the other. All regulations concerning collective dismissal are included in Section 5, entitled

> "*Collective Dismissal. Information, Employee Consultation, and Collective Dismissal Procedure*."

Until now, failure to transmit the relevant information to the competent authorities—like any other breach of the employer obligations in the context of collective dismissal—has always led to the nullity of the dismissal, without raising the issue of the purpose of the transmission obligation. The courts have consistently held that such an obligation falls within the realm of procedural obligations and have ruled nullity of the dismissal whenever it was not respected.

For instance, failure to meet the obligation of informing public authorities was considered a ground for nullity:

> *"From the documents in the case file, it is not clear that the stages of the collective dismissal procedure were followed prior to the issuance of the dismissal decision contested in the case." (see* Iași Court of Appeal, No. RJ 235d2g946/2022, 07 April 2022)*.*

> *"The employer's obligations within the collective dismissal procedure must be fully respected, the violation of one or more of them having the effect of absolute nullity of subsequent measures, respectively of dismissal decisions." (see* Timișoara Court of Appeal, Decision No. 1318/2006*).*

Courts consistently include the obligations established in Articles 68-72 of the Labour Code in the concept of 'collective dismissal procedure', and

> *"the violation of the formal rules of the collective dismissal invoked entails the sanction of nullity of the measure in accordance with the provisions of Article 78 of the Labour Code." (see* Iași Court of Appeal, No. 356, 11 May 2021).

The decision of the Court of Justice of the European Union in Case C 134/22 sheds new light on the issue of non-compliance with the preliminary information transmission obligation to the public authority, which could have implications for Romanian courts as well.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

A decision of the Supreme Court of the Slovak Republic on a fixed-term employment relationship has been published.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Fixed-term work

Collection of opinions of the Supreme Court and decisions of the Courts of the Slovak Republic No. 3/2023 (No. 35. page 74 et seq.)

If the employer only makes a reference to the fact that the employee performs work defined in the collective agreement as a reason for re-extending the fixed-term employment relationship, the employment contract lacks a substantive reason for its temporary nature, which would be in accordance with the content of the legal provision of Article 48 paragraph 4 and 5 of the Labour Code.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

Collective redundancies are regulated in the Labour Code (Act No. 311/2001 Collection of Laws (Coll.), as amended) in the provision of Article 73. The competent public authority generally controls the course of collective redundancies.

According to Article 73 paragraph 2 of the Labour Code with a view to reaching an agreement, the employer is required, at least one month prior to the commencement of collective redundancies, to negotiate with the employees' representatives, and if there are no employees' representatives in the workplace of the directly affected employees, measures that reduce the likelihood of collective redundancies, or at least a reduction thereof, to negotiate the possibility of placing them in appropriate employment at the employer's other workplaces, also subsequent to preceding preparation, and measures to mitigate the adverse consequences of collective redundancies of employees. To this end, the employer shall be required to provide the employees' representatives with all necessary information and to inform them in writing, in particular about:

a) the reasons for the collective redundancies,

b) the number and structure of employees to be subject to termination of employment,

c) the overall number and structure of employees employed by the employer,

d) the period over which collective redundancies shall be effected,

e) the criteria for the selection of employees with whom the employment relationship is to be terminated.

The employer shall deliver a copy of the written information according to paragraph 2, together with the names, surnames and addresses of permanent residence of the employees with whom the employment relationship is to be terminated, at the same

time to the Office of Labour, Social Affairs and Family for the purpose of finding solutions to problems associated with collective redundancies according to paragraph 7 (Article 73 paragraph 3 of the LC).

According to Article 73 paragraph 4 of the Labour Code, after negotiating collective redundancies with the employees' representatives, the employer is required to deliver written information about the outcome of the negotiation:

a) to the National Labour Office,

b) to employees' representatives.

The employees' representatives may submit comments relating to the collective redundancies to the National Labour Office (Article 73 paragraph 5 of the LC).

It should also be noted that according to Article 73 paragraph 6 of the Labour Code, in case of collective redundancies, the employer may give notice to the employee for the reasons specified in Article 63 paragraph 1 letter a) and b) or propose termination of the employment relationship by agreement for the same reasons, no earlier than one month after the date of delivery of the written information according to paragraph 4 letter a).

The National Labour Office uses the period established in paragraph 6 to find solutions to the problems associated with the planned collective redundancies. The Office of Labour, Social Affairs and Family can shorten the period according to paragraph 6 for objective reasons, and must immediately inform the employer in writing thereof (Article 73 paragraph 7 of the LC).

