



Flash Reports on Labour Law August 2019

Summary and country reports

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Executive Summary

National level developments

In August 2019, important developments in labour law took place in several Member States and European Economic Area (EEA) countries (see Table 1), whereas a number of countries indicated an interruption of legislative activity due to parliamentary holidays. **EU law** was particularly relevant for the following legislative initiatives and judicial decisions:

Free movement and posting of workers

In **Bulgaria**, The Ministry of Interior issued an Instruction amending certification and documentation requirements for family members of EU citizens. In **Denmark**, the government is considering legislation to introduce a minimum remuneration for truck drivers posted to Denmark. Posted workers were also the subject of two Industrial Arbitration rulings, which concerned the calculation of compensation for posted construction workers' and temporary agency workers' unpaid overtime. In **Germany**, The Federal Ministry of Labour and Social Affairs plans to present a bill to implement the amending directive to the Posting of Workers Directive. In **Romania**, a government ordinance contains provisions for the application of Regulation (EU) 2016/589 on a European network of employment services (EURES Regulation), identifying the national institutions to become part of the EURES network.

Atypical work

In **Belgium**, a decision by the Appeal Labour Court denied a teleworker the right to claim reimbursement of the costs associated with her work. CBA No. 85 on Teleworking, signed by the Belgian social partners on 9 November 2005, has transposed the European Framework Agreement on Telework (signed by ETUC, Eurocadres-CEC, UNICE, UEAPME and CEEP) on 16 July 2002 a framework agreement on telework, but does not grant

teleworkers the same rights as traditional home workers. In **Germany**, the Federal Labour Court found that the prohibition of concluding repeated fixed-term contracts did not apply in case of an interruption of 22 years between two employment relationships. In **Spain**, the Constitutional Court found rules for the calculation of retirement benefits for part-time workers discriminatory, in accordance with the CJEU's ruling in *Villar Láz* (8 May 2019, Case C-161/18). In the **UK**, the Court of Appeal, seized to rule on holiday pay for those on zero hours contracts, invoked the 'accrual approach' supported in case law of the Court of Justice, but upheld a calculation rule as more favourable for fixed-term workers. More specifically, national law requires a 'part-year worker's' weekly remuneration to be identified and multiplied by the ordinary annual leave duration of 5.6 weeks – even if this results in part-year workers receiving a higher proportion of their annual earnings as holiday pay than full-time workers.

Working time

In **Germany**, a decision of the Administrative Court referred to the CJEU's ruling of 21 February 2018, C-518/15, to find that Directive 2003/88/EC also applies to judges participating in a judicial standby service, irrespective of whether there is an employment relationship under national law. Also in **Ireland**, CJEU case law was invoked for a firefighter working on-call, required to carry an 'alerter' and report for duty at the fire station within seven minutes of receiving an alert. Reliance on the decision in Case C-518/15, *Ville de Nivelles v. Matzak*, was rejected by the Labour Court because, unlike *Matzak*, the applicant could choose the place to stay during his on-call periods.

Data protection

In **Denmark**, the Supreme Court found that an employee's unlawful secret recording of a meeting did not justify his summary dismissal. In an obiter dictum, the Court noted that not any breach of

Regulation (EU) 2016/679 (concerning the protection of natural persons with regard to the processing of personal data and on the free movement of such data, GDPR) was necessarily a breach of employee duties. In **Portugal**, legislation to implement the GDPR entered into force on 09 August.

Transfer of undertaking

In **Austria**, a Supreme Court decision on the takeover of a chain of betting shops referred extensively to CJEU case law to find that under an overall assessment a transfer of a business had taken place.

Working conditions of seafarers

In **Estonia**, the proposed the Seafarers Employment Act and Maritime Safety Act contains the implementation provisions for Directives (EU) 2017/159 and (EU) 2018/131.

Implications of CJEU or EFTA-Court rulings and ECHR

Nothing to report.

Table 1. Main developments (excluding implications of CJEU or EFTA-Court rulings)

Topic	Countries
Minimum wage	DK, HR, PL
Working time	DE, IE, LT
Data protection	DK, PT
Part-time work	ES, UK
Posting of workers	DE, DK
Brexit	UK
Collective redundancies	NO
Disabled workers	FR
Dismissal protection	EL
Employee appraisal interview	FR
EEA	LI
Employment of foreigners	ES
EURES	RO
Fixed-term employment	DE
Free movement of workers	BG
Harassment	FR
Health and safety	PT
Illegal employment	ES
Information and consultation	DE
Labour Inspectorate	ES
Location of work	HU
Recognition of qualifications	HR
Retirement saving scheme	FR
Subcontracting	EL
Telework	BE
Temporary Agency Work	DE
Third country nationals	HR
Training	PL
Transfer of Undertakings	AT
Workers' representatives	FR
Workplace rules	FR
Young workers	PL



Austria

Summary

The Austrian Supreme Court applied the criteria of the Transfer of Undertakings Directive to the takeover of a chain of betting shops.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Transfer of a chain of betting shops

Supreme Court, No. 9 ObA 81/19f, 23 July 2019

Factual Part

§ 3 (1) [Act on the Adaption of Contractual Labour Law](#) ('Arbeitsvertragsrechtsanpassungsgesetz' – hereinafter: AVRAG) provides for the following:

"If an undertaking, business or part of a business is transferred to another owner (transfer of business), he enters the existing employment relationships as the employer with all the applicable rights and obligations at the time of the transfer."

Austrian law does not include a definition of the relevant elements of a transfer of undertaking such as Article 1 paragraph 1 (b) of Directive 2001/23/EC. Nevertheless, the national courts interpret the notion in line with the Directive and the jurisprudence of the CJEU.

This [decision, which](#) deals with the takeover of a chain of betting shops, is another (fairly simple) example of such an interpretation that is in line with EU standards. First, the court repeats the standard phrase developed in a number of decisions: whether a transfer of business took place shall be assessed on the basis of the factual circumstances of the case. An overall assessment of the individual circumstances must be made; such circumstances include, for example, the takeover of tangible and intangible assets and the bulk of the workforce, the similarity of the activities performed before and after the transfer, client takeover and the continuation of the economic unit.

In the present case, the Supreme Court referred to the similarity of the business activities before and after the transfer, pointing out that bets could initially be placed by customers with the transferor and later in the shops that were taken over by the transferee. Hence, they essentially targeted the same customers; the fact that customer data was not transferred was irrelevant because in the betting business, the takeover of walk-in customers on account of the transfer of the betting shops is an important indicator for a transfer. The fact that the transferee had not acquired these betting shops directly from the former operator but from another intermediate company did not change the factual transfer, since the legal construction on which the transfer was based may not lead to a circumvention of the purposes of AVRAG. The slight temporary interruption of business due to renovations and conversion measures does not change the fact that a transfer of business took place. Moreover, the transferee had taken over a number of former employees of the transferor by concluding new employment contracts. The overall assessment led to the conclusion that a transfer of undertaking had taken place of those locations the transferee took over.



Analytical Part

This decision is another good example of Austrian courts applying the criteria for a transfer of undertaking as developed by the CJEU. In the reporters' view, Austrian court practice is very much in line with EU prerequisites.

3 Implications of CJEU rulings and ECHR rulings

Nothing to report.

4 Other relevant information

Nothing to report.

Belgium

Summary

An Appeal Labour Court ruling found that compensation entitlements of 'traditional' home workers could not be applied to teleworkers.

1 National Legislation

The federal government has resigned and Parliament members are on holiday. There was hence no legislative activity in the month of August 2019.

2 Court Rulings

The courts generally remain closed in August. One interesting labour court decision on telework was issued.

2.1 Telework

Appeal Labour Court Brussels, No. 2018/AB/278, 02 July 2019

Factual part

On 05 February 2001, the '*société anonyme BMXX*', the employer, and Mrs. Y signed a full-time employment contract of indefinite duration. Mrs. Y was recruited as a software developer.

On 16 March 2003, they signed a new employment contract, which modified her position to Staff Product Developer. She had a fixed monthly gross salary of EUR 3 978, supplemented by a variable salary of 17 per cent of her gross annual salary under the applicable bonus scheme (as of 01 April 2003).

