



# Flash Reports on Labour Law January 2019

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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**Table of Contents**

**Executive Summary** ..... 1

**Austria**..... 3

1 National Legislation ..... 3

2 Court Rulings ..... 3

3 Implications of CJEU rulings and ECHR rulings..... 3

4 Other relevant information ..... 4

**Belgium** ..... 5

1 National Legislation ..... 5

2 Court Rulings ..... 7

3 Implications of CJEU rulings and ECHR ..... 7

4 Other relevant information ..... 7

**Bulgaria** ..... 9

1 National Legislation ..... 9

2 Court Rulings ..... 9

3 Implications of CJEU Rulings and ECHR ..... 9

4 Other relevant information ..... 9

**Croatia**.....10

1 National Legislation .....10

2 Court Rulings .....10

3 Implications of CJEU Rulings and ECHR .....10

4 Other relevant information .....10

**Czech Republic** .....11

1 National Legislation .....11

2 Court Rulings .....12

3 Implications of CJEU Rulings and ECHR .....13

4 Other relevant information .....13

**Denmark**.....14

1 National Legislation .....14

2 Court Rulings .....15

3 Implications of CJEU Rulings and ECHR .....16

4 Other relevant information .....16

**Estonia** .....17

1 National Legislation .....17

2 Court Rulings .....17

3 Implications of CJEU Rulings and ECHR .....17

4 Other relevant information .....17

**France** .....18

1 National Legislation .....18

2 Court Rulings .....21

3 Implications of CJEU Rulings and ECHR .....26

4 Other relevant information .....26

**Germany**.....27

1 National Legislation .....27

2 Court Rulings .....28

3 Implications of CJEU Rulings and ECHR .....30

4 Other relevant information .....30



<b>Greece</b> .....	31
1 National Legislation .....	31
2 Court Rulings .....	31
3 Implications of CJEU Rulings and ECHR .....	31
4 Other relevant information .....	31
<b>Hungary</b> .....	32
1 National Legislation .....	32
2 Court Rulings .....	32
3 Implications of CJEU Rulings and ECHR .....	33
4 Other relevant information .....	33
<b>Iceland</b> .....	34
1 National Legislation .....	34
2 Court Rulings .....	34
3 Implications of CJEU Rulings and ECHR .....	34
4 Other relevant information .....	34
<b>Italy</b> .....	
1 National Legislation .....	35
2 Court Rulings .....	35
3 Implications of CJEU rulings and ECHR .....	35
4 Other relevant information .....	35
<b>Liechtenstein</b> .....	36
1 National Legislation .....	36
2 Court Rulings .....	37
3 Implications of CJEU rulings and ECHR .....	37
4 Other relevant information .....	37
<b>Lithuania</b> .....	38
1 National Legislation .....	38
2 Court Rulings .....	38
3 Implications of CJEU rulings and ECHR .....	38
4 Other relevant information .....	38
<b>Luxembourg</b> .....	40
1 National Legislation .....	40
2 Court Rulings .....	40
3 Implications of CJEU rulings and ECHR .....	42
4 Other relevant information .....	42
<b>Netherlands</b> .....	43
1 National Legislation .....	43
2 Court Rulings .....	43
3 Implications of CJEU rulings and ECHR .....	43
4 Other relevant information .....	43
<b>Poland</b> .....	44
1 National Legislation .....	44
2 Court Rulings .....	45
3 Implications of CJEU rulings and ECHR .....	45
4 Other relevant information .....	45
<b>Portugal</b> .....	46
1 National Legislation .....	46
2 Court Rulings .....	46



3	Implications of CJEU rulings and ECHR .....	47
4	Other relevant information .....	48
<b>Romania</b> .....		49
1	National Legislation .....	49
2	Court Rulings .....	49
3	Implications of CJEU rulings and ECHR .....	49
4	Other relevant information .....	49
<b>Slovenia</b> .....		50
1	National Legislation .....	50
2	Court Rulings .....	50
3	Implications of CJEU rulings and ECHR .....	51
4	Other relevant information .....	51
<b>Spain</b> .....		52
1	National Legislation .....	52
2	Court Rulings .....	52
3	Implications of CJEU rulings and ECHR .....	52
4	Other relevant information .....	53
<b>Sweden</b> .....		54
1	National Legislation .....	54
2	Court Rulings .....	54
3	Implications of CJEU rulings and ECHR .....	54
4	Other relevant information .....	54
<b>United Kingdom</b> .....		56
1	National Legislation .....	56
2	Court Rulings .....	56
3	Implications of CJEU rulings and ECHR .....	56
4	Other relevant information .....	56

# Executive Summary

## 1 National level developments

In January 2019, important developments in labour law took place in many Member States and European Economic Area (EEA) countries (see Table 1). Legislative initiatives and case law focused specifically on the following issues:

### Working time

In **Denmark**, the Eastern High Court awarded compensation to an employee whose working time had surpassed 52 hours per week in two successive quarters. The fact that the employee could influence the working time himself was not accepted as a basis for relying the exception in the Working Time Directive, but influenced the amount of the compensation. In **France**, employee social security contributions for overtime work have been reduced in the framework of a package to address demands by the 'yellow vests' movement. Moreover, the Supreme Court ruled a lump sum agreement for compensating all overtime hours of a commercial director ineffective. In **Luxembourg**, the government has put forward a proposal to introduce one new public holiday and an additional day of annual leave per year. In the **Netherlands**, the compensation for overtime was adapted to ensure that the hourly minimum wage is paid for all hour worked in a month instead of only compensating overtime by leave in another period. In **Poland**, a prohibition to open shops on more than one Sunday per month entered into force, and a general prohibition of opening on Sundays is set to take effect on January 2020. In **Portugal**, the Supreme Court ruled that periods of presence at the employer's premises to be available for towing services are to be qualified as working time. In **Slovenia**, the Supreme Court decided in a case of irregular distribution of working hours that compensation for overtime must be paid out at the legally provided rate including the supplement of 30 per cent at the end of the reference period.

