Flash Reports on Labour Law February 2024

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 February 2024, 29 countries reported labour law developments (all countries except for **SK** and **LV**). The following were of particular significance from an EU law perspective:

Implementation of EU Directives

In **Austria**, the National Assembly passed legislation transposing Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union into national law. Austrian law was partially compliant with the Directive. Therefore, only minor amendments were necessary to transpose Article 6 (modification of the employment relationship) and Article 7 of the Directive (additional information for workers posted to another Member State or to a third country).

In **Italy**, Parliament approved a law granting authority to the government for the implementation of two Directives. Firstly, Directive (EU) 2022/431 of the European Parliament and of the Council of 9 March 2022 amending Directive 2004/37/EC on the protection of workers from risks related to exposure to carcinogens or mutagens at work, and secondly, Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

Collective bargaining and collective action

In the **Czech Republic**, an amendment to the Labour Code is being discussed and is in the legislative process. It addresses the conclusion of collective agreements when multiple trade unions are present at the employer.

In **Finland**, a proposal for amendments to the industrial peace legislation has been submitted to Parliament. The proposal includes changes to the sanctions concerning unlawful strikes, limiting solidarity actions and restricting the length of political industrial action.

In **France**, the national interprofessional agreement (hereafter NIA) on ecological transition and social dialogue of 11 April 2023, has been extended. The NIA provides examples and best practices for those involved in social dialogue at company and branch level to meet the challenge of ecological transition in the workplace.

Finally, in **Norway**, the Labour Court has issued a judgment on the legality of a sympathy strike in support of an industrial dispute between a Norwegian trade union and a British company.

Occupational health and safety

In **Bulgaria**, the National Assembly has ratified two International Labour Organization Conventions (ILO) Conventions - No. 155 on Safety and Health at Work of 1981 and No. 187 on the Promotion of Safety and Health at Work of 2006.

Moreover, in **Hungary**, a Decree of the Minister of Economic Development amends the rules in relation to work in front of a screen. The amended legislation requires that work in front of a screen must be interrupted by ten minutes after every hour of work performed.

In **Romania**, the High Court of Cassation and Justice ruled that non-professional personal assistants (e.g. family members) are not entitled to the hazardous or harmful working conditions allowance.

In **Slovenia**, the Minister of Labour issued the scheme for determining the compensation for specific types of

occupational diseases due to asbestos exposure.

Platform work

In **Hungary**, the Supreme Court ruled that the legal relationship between a platform company and a worker does not qualify as an employment relationship due to the absence of extensive control and monitoring exercised over the worker. In **Portugal**, the Lisbon Labour Court recognised the existence of an employment relationship between a digital platform (in this case, Uber Eats) and a courier.

Transfer of undertaking

In **Denmark**, the Danish Supreme Court clarified the scope of protection for shop stewards in case of a transfer of undertaking, where the transferee does not take over the collective agreement. In the **Netherlands**, a District Court interpretation of the concept 'transfer of undertaking' within the meaning of Article 2 Directive 2001/23/EC on transfers of undertakings was published.

Working time

In **Croatia**, the Constitutional Court issued a ruling on the prohibition of shop operations on Sundays. In **Germany**, moreover, the Federal Labour Court ruled that in case of "zero short-time work", where work comes to a complete halt, days of illness should not be considered as compulsory work when calculating the employee's holiday entitlement. In **France**, the Constitutional Council upheld the constitutionality of Articles L. 3141-3 and L. 3141-5 of the French Labour Code, which restrict the accrual of paid leave during non-occupational illness and set a one-year limit for occupational cases. In another case, the Court of Cassation ruled that failure to respect the employee's daily rest period automatically gave rise to a right to compensation, without the need to demonstrate any prejudice.

Furthermore, in **Luxembourg**, a law has been passed amending the country's Labour Code and civil service legislation to address the absence of regulation when two public holidays coincide. In **Norway**, the Supreme Court ruled on whether an oil service worker was entitled to exemption from night work for health reasons.

Other developments

In **Croatia**, the Minister of Sea, Transport and Infrastructure has introduced the Regulation on Mediation in the Employment of Seafarers and Inland Navigation Crew (Official Gazette No. 21/2024), outlining criteria for entities mediating their employment, specifying authorisation procedures, and defining supervision measures. Moreover, in **Spain**, the Supreme Court ruled that employers cannot unilaterally set rules for digital device usage by workers. The involvement of representatives in the formulation of rules is deemed mandatory; failure to do so renders such rules null and void.

Implications of CJEU Rulings

Fixed-term work

This Flash Report analyses the implications of a CJEU ruling on fixed-term work.

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The CJEU case dealt with equal treatment between employees with a fixed-term and an open-ended employment contract.

It held that Clause 4 of the Framework Agreement on Fixed-term Work prohibits national legislation that allows an employer to not state the reasons for termination of a fixed-term employment contract with a notice period, although it is required to do so when an employment contract of indefinite duration is terminated. Thus, such difference in treatment infringes the fundamental right of fixed-term workers to an effective remedy.

The ruling will reportedly have little to no implications for the majority of countries, as national legislation and case law are already in line with the CJEU's decision.

Nonetheless, this is not the case for **Poland**, where prior to the April 2023 amendment to the Polish Labour Code employers were only required to provide reasons for the termination of employment contracts of indefinite duration. The April 2023 amendment now requires employers to state reasons for termination of both fixed-term and permanent employment contracts. Nonetheless, there may still be implications including potential effects on pending termination proceedings, debates on resumption possibilities, and considerations of state liability for damages due to non-compliance prior to April 2023.

The CJEU ruling is also relevant for **Greece** in relation to the fundamental right to an effective remedy, considering that according to national legislation, an employer may unilaterally terminate the employment relationship without presenting reasons for the termination.

Moreover, the CJEU's decision may have potential implications for **Cyprus**, if a similar case arises at national level. Similarly, the CJEU ruling may have an impact on **Latvia** given that the national legislation does not explicitly address whether, in the event of premature termination of a fixed-term contract, an employer is required to provide a notice of dismissal along with stating the reasons for the termination.

Table 1: Major labour law developments

Topic	Countries
Annual leave	CZ
Collective bargaining and collective action	CY CZ FI NO PL SL FR IE
Collective redundancies	DE ES
Data protection	ES FR IT
Dismissal protection	AT BE FR
Equal treatment between men and women	IT
Migrant workers	IE PL SE
Minimum wage	CZ PL PT SL GR
Occupational health and safety	BG HU IT NL NO RO SL
Parental leave	CY IS PL
Platform work	HU PT
Posting of workers	SE
Protection against discrimination	AT IT
Seafarers	CR
Temporary agency work	DE NL MT UK
Transfer of undertaking	DK NL
Work-life balance	LI ES
Working time	CR DE FR IT FR LT LU

Austria

Summary

Directive 2019/1152/EU was transposed approx. 18 months late, extending the existing obligations to provide information and introducing the right to parallel employment, provisions on mandatory training and protection against adverse treatment/consequences and dismissal (including provisions on the burden of proof).

1 National Legislation

1.1 Transposition of Directive 2019/1152/EU on transparent and predictable working conditions in the European Union

Directive 2019/1152/EU should have been transposed into national law by 01 August 2022. The Austrian legislator took its time: the National Assembly passed legislation transposing the Directive on 28 February 2024 (*Allgemeines bürgerliche Gesetzbuch, Arbeitsvertragsrechts-Anpassungsgesetz, u.a., 904/BNR*), and it still needs to be approved by the second chamber. It is scheduled to enter into force the day after its official publication.

Austrian law was partially compliant with the Directive, e.g. with relation to the maximum duration of the probationary period, which is one month. Hence, no transposition of Article 8 and 12 was required. Since Austrian law requires employers and employees to not only agree on the number of hours worked but also on the distribution of working hours (and only allows for amendments within the limits of § 19c Working Time Act – *Arbeitszeitgesetz* - and/or in works council agreements), no transposition of Article 10 and 11 of the Directive was required.

Most of the obligations in relation to the provision of information have already been addressed, and consequently, only minor amendments were necessary to transpose Articles 6 and 7 of the Directive. Administrative fines for non-compliance were added. Provisions on parallel employment, mandatory training and protection against adverse treatment/dismissal and burden of proof were introduced.

Obligation to provide information (Article 4 of the Directive)

Austrian law entails an extensive obligation to provide information to the employee at the beginning of the employment relationship (§ 2 AVRAG on the Written Record of the Content of the Employment Contract). This obligation has now been extended to fully cover all the obligations set out in Article 4 of the Directive, which partly exceed the previous requirements of Austrian law.

The following information requirements have been added:

- the procedure to be observed by the employer and employee, including the formal requirements and notice periods, when terminating the employment relationship (Article 4 para. 2 lit. j, see § 2 para. 2 No. 5 new AVRAG);
- seat of the company in addition to the name and address of the employer (Article 4 para. 2 lit b, see § 2 para. 2 No. 6 new AVRAG);
- brief specification or description of the work (in addition to the employee's tasks (Article 4 para. 2 lit. c ii, see § 2 para. 2 No. 8 new AVRAG));
- information on the payment of overtime hours (if any), in addition to a broad obligation to inform on remuneration (Article 4 para. 2 lit. k, see § 2 para. 2 No. 9 new AVRAG);
- information on the arrangements for changes in shifts (if any), in addition to agreed daily and weekly working times (Article 4 para. 2 lit. l, see § 2 para. 2 No. 11 new AVRAG);

- duration and conditions of an agreed probationary period, if any (Article 4 para. 2 lit. g, see § 2 para. 2 No. 14 new AVRAG);
- information on training entitlements provided by the employer, if any (Article 4 para. 2 lit. h, see § 2 para. 2 No. 15 new AVRAG).

Information on any amendments must be provided immediately, the latest on the day of its effectiveness (previously: within one month). If the employment contract contains all the necessary information, no additional provision of information is required.

In a similar manner, the already existing obligation to additionally inform temporary agency workers about their working conditions in the user undertaking they are assigned to (§ 11 Temporary Agency Work Akt – *Arbeitskräfteüberlassungsgesetz* - AÜG, which mirrored § 2 AVRAG on the Written Record of the Content of the Employment Contract) has now been amended to fully comply with the Directive's requirements.

Non-compliance with the obligation to provide information in a timely manner is now sanctioned with administrative fines ranging from EUR 100 to EUR 436, and in case of a repeat offence, between EUR 500 to EUR 2 000.

Additionally, the legislator has extended the obligation to provide information for freelancers (who are not qualified as employees under Austrian law, § 1164a General Civil Code – *Allgemeines Bürgerliches Gesetzbuch* - ABGB). Now, the seat of the company, in addition to the name and address of the contractual partner (new § 1164 para 1 No. 1 b ABGB), brief specification or description of the work (new § 1164a para 1 No. 6 ABGB) and the name and address of the obligatory severance pay fund (new § 1164a para 1 No. 8 ABGB) have been added.

Additional information for workers posted to another Member State or to a third country (Article 7 of the Directive)

§ 2 AVRAG on the Written Record of the Content of the Employment Contract in para 3 already contains specific information obligations in case the employee is posted outside of Austria. These obligations have also been amended to cover all information requirements specified in the Directive:

- the country or countries in which the work abroad is to be performed (Article 7 para. 1 lit. a, see § 2 para. 3 No. 1 new AVRAG);
- the remuneration to which the worker is entitled in accordance with the applicable law of the host state (Article 7 para. 2 lit. a, see § 2 para. 3 No. 4 new AVRAG);
- where applicable, any allowances specific to posting and any arrangements for reimbursing the expenditure on travel, board and lodging, both under Austrian law and under the law of the host state (Article 7 para. 2 lit. b, see § 2 para. 3 No. 5 new AVRAG);
- the link to the single official national website provided by the host Member State pursuant to Article 5(2) of Directive 2014/67/EU (Article 7 para. 2 lit. c, see § 2 para. 3 No. 6 new AVRAG).

The additional information obligation in § 11 para. 6 AÜG for temporary agency workers who are assigned to work abroad has been extended in a similar manner, as well as comparable additional obligations for freelancers in § 1164a ABGB.

The information on any amendments must be provided immediately, the latest on the date of its effectiveness (previously: within one month).

Parallel employment (Article 9 of the Directive)

The right to parallel employment had not yet been regulated in Austrian law, the regulations merely dealt with restrictions to parallel employment. Consequently, a new

regulation on parallel employment has been introduced in § 2i AVRAG. It reads as follows (unofficial translation by the author):

> *(1) The employee is entitled to conclude an employment contract with a different employer. The employee may not be subject to adverse treatment for doing so.*
>
> *(2) The employer may, in individual cases, request the employee to refrain from entering into another employment relationship in case the additional employment relationship*
>
> > *1. is not compatible with working time laws; or*
> >
> > *2. is detrimental to the performance of tasks within the scope of the employment relationship with the employer.*

The right to parallel employment does not affect the current regulation in § 7 Act on White Collar Workers (*Angestelltengesetz* - AngG), which prohibits white collar workers from working within the employer's line of business, either in an employed or self-employed capacity.

Mandatory trainings (Article 13 of the Directive)

The legislator has introduced the new § 11b AVRAG on trainings. The new regulation reads as follows (unofficial translation by the author):

> *(1) In case a certain training is required to perform the contractually agreed work by either mandatory laws, regulations, collective bargaining agreements or the employment contract,*
>
> > *1. the participation in these trainings shall be considered working time;*
> >
> > *2. the costs for these trainings are to be borne by the employer, unless a third party covers the costs.*
>
> *(2) Para. 1 does not prevent the conclusion of any agreements that are more beneficial to the employee.*

Protection against adverse treatment or consequence (Article 17 of the Directive)

§ 7 AVRAG contains the prohibition of adverse treatment of or consequences for employees who have made use of their rights in accordance with Article 45 TFEU and Directive 2014/54/EU. The legislator has now added in § 7 AVRAG that employees who have made use of their rights in relation to the obligation to provide information (including additional information for workers posted abroad), their right to parallel employment and their rights in relation to mandatory trainings may, as a consequence of the use of their rights, not be subject to dismissal, summary dismissal or any other adverse treatment.

Protection from dismissal and burden of proof (Article 18 of the Directive)

The newly introduced § 15 AVRAG contains additional protection against dismissal:

The employee may challenge the dismissal in case he/she was dismissed because:

- of his/her request for the provision of information (including additional information for workers posted abroad);
- permissible parallel employment;
- denial of a request for part-time employment after sick leave (reintegration part time);
- requested or agreed on education leave, education leave part-time, unpaid leave to receive benefits by the labour market authorities, reduction of working time due to an agreed solidarity premium model, reintegration part-time, reduction

of working time due to care obligations, including palliative care, care of severely sick children and full-care leave as well as part-time employment due to care obligations.

Under these circumstances, employees are not required to establish full proof of their claims, it suffices for them to make their claims plausible (lower standard of proof).

In case of a dismissal, the employee may request (in writing) the employer to state their reasons for the dismissal (in writing), if there have been measures in relation to the obligation to provide information on the employment relationship (including additional information for workers posted abroad), the right to parallel employment, mandatory trainings, reduction of working time due to care obligations, care leave and reduction of working time due to care obligations. The employee must make his/her request within five days of receiving the dismissal. The employer's lack of response does not, however, affect the dismissal's effectiveness.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

Under Austrian labour law, the employer does not have to state any reasons when terminating either an open-ended or a fixed-term employment contract by giving notice. Therefore, the decision does not have any direct implications for Austria. It should also be mentioned that terminating a fixed-term contract by giving notice is only possible if agreed upon and if there is good reason for increasing the employer's flexibility or if the fixed term is long enough. As a rule of thumb, the fixed term has to be at least one year for a dismissal by notice to be permissible (cf. *Brodil/Gruber-Risak*, *Arbeitsrecht in Grundzügen, 11th ed. 2022, recital 225*).

What is of interest, however, is the new enforcement aspect of the decision, which states that a dispute between individuals must be brought before the national court where it is not possible for the applicable national law to be interpreted in a way that is consistent with that clause, to ensure judicial protection within its jurisdiction, which individuals derive from Article 47 CFR and to guarantee the full effectiveness of that article by disapplying, in so far as necessary, any contrary provision of national law. This could potentially have a far-reaching impact as it may lead to a somewhat 'indirect' direct applicability of EU Directives, although it is not yet clear how generously the CJEU will apply Article 47 CFR. It is possible that it is only applied when challenging a dismissal, but more far-reaching readings thereof may be possible. The ruling could therefore potentially affect cases where the Supreme Court has detected a breach of EU labour law but stated that neither the national provision can be interpreted *contra legem* nor can the respective Directive be directly applied between individuals (for example Supreme Court, 8 ObA 58/22w, 21 November 2022 – Directive 1990/70/EC; Supreme Court, 9 ObA 106/06p, 19 December 2007 – Directive 2001/23/EG).

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) On 12 January 2024, the Flemish government specified the modalities in an Executive Order for the termination of statutory employment with the Flemish municipal and provincial authorities following the previously issued Dismissal Decree.

(II) Federal Parliament has approved a draft law to justify dismissal and prohibit the manifestly unreasonable dismissal of contractual employees in the public sector.

1 National Legislation

1.1 Dismissal law of civil servants in municipalities and provinces

The Executive Order of the Flemish Government of 12 January 2024 laying down the minimum conditions of employment under the legal status regulations for local and provincial government employees (Moniteur belge 01 February 2024) has been published. This so-called 'Dismissal Executive Order' amends the Flemish Government Order of 20 January 2023 stipulating the legal status regulations for staff members of local and provincial administrations. All provisions of the Dismissal Executive Order came into effect ten days after its publication in the Belgian Official Gazette, i.e. on 11 February 2024.

As discussed in the July 2023 Flash Report, a ground-breaking Decree of the Flemish Parliament of 16 June 2023, the so-called Dismissal Decree, abolished the administrative permanent appointment of civil servants in the administration of the Flemish cities, municipalities and provinces and replaced it with the same grounds for terminating the employment relationship that apply to employment contracts of regular employees.

The Dismissal Decree inserted Articles 194/1 and 194/2 in the Local Government Decree for municipalities and Articles 111bis and 111ter in the Provincial Decree for provinces, providing that the rules on dismissal in the Employment Contracts Law of 03 July 1978 apply mutatis mutandis to statutory staff members. As the same dismissal rules apply to contractors and statutory staff members, the Dismissal Decree also provides for the same jurisdictional protection. The labour courts were declared competent to hear disputes on the termination of the capacity of statutory staff members. The Dismissal Decree entered into force on 01 October 2023.

The Executive Order of 12 January 2024 is referred to as the Dismissal Executive Order. It partially implements the transposition of EU Directive 2019/1158 on work-life balance for parents and carers, so that statutory staff members, civil servants, such as employees with an employment contract, have the right to request flexible working arrangements for care purposes (Article 10).

Article 6 of the Dismissal Order addresses the consequence of an unfavourable evaluation of the staff member, i.e. including dismissal for occupational disability. However, a specification and derogation are included. Thus, after an unfavourable evaluation, the statutory staff member may, as an alternative to dismissal for professional incompetence, be reinstated in a suitable post of the same grade, provided the civil servant agrees to this.

A new provision of the Dismissal Order implementing the Decree of 16 June 2023 stipulates that when the employment of a statutory staff member is abolished for reasons of necessity for the functioning of the management, the statutory staff member shall be reinstated in a post of the same grade in its own administration or made available in an appropriate position of the same grade in another administration. Only

when reinstatement or posting is not possible, the statutory staff member may be terminated due to necessities for the functioning of management.

Following the entry into force of the Dismissal Decree, the appointment of a statutory staff member may also be terminated in accordance with the provisions of the Employment Contracts Law of 03 July 1978. The Executive Order therefore contains cases in which the notice period is suspended when the appointment of the statutory staff member is terminated in accordance with the provisions of the Employment Contracts Law. This is by analogy with the regime applicable to employees with employment contracts with local and provincial governments under Article 38 of the Employment Contracts Law. If the appointment of the statutory staff member is terminated by the management with notice, the notice period ceases to run during the following cases:

1° on taking annual leave;

2° upon taking maternity leave;

3° during the time when the staff member is absent due to measures of provisional deprivation of liberty;

4° upon taking circumstantial leave;

5° upon taking unpaid absence for compelling reasons;

6° upon taking adoption leave;

7° upon taking leave due to incapacity for work (Article 7).