As of September 2011, Mrs. Y's workplace was closed down and she was offered the opportunity to work from home using the company's IT resources.

By registered letter dated 03 September 2015, the employer terminated the employment contract and announced payment of severance pay. Mrs. Y also received an outplacement offer.

The employer wanted to settle the dismissal dispute by means of a settlement, but no agreement was reached. As a result, the employer paid a severance payment on 21 December 2015, equal to Mrs. Y's salary for 13 months and 10 weeks.

On 27 June 2016, the trade union secretary representing Mrs. Y sent an e-mail to the employer requesting, inter alia, compensation for the costs of home working of EUR 55 279.

Mrs. Y based her claim on Article 119.6 of the Employment Contracts Law of 03 July 1978, which stipulates that a lump sum of 10 per cent of the salary is due to the home worker—as a supplementary arrangement—to reimburse the costs associated with home working, unless the employee can demonstrate with supporting documents that the actual costs are higher than 10 per cent of the 'salary'.

Article 119.1 of the Employment Contracts Law defines home workers as employees who perform work for remuneration, under the authority of an employer at their place of residence or at any other place of their choice, without being under the supervision or direct control of the employer. Article 119.1, § 2, first paragraph, further stipulates that Articles 119.3 to 119.12 of the Employment Contracts Law, and therefore also Article 119.6 on which the employee Mrs. Y based her claim, do **not** apply to employees

to whom the intersectoral collective bargaining agreement (hereinafter: CBA), concluded in the National Labour Council of 09 November 2005 on teleworking, is applicable (declared universally binding by a Royal Decree 13 June 2006, '*Monteur belge*' 05 September 2006). This CBA had been concluded to transpose the framework agreement on telework, signed on 16 July 2002 by the European social partners ETUC (and the liaison committee Eurocadres-CEC), UNICE, UEAPME and CEEP.

Article 2, first paragraph, first indent of this CBA states that teleworking is defined as a form of organisation and/or performance of work in which, in the context of an employment contract, work that could also be carried out at the employer's company location, is carried out outside the company location on a regular basis and not on an incidental basis, using information technology. Article 4, paragraph 1, of this CBA adds that telework can be carried out in the home of the teleworker or at any other location of his/her choice.

The essential difference between a teleworker and a home worker thus lies in the fact that in the case of the former, the use of modern telecommunication is necessary, while this is not the case of the latter.

Since Mrs. Y was a teleworker, the regulation of home working did not apply to her, hence she could not invoke Article 119.6 of the Employment Contracts Law and could not claim reimbursement of the costs associated with work performed at her home.

The ruling is available [here](#).

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Bulgaria

Summary

A ministerial instruction amends documentation requirements for families of EU citizens.

1 National Legislation

1.1 Documents

The Ministry of Interior issued an [Instruction for Amendments and Supplements of Instruction No. 8123h-1276 of 2018 on the Procedure and Organization for Issuance of Documents and Certificates under the European Union Citizens and Members of Their Families Entry, Residence and Departure from the Republic of Bulgaria Act](#) (State Gazette No. 65 of 16 August 2019). The most important amendment is that an individual, instead of having to document that he/she is a family member of an individual or family that has settled in the EU, a document certifying the obstacles to their factual life together will need to be submitted (Article 3, 12, 13 and 14 of Instruction No. 8123h-1276).

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Croatia

Summary

(I) The annual quota for the employment of aliens in construction and in the tourism and hospitality sector has been raised.

(II) The Minister of Labour and Pension System has amended the Decision on the Committee of Experts for monitoring and analysing changes to the minimum wage.

(III) The Minister of Demographics, Family, Youth and Social Policy has issued two regulations on the recognition of foreign professional qualifications.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Employment of TCNs

The Minister of Labour and Pension System has issued the [Decision on an increase in the annual quota for employment of aliens in construction and in the tourism and hospitality sector for the calendar year 2019](#) (Official Gazette No. 74/2019).

4.2 Minimum wage

The Minister of Labour and Pension System has amended the [Decision on the Committee of Experts for monitoring and analysing changes to minimum wage](#) (Official Gazette No. 78/2019). Prior to the amendment, in addition to other experts, two representatives of the Ministry of Labour and Pension System were members of the Committee of Experts for monitoring and analysing changes to the minimum wage. In future, there will be two experts, but only one will be a representative of the Ministry of Labour and Pension System and the other a representative of the Croatian Bureau of Statistics.

4.3 Recognition of foreign qualification

The Minister of Demographics, Family, Youth and Social Policy has issued two regulations (Official Gazette No. 79/2019):

- The [Regulations on conditions for the recognition of foreign professional qualifications to pursue a regulated profession – social workers for the purpose of establishment in the Republic of Croatia](#); and



- The [Regulations on conditions for the recognition of foreign professional qualifications to pursue a regulated profession – educational rehabilitator for the purpose of establishment in the Republic of Croatia](#)

Denmark

Summary

- (I) The government has established a committee to prepare statutory legislation on minimum wages in road haulage/ cabotage road transport.
- (II) Three industrial arbitration rulings concerned sanctions for underpayment of posted workers, posted temporary agency workers and hired foreign workers.
- (III) The Supreme Court passed a ruling providing guidelines for an employee's right to record meetings with the employer.
- (IV) The Supreme Court provided an obiter dictum that not all breaches of the GDPR regulation would amount to a breach of duties by the employee.

1 National Legislation

1.1 Minimum wage for posted truck drivers

The new government has established a committee to prepare a report on legislation that ensures that foreign truck drivers receive Danish remuneration.

The committee will be established on the basis of a recommendation from the social partners.

The committee will aim to introduce minimum pay for mobile workers in cabotage road transport to ensure that this group of drivers becomes eligible for Danish remuneration corresponding to the salary levels established in the collective agreements of the most representative social partners in the transport sector. The control and enforcement mechanisms will also be increased, i.e. companies in breach of the new rules will be fined.

The committee is expected to conclude its report in December 2019, which will represent the basis for a proposal of a new statutory act.

A press release on this issue is available [here](#).

2 Court Rulings

2.1 Posting of workers, systematic circumvention of agreements for employee rights

Industrial Arbitration ruling, No. FV 2019.0042, 19 July 2019, 3F v Dansk Byggeri on behalf of B.C.I.

Factual part

The Italian posting entity, B.C.I, is a member of the Danish construction industry's employers' association, Dansk Byggeri, and as such is required to pay its posted workers the salaries set out in the collective agreements of Dansk Byggeri.

B.C.I had posted a number of workers to a construction site near the Copenhagen airport over a period of 1.5 years. The case involved 15 posted workers.

The parties disagreed on the validity of the documentation for remuneration for the hours worked, on the method of calculating outstanding pay for overtime, and on whether B.C.I. had constructed fake payslips.

[The industrial arbitrator found](#) no evidence that the payslips had been constructed, and that the only outstanding issue was how to calculate the payment in lieu.

The calculation was made on the basis of minimum pay based on the hours worked as stated on the payslips, and resulted in an overall outstanding amount of approx. DKK 800 000 (EUR 110 000). This amount was reduced at the discretion of the arbitrator, taking other elements of remuneration into consideration which were paid but not documented, such as payment of food, travel costs, etc. The underpayment of the posting entity was set at DKK 600 000 (EUR 85 000)

Analytical part

The ruling in itself is not important, but it is of relevance as it is part of the enforcement structure protecting the mandatory rights of posted workers to Denmark.

The ruling aligns with earlier case law on the matter.

2.2 Temporary agency work, posted temporary agency workers, underpayment

Industrial Arbitration ruling, No. FV 2018.0119, 10 July 2019, 3F Building and Construction Union v Dansk Byggeri on behalf of Adecco A/S

Factual part

The ruling involved three temporary agency workers who were posted from Poland to Denmark to work for the temporary work agency Adecco, and worked under temporary agency work contracts for the Copenhagen Metro over a period of 2-3 years.

[The arbitrators found](#) that the temporary agency workers had been underpaid by the temporary work agency, as they had not been fully remunerated for all of their working hours and registered overtime hours.

The outstanding remuneration was calculated on the basis of many methods, and in the end by the arbitrators, amounting to DKK 234 000 (EUR 30 000).

