Flash Reports on Labour Law March 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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Flash Report 03/2024 on Labour Law

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Executive Summary

National level developments

In March 2024, 26 countries reported labour law developments (all countries except for DK, LI, MT, SK and LV). The following were of particular significance from an EU law perspective:

Implementation of EU Directives

As reported in the Flash Report of February 2024, in **Austria**, the National Assembly passed legislation transposing Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union into national law. The new legislation entered into force on 28 March 2024. A minority report was presented in the Federal Assembly, highlighting potential legal issues in the transposition and requesting an amendment of the proposed legislation. However, the report was ineffective, and the legislation was passed by the Federal Assembly unchanged.

In **Romania**, Law No. 28/2024, published in Official Gazette No. 176 on 5 March 2024, transposes Directive (EU) 2021/1883 into Romanian law. This Directive governs the entry and residence conditions for highly skilled third-country nationals, replacing Council Directive 2009/50/EC.

Finally, in **Poland**, on 06 March 2024, a bill was published on the website of the governmental legislative centre, which transposes Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of whistleblowers.

Annual leave

In the **Czech Republic**, the government approved a draft amendment to the Labour Code. Among other changes, the amendment provides for the abolition of the obligation to issue a leave plan in agreement with the trade union.

In the **Netherlands**, the District Court issued a judgment on the settlement of hours of paid annual leave with minus hours at the end of the employment contract.

Collective bargaining and collective action

In the **Czech Republic**, the government approved a draft amendment to the Labour Code. Among other changes, the amendment aims to address the plurality of trade unions when concluding collective agreements.

Moreover, in **Finland**, the Parliament tasked the government with regulating essential work organisation during industrial actions. Subsequently, the Ministry of Economic Affairs and Employment announced the formation of a tripartite working group to propose legislative changes.

In **Lithuania**, the Supreme Court has issued a ruling on the notion of 'co-determination' or 'co-decision' as defined in Lithuanian law and collective agreements.

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

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

Dismissal protection

In **Belgium**, the Federal Parliament and government enacted the Law of 13 March 2024 on justification for dismissal and manifestly unreasonable dismissal

of contractual employees in the public sector.

In **Iceland**, the Court of Appeal issued a ruling on the termination of a nurse's employment contract, who had refused to take a COVID-19 rapid test in December of 2021. The Court considered the dismissal to be legal, even though no notice had been given.

Finally, in the **Netherlands**, a District Court ruled on a case involving an employee who was dismissed with immediate effect for setting up a business in competition with the employer during his employment. The District Court found the dismissal to have been justified.

Occupational health and safety

In **Finland**, a Government Decree on the protection of pregnant workers and workers who have recently given birth and are breastfeeding from hazardous working conditions was enacted.

In **France**, moreover, according to a ruling of the Court of Cassation, an employer's failure to comply with its legal obligation to protect the health and safety of its employees constitutes a reckless misconduct when the employer was or should have been aware of the danger to which the employee was exposed and failed to take the necessary measures to protect him or her.

Remote working

In **Bulgaria**, the National Assembly adopted the Law on Amendments and Supplements of the Labour Code which focusses primarily on remote working.

In **Ireland**, the provisions of the Work-life Balance and Miscellaneous Provisions Act 2023 relating to the right to request flexible or remote working entered into force.

Temporary agency work

In **Bulgaria**, the National Assembly adopted the Law on Amendments and Supplements of the Employment Promotion Act. According to the new legislation, the Employment Agency shall maintain a unified electronic centralised register of individuals and legal entities that carry out staffing activities and/or provide temporary work services. This register shall include information about individuals and enterprises engaged in temporary work services.

Moreover, in the **Netherlands**, a District Court issued a ruling on the enforcement of the provisions of Directive 2008/104/EC on Temporary Agency Work. The Court ruled that three former directors of a temporary employment agency are jointly and severally liable for the trade union SNCU's claims of compliance with the collective agreement of temporary agency work.

Working time

In the **Netherlands**, the Supreme Court ruled on whether on-call duty for ambulance staff qualifies as working time under Directive 2003/88/EC. By following CJEU case law, it pointed out that if on-call time significantly restricts workers' freedom to use their time, it should generally be considered working time.

In **Slovenia**, the rules determining the amount of supplements for extra workload in certain areas of healthcare have been amended with more detailed rules concerning the calculation and payment of the supplement for extra workload.

Other relevant developments

In **Finland**, the government proposal to Parliament for approval and implementation of changes to the Code of the ILO Maritime Labour Convention, 2006 and related laws was submitted.

Finally, in the **Netherlands**, a District Court interpreted the Whistleblower Protection Act, which transposes Directive (EU) 2019/1937 on the

protection of persons who report breaches of Union law.

Implications of CJEU Rulings

Temporary Agency work

This Flash Report analyses the implications of a CJEU ruling on temporary agency work.

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The CJEU case dealt with equal treatment between temporary agency workers and workers recruited directly by the user undertaking as regards compensation following a workplace accident.

The CJEU held that the first subparagraph of Article 5(1) of Directive 2008/104/EC, read in conjunction with Article 3(1)(f), must be interpreted as precluding national legislation under which temporary agency workers receive a lower amount of compensation for total permanent incapacity due to a work-related accident compared to directly recruited workers in the same job and for the same duration.

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

Nonetheless, this is not the case for **Spain**, where the case originated. However, a legal reform does not seem likely. The Spanish Supreme Court ruled that supplementary social security benefits voluntarily provided by employers do not qualify as 'pay' for temporary agency workers. This CJEU decision is poised to prompt a shift in the case law of the Supreme Court.

The CJEU's decision may have implications for **Lithuania**, if a similar case arises at national level. However, these will not be imminent or definitive

Furthermore, the CJEU ruling may have implications for **Malta**. The ruling challenges national legislation that provides a lower amount of compensation for temporary agency workers compared to directly recruited workers in similar circumstances. To align fully with the CJEU ruling, Maltese law may need to include compensation for permanent incapacity in the definition of basic working and employment conditions outlined in the Temporary Agency Workers Regulations, 2011.

The CJEU ruling will likely have significant implications in **Norway**. The ruling challenges the Norwegian interpretation of the concept of 'pay' within the Directive. While Norwegian law interprets 'pay' broadly, encompassing consideration for work performed, it may not explicitly include compensation for incapacity due to work-related accidents. The issue has not been addressed in case law or doctrinal works.

Moreover, the CJEU judgment is relevant for **Romania**, when domestic courts interpret the notion of 'remuneration', which should not be understood solely as remuneration for work, but also as including other benefits that the employer must pay in light of the employment relationship.

Lastly, given the significant influence of collective agreements in determining employment conditions for temporary agency workers in **Sweden**, the CJEU's judgment is likely to prompt reconsideration and potential adjustments in Swedish labour law to ensure compliance with EU standards regarding equal treatment.

Table 1: Major labour law developments

Topic	Countries
Annual leave	CZ NL PT SL
Collective bargaining and collective action	CR CY CZ FI HU IS LT LU SL
Dismissal protection	AT BE IS NL
Migrant workers	FI RO NL
Minimum wage	CZ EE EL NL PL SL
Occupational health and safety	FI FR NL
Platform work	NL
Protection against discrimination	AT ES SE
Remote work	BG IE
Temporary agency work	BG NL
Undeclared work	IT
Whistleblowing	PL NL
Work-life balance	IE
Working time	NL SL

Austria

Summary

(I) A minority report discussed in the Federal Assembly has raised several issues relating to the transposition of Directive 2019/1152/EU, but the law passed nonetheless unchanged.

(II) No decisions of interest from the perspective of EU labour law have been published in the reporting period.

1 National Legislation

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

As reported in our previous Flash Report of February 2024, the National Assembly passed the transposition (Allgemeines bürgerliche Gesetzbuch, Arbeitsvertragsrechts-Anpassungsgesetz, u.a., 904/BNR) of Directive 2019/1152/EU on 28 February 2024. On 14 March 2024, it passed the Federal Assembly and entered into force on 28 March 2024.

In the Federal Assembly, a minority report was presented, highlighting potential legal issues in the transposition and requesting an amendment of the proposed legislation. However, the report was futile, and the legislation was passed by Federal Assembly unchanged.

The following issues were raised:

i. Lack of transposition of Article 12 (Transition to another form of employment)

Article 12 of the Directive requires Member States to ensure that workers with at least six months' service (following a probationary period) with the same employer may request a form of employment with "*more predictable and secure working conditions"*. The minority report addresses the lack of transposition of Article 12 of the Directive into national legislation.

The report's observation that the legislation transposing the Directive does not contain the right to request more predictable and secure working conditions is correct. However, it needs to be examined whether Article 12 needs to be transposed. In the authors' view, this depends on the understanding of Article 12's notion of "*more predictable and secure working condition*s".

- (More) Predictable working conditions: in the authors' understanding, that predictability refers to the worker's predictability of the amount and allocation of his/her working hours. Austrian employment law generally requires the agreement not only on the amount of working hours per week, but also their daily allocation for the conclusion of an employment contract, and deviation from such an agreement is only possible within strict legal limits (for the deviation of the allocation of working hours, see Article 19c AZG, Austrian Working Time Act (Deviations from the agreed working time allocation by the employer are only permitted for objective reasons justifying a deviation, at least two weeks prior and only in case no employee interests worthy of consideration oppose this deviation)). Zero-hours contracts, or work-on-demand employment contracts are not permitted under Austrian law. Hence, in Austria, all workers enjoy standard predictable working conditions, and there is no room for transitioning to a form of employment with more predictable working conditions.

- (More) Secure working conditions: the Directive does not define 'secure' working conditions per se, but in Explanatory Note 36 of the Directive, refers to full-time and open-ended contracts as the standard and a secure form of employment that workers should be able to transition to. If secure working conditions are to be understood as full-time and open-ended employment, Austrian legislation does not fully transpose the Directive, as it does not contain the right to request a transition into a full-time or open-ended employment relationship.

ii. Lack of effective, proportionate and dissuasive penalties (Article 19)

The minority report also asserts that the transposition lacks effective, proportionate and dissuasive penalties for non-compliance.

- The transposition sanctions' non-compliance with the obligation to provide information in a timely manner (Article 4 of the Directive) with administrative fines ranging from EUR 100 to EUR 436, in case of a repeated offence, or in case more than five workers are concerned, between EUR 500 and EUR 2 000. As the fine does not cumulate for each concerned worker, the report argues that the penalty—which in the case of corporations is not directed at the company, but at the company's representatives personally—is not sufficiently dissuasive: even in case, say, 8 000 workers were concerned, the total fine would not add up to more than EUR 2 000.
- It should be noted that under Austrian law, administrative fines are generally cumulative. However, the principle of culminating fines came under scrutiny in *CJEU case C-64/18, 12 February 2019*, *Maksimovic* as a potential violation of Article 56 AEUV, which presumably led the legislator to deviate from the cumulation-of-fines principle when transposing the Directive. However, regardless of the principle of cumulation of fines, it remains questionable whether a maximum fine of EUR 2 000 is an effective, proportionate, and dissuasive penalty for non-compliance under all circumstances.
- The minority report rightly addresses that the transposition does not specifically impose effective, proportionate and dissuasive penalties for non-compliance with the right to predictable working conditions, parallel employment, mandatory trainings and the right to request written reasons for a dismissal.
- In case of violations of these provisions, it is a standard consequence under civil law, such as additional payments (e.g. for working time, including overtime surcharges, or refund of training costs, as well as potential interest rates) that apply, but there are no additional compensation or administrative fines.

iii. Lack of transposition of Article 18 (protection from dismissal and burden of proof)

The minority report argues that Article 18 has not been fully transposed as the Austrian legislation does not implement a reverse of the burden of proof. The implementation of Article 18 is based on the approach generally used for dismissal based on an ulterior motive ('*Motivkündigung*'): the worker in question does not have to establish proof for their claim but must make the ulterior motive (e.g. request for additional information, permissible parallel employment, etc.) for the dismissal likely or plausible. This is achieved by establishing facts. When the facts that make the ulterior motive plausible have been established, the employer must provide proof for other motives for the dismissal.

The authors of this report do not agree with the minority report on the argument that Article 18 requires a full reversal of proof: Article 18 requires Member States to implement legislation that in case workers before a court can establish facts from which it can be presumed that a dismissal occurred as a consequence for request for compliance with the Directive, the employer must prove that the dismissal was based on other grounds. Also, the Directive allows more favourable standards of proof for the worker. Article 18 hence introduces a very specific lower burden of proof—the

establishment of facts from which ulterior motives for the dismissal may be deduced—but not a reversal of proof (though the Directive would permit the introduction of such a strong standard).

The Austrian transposition meets the Directive's requirement as the establishment of facts that lead to the presumption of an ulterior motive for the dismissal will require the employer to establish proof for other or another (acceptable) motive for dismissal.

iv. Incomplete transposition of Article 9 (the right to parallel employment)

The Austrian legislator has expressly stated that the right to parallel employment does not affect the current legislation on the prohibition (for white collar workers in trade) of parallel employment in the employer's line of business (= potential competitors) without the employer's express consent (§ 7 AngG, White Collar Act, on employment with competitors and self-employed competitive activity)

The minority report argues that this exemption from the right to parallel employment is not based on health or safety concerns, or concerns regarding conflicts or interests, and as such, is contrary to the Directive.

In the authors' view, the Austrian exception to the right to parallel employment is in line with the Directive. As possible grounds for exemptions, Article 9 not only lists business confidentiality, but also potential conflicts of interests. Both interests are touched upon in case the employee works for another employer in his/her primary employer's line of business.

v. Incomplete transposition of Article 17 (Protection against adverse treatment or consequence)

The minority report argues that Article 17 has not been fully transposed as the protection against adverse treatment or consequence does not cover employees who reported their employer to authorities for non-compliance with the obligation to provide information according to the Directive.

The legislation transposing Article 7 (§ 7 AVRAG, Employment Contract Adaption Act) provides protection for workers who made use of their rights based on the Directive. The term 'making use of their rights' is not clearly defined and does not per se exclude protection in case the worker reports the employer. The transposing legislation is—read in line with the Directive—most likely to be understood as covering cases in which the worker reported the employer. If not, the observations made in the report are correct, and the transposition of Article 17 is incomplete.

vi. Inadequate transitional law (Article 22)

The minority report observes that the legislation implementing the Directive is not enacted retroactively, as of 01 August 2022, but applies to newly concluded contracts, i.e. concluded after the legislation entered into force (28 March 2024).

With regard to the obligation to provide information, the legislator argues that there was a pre-existing obligation to provide information (which covered most of the Directive's obligations), and the retroactive re-issuing of information would lead to a disproportionate administrative burden for employers; a view the authors of this report are also inclined to agree with.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The Austrian legislation provides that during a temporary work assignment, the temporary agency worker is entitled to at least the same remuneration and benefits that apply based on the collective bargaining agreement applicable in the user undertaking. § 10 para 1 Act on Temporary Agency Work (AÜG) reads as follows (unofficial translation and highlighted by the authors):

> *"The employee is entitled to an appropriate, customary remuneration, which is to be paid at least once a month and agreed in writing. Standards of collective legal organisation to which the temporary work agency is subject shall remain unaffected. When assessing appropriateness, the remuneration to be paid to comparable employees for comparable activities in the user undertaking in accordance with the collective agreement or statutory provisions shall be taken into account for the duration of the assignment. In addition, the other binding provisions of a general nature applicable in the employing organisation for comparable employees who engage in comparable activities shall be taken into account, unless a collective agreement to which the temporary work agency is subject and a collective agreement, regulation or statutory provision on remuneration in the user undertaking apply."*

The temporary agency worker would, under Austrian law, have been entitled to any payment based on the user undertaking's applicable collective bargaining agreement, unless the collective bargaining agreement applicable in the temporary work agency is more favourable. Hence, the decision has no direct implication for Austrian law.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) The Federal Parliament has enacted a new law to justify dismissal and prohibit the manifestly unreasonable dismissal of contractual employees in the public sector.

(II) Payment to an employee of commission wages in the form of Bitcoin is not valid under Belgian labour law.

1 National Legislation

1.1 Dismissal of contractual employees in the public sector

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

To remedy these problems, the Federal Parliament and government enacted the Law of 13 March 2024 on justification for dismissal and manifestly unreasonable dismissal of contractual employees in the public sector. Thus, after nearly 10 years (!), Article 38, 2° of the Single Status Law will also be implemented for employees in the public sector. The federal legislator has deliberately opted to ensure that the law is as closely aligned as possible with the dismissal rules in Collective Bargaining Agreement (CBA) No. 109 for the private sector, but taking the specific characteristics of the public sector of public administrations (infra) into account.

This law will enter into force on 01 May 2024.

The Law of 13 March 2024 applies to employees with employment contracts whose employers do not fall within the scope of Collective Bargaining Agreement Law of 05 December 1968, subject to some exceptions. Thus, among other things, this law does not apply if the employee is dismissed during the first six months of employment, in the case of a temporary employment contract, if the employee is dismissed for pertinent urgent reasons, or if the employer is required to comply with a special dismissal procedure as laid down by or pursuant to a legal norm. The Collective Bargaining Agreement Law of 05 December 1968 is, roughly speaking, applicable to employers and their employees (under an employment contract) in the private sector.

The new legislation is described in more detail in the February 2024 Flash Report. Accordingly:

> "*The specific characteristics [of the public sector] have manifested themselves in two deviations explained below.*
>
> *(a) The mandatory hearing of the employee prior to the dismissal.*

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

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

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

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

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

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

2 Court Rulings

2.1 Variable salary in Bitcoin

Appeal Labour Court of Antwerp, 2023/AA/73, 06 March 2024

An employee, a job recruiter, claimed overdue variable pay in the form of commission. In the written contract of employment, the parties had agreed on variable pay with a bonus based on the amount invoiced for contracts issued by the employee. Based on this method of calculation, i.e. 10 per cent on the invoiced amounts for the three contracts he had issued, the employee claimed an additional amount of EUR 2 899.18. The payment of the commission of one of the issued contracts was in dispute because it was paid in Bitcoin. According to the recruiter, this was to be considered an unpaid bonus payment. The Appeal Labour Court agreed with this reasoning and decided that a payment in Bitcoin is not legal since, based on Article 4, §1 of the Wage Protection Law of 12 April 1965, wages must be paid in cash in a currency that is legally used in Belgium. The court stressed that Bitcoin is a virtual currency, and thus belongs to the so-called crypto-currencies, which is not legally used in Belgium, hence it must be considered that the employee's bonus payment was not paid. According to the court, the prohibition of paying an employee's salary in a currency other than the one legally used in Belgium affects public order. Thereby, the absence of the proof of payment and the absence of the mention of the payment in Bitcoin in the employment documents indicates that the payment was made without observing the mandatory submission and declaration to social security and the mandatory deductions of withholding tax and social

security contributions. Thus, the recruiter could claim the payment for commissioning that contract.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The CJEU ruled in a Spanish case that:

> *"Article 5(1) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, read in conjunction with Article 3(1)(f), must be interpreted as precluding national legislation, as interpreted by national case-law, under which the compensation to which temporary agency workers are entitled in respect of a total permanent incapacity to carry out their usual occupation as a result of an accident at work sustained at the user undertaking and resulting in the termination of their temporary employment relationship, is less than the compensation to which those workers would be entitled* [because of different collective bargaining agreements – points 14 to 21 of the EJ ruling]*, in the same situation and on the same basis, if they had been recruited directly by that user undertaking to occupy the same job for the same period of time".*

Article 49(1) of the Estatuto de los Trabajadores (Spanish Workers' Statute) provides:

> *"An employment contract shall be terminated (…):*
>
> > *(e) in the event of the death, severe disability, or total or absolute permanent incapacity of the worker …".*

Similarly, according to Articles 32,5° and 34 of the Belgian Employment Contracts Law of 03 July 1978, total permanent incapacity to perform the agreed work as a result of an accident at work can be considered an event of force majeure ending the employment contract, a termination that can be invoked either by the employer or the employee (see '*Dismissal Protection Belgium'* in: Wilfried Rauws, Dismissal Protection in Belgium, in B. Waas (ed.), *Restatement of Labour Law in Europe*, Volume III: Dismissal Protection, 2023, Beck-Hart-Nomos, p. 106-107. In that case, an employee who has a work accident will receive income-substituting allowances from the social security labour accident insurance company of his/her employer in accordance with the Labour Accidents Law of 10 April 1971. The allowances are calculated on the basis of the worker's wages.