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) The new Long-term Care Act was published in the Official Journal and will be implemented gradually over the next two years.

(II) The Ministry of Labour has issued new rules on ensuring safety and health of workers in the field of manual handling of loads.

(III) Two emergency bills have been passed introducing additional labour law measures to support people, businesses and local communities affected by the floods that hit Slovenia in early August.

1 National Legislation

1.1 Long-term Care Act

On 02 August 2023, the new Long-term Care Act, passed by the National Assembly in July, was published in the Official Journal (OJ RS) ('Zakon o dolgotrajni oskrbi (ZDOsk-1)', OJ RS No. 84/23, 02. August 2023, p. 7215-7246). After more than two decades of failed attempts, the Act finally establishes the systemic regulation of long-term care in Slovenia and introduces the mandatory statutory social insurance scheme for long-term care (in addition to other four mandatory social insurance schemes, i.e. for healthcare, pension and disability, parental protection and unemployment).

The legislation will be implemented gradually over the next two years. Some of its provisions will start to apply as of 01 January 2024 and some sections will be postponed until 01 January 2025. A new mandatory social insurance contribution for long-term care (1 per cent of gross salaries for employees and employers) will be levied as of 01 January 2025.

1.2 Occupational health and safety for manual handling of loads

The Ministry of Labour issued new rules on ensuring safety and health of workers in the field of manual handling of loads ('Pravilnik o zagotavljanju varnosti in zdravja delavcev pri ročnem premeščanju bremen', OJ RS No. 84/23, 02 August 2023, p. 7247-7263). This is a response to many calls by trade unions to update outdated legislation and address increasing pressures. The rules will start to apply next year, on 01 August 2024.

1.3 Legislative responses to devastating floods

In early August, devastating floods hit large parts of Slovenia, in particular northern and central Slovenia. As a response, in addition to the already established system of measures for such events, two emergency bills were passed introducing additional measures to support people, businesses and local communities affected by this natural disaster.

The first one, amending the Natural Disaster Recovery Act ('*Zakon o spremembah in dopolnitvah Zakona o odpravi posledic naravnih nesreč* (ZOPNN-F), OJ RS No. 88/23, 10.8.2023, p. 7321-7333), was adopted immediately after the floods, introducing the most urgent immediate measures. The measures also included labour law-relevant measures:

the most important was the reimbursement of wage compensation for workers who could not work due to the floods (workers were entitled to 80 per cent of their salaries, but not less than the minimum wage; this compensation paid by the employers to the

workers affected was 100 per cent reimbursed from the State budget), and the reimbursement of wage compensation for temporarily laid-off workers due to the floods (80 per cent of their previous salaries, but not less than the minimum wage, paid by the employer and reimbursed by the State up to 80 per cent, but not more than the amount of the average salary for May 2023);

volunteers were entitled to be absent from work for up to seven days with 100 per cent wage compensation (100 per cent reimbursed by the State);

14 August was declared a solidarity day and a day off work declared for all to be able to help remove the consequences of the floods in the damaged areas;

payments for the self-employed affected by the flood (EUR 1 200 per month).

The second bill was passed by the National Assembly on 31 August 2023 and published in the Official Journal on 01 September 2023: the Intervention Measures to Eliminate the Consequences of Floods and Landslides of August 2023 Act (‘*Zakon o interventnih ukrepih za odpravo posledic poplav in zemeljskih plazov iz avgusta 2023* (ZIUOPZP)’, OJ RS No. 95/23, 01 September 2023, p. 7489-7521). It is very intricate and comprises 173 Articles; it entered into force the next day following its publication, i.e. on 02 September 2023.

Most of the measures introduced by the ZOPNN-F and the ZIUOPZP (four sets of measures are foreseen: one set for affected households, one for businesses, one for municipalities and one for rebuilding public infrastructure, watercourses and ensuring flood safety) do not directly concern labour law, but are nevertheless indirectly very important for workers (for instance, supporting businesses and rebuilding infrastructure protects jobs and prevents mass dismissals, 12-month moratorium on loan repayments, emergency cash solidarity assistance and exemptions from the payment of electricity bills and various other support measures, subsidies and similar, etc.).

Among the measures that are most relevant for labour law are those that were already introduced by the first bill (reimbursement of wage compensations for force majeure and for temporarily laid-off workers due to the floods).

The law also regulates the solidarity contribution (additional income tax of 0.3 per cent levied on gross wages and other income), to be charged in 2024 and 2025, whereby the Act allows for an alternative by way of forfeited earnings from two ‘solidarity Saturdays’ worked in 2023 and 2024 (Article 102 of the ZIUOPZP).

