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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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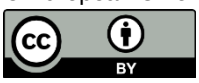

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Flash Report 11/2023 on Labour Law

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Table of Contents

Executive Summary 9

Austria 15
1 National Legislation 15
2 Court Rulings 15
3 Implications of CJEU Rulings 15
4 Other Relevant Information 15

Belgium 18
1 National Legislation 18
2 Court Rulings 19
3 Implications of CJEU Rulings 20
4 Other Relevant Information 20

Bulgaria 21
1 National Legislation 21
2 Court Rulings 21
3 Implications of CJEU Rulings 21
4 Other Relevant Information 21

Croatia 22
1 National Legislation 22
2 Court Rulings 22
3 Implications of CJEU Rulings 23
4 Other Relevant Information 23

Cyprus 23
1 National Legislation 24
2 Court Rulings 25
3 Implications of CJEU Rulings 25
4 Other Relevant Information 26

Czech Republic 27
1 National Legislation 27
2 Court Rulings 31
3 Implications of CJEU Rulings 31
4 Other Relevant Information 32

Denmark 33
1 National Legislation 33
2 Court Rulings 33
3 Implications of CJEU Rulings 33
4 Other Relevant Information 37

Estonia 38
1 National Legislation 38
2 Court Rulings 38
3 Implications of CJEU Rulings 38
4 Other Relevant Information 38

Finland 40
1 National Legislation 40
2 Court Rulings 40

3 Implications of CJEU Rulings 40
4 Other Relevant Information 41

France 42
1 National Legislation 42
2 Court Rulings 43
3 Implications of CJEU Rulings 44
4 Other Relevant Information 45

Germany 47
1 National Legislation 47
2 Court Rulings 47
3 Implications of CJEU Rulings 47
4 Other Relevant Information 48

Greece 49
1 National Legislation 49
2 Court Rulings 49
3 Implications of CJEU Rulings 49
4 Other Relevant Information 49

Hungary 49
1 National Legislation 50
2 Court Rulings 52
3 Implications of CJEU Rulings 52
4 Other Relevant Information 52

Iceland 52
1 National Legislation 54
2 Court Rulings 54
3 Implications of CJEU Rulings 54
4 Other Relevant Information 55

Ireland 56
1 National Legislation 56
2 Court Rulings 56
3 Implications of CJEU Rulings 57
4 Other Relevant Information 57

Italy 59
1 National Legislation 59
2 Court Rulings 59
3 Implications of CJEU Rulings 59
4 Other Relevant Information 60

Latvia 61
1 National Legislation 61
2 Court Rulings 61
3 Implications of CJEU Rulings 61
4 Other Relevant Information 61

Liechtenstein 62
1 National Legislation 62
2 Court Rulings 62
3 Implications of CJEU Rulings 62
4 Other Relevant Information 63

Lithuania 64
1 National Legislation 64
2 Court Rulings 64
3 Implications of CJEU Rulings 64
4 Other Relevant Information 65

Luxembourg 66
1 National Legislation 66
2 Court Rulings 66
3 Implications of CJEU Rulings 66
4 Other Relevant Information 66

Malta 69
1 National Legislation 69
2 Court Rulings 70
3 Implications of CJEU Rulings 70
4 Other Relevant Information 71

Netherlands 72
1 National Legislation 72
2 Court Rulings 73
3 Implications of CJEU Rulings 75
4 Other Relevant Information 76

Norway 78
1 National Legislation 78
2 Court Rulings 78
3 Implications of CJEU Rulings 79
4 Other Relevant Information 79

Poland 81
1 National Legislation 81
2 Court Rulings 81
3 Implications of CJEU Rulings 81
4 Other Relevant Information 82

Portugal 83
1 National Legislation 83
2 Court Rulings 83
3 Implications of CJEU Rulings 83
4 Other Relevant Information 85

Romania 86
1 National Legislation 86
2 Court Rulings 86
3 Implications of CJEU Rulings 86
4 Other Relevant Information 87

Slovakia 88
1 National Legislation 88
2 Court Rulings 88
3 Implications of CJEU Rulings 88
4 Other Relevant Information 89

Slovenia 90
1 National Legislation 90
2 Court Rulings 91

3 Implications of CJEU Rulings 91
4 Other Relevant Information 91

Spain 93
1 National Legislation 93
2 Court Rulings 93
3 Implications of CJEU Rulings 93
4 Other Relevant Information 93

Sweden 95
1 National Legislation 95
2 Court Rulings 95
3 Implications of CJEU Rulings 95
4 Other Relevant Information 96

United Kingdom 97
1 National Legislation 97
2 Court Rulings 97
3 Implications of CJEU Rulings 97
4 Other Relevant Information 97

Executive Summary

National level developments

In November 2023, 22 countries reported labour law developments (all countries except **Bulgaria**, **Denmark**, **Germany**, **Greece**, **Lichtenstein**, **Latvia**, **Poland** and **Slovakia**). The following were of particular significance from an EU law perspective:

Developments related to the COVID-19 crisis

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

In **Belgium**, the Constitutional Court interpreted the concept of 'being in service' which appears in the provision of the Employment Contracts Law as follows: when calculating the average of the variable part of the employee's salary, the 12-month period should be reduced by the five and a half month suspension due to COVID-19 (force majeure) during which the employee was apparently not 'employed'. Thus, according to the Court, 'employed' means being 'at work'.

Implementation of EU Directives

In **France**, the information employers must provide to employees who work abroad has been modified starting 01 November 2023. These changes, introduced by a decree dated 30 October 2023, intend to complete the transposition of Directive 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (Directive on Transparent and Predictable Working Conditions).

In **Hungary**, legislation came into force which implements Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report violations of Union law (Whistleblower Protection Directive).

In **Ireland**, provisions on paid domestic violence leave have entered into force. The principal purpose of the Work-life Balance and Miscellaneous Provisions Act 2023, when first introduced, was to give further effect to Directive 2019/1158/EU of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers (hereafter the Work-life Balance Directive). During its legislative passage, amendments were made to provide for five days of paid "domestic violence leave" per annum.

In November, the **Italian** government transposed Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for highly qualified employment, repealing Council Directive 2009/50/EC. The new provisions expand the scope of highly qualified foreign workers who may enter and reside in Italy.

In **Slovenia**, the Employment Relationships Act transposing Directives 2019/1152/EU (Directive on Transparent and Predictable Working Conditions) and 2019/1158/EU (Work-life Balance Directive) has been amended, introducing some other improvements of workers' rights entered into force on 16 November 2023.

Collective bargaining and collective action

In **Austria**, important sectoral collective bargaining agreements (metal industry, social services) have been concluded, which usually serve as a benchmark for bargaining in other sectors.

The **Croatian** Minister of Labour has extended the application of the Collective Agreement for Seafarers on Ships that Carry Out Transport in Coastal Maritime Traffic.

Collective redundancies

According to a court ruling in **Iceland**—following the advisory opinion of the EFTA Court—minor changes to employment agreements on the employer's behalf cannot be considered to be collective redundancies, but only significant changes to a key part of the employment agreement.

Dismissal protection

According to a recent court ruling in **Italy**, the employee's reduced productivity due to health reasons does not justify dismissal. The dismissal is unlawful if a medical doctor recommends a reasonable accommodation for the employee, which is technically possible and not excessively expensive for the employer and will allow the worker to continue performing work. The court referred to European legislation in this field as well.

Remote work / teleworking

The **Cyprus** Parliament has passed legislation that regulates teleworking, but excludes the public sector.

In **Croatia**, a decree has been issued on the possibility of civil servants who work at alternative workplaces, telework, or work part time.

Transparent and predictable working conditions

In **Ireland**, the High Court considered the changes to probationary periods in employment contracts introduced by Article 8 of Directive 2019/1152/EU of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (Directive on Transparent and Predictable Working Conditions).

Transfer of undertaking

In the **Netherlands**, two District Courts have interpreted Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employee rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (Directive on Transfer of Undertaking).

Working time

The government in the **Czech Republic** has approved a draft amendment to the Labour Code, which intends to eliminate the established possibility of an agreement for additional overtime work in the healthcare sector and to introduce a completely new regulation of working time for selected employees in the healthcare sector.

Estonia has modified the practice of applying working time and rest period regulations. based on CJEU case C-477/21 (*MÁV-START)*. This practice will be adapted as of 01 January 2024. Employers whose employees work according to a schedule must review the calculation of their employees' working time and rest period requirements. Two principles must be observed, namely daily and weekly rest periods. An employee must have at least 11 hours of daily rest time within a 24-hour period.

In **France**, the Paris Court of Appeal issued an initial application of the rulings handed down by the Court of Cassation in September 2023 to align with European law on paid annual leave. The Court of Cassation, after pointing out the incompatibility of French labour law on paid leave with European law, referred two priority questions of constitutionality to the Conseil constitutional to question the constitutionality of the rules on paid annual leave. In addition, a decree

authorises a derogation from the weekly rest period regulation for certain companies in preparation of hosting the 2024 Olympic Games.

In the **Netherlands**, the Minister of Social Affairs and Employment addressed a ruling on overtime pay for part-time workers, independently from CJEU case C-660/20 (*Lufthansa CityLine*).

A **Norwegian** Supreme Court ruling clarifies that the concept of working time in Directive 2003/88/EC influences the interpretation of working time regulations with a national basis and background that go beyond the Directive's minimum requirements.

In **Slovenia**, stricter rules on registering working time have started to apply.

Other developments

In **Croatia**, a decision on the establishment of an information system for a unified electronic record of work using digital work platforms has been issued.

The **Finnish** government has proposed for Parliament to approve ILO Convention No. 190 on the elimination of violence and harassment at work as well as the law that will bring into force the regulations within the scope of the Convention.

According to a Labour Court judgment in **Finland**, employees are entitled to paid time off for part-time sick leave. Any other interpretation would have been contrary to mandatory legislation. The Court referred, for example, to CJEU judgment C-193/17 (*Cresco Investigation*).

Developments on the employment of third-country nationals were reported in some countries. The **French** Senate adopted the text of the bill to "control immigration and improve integration", which includes a section on labour law and more specifically, a provision for a pilot phase until 2026 for a one-year residence permit for "work in short-staffed occupations", while illegal workers will be able to apply for regularisation under this new card. **Sweden** has imposed a higher maintenance requirement for third-country nationals' work permits.

Implications of CJEU Rulings

Working time

This Flash Report analyses the implications of a CJEU ruling on part-time work.

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

The present case concerned the interpretation of Clauses 4.1. and 4.2. of the Framework Agreement on Part-time Work, concluded on 06 June 1997 (hereinafter referred to as "Framework Agreement"), which is annexed to Council Directive 97/81/EC of 15 December 1997.

The decision is not expected to have any major implications nor is it of direct relevance for **Bulgaria**, **Cyprus**, the **Czech Republic**, **Croatia**, **Finland**, **Hungary**, **Italy**, **Lichtenstein**, **Lithuania**, **Latvia**, **Romania**, **Spain**, **Slovakia** and **Slovenia** because those countries' national legislation corresponds to and complies with the CJEU's interpretation. Therefore, no amendments to legislation will be necessary following the CJEU's decision. For example, in **Romanian** legislation, overtime work is prohibited for part-time workers. Furthermore, work performed by part-time workers who exceed their agreed working hours is considered to be undeclared work and entails substantial fines. Therefore, the issue raised in CJEU case C-660/20 would not arise in Romanian jurisprudence. Moreover, **Italian** law and collective bargaining for aircraft pilots comply with the CJEU's ruling. In **Latvia,** this case does not have any direct implications, as national law requires payment for time actually worked. Furthermore, in **Hungary**, the Labour Code or other Acts do not contain a specific provision on *pro rata temporis*. Therefore, the general anti-discrimination provisions of the Equal Treatment Act shall be applied, which provide a solid legal basis for the courts to comply with EU law requirements as stated by the CJEU judgment on part-time work.

The recent ruling in C-660/20 may have implications in some countries (**Austria**, **Belgium**, **Denmark**, **Estonia**, **Iceland**, **Luxembourg** and **The Netherlands**). For instance, there may be implications for provisions in **Danish** collective agreements concerning the right to overtime pay for part-time employees. This rests on individual assessments whether objective reasons exist for a difference in treatment between full-time and part-time employees. It cannot be established with certainty that the general practice in Denmark contradicts EU rules on part-time work.

The implications of CJEU case C-660/20 for **Estonian** labour law are modest. The ruling clarifies who is considered a comparable employee. This CJEU ruling may be relevant for the interpretation of the aforementioned rules of the **Portuguese** Labour Code on part-time work and the prohibition of less favourable treatment of part-time workers in comparison with full-time workers. Specifically, it is anticipated that this interpretation of the CJEU may have implications for the application of the thresholds defined by the law for the payment of overtime work. Under Portuguese law, the amounts due for overtime work double after the initial 100 hours of overtime work rendered in the given year (Article 268 of the PLC). Although there is no provision that reduces this threshold for part-time workers, in the light of the CJEU's ruling, it seems defensible that an interpretation of this rule is compatible with EU law that the threshold of 100 hours should be adjusted in accordance with the normal period of work applicable to the part-time worker.

This decision will have a significant impact in some countries (**Germany**, **Greece**, **Malta**, **Norway**, **Poland** and **Sweden**). In **Germany**, the ruling is reported to have major implications on case law while the **Polish** law on the right of part-time workers to an overtime bonus is not compatible with Directive 99/70 as interpreted by the CJEU. Serious implications have also

been reported in **Norwegian** law, as the ruling seems to reject the approach that forms the basis for the national regulation of overtime pay, namely that a uniform trigger threshold for overtime pay does not constitute a difference in treatment, as part-time and full-time workers receive the same pay for the same number of hours worked.

Table 1: Major labour law developments

Topic	Countries
Annual leave	**FR**
Collective bargaining and collective action	**AT LU NL SI SE**
Collective redundancies	**IS**
COVID-19	**BE**
Dismissal protection	**BE NL IT**
Employee representation/participation	**LT LU NL**
Minimum wage	**HU RO ES**
Occupational health and safety	**BE FI HU**
Part-time work	**NL**
Platform work	**HR LU SI**
Pregnant workers	**ES UK**
Remote work / teleworking	**CY HR LU**
Sick leave	**FI NL**
Temporary agency work	**CZ NL MT**
Third-country nationals	
Transfer of undertakings	**NL UK**
Transparent and predictable working conditions	**IE SI**
Undeclared work	**LU**
Whistleblowing	**HU IE**
Work-life balance	**IE LU SI**
Working time	**CZ EE FR LU NO ES SI SE UK**

Austria

Summary

(I) No new labour legislation has been passed and no decisions of interest from the perspective of EU labour law have been published.

(II) Important sectoral collective bargaining agreements (metal industry, social services) have been concluded, which usually serve as a benchmark for bargaining in other sectors.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

The Working Time Act (*Arbeitszeitgesetz* – AZG), in principle, provides for a general trigger threshold of eight working hours per day and 40 working hours per week. Any working hours that exceed these thresholds are to be considered overtime work (§ 6 AZG) and are to be remunerated with an additional 50 per cent overtime bonus. This working hours' threshold applies to part-time workers as well – for them, all hours exceeding their agreed working hours (so-called 'additional hours') are to be remunerated with an additional 25 per cent overtime bonus (§ 19d AZG). When they exceed the overtime threshold of eight hours/day or 40 hours/week, part-time workers also become entitled to a 50 per cent bonus.

In the past, this difference in treatment was considered to be in line with the Part-Time Work Directive. The Austrian Supreme Court (Oberster Gerichtshof – OGH 8 Ob A 89/11p, 28 June 2012 and before 8 ObA 11/05h, 19 December 2005) explicitly referred to the CJEU's decision in *Heming* (CJEU case C-399/92, 15 December 1994) and *Voss* (CJEU case C-300/06, 06 December 2007) and stated that part-time employees may not be paid less than full-time employees for the same amount of working hours. If this requirement is met, however, there is no discrimination against part-time employees, neither in terms of the prohibition of part-time discrimination nor in terms of indirect gender discrimination.

The Supreme Court did not, however, refer to the decision in case *Elsner-Lakeberg* (CJEU case C-285/02, 27 May 2004) and was criticised for this in the literature (Wagner, Commentary on OGH 8 ObA 98/11p, ZAS 2013, 185). It was disputed in the literature whether the decision in *Elsner-Lakeberg* led to a difference in assessment of the provisions on the overtime bonus in the AZG. While some voices (Lutz/Mayr, Mehrarbeitszuschlag bei Teilzeit und kollektivvertraglich verkürzter Wochenarbeitszeit, ecolex 2008, 756; Wagner, ZAS 2013, 185) considered the difference in treatment to be a discrimination of part-time workers, others (Risak, Aktuelle Rechtsprobleme des Mehrarbeitszuschlags, ZAS 2009, 309; Gerhartl, Mehrarbeitszuschläge als Gleichbehandlungsproblem, taxlex 2009, 173; Gleißner, Diskriminiert der Mehrarbeitszuschlag?, RdW 2008, 68) considered it justified due to the

different aims pursued by the overtime bonus and the bonus for additional work. The overtime bonus compensates for the strain that comes with long daily and weekly working hours, while the bonus for additional hours remunerates the employee for his/her flexibility. In any case, it was pointed out that the Supreme Court should have initiated a procedure before the CJEU to clarify this question (Wagner, ZAS 2013, 185).

It has also been pointed out in the literature that § 19b (3c) AZG can be considered discriminatory in the light of CJEU decision *Elsner-Lakeberg* (Felten, in Auer-Mayer/Felten/Pfeil, AZG, 4th ed. 2019, § 19d para. 40 with further references). The provision states that if the applicable collective bargaining agreement provides for additional working hours for full-time workers without an overtime bonus, the same number of working hours does not trigger an additional work bonus for part-time workers. It is argued that in such a case, the *pro rata temporis* principle is to be applied and the number of additional working hours without a bonus is to be reduced in relation to the agreed working time.

In recent years, a number of different constellations have been dealt with (again) by the Austrian courts where a bonus for additional working hours differed for full- and part-time workers: the Austrian Supreme Court (Oberster Gerichtshof – OGH 8 Ob A 32/21w, 03 August 2021) decided that if part-time employees only receive a supplement of 25 per cent for stand-in shifts on Sundays and public holidays and no supplement for night shifts, while full-time employees receive a supplement of 100 per cent for such shifts, this constitutes unjustifiable discrimination according to the Part-time Work Directive 97/81/EC. Therefore, part-time employees must also receive the 100 per cent supplement. The Constitutional Court (Verfassungsgerichtshof - VfGH G 379/2021, 17 June 2022) has considered legislation for judges that provides for overtime work during night time working hours with different bonuses for full-time judges (100 per cent) and part-time judges (25 per cent) as unconstitutional because there is no justification for such differentiation. In the literature (Kiesl, Diskriminierung bei Rufbereitschaften in der Nacht, ÖZPR 2023, 7) it is pointed out that this differentiation is also a breach of the Part-time Directive 97/81/EC and an indirect gender discrimination; these are all aspects the Constitutional Court did not have to deal with. In all such cases the differentiation was absolute, meaning that part-time workers under no circumstances were treated the same as full-time workers, and the courts did not have to reevaluate the 2005 decision concerning the different thresholds for overtime payments.

The decision in case *Lufthansa CityLine GmbH* might trigger a new wave of claims of discrimination by part-time workers as it explicitly considers general thresholds to be discriminatory if they cannot be justified by objective grounds. As in the German case, the Austrian legislation does not explicitly mention any objective ground to justify the difference in treatment. If the special burden of working long hours is put forward as such an objective reason, objectively determined values or scientific knowledge or general experimental data must be provided and it must be shown that it is possible to attain the aim of reducing overtime by foreseeing an overtime bonus. Austrian courts would therefore have to at least argue more substantially if they sought to uphold the opinion that the national legal situation was not in breach of EU legislation. It is also likely that the situation, which was considered unproblematic by the Supreme Court in the past, is now qualified to be in breach of the Part-time Workers Directive. Therefore, this CJEU decision is likely to have at least some implications for Austria.