Under Article 10 of the Belgian Law on Temporary Agency Work of 24 July 1987, the salary of the temporary agency worker may not be lower than that to which he/she would be entitled if he/she had been recruited directly as an employee by the user undertaking. Hence, a temporary agency worker who suffers a work accident with permanent total incapacity for work will not receive allowances that are lower than those he/she would be entitled to if he/she had been directly recruited by that user undertaking to occupy the same job for the same period of time.

When an employment contract ends due to force majeure, preventing definitively the performance of the employment contract, no dismissal compensation has to normally be paid by the employer to the worker. Theoretically, it is possible under Belgian labour law that collective bargaining agreements applicable to temporary agency workers and to workers directly recruited by the user undertaking would provide for a termination indemnity in favour of the worker whose employment contract ends as a result of permanent total incapacity for work following a work accident, which is higher for workers directly recruited than for temporary agency workers. In that case, the CJEU's

ruling does not have any implications. But such a hypothesis is at present purely hypothetical.

4 Other Relevant Information

Nothing to report.

Bulgaria

Summary

Several important legislative measures concerning labour law were introduced in Bulgaria in March. They address different problems related to working conditions and their management.

1 National Legislation

1.1 Electronic register

On 14 March 2024, the National Assembly adopted the Law on Amendments and Supplements of the Employment Promotion Act (promulgated State Gazette No 25 of 22 March 2024). The most important among these are included in Chapter Five: 'Single Electronic Centralised Register'. The Employment Agency shall maintain a unified electronic centralised register of individuals and legal entities that carry out staffing activities and/or provide temporary work services. This register shall include information about individuals and enterprises engaged in temporary work services. Access to the public part of the register is free of charge. The register's information system provides the possibility to electronically submit applications for registration, including all relevant attachments, and for the administrative body to transmit notification to individuals or enterprises that provide temporary work services; remove inconsistencies in the relevant applications and/or their annexes; submission of notifications by individuals and enterprises that provide temporary work services in case of changes in the data and information that must be entered in the register; issuance of certificates to individuals and enterprises that provide temporary work services; submission of applications for amendments of or additions to the type of intermediary service being provided by individuals; submission of documents of enterprises that provide temporary work services; submission of notifications by individuals who will not be conducting employment staffing activities for a given period of time; submission of notices for terminations of activity; transmission of documents that reject a registration for carrying out employment staffing activities; delivery of decisions rejecting registrations as an enterprise that provides temporary work services; delivery of notifications terminating the registration for conducting employment staffing activities.

1.2 Remote working

On 14 March 2024, the National Assembly adopted the Law on Amendments and Supplements of the Labour Code (promulgated State Gazette No 27 of 29 March 2024). They primarily focus on remote working.

More than one workplace can be negotiated and included in the employment contract on remote working. The employer may change the workplace for no more than 30 working days per year at the written request of the employee under the conditions and according to the procedure specified in the employment contract and/or in internal acts of the enterprise. New provisions apply when the remote work assignment and reporting use an information system, i.e. when the employer provides the employee with written information about the type and volume of work-related data that are collected, processed and stored in it. When an information system is used for the algorithmic management of remote working, the employer shall provide the employee with written information about the way decisions are made. At the written request of the employee, the employer or an official appointed by him/her is required to review the algorithmic management system's decision and to notify the worker or employee of the final decision.

The employee who performs remote work is required to provide the employer with information about the features of the workplace in writing if he/she performs remote work. The employer must take measures to ensure that on the date of the establishment or modification of the employment relationship, the workplaces for remote working meet the minimum requirements for health and safety at work, as defined in the Health Act and Safe Working Conditions Act. The employee who performs remote work is required to immediately notify the employer, his/her immediate supervisor or another authorised person of any accident at the workplace as agreed in advance.

The actual working hours can be reported through an automated system for recording working time. The employer, upon request, is required to provide employees who work remotely with access to the data in the system on his/her working time.

The employee is not required to respond to any communications initiated by the employer during his/her daily and weekly rest period, except when conditions are agreed upon in the individual and/or in the collective labour agreement according to which this is permissible.

The employer's liability in case of a work accident may be reduced if the victim contributed to the work accident by committing gross negligence and while he/she was working remotely, the injured party did not comply with the prescribed rules and norms for health and safety at work.

When the employer is a direct subcontractor of a contract for the provision of services, the contractor under the contract is jointly and severally liable for guaranteeing the payment of remuneration to employees. The contractor's liability is limited to the rights of the employee arising from the contractual relationship between the contractor and the employer. The contractor is not liable when he/she has performed or performs his/her obligations accurately and in good faith in accordance with the contract concluded with the employer.

1.3 Human rights

Decree No. 59 of 21 March 2024, on the establishment of a National Human Rights Coordination Mechanism aims to ensure effective interactions between state authorities and other public institutions for the improvement, protection and promotion of human rights in the Republic of Bulgaria. It contributes to the harmonisation of the legislation, policies and practices in the field of human rights of the Republic of Bulgaria with the legislation, policies and practices of the European Union, the United Nations, the Council of Europe, the Organization for Security and Cooperation in Europe and other intergovernmental organisations which the Republic of Bulgaria is a member of or participates in. The mechanism aims to help:

- maintain a permanent dialogue with the international control mechanisms on human rights, as well as with the state authorities and other public institutions involved in the preparation of the periodic national reports that are presented to these mechanisms;
- follow-up of the implementation by state bodies and other public institutions of the recommendations received upon presentation of the reports and accepted by the Republic of Bulgaria;
- highlighting the role of the Republic of Bulgaria on topics related to human rights within the framework of the European Union, the United Nations, the Council of Europe, the Organization for Security and Cooperation in Europe and other intergovernmental organisations which the country is a member of or participates in;
- support the relevant departments through the designated contact points in the development of policies and practices in fulfilment of commitments under international treaties in the field of human rights to which the Republic of Bulgaria is a party;

- continue to develop specialised human rights expertise, maintaining an open dialogue on human rights with the academic community and civil society, and improving transparency and accountability in the field of human rights.

The Decree establishes a Council to the National Human Rights Coordination Mechanism as a permanent advisory body to the Council of Ministers. The Council ensures coordination and cooperation between state authorities and other public institutions, as well as with civil society working on human rights issues, for the full implementation of policies related to the promotion and protection of human rights.

1.4 Academic staff

The National Assembly has adopted the Law on the Amendments and Supplements to the Higher Education Act (promulgated in State Gazette No. 25 of 22 March 2024). It provides that the funds from the state budget for financing higher education are planned annually in an amount not less than 0.9 per cent of the gross domestic product and follow the goals set in the Strategy for the Development of Higher Education. Every year, with the preparation of the state budget project for the relevant year, the Council of Ministers plans the transfer from the state budget in an amount that ensures the achievement of an average gross salary for the academic staff in state higher education institutions of not less than 180 per cent of the average gross salary for the country for the last 12 months, for which official data have been published by the National Statistical Institute. Every year, with the preparation of the draft state budget for the relevant year, the Council of Ministers plans an increase in the transfer from the state budget not lower than the increase in the average gross salary in the country over the last 12 months, for which official data from the National Statistical Institute have been published. The minimum basic salary for the lowest academic position in state higher education institutions is determined annually by an act of the Council of Ministers in an amount not less than 125 per cent of the average gross salary in the country over the last 12 months, for which official data are published by the National Statistical Institute.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

Case C-649/22 CJEU of 22 February 2024 does not have any implications for Bulgarian legislation and national practice in relation to the interpretation provided in the first subparagraph of Article 5(1) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, read in conjunction with Article 3(1)(f).

Article 200 of the Labour Code imposes a pecuniary liability on the employer for damages resulting from work accidents or occupational diseases causing temporary incapacity for work, permanent incapacity for work or death of the employee. The employer is liable for the pecuniary and non-pecuniary damage, which is a direct and proximate consequence of the work accident. There are no rules that would lead to different treatment in the event of a work accident or occupational decease of workers employed through a temporary employment agency. The principle of equal treatment referred to in the first subparagraph of Article 5(1) of Directive 2008/104/ is implemented in national law. Article 107s of the Labour Code expressly prohibits employees posted to work in a user undertaking to be put at a disadvantage compared

to employees in the user undertaking. An employee sent to work in a user undertaking has, during the time of work for that undertaking, the right, among other rights directly related to the performance of the work assigned, to form a trade union and to join a collective agreement.

Article 107u (3) of the Labour Code explicitly provides that the undertaking providing temporary work and the user undertaking shall be jointly and severally liable for obligations towards the employee arising out of or in connection with the performance of the work assigned to him/her. This means that the employee may claim compensation against both his/her employer and the user undertaking. There are numerous decisions in case law ordering a user undertaking to pay compensation for damage caused by an accident at work to employees posted to them by a temporary employment agency.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

(I) The Basic Collective Agreement for Employees in Public Services has been concluded as has the Amendment to the Collective Agreement for Civil Servants and Employees in Civil Service and the Amendment to the Collective Agreement in Construction Sector.

(II) The Minister for Labour has extended the application of the Collective Agreement for the Wood and Paper Industry.

(III) The Croatian Labour Act, among others, guarantees the temporary agency worker the same health and safety measures as to employees directly employed by the user undertaking.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

To establish whether Croatian law is in line with the CJEU's judgment in case C-649/22, Articles 46(6) and 46(7) of the Labour Act of 2014 (last amended in 2023), which are the relevant provisions, must be examined.

Article 46(6) of the Labour Act guarantees that the salary and other working conditions of temporary agency workers may not be lower or less favourable than those of workers employed by the user undertaking who perform the same jobs, which the temporary agency worker would have been entitled to had he/she concluded an employment contract with the user undertaking directly. Article 46(7) of the Labour Act explains what is meant by the notion of *'other working conditions'* of a temporary agency worker in Article 46(6) of the Labour Act. It states that the other working conditions are working hours, vacations and leaves, holidays, and other days for which no work is stipulated by law, health and safety measures at work, protection of pregnant women, parents, adoptive parents and minors, and protection from unequal treatment in accordance with the anti-discrimination regulation. This provision does not expressly mention compensation for the permanent incapacity for work due to an accident at work sustained at the user undertaking. Article 46(7) of the Labour Act mentions, among others, that the health and safety measures at the workplace must be guaranteed for the temporary agency worker in the same manner as for the employees directly employed by the user undertaking. This must be read extensively to be in line with the judgment of the CJEU in this case, i.e. it must include compensation for permanent incapacity for work of the temporary agency worker due to the accident at work sustained at the user undertaking. This compensation must be guaranteed in the same amount as for the employees employed directly by the user undertaking.

4 Other Relevant Information

4.1 Basic collective agreement for employees in public services

The Government of the Republic of Croatia and the trade unions of employees in public services have concluded the Basic Collective Agreement for Employees in Public Services (Official Gazette No. 29/2024). It is the fixed-term collective agreement concluded for a period of four years.

4.2 Amendment to the collective agreement for civil servants and employees in civil service

The Government of the Republic of Croatia and the representative trade unions have concluded the Amendment to the Collective Agreement for Civil Servants and Employees in Civil Service (Official Gazette No. 29/2024).

It regulates, among others, that for civil servants who became public servants or vice versa, an uninterrupted period of employment in the civil and public service is considered continuous employment in the public service, i.e. civil service, for the exercise of labour and material rights. Furthermore, it guarantees the longer period of annual leave for certain vulnerable civil servants and employees in civil services (such as for blind civil servants or blind employees in civil service). It guarantees carers leave in line with the Work-Life Balance Directive as well. The provisions on salaries have also been amended.

4.3 Amendment to the collective agreement in construction sector

New provisions on pay transparency have been introduced, among others.

4.4 Extended application of the collective agreement for the wood and paper industry

The Minister of Labour has extended the application of the Collective Agreement for the Wood and Paper Industry concluded in December 2023 to all employers and employees in this sector with certain exceptions.

Cyprus

Summary

Teachers on fixed-term contracts are striking to secure their jobs.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The CJEU case clarifies that:

> *"the first subparagraph of Article 5(1) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, read in conjunction with Article 3(1)(f) thereof, must be interpreted as precluding national legislation, as interpreted by national case-law, under which the compensation to which temporary agency workers are entitled in respect of a total permanent incapacity to carry out their usual occupation as a result of an accident at work sustained at the user undertaking and resulting in the termination of their temporary employment relationship, is less than the compensation to which those workers would be entitled, in the same situation and on the same basis, if they had been recruited directly by that user undertaking to occupy the same job for the same period of time".*

There has been no similar case before Cypriot courts. There is no large-scale operation of temporary work agencies in Cyprus, at least not officially. Before 2012, temporary agency work was not explicitly regulated in labour law. Traditionally, temporary work agencies were viewed with scepticism.

The general practice in Cyprus is that no employment relationship exists between the temporary work agency or placement agency and the worker during the period of posting. The Temporary Work Agency Law (*Ο περί της Εργασίας μέσω Επιχείρησης Προσωρινής Απασχόλησης Νόμος του* 2012, No 174(I)/2012.) does not explicitly provide that the Framework Agreement on Fixed-term Work excludes or applies either to the fixed-term employment relationship between a temporary worker and a temporary work agency or to the employment relationship between such a worker and a user undertaking. Whilst the Preamble Recital (17) provides for derogation from the principle of equal treatment, there is no provision in Cypriot law, excluding equal treatment for such workers. Preamble Recital (17) reads as follows:

> *"In certain limited circumstances, Member States should, on the basis of an agreement concluded by the social partners at national level, be able to derogate within limits from the principle of equal treatment, as long as an adequate level of protection is provided."*

Moreover, Article 9 of the Directive allows Member States to introduce legislative, regulatory or administrative provisions that are more favourable for workers. Article 9(1) reads as follows:

> *"This Directive is without prejudice to the Member States' right to apply or introduce legislative, regulatory or administrative provisions which are more favourable to workers or to promote or permit collective agreements concluded between the social partners which are more favourable to workers."*

In this sense, various provisions of the said law underscore the importance of equal treatment and as such, it can be interpreted that the Framework Agreement on fixed-term work also covers temporary workers.

It depends on how national courts interpret Section 18(1) of the Law, which includes the subheading 'principle of equal treatment' and replicates Article 5 of the Directive. This section stipulates that the basic terms and conditions of temporary workers shall, for the duration of their assignment at a user undertaking, be at least those that would apply if they had been recruited directly by that undertaking to occupy the same job. A semantic point that may be of some relevance is the term used in the Cypriot law for the practice of 'assignment', which is translated in the official EU translation as '*τοποθέτηση*' ('placement'); the Cypriot legislator preferred the term '*παραχώρηση*' ('concession'). According to Article 13 of the Temporary Agency Workers Law, the temporary work agency assumes all the rights and obligations of an employer. The Temporary Agency Worker Law stipulates that the principle of equal treatment applies. Temporary agency workers' basic working and employment conditions shall, for the duration of their assignment at a user undertaking, be at least those that would apply if they had been recruited directly by that undertaking to occupy the same job in accordance with Article 5 of Directive 2008/104/EC and Article 18 of the Temporary Agency Worker Law. Temporary agency workers also enjoy the same level of protection with reference to occupational health and safety conditions (see Article 18(2) of the Temporary Agency Workers Law). Temporary agency workers are entitled to equal treatment, just like the workers directly employed by the employer (Article 18(1) of the Temporary Agency Workers Law), including health and safety standards (Article 18(2) of the Temporary Agency Workers Law), the rights derived from statutes, subsidiary legislation and administrative provisions, collective agreements and practices (Article 18(3) of the Temporary Agency Workers Law). Moreover, the Temporary Agency Workers Law stipulates that the temporary work agency is required to refrain from any discrimination in accordance with the law on discrimination in employment (Law 58(I)/2004, *Περί Ίσης Μεταχείρισης στην Απασχόληση και την Εργασία Νόμος του* 2004. This law transposing the EU directives race 43/2000 and employment 78/2000 on employment matters), the law on equal pay between men and women (Law 205(I)/2002, *περί της Ίσης Μεταχείρισης Ανδρών και Γυναικών στην Απασχόληση και Επαγγελματική Εκπαίδευση*). This law transposes the EU gender equality Directives 76/207/EEC and 97/80/EC) and disability law (Law 207/2000 as amended, Περί των Ατόμων με Αναπηρίες Νόμος). According to Article 18 of the Temporary Agency Workers Law, general rules are applied to dismissals of temporary agency workers under the non-discrimination principle.

The user undertaking and the temporary work agency are jointly liable for the payment of remuneration or earnings to the temporary agency worker, including social insurance contributions (see Article 16(1) of the Temporary Agency Workers Law). According to Article 18(2) of the Temporary Agency Workers Law, the user undertaking is responsible for all other (legal, conventional, administrative) rules on employment conditions and protection.

The terms of the employment contract or of the leasing contract that prevent the user undertaking from hiring the temporary agency worker at a time when the employment relationship with the temporary work agency is terminated are considered void. The user undertaking is responsible for occupational health, hygiene and security jointly with

the temporary work agency (Article 18(2) of the Temporary Agency Workers Law). Temporary agency workers shall have access to the amenities or collective facilities at the user undertaking, in particular any canteen, childcare facilities and transport services, under the same conditions as workers employed directly by the undertaking, unless the difference in treatment is justified by objective reasons. However, 'objective grounds' are not defined in this law (see Article 18(4) of the Temporary Agency Workers Law).