The law also introduces simplified procedures for the employment of foreign workers (Article 89 and subseq.), the inclusion of all unemployed in public works programmes (Articles 33 and 34 of the ZIUOPZP), and unlimited temporary and occasional work of pensioners if they help in the recovery after the floods (Article 32 of the ZIUOPZP).

The possibility for social institutions as employers to assign their employees to another social institution have been expanded in case of urgent need during natural disasters (Article 57 of the ZIUOPZP) and additional rules on the possibility of temporary assignment of public employees to another employer have been introduced, with or without the consent of the public employee concerned (Articles 126 and subseq.).

Additional exceptions from the rules on limitations of overtime work, rest periods and certain other aspects of working time have been introduced for public sector employees (see Article 58 of the ZIUOPZP); in this exceptional case, the maximum ceiling for overtime work without the consent of the public employee is set at 20 hours per week and 80 hours per month, whereby an employee can perform even more overtime work with their consent, but in any case may not exceed 480 hours within the year (until the end of December 2023).

Most of the temporary measures are envisaged for the period until the end of December 2023, some until the end of March 2024 and others even until the end of December 2024.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

The CJEU judgment in this case is relevant for Slovenian law. Following the Directive, the Employment Relationships Act ('*Zakon o delovnih razmerjih* (ZDR-1)', OJ RS No. 21/13 et subseq.) follows the same provision as the German law at stake. According to Article 99, paragraph 3 of the ZDR-1, the employer must send a copy of the written notification referred to in paragraph 1 of this Article to the Employment Service; accordingly, the employer must at the earliest possible time inform the trade unions at the employer in writing of the reasons for redundancies, the number and categories of all employed workers, the expected categories of redundant workers, the period over which the performance of work by workers will no longer be needed, and, in accordance with paragraph 2 of this Article, with a view to reaching an agreement, the employer must consult the trade unions at the employer about the proposed criteria for the determination of redundant workers within the elaboration of the dismissal programme for redundant workers about potential ways of avoiding and limiting the number of dismissals and possible measures for the prevention and mitigation of harmful consequences.

There has not yet been any case law that is directly connected to Article 99, paragraph 3 of the ZDR-1, therefore this CJEU judgment is relevant for Slovenian courts, whereby it is worth noting that nothing in Slovenian law prevents labour courts from interpreting and applying Slovenian law in line with this CJEU judgment.

4 Other Relevant Information

4.1 Collective bargaining

The new management board of the public institution *Radiotelevizija Slovenija* has declared the collective agreement concluded in July (OJ RS No. 79/23, 21 July 2023, p. 6932-6934; see FR 07/2023 under 4.2.) null and void (decision from 22 August 2023, published in the OJ RS No. 94/23, 01 September 2023, p. 7485: '*Sklep uprave javnega zavoda Radiotelevizije Slovenija o ugotovitvi ničnosti Kolektivnega dogovora*').

Spain

Summary

The catalogue of occupations that are not adequately covered by Spanish workers has been expanded.

1 National Legislation

1.1 Employment of foreigners

In accordance with the legislation on employment of foreigners, this Resolution publishes the 'Catalogue of Difficult-to-Fill Jobs' in Spain for the third quarter of 2023. As its name suggests, this catalogue lists occupations that are not adequately covered by Spanish workers. Therefore, the recruitment of foreign workers who do not reside in Spain is permitted.

The Catalogue of Difficult-to-Fill Jobs needs to be approved by the government each quarter. For several years, starting from the onset of the economic crisis, these occupations have been quite limited and mainly comprised the professional sports sectors (both athletes and coaches) and maritime work.

For the first time in over a decade, the catalogue has been expanded to include specialised jobs in the construction sector, such as carpenters, electricians and crane operators.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

This ruling is not anticipated to have significant implications in Spain. Article 51 of the Labour Code stipulates that an employer who is considering a collective redundancy must provide the competent public authority with a copy of the information communicated to the workers' representatives. Once this obligation is fulfilled, the competent public authority will be involved in the consultation period.

According to Article 124(11) of the Law on Social Jurisdiction, a dismissal is rendered null and void if the employer fails to participate in the consultations or refrains from providing pertinent information to the workers' representatives. However, no explicit consequence has been specified in legislation when the employer provides the information but does not send a copy to the competent public authority. An employer could face an administrative penalty for failing to fulfil this obligation. However, in Spain this obligation is not intended to provide individual protection to workers affected by collective redundancies.

4 Other Relevant Information

Nothing to report.