### Minimum wage

In **Germany**, the Financial Court Berlin-Brandenburg decided that the German minimum wage needs to be paid to long-distance drivers even if they enter the country for a short period of time only. In **Greece**, the statutory minimum wage was increased (by about 11 per cent) for the first such time since the country's debt crisis erupted. Minimum wages were also increased in **Poland** (by 7.1 per cent) and in the public sector in **Croatia** (see *infra*). In the **Netherlands**, the Minimum Wage Act has been amended, particularly regarding the compensation of overtime as described *supra*.

### Posting of workers

In **Belgium**, the obligatory registration of posted self-employed workers under the 'Limosa' system has been limited to high-risk sectors. In **Liechtenstein**, the government has brought a proposal relating to the EEA Joint Committee's decision to incorporate Directive 2014/67/EU into the EEA Agreement before Parliament. The proposed regulation concerns in particular the definition of several terms related to the posting of workers, the introduction of subcontracting liability and provisions on cross-border cooperation with authorities from other Member States. In **Sweden**, changes of the Posting of Workers Act introduce subcontracting liability covering all tiers of the supply chain. The new regulation is, however, 'semi-dispositive' and can thus be altered by collective agreement.

### Public employment

In the **Czech Republic**, the Act on Civil Service was amended to the effect that, inter alia, State secretaries are no longer disciplinarily responsible to special commissions but can be recalled by the Government based on proposals by the respective Ministers. In **Croatia**, an agreement between the government and trade unions includes a salary increase of





three per cent as from January, and another two per cent as from September. In **Portugal**, the General Law on the Public Sector was amended regarding the regime of disciplinary sanctions and work beyond age 70 (which will now be permitted in exceptional cases).

### Dismissal protection

In **Belgium**, the dismissal package envisaged by law to be included in collective agreements by January 2019 has not yet been provided for by the collective agreements in any sector. In **Germany**, the Federal Cabinet adopted a bill to facilitate the dismissal of bankers without a requirement for justification by the employer. In **Sweden**, the introduction of a model of flexicurity envisaged by the coalition agreement would entail the flexibilisation of the selection criteria for redundancies in the Employment Protection Act.

legislative decision is reached, employers must grant all workers a paid public holiday on Good Friday.

This ruling will have no impact on the system of public holidays in **Belgium**, **Portugal** and **Spain**, where public holidays are applicable irrespective of a worker's religion.

## 2 Implications of CJEU and EFTA Court rulings

### CJEU Case C-193/17, 22 January 2019, Cresco Investigation

In this case the CJEU ruled that Austrian legislation under which, first, Good Friday is a public holiday only for employees who are members of certain Christian churches and, second, only those employees are entitled, if required to work on that public holiday, to a payment in addition to their regular salary for work done on that day, constitutes direct discrimination on grounds of religion.

In **Austria**, there is a broad discussion on how to amend the Act on Rest ('*Arbeitsruhegesetz*') to bring it into compliance with EU law, with workers' representatives' call for an additional Public Holiday for all strongly opposed by business representatives. It is also discussed to replace one of the existing Catholic public holidays by Good Friday, or to introduce a right for all workers to use one day of their holiday entitlement for a (pre-defined) religious holiday important in their religion. Until a

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

Topic	Countries
Working time	DK, FR, NL, PL, PT, SI
Minimum wage	DE, EL, NL, PL
Overtime	FR, NL, SI
Posting of workers	BE, LI, SE
Public employment	CZ, HR, PT
Brexit	CZ, UK
Dismissal protection	DE, SE
Employment policies	BE, SE
Health and safety	EE, IS
Privacy	DK, CZ
Public holidays	LU, PT
Transfer of Undertakings	DK, CZ
Wage	HR, FR
Adoption leave	BE
Co-determination	DE
Dismissal package	BE
Employee benefits	RO
Employee liability	HU
Employer's insolvency	DK
EEA	LI
Employment of foreigners	ES
Employment information	UK
Employment status	FR
Equal pay	FR
Fixed-term employment	DE
Flexicurity	SE
Key professions	BU
Labour Inspectorate	RO
Outsourcing	SE
Parental leave	BE
Part-time work	BE
Persons with disabilities	PT
Platform work	FR
Profit premium	BE
Self-employment	BE
Sick pay	CZ
Strike	SE

## Flash Report 01/2019



Students' work	HR
Subcontracting liability	SE
Unemployment benefit	IT
Works Councils	FR

# Austria

## Summary

There is a broad public debate on the amendment of the Austrian Act on Rest ('Arbeitsruhegesetz') to restore equal treatment following the CJEU ruling in C-193/17, *Cresco Investigation*.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR rulings

### 3.1 Discrimination on the grounds of religion

*CJEU C-193/17, 22 January 2019, Cresco Investigation*

All public holidays in Austria, even if the majority are of Roman Catholic origin, are granted to all employees, regardless of their confession. Only one holiday, namely Good Friday, is a public holiday only for members of the Evangelical Churches of the Augsburg and Helvetic Confessions, the Old Catholic Church and the United Methodist Church. If these employees work on Good Friday, they receive double pay, i.e. public holiday pay and pay for the work actually being performed.