4 Other Relevant Information

4.1 Strike by teachers under fixed-term contracts in Support Educational Programmes to secure their jobs

On 21 March 2024, striking teachers from the unions PASEY PEO and OEKDY FEC gathered outside the Ministry of Education, demanding protection of their jobs. The strike involved 1 200 teachers under fixed-term contracts who are employed in the Ministry of Education's Support Educational Programmes. The strike, which was initiated after the unions were informed that the union of permanent teachers, OELMEK, had requested the Minister of Education to halt 700 fixed-term jobs cut. Many of the teachers have been employed for over 15 years under fixed-term contracts and have fought a long legal battle to secure their jobs after the Ministry decided to change their contracts in 2014 into subcontracts as service providers. The Administrative Court ruled that they were workers and not subcontractors with a service contract. Unions are demanding all jobs in the 12 support programmes for which they have signed a collective agreement to be secured.

Czech Republic

Summary

The government has approved a draft amendment to the Labour Code, which introduces an indexation mechanism for determining the minimum wage, address the plurality of trade unions when concluding collective agreements and abolish the guaranteed wage for employees in the business sphere, and the obligation to issue a leave plan in agreement with the trade union.

1 National Legislation

1.1 Amendment to the Labour Code

On 20 March, the Government of the Czech Republic approved a draft amendment to the Labour Code. The amendment contains four key areas of changes:

i. Introduction of an indexation mechanism for determining the minimum wage (§ 111 LC)

For 2025, the minimum wage is to be determined according to the statutory indexation mechanism. The valorisation mechanism is based on the amount that is a prediction of the average wage in the national economy in the following calendar year (by 31 August of the preceding calendar year, and is announced in the Collection of Laws by the Ministry of Finance) and a coefficient issued by a government decree.

According to the draft law, the government shall determine the coefficient for calculating minimum wage so that the resulting amount of minimum wage is appropriate, in particular in relation to the purchasing power of minimum wage earners with respect to the cost of living, the general level of wages and their distribution, the rate of wage growth, the long-term development and the level of productivity (Article 111(3) LC). To assess the adequacy of minimum wage, the indicative reference value set out in Article 111(3) of the LC is used (the indicative value is 47 per cent of the average wage in the national economy).

The amount of minimum wage for the following calendar year is the product of the prediction of the average wage in the national economy for the following year and the amount of the coefficient issued by government decree. The final amount of minimum wage is to be announced by the Ministry of Labour and Social Affairs in the Collection of Laws by 30 September of the preceding calendar year, at the latest.

The coefficient for the calculation of the minimum wage is set by the government by decree for a period of two years, starting on 01 January of the year in which it is to be applied for the first time. The amount of the coefficient may be changed before the expiry of this period only if there is a significant change in national economic conditions. The coefficient may be set at different levels for each full calendar year within that period. In 2024, the minimum wage is approximately 41 per cent of the average wage.

ii. Abolition of the guaranteed wage for employees in the business sphere (§ 112 LC)

The bill also abolishes the guaranteed wage for the private sphere and fundamentally changes the guaranteed wage for the public sphere. According to the current legislation of Section 112 LC, the wage or salary of an employee cannot be lower than the guaranteed wage. The government by Regulation 8 sets the lowest levels of guaranteed wages (de facto minimum wages) according to the complexity, responsibility and exertion of the work performed, so that the maximum increase in the eighth level is at least twice the lowest level of the guaranteed wage. The lowest level of the guaranteed

wage shall be equal to the minimum wage. The level of the guaranteed wage levels is included in Government Regulation No. 396/2023 Coll. The wage of an employee who performs more skilled work must therefore be equal not only to the minimum wage, but also to the corresponding level of the guaranteed wage. However, the draft law is intended to abolish the guaranteed wages for the private sector, whereby the employee's wage will no longer be able to be lower than the general minimum wage determined by the indexation mechanism under Article 111 LC (see point A. Flash Report).

For employers in the public sphere—state, local self-government unit, contributory organisation, school legal entity (see § 109 (3) LC)—the guaranteed salary will remain, but in a modified form. Instead of the current 8 levels, there will be only 4 levels, with the maximum increase in the 4th level to be 1.6 times the lowest level of the guaranteed wage (minimum wage). In general, the required level of the guaranteed wage is thus reduced.

iii. Abolition of the obligation to issue a leave plan in agreement with the trade union (§ 217 LC)

The draft abolishes the obligation of an employer with a trade union to issue a leave plan for the entire calendar year in agreement with the trade union (the obligation is currently contained in Section 217 (1) LC). Therefore, it will now be up to the employer to determine the employee's leave schedule at least 14 days in advance, unless the employer agrees on a different time of notification.

iv. Addressing the plurality of trade unions when concluding collective agreements (§ 24 LC)

The proposal is intended to remove the current deadlock in concluding a collective agreement at an employer where several trade unions are active. According to the current Section 24 of the LC, these trade unions are to agree on a joint procedure for concluding negotiations on the conclusion of a collective agreement. However, if they do not agree, it is not possible to conclude a collective agreement, which is rightly criticised as not fulfilling the coalition's freedom to regulate the working conditions of employees.

According to the proposal, the trade union with the largest number of members as employees of the employer should have the right to conclude a collective agreement in such a case. However, to protect employees' right to collective representation, a majority of all employees of the employer may declare that the largest trade union cannot conclude a collective agreement on behalf of all employees, or they may also declare which other trade union has such a right.

The amendment's proposed effectiveness is set for as early as 01 July 2024. The exception is the minimum wage, to which the indexation mechanism will apply from 01 January 2025. Given the advanced time and the anticipated difficult negotiations in the Parliament of the Czech Republic, a later effective date cannot be ruled out.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The provisions of Section 309(5) of the LC in conjunction with the principles set out in Section 1a(b) and (e) of the LC shall apply to the rights and obligations or the position of agency workers of the user undertaking vis-à-vis the workers directly employed by the user (tribal workers).

According to § 1a(b) and (e) of the LC, the principle of satisfactory and safe working conditions for the performance of work applies, as well as the principle of equal treatment of employees and the prohibition of discrimination against them.

According to Section 309(5) LC, the employment agency as the employer and user are required to ensure that the working and wage conditions of the temporarily assigned employees are not worse than those of a comparable employee. A comparable employee can be considered, according to Section 110 of the LC, to be an employee (whether a regular or a seconded employee) who performs work of the same or comparable complexity of responsibility and exertion, in the same or comparable working conditions, with the same or comparable work performance and results.

The Czech legislation applies equal treatment between regular and seconded employees at the user undertaking to all working and wage conditions, not only to basic working conditions. Equal treatment would thus also apply to a right arising from a collective agreement in force at the user undertaking, if it was linked to the work performed by the seconded employee. Thus, it can be concluded that the Czech legislation does not contradict the interpretation of the CJEU.

However, it should be noted in this respect that under Czech law, this situation would likely not arise, as the user undertaking would make use of the procedure under Section 309(3) LC and terminate the temporary assignment by a unilateral declaration without giving any reason. In view of the fact that the Czech legislation accepts the negotiation of employment relationships of agency workers for a fixed period of time, only for the duration of the temporary assignment, the employment relationship of the agency worker with the employment agency would also end by such a unilateral declaration. There would thus be no need to terminate the employment relationship by notice by the employment agency, which in the present case is subject to the payment of monetary compensation under the collective agreement. Thus, the temporary worker would not receive any compensation if his/her employment relationship with the employment agency is terminated.

4 Other Relevant Information

Nothing to report.

Denmark

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 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The case concerns a Spanish temporary agency worker, who was covered by a collective agreement for temporary agency workers derogating from the principle of equal treatment. While performing work for the user undertaking, he suffered a work accident. The accident resulted in a permanent incapacity for work. He was paid a workers' injury compensation calculated according to the collective agreement for temporary agency workers in the amount of approx. EUR 10 000. The amount received was substantially lower than the compensation he would have received had he been entitled to equal treatment with workers directly hired by the user undertaking, namely approx. EUR 60 000.

The first question the CJEU dealt with was whether a workers' injury compensation was covered by the concept of 'basic working and employment conditions' within the meaning of Article 5(1) of Directive 2008/104. Basic working conditions are defined in Article 3(1)(f) and includes in No. (ii) 'pay'. The CJEU noted that 'pay' is not defined in the Directive. Despite the reservation about the national definition of pay in Article 3(2), the CJEU gave its interpretation of the (EU) concept of pay, cf. the approach adopted in the *Ruhrlandklinik* case. The CJEU found that 'pay' covered the compensation payable in the specific case. In its interpretation, the CJEU relied both on (case law related to) Article 157 TFEU, the connection with Directive 91/383/EEC as well as the objectives pursued by Directive 2008/104/EC (hereinafter: TAW Directive).

The next question concerned the principle of equal treatment. Here, the CJEU stressed that the facts in the specific case indicated a difference in treatment, as the worker received a lower compensation than that applicable at the user undertaking (although this was for the national court to ascertain).

Regarding the derogation by collective agreement under Article 5(3), the CJEU reiterated the test established in the *TimePartner Personnel* case. For a collective agreement to be able to derogate from the principle of equal treatment, the agreement must guarantee the overall protection of temporary agency workers. The national court must test whether the derogating agreement compensates for a difference in treatment, i.e. grants that offset benefits. It is for the national court to assess whether that is the case.

Specifically with respect to the difference in compensation, from EUR 10 500 to EUR 60 100, the Court stated:

> *"The collective agreement must grant the temporary agency worker countervailing benefits in respect of basic working and employment conditions which are capable of counterbalancing the effects of the difference of treatment he has suffered. And the national court should determine whether that is the case."*

In conclusion, the CJEU found that the national legislation contravened the equal treatment principle in the TAW Directive, as the compensation in case of permanent incapacity to perform work as a result of an accident at work at the user undertaking, which results in termination, was lower than the compensation applicable at the user undertaking.

In Denmark, the TAW Directive 2008/104/EC is implemented by statutory legislation, Act No. 595 of 12 June 2013.

The principle of equal treatment in Article 5(1) of the TAW Directive is implemented in Denmark as section 3(1) of the Act. The temporary work agency must ensure that the temporary agency worker is guaranteed equal treatment in respect, of inter alia, 'remuneration' ('*aflønning*').

The concept of remuneration is not clarified in the wording of the Act, nor in the preparatory works to the Act. Case law has to some extent dealt with the concept of remuneration, notably in the Danish Supreme Court ruling of U 2016.3736 H. But the courts have not dealt with the question whether 'remuneration' also covers compensation in case of permanent incapacity to perform work as a result of an accident at work at the user undertaking, which results in termination.

In the Danish commentary to the Danish TAW Act, it is, however, mentioned that insurance schemes such as occupation injury insurance are covered by the concept of remuneration in section 3(1) (cf. Abrahamson: Vikarloven med kommentarer, 2023 p. 117).

In Denmark, these insurance schemes will most often form part of the pension scheme at the user undertaking. As pension is regarded as remuneration, cf. indirectly U 2016.3736 H, it follows that the included insurance schemes are also regarded as such. But for derogating agreements, a temporary agency worker would be covered by a different pension scheme than the one applicable at the user undertaking. As a starting point, the test would thus be the same, if the temporary agency worker was covered by a derogating collective agreement and thus derogates from the principle of equal treatment.

As there is no case law confirming the correct interpretation of the concept of remuneration in the Danish Act on Temporary Agency Workers in this specific context, the CJEU's ruling provides an important clarification on the scope of the equal treatment principle for those workers. To the extent that the user undertaking has more favourable insurance schemes (outpayments), these must also be ensured for temporary agency workers.

In conclusion, the Danish legislation is understood to be in line with the EU law acquis.

4 Other Relevant Information

Nothing to report.

Estonia

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 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The CJEU's decision clarified what shall be considered the "main working and employment conditions" of a temporary agency worker and whether the temporary agency worker has the right to receive compensation for a work accident that has occurred at the user undertaking. The judgment is important for Estonian labour law, as it explicitly specifies the rights of a temporary agency worker.

In Estonia, the rights of a temporary agency worker in an employment relationship are not very clearly regulated. If the temporary agency worker works for the user undertaking, that company must ensure that he/she enjoys the working conditions prescribed by law, including occupational health and safety requirements. If a work accident occurs in the user undertaking, the employee can claim compensation against both the employer and the user undertaking. Both the employer and user undertaking are responsible for ensuring the occupational health and safety requirements. This is a typical civil law claim (tort law) that is not regulated by labour laws. Collective agreements do not regulate an employee's right to receive compensation in the event of an accident at work.

The aforementioned judgment does not add any novelties to Estonian labour law in terms of protection of temporary workers.

4 Other Relevant Information

4.1 Average wage increased in 2023

According to Statistics Estonia, the average monthly gross wage in the fourth quarter of 2023 was EUR 1 904. In 2023 in general, the average monthly gross wage was EUR 1 832. At the same time, the median monthly gross wage was EUR 1 578 in the fourth quarter of 2023 and EUR 1 501 in 2023 in general.

In the fourth quarter, the average monthly gross wage was highest in the information and communication sector (EUR 3 271), financial and insurance activities (EUR 2 902), and energy supply (EUR 2 548). The average gross wage was lowest in the accommodation and food service sector (EUR 1 193), other service activities (EUR 1 247), and real estate activities (EUR 1 310).

Median wages, i.e. the point at which half of employees earn more and half earn less, was EUR 1 578 in the fourth quarter of 2023. By economic activity, median wages were

highest in the information and communication sector (EUR 2 812) and financial and insurance activities (EUR 2 400). Median wages were lowest in real estate activities (EUR 913) and other service activities (EUR 970).

Finland

Summary

(I) The government has submitted to Parliament a proposal for the approval and implementation of changes to the Code of the ILO Maritime Labour Convention.

(II) The government has approved the Decree on the protection of pregnant workers and workers who have recently given birth and who are breastfeeding from hazardous working conditions.

1 National Legislation

1.1 Government proposal for the approval and implementation of changes to the Guidelines of the ILO Maritime Labour Conventions

The government proposal (HE 15/2024 vp) to Parliament for the approval and implementation of changes to the Code of the ILO Maritime Labour Convention and related laws was submitted to Parliament on 09 March 2024. The aim of the proposal is to bring Finnish legislation into line with the 2022 changes in the Code. Finland can notify the ILO that the changes will come into effect when they enter into force internationally.

1.2 Government Decree on the protection of pregnant workers and workers who have recently given birth and who are breastfeeding from factors that cause danger at work

On 27 March 2024, the government issued a decision on the basis of which a Government Decree (*Valtioneuvoston asetus 143/2024*) on the protection of pregnant workers and workers who have recently given birth and who are breastfeeding from hazardous working conditions was enacted. The Decree clarifies the safety and protection of health of pregnant employees, those who have recently given birth and are breastfeeding. The Decree, which covers all jobs and sectors, relates to the implementation of Directive 92/85/EEC. In the Decree, the list of risk factors has been amended to better match the Directive, and the list has been supplemented by adding more exposures to it. The Decree will enter into force on 05 April 2024.

1.3 A tripartite working group to work with development needs concerning essential work during an industrial action

Parliament has requested the government to examine the development needs that concern essential work during an industrial action and, if necessary, to prepare legislative proposals to secure the organisation of such work in conflict situations. In March 2024, it was announced that the Ministry of Economic Affairs and Employment will appoint a tripartite working group to prepare legislative changes.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The employer must take out a statutory accident insurance for employees from an insurance company of his or her choice; there are no separate rules on temporary agency workers that would put them in a less favourable position.

4 Other Relevant Information

4.1 A study on employment of people immigrating to Finland for different reasons

The report *'Eri syistä maahan muuttaneiden työllistyminen Suomessa'* (Publications of the Ministry of Economic Affairs and Employment 2024:9) explores how people who have moved to Finland for different reasons manage in the Finnish labour market. The report used the Finnish Immigration Service's data on residence permit decisions in 2011–2021 and Statistics Finland's extensive register data. According to the report, the employment rate and average income vary strongly among people who have arrived in Finland for different reasons, especially in the early stages of their stay. The employment and income of EU citizens, as well as of those arriving on the basis of international protection, family ties and studies are typically low in the first years of residence in Finland. People who have arrived in Finland with a work permit have a high employment rate and earnings in the early years.

According to the report, after ten years, about 80 per cent of EU citizens and of those arriving with a work permit are employed, whereas the employment rate of people arriving on the basis of family or studies is around 70 per cent, while that of those receiving international protection is approximately 60 per cent. There are still major differences in earned income after ten years. In the first few years, the employment and income of those arriving with a work permit are higher than that of persons of the same age and gender with a Finnish background in the same year, but the differences disappear relatively quickly. The earned income of people arriving on the basis of international protection and family reunification is initially low and even ten years later, about half of the income of those with a Finnish background. On the basis of the report, after ten years, the average income of EU citizens and those arriving based on studies is slightly above 80 per cent of the income of people of the same age with a Finnish background.

France

Summary

(I) An employer who has not set up an objective, reliable and accessible system for calculating working hours can still submit evidence to the judge to prove the existence and number of hours actually worked.

(II) Employees in the freight railroad sector, whose employment contract is transferred to a new employer under the job guarantee scheme provided for in the collective bargaining agreement in the event of a change of contract holder, are entitled to retain their set level of remuneration prior to their transfer, even in the presence of an immediate collective status substitution clause.

(III) Racist and xenophobic e-mails sent from a work e-mail account fall within the scope of the employee's personal life, since they were exchanged in the context of restricted private exchanges and were not intended to be made public.

(IV) Failure to comply with the employer's legal health and safety obligations towards the worker constitutes inexcusable misconduct when the employer was or should have been aware of the danger to which the worker was exposed and did not take the necessary measures to protect him or her from it.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Proof of hours worked

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

In the present case, an employee, a hairdresser, brought a claim before the industrial tribunal for judicial termination of her employment, payment of overtime and compulsory time off in lieu. The employer responded by producing a handwritten logbook of hours worked, which had been kept daily by him, corroborated by testimonies provided in court.

Taking into account the evidence provided by both parties, the Court of Appeal ruled that the employee had not worked the unpaid hours the employee to have worked and dismissed her claims.

The employee appealed to the French Supreme Court, arguing that in the event of a dispute concerning the existence or number of hours worked, the judge can only take into consideration documents produced by the employer if they are submitted. by an objective, reliable and accessible system set up by the employer to measure the employee's working hours. In present case, the employer had not established such a system, but used a handwritten notebook in which he recorded employees' daily working hours.

The Court of Cassation endorsed the Court of Appeal's decision to dismiss the employee's claim for overtime pay. According to the Court, the fact that the employer had not set up an objective, reliable and accessible system does not deprive him of the right to submit to the adversarial debate all elements of law, facts and evidence concerning the existence or number of hours worked.

In rendering its decision, the Court of Cassation reiterated its case law on the specific evidentiary mechanism set out in Article L. 3171-4 concerning the existence or number

of hours worked: the employee must first provide "sufficient evidence" to support his/her claim, upon which the employer, in response, shall provide the judge with evidence to justify the hours actually worked by the employee. The judge forms his or her opinion by taking all of these elements into account in the light of legal and regulatory requirements.