The Executive Order regulates the prohibition of manifestly unreasonable dismissal of a statutory staff member under the Employment Contracts Law and the statutory sanction in case of a manifestly unreasonable dismissal. The sanction is perfectly analogous to the sanction regime in intersectoral Collective Bargaining Agreement No.109 concluded on 12 February 2014 in the National Labour Council for a manifestly unreasonable dismissal of an employee employed in the private sector. If the labour courts determine that a manifestly unreasonable dismissal exists, the public sector administration is liable to pay damages of a minimum of three and a maximum of 17 weeks in addition to statutory severance pay for not respecting the statutory notice period (Article 7).

The general principle of good administration of the right to be heard is also explicitly registered if the public administration intends to terminate the statutory employment of the civil servant based on the Employment Contracts Law. Following an actual dismissal, the public administration must also provide the concrete reasons for the dismissal in writing. If the public administration does not hear the staff member prior to dismissal or does not communicate the reasons for dismissal, the local public administration will owe the staff member compensation in the amount of two weeks' salary, except in case of immediate dismissal for gross misconduct (Article 7).

The Executive Order prescribes the analogous motivation in the legal status regulations for statutory staff members, which contractual employees in the public authority are also entitled to, such as dismissal protection for pregnant employees, parents who use maternity leave, dismissal protection for trade union representatives and for whistleblowers. Dismissal compensation that a dismissed statutory civil servant can obtain based on a special dismissal protection procedure cannot be combined with compensation for manifestly unreasonable dismissal (Article 7).

Finally, the Executive Order declares the provisions regarding outplacement and employability-enhancing measures applicable to statutory staff members who are dismissed based on the Employment Contracts Law (Article 7).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

On 15 July 2020, company X, the employer, terminated the fixed-term employment contract concluded for a period of two years and eight months with employee K.L. two years before the scheduled end date by a declaration and respecting the one-month notice period, in accordance with the provisions of Polish labour law in force. According to a provision of Polish law, which the Polish Constitutional Court did not find to be contrary to the constitutional principle of equality, the employer—unlike in the case of an open-ended contract—was not required to communicate the reasons for termination.

The crucial question in this case the referring Polish court asked was whether Clause 4 of the Framework Agreement on Fixed-term Work must be interpreted as precluding national legislation under which an employer is not required to state in writing the reasons for the termination of a fixed-term employment contract with a notice period, although it is bound by such an obligation in the event of termination of an employment contract of indefinite duration, and whether that clause may be relied on in a dispute between individuals (point 32 of the CJEU ruling).

The CJEU found that such unequal treatment of workers with a fixed-term or a contract of indefinite duration could not be justified even by the 'different socio-economic function' of these contracts cited by the Polish government. However, the most remarkable aspect of the decision concerns the question of direct effect. Indeed, according to the Court's settled case law, the provision of a Directive can never be directly applied in a dispute between private individuals, even if—such as Clause 4 of the Framework Agreement on Fixed-term Work contained in Directive 1999/70, which was breached in this case—has direct effect, in principle. In the present case, however, there was a provision of national law that denied the employee any information that would enable him to assess whether his dismissal might be unlawful. Consequently, the right to an effective remedy enshrined in Article 47 of the EU Charter of Fundamental Rights was not properly guaranteed in the present case. Article 47 guarantees access of individuals such as a fixed-term worker to legal proceedings. The Polish labour law legislation restricted proper access of fixed-term workers. Since the Charter's provisions, and thus of primary EU law always have horizontal effect, the national court was thus required to disapply the provisions in conflict with it and apply EU law directly to the dispute.

Strictly speaking, this judgment has little significance for Belgian employment law because, unlike Polish law, the Belgian Employment Contracts Law of 03 July 1978 does not permit the early termination by the employer of a fixed-term employment contract with a notice period.

Moreover, under Belgian law in the private sector, both employees with fixed-term contracts and employees with open-ended contracts have the right, in the event of dismissal by the employer after a period of employment of at least six months, to request specific reasons for the dismissal and thus to know these reasons (Articles 2, 3 and 4 CBA No. 109 of 12 February 2014 on reasons for dismissal).

4 Other Relevant Information

4.1 Draft Law on the motivation for the dismissal and on manifestly unreasonable dismissal of contractual employees

The Single Status Law for Blue Collar Workers and White Collar Employees of 26 December 2013 abolished the discriminatory provision of the ban on arbitrary dismissal for blue collar workers. This led to a lot of legal uncertainty on both sides of the employment contract, in particular with regard to the motivation for dismissal. The legislator intended to introduce new regulations, both for the private and the public sector. This was implemented in the private sector by Collective Bargaining Agreement No. 109 of 12 February 2014, but did not have any impact in the public sector as its scope is limited to private sector employers who fall under the Collective Bargaining Agreement Law of 5 December 1968. In Belgium, public administrations employ both statutory civil servants and employees with an employment contract. In addition, case law ruled that the formal obligation to specify the reasons for dismissal under public law does not apply to the dismissal of government contractors (see Constitutional Court, No. 84/2018, 05 July 2018). Neither private nor public law provided the necessary protection against manifestly unreasonable dismissal for the employee working for a public administration.

To remedy the problems, the Federal Government submitted a Draft Law on 18 January 2024 to justify dismissal and manifestly unfair dismissal of contractual employees in the public sector (Parliamentary Documents, Chamber of Representatives, 2023-24, No. 55-3754/001). This Draft Law has now been approved and will soon be published in the *Moniteur belge*. Thus, after about ten years (!), Article 38, 2° of the Single Status Law will also be implemented for employees in the public sector. The federal legislator has deliberately opted to ensure that the draft law is as closely aligned as possible with the dismissal rules in the Collective Bargaining Agreement (CBA) No. 109 for the private sector, but taking into account the specific characteristics of the public sector of public administrations.

These specific characteristics have manifested themselves in two deviations explained below:

(a) The mandatory procedure prior to the dismissal hearing of the employee

Article 3 of the Draft Law explicitly stipulates that a public employer must hear its contractual employee prior to dismissal and must therefore inform its employee in writing of the concrete reasons for the intended dismissal. If the public employer decides to dismiss the employee after the preliminary hearing, the notification of dismissal must be made in writing and specify the reasons for the dismissal. This written notification must contain the elements that enable the employee to be informed of the concrete reasons for his/her dismissal. If an employer fails to comply with this obligation to hear or provide reasons for the dismissal, the employer must pay dismissal compensation equal to two weeks' wages. The dismissal remains valid and is not void.

The sanction has been taken from CBA No. 109, which stipulates an identical sanction if an employer fails to communicate the reasons for dismissal. What is different, on the other hand, is that the legislator has chosen to deviate from the 'a posteriori motivation' that employees in the private sector are entitled to.

The legal obligation to hear the employee does not apply by analogy with CBA No. 109 to immediate dismissals for gross misconduct.

(b) Burden of proof in the event of a 'manifestly unreasonable dismissal' of the employee in the public administration

CBA No. 109 provides for a provision for the burden of proof that is adjusted to the progress of the notification of the specific grounds for dismissal. The burden of proof shifts to the party that has not (correctly) executed the notification, be it the employee

who fails to send the request for reasons to the employer or the employer who fails to respond to it.

Since the Draft Law bill does not provide for a similar notification system, Article 4 of the Draft stipulates that the burden of proof regarding manifestly unreasonable dismissal is regulated in accordance with Article 870 of the Judicial Code - whoever makes allegation also bears the burden of proof. The Draft Law penalises public employers who fail to communicate the specific reasons for dismissal by shifting the burden of proof to him/her in such a case.

Bulgaria

Summary

The National Assembly has ratified two important ILO Conventions – Nos 155 and 187.

1 National Legislation

1.1 ILO Conventions

On 15 February 2024, the National Assembly ratified two important ILO Conventions – Nos 155 and 187. The Laws on the Ratification of Convention 155 concerning safety and health at work and on the Ratification of Convention No. 187 of the International Labor Organization on the Framework for the Promotion of Safety and Health at Work have been promulgated in State Gazette No. 17 of 27 February 2024.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

CJEU case C-715/20 of 18 February 2024 will not have any implications for Bulgarian legislation and national practice in relation to the interpretation given to Clause 4 of the Framework Agreement on Fixed-term Work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP.

There are no rules in Bulgaria that would lead to a difference in treatment in the event of dismissal of fixed-term workers or workers with a contract of indefinite duration. The national legislation applies the principle of explicitly and comprehensively established grounds for dismissal. These grounds for termination of the employment contract are established in the Labour Code (Articles 328 and 330). Specific grounds are established in special laws for some categories of employees. The right to dismissal with or without notice applies to both permanent and fixed-term contracts. The employer is required to draw up and deliver a written document to the employee stating the grounds for dismissal (Article 128a of the Labour Code). The moment of termination is determined in accordance with generally established rules (Article 335 LC).

Article 68(3) LC provides that fixed-term workers shall have the same rights and obligations as workers with an employment contract of indefinite duration. They may not be placed at a disadvantage solely because of the fixed-term nature of their employment relationship compared with workers with an open-ended contract and who perform the same or similar work in the undertaking, unless the law makes entitlement to certain rights conditional on the qualifications or skills acquired. Where there are no workers employed in the same or similar work, fixed-term workers may not be placed at a disadvantage compared with other workers who are employed under a contract of indefinite duration.

4 Other Relevant Information

4.1 European Labour Authority

The challenges mobile workers and employers who employ them face were discussed by the Minister of Labor and Social Policy, Ivanka Shalapatova, and the Executive Director of the European Labour Authority, Kozmin Boyanjiu, with representatives of the institutions involved in the implementation of legislation in this area and the social partners. The discussion took place within the framework of a round table on the topic "*The processes of the Bulgarian labour market and their impact on the labour mobility trends of Bulgarians in the EU and their rights*". It was organised by the Ministry of Labour and Social Policy (MLSP) as part of the programme of Kozmin Boyanjiu, who came to Bulgaria on a one-day visit at the invitation of Minister Shalapatova.

Croatia

Summary

(I) The Minister of Sea, Transport and Infrastructure has issued the Regulation on Mediation in the Employment of Seafarers and Crew Members of an Inland Navigation Vessel. The Government of the Republic of Croatia has issued a set of regulations that are relevant for the calculation of salaries in the public sector.

(II) The decision of the Constitutional Court of the Republic of Croatia on banning the operation of shops on Sundays has been published.

(III) The data on average monthly paid net salary and average monthly gross salary for employees in legal entities of the Republic of Croatia for 2023 have been published.

1 National Legislation

1.1 Regulation on Mediation in the Employment of Seafarers

The Minister of Sea, Transport and Infrastructure has issued the Regulation on Mediation in the Employment of Seafarers and Crew Members of an Inland Navigation Vessel (Official Gazette No. 21/2024). It establishes the conditions that must be met by legal entities that mediate the employment of seafarers and crew members of an inland navigation vessel, the procedure and manner of their authorisation and the supervision of their work. The provisions of this Regulation do not apply to the Croatian Employment Service.

1.2 A set of government regulations on salaries in the public sector

The Government of the Republic of Croatia has issued a set of regulations relevant for the calculation of salaries in the public sector (Official Gazette No. 22/2024). Most of the trade unions in the public sector are satisfied with the increase in salaries, but the trade union *'Preporod',* which represents school employees, rightfully protests against the illogical differentiations in the salaries of public servants whose work is of equal value.

2 Court Rulings

2.1 Decision of the Constitutional Court of the Republic of Croatia on banning the operation of shops on Sundays

The decision of the Constitutional Court of the Republic of Croatia on banning the operation of shops on Sundays (U-I-3291/2023, 14.2.2024) has been published (Official Gazette No. 21/2024).

The Croatian Employers' Association, as well as other applicants, challenged before the Constitutional Court of the Republic of Croatia, Article 57 of the Trade Act of 2008 (last amended in 2023) on banning the operation of shops on Sundays. The challenged provision states:

> *"(1) The working hours of sales facilities are determined by the retailer in the periods from Monday to Saturday for a total duration of up to 90 hours per week, which the retailer distributes independently.*
>
> *(2) Sales facilities are closed on Sundays.*

(3) Sales facilities are closed on holidays. The Government of the Republic of Croatia may, by decision, determine sales facilities that are required to work on public holidays in the Republic of Croatia in accordance with the law regulating public holidays, memorial days and non-working days in the Republic of Croatia.

(4) The trader can independently designate 16 Sundays of the year as working days, with the provision that 15 hours are added to the working hours of sales facilities from paragraph 1 of this article, which he allocates from Monday to Sunday.

(5) The provisions of paragraphs 1 to 4 of this article do not apply to sales facilities that are located within or are an integral part of the whole:

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

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

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

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

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

(10) In order to implement the inspection procedure, the Ministry of Finance, the Tax Administration are required to submit to the competent inspector, at his request, data from the fiscal system about the merchant's working week."

The Croatian Employers' Association claims that the consequence of this provision would be the dismissals of workers employed in shops. Furthermore, it claims that this provision put certain entrepreneurs in an unfavourable position because some of them are allowed to be open on Sundays (e.g. gas stations, railway and bus stations) as opposed to others whose operation has been banned on Sundays. The opening hours of shops are limited by law but the working hours of the workers in shops are not limited by this provision. This means that the workers could work on Sundays in different jobs aside from as salespersons. Even shop owners are prohibited from working as salespersons on Sundays in their shops. One of the impetuses for banning the operation of shops on Sundays was work-life balance and in particular the protection of female employees since the trade sector is a female-dominated sector (70 per cent of salespersons in retail stores in Croatia are female). The Croatian Employers' Association claims that this goal would not be achieved by banning the operation of shops on Sunday and that the only consequence would be lower salaries and dismissals of salespersons because of the reduced need for workers.

The Constitutional Court of the Republic of Croatia arrived at the conclusion that this provision of the Trade Act is in line with the Constitution. However, in their dissenting opinion, three judges of the Constitutional Court of the Republic of Croatia were of the

opinion that this provision of the Trade Act restricts entrepreneurial freedom, and that it is not a proportionate means to achieve the goal of work-life balance. They think that this goal could not be achieved in this manner.

> *"This is because the ban on working on Sundays, which is clearly discriminatory, affects only (some) workers in the trade sector, and does not include workers in the catering industry and many other activities, even in those that, such as betting shops and cafes, probably do not have the most favourable impact on the 'family life and social well-being of citizens'. And catering workers may have families, and gas station workers may be members of someone's family."*

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The Croatian law on dismissal of fixed-term employment contracts is in line with the judgment of the CJEU in case *C-715/20*. Namely, according to Croatian law (derived from Articles 115(1) and 116(1) of the Labour Act), the employer is required to provide a justified reason for dismissal in both cases: in case of dismissal of an open-ended employment contract as well as in case of dismissal of a fixed-term employment contract.

4 Other Relevant Information

4.1 Average salaries

Data on the average monthly net salary and average monthly gross salary per employee in legal entities of the Republic of Croatia for 2023 have been published (Official Gazette No. 21/2024).

The average monthly net salary per employee in legal entities of the Republic of Croatia for 2023 amounted to EUR 1 148. The average monthly gross salary per employee in legal entities of the Republic of Croatia for 2023 amounted to EUR 1 584.

Cyprus

Summary

Amending legislation extends maternity and paternity leave.

1 National Legislation

1.1 Amending legislation extends maternity and paternity leave

New legislation was introduced to extend maternity leave granted for the first-born child or for the adoption of a first child through adoption or surrogacy, and to extend the period for which maternity leave is granted in case of hospitalisation of the infant.

- Extension of the period of maternity leave in case of the first-born child or the adoption of a first child through a surrogate mother from 18 weeks, as currently in force under the provisions of the Basic Law, to 22 weeks.
- Extension of the period of maternity leave in case of adoption of a first child through adoption from 16 weeks, as currently in force under the provisions of the Basic Law, to 20 weeks.
- Extension of the maximum period for which additional maternity leave may be granted in case of hospitalisation of the infant from six weeks, as currently in force under the provisions of the Basic Law, to eight weeks.
- An additional week of maternity leave shall be granted in the event of hospitalisation of the infant for each additional 14 days of hospitalisation if the hospitalisation continues after the first 64 days.
- Inserting a transitional provision to make the proposed provisions of the first bill applicable to any tenant who is already on maternity leave on the effective date of such regulations.

The Social Security Law has been amended to extend the period of time for which maternity benefit is paid for the first-born child or for the first child adopted through adoption or surrogacy and to extend the period of time for which maternity benefits are paid in the event of the infant's hospitalisation. Specifically, the provisions of this bill provide for the following:

- Extension of the period for which maternity benefits are payable in the case of the first-born child or the first child adopted through a surrogate mother from 18 weeks, as currently in force under the provisions of the Basic Law, to 22 weeks.
- Extension of the period for which maternity allowance is payable in the case of the first-born child acquired through adoption from 16 weeks, as currently in force under the provisions of the Basic Law, to 20 weeks.
- Extension of the maximum period for which additional maternity allowance is paid in case of hospitalisation of the infant from six weeks, as currently in force under the provisions of the Basic Law, to eight weeks.
- Granting an additional week of maternity allowance in the event of hospitalisation of the infant for each additional 14 days of hospitalisation if the hospitalisation continues after the first 64 days.
- Provision of a transitional provision to make the proposed regulations in the second bill applicable to any insured mother already on maternity leave on the effective date of this regulation.

In the context of the Committee's examination of the bills, the Minister of Labour and Social Insurance stated that the proposed regulations contribute to further improving the relevant legislative framework, have been submitted as part of a package of

measures that the executive intends to promote to reconcile work and family life, and are expected to benefit around 5 000 new working mothers annually.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

This is an important decision that will have implications for labour law and practice relating to fixed-term contracts. The CJEU has ruled that Clause 4 of the Framework Agreement must be interpreted as precluding national legislation according to which an employer is not required to state, in writing, the reasons for the termination of a fixed-term employment contract with a notice period, although it is bound by such an obligation in the event of termination of an employment contract of indefinite duration. The national court hearing a dispute between individuals is required, where it is not possible for it to interpret the applicable national law in a way that is consistent with that Clause, to ensure, within its jurisdiction, the judicial protection which individuals derive from Article 47 of the Charter, and to guarantee the full effectiveness of that Article by disapplying, in so far as necessary, any contrary provision of national law.

Fixed-term work is regulated by the law (Law 98(I)2003, 25 July 2003, '*FT Law*') purporting to transpose Directive 1999/70/EC on Employees with Fixed-term Work (Prohibition of Less Favourable Treatment) of 2003, herein referred to as the 'Framework Agreement' or 'FAD'. The law (*Law 70(I)2002, 07 June 2022, amending the Law on Termination of Employment, published in Cyprus Official Gazette 3610, 07 June 2002, effective 01 January 2003*) entered into force a year prior to EU accession, explicitly stipulating its purpose to harmonise Cypriot law with the Directive. Section 2 of the FT Law defines 'fixed-term worker' as a person who has entered into an employment contract or relationship directly with an employer, under which the end of the employment contract or relationship is determined by an objective condition such as the reaching of a specific date, completion of a specific task, or the occurrence of a specific event. Section 2 of the FT Law defines the term 'comparable employee with work of indefinite duration' as a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills. The wording of Clause 3.2 of the Framework Agreement is copied verbatim. No minimum period of continuous employment is required to be entitled to the protection under the FT Law.

Section 5(3) of the FT Law copies the text of Clause 4.4 of the Framework Agreement verbatim; 'objective grounds' is defined in Section 7(2) of the FT Law (transposing Directive Clause 5 of the Framework Agreement with reference to the measures preventing abuse). Section 7(2) provides that objective grounds exist especially where:

- The needs of the undertaking with regard to the execution of a particular task are temporary;
- The employee is replacing another employee;
- The special nature of the work that must be carried out justifies the fixed-term duration of the contract;
- The employee is employed on probation (the concept of 'probation' is found in the Termination of Employment Law);
- The employment on the basis of a fixed-term contract is in pursuance of a court decision;
- The employment on the basis of a fixed-term contract concerns employment in the National Guard of the Republic of Cyprus, volunteers with a five-year

obligation. The employment of National Guard volunteers (the precise term used is 'volunteers of a five-year service') is covered by a special scheme regulating the service of these individuals in the Army for a period of five years, because conscription to the Cypriot Army is otherwise obligatory for a term of two years (approximately) with the exception of a few permanent posts. These persons are highly qualified professionals and have been trained in operating advanced technology weapons, which is why they are given a five-year contract of service, presumably in an effort to allow flexibility for the government to review the situation every five years and decide according to the circumstances as to whether their services are needed or not. There were media reports in early 2006 about these employees protesting against abuse of their position by the government.