The arbitrators asserted that no principle existed in case law to increase the penalty beyond the outstanding amount of remuneration for underpayment of non-unionised workers, but not for temporary agency workers in the same situation, like the three workers in the present case, nor as a penal element against the breach of agreement by the agency.

The fine was set at DKK 234 000 (EUR 30 000), the outstanding amount.

Analytical part

The ruling in itself is not important, but it is relevant as it is part of the enforcement structure protecting the mandatory rights of posted workers, including posted temporary agency workers to Denmark.

The enforcement of the agreements on posted workers are deemed essential, as they ensure that the rights of posted workers are protected and that they receive minimum pay while performing work in Denmark.

2.3 Underpayment of hired foreign workers

Industrial Arbitration ruling, No. FV2019.0053, 02 July 2019, 3F v Dansk Byggeri for Company X.

Factual part

A construction company hired foreign workers to perform work at a number of construction sites in Denmark. Upon inspection of the sites, the trade union found that

the foreign workers were not being paid the normal remuneration rates, including overtime rates for work performed on weekends.

This was a breach of agreement by the company.

According to industrial case law, the fine payable to the union for breach of agreement adds up to the amount the company saved by not adhering to the agreement, cf. FV2014.0156.

As provided by FV2018.0064, the amount the company saved for not making pension payments is limited to the employer's part of the pension payments.

The company had not provided further documentation or evidence contrary to the calculation presented by the trade union, and the fine was set at the calculated savings of the company, namely DKK 1 400 000 (EUR 190 000).

Analytical part

The [ruling](#) is important as it reinforces the applicability of collective agreements to all companies providing services in Denmark and to all the workers of such companies, including foreign workers.

The ruling aligns with earlier case law on breaches of agreement by underpayment—or alternative payment structures—for foreign workers, including for such elements as overtime pay for work performed during weekends.

The ruling aligns with the EU acquis in that the free movement of labour requires workers to be entitled to all the rights and privileges in the receiving country.

2.4 Dismissal protection

Supreme Court, No. BS-42617/2018, 19 August 2019

Factual part

A summary dismissal of an employee for making an audio recording of a meeting with the company management and other colleagues was not lawful.

The question was whether the employer's summary dismissal was lawful based on the secret audio recording of the meeting.

Any handling of personal information must—according to the GDPR—have an objective purpose. The assessment of whether a secret recording is a breach of the GDPR regulation depends in part on a proportionality assessment.

The assessment of whether an employee's recording of a conversation with his/her employer without the employer's knowledge constitutes a breach of the employee's duties, depends on a thorough balancing of interests of both the employee and the employer and other persons involved. The purpose for the recording as well as the background circumstances had to be taken into consideration, including whether the employee had a specific reason for securing evidence in a way that overruled his employee rights. What type of information the employee expected or intended to record, including whether this information was of a purely private character or should be confidential with reference to the company or others present had to also be taken into account.

The handling of the recording after the fact can also represent a breach of agreement. It was determined that the employee had not handled or used the recording in any manner, that could be deemed a breach of agreement.

The Supreme Court also noted that not just any breach of the GDPR is also automatically a breach of the employee's duties which can be sanctioned with dismissal or summary dismissal.

Assessing the content of the recording and the background for the recording, the Supreme Court ruled that the employee had an objective purpose for recording the meeting, and that the interests of the employer and the other colleagues in this situation did not overrule the interest of the employee.

The employee was awarded his full wages during the notice period and compensation for unlawful dismissal.

The Supreme Court's decision differed from that of the High Court.

Analytical part

This is a significant [ruling](#), as it is the first time that the Supreme Court has dealt with a dismissal (and summary dismissal) because of an employee's secret recording of the content of a meeting with a view to securing evidence.

The Supreme Court provided guiding principles and considerations for an assessment of when a secret recording would be in breach of the GDPR, and how to assess the proportionality of a sanction in the form of dismissal or summary dismissal.

The fact that the Supreme Court stated that employees would in certain situations have the right to secure evidence, depending on the background and purpose of the recording, is a clear guideline.

The Supreme Court gave the obiter dictum that not any breach of the GDPR by the employee is a breach of the employee's duties that can be sanctioned with dismissal or summary dismissal. This statement is helpful and levels out the situation for the employee and the employer, as the employer in certain situations may be allowed to use data or information obtained by violating the employee's privacy to justify dismissal or summary dismissal.

The ruling covers secret recordings of work meetings between an employee and the employer, the protection of employer privacy, and the relationship between the GDPR and the employee's duties.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Estonia

Summary

The Estonian Ministry of Social Affairs has prepared amendments to modify seafarers' employment conditions in line with Directives (EU) 2017/159 and (EU) 2018/131.

1 National Legislation

1.1 Amendments to Seafarers Employment Act and Maritime Safety Act

Two directives were adopted at the European Union level to specify the employment conditions of seafarers. The directive (EU) 2017/159 focuses on the employment conditions of seafarers employed on fishing vessels. The Directive shall be transposed by 15 November 2019.

The second directive to be transposed is Directive (EU) 2018/131/. It concerns changes to Directive 2009/12/EC in line with the adaptations to the ILO 2006 Convention on seafarers' employment conditions. The Directive and its content must be transposed by 16 February 2020.

The necessary changes in Estonian legislation concern the Seafarers Employment Act and Maritime Safety Act.

The main changes in Estonian legislation concern the regulations on financial guarantees primarily related to work accidents and occupational diseases. Such guarantee mechanisms are currently still missing.

The amendments also envisage that the regulations that apply to vessels with a length of over 24 meters shall also be applied to vessels with a length of under 24 meters. Among others, the amendments concern the minimum age for concluding a seafarers' employment contract and night work regulations.

The planned amendments have not been discussed in Parliament yet.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

France

Summary

(I) An ordinance amends provisions of the Labour Code regarding obligatory employment of disabled workers and mandatory employee evaluation interviews.

(II) The Supreme Court ruled in a case on moral harassment in the workplace (statute of limitations), on the dismissal of an employee representative by a liquidator, and workplace rules on alcohol consumption.

1 National Legislation

1.1 Labour Code amendments

[Ordinance No. 2019-861 of 21 August aimed at ensuring consistency of various legislative provisions with Act No. 2018-771 of 05 September 2018 on freedom of choice of professional future](#) was published in the Official Gazette on 22 August. The text amends several provisions of this law and adapts the measures of the other codes to the new references of the Labour Code.

1.1.1 Obligation to employ disabled workers

The Ordinance of 21 August provides details on the amendments of the obligation to employ disabled workers:

- the transfer of competences from the French Association managing the funding for the occupational integration of disabled persons to Urssaf concerning the recovery of the contribution due pursuant to the obligation to employ disabled workers is extended, as of 01 January 2020, to litigation and sanctions (Code de la sécurité sociale (hereinafter CSS), [Article L. 213-1](#));
- concerning approved agreements allowing the employer to exempt him-/herself from the payment of contributions within the scope of the obligation to employ disabled workers (Code du travail (hereinafter: Labour Code), [Article 5212-8](#)), only agreements approved and in force before 01 January 2020 will continue to have effect until their expiry, with the possibility of renewal for a maximum period of three years (with the exception of establishment agreements). Agreements that enter into force on or after 01 January 2020 but are approved before that date are not affected, i.e. these agreements and those concluded after 01 January 2020 will have a maximum duration of 3 years, and may be renewable once (6 years);
- concerning the possibility of deducting the amount of supply, subcontracting and service contracts concluded with protected or disabled self-employed workers from the contribution due within the scope of the obligation to employ disabled workers (Labour Code, [Article L. 5212-10-1](#)), the Ordinance adds wage carrying companies, if the employee concerned is a beneficiary of the obligation to employ disabled workers;
- jobs requiring special aptitude conditions (ECAP) held by employees of the company are taken into account to modulate the contribution due within the scope of the obligation to employ disabled workers. The Ordinance specifies that this modulation may take the form of a deduction from the amount of the contribution (Labour Code, [Article L. 5212-9](#)). The Future Law had provided that

the contribution would be modulated according to the ECAP but without specifying in what form.