In its decision, the Court recalled the case law of the Court of Justice of the European Union of *14 May 2019, No. C-55/18, Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank, SAE*, which provides that Member States must impose on employers the obligation to establish an objective, reliable and accessible system to record the duration of the daily working hours performed by each worker. It should be noted that under French law, Article L. 3171-4 of the Labour Code does not specify that this time recording system must be objective, reliable and accessible. It merely specifies that if the recording system is automatic, it must be reliable and tamper-proof. The application of European jurisprudence makes it necessary to keep a record of working hours in compliance with more demanding criteria.

The question put to the judge in this case was what the consequences would be if the employer had failed to comply with this obligation. The answer is clear: non-compliance does not deprive the employer of the right to submit evidence and the Court of Cassation takes a very broad view of the evidence the employer can submit in response to the evidence provided by the employee.

2.2 Contractual transfer of employment contracts: salary levels must be maintained

Social Division, Court of Cassation, 06 March 2024, No. 21-23.962

As the mere loss of a market does not constitute a change in the employer's legal situation, and therefore does not fall within the scope of Article L. 1224-1 of the French Labour Code, several professional branches have signed collective agreements aimed at guaranteeing and organising the transfer of all or part of current employment contracts in the event of the loss of a market and a change of holder. This is notably the case for the freight railroad sector, whose collective agreement sets out the procedures for transferring staff in the event of a change of contract holder.

According to Article 15 ter of the collective bargaining agreement for the freight railroad sector (hereafter freight railroad sector's CBA), in the event that, following the termination of a commercial contract or a public procurement contract, in whole or in part, and irrespective of the principal, an activity that falls within the scope of the present collective bargaining agreement is assigned to a holder other than the previous holder, the continuity of employment contracts that existed on the last day of the commercial contract or of the previous contract of non-managerial employees of the original employer assigned to the said activity for at least six months, will be ensured at the succeeding employer. The text adds that it is the latter's responsibility to meet its legal and contractual obligations, notably financial, in terms of workforce management and work organisation under the new contract.

In application of these provisions, the employment contract of a cleaning worker assigned to cleaning SNCF TGV high-speed trains was transferred to a new company after the latter had taken over the contract. Following a dispute with his new employer over the payment of a bonus, the employee brought the matter before the industrial tribunal. He claimed that after the transfer of his contract, he should continue to receive the bonus provided for in an end-of-strike protocol concluded with the former employer (a protocol constituting a collective agreement establishing the right of employees to receive the bonus).

The new employer, on the other hand, asserted that it was not required to pay this bonus to the transferred employees, basing its argument not on Article 15 ter of the

freight railroad sector's CBA, but on Article 15 quater. In his view, while Article 15 ter stipulates that the succeeding company must "meet its legal and contractual obligations, particularly in financial terms, in terms of workforce management and work organisation under the new contract", Article 15 quater states that "the collective status of the succeeding company will automatically replace that of the outgoing company from the first day the contract is taken over". As far as the new employer was concerned, its own collective status therefore automatically replaced that of the former employer from the first day of the transfer, and thus the collective agreement providing for payment of the end-of-conflict bonus.

The Court of Cassation ruled in favour of the employee, basing its decision on the provisions of the collective bargaining agreement and European case law. After recalling the provisions of the branch agreement, it pointed out that the CJEU, in case C-108/10 of 06 September 2011, ruled that the exercise of the option to replace with immediate effect the conditions enjoyed by transferred employees under the collective agreement in force at the transferor with those provided for by the collective agreement in force at the transferee cannot have the purpose or effect of imposing on those employees conditions that are overall less favourable to those applicable prior to the transfer. According to the Court of Cassation, this means that the contractual transfer carried out in application of Article 15 ter of the freight railroad sector's CBA, interpreted in the light of Council Directive 2001/23/EC of 12 March 2001 requires the succeeding company to maintain the level of remuneration granted to employees prior to their transfer, notwithstanding the existence of an immediate substitution of collective status, so that they are not placed, by the mere fact of the transfer, in an overall less favourable position compared to immediately prior to the transfer.

In the present case, the new employer was therefore required to retain the employee's remuneration, including the disputed bonus, as long as he fulfilled the transfer conditions (status and minimum length of assignment to the market) laid down in the collective agreement. Even in the presence of a contractual clause stipulating that the new employer's collective status replaces that of the previous employer from the first day of the takeover, the new employer may be required to retain the payment of a bonus provided for in a collective agreement concluded with the previous employer on the basis of the principle—clearly set out in the case under review—of the right to maintain the level of remuneration achieved prior to the transfer.

2.3 Racist or xenophobic comments in a private context

Social Division, Court of Cassation, 06 March 2024, No. 22-11.016

An employee was dismissed for serious misconduct for having sent using her work e-mail address, messages of a "manifestly racist and xenophobic nature" addressed to certain colleagues.

However, according to the Court of Appeal, the employee was entitled to use her freedom of expression and express her opinions in a private context, as the disputed e-mails had been sent in the context of private exchanges within a limited group and were not intended to become public. Her dismissal was therefore without real or serious cause.

The Court of Cassation confirmed the position taken by the trial judges. It considered that an employee is entitled to respect for the privacy of his or her private life, even at work, so that a reason for dismissal associated with the employee's personal life cannot in principle justify disciplinary dismissal, unless the employee's action constitutes a breach of an obligation arising from his or her employment contract. The decision of the Court of Appeal must be approved, as it holds that the employer cannot base its decision to dismiss an employee on the content of messages which, even if they were sent using the company's e-mail system, fall within the scope of the employee's personal life, since, on the one hand, these messages were part of private exchanges, secondly, the opinions

expressed by the employee had no impact on her employment or her relations with users or colleagues, and it was not established that they would have become public outside her private sphere.

2.4 Reckless misconduct

Second civil chamber, Court of Cassation, 29 February 2024, No. 22-18.868

According to the jurisprudence of the Court of Cassation (see here and here), an employer's failure to comply with its legal obligation to protect the health and safety of its employees constitutes reckless misconduct when the employer was or should have been aware of the danger to which the employee was exposed and failed to take the necessary measures to protect him or her.

In the present case, a hospital employee was physically assaulted by a patient in the emergency department. The victim applied to a social security court for recognition of his employer's reckless misconduct.

Awareness of the danger was indisputable in this case. The judgment notes that the increase in acts of violence in the hospital's emergency unit has been mentioned since 2015. This is primarily due to service bottlenecks leading to user dissatisfaction, altered working conditions and deterioration in the quality of care. The judges concluded that the employer could not have been unaware of the risk of aggression among its nursing staff, including doctors. The Court then examined the measures put in place by the employer to prevent the risk of aggression. The latter had recruited a dog handler and organised regular training sessions on violence management and traumatic situations. But employees had requested the treatment and outpatient areas to be enclosed in glass and for access to be limited by installing doors at the entrance.

The judges then considered that the dog-handling security contract was clearly insufficient to prevent the risk of aggression among the hospital and the organisation of training courses on violence management was an inadequate response to the reality and seriousness of the risk involved.

Finally, they decided that the protective measures implemented by the employer were insufficient or ineffective in preventing the risk of aggression to which its staff were subjected.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

According to French law, if all the formalities relating to accidents at work are completed on time, and the accident has been recognised by the CPAM as being work-related, the temporary worker who is incapacitated for work as a result of the accident is entitled to a daily allowance (*indemnités journalières accident du travail*) to compensate for lost wages. During this period, the temporary worker will no longer be remunerated by his/her temporary work agency, as these will be paid directly by social security to the employee.

The amount of daily allowance received by the employee is calculated on the basis of a reference daily wage. This is obtained by adding together all the wages earned by the temporary worker over the 12 months prior to the accident, and dividing the figure by 365.

If a temporary worker cannot work as a result of a work accident, he or she will receive:

- 60 per cent of their reference daily wage for the first 28 days of incapacity,
- 80 per cent of their daily reference salary from the 29th day of incapacity,

as long as the temporary worker's incapacity for work lasts and even during the time of rehabilitation.

In addition to social security benefits, the temporary worker will also receive a complementary compensatory benefit from a compulsory private provident scheme called Intérimaire santé (since 2016, the Accord National Interprofessionnel (ANI), transposed into the 14 June 2013 law on securing employment, has made supplementary health coverage compulsory for all employees to facilitate access to medical care and reimbursement of healthcare expenses. The social partners have therefore proposed a solution specifically adapted to the specificities of the temporary work agency sector: the mutual fund *Intérimaires Santé*), regardless of his or her length of service at the time of the work accident. In addition to the basic scheme, which provides compulsory health insurance coverage for temporary workers, the basic scheme provides for the payment of additional daily benefits in the event of an accident at work, with automatic coverage from the first hour of the assignment.

The amount of the additional allowance corresponds to:

- 50 per cent of the temporary worker's basic salary (salary received during the assignment) for the first 30 days.
- 25 per cent of basic salary from the 31st day of sick leave.

Payment of this additional indemnity is the responsibility of the temporary work agency via the pay slip, until the end of the assignment.

Once the assignment ends, and if the employee is still incapacitated for work, the mutual fund will take over the payment of this allowance.

There is no difference between the compensation to which temporary agency workers are entitled in respect of a total permanent incapacity for work as a result of an accident at work sustained at the user undertaking and resulting in the termination of their temporary employment relationship and the compensation to which those workers would be entitled in the same situation and on the same basis, if they had been recruited directly by that user undertaking to occupy the same job for the same period of time.

4 Other Relevant Information

4.1 Paid leave and sick leave

On 15 March 2024, the French government tabled its amendment to the bill on adaptation to European Union law, with a view to bringing the French Labour Code into line with European law in terms of the acquisition of paid leave entitlements during work stoppages. The text of the government's amendment is in line with the opinion published by the State Council on 13 March on the same topic.

In response to a request from the French government for an opinion on a draft amendment to the bill containing various provisions for adapting to European Union law in the fields of economics, finance, ecological transition, criminal law, social law and agriculture, which is due to be examined in a first reading by the National Assembly from 18 March 2024, after having been adopted by the Senate last December, has taken a clear and detailed position on the ways and means available to the legislator to adapt

the French national law following European and national case law on paid leave and sickness.

For the State Council, there is no obstacle to the legislator's ability to limit to four weeks a year the paid leave acquired during a period of sick leave of non-occupational origin. Firstly, he recalled the recent decision of the Constitutional Court, which held that the current legal provisions, which only allow for periods of sick leave of occupational origin or due to an accident at work to acquire paid leave entitlements, do not infringe the principle of equality insofar as they introduce a difference in treatment compared to other cases of sick leave. It also points out that European case law paves the way for this distinction in *case C-282/10 of 24 January 2012, Dominguez*, since it "*is open to Member States to provide that the entitlement to paid annual leave granted by national law varies according to the origin of the worker's absence on health grounds, provided that it is always greater than or equal to the minimum period of four weeks"* provided for in Article 7 of the Directive.

Above all, the State Council did not identify any norm in European law that would prohibit the legislator or the national judge from discriminating on the grounds of health in employment relationships, and which would therefore prevent a distinction in the acquisition of paid leave between a sick employee and another employee. Neither Article 21 of the Charter of Fundamental Rights of the European Union, which applies directly to disputes between private individuals, nor Directive 2000/78/EC of 17 November 2000 establishing a general framework for equal treatment in employment and occupation, refer to state of health as a discriminatory factor that can be used to support such restrictions.

The State Council then added that no period of illness prior to 01 December 2009 could be taken into account. This is the date on which the Charter of Fundamental Rights of the European Union entered into force and can be invoked in disputes between individuals. To revert back to before December 2009 would be tantamount to retroactively transposing the European Working Time Directive, which is not possible.

The government's amendment was adopted by the National Assembly in a first reading on 18 March 2024. For the time being, the measures envisaged are as follows:

- acquisition of two working days of paid leave per month, with a maximum of 24 days (four weeks) per year for people on sick leave;
- acquisition of paid leave for an uninterrupted period of one year, but for the entire duration of the incapacity for work;
- a 15-month carry-over period for earned paid leave that could not be taken during its "applicable" period due to the incapacity for work;
- retroactive application as of 01 December 2009.

Germany

Summary

The Act on notification of conditions governing an employment relationship will be amended to the effect that the text instead of the written form will suffice.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The Court held that Article 5(1) of Directive 2008/104/EC

> *"must be interpreted as precluding national legislation, as interpreted by national case-law, under which the compensation to which temporary agency workers are entitled in respect of a total permanent incapacity to carry out their usual occupation as a result of an accident at work sustained at the user undertaking and resulting in the termination of their temporary employment relationship, is less than the compensation to which those workers would be entitled, in the same situation and on the same basis, if they had been recruited directly by that user undertaking to occupy the same job for the same period of time".*

German law is not directly affected by this decision, as no claim for compensation exists as is the case under Spanish law.

4 Other Relevant Information

4.1 Amendment of the Act on notification of conditions governing an employment relationship

The Act on notification of conditions governing an employment relationship (*'Gesetz über den Nachweis der für ein Arbeitsverhältnis geltenden wesentlichen Bedingungen*, *Nachweisgesetz'*, NachwG) will be amended to the effect that the text form (Section 126b of the Civil Code) will suffice instead of the written form.

Under the current law, the employer must record the essential contractual terms of the employment relationship in writing, sign the record and hand it to the employee (Section 1 (1) sentence 1 of the NachwG). Evidence of the essential contractual conditions in electronic form is expressly excluded (Section 1 (1) sentence 3 of the Act).

According to press reports, in future, employers will no longer have to hand signed hard copies of the terms and conditions of their employment contracts to their employees. The SPD, Green and FDP parliamentary groups recently announced that a corresponding passage shall be included in the draft bill to reduce bureaucracy. In future, the text form instead of the written form will suffice for concluding the contractual terms and

conditions. The Minister of Justice wrote in a letter to the associations affected by the new regulation:

> *"Specifically, the NachwG will in future allow evidence of the essential contractual terms and conditions to be provided in text form, provided that the document is accessible to employees, can be saved and printed out, and the employer receives proof of transmission and receipt."*

Only if employees specifically request this would the employer have to provide them with written proof. According to the Minister, it should also be possible in future to conclude agreements to assign temporary agency workers by email.

Section 126d of the Civil Code reads as follows:

> *"If text form is required by law, a legible declaration in which the person making the declaration is named must be submitted on a durable medium. A durable medium is any medium that*
>
> *1. enables the recipient to retain or store a declaration on the data carrier that is addressed to him personally in such a way that it is accessible to him for a period of time appropriate to its purpose, and*
>
> *2. is suitable for reproducing the declaration unchanged."*

Greece

Summary

There are no new developments to report this month.

1 National Legislation

The Greek government announced that from 01 April 2024, the minimum monthly national wage shall amount to EUR 830 gross, an increase of 6.4 per cent.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

Pursuant to Article 115 (f) of Law 4052/2012, 'basic working and employment conditions' means the working and employment conditions the worker would be entitled to would he/she have been recruited by the user undertaking directly. Therefore, there is no distinction between working and employment conditions: all conditions are included. The principle of equal treatment requires the temporary work agency, for the duration of the assignment, to ensure the temporary agency worker enjoys the same 'basic working and employment conditions' as comparable employees of the user undertaking (Article 117 (1) of Law 4052/2012). The user undertaking is also responsible for ensuring occupational health, hygiene and security, as well as for adhering to all other rules on employment conditions and protection (Article 125 (1) of Law 4052/2012).

Consequently, the compensation to which temporary agency workers are entitled in case of a total and permanent incapacity for work, i.e. to carry out their usual occupation as a result of an accident at work sustained at the user undertaking and resulting in the termination of their temporary employment relationship, is included in the term 'basic working and employment conditions'.

A provision such as that mentioned in the judgment does not exist in Greek law.

Therefore, this case law has no implications for Greece.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

The Labour Code prescribes that a trade union that has secured the 10 per cent membership threshold after the collective agreement had been concluded, was only granted the right to be consulted in the negotiations, but did not become a party to the agreement. In September 2023, the Constitutional Court partially annulled this rule on the grounds that it unjustifiably discriminated between trade unions representing workers, even if they had the same legitimacy.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Becoming a party to a collective agreement

Constitutional Court of Hungary, 22/2023. (X.4.), 26 September 2023

Judicial practice has established a doctrine that—following the contractual nature of a collective bargaining agreement—only the parties that have concluded the collective agreement can amend it (see, for example, Supreme Court decisions EBH 2002.684. and BH 2003.128.). This was explicitly incorporated by the 2012 Labour Code in Article 276 (8), prescribing that a trade union, which has reached the 10 per cent threshold after the collective agreement had been concluded, was only granted the right to be consulted in the negotiations, but did not become a party to the agreement. However, in September 2023, the Constitutional Court annulled the contested rule on the grounds that it unjustifiably discriminated between trade unions representing workers, even if they had the same legitimacy. The provision after the decision reads as follows: Article 276 (8)

> *"Any trade union (trade-union confederation) that meets the requirements set out in Subsection (2) after the collective agreement is concluded shall be able to request an amendment of the collective agreement, and to participate in the negotiations relating to the amendment."*

While the Constitutional Court's decision partly solved the problem, two concerns remain. First, judicial practice can still be criticised for not understanding union representativity in a dynamic way. In one case (EBH 2018.M.6.), the Supreme Court (*'Kúria'*) ruled that a trade union that has concluded a collective agreement is entitled to amend or terminate the agreement as long as it is in force, irrespective of the number of its members, i.e. even if its membership falls below the 10 per cent threshold.

Second, it is apparent from the Constitutional Court's decision that there shall be no distinction between the rights of unions above the 10 per cent threshold as regards collective bargaining, irrespective whether they reached that limit before or after the agreement was concluded. However, the Labour Code still prescribes that unions that reach the threshold after the collective agreement was concluded shall only enjoy the right to amend it, but there is no explicit reference to their right to terminate it. While it is clear that the Constitutional Court's interpretation is mandatory, from the aspect of legal certainty it would be beneficial to explicitly include both rights in the Labour Code.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

According to Article 219 of the Labour Code:

> *"(1) The basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment, those available to the employees employed by the user enterprise under an employment relationship.*
>
> *(2) The basic working and employment conditions referred to in Subsection (1) shall, in particular, cover:*
>
> *a) the protection of pregnant women and nursing mothers; and*
>
> *b) the protection of young workers;*
>
> *c) the amount and protection of wages, including other benefits;*
>
> *d) the provisions on equal treatment."*

The list of basic working and employment conditions in Subsection (2) only contains examples. Therefore, this article may be interpreted by labour courts in accordance with the CJEU's judgment, and includes liability for damages.

In addition, Article 221 paragraph 4 stipulates:

> *"For any damages caused to the employee, or for any violation of the employee's rights while on assignment, the user undertaking and the temporary work agency shall be subject to joint and several liability."*

Hence, the provisions of the Labour Code comply with the judgment, as they guarantee equal treatment of agency workers to liability of the employer for damages.

4 Other Relevant Information

Nothing to report.

