Flash Reports on Labour Law
April 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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Contact: Marie LAGARRIGUE

E-mail: Marie.LAGARRIGUE@ec.europa.eu

European Commission

B-1049 Brussels

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Country	Labour Law Experts
Austria	Martin Gruber-Risak Daniela Kroemer
Belgium	Wilfried Rauws
Bulgaria	Krassimira Sredkova Albena Velikova-Stoyanova
Croatia	Ivana Grgurev
Cyprus	Nicos Trimikliniotis
Czech Republic	Petr Hůrka
Denmark	Natalie Videbaek Munkholm Mette Soested Hemme
Estonia	Gaabriel Tavits
Finland	Ulla Liukkunen
France	Francis Kessler
Germany	Bernd Waas
Greece	Costas Papadimitriou
Hungary	Tamás Gyulavári
Iceland	Leifur Gunnarsson
Ireland	Anthony Kerr
Italy	Edoardo Ales
Latvia	Kristīne Dupate
Liechtenstein	Wolfgang Portmann
Lithuania	Tomas Davulis
Luxemburg	Jean-Luc Putz
Malta	Lorna Mifsud Cachia
Netherlands	Miriam Kullmann Suzanne Kali Matthijs van Schadewijk
Norway	Marianne Jenum Hotvedt Alexander Næss Skjønberg
Poland	Marcin Wujczyk
Portugal	José João Abrantes Isabel Valente Dias
Romania	Raluca Dimitriu
Slovakia	Robert Schronk
Slovenia	Barbara Kresal
Spain	Joaquín García Murcia Iván Antonio Rodríguez Cardo
Sweden	Andreas Inghammar Erik Sinander
United Kingdom	Catherine Barnard

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Executive Summary

National level developments

In April 2024, 23 countries reported labour law developments (all countries except for **BG**, **IS**, **SK**, **LI**, **LT**, **LU**, **LV** and **MT**). The following were of particular significance from an EU law perspective:

Implementation of EU Directives

In **Hungary**, the government published the draft of the implementation package of the Minimum Wage Directive for consultation. The draft will supplement several employment-related acts by adding that the respective law complies with Directive 2022/2041.

In **Poland**, a bill to protect whistleblowers was submitted to Parliament. The bill aims to implement the European Parliament and Council (EU) Directive 2019/1937 of 23 October 2019.

In **Slovenia**, the Act on Co-determination of Workers in Cross-border Mergers, Divisions and Conversions of Companies has been enacted. The Act transposes six articles of the Mobility Directive 2019/2121 on cross-border conversions, mergers and divisions into the Slovenian legal system.

In **Spain**, a draft bill was put in place to transpose Directive (EU) 2019/1152 on transparent working conditions in the EU; however, its final approval date remains uncertain.

Annual leave

In the **Czech Republic**, the Ministry of Labour and Social Affairs submitted a draft amendment to the Labour Code to the inter-ministerial comment procedure. Among other things, the draft amendment aims to safeguard employees' right to leave in case of invalid termination of employment.

In the **Netherlands**, a District Court ruled on a case concerning a dispute over paid annual leave. The Court made an explicit reference to relevant EU and Supreme Court case law on entitlement to holiday hours.

Finally, in **Spain**, in cases where the weekly rest period is not taken on the same day each week but varies, the Supreme Court has ruled that it may not coincide with a public holiday, ensuring workers do not forfeit either entitlement.

Dismissal protection

In **Belgium**, a new law was enacted which introduces enhanced dismissal protection for employees undergoing fertility treatment or medically assisted reproduction.

In the **Czech Republic**, as mentioned, the Ministry of Labour and Social Affairs submitted a draft amendment to the Labour Code. Among other things, the draft amendment proposes the extension of statutory time limits for giving notice of termination for breach of an employee's duties.

In the **Netherlands**, the Court of Appeal ruled on the legality of a dismissal. The central question in this case was whether a company's restructuring could be considered a transfer of undertaking, pursuant to which the employee's employment contract passed from the holding company to the subsidiary by operation of law.

Fixed-term work

In **Germany**, the Federal Labour Court ruled that in the context of a fixed-term contract for substantial reasons, public employers are not required to exercise their organisational discretion in a manner that leaves them vulnerable to accusations of institutional abuse of rights when selecting applicants for inclusion.

In **Italy**, the Court of Cassazione ruled that seasonal workers have precedence for similar positions as the one they held upon the termination of their employment. They are entitled to compensation for damages rather than guaranteed permanent employment should this right be violated.

Platform work

In **Portugal**, a labour court ruled that the relationship between a digital platform (Glovoapp) and 27 couriers should not be treated as an employment relationship within the context of a claim for recognition of the existence of an employment contract.

Temporary agency work

In **Denmark**, the High Court ruled on a case that concerned three workers who had been employed by a temporary work agency and had been assigned on successive contracts to the same undertaking. One of the key questions was whether the workers were covered by the Temporary Agency Act, i.e. whether the work was of a 'temporary' nature.

In the **Netherlands**, the Court of Appeal ruled on a case that concerned the implementation of Article 6(2) of Directive (EU) 2008/104 on temporary agency work.

Working time

In **Austria**, the Supreme Court delivered a judgment which is of interest from an EU labour law perspective, and dealt with the forfeiture of the employee's entitlement to be provided with the working time records.

In the **Czech Republic**, the Ministry of Labour and Social Affairs submitted a draft amendment to the Labour Code. Among other things, the amendment touches upon the employee's scheduling of working time on the basis of an agreement between the employer and the employee, while maintaining the employer's obligations relating to working time and rest periods.

In **Germany**, a parliamentary hearing on Working Time Law took place related to employees' demands for more flexibility.

In **Sweden**, a labour court ruled on the interpretation of working time in a collective agreement for onboard staff of SAS (airline company), and concluded that the employer had violated the collective agreement.

Other developments

In **Austria**, both the National and Federal Assembly passed an amendment of the Act against Wage and Social Dumping with the aim of enhancing enforcement of legislation transposing Directive 1996/71/EC, 2014/67/EU and 2020/1057/EU in the transport sector.

In **France**, the Court of Cassation ruled that it is not a discriminatory measure to award certain non-striking employees an exceptional bonus for extra work or for carrying out tasks outside the scope of their employment contract.

Finally, in **Romania**, the Violence and Harassment Convention, 2019 (No. 190) was ratified.

Implications of CJEU Rulings

Collective redundancies

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

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

The CJEU case dealt with the consultation obligation laid down in Article 2(1) of Directive 98/59/EC relating to collective redundancies.

The Court held that Article 2(1) of Directive 98/59/EC must be interpreted as meaning that the consultation obligation stipulated arises at the time when the employer, in the context of a restructuring plan, contemplates or plans a reduction of employment positions, the number of which may exceed those fixed in Article 1(1)(a) of that Directive, and not when, after having adopted measures involving the reduction of that number, the employer became certain that it would in fact have to dismiss a number of workers greater than those set by the latter provision.

The ruling will 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.

This is not the case for **Spain**. While Spanish law is not inherently non-compliant with EU law, the interpretation of specific issues remains uncertain and requires further clarification from the courts. The CJEU's ruling suggests that all job eliminations in a crisis context should be considered in collective dismissals, even if not technically classified as dismissals. Spanish law allows for such an interpretation, as Article 51 of the Spanish Labour Code covers terminations initiated by the employer. While there is no existing Supreme Court doctrine on this issue, nothing in Spanish law prohibits courts from adopting the CJEU's approach.

In conclusion, the CJEU's ruling provides clarity on a new issue, potentially impacting how collective dismissals will be dealt with in Spain and other EU Member States. However, the full extent of its implications will depend on how courts interpret and apply the ruling in future cases.

Moreover, the ruling may have implications for **Belgium** in relation to the timing of consultation in cases of collective redundancies. Belgian regulations require employers to inform and consult workers' representatives before proceeding with collective redundancies. However, the regulations do not specify the exact timing of this consultation obligation.

Potential implications may also arise for the **Czech Republic**. Currently, national law exempts employers from information and consultation obligations if the number of affected employees falls below five due to agreements on terminations or employee-initiated terminations. The CJEU's ruling may challenge this exemption, potentially requiring revisions to ensure compliance with EU standards.

The CJEU ruling is also relevant for **Greece**, as it is likely to have significant implications for Greece's legal framework concerning collective redundancies and consultation obligations.

In **Latvia**, moreover, if a similar situation arises at the national level, the CJEU's decision would serve as a source of interpretation in case of the dispute on the establishment of the moment when an employer has taken the decision on the collective redundancies. The same can also be said for Malta.

The CJEU's ruling is also relevant for **Portugal**, as the national concept of collective dismissal does not fully coincide with the concept arising from Article 1 (1) of the Directive.

Finally, the CJEU's decision may also have implications for **Slovakia**, as it may prompt revisions to national labour law to ensure compliance with EU standards on the timing and initiation of negotiations in cases of collective redundancies.

Table 1: Major labour law developments

Topic	Countries
Annual leave	CZ ES NL
Collective bargaining and collective action	BE CR CZ FI PL SL UK
Collective redundancies	IE
Domestic work	RO
Dismissal protection	BE CZ FR
Fixed-term work	DE IT
Migrant workers	EE PL SL
Minimum wage	CZ HU NL
Platform work	PT
Parental leave	CY CZ
Temporary agency work	DK NL
Working time	AT CZ DE NO SE

Austria

Summary

(I) The Act against Wage and Social Dumping has been amended to improve its enforcement in the transport sector/for mobile transportation workers who are not subject to transit exemptions.

(II) One ruling of the Austrian Supreme Court is of interest from an EU labour law perspective and deals with the forfeiture of employees' entitlement to be provided with their working time records.

1 National Legislation

1.1 Amendment to the Act against Wage and Social Dumping

Both the National (17 April 2024) and Federal (24 April 2024) Assembly passed an amendment to the Act against Wage and Social Dumping ((Lohn-und Sozialdumpingbekämpfungsgesetz, LSD-BG, BGBl I 45/2024) with the aim of enhancing the enforcement of legislation transposing Directive 1996/71/EC, 2014/67/EU and 2020/1057/EU in the transport sector. Previously, administrative authorities were required to use the IMI system to reach out to employers in the transport sector (regarding posted mobile workers who were not subject to the transit exemption) who did not have the required documents (either in print or electronically) during a control, and to deliver administrative decisions (including on fines in case of violations).

In practice, this strict requirement to use the IMI system for these matters proved to not be effective, as, for example, some countries made the use of the IMI system dependent on previously unsuccessful delivery by regular mail. The amendment now allows authorities to contact employers in other EU Member States via regular mail services.

Additionally, some of the information requirements in the notification prior to a posting/transnational agency work were touched upon, but not substantially altered. The amendments entered into force on 27 April 2024.

2 Court Rulings

2.1 Forfeiture of the right to demand working time records

Supreme Court (Oberster Gerichtshof – OGH) of 22.3.2024, 8 ObA 9/23s

In Austria, the employer is required to record employees' working time as well as in-work rest breaks (§ 26 (1) Working Time Act – *Arbeitszeitgesetz* – AZG). Pursuant to § 26 (8) AZG, employees are entitled to request and be provided with their working time records free of charge once a month. In the present case, it was disputed whether a general forfeiture clause in a collective agreement (in concreto, the collective agreement for blue collar workers in the metal manufacturing trade) is also applicable to this entitlement. According to Article XX of this collective agreement, the rights and entitlement of both parties must be made in writing within six months after their due date, otherwise they are precluded.

The Supreme Court (as well as the lower courts) ruled that the forfeiture clause in the collective agreement is also applicable to this entitlement. It is established case law that preclusion periods in collective agreements are also permissible for mandatory statutory claims arising from the employment relationship, because such forfeiture clauses do not restrict the claims themselves, but only their enforcement. Only if they violate mandatory statutory provisions on the time limit for making such claims to the detriment

of the employee could such collective agreement provisions be deemed null and void. In the present case, the Working Time Act does not stipulate any time limits for the claim to be provided with the working time records, but actually limits the entitlement to obtaining them once a month. Therefore, the preclusion period in the collective agreement was applicable.

The ruling dealt with an interesting question that has not yet been ruled on by the CJEU. Based on the findings in case C-55/18, *CCOO*, in which the Court established the obligations of Member States to set up a system enabling the measurement of the duration of working time each day by each worker, it is arguable that workers are entitled to access to such working time records. If this is the case, the question follows whether this access may be denied after a certain period of time. It would have been interesting to have this question answered by the CJEU, but the Austrian Supreme Court did not consider the potential relevance of EU law (and was not raised by the parties, either), and therefore did not deal with this aspect.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

In Austria, the Act on the Advancement of the Labour Market (*Arbeitsmarktförderungsgesetz* – AMFG) provides in § 45a that employers must inform the public labour market services in writing about the intention to terminate a certain number of employment relationships as specified in paragraph 1 within a period of 30 days (mass redundancies). The notification must take place at least 30 days before the first termination and may be prolonged in the applicable collective agreement (§ 45a (2) AMFG).

In parallel, the employer is also required to inform the works council about mass redundancies according to § 109 Labour Constitution Act (Arbeitsverfassungsgesetz – ArbVG). It should be pointed out that mass redundancies are only one of the cases listed in this provision as examples of 'operational changes' (*Betriebsänderung*) about which the works council must be informed. The reduction or closure of the entire business or parts thereof it is also mentioned; the relocation of the entire business or parts thereof; the merger with other businesses. Therefore, the works council must be informed about a restructuring plan, regardless of the number of employees to be dismissed, as it would be considered an 'operational change'.

Concerning the relevant point in time, the Act stipulates that the information must be provided "*at a time, in a manner and with a content that enables the works council to assess the possible effects of the planned measure in detail and to issue a statement on the planned measure*."

Against this national legal background, it can be concluded that the legal situation in Austria already complies with EU law as it can be interpreted that the consultation obligation already arises at the time when the employer, in the context of a restructuring plan, contemplates or plans a reduction of employment positions which may exceed the threshold for mass redundancies. The present ruling concretises this obligation but does not have any impact beyond that.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) A new Collective Bargaining Agreement concluded in the National Labour Council increases the intersectoral minimum salary up to EUR 2029.88.

(II) A new law of 24 March 2024 (*Moniteur belge* 18 April 2024) introduces new dismissal protection for employees undergoing fertility treatment or a medically assisted reproduction programme and provides for a new protected criterion in the Anti-Discrimination Law of 10 May 2007 to fight sex discrimination.

1 National Legislation

1.1 Increase of the intersectoral minimum monthly salary

Collective Bargaining Agreement (CBA) No. 43/17 of 26 March 2024, concluded in the National Labour Council, amends CBA No. 43 of 02 May 1988 on the guarantee of an average minimum monthly income. The new CBA increases the intersectoral minimum wage from 01 April 2024 by EUR 35 gross, bringing the total guaranteed average minimum monthly income to EUR 2029.88 gross. The CBA came into force on 01 April 2024 and was concluded for an indefinite period.

1.2 Dismissal protection and non-discrimination of workers undergoing a fertility treatment or a medically assisted reproduction programme.

A new law of 24 March 2024 (*Moniteur belge* 18 April 2024) introduces new dismissal protection for employees undergoing fertility treatment or a medically assisted reproduction programme and provides for a new protected criterion in the Anti-Discrimination Law of 10 May 2007 to fight discrimination between women and man. The new Law amends the Labour Code of 16 March 1971 by introducing a new provision 45/1 and the Law of 10 May 2007 to fight discrimination between women and men (new Article 19/1).

Henceforth, with this amendment, the Labour Law of 16 March 1971 provides for specific dismissal protection for workers and employees who are absent from work to undergo fertility treatment or a programme of medically assisted reproduction. This law sets the following requirements in this regard:

- Dismissal protection applies as soon as the employer has been informed in writing and on the basis of a medical certificate about the treatment or programme. The employer may not unilaterally terminate the employment contract until two months after the treatment, except for unrelated reasons.
- If the worker or employee is dismissed during this period, and the employer cannot prove unrelated reasons, the employer is liable to pay liquidated damages of six months' gross salary in addition to the compensation due for termination of the employment contract (Article 2).

Similarly, this law also provides for a new protected criterion in the Anti-Discrimination Law of 10 May 2007, the "*absence due to fertility treatment or a medically assisted reproduction programme"* (Article 3). This law came into force on 28 April 2024.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

The CJEU confirmed that the obligation to consult employee representatives stipulated in Article 2 of Directive 98/59/EC arises as soon as the employer is "*contemplating or proposing to abolish a certain number of jobs and that number may exceed the thresholds laid down in Article 1(1)(a) of that Directive*". Nonetheless, if as in the present case, the employer takes measures that may encourage voluntary departure of some of the employees concerned and the success of the measures is uncertain, such consultation must take place immediately. In terms of that obligation, the CJEU found no reason to consider whether a 'voluntary departure' should be considered a "*termination[s] of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned*" (i.e. redundancies) and that the employees concerned should therefore be included for the purposes of determining the threshold for collective redundancies.

In Belgium, the obligation to consult workers' representatives in the event of collective redundancies is regulated in Collective Bargaining Agreement (CBA) No. 24 of 02 October 1975, concluded in the National Labour Council, concerning the procedure for informing and consulting workers' representatives about collective redundancies (CLA No. 24) and indirectly by the so-called Renault Act of 13 February 1998. Article 6 CLA No. 24 provides that when the employer intends to proceed with collective redundancies, it is required to inform and consult the workers' representatives in advance. Neither CBA No. 24 nor the Law of 13 February 1998 specifies at what point in time the prior consultation must take place. Belgian case law follows the interpretations issued by the CJEU regarding Directive 98/59/EC Collective Redundancies.

The Directive Collective Redundancies, which the Belgian regulations must comply with, must be interpreted as meaning that the adoption of strategic decisions or changes in activities leading to the employer contemplating or planning a collective redundancy within an undertaking or group of undertakings creates an obligation for that employer to consult the workers' representatives. According to the Court's case law, the consultation procedure specified in Article 2 of Directive 98/59/EC must be initiated by the employer once a strategic or commercial decision to contemplate or plan a collective redundancy has been taken (for instance CJEU case C-429/16, 21 September 2017, *Ciupa*, paragraph 34).

The judgment of 22 February 2024 outlined here is therefore relevant as it refines the CJEU's case law on the timing of consultation in case of collective redundancies.

4 Other Relevant Information

Nothing to report.

Bulgaria

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 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

The judgment in C-589/22 CJEU of 22 February 2024 will not have any implications for Bulgarian legislation and national practice in relation to the interpretation of Article 2(1) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

Article 130a of the Labour Code (LC) establishes an obligation for the employer to initiate consultations with trade union representatives as well as workers' representatives (elected by the General Assembly of Workers to represent their common interests in labour and social insurance matters before the employer or state authorities), no later than 45 days before the mass dismissals take place, and to undertake efforts to reach an agreement with them to avoid or limit mass dismissals and to mitigate their consequences. The modalities of the consultation shall be determined by the employer, the trade union representatives and the workers' representatives. The employer may not rely on the fact that another body has taken the decision to initiate a mass dismissal (Article 130a (6) LC) for failure to fulfil its obligation.