In the present case, an employee, Mr Achatzi, who is not a member of any of the Churches covered, claimed that he was being discriminated by being denied public holiday pay for the work he performed on Good Friday in 2015, and for that reason sought additional payment from his employer.

The CJEU ruled that national legislation under which, first, Good Friday is a public holiday only for employees who are members of certain Christian churches and, second, only those employees are entitled to a payment in addition to their regular salary for work performed on that day, constitutes direct discrimination on grounds of religion.

The Court also ruled that until Austria has amended its legislation granting the right to a public holiday on Good Friday only to employees who are members of certain Christian churches to restore equal treatment, private employers who are subject to such legislation are required to also grant the other employees a public holiday on Good Friday, provided that the latter have sought prior permission to be absent from work on that day, and, consequently, to recognise that those employees are also entitled to a payment in addition to their regular salary for work performed on that day if the employer has not approved their request for leave on that day.

The CJEU clearly states that the [Austrian Act on Rest](#) ('Arbeitsruhegesetz', hereinafter ARG) needs to be amended to be compliant with EU law.

Austria must now amend its legislation to restore equal treatment for all employees. Currently, there is no indication what action the legislator will take: while the Austrian Federation of Trade Unions and the Chamber of Labour argue that Good Friday should be an additional public holiday for all, representatives of the Chamber of Commerce



and Industry strongly oppose introducing another public holiday. There are discussion to replace one of the existing Catholic public holidays (that apply to all workers) with Good Friday, thus turning Good Friday into a public holiday for all, thus ensuring that the (minority) Evangelical Churches keep the holiday that is very important to them.

Some academics and practitioners propose a different and more comprehensive approach to restore equal treatment: instead of granting an additional public holiday to all employees, they should have the right to use one day of their holiday entitlement for a (pre-defined) religious holiday that is important in their religion. Members of the Evangelical Churches would be given the right to use Good Friday as a public holiday, Jewish workers would be able to apply this right for Yom Kippur, etc. Workers who are not members of the respective religion could take those days off as well, if their employer agrees (as is the general practice for taking leave). This approach considers the specific needs of all recognised minority religions in Austria, without favouring members of one religion over others or over workers without religious affiliations, as all employees have the same holiday entitlement.

Until the Austrian legislator reaches a decision, employers must now grant all workers a paid public holiday on Good Friday, if they request so, or pay the additional payment if the workers are required to work despite requesting to take leave on that public holiday.

Sources:

A parliamentary proposal by the Social Democratic Party on Good Friday legislation for all workers is available [here](#).

A press release of 29 January 2019 is available [here](#).

Further newspaper articles by '*Der Standard*' are available [here](#) (interview with Prof. Risak, 28 January 2019) and [here](#) (29 January 2019).

## 4 Other relevant information

Nothing to report.

# Belgium

## Summary

(I) The Law of 14 December 2018 amends the legislation on profit premiums for employees, clarifies the application of the pro rata temporis principle and provides for the possibility to not grant the profit premium to an employee who has been dismissed for gross misconduct or who has resigned.

(II) The Law of 21 December 2018 on various provisions concerning social affairs (i) extends the duration of adoption leave and (ii) introduces a new right to long-term foster parent leave of up to six months.

(III) A Royal Decree of 21 December 2018 amending the Royal Decree of 20 March 2007 implementing Chapter 8 of Title IV of the Programme Law (I) of 27 December 2006 on prior notification of posted employees and self-employed persons limits prior notification of posted self-employed persons to high-risk sectors.

(IV) As the deadline of 01 January 2019 has expired and no collective bargaining agreement has yet been laid down providing for the legally envisaged statutory dismissal package to increase labour market employability, employers and employees do not have to pay a special social security contribution.

## 1 National Legislation

### 1.1 Profit premium

The Law of 14 December 2018 (published in the official journal '*Moniteur belge*' on 21 December 2018) has again amended the Law of 22 May 2001 on profit premium introduced after 01 January 2018.

Since 01 January 2018, the employer can share part or all of the profit of the given financial year with the employees through a socially and fiscally attractive profit premium. A distinction is made between two types of profit premiums: identical or categorised. The amount of an identical profit premium is the same for all employees or corresponds to an equal percentage of the employees' salaries. A categorised profit premium consists of an amount that is paid to all employees and builds on a distribution scheme that is based on objective criteria.

The law specifies the application of the so-called pro rata temporis principle and provides for the possibility to not grant the profit premium to an employee who has been dismissed for gross misconduct or who has voluntarily resigned.

Since 01 January 2019, it is possible to calculate the amount of the profit premium based on the employee's actual work performance over the preceding financial year. This change implies that a lower profit premium can be paid to an employee: (i) who worked part time over the preceding financial year, or (ii) whose employment contract was suspended for certain periods during the financial year.

However, certain periods of suspension cannot give rise to a reduction in the amount of the profit premium. This is the case for periods of suspension of the employment contract with retention of the right to pay (such as the first 30 days of an incapacity period) and periods of maternity leave, paternity leave, adoption leave and foster leave.

Since 01 January 2019, the employer may also choose not to grant the profit premium to an employee who left the company during the preceding financial year for which the accounts have been closed and who:

- has been dismissed for gross misconduct;
- has resigned, with the exception of resignation for gross misconduct attributable to the employer.

Employees who have been dismissed for a reason other than an urgent one and employees whose employment contract has been terminated by mutual agreement cannot be excluded from the right to the profit premium.