Iceland

Summary

(I) An employer has been acquitted for having terminated the contract of a nurse without notice, who had refused to take a COVID-19 test.

(II) Collective agreements have been concluded in the private sector with an emphasis on curbing inflation and creating an environment to reduce interest rates.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 COVID-19 rapid test and termination of employment

Court of Appeal, case no. 186/2023, 15 March 2024

On 15 March 2024, the Court of Appeal ruled in case no. 186/2023, which concerned the termination of a nurse's employment contract, who had refused to take a COVID-19 rapid test in December of 2021. Her employment contract was terminated without notice. Both the District Court as well as the Court of Appeals considered the dismissal to be legal, even though no notice had been given, which is an exception in Icelandic labour law. The Court considered the employer's demand given the circumstances to have been reasonable and legal. As she could not perform her work because of her refusal to undergo testing, the nurse was in significant breach of her basic duty under her contractual relationship. The employer was therefore acquitted in the present case.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The judgment will not have any implications for Icelandic labour law. Article 5(a) of the Act on Temporary Work Agencies No. 139/2005 guarantees that a temporary agency worker shall for the duration of his/her assignment at a user undertaking enjoy the same salary and other working conditions as those he/she would have enjoyed had he/she been directly employed by that user undertaking.

In addition, Icelandic collective agreements and other labour laws do not differentiate between temporary agency workers, on the one hand, and other forms of employment, on the other, with regard to *inter alia* the right to sick days or the right to workplace accident compensation.

As regards disability pension and benefits for longer term incapacity for work, Icelandic law, including the Act on Social Security No. 100/2007 and the Act on Compulsory Insurance of Pension Rights and the Operation of Pension Funds No. 129/1997 do not differentiate between the aforementioned forms of employment. It can therefore be concluded that this ruling will not have any implications for Icelandic law.

4 Other Relevant Information

4.1 Collective agreements concluded in the private sector

In the first two weeks of March, collective agreements were concluded in the private sector between the Confederation of Icelandic Enterprise and the unions representing general and specialised workers, office and shop employees, and tradesmen and vocational workers. The collective agreements will apply for a relatively long period (until 2028), although there are options to terminate the agreements if certain economic targets are not met, in particular with regard to inflation; one of the main goals of the agreements is to curb inflation, which was 6.8 per cent in March 2024, and should give the Central Bank of Iceland the ability to lower interest rates, which currently stand at 9.25 per cent.

The general pay raise will be 3.25 per cent or at least ISK 23 750 in the first year, and will increase thereafter *inter alia* if the level of productivity, economic growth and inflation rise by at least 3.5 per cent or ISK 23 750 on 01 January for the years 2025 to 2027. Amongst other changes to the collective agreements is an increase in the minimum days of annual leave to 25 days from 24 days, as well as giving those who have worked in the same company for many years a higher number of minimum annual leave days.

In connection with these collective agreements, the state will, amongst others, support municipalities in giving primary school age children free school meals over the next years, increase maximum benefits from the parental leave fund from ISK 600 000 a month to ISK 900 000 a month, in addition to increasing child benefits and rental benefits.

Ireland

Summary

Legislation entitling employees to request flexible or remote working arrangements has been introduced.

1 National Legislation

1.1 Work-life balance

The provisions of the Work-Life Balance and Miscellaneous Provisions Act 2023 ('the 2023 Act') relating to the right to request flexible or remote working were introduced with effect from 6 March 2024: see the Work Life Balance and Miscellaneous Provisions Act 2023 (Commencement) Orders 2024 (S.I. No. 90 of 2024 and S.I. No. 91 of 2024).

The principal purpose of the 2023 Act, when first introduced, was to give further effect to Directive 2019/1158/EU on Work-life Balance for Parents and Carers. Accordingly, the legislation sought to amend the Parental Leave Act 1998 ('the 1998 Act') by providing parents and carers with, *inter alia*, a right to request a 'flexible working arrangement' for 'caring purposes'. During its legislative passage, however, amendments were made to entitle all employees, not just parents and carers, to request a 'remote working arrangement'.

For the purposes of the 1998 Act, a 'flexible working arrangement' is an arrangement whereby an employee's working hours or working patterns are adjusted. This could take different forms, such as working part time, remote working or compressed working hours.

A 'remote working arrangement' is an arrangement whereby some, or all, of the work ordinarily performed by an employee at an employer's place of business is provided at a location other than at that place of business without change to the employee's ordinary working hours or duties. A request for this form of working arrangement must include details of the remote working location and its suitability.

An employer who receives a request for either working arrangement must respond to such a request within stipulated time limits (no more than eight weeks) and must consider the request to have regard both to its business needs and the needs of the employee.

Any agreed working arrangement can be terminated if the employer has reasonable grounds for believing that the arrangement is not being used for the purpose for which it was approved (in the case of flexible working) or that the employee is not fulfilling all of the requirements of his or her role (in the case of remote working).

At the request of the Minister for Enterprise, Trade and Employment, the Workplace Relations Commission ('WRC') prepared a Code of Practice for the purpose of providing 'practical guidance' to employers and employees as to the steps that should be taken for complying with these provisions. This Code of Practice was developed in consultation with the social partners and has now been put on a statutory footing: see S.I. No. 92 of 2024.

Disputes relating to the fulfilment by employers of their obligations to consider, and respond to, requests for a flexible or remote working arrangement can be referred to the WRC for adjudication but its jurisdiction does not extend to assessing the merits of the decision reached on the request: see section 21(6) of the 2023 Act.

It should be noted that the definition of 'employee', for the purposes of the 1998 and 2023 Acts, was not given the more expansive definition, now found in Section 1(1) of the Terms of Employment (Information) Act 1994, whereby a 'contract of employment'

is defined as including a contract under which "*an individual agrees with another person personally to execute any work or service for that person*".

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

This decision will have limited, if any, consequences for Ireland.

Directive 2008/104/EC ('the Directive') was implemented by the Protection of Employees (Temporary Agency Work) Act 2012 ('the 2012 Act'). Although, as the CJEU noted, the concept of 'pay' is not defined in the Directive, the word is defined in the 2012 Act as meaning:

> *(a) basic pay, and*
>
> *(b) any pay in excess of basic pay in respect of –*
>
> *(i) shift work,*
>
> *(ii) piece work,*
>
> *(iii) overtime,*
>
> *(iv) unsocial hours worked, or*
>
> *(v) hours worked on a Sunday,*
>
> *but does not include sick pay, payments under any pension scheme or arrangement or payments under any scheme to which the second sentence of the second subparagraph of paragraph 4 of Article 5 of the Directive applies.*

The sentence in Article 5 to which reference is made in this definition requires Member States, when defining 'basic working and employment conditions', to specify whether "*occupational social security schemes, including pension, sick pay or financial participation schemes*" are included or not.

Unlike the position in Spain, workers in Ireland are not entitled to receive, as part of their remuneration package, a specific lump sum if they suffer an injury at work resulting in a permanent incapacity. Instead, such workers, whether directly employed or posted by an agency, would be entitled to certain benefits or allowances under the Social Welfare Occupational Injuries Benefit Scheme.

If the injury arose because of the employer's negligence or breach of statutory duty, the worker, again regardless of his or her employment status, has a legal right to seek damages against the employer through proceedings in the civil courts: see, recently, *Corless v Health Service Executive* [2023] IEHC 622 where the worker was awarded EUR 377,639.71 in damages for personal injuries by the High Court.

4 Other Relevant Information

Nothing to report.

Italy

Summary

(I) In March, Parliament introduced an allowance for employees of national strategic companies in crisis.

(II) The Italian Constitutional Court dealt with the rise in undeclared work of individuals convicted of drug crimes.

1 National Legislation

1.1 Strategic companies

Act No. 24 of 15 March 2024 implement Law Decree No. 4 of 08 January 2024, which dealt with the extraordinary management of strategic companies.

The Act contains provisions relating to employment relationships, including in particular:

- in 2024, employees of companies that manage at least one industrial plant of national strategic importance are entitled, in the event of suspension or reduction of employment, to a supplement of income paid by the '*INPS*' (National Institute for Social Security);
- for the years 2024 and 2025, incentives for business aggregation and employment protection are ruled on an experimental basis.

2 Court Rulings

2.1 Undeclared work

Corte costituzionale, case No. 43, 19 March 2024

It is illegitimate to automatically exclude a worker who has been convicted in the past of selling small quantities of drugs from the regularisation procedure on undeclared work.

The Constitutional Court assessed the constitutionality of the regulation that provides for an automatic exclusion from the regularisation procedure for those convicted of drug crimes (Article 103, para. 10 c), Law Decree No. 34/20, conv. into Act No. 77/20), in contrast with Articles 3 and 117 Cost., the latter in relation to Article 8 of the ECHR.

According to the Court, the crime in question (Article 73, para. 5 D.P.R. 309/90) is a minor offence, which diverges from the definition of an absolute presumption of danger of the offender. Hence, the regulation is unconstitutional. Therefore, the exclusion must be assessed on the basis of the real threat to the public order or security, also in light of the danger that can be inferred from the commission of crimes.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

In Italy, temporary agency work is regulated in Legislative Decree No. 81 of 15 June 2015, Articles 30-40. According to Article 37:

> *"The obligation of insurance against accidents and occupational diseases provided for in the decree of the President of the Republic of 30 June 1965, No.*

> *1124, and subsequent amendments, are determined in relation to the type and risk of the work carried out. Premiums and contributions shall be determined in relation to the weighted average or weighted average rate established for the activity carried out by the user undertaking in which the work carried out by the workers administered can be classified".*

the amount of the allowance does not depend on whether the worker is employed by the employer or the agency, but only on the type of work being performed and the damage actually suffered.

In fact, in case of total permanent incapacity to carry out the usual occupation as a result of an accident at work, the worker is entitled to an income calculated on the basis of:

- a quota to compensate for the physical damage caused by the accident, proportionate to the percentage of verified impairment;
- a quota for the impact of the disability on the ability of the injured person to earn income from work, commensurate with the degree of disability and a percentage of the insured person's earnings.

4 Other Relevant Information

Nothing to report.

Latvia

Summary

There are no developments to report this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

Article 59 of the Labour Law provides a definition of 'pay'. Although the respective provision formally provides for a national level definition of 'pay', the Senate of the Supreme Court in several decisions has interpreted the definition of 'pay' on the basis of CJEU decisions providing interpretations of the definition of 'pay' within the meaning of equal pay, i.e. Articles 157(1) and (2) of the TFEU. Therefore, the understanding of the concept of 'pay' in Latvian national labour law and in EU law is the same in the Latvian legal system.

The principle of equal treatment with regard to basic employment principles of temporary agency employees in comparison to regular employees of user undertakings is provided in Article 7(4) and (5) of the Labour Law.

It follows that the legal provisions of the Labour Law that reflect Directive 2008/104/EC and national case law on the concept of 'pay' are in line with the findings of the CJEU in case C-649/22.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

There are no developments to report this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

In case C-649/22, the CJEU (Sixth Chamber) ruled as follows:

> *"The first subparagraph of Article 5(1) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, read in conjunction with Article 3(1)(f) thereof, must be interpreted as precluding national legislation, as interpreted by national case-law, under which the compensation to which temporary agency workers are entitled in respect of a total permanent incapacity to carry out their usual occupation as a result of an accident at work sustained at the user undertaking and resulting in the termination of their temporary employment relationship, is less than the compensation to which those workers would be entitled, in the same situation and on the same basis, if they had been recruited directly by that user undertaking to occupy the same job for the same period of time."*

This case concerned the question whether voluntary additional social security benefits established in a collective employment agreement, which a directly employed worker is entitled to in the event of an accident, can also be claimed by a temporary agency worker (cf. CJEU C-649/22 No. 19).

In a first step, the CJEU dealt with the concept of 'basic working and employment conditions' within the meaning of the first subparagraph of Article 5(1) of Directive 2008/104, read in conjunction with Article 3(1)(f) thereof. The CJEU arrived at the conclusion (CJEU C-649/22 No. 63)

> *"that the compensation payable to temporary agency workers in respect of a total permanent incapacity to carry out their usual occupation as a result of an accident at work sustained at the user undertaking and resulting in the termination of their temporary employment relationship falls within the concept of 'basic working and employment conditions' within the meaning of the first subparagraph of Article 5(1) of Directive 2008/104, read in conjunction with Article 3(1)(f) thereof"*.

In the second step, the CJEU examined the scope of the principle of equal treatment referred to in the first subparagraph of Article 5(1) of Directive 2008/104 (cf. CJEU C-649/22 No. 64 et seqq.). This examination led to the leading sentence quoted above.

In Liechtenstein law, the principle of equal treatment is enshrined in Article 19a(1) of the Act on Employment Services and Temporary Agency Work (Gesetz über die Arbeitsvermittlung und den Personalverleih, Arbeitsvermittlungsgesetz, AVG, LR 823.10). Accordingly, the following applies:

> *"The basic wage and working time conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job."*

Furthermore, Article 20(1) of the Act on Employment Services and Temporary Agency Work (Gesetz über die Arbeitsvermittlung und den Personalverleih, Arbeitsvermittlungsgesetz, AVG, LR 823.10) stipulates the following:

> *"If a user undertaking is subject to a generally binding collective employment agreement, the temporary work agency must comply with the contractual provisions of the collective employment agreement towards the employee, in particular with regard to wages and working time."*

It follows from the wording of this provision that *all* provisions of the collective agreement must be complied with. Under these circumstances, a dispute such as that which arose under Spanish law in case CJEU C-649/22 could not have arisen in Liechtenstein.

In Liechtenstein, there is a collective employment agreement for temporary agency work (Gesamtarbeitsvertrag für den Personalverleih) that has been declared generally binding in the Ordinance on the Declaration of General Applicability of the Collective Employment Agreement for Temporary Agency Work (Verordnung über die Allgemeinverbindlicherklä-rung des Gesamtarbeitsvertrages für den Personalverleih, LR 215.215.027). Article 25 of the agreement contains provisions that apply in the event of an accident. The systems under Liechtenstein and Spanish law are not directly comparable.

In the light of the explanations above, it can be assumed that Liechtenstein law is in line with judgment C-649/22 of the CJEU.

4 Other Relevant Information

Nothing to report.

Lithuania

Summary

(I) The Lithuanian Supreme Court tends to narrow the scope of co-determination of trade unions in defining internal rules of the employer.

(II) Trade unions´ veto right is not recognised and instead, the right to information and consultation is confirmed.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Definition of co-determination

Lithuanian Supreme Court, No e3K-7-66-469/2024, 21 March 2024

The Lithuanian Supreme Court has issued a ruling on the notion of 'co-determination' or 'co-decision' (in Lithuanian - *suderinimas*) as it is defined in Lithuanian law and collective agreements. The current Lithuanian labour law still included some Soviet labour law provisions which gave the right to trade unions to co-sign or to co-determine the decisions of the employer in certain cases (for example, the adoption of internal rules or internal regulations). In the course of 20+ years, the majority of these 'co-decision' rules were replaced by provisions on information and consultation, as provided for in EU directives. However, the national sectoral agreement in the public health sector specified the main rules on remuneration but also contained the provision that the 'local rules on remuneration' shall be co-signed (in Lithuanian - *suderintos*) by the local trade union in the health institution. In the major Vilnius health institutions, the local trade unions refused to co-sign (in Lithuanian - *suderinti*) the internal regulation on remuneration, demanding moderation of the nationally agreed rules in favour of workers (in fact, the trade unions wanted to amend the compromise reached at the national level by retaining certain parts of the previous compromise formula on remuneration, which were not included in the most recent agreement at the national level). The courts had to examine whether the employer has the right to approve the internal regulations on remunerations without trade union agreement (i.e. without the trade unions co-signing the document), but after information and consultation processes, which had in fact taken place in the institution. The Supreme Court thus confirmed that the co-signing of internal rules shall not be equated with a veto right of the trade union but with the information and consultation duty of the employer.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The CJEU's ruling may have certain implications for Lithuanian labour law, but these will not be imminent or definitive. There are major differences in the perception of the question between the CJEU and Lithuanian labour law, although there is not much developed doctrine and case law at the national level on the question reviewed by the CJEU. First, remuneration or compensation for damages suffered by an injured worker does not fall under the concept of pay. This is a separate sphere in labour law ('compensation of damages') and is not subsumed under remuneration as one of the

core (aka 'essential') working conditions in the context of Article 3(1) f) of the Directive. Secondly, the CJEU did not address the question of culpability, which is of central significance for Lithuanian labour law. Article 78 (3) of the Labour Code stipulates that the user undertaking is responsible for any damages claimed by the temporary worker. This means that the user undertaking and not the temporary work agency must compensate any damages in accordance with the provisions of law. Collective bargaining agreements do not regulate these questions. Thirdly, collective agreements are only applied to members of trade unions that concluded the agreement (unless extended, but this has not happened since 2002). How to impose an entitlement established in a collective agreement to the benefit of a single employee (temporary agency worker) from another company and another sector is a question that has not yet been addressed in Lithuanian labour law.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

Social elections took place in March 2024.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

This CJEU decision has no implications for Luxembourg. No comparable situation as that dealt with in the present case could arise in Luxembourg.

A collective agreement for temporary agency workers exists, but it does not provide for a specific compensation in case of total permanent incapacity for work as a result of a work accident. Other collective agreements do not provide for such compensation either. Thus, no claim in terms of unequal treatment can arise.

Compensation in case of work accidents is covered by social security ('*Association d'Assurance Accident'*) and no difference is made between temporary agency workers and other workers.

4 Other Relevant Information

4.1 Social elections

As is the case every five years, social elections took place in Luxembourg in March 2024. These elections take place at two levels:

1. '*Chambre des salaries'*

All employees in Luxembourg are automatically members (*'ressortissant')* of a professional chamber, a public law body, known as the '*Chambre des salariés*'. They are called upon to vote for the committee (*'comité'*), and it is the trade unions that can be elected. The result of this vote determines 'trade union representativeness' (*'représentativité syndicale')*. A Union needs to obtain at least 20 per cent of the votes to become a representative trade union at the national level; alternatively, a union needs to obtain at least 50 per cent of the votes in a group (economic sector) to be deemed a representative trade union in that sector. Such representativeness has implications, particularly in terms of the right to participate in collective bargaining and participation in tripartite institutions (employers - trade unions - government), of which there are many in Luxembourg and which have a long tradition.

Two nationally representative unions (OGBL and LCGB) have existed for a very long time. In the recent elections, they successfully defended their status.

There is only one representative union at sector level, ALEBA, in the banking and insurance sector. ALEBA has recently expressed its wish to diversify and represent all sectors (i.e. at the national level). But ALEBA already faced the problem in previous elections of only obtaining 49 per cent of the votes (i.e. less than 50 per cent of the vote), hence at the request of the other two unions, the Ministry withdrew ALEBA's representativeness. ALEBA appealed against this decision. It won its case before the ILO's Committee on Freedom of Association (case No. 3408), while the case is still pending before the national administrative courts.