4 Other Relevant Information

4.1 Important collective bargaining agreements concluded

In Austria, around 850 collective bargaining agreements covering about 98 per cent of workers outside of the public sector are usually renegotiated annually. The so called *`fall round of negotiations´* traditionally starts with the metal workers, and their agreements usually set an important benchmark for all other sectors. This year, the

negotiations have been very difficult due to the high inflation and employers not willing to compensate the workers for at least this percentage. The negotiations were accompanied by industrial actions by the metal workers, which is very unusual for Austria. Some sectors have even "overtaken" the metal workers and have reached agreements before them. This was the case for the social services sector where the social partners agreed on a 9.2 per cent raise following the decision to raise the wages of federal employees between 9.15 per cent and 9.71 per cent, which was passed as an amendment to the respective acts.

On 30 November, an agreement was finally reached in the metal sector, which lies below these rates—on average, the actual wages will be raised by 8.6 per cent—with lower wages raised by 10 per cent, but the raise capped at EUR 400 per month. The minimum wages were raised by only by 8.5 per cent. The parties agreed to a pay raise in 2025 as well – this reflects the average inflation per month, plus 1 per cent.

Belgium

Summary

(I) Until the new Law of 5 November 2023, which contains various labour provisions, the designation of a confidential counsellor to prevent psychosocial risks at work was optional. If all staff representatives in the Committee for Safety and Health at Work in companies with at least 50 employees or, in their absence, the union delegation or the employees requested it, the designation of such a counsellor was mandatory. This will change from 01 December 2023. From that date onwards, the designation of one or more counsellors to prevent psychosocial risks at work will become mandatory for employers that employ 50 or more employees.

(II) Article 39 of the Labour Contracts Act provides that the 12 months prior to the dismissal shall be taken into account when calculating the basis of severance pay in case of variable pay. According to the Constitutional Court, Article 39 of the Labour Contracts Law allows for a period during which no salary was owed by the employer to be excluded from the 12 months on the basis of which the average salary is determined for calculating the severance pay. The Court thus unwittingly uses the word 'service' curiously in its 'ordinary' meaning, that is, work.

1 National Legislation

1.1 Confidential counsellor mandatory in companies with 50 employees or more

In regulations aimed at preventing psychosocial risks at work, including stress, violence, bullying and sexual harassment, two actors play a special role: the psychosocial prevention advisor and the confidential counsellor.

Article 10 of the Law of 05 November 2023 containing various labour provisions, *Moniteur belge* of 23 November 2023, amends the designation of a confidential counsellor. The confidential counsellor has an important first-line function in the informal internal procedure in the undertaking, which allows solutions to be sought without formalism and in a confidential manner.

Currently, the designation of a confidential counsellor is optional. However, if all staff representatives in the Safety and Health Committee for Prevention and Protection at Work, which is mandatory in companies with at least 50 employees, or, in their absence, the trade union delegation, requested it, the designation of such a counsellor was mandatory.

This will change from 01 December 2023. From that date onwards, the designation of one or more confidential counsellors will become mandatory for employers that employ 50 or more employees. For employers that employ fewer than 50 employees, the appointment of a confidential counsellor will only be mandatory in the event that all members of the trade union delegation request it.

The designation and removal from office of a confidential counsellor must be carried out in accordance with the procedure set out in the Safety and Health at Work Law of 4 August 1996. That procedure remains unchanged. Sometimes, the counsellor must be an employee of the company. At least one of the confidential counsellors must belong to the employer's staff if:

- the employer employs 50 or more employees (i.e. this is a new requirement),
- the employer employs 20 or more employees and exclusively uses a psychosocial counsellor from an external service for prevention and protection at work.

The person appointed as a confidential counsellor does not have to have undergone the required training at the time of his/her appointment. It is sufficient for the employer to take the necessary measures to ensure that the individual possesses the skills and knowledge required to perform these duties over two years following their appointment.

2 Court Rulings

2.1 Suspension of performance of the employment contract

Constitutional Court 09 November 2023, No. 148/2023

In this decision, the Constitutional Court recently interpreted 'being in service' which appears in the provision of the Employment Contracts Law of 3 July 1978. This provision prescribes how fully or partially variable pay is to be calculated when determining the basis of a severance payment: "For the variable part, the average of the 12 preceding months or, as the case may be, part of those 12 months during which the employee was in service" (Art. 39, §1, third paragraph, Employment Contracts Law of 3 July 1978). The Constitutional Court recognises that it is the judges' competence of the judicial system, such as the labour courts and the Cour de Cassation, to interpret the legal provisions on the constitutionality of which it is required to rule. But it nuances that this is only the case "as a rule" and "subject to a manifest misreading" of the provisions.

Apparently, the Constitutional Court considered that the Brussels French Labour Court, which submitted the preliminary question to the Constitutional Court on which the Court ruled in the judgment, gave a manifestly wrong reading to the terms quoted above that determine how the variable salary should be calculated as a component of severance pay. The Brussels Labour Court had to decide in a case of temporary force majeure because companies were closed due to the COVID-19 pandemic. According to Article 26 of the Employment Contracts Law, temporary force majeure leads to the suspension of performance of the employment contract and the employer has no obligation to pay the salary. The Constitutional Court *limits* its decision to such a situation (point B.4).

The Labour Court assumed that those terms implied that an employee whose employment contract had been suspended in the 12 months preceding the irregular dismissal entitling him/her to severance pay because of temporary unemployment due to force majeure as a result of the COVID-19 pandemic, in this case during five and a half months, implied that severance pay was limited or even reduced to zero. During the period of suspension of the employment contract, the employee was indeed 'employed', which counted for determining the average according to the labour court's reasoning.

Yet the Constitutional Court determined that the Brussels Labour Court proceeded on the basis of a manifestly wrong interpretation of Article 39, §1, third paragraph of the Employment Contracts Law. That provision must, according to the Court, be read as meaning that the period during which no salary was owed by the employer due to lack of work performance due to force majeure during the COVID-19 pandemic does not count and must therefore be excluded from the 12 months on the basis of which the variable salary is determined for the calculation of severance pay.

Therein, the Court ruled that in calculating the average of the variable part of the salary, the 12-month period should be reduced by the five and a half months of suspension due to COVID-19 (force majeure). During those five and a half months, the employee was apparently not 'employed'. According to the Court, 'employed' therefore means 'at work'.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

Overtime is work performed in excess of the statutory maximum working hours limits.

According to Belgian labour law, i.e. the Royal Decree of 25 June 1990, equating some additional services of part-time workers with overtime work, part-time employees who perform additional services that do not reach the normal limits for overtime work by full-time employees, will receive the overtime allowance under certain conditions, as their additional services are *assimilated* to overtime.

This does not apply to work performed by part-time employees in application of a collective agreement, regulating changes in work schedules or exceeding the applicable work schedule.

Additional services are defined as situations in which:

- a fixed work schedule applies: any performance of work outside the work schedule;
- when a variable work schedule applies: any work that is performed:
- outside the work schedule regularly fixed by the employer;
- as part of a work schedule regularly fixed by the employer, but in excess of the average weekly working hours regularly laid down in the individual agreement.
- Overtime pay supplements are not payable for work performed outside the regularly published work schedule:
- when there is a change in the work schedule following a written agreement of the employees concerned;
- when there is a shift in the work schedule at the written request of the employee.

Employees who work part time are entitled to overtime pay for their additional working hours the same way as full-time employees, namely from the *thirteenth* additional hour of work performed per month.

In principle, overtime entitles the employee to an allowance, an overtime pay of 50 per cent on the worker's regular wage and 100 per cent for overtime work on Sunday or a public holiday.

This statutory scheme has not been judicially challenged until now. At first glance, the Belgian regulation seems to be in line with the CJEU ruling since the regulation does not require a part-time employee to perform the same number of working hours as a full-time worker to receive additional remuneration for the extra work. Nevertheless, it remains to be seen whether the Belgian labour courts will derive other conclusions from case C-660/20. The courts will have to judge whether the thresholds for additional remuneration for part-time employees are sufficiently proportionate to the working hours of full-time workers.

4 Other Relevant Information

Nothing to report.

Bulgaria

Summary

No new legislative acts have been passed in Bulgaria in November.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

The decision in case C-660/22 of 19 October 2023 of the Court (First Chamber) will not have any implications for Bulgarian legislation and national practice in relation to the interpretation of Clauses 4.1 and 4.2 of the Framework Agreement on Part-time Work concluded on 6 June 1997 and annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on Part-time Work concluded by UNICE, CEEP and the ETUC regarding the payment of additional remuneration.

Bulgarian legislation entails specific rules for working hours, which are established in Ordinance No. 4018 of 16 September 2005 on the working hours of aviation personnel. The general rules for determining labour remuneration, provided for in the Labour Code (LC), are also applicable to this category of workers. Overtime work performed shall be remunerated with an increase agreed upon between the employee and the employer, but not less than those specified in Article 262 LC. Collective employment contracts shall not contain clauses that are less favourable for employees than those provided for by law or in a collective employment contract by which the employer is bound (Article 50, para. 2 LC). Article 138, para. 3 of the Labour Code contains a prohibition to put part-time employees in a less favourable position only due to their part-time working hours compared to full-time employees who perform the same or similar work for the enterprise. They shall have the same rights and obligations as full-time employees, unless the law stipulates that specific rights depend on the duration of the hours worked, the length of service, their qualification, etc.. National legislation does not allow for the payment of additional remuneration for part-time employees and comparable full-time employees that are linked to the circumstances analysed in the decision.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

(I) The decision on the establishment of an information system for a unified electronic record of work using digital work platforms has been issued in addition to a decree on the possibility of civil servants who work at alternative workplaces, telework, and work part time.

(II) The Minister of Labour has extended the application of the Collective Agreement for Seafarers on Ships that Carry Out Transport in Coastal Maritime Traffic.

1 National Legislation

1.1 Establishment of an Information System of a Single Electronic Record of Work Through Digital Work Platforms

Based on the Act on Suppression of Undeclared Work (Official Gazette, No. 151/2022), the Government of the Republic of Croatia has adopted the Decision on the Establishment of an Information System of a Single Electronic Record of Work Through Digital Work Platforms.

The development of this information system will be carried out as part of the project '*Introduction of a system for mandatory electronic records of working hours and raising the level of awareness of the benefits of registered work'*, the preparation and management of which is the responsibility of the Ministry of Labour, Pension System, Family and Social Policy.

The decision has been published in the Official Gazette No. 135/2023.

1.2 Extended application of the Collective Agreement for Seafarers on Ships that Carry Out Transport in Coastal Maritime Traffic

The Minister of Labour has extended the application of the Collective Agreement for Seafarers on Ships that Carry Out Transport in Coastal Maritime Traffic. It is now extended to all employers and workers in the Republic of Croatia in this sector (Official Gazette No. 138/2023).

1.3 Decree on the possibility of civil servants who work at alternative workplaces, telework and or work part time

In accordance with this Decree of the Government of the Republic of Croatia (Official Gazette No. 141/2023), civil servants may work from home or from another alternative workplace, telework and work part time, which until now was only possible for private sector employees. The Decree, among others, regulates the types of work that cannot be performed at home or other alternative workplaces or through teleworking; working conditions in case of working from home or in case of teleworking; the procedure for approving such a manner of working; the working conditions of a part-time civil servant, etc.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

According to Article 65(1) of the Labour Act (Official Gazette No. 93/2014, 127/2017, 98/2019, 151/2022, 64/2023), working longer hours than full-time or part-time work is considered overtime work. Employees are entitled to a salary supplement (increased salary) for overtime work (Article 94(1) of the Labour Act). This amount is determined by the collective agreement, labour regulations or employment contract (Article 94(1) of the Labour Act). If it is not determined in this manner, the employee will be entitled to an appropriate increase in the salary for overtime work (Article 94(4) of the Labour Act). These provisions apply to the employment relationship of pilots as well. In summary, the above-mentioned provisions of the Labour Act are in line with the CJEU's judgment in case C-660/20.

4 Other Relevant Information

4.1 Average salary in Croatia, January-August 2023

The data on average salary in Croatia was published (Official Gazette No. 131/2023).

The average monthly paid net salary per employee in legal entities of the Republic of Croatia for the period January - August 2023 was EUR 1 131.

The average monthly gross salary per employee in legal entities of the Republic of Croatia for the period January – August 2023 was EUR 1 560.

Cyprus

Summary

The Cyprus Parliament has passed legislation that regulates teleworking, but it excludes the public sector.

1 National Legislation

1.1 New law regulates teleworking

Teleworking has been approved by Parliament via a new bill (*Ο περί Ρύθμισης του Πλαισίου Οργάνωσης της Τηλεργασίας Νόμος του 2023*). However, the legislation does not cover the public sector. During the Parliamentary Committee deliberations, the Federation of Organisations for Persons with Disabilities (KYSOA) expressed strong disagreement with the bill's provisions, arguing that the proposed regulations are discriminatory on the grounds of disability as they are not in line with the provisions of the UN Convention on the Rights of Persons with Disabilities. The KYSOA representative stated that teleworking is a form of reasonable accommodation to enable persons with disabilities to enjoy the right to work on an equal basis as any other worker. Therefore, KYSOA asserted that the provisions should be included in the Bill under consideration to ensure that the human right of persons with disabilities to work is duly guaranteed by providing for reasonable accommodation of teleworking as a form of employment for persons with disabilities in cases where such persons face any obstacle to commute to work, and to ensure that at the stage of planning and implementation of teleworking, adequate consideration is given to the needs of persons with disabilities to ensure that their needs are adequately taken into account (*Έκθεση της Κοινοβουλευτικής Επιτροπής Εργασίας, Πρόνοιας και Κοινωνικών Ασφαλίσεων για το νομοσχέδιο «Ο περί Ρύθμισης του Πλαισίου Οργάνωσης της Τηλεργασίας Νόμος του 2023»*).

In the context of further examination of the Bill under discussion, the Parliamentary Committee of Labour addressed, inter alia, the following issues:

- The need for legislation to regulate the working conditions governing teleworking for public sector and the wider public sector employees, as well as the possibility of broadening the scope of the proposed regulations to include these employees.
- The need to further strengthen the proposed right of the employee to disconnect from electronic means used to provide teleworking outside his/her working hours to fully safeguard the employee's employment rights.
- The extent to which the executive is prepared to adequately implement the proposed legislative framework and effective monitoring of its implementation shall be carried out by inspectors appointed under the proposed provisions.

The Committee was concerned about the possibility of broadening the scope of the proposed regulations to include public sector and wider public sector employees.

The representative of the Department of Public Administration and Personnel of the Ministry of Finance objected to broadening the scope of the proposed legislative arrangements to include public sector employers but suggested that an action plan for the regulation of teleworking be approved with a timespan for implementation by the end of 2024. The Council of Ministers does not have plans to broaden the scope of the proposed legislative arrangements to include the wider public sector. Some legal entities under public law have already made arrangements to provide the possibility of teleworking to their employees. Therefore, according to the same representative, it is up to the Ministry of Labour and Social Insurance to decide whether to include public law entities within the scope of the proposed arrangements and it is up to each public

law entity to decide whether to proceed with the implementation of this flexible form of employment.

The Deputy Director of the Labour Relations Department of the Ministry of Labour and Social Insurance, referring to the extension of the scope of the proposed legislation, stated that the Ministry's objective remains the legislative regulation of teleworking for all employees, regardless of the status governing their working conditions, and stated that the Ministry reserves the right to re-examine the possibility of extending the scope of the proposed legislation.

In summary, the main provisions of the Bill are as follows:

- Teleworking is not mandatory. The legislation defines teleworking as the remote provision of work by an employer using technology under a full-time, part-time or other form of employment contract, which could be provided from an employer's premises or a workplace outside the employer's premises;
- The use of teleworking on a voluntary basis after agreement between the employer and the employee;
- mandatory use of teleworking in exceptional circumstances, which are defined in the Bill;
- prohibition of discrimination against teleworkers;
- an obligation on the employer in relation to the cost of teleworking;
- regulation of the right to disconnect after the end of working hours;
- prior information of the employee by the employer on individual teleworking issues, such as time limits for teleworking, support procedures, restrictions on the use of equipment, risks arising from the use of teleworking, protection of personal data, etc.;
- job security whereby the use of teleworking must not affect existing employee rights such as pay, working hours, etc.;
- regulation of the health and safety of teleworkers;
- providing opportunities for career development, training/training for teleworkers;
- powers and duties of inspectors responsible for the enforcement of the law;
- penalties of up to EUR 10 000 for offenders.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

The case involved a reference for a preliminary ruling of the Federal Labour Court, Germany. The matter related to part-time work (Directive 97/81/EC, Clause 4.1) regarding the principle of non-discrimination of part-time workers and implementation of the principle pro rata temporis in a case involving pilots' remuneration for additional flying duty hours. The issue was whether identical trigger thresholds for full-time and part-time pilots allowed a difference in treatment. The Court ruled that Clause 4.1 of the Framework Agreement on Part-time Work must be interpreted as meaning that national legislation that makes the payment of additional remuneration for part-time

workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, must be regarded as 'less favourable' treatment of part-time workers within the meaning of that provision. Clauses 4.1 and 4.2 of the Framework Agreement on Part-time Work must be interpreted as precluding national legislation that makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, to compensate for a workload specific to that activity.

The Cypriot Law on Employees with Part-time Work (PT Law - *Ο περί Εργοδοτουμένων με Μερική Απασχόληση (Απαγόρευση Δυσμενούς Μεταχείρισης) Νόμος του 2002*, Law on Employees with Part-time Work (prohibition of disadvantageous treatment) No. 76(I)/2002) purports to transpose Directive 97/81/EC concerning the Framework Agreement on Part-time Work. The legislation introduced the principles of non-discrimination for part-time workers, as well as other new concepts such as 'pro rata temporis' and 'comparable full-time worker'. Article 3(1) of the PT Law repeats the same goals as in the Directive, copying the wording of the Directive verbatim, (a) to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work; and (b) to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner that takes the needs of employers and workers into account. The principle of non-discrimination is implied by law in contracts of employment and is presumed to have universal application. The principle *pro rata temporis*, as provided in Clause 4.2 of the PT Directive, is referred to in the PT Law in the same way as in the Directive. The application of the principle is a matter that has not yet been covered by the courts. The term 'pro rata temporis' is defined in Article 2 of the PT Law as follows: whenever a comparable full-time employee receives or is entitled to receive pay or any other benefit, the part-time employee will receive or be entitled to receive such part of the pay or the other benefit on a pro rata basis calculated in accordance with the number of weekly working hours in comparison to the number of hours of the equivalent full-time comparator employee.

4 Other Relevant Information

Nothing to report.

Czech Republic

Summary

(I) The Chamber of Deputies of the Parliament of the Czech Republic has approved an amendment to the Employment Act as amended by major amendments concerning changes to the definition of illegal work, the deletion of proposed provisions that were intended to increase the stability of the position of agency workers who are repeatedly assigned temporarily to the same user and agency workers whose employment relationship is agreed for the duration of the temporary assignment only, and the introduction of contractors' liability in the construction industry.

(II) The President of the Czech Republic has signed the so-called austerity package, a proposal for changes to tax and insurance regulations to reduce the state budget deficit.

(III) The government has approved a draft amendment to the Labour Code, which is intended to eliminate the established possibility of an agreement for additional overtime work in the healthcare sector and to introduce a completely new regulation of working time for selected employees in the healthcare sector.

1 National Legislation

1.1 Amendment to Act 435/2004 Sb., on Employment and Other Related Acts

The draft amending the bill to Act 435/2004 Sb., on Employment and Other Related Acts (including the Labour Code) has been approved by the Chamber of Deputies of the Parliament of the Czech Republic as amended by motions brought forward by the members of Parliament (Print 540/0). A detailed analysis of the members' motions has been provided in previous Flash Reports. Compared to the original text submitted to the government, the draft amendment includes the following changes:

- modification of the definition of illegal employment;
- deletion of the proposed provisions aimed at increasing the stability of the position of agency employees who are repeatedly and temporarily assigned to the same user, as well as that of agency employees whose employment relationship is agreed only for the duration of the temporary assignment;
- liability (surety) rules.

Modification of the definition of illegal employment

Section 5(e) LC defines illegal employment as "*work which features the elements of dependent work as defined in Section 2(1) of the Labour Code and which is performed by a natural person outside the employment relationship, unless expressly permitted by other legal provisions.*" The following sentence has been added: "*The duration of the performance of such work is not relevant for the assessment of whether it constitutes illegal employment.*"

The draft amendment gives Labour Offices leeway to carry out state control in an appropriate manner and to prove that certain employment relationships are in fact illegal as soon as dependent work is performed outside the employment relationship, without supervisory authorities having to prove the duration of such work.