The use of the word 'especially' in the opening section of this Article implies that the above list is not exhaustive. The FT Law applies to two categories of workers: workers in the private sector and workers in the public sector.

Equal treatment in Cypriot employment law is not only a general principle derived from Article 28 of the Cypriot Constitution, the ECHR and EU law, such as the Charter, it is also enshrined in the legislation on termination of employment. However, the mechanism that effectively implements the principle of non-discrimination is implied by law into contracts of employment, particularly following the enactment of a comprehensive set of legislation in 2004, transposing the anti-discrimination Directives 2000/78/EC and 2000/43/EC. Fixed-term employees have the right to be treated equally like regular permanent employees. The principle of non-discrimination as enshrined in the Law (Section 5(1) of the Cypriot Law copies verbatim the text of Clause 4.1 of the Framework Agreement) provides that with reference to employment conditions, fixed-term workers shall not be treated less favourably than comparable permanent workers solely because they have a fixed-term contract or relationship, unless differentiated treatment is justified on objective grounds. There is no definition of 'employment conditions' in the FT Law.

With regard to termination, the basic position is that where an employment relationship has been concluded, i.e. a contract of employment, it is for the employer to prove that one or more of the valid reasons for termination of contract apply, otherwise the termination of the contract is unlawful. The Law sets out the conditions under which an employer may lawfully terminate an employee's contract. The Law contains a list of situations giving rise to terminations of the employment relationship without the right to compensation. These are the following (see Section 5 of the Law on Termination of Employment (*Ο περί τερματισμού της απασχόλησης νόμος)* No. 24 of 1967):

- Employers may lawfully dismiss employees who have not performed their work duties in a reasonably satisfactory manner.
- As a result of redundancy.
- Due to force majeure.
- When a fixed-term contract expires.
- Upon reaching pensionable or retirement age.
- Where the employee's conduct was such rendering him or her liable to dismissal without notice.

Under those circumstances, the dismissed employee has no right to compensation, unless the employment relationship was terminated as a result of redundancy, in which case the employee is entitled to compensation from the State Redundancy Fund. There is a rebuttable presumption in law that the termination is unlawful; the burden of proof to rebut this presumption lies with the employer (see Section 6(1) of the Law on Termination of Employment (*Ο περί τερματισμού της απασχόλησης νόμος)* No. 24 of 1967).

The employer is therefore required to provide reasons for the dismissal in cases of termination of the contract of employment, irrespective of whether they are employed on a contract of indefinite duration or a fixed-term contract. No case has been brought before the courts over this matter, but it is questionable whether in practice this is followed in cases of termination of fixed-term contracts. Therefore, *CJEU case C-715/20, 20 February 2024, X* clarifies and provides a clear position about the employer's obligation to provide reasons for dismissal.

4 Other Relevant Information

4.1 Prison guards strike over the Ministry's decision to terminate fixed-term contracts

On 29 February 2024, the two prison guard trade unions, ISOTITA and PASYDY, organised a two-hour work stoppage and demonstration outside the Central Prisons. The protest was arranged in response to the Ministry of Justice's contentious decision to terminate the contracts of 13 fixed-term prison employees. The unions released a collective statement denouncing the terminations as unjust and illogical, highlighting the possible repercussions on an already burdened prison system, emphasising that everyone is essential in a critical and underfunded sector. The decision to protest stems from growing concerns regarding staff shortages and the overall welfare of prison employees. The collective action aimed to contest the Ministry's decision and highlight the crucial role each staff member plays in the secure and efficient operation of the prison system.

Czech Republic

Summary

(I) An amendment to the Labour Code is being discussed in the legislative process to introduce an automatic indexation mechanism for setting the minimum wage, regulate levels of guaranteed wages and address the conclusion of collective agreements in the event of a plurality of trade unions at the employer.

(II) The Supreme Court of the Czech Republic issued a decision addressing the accrual of an employee's right to leave during the period when it was not possible to perform work due to an invalid termination of employment.

(III) A draft flexible amendment to the Labour Code is being discussed with the social partners, which is intended to address in particular the termination of employment.

1 National Legislation

1.1 Amendment to the Labour Code

The Ministry of Labour and Social Affairs has submitted a draft amendment to the Labour Code (LC) and other related laws to the Government Office. The new bill proposes the introduction of a mechanism for minimum wage indexation, changes to the current regulation of wage guarantees, and a solution to the plurality of trade union activities at the employer.

Minimum wage increases are to be linked to objective criteria, with increases occurring automatically without the need for a government decree. Additionally, the guaranteed wage, which comprises eight levels of minimum wages for employees based on the complexity, responsibility and arduousness of the work performed (Section 112 LC) under Czech law, is to be adjusted. The change aims to reduce the number of levels and flatten the increase of the minimum wage within them. Section 24 of the Labour Code, which limits collective bargaining, is to be amended as well. This section currently states that if an employer has multiple trade unions that cannot agree on a common procedure for concluding a collective agreement, a collective agreement cannot be concluded. The proposed amendment allows for the possibility of entering into a collective agreement with the trade union that has the largest number of members at the employer, unless the employees state otherwise. The rights of other trade unions to engage in social dialogue are to be respected.

Moreover, the proposed changes should address the regulation of service relationships for civil servants and members of the security forces. The amendment is scheduled to take effect on 01 July 2024. The draft is currently under discussion in the working committees of the Legislative Council of the government and will subsequently be submitted to the plenary session of the Council. It is expected to be approved by the Government of the Czech Republic in coming weeks. Further details will be provided following its approval by the government given possible changes to the draft.

2 Court Rulings

2.1 Right to leave

Judgment of the Supreme Court of the Czech Republic, 21 Cdo 1053/2022-230

The Supreme Court case law in question dealt with a dispute where the lower courts, based on a decision that the termination of employment was invalid, decided on the employee's right to be granted leave during the period when the litigation was pending, and it was not possible to grant leave. The Supreme Court did not question, in the light

of CJEU case C-57/22, the right to leave for that period, but, in the light of CJEU cases C-762/18 (*Varchoven kasacionen sad na Republika Bulgaria*) and C-37/19 (*Iccrea Banca*), it allowed an exception to the established rule in case the employee performed work for another employer under an employment contract during the period in which the dispute over the validity of the termination of the employment relationship was pending and was entitled to leave with that employer. The Court thus concluded that the employee was not entitled to leave pay for the entire period during which the dispute over the validity of the termination of his employment was pending with his 'home' employer; i.e. he was not entitled to leave pay to the extent that that entitlement arose with another employer.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

Czech legislation does not derogate from the CJEU's decision. Section 52 of the Labour Code states that an employer can only terminate an employment contract for reasons explicitly listed in the provision. An employer is not permitted to terminate an employment relationship without cause, even fixed-term employment relationships. The Czech Labour Code does not provide for an exception to the termination of fixed-term employment. An employer may terminate a fixed-term employment relationship only for reasons defined by law, under the same conditions as an employment relationship of indefinite duration.

4 Other Relevant Information

4.1 Upcoming flexible amendment to the Labour Code

Discussions with social partners are ongoing regarding a proposal for further amendments to the Labour Code. The aim is to increase flexibility in Czech labour law, which will support the recovery of the labour market during the current economic crisis. The proposed measures will focus on terminations of employment relationships and work scheduling. The new bill is expected to be submitted in coming months, with an anticipated effective date of 01 January 2025.

Denmark

Summary

A recent ruling of the Danish Supreme Court clarifies the scope of protection for shop stewards (under Danish collective labour law) in case of transfers, where the transferee does not take over the collective agreement.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Transfer of undertakings, employee representation

Supreme Court, sag BS-27443/2023, U 2024.1803 H, 30 January 2024

(*Appeal of Eastern High Court Ruling of 23 May 2023, mentioned in the May 2023 Flash Report*)

On 01 February 2020, the private Company X took over nearly 100 employees, including employee A from a public employer. It was undisputed that a transfer had taken place within the meaning of the Danish Act on Transfers of Undertakings. The Act implements EU Directive 2001/23/EC.

Prior to the transfer, employee A was covered by a collective agreement, which inter alia contained rules on the election and protection of shop stewards (*tillidsrepræsentant*). Employee A had been elected shop steward before the transfer in accordance with these rules. Company X did not have a collective agreement before the transfer and used the possibility under Danish law to denounce the collective agreement applicable at the transferor's business in connection with the transfer. In this situation, the transferee must continue to respect all the rights and obligations of the (former) collective agreement for the transferred employees until the date of expiry of the (former) collective agreement. The right to denounce the collective agreement only concerns the right to have the status as a party to the agreement, it does not change the duty to adhere to the provisions in the agreement for the transferred employees.

On 25 November 2020, company X announced that it would introduce changes to the working conditions of the transferred employees as of 01 June 2021, i.e. with a 6 months' notice. Employee A refused to accept the changes and her employment relationship was terminated on 31 May 2021.

The case concerned the rights of the elected shop steward after the transfer. The question was, first, whether she had a right to continue her function and legal status as a shop steward after the transfer, and second, the length of her special shop steward employment protection after the transfer in case her functions were not continued.

The relevant provision of the Danish Act was sections 4(1-2), which implement Article 6(1-2) of the Directive.

According to section 4(1), an employee representative maintains his/her function and legal protection after a transfer. From the preparatory works it follows, inter alia, that section 4(1) covers the situation where the transferred workers' functions are not affected by the transfer. In such situations, the employee representatives maintain their existing legal protection and function.

The exception is specified in section 4(2), namely when the transfer has the consequence that 'the basis' for representation ceases. In that case, the employee

representative is entitled to continue to be covered by the special employment protection granted to shop stewards. The Danish provision has a temporal limitation to continued protection. The protection continues for a period calculated from the expiry of the function corresponding to the length of the notice period applicable to employee representatives, i.e. the employee's individual notice period + the extended notice period as shop steward.

The Danish Supreme Court determined that section 4 was to be understood in a way that a shop steward does not maintain his/her *function* under the collective agreement, if the company does not keep its independence following the transfer, as the basis for employee representation under the collective agreement in that situation must be regarded as having ceased. The 'basis' for employee protection thus refers to the factual situation of the transferred entity after the transfer, and not to the legal basis for the election and function of shop stewards in the collective agreement. The Eastern High Court had ruled that the 'basis' for the continued functions as shop steward should be interpreted as meaning the legal basis, i.e. the collective agreement. The Supreme Court changed this interpretation.

As the parties to the specific case agreed that the (transferred) company had not kept its independence after the transfer, the Supreme Court ruled on the first question, namely whether the function of the employee as shop steward had ceased in connection with the transfer, due to her rejection of the collective agreement.

The second question then was the length of the continued employment protection as shop steward, as outlined in section 4(2).

The temporal framework for a right to extended employment protection is the individual and enhanced dismissal notice. In this case, the individual dismissal notice was 6 months, and the extended notice period for shop stewards was 3 months, so the employee was entitled to 9 months special dismissal protection as a shop steward. The time started at the time of cessation of her functions, which, in this case, was the date of the transfer, as already established by the Supreme Court.

Her enhanced employment protection as a shop steward would therefore cease after 9 months after the date of the transfer, i.e. on 31 October 2020. As Company X had given notice of the change in employment conditions in November 2020, it had not breached the Act on Transfers of Undertakings section 4(2).

As mentioned, the Eastern High Court had arrived at the same conclusion but on different grounds.

The Supreme Court arrived at the same conclusion as the Eastern High Court, but on very different grounds.

The Eastern High Court ruling had focused on the collective agreement not being in force at the transferee undertaking, and thus the 'basis' for the function of collective representativeness no longer existed after the transfer. This would align with the usual Danish approach to shop stewards, where the collective agreement embodies the enhanced rules on the election, function and protection of shop stewards, which is not enshrined in general employment legislation.

The question relevant to the specific case was how the protection of a shop steward is affected by a transfer, where the transferor does not agree to be bound by the collective agreement applicable at the transferee undertaking.

The Eastern High Court arrived at a conclusion that was less in line with the wording and approach of the underlying EU Directive Article 6(1) and (2). The Supreme Court's interpretation aligns with the understanding of section 4 in the Danish Act on Transfer of Undertaking almost verbatim with Article 6(1).

The Supreme Court ruling clarifies that the interpretation of section 4 should be aligned with Article 6(1) and that the condition for the continued function, cf. Article 6(1) and section 4(1), depends solely on whether the transferred entity retains its autonomy. The

word 'autonomy' in Article 6(1) is not transposed into the Danish Act section 4(1) or 4(2). Thus, the Supreme Court had to interpret this underlying understanding of 'autonomy' in the word 'basis' in section 4(2).

The interpretation of the Supreme Court thus aligns with the EU law acquis as outlined in Articles 6(1) and 6(2) of the ToU Directive, and the concept of 'autonomy' as discussed by the CJEU in the ruling C-151/09.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The case concerned a Polish employee whose fixed-term employment relationship was terminated before the intended expiry date. The contract was terminated with one months' notice period. According to Polish statutory legislation, an employer is only required to state (in writing) the reasons justifying that termination in case of contracts of indefinite duration, but not in case of fixed-term employment contracts (whether or not that employee is terminated with notice). Accordingly, the employee had not been informed of the reasons for the termination by his employer and brought a claim for compensation before the national courts.

The question—according to the CJEU—was whether Clause 4 of the Framework Agreement on Fixed-term Work, which is annexed to Council Directive 1999/70/EC, must be interpreted as precluding such national legislation, and whether that Clause may be relied on in a dispute between individuals. In its reformulation, the CJEU stated that it was not necessary, as had been put forward by the referring courts, to rule on the request for an interpretation of Article 21 of the Charter.

The employee was undisputedly a fixed-term worker who fell within the Directive's personal scope. The question was whether the case concerned 'employment conditions' within the meaning of Clause 4 of the Framework Agreement. By relying on existing case law and the objective of the provision—to protect fixed-term workers against less favourable treatment—the CJEU found that the conditions relating to the termination of a fixed-term contract fall within the scope of that provision.

Furthermore, the CJEU ruled that the prohibition of discrimination laid down in Clause 4(1) of the Framework Agreement is a specific expression of the general principle of equality. The Clause articulates a fundamental principle of EU social law and cannot be interpreted restrictively.

As to the question whether the legislation at issue results in a difference in treatment which amounts to less favourable treatment of fixed-term workers as opposed to comparable permanent workers, the CJEU found that first, it appears that fixed-term workers can be compared to workers employed on a contract of indefinite duration in light of the general nature of the national legislation. Second, the CJEU found that the fixed-term worker had been deprived of important information for assessing whether the dismissal is unjustified and for determining whether to bring proceedings before a court, amounting to a difference in treatment between these two categories of workers. The CJEU added, inter alia, that an early termination of a fixed-term employment contract disrupts the normal course of that employment relationship, liable to affect a fixed-term worker at least as much as the termination of an employment contract of indefinite duration for the corresponding worker. The final assessment is subject to the verification for the referring court. The CJEU also assessed whether such difference in treatment could be justified by objective grounds, but found that the objective relied on by the Polish government in any event do not appear to be necessary.

On the question of direct effect, the CJEU reiterated that directives cannot be given horizontal direct effect. The CJEU added that the national legislation in question restricts

access of fixed-term workers to legal proceedings, the guarantee of which is enshrined in particular in Article 47 of the Charter. The right to effective remedy in Article 47 of the Charter is sufficient in itself and does not need to be made more specific by provisions of EU or national law to confer on individuals a right on which they may rely as such. Thus, the national court is required to disapply provisions of national law that are contrary to Article 47, also in a dispute between individuals, in so far as EU-conform interpretation is not possible.

Under Danish law, Council Directive 1999/70/EC has been transposed by Act No. 907 of 11 September 2008. This legislation implements the Directive and the principle of equal treatment without making specific the working conditions to which fixed-term workers are entitled.

Under Danish law, there is no general statutory employment legislation on the right to receive a written statement of the reasons for a termination by the employer applicable to all employees. There are, however, specific regulations hereof that only give certain categories of employees such a right, both in law and in collective agreements. Examples are:

- For public employees, the Danish Public Administration Act sections 22-24 requires the employer to give a concurrent written confirmation of the reasons for a termination made in writing. Terminations are generally always delivered in writing.
- For salaried employees, the Danish Act on Salaried Employees, section 2(7) entitles an employee to request a written confirmation of the reasons for the termination. The employer is not required to state the reasons, unless such a request is made by the employee.
- Under the main agreement between the largest trade union and employer confederation (Hovedaftalen mellem DA og LO), section 4(3), the employee may request a written confirmation of the reasons for the termination from the employer, but only if that employee has nine months of seniority.

To conclude, all of Danish legislation differs from Polish legislation in that the right to a written statement of the reasons for a termination is not a general right attributed to all employees as such. The legislation does not have the same general nature.

Second, it does not follow from any of the legal sources mentioned above that a fixed-term employee, who is subject to 'early termination' with a notice period, cannot exercise the right to a written statement of the reasons for the termination. There does not appear to be any difference in treatment.

The CJEU's ruling does not seem to have any implications for Danish law and the Danish regulations are in line with the EU law acquis.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

Estonian legislation now allows employees to work during long-term sick leave. This is deemed necessary to avoid long absences from the labour market.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The decision of the European Court of Justice dealt with equal treatment between employees with a fixed-term and an open-ended employment contract. The focus was the difference in treatment which explains the justification for the termination of an employment contract. The Court's decision has limited implications for Estonian legislation. The Estonian Employment Contracts Act (*'ECA'*) does not distinguish between fixed-term and open-ended employment contracts as regards terminations of employment contracts. According to § 95 of the ECA, a termination of an employment contract by the employer must be made in writing. In addition, during the notice period, justification must be provided as to why the employer is terminating the employment contract. This applies both to fixed-term and open-ended employment contracts. Both Estonian labour legislation and case law are in line with the requirements of European Union Directive 1999/70/EC. There is no discrimination between employees with an open-ended or fixed-term employment contract.

However, the interpretation of the European Court of Justice on the application of judicial protection of Article 47 of the Charter of Fundamental Rights of the European Union by a domestic court can certainly be considered important.

4 Other Relevant Information

4.1 Employers support working during long-term sick leave

The Estonian government plans to allow employees to work part time or to perform light tasks during sick leave of more than two months and to receive a salary. The purpose of these changes is to ensure employees can receive an income, maintain their relationship with the labour market and prevent the development of a permanent incapacity for work.

Employers support the principle of this possibility. A healthy person is crucial for society and the economy, and in the deepening labour crisis, it is important to prevent the loss of working capacity. It is important for employees to remain on the labour market for longer.

At the same time, employers have pointed out the risks of abuse and the possible costs to the State and employers. Since health care is expensive, introducing new services and such changes might bear particular risks.

This change covers an average of 17 000 employees who have been on sick leave for over 60 days annually. Of these, an estimated 5 000 people would use the opportunity to work while on sick leave, and approximately 1 800 would need Unemployment Insurance Fund support services to do so. In addition, under certain conditions, the State plans to pay the employee’s salary from the Health Fund's budget.

Working while on long-term sick leave is voluntary for the employee as well as the employer, but may require the guidance of an expert or occupational health doctor.

The work disability prevention system will start on 01 April 2024, and its implementation will be partly financed by the European Social Fund.

Finland

Summary

The government has submitted its proposal for amendments to the industrial peace legislation to Parliament. The proposal includes changes to the sanctions for unlawful strikes, limiting solidarity actions and restricting the length of political industrial action.

1 National Legislation

1.1 Government Bill on amendments to industrial peace legislation

The government submitted its proposal for amendments to the industrial peace legislation to Parliament on 29 February 2024 (Government Bill, HE 12/2024 vp). The purpose of the reform, which is based on the Government Programme, is to enhance the sanctions system for unlawful strikes, limit disproportionate solidarity action and restrict the length of political industrial action.

According to the proposal, the level of compensatory fines for a breach of the peace obligation would be maximum EUR 150 000 and minimum EUR 10 000. These fines would also apply to illegal disproportionate solidarity action and political industrial action that exceeds the maximum duration. An employee who continues an industrial action, which the Labour Court has found to be unlawful, could be sentenced to a compensatory fine of EUR 200. Moreover, disproportionate solidarity actions would be limited. In addition, the maximum duration of political work stoppages would be limited to 24 hours and the maximum duration of other political industrial action to two weeks.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

In principle, a fixed-term employment contract may not be terminated in Finland unless this has been specifically agreed on. The other party must be notified of the termination of the employment relationship in person. If this is not possible, the notification may be sent by mail or e-mail. The rules on the termination of an employment relationship are included in the Employment Contracts Act (*Työsopimuslaki*, 2001/55).