Following the 2024 elections:

- ALEBA was unable to gain a substantial foothold in other sectors (only one seat out of 60 was won in another sector).
- ALEBA failed to win 50 per cent in its traditional sector, the banking and insurance sector.

In the light of the ILO decision, however, it is likely that national legislation on trade union representativeness will be amended, as the 50 per cent criterion does not appear to be consistent with the freedom of trade unions.

The participation rate was 34.4 per cent (212 400 employees out of a total of 617 000), 1.8 per cent higher than in 2019.

2. Employee representatives

In companies (with 15 or more employees), employee representatives (*'délégués du personnel')* are elected. Representative trade unions are automatically entitled to put forward candidates, but neutral candidates can also be elected. There are more neutral candidates elected than candidates running under a trade union banner. Generally speaking, neutral candidates are more common in small companies.

Malta

Summary

There are no developments to report this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

This judgment should have implications for Maltese law because the Temporary Agency Workers Regulations, 2011 (S.L. 452.106) preclude national legislation under which the compensation to which temporary agency workers are entitled in respect of a total permanent incapacity to carry out their usual occupation as a result of an accident at work sustained at the user undertaking and resulting in the termination of their temporary employment relationship, is less than the compensation to which workers in the same situation and on the same basis would be entitled, if they had been directly recruited by that user undertaking to occupy the same job for the same period of time.

This is being submitted by direct extrapolation of what the Temporary Agency Workers Regulations, 2011 state:

> *"(1) Without prejudice to the provisions of regulation 5, the basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job, by virtue of the Act, or any regulations issued thereunder or under any other legislation or by virtue of any applicable collective agreement.*
>
> *(2) For the purposes of these regulations, the term "basic working and employment conditions" means such conditions as limitedly relate to:*
>
> *(a) pay;*
>
> *(b) the duration of working time;*
>
> *(c) overtime;*
>
> *(d) rest breaks;*
>
> *(e) rest periods;*
>
> *(f) night work;*
>
> *(g) annual leave;*
>
> *(h) public holidays;*
>
> *(i) the protection of pregnant women, women who have just given birth or who are breastfeeding;*

> *(j) the protection of children and young people; and*
>
> *(k) equal treatment for men and women and any action to combat any discrimination based on sex, race or ethnic origin, religion, beliefs, disabilities, age or sexual orientation.*

(3) For the purposes of sub-regulation (2)(a), "pay" means remuneration or earnings payable to the worker by his employer, that is, the basic wage, any statutory cost of living increase payable under the Act or under any other law, any statutory bonuses and allowances payable under the Act or under any other law, the payment for overtime work at the applicable rate, payment in respect of public holidays, payment in respect of annual leave, payment in respect of maternity leave and any applicable shift allowances."

Hence, the 'basic working and employment conditions' are stipulated at law and no mention is made of this compensation mentioned above. Therefore, under Maltese employment law, it is clear that this ruling has certain implications.

However, if a temporary agency worker suffers from permanent disability as a result of a work injury, they are still entitled, under civil law (not employment law, however) to compensation for such permanent disability – even if it does not result in the termination of his/her employment. That compensation, however, is determined on a case-by-case basis and is not dependent on whether the employee was a temporary agency worker or otherwise. Their work situation would be taken into consideration to determine who is really liable – whether the user taking or the employer of the temporary agency worker is liable. This is a result of the application of the Civil Code, however, and not Maltese labour law.

For Maltese law to be fully aligned with this CJEU ruling, it must include such compensation in the definition of Regulation 4(2) of the Temporary Agency Worker Regulations, 2011.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

(I) The government prosecutor has issues recommendations for amending the law on the temporariness of temporary agency work assignments.

(II) Internet consultations are under way for: (1) the admission system for temporary work agencies; (2) support for employers hiring those with temporary admission; (3) amendment of the Participation Act with regard to categorical special assistance for single earners; (4) amendment of the non-competition clause.

(III) The Council of State has been asked for advice on the More Security for Flex Workers Act.

(IV) The Court of Appeal Amsterdam has submitted preliminary questions to the Supreme Court concerning the employment status of Uber drivers.

(V) AG de Bock interprets the Working Time Directive and argues that overtime should be included in holiday pay calculations if it is regularly performed and if it constitutes a significant share of total remuneration.

(VI) District courts have settled disputes concerning transparent and predictable working conditions, the enforcement of provisions on temporary agency work, the settlement of paid annual leave with minus hours and implicit choice of forum.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Liability of temporary agency workers

District Court Den Haag, ECLI:NL:RBDHA:2023:22032, 20 December 2023 (published 12 March 2024)

This case concerned the enforcement of the provisions of Directive 2008/104/EC on Temporary Agency Work. In the present case, the District Court ruled that three former directors of a temporary employment agency were jointly and severally liable for the trade union SNCU's claims for compliance with the collective agreement of temporary agency work. In principle, a director of a private limited company is not personally liable for the company's debts. However, the director may be liable for the debts of the company if he/she has committed a wrongful act as a director. It is established that SNCU wrote to temporary work agency B for the first time on 29 October 2019 and as of that date, notified that B had been selected for an investigation on compliance with the collective agreement for temporary workers and B was requested to provide a selection of administrative records as part of this investigation. It is undisputed that Z was at that time the sole/autonomous director of company B. Z, as director of company B, should therefore already have taken serious account of the possibility that SNCU would file a claim against company B at least after 06 May 2020. In that context, SNCU also argued, without contradiction, that during the period Z was director, company B had sufficient resources, as evidenced by the 2020 financial statements, to remedy the disadvantage and pay damages. It is not disputed that Z did not use these means to that end. In the opinion of the District Court, that action was so careless that Z could be personally blamed for it and that she had acted imputably unlawful towards SNCU. It is also established that Y—who at the time of the dissolution of company B was the sole/independent director—failed to inform SNCU at any time about the imminent

dissolution of the company and that SNCU had to find out on its own. By dissolving company B within the given circumstances and not informing SNCU about which entity it should turn to with its claim, Y, in the opinion of the subdistrict court, acted imputably unlawful towards SNCU. In the District Court's opinion, it was sufficiently proven that X was in fact still the director of company B and that he was in such a dominant position that he could determine company B's policy on whether or not to provide an answer and submit recovery documents to SNCU in response to a re-inspection. All this leads to the conclusion that Y, Z and X are all jointly and severally liable for SNCU's claims in relation to company B.

2.2 Employment status of Uber drivers

Court of Appeal Amsterdam, ECLI:NL:GHAMS:2024:601, 13 February 2024 (published 12 March 2024)

In the present case, the Court of Appeal submitted preliminary questions to the Supreme Court on the employment status of Uber drivers. It is the follow-up to Court of Appeal Amsterdam of 03 October 2023, ECLI:NL:GHAMS:2023:2220. In short, the preliminary questions are:

1) whether the relationship between Uber and its drivers qualifies as an employment contract within the meaning of Article 7:610 Dutch Civil Code, and

2) whether Article 3(2) Act on declaring provisions of collective agreements generally binding and non-binding, which gives legal standing to trade unions to invoke the nullity of provisions between employers and employees that are contrary to collective agreements that have been declared generally binding, provides sufficient legal basis for bringing the claims of the Dutch trade union FNV against Uber (i.e. that Uber drivers are employees and that Uber is therefore obligated to comply with the collective labour agreement for taxi transport, which has been declared generally binding).

2.3 Annual leave with minus hours

District Court Midden-Nederland, ECLI:NL:RBMNE:2024:1504, 14 February 2024 (published 12 March 2024)

This case concerned the settlement of hours of paid annual leave with minus hours at the end of the employment contract. The District Court ruled that it cannot be inferred from the correspondence submitted that the employee, without approval from or coordination with the employer, took leave or holiday. It only shows that the employee indicated that she had taken or would take holidays, but not that this did not take place in consultation with and with the consent of the employer. Moreover, it is neither stated nor apparent that the employer addressed the employee about this during the term of the employment contract, or that the employer warned her that this would, if the occasion arose, lead to the write-off (and subsequent set-off) of minus hours. More generally, it has not been shown that the parties allegedly entered into any kind of min-max or on-call agreement, nor that it was agreed that the employee would have to make up any min-hours or that she would only be paid an advance on her salary, which would be corrected or settled afterwards. On the contrary, the parties agreed on an employment contract with a fixed scope of work (and a fixed salary), and the circumstance that the employee may have been scheduled to work for too few hours is, under the given circumstances, for the employer's own account. Consequently, the employer was not entitled to settle any remaining hours of paid annual leave with minus hours at the end of the employment contract.

2.4 Interpretation of Directive 2003/88/EC – Holiday pay

Advocate General, ECLI:NL:PHR:2024:177, 16 February 2024 (published 12 March 2024)

In the present case, the Advocate General (AG) De Bock submitted recommendations to the Supreme Court on the interpretation of Directive 2003/88/EC and more specifically the inclusion of compensation for overtime work in the calculation of holiday pay.

The employee worked as a crane operator for Mammoet (a transport company). Along with three other Mammoet employees, he claimed payment for overdue holiday pay because the calculation of holiday pay did not take into account compensation for overtime and night shift allowances. The District Court granted the claim, insofar as it related to the night shift allowances, but rejected claims for overtime compensation. The Court of Appeal subsequently awarded the overdue holiday pay for overtime worked.

Following this, Mammoet filed an appeal in cassation against the Court of Appeal's judgment that overtime compensation should be included in the calculation of holiday pay. The grounds for cassation assert that overtime should not be factored into the holiday pay calculation unless there is a mandatory overtime requirement, as established by the Hein/Holzkamm ruling. However, AG disagreed with this assertion.

The AG emphasised that holiday pay should reflect the normal remuneration earned during working periods to ensure comparable economic conditions during leave. The AG's argument stressed that obligations arising from the employment contract requiring regular overtime should be the basis for including overtime compensation in holiday pay. Furthermore, the AG criticised the requirement for employees to prove the obligation to work overtime, suggesting that the focus should be on whether the duties mandated by the employment contract necessitate overtime work. The AG concluded that overtime should be included in holiday pay calculations if it is regularly performed and constitutes a significant share of the employee's total remuneration, aligning with the objectives of Directive 2003/88/EC.

2.5 Dismissal – protection of business confidentiality

District Court Zeeland-West Brabant, ECLI:NL:RBZWB:2024:1509, 29 February 2024 (published 14 March 2024)

In the present case, the employee was dismissed with immediate effect for setting up a business that stood in direct competition with the employer during his employment. The District Court ruled that the dismissal was justified. During his employment, the employee established his own competing company without the employer's knowledge, even using photographs of the employer's projects. He also approached one of the employer's clients for his own business. Although the employee claims that his intention was to cooperate with the employer, this is not evident from his actions.

This case has some relevance for Article 9 Directive (EU) 2019/1152 on Transparent and Predictable Working Conditions (parallel employment). Article 9(2) states that Member States may lay down conditions for the use of incompatibility restrictions by employers, on the basis of objective grounds, such as health and safety, the protection of business confidentiality, the integrity of public service or the avoidance of conflicts of interests. The case concerned such a ground (the protection of business confidentiality), but some doubt exists as to whether the rules for immediate dismissal laid down in Article 7:677-7:678 Dutch Civil Code (which allows for immediate dismissal in case of a 'pressing reason', which does not explicitly mention the protection of business confidentiality) can be considered a 'condition laid down by a Member State', more so since the employment contract did not prohibit the employee from setting up a competing business in line with Article 7:653a Dutch Civil Code.

2.6 Jurisdiction

District Court Oost-Brabant, ECLI:NL:RBOBR:2024:797, 04 March 2024 (published 12 March 2024)

In the present case, the District Court applied the Brussels I bis-Regulation on jurisdiction in civil and commercial matters in a dispute between an employer and an employee. Article 22 Brussels I bis-Regulation provides that an employer's claim can only be brought before the courts of the Member State in whose territory the employee resides. Since at the time of the initiating application the employee resided in a Member State other than the Netherlands, in principle only that Member State had jurisdiction. Contrary to this principle, the Dutch court may nevertheless assume jurisdiction in proceedings initiated by the employer in two situations. First, in case of an explicit choice of forum for the Dutch court. That was not the situation in the present case. Second, jurisdiction may be assumed in the event of an implied or tacit choice of forum by appearance. The tacit choice of forum is regulated in Article 26(1) Brussels I bis-Regulation. The ground for jurisdiction from this article also applies to disputes relating to employment contracts and means that the court before which the defendant—the employee—appears has jurisdiction, unless the purpose of the appearance is to contest that jurisdiction. This is different if another court has exclusive jurisdiction under Article 24 Brussels I bis-Regulation, but this provision does not concern labour disputes. An employee who appears in the proceedings and waives a lack of jurisdiction exception waives his/her protection under Chapter II, Section 5 of the Brussels I bis-Regulation. By appearing and not contesting jurisdiction, the defendant unilaterally and implicitly accepts the jurisdiction of a court that initially had no jurisdiction. Under the second paragraph of Article 26 EEX-Vo, the court must ensure that the defendant has been informed of his/her right to contest jurisdiction and of the consequence of appearing and not appearing. This is called the so-called duty of acquaintance. To assess whether there is an implied choice of forum and whether the duty to inform has been met, the following applies: the mere appearance of the defendant in the proceedings cannot lead to the conclusion that the duty to inform has been met. It must have been made sufficiently clear to the defendant that he/she has the opportunity to contest the court's jurisdiction. Restraint is required before it can be assumed that certain conduct of a defendant 'implicitly implies' that he/she did not intend to contest the court's jurisdiction. Furthermore, the mere circumstance that the defendant is represented by a professional is not sufficient to be assured that he/she has actually been informed of his/her right to contest the court's jurisdiction and of the consequences of appearing or not appearing (see Supreme Court 11 March 2022, ECLI:NL:HR:2022:345). In the light of the above, the request by the employee('s representative) to move the oral proceedings did not constitute a tacit choice of forum, because it did not prove that the employee was aware of his right to contest the jurisdiction of the Dutch court and the consequences of appearing or not appearing, and that he wished to waive that right. On the contrary, the employee invoked the Dutch court's lack of jurisdiction prior to the oral proceedings and the filing of a statement of defence so that the ground of jurisdiction under Article 26(1) Brussels I bis-Regulation does not apply. In conclusion, the District Court ruled that it did not have jurisdiction to rule on the case.

2.7 Interpretation of the Whistleblower Protection Act

District Court Midden-Nederland, ECLI:NL:RBMNE:2024:1257, 05 March 2024 (published 05 March 2024)

The Court interpreted the Whistleblower Protection Act (hereinafter: WPA) which transposed Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. In the present case, the employer was a manufacturer and supplier of bicycles. The employee was a mechanic and carried out repairs. The employer had its

own whistleblower regulations. Since 2022, the employee had had several clashes with his superiors following internal reports made by the employee about faults in the frames of bicycles. In response to these faults, the employer referred the employee to the 'Speak-up line'. On 08 December 2023, the employer suspended the employee for threatening and intimidating an official of the employer. The employer sought to dismiss the employee and subsequently, the employee filed a claim against the dismissal, arguing that he had raised breaches with superiors on several occasions, but that no action had been taken. The employee invoked the prohibition of retaliation under Section 17e of the WPA and argued that the employer's request for dismissal should be rejected.

The District Court ruled that the employer should have followed its own whistleblowing regulations and that the reference to the employer's 'Speak-up line' was unjustified. According to the regulations, the employer should have sent a certified copy of the report to the board of directors and an investigation should have been launched. The fact that the employee did not explicitly state that his report was a report within the meaning of the whistleblower regulation is irrelevant since management should have recognised this.

Furthermore, the Advisory Department of the Dutch Whistleblowers Authority, following the employee's approach on 04 September 2023, concluded on 27 September 2023, that there was suspicion of wrongdoing under Section 17e WPA.

The District Court ruled that the employee's position had been adversely affected by reporting the breaches and that these reports could not be viewed separately from the employer's request for dismissal. In accordance with Section 17eb of the WPA, it is presumed that the dismissal request was submitted in retaliation for the report, shifting the burden of proof to the employer. The District Court concluded that the conditions for whistleblowing protection had been met. Consequently, the employee rightfully relied on the protection afforded to him against retaliation. As a result, the request for dismissal was rejected.

2.8 Interpretation of the Whistleblower Protection Act

Court of Appeal Arnhem-Leeuwarden, ECLI:NL:GHARL:2024:1737, 11 March 2024 (published 13 March 2024)

The Court interpreted the Whistleblower Protection Act (hereinafter: WPA) which transposes Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. In the present case, the employee worked for the Environmental Department IJsselland as a legal advisor from 01 January 2021. A conflict arose with his supervisor about the terms and conditions of employment, and shortly thereafter also with a number of colleagues. The employee subsequently made several complaints about his colleagues, both internally and externally meanwhile threatening to report the matter to the judicial authorities. On 24 June 2022, the employee sent several complaints to the employer about the director's performance. On 05 July 2022, the employee was suspended. One of the reasons was the series of complaints. Several employees had also reported to the Dutch Whistleblowers Authority. Subsequently, the employer requested dismissal of the employee before the court. The District Court terminated the contract based on the disrupted working relationship. The District Court (ECLI:NL:RBOVE:2023:916) ruled that the employee's conduct, on which the employer based the request for dismissal, was not related to his subsequent whistleblower report, so that he was not entitled to dismissal protection as a whistleblower.

The Court of Appeal determined that the violations did not constitute a breach under the 'Regulations on reporting suspected wrongdoing of the employer.' The Court emphasized that the reported issues were personal rather than of public interest, thus not qualifying the employee for dismissal protection.

Moreover, the Court of Appeal considered that the employee's suspension was primarily triggered by the complaints raised on 24 June 2022, marking the employer's breaking

point. The Court concluded that the employer successfully countered the presumption of a causal connection between the subsequent whistleblower report and the request for dismissal. In this regard, the Court emphasised that the employee's conduct based on which the request for dissolution of the employment relationship was based, dates from (well) before July 2022 (the moment the employer became aware of the whistleblower's report). The request for dismissal was therefore granted.

2.9 On-call duty and working time

Supreme Court, ECLI:NL:HR:2024:426, 15 March 2024

In the present case, the Supreme Court ruled on the question whether on-call duty (of ambulance staff) can be classified as working time within the meaning of Directive 2003/88/EC. According to the Supreme Court, it follows from CJEU case law that if in the specific case on-call time has such an impact on the workers that they are objectively and significantly restricted in their ability to freely organise their time during the periods of on-call time, those periods must, in principle, be regarded in their entirety as working time. A low average number of interventions cannot detract from this, even if in the end workers rarely need to intervene. Moreover, wearing a uniform (due to the impossibility of changing clothes after a call) and the workers' knowledge that they might be called out during their on-call duty (the 'beeper pressure') are relevant circumstances that affect workers' free time. Although the short response time is a target standard that the government imposes on the ambulance service, it must still be viewed from an employment law perspective.