Employers may, but are not under the obligation, to make use of the pro rata temporis calculation and exclude employees who have left the undertaking from the profit premium. If the employer wishes to make use of one or both of these options, this must be explicitly reported

- for the identical profit premium, in the minutes of the general meeting of the shareholders of the company at which the decision to grant the profit premium is taken;
- for the categorised profit premium, in the company collective bargaining agreement by which the profit premium was introduced.

### 1.2 Adoption and foster care leave

The Law of 21 December 2018 (published in '*Moniteur belge*' on 17 January 2019) contains several amendments with regard to the duration of adoption and foster leave.

#### 1.2.1 Adoption leave

The maximum duration of six weeks per adoptive parent, regardless of the child's age, will, with exceptions determined by a Royal Decree, be increased by one week from 01 January 2019, by two weeks from 01 January 2021, by three weeks from 01 January 2023, by four weeks from 01 January 2015 to five weeks from 01 January 2027. In the case of two adoptive parents, the additional weeks are divided between them (Article 84).

#### 1.2.2 Foster care

The Law of 21 December 2018 also introduces a new Article 30sexies in the Employment Contracts Law of 03 July 1978, whereby an employee who has become a foster parent of a minor, obtains a right to long-term foster parent leave within the framework of long-term foster care. Long-term foster care refers to cases in which it is clear from the start that the child will remain with the same foster family/ parents/ parent for at least six months.

This right is a one-time right to foster parent leave. During foster parent leave, the employee benefits from a social security benefit to be determined by the King, which is paid to her by the health insurance fund under the sickness and invalidity insurance scheme. To be able to exercise the right to foster parent leave, the leave must commence within twelve months following the registration of the child as a member of the employee's family in the residence register or in the aliens register of the municipality where she resides. An employee who wishes to make use of the right to foster parent leave must inform his employer of this in writing at least one month before taking such leave.

The duration as well as any additional weeks of foster parent leave shall be identical to that of adoption leave.

The employer may not take any measures to unilaterally terminate the employment contract of an employee who exercises his right to foster care leave. Such protection applies two months before the leave is taken and ends one month after the end of the leave. Termination is still allowed for reasons unrelated to the foster parent leave. A lump-sum allowance equal to the employee's three-month salary is due if the employer fails to prove justified reasons for the dismissal. A level 2 criminal penalty is also applied if the employer fails to comply with the law.

The former short-term foster parent leave of six days also remains.

### 1.3 Notification obligation for posted self-employed workers

The Royal Decree of 21 December 2018 (published in 'Moniteur belge' on 31 December 2018) amends the Royal Decree of 20 March 2007 implementing Chapter 8 of Title IV of the Programme Act (I) of 27 December 2006 on prior notification of posted employees and self-employed persons on the determination of risk sectors referred to in Article 137, 6 of the Programme Law (I) of 27 December 2006 in the context of prior notification of posted self-employed persons (see December 2013 Flash Report).

The 'Limosa' notification obligation of self-employed workers on secondment is limited to high-risk sectors. The risk sectors referred to in Article 137, 6 of the Programme Law (I) of 27 December 2006 were included in Article 3 of the Royal Decree of 20 March 2007. It includes, inter alia, the construction industry, the meat industry and the cleaning industry.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR

One important ruling for the Belgian legal system relates to direct discrimination on the basis of the employee's religion: CJEU case C-193/17, 22 January 2019, *Cresco Investigation*. However, Belgian legislation differs from Austrian legislation on work on religious holidays such as Good Friday.

## 4 Other relevant information

### 4.1 Dismissal package

The [Law on the Single Statute](#) for blue collar workers and white collar employees of 26 December 2013, amending Article 39ter Employment Contracts Law of 03 July 1978, requires the social partners ('joint committees' for economic sectors) to stipulate no later than 01 January 2019 in collective bargaining agreements that employees who are dismissed with a notice period or dismissal compensation corresponding to at least 30 weeks are entitled to a so-called dismissal package. This dismissal package must contain:

- the maintenance of 2/3 of the notice period or indemnity in lieu as stated in the law;
- instead of the remaining 1/3: measures to increase the employability of the worker in the labour market.





However, the scheme may not have the effect of reducing the notice period or compensation to less than 26 weeks.

Although the deadline of 01 January 2019 has expired, not a single collective bargaining agreement (hereinafter CBA) has laid down provisions for the statutory dismissal package. In other words, the different sectors have not (yet) implemented the obligation imposed by the Single Status Law. What are the consequences?

First of all, in the absence of a single sectoral CBA that provides for a dismissal package with measures to increase employability, the employee cannot demand such a dismissal package from the employer. Nor is the employer required to offer a package of measures to increase the employee's employability if there is no sectoral CBA that requires the employer to do so. The Single Status Law only imposes an obligation on the joint committees, not on individual employers.

The Single Status Law, amending Article 38, §3quaterdecies General Social Security Principles Law of 29 June 1981, provides for a special social security contribution on the remuneration paid during the last third of the notice period. This special contribution on the salary—1 per cent for the employee and 3 per cent for the employer—is due in the event that an employee who has been dismissed and 'who meets the conditions to be entitled to a dismissal package that includes measures to increase employability' receives the entire dismissal package as a notice period or dismissal payment. According to the law, this special social security contribution is not due if the sector to which the undertaking belongs does not have a CBA providing for a package of measures to increase the dismissed employee's employability.

The National Social Security Office's administrative instructions have now removed any possible doubts: they state that the special contribution will not be collected because no CBAs have been concluded.