Sweden

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

The Swedish regulations that transpose Directive 98/59/EC are found in the Employment Protection Act (*lagen 1982:80 om anställningsskydd*) as well as in the Act on certain measures to promote employment (*lagen 1974:13 om vissa anställningsfrämjande åtgärder*). The Employment Protection Act includes individual rights to employment protection and fairness of dismissal, including redundancy and the employer's duty to negotiate with or consult trade unions (with further information and consultation provisions in the Co-determination Act (*lagen 1976:580 om medbestämmande i arbetslivet*). The 1974 Act, on the other hand, contains provisions on how and when to inform the Swedish Public Employment Service (*Arbetsförmedlingen*) in cases of collective dismissals. The Swedish threshold for such information starts at five redundant employees. While the Employment Protection Act provides for individual rights, the provisions in the 1974 Act regulate the relationship between the employer and the authorities, and the sanctions in that Act are disconnected from the employment procedures between the employer, the trade unions and the employees.

To conclude the case before the CJEU, Swedish legislation is in line with the judgment of the Court of Justice.

4 Other Relevant Information

4.1 Illegal foreign construction workers

Criminal law court proceedings have been initiated in a case concerning the personal liability of an individual manager at a large Swedish battery manufacturer for contracting subcontractors that hire foreign workers without a work permit. It is likely that the case will put the ideas of both criminal personal liability for labour law-related misconduct as well as the liability for misconduct of subcontractors to the test. Swedish radio has reported about the case in its international English-speaking news channel.

United Kingdom

Summary

The Inner House of the Court of Session ruled on the right to participate in a share incentive plan transferred to a new employer after a transfer of undertaking.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Transfer of undertakings

Scottish Court of Session Decisions, [2023] CSIH 32, 15 August 2023, Ponticelli UK Ltd v Gallagher

In *Ponticelli UK Ltd v Gallagher*, the Inner House of the Court of Session has upheld the EAT's decision that 'the right to participate in a share incentive plan transferred to a new employer under TUPE, even though the employee's entitlement to participate in the plan arose under an agreement separate from and not referred to in his contract of employment.' The Court of Session focused on the words in Regulation 4(2)(a) that on a TUPE transfer, 'all of the transferor's rights, powers, duties and liabilities under or in connection with any such [employment] contract shall be transferred by virtue of this regulation to the transferee' (emphasis added). This creates a significant burden for the transferee, especially if it does not operate such a scheme itself.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-134/22, 13 July 2023, G GmbH

In case C-134/22, *G GmbH*, the Court ruled:

The second subparagraph of Article 2(3) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as meaning that the employer's obligation to forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph of Article 2(3), point (b), subpoints (i) to (v) of that directive is not intended to confer individual protection on the workers affected by collective redundancies.

The UK continues to respect the obligations under this Directive. Where a collective redundancy takes place, an employer has a duty to notify the Secretary of State on form HR1. The details are set out in s.193 TULR(C)A 1992. Notification must be received by the Secretary of State at least 45 days before the first dismissal, where the employer proposes to dismiss 100 or more employees within a 90-day period. This decision will not affect the interpretation of UK law.

4 Other Relevant Information

4.1 Retained EU Retained EU Law (Revocation and Reform) Act 2023

As reported last month, the REUL Bill has received royal assent and is now an Act, but a number of its provisions will not come into force until 01 January 2024. This legislation

was extensively discussed in previous Flash Reports. In summary, the default is that all Retained EU Law will remain, except the 587 pieces listed in the Schedule to the Act. There are a number of measures in the field of employment but none significant in the post-Brexit world, notably removing rules on posting of workers and removing rules on drivers' hours during foot and mouth in 2001.

However, other key aspects of the Bill have been retained in the Act, including turning off the supremacy of EU law, direct effect (including of Article 157 TFEU) and general principles as well as encouraging courts to be more enthusiastic about departing from pre-Brexit case law. The Act also contains extensive powers for the executive to revoke or restate Retained EU Law (which will be called 'assimilated law'). The *FT* has reported that the government intends to use its powers to restate Article 157 TFEU (and presumably its relevant effects. There was confusion in the original version of the report, which was subsequently corrected following a complaint by the Secretary of State, Kemi Badenoch. A summary is available in this thread.

4.2 The Strikes (minimum service level) Act 2023

This Bill has now become an Act. According to the government:

- Minimum service levels balance the right of workers to strike with the rights of the public, who expect essential services they pay for to be available when they need them.
- Government will now launch a public consultation on reasonable steps unions should take to ensure their members comply with a work notice given by an employer.

The draft code of practice has now been published and it is open for consultation.

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