4 Other Relevant Information

4.1 Study of the coverage of collective agreements

A study of the coverage of collective agreements (*Työ- ja elinkeinoministeriön julkaisuja* 2024:7) has been published by the Ministry of Economic Affairs and Employment. According to the study, the coverage of collective agreements means the share of employees employed by organised employers of all employees within the collective agreement sector. In Finland, this share is an important criterion when deciding on the general applicability of collective agreements based on the Employment Contracts Act. If the share is at least approximately half of all employees in the sector, it is confirmed

that the collective agreement in question is generally applicable, and it applies to all employment relationships within the sector. Since 2001, a committee for confirming the general applicability of collective agreements has existed in Finland. The decisions of the committee and the grounds for the decisions have been the base material for this study. In addition, information on the employee share per sector in the Structure of Earnings of Statistics Finland has been used mainly as comparison material.

According to the study, the coverage of collective agreements was 64 per cent in the private sector (65.2 per cent in 2017). This share of employees in the private sector was employed by organised companies. Their number amounts to 943 708 (945 252 in 2017). In addition, on the basis of general applicability, 292 319 (269 311 in 2017) employees were covered by collective agreements. In 2021, a total of 1 236 027 private sector employees (1 214 563 in 2017) were covered by collective agreements. According to employment data of Statistics Finland, there were a total of 1 473 657 employees in the private sector in 2021. Accordingly, 237 630 employees were not covered by collective agreements and the share of private sector employees covered by the agreements was 83.9 per cent. When the public sector is included as well, 88.8 per cent of employees in Finland were covered by collective agreements in 2021. The share was the same in 2017.

4.2 Action plan against labour exploitation

An action plan against labour exploitation (Publications of the Ministry of Economic Affairs and Employment 2024:5) has been published by the Ministry of Economic Affairs and Employment. This action plan is based on the government resolution on the strategy for preventing and fighting labour exploitation, and was adopted on 09 March 2023. The action plan includes 33 measures that respond to the objectives described in the strategy and aim to ensure that the entries in the Government Programme on fighting exploitation of labour are implemented. The strategy for preventing and fighting the exploitation of foreign labour aims to:

1. safeguard the operating conditions of authorities involved in preventing and fighting the grey economy and economic crime and exploitation as well as developing cooperation between these authorities;
2. promote the identification and detection of exploitation and trafficking of humans, improving the status of exploited workers and preventing the recurrence of exploitation;
3. promote the integration, establishment and social inclusion of foreigners arriving in Finland from abroad to work in Finland;
4. strengthen corporate and public contracting entities' social responsibility in preventing and fighting the exploitation of foreign labour;
5. improve the implementation of criminal liability while ensuring the legal protection of the suspect.

France

Summary

(I) Articles L. 3141-3 and L. 3141-5 of the French Labour Code, which exclude the acquisition of paid leave during a period of absence from work due to non-occupational illness, and which limit to one year the period during which such leave can be acquired in the event of absence due to an occupational accident or illness, have been judged by the Constitutional Council to be in conformity with the Constitution.

(II) While the judge cannot, in the light of an administrative authorisation granted to the employer to dismiss a protected employee, and without violating the principle of the separation of powers, assess the real and serious nature of the dismissal, he/she nevertheless remains competent to assess the failings attributed to the employer during the period prior to the dismissal according to recent case law.

(III) The Court of Cassation ruled that the mere fact that the employee did not benefit from the agreed 12-hour daily rest period between two shifts entitles him to compensation.

(IV) To remain exceptional, night work must be justified by the need to ensure the continuity of economic activity according to a decision of the Court of Cassation.

(V) When asked to do so, the judge must assess whether evidence considered to be unlawful undermines the fairness of the proceedings as a whole by weighing up the right to evidence against the conflicting rights in question. The Court of Cassation ruled that the right to evidence may justify the production of elements that infringe other rights, provided that such production is essential to the exercise of that right and that the infringement is strictly proportionate to the aim being pursued.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Constitutional conformity of non-acquisition of sick leave during a work stoppage

Constitutional Council, No. 2023-1079 QPC, 08 February 2024

On 08 February 2024, the French Constitutional Council handed down a ruling on the question of whether the rules set out in the Labour Code concerning the impact of sick leave on paid leave were in conformity with the Constitution.

On 15 November 2023, the Cour de Cassation submitted two priority preliminary rulings on the issue of constitutionality (QPC in French) to the French Supreme Court, asking whether in the absence of conformity with European law and case law, Articles L.3141-3 and L.3141-5 of the French Labour Code, which deprive an employee who is on sick leave of any right to paid leave and an employee on leave for occupational illness of any right to leave beyond one year are consistent with the Constitution.

This referral comes after the Court of Cassation, in the absence of legislative intervention, ended up adopting the CJEU's position on the acquisition of paid leave during sick leave in a series of rulings (see here and here) dated 13 September 2023.

According to the French Constitutional Council, the provisions of Articles L.3141-3 and L.3141-5 of the Labour Code do not infringe the principle of equality or the right to health and rest.

The first question submitted to the Council was whether Articles L.3141-3 and L.3141-5, 5° of the Labour Code infringe the right to health, rest and leisure guaranteed by the 11th paragraph of the Preamble to the Constitution of 27 October 1946, in that they have the effect of depriving, in the absence of actual work, an employee on leave for a non-occupational illness of any right to paid leave, and an employee on leave for an occupational illness of any right to leave beyond a period of one year.

The Constitutional Council answers this question in the negative. Although the annual right to leave is a guarantee, the right to rest protected in the Preamble to the 1946 Constitution does not require sick employees to acquire paid leave during their periods of absence. Consequently, the Articles of the Labour Code at issue, which does not provide for the acquisition of paid leave during work stoppages for non-occupational illness, while limiting it to one year in the event of an accident at work or sick leave, are the result of an autonomous choice of the legislator. According to the Constitutional Councill, it was open to the legislator to

> *"assimilate to periods of actual work only those periods of absence of the employee due to an occupational accident or illness, without extending the benefit of such assimilation to periods of absence due to a non-occupational illness. He was also free to limit this measure to an uninterrupted period of one year",*

The Council also points out that they have no right to interfere in this legislative choice, as they do not have "a general power of assessment and decision of the same nature as that of Parliament", provided that it does not infringe the right to rest.

The Council also ruled in the negative on the question of whether Article L.3141-5, 5° of the Labour Code infringes the principle of equality guaranteed by Article 6 of the Declaration of the Rights of Man and of the Citizen of 1789 and Article 1 of the Constitution of 04 October 1958, in that it introduces a distinction between the occupational and non-occupational origin of the illness, which is not directly related to the purpose of the law establishing it, in terms of the acquisition of paid leave entitlements for employees whose employment contract is suspended due to illness.

Indeed, after recalling that:

> *"the principle of equality does not prevent the legislator from regulating different situations in different ways, nor from derogating from equality for reasons of general interest, provided that, in either case, the resulting difference in treatment is directly related to the purpose of the law establishing it",*

the Council emphasised that

> *"occupational illness and accident, which originate in the very performance of the employment contract, are distinct from other illnesses or accidents that may affect the employee".*

Consequently, "*the difference in treatment resulting from the contested provisions, which is based on a difference in situation, is in line with the purpose of the law"*.

The French Constitutional Council has ruled in favour of compliance. However, this decision is of no immediate consequence, since it does not invalidate the case law of the Court of Cassation, nor does it exonerate the legislator from any intervention. Even if they are deemed constitutional, these provisions will continue to be rejected by the Court of Cassation contrary to European Union law.

2.2 Trade union discrimination: judicial and administrative courts share responsibility

Social Division, Court of Cassation, No. 22-20.778, 17 January 2024

If the employer applies for authorisation to dismiss a protected employee, it is up to the authorities to determine that the proposed dismissal is not related to the mandate held, applied for or previously exercised by the person concerned. Consequently, the administrative authorisation for dismissal establishes that the dismissal had neither the purpose nor the effect of undermining the representative mandate. It follows that without violating the principle of separation of powers, the judicial judge cannot, on the basis of an administrative authorisation for dismissal that has become final, annul the employee's dismissal for economic reasons on the grounds of union discrimination. However, the court may award damages for union discrimination.

In this case, the employer obtained authorisation to dismiss a protected employee for economic reasons. Claiming to have suffered union discrimination, the employee brought claims before the Employment Tribunal for payment of compensation for discrimination and for dismissal without real and serious cause. On appeal, he sought annulment of his dismissal, in addition to compensation for union discrimination. The company was ordered to pay damages for non-material loss resulting from union discrimination, and the dismissal was declared null and void insofar as it had been pronounced in the context of union discrimination. The employer contested this decision on the grounds that the administrative authorisation for dismissal established that it neither had the purpose nor the effect of undermining the employee's representative mandate, and that the judicial judge had violated the principle of separation of powers. The Court of Cassation validated the compensation for non-material damage resulting from union discrimination, as the employee presented evidence suggesting the existence of such discrimination, and the employer failed to demonstrate that his actions were justified by objective factors unrelated to any discrimination. In this respect, it reiterates its case law:

> *"while the judicial judge cannot, in the light of the administrative authorisation granted to the employer to dismiss a protected employee, without violating the principle of the separation of powers, assess the real and serious nature of the dismissal, he remains, however, competent to assess the faults committed by the employer during the period prior to the dismissal, and in particular the existence of union discrimination in the employee's career development".*

2.3 Rest period

Social Division, Court of Cassation, No. 21-22.809, 07 February 2024

An employee brought an action before the labour court seeking judicial termination of his employment contract and the payment of damages on the grounds that he had repeatedly failed to take his 12-hour rest period between two shifts provided for in the collective agreement for prevention and security companies. In rejecting the employee's claim, the Paris Court of Appeal, after noting that on several occasions, the employee had not benefited from the 12-hour rest period between two shifts during 2014 and 2015, held that he could not justify any specific prejudice. The employee appealed to the Court of Cassation. The Social Division of the Court of Cassation censured the Court of Appeal's decision. It ruled that failure to respect the employee's daily rest period automatically gave rise to a right to compensation without the need to demonstrate any prejudice.

2.4 Night work

Social Division, Court of Cassation, No. 22-18.940, 07 February 2024

Under the terms of Article L. 3122-32 of the French Labour Code, recourse to night work is exceptional. It takes the imperatives of protecting the health and safety of workers into account and is justified by the need to ensure the continuity of economic activity or services of social utility. A Court of Appeal that dismisses an employee's claim that night work was unlawful therefore violates these provisions, without finding that the employer's recourse to night work was justified by the need to ensure the continuity of economic activity or services of social utility, regardless whether the employee had the status of a night worker, received compensation for the hours worked at night and wished to work during that time.

2.5 Video surveillance and admissibility of unlawful evidence: new jurisprudential illustration

Social Division, Court of Cassation, No. 22-23.073, 14 February 2024

In the present case, a pharmacy had installed a video surveillance system to protect people and property on its premises. On the first floor, three cameras monitored the baby area, the parapharmacy area and the prescription area; two cameras, located upstairs, monitored the office and the storeroom. This video surveillance system had not been the subject of prior individual notification of employees or consultation with staff representative bodies, with the result that recordings from this system constituted unlawful evidence if used to justify the dismissal of an employee.

Observing anomalies in his stocks, the pharmacist had considered the possibility of theft by customers. He therefore viewed the recordings from his video surveillance system. This screening ruled out the possibility of theft by customers. As the inventories confirmed unjustified discrepancies, he decided to follow the products as they passed through the checkout and cross-checked the video footage showing the day's sales with the computerised sales logs. This two-week check revealed 19 serious anomalies on one employee's till.

On the basis of this evidence, the employee was dismissed for gross misconduct, a dismissal that was contested in court. The employee argued that the evidence was unlawful, that there were more respectful means of proof of her personal life, and that the interference with her personal life was disproportionate to the aim pursued.

The trial judges rejected her claims and declared the disputed recordings admissible. They noted that the viewing of the recordings had been limited in time, within a context of disappearing stock, after initial unsuccessful searches, and had been carried out by the company's manager alone.

The employee appealed to the Court of Cassation.

The Court of Cassation ruled that the trial judges had carefully balanced the employee's right to respect for her private life against her employer's right to ensure the smooth operation of the company, taking into account the legitimate aim pursued by the company, namely to protect its assets. They were right to deduce that the production of personal data from the video surveillance system was essential to the exercise of the employer's right to evidence and proportionate to the aim pursued. The disputed documents were therefore admissible.

2.6 Measurement of working time

Social Division, Court of Cassation, No. 22-15.842 FS-B, 07 February 2024

It follows from the case law of the Court of Justice of the European Union that to ensure the effectiveness of the rights laid down in Directive 2003/88/EC of 04 November 2003 and the fundamental right enshrined in Article 31(2) of the Charter of Fundamental Rights of the European Union, Member States must require employers to set up an objective, reliable and accessible system for measuring the length of daily working time of each worker (CJEU case C-55/18, 14 May 2019, paragraph 60). The employer's failure to set up such a system does not deprive it of the right to submit all elements of law, facts and evidence to the adversarial debate as to the existence or number of hours worked.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

A fixed-term worker must be informed of the reasons for the termination of his or her employment contract with a notice period where the provision of such information is required for a permanent worker.

As a matter of principle, a fixed-term employment contract (CDD) can only be terminated on the end date specified in the contract. However, there are special conditions under which a fixed-term contract can be terminated early.

During the trial period, the employee may resign and the employer may terminate the fixed-term contract without cause. The rules are the same as for an employment contract of indefinite duration.

Outside the trial period, the fixed-term contract may only be terminated early in the following cases (the termination of a fixed-term contract *"At the request of the employee who can prove that he or she has found a permanent job"* will not be considered):

1. In the event of serious misconduct by the employee or the employer. Serious misconduct on the part of the employee includes, for example, unjustified absences, abandonment of post, insubordination or theft from the company. Serious misconduct on the part of the employer includes non-payment of wages and endangerment of the employee's health. As this is considered to be a disciplinary measure, an employer who intends to penalise an employee must comply with the legal disciplinary procedure (or that provided for in the collective agreement), which is the same as for a dismissal of an employee with a contract of indefinite duration.

2. In the event of incapacity for work certified by the occupational physician. If an employee becomes incapacitated for work as a result of an accident at work or an occupational illness and it is not possible to perform another job in the undertaking, the employer may terminate the fixed-term contract before it expires. The procedural rules, e.g. information, follow the same rules as those applied to contracts of indefinite duration.

3. In the event of force majeure. Force majeure is an unforeseeable, insurmountable event that is beyond the control of those involved, such as a fire that destroys the business. Again, the employee has to be informed on this dismissal ground. In case of force majeure, the employer may terminate the employment contract immediately without taking into account the procedure laid down for dismissal: the rules are the same for any type of employment contract.

4. By mutual agreement between the employer and the employee. To formalise this agreement, a clear and unequivocal document is required to ensure that the parties' common desire to terminate the contract cannot be called into question. This way of terminating the fixed-term contract, which is also possible for an indefinite contract,

conflicts with the '*rupture conventionelle*' procedure, the Mutual Termination Agreement which requires far more detailed information: there are steps that must be followed in accordance with the law. An interview must take place at least once between the employee and employer in order for them to discuss the conditions of the termination of the contract. A termination agreement must then be made in writing, indicating the exact date the contract will end, along with the value of the allowance to be given to the employee. This agreement must be signed by both parties and then validated by the relevant state organisation: 'Dreets' (*Directions régionales de l'économie, de l'emploi, du travail et des solidarités*).

4 Other Relevant Information

4.1 National interprofessional agreements on ecological transition and social dialogue

The national interprofessional agreement (NIA) on ecological transition and social dialogue of 11 April 2023 has been extended. The NIA is a reminder of existing law and provides examples and best practices for those involved in social dialogue at company and branch level to meet the challenge of ecological transition in the workplace. It neither includes new rights for employees, nor new obligations for companies.

Germany

Summary

(I) The Federal Labour Court has ruled that an employee who falls ill during a period for which "zero short-time work" has been introduced, the lost working days shall not be considered when calculating the employee's holiday entitlement.

(II) The Court also submitted a request for a preliminary ruling on mass redundancies. The State Labour Court Mecklenburg-Vorpommmern delivered an interesting ruling on what could be called "reversed" temporary agency work.

(III) The Federal Council has published its position on temporary work in the care sector and subcontractors in the parcel service.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 "Zero short-time work and annual leave"

Federal Labour Court, 9 AZR 364/22, 05 December 2023

The Court has ruled that an employee who falls ill during a period for which "zero short-time work" has effectively been introduced, the lost working days are not to be treated as periods of compulsory work when calculating the employee's holiday entitlement. In the Court's view, this has been sufficiently clarified by the CJEU's case law. With reference to CJEU, C-561/19, 06 October 2021, Consorzio Italian Management e Catania Multiservizi, (para. 39 et seq.), the Federal Labour Court denies any obligation to make a request for a preliminary ruling. "Zero short-time work" exists if the loss of working hours is 100 per cent, i.e. if work is completely stopped.

2.2 Mass redundancies (Request for a preliminary ruling)

Federal Labour Court, 2 AS 22/23 (A), 01 February 2024

On 14 December 2023, the Sixth Senate of the Federal Labour Court asked whether the Second Senate of the Federal Labour Court would uphold its legal opinion that a dismissal declared in the context of a collective redundancy is null and void if there is no notification or an incorrect notification pursuant to Section 17 (1) and (3) of the Dismissal Protection Act (*Kündigungsschutzgesetz*, *KSchG*) at the time it is received (see December 2023 Flash Report). The Second Senate of the Court has now suspended these proceedings and asked the CJEU to provide the necessary answers to questions on the interpretation of the provisions in Directive 98/59/EC that underlie sections 17 et seq. of KSchG.

2.3 Temporary agency work

State Labour Mecklenburg-Vorpommern, 5 Sa 37/23, 09 January 2024

The Court ruled that an employee does not become a temporary worker simply because his or her direct superiors and the majority of employees in the company are not in an employment relationship with the employer, but are instead employed as temporary agency workers by another (group-affiliated) company or as assigned civil servants.

Furthermore, the Court ruled that the principle of equal treatment in section 8 (1) of the Act on Temporary Agency Work (*Arbeitnehmerüberlassungsgesetz*, *AÜG*) protects temporary agency workers from being placed in a less favourable position than a comparable permanent employee, but not the permanent employees themselves. In the Court's opinion, Section 8 therefore does not give rise to any entitlement to the payment of the (better-paid) temporary agency workers.

The underlying facts were as follows: the plaintiff had concluded an employment contract with the defendant for employment as a call centre agent in a service centre. The defendant is a group-dependent company and employs around 2 500 employees nationwide, of which it has concluded an employment contract with around 900 of them. The defendant also employs temporary agency workers, of which over 1 500 come from companies within the group and around 70 are from companies outside the group. The plaintiff's immediate superior is a team leader who is employed by another group company. The team leader's superior is a civil servant who is assigned to the defendant. Her superior is also a civil servant.

The plaintiff asserted that she was legally employed as a temporary agency worker, as the business was not managed by the defendant, but by the other group company, which provided the majority of call centre agents in addition to the entire management staff.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The Court held that Clause 4 of the Framework Agreement on Fixed-term Work must be interpreted as precluding national legislation according to which an employer is not required to state, in writing, the reasons for the termination of a fixed-term employment contract with a notice period, although it is bound by such an obligation in the event of termination of an employment contract of indefinite duration.

The implications of the decision in Germany will be limited; firstly, a fixed-term employment relationship can only be terminated under very specific circumstances. Section 15 (4) of the Part-Time and Fixed-Term Contracts Act (*Teilzeit- und Befristungsgesetz*, TzBfG) stipulates that "*a fixed-term employment relationship is only subject to ordinary termination if this has been agreed in an individual contract or in the applicable collective agreement*". Secondly, and even more importantly, there is no legal obligation to state the reason for termination when ending an employment relationship of indefinite duration. The notification of the reason for termination is not a prerequisite for the termination to be effective. This applies regardless whether the Dismissal Protection Act applies to the dismissal or not. The same applies to extraordinary dismissals. Their legal validity is also not affected by the fact that the employer does not state the reasons for the dismissal. However, the dismissed person (employee) is entitled to be informed of the reasons for dismissal by the employer. In case of extraordinary termination, the right to be informed of the reason follows directly from section 626 (2) sentence 3 of the Civil Code (*Bürgerliches Gesetzbuch*, *BGB*). The provision reads: "*The terminating party must upon request inform the other party of the reason for termination in writing without delay.*" In case of ordinary termination, the prevailing opinion is that such a claim arises in good faith from a (unwritten) secondary contractual obligation.