2.10 Study costs clause

District Court Rotterdam, ECLI:NL:RBROT:2024:2130, 15 March 2024 (published 22 March 2024)

This case concerned the interpretation of Article 13 Directive 2019/1152 on Transparent and Predictable Working Conditions as implemented in Article 7:611a Dutch Civil Code (mandatory training). In the present case, the District Court ruled that the study costs clause in the employment contract was valid and that the employee had to repay the training costs to become a medical pedicurist. Although the profession of medical pedicurist is not on the list of regulated professions, according to the District Court it is an equivalent profession. This qualifies the advanced training to become a medical pedicurist as vocational training to obtain a professional qualification. As training is necessary to obtain a professional qualification, the training costs are in principle not borne by the employer. The employer is only required to pay the costs of vocational training if an applicable regulation requires it to do so, e.g. by collective agreement. It has not been stated or demonstrated that such an obligation applies to the employer. Therefore, the study costs clause in the employment contract is valid and the employee has to repay the training costs.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.
The case relates to Directive 2008/104/EC and concerned the benefit scheme for temporary agency workers in the event of total permanent incapacity for work. In the Netherlands, the situation in this regard is as follows. In principle, parties can agree in a collective agreement on an (extra) allowance to be paid to the employee in such cases. It is unclear whether this occurs in practice. If the parties have not made any (additional) agreements in this respect, the starting point is that the employee concerned is entitled to a so-called 'WIA benefit'. In short, the amount of this WIA benefit depends on the

salary the employee previously earned. In addition, an employee may try to hold his/her employer liable for damages under Section 7:658 of the Dutch Civil Code, if, according to the employee, damages have arisen because the employer failed in its duty of care to ensure a safe working environment for the employee. In short: the ruling seems to have limited implications for labour law practices in the Netherlands.

4 Other Relevant Information

4.1 Recommendations by the Government Prosecutor on timeliness of temporary agency work assignments

Parliament letter, 20 March 2024

According to the Government Prosecutor, Dutch law does not provide for appropriate measures that guarantee the temporary nature of temporary agency work assignments. In addition, Dutch courts have insufficient instruments to sanction a violation and thus prevent circumvention of the provisions of Directive 2008/104/EC.

The Government Prosecutor outlines several policy options to safeguard the temporary nature of assignments, bringing Dutch legislation in line with Directive 2008/104/EC:

1. a maximum period in the law;
2. an open norm in the law to the effect that a temporary employment relationship is temporary in nature so that the provisions of Directive 2008/104/EC may not be circumvented; courts must assess whether the regulations have been violated based on the circumstances of the case;
3. a rebuttable presumption of law according to which a temporary employment relationship ceases to be temporary, unless the temporary employer demonstrates otherwise.

The Government Prosecutor also recommends for the legislation to include consequences in case the assignment is no longer temporary, offering the following three options:

1. the law could provide that in that case, the temporary agency worker enters the user undertaking under an employment relationship in accordance with the law;
2. determining in the law that the temporary agency work contract (Article 7:690 Civil Code) converts to a payroll contract (Article 7:692 Civil Code) in accordance with the law. Yet it is not clear whether the (non-temporary) payroll contract is in line with the Directive;
3. to grant the court the power to impose damages. In addition, another possibility could be to impose an (administrative) fine on the hiring employer; this does not, however, result in a change of the employment relationship of the temporary agency worker.

4.2 Work-related care

Progress letter, 14 March 2024

A safe and healthy working environment reduces the risk of occupational hazards, which can prevent or reduce accidents and health problems caused by work. The government does not want workers to die or fall ill because of poor working conditions ('zero death'). The Health and Safety Vision 2040 is therefore committed to prevention of death, illness and injury.

The reason for a new vision is that good work-related care helps prevent long-term absenteeism and promotes effective reintegration of workers who return to work. Thereby, the costs covered in the Sickness Benefits Act (*'Ziektewe't*) and the Work and

Income according to Labour Capacity Act (‘*Wet Inkomen naar Arbeidsvermogen’*) can be reduced, and care costs can be prevented.

4.3 Internet consultations

4.3.1 Amendment of the law on the allocation of labour force by intermediaries in connection with the introduction of an admission system for temporary work agencies

The law on the allocation of labour force by intermediaries will be amended in connection with the legislative proposal on the admission of the labour force for the provision of workers (see also October 2023 Flash Report and February 2024 Flash Report).

4.3.2 Grant scheme supporting employers hiring those with temporary admission

A grant scheme is being discussed in which employers can apply for subsidies for workplace activities aimed at reducing cultural and language differences among those with temporary admission.

4.3.3 Amendment to the Participation Act in connection with categorical special assistance for single earners

A confluence of schemes penalises a group of single earner households with a combination of income sources. This leaves them with an income below the subsistence level. With this bill, the government provides a temporary, workable solution to this problem, as a fundamental solution through taxation is not possible until 2028.

4.3.4 Amendment to Article 7:653 Civil Code modernising the non-competition clause

The non-competition clause prohibits employees from performing similar work for another employer after the end of their employment contract. The employer’s aim so is to protect its business interests, such as trade secrets, knowledge of rates, customer data and files and goodwill.

As the non-competition clause constitutes a restriction on employees’ constitutional freedom of free choice of employment, this bill aims to achieve the following objectives:

1. a reduction in the use of the number of (non-essential) clauses, promoting free choice of employment, labour mobility and optimal labour allocation;
2. balancing the interests of employers and employees;
3. providing more legal certainty, reducing the need for litigation; and
4. maintaining the possibility for employers to protect the company flow.

4.4 Fight against sexually transgressive behaviour and sexual violence

The cabinet has launched a multi-year comprehensive approach to fighting sexually transgressive behaviour and sexual violence in spring 2022. An important step was the appointment of Mariëtte Hamer as an independent government commissioner for sexual transgressive behaviour and sexual violence as of 01 April 2022. On 13 January 2023, the cabinet published the National Action Programme on Fighting Sexual Transgressive Behaviour and Sexual Violence (NAP). With this letter, information on the progress of the NAP will be provided.

The NAP looks at three levels of progress:

1. Overarching goal: is cultural change taking place and is sexual transgressive behaviour and sexual violence becoming less prevalent?
2. Substantive progress: are the desired results being achieved to which the cabinet aims to contribute to with actions within the action lines?
3. Procedural progress: are activities being implemented as planned?

4.5 More Security for Flex Workers Act submitted to the Council of State for advice

The bill was submitted to internet consultation and anyone was free to comment on it. The request for advice from the Council of State is the next step in the legislative process. After the Council shares its advice and proposes possible adjustments to the bill, the final proposal can proceed to the Lower House.

4.6 Tax Authority's enforcement plan on employment relationships 2024

From 01 January 2025, the Tax Authority can, after an enforcement moratorium, impose a correction obligation and additional tax assessments, possibly with a fine (for situations as of 01 January 2025), in all cases when an incorrect qualification of the employment relationship is found.

4.7 Advisory report – 'No third-class citizens. The risks for posted workers and Dutch society' of 13 March 2024

Posted workers in the Netherlands run a high risk of being treated like third-class citizens, not receiving wages, poor working conditions or benefiting from social security to which they are entitled under EU and national labour law. One reason is that employers take advantage of ambiguous situations that arise because regulations in the sending country differ from those in the Netherlands. This 'competitive secondment' has risks not only for the migrant workers, but also for Dutch society.

The Advisory Body offers four recommendations:

1. Slow down the race to the bottom by tackling labour market flexibility more intensively;
2. more intensively tackle fraudulent employment and step up enforcement;
3. strengthen the position of posted workers;
4. conclude better agreements in Europe and bilaterally with other Member States.

Norway

Summary

The provisions that allow temporary employment contracts in the university sector have been adjusted in the new University and University Colleges Act to ensure more permanent employment.

1 National Legislation

1.1 A new University and University Colleges Act

A new University and University Colleges Act has been passed (LOV-2024-03-08-9). The Act will replace the former University and University Colleges Act from 2004.

Chapter 7 in the Act regulates employment in this sector. The most important changes in this part of the new Act relate to the possibility of entering into temporary employment contracts. The share of temporary positions is higher in the state sector than in other sectors, and it is highest in teaching and research positions in the university and college sector. Against this background, some provisions that are specific to this sector have been adjusted with the aim of ensuring use of permanent employment when the institutions' need for employment is of a permanent nature.

The Act will enter into force when decided by the King (in Council of the State).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

Directive 2008/108/EC on temporary agency work is implemented in the Norwegian Work Environment Act (LOV-2005-06-17-62) Chapter 14 (WEA). The principle of equal treatment regarding basic working and employment conditions is regulated in WEA Section 14-12 a. According to this provision,

> *"the temporary work agency shall ensure that the workers hired out are at least given the conditions that would have applied if the worker had been employed directly by the user undertaking to perform the same work regarding"*

inter alia "pay and coverage of expenses" (litra f).

The CJEU ruling will have clear implications for Norwegian law. The ruling builds on a different understanding of the concept of 'pay' in the Directive than what has been assumed in Norwegian law, both concerning the power to define the concept in national law and the scope of the concept.

First, when implementing the Directive, the Norwegian government took the view that the concept of pay with reference to the principle of equal treatment could be defined in national law, cf. Prop. 74 L (2011–2012) p. 55. This interpretation of the Directive was based on the absence of a definition of 'pay' in the Directive read in conjunction with the reference to national law as regards the concept of pay in Article 3 (2). The Norwegian Supreme Court has interpreted the Directive in the same way and has

explicitly stated that "it is up to the Member States to define [pay] in relation to the Directive", cf. HR-2020-2109-A para. 60, see also HR-2018-1037-A para. 25.

Second, although the concept of pay in WEA Section 14-12 a (1) litra f. is interpreted broadly, the preparatory works build on the premise that 'pay' must constitute consideration for the work performed, cf. Prop. 74 L (2011–2012) p. 55–56 and p. 105–106. This seems to imply that compensation related to incapacity for work as a result of an accident at work would not be included. To the author's best knowledge, the issue has not yet been addressed in case law or doctrinal works.

In other words, the interpretation of 'pay' in relation to the principle of equal treatment for temporary agency workers will have to be adapted in Norwegian law to ensure compliance with the Directive.

4 Other Relevant Information

Nothing to report.

Poland

Summary

(I) From 01 March 2024, the minimum wage rates for adolescent workers will be adapted based on the average remuneration in the national economy. The rates vary depending on the year of study. The minimum wage for those participating in job training is PLN 527.83.

(II) On 06 March 2024, a new bill was published to implement the EU Directive on the Protection of Whistleblowers. Key changes for employers include an expanded catalogue of potential breaches, such as human rights and corruption.

1 National Legislation

1.1 Minimum wage for adolescent employees

From 01 March 2024, adapted minimum wage rates will apply for adolescent employees.

The amount of rates is linked to the average remuneration in the national economy, which in the fourth quarter of 2023 was PLN 7 540.36. Depending on the year of study, the minimum rates for adolescent employees are:

- PLN 603.23 in the first year of study or first grade of a level one vocational school;
- PLN 678.63 in the second year of study or second grade of a level one vocational school;
- PLN 754.04 in the third year of study or third grade of a level one vocational school.

The minimum wage for adolescent employees undergoing training to perform a specific job is PLN 527.83.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The CJEU, in its judgment of 22 February 2024 in case C-649/22, ruled that national legislation, which differentiates between the amount of compensation for permanent total incapacity for work as a result of an accident at work depending on whether the worker was directly employed by the employer or was a temporary worker working for a user undertaking is contrary to the principle of equal treatment under EU law. According to this principle, the basic working and employment conditions of temporary workers should correspond to those that would apply to them if they had been directly employed by the user undertaking.

Polish legislation on benefits paid in connection with an accident at work causing permanent incapacity for work (including incapacity for work pensions) does not distinguish between permanent and temporary workers. Both categories of employees fall within the definition of 'insured person', as social security contributions are paid for them. A temporary worker therefore is entitled to the right to a pension in the event of

incapacity for work. In turn, the amount of the pension is determined on the basis of the assessment of social security contributions, i.e. by taking the employee's salary into account. At the same time, the provisions on equal treatment of temporary workers with regard to employment conditions, including pay, apply. Therefore, it can be concluded that from a legal perspective, Poland ensures equal treatment for temporary employees with regard to compensation in case of permanent and total incapacity for work as a result of an accident at work.

4 Other Relevant Information

4.1 Whistleblower regulations

On 06 March 2024, another bill (dated 26 February 2024) was published on the website of the government legislative centre, which transposes Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of whistleblowers.

The most important changes for employers in comparison to the previous draft include:

- Scope of breaches: The catalogue of potential breaches which can be the subject of whistleblower reports has been expanded. The added areas are: human and civil liberties and rights, corruption, human trafficking, and labour law meaning that whistleblower reports can be made in relation to, inter alia, mobbing, discrimination, correct accounting of working time or observance of health and safety rules.
- Status of employment: The manner of determining the number of total employees has been clarified. A procedure for accepting whistleblower notifications will have to be implemented by entities employing, as of 01 January 01 July, at least 50 employees, taking into account both employees (full-time equivalents) and other persons working for pay for the entity on another basis (e.g. B2B contracts, service contracts, 'commission' contracts, etc.), provided that they do not employ subcontractors.
- Anonymous reports: Each entity accepting whistleblower reports will have to decide for itself whether it will permit anonymous reports. If an entity decides to accept anonymous reports, it will have to describe in an internal reporting procedure how it deals with such reports.
- Protection of a whistleblower: is the bill clarified that a whistleblower is protected from the moment the report is submitted, or publicly disclosed, provided that the whistleblower had good reason to believe that the information subject of the report or public disclosure was accurate at the time of drafting the report or public disclosure and that it is information on a breach of law.
- Compensation: The bill includes more detailed rules on the amount of compensation for a whistleblower who has suffered retaliation in breach of the proposed law. The whistleblower will be entitled to compensation not lower than 12 times the average monthly salary in the national economy in the previous year, as well as the right to redress.
- Vacatio legis: It has been proposed that the Act will enter into force three months after the date of its promulgation, with the exception of the provisions of Chapter 4 (on external reporting), which are to enter into force six months after the date of promulgation. On 06 March 2024, another bill (dated 26 February 2024) was published on the website of the government legislative centre, which transposes Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of whistleblowers.

The precise date of referral of the draft to the Lower House of Parliament is not yet known.

Portugal

Summary

An analysis of a recent ruling of the Portuguese Supreme Court of Justice declares that the mandatory and non-derogable nature of the rules of Portuguese law on the existence of vacation and Christmas allowances.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Vacation and Christmas allowances

Supreme Court of Justice, Process No. 5001/21.2T8MAI.P1.S1, 06 March 2024

In the present ruling, the Supreme Court of Justice stated that the provisions of Portuguese law on vacation and Christmas allowances (Articles 263(1) and 264(2) of the Labour Code) are non-derogable, especially for the purposes of applying Article 8(1) of the Rome I Regulation. Therefore, even if the employment contract is governed by a foreign law (under the terms chosen by the parties), the payment of vacation and Christmas allowances is mandatory for employees whose employment contract is being carried out in Portugal. In the present case, the employer was located in Ireland and the parties chose Irish law to regulate the contractual relationship with employees. Irish law does not provide for the payment of vacation and Christmas allowances. It was not proven (nor was it alleged) that when the employment contract was concluded, the parties wanted to set a higher overall salary for covering the amount that would be due in accordance with Portuguese law, namely vacation and Christmas allowances.

Considering the above, the Supreme Court of Justice recognised the employer's obligation to pay the vacation and Christmas allowances to employees, in addition to the remuneration agreed by the parties. According to this ruling, such a conclusion does not require any comparison of the minimum remuneration amounts provided for in the two relevant countries (Ireland and Portugal), taking into account that the legal regime relating to vacation and Christmas allowances is not based on considerations of a strictly retributive nature, nor on considerations associated with the principle of wage sufficiency.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

In the present ruling, the CJEU analysed a case of an employee who had concluded a temporary employment contract with *Randstad Empleo*, which assigned him to *Serveo Servicios* to perform the functions of handling operator. During the assignment, the employee suffered a work accident that caused a total permanent incapacity to carry out his usual occupation and resulted in the termination of his employment relationship. Based on the collective temporary agency work agreement, the insurance company paid him compensation in the amount of EUR 10 500 for his total permanent incapacity for work, instead of compensation in the amount of EUR 60 101.21, which would be the amount in the collective transport sector agreement. The question was whether this employee was entitled to the same compensation to which an employee directly

recruited by the user undertaking would be entitled to in the same situation, considering the purpose of Directive 2008/104/EC on temporary agency work, and in particular Article 5 thereof, which states that

> *"the basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job".*

The CJEU assessed whether the abovementioned compensation payable to a temporary agency worker falls within the concept of 'basic working and employment conditions' within the meaning of Article 5 (1) of Directive 2008/104/EC, read in conjunction with Article 3(1)(f) thereof. According to the latter provision, this concept means

> *"working and employment conditions laid down by legislation, regulations, administrative provisions, collective agreements and/or other binding general provisions in force in the user undertaking relating to:*
>
> *(i) the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays;*
> *(ii) pay".*

As explained by the CJEU, the concept of 'pay' is defined in Article 157(2) TFEU as

> *"the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the employee receives directly or indirectly, in respect of his employment, from his employer".*

According to the case law, this concept must be interpreted broadly and covers, in particular, any consideration, whether in cash or in kind, whether immediate or future, provided that the employee receives it, albeit indirectly, in respect of his/her employment with his/her employer, and irrespective of whether it is received under a contract of employment, by virtue of legislative provisions or on a voluntary basis. In addition, this concept includes consideration paid by the employer under a contract of employment whose purpose is to ensure that employees receive income even where, in certain specific cases, they are not performing any work provided for in their contracts of employment.

This interpretation concerning the concept of 'pay' is relevant to determine the scope of the abovementioned Article 3(1)(f) of Directive 2008/104/EC. As a result, the CJEU considered that the concept of 'pay', within the meaning of Article 3(1)(f) of Directive 2008/104/EC, is sufficiently broad to cover compensation to which temporary agency employees are entitled in respect of a total permanent incapacity to carry out their usual occupation as a result of an accident at work sustained at the user undertaking.

Considering the above, the CJEU ruled that Article 5(1) of Directive 2008/104/EC,

> *"read in conjunction with Article 3(1)(f) thereof, must the interpreted as precluding national legislation, as interpreted by national case-law, under which the compensation to which temporary agency workers are entitled in respect of a total permanent incapacity to carry our their usual occupation as a result of an accident at work sustained at the user undertaking and resulting in the termination of their temporary employment relationship, is less than the compensation to which those workers would be entitled, in the same situation and on the same basis, if they had been recruited directly by that user undertaking to occupy the same job for the same period of time".*

According to Portuguese law, during the assignment, the temporary agency worker is subject to the regime applicable to the user undertaking in relation to the way, place, duration of work and suspension of the employment contract, safety and health at work

and access to equipment (Article 185(2) of the Labour Code). In addition, the temporary agency worker is entitled to the minimum remuneration of the collective bargaining agreement applicable to the temporary work agency or to the user undertaking, corresponding to his/her duties, or the activities performed by the user undertaking for equal work or for work of equal value, whichever is more favourable (Article 185(5) of the Labour Code). It is also clarified that the collective bargaining agreement applicable to employees of the user undertaking, who perform the same functions, applies to temporary agency workers (Article 185(10) of the Labour Code).