1.1.2 Employee evaluation interview

In 2020, employers will have to organise the first 'inventory of fixtures' interviews, planned to take place every six years and introduced in the 2014 law as amended by the Future Law of 05 September 2018 (Labour Code, [Article L. 6315-1](#), II). This interview, which shall take place every 6 years, aims to formulate a summary of the employee's professional background. If during this interview it becomes evident that the employee did not have all of the necessary interviews (biennial, interview every 6 years...) and non-compulsory training, companies with at least 50 employees will have to contribute EUR 3000 to the personal training account (Labour Code, Articles [L. 6323-13](#) and [R. 6323-3](#)).

Ordinance No. 2019-861 of 21 August 2019 establishes a transitional period until 31 December 2020 for companies with at least 50 employees to comply with this obligation to organise periodic interviews and to train their employees and thus avoid having to pay the penalty. However, beyond that, as of 01 January 2021, employers will have to provide evidence that the employees had all of the required professional interviews and that they received at least one non-compulsory training in every six-year period.

1.2 Retirement savings plan

[Decree No. 2019-862 of 20 August 2019 implementing the provisions of Law No. 2019-486 of 22 May 2019 on the growth and transformation of companies in terms of employee savings and stock ownership](#) specifies the terms and conditions for the payment of unilateral employer contributions created by the law on the growth and transformation of companies as well as the content of the annual statement of companies' financial position to be submitted to the beneficiary of an employee savings plan as of 01 January 2020. It also sets a ceiling on the management costs payable by the beneficiary of a company retirement savings plan, who has left the company, and the performance criteria relating to the CSR that can be included in the branch negotiations.

The PACTE law offers the employer two new possibilities for the company savings plan, even in the absence of an employee's contribution (Labour Code, [Article L. 3332-11](#)). One of these possibilities is intended to encourage employee stock ownership within an employee savings plan. The other is intended for the sharing of securities between shareholders and employees through a retrocession of capital gains.

The decree sets a ceiling for payment of the employer's unilateral contribution, intended to encourage employee stock ownership: 2 per cent of the annual amount of the social security ceiling (Labour Code, Article D. 3332-8-1 new). This employer contribution must be taken into account when assessing compliance with the general ceiling set, which is 8 per cent of the annual social security ceiling (Labour Code, Articles [L. 3332-11](#) and [R. 3332-8](#)).

The payment ceiling applicable to the contribution resulting from the contract between shareholders and employees has already been determined by law: only the amount allocated to an employee and paid into the EPE not exceeding 30 per cent of the amount of the employee's annual social security ceiling benefits from the social and fiscal value. It should also be recalled that this contribution, unlike the contribution intended to encourage employee stock ownership, is not used to assess compliance with the general ceiling of 8 per cent of the annual social security ceiling contribution.

According to [Article L. 23-11-3 of the French Commercial Code](#), the company has the choice between three allocation criteria provided for profit-sharing or incentives (uniform distribution, according to the length of service or the amount of salary), the uniform criterion being the criterion applied in the absence of an election. But this article of the Commercial Code does not ascertain whether these criteria can be combined.

The decree removes this doubt by explicitly specifying that the criteria may be combined, subject to the 30 per cent payment ceiling.

The managing body is required to provide the participant—prior to any subscription—with a Key Investment Information Document. However, since this document is not a guideline, the law on the growth and transformation of companies (Law No. 2019-486 of 22 May 2019 JO) has strengthened the information obligations towards members.

Thus, the account-keeping organisation must provide any participant, with an annual statement of the situation, including the choice of allocation of his/her savings and the amount of his/her securities estimated on 31 December of the previous year (Labour Code, [Article L. 3332-7-1](#)).

The content of this statement and the deadline for its delivery have yet to be specified by decree.

This detailed and standardized statement must be provided to the beneficiary within 3 months of 31 December of the previous year.

It must include the following information:

- the identification of the company and the beneficiary;
- the total amount of rights and assets recorded in the beneficiary's account, estimated on 31 December of the previous year;
- the amount of its rights and assets per management medium, with the dates of availability, as well as the management methods, provided for by default in the plan's rules or chosen by the beneficiary;
- a summary of the sums invested during the past year in the plan, presented by type of payment (profit-sharing, voluntary payments, traditional employer contributions, unilateral employer contributions), as well as sums disinvested from the plan over the same period, distinguishing those resulting from an authorised early release case;
- a summary of the expenses payable by the employee during the past year in accordance with the provisions of the plan.

It may be provided electronically ('under conditions ensuring the integrity of the data'), unless the beneficiary expressly states otherwise. This new requirement only comes into effect on 01 January 2020, to allow account managers to configure their computer systems.

A former employee of a company can continue to contribute to his/her company retirement savings plan, unless he/she has access to a company retirement savings plan in the new company employing him/her. These payments do not benefit from the company's additional payments and the costs related to their management are the sole responsibility of the company (Labour Code, [Article L. 3334-7](#)).

The PACTE law sought to cap the management costs borne by the beneficiary in this case. The decree sets this ceiling.

The management fees payable by the former employee may not, in principle, exceed EUR 20 per year. If the sums and securities registered in the beneficiary's account are less than EUR 400, these costs may not exceed 5 per cent of the sums and securities (Labour Code, Article D. 3334-3-3-3 new).

To promote small and medium businesses, access to the participation scheme was offered, the professional branches were required to negotiate participation or profit-sharing agreements before 31 December 2017 and thus provide companies with a reference framework. However, since not all industry sectors have complied with this obligation, the PACTE law has once again imposed an obligation on branches to negotiate the implementation of a profit-sharing, incentive or inter-company savings plan. Initiated primarily by employers' organisations, this negotiation must be 'concluded' by 31 December 2020, at the latest ([L. No. 2019-486, 22 May 2019](#), Article 155, V).

The legislator has specified that this negotiation may include performance criteria relating to corporate social responsibility.

The list of these criteria is set by the decree. These criteria may relate to the topics mentioned in II of [Article R. 225-105 of the French Commercial Code](#) (social information such as employment, health and safety, labour relations, environmental information or societal information).

2 Court Rulings

2.1 Harassment in the workplace

Criminal Division of the Court of Cassation, No. 18-85.725, 19 June 2019

Factual part

An employee filed a complaint with the Paris Court of First Instance in October 2014 claiming that he had been subjected to acts of moral harassment by his superiors.

These acts, which were allegedly committed between 1992 and 2012, led to the opening of a judicial investigation. At the end of the proceedings, the investigating judge issued an order dismissing the case. According to his decision, the magistrate held that the facts that had been committed before 16 October 2011, i.e. more than 3 years before the complaint was filed, and were therefore covered by the statute of limitations.

Analytical part

[The Paris Court of Appeal upheld the dismissal order](#). It added that after analysing all the facts, including those covered by the limitation period, it had not been established that the employee's supervisors had refused to provide him with work, thus excluding proof of moral harassment against him.

The employee argued that the description of the offence of moral harassment, which is only characterised by repetition of comments or behaviour, begins to run on the day of the last act, demonstrating the state of habit. Consequently, the alleged acts of harassment, which had continued until 02 July 2012, were therefore not time-barred.

Invited to rule, the Court of Cassation confirmed the employee's reasoning but did not censure the decision of the judges on the merits. In the case of the High Court, the statute of limitations began to run for each act of harassment charged only from the last one. The Court of Appeal therefore wrongly held that the facts prior to 16 October 2011 were time-barred.

On the other hand, the existence of moral harassment was rejected, as the Court of Appeal analysed the facts from the beginning and independently assessed that throughout this period, the offence of moral harassment had not occurred.