4 Other Relevant Information

4.1 Federal Council resolution on temporary agency work

The Federal Council (*Bundesrat*) has called on the Federal Government to effectively limit the use of temporary agency work in the care sector, both in hospitals and in inpatient and outpatient facilities. On 02 February 2024, it passed a corresponding resolution on the initiative of Bavaria and forwarded it to the Federal Government.

4.2 Federal Council resolution on ban on work contracts and subcontractor chains

In the context of a reform of the postal law, the Federal Council has requested a ban on the use of external staff to be introduced

> *"in the core area of delivery on the so-called last mile, i.e. for transport (including sorting and loading of parcels) and delivery in the courier and parcel sector, analogous to section 6a of the Act to Safeguard Employee Rights in the Meat Industry (GSA Fleisch), and thus the ban on work contracts and subcontractor chains, be included in the further legislative process".*

Greece

Summary

No new developments have been reported this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

Under Greek labour law, the lawfulness of the dismissal of an employee with a contract of indefinite duration does not depend on the existence of grounds. An employer may unilaterally terminate the employment relationship without presenting reasons for the termination. The employee is required to demonstrate that his or her dismissal was discriminatory or unfair. Only if the employee demonstrates prima facie that his or her dismissal was discriminatory or unfair does the employer have to present reasons for the termination.

The parties to a fixed-term employment contract have the right to extraordinary termination without notice in case of existence of serious reasons. The reason for termination does not, however, need to be communicated by the employer to the employee at the time of dismissal.

There is therefore no difference in treatment between employees with a contract of indefinite duration and those with a fixed-term contract. The judgment has no implications for Greece in terms of difference in treatment.

However, the judgment refers to the fundamental right to an effective remedy that is enshrined in Article 47 of the Charter, since a worker is deprived of the possibility of assessing beforehand whether he or she should bring legal proceedings against the decision terminating his or her employment contract and, where appropriate, to bring an action challenging in a precise manner the reasons for such a termination. This position of the Court concerns both categories of employees, i.e. those with a fixed or an open-end contract. Reasons for termination do not need to be provided for any type of employee. In this regard, the judgment is important for Greece.

4 Other Relevant Information

The process for determining the national minimum wage for 2024 has started. All social partners agree that the new minimum wage must be increased. The final decision of the Council of Ministers concerning the scope of this increase is expected until the end of March.

Hungary

Summary

(I) A Decree of the Minister of Economic Development No. 59/2023 (28 December 2023) amends the rules of 50/1999 on work in front of a screen (Article 4). The amended Article 4 (1) requires that work in front of a screen must be interrupted by ten minutes after every hour of work performed.

(II) The Debrecen Regional Court of Appeal issued the first decision on 18 April 2023 on the classification of platform work as an employment relationship. The Supreme Court's final decision abolished the Court of Appeal's judgment and replaced the decision of the First Instance Debrecen Court. The Supreme Court stated that the legal relationship between the parties was not an employment relationship.

1 National Legislation

1.1 New rules on work in front of a screen

The Decree of the Minister of Economic Development No. 59/2023 (28 December 2023) amends the rules of 50/1999 on work in front of a screen (Article 4). This amendment abolishes the former maximum of six hours per day, or up to 75 per cent of working time for work in front of a screen. The amended Article 4 (1) requires that work in front of a screen must be interrupted by ten minutes after every hour of work performed.

2 Court Rulings

2.1 Platform work judgment of the Supreme Court

As reported in May 2023, the Debrecen Regional Court of Appeal issued a decision on 18 April 2023 on the classification of platform work as an employment relationship. The platform worker concluded a contract with a food delivery app in October 2019 and performed work until January 2020. He sued the platform and requested the Court to state that his work relationship with the platform was an employment relationship. He wanted this to be officially stated so he could apply for social benefits which require the previous existence of an employment relationship.

The First Instance Debrecen Court stated that his work relationship had been a civil law relationship based on a civil law contract, since the relationship between the platform and the worker was not restrictive.

However, the Court of Appeal changed this assessment and stated that an employment relationship had existed based on the assessment of the national case law criteria of the classification of employment. The judgment also referred to international case law and literature.

The Supreme Court's decision (Kúria, 14 December 2023) is the latest and final ruling in the case. The decision of the Supreme Court abolished the Court of Appeal's judgment and replaced the decision of the First Instance Debrecen Court. The Supreme Court stated that the legal relationship between the parties was not an employment relationship due to the lack of wide-ranging control and monitoring (personal subordination extending to the place, time and method of work) over the worker. The main arguments:

- A certain degree of control over the type of work (formal, uniform criteria), the obligation to be available, to accept rides within 75 seconds are not considered to be a wide-ranging right of order (control). The plaintiff was not integrated in

the defendant's organisation, there was no hierarchy or dependency. The right to order did not include all phases or elements of work. The presence of an online platform does not prove the existence of hierarchy.
- The plaintiff could schedule his/her working time individually, and nobody monitored it. Although the availability defined the worker's rating, it was up to the worker to decide his/her availability. Hungarian labour law does not acknowledge a legal work relationship that allows the adjustment of working time to the needs and sole autonomy of the worker.
- The form of payment is not a decisive factor. The fact that the worker reported and paid in every two weeks, and that it contained an hourly rate does not mean that this payment was a wage. Payment was not fixed and maximised.
- The worker used his own equipment, therefore, the necessary means to perform work were not provided by the defendant.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU C-715/20, 20 February 2024, X (Lack of reasons for termination)

The Hungarian Labour Code requires all terminations of employment to be made in writing:

Article 22 (3):

> *"Where an agreement had to be concluded in writing, any amendment thereto and termination thereof shall also be done in writing."*

Article 44:

> *"Employment contracts may only be concluded in writing."*

Written termination of fixed-term employment contracts with notice must contain a clear, valid reason:

Article 64 (2):

> *"The reasoning shall clearly specify the grounds for termination. The burden of proof to verify the authenticity and substantiality of the grounds of the act of termination shall lie with the party taking the legal act."*

Article 66 (8):

> *"The employer shall be permitted to terminate a fixed-term employment relationship by notice:*
>
> *a) if undergoing liquidation or bankruptcy proceedings; or*
>
> *b) for reasons related to the worker's ability; or*
>
> *c) if maintaining the employment relationship is no longer possible due to unavoidable external reasons."*

Therefore, the Hungarian Labour Code requires a written, valid reason for terminations of fixed-term employment relationships with notice in accordance with the reasons specified in Article 66 (8). Thus, the Hungarian provisions fully comply with the latest CJEU judgment.

4 Other Relevant Information

Nothing to report.

Iceland

Summary

A Supreme Court ruling on the calculation of maternity leave benefits and work in other states of the internal market has been issued.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Maternity leave

On 28 February 2024, the Supreme Court issued a ruling in case No. 24/2023. The case concerned a woman's application for maternity benefits. The applicant, who is a physician, moved to Iceland from Denmark two and a half months before the birth of her child. After the birth of her child, she applied for maternity leave benefits in Iceland, but was only entitled to a so-called '*birth stipend'* (Icelandic: '*fæðingarstyrkur'*).

Icelandic law, namely Article 13 of Act No. 95/2000 on Maternity, Paternity and Parental Leave (now Act No. 144/2020) stated that the remuneration of the benefits depended on the applicant's salary on the Icelandic labour market in the 12-month period ending six months before the birth of the child. The monthly payment could be up to 80 per cent of an applicant's salary. However, those who had worked on the EU internal market in the 12-month period could be entitled to considerably lower benefits, the aforementioned '*birth stipend*' if they were working in Iceland at the time of the child's birth.

The applicant considered that not taking her working time in another EU Member State into account when calculating her benefits constituted a violation of the free movement of people and workers as enshrined in Article 28 of the Agreement of the European Economic Area. However, the Icelandic State argued *inter alia* that the wording of the Icelandic rules was clear and referred to the fact that the Icelandic Parental Leave Fund was funded by the payment of an insurance fee (Icelandic: '*tryggingagjald'*) of all salaries to the Fund. The applicant had not been paying into the Fund while working in Denmark and the law did not allow consideration of her salary in Denmark when calculating her benefits.

After the Parental Leave Fund and the Welfare Appeals Committee denied her application for benefits that did take her Danish salary into account, the matter was brought before the District Court of Reykjavík. The District Court referred the following question to the EFTA Court:

- Does Article 6 of Regulation 883/2004, on the coordination of social security systems (cf. also Article 21(3) of the Regulation), require an EEA State, when calculating payments in connection with maternity/paternity leave, to calculate reference income on the basis of a person's aggregate wages on the labour market across the entire European Economic Area? Does it infringe the aforementioned provision and the principles of the EEA Agreement (see, for example, Article 29 EEA) if only a person's aggregate wages on the domestic labour market are taken into account?"

The EFTA Court concluded that:

> *"Art. 6 and 21 of Regulation 883/2004 should be interpreted as requiring the competent institution of an EEA State to take into account periods of employment in another EEA State when determining whether the conditions for entitlement to maternity benefit are met and to take into account only average income received during periods of employment undertaken under its national legislation during the relevant calculation reference period."*
>
> *"In order for Article 6 and 21 of Regulation 883/2004 to be effective and to satisfy the equal treatment requirement of Article 4 of the Regulation, where the reference period for calculation of the benefit is in its entirety completed under the legislation of another EEA State, the competent institution of the EEA State should ensure that the amount of the benefit is calculated by reference to the income of a person who has comparable experience and qualifications and who is similarly employed in the EEA State in which the benefit is claimed."*

Additionally, the EFTA Court stated in its conclusion that:

> *"Articles 28 and 29 EEA must be interpreted as precluding legislation of an EEA State such as that at issue in the main proceedings that, for the purposes of determining the average wage/ contribution basis when calculating the amount of maternity benefit excludes wages/ contributions in another EEA State, has the effect of substantially reducing the amount of maternity benefit granted to that person in comparison with the amount to which she would have been entitled had she been gainfully employed in that EEA State alone."*

The Icelandic Courts, in particular the Supreme Court, concluded that the Icelandic legislation had not been implemented in line with the conclusion of the EFTA Court. The interpretation of the EFTA Court could additionally not trump "clear and unequivocal" provisions of Icelandic law. Furthermore, the Court stated that Regulation (EC) No. 883/2004, which was included in the agreement, was only implemented by general government orders without concurrent changes to Act No. 95/2000 in accordance with the said obligation for payment from the Fund resulting from the agreement. The Supreme Court therefore concluded that the applicant's payments had been in line with Icelandic law and acquitted the State from her demands just as the District Court in Reykjavík had determined.

In its ruling, the Supreme Court states that if individuals or legal entities fail to enjoy their rights based on obligations under international law according to the EEA Agreement, the Icelandic State's liability for compensation can be brought before the courts if the conditions that apply to it are met. In addition, depending on the circumstances, this may call for a response from the EFTA Surveillance Authority.

Thus, whilst the Supreme Court acquitted the Icelandic State, the Supreme Court also pointed out that the Icelandic legislation was not in line with European law which could lead to the State being liable for damages towards the applicant or warrant a reaction from the EFTA Surveillance Authority. It is therefore likely that there will be implications for the Icelandic State.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

Icelandic collective agreements in the private sector generally stipulate that terminations of employment contracts should be concluded in writing as well as giving employees the right to an interview, stating the reasons for the termination and providing those reasons in writing. Laws and public sector collective agreements provide

for comparable rights for public sector employees, although certain nuances might vary as an employee must generally be warned before his/her contracts can be terminated.

The same rules apply to terminations of fixed-term contracts, with the exception being that fixed-term contracts may generally not be terminated, unless provided for in the employment agreement. Therefore, as the procedural rules concerning terminations of employment contracts of indefinite duration, *on one hand*, and of fixed-term contracts, *on the other hand*, are comparable, it does not seem that the judgment will have any implications for Icelandic labour law.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

The Minister has responded to a parliamentary question seeking an update on the action plan to promote collective bargaining.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The answer to the first part of the reformulated question before the CJEU has no implications for Ireland. This is because there is no equivalent statutory provision comparable to Article 30(4) of the Polish Labour Code, or indeed to Article 50(3) – Section 14 of the Protection of Employees (Fixed-Term Work) Act 2003 specifically provides for reinstatement/reengagement as one of the remedies for an unfairly dismissed fixed-term employee.

As a matter of Irish statute law, an employer is not required, at the time of dismissal, to provide the reason(s) for the employee's dismissal. This applies equally to both permanent and fixed-term employees. Section 14(4) of the Unfair Dismissals Act 1977, however, provides that where an employee is dismissed, the employer shall, "if so requested", furnish to the employee, within 14 days of the request, any particulars in writing of the "principal grounds" for dismissal. This provision again applies equally to both permanent and fixed-term employees.

It has been accepted in Irish case law that "employment conditions" include conditions relating to the termination of the employment contract: see The High Court, IEHC 76, *University College Cork v Bushin*.

Of great significance, however, and presumably why a Grand Chamber was convened, is the answer to the second part of the reformulated question concerning the "horizontal effect" of the Directive. Could Clause 4 of the Framework Agreement be relied on in a dispute between "private parties"? As is noted below, this is an issue that has arisen in Ireland, albeit not in the context of fixed-term workers, and which was decided in a manner consistent with the CJEU's conclusion in this case.

The CJEU emphasised that in the first instance, a national court should seek to interpret its domestic law in conformity, and consistently, with EU law. Where that is not possible, the principle of primacy of EU law required a national court, which is called upon, within its jurisdiction, to apply provisions of EU law, "*to disapply any provision of national law which is contrary to provisions of EU law having direct effect*" (para. 72).

As the CJEU goes on to point out (para. 73), it is settled case law that a Directive cannot of itself impose obligations on an individual and cannot be relied on as such against that individual before a national court. Consequently,

> *"even a clear, precise and unconditional provision of a directive does not allow a national court to disapply a provision of its national law which conflicts with it if, were that court to do so, an additional obligation would be imposed on an individual".*

Because the dispute was between individuals, EU law could not require the referring court to disapply Article 30(4) of the Polish Labour Code solely on the basis of a finding that that provision was contrary to Clause 4 of the Framework Agreement (para. 76).

Nevertheless, the CJEU concluded that Article 30(4) could be disapplied on the basis that it failed to ensure compliance with the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights.

Following the CJEU decision in case C-318/17, *Minister for Justice*, WRC adjudication officers have exercised the power to disapply provisions of domestic law on a number of occasions, usually in disputes involving the State or an emanation of the State. The most recent occasion, however, involved a dispute between private parties: ADJ-00033976, *Hurley v Eazy Connections Ltd*. Here, the company contended that the complaint, which concerned an alleged breach of section 26 of the Maternity Protection Act 1994, was statute barred by section 41(7)(c) of that Act. The 1994 Act transposes Directive 92/85/EEC. The adjudication officer, however, disapplied the latter provision so as to provide the claimant with an effective legal remedy to vindicate rights derived from EU law.

4 Other Relevant Information

4.1 Action plan to promote collective bargaining

Responding to a Parliamentary Question seeking an update on the action plan to promote collective bargaining, as required by Article 4 of Directive 2022/2041/EU, the Minister for Enterprise, Trade and Employment acknowledged that Ireland was "a long way short" of the 80 per cent threshold and indicated that the social partners would begin work in March on what should form the plan. The Minister confirmed that a "technical group" within the Labour Employer Economic Forum ("LEEF") had been set up to develop the action plan. Another LEEF subgroup explored mechanisms to encourage greater collective bargaining which, he said, would "feed into" the plan. The Minister also noted that his departmental officials, through Ireland's permanent representation in Brussels, were engaging with other Member States to share "best practice" with regard to the development of the required action plans.

Italy

Summary

(I) In February, Italian Parliament approved an act authorising government to implement some European Directives.

(II) The Corte di Appello of Rome denounced discrimination of pregnant women.

(III) The Data Protection Authority dealt with the management of workers' e-mails in the cloud.

(IV) The Ministry of Health recommends respecting the working time of doctors in training.

1 National Legislation

1.1 Implementation of EU Directives

On 21 February 2024, Italian Parliament approved Law No. 15, authorising government to implement some European Directives. Specifically, the following Directives must be implemented:

- Directive (EU) 2022/431 of the European Parliament and of the Council of 9 March 2022 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work;
- Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

2 Court Rulings

2.1 Discrimination against pregnant women

Corte di Appello of Rome, No. 475, 06 February 2024

The airline ITA Airways discriminated against pregnant workers during the selection process of staff.

Following the nationalisation of the airline Alitalia, the new company ITA absorbed a large share of former Alitalia staff. Two flight attendants who were excluded from selection proved in court that their exclusion was due to their pregnancy. Moreover, ITA did not hire any pregnant former employee of Alitalia. The Court determined that ITA's selection procedure was discriminatory by referring to the relevant European legislation and ordered the employer to recruit the two applicants.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

In Italy, the termination of a fixed-term employment relationship is regulated in Article 2119 of the Italian Civil Code:

> *"Any contracting party may terminate the contract before the expiry of the agreed period if the contract has been concluded for a fixed term, or without*

notice, if the contract has been concluded for an indefinite period, if a ground arises which does not permit the continuation, even provisionally, of the relationship".

In a fixed-term contract, therefore, the worker can be dismissed before the expiry of the contract only if there is just cause, i.e. a cause that due to its gravity does not even allow a temporary continuation of the relationship.

According to Article 2, Act 15 July 1966 No. 604, the dismissal must always be submitted to the employee in writing, containing the reasons for the termination.

Italian legislation is thus compliant with CJEU ruling.

4 Other Relevant Information

4.1 Workers' e-mails and protection of personal data

On 06 February 2024, a provision of the Data Protection Authority (No. 642) was published on 21 December 2023 in its newsletter.

According to the guarantor, the management of workers' e-mails in the cloud entails the processing of personal data, with the subsequent need to apply all the guarantees and procedures provided by law. The content of e-mail messages—as well as external communication data and attached files—are forms of correspondence with guarantees of secrecy, which are also constitutionally protected. This implies that even in the context of the public and private sector, there is a legitimate expectation of confidentiality. Employers must therefore always respect Article 4 of the Workers' Statute, which allows the use of remote control tools without prior union agreement or without administrative authorisation, only if they serve to "*record access and attendance"* or are necessary for the "*performance of the job"*. Only the collection and storage of so-called metadata necessary to ensure the functioning of the electronic mail system infrastructure, for a period of a few hours or days, should be included in this last notion. Employers who for organisational and productive needs or for the protection of the business, as well as for collecting information for the business owner shall retain the metadata for a longer period than specified by the guarantor can, therefore, only do so after completing the guarantee procedures provided for by the Workers' Statute (trade union agreement or authorisation of the labour inspectorate). Without this step, the use of cloud-based e-mail management programmes and services would not only conflict with the provisions of the Workers' Statute, but also with legislation on the protection of personal data.

Latvia

Summary

No new developments have been reported this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The Labour Law does not provide an explicit answer to the question whether in case of termination of a fixed-term contract prior to its expiry an employer is required to issue the notice of dismissal stating the reasons. However, it follows from the Labour Law that a fixed-term contract expires on the date or event specified in the employment contract. If another reason for termination of any employment contract arises, then the general procedure and obligations on terminations of employment contracts applies, i.e. the terms for giving a notice of dismissal (Article 103) and one of the permissible grounds for dismissal (Article 101).

As regards the remedies available under the Labour Law (in the light of Article 47 of the Charter of Fundamental Rights), Article 122(1) of the Labour Law provides the right to bring a claim before a court not only regarding the recognition of a notice of dismissal as void but also in other cases where an employee claims that the termination of the employment relationship was illegal.

Therefore, the CJEU's decision in case C-715/20 has indirect implications for Latvian law as it provides an explicit obligation towards fixed-term employees in case their employment contract is terminated prior to its expiry.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

The Liechtenstein government has submitted a draft law with an accompanying report regarding work-life balance for parents and carers. The present draft law (with an accompanying report) serves to implement Directive (EU) 2019/1158. The compatibility of work and family life shall be improved with new measures such as the introduction of paid parental leave, paid paternity leave and care leave.

1 National Legislation

1.1 Work-life Balance for Parents and Carers

The present project serves to implement Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

Directive (EU) 2019/1158 builds on and complements the provisions of Directive 2010/18/EU by strengthening existing rights and introducing new rights. Specifically, the compatibility of work and family life is to be improved with the following innovations: introduction of paid parental leave, introduction of paid paternity leave, introduction of care leave, concretisation of time off work due to force majeure, better design of flexible work arrangements, explicit provision on protection for employee employment claims.