Although it is understandable that labour inspectorates may find it difficult to prove that the essential elements of dependent work are not satisfied, the definition of dependent work is indirectly modified by the bill. The legal definition, as well as the definition of terms, should only be changed in exceptional cases, and only if the content of the

defined term has changed as a result of objective developments, which is not the case here. The legislature's intention to reinforce the position of supervisory authorities does not amount to such a reason. Dependent work is defined in Section 2 of the Labour Code, and the corresponding obligations related to the performance of dependent work in an employment relationship are defined in Section 3 of the Labour Code. The Labour Code does not explicitly mention consistency as one of the essential elements of dependent work, but the defining characteristic of superiority and subordination certainly implies the requirement of some consistency, at least to the extent of the continuation of the employment relationship for a certain period of time from which the dependence and subordination of the employee, as well as the employee's position as the weaker party, still have to emerge. If a natural person personally performs work under the employer's authority, on the employer's behalf and according to the employer's instructions for a very short period of time on a one-off basis, there can be no question of a categorically dependent position requiring special employment protection, nor can social and economic dependence arise in a relationship of limited duration. This interpretation also follows from Czech case law, in particular Supreme Administrative Court judgment sp. zn. 6 Ads 46/2013 of 13 February 2014, and Supreme Court judgment 21 Cdo 2034/2019-313 of 21 January 2020.

Temporary agency work

The Government Bill submitted to the Chamber of Deputies included a draft version of Section 307b LC, according to which employment agencies and users are required to ensure that the temporary assignment of employees to work for the same user does not exceed a total of 3 years over a period of 5 consecutive years. This provision was intended to respond to current EU legislation, in particular to Article 5(5) of Directive 2008/104/EC, as well as CJEU judgment C232/20 *NP v Daimler AG, Mercedes-Benz Werk Berlin* and CJEU judgment C-681/18 *JH v KG*, and finally CJEU judgment C-290/12 *Della Roca*.

In light of the above-mentioned CJEU case law, the current national legislation is not up to the task of preventing the Directive's circumvention, as it does not reasonably preclude a single user from employing agency employees on a permanent basis through repeated assignments. The restriction in Article 309(6) of the Labour Code, i.e. that an employment agency may not assign the same employee to work for the same user for more than 12 consecutive calendar months, is not adequate, because it allows the agency employee to 'waive' the restriction, and this waiver does not even have to be made in writing. Employment agencies also have a statutory exemption from the restriction of chaining fixed-term employment relationships (see Section 39 LC). Repeated assignments of the same agency employee to the same user should only be of sufficient duration to qualify as "temporary". In any particular case, the use of successive assignment contracts should be objectively justifiable.

The proposed Section 309(c) LC, which would have prohibited an employment agency from negotiating an employment contract or an agreement to perform work for the period of the employee's temporary assignment to the user only; such an agreement would be null and void. Under the deleted paragraph, the employment agency could conclude the respective contracts for a fixed period only insofar as the fixed period was not defined by the duration of the temporary assignment to a particular user. Thus, it continues to apply that the law does not in any way prevent the widespread practice of employing an agency employee only for the duration of the temporary assignment while permitting the user, by virtue of the agreement, to terminate the assignment of the agency employee at any time without cause, thereby terminating not only the temporary assignment (which may be considered legitimate) but also the entire employment relationship.

The legitimacy of concluding an employment relationship and thus an agreement to perform work for a fixed period of time that is linked to the duration of the temporary assignment may also be questioned in light of the temporary assignment agreement under Section 308(1)(g) LC, which expressly allows the user and, ultimately, the agency

employee (although not a party to the agreement) to unilaterally terminate such a temporary assignment with immediate effect. Given the de facto tripartite structure of the relationship between the user, the employment agency as the employer and its employee, the de facto termination of the employment relationship depends on the will of the user and, consequently, to the extent of the temporary assignment agreement, on the will of the employer, i.e. the employment agency. However, it is a principle of law that an obligation is conclusively presumed to be concluded for a fixed period only if the parties to the agreement base its duration on the expiry of a period (time specified) or on some other objectively ascertainable manner that leaves no doubt as to when the fixed-term employment relationship will end once the agreed period expires (by analogy, refer also to Supreme Court judgment 21 Cdo 2372/2002).

Since the purpose of the temporary assignment is to enable the user to use the agency employee's work potential for the duration of the assignment only, the temporary nature and flexibility on the part of the client is entirely appropriate. A temporary assignment is therefore quite natural, given its temporary nature, but it is not always possible for a temporary assignment to mirror a 'temporary job' for the employee.

Liability (surety) rules

The Chamber of Deputies added Section 324a to the Labour Code through an amending bill to the above-mentioned draft amendment to the Employment Act and the Labour Code.

Section 324a LC introduces a form of employee protection by way of a statutory liability for unpaid wages. The liability to pay wages, salaries and remuneration under the agreement only applies to activities in the construction industry if they are carried out by a building contractor under the Building Act. For the purposes of this concept, a building contractor is defined in Section 14(d) of the Building Act as a person who provides services through a subcontractor in the course of the construction, alteration or maintenance of a completed construction or in the course of the demolition of a construction. The liability only applies to activities in the construction sector, in particular those listed in the Annex to Directive 96/71/EC. The Regulation does not apply to employees of undertakings that are not connected with these activities, even if they supply materials or energy or provide administrative or legal support for the construction.

Protection is also given to workers who are temporarily assigned by employment agencies, provided that such agency employees carry out work as listed.

Statutory liability (suretyship) applies to all subcontractors, including the general contractor, for wages owed by the employer in the subcontracting chain that are not paid to its employees up to the minimum wage. An employee who has not been paid wages within three months of the due date may bring a claim against any higher-tier subcontractor in the supply chain, including the general contractor. The guarantor must fulfil the obligation within ten days from the date of the request for payment. The regulation of the obligation (surety) in the Civil Code contains an exception in Section 2021, which makes the creditor's right to demand performance of the obligation conditional on the debtor's failure to perform the obligation within a reasonable period of time, despite the creditor's written demand for performance. But since the demand for performance is superseded by the employer's legal obligation to pay the employee's wages, the regulation does not require a prior request for performance from the debtor. Therefore, the employer's demand is not a prerequisite for a claim against the guarantor.

The contractor is liable for the wages, salaries and remuneration under agreement of the subcontractor's employees to the extent that they have participated in the performance of the contract for the contractor, up to the minimum wage.

1.2 Act on the Consolidation of Public Budgets (ST 488/0)

The President of the Czech Republic has signed a draft bill of the so-called austerity package, i.e. a proposal to modify tax and insurance regulations with the aim to reduce the state budget deficit. In terms of labour relations, the impact of these changes is rather indirect. The main changes are the abolition or restriction of the tax deductibility of certain employee benefits and the extension of social insurance for agreements to complete a job. The proposed date of entry into force is 01 January 2024 and, in the case of the extension of social insurance for agreements to complete a job, 01 July 2024.

1.3 Changes in working hours for doctors and other health professionals

In reaction to vocal protests by professional medical associations of doctors against the recently introduced agreement on additional overtime in the healthcare sector, the government has approved a draft amending bill to the Labour Code (ST 581), which will repeal Section 93a of Act 281/2023 Sb., amending the Labour Code, with effect from 01 October 2023, thus abandoning the concept of an agreement on additional overtime in the healthcare sector and introducing a completely new working time regulation for selected employees in the healthcare sector.

The draft amendment allows healthcare professionals to work continuously for up to 24 hours. In practice, this means combining a 12-hour shift and overtime. In other words, the draft amendment allows healthcare professionals to work continuously for up to 26 hours, with three meal and rest breaks of at least 30 minutes each.

Where such long periods of continuous work are required, it will not be possible to observe the statutory rest periods, in particular the daily rest period. Legislation therefore attempts to guarantee the employee a subsequent rest period.

To ensure at least a minimum scope of legal protection for the employee's position, the draft amendment requires the following:

- Incorporating the change in the collective agreement or internal regulation(s) of an employer without a trade union;
- Limiting the 24-hour work scheme to continuous operations;
- Restricting the 24-hour work scheme to health services provided by an in-patient care provider or an ambulatory care provider;
- Limiting the 24-hour work scheme to employees in the healthcare sector only, who are doctors, dentists, pharmacists or non-medical health professionals;
- Incorporating the change based on an agreement with the employee.

In addition, the employer must notify the competent labour inspectorate about the 24-hour work scheme in writing and must keep an up-to-date list of all employees with whom it has negotiated such an agreement.

The draft amendment also addresses the impact of long working hours under Section 83a on the provision of uninterrupted daily rest periods. If the daily rest period is reduced to less than eight hours, the employer is required to provide the employee with a compensatory daily rest period equal to the reduction immediately after the end of working time, followed immediately by an uninterrupted daily rest period of the standard (unreduced) length. This total rest period cannot be reduced again. This will provide the employees affected with the remainder of the previous daily rest period together with the unreduced length of the next daily rest period.

The bill (ST 581) will be debated in Parliament. The government aims for it to come into effect as early as 01 January 2024.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

Czech law regulates part-time employment relationships in Section 80 LC. The law provides that such an employment relationship is deemed to exist if the working hours agreed in writing between the employer and the employee are shorter than the weekly working hours specified in Section 79 LC. The second sentence of the same provision provides that the employee's wage or salary shall correspond to his/her shorter working hours. It follows from the provision in question that the wage or salary is paid to the employee in proportion to the extent of his/her working time.

Remuneration

Section 110 LC lays down the rule that all employees of one employer are entitled to the same wage or salary for equal work or work of equal value. Equal work or work of equal value means work of equal or comparable complexity, responsibility and exertion performed under the same or comparable working conditions and which is of equal or comparable work efficiency and brings equal or comparable work results. Working time is not a legitimate statutory criterion for a difference in wage or salary.

In view of the above, it may be considered that the differentiation made by the employer in the case law under review would not be legal under Czech labour law.

However, in the context of the CJEU's response to the questions referred for a preliminary ruling, it should be noted that the statutory overtime legislation imposes a restriction on the employee who works shorter hours, which does not reflect the proportionate provision of statutory overtime pay.

Under Section 78(1)(i) LC, overtime is only presumed to be work performed in excess of the weekly working hours laid down in Section 79 LC, i.e. work for which overtime pay is payable under Section 114 (wages) and Section 127 (salaries). Thus, in case of a part-time employee, overtime work for which overtime pay is due is defined as work in excess of the legally fixed weekly working hours, i.e. the working hours corresponding to full-time (not part-time) work, not the working hours agreed with the employee (working time). On the other hand, a part-time employee is not required to work the extra hours, which means the employer must conclude an ad hoc agreement with the employee. Thus, the law ties overtime pay for part-time employees to the same number of hours worked as for full-time employees (generally, more than 40 hours per week according to Section 79 LC).

This provision has been interpreted to mean that overtime pay is compensation for overtime work in excess of 40 hours per week, which is the statutory working time for employees in the Czech Republic. This amount of work is burdensome for the employee and is therefore financially compensated by the employer. However, in the light of the reasoning of the CJEU's case law under review, in order to assess the lawfulness of Section 78(1)(i) LC, it is necessary to interpret whether the general limitation of working time can be regarded as an "objective reason" within the meaning of Clause 4(1) of the Framework Agreement, and whether it is a sufficiently objective and transparent criterion for ensuring that this practice corresponds to a real need, which is capable of achieving the objective pursued and is necessary for such purpose (see paragraphs 57 and 58 of the Decision).

As a result, part-time employees must work more hours than contractually agreed to qualify for overtime pay, as they may also have another employment relationship or other gainful activity or, conversely, may be unable to perform other work in view of their health or work-life balance.

Other working conditions

No specific legislation exists for other working conditions of part-time employees. There are also no provisions on the treatment of part-time employees. The general principle of equal treatment and non-discrimination is directly regulated in Section 1a(1)(e) LC and Section 16(1) and (2) LC, which expand upon the general principle and impose an obligation on the employer to ensure equal treatment of all employees with regard to their working conditions, remuneration for work and the provision of other monetary benefits and benefits of monetary value, and would apply to the regulation of the rights and obligations of part-time employees. Paragraph 2 prohibits any discrimination between employees. Cases of permissible difference in treatment and means of protection against discrimination are regulated by Act 198/2009 Sb., on Equal Treatment and Legal Means of Protection against Discrimination (Anti-discrimination Act). Section 6 of the Act contains an exhaustive list of permissible forms of differences in treatment, including, in addition to age requirements, special types of work performed. Working time is not a permissible ground for difference in treatment.

It can therefore be assumed that under Czech law, other working conditions and rights are granted to part-time employees in proportion to the agreed working time.

Therefore, under Czech labour law, working time cannot be invoked as a reason for difference in treatment of employees in terms of remuneration and working conditions, subject to the above-mentioned statutory overtime pay.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

No new legislative acts have been passed in Denmark in November.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

The case concerned a dispute between a German pilot and his employer, an air carrier, for the payment of remuneration for additional flying duty hours. The employee was employed part time, and the ruling concerns an interpretation of the Framework Agreement on Part-time Work concluded on 06 June 1997 and annexed to Council Directive 97/81/EC, Clauses 4.1. and 4.2.

The pilot's part-time employment reduced his working hours to 90 per cent of full-time working hours, and his basic remuneration was reduced by ten per cent. There was no reduction in the number of his flying duty hours during workdays, but he was granted an additional 37 days of leave each year.

Under the applicable collective agreement, the so-called flight duty periods were one component of the working time remunerated as basic remuneration. A worker receives 'additional remuneration' for additional flying duty hours on top of basic remuneration, when certain thresholds of flying duty hours are met within a month. The collective agreements establish three hourly rates, incrementally increasing. The 'trigger thresholds' are—according to the wording of the collective agreement—not reduced for part-time employees. In the specific case, the employer calculated an individual trigger threshold which takes into account the worker's part-time work, and hours in excess of this individual trigger threshold is remunerated with the hourly pay determined on the basis of the basic remuneration. It is only when the flight duty period exceeded the uniform trigger thresholds (applicable to full-time employees) that he received the additional remuneration.

Against that background, the employee claimed additional remuneration on the basis that he would exceed the trigger thresholds if those were reduced according to his part-time percentage for a four-year period. The employee submitted that he was treated in a manner less favourable than a full-time worker, that there was a failure to observe the pro rata temporis principle and that there are no objective grounds justifying that difference in treatment (cf. the EU Framework Agreement on Part-time Work).

The CJEU, after assessing that the case *was* within the scope of the EU Framework Agreement on Part-time Work, first considered whether it must be regarded as a 'less favourable' treatment of part-time workers that the payment of additional remuneration for part-time and full-time workers were uniformly contingent on exceeding the same number of working hours. Under the circumstances present in the case, the CJEU stated that part-time pilots do not reach the trigger thresholds required to be entitled to

additional remuneration, or are much less likely to do so than full-time pilots. Although it appears that remuneration per flying hour appears to be equal, the CJEU noted that those identical thresholds represent a longer flight-hour duty for part-time pilots in relation to their total working time compared to full-time pilots, and consequently, a greater burden for part-time pilots. In conclusion, the CJEU viewed this approach as being less favourable treatment, as part-time workers much more rarely meet the conditions for entitlement to additional remuneration.

The CJEU then considered whether national legislation was precluded by the EU Framework Agreement on Part-time Work, because the objective of those rules was 'to compensate for a workload particular to that activity', in essence, whether the less favourable treatment was justified on objective grounds as laid down in Clause 4.1. The CJEU reiterated that it does not suffice as justification that the difference is provided for by a general abstract norm, such as a law or a collective agreement. Precise and specific factors must be present. The difference in treatment must in fact respond to a genuine need, be appropriate for achieving the objective pursued and be necessary for that purpose. First, the CJEU noted that collective agreements did not mention any justifiable objective grounds. Secondly, the CJEU could conclude from the hearings that the thresholds for triggering flying duty hours laid down in the applicable collective agreements were not based on objectively determined values or scientific knowledge, or on general experimental data, for example relating to the effects of accumulating monthly flying hours. Thus, the employer had not established a genuine need (upon final assessment by the referring court). The CJEU finally considered whether the fixing of uniform thresholds was appropriate and consistent in the light of the objective of protecting pilots' health from excessive workload. In this regard, the ECJ noted that the system is tantamount to failure of taking into account the very reasons behind the introduction of part-time work, such as possible non-work-related burdens borne by the pilot concerned. In addition, it is at odds with the objective of dissuading airlines from making pilots work excessively in the case of part-time pilots.

The CJEU noted that it might constitute a more appropriate and consistent measure—with a view to achieving the objective of protecting pilots' health from excessive workload—to have a system of recovery of working hours or days off, or the fixing of hours per week rather than per month.

In conclusion, the CJEU found that Clauses 4.1 and 4.2 of the Framework Agreement must be interpreted as precluding national legislation that makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, to compensate for a workload particular to that activity.

The ruling may have implications under Danish law.

The EU rules on part-time work have been implemented in the Danish Part-time Act, L 1142 of 14 September 2018, and collective agreements. For employees not covered by a collective agreement which grants rights as laid down in Directive 97/81/EC, the Act applies. The Act elevates the provisions of a collective agreement between DA and LO (the largest employee and employer confederations) as applicable to all employees. Clauses 4.1 and 4.2. are implemented in the said agreement.

There is no general regulation of an employer's right to request the performance of overtime work, also not specifically for part-time workers. Unless otherwise agreed, workers, including those working part-time, may be requested to perform overtime work.

The remuneration for overtime work depends on the individual contract, collective agreement or practice. Under many collective agreements, overtime hours are remunerated with an additional supplement (*tillæg*) to the hourly wage.

It is generally assumed that overtime hours of part-time workers are not remunerated with overtime supplements until their overtime hours exceed the ordinary working time (37 hours per week for full-time employees). Part-time workers receive their hourly wage up to 37 hours of work per week, and overtime pay is then added. This assumption is confirmed by older industrial arbitration practice.

In the industrial arbitration ruling of 23 January 1973, the dispute concerned overtime payment for (female) part-time workers when they performed overtime work beyond their 26 hours of working time. The average working time in the company was 41 ¾ hours per week. The arbitrator held that the reasons that motivated a special payment obligation for overtime work, i.e. the 'increased tension' and nuisance of a personal nature connected with working more than the ordinary working time, are not present for part-time workers. It would not be fair towards full-time employees if part-time employees were remunerated with another and higher salary for the same work within the ordinary working hours at the company. The trade union's claim for special overtime payment to part-time employees was thus rejected. The industrial arbitration ruling of 22 June 1972 concerned a similar dispute, and the ruling seems to be in line with the ruling summarised above. An industrial arbitration ruling of 21 September 2000 also lays down a similar interpretation. In that case, part-time employees were not entitled to a specific 'warning supplement' (*varskotillæg*) until they fulfilled the same duties as full-time employees with regard to working hours due to long-standing practice, despite the wording of the collective agreement not differentiating between full- and part-time employees.

In general, it seems that the principle is still applied by social partners today. The wording of several collective agreements suggests that the interpretation is still applied, e.g. Industrial Agreement 2023-2025, Clause 13 subclause (7) litra d) (p. 38):

> "Not-full-time employees receive an overtime rate for hours beyond the agreed weekly working hours if the hours lie outside the normal working hours of the company/department".

This is also the approach promoted by several trade unions and employer organisations. The working time for part-time workers up to the full-time norm is called 'additional work' (*merarbejde*), whereas hours beyond the full-time norm is called 'overtime work' for full-time as well as for part-time employees.

The question is whether the practice for regulating overtime pay for part-time workers under Danish collective agreements are in conflict with EU rules on part-time work in light of the new CJEU ruling. As we read the Court's decision, as a starting point, the practice must be considered 'less favourable treatment' of part-time workers, as they will rarely meet the conditions for (the more economically favourable) overtime pay.

The legitimacy of the Danish practice then depends on whether the less favourable treatment can be justified. The employer must provide objective reasons for the difference in treatment. This is a concrete assessment taking the precise and specific factors of the situation into account.

First, Danish collective agreements generally do not specifically mention any objective grounds in the wording of the relevant provisions. It is questionable whether the employer-side can prove that it is responding to a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose. At least with a view to the historic background, as seen in the industrial arbitration rulings, whereas the arbitrator rejects that part-time employees are exposed to the 'increased tension' and nuisance of a personal nature in case of overtime work.