Failure to comply with the provisions of Article 130a of the Labour Code does not make the dismissal illegal, but makes the employer administratively liable for violation of labour legislation. This understanding is confirmed in the practice of the Supreme Court of Cassation.

In the event of a breach of the provisions of Article 130a LC concerning the execution of consultations and the provision of prior written information ("*on the reasons for the planned dismissals, the number of workers to be dismissed, the main economic activities, occupational groups and positions to which they relate; the specific indicators for the application of the selection criteria for the workers to be dismissed, the period during which the dismissals are to take place and the benefits associated with the dismissals"*), the employer shall be liable to a fine in the amount of BGN 1.500 or higher, but not exceeding BGN 5.000 (between EUR 767 to EUR 2.557) and any responsible official shall be liable to a fine of BGN 250 or higher, but not exceeding BGN 1.000 (EUR 511).

4 Other Relevant Information

Nothing to report.

Croatia

Summary

The Collective Agreement for the Hospitality Sector has been expanded by ministerial decree to cover all employers and workers in the hospitality sector in Croatia.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

Article 127 of the Labour Act of 2014 (last amended in 2023) provides for a consultation obligation on the side of the employer in case of collective redundancies.

It states:

> (1) An employer whose need for the work performed by at least twenty workers may cease within a 90-day period and who plans to terminate the employment contracts of at least five workers due to business-related dismissals, is required to consult the works council in a timely manner and in line with the procedure prescribed by this Act, to reach an agreement for the purpose of eliminating or reducing redundancies.
>
> (2) Redundant workers referred to in paragraph 1 of this Article include workers whose employment relationship will come to an end due to business-related terminations of the employment contract and an agreement between the employer and the worker at the employer's request.
>
> (3) To implement the consultation obligation stipulated in paragraph 1 of this Article, the employer is required to submit to the works council in writing all relevant information about the reasons why the need for the work performed by the workers might cease, the total number of workers employed, the number, title and jobs of workers who will be redundant, the selection criteria of such workers, the amount and method of calculation of severance pay and other benefits to workers, and the measures taken to deal with redundant workers.
>
> (4) During the consultation process with the works council, the employer is required to consider and justify all possibilities and proposals that could eliminate the intended termination of the need for the worker's work performance.
>
> (5) The employer is required to inform the competent public employment service about the consultation referred to in paragraph 1 of this Article and submit the information referred to in paragraph 3 of this Article, information on the duration of the consultation with the works council, the results and conclusions of the consultation, and to attach a written declaration of the works council, if it was delivered to him/her.

(6) The works council can submit its comments and suggestions to the competent public employment service as well as the employer on the notification provided under paragraph 5 of this Article.

(7) The employer is required to implement the consultation procedure referred to in paragraph 1 of this Article, even if following the consultation, the employer decides to initiate the redundancybecause the need for the worker's work is no longer needed, but the decision must be made in accordance with the special regulation.

This is in line with Article 2(1) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies and in line with the CJEU's judgment in case C-589/22. Namely, it is evident from the wording of the above-cited provision ("the need for the work…could cease… to consult with the works council in a timely manner") that employers in Croatia are required to carry out a consultation procedure when contemplating or planning a reduction of employment positions, the number of which exceeds those set in Article 1(1)(a) of that Directive, and not after having adopted measures involving the reduction of that number of posts, i.e. after the employer decided that a number of workers greater than that set in the latter provision has to be dismissed.

4 Other Relevant Information

4.1 Expansion of the application of the Collective Agreement for the Hospitality Sector

The Minister of Labour, Pension System, Family and Social Policy has expanded the application of the Collective Agreement for the Hospitality Sector (Official Gazette No. 39/2024) concluded on 12 March 2024, to cover all employers and workers in the Republic of Croatia involved in activities related to accommodation and preparing and serving of food (Official Gazette No. 49/2024).

Cyprus

Summary

(I) The Parliamentary Committee on Labour, Welfare and Social Insurance has evaluated the Law on Social Insurance to entitle each insured self-employed person to parental leave allowance.

(II) The Parliamentary Committee on Labour, Welfare and Social Insurance has examined an amendment proposing to extend the period of time during which employees have the right to take parental leave to allow for flexible working arrangements that would serve to improve work-life balance.

(III) The Parliamentary Committee on Labour, Welfare and Social Insurance Law discussed legislation on the establishment of the Inspection Service to carry out inspections of the implementation of the provisions of the Law on Transparent and Predictable Working Conditions.

1 National Legislation

1.1 Parental leave for self-employed persons

The Parliamentary Committee on Labour, Welfare and Social Insurance has evaluated the Law on Social Insurance to grant self-employed workers the right to receive parental leave allowance and benefits in case of occupational injuries and to determine the relevant insurance safeguards for receiving these. Specifically, the provisions of *The Social Insurance (Amendment) Law of 2024*, as originally tabled in Parliament, provide, inter alia, for the following:

"Establishment of the terms and conditions *for entitlement to parental leave allowance for each insured self-employed person, in addition to the corresponding terms and conditions already in force for insured employees."*

- Setting the period of time within which the self-employed parent must give notice to the director of the Social Security Administration on taking parental leave at least three weeks prior to the start date of the parental leave, except in special cases where the director may agree to condense that period.
- Establish the terms and conditions for entitlement to occupational injury benefits for each insured self-employed person, in addition to the corresponding terms and conditions already in effect for insured employees.

According to the information submitted by the Ministry of Labour and Social Insurance accompanying the bills, the following, among others, were noted:

- Based on the results of a relevant recent study carried out to expand the beneficiaries of parental leave allowance to include self-employed workers under the same insurance conditions and at the same level as salaried workers, the annual expenditure is estimated to amount to EUR 0.6 million or 0.01 per cent of insurable earnings, while the non-recurring cost to cover the costs of retroactivity of the allowance is estimated at EUR 1.1 million.
- Based on the results of a relevant recent study carried out to estimate the cost of expanding the coverage to self-employed persons in case of accidents at work, the annual cost is estimated at EUR 0.6 million or 0.01 per cent of insurable earnings.

1.2 The Leave (Paternity, Parental, Care, Force Majeure) and Flexible Working Arrangements for Work-life Balance (Amendment) Law of 2024

The Parliamentary Committee on Labour, Welfare and Social Insurance reviewed the *Law on Leave (Paternity, Parental, Care, Force Majeure) and Flexible Working Arrangements for Work-life Balance* with the purpose of clarifying that the terms and conditions for granting parental leave allowance are regulated by the provisions of the Social Security Act and to complement the regulations proposed in the first bill that grant the right to parental leave allowance to self-employed workers. The bill was debated along with other related bills, entitled *The Leave (Paternity, Parental, Carer, Force Majeure) and Flexible Working Arrangements for Work-life Balance (Amendment) Act, 2023* and *The Social Security (Amendment) (No. 7) Law of 2023* proposing to extend the period of time during which the right to take parental leave and to receive the related allowance may be exercised until the 15th year of the child's life instead of the child's eighth year of life only, as under the provisions of the existing legislation. The Committee agreed to continue discussions on the proposed legislation at a time after the passage of the bills to allow time for the Executive to study the arrangements proposed in the draft laws in detail.

1.3 The Establishment of the Inspectorate of the Ministry of Labour and Social Insurance (Amendment) Law of 2024 and The Transparent and Predictable Working Conditions (Amendment) Law of 2024

The Parliamentary Committee on Labour, Welfare and Social Insurance has examined the above amending bills in three sessions.

- Amendment to the *Law on the Establishment of the Inspection Service at the Ministry of Labour and Social Insurance*: the purpose of the bill is to amend the *Law on the Establishment of the Inspection Service at the Ministry of Labour and Social Insurance* to enable the Service, within the framework of its competences, to carry out inspections for the implementation of the provisions of the *Law on Transparent and Predictable Working Conditions*, as well as to impose administrative fines for certain violations of the aforementioned law. The Deputy Director of the Department of Labour Relations has stated, inter alia, that the regulations proposed in the first bill were considered necessary to include inspections carried out by the Inspectorate within its scope of the implementation of the provisions of the *Transparent and Predictable Working Conditions Act*. Furthermore, he stated that the regulations proposed in the first bill provide the Inspectorate with the power to impose administrative fines for specific violations of the *Transparent and Predictable Working Conditions Act* in relation to the employer's obligation to inform its employees of the essential terms and conditions of their employment relationship, specifying that the amount of such fines, in accordance with the provisions of the basic law, amounts to EUR 250 for each affected employee. In this regard, he pointed out that the power to impose administrative fines will be exercised in parallel by the inspectors of the Inspection Service who carry out inspections under the *Law on the Establishment of the Inspection Service in the Ministry of Labour and Social Security* and the inspectors appointed under the *Law on Transparent and Predictable Conditions of Employment*, since, under the existing provisions of the first law, any inspectors appointed under legislation included within its scope retain those powers.
- *Amendment of the Law on Transparent and Predictable Working Conditions*: The purpose of the second bill is to amend the *Law on Transparent and Predictable Working Conditions* to include the offence of obstructing inspectors in the

performance of their duties among the offences that constitute a criminal offence and to determine the relevant penalties in case of conviction.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

In the present case, the CJEU ruled that Article 2(1) of Directive 98/59/EC

> *"must be interpreted as meaning that the consultation obligation that it lays down arises at the time when the employer, in the context of a restructuring plan, contemplates or plans a reduction of employment positions, the number of which may exceed those fixed in Article 1(1)(a) of that directive, and not when, after having adopted measures involving the reduction of that number, the employer became certain that it would in fact have to dismiss a number of workers greater than those fixed by the latter provision".*

The Republic of Cyprus regulates collective dismissals through a combination of the general *Law on Termination of Employment* and the Cypriot law providing for mass dismissals, No. 28(I)/2001 (hereinafter referred to as the *Collective Redundancies Law*), enacted prior to Cyprus' accession to the EU on 01 May 2004, and in force since 09 March 2001. As enterprises in Cyprus tend to be relatively small, the possibility of meeting the specifications to dismiss the number of employees required to fall within the definition of 'collective dismissals' is rather slim. In 2001 in the run up to EU accession, significant changes were introduced to regulate collective redundancies with the legislative provisions contained in the *Collective Redundancies Law* 28(I)/2001. However, the specific law does not state that it purports to transpose Directive 98/59/EC to harmonise legislation enacted prior to Cyprus' EU accession. The Cypriot *Law on Collective Redundancies* the Collective Redundancies Directive copies verbatim the wording of the Directive in the relevant law. It must be noted that overall, there has thus far been no debate on this subject, despite the fact that one important Supreme Court decision in 2003 was issued, which will be discussed in more detail.

Article 2 of the *Collective Redundancies Law* states that "'*competent authority' means the Minister of Labour and Social Insurance*"; "'*representatives of the employees' means the representatives of any employees provided for by legislation or practice*" and "'workers' representatives' means the workers' representatives provided for by legislation or practice". Article 2 of the *Collective Redundancies Law* defines 'collective dismissals' as "*dismissals for one or more reasons unrelated to the employees in person where the number of employees dismissed within a thirty-day period*" is as follows:

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

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

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

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

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

No case has been reported about the implementation of collective redundancies since accession to the EU, though the *Lordos* case is often cited. Overall, no debate on the subject has taken place and no case has gone before the court about any of the provisions of this law. In Cyprus, enterprises tend to be smaller and family-run; with the exception of publicly owned corporations and governmental organisations in general, few enterprises are larger, mainly in the field of banking, education and services and light industry sector. In general, trade unions report an overall lack of mechanisms to monitor implementation, as is the case with most labour law directives.

4 Other Relevant Information

Nothing to report.

Czech Republic

Summary

(I) The Chamber of Deputies discussed a draft amendment to the Labour Code, which introduces an indexation mechanism for determining minimum wage, addresses the plurality of trade unions when concluding collective agreements and abolishes the guaranteed wage for employees engaged in the business sector and introduces the obligation to issue a leave plan in agreement with the trade union.

(II) The Ministry of Labour and Social Affairs has submitted another draft amendment to the Labour Code for inter-ministerial comments.

1 National Legislation

1.1 Amendment containing a minimum wage indexation mechanism

The amendment containing the minimum wage indexation mechanism has already reached the Chamber of Deputies (Chamber of Deputies Document 663).

The amendment's proposed effective date is 01 July 2024.

As discussed in the previous Flash Report, the amendment contains the minimum wage indexation mechanism, abolishes the guaranteed wage in the business sector, covers the conclusion of collective agreements at employers with multiple trade unions, and abolishes employers' obligation to create a leave plan.

1.2 Amendment to the Labour Code to increase flexibility

On 29 April, the Ministry of Labour and Social Affairs submitted a draft amendment to the Labour Code to the inter-ministerial comment procedure. The aim of the amendment is to increase the labour market's flexibility, as well as in the performance of work under an employment relationship. The amendment thus enhances flexibility in terms of establishing and terminating employment relationships. A greater degree of contractual freedom will also apply to working conditions. The most important changes are:

- The extension of the probationary period for managers from the currently three or six months to four or eight months;
- The possibility of exceptions to the general restriction on the negotiation of a fixed period for the replacement of an absent employee;
- Simultaneous performance of the same type of work for the same employer in another employment relationship during a period of parental leave;
- Change to the notice period - the notice period shall commence from the date of delivery of the notice notification, not from the first day of the calendar month following its delivery;
- Reduction of the notice period for terminations under Section 52(f) to (h) LC, i.e. for reasons based on the employee's conduct or competence, to one month from the currently two months;
- Extension of the statutory time limits for giving notice of termination for breach of an employee's duties (discipline) (Section 58), from the currently two months from the date on which the employer became aware of the breach and one year from the date on which the breach occurred to three months and 15 months, respectively;

- Provision of compensation in the form of damages instead of severance pay (12 times the worker's average earnings) upon termination of employment due to incapacity for work following an occupational accident or disease. In place of the current severance pay provided by the employer from its wage bill, the employer will be entitled to compensation for damages, which will be covered by the employer's statutory employers' liability insurance for occupational accidents and diseases. The statutory insurance is already established in law in connection with the conclusion of the employment relationship, and the employer is required to pay premiums in accordance with the level of risk of the respective work;
- The employee's right to leave in case of invalid termination of employment - in response to the CJEU's decision C-57/22. Will the employer be required to provide the employee not only with compensation for lost wages in the event of invalid termination of employment, but also with leave the employee could not take for such purposes?
- The scheduling of working time by the employee on the basis of an agreement between the employer and the employee, while maintaining the employer's obligations regarding working time and rest periods;
- Reduction of daily rest periods in the event of an emergency in the energy sector to up to six hours with subsequent compensation;
- The possibility to employ minors aged 14 years and over in light work during the main holidays with the consent of the legal representative;
- Possibility to pay wages in a foreign currency if there is an element of foreignness on the part of the employee (e.g. place of work, place of residence, parental responsibilities);
- The obligation for a trade union to prove the number of its members by notarial deed at the employer's request and expense;
- Ensuring that registered partners of employees have the same status as spouses in the event of disruption of work and death of the employee.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

According to Czech legislation (§ 62 (1) LC), a collective redundancy is the termination of employment by the employer for organisational reasons (§ 52 (a) to (c) LC) within a period of at least 30 calendar days:

> (a) 10 employees in the case of an employer employing between 20 and 100 employees;
>
> (b) 10 per cent of employees of an employer employing between 101 and 300 employees;
>
> (c) 30 employees of an employer employing over 300 employees.

Only if at least five notices are issued in this way by the employer does the number also include employees whose employment is terminated by agreement for organisational

reasons. Terminations of employment for other reasons are not included in the specified number of persons.

Section 62 (2) of the LC, in accordance with the CJEU's present decision, requires the employer to inform the trade union and works council of its intention at least 30 days before giving notice of termination and, if there are no such representatives, each employee concerned should be informed of the employer's intention and of other related matters as provided for in this provision. The objective of the negotiations with employee representatives or, where appropriate, with the employees themselves, shall be to reach agreement on measures to prevent or limit collective redundancies or to mitigate their consequences.

However, if the employer decides to conclude an agreement on the termination of employment with all employees concerned or if the employees themselves terminate their employment relationship and if the number of employees to whom notice must be given is less than five, there is no collective redundancy under Czech law, and the employer will not be required to initiate an information and consultation procedure with the employees, even if the organisational change results in the termination of employment of a specified number of persons.

The CJEU decision in question will thus have consequences for Czech labour law, or specifically for the provisions in Section 62 LC.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

A recent ruling by the Danish Eastern High Court provides an important clarification of the interpretation of 'temporariness' and abuse under the Act on Temporary Agency Work, which transposes EU Directive 2008/104/EC.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Temporary agency workers, the concept of temporariness

Eastern High Court, BS-45303/2021, BS-8528/2023, 24 April 2024

The case concerned three workers who had been employed by a temporary work agency and had been assigned on successive contracts to the same undertaking.

The main question was, first, whether the workers were covered by the Temporary Agency Act, i.e. whether the work was of a 'temporary' nature. Second, the question was whether the successive assignments were to be considered abuse by circumventing the Danish Salaried Employees Act and the Act on Fixed-term Work.

The Act on Temporary Agency Work transposes EU Directive 2008/104/EC. The Act according to section 1(1) applies to

> *"…temporary agency workers, who have a contract of employment or are in an employment relationship with a Danish or foreign temporary work agency and who is assigned by the temporary work agency to user undertakings in Denmark to temporarily perform work tasks under their supervision and direction."*

Section 1(1) almost verbatim transposes Art 1(1) of the Temporary Agency Work Directive. Whether work is temporary agency work covered by the Act depends on an individual assessment of the circumstances of the case.

The High Court in its assessment referred to the EU Directive and the CJEU's case law in *KG* and *Daimler*.

The High Court stated that whether a situation is covered by the Temporary Agency Workers' Act depends on a concrete assessment of the specific circumstances, including whether objective explanations are provided for in the successive assignments to the same user undertaking.

The High Court further stated that in and by itself, it is not a breach of the Temporary Agency Workers' Act or the Temporary Agency Work Directive's rules on 'temporary' assignments to successively assign a temporary agency worker to a user undertaking to carry out fixed-term assignments, regardless whether at different or the same user undertakings. The nature of the work is also not decisive, i.e. whether the assignments are concluded for a position that is temporary in nature, or whether the temporary agency worker is assigned to cover a permanent position that is not covered by a replacement worker.

The cases were then assessed each on their own merits.

The first case concerned two workers who had been assigned as IT supporters to the same user undertaking. The assignments were all fixed-term assignments that were extended seven times for a total duration of two years.

The user undertaking claimed that the successive assignments of the IT supporters were attributable to the fact that the IT department had been meant to close down because the IT tasks were to be outsourced. The company's need for IT support was thus temporary, as it was not a question of *whether* the IT department would close down, but only a matter of *when* it would close down. The outsourcing kept being delayed for external reasons, but the tasks were finally outsourced.