# Bulgaria

## Summary

A Ministerial Decree has amended the List of professions recognised as experiencing a shortage of labour.

## 1 National Legislation

### 1.1 Labour shortages in specific professions

Under Article 6a, paras 4 and 5 of the Professional Education and Training Act, the Council of Ministers shall determine a list of professions that are experiencing a shortage of labour. [Decree No. 352](#) of 31 December 2018 (Promulgated State Gazette No. 3 of 08 January 2018) published the list for 2019. There are 57 professions in this list.

## 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) Salaries in public sector have been agreed by the social partners.

(II) The minister of science and education issued two regulations related to students' work.

## 1 National Legislation

### 1.1 Regulations related to students' work

The minister of science and education issued two regulations related to students' work. The first one is the [Regulation on meeting the conditions for conducting mediation activities in student's work](#) (Official Gazette No. 3/2019). It defines which students' centres established by the high education institution are allowed to mediate between contracting parties (students and employers).

The other one is the [Regulations on the form and content of the contract for student's work](#) (Official Gazette No. 3/2019)

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

### 4.1 Salaries in the public sector

The Government of the Republic of Croatia concluded with the trade unions representing civil servants and employees employed in civil services the [Annex to the Collective Agreement for civil servants and employees employed in civil services](#) (Official Gazette No. 2/2019). The annex defines the base for calculation of salaries.

Similarly, The Government of the Republic of Croatia concluded with the trade unions representing public servants the [Agreement on base for calculation of salaries in public services](#) (Official Gazette No. 2/2019). According to the Agreement, the salaries base in public services will be raised three per cent in January 2019, and additionally two per cent in September 2019.

## Czech Republic

### Summary

- (I) A draft act contains provisional arrangements for the eventuality of a 'no-deal Brexit'.
- (II) The 3-day waiting period for benefits in case of incapacity for work has been abolished.
- (III) The Act on Civil Service amendments; personal data processing – transposition of Directive (EU) 2016/680 and adjustment of national legislation to Regulation (EU) 2016/679;
- (IV) implication of transfer of undertaking for former employees.

## 1 National Legislation

### 1.1 Provisional arrangements for the eventuality of a 'no-deal Brexit'

The [Draft Act](#) on adjustments of certain relationships in connection with the United Kingdom of Great Britain and Northern Ireland leaving the European Union has entered the legislative procedure (it has been approved by the Chamber of Deputies and is being deliberated in the Senate).

Should the United Kingdom leave the European Union with no deal on 29 March 2019, the Draft Act ensures that certain rights of UK citizens are guaranteed for a transitional period from 30 March 2019 to 31 December 2020.

The Draft Act regulates, inter alia, the conditions of stay in the Czech Republic, acquisition of Czech citizenship, access to the labour market and conditions of participation in unemployment schemes, benefit claims, aspects of income tax, recognition of professional qualifications, etc.

The Draft Act has been approved by the Chamber of Deputies and is currently being deliberated in the Senate. The preliminary effective date is 'set to the date on which the TEU and TFEU cease to be applicable, under the condition that no deal is reached between the EU and the UK'.

### 1.2 Abolishment of 3-day waiting period

A [Draft Act](#) amending Act No. 262/2006 Coll., the Labour Code, has been approved by the Chamber of Deputies and delivered to the President to be signed into law.

Information on the Draft Act, which abolishes the initial 3-day waiting period for sickness benefits, was provided in Flash Report No. 09/2018.

As of 01 July 2019, the employer will be required to provide salary compensation to an employee who is temporarily incapacitated for work for the entire 14-day period before the employee's sickness benefit is provided by the state, and no longer only for the period starting on day four to day 14 as was previously the case.

Despite earlier rejection by the Senate, the Draft Act has been approved by the majority of the Chamber of Deputies and was delivered to the President on 24 January 2019 to be signed into law. The preliminary effective date is now set to 1 July 2019.

### 1.3 Civil Service

A [Draft Act](#) amending Act No. 234/2014 Coll., on Civil Service, has been approved by the Chamber of Deputies and delivered to the President to be signed into law.

Apart from the information already reported (see also January 2018 Flash Report), it should be mentioned that the Draft Act introduces a possibility for the government to recall state secretaries (who are responsible for staffing individual ministries and other offices). State secretaries are thus no longer disciplinarily responsible to special commissions, but can be recalled by the government based on proposals of the respective ministers.

The Draft Act has been approved by the Chamber of Deputies (overruling the Senate) and was delivered to the President to be signed into law on 30 January 2019. The preliminary effective date is set for 01 January 2019.

### 1.4 Personal data processing - Transposition of Directive (EU) 2016/680 and adjustment of national legislation to Regulation (EU) 2016/679

A [Draft Act](#) on Personal Data Processing transposing Directive (EU) 2016/680 and adjusting national legislation to Regulation (EU) 2016/679 has been returned by the Senate to the Chamber of Deputies with amendments. The amendments, inter alia, propose municipalities to not be penalised for personal data rule violations (see also October 2017 and March 2018 Flash Reports). The preliminary effective date is set for the date of the Act's publication.

## 2 Court Rulings

### 2.1 Implications of transfer of undertaking for former employees

*Supreme Court, No. 21 Cdo 2980/2018, 09 October 2018*

The Supreme Court has [ruled](#) that “when assessing whether a provision of an agreement on the transfer of rights and obligations from a (former) employer to a different entity is invalid on absolute grounds (examined by court *ex officio*) or on relative grounds (must be invoked by the party to be considered by the court), the specific circumstances of each individual case must be taken into consideration. The provision is not necessarily invalid on absolute grounds if it increases employee protection”.