The CJEU explicitly rejects the German rules, inter alia, as they fail to take any specific personal reasons into account for taking on part-time work, such as matters of a private nature for the pilot concerned. On the other hand, the CJEU noted that it might constitute a more appropriate and consistent measure—with a view to achieving the objective of protecting the pilot's health from excessive workload—to have a system of

recovery of working hours or days off in lieu, or the fixing of working hours per week rather than per month.

In Denmark, overtime work is in general fixed according to the weekly working hour norm. Collective agreements may prescribe overtime pay and may also, in parallel, prescribe taking overtime hours off in lieu (*afspadsering*), such as in the Industrial Agreement Clause 13 subclause 8. Therefore, it is difficult to establish with certainty that the general practice in Danish collective agreements—depending on a specific evaluation—conflict with the EU rules on part-time work.

It is difficult to clearly point to a result. The CJEU ruling leaves open the legitimacy test for the national courts. National courts in Denmark may find legitimate underlying reasons for not paying overtime supplements until the part-time worker has reached the normal full-time working hours.

An overall reason, which is not expressed in the collective agreements, is the underlying policy of encouraging full-time work. The traditional approach of trade unions is that full-time work is the best solution for workers, and thus full-time work is pursued as the best case. Part-time work is generally frowned upon, as it places workers in a more exposed situation. For this reason, working conditions for part-time work are reserved.

In addition, Denmark has experienced a labour shortage in the last five to ten years. From a policy perspective, all sails are set to encourage full-time employment over part-time employment in labour market policies. This includes aiming to increase the working hours for already employed persons, considering special benefits for full-time employees, etc. This of course is also in breach of the Part-time Directive, but is considered to be justified in view of the current lack of labour, and special measures must be taken.

There is a general tradition of resistance to awarding special working conditions to part-time workers over full-time workers with a view to supporting full-time work as the standard form of work, as the right/protection of workers, and additionally for the time being, with a view to activating all available working hours, so workers work part-time only when needed.

Paying overtime to part-time workers for the working hours between part-time and full-time weekly working hours in essence discriminates against full-time workers, who, when working the same hours as part-time workers, would receive less hourly pay for the same hours worked. A part-time worker, contracted for 30 hours per week, would receive a supplement for overtime hours worked from 31-37 hours per week, which would be a higher payment for a week's work compared to a full-time worker who receives the normal hourly pay for all 37 hours worked per week.

In the Danish view, the issue of supplementing remuneration for part-time workers cannot be settled without favouring one over the other. One version favours part-time workers over full-time workers, and the other does not compensate part-time workers fully for overtime work in relation to their part-time work scheme. Both versions are imperfect.

So far, the Danish approach has been to be more inclined to not discriminate full-time workers, as this would encourage workers to not work full-time – and the overall notion is, that full-time work is in principle the better working relationship for the worker as well as for the employer (for some employers).

For this reason, it is not clear whether a justification test in Denmark would arrive at the same solution as the justification test in the CJEU ruling. It would be a very specific test, involving underlying objective reasons relating to labour- employment- and quality of life policies related to the labour market. Also, the balancing test would be a specific assessment to balance the overall labour- /welfare policies against the burden of unfavourable treatment of part-time employees, which, indeed, may vary from one part-time worker to another.

It is unclear how the social partners in Denmark will react to the recent CJEU ruling – the ruling is being intensely debated, as is the interpretation and the scope.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

Estonia has modified the practice of applying the working and rest time based on the CJEU case C-477/21.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

The CJEU's decision clarifies situations in which a part-time employee is in a less favourable situation compared to a full-time employee. The implications of said judgment on Estonia are indirect, but it clarifies how domestic courts can better assess situations in which a part-time employee may be in a less favourable situation compared to a full-time employee.

In Estonian law, the principle of equal treatment of part-time employees is stipulated in the Equal Treatment Act, Section 11. According to this section, employees who have concluded contracts for part-time employment may not be treated less favourably than comparable full-time employees, unless a difference in treatment is justified on objective grounds arising from law or a collective agreement.

"Comparable employee" refers to an employee who works for the same employer, is engaged in the same or similar job, with due regard being given to the qualifications and skills of the employee. Where there is no comparable employee employed by the same employer, the comparison is made with reference to the applicable collective agreement. Where there is no collective agreement, an employee engaged in the same or similar work in the same region shall be deemed a comparable employee.

The case mentioned above clarifies how "comparable employee" could be interpreted. So far, there have only been few decisions in Estonian case law that have dealt with the less favourable treatment of part-time employees.

4 Other Relevant Information

4.1 Implementation of working time and rest periods from 01 January 2024

On 02 March 2023, the European Court issued a decision in case C-477/21 (*MÁV-START*), which amends the current practice in Estonia in terms of implementing working time and rest period requirements. It is not an amendment to the law, but an interpretation of national law in the light of European Union law based on the CJEU's decision mentioned above.

The CJEU's decision is binding for all Member State courts dealing with the same issue.

As a result of the CJEU's decision, daily and weekly rest periods are treated as separate rights with different purposes. Therefore, daily rest periods are not considered part of the weekly rest period, but must be preceded by the weekly rest period, also in situations in which the Member State has stipulated a weekly rest period that is more favourable than the minimum requirements established by the Directive.

Based on the CJEU's decision in case C-477/21, the practice of implementing working time and rest periods will be adapted as of 01 January 2024.

Employers whose employees work according to a schedule must review the calculation of their employees' working time and rest period requirements. Two principles must be observed, namely daily and weekly rest periods. An employee must have at least 11 hours of daily rest time within a 24-hour period.

The weekly rest period means that the employee must be able to rest for at least 48 hours consecutively in case of a normal working time calculation or at least 36 consecutive hours in case of a cumulative working time calculation (working on the basis of a schedule).

To date, a scheduled employee was entitled to a 36-hour weekly rest period once every seven days without this being preceded by a daily rest period of 11 hours. From 01 January 2024, the employee must be guaranteed both daily and weekly rest periods consecutively at least once in seven days: 11 hours + 36 hours = 47 hours in total. The number of working hours per month remains the same.

The labour inspectorate will start monitoring the working time and rest period requirements from 01 January 2024, based on the new interpretation. The labour inspectorate monitors compliance with the requirements of daily and weekly rest periods during general inspections and does not perform separate monitoring services.

Finland

Summary

The government has proposed Parliament to approve ILO Convention No. 190 on the elimination of violence and harassment at work.

1 National Legislation

1.1 Government proposal on approval of ILO Convention No. 190

The government has proposed (Government Proposal HE 89/2023 vp) for Parliament to approve ILO Convention No. 190 concerning the elimination of violence and harassment at work as well as the law that will bring into force the regulations within the scope of the Convention. The law contained in the proposal is intended to enter into force as determined by a government decree so that it enters into force at the same time as the Convention. According to the government proposal, the adoption of the Convention promotes and supports the realisation of the fundamental rights stipulated in the Constitution of Finland (Suomen perustuslaki, 731/1999). The government submitted its proposal to Parliament on 23 November 2023.

2 Court Rulings

2.1 Right to partial sickness allowance

According to Labour Court judgment TT 2023:68, 21 November 2023, employees are entitled to paid time off for part-time sick leave. Any other interpretation would have been contrary to mandatory legislation. The Labour Court stated that a collective agreement cannot be concluded or applied contrary to mandatory law. As long as measures to restore equal treatment have not been taken, compliance with the principle of equal treatment can only be ensured by granting persons from a disadvantaged group the same benefits as those in a privileged group. Disadvantaged persons must therefore be placed on the same footing as persons benefiting from the respective advantage. The court referred, for example, to CJEU judgment C-193/17 of 22 January 2019, *Cresco Investigation*, paragraph 79.

The Labour Court held that a worker who is entitled to partial sickness allowance under Chapter 8, Section 11 of the Health Insurance Act (Sairausvakuutuslaki, 1224/2004) was entitled to time off in accordance with Clause 3 of the Working Time Reduction Agreement in proportion to the full-time contractual hours worked (40 hours per week). Any other interpretation would have been contrary to the *pro rata temporis* principle referred to in Chapter 2, Section 2 of the Employment Contracts Act (Työsopimuslaki, 55/2001) and would have also been directly discriminatory on the basis of the employee's state of health and contrary to the prohibition of discrimination in Section 8 of the Non-discrimination Act (Yhdenvertaisuuslaki, 1325/2014).

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

According to Chapter 2, Section 2(2) of the Employment Contracts Act, less favourable employment terms than those applicable to other employment relationships may not be applied to fixed-term and part-time employment relationships without a proper and justified reason, merely because of the duration of the employee's employment contract

or working hours. In accordance with the principle of proportionality, the starting point is therefore that the terms of employment, including the remuneration of part-time workers, are determined in proportion to the time worked in the same way as those of a full-time worker (*pro rata temporis*).

4 Other Relevant Information

Nothing to report.

France

Summary

(I) A decree has been published to supplement the information to be provided by employers when their employees are required to work abroad.

(II) Another decree authorises a derogation from the weekly rest period regulation for certain companies in preparation of hosting the 2024 Olympic Games.

(III) The Paris Court of Appeal has issued an initial application of the rulings handed down by the Court of Cassation in September, to align with European law on paid annual leave. The Court of Cassation, after pointing out the incompatibility of French labour law on paid leave with European law, referred two priority questions of constitutionality to the Conseil constitutional to question the constitutionality of the rules on paid annual leave.

(IV) Lastly, a law on immigration is currently before Parliament and provides for certain labour law measures.

1 National Legislation

1.1 Further information on the transposition of Directive (EU) 2019/1152

Since 01 November 2023, the information employers must provide to employees who work abroad has been modified. These changes, introduced by a decree dated 30 October 2023, intend to finalise the transposition of Directive 2019/1152 of 20 June 2019 by the Law of 09 March 2023 on provisions for adapting to European Union law in economic and financial matters.

This law created Article L. 1221-5-1 in the Labour Code. The article refers to a decree for determining the list of information to be transmitted by the employer to the employee. The Decree of 30 October 2023 specifies what information must be provided and the procedures for preparing and issuing it.

The Labour Code refers specifically to employees unlike the Directive, which refers to the broader concept of workers.

1.2 Temporary suspension of weekly rest periods during the 2024 Olympic Games

A decree published on 23 November 2023 authorises a derogation from the weekly rest period regulation (35 consecutive hours, including the weekly day of rest, which is generally Sunday) in companies experiencing an extraordinary increase in work linked to their participation in the broadcasting or organisation of the 2024 Olympic Games.

From 18 July to 14 August 2024, the weekly rest period may be suspended in establishments experiencing an extraordinary increase in work:

- either for the purposes of filming, transmitting, broadcasting and retransmitting competitions organised as part of the Olympic Games;
- or to ensure activities relating to the organisation of events and the operation of sites linked to the organisation and staging of the Games.

However, this derogation will be limited. The weekly rest period may not be suspended more than twice a month. The hours worked on the weekly day of rest will be considered as overtime and will be deducted from the annual quota.

The law also stipulates that compensatory rest at least equal to the suspended rest period must be granted to the employees concerned immediately after this period (i.e. after 14 August 2024).

2 Court Rulings

2.1 Acquiring paid leave during periods not worked - first applications of European case law by lower courts

In two rulings handed down on 27 September and 12 October 2023, the Paris Court of Appeal made one of the first applications of the solution reached on 13 September by the Court of Cassation, which allows employees who have been on sick leave to be entitled to paid leave in respect of these periods of suspension of the employment contract.

In the first case, Paris Court of Appeal, No. 21/01244, 27 September 2023, an employee had been recruited on 23 October 2008; her employment contract had been transferred several times pursuant to Article L.1224-1 of the French Labour Code. During her period of employment, the employee was on sick leave from 28 October 2017, which was regularly extended until she applied for judicial termination of her employment contract on 25 February 2020. The company was subsequently placed in compulsory liquidation.

The labour tribunal rejected her request on 13 November 2020. This rejection was upheld on appeal on 27 September 2023. The judges noted that the shop in which she worked had been transferred to another company under a management lease with effect from 19 May 2021. Consequently, "*unless it is directed against her current employer, the employee's application for judicial termination is unfounded*".

On this occasion, the employee requested payment of compensation for paid holidays. She relied on the CJEU's case law as set out in Directive 2003/88/EC of the European Parliament and of the Council of 04 November 2003. The employee pointed out that this text and the case law "*make no distinction between workers who are absent from work on sick leave during the reference period and those who actually worked during that period"*.

The Court of Appeal upheld the employee's claim and partially rejected the application of the provisions of Article L.3141-3 of the Labour Code "*in that they make the acquisition of paid leave entitlements subject to the performance of actual work when the employment contract is suspended by the effect of sick leave due to non-occupational illness, and ruled that the employee may claim his/her paid leave entitlements in respect of this period pursuant to Articles L.3141-3 and L.3141-9 of the Labour Code"*.

The employer was therefore ordered to pay the employee three years' compensation for paid leave. The employee was "*entitled to paid leave for the period during which she was not working. As she was unable to exercise her holiday entitlement, the Court ruled that she was entitled to the corresponding compensation that she is claiming for the years 2018, and 2019 to November 2020, i.e. EUR 6 000"*.

In the second case, Paris Court of Appeal, No. 20/03063, 12 October 2023, the employee had been hired on 18 February 1991. During the term of her employment contract, the employee was on sick leave several times: from 04 March to 04 September 2014, from 26 September 2014 to 08 November 2015, from 27 December 2016 to 17 February 2017, again from 28 February 2017 to 05 March 2018, before being recognised as suffering from a category II disability and being dismissed for unfitness and incapacity for work.

As part of this dispute, the employee claimed back pay in lieu of paid leave. She invoked Article 27 of the applicable collective bargaining agreement for air transport ground workers, which sets the number of paid holidays in relation to the employee's seniority,

as well as taking periods of illness into account under certain conditions set out in Article 26 of the collective bargaining agreement.

The employee therefore claimed that she was entitled to 32 working days of paid leave over the last three years of employment with the company, except for 2015, when she was no longer entitled to the same benefit for a period of one month. The employer claimed that the employee's calculations were incorrect, since only periods of actual work entitle employees to paid leave, and absences due to illness do not entitle employees to paid leave.

The Court of Appeal, relying on the same arguments as the Court of Cassation in its ruling of 13 September 2023, invoked the CJEU's case law and Directive 2003/88/EC to set aside Articles L.3141-3 and seq. of the Labour Code. It points out that this text "*makes no distinction between employees who are absent due to sick leave during the reference period and those who have actually worked, and in the case of absence due to duly prescribed sick leave"* and that consequently, "*a Member State may not make entitlement to paid annual leave subject to the obligation of having actually worked during the reference period*".

The Court of Appeal noted that in the case in question, there was no company agreement, internal regulations or provisions of the applicable collective agreement "*enabling the aim pursued by the Directive to be achieved, enabling national legislation to be interpreted in such a way as to ensure compliance with Article 7 of Directive 2003/88/EC and Article 31(2) of the Charter of Fundamental Rights"*.

In the absence of provisions to this effect, the Court ordered the employer to pay the employee EUR 7 336.69 in paid holiday.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

If the national legislation of an EU Member State provides for the same threshold for compensation for full-time and part-time workers, the CJEU has now concluded that such practice is contrary to EU law. Entitlement to additional remuneration must be proportionate to the worker's working time. This will more appropriately balance the proportional time required of full-time versus part-time workers in terms of when they are entitled to additional remuneration. The CJEU concluded that identical trigger thresholds for additional remuneration represent a longer flight hour duty for full-time pilots compared to their total working time. Part-time pilots will meet the conditions for entitlement to additional remuneration far more rarely than their full-time counterparts according to the CJEU.

This practice puts part-time pilots in a less advantageous position, which is contrary to EU law, unless objective grounds exist for such a difference in treatment of part-time pilots.

Under French law, a part-time employee shall not work more than the working hour limits set out under labour law (Article L3121 of the Labour Code) as follows:

- less than the legal weekly duration: 35 hours, or
- less than the legal monthly duration: 151.67 hours, or
- less than the legal annual duration: 1 607 hours.

Part-time employees are entitled to receive overtime pay for any hours worked beyond their regular working hours. The amount of overtime pay varies depending on the number of hours worked and the specific provisions of the employment contract or collective agreement that applies to the employee.

In the absence of an agreement, the number of additional hours worked by a part-time employee during the same week or month or for the period provided for by a collective agreement, may not exceed one-tenth of the weekly or monthly working time provided for in the employment contract and calculated, where applicable, over the period provided for by a collective agreement.

The minimum working time of part-time employees in accordance with Articles L.3123-1, L.3123-7, L.3123-19 and L.3123-27, Labour Code is 24 hours per week, unless fewer hours are authorised by an applicable CBA. Derogations from the 24-hour minimum working time are also possible when requested by the employee. The 24-hour minimum working time does not apply to fixed-term contracts of a duration of up to seven days.

Where applicable, part-time employees' minimum working time is the monthly equivalent of this duration or as provided for under their contract or the collective agreement. Part-time employees are not allowed to work more than one-tenth of the weekly monthly working time provided or up to one-third of their weekly working hours in some cases or as provided for in their contract or the collective agreement. Any hours worked beyond these limits are considered overtime and must be paid accordingly.

A part-time employee is entitled to a premium pay of not less than 10 per cent of the regular hourly rate for the first eight hours of overtime worked within a week, and 25 per cent for any additional hours worked beyond the initial eight hours.

For full-time employees, overtime work refers to any work performed beyond the established weekly limit of 35 hours. When an agreement has been concluded, overtime pay may not be less than 110 per cent of the employee's regular wages. If no agreement has been concluded, overtime pay should be 125 per cent of the regular pay for the initial eight hours and 150 per cent thereafter.

Employers may choose to compensate employees with paid time off instead of remuneration for overtime (in whole or in part). A compensatory rest period is mandatory for any working hours performed beyond the annual quota of overtime (220 hours/year subject to different quotas provided for in a company/branch level agreement). In the absence of more favourable provisions provided for in an agreement, the premium is set at 50 per cent of overtime hours worked beyond the annual quota of 100 per cent of the same hours if the company has more than 20 employees.

These compensatory rest rules do not exist for part-time workers who perform supplementary work.

4 Other Relevant Information

4.1 Immigration bill

On 14 November, the Senate adopted the text of the bill to "control immigration and improve integration". The bill includes a section on labour law.

Article 3 of the bill provides for a pilot phase until 2026 for a one-year residence permit for "work in short-staffed occupations". Illegal workers will be able to apply for regularisation under this new card, which will be automatically issued if the workers:

- have been a resident of France for at least three months;
- have eight months' of experience over the last 24 months in a job or geographical area where there is a shortage of workers.

Employers will not have to take any action, as the card will be treated as a work permit. At present, undocumented workers employed in these sectors can obtain an "employee" or a "temporary employee" card, but these are exceptional regulations at the employer's initiative.

To fight illegal employment, a new administrative fine of up to EUR 4 000 per employee affected (double in the event of a repeat offence) will be imposed on employers who abuse illegal workers. This fine will be added to the criminal and administrative penalties already in place.

4.2 Referral to the Constitutional Council for the annual right to paid leave

Court of Cassation No. 23-14.806, 15 November 2023

After declaring Articles L. 3141-3 and L. 3141-5 of the Labour Code to be contrary to Article 31(2) of the Charter of Fundamental Rights of the European Union, which provides for the right to a rest period and the right to an annual period of paid leave, the Court of Cassation once again put the legitimacy of these texts to the test by referring a priority question of constitutionality to the Constitutional Council for a ruling on their compliance with the Constitution.

Two priority questions of constitutionality were therefore referred to the Constitutional Council. The first concerned compliance of Articles L. 3141-3 and L. 3141-5, 5° of the Labour Code with the right to health and rest periods as set out in paragraph 11 of the Preamble to the Constitution of 27 October 1946; the second concerned compliance of these texts with the principle of equality guaranteed by Article 6 of the Declaration of the Rights of Man and of the Citizen of 1789 and Article 1 of the Constitution of 04 October 1958.

As the matter was referred to the Council on 15 November 2023, a response is expected by 15 December 2023, the latest.