"Attendu qu'il résulte de l'arrêt attaqué et des pièces de la procédure que, le 11 février 2015, M. U... a déposé une plainte avec constitution de partie civile devant le doyen des juges d'instruction du tribunal de grande instance de Paris contre

personne non dénommée, qu'il a fait valoir qu'il avait subi, dans le cadre de son travail, de la part de ses supérieurs hiérarchiques, depuis 1992 et jusqu'au 1er juillet 2012, des agissements répétés constitutifs de harcèlement moral qui avaient eu pour objet ou pour effet d'altérer sa santé psychique ou mentale du fait que son travail avait été déprécié par sa hiérarchie qui ne lui avait apporté aucun soutien pendant près de vingt ans, qu'ils avaient eu pour objet ou pour effet de compromettre son avenir professionnel ; qu'à l'issue de l'information judiciaire, le juge d'instruction a rendu une ordonnance de non-lieu ; que M. U... en a interjeté appel ;

Attendu que, pour confirmer cette ordonnance, l'arrêt relève que les faits antérieurs au 16 octobre 2011 sont couverts par la prescription de l'action publique et que, y compris pour les faits couverts par cette prescription, sur lesquels le magistrat instructeur a instruit, il n'est pas établi que sa hiérarchie ait refusé de fournir du travail à M. U... ;

Attendu que, si c'est à tort que la cour d'appel a estimé que les faits antérieurs au 16 octobre 2011 étaient couverts par la prescription de l'action publique, alors que la prescription n'a commencé à courir, pour chaque acte de harcèlement incriminé, qu'à partir du dernier, l'arrêt n'encourt néanmoins pas la censure, la cour d'appel ayant procédé à une analyse des faits depuis leur origine et ayant souverainement apprécié que, sur toute cette période, le délit de harcèlement moral n'était pas caractérisé ;

D'où il suit que le moyen doit être écarté"

2.2 Dismissal of employee representatives

Council of State, No. 411058, 24 July 2019

The decision to authorise dismissal is illegal if the liquidator informed of the existence of an external mandate at a meeting of the works council (or of the CSE if it has been set up) but has not informed the administration. This is the clarification provided by the Council of State in a [decision](#) of 24 July.

2.2.1 External mandate: to be protected, you must be informed

Referral to the labour inspectorate is required, regardless of the reason for termination of a protected employee's employment contract by the liquidator. When deciding on an application for dismissal authorisation, the administrative authority must take into account all of the employee's representative functions. It is therefore the liquidator's responsibility to refer to all of the mandates held by the person concerned. Omission of one of these mandates results in the annulment of the decision authorising the dismissal ([Council of State, No. 366166, 27 March 2015](#)).

Awareness of a mandate, and thus of the protective status attached to it, is not necessarily possible if the employee has a mandate outside the company (such as that of a prudential advisor or an employee's advisor).

The judges decided the matter by specifying that it is up to the employee concerned to take the initiative to inform the liquidator of the existence of his/her mandate, at the latest during the interview prior to the dismissal. In the event of litigation, it is therefore up to the employee to prove that he had informed the liquidator of his/her mandate or that the liquidator had knowledge of this by other means ([Cass. soc., QPC, n° 11-28.269, 14 Sept. 2012](#), [Cass. soc., n° 16-12.221, 01 June 2017](#)). Otherwise, the employee's mandate is unenforceable and the employee does not benefit from the protection attached to it.

2.2.2 It does not matter how the liquidator is informed

In the present case, a dismissed employee sought annulment of the administrative decision authorising his dismissal by the liquidator on the grounds that the inspector had failed to take his mandate as a labour tribunal advisor into consideration. The liquidator had been informed of this mandate 3 months before the start of the dismissal procedure, at a meeting of the works council. Not having been informed of the existence of this mandate by the employee himself, the liquidator had not bothered informing the labour inspector of it.

In line with existing case law handed down by the Constitutional Council (see above), the Council of State asserted that in the particular case of a company placed under judicial liquidation, the administration must, under penalty of invalidity of its decision to authorise dismissal, take into account, regardless of the manner in which they are brought to his/her attention, all of the employee's mandates held by the protected employee outside the company, provided that they have been brought to the attention of the liquidator by the employee him-/herself or by any other means after the placement in liquidation, at the latest on the date of the interview prior to dismissal.

Therefore, it does not matter how the existence of the mandate outside the company was brought to the attention of the liquidator before the interview prior to dismissal. In the present case, if the employee had not taken the initiative to inform the liquidator himself of the existence of his mandate as a labour arbitrator, the Council of State considered that the latter had become aware of it at a meeting of the company's works council on 20 November 2012, prior to the interview before the dismissal, and that it was his responsibility to inform the administration before which the dismissal request was made.

He added that the Administrative Court of Appeal had "no advantage, committed an error of law by deducting that even though the liquidator had not fulfilled the obligation to provide information, it was incumbent on the administration to take this mandate into account, under penalty of invalidity of its decision".

2.3 Workplace rules

Council of State, No. 420434, 08 July 2019

Factual Part

In the present [case](#), a company specialising in the manufacture of automotive equipment had revised its internal regulations in November 2012. The new version included an annex to the rules of procedure concerning 'impaired driving tests', which meant that employees in "safety and security or risk positions", as defined in that annex (operators of certain types of machinery, users of lifting platforms, electricians or mechanics, etc.), were subject to "zero alcohol tolerance". In practice, these employees were prohibited from consuming alcohol in the workplace or from being inebriated.

One year later, during an inspection, the labour inspectorate decided to cancel this article of the internal regulations. The company defended the merits of its measure and brought the case before the administrative tribunals.

Analytical Part

The Council of State recalls the two principles to be reconciled:



- the employer may only impose restrictions on the employee's rights if they are justified by the nature of the task to be performed and proportionate to the intended purpose;
- the employer, who is bound by a general obligation to prevent occupational risks and whose liability, including criminal liability, may be incurred in the event of an accident, must take the necessary measures to ensure the safety and protect the physical and mental health of workers.

For the High Administrative Court, it follows first of all that "the employer may, where the consumption of alcoholic beverages is likely to harm the safety and health of workers, take measures, proportionate to the intended purpose, limiting or even prohibiting such consumption in the workplace. In the event of particularly high danger to employees or third parties, it may also prohibit any inebriation of the employees concerned. On this point, the Conseil d'Etat seems to be changing its case law, which until now has been against the outright prohibition of any consumption of alcoholic beverages, in order to adopt the content of [Decree No. 2014-754 of 01 July 2014](#).

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Germany

Summary

(I) The Federal Government has announced that it will present a bill to implement the amending directive to the Posting of Workers Directive.

(II) The Federal Labour Court ruled that the prohibition of concluding a fixed-term contract after previous employment relationships does not apply if an employee was hired again by the same employer 22 years after the termination of his previous employment relationship.

(III) The Federal Civil Court ruled on the question to what extent temporary employees are to be taken into account when determining the threshold for the formation of a supervisory board pursuant to the Co-Determination Act.

(IV) The Administrative Court Chemnitz ruled that the Working Time Directive applies to judges.

(V) The number of women in atypical employment has recently fallen significantly.

1 National Legislation

1.1 Draft of amending directive to the Posting of Workers Directive

The Federal Ministry of Labour and Social Affairs (hereinafter: BMAS) plans to present a bill to implement the amending directive to the Posting of Workers Directive after the parliamentary summer break. This is apparent from an [answer to an enquiry by the FDP parliamentary group](#). The government has not commented on the content of the draft.

2 Court Rulings

2.1 Fixed-term contracts

Federal Labour Court, No. 7 AZR 452/17, 21 August 2019

According to a decision of the Federal Labour Court, the prohibition of concluding a fixed-term contract after previous employment pursuant to section 14(2) sentence 2 of the Part-time and Fixed-term Contracts Act ('*Teilzeit- und Befristungsgesetz*', hereinafter: *TzBfG*) does not apply if an employee was hired again by the same employer 22 years after the termination of his previous employment relationship. In arriving at its decision, the court 'implemented' a decision of the Federal Constitutional Court of 06 June 2018 (1 BvL 7/14, 1 BvR 1375/14, ArbRB 2018, 195) according to which the application of section 14(2) sentence 2 may be unreasonable, in particular if the previous employment occurred long ago (see also June 2018 Flash Report).

According to section 14(1) sentence 1 *TzBfG*, a fixed-term employment contract is permissible if it is justified by an objective reason. Pursuant to section 14(2) sentence 1 *TzBfG*, the fixing of the term of an employment contract is also permissible without the existence of an objective reason up to a total duration of two years; the extension of a fixed-term employment contract for a maximum of three calendar periods is also permissible. According to section 14(2) sentence 2, a fixed-term contract in accordance with sentence 1 is permissible if a fixed term or an employment contract of indefinite duration has already existed with the same employer.