An employee (a miner) sued his former employer for a special allowance provided to miners. During the proceedings, the employee requested his employer's successor to take the employer's place in the proceedings, as the former employer had become economically inactive and insolvent. This request was based on the understanding that, in the meantime, a transfer of undertaking had taken place. The contract on the acquisition of the enterprise expressly stated that the transfer included not only all rights and obligations towards current employees but also towards former employees whose employment relationship had terminated prior to the time of acquisition of ownership of the said enterprise.

Such a provision violates the existing legislation on transfers of undertakings, by which only the rights and obligations towards those employees whose employment relationship has not yet been terminated shall be transferred to the new employer. However, the Supreme Court held that if the aforementioned provision was concluded for the benefit of former employees, this provision is invalid exclusively on relative grounds. In other words, it remains valid provided that the protected party—the employee—decides not to question its validity in court.



### **3 Implications of CJEU Rulings and ECHR**

Nothing to report.

### **4 Other relevant information**

Nothing to report.

# Denmark

## Summary

(I) A new law regulates the responsibility for the payment of employees' outstanding salaries in case of bankruptcy of their employer in cases of subsequent transfers of undertakings.

(II) A new law clarifies in which situations the employer is entitled to access the health information of employees who have applied for sick leave benefits.

(II) The Eastern High Court has issued a decision on compensation in case of overtime in violation of the provisions of the Working Time Directive.

## 1 National Legislation

### 1.1 Employees' Guarantee Fund

[Proposal L11](#) amends the Act on Employees' Guarantee Fund to pay employees' outstanding salaries in case of bankruptcy of their employer in cases in which a transfer of undertaking took place before the bankruptcy.

At present, if the Employee's Guarantee Fund determines that a transfer of undertaking has taken place, the transferee—in the view of the Employees' Guarantee Fund—required to pay the salaries of the transferred employees. This legal dispute between the transferee and the Employees' Guarantee Fund must be resolved before any of the employees' outstanding salaries are paid.

The Western High Court recently ruled in accordance with the current law, and assessed whether a transfer of undertaking had taken place. The affected employees had to await the results of the ruling before becoming entitled to their outstanding salaries.

The Court stated that a transfer of undertaking had taken place in the present case, and that the transferee, a public entity, and not the Employees' Guarantee Fund, was obligated to pay the outstanding salaries to the transferred employees. The Western High Court ruling has not been published and is currently not publicly available.

The proposed amendment changes this approach, i.e. affected employees can transfer their right to outstanding payments to the Employees' Guarantee Fund, which immediately pays any outstanding salaries to the employees. The Employees' Guarantee Fund is entitled to recover salaries from the transferee in case a transfer of undertaking has taken place and the transferee has agreed to pay the outstanding salaries to the affected employees.

The proposal was accepted by Parliament on 31 January 2019.

### 1.2 Sick Leave Benefits

An [Amendment Act](#) clarifies situations in which the employer is entitled to access health information of employees when the employee has applied for sick leave benefits from the local municipality.

The Amendment Act entered the legislative procedure in October 2018, and has now been accepted by Parliament. It applies to applications for access to information received as of 01 January 2019.

This development is of practical importance, as the procedures for assessing the health of an applicant for sick leave benefits from the local municipality may reveal personal information that should not be forwarded to the employer. The Amendment Act ensures that the employer has only limited access to the employee's health information.

## 2 Court Rulings

### 2.1 Working time compensation

*Eastern High Court ruling of 13 December 2018*

A public employee had an average working time of 52.1 hours and 54.49 hours, respectively, within two 4-month periods. The parties to the employment relationship agreed that the working time had exceeded the maximum weekly working hours stipulated in the Working time Directive. The employer argued that the employee had a significant influence on the organisation of working time, and that this was a ground for an exemption from the maximum weekly working hours.

The High Court dismissed the employer's argument that the situation was covered by the exemptions in the Working Time Directive and stated that the employee was entitled to compensation.

One of the claims had lapsed due to the limitation period of three years according to the Act on Limitation Periods for legal claims. The other claim entitled the employee to compensation, which was awarded in accordance with the principles established by the Supreme Court in ruling U 2018.763 H of 14 November 2017 (see also November 2017 Flash Report).

The compensation was set at DKK 25 000 (EUR 3 200), which is the default compensation based on the ruling of November 2017.

The compensation the employee received was the default compensation. The default amount can be adjusted by taking the specific circumstances of the situation into account.

In the present case, only one of the two 4-month periods was considered, the fact that the employee had agreed to work additional hours, and that the employee had been paid for the overtime work. These circumstances were taken into consideration in the decision to award the default compensation.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual Leave

*CJEU case C-684/16, 06 November 2018, Max-Planck-Gesellschaft*

The question raised in the case was whether it was the duty of the employee or of the employer to take the initiative to ensure that the employee takes annual leave. The Court ruled that if the employer cannot document that it encouraged the employee to take annual leave and informed the employee in good time that not any leave not taken will result in the loss of leave, the employee retains the right to take the outstanding leave and to compensation.

If national law does not envisage this duty of the employer and cannot be interpreted in conformity with it, then the provision, as an expression of a fundamental principle of EU social law, is sufficiently precise and unconditional to be directly applicable by an employee against an employer in the private sector.

The CJEU's ruling may have implications for Danish law.





The Executive Order on Holidays contains an exhaustive list of obstacles to taking annual leave, which implies that the employee is only entitled to compensation for leave days not taken in those specific situations.