Germany

Summary

No new labour legislation has been passed and no decisions of interest from the perspective of EU labour law have been published.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU Case C-660/20, 19 October 2023, Lufthansa CityLine

The CJEU ruled that Clause 4.1 of the Framework Agreement on Part-time Work annexed to Council Directive 97/81/EC must be interpreted as meaning that national legislation that makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, must be regarded as 'less favourable' treatment of part-time workers within the meaning of that provision. The Court also ruled that Clauses 4.1 and 4.2 of the Framework Agreement must be interpreted as precluding national legislation that makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, to compensate for a workload particular to that activity.

The German courts will now have to carry out the examination of the prohibition of discrimination in accordance with the individual comparison method. So far, the case law of the Federal Labour Court has been inconsistent. It has also been pointed out in the literature that contrary to a decision of the Federal Labour Court of 05 October 2021 – 6 AZR 253/19 (a constitutional complaint is pending against this decision, however), the comparability of full-time and part-time employees is not already ruled out because the parties to the collective agreement have created an "independent time-off regime" for part-time employees, and that the overtime of part-time employees is subject to their consent. The CJEU clarified that the additional days off granted to the pilot had no influence on the comparability with full-time employees. Rather, all employees of the same employer with the same or equivalent activity, who are covered by the relevant collective agreement, must be included in the comparative group formation. Reduced working hours may therefore only be remunerated quantitatively, but not qualitatively, differently to full-time work (see *Stach*, EuGH: Diskriminierung Teilzeitbeschäftigter bei Mehrvergütung, Neue Zeitschrift für Arbeitsrecht 2023, p. 1379; critical of the decision, not least from the point of view of its impact on collective bargaining, however, *Thüsing/Mantsch*, Teilzeitbeschäftigung und Überstundenzuschlag: Diskriminierung durch Gleichbehandlung?, Betriebs-Berater (BB) 2023, p. 2676).

4 Other Relevant Information

Nothing to report.

Greece

Summary

No new labour legislation has been passed and no decisions of interest from the perspective of EU labour law have been published.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

The judgment has implications for Greek law, as it provides for a difference in pay for overtime work between full-time and part-time employees. In particular, if the full-time employee works beyond the working hours provided for in the employment contract, he/she is entitled to a remuneration increased by 20 per cent (Article 74 of Law 3683/2010), while when the part-time employee works beyond the working hours provided for in the employment contract, he/she is entitled to a remuneration that is increased by only 12 per cent (Article 38 para 11 of Law 3892/1990). A difference is thus made depending on the duration of the employee's normal daily or weekly working time.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

(I) Act 25 of 2023 on Complaints and Public Interest Disclosures, and that on the Rules of Whistleblowing Notifications came into force on 25 July 2023. The Act implements Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law.

(II) According to Article 49 (1) of Act 93 of 1993 on Occupational Safety, a compulsory medical examination must be performed at the time of establishment of the employment relationship to assess the worker's capacity to work. The government submitted a bill on 14 November 2023, which abolishes this general obligation.

(III) The government published a draft in August 2023 on several measures to simplify the operation of the state with two proposals affecting employment protection (see also October 2023 Flash Report). Act 70 of 2023 with the same provisions came into force on 1 November 2023.

(IV) The Minister of Economic Development announced on 17 November 2023 that the minimum wage will increase by 15 per cent (to EUR 711), and the guaranteed minimum income will increase by 10 per cent (to EUR 869) from 1 December 2022.

1 National Legislation

1.1 Act on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications

Act 25 of 2023 on Complaints and Public Interest Disclosures, and on the Rules of Whistleblowing Notifications entered into force on 25 July 2023. The Act implements Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. The Act consists of three important chapters:

Chapter 1 (Articles 1-15) depicts the rules of complaints and public interest disclosures, which are based on the former provisions of the replaced Act 165 of 2013 on complaints and public interest disclosures (in force until 2023).

Chapter 2 (Articles 16-49) contains provisions on whistleblowing, which implement Directive (EU) 2019/1937. Chapter 2 (Articles 16-49) contains the following rules on whistleblowing:

- "*An employer who employs at least fifty persons under contract for some form of employment shall establish an internal fraud reporting system. Employers who employ at least fifty and at most two hundred forty-nine persons under contract for some form of employment may establish an internal fraud reporting system jointly, and/or together with another employer so authorised*" (Article 18).
- "*The internal fraud reporting system may be operated by an unbiased person or organisational unit designated for this purpose by the employer. The internal fraud reporting system may also be operated by a whistleblower counsellor or other external organisation under contract*" (Article 19).
- "*In the internal fraud reporting system, reports of information related to unlawful or allegedly unlawful acts or omissions, including other cases of fraud may be submitted. The reporting person may make the report in writing or orally. Oral reporting shall be possible by telephone or through other voice messaging systems, or by means of a physical meeting*" (Articles 20-21).

- *"The investigation of the report shall cover the correctness of the circumstances contained in the report and measures shall be taken for remedying the cases of fraud. If criminal proceedings are to be initiated on the basis of the report, measures shall be taken accordingly"* (Article 23).

Chapter 3 (Articles 50-52) refers to the new whistleblower counsellor: the employer may retain the services of an attorney for performing the tasks related to receiving and handling reports defined in Chapter 2 and those related to its activity, to serve as a whistleblower counsellor under contract. The contract may not be concluded with a legal entity the whistleblower counsellor is engaged with under any other personal service contract, employment or other work-related contractual relationship, or with whom he or she had such a legal relationship in the five-year period prior to the conclusion of the personal service contract.

Based on the personal service contract, the whistleblower counsellor:

a) shall receive reports related to the client's activities;

b) shall provide legal counsel to the reporting person regarding the report;

c) shall maintain contact with the reporting person, and may request information and clarification from the reporting person to investigate the report further, if necessary;

d) may participate, as instructed by the client, in the investigation opened on the basis of the report; and

e) shall inform the reporting person in writing upon request about the events related to the report, in particular the result of the investigation opened based on the report, the measures taken by the client or the refusal to conduct the investigation.

1.2 Draft on abolishing the compulsory medical examination on capacity to work

According to Article 49 (1) of Act 93 of 1993 on Occupational Safety, a compulsory medical examination must be performed at the time of establishment of the employment relationship to assess the worker's capacity to perform the given scope of work.

However, the government submitted a Bill on 14 November 2023 to reduce the administrative burdens for employers and employees. Article 6 of the draft abolishes this general obligation, since a medical examination will only be necessary if a law specifically requires employers in relation to a defined group/category/sector of workers, or the employer voluntarily undertakes this obligation (amended Art. 49 (1) of the Occupational Safety Act).

1.3 Act on Simplification of the State Operation Affecting Labour Rights

The government published a Draft in August 2023 on several measures to simplify the operation of the state with two proposals affecting employment protection (see October 2023 Flash Report). Act 70 of 2023 came into force on 01 November 2023 with the same provisions.

First, Article 16 of Act 70 of 2023 amended the rules on information and training provided by the employer for employees on health and safety at work. Formerly, Article 55 Act 93 of 1993 on Occupational Safety required employers to provide training on health and safety at work. According to the new Subsection 2a), this training may be replaced by an electronic information letter containing the general education material published by the minister responsible for employment. This amendment may have a negative effect on health and safety at work, but may also have an effect on litigation on the employer's liability for damages.

Second, Act 70 of 2023 amends several acts on employment in the public sector (Articles 9, 69, 100, 101, 106, 113, 114, 119 of the Act): the employer is no longer required to deduce the amount of trade union membership fee and transfer this amount to the trade union. This obligation remains in the private sector, but has been abolished in the entire public sector. This may contribute to a further drop in the number of trade union members in the public sector. Therefore, this amendment may contribute to the weakening of social dialogue in the affected sectors. It is remarkable that education is one of the affected sectors, a fact that may be relevant in the light of strike conflicts between trade unions and the government in recent years (see earlier Flash Reports).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

The Hungarian Labour Code does not contain a specific provision on the *pro rata temporis* principle regarding part-time workers. However, the general provision on equal treatment (Article 12) refers to the detailed regulation to Act 125 of 2003 on equal treatment and the promotion of equal opportunities (Equal Treatment Act). The Labour Code and the Equal Treatment Act must be applied in harmony (Article 2 of the Equal Treatment Act).

The Equal Treatment Act (Article 8) considers issues at stake in the CJEU's decision as direct discrimination:

> *"All dispositions as a result of which a person or a group is treated or would be treated less favourably than another person or group in a comparable situation because of his/her*
>
> *r) part-time or permanent employment relationship or other work-related relationship,*
>
> *are considered direct discrimination."*

The Equal Treatment Act (Article 22.1) also contains an exemption clause:

> *"The principle of equal treatment shall not be considered violated if*
>
> *a) the discrimination is proportional, justified by the characteristics or nature of the work and is based on all relevant and legitimate terms and conditions considered during the hiring."*

Consequently, the Labour Code or other Acts do not contain a specific provision on *pro rata temporis*. Therefore, the general anti-discrimination provisions of the Equal Treatment Act shall apply, which provide a solid legal basis for the courts to comply with in terms of the EU law requirements highlighted by the CJEU judgment.

4 Other Relevant Information

4.1 Announced agreement on minimum wage

In earlier Flash Reports, a possible second increase in minimum wage in 2023 was reported for the first time in Hungarian minimum wage history. The Minister of Economic Development announced on 17 November 2023 that:

- the minimum wage will increase by 15 per cent (to HUF 266 800, EUR 711), and

- the guaranteed minimum income will increase by 10 per cent (to HUF 326 000, EUR 869)

from 01 December 2022. The Government Decree No. 508/2023 is available here.

Remarkably, this will be the first time that another increase in minimum wage comes into force during the same year (from 01 December 2022) instead of the traditional 01 of January of the next year (01 January 2023). This is due to the high inflation rate and the decreasing net wages. Although the one-month gain in increase is symbolic, the actual increases (15 per cent and 10 per cent) are far above the expected inflation.

Iceland

Summary

(I) In view of the imminent volcanic eruption, a new law supporting workers not able to work in the affected areas has been adopted.

(II) According to a court ruling—following the advisory opinion of the EFTA court—minor changes to employment agreements on the employer's behalf cannot be considered collective redundancies, but only significant changes to a key part of the employment agreement.

1 National Legislation

1.1 Support for payment of wages due to natural disasters

Due to earthquakes and the danger of a volcanic eruption in the 4 000-person town of Grindavík, the Parliament passed legislation on 27 November 2023 to support workers who have not been able to work or perform their work due to the evacuation of the town with the Act on Temporary Support for the Payment of Wages due to Natural Disasters in Grindavíkurbær. The Act will support payment of wages up to ISK 633 000 (approx. EUR 4 200) a month and is subject to conditions such as the workplace being in Grindavík and the employees being unable to perform their tasks due to the natural disaster. The support is to last from 11 November to 29 February 2024.

2 Court Rulings

2.1 Collective redundancy

On 03 November 2023, the Court of Appeal passed its ruling in Case No. 748/2020. An employer had decided to terminate fixed overtime payments for its employees on its own accord. The employees' unions considered this to be a collective redundancy, but the employer disputed this, pointing out that the employment agreements had not been terminated, but that only fixed overtime payments had ceased.

The EFTA Court issued an advisory opinion on 19 April 2023, stating, *inter alia*, that minor changes to employment agreements on the employer's behalf could not be considered collective redundancies, but that significant modifications to a key part of the employment agreement were considered redundancies.

The Court of Appeal therefore ruled that such a cut in the employees' salary constituted a significant modification to a key part of the employment agreement, and as the numerical limit for a redundancy to be considered a collective redundancy had been exceeded according to Article 1(1) of the Act on Collective Redundancies No. 63/2000, the termination of the fixed overtime salary payments of 113 employees was considered to be a collective redundancy.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

In general, collective agreements in Iceland stipulate that overtime work, which is often around 80 per cent higher than the day-time hourly salary rates, be paid after 40 hours of work in a work week or 173.33 hours of work a month. This applies to full-time as

well as to part-time employees and could therefore, according to this ruling, constitute "less favourable" treatment in line with the Framework Agreement on Part-time Work.

It is therefore necessary to review the appropriate clauses in collective agreements with regard to this ruling.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

(I) Provisions on paid domestic violence leave have come into operation.

(II) The High Court has considered the changes to probationary periods in employment contracts brought about by Article 8 of Directive 2019/1152/EU.

(III) Statutory guidance for public bodies to enhance their implementation of effective processes for handling protected disclosures has been published.

1 National Legislation

1.1 Domestic violence leave

The principal purpose of the Work-life Balance and Miscellaneous Provisions Act 2023, when first introduced, was to give further effect to Directive 2019/1158/EU. During its legislative passage, however, amendments were made to provide for five days of paid "domestic violence leave" per annum: see section 7 inserting section 13AA into the Parental Leave Act 1998. Section 7 was brought into operation with effect from 27 November 2023: see S.I. No. 573 of 2023. The Parental Leave Act 1998 (Section 13AA) (Prescribed Daily Rate of Domestic Violence Leave Pay) Regulations 2023 (S.I. No. 574 of 2023) provides that the prescribed rate of pay is 100 per cent of wages or salary, including any regular bonus or allowance but excluding any pay for overtime or commission.

2 Court Rulings

2.1 Probationary periods

Parliament and Council Directive 2019/1152/EU on transparent and predictable working conditions required implementation by 01 August 2022. The Directive's provisions were ultimately implemented in Ireland by the European Union (Transparent and Predictable Working Conditions) Regulations 2022 (S.I. No. 686 of 2022) with effect from 16 December 2022.

Article 8.1 of the Directive requires Member States to ensure that where an employment relationship is subject to a probationary period, that period should not exceed six months. Article 8.3, however, allows for a longer period, on an exceptional basis. Article 1.6 further permits the Member States to provide, on objective grounds, that Article 8 (and the other Articles in Chapter III) does not apply to *inter alia* civil and certain other public servants.

The rationale for the imposition of a maximum duration on probationary periods is set out in Recital 27 of the Directive, namely to ensure that an entry into the labour market or a transition to a new position "should not be subject to prolonged insecurity".

Article 8 was implemented by the insertion of a new section 6D into the Terms of Employment (Information) Act 1994, subsection (1) of which provides that where an employee has entered into a contract of employment with an employer that provides for a probationary period, such period shall not exceed six months. Subsection (3) then provides that that probationary period may, on an exceptional basis, be longer where such longer period does not exceed 12 months and would be in the interest of the employee. Subsection (2), however, provides that the probationary period of a "public servant" shall not exceed 12 months.

This section was given detailed consideration by the High Court in Whelan v Minister for Transport [2023] IEHC 586, where Simons J. noted that a deliberate decision had been taken "to draw a distinction between employees in general and public servants". For the former, the maximum period is six months, which can be extended but by no more than a further six months where it would be in the employee's interest. The position of public servants, however, was "less nuanced" in that Subsection (2) merely provides that the probationary period of a public servant shall not exceed 12 months. Simons J. confirmed that the section did not allow for an extension of this period.

The distinction also applies in respect of the transitional provisions in Subsection (4) where provision is made for the contingency where on the commencement date (16 December 2022), an employee "other than a public servant" is subject to a probationary period that exceeds six months, and the employee has completed at least six months. Here, a "longstop date" of 01 February 2023 is prescribed by reference to which the period must expire. It followed that for public servants who had already completed 12 months of probation or more, their probationary period expired by operation of law on 16 December 2022 or even possibly on 01 August 2022.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

Clause 4.1 of the Framework Agreement on Part-time Work annexed to Council Directive 97/81/EC was implemented in Ireland by Section 9(1) and (2) of the Protection of Employees (Part-Time Work) Act 2001. These Subsections provide, in general terms, that a part-time employee shall not be treated less favourably than a comparable full-time employee in respect of his or her conditions of employment, unless that unfavourable treatment can be justified on "objective grounds".

The Labour Court has held that the 2001 Act is clear in that "what must be justified is not the more favourable treatment of full-time employees, but the less favourable treatment of part-time employees": see Abbott Ireland Ltd v SIPTU PTD043.

The CJEU's reasoning in this case that part-time pilots were treated less favourably than their full-time counterparts is not reflected in the 2003 decision of the Labour Court in Curry v Boxmore Plastics Ltd PTD035. Here, the Court held that a condition of employment, whereby part-time employees did not receive overtime payments until they had completed the standard number of working hours under which a comparable full-time employee would be entitled to such payments, was not unfavourable treatment.

4 Other Relevant Information

4.1 Whistleblowing

Ireland was one of the first EU Member States to enact comprehensive statutory protections for whistleblowers in the Protected Disclosures Act 2014 ("the Act"). The Act was extensively amended with effect from 01 January 2023 to comply with Directive 2019/1937/EU on the protection of persons who report breaches of Union law. The Directive sets out, *inter alia*, procedures for reporting channels, follow-up of reports of breaches and provisions in relation to confidentiality. Section 21(1) of the Act enables the Minister for Public Expenditure, National Development Plan Delivery and Reform to issue guidance to assist public bodies and others in the performance of their functions under the Act. The Minister has now published that statutory guidance.

Four principles inform that guidance:

(i) All reports of wrongdoing in the workplace should, as a matter of routine, be the subject of an initial assessment and any appropriate follow-up action.
(ii) The focus of the process should primarily be on the wrongdoing reported and not on the reporting person.
(iii) The identity of the reporting person and any person concerned should be adequately protected.
(iv) Provided that the reporting person discloses information relating to a relevant wrongdoing, in an appropriate manner and based on a reasonable belief, no question of penalisation should arise.

It is the Minister's expectation that if these principles are respected, there should be no need for reporting persons to access the protections and redress contained in the Act.

Italy

Summary

(I) In November, the Italian government transposed Directive (EU) 2021/1883 on the conditions of entry and residence of third-country nationals.

(II) The Court of Cassazione dealt with dismissals, disability and reasonable accommodation.

1 National Legislation

1.1 Implementation of EU Directives

On 02 November 2023, the Legislative Decree 18 October 2023 No. 152 was published in the Italian Law Journal. The Decree implements Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment and repeals Council Directive 2009/50/EC.

The new provisions expand the scope of highly qualified foreign workers who may enter and stay in Italy.

2 Court Rulings

2.1 Dismissals and disability

Corte di Cassazione, 13 November 2023, No. 31471

According to the Court, the reduced productivity of the employee for health reasons does not justify dismissal.

If a medical doctor recommends a reasonable accommodation to the employer, which is technically possible and not excessively expensive that will allow the worker to perform work, the dismissal is unlawful. In fact, the employer is required to adopt the "reasonable accommodation" to allow the disabled employee to continue to carry out his/her duties. The Court referred to European legislation in this field as well.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on Part-time Work concluded by UNICE, CEEP and the ETUC was implemented in Italy by the Legislative Decree of 25 February 2000 No. 61.

Part-time work is now regulated in the Legislative Decree of 15 June 2015 No. 81, Articles 4-12, and Italian law distinguishes between overtime work (working hours exceeding normal working hours) and supplementary work. In the latter case, according to Article 6, *"the employer has the right to request, within the limits of the normal working hours, the performance of additional services, meaning for those carried out beyond the hours agreed between the parties. Where the collective agreement applied to the employment relationship does not regulate additional work, the employer may require the employee to provide additional work services not exceeding 25 per cent of the agreed weekly working hours".*

A specific regulation for the working hours of the flight crew is provided by the Legislative Decree of 19 August 2005 No. 185, implementing Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA).

In Italy, without prejudice to the general principles laid down by law (and by Commission Regulation (EU) No. 83/2014 of 29 January 2014, amending Regulation (EU) No. 965/2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No. 216/2008 of the European Parliament and of the Council), the definition of the detailed rules is referred to in the regulatory source and collective bargaining.

The collective agreement of the air carriers of 02 December 2021, aircraft pilots' section, Article 2R, provides that "the economic and regulatory treatment is directly proportional to the reduced duration of the service" and "the accrual of the company's seniority, for the purposes of applying the economic and regulatory treatments provided for in this contract, is directly proportionate to the short duration of the service".

Italian law and Italian collective bargaining for aircraft pilots are compliant with the CJEU ruling.

4 Other Relevant Information

Nothing to report.