In its decision, the Federal Constitutional Court found that section 14(2) sentence 2 *TzBfG* impairs the freedom of employees to choose an occupation and the freedom of employers to conclude employment contracts. Nonetheless, the Court held that it was

consistent with the Constitution, since the labour courts could exclude its application on the basis of an interpretation in conformity with the Constitution in cases in which the application would be unreasonable for the parties involved.

A press release relating to this judgment is available [here](#).

2.2 Co-determination and temporary agency workers

Federal Civil Court, No. II ZB 21/18, 25 June 2019

According to a decision of the Federal Civil Court, temporary employees are to be taken into account when determining the threshold of over 2 000 employees for the formation of a supervisory board pursuant to section 1(1) No. 2 Co-Determination Act ('*Mitbestimmungsgesetz*', hereinafter *MitbestG*) if the company regularly fills jobs with temporary employees for more than six months over a period of one year.

According to section 1(1) in conjunction with sections 6 and, 7 *MitbestG*, a supervisory board with equal representation, must be established in companies operating in i.a. the legal form of a GmbH if that company generally employs more than 2 000 employees. Pursuant to section 14(2) sentence 5 of the Act on Temporary Agency Workers ('*Arbeitnehmerüberlassungsgesetz*', hereinafter *AÜG*), temporary agency workers in principle also qualify as employees within the meaning of the Codetermination Act. However, when determining the threshold for applying the Co-Determination Act, this only applies if the duration of employment exceeds six months (section 14(2) sentence 6 *AÜG*).

According to the Federal Civil Court, this minimum period of employment must not be determined on the basis of the employee but on the basis of the workplace. It should therefore not be based on the fact that the individual temporary employee is or will be employed by the enterprise in question for more than six months, but on how many jobs in the enterprise are regularly filled with temporary employees, including changing ones, over a period of six months.

A press release issued on this ruling is available [here](#).

2.3 Working time of judges

Administrative Court Chemnitz, No. 1 L 131/19, 16 April 2019

The Court held with reference to the decision of the CJEU of 21 February 2018 (C-518/15) that Directive 2003/88/EC also applies to judges participating in a judicial standby service. The Court explicitly stated that it is irrelevant in this regard, whether an employment relationship has been established under national law or any other employment relationship geared to the provision of professional services.

The judgment is available [here](#) (in German).

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Number of women working in atypical employment

According to the Federal Statistical Office (Destatis), in 2018, the number of women working in normal employment rose significantly by around 300 000 (+2.8 per cent)



compared with the previous year. At the same time, the number of women in atypical employment fell by about 16 000 (-3.1 per cent). As the Federal Statistical Office further reports, this change was not as pronounced among men.

A press release on this topic is available [here](#).

Greece

Summary

A recent law presented by the new government abolished the provisions on joint responsibility in the event of subcontracting and the obligation of the employer to justify the dismissal of an employee with an open-ended contract.

1 National Legislation

1.1 Subcontracting

Law 4554/18-7-2018 provided for joint and several responsibility of any natural or legal person, who orders an employee to perform works/services that are the object of a contract within the framework of an entrepreneurial activity. This person (client) was jointly found responsible for the payment of salaries, social security contributions and the severance pay of employees of the contractor. This joint and several responsibility of the client concerned employees employed by the contractor within the scope of the execution of their contract.

Article 117 of the recent Law 4623/7.8.2019 abolished the above provision. The notion of joint responsibility in the event of subcontracting no longer applies.

1.2 Reason for dismissal

Under Greek labour law valid before 2019, the lawfulness of the dismissal of an employee with a contract of indefinite duration did not depend on the existence of valid grounds. An employer could unilaterally terminate an employment relationship without presenting reasons for the termination, unless the employee enjoyed special protection from dismissal as provided either by law, a collective agreement or his/her individual contract. On the legislative basis of the general prohibition of abusive exercise of a right (Article 281 of Civil Code), significant restrictions on the freedom to dismiss had been imposed by the courts. The employee could challenge the dismissal if the employer has dismissed him/her for reasons that constitute an abuse of a right.

A recent Law (4611/17.5.2019) completely modified the entire system and provided that the employer had to justify the dismissal of an employee who had concluded a contract of indefinite duration.

Article 117 of the recent [Law 4623/7.8.2019](#) retroactively abolished the above provision. Therefore, the previous legal system based on the principle of the abuse of rights will continue to be applied.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.



4 Other relevant information

Nothing to report.

Hungary

Summary

The Supreme Court defined the workplace as the organisational unit of the employer where the employee performs his/her work.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Place of work

Supreme Court, No. 16/2019, Mfv.I.10.097/2018, 05 April 2019

The workplace can be specified in the employment contract as a geographical territory or an address. It cannot be concluded from Article 45(3) of the Labour Code that the workplace is only the organisational unit of the employer, where the employee performs work.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Ireland

Summary

The Workplace Relations Commission has determined that a firefighter's on-call time is not working time.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working time

Labour Court, No. ADJ-00015512, 07 August 2019, Retained Firefighter v Local Authority

In [*Retained Firefighter v. Local Authority ADJ-00015512*](#) a Workplace Relations Commission adjudication officer was considering complaints under the [Organisation of Working Time Act 1997](#) that the respondent had not complied with its obligations as regards rest periods, breaks and weakly/night work maximum hours under sections 11, 12, 13, 15 and 16 of the Act.

The complainant was a retained firefighter who, when not attending a fire or other call-out or drill, was on-call for incidents and was required to carry an 'alerter' with him during on-call time. He relied on the CJEU decision in case C-518/15, *Ville de Nivelles v. Matzak*. The respondent accepted that, whilst on-call, retained firefighters were not required to attend at the fire station, they had to be able to report for duty at the fire station within seven minutes of receiving the alert. The respondent submitted, however, that *Matzak* could be distinguished on the basis that the firefighter in that case was obliged to spend his on-call time at home whereas the complainant in this case was free to engage in other employment or activities as long as he could respond within the stipulated time.

The adjudication officer accepted that it was the fact that *Matzak* could not choose the place where he had to stay during his on-call periods that provided the restraint that led the CJEU to decide that such periods must be classified as 'working time'. Because the restrictive elements pertaining to the decision in *Matzak* could not be applied to the complainant, the adjudication officer found all of his complaints to be unfounded.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Liechtenstein

Summary

This year's Europe Day took place in Vaduz. On this occasion, the 25th anniversary of the EEA Agreement was celebrated.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Europe Day

This year's Europe Day took place in Vaduz, the capital of Liechtenstein. On this occasion, the 25th anniversary of the EEA Agreement was celebrated. According to the Liechtenstein government, Liechtenstein's participation in the EEA Agreement has proved valuable. The government considers that the EEA Agreement guarantees the four fundamental freedoms, thereby promoting innovation, competitiveness and general prosperity. The EEA plays a central role in the economic success of Liechtenstein. Almost half of all jobs in Liechtenstein are occupied by EU citizens. In addition, Liechtenstein companies employ thousands of employees in the European Union.

More information is available [here](#) and [here](#).

Lithuania

Summary

A new law contains stricter regulations for recording overtime and night work and work on public holidays.

1 National Legislation

The Law on Employment (*Registry of Legal Acts, 2016, No. 18825*), the separate piece of legislation alongside the Labour Code (*Registry of Legal Acts, 2016, No. 23709*) and the Code of Administrative Offences (*Registry of Legal Acts, 2015, No. 11216*) that governs the institutional framework to support unemployed persons, but also provides for sanctions for illegal work and undeclared work, has been amended by Law No. XIII-2341 of 16 July 2019 to include the duty of the employer to record deviations from normal working time (e.g. overtime, night work, work on public holidays) before the end of the working day. The previous provision only required the employer to do so on the day following the deviation. The amendment was passed relatively 'unnoticed' in public as it was not related to the Labour Code but was inserted into the package on migration laws. Just recently, experts and employers began pointing out the deficits and challenges of implementing the illogical provision to register overtime before the end of the work shift. The adoption of the provision is not a direct result of the CJEU ruling in case C-55/18, 14 May 2019, *CCOO*. The ruling itself does not require special transposition according to officials of the Ministry of Social Affairs and Labour (Payment for overtime: half of all employees are only paid occasionally. More information can be found [here](#).)