The Holiday Act and the Executive Order will, following a transitional period from 01 January to 01 September 2020, be fully replaced by a new Holiday Act and a new Executive Order. The new Holiday Act states that sickness and parental leave are obstacles to taking annual leave, and the employee retains the right to take annual leave, either by postponing it to the following year, or by receiving monetary compensation. The content of the new Executive Order on Holidays is unknown –this new Executive Order may, in accordance with the Holiday Act, establish which circumstances are to be considered as obstacles to leave.

#### **4 Other relevant information**

Nothing to report.

# Estonia

## Summary

Harassment and bullying at the workplace have been included in the list of psychosocial hazards.

## 1 National Legislation

### 1.1 New risks added

The Estonian Parliament adopted changes to the Occupational Health and Safety Act already in June 2018. The amendments entered into force on 01 January 2019. The majority of changes concern technical aspects of medical help at the workplace. One important change in Section 9 of the Act is the inclusion of new psychosocial hazards. Among others, bullying and harassment at the workplace were added. Although surveys had been carried out in the past according to which Estonian employees experienced bullying and harassment at the workplace, there has thus far not been any clear legal regulation on these hazards. The employer is required to carry out a risk assessment at the workplace and determine whether a risk of harassment and bullying exists. If this is the case, necessary measures to avoid such risks must be mentioned in the assessment.

As the amendments only came into force in January, there is no case law on how harassment and bullying can be identified.

More information is 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.

## France

### Summary

(I) Provisions and decisions on harassment have been published. Decrees on professional equality as well as overtime have been issued.

(II) A decision of the Paris Court of Appeal concerning UBER is important in terms of reclassification of an agreement into an employment contract. Decisions on professional elections and working time have also been issued.

## 1 National Legislation

### 1.1 Emergency economic and social measures

In response to the 'yellow jackets' movement, the French Parliament adopted [Law No. 2018-1213](#) of 24 December 2018, which introduces a number of measures to address protesters' demands.

The law provides in particular for (i) an extraordinary bonus which, under certain conditions, may be exempted from income tax and social security contributions, and (ii) a tax exemption for overtime.

The government is also committed to producing an evaluation report on the efficiency of these measures within six months.

#### 1.1.1 Extraordinary bonus

Companies have the opportunity to grant an exceptional bonus to employees, which will be exempted from income tax and social security contributions under specific and restricted conditions.

The bonus must be introduced by a company or in a group-wide agreement, or in a unilateral decision of the employer. In that case, the decision will have to be taken before 31 January 2019, and the employee representative (works council/social and economic council, or failing that, staff delegates) will have to be informed thereof before 30 March 2019.

The agreement or decision must specify

- bonus recipients: the company may decide to grant the bonus to all employees or to only some of them. However, the favourable tax and social security treatment is limited to employees who earn less than a predetermined ceiling (see below);
- bonus amount: the bonus may be adjusted to criteria enumerated by the law, such as employees' salary, classification, working time or effective presence. However, the criteria chosen by the employer may not generate a bonus equal to zero for any employee. Employers must therefore define a lower limit.

Furthermore, any discriminatory feature is prohibited. For instance, the bonus cannot be reduced or removed for an employee who was on maternity or parental leave. Failing that, the tax and social security exemption will be denied, not only for that particular employee but for all of the employer's employees.

In some cases, the exceptional bonus is exempted from income tax and social security contributions.

### 1.1.2 Overtime work

Since 01 January 2019, employees benefit from an income tax exemption on overtime up to a limit of EUR 5 000 gross per year. Moreover, their retirement insurance contribution on overtime work is reduced.

The employer's contributions are not, however, exempt from such taxation.

Even if these measures have appeased the protesters, the fact remains that their application has already raised a number of practical issues for employers. Employers should be cautious when applying the measures to avoid any risk of reassessment by the social security authorities who might challenge these exemptions

## 1.2 Equal pay and sexual harassment

[Decree No. 2019-15](#) was published on 08 January 2019 (in the official journal 'JORF' on 09 January). It deals with equal pay and sexual harassment in the workplace.

### 1.2.1 Equal pay

Companies with at least 50 employees must publish an annual gender equality index. On the basis of four or five indicators, the objective is to determine possible wage inequalities between female and male employees. The first index must be published before 01 March 2019 for companies with at least 1 000 employees, on 01 September 2019 for companies with 250 to 1 000 employees and on 01 March 2020 for companies with 50 to 250 employees. Companies have three years from these dates to comply with the law by introducing corrective measures. Failure to publish the index on time and failure to comply is subject to financial penalties.

Companies will also have to inform the Economic and Social Committee (ESC) annually about the final results of the gender equality index and the detailed results for each indicator. This information shall be made available to the ESC through the economic and social database. The economic and social database allows employers to communicate the data as required by law to the elected employee representative. This information must be made available to the ESC for the first time by 01 March 2019 for companies with at least 1 000 employees, by 01 September 2019 for companies with 250 to 1 000 employees and by 01 March 2020 for other companies. Thereafter, this information will have to be made available to the ESC annually before 01 March.

All relevant details to better understand the information must be submitted as well, in particular relating to the methodology applied, the distribution of employees by socio-professional category or according to the levels of the company's job rating method and, where applicable, the corrective measures envisaged or already implemented.

The ESC must also be informed if certain indicators cannot be calculated. In this case, all relevant details explaining why the indicators could not be calculated must be submitted with the information.

All this information is also transmitted to the Minister of Labour in accordance with a model and procedure for electronic declaration, which will be defined by decree.