Latvia

Summary

No new labour legislation has been passed and no decisions of interest from the perspective of EU labour law have been published.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

The CJEU's decision in case C-660/22 does not have any direct implications on Latvian legal regulations, because according to legal regulation, the pay calculated on the basis of hours worked, in principle, require consideration of all hours actually performed.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

No new labour legislation has been passed and no decisions of interest from the perspective of EU labour law have been published.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

In case C-660/20, the CJEU (First Chamber) ruled as follows:

First, Clause 4.1 of the Framework Agreement on Part-time Work concluded on 06 June 1997 and annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on Part-time Work concluded by UNICE, CEEP and the ETUC must be interpreted as meaning that national legislation that makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, must be considered 'less favourable' treatment of part-time workers within the meaning of that provision.

Second, Clauses 4.1 and 4.2 of the Framework Agreement on Part-time Work concluded on 06 June 1997 and annexed to Council Directive 97/81 must be interpreted as precluding national legislation that makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, to compensate for a workload particular to that activity.

The following statements by the CJEU are essential for understanding the present case:

- Additional remuneration falls within the scope of 'employment conditions' as defined in Clause 4 of the Framework Agreement (CJEU case C-660/20, para 43).
- The situation of the applicant in the main proceedings, as a part-time pilot, is comparable to that of a full-time pilot, subject to a final review which will be a matter for the referring court (CJEU case C-660/20, para 46).
- Since part-time workers meet the conditions for entitlement to additional remuneration much more rarely than full-time workers, a part-time pilot, such as the applicant in the main proceedings, must be considered as being subject to a difference in treatment compared with comparable full-time pilots, prohibited by Clause 4.1 of the Framework Agreement, unless it is justified on 'objective grounds' within the meaning of that clause (CJEU case C-660/20, para 49).
- It will be for the referring court to determine, having regard to all the relevant factors, whether the difference in treatment at issue in the main proceedings can

be considered justified on 'objective grounds' (CJEU case C-660/20, para 56). From the following considerations of the CJEU, which the referring court must take into account, it follows that hardly any objective grounds exist in this sense.

The principle of equal treatment of full-time and part-time employees is laid down in Liechtenstein law in Section 1173a Art. 8b of the Civil Code (Allgemeines bürgerliches Gesetzbuch, LR 210.0). This provision stipulates the following: the employer may not discriminate against a part-time employee compared to comparable full-time employees, unless objective grounds exist justifying a difference in treatment. Where appropriate, the pro rata temporis principle applies.

The present case, which the CJEU had to decide, was particular in two respects: firstly, the presumed discriminatory provision was contained in a collective agreement concluded under German law. A comparable provision could not be found in Liechtenstein collective agreements. Secondly, the case concerned employees with a very specific activity, namely professional pilots. As Liechtenstein is one of the smaller countries, there is no Liechtenstein airline and no official airport. The relevance of CJEU case C-660/20 therefore appears to be low from a Liechtenstein perspective.

4 Other Relevant Information

Nothing to report.

Lithuania

Summary

The Labour Code has been amended to include two legal forms of public institutions (budgetary institutions and public institutions) into the list of employers, where the employee representatives have the right to elect (appoint) at least one member of the collegial management or supervisory board.

1 National Legislation

1.1 Extension of co-determination rights for public sector employees

Parliament adopted the amendment (see June 2023 Flash Report and Law No. XIV 2260 of 16 November 2023. Registry of Legal Acts, TAR, 2023 11 29, No. 22993) to the Labour Code, which extends the right to participation (co-determination), i.e. the right for employee representatives to elect (appoint) at least one member of the collegial management or supervisory board in:

- Budgetary institutions (*biudžetinės įstaigos*) – from 01 January 2024, and
- Public institutions (*viešosios įstaigos*) – from 01 May 2024.

In accordance with Article 211 on the Labour Code, the right to appoint members of the board is vested in the works council or the employees´ trustee. Only in the absence thereof shall the trade union, acting on the employer level, have the right to appoint part of the members of the supervisory body of an enterprise, establishment or organisation.

Lithuania is among few European Union Member States that has no effective co-determination or participation rights. The Labour Code only introduced the right to appoint or elect employee representatives in the State and Municipal Enterprises in 2016. Currently, the role of employees on the boards is rather insignificant – the appointed members of (supervisory) boards often do not possess knowledge and experience about their opportunities and the modus operandi. The attitude of the management and stakeholders in public institutions is rather loose – the employee representatives are very often considered as passive observers of the ongoing processes in the enterprise.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

At the outset, it should be emphasised that there is no specific legislation or any collective bargaining agreements that cover pilots in Lithuania, therefore, the national collective agreement provisions on additional remuneration are non-existent. If the ruling's logic is transferred to comparable situations that could hypothetically arise in other sectors, there are no explicit provisions in the law that would specifically impose the duty on employers to tailor the system of 'additional remuneration', taking into account the situation of part-time workers. It seems that the general rules on part-time

work (Article 40 (6) of the Labour Code) would be sufficient to prevent discriminatory treatment of part-time workers.

According to Article 40 (6) of the Labour Code:

> *"Part-time work shall not result in limitation when setting the duration of annual leave, calculating the length of service, promoting an employee, improving qualification, and shall also not limit other employment rights of the employee in comparison to employees who perform a similar or equivalent work on a full-time basis, taking into account the length of service, qualifications and other circumstances. Part-time work shall be paid in proportion to the time spent at work or the work carried out."*

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

The new government has formed a coalition agreement that includes a number of labour law reforms.

1 National Legislation

Nothing to report. Legislative elections have just taken place and both the Chamber and government have been reshuffled.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

There is no national legislation or rule that makes a specific benefit (such as the payment of additional remuneration) for part-time workers and comparable full-time workers uniformly contingent on the same conditions (such as a certain number of hours worked). No case law exists for such a situation. While collective agreements are not all public, there is no specific collective agreement containing such a clause. If the question arises however, there is no doubt that Luxembourg courts would follow EU case law.

4 Other Relevant Information

4.1 Developments related to the new government

A new government has just taken office. The new Minister of Labour is Georges Mischo, who was previously mayor of the country's second largest city and had no previous government responsibilities. He is also Minister for Sport; he used to be a sports teacher.

The Ministry's name has been simplified. The "Ministry of Labour, Employment and the Social Solidarity Economy" («*Ministère du Travail, de l'Emploi et de l'Économie sociale et solidaire*») has become the "Ministry of Labour" («*Ministère du Travail*»). However, both the social economy and employment policy remain within its remit.

As for the functions of the Ministry of Labour, a comparison between the Decree from 2018 for the former government and the new rules for 2023 (decree and internal government rules) shows slight differences. For example, the fight against stress, mobbing and moral and sexual harassment at work, as well as the fight against illegal employment and social dumping, are no longer explicitly mentioned. However, these matters are covered by labour law legislation in general and therefore, in principle, still fall within the remit of the same Ministry.

Both 'upskilling' and 'reskilling' as well as 'talent attraction' have been added as new explicit competences, terms which appear in English and not in French.

The new 2023-2028 coalition agreement is entitled "*Lëtzebuerg fir d'Zukunft stärken*" (Strengthening Luxembourg for the future).

Developments on 'labour' policy run from pages 173 to 181 and are placed under the banner of modernisation and a "new balance between private and professional life in the interests of employees and employers".

A first emphasis is on social dialogue, and a review of the rules governing collective agreements has been announced, in particular to enable work to be reorganised and working conditions improved. It is also announced that the legal provisions relating to staff representation (*délégation du personnel*) will be reformed.

The system of wage indexation (automatic adjustment to changes in the cost of living) has been maintained.

Teleworking (*télétravail*) is supported but must remain voluntary, and discussions with neighbouring countries are being pursued to facilitate teleworking, particularly with regard to the limits set in terms of social security and taxation. 'Remote working', i.e. working from other places than home, and co-working spaces will be supported.

'Reskilling' and 'upskilling' are intended to anticipate future labour market challenges and respond to labour shortages. Other reforms to vocational training have also been announced.

Talent attraction is to be ensured by devising sectoral strategies, and immigration laws are to be adapted to speed up and facilitate procedures.

The new government has also set the goal of fighting precarious work (*travail précaire*), particularly in the context of platform work. It is in favour of a strong and ambitious European directive on platform workers.

There are plans to introduce 'job vouchers' (*chèques-emploi*) for very short-term one-off services, such as work in private households, catering and events to fight undeclared work.

The reorganisation of working hours should be a matter of negotiation between employers and employees. Flexible forms of work will be envisaged, and the current system of 'work organisation plans' (*plan d'organisation du travail)* will be reviewed, as will that of time savings accounts (*comptes épargne-temps*).

With regard to occupational medicine (*médecine du travail*), the coalition partners note the shortage of occupational physicians and the need to modernise this legislation.

It should also be noted that according to the political agreement, "*the work of employees and the work of self-employed persons must be treated equally. The government will therefore reform the status of self-employed persons"*.

The consistency of the various existing special leaves (*congés spéciaux*) will be reviewed to harmonise them. A special leave in the event of miscarriage, stillbirth or premature birth followed by death is in planning.

The coalition agreement also announces a greater flexibility in Sunday work, which is currently, in principle, limited to four hours of work on Sundays.

Due to a sharp increase in absenteeism, preventive measures are planned.

The role of the labour inspectorate (*Inspection du travail et des mines)* is to be redefined, with emphasis on prevention and support for businesses, and administrative simplifications are to be examined.

In addition to the 'labour' section per se, other parts of the coalition agreement may be of interest.

At the level of 'justice' (judicial system) and therefore also of labour courts, it is planned to put in place means to increase personal resources and to advance the digitalisation of the procedures.

Concerning the attachment and assignment of wages (*saisies et cessions sur salaire*), the non-attachable shares of the wage should in the future be adjusted automatically

to the cost of living, possibly also taking into account the composition of the employee's household.

The coalition agreement also contains a series of provisions to promote equality and non-discrimination. A "National Action Plan against Racism and Racial Discrimination" is announced, as are numerous measures to promote equal opportunities between men and women. However, these measures are not specific to the employment relationship. There is, however, a heading dedicated to equality in the labour market.

Malta

Summary

New regulations on employment agencies have been published.

1 National Legislation

1.1 Employment Agency Regulations, 2023

The new regulations came in the wake of reported abuse over the past months and years with respect to the recruitment of workers through employment agencies. The trend to resort to employment agencies in the past decade, particularly in the post-pandemic period, has increased drastically and exponentially and yet, no particular provisions were introduced into Maltese law to regulate the challenges employment agencies were posing to the general employment situation in Malta.

The objective of the Employment Agency Regulations, 2023 is the regulation of employment agencies and the curbing of any abuse that might arise therefrom.

What follows is a brief description of the relevant regulations and a brief commentary.

The regulations define 'employment agencies' as an 'employment agency' or 'employment business' that carries out activities in Malta, recruiting persons for employment in Malta or outside Malta.

The regulations stipulate that an employment agency must be licenced to carry out its business from the premises indicated in the licence (Regulation 3(1)(a)) or, if engaged in the employment agency business in a Member State, the company must notify the Director of Industrial and Employment Relations within five working days of commencing such a business in Malta (Regulation 3(1)(b)).

Furthermore, there is an application procedure that must be followed, most notably that a notice must be posted in the premises (Regulation 2A) (the premises must be adequate in terms of Regulation 7A), and the premises must be used as an employment agency.

The main eligibility provision for an individual to be able to act as an employment agency is the following:

(2) No person shall be qualified to be granted a licence to conduct any employment agency or employment business in terms of sub-regulation (1)(a), unless he/she is 25 years of age or older and has displayed a notice of his/her intention to run the employment agency and has advertised the notice of application in accordance with sub-regulation (2A) (Regulation 3(2)).

Each employment agency must have a competent person who will be responsible as a legal body to run the employment agency (Regulation 6(4)). Indeed, Regulation 6(4) states the following:

> *"(4) It shall be a condition of any licence that a competent person is available at all times to manage the employment agency or employment business, provided that the licensee may nominate one or more competent persons to act as substitutes for the person nominated by him, if such person is not at any time available for any justifiable reason. Failure to comply with the provisions of this sub-regulation constitutes an offence against these regulations."*

There are also provisions in the Regulations about who may be nominated as a competent person.

The Regulations are mainly of an administrative and procedural nature, but one key provision is the following (Regulation 11(c)):

> *"Where a person is employed by an employment agency or employment business and referred to an employer by it to perform service temporarily for that employer, the employment agency or employment business shall not charge such employer rates for the services provided which are less than those payable by such employer to his regular employees for similar work."*

This was one of the reasons why these Regulations have been enacted. One important element to consider is that an employment agency often also ends up acting as a temporary work agency and there is considerable convergence between the two types of agencies. The problem, however, was that the demarcation lines were becoming blurred and hence, the need was felt to address the issue.

In the scenario envisioned in Regulation 11(c), even if an entity carries out both the activities of an employment agency and those of a temporary work agency, that entity cannot charge less for the services than the amounts payable by way of salary to the employees of the 'user undertaking'. This also aims to address the imbalance between payments due to the temporary work agency employees.

All in all, the Regulations are a brave yet slightly weak way of addressing the myriad of challenges beleaguering the sphere of recruitment and temporary agency workers in Malta. The truth is that these regulations miss an opportunity to address even the most novel of employment agencies: those carried out entirely online. The exercise of the business must be linked to a premise and, furthermore, the intention to carry out the business of employment agencies must be displayed at the business premises by means of a notice. It would appear that Maltese law, whilst stopping short of prohibiting them, is not even recognising that they can exist, either. Whether this is lawful or not remains to be seen. Indeed, whether this will have the implication of creating an unregulated business of online employment agencies remains to be seen but, all in all, it is clear that if the law sought to regulate ALL employment agencies, it has failed.

The interaction between these Regulations and the provisions regulating temporary agency workers in Malta is still unclear. The Regulations will enter into force on 01 April 2024, and it will then become clearer whether they will have their desired effect.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

This is a very interesting and important judgment and may have very important implications across most sectors in Malta. A question that has always beleaguered employers in Malta was whether part-time workers were entitled to overtime payments or additional compensation in line with the overtime provisions of full-time employees once they work beyond their contractual hours or when they work beyond a full-time week.

This judgment also has a very serious implication for Maltese law. Regulation 4 of the Part-Time Regulations (hereinafter 'the Regulations') makes the following very clear (Proviso to Regulation 4(2) in the Regulations):

> *"Provided that a part-time employee who in a particular week works hours not exceeding the normal weekly hours of a comparable whole-time employee, and is*

paid at the normal hourly rate for such hours, shall not be considered as being treated less favourably than a comparable whole-time employee solely because the comparable whole-time employee is paid at a higher rate for those hours worked in excess of normal weekly hours, so however that:

(a) If the part-time employee's weekly hours of work exceed the normal weekly hours of a comparable whole-time employee, any such hours exceeding the normal weekly hours of a comparable whole-time employee, shall be paid at the same rate as that applicable to comparable whole-time employees;

(b) Any hours worked on Sundays and public holidays, whether in respect of normal hours of work or for hours in excess of normal hours of work of comparable whole time employees, shall be paid at the same hourly rates applicable to comparable whole-time employees."

A part-time worker who works more than his/her agreed weekly working hours shall not be entitled to any overtime rates, unless he/she works more than a full-time workers' weekly hours shall he be entitled to overtime rates (essentially).

Consequently, it becomes manifestly clear that the law in Malta needs to be amended to be aligned with this provision of the Law. It is very clear that the situation 'looked' unfair before – and many times, employers were concerned about this, believing that they have to pay overtime to those part-time workers who exceed their own part-time hours in any given week.

From now on onwards, there is no doubt that the Regulations are not in line with this CJEU judgment and need to be amended.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

(I) The Supreme Court has ruled on paid annual leave during illness and the competence of a works council, thereby ending the Deliveroo-saga.

(II) A Court of Appeal has ruled on the freedom of speech.

(III) Two District Courts have interpreted the Directive on Transfer of Undertaking.

(VI) The CJEU ruled on overtime pay for part-time workers, a topic that was independent of that ruling addressed by the Minister of Social Affairs and Employment in a letter.

1 National Legislation

1.1 Internet consultation on temporary measure WIA-assessments

Backlogs of social medical assessments for WIA (Wet Inkomen naar Arbeidsvermogen, Law on Work and Income in Accordance with Capacity for Work) benefits appear to be stagnating and even decreasing for the first time in years. However, these backlogs remain substantial. For that reason, the Minister of Social Affairs and Employment—as part of a broader approach—is working on the temporary measure 'Practical Assessment'. This initiative involves evaluating individuals' incapacity for work solely based on their actual earnings.

When employees become incapacitated for work in the long term, they can claim WIA benefits. The degree of occupational disability determines whether someone is entitled to benefits and, if so, what the level of these benefits is. Under the current rules, employees who still earn income from work undergo both a practical and a theoretical assessment (an estimation of the employee's potential theoretical earnings). The assessment with the lowest degree of incapacity for work then determines whether a WIA benefit is awarded. The theoretical estimation is omitted when a practical assessment is possible. It is anticipated that this will enable an additional 2 000 to 3 000 more WIA claim assessments each year. The measure is to take effect from 01 July 2024 and will run for three years.

The new procedure will apply to a WIA claim assessment, a WIA reassessment, the assessment of revival of a terminated WIA entitlement and the assessment of the later emergence of a WIA entitlement. Other disability assessments, such as the First-year Sickness Benefits Act assessment, the WAO, WAZ and Wajong are excluded from the measure. The Dutch Employee Insurance Agency (UWV) will monitor the effect of the Practical Assessment measure.

2 Court Rulings

2.1 Deduction of vacation days

Supreme Court 17 November 2023, ECLI:NL:HR:2023:1603

In this case, an employee, after his vacation had been scheduled, fell ill and with the approval of the company doctor, went on vacation. Subsequently, the employer deducted vacation days, leading to a legal dispute about the employee's entitlement to vacation days while being sick during his scheduled vacation. The employee claimed the reversal of the deduction of 29 vacation days, arguing that the employer violated Article 7:638(8) Dutch Civil Code. The employer argued that according to the collective agreement, it had the authority to deduct vacation days, and the employee had consented to it.

The Court of Appeal rejected the employer's argument regarding the collective agreement, stating it could not deviate from Article 7:638(8) BW. In addition, the Court determined that the employee had not agreed to the deduction of vacation days.

The Supreme Court, however, annulled the Court of Appeal's judgment and clarified that a collective agreement qualifies as a written agreement under Article 7:638(8) BW. The Supreme Court referred the case to the Court of Appeal.

2.2 Employment law obligations of Deliveroo

Supreme Court 24 November 2023, ECLI:NL:HR:2023:1610 and ECLI:NL:HR:2023:1622

These rulings are the final piece in the Dutch *Deliveroo*-saga (see). After ruling that Deliveroo riders are employees with an employment contract within the meaning of Article 7:610 Dutch Civil Code (ECLI:NL:HR:2023:443, see March 2023 Flash Report), the Supreme Court consequently also determined that Deliveroo riders (as meal delivery drivers) are covered by the collective agreement on professional goods transport. In addition, Deliveroo must pay retroactive pension payments to the drivers.

2.3 Advisory right of works councils

Supreme Court 03 November 2023, ECLI:NL:HR:2023:1514

This case concerned the interpretation of Article 25 Works Councils Act, which has been implemented in Article 4(2) Directive 2002/14/EC. It concerns the question whether a company decision to hire workers on a group basis by entering into agreements with temporary work agencies must be submitted to the works council for its advice under Article 25(1)(g) Works Council Act, even if it concerns a group recruitment of workers that is customary for the company. Article 25(1)(g) Works Council Act mentions the 'group recruitment or hiring of workers' in a general manner. The Supreme Court considered that neither the text of this provision, nor the legislative history provides support for the conclusion that the advisory right of the works council only applies if there is a deviation from the usual hiring policy. The Supreme Court therefore rules that the works council is entitled to an advisory right in respect of any proposed decision to hire workers on a group basis.

2.4 Freedom of speech

Court of Appeal's-Hertogenbosch 09 November 2023, ECLI:NL:GHSHE:2023:3713

This case concerned the freedom of speech in an employment relationship. The employee wrote a book about the situation at her former employer and was dismissed because of this publication.

In 2022, the Supreme Court ruled that the publication of the book falls under the right to freedom of expression, which is also protected by Article 10 ECHR. The Court of Appeal ruled that a causal relationship existed between the publication of the book and the request for termination of the employment contract, and that therefore, the present request for termination constituted an interference of freedom of expression.