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Norway

Summary

A ministerial proposal envisages the repeal of an act on procedures in case of a large-scale business closure.

1 National Legislation

1.1 Collective redundancies

The [Ministry of Trade, Industry and Fisheries has proposed repealing the Act on the obligation to notify in connection with the closure of business of 06 June 2008](#). Under this Act, a company that has employed more than 30 employees over the last 12 months and is considering closing down that office or terminating 9/10 of the employees, must send a notification to the county municipality. The county municipality will arrange for consultations, and no decision can be made until 30 days after the notification was sent. The same applies if all or 9/10 of the employees are relocated outside the relevant county municipality.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Poland

Summary

(I) An amendment to the Law on Minimum Wage ensures higher wages for employees with longer seniority.

(II) A government regulation increases the remuneration of young people employed for the purpose of vocational training.

1 National Legislation

1.1 Minimum remuneration for work

Factual part

On 02 August, the [Law of 19 July 2019 on the amendment to the Law of 10 October 2002 on minimum remuneration for work](#) was accepted by the Senate. On 06 August, it was signed by the President, and subsequently published in the Journal of Laws 2019, item 1564.

Under Polish law, employees are entitled to minimum remuneration for work, which is calculated on a monthly basis. The purpose of the amendment is modification of the method for calculating the amount of minimum remuneration. Under previous regulations, the following components were excluded from the calculation of minimum wage: jubilee award, severance pay due to retirement or acquiring the right to invalidity benefits, bonus for overtime work and bonus for night work. According to the new provisions, seniority allowance (pol. 'dodatek za staż pracy') will also not be taken into account to determine the amount of minimum wage. As planned, the new regulations will take effect on 01 January 2020.

Analytical part

As indicated and substantiated in the previous Flash Report, the amendment should be evaluated positively (see also July 2019 Flash Report, point 1).

Under previous regulations, the method for calculating the amount of statutory minimum wage has been unfavourable for employees with a long employment record. The case could arise that an employee with a long employment record, whose pay amounted to the statutory minimum wage, received lower basic remuneration in comparison to the basic wage of a new employee (or an employee with a short employment record), even if both of them performed the same work or work of the same value. In practice, employees who receive minimum wage and who have been employed for at least several years will get a raise in salary as of 2020.

Moreover, it seems that the new rules on determining the amount of minimum wage will be more transparent.

It should be emphasised that the legislative process was completed within a very short period of time.

Sources:

The original Law of 10 October 2002 on minimum remuneration for work (consolidated text, Journal of Laws 2018, item 2177) is available [here](#).

The information on the legislative process is available [here](#).

1.2 Remuneration of young people

Factual part

Under Polish law, the employment of young people is regulated in section 9 of the [Labour Code](#) (Articles 190 – 206). Article 190 § 1 LC provides that for the purposes of the Code, a young person is a person who has reached the age of 15, but is not yet 18. In principle, young people are employed under an employment contract for an indefinite duration, subject to changes introduced by the abovementioned section 9 of the Code.

Under Article 195 § 1 LC, an employment contract for vocational training should indicate, in particular, the type of vocational training (training for a particular vocation or training in a particular job), duration and location of vocational training, the form of theoretical training and the amount of remuneration.

The legal status of young people is subject of the [Regulation of the Council of Ministers \(i.e. the Government\) of 28 May 1996 on vocational training of young people and their remuneration](#) (consolidated text: Journal of Laws 2018, item 2010).

Paragraph 19 of the Regulation determines the amount of remuneration of young people who are employed for training for a particular vocation. The remuneration of young people constitutes the percentage of the average remuneration in the national economy. The percentage amounts to not less than 4 per cent during the first year of education, not less than 5 per cent during the second year of education, and not less than 6 per cent during the third year of education.

The abovementioned rules on remuneration have been modified by the [Regulation of the Council of Ministers of 13 August 2019 on the amendment of the Regulation of 28 May 1996 on vocational training of young people and their remuneration](#) (Journal of Laws 2019, item 1636).

Under the new paragraph 19, the amount of remuneration of young people employed for training in a particular vocation amounts to not less than 5 per cent during the first year of education, not less than 6% during the second year of education, and not less than 7 per cent during the third year of education. Employers will have the possibility to claim reimbursement of the raise from public funds. The new regulations take effect on 01 September 2019.

Analytical part

In practice, the amount of remuneration of young workers who are engaged in vocational training will be slightly raised in 01 September 2019. The new rules constitute a part of the reform of the system of vocational education. They should encourage employers to hire new candidates and encourage young people to pursue vocational training.

In the present reporter's view, the changes should be evaluated positively, although it is not clear yet whether the financial incentives to employ young people for vocational training will be effective in practice.

Information of the Ministry for Family, Labour and Social Policy on the changes available [here](#).

2 Court Rulings

Nothing to report.



3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Portugal

Summary

(I) The Portuguese law implementing the General Data Protection Regulation entered into force on 09 August.

(II) Relevant laws on employment matters, including substantial amendments to the Portuguese Labour Code and social security legislation have been promulgated by the President.

(III) A law on occupational safety and health in the public administration has been promulgated by the President.

1 National Legislation

1.1 Data protection

[Law No. 58/2019, of 8 August](#), which transposes [Regulation \(EU\) 2016/679 into national law](#) concerning the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing [Directive 95/46/EC](#) (General Data Protection Regulation – hereinafter GDPR), was finally published and entered into force on 09 August.

This law revokes the former Portuguese Data Protection Law – [Law No. 67/98, of 26 October](#), which transposed [Directive 95/46/EC](#) – and amends [Law No. 43/2004, of 18 August](#), which envisages the organisation and operation of the Data Protection National Commission (CNPd) and the personal status of its members.

Law No. 58/2019 stipulates specific rules on the processing of personal data of employees or which may have an impact on employment relationships. The most relevant regulations are summarised below.

1.1.1 Employment relationships

Article 28 of [Law No. 58/2019](#) stipulates certain specificities on the processing of employees' data in the context of employment relationships, such as:

- Consent of the employee to the processing of personal data: the law clarifies that unless otherwise provided by law, the consent of the employee does not make the processing of his/her personal data legitimate (i) if such processing results in a legal or economic disadvantage for the employee or (ii) if it is necessary for the performance of the contract of employment.
- Remote surveillance: the law expressly refers that images and other personal data recorded by means of a remote surveillance system pursuant to Article 20 of the [Labour Code](#) (which regulates the use of remote surveillance systems in the employment context), may only be used within the scope of criminal proceedings. It also clarifies that such images and data may also be used for the purpose of disciplinary proceedings insofar as they are in the context of criminal proceedings.
- Biometric data: the law establishes that the processing of biometric data of employees is only considered legitimate for the control of attendance and the control of access to the premises of the employer. In those cases, it should be ensured that only representations of biometric data are used as well as the collection procedure does not allow data to be reversible.

1.1.2 Period of storage of personal data

According to Article 21 of [Law No. 58/2019](#), personal data may be stored for the period stipulated by the law or regulation or, in its absence, for the period deemed necessary for pursuing their purpose.

If personal data is necessary for the controller or the processor to prove compliance with contractual obligations or others, they may be stored as long as the limitation period of the corresponding rights does not expire.

A special rule on the personal data related to social security is laid down in Law No. 58/2019: the data related to contributory statements for retirement purposes may be stored without a time limit to assist the data subject on the reconstitution of contributory careers, provided that appropriate technical and organisational measures are taken to safeguard his/her rights.

1.1.3 Processing of data related to health and genetics

The processing of data necessary for the purposes of, among others, preventive or occupational medicine or for assessment of the working capacity of the employee as set forth in Article 9 (1) (h) of [GDPR](#), must be carried out by a professional subject to a duty of secrecy or other person subject to a confidentiality duty, and appropriate security measures must be guaranteed (Article 29/2 of [Law No. 58/2019](#)).

Access to such information is governed by the 'need to know' principle. Except in case of technical impossibility or express indication of the data subject otherwise, access to these health data shall be available exclusively by electronic means and the data subject shall be notified of any access to his/her personal data (Article 29/1 and 3 of [Law No. 58/2019](#)).