To achieve full compliance with the Directive, an amendment of national law is indispensable. Liechtenstein has therefore created a draft law to implement the mentioned Directive.

The aim of the draft law is, as mentioned, to adapt Liechtenstein law to Directive (EU) 2019/1158. This shall be achieved through four central points:

(1) Each parent shall be entitled to four months of non-transferable parental leave, which in principle must be taken by the time the child is three years old. Two of the four months of parental leave will be paid at 100 per cent of the average relevant monthly salary, but limited to twice the maximum amount of the monthly old-age pension. Paid parental leave is to be financed and administered by the Family Compensation Fund (*'FAK'*).

(2) Fathers shall be entitled to two consecutive weeks of paternity leave, which must be taken within eight months of the birth of the child at the latest. Paternity leave is paid at 80 per cent of the salary subject to contributions for old-age insurance. This benefit is granted through the Health Insurance Act.

(3) If it is necessary to provide substantial care or assistance to relatives or persons living in the same household as the employee, the employee shall be entitled to care leave of up to five working days per year. Care leave is not remunerated.

(4) Under current law, in the event of illness or accident of family members living in the same household, an employee may be entitled to leave of absence due to force majeure for up to three days per event with full pay from the employer, provided the immediate presence is urgently required and care cannot be organised in any other way. This existing regulation will be revised by defining the group of family members conclusively, deleting the criterion of living in the same household and explicitly including full continued payment of wages.

In addition to the actual implementation of Directive (EU) 2019/1158, some other points relating to maternity are to be regulated.

The enactment of the proposed amendments requires the adaptation of numerous acts. The main points are to be regulated in the following acts:

- Civil Code (*Allgemeines bürgerliches Gesetzbuch, ABGB, LR 210*)
- Act on Family Allowances (*Gesetz über die Familienzulagen, Familienzulagengesetz, FZG, LR 836.0*)
- Health Insurance Act (*Gesetz über die Krankenversicherung, KVG, LR 832.10*)

The Liechtenstein government has submitted a draft law with an accompanying report, which was sent for consultation. The consultation was lasting until 17 March 2023, after which the government evaluated the comments received. Based on the results of the consultation, the government has currently produced a report and motion for Parliament regarding the Amendment of the Civil Code and further Acts (*Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend die Abänderung des Allgemeinen bürgerlichen Gesetzbuches (Arbeitsvertragsrecht), des Familienzulagengesetzes, des Krankenversicherungsgesetzes sowie weiterer Gesetze, BuA 2024/13*).

The next steps will be the consultation in Parliament and the adoption of the relevant legislative amendment. To date, it is not possible to project when the amendment will be passed.

The amendment is of considerable importance. It is an important issue for the economy, the labour market, workers and employers. In the area of work-life balance for parents and carers, some important issues are newly regulated.

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

Since 01 January 2004, there has been a legal entitlement to parental leave in Liechtenstein. This entitlement is based on Directive 96/34/EC, which had the objective of achieving improved compatibility of family and work and promoting equal opportunities and equal treatment of men and women. The Directive was primarily incorporated in the employment contract law provisions in the Civil Code.

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

The main purpose of the amendments is to implement Directive (EU) 2019/1158. An initial review of the draft law reveals that the government is seeking implementation in line with the mentioned Directive.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

In case C-715/20, the CJEU (Grand Chamber) ruled as follows:

> *"Clause 4 of the framework agreement on fixed-term work concluded on 18 March 1999 which is annexed to Council Directive 1999/70/EC of 28 June 1999*

concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP must be interpreted as precluding national legislation according to which an employer is not required to state, in writing, the reasons for the termination of a fixed-term employment contract with a notice period, although it is bound by such an obligation in the event of termination of an employment contract of indefinite duration. The national court hearing a dispute between individuals is required, where it is not possible for it to interpret the applicable national law in a way which is consistent with that clause, to ensure, within its jurisdiction, the judicial protection which individuals derive from Article 47 of the Charter of Fundamental Rights of the European Union and to guarantee the full effectiveness of that article by disapplying, in so far as necessary, any contrary provision of national law."

According to Section 1173a Article 44(1) of the Civil Code *(Allgemeines bürgerliches Gesetzbuch, LR 210)*, a fixed-term employment relationship ends without notice. Under Liechtenstein (and Swiss) law, ordinary notice of termination is—subject to a deviating contractual provision—excluded for fixed-term employment relationships (while immediate extraordinary termination for good cause is possible at any time). However, in practice, there are mixed forms in which the parties to the employment contract agree that a fixed-term employment relationship can be terminated by ordinary notice before it expires.

Under Polish law, the employer is not required to give reasons for the dismissal if it concerns a fixed-term employment relationship. According to the CJEU's judgment, this constitutes unlawful discrimination against employees with a fixed-term employment contract in relation to employees with a permanent employment contract and thus a violation of Clause 4 of the Framework Agreement on Fixed-term Work which is annexed to Council Directive 1999/70/EC.

Since Liechtenstein law does not have a provision such as that in Polish law, it is fully in line with the present CJEU judgment. According to Section 1173a Article45(2) of the Civil Code *(Allgemeines bürgerliches Gesetzbuch, LR 210)*, the party giving notice of termination must state his or her reasons in writing if the other party thus requests. This provision is directly linked to the notice of termination and not to the type of employment relationship. This is not affected by the fact that this provision appears in the section on permanent employment relationships, because (as mentioned above) ordinary notice of termination is—subject to a deviating contractual provision—excluded for fixed-term employment relationships. However, if a mixed form occurs in practice, which provides for ordinary notice of termination on a contractual basis even in the case of a fixed-term employment relationship, it goes without saying that the requirement to give reasons also applies to such a termination.

4 Other Relevant Information

Nothing to report.

Lithuania

Summary

The public debate on the possible introduction of a 4-day work week was organised in Lithuania and the social partners have expressed their first initial views on whether and to what extent a shorter working time can be proposed in Lithuania.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The case has no direct implications for Lithuania because the Lithuanian legal system does not differentiate in terms of justified grounds for dismissal by the employer of a fixed-term employee and a permanent employee. This conclusion is supported not only by the principle of non-discrimination of fixed-term employees (Article 70 of the Labour Code on non-discrimination of fixed-term workers), but, primarily, by the formulation of Article 57 of the Labour Code "Termination of an employment contract at the initiative of the employer without any fault on the part of the employee". Article 57 (1) of the Labour Code states that an employer shall be entitled to terminate a permanent or *a fixed-term employment* (!) contract for the following reasons (…). The current provision must apply to both types of contracts. The provisions of Article 57 of the Labour Code, including provisions on the notice period and notification documents apply to both fixed-term and permanent employees. Following the necessity to notify the employee, Article 64 further defines the content of information that shall be given in the dismissal of both types of employees: employees with an indefinite employment contract and fixed-term employees. These pieces of information do not differ for the two types of contact.

4 Other Relevant Information

4.1 Debate on four-day work week

The public debate on the four-day work week was organised by the Democracy Institute in Lithuania. The social partners have exchanged views on the possibility of introducing a shorter working time in Lithuania, following other European countries' examples. The trade unions are of the opinion that there is a fundamental need to shorten working time, while employers urged to pilot sector-, company- and region-based differentiations. The debate is the first of its kind at the national level, but no concrete initiatives have been announced yet.

Luxembourg

Summary

A law has been adopted to address the case when two public holidays fall on the same day.

1 National Legislation

1.1 Public holidays that fall on the same day

There are 11 public holidays under Luxembourg labour law. The Labour Code has long provided for cases where a public holiday falls on a Sunday. The employee is entitled to a day's compensatory leave, to be taken within three months.

The Code did not specifically regulate the situation where two public holidays fall on the same day. This situation may arise because some public holidays are defined in relation to a specific date and others in relation to a specific event. In 2024, two of these 11 days, namely Ascension Day and Europe Day, will fall on 09 May. To clarify the legal situation, a law has been passed amending both the Labour Code and civil service legislation to specify that workers in such a situation will also be entitled to a compensatory day's leave to be taken within three months.

In practice, many companies simply add this leave to the holiday balance, without requiring employees to meet the three-month deadline.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The situation at issue cannot arise in Luxembourg.

Fixed-term contracts cannot be terminated with notice.

As regards terminations with immediate effect, the rules are the same for fixed-term and open-ended contracts. The employer is required to state the reasons for its decision in writing in the letter of dismissal.

4 Other Relevant Information

Nothing to report.

Malta

Summary

There are no developments to report this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

This is a very interesting judgment, but it has no real implications in Malta for reasons that are elaborated below.

Under Maltese law, the definition of unfair dismissal is as follows:

> *"The termination by the employer in respect of that worker of a contract of employment for a fixed term".*

Furthermore, the Employment and Industrial Relations Act, 2002, also states that:

> *"An employer who terminates the contract of service of an employee before the expiration of the time specified by the contract of service, shall pay to the employee a sum equal to one-half of the full wages that would have accrued to the employee in respect of the remainder of the time specifically agreed upon (Article 36 (11) of the EIRA)" and "Provided that notwithstanding the foregoing provisions of this Article, an employee may abandon a fixed-term contract of service prior to its expiry and an employer may terminate a fixed-term contract prior to its expiry without any liability to make payment as provided in sub-articles (11) and (12) if there is good and sufficient cause for such dismissal or abandonment (Article 36 (14) of the EIRA)."*

Under Maltese law, an employment agreement for a fixed term may be terminated for any reason whatsoever – but if the reason does not reflect a good and sufficient cause, there is an obligation to pay the worker compensation (the full wages which would have accrued in favour of the employee for the remainder of the period of employment.)

The key point here is the following, however: did the CJEU mean that reasons in writing have to be provided irrespective of the actual consequence of the lack of a stated reason? Under Maltese law, if a valid reason for early termination of the fixed-term work contract exists, there is no liability to pay compensation to the worker. Therefore, the existence or otherwise of good and sufficient cause for termination gives rise (or otherwise) to the payment of compensation. One is inexorably linked to the other. In case of early termination without good and sufficient cause, the liability to pay compensation arises (for fixed-term agreements).

However, the CJEU made it clear that:

> *"national legislation according to which an employer is not required to state, in writing, the reasons for the termination of a fixed-term employment contract with a notice period…".*

Under Maltese law there is no real requirement to provide the reason for termination– the law simply states that a good and sufficient cause must exist for termination (for both permanent and fixed-term agreements) but it does not state that the reason must be made in writing. It is taken as "a given" that if there is a reason, the reason will be included in the termination documentation (letter, decision of a disciplinary board, etc.). The underlying principle is the equal treatment of workers under a definite and an indefinite agreement. This means, therefore, that as long as the workers are treated equally, this judgment should not have very far-reaching implications.

Under Maltese law, there is no requirement as such for the good and sufficient reason to be specified in writing—but this applies both to the termination of fixed-term and indefinite-term agreements—and it is in the full interest of the employer that such reason be provided in writing and in practice, all employers that have good and sufficient cause to terminate a contract will include it in writing in their dismissal letter – it is moreover likely that the dismissal was preceded by a number of written warnings. Jurisprudence in this sense is very clear.

If one were to extrapolate this reasoning to all the other facets of the fixed-term agreement, does this mean that the only liability the employer carries in case of unfair dismissal of a fixed-term worker, that is, the pay which would accrue in favour of the fixed-term worker for the remainder of the term, is discriminatory in itself?

Under an indefinite-term agreement, unfair dismissal would entitle a worker to compensation. Under a fixed-term agreement, on the other hand, unfair dismissal would entitle a worker to compensation which is equivalent to the pay he/she would have received for the duration of the remaining period post-termination. The "quantum" of the termination is not the same. Does this mean, therefore, that such distinction is discriminatory? Perhaps the CJEU did not want to go that far—because it is quite clear that a fixed-term agreement differs from a contract of indefinite duration—but should there be less distinction between the way an unfair termination of a contract of indefinite duration is treated versus the way an unfair termination of a fixed-term agreement is treated? Is this distinction, therefore, unlawful?

It would appear that such distinction is not unlawful because the raison d'être behind the compensation following (unfair) termination from a fixed-term contract is to compensate the employee for having left "blank" a number of years in his/her professional life to work for the fixed-term employer. Hence, the employer should conduct itself as though it never violated its obligations in terms of the worker – i.e. pay him/her the full amount which he/she would have received. An indefinite-term contract is intended to be an open-ended term and hence the employee must be compensated for such dismissal, also to cover him/her until he/she finds alternative employment. Hence, it would be quite hyperbolic to state that the types of compensation open to the employee must be different given that the employee's commitment to the "job" is different –one is for a fixed-term (with no automatic right to renewal except in exceptional circumstances) and the other is for an indefinite term – and hence, with no contracted end in the intention of the parties.

The implications for Maltese law are therefore not as ground-breaking as they may be for other systems. However, it is clear that the CJEU wants to remove any discrimination in its most "invisible" form – and, in itself, this is a very good step.

4 Other Relevant Information

4.1. Employment Agencies Regulations, 2023

As mentioned in previous reports, the Employment Agencies Regulations, 2023 (hereinafter "the regulations"), were published. The regulations try to end abuse in relation to the employment and placement of third-country nationals into (usually) low-skilled work (such as cleaning, factory work and so on). This has been done rather clumsily for a number of reasons, which have already been described.

However, these regulations might have created a distinction between a temporary work agency and an outsourcing agency. A temporary work agency has been defined in Article 2 of the Regulations as: a natural or legal person and in the case of a legal person whose objects in its memorandum of association include the performance of the relevant activities as well as all the ancillary activities or incidental thereto, but do not include such objects that are not compatible with the services of a temporary work agency, which enters into contracts of employment or employment relationships with temporary agency workers and which assigns, whether on a regular or irregular basis, the temporary agency workers to user undertakings to work there temporarily under their supervision, direction and control, whether or not such an activity is the main or ancillary activity of the temporary work agency.

An outsourcing agency has been defined as follows: a natural or legal person, and in the case of a legal person whose objects in its memorandum of association include the performance of relevant activities as well as all ancillary activities or incidental thereto, but do not include such objects which are not compatible with the services of an outsourcing agency, which enters into contracts of employment or employment relationships with employees and assigns, whether on a regular or irregular basis, the employees to user undertakings to work there temporarily, by being physically present at the premises of the user undertaking or work remotely, under the supervision, direction and control of the outsourcing agency, whether or not such activity is the main or ancillary activity of the outsourcing agency.

Outsourcing agencies are exempt from the application of the regulations and do not require a licence if they are provided through an outsourcing agency: professional services when the person providing those services is in possession of a warrant, or equivalent, to exercise that profession, including but not limited to the profession of advocate, auditor or certified public accountant; technical services and surveying activities in relation to machinery and vessels. This exemption shall also apply in the event that the said services are provided by employees at the premises of the user undertaking where they are outsourced.

The problem, however, lies in the fact that whilst a temporary work agency, which falls within the definition of the Temporary Agency Workers Regulations, 2010, covers all temporary agency workers, the regulations seem to unlawfully create a distinction between those agency workers providing the services listed above and all other temporary agency workers. Whilst it is true that the regulations refer exclusively to licencing requirements (and again, there are differences in treatment of the different agencies under the regulations), given that an outsourcing agency is no longer defined as a temporary work agency under the regulations, it would appear that such workers are no longer able to benefit from the protection of the Temporary Agency Workers Regulations.

Whilst there may be some eyebrows raised about whether these types of workers (normally highly-skilled and highly-qualified workers) really need protection in terms of the Temporary Agency Work Regulations, it has become amply clear that even such workers require protection because some outsourcing agencies are abusing the situation and these workers – whereas the hourly rate of the service by the outsourcing agency would be less than EUR 6 per hour (which would, therefore, beg the question what the hourly rate is that such individuals would be paid).

Netherlands

Summary

(I) District courts have interpreted the EU directives on transparent and predictable working conditions and transfer of undertaking.

(II) The Committee on the conduct and culture in broadcasting published its report on transgressive behaviour.

(III) The Council of Ministers has approved the extension of unemployment benefits for older workers.

(IV) The Dutch Advisory Board on Regulatory Burden advises on the legislative proposal on an admission system for temporary work agencies.

(V) The Cabinet wants to increase livelihood security through public institutions which need to encourage better use of schemes.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Reimbursement of training cost(s)

District Court Rotterdam, ECLI:NL:RBROT:2024:618, 25 January 2024 (published 12 February 2024)

This case concerned the validity of a contractual requirement to reimburse study costs (a study expenses clause) in light of Article 13 Directive (EU) 2019/1152 as implemented in Article 7:611a Dutch Civil Code. The employee was hired by the employer as a tram driver. The employee underwent training as a tram driver at the employer's expense, for which a study expenses clause was included in the employment contract. The court declares the clause null and void. Although driving a tram only requires a driver's license, employees are not allowed to drive a tram *independently* before completing the tram driver training. As he was hired as a train driver, this training constituted mandatory training that is necessary for the performance of his job within the meaning of Article 7:611a(1) Dutch Civil Code. Article 7:611a(1). The Dutch Civil Code is a provision of national law within the meaning of Article 13 Directive (EU) 2019/1152, meaning that the employer must offer this training free of cost (Article 7:611a(2) Dutch Civil Code) and the study expenses clause is null and void (Article 7:611a(4) Dutch Civil Code). Only training that is necessary to obtain a diploma or certificate that the employee is already required to have, under national law, when he/she first starts working is not covered by Article 7:611a(2) Dutch Civil Code. Contrary to the employer's argument, completing the training is not a starting qualification. This also follows from the employer's vacancy text, which states that only a driver's licence is required for the position of tram driver.

2.2 Interpretation of the concept of 'transfer of undertaking'

District Court Midden-Nederland, ECLI:NL:RBMNE:2024:749, 14 February 2024 (published 16 February 2024)

This summary proceedings case concerned the interpretation of the concept 'transfer of undertaking' within the meaning of Article 2 Directive 2001/23/EC and Article 7:662

Dutch Civil Code. It concerned a tender in the ICT sector, in which the current service provider requires the new service provider to whom the contract has been awarded to take over staff from the current service provider. The summary proceedings court does not honour this demand, since no transfer of undertaking within the meaning of Article 7:662 Dutch Civil Code has taken place. In particular, the Court sheds light on the question how the concept of transfer of undertaking should be interpreted in case many of the *Spijkers* criteria (such as the economic activity and the customer(s)) stay the same not due to the will of the transferee but due to the nature of the transfer (such as outsourcing a service to a new service provider). The Court considered that the fact that the bank (the entity issuing the tender) remains the same has relatively little significance as this is inherent to a change of contract between contractors who are each other's competitors in the same market segment. It should be avoided that an (overly) broad interpretation of the Directive distorts market dynamics. After all, the mere loss of a contract to a competitor does not constitute an indication of a transfer of undertaking (e.g. *Süzen*). Similarly, the circumstance that data centre services are transferred to the new service provider at the end of the transition period without interruption does not weigh heavily—within the totality of the transaction—because this circumstance is linked to the bank's understandable requirement that the transfer should not lead to a hitch in, or interruption in, the availability of the data stored in the servers. The two factors (clientele and continuity) therefore do not carry substantial weight in the assessment. All in all, no transfer of undertaking has therefore taken place.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The CJEU has ruled that employees with temporary contracts are entitled to an explanation for the premature termination of their contract, just like employees with permanent contracts. This ruling seems to have little effect on Dutch labour law since an employer in the Netherlands must always provide a reason for termination.

Dutch law in general prohibits unilateral termination of fixed-term employment contracts by the employer. However, the parties to a fixed-term contract can agree on a termination clause in accordance with Section 7:667(3) Dutch Civil Code. The employer's possibilities for dismissal are (1) permission by the Employee Insurance Agency, (2) permission by a district court, (3) dismissal with immediate effect. All require the employer to give a 'reasonable ground' or 'urgent cause' for dismissal of the employee. Moreover, at the end of the employment contract the employee can ask the employer for a testimonial. If the employee asks for this, the employer is required to inform the employee of the reason for which he or she is dismissed in accordance with Section 7:656(2) sub d and e Dutch Civil Code. The same rules apply to contracts of indefinite duration.

Unlike the situation in CJEU case *C-715/20*, Dutch law provides employees with the opportunity to (at least) ask for the reason for which they were dismissed. The employer is required to provide this reason or risk liability for damages incurred by the employee as a result of this. The CJEU case *C-715/20* therefore does not seem to affect Dutch labour law.