The Court had to then assess whether the termination of the employment contract was a permissible or impermissible interference with/restriction of the employee's freedom of expression in the light of Article 10 ECHR. How this should be applied in an employment relationship, the ECtHR clarified in *Herbai v Hungary* using four criteria, namely:

(i) the nature of the expression of opinion,

(ii) the employee's motives for the expression of opinion,

(iii) the damage suffered by the employer due to this expression, and

(iv) the severity of the sanction imposed by the employer.

All things considered, not losing sight of the internal commotion at the school and the task facing the school board as a result, the Court concluded that the termination of the employee's employment contract was an impermissible restriction to her freedom of expression. The book is a critical, but not insulting reflection, and there was no evidence of blatant untruths. Moreover, the book served a general interest and could not be called "provocative". The fact that the media showed interest in the case was mainly because the employer proceeded to dismiss the employee. Given the importance of freedom of expression, the Court of Appeal ruled that the employer could and should have made more efforts to normalise relations between the employee and the colleagues who, according to the employer, were hurt. In the Court of Appeal's opinion, the circumstances put forward do not justify the sanctioning route chosen by the employer by means of suspension and a request for dissolution. The Court of Appeal therefore ruled that the employee was entitled to fair compensation pursuant to Article 7:683(3) Dutch Civil Code.

2.5 Interpretation of the concept 'transfer of undertaking'

District Court Rotterdam, 2 November 2023, *ECLI:NL:RBROT:2023:10910*

This case dealt with the interpretation of the concept 'transfer of undertaking'. The employee was employed by the employer as a driver. According to the employee, Transchat took over the employer's business activities with effect from 01 March 2022, and the employee was transferred to Transchat on the basis of Article 7:663 Dutch Civil Code, which transposes Article 3 Directive 2001/23/EC. The District Court did not agree with Transchat's claim that it only took over drivers, since Transchat also took over a customer. In addition, the work was performed using the same vans. Even if Transchat already owned these vans and first rented them to the initial employer, the activities were at least carried out using the same vans. The drivers also remained the same. What matters is that the operation of the business activities in question was continued by Transchat (CJEU 18 March 1986, *Spijkers v Benedik*). Furthermore, Transchat did not dispute that the person who in fact managed the business operations (Y) remained the same and that the location of the business had hardly changed. As a result, the District Court established that the identity of the undertaking had been preserved and that the relevant economic activity had passed from the employer to Transchat. In addition to the transfer of an economic entity, the employee also argued that there was an agreement underlying the transfer. In this respect, the employee pointed out the central role Y played in both companies. Y indicated that he has and had nothing to do with the employer. He did have a one-man business with the employer's name, but the business went bankrupt during the same period. According to the District Court, this does not mean that no agreement between the employer and Transchat could underlie

the transfer. In addition, Transchat was unable to explain what happened around the bankruptcy of the one-man business and the transfer of drivers to Transchat. Furthermore, Y always played an important role in both companies that partly bear his name. It is also striking that the employment contract submitted by Transchat to the employee lists the employer's name at the bottom. If there is a mistake here, it is at Transchat's expense and risk. In sum, the District Court ruled that Transchat did not sufficiently dispute that there was an agreement whereby the activities in question were transferred to Transchat.

According to Transchat, the employee first joined Y's one-man business with effect from 29 October 2018 and later joined the employer. The District Court held that the employee should be followed in her contention that there must also have been a transfer of undertaking between the sole proprietorship and employer. Transchat will therefore have to pay the back pay to the employee from 29 October 2018.

2.6 Transfer of undertakings and non-competition clauses

District Court Gelderland, 13 September 2023 (published 14 November 2023), ECLI:NL:RBGEL:2023:6117

In this case, the District Court applied the rule laid down in the *Daddy's Dance Hall* case, entailing that individual employment conditions may not be altered to the detriment of the employee by reason of a transfer. The issue at hand was whether the transferee had entered into a legally valid non-competition clause with the employee on 25 February 2020. It was established that a transfer of undertaking had taken place on 07 January 2020, and that the rights and obligations arising for the transferor on that date from the employment contract pursuant to Article 7:663 Dutch Civil Code transferred to the transferee. The District Court held that a transferee was not allowed to deviate to the detriment of the employee after a transfer of undertaking. Furthermore, the new employment contract may not be assessed as a package, but per each individual employment condition. The District Court ruled that the scope of the new non-competition clause is much broader than that of the non-competition clause that was present in the employment contract with the transferor, since the previous clause only covered self-employed work, while the new clause also covered salaried work. Moreover, the penalty included in the new clause was a lot higher than the penalty in the previous clause. Finally, the District Court found that the new non-competition clause was concluded because of the transferee's desire to harmonise working conditions after the transfer. As a result, the new non-compete clause had to be deemed to have been concluded by reason of the transfer (CJEU 06 November 2003, *Martin/SBU*) and was therefore declared null and void.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

The underlying case addressed the question whether part-time pilots are treated less favourably than full-time pilots because for both groups, identical thresholds were being used, resulting in a longer flight hour duty for part-time pilots than for full-time pilots in relation to their total working time, and thus a greater burden than for full-time pilots (see earlier, *Elsner-Lakeberg*, C-285/02, EU:C:2004:320, para 17). Similarly, the national court asked whether making the payment of additional remuneration for part-time workers and comparable full-time workers contingent on the aforesaid threshold treated part-time workers less favourably than full-time workers.

According to Art. 7:648 Dutch Civil Code, an employer may not discriminate between employees on the basis of a difference in working hours in the conditions under which an employment contract is entered into, continued or terminated, unless such discrimination is objectively justified. Following that provision, where there is no (generally) applicable collective agreement or individual employment contract regulating how to treat overtime work, i.e. work that exceeds the employee's contractually agreed working hours, the general rule is that part-time and full-time workers shall receive the same hourly pay and for hours worked in addition to the normal working hours of a full-time worker, the same overtime pay (usually, a percentage of the hourly wage). This is in line with the CJEU's ruling in *Helmig*, where the reference norm is that of the full-time worker.

Before the case *Helmig*, the Netherlands Institute for Human Rights' approach was that overtime pay was due as soon as the individually agreed working time was exceeded. In that case, certain inconveniences may arise for the employee concerned that would occur for full-time employees when their agreed working time (i.e. the normal full-time working hours) were exceeded. Nevertheless, in line with *Elsner-Lakeberger*, part-time workers who might face fixed thresholds in overtime compensation schemes can most likely claim that there is a heavier burden in their case, thus challenging the overtime compensation and the schemes underlying it.

4 Other Relevant Information

4.1 Parliamentary letter of November 2023 on an extra hours bonus for part-time workers

On 22 November 2023, the Minister of Social Affairs and Employment informed the House of Representatives about the possibility of paying an extra hours bonus for part-time workers who work more hours than agreed in their employment contract. This letter addresses a question that was asked during the parliamentary debate on 07 February 2023 on labour market shortages by a member of the Social Democratic party (PvdD), namely whether there is a possibility of paying an extra hours bonus for part-time workers who work more hours than their contract provides for.

According to the Minister, based on the CJEU's ruling in *Helmig* (ECLI:EU:C:1994:415) and as laid down in Art. 7:648 Dutch Civil Code, in which the CJEU ruled that there is no unequal treatment if a part-time worker only receives an overtime bonus when the normal working time applicable to full-time workers is exceeded, this ruling implies that for the same number of hours worked within a given period, the total remuneration should be the same, regardless of whether an hour worked falls within his/her contractual working hours. Only if a part-time worker works so many additional that these hours exceed a full-time contract, he or she should receive the same bonus that a full-time worker receives for those overtime hours. Based on the above, the government assumes that paying an overtime bonus to part-time workers for hours below those of a full-time contract is, in principle, a form of direct discrimination and possibly also indirect discrimination. Therefore, this bonus is only permissible if it can be objectively justified.

The letter concludes by saying that based on the current interpretation of (EU) law and case law, an overtime bonus for part-time workers may not be paid to the extent that the hours do not exceed a full-time employment, unless the employer can objectively justify this measure for its own situation. It seems that the government adopts a quite strict reading of *Helmig*, given that the national court in that case merely asked whether the rule that overtime compensation should only be paid to full-time and part-time employees, where the normal working hours of a full-time worker were exceeded and whether this was in line with EU law. The CJEU confirmed that, indeed, there would be no discrimination. Yet, the CJEU did not rule that a Member State cannot adopt a rule

following which overtime compensation is paid because the employee works more hours than contractually agreed.

Norway

Summary

The Supreme Court ruling HR-2023-1637-A clarifies that the concept of working time in Directive 2003/88/EC influences the interpretation of working time regulations with a national basis and background that go beyond the Directive's minimum requirements.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Concept of working time

Supreme Court ruling HR-2023-1637-A

The Court dealt with the question whether an employee with a right to reduced working hours also had a right to a corresponding reduction in 'available time'. One key issue was whether 'available time' is to be considered working time according to different provisions in Chapter 10 of the Working Environment Act (WEA, LOV-2005-06-17-62). WEA Chapter 10 implements Directive 2003/88/EC, but also includes provisions with a national background that go beyond the minimum protection established in the Directive.

The concept of working time is defined in WEA Section 10-1, and the Supreme Court has previously ruled that this concept of working time must be interpreted in line with Article 2 of the Directive, as far as it concerns the provisions that transpose the Directive (see HR-2018-1036-A). The present ruling concerned provisions with a national basis and background; the right to reduced working hours in WEA Section 10-2 (4) and Section 10-4 (3). The latter provision states that in the case of stand-by duty outside the workplace, at least 1/7 of the time on stand-by duty shall be included in the employee's ordinary working hours.

The employee worked in the oil service industry and had a working time arrangement where he alternated between fixed periods of 'available time' and periods off work. Work was primarily to be carried out during his 'available times', but he could also be called on to perform work during his periods off work. After having been granted a reduction in his normal working hours according to WEA Section 10-2 (4), he claimed that his 'available time' had to be reduced accordingly. The Supreme Court, like the Court of Appeal, found that the right to reduced working hours did not entitle to a corresponding reduction in 'available time', as this could not be considered working time under WEA Section 10-1 (1). Furthermore, 'available time' could not be considered stand-by duty according to WEA Section 10-4 (3).

The Court first considered whether the concept of working time in WEA Section 10-2 (4) was the same as in the definition in WEA Section 10-1 (1). Although the purpose of the right to reduced working hours could support a broader concept, the Court concluded that there was insufficient support to deviate from the general definition.

Therefore, the next question was whether 'available time' was working time according to WEA Section 10-1 (1), interpreted in line with Article 2 of the Directive and CJEU case law. With particular reference to case C-344/19 *Radiotelevizija Slovenija* and case C-580/19 *Stadt Offenbach*, the Court concluded in the negative. The time limit within which the worker was required to return to work varied from days down to a few hours. It was still considerably longer than in the CJEU cases, and the worker was not subject

to other instructions or limitations until he was actually called on to perform work. He therefore did not have any limitations that objectively and very significantly affected his possibility to freely manage his time and pursue his own interests.

Furthermore, his 'available time' was not considered to be stand-by duty under WEA Section 10-4 (3). Available time was considered to be a different type of working time arrangement than stand-by duty. The Court also clarified that stand-by duty outside the workplace according to this provision is not working time, unless the worker faces such constraints that the time must be classified as working time in light of CJEU case law.

This ruling shows that the concept of working time in Directive 2003/88/EC influences the interpretation of working time regulations with a national basis and background that go beyond the Directive's minimum requirements.

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

The Framework Agreement on Part-time Work (Directive 97/81/EC) has been implemented in the Working Environment Act (WEA, LOV-2005-06-17-62) Chapter 13), which provides protection against discrimination on several grounds. WEA Section 13-1 (3) states that the provisions of the chapter shall apply correspondingly in case of discrimination of a part-time employee. A prohibition of both direct and indirect discrimination therefore applies (cf. WEA Section 13-1 (1)). Discrimination that is necessary to achieve a just cause and does not involve a disproportionate intervention is not in contravention of the prohibition of discrimination against a part-time employee (cf. WEA Section 13-3).

WEA Section 10-6 (1) and (2) distinguish between extra work and overtime work. Extra work is work that exceeds the *agreed working hours*, and overtime work is work that exceeds the *limits* prescribed by the WEA for *normal working hours*. The general limits for normal working hours are nine hours per 24 hours and 40 hours per seven days.

In the case of overtime work, the employee is entitled to overtime pay (cf. WEA Section 10-6 (11)). For overtime work, a supplement of at least 40 per cent shall be paid in addition to the employee's pay for corresponding work during normal working hours. There is no statutory right to additional pay for extra work. In other words, the statutory limits for normal working hours also set a uniform threshold for the statutory right to overtime pay, both for full-time and part-time work. Collective agreements often provide rights to overtime pay beyond the minimum requirements in the WEA, for example by setting a lower number of normal working hours than the statutory limits and relating the right to overtime pay to work beyond the collectively agreed working hours. These collective agreements normally also set a uniform threshold for the right to overtime pay for both full-time and part-time workers. A right to additional pay for work that exceeds the *agreed* working hours may, however, be set by individual or collective agreement.

The approach in Norwegian law has been that this does not conflict with the Framework Agreement for Part-time Work. The preparatory works of the WEA clearly state that those who work part-time or have reduced working hours are not entitled to overtime pay until their working hours exceed normal working hours, cf. Ot.prp. nr. 49 (2004–2005) p. 319. It is explicitly mentioned that the same applies to those who have normal working hours that are shorter than the statutory limits set by collective agreement (*ibid*).

Consequently, both the WEA and many collective agreements are based on the approach that there is no difference in treatment as long as part-time and full-time workers receive the same pay for the same number of hours worked. This view was upheld by the Norwegian government in submitted observations and oral arguments in the present case. As the present ruling seems to reject this approach, the ruling may have serious implications for Norwegian law.

4 Other Relevant Information

Nothing to report.

Poland

Summary

No new labour legislation has been passed and no decisions of interest from the perspective of EU labour law have been published.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

In Poland, working time issues, including remuneration of part-time workers, are regulated in the Labour Code.

Article 151 § 1 LC provides that work performed in excess of the working time standards applicable to an employee as well as work performed longer than the extended daily amount of working time based on the working time system and schedule applicable to the employee, should be considered as overtime work. Such work shall only be permissible in the case of:

1) the need to carry out rescue operations for the protection of human life or health or for the protection of property or the environment, or to repair a breakdown;

2) special needs of the employer.

According to Article 151 § 5 LC, the parties to the employment contract shall agree on the admissible number of working hours exceeding the amount of working time of an employee employed on a part-time basis which, if exceeded, give the employee the right to the overtime bonus mentioned in Article 151 § 5 LC in addition to his/her regular remuneration.

Article 151 § 1 LC determines that for overtime work, apart from regular remuneration, the following allowance shall be due:

1) 100 per cent of remuneration for overtime work performed:

a) at night;

b) on Sundays and legal holidays which, according to the relevant employee's working time schedule, do not constitute working days;

c) on a rest day given to the employee in exchange for work on Sunday or on a legal holiday in accordance with the employee's work schedule;

2) 50 per cent of remuneration for overtime work on any day other than specified in item 1.

Thus, under Polish law there is a statutory worker's right to an overtime bonus. Article 151 § 5 LC expressly refers to an overtime bonus for part-time workers. Parties to the

employment contract should stipulate the number of working hours which, if exceeded, gives the worker the right to an overtime bonus. It is therefore left to the parties to determine whether the right to the overtime bonus applies where the regular statutory eight-hour daily limit has been exceeded, or e.g. the four-hour daily limit in case of part-time workers.

The Supreme Court in its judgment of 04 April 2014, case I PK 249/13, determined that part-time workers do not have the right to the overtime bonus mentioned in Article 151 § 1 LC, where the employment contract does not determine the number of hours which, if exceeded, gives the employee the right to the overtime bonus. The judgment can be found here.

In other words, where the parties to the employment contract have not determined the number of working hours mentioned in Article 151 § 5 LC, the part-time worker acquires the right to an overtime bonus only after he/she has exceeded the statutory maximum working time limits, i.e. if he/she has worked more than eight hours per day or 40 hours per week. Since there is no objective ground for differentiating the situations of full-time and part-time workers, the latter are subject to less favourable treatment than full-time workers. Therefore, Polish law is not compatible with Directive 99/70, as interpreted by the CJEU in case C-660/20, 19 October 2023, *Lufthansa CityLine*, in particular paragraphs 49 – 50.

4 Other Relevant Information

Nothing to report.

Portugal

Summary

(I) The government has updated the salaries of public sector workers for 2024.

(II) An exceptional measure has been created to incentivise long-term unemployed persons to return to work and has extended the unemployment benefit to victims of domestic violence.

1 National Legislation

1.1 Update of the public administration salaries

Decree Law No. 108/2023, of 22 November, approved measures to improve the valorisation of public sector workers' incomes.

The base of the public sector salary was set at EUR 821.83, and the salaries of public sector workers have been updated. This Decree Law will take effect from 01 January 2024.

1.2 Measures for long-term unemployed persons and victims of domestic violence

Decree Law No. 113/2023, of 30 November, establishes an exceptional measure to incentivise long-term unemployed persons to return to work and extended unemployment benefit to victims of domestic violence.

According to this Decree Law, long-term unemployed persons may partially cumulate the unemployment allowance with employment income after 12 months of unemployment allowance, since the requirements stipulated in the law are met.

Furthermore, it was established that the termination of the employment contract by a worker who is a victim of domestic violence is also considered involuntary unemployment for the purposes of being granted the unemployment allowance.

This Decree Law entered into force on 01 December 2023. The exceptional measure to incentivise the return to work will be in force until 31 December 2026.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

This ruling concerned the interpretation of Clauses 4.1. and 4.2. of the Framework Agreement on Part-time Work, concluded on 06 June 1997 (hereinafter referred to as "Framework Agreement"), which is annexed to Council Directive 97/81/EC of 15 December 1997.

In the present case, a Lufthansa pilot worked part time, with a working time reduction to 90 per cent of full-time working hours. In accordance with the applicable collective agreement, workers receive remuneration for additional flying duty hours in addition to

the basic remuneration ("additional remuneration") when they work a certain number of flying duty hours within a month and thereby exceed the trigger thresholds for additional remuneration. These trigger thresholds are identical for full-time and part-time pilots.

The CJEU stated that *"although the remuneration per flying hour for the two categories of pilots appears to be equal up to those trigger thresholds, it should be noted that those identical thresholds represent, for part-time pilots, a longer flight-hour duty than for full-time pilots in relation to their total working time and, consequently, a greater burden than for full-time pilots".* Therefore, a part-time pilot must be regarded as subject to a difference in treatment compared with comparable full-time pilots, which is prohibited by Clause 4 of the Framework Agreement, unless it is justified on "objective grounds" within the meaning of that clause.

Consequently, the CJEU ruled that Clause 4.1 of the Framework Agreement must be interpreted as meaning that *"national legislation which makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, must be regarded as a 'less favourable' treatment of part-time workers within the meaning of that provision".*

The CJEU analysed whether the difference in treatment at issue can be considered justified on *"objective grounds".* The concept of *"objective grounds"* requires a difference in treatment to exist to be justified by the presence of specific factors, characterising the employment condition to which it relates, in the specific context in which it occurs and on the basis of objective and transparent criteria to ensure that such difference in treatment responds to a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose.

According to the CJEU, Clauses 4.1 and 4.2 of the Framework Agreement *"must be interpreted as precluding national legislation which makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, in order to compensate for a workload particular to that activity".*

In line with Clause 4 of the Framework Agreement, Article 154 (2) of the Portuguese Labour Code (hereinafter referred to as "PLC") establishes that a part-time worker shall not be treated less favourably than a full-time worker in a comparable situation, unless different treatment is justified by objective reasons, which may be defined by a collective labour regulation.

Specifically, Article 154 (3) of the PLC stipulates that the part-time worker is entitled to (i) the basic remuneration and other benefits, whether paid or not, provided for by law or collective bargaining or, if they are more favourable, those received by full-time workers in a comparable situation, in proportion to his/her weekly normal period of work, and (ii) the meal allowance in the amount provided for in a collective labour regulation or, if it is more favourable, in the company regulations, except where the daily normal period of work is less than five hours, in which case it is calculated in proportion to his/her weekly normal period of work.

For this purpose, the situations of a part-time and a full-time worker shall be comparable when they work in the same establishment or, in the absence of such a comparable worker, in another establishment of the same undertaking with the same activity, and his/her seniority and qualifications shall be considered (Article 150 (4) of the PLC).