The High Court found that the duration and number of renewals for the two workers did not in by themselves place the successive assignments outside the scope of the Act on Temporary Agency Work. Furthermore, there was evidence that there was an objective explanation for the conclusion of successive assignments, and the circumstances did not constitute abuse per se.

That is, the two workers performed work 'temporarily' for the user undertaking and as such were covered by the Temporary Agency Workers' Act and the terms applied to their work. The two workers could not claim rights under the Salaried Employees Act or the Act on Fixed-term Work.

Whether the rights of the two temporary agency workers were breached was a question of interpreting their entitlements under the Temporary Agency Workers' Act, section 3, which sets out temporary agency workers' rights.

The temporary agency worker can either be covered by the rights stipulated in section 3 of the Act itself, i.e. the right to equal treatment concerning basic rights in section 3(1), the right to protection against unequal treatment and discrimination on grounds of sex, race, etc. in section 3(2), the right to information about the terms of employment for the assignment in section 3(3), and the right to not conclude successive assignments without an objective cause in section 3(4).

Alternatively, the temporary agency worker may be covered by rights under a derogating collective agreement that meets the requirements for derogations set out in the Act's section 3(5).

The Court noted that an assessment of which terms the temporary agency workers were entitled to presupposes an assessment of whether the derogating agreement met the criteria set out in section 3(5), including an assessment of whether the collective agreement respected the overall protection of temporary agency workers as stated in Supreme Court ruling U 2020.845 H (discussed in the Flash Report of December 2019). This assessment is the executive competency of the Labour Court, as set out in the Act's section 3(7) and reiterated by the Supreme Court in U 2020.845 H.

For this reason, the High Court did not have the competency to assess whether the workers were entitled to compensation under the Act on Temporary Agency Work, as that assessment would require an assessment of questions that are covered by the sole competency of the Danish Labour Court.

The second case concerned a worker who had been assigned to a user undertaking as a supply chain analyst between December 2016 to July 2020, which included four successive assignments.

The user undertaking explained that it needed flexibility because the company's demands changed rapidly. The temporary work agency, on the other hand, stated that the successive assignments had been explained by an expected shut-down of the user undertaking.

The High Court reiterated that the duration and number of renewals of the assignments in question did not in and by themselves place the successive assignments outside the scope of the Act on Temporary Agency Work.

The High Court in this case, however, did not find any objective explanations for why the user undertaking wanted the temporary agency worker to be assigned in the first place, nor any explanations regarding the need for renewals of the temporary contract in subsequent years. This lack of objective reasons for the use and for the continued use of a temporary agency worker combined with the total duration of the assignments was evidence that the assignment and renewals constituted abuse and a circumvention of the Salaried Employees Act as well as of the Act on Fixed-term Work.

The fact that the company did close down in 2020 did not constitute an objective reason for the assignments in 2016 and the renewals in 2017 and 2018.

On this basis, the High Court ruled that the worker had not 'temporarily' performed work at the user undertaking, and that the Act on Temporary Agency Work was not applicable to the situation.

As a consequence, the worker was covered by the rules in the Salaried Workers Act and the Act on Fixed-Term Work. The temporary work agency as the employer was thus liable to paying the worker's salaries during the notice period as well as during the worker's sick leave, which are entitlements according to the Salaried Workers Act, totalling DKK 257 000 (approx. EUR 35 000) as well as compensation for breach of the Fixed-term Workers Act for concluding successive fixed-term contracts, totalling DKK 25 000 (approx. EUR 3 333).

It is not known whether the case will be appealed to the Danish Supreme Court.

The Danish Act on Temporary Agency Work applies—similar to the Directive—to 'temporary' assignments.

The High Court clearly relied on CJEU case law in the assessment of whether the assignments in the specific case had been temporary or not, and thus an example of abuse of the otherwise applicable rules for the performance of work.

Thereby, the ruling is in line with the EU acquis on the concept of 'temporary'.

From a Danish perspective, this ruling clarifies the interpretation of the Temporary Agency Workers' Act, as the interpretation of the concept of temporariness under the Act had so far been unclear.

The case also provides an important clarification of the consequences related to assignments that are not temporary and thus fall outside the scope of the Temporary Agency Workers Act. As a consequence, the worker also falls outside the scope of the Act on Temporary Agency Work. First, the worker is perceived as a 'regular' worker who is entitled to the rights under the otherwise applicable legal framework. Second, the worker does not change his or her contract of employment, but the temporary work agency is the employer responsible for the worker's rights under the other applicable laws. Third, the user undertaking does not have any duties vis-à-vis the worker, i.e. the temporary work agency is the employer and the employee shall direct any outstanding claims towards the agency as the employer. As such, the temporary work agency continues to be the contractual and actual entity responsible for all rights of their employees – either rights under the Temporary Agency Workers' Act, or alternatively their rights under other legal acts.

This means that the temporary work agency is the entity responsible for ensuring that an assignment is 'temporary' in order for their workers to only be entitled to the limited rights under the Temporary Workers' Act. If their assignment is not temporary, then the temporary work agency must assume responsibility for the rights of those employees based on other legal sources. This bypasses the problematic question of whether temporary agency workers should be entitled to change employers – and be perceived as permanently employed workers by the user undertaking, which then becomes liable for their rights under other legal bases.

This is not the case. Instead, the worker, who is not 'temporary', remains employed by the temporary work agency and his/her entitlements are calculated purely on the basis

of the work performed for the user undertaking, and he/she is perceived as a worker on loan to another entity. This is a pragmatic and practical approach, at least for rights that are based in statutory acts, where the temporary work agency can be directly responsible based on the entitlements and duties following statutory acts and resting on all employers.

A second point is that the ruling only focusses on an interpretation of the concept of 'temporary' in the Temporary Workers Act, section 1(1) as a criterion for being covered by the Temporary Workers' Act, and as such, being entitled to limited rights as temporary agency workers only. This aligns with the EU acquis, namely that the temporariness of the assignment balances the fact that the workers are only entitled to certain rights (basic rights) during their assignment.

The interpretation was not linked with the separate right in section 3(4) (transposing the Directive's Article 5(5)) preventing successive assignments without objective reasons. The cases did not concern interpretations of this right, and focused only on the temporariness of the assignments as a gatekeeper criterion for being covered (or not) by the (limited) terms in the Temporary Agency Workers' Act. That in itself is an important clarification in Danish law.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

The case concerned the obligation to provide information and hold consultations as stipulated in Directive 98/59/EC on collective redundancies.

The question was more specifically at which point those obligations are triggered in the context of a restructuring plan. In short, the respondent (employer) had been engaged in negotiations for an agreement with creditors on refinancing from September 2019 onwards. The number of hotels managed and operated by the respondent decreased from 20 to 7 between August 2019 and December 2019. Specifically, an agreement dated 30 December 2019 terminated the management of 7 of the 20 hotels and transferred the management of those hotels to another operator. In December 2019, the respondent also facilitated job interviews with some of its management employees with one of the new operators, leading to nine employees terminating their positions with the respondent.

One month later, on 31 January 2020, the respondent notified nine workers of their dismissal for organisational and production reasons.

The CJEU found that the consultation obligation arises 'when the employer, in the context of a restructuring plan, contemplates or plans a reduction of employment positions', which may in numbers exceed the Directive's trigger thresholds. The consultation obligation thus does not arise when, 'after having adopted measures involving the reduction of that number', the employer is certain that it would in fact have to dismiss the number of employees that exceed the trigger thresholds.

The CJEU assessed, inter alia, that it had been reasonably foreseeable for the employer that it would have consequences for the workload in its offices, when the employer commenced discussions on the termination of the management of the seven hotels (that were transferred to another operator on 30 December 2019). The Court found that this may be considered a strategic or commercial decision that compelled the employer to plan for collective redundancies, which it is for the national court to ascertain. It was therefore necessary to carry out consultations within the meaning of Article 2 when collective redundancies were contemplated (provided that the conditions in Article 1(1) had been met).

Under Danish law, the Directive on Collective Redundancies has been transposed in the Act on Collective Redundancies, No. 291 of 22 March 2010, as well as in some collective agreements. As in the Directive, the Danish Act states that the consultation obligation arises where an employer is contemplating collective redundancies.

There is only little case law from the Danish Courts on the Act on Collective Redundancies, and in particular on the interpretation of 'contemplated redundancies', which triggers the employer's consultation obligation.

An industrial arbitration ruling of 24 October 2003 addressed this question. In short, the arbitrator relied on which factors the employer could (or could not) reasonably foresee in terms of the number of planned or contemplated redundancies in the assessment of whether the employer should have initiated consultations. As the employer could substantiate that it was not reasonably foreseeable for the employer that the employer would reach the trigger number of dismissals within 30 days, as unexpected business events later resulted in additional dismissals, the employer had not breached the consultation duty.

The Danish legislation is in conformity with EU law. However, the new CJEU ruling clarifies—together with the Court's existing case law—the interpretation of 'contemplated collective redundancies', i.e. the point at which the consultation obligation for employers arises.

The link to the Act on Collective Redundancies, No. 291 of 22 March 2010 is available here.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

(I) Estonian employers want to modify the conditions related to the employment of persons from third countries in Estonia.

(II) The Estonian Chamber of Commerce and Industry is not in favour of regulating the working conditions of trainees with an EU Directive.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

The CJEU's decision will not have any implications for Estonia's labour legislation and its case law. According to § 101 of the Employment Contracts Act, the employer must engage in consultations with employees before initiating the termination of employment contracts. Therefore, the applicable law of Estonia and the practice in companies follow the principles laid down in the CJEU's decision. The current law in Estonia and its implementation are in line with the explanations handed down in the CJEU's decision.

4 Other Relevant Information

4.1 Employers: Estonia should simplify the recruitment of foreign workers

In the interests of the development of Estonia's economy and the sustainability of the state budget, the inclusion of foreigners in the labour market must be simplified; the Central Union of Employers asserted that regulations should not go against the flow of the rest of Europe by making labour migration more difficult.

Estonia's population is ageing rapidly, the birth rate has dropped to a very low level, and every year, up to 6 000 people of working age are missing from the labour market to ensure the funding of public services - security, pensions and health care. In addition, compared to the period before the war in Ukraine, two-thirds of the short-term foreign workforce in 2023 have left the Estonian labour market due to the war. Therefore, to ensure the sustainability of the economy and of the state budget, amendments need to be introduced that facilitate the inclusion of foreigners in the labour market. Short-term employment will not attract experts to Estonia, and the average salary requirement is sometimes too restrictive. Residence and work permits, which allow for a slightly longer stay in Estonia, is limited to only 0.1 per cent of the population.

Employers support the digitalisation of the procedure, the cross-use of data and the channelling of communication into a single information gateway, provided that it simplifies and speeds up the permit procedure, facilitated supervision and allows for an increase in legal labour migration, because risks are mitigated.

Employers disagree with the plan to give the government the possibility to suspend the registration of short-term employment across professions or fields of activity in exceptional cases for reasons of public order or security.

Employers favour language proficiency and adaptation programme requirements, but point to the existing teacher shortage, which calls the fulfilment of these requirements into question.

In addition to the limited number of immigrants to Estonia, another important obstacle are the average salary requirements for third-country workers that are too high in some cases. Employers therefore recommend establishing a wage requirement of 1.5 times the minimum or the median wage, which more accurately reflects the labour market's wage level.

4.2 Estonian Chamber of Commerce and Industry: traineeship contracts do not need regulation by the European Union

The European Commission has drawn up a directive that aims to improve the working conditions of trainees and to fight cases in which employment relationships are presented as internships. According to the Chamber of Commerce, the problems regulated in trainees' contracts are not relevant in Estonia, and the over-regulation of traineeships may reduce companies' desire to offer traineeships to young people.

In Estonia, employment relationships are not hidden behind a traineeship contract.

According to the planned directive, regular employment relationships cannot be hidden behind a traineeship contract, and Member States must implement control and inspection measures to identify and fight activities in which a regular employment relationship is disguised as a traineeship. According to the Chamber, no significant problems have emerged in Estonia with reference to a normal employment relationship hidden behind a traineeship contract. In Estonia, trainees are mostly students gaining their first professional experience. An employment relationship in Estonia includes a probationary period regulated in the Employment Contracts Act. Even if the parties have concluded a traineeship contract, which in terms of content may correspond to an employment relationship, trainees have the opportunity to appeal to the labour dispute commission or the courts. In addition, the trainees have the option to turn to the labour inspectorate for help.

If the planned directive enters into force, companies might be hesitant to offer traineeship opportunities and may have to think twice before signing a contract with a trainee and, if necessary, will have to prove that the trainee's obligations differ from those of regular employees. If a trainee works fewer hours than a regular employee, the question arises whether and to what extent the trainee should be paid in line with his/her contribution. If the requirements for traineeships are too strict, including payment requirements, the provision of traineeship opportunities may be shunned by companies, which in turn would inhibit the development of young people and the growth of a new workforce. According to the Chamber, the directive may become an obstacle to the practice that has been in force in Estonia until now, according to which companies can employ young people under a traineeship of their own free will to train them and offer them initial professional experience.

Finland

Summary

(I) The report of the Employment and Equality Committee of Parliament on the Government Bill concerning restrictions to the right to take industrial action was finalised on 19 April 2024.

(II) The Ministry of Economic Affairs and Employment Preparation has continued preparations of a government proposal to enhance local level bargaining after the consultation round ended.

1 National Legislation

1.1 Employment and Equality Committee's report on the Government Bill on industrial action finalised

The Report of the Employment and Equality Committee of Parliament concerning the Government Bill (12/2024) on restricting the right to take industrial action was finalised on 19 April 2024.

The Committee proposes some clarifications and amendments to the suggested provisions on political and sympathy industrial action. As regards regulations on political industrial action, the Committee proposed adding a 12-month time limit after which an association that has taken industrial action may continue the political industrial action it has previously taken to achieve the same objective. In addition, the Committee proposed to supplement the conditions under which an employer may offset a penalty of EUR 200 against the wages of a worker who has taken part in an industrial action that has been found to be unlawful.

The Employment and Equality Committee of Parliament also adopted a statement that would require the government to assess the gender impact of changes to the industrial peace legislation and report back to the Committee by the end of 2027. The Government Bill was returned to the plenary session of Parliament after the Committee completed its report.

1.2 Preparation of government proposal on local-level bargaining has continued

The Ministry of Economic Affairs and Employment received 49 statements on the draft government proposal to promote local-level collective bargaining. The feedback received during the consultation round will be analysed as part of the further preparation. The draft proposal will also be sent to the Finnish Council of Regulatory Impact Analysis for evaluation.

The Ministry had requested comments on the report of the tripartite working group that had prepared the draft government proposal concerning local collective bargaining. One of the working group's tasks was to prepare legislative amendments based on the Government Programme's entries on local collective bargaining. The tripartite group was not unanimous in its work.

Increasing local bargaining is one of the reforms to enhance the Finnish labour market's flexibility. The government's goal is for local-level collective bargaining to be equally possible in all companies, regardless whether the company belongs to an employer association or what type of employee representation the company has.

The consultation round started on 01 March 2024 and ended on 12 April 2024. However, the deadline for submitting comments in Swedish ended on 23 April 2024, because the

request for comments in Swedish was published later than that for comments in Finnish. The government aims to submit its proposal to Parliament in June 2024. According to the plan, the legislative amendments would largely enter into force on 01 January 2025.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

According to the Act on Co-operation within Undertakings (Yhteistoimintalaki 1333/2021), negotiations on any changes between the employer and employees shall take place when the employer contemplates a business decision that, if implemented, would lead to dismissals. In the context of a restructuring plan, negotiations between the employer and employees shall take place at the stage of planning a reduction of employment positions.

4 Other Relevant Information

4.1 According to the Working Life Barometer, training offered has remained at a lower level since the pandemic

The Ministry of Economic Affairs and Employment produces an annual Working Life Barometer to monitor employees' experiences as regards the quality of working life. According to the Barometer, nearly three quarters of employees considered their possibilities to reconcile work and their private life to be good in 2023. However, there was plenty of room for improvement in terms of skills development at workplaces. Experiences related to the threat of dismissal have largely remained unchanged since 2022. By contrast, more employees, especially men, reported that they might be laid off. Fewer respondents than in the past were confident that they could find a new job. Individuals among the oldest age groups, especially those over the age of 54 years, were the most pessimistic about finding new employment. In addition, fewer employees reported increases in the number of new staff at their workplace compared to 2022.

Despite external pressures, employees considered that the atmosphere at workplaces had remained good. This was reflected in experiences relating to equal treatment, transparent flow of information and ability to resolve conflicts arising at the workplace. Time pressure was common at work, although it decreased slightly from previous years. In 2023, 25 per cent of employees stated that they worked on a tight schedule or at a very fast pace daily, while 37 per cent said that they had to do so weekly. According to the Working Life Barometer, those under the age of 35 years, in particular, showed more symptoms of burnout and harmful stress than the average.

Participation in training offered by employers has remained at a lower level since the coronavirus pandemic. The number of participants has remained at 40 per cent for three consecutive years in a row. Approximately half of the employees participated in education and training independently, but their number also dropped in 2023. Studying under the guidance of a more experienced employee, mentor or teacher decreased compared with the previous year. Participation in continuous learning shrank the most among those engaged in manual work and those employed in industry and small businesses.

France

Summary

(I) The French legislator has brought French law on the acquisition of paid leave during sick leave into line with European law.

(II) While it is up to the social and economic committee (CSE) to define its actions in terms of social and cultural activities, the right of all employees and trainees within the company to benefit from social and cultural activities cannot be made subject to the condition of seniority.

(III) It is not a discriminatory measure to award certain non-striking employees an exceptional bonus for performing extra work or for carrying out tasks outside the scope of their employment contract.

(IV) Specific rules apply in the credit institutions and finance sector, allowing for exceptions to the principle of prohibiting financial penalties in the event of failure to comply with the requirements of good repute and competence applicable to the person in question, or engagement in risky behaviour. However, while such behaviour may make it possible to reduce or eliminate the employee's variable remuneration, it may not constitute behaviour unrelated to the employee's professional activity.