The direct effect of Article 47 CFREU, however, might be of interest in other areas of (Dutch) labour law where the right to an effective remedy might be at stake. This greatly depends, however, on the interpretation of this aspect of the CJEU's ruling.

4 Other Relevant Information

4.1 Transgressive behaviour

On 01 February 2024, the Committee on the Conduct and Culture in Broadcasting (*Onderzoekscommissie Gedrag en Cultuur Omroepen*) published its report on transgressive behaviour. The central question the report addresses was: How can social safety for employees at the national public broadcaster be improved? The Committee concluded that an unsafe working environment has been created by transgressive behaviour by some individuals, managers who allow it, an employer who does not intervene, colleagues who look on and dare not speak out, and supervision that fails. There has been too much looking away at all levels: executives, informal leaders of programmes, board members, supervisory holders and the public broadcaster NPO. And this despite signals from the shop floor but also from HR officials. Furthermore, the Committee provides 15 recommendations.

4.2 Extension of older unemployed persons' benefits

The Council of Ministers announced on 02 February 2024 that jobseekers over 60 who are struggling to find a new job can (continue to) count on an appropriate safety net in the coming years. The government wants to extend the Income Support for Older Unemployed Persons Act (IOW) by four years. If approved by the lower and upper houses, the proposal will enter into force retroactively from 01 January 2024.

4.3 Admission systems for temporary work agencies

On 07 February 2024, the Dutch Advisory Board on Regulatory Burden (*Adviescollege toetsing regeldruk*) published its view on the introduction of an admission system (*toelatingssysteem*) for temporary work agencies (see also October 2023 Flash Report). In assessing the regulatory burden that comes with the admission system, the Advisory Board criticises the legislative proposal on four aspects:

1. *its usefulness and necessity*: lack of a testable standard to assess whether the law meets its purpose, lack of requirements to justify the law's usefulness and necessity, launch of an (internet) consultation for further requirements on the (administrative) procedure and exemption from the hiring ban;
2. *less burdensome alternatives*: instead of introducing an admission system, to have stringent and consistent monitoring of compliance with already existing standards and requirements (if necessary, supplemented by housing-related standards);
3. *workability and noticeability*: lack of explanation on the workability of the admission system for companies;
4. *calculation of regulatory impact*: for inspectorates and the mandatory notification to the user undertaking as well as the impact for companies using the procedure to become exempt from the prohibition to assign temporary agency workers.

The general conclusion by the Advisory Board is that the explanatory notes to the bill and the decree now submitted for opinion do not make it clear why the chosen statutory mandatory admission and its details will improve the position of temporary agency workers and in particular migrant temporary agency workers, and ensure a level playing field for all user undertakings and temporary work agencies.

4.4 Cabinet wants to increase livelihood security through better use of schemes

Many people do not know they are entitled to benefits or other support from the government, or they do not use the schemes available to them for other reasons. Thus, people may end up below the social minimum and the risk of financial concerns, poverty and debt increases. Therefore, the government announced on 09 February 2024 the possibility of the Employees Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen*), the Social Insurance Bank (*Sociale Verzekeringsbank*) and municipalities to actively point people to benefits and provisions to which they may be entitled. Thereby, the Cabinet wants to promote the use of schemes and increase subsistence security. The bill regulating this has been opened for internet consultation.

Within this context, the Social and Economic Council (*Sociaal-Economische Raad*) published an advice letter 'Growing up healthy, living and working' in which it calls on the incoming Cabinet to swiftly focus on health promotion and reduce socio-economic health differences. The Social and Economic Council recommends focusing policies on removing the social causes of health risks and improving the health of all, with extra attention on people in a vulnerable position.

Norway

Summary

(I) The Supreme Court has issued a judgment on the right to exemption from night work. The judgment clarifies that the Norwegian rules on this point go further than what is required according to Directive 2003/88/EC of 04 November 2003 Article 9.

(II) The Labour Court has issued a judgment on the legality of a sympathy strike in support of an industrial dispute between a Norwegian trade union and a British company. The judgment applies Regulation No. 864/2007 on the law applicable to non-contractual obligations (Rome II), even though the regulations are not binding for Norway.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 The right to exemption from night work

Supreme Court, HR-2024-423-A, 28 February 2024

The question in the present case was whether an oil service worker was entitled to exemption from night work for health reasons. The right to such an exemption is regulated in the Working Environment Act of 17 June 2005 No. 62 (WEA) Section 10-2 second paragraph. The provision states that:

> *"[a]n employee who regularly works at night shall be entitled to exemption from the working-hour arrangement that applies to the employee group if such exemption is needed by the employee concerned for health, social or other weighty welfare reasons and can be arranged without major inconvenience to the undertaking".*

The provision Implements Article 9 No. 1 b) on the right to transfer to day work for which the employee is qualified, if it is "possible" in Directive 2003/88/EC of 04 November 2003 concerning certain aspects of the organisation of working time.

All five judges of the Supreme Court concluded that the employee was not entitled to exemption from night work but divided 4-1 as regards the reasoning. According to the majority, the Norwegian implementation provision in WEA Section 10-2, it gives the employee the right to preferably be exempt from night work in the post in question, i.e. so that the provision goes beyond the protection provided for the employee by the Directive. An essential element in the disadvantage assessment will then be whether there is alternative day work for which the person concerned is qualified.

The employer had offered the employee alternative work on land, but the employee was unwilling to accept this offer. He wanted to keep the work he had without night shifts. For the majority, the employer's offer was part of a broader disadvantage assessment, and it concluded that an exemption from night work in this case would entail *"a significant disadvantage for the business"*. The minority of one judge understood the legal provision to mean that it does not go beyond the protection provided by the Directive and that the employer had, in any case, fulfilled its duty under the Working Environment Act provision by offering other work on land.

2.2 Choice of law; Rome II on the law applicable to non-contractual obligations Article 9

Labour Court, AR-2024-2, 05 February 2024

The question in the present case was whether a called sympathy strike had been lawful. The two unions LO and Industri Energi had announced a sympathy action among their members in the Norwegian company Archer AS in support of demands from Industri Energi for the establishment of a collective agreement with a British company, Schlumberger Oilfield UK Ltd. (SLB UK). The collective agreement was to apply to the work carried out by employees employed by SLB UK, who performed work from the vessel Island Captain on the Norwegian continental shelf. The vessel is registered in Norway and operates out of Esbjerg in Denmark, where the vessel is docked and has a base for supplies and maintenance. Personnel from SLB UK meet in Esbjerg and then sail to the Norwegian continental shelf to carry out well-stimulation work. Nine members of Industri Energi who worked on the vessel went on strike to push through the demand for a collective agreement with SLB UK. The employees were British citizens and residents.

The question whether the announced sympathy strike was lawful raised several questions. Archer AS was bound by a collective agreement and was a member of the Norwegian Shipowners' Association. Their Basic Agreement with LO and Industri Energi states that a sympathy strike can be carried out "*in support of another lawful conflict in Norway*". The question whether the called strike would be carried out "in Norway" had, according to the Labour Court, to be decided based on whether the conflict had a closer connection to Norway or to another country. Emphasis was placed on the fact that the employees who had gone on strike in the main conflict had served on the vessel for several years, which for a long time had only carried out well-stimulation on the Norwegian continental shelf. In the assessment, emphasis was also placed on the fact that the demand for a collective agreement concerned the Oil Service Agreement, a Norwegian collective agreement and that it was agreed that this agreement included the type of work carried out by SLB UK.

The question that was of particular interest was whether the called sympathy strike would take place in support of a "lawful" main dispute. The question was whether this was to be resolved based on Norwegian or British law. With reference to, among other things, Regulation No. 593/2008 on the law applicable to contractual obligations Rome I, the Court assumed that the parties could initially determine which country's law should regulate this matter. When the parties had agreed on a right to a sympathy strike in support of a main conflict "in Norway", there was, according to the Court, much evidence that the conflict was to be settled according to Norwegian law. However, the Court did not conclude on this point but resolved the issue according to the general rules on choice of law.

The Court pointed out that Norwegian international private law does not provide a clear solution here. Norway is not bound by Regulation No. 593/2008 on the law applicable to contractual obligations (Rome I) and Regulation No. 864/2007 on the law applicable to non-contractual obligations (Rome II). However, the Labour Court took as its starting point the relevant provisions of Rome II, such as Article 4 and Article 9. The Court assumed that the law of the country where the strike was to take place, or has taken place, dictated that Norwegian law was applicable. According to the Court, there were, first and foremost, *formal* circumstances that indicated that British law was applicable.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP was implemented in the Working Environment Act of 17 June 2005 No. 62 (WEA). A fixed-term employment contract ends when the agreed period ends. During the agreed period, however, the same rules on dismissal protection apply to fixed-term employment contract as to employment relationships of indefinite duration, cf. WEA Section 14-9 (6). This means that the fundamental requirement that a dismissal must be objectively justified applies, cf. WEA Section 15-7 (1). In practice, an employer must present the circumstances it claims are the grounds for dismissal. This should be discussed with the employee before the decision on dismissal is made, cf. WEA Section 15-1. If the employee demands, the employer shall also provide this information in writing, cf. WEA Section 15-4. The law does not specify what the legal effect is of the employer not providing information in accordance with this provision. This does not mean that the dismissal is automatically unjustified and invalid. However, it will be a strong indication that the employer did not have legitimate reasons for dismissal, and the employer has the burden of proof that grounds for dismissal exist. As these rules are the same for fixed-term and permanent employment, the ruling does not seem to have any implications for Norwegian provisions in line with the principle of equal treatment in Article 4 of the Directive.

4 Other Relevant Information

Nothing to report.

Poland

Summary

(I) The law extending protection afforded to Ukrainian citizens in Poland and associated privileges have been prolonged to 30 June 2024.

(II) Plans to implement new legislation has been presented by Polish authorities.

1 National Legislation

1.1 Act on Assistance to Citizens of Ukraine

On 21 February, an Act amending the Act on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of Ukraine, dated 09 February 2024, was published in the Journal of Laws (Journal of Laws 2024, item 232). Under this legislation, the temporary protection afforded to Ukrainian citizens in Poland and associated privileges have been extended until 30 June 2024.

The amendment extends assistance to Ukrainian citizens including, among others:

- legal residence in Poland,
- extending the duration of visas, residence permits and Polish identity documents,
- undertaking employment based on notifications,
- implementation of simplified rules for granting temporary residence permits.

In addition, according to a communiqué from the Secretary of State at the Ministry of the Interior and Administrative Affairs, inter-departmental work is professing on further substantive amendments to the law on assistance to Ukrainian citizens in connection with the war in Ukraine.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

Until the April 2023 amendment to the Polish Labour Code, an employer was only required to provide a reason justifying the termination of an employment relationship in the statements of termination of an employment contract of indefinite duration. Since the amendment, which came into force on 26 April 2023, an employer must provide the reason for termination in a notice of termination, regardless whether the contract was concluded for a fixed or indefinite term.

The CJEU, in its judgment in *case C 715/20*, asserted that Polish regulations that make it compulsory to only inform employees who have concluded an employment contract of indefinite duration of the reason for the termination is discrimination because it deprives fixed-term employees of important information related to the legitimacy of the termination of their contract and therefore, the possibility to assess whether it is worth pursuing claims in court. The CJEU declared that such legislation is an infringement of the right to an effective remedy in court.

Consequently, while after the April 2023 amendment, the legal requirements of EU law are met, the regulations in force previously breached EU standards to the extent that it deprived fixed-term employees of the possibility of gaining information about the reasons for termination of their contract. The CJEU ruled that the courts in this situation should deviate from the application of Polish regulations prior to amendment of the Labour Code. It is therefore possible that the judgment could have implications for still-pending proceedings concerning terminations submitted prior to the amended regulations entering into force. Another issue to be considered is the question of resumption of proceedings that have been validly terminated. The Code of Civil Procedure does not expressly provide for such a possibility, but there are claims that such a solution is unconstitutional. The question of possible liability of the State may also arise for damages employers will have to pay to employees in connection with the circumstance that they did not have to provide reasons for termination in accordance with the law in Poland in force before April 2023.

4 Other Relevant Information

4.1 Government announcement of new intended legislation

The Minister of Family, Labour and Social Policy has announced that the main items the Ministry is currently focussing on include:

- an act extending the application of collective agreements;
- a novel minimum wage act;
- an act regulating labour market institutions, which includes reform of public employment services (replacing the current Act on Promotion of Employment);
- an act on the employment of foreigners;
- periods of working under civil law contracts (e.g. service or mandate contracts) and being self-employed in the length of service;
- additional parental leave for parents of premature babies;
- deletion of social insurance overlaps (all mandate and service contracts would be subject to social security contributions).

Work is also progressing on a bill to amend the Trade Unions Act. The amended Act is intended to provide information to trade unions on the parameters, rules and instructions on which algorithms or artificial intelligence systems that influence decisions made by the employer are based.

No drafts on the above items have been published yet by the Ministry.

Portugal

Summary

(I) The amount of minimum wage applicable in Madeira has been adjusted.

(II) Analysis of the first ruling of a Portuguese court declaring the existence of an employment relationship between a digital platform and a courier was issued.

1 National Legislation

1.1 Minimum wage in Madeira

Regional Decree No. 3/2024/M, of 08 February approves the amount of minimum wage applicable in Madeira, which has been set at EUR 850, with effect from 01 January 2024.

2 Court Rulings

2.1 Qualification of the nature of the contractual relationship between a digital platform and a courier

For the first time in Portugal, a court has recognised the existence of an employment relationship between a digital platform (in this case, *Uber Eats*) and a courier. This ruling was issued by the Lisbon Labour Court on 01 February 2024 (this ruling has not been published and cannot be consulted in a public database) within the context of a lawsuit for the recognition of the existence of an employment contract, filed by the Public Prosecutor following participation of the Work Conditions Authority (*'Autoridade para as Condições do Trabalho'*). The company may, however, appeal this decision.

This unprecedented decision was taken after a legislative amendment implemented by Law No. 13/2023, of 03 April, which became effective on 01 May 2023.

The said law introduced in the Portuguese Labour Code (Article 12-A) a rebuttable presumption of the existence of an employment contract between the provider of the activity and the digital platform, when some (at least two) of the following characteristics are verified:

a) The digital platform sets the remuneration for the work provided on the platform or establishes maximum and minimum limits for it;

b) The digital platform exercises the power of direction and determines specific rules, namely regarding the way of presentation by the activity provider, his/her behaviour towards the service user or the provision of the activity;

c) The digital platform controls and supervises the provision of the activity, including in real time, or verifies the quality of the activity provided, namely through electronic means or algorithmic management;

d) The digital platform restricts the activity provider's autonomy regarding the organisation of work, especially with regard to the choice of working hours or periods of absence, the possibility of accepting or refusing tasks, the use of subcontractors or substitutes, through the application of sanctions, the choice of clients or providing activity to third parties via the platform;

e) The digital platform exercises employment authority over the activity provider, namely disciplinary power, including exclusion from future activities on the platform by deactivating the account;

f) The equipment and work tools used belong to the digital platform or are used by it.

According to the law, this presumption may be rebutted in general terms, namely if the digital platform proves that the activity provider works with effective autonomy, without being subject to the control, power of direction and disciplinary power of the entity that hires the same.

In cases where an employment contract is considered to exist, the rules set out in the Portuguese Labour Code that are compatible with the nature of the activity performed shall apply, namely the provisions on accidents at work, termination of the contract, prohibition of unfair dismissal, minimum remuneration, holidays, limits on normal working hours, equality and non-discrimination.

In the present case, the Lisbon Labour Court considered that some of the abovementioned characteristics could be verified. As a result, the presumption of existence of an employment relationship would apply, considering that such presumption had not been rebutted in this case. For this reason, the Court ruled that the courier had been bound to the digital platform through a permanent employment contract since 01 May 2023.

This is an important decision due to its novelty and the fact that similar decisions will likely follow (considering that a large number of similar lawsuits for the recognition of the existence of an employment contract between a digital platform and providers are pending before Portuguese courts).

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

This case concerned the interpretation of Clause 4 of the Framework Agreement on Fixed-term Work concluded on 18 March 1999 (hereinafter "Framework Agreement"), which is annexed to Council Directive 1999/70/EC of 28 June 1999, and Articles 21 and 30 of the Charter of Fundamental Rights of the European Union (hereinafter "Charter").

In this ruling, the CJEU determined whether Clause 4 of the Framework Agreement must be interpreted as precluding national legislation under which an employer is not required to state in writing the reasons for the termination of a fixed-term employment contract with a notice period, although it is bound by such an obligation in the event of termination of an employment contract of indefinite duration.

According to the CJEU, the Framework Agreement applies to all employees providing remunerated services in the context of a fixed-term employment relationship. The prohibition of less favourable treatment of fixed-term employees as opposed to permanent employees, indicated in Clause 4 of the Framework Agreement, concerns the employment conditions of employees, which cover, according to the CJEU, the protection afforded to an employee in the event of unlawful dismissal and the rules for determining the notice period applicable in the event of termination of a fixed-term employment contract, as well as those relating to the compensation paid to an employee on account of the termination of his/her employment contract. In addition, the CJEU stated that the Framework Agreement, in particular its Clause 4, aims to apply the principle of non-discrimination to fixed-term employees to prevent an employer from using such an employment relationship to deny those employees rights that are recognised for permanent employees. For this purpose, it is important to determine whether the difference of treatment between fixed-term employees and comparable permanent employees can be justified on "*objective grounds*".

The CJEU explained that a fixed-term contract ceases upon expiry of the term stipulated therein, so the parties are aware from the moment of its conclusion of the date that determines its end. Such a term limits the duration of the employment relationship without the parties having to make their intentions known in that regard after entering

into the contract. However, *"the early termination of such an employment contract, on the initiative of the employer, resulting from the occurrence of circumstances which were not foreseen on the day the contract was entered into and which thus disrupt the normal course of the employment relationship, is, because of its unforeseen nature, liable to affect a fixed-term worker at least as much as the termination of an employment contract of indefinite duration for the corresponding worker".*

As a result, the CJEU ruled that Clause 4 of the Framework Agreement

> *"must be interpreted as precluding national legislation according to which an employer is not required to state, in writing, the reasons for the termination of a fixed-term employment contract with a notice period, although it is bound by such an obligation in the event of termination of an employment contract of indefinite duration".*

Under Portuguese law, a fixed-term employment contract expires at the end of the stipulated term or its renewal, provided that the employer or the employee notifies the other party of the intention of terminating it in writing, respectively 15 or eight days in advance (Article 244 (1) of the Labour Code). If the expiry results from a declaration of the employer, the employee is entitled to compensation corresponding to 24 days of the base remuneration and seniority premiums per year of seniority (Article 244 (2) of the Labour Code). In case of expiry at the end of the term (or its renewal), the employer is not required to invoke reasons for the termination. However, if the employer intends to terminate a fixed-term contract prior to the term stipulated (and therefore for another reason than expiry), such termination may only occur under the same terms as in the case of a permanent employment contract. For instance, in case of termination by disciplinary dismissal or objective dismissal (e.g. collective dismissal or dismissal due to the extinction of a post), the employer must comply with a procedure defined by law, which implies providing the employee with the grounds that justify such termination, as it occurs in the event of termination of an employment contract of indefinite duration. For this reason, Portuguese law seems to be aligned with the CJEU's ruling.

4 Other Relevant Information

Nothing to report.

Romania

Summary

Non-professional personal assistants are not entitled to the hazardous working conditions allowance.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Workers in the long-term care sector; hazardous working conditions allowance

According to Article 35 of Law No. 448/2006 on the protection and promotion of the rights of persons with disabilities, severely disabled individuals have the right to a non-professional personal assistant. Non-professional personal assistants (often family members) are employed and remunerated by the municipality. These personal assistants perform work (the beneficiary's care activities) at their own residence.

In the application of this provision, the High Court of Cassation and Justice has noted that in the judicial practice of Romania, different jurisprudential orientations have emerged regarding the entitlement of personal assistants to the hazardous working conditions allowance (15 per cent of the base salary):

a) Some courts have ruled that based on workplace assessment reports confirming the presence of difficult, harmful or hazardous working conditions, the granting of such allowance is possible;

b) Others have ruled that such allowances can be granted even in the absence of workplace assessment reports, as the work of personal assistants involves exposure to specific risk factors: neuropsychological stress, physical aggression, ergonomic factors, risk of contamination;

c) Conversely, other courts have ruled that considering that the work is performed at the personal assistant's residence, they may never be entitled to such allowances. The hazardous or harmful working conditions allowance was exclusively provided by the legislator for the benefit of staff in social assistance units.