This CJEU ruling may be relevant for the interpretation of the aforementioned rules of the PLC regarding part-time work and the prohibition of less favourable treatment of part-time workers in comparison with full-time workers. Specifically, it is anticipated that this interpretation of the CJEU may have implications on the application of the thresholds defined by the law for the payment of overtime work. Under Portuguese law

(after the recent amendment introduced by Law No. 13/2023, of 03 April, within the scope of the Decent Work Agenda which entered into force on 01 May 2023), the amounts due for overtime work double after the initial 100 hours of overtime work rendered in the year (Article 268 of the PLC). Although there is no provision that reduces this threshold for part-time workers, considering this ruling of the CJEU, it seems defensible that an interpretation of this rule is compatible with EU law that the threshold of 100 hours should be adjusted in accordance with the normal period of work applicable to the part-time worker.

4 Other Relevant Information

Nothing to report.

Romania

Summary

(I) In construction and agriculture, special minimum wages have come into effect (higher than the general minimum wages).

(II) Cross-border workers will be able to enter and exit the country more easily.

1 National Legislation

1.1. The minimum wage in construction, agriculture and the food industry

In October 2023, the general minimum wage was increased nationwide to LEI 3 300 per month (see also September 2023 Flash Report). However, the special minimum wages in agriculture and construction remained unchanged. Therefore, starting from November 2023, the provisions of Emergency Ordinance 93/2023 (published in the Romanian Official Gazette No. 993 on 1 November 2023) became applicable for establishing the minimum wage for the construction, agricultural and the food industry. According to this Ordinance, the minimum wage for the construction sector, excluding allowances, bonuses and other supplements, is set at the amount of LEI 4 582 per month (approximately EUR 922), and for the agricultural and food industry, it is set to LEI 3 436 per month (approximately EUR 692), excluding allowances, bonuses and other supplements.

1.2 Cross-border workers

Law No. 306/2023, amending Law No. 209/2020 on certain measures for crossing the state border of Romania (published in the Romanian Official Gazette No. 1001 on 3 November 2023) clarified the conditions under which cross-border workers can enter and exit Romania more easily. Cross-border workers will be able to benefit from the provisions of the law to the extent that bilateral agreements are concluded between Romania and the respective neighbouring state. The possibility of obtaining a cross-border worker card has been eliminated.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

Equal treatment implies treating workers in similar situations the same and treating workers who are in different situations differently. From this perspective, the Court has observed that since part-time workers much less frequently meet the conditions for the right to additional remuneration, imposing the same condition for acquiring it, namely exceeding the same number of working hours both for full-time and part-time workers violates the non-discrimination principle enshrined in Clause 4 of the Part-time Directive.

However, in Romanian legislation, overtime is prohibited for part-time workers. Furthermore, work performed by part-time workers that exceed their working hours is considered to be undeclared work and attracts substantial fines. Therefore, the issue raised in CJEU case C-660/20 will not arise in Romanian jurisprudence.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

No legal acts were adopted in November. No important court decisions were published.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

Current legislation does not allow for such an unacceptable procedure.

Act No. 462/2007 Collection of Laws – Coll. on the organisation of working time in transport, as amended, also regulates the minimum requirements for the organisation of working time in transport (Article 1 paragraph 1 letter a/). However, this Act does not regulate the issue in question and overtime work (according to Article 1 paragraph 2 of this Act, labour law relationships of transport employees shall be governed by this Act, unless stipulated otherwise by a special regulation).

The main legal source in this case is the Labour Code (Act No. 311/2001 Coll.), as amended. According to Article 3 paragraph 2 of the Labour Code, labour law relationships of transport employees shall be governed by this Act, unless stipulated otherwise by a special regulation. As already mentioned, Act No. 462/2007 Coll. does not regulate the issue in question.

For an employee with shorter working hours (part-time work), overtime work is any work that exceeds his/her weekly working hours. This employee cannot be ordered to work overtime (Article 97 paragraph 2 of the LC).

According to Article 49 paragraph 4 of the Labour Code, an employee in an employment relationship with shorter working hours (part-time work) is entitled to a wage corresponding to the agreed shorter working hours. According to Article 121 paragraph 1 of the Labour Code, an employee shall be entitled to wages earned and a wage surcharge equal to at least 25 per cent of his/her average earnings for the performance of overtime work. An employee who performs risky work shall be entitled to the wages earned and a wage surcharge of at least 35 per cent of his/her average earnings for the performance of overtime work.

An employee in an employment relationship with shorter working hours (part-time work) may not be advantaged nor disadvantaged in comparison to a comparable employee (Article 49 paragraph 5 of the LC). 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 agreed to an employment relationship for an indefinite period and a determined weekly working time of the same employer or an employer pursuant to Article 58, who performs or would perform the same type of work or a similar type of work, taking into

consideration the employee's qualifications and professional experience (Article 58 of the LC - Temporary Assignment).

Moreover, according to Article 231 paragraph 1 of the Labour Code, a trade union body shall conclude a collective agreement with an employer, which shall regulate the working conditions, including wage conditions and the conditions of employment, the relationship between employers and employees, the relationships between employers or their organisations and one or more employee organisations on more favourable terms than those stipulated in this Act or other labour law regulation, except where by this Act or other labour law regulation is not expressly prohibited to such terms or where deviation from such terms is not impossible.

According to Article 4 paragraph 2 of Act No. 2/1991 Coll. on Collective Bargaining, as amended, the collective agreement shall be invalid in the part which:

a) contravenes generally binding legal regulations,

b) regulates claims by employees to an extent smaller than stipulated in the collective agreement of a higher degree.

In our opinion, considering the cited provisions of the Acts, as already stated, such an unacceptable procedure covered in the CJEU's present case would not arise.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) Amendments to the Employment Relationships Act transposing Directives 2019/1152/EU and 2019/1158/EU and introducing some other improvements of workers' rights entered into force on 16 November 2023.

(II) Slovenia signed and ratified the Multilateral Competent Authority Agreement on Automatic Exchange of Information on Income Derived through Digital Platforms.

(III) Stricter rules on registering working time have started to apply.

1 National Legislation

1.1 Amendments to the Employment Relationships Act enacted, published and entered into force

After being vetoed by the National Council, the Act Amending the Employment Relationships Act (*'Zakon o spremembah in dopolnitvah Zakona o delovnih razmerjih* (ZDR-1D)' Official Journal of the Republic of Slovenia (OJ RS) No. 114/23, 15.11.2023, p. 9601-9603) was sent back to the National Assembly for a second voting and was adopted by an absolute majority on 07 November 2023. The amendments entered into force the day after the publication, i.e. on 16 November 2023.

For a detailed description of the content of these amendments to the Employment Relationships Act, see also October 2023 Flash Report under 1.1. An important part of these amendments is the transposition of two EU directives, which have not yet been fully transposed into national law, namely Directive 2019/1152/EU and Directive 2019/1158/EU.

1.2 Platform work – exchange of information on income for tax purposes

The Slovenian government signed and ratified the Multilateral Competent Authority Agreement on Automatic Exchange of Information on Income Derived through Digital Platforms (*'Uredba o ratifikaciji Večstranskega sporazuma med pristojnimi organi o avtomatični izmenjavi informacij o dohodkih, pridobljenih z digitalnih platform'*, OJ RS – International Treaties, No. 10/23 (OJ RS No 116/23), 17.11.2023 p. 153-161), concluded in Sevilla on 09 November 2022.

1.3 Stricter rules for registering working time

The amendments to the Labour and Social Security Registers Act (*'Zakon o evidencah na področju dela in socialne varnosti* (ZEPDSV)', OJ RS No. 40/2006 et subseq.), adopted in May 2023, started to apply on 20 November 2023. They introduce stricter and more detailed rules with respect to the employers' obligation to register working time and some other work-related data (see also May 2023 Flash Report).

There was a strong opposition, especially from the employers' side, and even proposals to postpone these amendments and to change the rules, making them more flexible and not so strict (see, for example here). The Ministry announced that the labour inspectorate will give guidance on the new rules and start to impose sanctions in case of violations only after the end of this year, and that the Ministry will gather opinions on

the new rules and proposals for changes during the next few months and, if necessary, prepare additional amendments.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

The CJEU has ruled that the Part-time Work Directive 97/81/EC (Clause 4.1 of the Framework Agreement annexed to the Directive) must be interpreted as meaning that national legislation, which makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, must be regarded as a 'less favourable' treatment of part-time workers within the meaning of that provision, and must be interpreted as precluding such national legislation.

The case has no particular implications for the Slovenian legal order. The Slovenian employment legislation and case law is in line with this judgment. It prohibits less favourable treatment of part-time workers and guarantees them equal treatment in comparison with comparable full-time workers, as well as explicitly mentioning the *pro rata temporis* principle to be applied. Slovenian case law on part-time work is in line with this judgment. There is no case which specifically deals with pilots employed under a part-time contract, their flight duty and their payment; however, there is case law on additional payments/supplements for overtime work, with the Court emphasising that there cannot be one uniform trigger threshold for additional remuneration for full-time and part-time workers, and that part-time workers must be entitled to this supplement and additional payments, taking into account their agreed number of working hours, applying the *pro rata temporis* principle and that only such approach would mean equal treatment (see, for example, judgment of the Higher Labour and Social Court, No. Pdp 598/2014, 17 July 2014, ECLI:SI:VDSS:2014:PDP.598.2014).

4 Other Relevant Information

4.1 Collective bargaining

The Slovene Chamber of Pharmacy has acceded (as a party on the employers' side) to the Collective Agreement for the Healthcare and Social Protection Sector ('*Naknadni pristop Lekarniške zbornice Slovenije h Kolektivni pogodbi za dejavnost zdravstva in socialnega varstva Slovenije*', OJ RS No. 118/23, 24.11.2023, p. 9891). The collective agreement for the healthcare and social protection sector can be found here.

The Committee for the interpretation of the Collective Agreement for the Healthcare and Social Protection Sector, established on the basis of Point 11 of Part I of this collective agreement, adopted several interpretations in relation to various provisions of collective agreement (*Razlage Kolektivne pogodbe za dejavnost zdravstva in socialnega varstva Slovenije*', OJ RS No. 116/23, 17.11.2023, p. 9664-9666), concerning work on national holidays, annual leave, solidarity payment, personal scope of collective agreement covering personal assistants, etc. Each party appoints two members to this Committee, who then mutually appoint the fifth member; the Committee decides by majority vote; the adopted interpretations are mandatory for all who are covered by the collective agreement.

4.2 Statistics on wages

The Statistical Office published the Wage Report for September 2023 (*'Poročilo o gibanju plač za september 2023'*, OJ RS No. 118/23, 24.11.2023, p. 9890). Average monthly gross wage in Slovenia amounted to EUR 2 174.70 (-2.1 per cent in comparison to August 2023). The average monthly net wage in Slovenia amounted to EUR 1 413.16 (-2.0 per cent in comparison to August 2023).

Spain

Summary

(I) There have not been any legal developments following the formation of the new government in November.

(II) A Supreme Court ruling that is of interest concerning the protection of pregnant workers.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Protection of pregnant workers

The administrative body responsible for managing unemployment benefits has denied these benefits to a worker following the termination of a three-month fixed-term contract. After considering that the worker was hired during her sixth month of pregnancy, the administrative body concluded that the contract was fraudulent. It therefore rejected the application for unemployment benefits, suggesting that the situation involved fraud to secure those specific benefits.

The Supreme Court found no indication or proof of fraud, citing Directive 76/207 and CJEU case law. It emphasised that pregnancy deserves special and stringent protection in both labour law and the realm of unemployment benefits.

This decision aligns with ECHR *Jurčić vs Croacia*, which deems such treatment as being direct discrimination.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

This ruling should not have any implications in Spain. On the one hand, Article 12(4)(d) of the Labour Code recognises that part-time workers must enjoy the same rights as full-time workers, and the principle of *pro rata temporis* shall apply, where appropriate. On the other hand, Spanish rules have been amended to fully comply with EU law, particularly in the field of social security, as evident in CJEU case C-161/18, 08 May 2018 *Villar Láiz*, among others.

If a comparable situation concerning pilots or any other worker arose, Spanish courts would apply the CJEU's doctrine. There is no need for legal amendments, and the case law of both the Supreme and Constitutional Courts is fully in line with CJEU case law.

4 Other Relevant Information

4.1 New government

A new government has been formed following the general elections in July. The Ministry of Labour has announced a reduction in working time (from 40 hours to 37.5 hours per week) and an increase in minimum wage.

4.2 Unemployment

The number of unemployed persons increased in October by 36 936, hence, the total number of unemployed persons is 2 759 404. This is the lowest number in any September since 2007.

Sweden

Summary

(I) Sweden has imposed a higher maintenance requirement for third country nationals' work permits.

(II) An official report proposes a modernised war-time labour act.

(III) Two intense Swedish collective bargaining procedures gained much media attention in Sweden and abroad in November.

1 National Legislation

1.1 Stricter rules on work permits

From 01 November 2023, Sweden imposes stricter rules for granting third-country nationals a work permit. Work permits are only granted if the applicant will earn a salary of at least 80 per cent of the current median salary after an amendment made to Chapter 6 Section 8 a of the Foreigner Decree (*utlänningsförordningen* 2006:97). As the current median salary in Sweden is SEK 34 200 (approx. EUR 3 000), the maintenance requirement for work permits is SEK 27 360 (approx. EUR 2 400). The new maintenance requirement is over 100 per cent higher than the previous requirement of SEK 13 000 (approx. EUR 1 140). It is likely that the maintenance increase will decrease third-country labour migration to Sweden.

1.2 Proposal on new war-time legislation

On 21 November, a new official report of the Swedish government SOU 2023:79 on a new war-time labour legislation was presented. Sweden has a dormant war-time labour act (*Arbetsrättslig beredskapslag* [1987:1262]), but that act was not updated when Swedish labour law was Europeanised and modernised. The proposal, which was initiated by the Swedish government in June 2022, is obviously a measure to deal with the new world order caused by Russia's illegal war on Ukraine.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Part-time work

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

In its judgment, the CJEU held that it is incompatible with EU law to have fixed thresholds for granting overtime compensation as this risks being discriminatory against part-time employees.

Sweden has no legislation on how overtime shall be compensated. The Swedish Working Hours Act (*arbetstidslagen* [1982:673]) regulates, just like the Working Time Directive, how overtime may be requested and scheduled by the employer. According to these rules, overtime is characterised as working time exceeding ordinary working hours (Section 7 of the Working Hours Act). A part-time employee's working time exceeding the individual employment contract but levelling up to ordinary working time is

characterised as "more-time" (Section 10 of the Working Hours Act). A part-time employee may not work more than 200 hours of more-time but may work overtime in addition to more-time.

Even though the Swedish Working Hours Act does not regulate the issue of compensation (which was at stake in the CJEU judgment), it is likely that Swedish collective agreements that regulate compensation for part-time employees have been influenced by the logic of the Working Hours Act. Hence, it is likely that the CJEU's judgment will have significant implications for Swedish labour law.

4 Other Relevant Information

4.1 Collective bargaining

In November, two collective bargaining procedures gained much media attention after the well-known employers' (Swedish online payment company Klarna and American car manufacturer Tesla) reluctance to sign collective agreements with Swedish trade unions. In early November, Klarna entered a collective agreement after the trade union's threat to take industrial actions (for more information in English, see here). The collective bargaining procedure with Tesla has so far not resulted in the conclusion of a collective agreement, but in intensified sympathy actions. In late November, Tesla sued the Swedish state in two civil district courts as the sympathy blockade actions taken against the company meant both that no new registration plates were delivered to the car manufacturer and that it received no postal services. The collective bargaining procedure between the Swedish trade union and Tesla is now also covered in international media.

United Kingdom

Summary

There has been new draft legislation related to the Retained EU Law (REUL).

1 National Legislation

Nothing to report.

2 Court Rulings

CJEU case C-660/20, 19 October 2023, Lufthansa CityLine

Case C-660/20 concerned the allegation of discrimination which made the payment of additional remuneration conditional on full- and part-time workers working the same number of additional hours. The Court found this to be less favourable treatment according to Clause 4 (1) of the Framework Agreement annexed to the Part-time Work Directive 97/81. It is likely UK courts would find the same.

3 Implications of CJEU Rulings

Nothing to report.

4 Other Relevant Information

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

As reported previously, the REUL Bill has now received royal assent and is now an Act. In summary, the default is that all Retained EU Law will remain in place except the 587 pieces listed in the Schedule to the Act. In the employment field, there are a number of measures but nonsignificant in the post-Brexit world, notably removing rules on posting of workers and removing rules on drivers' hours during foot and mouth in 2001.

The Act contains extensive powers for the executive to revoke or restate Retained EU Law (which will be called 'assimilated law' after 31 December 2023). Section 14 contains the widest powers and these have been used as the basis for the Retained EU Law regulations 2023, which turns off yet more secondary legislation, including in the labour law field. The Sex Discrimination Act 1975 (Application to Armed Forces etc) Regulations 1994 (S.I. 1994/3276), which the government asserts, is a tidying up exercise, namely 'This piece of legislation no longer has any legal effect as the Sex Discrimination Act 1975 was repealed by the Equality Act 2010. As a result the Sex Discrimination Act 1975 (Application to Armed Forces etc) Regulations 1994 are obsolete.'

Two important draft statutory instruments have been introduced under the wide powers in the legislation. The first are The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023. They achieve three things. First, following the May 2023 consultation, they introduce provisions for the three areas of employment law that the government believes would 'benefit from reform to ensure that they are fit for purpose for both businesses and workers alike'. The three areas of reform are:

- Record keeping requirements under the Working Time Regulations 1998 ("WTR");
- Simplifying annual leave and holiday pay calculations under the WTR;
- Consultation requirements under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").

Second, the instrument restates certain principles to ensure employment rights in those areas are maintained, notwithstanding the changes to Retained EU Law that are provided for in the 2023 Act. These are:

- The right to carry over annual leave where an employee has been unable to take it due to being on maternity or other family-related leave or sick leave;
- The right to carry over annual leave where the employer has failed to inform the worker of their right to paid annual leave or enable them to take it; and
- The rate of pay for annual leave accrued under Regulation 13 of the WTR.

Third, the SI will revoke two pieces of legislation. These are:

- the European Cooperative Society (Involvement of Employees) Regulations 2006, and
- the Working Time (Coronavirus) (Amendment) Regulations 2020.

The second set of Regulations are The Equality Act (Amendment) Regulations. According to the Explanatory Memorandum:

> *"The instrument will reproduce the following principles from 1 January 2024 to ensure these rights and protections continue, notwithstanding the removal of interpretive effects by the REUL Act:*
>
> *(a) That special treatment can be afforded to women in connection with pregnancy, childbirth or maternity;*
>
> *(b) That less favourable treatment on grounds of breastfeeding constitutes direct discrimination on grounds of sex, and that this applies in the workplace as in other settings covered by the 2010 Act;*
>
> *(c) That women are protected from unfavourable treatment after they return from maternity leave where that treatment is in connection with the pregnancy or a pregnancy-related illness occurring before their return;*
>
> *(d) That women are protected against pregnancy and maternity discrimination in the workplace where they have an entitlement to maternity leave which is equivalent to compulsory, ordinary or additional maternity leave under the Maternity and Parental Leave etc. Regulations 1999 (MAPLE Regulations);*
>
> *(e) That a claimant without a relevant protected characteristic, who suffers a disadvantage arising from a discriminatory provision, criterion or practice ("PCP") together with persons with the protected characteristic may bring a claim of indirect discrimination;*
>
> *(f) That employers and equivalent for other work categories covered by Part 5 of the 2010 Act may be liable for conduct equivalent to direct discrimination if a discriminatory statement is made regarding recruitment, even when there is not an active recruitment process underway;*
>
> *(g) That an employee is able to draw a comparison for the purposes of equal pay claims with another employee where their terms are attributable to a single body responsible for setting or continuing the pay inequality and which can restore equal treatment, or where their terms are governed by the same collective agreement;*
>
> *(h) That the definition of disability must be understood as specifically covering a person's ability to participate in working life on an equal basis with other worker."*

These are major pieces of legislation, and the implications are being thought through.

On 22 November 2023, the House of Commons European Scrutiny Committee launched a new inquiry, Retained EU Law: the progress and mechanics of reform.

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