1 National Legislation

1.1 Paid leave during work stoppage

Following the Court of Cassation's rulings of 13 September 2023 on the acquisition of paid leave during work stoppages, the law to bring French regulations into line with European Union law has been published. Law No. 2024-364 of April 22, 2024, containing various provisions for adapting to European Union law in the fields of economics, finance, ecological transition, criminal law, labour law and agriculture came into force on 24 April 2024. It provides for the acquisition by employees of paid leave entitlements at the rate of two working days per month in the event of non-occupational illness (i.e. a total of 24 working days or four week's paid leave per year, the minimum set by Directive 93/104/EC), and 2.5 working days per month in the event of an occupational accident or illness;

Event		No. of days of paid leave gained / month		
		During 1st year	During 2nd year	During 3rd year
Non-occupational accident / illness	**Before** the law adapting French legislation	0	0	0
	After the law adapting French legislation	**2**	**2**	**2**
Occupational accident / illness	**Before** the law adapting French legislation	2.5	0	0
	After the law adapting French legislation	2.5	**2.5**	**2.5**

- similarly, the inclusion of absence due to a non-occupational accident or illness in the employee's effective working time up to a limit of 80 per cent of the remuneration related to these periods (in compliance with the limitation of paid annual leave entitlement to 24 working days), within the calculation of one-tenth of the total gross remuneration received by the employee during the reference period;
- the implementation of a 15-month postponement period for all paid leave rights, in compliance with the Court of Justice of the European Union's case law (*CJEU, 09 November 2023, case No. C-271/22*). In case of paid leave rights for sick leave, the postponement period begins when the paid leave's reference period ends, and if on that date, the employment contract has been suspended for at least one year due to illness or accident;
- the employer's obligation to inform the employee within one month (ten days from the initial amendment introduced by the government) following his or her return from sick leave or a workplace accident by any means, ensuring certainty of receipt: of the number of days of paid leave available and of the date on which such paid leave may be taken.

This authorises the employer to communicate the aforementioned information, in particular through the employee's pay slip. However, the obligation to ensure that the date of receipt of the information can be ascertained remains unchanged.

These provisions will also apply to periods running from 01 December 2009 until the date on which the law will come into force, with an exception for employees who are absent due to a non-occupational accident or illness, and who have already been entitled to 24 working days of paid leave over a leave accrual period, and who will not be able to claim additional leave related to their absence.

For employees with an ongoing employment contract, the time limit for taking legal action to claim back paid leave remains two years but will be counted from the date of entry into force of the law and may cover a period from 01 December 2009.

2 Court Rulings

2.1 No minimum length of service required to benefit from CSE social and cultural activities

Social Division, Court of Cassation, 03 April 2024, No. 22-16.812

In the present case, during a meeting on social and cultural activities, a company's CSE decided to amend the general regulations to introduce a six-month waiting period before newly hired employees could benefit from social and cultural activities. A trade union brought the company's CSE to court to have the disputed Article annulled.
The claim was dismissed by the lower court stating that:

- the requirement of six months' seniority in the company to benefit from social and cultural activities is applied in the same way to all employees;
- the criteria considered discriminatory for excluding certain employees from the allocation of social and cultural activities are union membership and professional category;
- the committee is legitimate, in the interests of the employees themselves, in seeking to avoid a windfall effect resulting from the possibility of benefiting, regardless of seniority, from the committee's reputedly generous social and cultural activities.

The union decided to appeal to the Court of Cassation. Based on Articles L. 2312-78 and R. 2312-35 of the French Labour Code, the Court of Cassation censured the appeal ruling.

In the present case, the requirement of six months' seniority in the company to benefit from social and cultural activities is unlawful, regardless of whether it is applied in the same way to all employees. Consequently, all employees and trainees must benefit equally from social and cultural activities.

2.2 Bonus for non-strikers

Social Division, Court of Cassation, 03 April 2024, No. 22-23.321

In the present case, an employer decided to pay an exceptional bonus to some non-striking employees, based on an exceptional overload of tasks entrusted to them. This bonus was not linked to the previous year's results, but to the additional efforts made by specific employees over the last four months outside their usual duties.

Considering themselves victims of discrimination in the exercise of their right to strike, the employees brought an action before the industrial tribunal seeking payment of specific sums for each of them by way of back pay corresponding to this exceptional bonus, as well as damages for the company breaching its obligations to perform the employment contract in good faith.

The industrial tribunal noted that at the request of the judges, the company had failed to provide the job descriptions and employment contracts within a specified timeframe of each employee who had benefited from the bonus. It also noted that the employer's power of direction allowed it to unilaterally modify employees' working conditions. The employer had granted a discretionary salary benefit to non-striking employees, since they had performed the tasks requested in accordance with the employer's orders. As a result, the industrial tribunal found that there had been discrimination, and ordered the company to pay each employee a specific sum in back pay corresponding to the exceptional bonus. The company then appealed to the Court of Cassation.

Setting out the above solution, the Cour of Cassation overturned the appeal decision on the basis of Article L. 2511-1 of the French Labour Code. According to Article L. 1132-2 of the French Labour Code, exercising the right to strike cannot, in principle, give rise to discrimination, particularly in terms of pay. However, it is possible to pay a bonus to non-striking employees for a temporary increase in activity, without this constituting discrimination.

2.3 Sexual harassment and financial penalties

Social Division, Court of Cassation, 13 March 2024, No. 22-20.970

In another case, an employee of a corporate and investment bank was dismissed for gross misconduct following an internal investigation for inappropriate and improper behaviour towards several female employees. In view of this behaviour, the company refused to pay the deferred variable remuneration on the grounds of non-compliance with good repute requirements.

The employee brought an action before the industrial tribunal, claiming in particular that his dismissal should be requalified as a dismissal without real and serious cause, and that he should receive back pay in respect of his deferred variable remuneration. In a judgment issued on 06 February 2020, the industrial tribunal rejected the employee's claim to have his dismissal reclassified as a dismissal without real and serious cause. On the other hand, the court awarded him his deferred variable remuneration. The employee appealed against this decision.

The Versailles Court of Appeal reclassified the employee's dismissal for serious misconduct as a dismissal for real and serious cause, finding that sexual harassment had not been established, and confirmed the award of deferred variable pay.
As a matter of principle, the variable portion of remuneration may not be withheld or reduced on grounds of misconduct on the part of the employee. Article L. 1331-2 of the French Labour Code prohibits fines and pecuniary penalties. However, there is an exception for credit institutions and finance companies. Article L. 511-84 of the French Monetary and Financial Code provides for a derogation from the aforementioned Article L. 1331-2 in view of the financial risks and criminal liability that certain behaviours may entail.

The Court of Cassation ruled that sexual harassment had indeed occurred. However, these facts could not lead to the cancellation of the employee's variable remuneration, as there was no link between his professional activity and this behaviour. According to the Court of Cassation, the derogation from the prohibition on financial penalties set out in Article L. 511-84 of the French Monetary and Financial Code must be understood strictly with reference to the professional activity that justifies the said derogation. Risky behaviour, therefore, refers to behaviour that does not comply with monetary and financial rules and not to behaviour towards other employees, for example.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

Consulting the CSE is relevant in a wide range of situations, some of which require specific procedures to be implemented.

First, it should be noted that CSE consultations are only necessary if the employer wishes to implement changes that are likely to affect the size or structure of the workforce. Cases vary and cover several situations, such as:

- redundancies on economic grounds;
- collective contractual terminations or collective performance agreements. The consultation does not, however, relate to draft agreements, but to the reasons leading to the restructuring, its timetable and the impacts on working conditions;
- more generally, any regular and significant reduction of a company's workforce over a given period as part of a deliberate strategy.

The French Labour Code states that the CSE "shall be informed in a timely manner of restructuring and downsizing projects." This notion of "*timely*" is particularly difficult to determine when it comes to a restructuring and downsizing project prepared several weeks or months in advance. With respect to changes in a company's economic or legal structure, the works council must be informed and consulted prior to the decision's implementation. It is clear that the CSE can only require that it be consulted if a specific project actually exists, and not for preliminary studies (which are essential for the development of a project). If some companies involve employee representatives immediately from the study phase, it is certainly not out of a legal obligation, but out of the desire to encourage the most transparent social dialogue possible.

Such involvement enables staff representatives to be informed in advance, making it easier for them to understand the project's objectives and principles. The consultation concerns, on the one hand, the plan to restructure and reduce the workforce (including a description and features of the affected business sector, the economic difficulties experienced by this sector, the need to safeguard competitiveness, with each case including all necessary data and figures) and, in the absence of unions or any agreement with the unions, the collective layoff plan (the PSE) itself (including the number of jobs

eliminated, the affected employment categories, the criteria for the order of layoffs and an estimated timetable for the layoffs and accompanying social measures), on the other.

According to case law, consultations must take place not only before the implementation of a measure decided by the employer, but also before the decision is finally taken. In practice, it is not always clear when the works council should be consulted.

In an attempt to clarify the situation, the Court of Cassation has laid down the following principles:

- if a decision is understood to be a manifestation of the will of a governing body which obliges the company, it does not follow that it necessarily implies precise and concrete measures;
- a project or guidelines, even if formulated in general terms, must be submitted to the Works Council for consultation when their purpose is sufficiently specific for their adoption to have an impact on the organisation, management and general operation of the undertaking;
- it is irrelevant that this project or these guidelines are not accompanied by precise and concrete implementation measures, provided that subsequent discussion of these measures is not such as to call into question the principle of the project or guidelines adopted.

In other words, consultation of the works council may not be too premature in the sense that the project must be sufficiently advanced for the information to be substantial or too late, and in the sense that it must not relate to a project that has been finalised so that a discussion can take place between the employer and the works council. Accordingly, the procedure for informing and consulting the works council before the conditions of the outsourcing project have been definitively decided and before the project is implemented is in order (Cass. soc. 26 May 2004, No. 02-17.642). A delayed consultation of the works council, i.e. after the decision has been taken, would likely constitute an offense of obstruction. It is irrelevant that the consultation took place before the decision was actually implemented (Cour de Cassation, 13 December 1994, No. 93-85.092). In this respect, it is necessary to ascertain whether or not the decision was definitively taken before the committee's consultation was finalised (Cass. crim., 28 January 2014, No. 12-87.164).

French case law seems to be in line with the CJEU's decision which states "that the consultation obligation that it lays down arises at the time when the employer, in the context of a restructuring plan, contemplates or plans a reduction of employment positions, and not when, after having adopted measures."

Under Article L. 1233-30 of the French Labour Code, the employer implementing a redundancy procedure with a redundancy plan must convene and consult the works council on the planned operation and the timetable for its implementation, as well as on the collective redundancy project. In accordance with Article L. 1233-31 of the same Code, the employer shall send the members of the EWC, along with the invitation to the first meeting, all the relevant information on the project. If any information is missing, Article L. 1233-57-5 of the Labour Code allows the CSE to ask the Dreets during the procedure, to order the employer to provide it with this information or to comply with the procedural rule laid down by law.

For the consultation procedure to be in order and for the PSE to be approved, the CSE must therefore have been given the opportunity to give its two opinions regularly, with full knowledge of the facts (CE 22-7-2015 No. 385816). Consequently, a request for approval of the unilateral document setting out the content of the PSE may only be duly referred to the Dreets if this request is accompanied by the opinions issued by the CSE or if in their absence, the CSE is deemed to have been consulted (CE 22-5-2019 No. 420780).

In addition, if an expert is called in, the administration must ensure that the two opinions are obtained after the CSE has been given the opportunity to examine the expert's analyses. If the report has not been submitted, the opinions must be issued after a date on which the expert has had sufficient time to carry out his or her assignment under conditions that enable the CSE to formulate its opinions in full knowledge of the facts (CE 16-4-2021 No. 426287).

No approval of the reorganisation may be implemented before the CSE has given its opinion.

The Conseil d'État has ruled in its decision of November 2022 that the administration must check that the information-consultation procedure with the CSE has been completed before the employer implements the planned reorganisation.

4 Other Relevant Information

Nothing to report.

Germany

Summary

(I) According to the Federal Labour Court, the Law on General Terms and Conditions establishes a level of protection as mandatory law within the meaning of Article 8 para. 1 sentence 2 of Rome I Regulation, which may not be deviated from to the detriment of the employee.

(II) The Federal Labour Court has also ruled that in the case of a fixed-term contract for a material reason, the public employer is not required to exercise its organisational discretion with regard to the applicants to be included in the selection in a way that exposes it to accusations of institutional abuse of rights.

(III) Calls for more flexible working time legislation have met with a mixed response in the Bundestag.

(IV) To ensure that the European Football Championship runs smoothly, the State Government of North Rhine-Westphalia has created a temporary exemption authorisation on the basis of Section 15 (2) of the Working Time Act.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 General terms and conditions review

Federal Labour Court, ECLI:DE:BAG:2024:230124.U.9AZR115.23.0; 23 January 2024

According to the Federal Labour Court, a standard employment contract must be subject to a general terms and conditions review (sections 305 et seq. of the Civil Code), even if the parties have chosen a different law to apply (Article 8 para. 1 sentence 1 of Rome I Regulation), if German law were applicable had no choice of law been available. If a contractual clause that is detrimental to the employee is deemed invalid, the comparison of favourability, which is otherwise required, is no longer necessary. The Law on General Terms and Conditions establishes a level of protection as mandatory law within the meaning of Article 8 para. 1 sentence 2 of Rome I Regulation, which may not be deviated from to the detriment of the employee.

2.2 Fixed-term contracts in the public sector

Federal Labour Court, ECLI:DE:BAG:2024:290224.U.8AZR187.23.0, 29 February 2024

The Federal Labour Court has ruled that the decision of a public employer to only include applicants in the selection for a position to be filled on a fixed-term basis where there is no obvious possibility that a further fixed-term employment contract for a material reason meets the requirements of an institutional abuse of rights is part of the organisational decision pursuant to Article 33 (2) of the Basic Law that precedes the selection procedure pursuant to Article 33 (2). In case of a fixed-term contract for a material reason, the public employer is not required to exercise its organisational discretion with regard to the applicants to be included in the selection in a way that exposes it to accusations of an institutional abuse of rights.

The Court stated that:

> *"Public employers do not regularly violate their organisational discretion if they decide to advertise a position for a fixed term and only include applicants in the selection process for whom there is no obvious possibility that a fixed-term contract for a material reason will prove to be legally invalid due to an institutional abuse of rights."*

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

The Court held that Article 2 (1) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as meaning that the consultation obligation it stipulates arises at the time when the employer, in the context of a restructuring plan, contemplates or plans a reduction of employment positions, the number of which may exceed those set in Article 1 (1) (a) of that Directive, and not when, after having adopted measures involving the reduction of that number, the employer decided that it would in fact dismiss a number of workers greater than those determined in the latter provision.

An initial assessment of the decision from the literature reads as follows:

> *"Between the poles that a decision on collective redundancies must not yet have been taken, but the factors and criteria must already be sufficiently concrete to allow for consultation, it remains difficult for practitioners to identify the relevant point in time and to categorise it in the timetable for the commencement of negotiations on the reconciliation of interests. (...). It remains to be seen to what extent the Chamber's decision, which is heavily influenced by the facts of the case, will be adopted and generalised …"* (*Kaufmann*, Maßgeblicher Zeitpunkt für die Konsultationspflicht nach der Massenentlassungs-RL, Neue Zeitschrift für Arbeitsrecht 2024, p. 193).

4 Other Relevant Information

4.1 Parliamentary hearing on Working Time Law

In the view of the CDU/CSU parliamentary group, the German Working Hours Act (*Arbeitszeitgesetz*, *ArbZG*), with its stipulation of an 8-hour working day as a rule, runs counter to employees' demands for more flexibility. In a motion (20/10387), the group therefore called on the government to draft a law "that meets the desire for greater working hour flexibility, enabling more flexible working hours and working time models for different phases of life to better reconcile family and career". It also demanded an introduction of a weekly instead of a daily maximum working time in line with EU law.

At a public hearing of the Committee on Labour and Social Affairs of the German Parliament, employer representatives supported the CDU/CSU parliamentary group's call for more flexible working hours and spoke out in favour of the possibility of weekly rather than daily maximum working hours. Trade union representatives, on the other hand, pointed out that working hour flexibility is already possible in many cases and argued in favour of retaining the 8-hour working day.

4.2 Exemptions from the Working Hours Act during the European Football Championship

To ensure that the European Football Championship runs smoothly, the State Government of North Rhine-Westphalia has created a temporary exemption

authorisation on the basis of Section 15 (2) of the Working Time Act (*Arbeitszeitgesetz*, *ArbZG*).

The exemptions from the law apply for a limited period from 15 May 2024 to 31 July 2024 and exclusively for the State of North Rhine-Westphalia. However, it can be assumed that the health and safety authorities in the other federal states (at least in the other hosting Federal States of Bavaria, Baden-Württemberg, Berlin, Hamburg, Hesse and Saxony) will issue identical or similar exemptions. The exemption applies to all persons who are commissioned or accredited for the preparation, participation, realisation and follow-up of UEFA EURO 2024.

The essence of the regulation is the option to extend maximum daily working time to 12 hours (including on Sundays and public holidays, if necessary). This extension may be utilised without separate authorisation from the supervisory authority. However, this only applies if such an extension of working hours is necessary due to logistical problems or an unpredictable demand situation that cannot be avoided by implementing forward-looking organisational measures, including the scheduling of working hours, temporary hiring or other personnel management measures.

Employers must also comply with certain requirements. For example, the maximum weekly working time may not exceed 60 hours; the start and end of the actual working hours as well as the location and duration of rest breaks must be recorded for all employees concerned; in the case of work on Sundays and public holidays, the substitute rest day must be taken within the legally prescribed period of 14 days; at least 15 Sundays per year must remain days of rest.

The State Government informed the North Rhine-Westphalian State Parliament as follows:

> *"To ensure that the European Football Championship runs smoothly, the State Government has reached an early agreement with the social partners, including the German Trade Union Confederation of North Rhine-Westphalia (DGB NRW), the United Services Union of North Rhine-Westphalia (Verdi NRW) and the Food, Beverages and Catering Union of North Rhine-Westphalia (NGG NRW), regarding a possible temporary exception within the framework of the Working Hours Act (ArbZG) regarding a possible temporary exception for the preparation, realisation and follow-up of the games. In close cooperation with the social partners, the contents of a temporary exemption were developed, which (…) would protect workers' rights and at the same time ensure the success of UEFA EURO 2024."*

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 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

Greek legislation (Law 1387/1983) provides a quantitative and temporal threshold for collective dismissals. Collective redundancies mean dismissals effected by an employer for one or more reasons not related to the individual workers concerned. The number of these dismissals is at least seven in establishments employing 20-150 employees (at the beginning of the month) or 5 per cent of employees in firms employing over 150 employees (at the beginning of the month).

For the purposes of this assessment, it is necessary to determine at what point in time a redundancy occurs, i.e. the point in time at which the event triggering the redundancy takes place.

The Greek Supreme Court (judgment 116/2019) has stated that the event triggering a redundancy is the declaration by an employer of its intention to terminate the contracts of employment upon the expiry of the period in the notice of redundancy.

The CJEU stated that the obligation of consultation arises when in

> *"the context of a restructuring plan, contemplates or plans a reduction of employment positions, the number of which may exceed those fixed in Article 1(1)(a) of that directive, and not when, after having adopted measures involving the reduction of that number, the employer became certain that it would in fact have to dismiss a number of workers greater than those fixed by the latter provision",*

which clarifies the issue of the point in time at which the event triggering the redundancy takes place. This point is not the declaration of the intention to terminate the employment contracts, but the contemplation or the planning of such terminations. Moreover, this point is not when the employer is certain but when the planning of reductions of employment positions materialises.