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Amendments to Labour Code and related legislation

[Decree No. 372/XIII](#), which approves amendments to the Portuguese Labour Code and other related legislation, as well as amendments to social security legislation (see also July 2019 Flash Report), will introduce relevant changes, among others, regarding the following matters:

- probation period;
- term employment contract;
- protection of specific groups of employees (e.g. employees on parental leave; employees with oncological illness);
- professional training;



- harassment;
- bank of hours;
- temporary and intermittent work;
- dismissal due to redundancy of a post;
- collective regulation.

This law was promulgated by the President on 19 August 2019 and is awaiting its publication in the Official Gazette. As a rule, this new law will enter into force on the first business day of the subsequent month to its publication.

4.2 Occupational safety and health in the public administration

On 19 July 2019, the Portuguese Parliament approved [Draft Law No. 185/XIII](#) on the application to the public administration of the legal framework on occupational safety and health set forth in the Labour Code and related legislation, amending the General Labour Law in Public Functions, approved by [Law No. 35/2014, June 20](#).

This law was already promulgated by the President on 9 August 2019 and is awaiting publication in the Official Gazette.

Romania

Summary

The Romanian government has adopted the legal and institutional framework necessary for the application of the provisions of the EURES Regulation.

1 National Legislation

1.1 European network of employment services (EURES)

[Government Ordinance No. 22/2019](#) on the establishment of measures for the application of Regulation (EU) 2016/589 on a European network of employment services (hereinafter: EURES), workers' access to mobility services and the further integration of labour markets has been published in the Official Gazette No. 708 of 28 August 2019.

The new Government Ordinance designates the Public Employment Service of Romania, respectively the National Agency for Employment, together with the agencies for the employment of the county and of the Municipality of Bucharest, as members of EURES.

The Ordinance also contains the conditions for private and public legal entities in Romania that apply to become members, respectively EURES partners, as well as the procedure for admission as a EURES member or partner.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Spain

Summary

- (I) A resolution on the employment of TCNs in 'jobs difficult to fill' was passed.
- (II) A collaboration agreement between the labour inspectorate and the insolvency compensation fund ensures the exchange of data to combat illegal employment.
- (III) The Constitutional Court followed the reasoning of the CJEU's Villar Láiz ruling in a case of discrimination of part-time workers.

1 National Legislation

1.1 Employment of foreigners

Factual part

In accordance with the provisions of the legislation on employment of foreigners, this [Resolution](#) published the 'Catalogue of jobs difficult to fill' in Spain for the third quarter of 2019. As follows from its name, this catalogue lists occupations or jobs every three months that do not usually get coverage through Spanish workers, and for that reason, the recruitment of foreign workers is allowed.

Analytical part

The Catalogue of 'jobs difficult to fill' must be approved by the government every quarter of the year, so it is not a major development. It is an implementation of the Law on Foreigners. For several years (since the start of the economic crisis in 2008), these occupations have been very few, and are currently reduced to the professional sports sectors (both for athletes and coaches) and work at sea. There will not be any major implications, neither for Spain nor for the UE.

1.2 Fight against illegal work

Factual part

The labour inspectorate has reached agreements with the relevant bodies of the social security system and with FOGASA (Spanish guarantee institution in the event of insolvency of the employer) to access the databases of these entities and exchange data of common interest. All these entities will also prepare an annual plan of action aimed at combating situations of fraud against labour and social security legislation.

Analytical part

For several years, collaboration agreements have been concluded between the Spanish labour inspectorate and certain public entities involved in labour and social security affairs to improve the control and monitoring of compliance with labour and social security legislation. This collaboration has been promoted since the approval by the Government of Spain of a Master Plan for Decent Work for the 2018-2020 period and the preparation of several plans of the labour inspectorate for the fight against illegal work and effective compliance by employers of labour and social security obligations.

Sources:

An Agreement between the Labour Inspectorate and the General Treasury of the Social Security is available [here](#).

Another agreement between the Labour Inspectorate and the Salary Guarantee Fund is available [here](#).

A third agreement between the Labour Inspectorate and the National Social Security Institute is available [here](#).

2 Court Rulings

2.1 Retirement benefits and part-time work

Constitutional Court, No. 91/2019, 03 July 2019

Factual part

The [Spanish Constitutional Court has deemed](#) that the rules for the calculation of retirement benefits for part-time workers are discriminatory. The reasons are similar as those provided by CJEU Villar Láiz (8 May 2019, case C-161/18). According to that ruling, Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that the amount of retirement pension based on contributions of a part-time worker is to be calculated by multiplying a basic amount, established from the remuneration actually earned and contributions actually paid, by a percentage which relates to the length of the period of contribution, that period being itself modified by a reduction factor equal to the ratio of the time of part-time work actually performed to the time of work carried out by a comparable full-time worker, and increased by the application of a factor of 1.5, to the extent that that legislation places at a particular disadvantage workers who are women as compared with workers who are men.

The Spanish Constitutional Court reached the same conclusion in accordance with Article 14 of the Spanish Constitution, which recognises the general principle of equality and non-discrimination.

Analytical part

The rules on the calculation of retirement benefits for part-time workers were modified after CJEU Elbal Moreno ruling (22 November 2012, case C-385/11). However, these new rules are not fully compatible with EU law and could cause indirect discrimination according to the Villar Láiz ruling. The Constitutional Court has arrived to the same conclusion.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Political situation

After the general elections of April 2019, Parliament had to appoint a prime minister. However, the first investiture attempt failed and a new government has not yet been formed. Unions have called for a pact of left-wing parties to avoid new general elections.



4.2 Unemployment

Unemployment has been reduced to 3 011 433 people, the lowest number since 2008.

4.3 Overtime

According to the media, overtime decreased in July since the implementation of the recording of working time.

United Kingdom

Summary

The Court of Appeal upheld a regulation on the pro-rata calculation of annual leave for part-time workers.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Part-time work

Court of Appeal, No. [2019] EWCA Civ 1402, 06 August 2019, Harpur Trust v Brazel

In [Harpur Trust v Brazel](#) [2019] EWCA Civ 1402 the question was raised as to how much holiday pay those on zero-hours contracts should receive. Mrs Brazel was a part-time music teacher, engaged on an hourly-paid contract, who did not teach in the school holidays (though she remained subject to contractual duties). The school argued her holiday entitlement should be less than 5.6 weeks, based on the weeks she in fact worked. The Employment Tribunal was read words into Regulation 16 of the Working Time Regulations 1998 that 'part-year workers' (those working only part of the year) should have their annual leave entitlement capped at 12.07 per cent of annualised hours. However, the trade union, UNISON, intervened in the case in the Court of Appeal, contending that under the Working Time Regulations, she was entitled to 5.6 weeks' leave, just like a full-time teacher.

The Court of Appeal accepted that the case law of the Court of Justice supported the 'accrual approach' but member states could adopt a more favourable approach and this was the case here. It said that the exercise required by Regulation 16 of the WTR 1998, which involved identifying a week's pay and multiplying it by 5.6 weeks, was straightforward and should be followed, even if it results in part-year workers receiving a higher proportion of their annual earnings as holiday pay (in this case, 17.5 per cent). Underhill LJ concluded:

The WTR do not provide for the kind of pro-rating for which the Trust argues and which underlies the application of the 12.07 per cent formula in the case of a part-year worker. The exercise required by regulation 16 and the incorporated provisions of the 1996 Act is straightforward and should be followed.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Brexit and repeal of the ECA 1972

On 16 August 2019, the government made the [European Union \(Withdrawal\) Act 2018 \(Commencement No. 4\) Regulations 2019 \(SI 2019/1198\)](#) brought into force section 1 of the European Union (Withdrawal) Act 2018 (EUWA). Section 1 repeals the European Communities Act 1972 (ECA 1972) on exit day (11.00 pm on 31 October 2019). At



present, this is a symbolic move because the ECA 1972 remains in force until 31 October 2019.

4.2 Brexit and free movement

The government announced that it would end free movement on 31 October in the event of a no deal Brexit. However, it has now been advised that it cannot do this, relying simply on the Henry VIII powers in the EU(W)A 2018.

A newspaper article of the Guardian from 01 September on this issue is available [here](#).

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