This latter opinion was adopted by the High Court of Cassation and Justice. Through Decision No. 23/2023, published in the Official Gazette of Romania No. 90 of 31 January 2024, it ruled that personal assistants are not entitled to the hazardous or harmful working conditions allowance. According to its decision, which is now mandatory for all courts in the country, the 15 per cent allowance is granted to staff in social assistance units, but not to non-professional personal assistants who perform caregiving activities at their own residence.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

Article 76 of the Romanian Labour Code requires dismissal decisions to include, among other things, the reasons for the dismissal and notice period. These provisions apply indiscriminately, regardless whether the contract was concluded for an indefinite or a

fixed term. Consequently, Romanian legislation is consistent with the rulings of the Court of Justice of the European Union in case C-715/20.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

No new developments have been reported this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The legal regulation of termination of employment by notice by the employer in the Labour Code (Act No. 311/2001 Coll. Labour Code, as amended) is in line with the Court's decision. In case of termination by notice by the employer, the legal regulation does not distinguish between employment relationships of indefinite duration or of a fixed term.

According to Article 61 paragraph 1 of the Labour Code, the employment relationship can be terminated by notice by either the employer or the employee. The notice must be made in writing and delivered, otherwise it is invalid. According to paragraph 2, the employer may give notice to the employee only for reasons established in this Act. The reason for notice must be factually defined in the notice in such a way that it cannot be confused with another reason, otherwise the notice is invalid. The reason for notice cannot be changed subsequently.

According to Article 63 paragraph 1 of the Labour Code, the employer may only give notice to an employee for the reasons listed under letters a) to e), regardless whether it is an employment relationship of indefinite duration or an employment relationship for a fixed term.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) Following the adjustment of the minimum wage in January 2024, the minimum hourly rates for occasional and temporary work of retired persons and of students were adjusted. Various other payments have been adjusted as well.

(II) The longest strike of medical doctors is still ongoing. The government has issued an Ordinance on the provision of medical services during a strike.

1 National Legislation

1.1 Health and safety at work - asbestos

The Minister of Labour has issued the scheme for determining the compensation for particular types of occupational diseases due to asbestos exposure (‘*Shema za določanje odškodnine za posamezne vrste poklicnih bolezni zaradi izpostavljenosti azbestu’*, Official Journal of the Republic of Slovenia (hereinafter: OJ RS) No. 15/24, 23 February 2024, p. 1250) with the adjusted amounts of compensation.

1.2 Supplements for extra workload in the healthcare sector

The Minister of Health has issued the rules determining the amount of supplements for extra workload in certain areas of healthcare (‘*Pravilnik o določitvi dodatka za povečan obseg dela za posebne obremenitve’*, OJ RS No. 11/24, 07 February 2024, p. 665-666). This is one of the measures aimed at addressing the staff shortages in the healthcare sector, in particular in family medicine (see also December 2023 Flash Report, under 1.1).

1.3 Adjustment of the minimum hourly rate for temporary and occasional work (student work, work of retired persons)

Following the adjustment of the minimum wage in January 2024 (see January 2024 Flash Report, under 1.1), the minimum hourly rate for occasional and temporary work of retired persons was adjusted by the Minister of Labour (Order on the adjustment of the minimum hourly rate and maximum income for temporary or occasional work, ‘*Odredba o višini urne postavke in višini dohodka za opravljeno začasno ali občasno delo upokojencev’*, OJ RS No. 10/24, 05 February 2024, p. 662). The minimum hourly rate for occasional and temporary work of retired persons was raised to EUR 7.21 – the adjusted amount is valid from 01 March 2024 until 28 February 2025 (in 2023, it was EUR 6.92 and in 2022, it was EUR 5.77).

The minimum hourly rate for occasional and temporary work of students was also adjusted (Order on the adjustment of the minimum gross hourly pay for temporary and occasional work, *‘Odredba o uskladitvi najnižje bruto urne postavke za opravljeno uro začasnih in občasnih del’*, OJ RS No. 9/24, 02 February 2024,p. 596). From 03 February 2024 onwards, the minimum hourly rate for occasional and temporary work of students also amounts to EUR 7.21 gross.

1.4 Restrictions to the right to strike – medical doctors

The strike of medical doctors, organised by the trade union FIDES, which started in mid-January 2024 is still ongoing and is the longest doctors’ strike in Slovenia so far (see below under 4.2.). To prevent the disruption of the public healthcare system in Slovenia

and to help healthcare providers ensure the provision of uninterrupted services and to protect patients' rights, the government has adopted a set of measures. On 29 February 2024, the government issued the ordinance on the provision of medical services during a strike ('*Odlok o opravljanju zdravniške službe v času stavke*', OJ RS No. 17/24, 29 February 2024, p. 1331).

Restrictions to the right to strike are regulated by the Constitution (see Article 77, para 2) and the Strike Act ('*Zakon o stavki*', OJ RS No. 22/91-I and OJ SFRJ No. 23/91; in particular Articles 5 and 7, see also Article 15 which authorises the government to issue an ordinance if the provisions on the minimum services during a strike are not respected.), and specifically for medical doctors in the Medical Services Act ('*Zakon o zdravniški službi*', OJ RS No. 98/99 et subseq.), in Article 46:

> *"During a strike, medical doctors shall be required to perform medical services, the omission of which would within a short time lead to irreparable and severe damage to health or even to death. This shall include in particular:*
>
> - *medical treatment of febrile illnesses and infections;*
> - *medical treatment of injuries and poisoning;*
> - *medical treatment of chronic diseases, if omission would cause direct and within a short period of time a deterioration of the state of health, disability, other permanent damage to health or death;*
> - *other services of emergency medical assistance;*
> - *triage examination;*
> - *prescribing medicinal products and medical devices to treat the medical conditions referred to in the preceding indents.*
>
> *In addition, during a strike the medical doctor is required to perform the following services:*
>
> - *all medical services for children under the age of 18 and patients over the age of 65;*
> - *all medical services related to pregnancy and childbirth;*
> - *measures to prevent and manage infectious diseases."*

With this Ordinance, the government specifies additional services that are mandatory during the strike (which have been identified as problematic in practice). This list includes (Article 2 of the Ordinance) includes the treatment of patients falling under 'very quick' level of urgency (four levels exist: urgent, very quick, quick, regular) and the issuance of medical certificates and sick notes. Furthermore, medical services must be provided for all vulnerable groups, including people with disabilities or special needs, palliative patients, war veterans, victims of war and psychiatric patients with restricted freedom of movement. Doctors are required to refer patients for further treatment. They must perform medical assessments requested by patients to meet the requirements of other institutions, such as insurers or courts, issuing medical certificates for driving licences, in relation to health and safety at work, for claiming social security rights, such as maternity, paternity, parental leave, family benefits, long-term care and similar. Doctors must also provide information on the health status of elderly persons in care homes and patients in other social care institutions.

According to the government, this Ordinance specifies the limitation of the right to strike, which is already limited by the Constitution, the Strike Act and the Medical Services Act,

> *"due to the risk that not providing these services could lead to imminent danger or extremely serious consequences for the life and health of people, or the safety and security of property, or to other harmful consequences",*

whereby the government also emphasises that the right to strike must be proportionate and must in no way override other constitutionally guaranteed rights (93rd regular session of the government; text of the proposal and argumentation is available here).

The Decree entered into force on 01 March 2024.

The trade union FIDES raised concerns that this Ordinance is unlawful and violates the right of medical doctors to strike, The Slovenia Times, 29 February 2024.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The case concerned the difference in treatment in the event of dismissal of a fixed-term employment contract, since according to Polish law, there is no obligation for the employer to state the reasons for dismissal of a fixed-term employment contract, although such obligation is prescribed for employment contracts of indefinite duration.

The case is of no particular relevance for Slovenian law, since the same legal regime for dismissals applies to both types of employment contracts. If an employee with a fixed-term employment contract is dismissed with a notice period before the expiry of the fixed-term contract, the same provisions regulating dismissals apply as in the case of a dismissal of a worker with an employment contract of indefinite duration. Moreover, a fixed-term worker, like a worker employed under a contract of indefinite duration, must be informed in writing of the reasons for that dismissal.

According to the Employment Relationships Act (*'Zakon o delovnih razmerjih (ZDR-1)'*, OJ RS 21/13 et subseq.) Article 79, para 1, a fixed-term employment contract shall terminate without notice upon the expiry of the time period for which it was concluded, and, according to Article 79, para 2, a fixed-term employment contract may also be terminated prior to the expiry of the period for which it was concluded if this is agreed by the parties or if other reasons arise for the termination of the employment contract pursuant to this Act, meaning that all other modes of termination of employment listed in Article 77 of the ZDR-1 are possible, including a dismissal. In case of a dismissal of a fixed-term contract of employment, all provisions governing a dismissal apply (the same provisions and the same level of protection as in the case of a contract of employment of indefinite duration). According to Article 83, para 2 of the ZDR-1, the employer may only dismiss an employee with a notice period if a justified reason for ordinary dismissal exists. According to Article 87 of the ZDR-1 (which equally applies to fixed-term workers as it does to those employed under an open-ended contract), a dismissal must be given in writing and the employer must explain in writing the actual reason(s) for the dismissal.

4 Other Relevant Information

4.1 Collective bargaining

The government has reached an agreement with the trade union SVIZ (trade union in education and science) to amend/improve the strike agreement from 2023 (see March 2023 Flash Report, point 4.2.), concerning the reform of the pay system and some other issues. A similar agreement was also reached with the higher education trade union (*'VSS'*). An Annex to the Collective Agreement for the Education Sector in the Republic

of Slovenia was concluded and published in the Official Journal (‘*Aneks h Kolektivni pogodbi za dejavnost vzgoje in izobraževanja v Republiki Sloveniji*’, OJ RS No. 13/24, 16 February 2024, p. 809-811); it mainly concerns certain aspects of working time, in particular some specific working time issues in the education sector.

The two trade unions (*SVIZ, VSS*) acceded to the already concluded Agreement on the Adjustment of Wages and Amount of Annual Leave Allowance for 2024 in the public sector (‘*Dogovor o uskladitvi vrednosti plačnih razredov plačne lestvice in datumu izplačila regresa za letni dopust v letu 2024’*, OJ RS No. 12/24, 09 February 2024, p. 729-731; ‘*Naknadni pristop k Dogovoru…*’, OJ RS No. 15/24, 23 February 2024, p. 1254).

The Agreement is an important step forward in the negotiations between the government and public sector trade unions. A compromise has been reached, and the agreement provides for the adjustment of the pay scale for all public sector employees to 80 per cent of the increase in consumer prices between December 2022 and December 2023 as of 01 June 2024, and for earlier payment of the annual leave allowance for 2024 already in March. At the same time, the government managed to reach an agreement with the trade unions to gain more time for negotiations on the implementation of the reform of the wage system that was already due to start on 01 January this year, however, negotiations up to now have not been successful and the reform has not yet been prepared and negotiated.

Following the above mentioned Agreement, the Annex to the Collective Agreement for the Public Sector has been concluded (‘*Aneks št. 14 h Kolektivni pogodbi za javni sektor’*, OJ RS No. 12/24, 09 February 2024, p. 731-733), as well as the Annex to the Collective Agreement for Non-commercial Activities in the Republic of Slovenia (‘*Aneks h Kolektivni pogodbi za negospodarske dejavnosti v Republiki Sloveniji’*, OJ RS No. 12/24, 09 February 2024, p. 734-8735).

4.2 Strikes

The strike of medical doctors, organised by the trade union FIDES, which started in mid-January 2024, is still ongoing and is the longest doctors’ strike in Slovenia to date. The main demands concern remuneration and a separate pay pillar for doctors apart from the uniform public sector pay system. Other trade unions in the public sector have reached an agreement with the government on salary increases for all workers (see above under 4.1.), and in return, they have suspended strikes until September 2024 to open additional time for negotiations on the reform of the public sector pay system. FIDES has not agreed to it and refuses to take part in negotiations on the reform of the public sector pay system in which all other trade unions representing public sector employees participate. As the negotiations between the government and the trade union FIDES seems to have ended in deadlock and there are increasingly serious problems in delivering healthcare services to the population, proposals have emerged (for instance, by the Patients’ Association) to try to resolve this conflict with the help of a mediator.

Slovenian emergency dispatchers went on strike as well (on 19 February), demanding pay increases and better working conditions. In January, judges went on strike demanding adequate, higher remuneration. In January, administrative workers at 41 administrative units all over the country went on strike as well. A wave of strikes is observable and there is increasing pressure by many occupational groups to increase their remuneration and improve working conditions in general.

Spain

Summary

No major developments of particular interest took place this month. However, three Supreme Court rulings may be of some interest, particularly the ruling of non-admission of the duplication of parental leave for single parents.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Collective dismissal

The Supreme Court explicitly referred to CJEU ruling C-496/22, 05 October 2023, EI where the workers refused to designate representatives to negotiate a layoff. The workers requested to negotiate the decision with the employer individually, not through representatives. Spanish law does not require the employer to meet the I&C obligations with workers individually. The Spanish Supreme Court, referring to the aforementioned CJEU ruling, determined that Directive 98/59/EC had not been violated.

2.2 Work-life balance for single parents

Spanish law grants specific parental leave for each parent (16 weeks each). Neither can transfer their leave to the other parent. The Supreme Court determined that there are no exceptions to this rule in case of single parents, hence it is not discrimination that a single parent is only entitled to 16 weeks of parental leave, while a couple is entitled to a total of 32 weeks. The Supreme Court also considered that Directive 2019/1958 and the Charter do not require a 'duplication' of such leave for single parents.

2.3 Rules for the use of digital devices

The Supreme Court applied the statutory legal rules contained in Article 87 of the Data Protection Act and stated that the employer cannot unilaterally establish rules for the use of digital devices given to workers. Representatives must participate in the elaboration of these rules. Otherwise, such rules are null and void.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

This CJEU ruling will not have any implications for Spain. The termination of fixed-term employment contracts usually occurs on the date expressly agreed upon by the parties (with a statutory notice period). If the employer wishes to terminate the contract sooner, the rules for the termination of permanent contracts apply (e.g. dismissal). In this latter case, if the employer fails to inform the worker of the reasons for the termination of the contract, that termination is considered an unfair dismissal.

4 Other Relevant Information

Nothing to report.

Sweden

Summary

(I) The Swedish Labour Court has rendered a judgment on a foreign employer's breach of a collective agreement regulating the working conditions of posted workers.

(II) The Swedish Parliament is about to pass legislation making it more difficult for third-country labour migrants to obtain work permits.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Trans-border posting of workers

The Swedish Labour Court ruled in a trans-border posting of workers case, AD 2024 No. 11, on the interpretation or breach of the Construction Work Collective Agreement. A Latvian company was bound by the Swedish Construction Work Collective Agreement (*Byggavtalet*) while conducting operations using posted workers in Sweden. The Construction Workers' Union (*Svenska Byggnadsarbetarförbundet*), which was/is party to the collective agreement, did not have any members employed at the workplace (or in the company), but the company had nevertheless signed an affiliated collective agreement (in memory of the very similar Laval case of 2004?) and was an occasional member of a Swedish employer organisation. The Labour Court determined that the construction company had violated the collective agreement clauses on different forms of reimbursement such as pay for overtime, or during weekend work, and also about the agreement's provisions on overtime and working hours. As the plaintiff trade union could not prove the damages, the Court only issued compensation for SEK 750 000 (EUR 70 000) compared to the requested SEK 26 100 000 (approx. EUR 2 300 000).

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

The CJEU ruling monitors interesting consequences of the Fixed-term Directive (FTD), especially related to the termination of fixed-term contracts and the communication of the reasons for such terminations.

The FTD, in this regard, is transposed into Swedish law through the provisions in the Employment Protection Act (*lag [1982:80] om anställningsskydd*). The default position in Swedish law is that permanent employment contracts can be terminated with the application of a regulated (or agreed upon) period of notice (section 11 of the Swedish Employment Protection Act), and that the employer, upon request from the employee, must provide the reasons for the termination, eventually in writing (section 9). The provision can be subject to adjustments, or even replacements, through collective agreements, in theory even *in pejus* (see para 2 c of the Act). However, the default position of *temporary employment contracts* is that they last for the duration of the agreed period and cannot be terminated unless there is a significant breach of contract, which would call for an immediate termination of the contract. However, this point of departure can be altered by collective agreements but also if the parties to the contract agree on it, and explicitly clarify this in the employment contract, usually by the use of

the (translated from Swedish) phrase "indefinite, but no longer than" followed by a certain date. The duration of this indefinite but fixed-term contract must lie within the maximum duration period for fixed-term contracts, under the statutory law of collective agreements. A termination of this type of fixed-term contract will require the employer to apply ordinary proceedings for negotiating redundancies or dismissals related to the conduct or similar (personal reasons) of the employee. The CJEU's ruling does not appear to call for any modifications of Swedish law.

4 Other Relevant Information

4.1 Draft for increased requirements for third-country labour migrants

A public inquiry (SOU 2024:15 *Nya regler för arbetskraftsinvandring m.m.)* suggests, in line with the instructions from the Swedish Conservative-Christian Democrat-Liberal Government, that work permits for third-country labour migrants, in most cases, should be restricted to those who can prove that their monthly salary (gross) will be at least the median income reported for that particular year. For 2024, this is approximately SEK 35 000 (approx. EUR 3 000). The explicit goal of the government is to reduce the number of third-country migrants in Sweden with an indirect aim to offer national vacancies to the large number of jobseekers already in the country. The proposal has general support in Parliament and is very likely to be passed into law. The current proposal is a key element of an ongoing transition from a 15-year period of very inclusive, third-country labour migration policy, introduced by another conservative-liberal-Christian democrat majority of another time, in 2006/2007.

United Kingdom

Summary

The Employment Appeal Tribunal ruled on a case related to temporary agency work.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Temporary agency work

Employment Appeal Tribunal, Case No. EA-2021-001299-BA, 29 February 2023, Donkor-Baah v University Hospitals Birmingham Management Trust

The claimant, an agency worker, booked her shifts with the hospital on a shift-by-shift basis. Following an alleged incident during the night shift on 10 February 2019, the claimant was told to end her shift early and go home. Her case was that she was suspended at this point, that her suspension continued until 06 November 2019 when she was told that she could re-commence booking shifts with the hospital and that she was entitled to be paid for this period of suspension pursuant to regulation 5 AWR, as the hospital's own employees or workers would have been paid during a period of suspension.

The ET found that the claimant's assignment had been terminated when she was sent home on 10 February 2019. On appeal, she argued that read together, Regulations 5, 7 and 8 Agency Work Regulations gave rise to an overarching 'Agency Relationship' between an agency worker and a hirer, which was capable of subsisting beyond individual assignments and that it was this relationship that had been suspended by the hospital. This was rejected by the Employment Appeal Tribunal on its merits. The entitlements conferred on agency workers by Regulation 5 AWR relate to the period of an assignment when the agency worker is working for the hirer. This is apparent from the nature of the entitlements, the language of Regulation 5(4), the scheme of the AWR which defines an agency worker in Regulation 3(1) by reference to their supply to a hirer and in terms consistent with the definition of 'assignment' in Regulation 2, and the terms of Directive 2008/104/EC on Temporary Agency Work, which the AWR implements. Furthermore, Regulations 7 and 8 do not support the existence of the alleged overarching 'Agency Relationship'.

3 Implications of CJEU Rulings

3.1 Fixed-term work

CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)

This case is clearly significant for its approach to the horizontal direct effect of directives which no longer applies to the UK. However, on the specific point about the statement to provide reasons for the termination of a fixed-term contract, under UK law, the employer has a statutory duty to give a written statement of the reasons for dismissal (whether they are on a fixed term or an indefinite contract): Employment Relations Act (ERA) s. 92. This only arises if the employee has two years' continuous employment ERA s. 92(3).

4 Other Relevant Information

4.1 Increase of limits for tribunal awards

The Employment Rights (Increase of Limits) Order 2024 (SI 2024/213) will revise compensation limits for certain tribunal awards from 06 April 2024. Most notably:

- The limit on a week's pay increases from GBP 643 to GBP 700.
- The maximum compensatory award for unfair dismissal increases from GBP 105 707 to GBP 115 115.
- The minimum basic award for certain unfair dismissals (including health and safety dismissals) increases from GBP 7 836 to GBP 8 533.

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