Therefore, the judgment has implications for Greek legislation.

4 Other Relevant Information

The Greek Ministry of Employment has announced the creation of a committee to prepare a draft to implement Directive 2022/2041.

Hungary

Summary

The government has published the draft of the implementation package of the Minimum Wage Directive for consultation.

1 National Legislation

1.1 Consultation on the draft of the Minimum Wage Directive

The government has published the Draft of the Implementation Package of the Minimum Wage Directive for consultation. The Draft aims to supplement several employment-related acts by adding that the respective law complies with Directive 2022/2041.

The planned amendment of the Labour Code also states compliance with the Directive. In addition, it stipulates:

> *Proposed Article 153*
>
> *(1a) In an agreement, the government may create or designate a forum with which it can hold consultations on the determination of the mandatory minimum wage and the guaranteed minimum wage.*
>
> *(5) The government is authorised to establish the detailed rules in a decree regarding the consultation of the mandatory minimum wage and the guaranteed wage minimum.*

There is no information on the Draft of the Action Plan required by the same Directive.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

In the Hungarian Labour Code, the consultation obligation arises at the time the employer contemplates or plans a reduction of employment positions, the number of which may exceed those set in Article 1(1)(a) of the Directive, and not when the employer decides to dismiss a number of workers above the specified threshold:

> *"Article 72 (1) The employer, if planning to carry out collective redundancies, shall initiate consultations with the works council."*

Therefore, this ruling will not have any implications for or impact on Hungarian labour legislation.

4 Other Relevant Information

Nothing to report.

Iceland

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 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies was transposed into Icelandic law by Act No. 63/2000 on Collective Redundancies.

Article 5(1) of that Act states that if an employer plans a collective redundancy as defined in Article 1(1) of the Act, the employer must consult with union representatives from the relevant trade unions or if such a representative has not been elected, another elected employee representative in order to reach an agreement.

Icelandic law is clear that the consultation obligation arises when an employer plans a reduction of employment positions, with the intention of the consultation being to reach an agreement to reduce the number of employees. Disagreements over the interpretation of the provision of when exactly the consultation must take place have neither reached the Supreme Court nor the Court of Appeal, hence interpreting Article 5(1) in light of this ruling of the CJEU should not pose any problems. The Court's ruling will therefore not change courts' precedents but will influence future interpretations of the law.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

The Labour Court has issued decisions on whether an employer, which went into liquidation resulting in collective redundancies, complied with its information and consultation obligations.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Collective redundancies

Article 2 of Directive 98/59/EC imposes information and consultation obligations on employers in collective redundancy situations. The Directive has been transposed by the amended provisions of the Protection of Employment Act 1977 ("the 1977 Act").

On 08 April 2020, the UK-based parent company informed Debenhams Retail (Ireland) Ltd that because of its insolvency, it could no longer provide funding. The following day, the Board of Directors of the Irish company decided that it would cease trading with immediate effect, and that the parent company, as the sole shareholder, should take the necessary steps to petition the High Court for the appointment of a liquidator. Provisional liquidators were appointed by order of the High Court on 16 April 2020 and the company was formally wound up on 30 April 2020.

In the meantime, by letter dated 09 April 2020, the Irish company's chief executive wrote to all staff informing them of the situation and confirming that the stores "are not expected to reopen". The trade union representing the employees was advised on 14 April 2020 that the reasons for the proposed redundancies related to "trading difficulties".

On 17 April 2020, a meeting took place between union representatives and the provisional liquidators, following which a 30-day consultation process commenced. Further inconclusive meetings took place on 28 April and 07 May 2020. A final meeting took place on 15 May 2020, at which the liquidators stated that there was no reason to extend the consultation process. By letter dated 20 May 2020, all employees were given notice of termination on the ground of redundancy.

Section 9(1) of the 1977 Act provides that where an employer proposes to create collective redundancies, it shall, with a view to reaching an agreement, initiate consultations with employee representatives. Section 9(3) stipulates that such consultations must be initiated at the earliest opportunity and in any event, at least 30 days before the first notice of dismissal is given.

Section 10(1) of the 1977 Act provides that for the purpose of consultations under section 9, the employer concerned shall supply the employee representatives with all relevant information relating to the proposed redundancies. Without prejudice to the generality of this requirement, section 10(2) sets out details of what information must be provided, such as the reasons for the proposed redundancies and the number of employees whom it is proposed to make redundant.

Many of the employees lodged complaints with the Workplace Relations Commission ("WRC"), contending that the company had not complied with the requirements set out in either of those two sections and a "test case" was eventually selected. The specific complaints lodged were, first, that the consultation process should have commenced on

09 April at the latest; second, that the consultation process entered into on 17 April had not been "meaningful"; and third, that the information provided had been incomplete.

The WRC Adjudication Officer concluded that the "strategic decision", which exerted "compelling force" on the employer, was taken on 08 April 2020 and that the consultation process should have begun no later than the 9th, and that relevant information had not been shared with the union representatives during the process, which took place, to enable them to formulate constructive proposals. Consequently, there was a breach of both section 9 and section 10.

Section 11A of the 1977 Act limits the amount of compensation that can be awarded for a breach of a provision of the Act to four weeks' remuneration. Accordingly, the complainant was awarded EUR 2,280 (being EUR 285 x 4 x 2): *Crowe v Debenhams Retail (Ireland) Ltd* ADJ-00038906.

The liquidators appealed to the Labour Court, which has now upheld the decision under section 9 but has overturned the decision under section 10: see *Debenhams Retail (Ireland) Ltd v Crowe* PED241 and PED243. The Court, having considered relevant CJEU case law, such as case C-44/08, *Fujitsu*, was satisfied that consultations with the employee representatives had not commenced at the "earliest opportunity" and should have commenced on 09 April 2020 after the Board passed the resolution that the company would cease trading. By delaying the consultations until after the liquidators had been appointed, the company limited the options available in terms of coming to an agreement. The Court emphasised that there was no requirement to have all the relevant information available before beginning the consultation process. Consequently, that part of the WRC decision, including the award of four weeks' wages, was upheld.

The Labour Court was satisfied, however, that the company had provided the employee representatives with all relevant information and that part of the WRC decision was overturned.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

In the present case, the CJEU confirmed that the consultation obligation laid down in Article 2(1) of Directive 98/59/EC—transposed by section 9 of the Protection of Employment Act 1977—must be interpreted as meaning that it arises at the time the employer "contemplates or plans a reduction in employment positions", the number of which may exceed those set in Article 1(1)(a).

Although the specific situation in this case has not arisen in Ireland, the same decision would have been reached were it to have arisen.

4 Other Relevant Information

Nothing to report.

Italy

Summary

(I) No legislative developments in the area of labour law took place in April.

(II) The Court of Cassazione dealt with a case involving seasonal workers.

(III) I.N.P.S. and Ministry of Labour have clarified recent reforms.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Fixed-term contract

Court of Cassazione case No. 9444, 09 April 2024

According to Article 24 of the Legislative Decree of 15 June 2015 No. 81, seasonal workers have the right of precedence when posts for the same tasks they carry out become available within a certain time period from the termination of their employment relationship. In the event of a breach of this right, workers shall not have the right to be hired permanently, but are entitled to compensation for damages resulting from non-compliance with the employer's contractual obligation.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

In Italy, collective redundancies are regulated in the Act of 23 July 1991 No. 223.

According to Articles 4 and 24, the consultation and notification requirements arise as soon as an undertaking, as part of a restructuring process, projects a number of terminations of employment contracts which may exceed the collective redundancy threshold, irrespective of the fact that, ultimately, the number of dismissals or terminations does not reach that threshold. Hence, the consultation obligation arises at the time the employer, in the context of a restructuring plan, contemplates or plans a reduction of employment positions, the number of which may exceed those set by the law, and not when, after having adopted measures involving the reduction of that number, the employer became certain that it would in fact have to dismiss a number of workers greater than those set by the latter provision. Italian legislation is therefore in line with EU law and the CJEU's ruling.

4 Other Relevant Information

4.1 Parental leave

I.N.P.S. circular letter No. 57, 18 April 2024

The last Budget Law (Act of 30 December 2023 No. 213) provides new rules on parental leaves (see also January 2024 Flash Report). The *'I.N.P.S.'* (*'Italian Institute for Social Security'*) specifies that new rules are only provided for parents whose parental leave ended after 31 December 2023 (even if for only one day), and offers some operating and accounting instructions to employers.

4.2 Sports work

Ministry of Labour vademecum, April 2024

The Ministry of Labour, in collaboration with the Department of Sport, has published an illustrated *vademecum* that summarises the innovations introduced by the recent Reform of Sport (D.Lgs. No. 36/2021), with particular regard to the sector of amateur sports associations and clubs. The document summarises the key points of the reform of sports work (definitions, scope, safeguards, fulfilment) and contains some answers to FAQ.

Latvia

Summary

No new labour law 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 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

The collective redundancy and prior information and consultation obligation is regulated in Articles 106 and 107 of the Labour Law. The respective provisions do not regulate in detail when it could be considered that an employer has taken the decision to implement a collective redundancy and consequently, has an obligation to inform and consult the employees. National law simply states that an employer, after deciding on a collective redundancy has the obligation to inform and consult the employees.

It follows that the CJEU's decision in case C-649/22 serves as a source of interpretation in the context of Latvian legal regulations in case of a dispute regarding the establishment of the moment when an employer has taken the decision to initiate collective redundancies arises.

4 Other Relevant Information

Nothing to report.

Liechtenstein

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 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

In case C-589/22, the CJEU (Seventh Chamber) ruled as follows:

Article 2(1) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as meaning that the consultation obligation that it lays down arises at the time when the employer, in the context of a restructuring plan, contemplates or plans a reduction of employment positions, the number of which may exceed those set in Article 1(1)(a) of that Directive, and not when, after having adopted measures involving the reduction of that number, the employer became certain that it would in fact have to dismiss a number of workers greater than those fixed by the latter provision.

Under Liechtenstein law, the employer's consultation obligation in the event of collective redundancies is regulated in Section 1173a Article 59b of the Civil Code (Allgemeines bürgerliches Gesetzbuch, LR 210.0). Subsection 1 provides as follows: the employer shall inform and consult the employee representative body in good time to give the employee representative body the opportunity to prepare counter-proposals and, if possible, to reach an agreement on: a) the possibility of avoiding planned collective redundancies or reducing their number; b) the possibility of mitigating the consequences of planned collective redundancies by means of measures such as retraining. Section 1173a Art. 59a (2) furthermore stipulates the following: *other types of termination of the employment relationship* that a) are planned for one or more reasons unrelated to the person of the employee, b) *take place at the initiative of the employer*, and c) affect at least five employees, *shall be treated in the same way as a dismissal*. Such dismissals are included in the calculation of the relevant minimum number.

Liechtenstein has largely adopted the labour law of Switzerland. As Liechtenstein is a small country, court decisions are relatively rare. The Liechtenstein courts therefore regularly follow Swiss case law and doctrine.

The Swiss Federal Supreme Court has ruled on the timing of the consultation obligation on several occasions. In BGE 137 III 162 No. 1.1, it stated as follows: the employer is required to initiate consultations as soon as it intends to carry out a collective redundancy. The employees should have the opportunity to prompt the employer to examine alternative measures proposed by them before the employer ultimately decides to implement a mass redundancy. The employer must initiate the consultation at such an early stage that it can be completed before the employer has to arrive at the final decision *whether and in what form it will carry out the envisaged collective redundancy*.

In addition, the Federal Supreme Court stated as follows in BGE 123 III 176 No. 4a: the purpose of consultation is to enable employees to influence the employer's decision-making process. The employer may not initiate the consultation immediately prior to implementing the dismissals, but at such an early stage that it can be completed before the employer arrives at the final decision whether and in what form it will carry out the envisaged collective redundancy. A collective redundancy must therefore also be deemed as intended if the employer *only plans it, but at least in case the employer's other plans cannot be realised*.

In the author's assessment, the above-mentioned provisions and court statements are fully in line with judgment C-589/22 of the CJEU. In other words, Liechtenstein law is to be interpreted in accordance with the CJEU. From this perspective, it can be assumed that judgment C-589/22 of the CJEU will have no implications for Liechtenstein law.

4 Other Relevant Information

4.1 30th Anniversary of the EEA

To celebrate the 30th anniversary of the European Economic Area (EEA), Liechtenstein (together with the other EEA-EFTA states) took part in the European Council at the invitation of its President. The Liechtenstein Prime Minister emphasised the importance of the EEA for Liechtenstein and its residents. Free market access for Liechtenstein companies or the participation of Liechtenstein students in EU programmes are just some of the many advantages of the EEA. For Liechtenstein, it is especially important for the internal market to not lose competitiveness due to overregulation. Simplifications for small- and medium-sized enterprises and the avoidance of unequal treatment in the internal market, including teleworking, are two specific concerns.

Lithuania

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 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

The regulations in Lithuania are in line with Article 1(1) of the Directive 98/59/EC, as interpreted by the CJEU in case C-589/22. Article 63(1) of the Lithuanian Labour Code establishes that the:

> "*termination of employment contracts at the initiative of the employer without any fault on the part of the employee (Article 57 of Labour Code), by the will of the employer (Article 59 of Labour Code) or by agreement of the parties to the employment contract (Article 54 of Labour Code), initiated by the employer, within a period of no longer than 30 calendar days or when due to the bankruptcy of the employer (Article 62 of Labour Code), it is intended to dismiss:*
>
> - *ten or more employees in a workplace where the average number of employees is between 20 and 99 employees;*
> - *not less than 10 per cent of employees in a workplace where the average number of employees is between 100 and 299 employees;*
> - *30 or more employees in a workplace where the average number of employees is 300 or more employees."*

The notion 'intended to dismiss' refers to the number of employees who will potentially be affected, but not actually. In the course of the procedure, such as restructuring, some employees may opt for another position or be transferred with the assets to another company, but this shall not affect the employer's duty to include those employees as employees included in the procedure of collective dismissal.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

No new developments have been reported this month.

1 National Legislation

No new bills, laws or decrees concerning employment law were issued in April 2024.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

Collective redundancies are defined in Article L.166-1 of the Labour Code.

This article refers to the number of redundancies 'envisaged' ('*envisagés*') and thus uses terminology that is very similar to that of the Directive. There is no case law that determines what precisely is meant by 'envisaged'. In case of doubt, Luxembourg's case law would align itself with European case law, particularly the C-589/22 ruling.

Luxembourg courts tend to adopt a position that protects employees, so they would probably have followed the ruling in any case.

4 Other Relevant Information

Nothing to report.

Malta

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 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

Before analysing the implications of this judgment for Maltese law, some light will be shed first on the legal provisions of Maltese law that regulate the matter.

The relevant regulations are found in the *Collective Redundancies (Protection of Employment) Regulations* of 2002, which state the following (with respect to the points raised in the judgment in question):

> *"4. In all cases of collective redundancies, the employer proposing to declare the redundancies shall not terminate the employment of such employees before he has notified in writing the employees' representatives of the termination of employment contemplated by him and has provided the said representatives with an opportunity to consult with the employer as specified in regulations 5 and 6.*
>
> *5. The consultations between the employer and the employees' representative shall begin within seven working days from the day on which the employees' representatives have been notified of the intended collective redundancies and such consultations shall cover ways and means of avoiding the collective redundancies or reducing the number of employees affected by such redundancies and for mitigating the consequences thereof.*
>
> *6. Within the period of seven days mentioned in the preceding regulation, the employer shall be bound to supply the employees' representatives with a statement in writing, giving all relevant information and shall in any event give such employees' representatives the reasons for the redundancies, the number of employees he intends to make redundant, the number of employees normally employed by him, the criteria proposed for the selection of the employees to be made redundant, details regarding any redundancy payments which are due and the period over which redundancies are to be effected.*
>
> *7. The obligations laid down in regulations 4, 5 and 6 shall apply, irrespective of whether the decision regarding collective redundancies is taken by the employer or the undertaking controlling the employer:*
>
> *Provided that in the event of alleged breaches of the information, consultation and notification requirements of these regulations, account shall not be taken of any defence on the part of the employer that the necessary information had not*

been provided to the employer by the undertaking which took the decision leading to the collective redundancies.

8. (1) The employer shall also forward to the Director responsible for Employment and Industrial Relations a copy of the written notification mentioned in regulation 4 and a copy of the written statement mentioned in regulation 6 on the same day that these are notified to the employees' representatives.

9. (1) Saving the right of employees regarding notice of dismissal, any projected collective redundancies notified to the Director responsible for Employment and Industrial Relations in accordance with regulation 8 shall only take effect on the lapse of thirty days after the said notification:

Provided that the Director responsible for Employment and Industrial Relations may, in exceptional circumstances, grant the employer a shorter period of notification:

Provided further that the Director responsible for Employment and Industrial Relations may also extend the said period by a second period of thirty days if it appears to him that such extension may provide further opportunity for the resolution of the reasons for the redundancies or for the identification of solutions to the benefit of those employees who are being declared redundant.

(2) In the event that the Director responsible for Employment and Industrial Relations decides to extend the time limit of thirty days as provided in the second proviso of sub regulation (1), the employer shall be informed of such extension by notice in writing which is to reach him prior to the lapse of the initial period.

(3) Subject to sub regulations (1) and (2) the notice of termination of employment may begin to run from the date when the consultations referred to in regulation 5 commence."

The above are the key provisions in relation to the timeline for triggering the procedure leading to collective redundancies. As transpires from the above, it is not clear under Maltese law that the consultation obligation is triggered when the employer, in the context of a restructuring plan, contemplates or plans a reduction of employment positions. Maltese law speaks of proposals of collective redundancies – not quite planning. The question arises: is a plan equal to a proposal or is a plan a step before a proposal? As described above, the consultation commences once the proposal reaches the employee representatives. That is, there first has to be a proposal and then, within the seven days mentioned above, consultations must commence. The CJEU judgment in question makes it clear that the plan must trigger consultations, irrespective of what actually occurs later and that the actual number of employees who are actually effected by the collective redundancies is lower (but still exceeds the threshold).

It is submitted that the judgment in question has the clear implication that Maltese law on the matter must be further clarified to express the notion that once plans have been made, the employer should commence consultations – without actually proposing the same. This is being submitted because a proposal expresses more advanced preparations for collective redundancies than mere plans. Hence, it would be remiss to treat plans and proposals akin to one another.

In practice, it would be far more desirable for Maltese law to specify that collective redundancy plans are discussed with employee representatives *before* the actual drawing up of a collective redundancy proposal—which itself could be subject to further consultation if need be—prior to the actual implementation of redundancies. This also seems to be the reasoning of the CJEU.

4 Other Relevant Information

4.1 Low unemployment rate and low labour supply in Malta

Malta continues to report high levels of labour requirements which cannot be met domestically. The unemployment rate remains consistently low—but this translates into a major influx of third-country workers—which, in itself, is not alarming or negative. However, such influx is also creating issues of abuse, as has been reported in previous Flash Reports. More will be reported as developments unfold.