Considering this legal framework, it can be concluded that Portuguese labour law is compatible with the interpretation of Article 5(1) of Directive 2008/104/EC confirmed by the CJEU in the above judgment.

4 Other Relevant Information

Nothing to report.

Romania

Summary

(I) Legislation concerning the employment of foreigners has been amended.

(II) The transposition of Directive 2008/104/EC includes a restrictive definition of the concept of 'remuneration'.

1 National Legislation

1.1 Employment of foreigners

As of 31 March 2024, Romania will enter the Schengen area and maritime and air borders will be open. Consequently, some new legislative acts on the issuance of work visas for foreigners have been adopted. Thus, Emergency Ordinance 25/2024 amending and supplementing certain normative acts in the field of foreigners and borders, published in the Official Gazette No. 250 of 22 March 2024, currently provides that a foreigner who has obtained a work permit must be employed within 15 days from the date of entry into Romanian territory. The employer who has obtained the work permit for that foreigner will be fined if they refuse to employ them.

Additionally, to apply for a work permit for a foreigner, a new condition has been added: the employer must have actually performed activities in the field for which they are requesting the work permit for a minimum of one year.

Law No. 28/2024 amending and supplementing certain normative acts in the field of foreigners, published in the Official Gazette No. 176 of 05 March 2024, has transposed into Romanian law Directive (EU) 2021/1883 on the conditions of entry and residence of third-country nationals for highly skilled employment and repealing Council Directive 2009/50/EC. The law has simplified the procedure for hiring highly skilled foreigners.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

In Romania, legislation and collective labour agreements do not provide for the payment of any compensation in case of permanent incapacity for work for either temporary or permanent employees. Moreover, regarding health and safety at work, temporary workers are treated the same way as employees directly hired by the user undertaking. Consequently, there is no question of applying a more disadvantageous legal regime for temporary workers in this respect compared to those directly employed by the user undertaking.

However, concerning the interpretation provided by the Court of Justice of the European Union on the notion of 'remuneration', it should be noted that the Labour Code, which transposes Directive 2008/104/EC, contains a more restrictive provision. Thus, Article 92(3) of the Labour Code only refers to 'salary', not to all benefits paid by the employer under the employment relationship:

> *"The salary received by the temporary employee for each assignment cannot be lower than that received by the user undertaking's employee, who performs the same or a similar job to that of the temporary employee."*

Therefore, the decision of the Court of Justice of the European Union is relevant for Romanian courts when interpreting the notion of 'salary', which should not be understood, in this context, solely as remuneration for work, but also as including other benefits that the employer must pay in light of the employment relationship.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

No new legal acts were adopted and no relevant court decisions were published.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

Although there is no explicit provision for temporary agency workers to receive compensation for incapacity for work following a work accident in Slovak legislation, it fully corresponds to EU legislation. It especially corresponds also with the first subparagraph of Article 5(1) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work in connection with Article 3(1)(f).

The main legal source is Act No. 311/2001 Collection of Laws ('Coll.') (hereinafter: Labour Code) as amended.

According to Article 13 paragraph 1 of the Labour Code, the employer is required to treat employees in accordance with the principle of equal treatment established in the field of employment relationships in the specific Act on equal treatment in certain areas and on protection against discrimination and on the amendment of certain laws (Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, and on amending and supplementing certain other laws as amended (Anti-Discrimination Act)).

According to Article 58 paragraph 1 of the Labour Code, the employer or the temporary work agency may agree in writing pursuant to a special regulation with an employee in an employment relationship on their temporary assignation to perform work for a user undertaking. Temporary assignments cannot be agreed for the performance of work that the appropriate public health authority has assigned to the fourth category pursuant to a special regulation.

The establishment and duties of the temporary work agency are regulated in Act No. 5/2004 Coll. on employment services, as amended in Articles 29-31.

According to Article 30 paragraph 1 of Act No. 5/2004 Coll., the temporary work agency shall provide protection to the temporary employee in terms of working conditions and conditions of employment pursuant to a special regulation 30. Article 30 paragraph 1 of Act No. 5/2004 Coll. refers to *Act No. 311/2001 Coll. Labour Code, as amended and Act No. 124/2006 Coll. on Occupational Safety and Health Protection, as amended.*

According to Article 40 paragraph 10 of the Labour Code, for the purposes of this Act, a user undertaking is a legal person or natural person to whom the employer or temporary work agency under a special regulation temporarily assigns an employee for the performance of work in an employment relationship.

According to Article 58 paragraph 8 of the Labour Code, a user undertaking to which an employee has been assigned on behalf of an employer or temporary work agency for the temporary assignment of work duties, organises, manages and supervises his/her work, gives instructions for that purpose, creates favourable working conditions and ensures occupational health and safety in accordance with that provided for its regular employees.

While temporarily assigned, the employee shall be provided with wage, wage compensation and travel allowances by the employer which has temporarily employed the employee, or by the temporary work agency, unless otherwise provided in this Act or a specific regulation. Working conditions, including wage conditions and the conditions of employing the temporarily assigned worker shall be at least as favourable as those of a comparable employer at the user undertaking (Article 58 paragraph 9 of the Labour Code).

According to Article 40 paragraph 9 of the Labour Code, for the purposes of this Act, a comparable employee shall be an employee who has concluded an employment relationship for an indefinite period and has a determined weekly working time with the same employer or an employer pursuant to Article 58, and who performs or would perform the same type of work or a similar type of work, taking into consideration qualifications and professional experience.

According to Article 58 paragraph 11 of the Labour Code, the terms and conditions of work and employment include, among other things:

- wage conditions (letter b),
- occupational health and safety (letter c),
- compensation for accidents at work or occupational diseases (letter d).

The temporary assignment agreement concluded between the employer or temporary work agency and the user undertaking shall include the working conditions, wage conditions and employment conditions for temporarily assigned employee, which shall be at least as favourable as those for a comparable permanent employee of the user undertaking (Article 58a paragraph 2 letter f of the Labour Code).

The cited provisions are, therefore, in line with the relevant provisions of EU law and the courts should respect this in their decisions.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) The minimum hourly rate for occasional and temporary work in agriculture has been adjusted.

(II) The strike of medical doctors, organised by the trade union FIDES, which started in mid-January 2024 is still ongoing.

1 National Legislation

1.1 Supplements for extra workload in healthcare

The rules determining the amount of supplements for extra workload in certain areas of healthcare have been amended (‘*Pravilnik o spremembah in dopolnitvah Pravilnika o določitvi dodatka za povečan obseg dela za posebne obremenitve’*. OJ RS No 24/2024, 22 March 2024, p. 1794-1795), with more detailed rules concerning the calculation and payment of the supplement for extra workload. This is one of the measures aiming to address the staff shortages in healthcare, in particular in family medicine (see also Flash Report of February 2024 under 1.2 and Flash Report of December 2023 under 1.1).

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

Following the adjustment of the minimum wage in January 2024 (see Flash Report of January 2024, 1.1) and on the basis of Article 105.d of the Agriculture Act (‘*Zakon o kmetijstvu – ZKme-1’*, OJ RS No 45/08 et subseq.), the minimum hourly rate for occasional and temporary work in agriculture was adjusted as well (Order on the adjustment of the minimum gross hourly rate for temporary or occasional work in agriculture, ‘*Odredba o uskladitvi najnižje bruto urne postavke za opravljeno začasno ali občasno delo v kmetijstvu*’, OJ RS No. 19/24, 8 March 2024, p. 1482).

The minimum hourly rate for occasional and temporary work in agriculture was raised to EUR 7.21 (it was EUR 6.92 before the adjustment).

2 Court Rulings

2.1 Annual leave

The case (Higher Labour and Social Court, judgment No. Pdp 417/2023, 17.01.2024, published on 29 March 2024, ECLI:SI:VDSS:2024:PDP.417.2023) concerned the right to annual leave, more precisely, the payment of compensation for unused days of annual leave (allowance in lieu of days of annual leave not taken) in case of termination of employment. According to the Court, the employer did not prove that he had enabled the plaintiff to use her annual leave when she applied for it, nor could he prove that he encouraged the worker to use her annual leave. Therefore, the worker was entitled to compensation for the unused annual leave. In its judgment, the Court extensively referred to CJEU case law on annual leave, in particular to cases C-233/20, C-619/16 and 684/16.

3 Implications of CJEU Rulings

3.1 Temporary Agency Work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

The case concerned the interpretation of Article 5(1) of Directive 2008/104 on temporary agency work, and in particular the payment of compensation to a temporary agency worker for a total permanent incapacity for work as a result of an accident at work at the user undertaking, resulting in the termination of the temporary employment relationship, whereby the amount of this compensation was lower to the amount of such compensation to which a worker in the same situation and on the same basis would be entitled, who had been recruited directly by that user undertaking to occupy the same job for the same period of time. According to Spanish law, temporary agency workers are only entitled, in the event of total permanent incapacity to carry out their usual occupation, to compensation under Article 42 of the Collective Agreement for Temporary Agency Work, which is lower than the compensation to which workers directly recruited by the user undertaking are entitled under Article 31 of the Collective Agreement for the transport sector; in the concrete case, the temporary agency worker was entitled to compensation in the amount of EUR 10.500 on the basis of the former of those collective agreements, whereas he would have been entitled to compensation in the amount of EUR 60,101.21 according to the latter of those collective agreements had he been directly recruited by the user undertaking.

The case has no direct implications for Slovenian law since situations such as that dealt with in case C-649/22 could not arise in Slovenia. According to Slovenian law, temporary agency workers must enjoy working and employment conditions that are at least equal to those that would have been applicable to them if they had been recruited directly by the user undertaking to occupy the same job for the same period. There are no special/separate collective agreements concluded which would cover only temporary agency workers and stipulate different, less favourable working conditions (i.e. lower wages, lower compensation, etc.).

No exceptions to the principle of equal treatment for temporary agency workers are allowed under Slovenian law (see, in particular, Articles 61 to 63 of the Employment Relationships Act, Zakon o delovnih razmerjih (ZDR-1), OJ RS No. 21/13 et subseq.). Collective agreements may not establish arrangements concerning the working and employment conditions of temporary agency workers that are less favourable than those of workers directly employed by the user undertaking. The provisions of a collective agreement that would establish different, less favourable standards for working and employment conditions of temporary agency workers would be in breach of the law and thus inapplicable. It is worth noting that Slovenia has not used the possibility stipulated in Article 5(3) of the Directive and has not granted the option to social partners to conclude/maintain collective agreements which, while respecting the overall protection of temporary agency workers, derogate from the principle of equal treatment.

According to Slovenian law, all working and employment conditions of temporary agency workers must, for the duration of their assignment at a user undertaking, be the same as those that would apply if they had been directly recruited by the user undertaking for the same job (see also Katarina Kresal Šoltes (2017), 'Razmejitev obveznosti med agencijo in podjetjem uporabnikom ter načelo enakega obravnavanja – je lahko model tudi za druge nestandardne oblike dela?, [Obligations of the temporary work agency and of the user undertaking and the principle of equal treatment – Could the principle of equal treatment be a model for other non-standard forms of work?]', Delavci in delodajalci, Vol. 17, No. 2-3, pp. 199-220).

4 Other Relevant Information

4.1 Collective bargaining

Some sectoral collective agreements have been amended or annexes agreed, mainly adjusting the amounts of payments (for example, for the postal services, see in OJ RS No. 22/2024, 15 March 2024, p. 1652, for the metal and foundry sector, see in OJ RS

No. 24/2024, 22.3.2024, p. 1798, for the trade sector, see in OJ RS No. 26/2024, 26 March2024, p. 1976, for the banking sector, see in OJ RS No. 27/2024, 29 March 2024, p. 2045).

4.2 Medical doctors still on strike

The strike of medical doctors, organised by the trade union FIDES, which started in mid-January 2024, is still ongoing (see also Flash Report of February 2024 under 4.2).

There was an attempt to resolve the conflict through the mediation procedure. However, the mediation between the government and the trade union FIDES's Main Strike Committee, launched under the auspices of the Bar Association (the Mediation Centre at the Bar Academy and Institute for Alternative Dispute Resolution of the Bar Association of Slovenia) in mid-March failed.

Spain

Summary

(I) There were no major labour law developments in March.

(II) A Constitutional Court ruling addresses discrimination based on sex, but does not represent a significant shift in legal interpretation.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Equality and non-discrimination on grounds of sex

Spanish law grants workers the right to receive the salary they would have earned from the date of dismissal to the date of the ruling if the dismissal is considered null and void. The same rule applies to unlawful dismissals if the worker is reinstated. When reinstatement is not possible, these wages are paid directly by the State, and not by the employer.

That was the case in the present ruling of the Constitutional Court. The undertaking decided to cease its operations and dismissed four workers. They challenged the employer's decision and the judge ruled that there were no valid reasons for the dismissal, hence the Court decided that three of the dismissals had been unfair. However, the fourth worker was a pregnant woman. According to the Labour Code, dismissals of pregnant women are either lawful or null and void. They cannot be considered unfair dismissals per se, so the judge decided that her dismissal was null and void.

As reinstatement was not an option (the undertaking no longer exists), all four workers claimed from the State their salaries from the date of the dismissal to the date of the ruling. However, the specific legal provision only grants that right to workers who have been unfairly dismissed and not in cases of null and void dismissals. Therefore, the relevant body of the public administration granted those salaries to the three workers whose dismissals were qualified as unfair but denied the pregnant woman's application, arguing her dismissal was null and void.

The Constitutional Court warned that this literal interpretation is not admissible, and reminded that the case law of the Supreme Court allowed an interpretation that is more in line with the principles of equality and non-discrimination. In the end, the Constitutional Court stated that protection of the pregnant woman enjoyed a higher standard, i.e. interpretations that reduce this level of protection are not admissible.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

This ruling will have implications in Spain because the case originated there. However, a legal reform is not likely. The Supreme Court has stated that supplementary social security benefits granted voluntarily by the employer did not fall within the concept of *'pay'* for temporary agency workers. This CJEU ruling will certainly lead to a change in the case law of the Spanish Supreme Court.

4 Other Relevant Information

Nothing to report.

Sweden

Summary

The Supreme Court decided to not permit the Discrimination Ombudsman's petition for a new trial.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Supreme Court's decision to not permit a new trial in a discrimination case

The Supreme Court has decided to not permit the Discrimination Ombudsman's petition for a new trial after the Labour Court issued a default judgment lowering the plaintiff's claim for damages in a discrimination matter. As the Labour Court is the court of last instance, a new trial would have been an extraordinary procedural measure. A press release about the decision of 15 March 2024 can be found on the Discrimination Ombudsman's website.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

In its judgment in *Randstad Empleo*, C-649/22, the CJEU held that a temporary agency worker must be treated equally as regards compensation following a workplace accident of a worker permanently employed by the user undertaking. As the principle of the rule of equal treatment under the Temporary Agency Workers Directive is limited to working conditions regarding 'pay' and different aspects of working time, the judgment specified the notion of 'pay'. The Swedish implementation of the temporary agency workers directive relies on the idea that a user undertaking must only treat temporary agency workers equally in matters relating to fundamental employment conditions. From Section 5 para 3 b) of the Swedish Temporary Agency Workers Act, it is therefore clear that equal treatment is only required for 'pay' ('*lön*'). There is no statutory definition of 'pay' in Swedish labour law. In the preparatory works to the implementation act, it was held that it should be interpreted in line with what is common in each sector (see. Prop. 2011/12 p. 33–34 and p. 100–101). As the CJEU with its new judgment now has clarified that the notion of 'pay' cannot be national but must be interpreted uniformly, the presumptions in the Swedish preparatory works are wrong. Consequently, the judgment may have significant implications for Swedish labour law. This is especially true due to the fact that temporary agency workers' employment conditions to a great extent follow collective agreements that most likely have been influenced by the statements in the Swedish preparatory works.

4 Other Relevant Information

Nothing to report.

United Kingdom

Summary

(I) New minimum wage levels came into force on 01 April 2024.

(II) A case on Artificial Intelligence and discrimination was brought before the court.

(III) The most recent Minimum Service Levels have been stipulated for fire and rescue services in the Strikes (Minimum Service Levels) Act 2023.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Temporary agency work

CJEU case C-649/22, 22 February 2024, Randstad Empleo u.a.

In case C-649/22, 22 February 2024, *Randstad Empleo u.a.*, the Court ruled that

> *"precluding national legislation, as interpreted by national case-law, under which the compensation to which temporary agency workers are entitled in respect of a total permanent incapacity to carry out their usual occupation as a result of an accident at work sustained at the user undertaking and resulting in the termination of their temporary employment relationship, is less than the compensation to which those workers would be entitled, in the same situation and on the same basis, if they had been recruited directly by that user undertaking to occupy the same job for the same period of time".*

This issue has not arisen in the UK. Since it is a post-Brexit decision, it is not binding on UK courts but they can take it into account in their interpretation of the UK implementing legislation.

4 Other Relevant Information

4.1 Increase in minimum wage

The National Minimum Wage (Amendment) (No. 2) Regulations 2024 (*SI 2024/432*) came into force on 01 April 2024. The new levels are:

- The NLW is extended to apply to workers aged 21 and over (down from 23 and over) and increases from £10.42 to £11.44 per hour.
- The NMW for 18- to 20-year-olds increases from £7.49 to £8.60 per hour.
- The NMW for 16- to 17-year-olds increases from £5.28 to £6.40 per hour.

4.2 Artificial Intelligence (AI) and discrimination

In light of the agreement on the Platform Work Directive, a case on AI and discrimination thought to be the first was brought before the court. Manjang was a driver for Uber Eats. Its facial recognition software required drivers to take a picture of themselves for verification when using the app. Mr Manjang was suspended from the app following failed facial recognition checks and thus lost income. He said that he was not aware of the checks, did not have an effective route of redress and that the technology placed people who are non-white at a disadvantage as they were less likely to pass the facial recognition test. The claim was settled.

4.3 The Strikes (Minimum Service Levels) Act 2023

The Strikes (Minimum Service Levels) Act 2023 provides for minimum services levels in certain sectors in the event of strikes. Minimum Service Levels (‘*MSLs*’) for passenger rail, ambulance and border security services have already been laid down. The most recent *MSLs* have been stipulated for fire and rescue services in the Strikes (Minimum Service Levels: Fire and Rescue Services) (England) Regulations 2024 (*SI 2024/417*). For the purposes of enabling work notices to be given under section 234C of that Act, these Regulations specify: (a) fire and rescue services provided by fire and rescue authorities in England, and certain persons acting on behalf of those authorities, as “relevant services”, and (b) the levels of service in relation to strikes in respect of those relevant services.

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