Netherlands

Summary

(I) The Senate has rejected a raise in the minimum wages as of July 2024.

(II) A bill on human trafficking has been forwarded to the Second Chamber.

(III) The Court of Appeal applied Directive 2008/104 ex officio.

(IV) The Court of Appeal applied Directive 2001/23 on transfers of undertakings.

(V) A District Court applied the criteria from the Max-Planck case on paid annual leave.

(VI) A report on social security policy has been published.

(VII) The cabinet plans to invest in social development companies and has worked out agreements on the Directive on Adequate Minimum Wage.

(VIII) Two internet consultations have been published: one addresses anonymous reporting requirements for employers under the Whistleblowers Protection Act, while the other seeks feedback on adjustments to Dutch language requirements for childcare staff.

1 National Legislation

1.1 Senate rejects bill on raising minimum wages

In October 2023, the Second Chamber passed an amendment to increase the statutory minimum wage. However, this required an emergency bill. On 17 April 2024, the Senate voted against an additional increase in the statutory minimum wage by 1.2 per cent. Consequently, only a regular indexation will take place with an increase as of 01 July. The statutory minimum wage will therefore increase by 3.09 per cent (instead of 4.29 per cent). The hourly statutory minimum wage will be EUR 13.68 gross as of 01 July. This indexation also affects benefits such as social assistance, retirement benefits and unemployment benefits.

1.2 Bill for enhanced protection against human trafficking submitted to Second Chamber of the Netherlands

The Second Chamber, alongside Ministers Yeşilgöz-Zegerius of Justice and Security and Van Gennip of Social Affairs and Employment, has proposed a bill (19 April 2024) to expand and simplify the criminalisation of human trafficking. This measure aims to enhance the detection and prosecution of perpetrators, thereby improving the. protection for victims. The bill introduces a new offense, namely 'serious disadvantages', to address serious labour abuses, such as underpayment and unsafe working conditions, which vulnerable groups are exposed to. This enables the punishment of offenders who exploit individuals in vulnerable posts. The legislation also clarifies what is to be understood as punishable behaviours, which helps the organisations responsible for investigation and prosecution, including the police, the Dutch Labour Inspectorate, the Public Prosecution Service and the judiciary.

2 Court Rulings

2.1 Temporary agency work

Court of Appeal's Hertogenbosch, ECLI:NL:GHSHE:2024:805, 12 March 2024 (published 04 April 2024)

This case concerns the *ex efficio* interpretation of Article 9a Waadi (*Wet Allocatie Arbeidskrachten door Intermediairs*) which serves as the implementation of Article 6(2) of Directive (EU) 2008/104.

Oranjegroep is a temporary employment agency to companies in the scaffolding construction industry. The employee joined Oranjegroep in the position of account manager/project leader and performed work for a company active in the construction of scaffolding. Eventually, the employee joined another employment agency that also focuses on scaffolding construction. Through this agency, the employee started performing scaffolding construction work for the same company as before. On the basis of the TAW Directive and the EUCFR, the Court of Appeal considers itself obliged to apply Article 9a Waadi *ex officio*. The Court of Appeal ruled that there was a partial conflict with Article 9a(1) Waadi and considered that the employee acknowledged that he worked temporarily with some other employees in erecting scaffolding. The employee was therefore not exclusively engaged in administrative work that is normally carried out by the client. This therefore constitutes posting within the meaning of Article 9a Waadi. The argument that the restriction prohibition would lack application because the employee did not enter the service of the construction company is not consistent with the purpose of the TAW Directive which is to promote permanent employment. The employee did have an employment relationship with the construction company through the agency, which falls within the scope of the prohibition on obstruction. The non-solicitation clause therefore hampered employee's employment opportunities and the clause should be considered null and void. However, the ban on obstruction does not preclude the non-competition clause as that clause refers to entering into an employment contract with a competitor (another temporary work agency) and not with the user undertaking.

2.2 Transfer of undertakings

Court of Appeal Arnhem-Leeuwarden, ECLI:NL:GHARL:2024:1922, 18 March 2024 (published 25 March 2024)

This case concerns the interpretation of Section 7:662 Dutch Civil Code which serves as implementation of Directive (EU) 2001/23.

The employee was a statutory director and employee of USE-System Engineering B.V. (USE) since 2006. In 2011, the holding company established a subsidiary and transferred a large part of its assets and liabilities to this subsidiary. On 10 February 2023, employee was dismissed as a statutory director and employee of USE. The central question in this case is whether the restructuring in 2011 should be regarded as a transfer of undertaking, pursuant to which employee's employment contract passed from the holding company to the subsidiary by operation of law. According to employee, this is the case and means that the (shareholder of the) holding company terminated his employment contract in violation of legal requirements.

The Court of Appeal rules that it hast been established that the activities of the holding company were transferred to the subsidiary as part of the restructuring by means of an asset-liability transaction, which was based on an agreement. Furthermore, it must be assumed that the holding company, with the exception of the (then existing) intellectual property rights, transferred all other assets and liabilities (such as machinery, furniture, computers, data in systems, lease agreement for the premises) to the subsidiary, that all other employees of the holding company were transferred to the subsidiary and that the subsidiary continued the business activities of the holding company on a one-to-one basis and without any interval.

All these factors point towards a transfer of undertaking. The subsidiary's only objection to this is that, in its view, the holding company did not transfer two essential assets, namely (i) the intellectual property rights in respect of technologies developed until then, and (ii) the employee's employment relationship. The Court considers that even

if it is assumed that the intellectual property rights remained in the holding company, which employee disputes, this does not preclude a finding of a transfer of undertaking. Indeed, it must be assumed that the subsidiary was allowed to continue using those intellectual property rights in the operation of its business even after the restructuring. Indeed, without that right of use, there was nothing to exploit. Since transfer of legal ownership of assets is not a requirement for assuming that the identity of the company is preserved, the Court of Appeal ignores this defence of the subsidiary. In the Court's opinion, the restructuring has to be regarded as a transfer of undertaking. This means that the starting point is that the employee's employment contract was also transferred to the subsidiary by operation of law; the fact that the employee also held a statutory position with the holding company at the same time does not alter this.

2.3 Paid Annual Leave

District Court Noord-Holland, ECLI:NL:RBNHO:2024:2221, 14 February 2024 (published 03 April 2024)

The case concerns the application of the criteria from the case ECLI:EU:C2018:874 (*Max-Planck-Gesellschaft*) on paid annual leave.

The employer operates a beach pavilion. The employment contract between the parties stipulated the following: "*The salary includes holiday pay and allowances.*" The employment contract between the parties ended as of 01 August 2022 through employee's termination. Subsequently, as a result of the final settlement, discussions arose between the parties about, among other things, the payment of holiday compensation, overtime and unused holidays. Employee argues that the holiday compensation is not included in the hourly wage and that the agreed 'wage including holiday pay and allowances' does not make this different. The employer argues that it offers a higher wage than the collective agreement, that this is an all-in wage, that this was also explicitly agreed with employee, that he never complained about this and that the collective agreement also does not contain any other supplement that could fall under this. The District Court found both parties' positions on what should be understood under all-in wage defensible and considered that the parties should also behave as a reasonable employee and employer respectively. In the opinion of the District Court, awarding half of the amount claimed by the employee as holiday compensation (*'feestdagencompensatie') does* justice to the interests of both parties. Referring to the case law of the Court of Justice of the EU and the Supreme Court (ECLI:EU:C2018:874 (*Max-Planck-Gesellschaft*), ECLI:EU:C:2022:718 and ECLI:NL:HR:2023:955), the Court held that the employee's entitlement to the holiday hours (*'vakantie-uren')* could not have lapsed. Employee claimed payment of a total of 562.62 holiday hours, amounting to EUR 10 931.26 gross. The amount already paid by the employer will be deducted from this. Employee's claim regarding additional overtime and unrecorded days is rejected.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

The ruling concerned the timing of the consultation obligation under Article 2(1) Directive 98/59/EC. The question addressed was whether the consultation obligation arises when (a) the employer contemplates or plans a reduction of employment positions, the number giving rise to collective redundancies (Article 1(1)(a)), or (b) after having adopted measures involving the reduction of the number of employment positions, the number of workers to be dismissed being greater than those set by Article 1(1)(a)?

Under currently applicable Dutch law and practice, the point in time consultations should be initiated is when a strategic or commercial decision forces the employer to consider or plan collective redundancies. Employers have experience with a view to working with intended decisions through co-determination under the Works Councils Act (*Wet op de ondernemingsraden*). In the Netherlands, a strategic decision that compels the employer to contemplate or plan a collective redundancy, will often in itself be subject to the obligation to consult the works council(s) involved under the aforementioned Act.

This means that the approach based on the idea that the employer's intention to implement collective redundancies within the meaning of the Collective Redundancy (Notification) Act (*Wet melding collectief ontslag*) coincides with the moment at which a proposed decision within the meaning of Article 25 Works Councils Act is made. Under Article 25 Works Councils Act, the works council shall be given the opportunity by the employer to give its opinion on each decision relating to, *inter alia*, the termination of the enterprise's activities or of an important part thereof (sub c), a major downsizing, expansion or other change in the enterprise's activities (sub d), and a major change in the employer's organisation or in the distribution of powers within the enterprise (sub e).

To conclude, it is not relevant that the commencement of consultations shall start at the time of the vague intention to terminate 20 or more employment contracts.

4 Other Relevant Information

4.1 More flexibility for companies through more overtime options on permanent contracts

The cost of overtime in the unemployment premium will decrease for large permanent contracts from 01 January 2025. The Council of Ministers has agreed to this proposal by Social Affairs and Employment Minister Van Gennip. The measure contributes to internal agility and is a burden reduction for companies. Last year, the cabinet made agreements with employers' and employees' organisations that ensure more security for employees and more flexibility for companies. One of the agreements from this labour market package is an extension of overtime premium differentiation in unemployment insurance. Premium differentiation in the Unemployment Act means that employers pay a lower premium for permanent contracts and a higher unemployment premium for flexible contracts. To provide employers with flexibility, an employee is allowed 30 per cent overtime in addition to the hours of the fixed contract. If more than 30 per cent overtime is worked on average in addition to the fixed number of hours, the high unemployment rate will apply retroactively for that whole year. Larger employment contracts where an employee works an average of 35 hours or more per week are exempt from this rule. This exception will now be extended to contracts averaging 30 hours per week. The change is estimated to reduce the burden on employers by EUR 15.5 million.

4.2 Plans to simplify leave schemes to promote a good work-life balance

Currently, there are 10 different statutory leave schemes aimed at assisting individuals in balancing work and caregiving responsibilities for children or other dependents. However, navigating this complex and confusing system has become challenging for many. To address this issue, the government is proposing to streamline the existing schemes into three main categories of leave:

1. Childcare Leave
   This encompasses arrangements related to childbirth, caring for infants, adoption, and foster care. It consolidates existing provisions such as maternity

leave, additional birth leave, adoption and foster care leave, and paid parental leave. The aim is to promote equal sharing of caregiving duties between partners and enhance parental economic independence. Various scenarios have been developed within this category to integrate, extend, or shorten existing arrangements.

2. Dependents Care Leave
   This category includes both short-term and long-term care leave, designed to support individuals providing temporary informal care to loved ones. With an aging population and an increase in individuals working longer, the need for such leave is expected to rise. Two scenarios have been proposed: one integrating existing leave schemes and a more comprehensive variant.
3. Personal Circumstances Leave
   This category encompasses emergency and short-term leave for unforeseen or special circumstances, such as the death of a loved one or home emergencies. These arrangements are customizable and agreed upon by employers and employees as needed. Any future leave arrangements requiring customization, such as bereavement or domestic violence leave, could also fall under this category.

4.3 Low-income benefit for employers expires

The allowance employers can receive for low-income employees will expire on 01 January 2025. The benefit was intended as an incentive for employers to hire and retain people with a vulnerable position on the labour market more often, but only contributes to the opportunities for this group to a limited extent. The money freed up by scrapping this measure will be used for other concessions for employers and compensation for social development companies. The labour cost advantage for employers employing older workers will also be discontinued from next year. This means that the labour cost advantage for older workers for employment started on or after 01 January 2024 will be reduced (as of 01 January 2025) and abolished (as of 01 January 2026). For employment relationships that started before 01 January 2024, however, the labour cost advantage will continue to apply as usual. The government chooses to encourage employers to hire older workers in other ways. The money freed up by the abolition of the benefit will be used, among other things, to make the 'labour cost benefit target group employment agreement' more structural. Money has also been reserved to mitigate the consequences of the abolition of the benefit for social development companies. Municipalities will receive compensation for the abolition of the benefit from 2025 onwards. In addition, as from next year, the criteria for the labour cost benefit for the re-employment of an employee with a disability will be expanded. With the extension, employers will in more cases be eligible for a labour cost benefit when they partially re-employ an employee with a disability in his/her own job or (partially or entirely) elsewhere in the company.

4.4 Cabinet will invest 1 billion Euros in social development companies

In the Spring budget, the government is allocating extra money to help municipalities better organise social development companies. It concerns an amount of almost EUR 600 million for the period 2025-2034. With previously promised resources for, among other things, funding social work, a total of about one billion euros will go to social development companies in the coming years. Even after that, additional money will remain structurally available.

4.5 Guide on 'human scale' in social security policy and implementation

The General Court of Auditors has devised a guide aimed at fostering a more human-centric approach in social security policy and its execution. Based on findings from the study 'Control over Human Scale' (*Grip op menselijke maat)*, which primarily examines the effects of the Work and Income according to Labour Capacity Act (WIA) on long-term sick employees, the guide broadens its applicability to different aspects of social security, addressing a wide range of demographic groups. Prioritizing a people-centric approach, the 'Guide on human scale' acknowledges instances where implementers may need to diverge from strict legal interpretations to uphold the underlying principles of justice. Ultimately, the aim of the guide is to strengthen government efficiency and responsiveness, promoting a culture of ongoing learning and refinement of legislation to minimize unintended consequences.

4.6 New regulatory framework for adequate minimum wage

The cabinet has worked out the agreements on the Adequate Minimum Wage Directive in a bill. The Council of Ministers agreed to this on the proposal of Social Affairs and Employment Minister Van Gennip. The bill is an elaboration of the European directive on adequate minimum wages. Using procedures and reference values, the adequacy of the legal minimum wage can be better assessed. This will help ensure that minimum wage workers can make ends meet and that work pays. The directive also calls for measures to promote collective bargaining between trade unions and employer organisations, so that more people are covered by collective bargaining protection, companies have a level playing field and competition on working conditions is dampened. Although the Dutch collective bargaining system already works very well, there is room for improvement. In the Netherlands, for instance, 72 per cent of workers are covered by a collective agreement. This is below the 80 per cent threshold set by the directive. To meet European standards, minister Van Gennip is working with social partners on an action plan. This plan is scheduled to be submitted to the European Commission in November 2025.

4.7 Internet consultations

4.7.1 Decision on anonymously reporting suspicions of wrongdoing

This decision outlines the requirements for employers to comply with the obligation to receive and address anonymous reports of suspected wrongdoing. This obligation is regulated in the Whistleblowers Protection Act, Article 2, paragraph 2, subparagraphs e and f. This decision is important for employers (private and public) and employees (in the sense of ((potential) reporters). The proposed changes involve the criteria that independent officials must meet to receive anonymous reports of suspected wrongdoing, as well as the requirements for the manner in which such suspicions can be anonymously reported to employers. Public feedback on the proposed changes is open until 14 May.

4.7.2 Adjustments to the language requirement for childcare pedagogical staff

From 2025, childcare staff must meet Dutch language requirements under the Innovation and Quality Childcare Act. Adjustments aim to clarify proof of proficiency and ease implementation. Exceptions include lower proficiency for some, extended deadlines, and allowances for multilingual settings. Public feedback on the proposed changes is open until 12 May.

Norway

Summary

(I) The government has introduced new regulations clarifying that all inshore professional diving shall be regulated by the Act on working environment, working hours and employment protection of 17 June 2005 No. 62.

(II) The Labour Court has concluded in a ruling that a collective agreement provision that entitled employee representatives to obtain salary information of employees other than their members was not in breach of the GDPR.

1 National Legislation

1.1 New regulations concerning the application of the Working Environment Act for diving operations

The government has introduced new regulations (LOV-2024-04-11-607) that clarify that all inshore professional diving shall be regulated in the Act on working environment, working hours and employment protection of 17 June 2005 No. 62. The regulations will enter into force 01 July 2024 and can be found here.

2 Court Rulings

2.1 Right to obtain salary information of individuals and GDPR

Labour Court's judgment of April 15 2024 (AR-2024-9)

The question in the present case was whether a collective agreement provision entailed a right for employee representatives to obtain identifiable salary information of employees who were not members of the union and whether such a right was compatible with the General Data Protection Regulation (GDPR, Regulation (EU) 2016/679). After a comprehensive assessment, according to the wording, the parties' practices from other agreements and the purpose of the provision, the Court concluded that the provision also entitled employee representatives to access identifiable salary information about individuals other than their members. Whether this provision was contrary to GDPR was assessed under Article 6 letter f. The plaintiff argued that the GDPR did not limit the right to such information and referred, among other things, to the previous case law of the Labour Court. The defendant pointed out that this practice predated the GDPR and that the conditions for disclosing this type of information have been tightened with the new legislation. The Court noted that the question of whether the conditions in GDPR Article 6 letter f are met must be assessed specifically in relation to each request for salary information. The plaintiff could therefore not be granted the claim that the collective agreement provision always entitles employee representatives the right to identifiable salary information of others who are not trade union members. Regarding whether the conditions under GDPR Article 6 were met in the specific case, the Court referred to previous Labour Court case law as still providing guidance. The judgment is available here.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

According to the Working Environment Act of 2005 Section 15-2, which transposes Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the

Member States relating to collective redundancies, the duty to provide information and hold consultations with employee representatives arises when an employer is 'contemplating' collective redundancies. The term collective redundancies is defined as a dismissal given to at least ten employees within 30 days without being warranted by reasons related to the individual employee, cf. Section 15-2 (1). Other forms of termination of contracts of employment that are not warranted by reasons related to the individual employee shall be included in the calculation, provided that at least five persons are made redundant. The employer must initiate consultations 'at the earliest opportunity', cf. Section 15-2 (2). According to court cases from the appeal courts, the provision is understood that the employer must initiate consultations if the employer is considering enough terminations that meet the abovementioned requirement, regardless whether the decision later implies that the condition for collective redundancies is not being met. Similarly, the provision must be understood—as the CJEU asserts in case C-589/22—that the consultation obligation arises at the time when the employer in the context of a restructuring plan contemplates or plans a reduction of employment positions, the number of which may exceed the relevant limit. There do not seem to be any legal sources in Norwegian law that indicate a different interpretation.

4 Other Relevant Information

Nothing to report.

Poland

Summary

(I) A parliamentary commission submitted a bill to amend the Act on Trade Unions.

(II) The Council of Ministers adopted a bill amending the Law on Assistance to Ukrainian Citizens in Connection with the Armed Conflict in that Country.

(III) On 17 April 2024, a bill to protect whistleblowers was submitted to Parliament.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

In its judgment of 22 February 2024 (case C-589/22), the CJEU ruled that the obligation to consult under the Collective Redundancies Directive 98/59 already arises when an employer plans or intends to make redundancies, the number of which may exceed the thresholds set out in the Directive, even if the number of redundancies does not ultimately reach those thresholds.

The case was pending before the CJEU following a question submitted by a Spanish court. A hotel management group had decided to restructure in 2019. This resulted in the dismissal of nine employees, who transferred to another capital group. Subsequently, in 2020, the restructured employer dismissed an additional nine employees. At no time was a collective redundancy procedure initiated. Some of the dismissed employees alleged that the former employer had acted improperly on the grounds that it had artificially encouraged the employees to voluntarily move to another employer in 2019 to avoid having to initiate the relevant procedure.

Under Polish law, pursuant to Article 2(4) of the Act of 13 March 2003 on special principles for terminating labour relationships with employees for reasons not related to the person of the employee, an employer is required to provide trade union organisations with information on intended collective redundancies within a timeframe that allows these organisations to submit proposals as part of consultations on matters covered by them. In light of the aforementioned CJEU ruling, employers should already be prepared to initiate the procedure described in the Act when taking an internal strategic decision on restructuring. Employers sometimes propose to certain groups of employees that they should voluntarily leave the company to avoid having to apply the collective redundancy procedure. The judgment indicates that the obligation to initiate the relevant procedure may already arise at the stage of discussions on such voluntary departures if these precede further planned job cuts.

4 Other Relevant Information

4.1 Proposal of an act on Trade Unions

A parliamentary commission submitted a bill to amend the Act on Trade Unions.

The amendments require employers to inform trade unions, at their request, about the bases of parameters, rules and instructions on which algorithms or artificial intelligence systems influence the employer's decisions.

The amendments are expected to enter into force 14 days after being published.

4.2 Draft law on Assistance of Ukrainian Citizens in Connection with the Armed Conflict in that Country

The Council of Ministers adopted a bill amending the Law on Assistance to Ukrainian Citizens in Connection with the Armed Conflict in that Country.

The bill was forwarded to the lower chamber of parliament (Sejm) on 30 April 2024. The most important amendments include:

- extension of Ukrainian citizen rights to stay in Poland until 30 September 2025;
- improvements in the system of support, specifically accommodation and food for refugees from Ukraine;
- linking the 800+ benefit to compulsory education;
- elimination of the requirement of a minimum period of residence in Poland before applying for a residency card to reunite families;
- an option to simplify the procedure to transform current residency rights into the issuance of residency card for three years.

In addition, temporary protection will be extended to minor children of Ukrainian citizens and to minor children of spouses of Ukrainian citizens who do not have Ukrainian citizenship.

The proposed changes are expected to enter into force on 01 July 2024.

4.3 Draft law on collective labour agreements and collective arrangements

The premises for a bill on collective labour agreements and collective arrangements have been published in the list of the Council of Ministers' legislative and scheduled work.

The regulations aim to comprehensively regulate the rules for concluding and registering collective labour agreements and collective arrangements. The most important of them for employers are:

Specific term of an agreement. Two terms have been proposed: five years for a business-level agreement and ten years for a multi-business agreement. The parties will be able to extend the duration by a further term.

Open range of matters. The parties shall determine the range of matters, which significantly broadens the existing rule.

Assistance of a mediator. Parties in negotiations will be able to benefit from the involvement of a mediator.

Simplifications in registering collective labour agreements. It is proposed:

- to abolish the present complicated procedure of registering agreements and for correspondence to be made in writing;
- to be able to electronically register agreements in the National Register of Collective Labour Agreements.

Simplification of procedure for expanding an agreement. To date, only an employer and multi-business trade unions that concluded an agreement can seek to expand it. It is proposed for employers that are not part of an agreement and the relevant trade union to be able to apply to the appropriate minister to expand such an agreement.

Easier withdrawal from a multi-business agreement. A simpler procedure has been proposed for firms that are unable to implement such an agreement for commercial reasons.

The bill has not been published yet. It is expected that the Council of Ministers will adopt it in the third quarter of 2024.

4.4 Draft law on whistleblowers

On 17 April 2024, a bill to protect whistleblowers was submitted to Parliament; the bill aims to implement the European Parliament and Council (EU) Directive 2019/1937 of 23 October 2019.

The most important changes for employers are:

- Subject of breaches. Human trafficking has been removed from the list of breaches that can be reported; only breaches of constitutional human and civil liberties and rights can be reported to public authorities.
- Whistleblower proxy. It is expressly stated that a proxy will also be able to be a whistleblower.
- Level of compensation for a whistleblower. A whistleblower against whom there has been retaliation is to be entitled to compensation of not lower than the average monthly salary in the national economy in the previous year (the previous draft provided for a minimum compensation of 12 times the average salary).

The law is expected to enter into force three months after it is announced.

Portugal

Summary

An innovative decision of the Labour Court of Portimão that refused to declare the existence of an employment relationship between a digital platform and several couriers is analysed.

1 National Legislation

Nothing to report.

2 Court Rulings

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

The Labour Court of Portimão reviewed whether the relationship between a digital platform (Glovoapp) and 27 couriers should be considered employment relationships within the scope of a claim for recognition of the existence of an employment contract filed by the Public Prosecutor, and with participation of the Work Conditions Authority (*Autoridade para as Condições do Trabalho*). On 05 April 2024, the Court decided that no employment contracts existed between Glovoapp and the couriers, a decision that is innovative for a Portuguese court.

Law No. 13/2023 of 03 April, which became effective on 01 May 2023, introduced a rebuttable presumption into the Portuguese Labour Code (Article 12-A) of the existence of an employment contract between the provider of an activity and a digital platform, when some (at least two) of the following criteria can be verified:

a) The digital platform determines the remuneration for the work being provided through the platform or establishes maximum and minimum limits for such work;

b) The digital platform exercises the power of direction and specifies certain rules, namely on the presentation of the provider's activity, his/her behaviour towards the service user or on 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 being provided, namely through electronic means or algorithmic management;

d) The digital platform restricts the activity provider's autonomy in terms of the organisation of work, especially with regard to choice of working hours or periods of absence, the possibility of accepting or rejecting assignments, the use of subcontractors or substitutes, the application of sanctions, the choice of clients or the provision of activity to third parties via the platform;

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

f) The equipment and work tools used belong to the digital platform or are exploited 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 activity providers.

The Labour Court of Portimão considered that the abovementioned presumption on the provision of work in digital platforms only applies to contractual relationships that started after 01 May 2023.

Regarding this specific presumption, the Court concluded that only the criterion referred to above in e) had been met in the present case, considering that the Glovoapp could deactivate a courier's account. However, as the remaining criteria had not been met, the presumption did not apply. In addition, the Court explained that the proven facts generally did not allow for the conclusion that Glovoapp and the couriers were bound by an employment contract.

This is an important decision due to the novelty of the specific regime on the provision of work through platforms (in particular, the presumption of employment contract referred to above) and the fact that this decision is contrary to the ones that, to the best of the authors' knowledge, have already been issued on this issue (see reference to the first decision on this issue in the February 2024 Flash Report).

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

The present case deal with the interpretation of Articles 1(1) and 2(1) of Directive 98/59/EC, of 20 July 1998, on the approximation of the laws of the Member States relating to collective redundancies ("Directive").

The CJEU reviewed whether Article 2(1) of the Directive must be interpreted as meaning that the consultation obligation arises at the time when the employer, in the context of a restructuring plan, contemplates or plans a reduction of employment positions, the number of which may exceed those fixed as giving rise to the concept of collective redundancies, within the meaning of Article 1(1) a) of that Directive, or only when, after having adopted measures involving the reduction of that number, the employer became certain that it would in fact have to dismiss a number of workers greater than those set by the latter provision.

According to the CJEU's case law, the obligations of consultation and notification under Article 2 of the Directive arise prior to any decision by the employer to terminate contracts of employment, considering that the objective of the same is to avoid terminations of contracts of employment or to reduce their number and to mitigate their consequences. Thus, the consultation procedure laid down in Article 2 of the Directive must be initiated by the employer once a strategic or commercial decision compelling it to contemplate or to plan for collective redundancies has been taken.

In the present case, the CJEU considered that the decision to transfer the management and operational activity of seven hotels to another company necessarily implied that collective redundancies were contemplated and, for this reason, in so far as the conditions defined in Article 1(1) of the Directive were satisfied, the company should have carried out the consultations provided for in Article 2 of the same Directive.

The CJEU explained that the purpose of the obligation to hold consultations, laid down in Article 2 of the Directive, and the objective pursued by the employer in the present case by asking its workers whether they were willing to be interviewed by the company that was exploring the hotels and, consequently, to reduce the number of individual dismissals, overlapped to a great extent. As stated by the CJEU, since the decision resulting in the significant reduction of the number of hotels managed and operated by the employer was likely to result in an equally significant reduction in its activity and workload at its central offices and, therefore, in the number of workers that it required, the voluntary departure of a certain number of workers to the company that took over

a part of its transferred activity obviously made it possible to avoid collective redundancies.

For these reasons, the CJEU ruled that:

> *"Article 2(1) of Directive 98/59 must be interpreted as meaning that the consultation obligation that it lays down arises at the time when the employer, in the context of restructuring plan, contemplates or plans a reduction of employment positions, the number of which may exceed those fixed in Article 1(1) (a) of that directive, and not when, after having adopted measures involving the reduction of that number, the employer became certain that it would in fact have to dismiss a number of workers greater than those fixed by the latter provision".*

Under Portuguese labour law, a collective dismissal is defined as the termination of employment contracts promoted by the employer and operated simultaneously or successively over a period of three months, comprising at least two or five employees, depending on whether the employer has less than 50 employees or 50 or more employees, respectively, based on the closure of one or more sections or an equivalent structure or a reduction in the number of employees for market, structural or technological reasons (Article 359 (1) of the Portuguese Labour Code). In the present case, in which the employer asked its workers whether they were willing to be interviewed by another company with the aim of reducing the number of dismissals (by virtue of voluntary terminations of those workers' employment contracts), does not seem to be relevant for determining whether the Portuguese rules on the collective dismissal apply and, therefore, the information and consultation obligations foreseen therein.

In any case, as the Portuguese concept of collective dismissal does not fully coincide with the concept arising from Article 1 (1) of the Directive, it seems necessary to ensure compliance of national law with EU law. In that context, the interpretation of the CJEU in the present case seems to be relevant and may have implications for Portugal, particularly in cases dealing with the EU concept of collective redundancies.

4 Other Relevant Information

Nothing to report.

Romania

Summary

The government has adopted new rules on domestic work that is paid using vouchers, aiming to limit undeclared work in this sector.

1 National Legislation

1.1 Domestic work

Law No. 111 was adopted in 2022. It regulates domestic service providers, aiming to curb undeclared work in this sector. The law introduced a system whereby employers pay domestic service vouchers to employees, thereby benefiting from certain tax incentives. Employees can use these vouchers for services provided by domestic service providers within their own households. The domestic service providers ultimately exchange the vouchers for cash. The system is facilitated by the National Employment Agency, the issuer of the vouchers.

However, the system has not been used so far. Indeed, the Employment Agency only recently operationalised the platform for tracking domestic activities.

To ensure the implementation of the domestic service voucher system, which is a milestone in the National Recovery and Resilience Plan, the government has adopted Emergency Ordinance No. 38/2024 to amend and supplement Law No. 111/2022 on the regulation of domestic service providers, published in the Official Gazette No. 388 on 25 April 2024. The new version of the law includes 34 types of unskilled activities that can be carried out under this system and clarifies the roles and responsibilities of both domestic service providers and beneficiaries of domestic work. The government hopes that these changes, along with the tax incentives benefiting all three participants in the system (employer, employee as the beneficiary of domestic activities, and the domestic service provider), will lead to an increased use of the system. According to the NRRP, by the end of 2024, at least 20 000 unemployed persons should be registered as domestic service providers.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

Article 69(1) of the Labour Code, which transposes the provisions of Article 2(1) of Directive 98/59/EC, stipulates that in the event that the employer intends to implement collective redundancies, it is required to initiate timely consultations with the trade union or, where applicable, with the employee representatives, concerning at least:

a) the methods and means to avoid collective redundancies or the reduction of the number of employees to be dismissed;

b) mitigation of the consequences of dismissals through social measures, including through retraining of dismissed employees.

The text thus concerned the obligation to initiate consultations where the possibility, rather than the certainty, of redundancies exists, in a number that could exceed the threshold triggering the provisions on collective dismissals.

It should be noted in this context that at a meeting of judges specialised in labour disputes on 01-02 November 2023, organised to unify practices at the national level, the following question was raised: are the rules on collective redundancies applicable if the employer, based on a definite strategic decision, envisages eliminating a large number of positions but carries out dismissals gradually, such that within each 30-day period fewer employees are dismissed than the legal threshold for collective redundancy? It was determined on that occasion that the envisaged dismissals under such circumstances are individual, provided that the number of dismissed employees did not exceed the threshold over a consecutive 30-day period, which would characterise it as a collective redundancy.

In light of the CJEU's decision, the question may arise whether the initiation of consultations would be necessary even in the scenario discussed at the aforementioned practice unification meeting, namely where the employer envisages dismissing a number of individuals that has the potential to exceed the legal threshold for collective redundancies, even if the actual issuance of dismissal decisions occurs gradually over several months.

In conclusion, Romanian legislation transposing Directive 98/59/EC is consistent with the interpretation given by the CJEU, associating the obligation to initiate consultations at the point in time when the employer "*intends to carry out collective redundancies*" rather than when such a decision has already been made. Some uncertainties persist in the scenario where a single redundancy decision is implemented through gradual dismissals.

4 Other Relevant Information

4.1 Violence and harassment in the world of work

Through Law No. 69/2024, published in the Official Gazette No. 285 on 02 April 2024, Romania has ratified the Violence and Harassment Convention, 2019 (No. 190), adopted at the 108th session of the International Labour Conference of the International Labour Organization in Geneva on 21 June 2019. The new regulation supplements the existing detailed rules prohibiting harassment in the workplace, contained in the Labour Code and related legislation.

Slovakia

Summary

No new labour law 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 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

Collective redundancies are regulated in Article 73 of the Labour Code (Act No. 311/2001 Collection of laws –"Coll."), as amended.

According to Article 73 paragraph 2 of the Labour Code with a view to reaching an agreement, employers are required, no later than one month before the start of a collective redundancy, to negotiate with the employee representatives, and if there are no employee representatives at the employer directly, then with the affected employees, about measures to prevent collective redundancies or to limit them, and primarily to discuss the possibility of placing the redundant workers in suitable employment at the employer's other workplaces, even after prior preparation, and about measures to mitigate the adverse consequences of collective redundancies for employees. To this end, the employer shall be required to provide the employee representatives with all necessary information and to inform them in writing, in particular about

a) the reasons for collective redundancies,

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

c) the total number and positions of employees employed by the employer,

d) the period during which the collective redundancies will take place,

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

The employer shall simultaneously deliver a copy of the written information according to paragraph 2, together with the names, surnames and addresses of permanent residences of the employees with whom the employment relationship is to be terminated to the Office of Labour, Social Affairs and Family for the purpose of finding solutions to problems associated with collective redundancies according to paragraph 7 (paragraph 3).

According to paragraph 4, after negotiating collective redundancies with employee representatives, the employer is required to deliver information about the outcome of the negotiation in writing to:

a) the National Labour Office,

b) the employee representatives.

Employee representatives can submit reminders about collective redundancies to the National Labour Office (paragraph 5).

According to paragraph 6, in case of collective redundancies, the employer may give notice to the employee for the reasons specified in Article 63, paragraph 1, letter a) and b) or a proposal to terminate the employment relationship by agreement for the same reasons no earlier than one month after the date of delivery of the written information in accordance with paragraph 4, letter a).

The National Labour Office will use the period established in paragraph 6 to find solutions to the problems associated with the planned collective redundancies. The Office of Labour, Social Affairs and Family may appropriately shorten the deadline according to paragraph 6 for objective reasons, which must be immediately shared in writing with the employer (paragraph 7).

It should also be noted that according to paragraph 11, if there are no employee representatives at the employer, the employer must fulfil the obligations established in paragraphs 2 to 4 and negotiate directly with the affected employees.

Several time limits are specified in the cited provisions.

According to paragraph 2, with a view to reaching an agreement, the employer is required, no later than one month before the start of collective redundancies, to initiate negotiations with the employee representatives, and if there are no employee representatives at the employer, then directly with the affected employees).

(After negotiating the collective redundancy with the employee representatives, the employer is required to deliver information in writing about the outcome of the negotiation *to the National Labour Office (paragraph 4, letter a/).*

In case of collective redundancies, the employer may give notice to the employee or a proposal to terminate the employment relationship by agreement no earlier than one month after the date of delivery of the written information in line with paragraph 4, letter a/ (paragraph 6).

According to paragraph 7, the Office of Labour, Social Affairs and Family may appropriately shorten the deadline in line with paragraph 6 for objective reasons.

Paragraph 2 stipulates "with a view to reaching an agreement, the employer is required, no later than one month before the start of collective redundancies", which in the authors' opinion indicates that some clarification is necessary given the CJEU's judgment and in accordance with the text of the Directive – "Where an employer is contemplating collective redundancies".

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) Workers' rights in case of cross-border mergers, divisions and conversions have been regulated in a single Act transposing relevant provisions of the Mobility Directive on Workers' Rights.

(II) The Amendments to the Medical Services Act have been enacted introducing more restrictions to medical doctor's right to strike.

(III) Several collective agreements have been amended or annexes concluded.

1 National Legislation

1.1 Workers' rights in case of cross-border mergers, divisions and conversions

The Act on Co-determination of Workers in Cross-border Mergers, Divisions and Conversions of Companies ('*Zakon o soodločanju delavcev pri čezmejnih združitvah, čezmejnih delitvah in čezmejnih preoblikovanjih kapitalskih družb (ZSDČPKD)*', OJ RS No. 32/24, 12 April 2024, p. 2692 et subseq.) has been enacted.

The Act transposes six articles of the Mobility Directive (Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions) into the Slovenian legal system, namely Articles 86k, 86l - cross-border transformation; 126c, 133 - cross-border merger; 160k, 160l - cross-border division, which regulate workers' information and consultation rights and co-determination in the management or supervisory bodies of the company in case of a cross-border merger, division or conversion of the company.

Since these rights for cross-border mergers have already been regulated in a separate Act, this Act has been repealed (Act on Co-determination of Workers in Cross-border Mergers ('*Zakon o soodločanju delavcev pri čezmejnih združitvah kapitalskih družb (ZSDČZKD)*', OJ RS No. 56/08).

1.2 Restrictions to the right of medical doctors to strike

The Amendments to the Medical Services Act have been enacted and published ('*Zakon o zdravniški službi (ZZdrS)*', OJ RS No. 35/24, 26 April 2024, p. 3045-3046); they entered into force the day after publication, i.e. on 27 April 2024. They concern restrictions to the right of medical doctors to strike.

After the trade union FIDES, which organised the strike of medical doctors, challenged the Government's Ordinance which expands the scope of services doctors are required to provide during a strike (according to FIDES, the Ordinance was unlawful and unconstitutional as it interfered with the right to strike), the government decided to amend the rules on the restrictions to the right to strike for medical doctors in the Medical Services Act. The list of minimum services that must also be performed during the strike has been modified, adding more essential services that must be performed.

According to the amended Article 46 of the ZZdrS, doctors must be at the workplace during the strike and perform medical services to not threaten the health of people or property or to prevent harmful irreversible consequences, and to enable the continuation of work after the end of the strike by providing enumerated medical services (the minimum work procedures). The responsibilities of directors and trade unions during a strike have been elaborated in more detail, and penalties for non-

compliance with these rules have been expanded. The Government Ordinance that regulated minimum work procedures during a strike (see also February 2024 Flash Report under 1.4) has been repealed.

2 Court Rulings

2.1 Employment of foreign workers

At the request of the National Council, the Constitutional Court reviewed the provisions of the Employment, Self-Employment and Work of Foreigners Act according to which employers who have been fined for certain offenses are prohibited to employ foreign workers within a period of one, two or five years from the imposition of a fine.

By its decision No. U-I-130/22 from 21 March 2024 (OJ RS No. 30/24, 05 April 2024, p. 2275-2285; ECLI:SI:USRS:2024:U.I.130.22), the Constitutional Court held that the challenged regulation is not inconsistent with the Constitution.

In its reasoning, the Constitutional Court emphasised, among others, that taking into account the well-known fact of the lack of workers in at least some economic activities, such a measure can in certain cases have a profound impact on the possibility of an employer to find and employ workers, and thus on the very possibility of performing an economic activity or on its scope. The Constitutional Court deemed that considering the intensity of the impact, this constitutes an interference with the right to free economic activity in line with paragraph 1 of Article 74 of the Constitution, and applied the proportionality test. The Constitutional Court determined that the challenged regulation is not inconsistent with the right to free economic initiative, as the objectives pursued by the challenged regulation (protection of foreign workers from employment with employers with negative references; encouraging economic entities to comply with the provisions on the employment of foreigners and some other legal provisions relating to them) are in the public interest and the measure is also proportionate in a narrower sense. According to the Constitutional Court's assessment, the pursuit of the stated goals must be given priority over the benefits which the non-existence of the contested measure would entail for economic entities.

It is worth mentioning that the issue has become particularly relevant recently, since employers are facing increasing problems finding suitable workers. The share of non-EU workers has been rising rapidly (15 per cent in January 2023), and has grown by 6.5 per cent over the last six years. The Ministry of Labour has announced amendments to the Employment, Self-Employment and Work of Foreigners Act, loosening the requirements for work permits. The Ministry of Labour emphasised in this regard that "*Slovenia is facing a severe shortage of labour. Foreign workers are important, not only for the corporate sector but also to maintain our standard of living...*" and that "*it is in the country's interest for the workers to have the best possible working conditions here, so that they come in great numbers*", and that "*foreign workers must be paid on exactly the same terms as domestic workers. This is the only way to prevent social dumping*". The majority of permits for foreign workers are issued for the construction industry, followed by manufacturing, transport and warehousing, hospitality and agriculture.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

The CJEU decided that:

> "*Article 2(1) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as meaning that the consultation obligation that it lays down arises*

> *at the time when the employer, in the context of a restructuring plan, contemplates or plans to reduce the number of jobs whose number may exceed those fixed in Article 1(1)(a) of that directive (the collective redundancy threshold), and not when, after having adopted measures involving the reduction of that number, the employer became certain that it would in fact have to dismiss a number of workers greater than those fixed by the latter provision."*

The case is of relevance for Slovenian law, case law and practice, as it confirms the approach of Slovenian courts when dealing with collective redundancies cases; however, it will have no direct implications, as existing case law seems to already be in line with this decision. Slovenian courts have to interpret Slovenian law in line with CJEU judgments and it is expected that they will take this ruling into account as well.

The relevant provisions of the Employment Relationships Act ('*Zakon o delovnih razmerjih (ZDR-1)*' OJ RS No. 21/13 et subseq.) on collective redundancies can be found in Articles 98 and subseq.

According to Article 99, para 1 of the ZDR-1, the employer must *at the earliest possible time* inform the trade unions at the employer in writing of the reasons for redundancies, the number and the categories of all employed workers, the expected categories of redundant workers, the expected terms under which the work performed by the workers will no longer be needed, and the proposed criteria for the determination of redundant workers. According to Article 99, para 2 of the ZDR-1, the employer shall have previously consulted the trade unions at the employer with a view to reaching an agreement on the proposed criteria for the determination of redundant workers and within the elaboration of the dismissal programme for redundant workers about the possible ways of avoiding and limiting the number of dismissals and the possible measures for the prevention and mitigation of harmful consequences.

In its judgment, the Higher Labour and Social Court (No. Pdp 431/2018, 07 November 2018, ECLI:SI:VDSS:2018:PDP.431.2018) emphasised that the information and consultation obligation already arises at an early stage, namely when the employer plans to reduce the number of employment positions, even if the employer has not at that stage taken any concrete dismissal decisions yet (in December 2015, the employer included the dismissal of 36 workers in its plan for the year 2016, however, concrete decisions to dismiss were only taken later during 2016).

The Court referred to Article 99 of the ZDR-1 and emphasised that it must be interpreted in line with Article 2 of Directive 98/59/EC. The Court also referred to CJEU case law, in particular to *Akavan Eritasalojen* case (C-44/08) and to *Ciupa and others* (C-429/2016) and *Socha and others* (C-149/2016). It emphasised that the consultation obligation already arises at a stage when no decision on concrete dismissals has yet been made in order to allow workers' representatives to participate in procedures during which strategic decisions are being prepared and adopted or changes in operations are being planned within which collective redundancies are foreseen or planned, and not only when the necessity of dismissals emerges from such strategic or business decisions. Consultations concern, in particular, the possibility of avoiding or reducing redundancies. Therefore, according to the Court's reasoning, consultations that would take place after the employer has already made the decision on the necessity of redundancies would not ensure the full effect of the Directive (see also similar judgments, for example the judgment of the Supreme Court No. Ips 282/2016, 06 June 20217, ECLI:SI:VSRS:2017:VIII.IPS.282.2016).

It is important to take into account that the purpose of the consultation obligation in case of collective redundancies can only be effectively fulfilled if it is performed at an early stage when it is still possible to avoid redundancies or to reduce its number. The CJEU, among others, also emphasised that consultations that take place at a later stage, i.e. after already having adopted measures and when it is already certain that the employer will have to dismiss a number of workers greater than the collective

redundancy threshold, would not allow for an assessment of alternatives to dismissals and to consider various measures aimed at reducing or avoiding such redundancies.

4 Other Relevant Information

4.1 Collective bargaining

The collective agreement for the metal industry has been amended (‘*Dodatek št. 7 h Kolektivni pogodbi za kovinsko industrijo Slovenije*’, OJ RS No. 36/24, 29 April 2024, p.3324); the amendments include the issuance of a warning prior to a dismissal, annual leave and some other issues.

Spain

Summary

There is a ruling of the Supreme Court on the possible coincidence of weekly rest and public holidays, but there has been a quiet month.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Weekly rest and public holidays

The Supreme Court states that when the weekly rest is not enjoyed in the same day of the week, so it is enjoyed in different days each week, this weekly rest cannot be overlapped with a public holiday. The worker cannot lose one of these rights in that particular case.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

This ruling originates from Spain and is therefore relevant. Article 51 of the Labour Code governs collective dismissals. Under this Article, a collective dismissal encompasses not only direct dismissals but also all contract terminations "at the initiative" of the employer. Thus, this Article could be interpreted in line with the CJEU ruling, particularly in cases where the employer encourages employees to seek alternative employment prior to a decision to terminate contracts. However, it is not accurate to say that Spanish Law is non-compliant with EU Law. The matter hinges on the interpretation of a specific issue that has not previously been adjudicated by the courts.

Therefore, it is a very specific case where the employer didn't terminate contracts directly. Instead, some workers accepted other employment offers. The Spanish court could have reached the same conclusion as the CJEU, considering such terminations as "assimilated" to dismissals (similar to voluntary redundancy schemes). However, it chose to seek guidance of the CJEU, which used a different approach: an "ex ante" approach, not "ex post". This is relatively new and requires foreseeing the total number of jobs eliminated before a collective redundancy is formally initiated. This is a significant shift, and the consequences are unknown. If this approach only affects collective redundancies with unique elements like this case, the impact is likely minimal. No legal reform would be necessary, and courts would just need to respect CJEU doctrine in the few cases that arise. However, if employers are required to foresee the exact number of jobs eliminated in a hypothetical future crisis, and take into account workers who accept other job offers, the consequences would be dramatic, not just in Spain, but in every other EU Member State.

4 Other Relevant Information

4.1 Transparent working conditions

A draft bill is in place to implement Directive (EU) 2019/1152 on transparent working conditions in the EU. Its final approval date remains uncertain.

Sweden

Summary

Working time and daily rest periods under collective agreements that over-reach the transportation standards or requirements in the Working Time Directive (WTD).

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working time

Labour Court AD 2024 No. 24

The Swedish Labour Court ruled in case AD 2024 No. 24 on the interpretation of working time in a collective agreement for onboard staff with SAS (airline company), and concluded that the employer had violated the collective agreement. The employees had not been provided a 13-hour rest period at the home base, which was a requirement in the collective agreement, which is more than 12 hours, the minimum standard in the SAS OM-A provisions accepted by the Swedish Transport Agency (*Transportstyrelsen*) and the 11-hour daily minimum rest period stipulated in the Working Time Directive (WTD). The employees, due to delayed flights, had been refused their 13-hour rest period (the rest period for the three claimants had been 12 h 45 min, 12 h 44 min and 12 h 18 min on three different occasions.

The Labour Court concluded that the collective agreement had been violated and ruled in favour of the trade union (applicant), despite the more inclusive wording of both the transportation standards and the WTD.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

The decision in C-589/22 has no implications for Swedish labour law. Even if the Directive on Collective Redundancies establishes different thresholds for the (minimum) application of the duty to inform or negotiate collectively, the Swedish labour law already contained far stricter provisions on collective redundancies (*arbetsbrist*) before the transposition of the Directive, provisions that are still in place. Sweden's Employment Protection Act (*lagen [1982:80] om anställningsskydd*) section 29 and the corresponding Co-determination Act *(lagen [1976:580] om medbestämmande I arbetslivet*), section 11, regulate the employer's duty to negotiate with employee representatives prior to a decision on redundancy, regardless of the number of employees subject to the proposed redundancy. As long as the reason for the dismissal is redundancy (*arbetsbrist*), the employer is required to initiate (or at least request) a negotiation with the trade unions. The legal issues in the case before the CJEU would therefore not arise in Sweden.

4 Other Relevant Information

Nothing to report.

United Kingdom

Summary

(I) The Employment Appeal Tribunal ruled on holiday pay and whether it includes meal allowances, compensation uplift in the case of collective redundancies in fire and rehire situations.

(II) The Supreme Court had the opportunity to consider important issues around the right to strike and UK law.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Holiday pay

Employment Appeal Tribunal, [2024] EAT 53, 19 April 2024, British Airways v De Mello

In *British Airways v De Mello*, one of a number of questions raised on appeal was whether a flat rate meal allowance, which exceeded the cost of the meal, should have been included in the calculation of statutory holiday pay for cabin crew. The EAT stated:

As to the burden, the overall position is that this is on the worker who asserts that a payment forms part of normal pay to show that it does. But, as so often, the tribunal is unlikely to need to resort to the burden of proof to decide the issue. Whether the payment is a performance payment or an expenses payment should be decided by the tribunal by identifying all the relevant facts and circumstances (from whichever source the evidence was drawn), and then stand back and assess the overall picture, including by drawing appropriate reasoned inferences from the primary facts, to decide which side of the line the given payment falls.

Lord Mance's observation at [31] should be seen in this context. The fact that a payment is a fixed amount is not decisive for the conclusion that it is an expenses payment. But if in the given case, it is at a very high level that is 'obviously' not wholly required to cover expenses, it may be treated as decisively tipping the scales in favour of the conclusion that the real basis on which it has been made is that it is a performance payment. The answer in such a case is not for the tribunal to split or apportion the payment. Rather, the employer may avoid this conclusion by bringing the level of the payment down below such a very high level.

Thus, payments which are part of performance should be included; payments for occasional or ancillary costs should not. The case was remitted to the tribunal.

3 Implications of CJEU Rulings

3.1 Collective redundancies

CJEU case C-589/22, 22 February 2024, Resorts Mallorca Hotels International

In Case C-589/22 *Resorts Mallorca Hotel*, the Court ruled that Article 2(1) of Council Directive 98/59/EC had to be interpreted as meaning that the consultation obligation it lays down arises at the time when the employer, in the context of a restructuring plan, contemplates or plans a reduction of employment positions, the number of which may exceed those fixed in Article 1(1)(a) of that Directive, and not when, after having adopted measures involving the reduction of the number of employees, the employer

became certain that it would in fact have to dismiss a number of workers greater than those set by the latter provision.

This issue has long been a vexed one for the UKL, because the statutory language in s.188 TULR(C)A 1992 refers to 'proposing'. The question has long been whether the two terms could be reconciled. As Reade and Northall assert, 'On the basis of the decision of the EAT in *UK Coal Mining Ltd v National Union of Mineworkers (Northumberland Area) and another* [2008] IRLR 4, the critical issue is when a strategic or commercial decision is taken' (by either the employer or an entity which controls the employer), which compels it to contemplate or plan the redundancies. That case concerned closure which inevitably would involve redundancies and the duty was therefore engaged to consult on the proposal to close the entire mine.

Whilst the reasoning of UK Coal has held the ascendency, there is a body of law at the level of the EAT which is inconsistent. The most helpful summary of the position is to be found in the decision of the Court of Appeal in United States v Nolan [2011] IRLR 40 at paragraph 36 onwards.' However, Reade and Northall conclude that *UK Coal* remains good law. *Resorts Mallorca* suggests this earlier point in time is the relevant one and hence UK law is not significantly out of line.

4 Other Relevant Information

4.1 Response to the P&O mass dismissals

P&O decided to dismiss its entire workforce and replace it with a cheaper (foreign) workforce. This led to considerable outrage from the trade union movement, but few legal tools to deal with it. The government consulted on its response which led to a Statutory Code of Practice on 'Dismissal and Re-engagement', set to come into effect in July 2024. It requires that 'fire and rehire' should be a last resort following meaningful consultation with employees or their representatives. This is now to be supplemented by The Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment of Schedule A2) Order 2024. This Order amends Schedule A2 to the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) ('the Act'), according to the Explanatory Memorandum.

Schedule A2 to the Act lists the tribunal jurisdictions to which section 207A of the Act (Effect of failure to comply with the Code: adjustment of awards) applies. Where section 207A of the Act applies, and where it appears to the employment tribunal that a relevant Code of Practice applies and that the employer has unreasonably failed to comply with it, the employment tribunal may increase any award it makes to the employee by no more than 25 per cent. The employee's award may be reduced by no more than 25 per cent where it is the employee who has unreasonably failed to comply with the relevant Code of Practice. A relevant Code of Practice is one which relates exclusively or primarily to the procedure for the resolution of disputes.

Article 2 of this Order adds section 189 of the Act (failure to follow consultation requirements) to the list of tribunal jurisdictions to which section 207A of the Act applies.

In other words, if the employer fails to undertake collective consultations in the event of collective redundancies under Directive 98/59, the individual's compensation can be increased.

4.2 Mercer decision of the Supreme Court

This important case, Mercer, gave the Supreme Court the opportunity to consider issues around the right to strike. The Supreme Court summarised the facts as follows: 'The appellant, Ms Mercer, was employed as a support worker in the care sector by a care services provider, Alternative Futures Group Ltd ('AFG'). As a workplace representative of UNISON, she was involved in planning and took part in lawful strike action. She was

subsequently suspended by AFG. While suspended, Ms Mercer received normal pay but was unable to earn pay for the overtime she would otherwise have worked.

Ms Mercer brought a claim against AFG under section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 ('TULRCA') that she had suffered detrimental treatment done for the sole or main purpose of preventing or deterring her from taking part in the activities of an independent trade union 'at an appropriate time' or penalising her for having done so.

By agreement between the parties, the Employment Tribunal determined as a preliminary issue whether, in light of Articles 10 and 11 of the European Convention on Human Rights ('the Convention'), section 146 of TULRCA protected workers from detriment short of dismissal for participation in lawful industrial action as a member of an independent trade union.'

The legal problem is succinctly set out in the Supreme Court's press release:

Section 146 of TULRCA protects a worker against detrimental treatment by their employer done with the sole or main purpose of preventing or deterring them from taking part in the activities of an independent trade union 'at an appropriate time'. However, as a matter of domestic interpretation, section 146 does not provide protection from detriment short of dismissal to workers participating in lawful strike action. This is because the words 'at an appropriate time' are defined to exclude working time (except with the employer's consent). Protection is therefore limited to activities which are outside working hours and/or done at a time that is not inconsistent with the worker's job responsibilities. Industrial action will normally be carried out during working hours if it is to have the desired effect, since for workers to withhold their labour at a time when the employer has no expectation of labour being provided is unlikely to have any consequence for the employer.

So the question is whether the absence of any protection in TULRCA for workers (not employees) taking part in lawful industrial action against detriments short of dismissal is compatible with Article 11 of the Convention. The Supreme Court concluded that UK law does not 'provide any protection for a worker faced with a disciplinary sanction short of dismissal for taking part in a lawful strike. The right of an employer to impose any sanction it chooses, short of dismissal, for participation in lawful strike action nullifies the right to strike, as employees are unable to strike without exposing themselves to detrimental treatment. In that sense, section 146 both encourages and legitimises unfair and unreasonable conduct by employers. Had there been legislation addressing detrimental treatment short of dismissal for lawful strike action, it might be possible to say that a fair balance had been struck. However, no protection is provided and this places the UK in breach of its obligations under Article 11.' Under the Human Rights Act 1998, the Supreme Court therefore issued a declaration of incompatibility of the UK statute. Of particular interest is the observation by the Supreme Court that 'Nonetheless, the fact that the right to strike is protected is recognised in domestic law, for example, by the introduction of section 238A of TULRCA.' The interest lies here because traditionally, there has been no recognition of the right to strike in the UK (as opposed to immunity from an action in tort).

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