If the employer fails to publish the results of the index, the penalty provided for in Article L. 2242-8, paragraph 1 of the Labour Code shall apply, namely 1 per cent of the remuneration and earnings paid to employees during the period in which the company did not comply with its obligations ([Labour Code, Article L. 2242-8](#)).

### 1.2.2 Harassment

The Law on Freedom of Profession requires companies with at least 250 employees to designate an individual to guide, inform and support employees in cases of sexual harassment and sexist behaviour. The ESC must also designate an individual from among its members who will be in charge of any issues related to harassment.

A decree recently published in the Official Journal specifies that these appointees are the reference point and have authority and responsibilities related to sexual harassment in the same way as occupational physicians, labour inspectors and protectors of rights (D. No 2019-15, 8 Jan. 2019: Official Journal, 09 January 2019).

The employer must therefore inform the employees who the appointee is, her address and telephone number in the workplace as well as on the premises of the undertaking.

### 1.3 Exemption from employee contributions for overtime

Decree No. 2019-40 of 24 January 2019 (published in the official journal 'JORF' on 25 January 2019) establishes a system for reducing employee contributions. It applies in particular to remuneration and bonuses paid for overtime, additional working hours and rest days waived by employees who have concluded a lump sum agreement and who have been paid on or after 01 January 2019.

The applicable rate is equal to the sum specified in the employee's collective bargaining agreement and the legal state pension scheme contributions, up to a maximum of 11.31 per cent.

### 1.4 Rights and obligations of job seekers; job search monitoring

[Decree No. 2018-1335](#) entered into force on 28 December 2018 (published in the official journal 'JORF' No. 30/12).

Since 01 January 2019, the system of sanctions applied to job seekers has been modified. Failure to comply with the relevant obligations will result in removal from the list of job seekers and cessation of benefits according to instructions from the employment centre. These sanctions are now imposed by the regional director of the employment centre ([Article R. 5312-26 of the Labour Code](#)).

Since 01 January 2019, the removal from the list of job seekers ([Article R. 5412-5 of the Labour Code](#)) and the withdrawal of allowances ([Article R. 5426-3 of the Labour Code](#)) have been ordered for a period of one month in the event of a breach, namely

- the absence of justification for not undertaking any repeated efforts to finding a job or creating, taking over or developing a business activity;
- refusal without legitimate reason, for the second time, of accepting a reasonable job offer;
- refusal or abandonment of participation in vocational training;
- refusal to undergo a medical examination;
- refusal of help in searching for a professional activity.

In addition, a withdrawal for a period of one month is also envisaged if the job seeker does not appear to an appointment with a representative of the public employment service. In case of a second infringement, the duration of the withdrawal period is increased to two months and is supplemented by a cancellation of allowances for a period of two months; in case of a third infringement, the duration of the withdrawal of the allowance is four months.

In the event of a false declaration to be or to remain on the list of job seekers and to unduly receive unemployment benefits, the withdrawal of the allowance will last for a period of between six and twelve consecutive months. The withdrawal of unemployment allowances is, in principle, final. If the unemployed person's infringement is linked to a very brief undeclared activity, the withdrawal of benefits will be limited to a period of two to six months for the first breach.

For beneficiaries of allowances who resigned to participate in a professional retraining programme, the duration of the withdrawal of benefits will be set at a later date.

The decree also specifies the procedure to be followed by the regional director of the employment centre, in particular with regard to the right of the unemployed person to be heard. Before imposing a sanction (deregistration: [Article R. 5412-7](#); withdrawal of unemployment benefits: [Article R. 5426-8](#) and [R. 5426-10](#) of the Labour Code), the regional director of the employment centre shall inform the person concerned about the allegations against him and the nature and duration of the sanction. It shall inform the person concerned that she shall have ten days in which to submit written comments or to request a hearing with the assistance, if necessary, of a person of her choice.

At the end of this period or within 15 days from the date of her hearing, the regional director shall notify her of the applicable penalty. This notification shall specify the duration of the sanction imposed and the remedies and time limits for appeal.

The decree also amends the procedures for implementing the administrative penalty, entrusting its execution to the regional director of the employment centre ([Article R. 5426-15 to R. 5426-17-1](#) of the Labour Code).

## 2 Court Rulings

### 2.1 Severance pay

There were some interesting developments on the application of the ceiling for damages to unfair dismissals.

As a reminder, a mandatory ceiling for damages was implemented through the 'Macron legislative orders' in September 2017, whereby judges who find that a dismissal is unfair cannot award higher damages to the employee than those specifically established for her length of service.

Previously, judges could order any amount of compensation they saw fit for each particular case, with no restriction to the amount.

Judges on employment tribunals (who are lay magistrates) initially contested this bill.

In recent decisions, a number of employment tribunals ([Le Mans](#), No. 17/00538, 26 September 2018, [Troyes](#), No. 18/00036, 13 December 2018 and [Lyon](#), No. 18/01238, 21 December 2018) refused to comply with the mandatory ceiling for damages, stating that it was contrary to international legal sources ([Convention No. 158 of the International Labour Organization and the European Social Charter](#)).

From a strictly legal point of view, and this perspective is usually shared in doctrine, such judgments are unlikely to be upheld by the courts of appeal or ultimately, if required, by the French Supreme Court. Indeed, the provisions of Convention No. 158 of the International Labour Organization and the European Social Charter on which the employment tribunals' position is based, are vaguely drafted and do not, as such, prohibit ceilings for damages – this is even more so the case since French law provides for some situations where the ceiling does not apply.

While the ceiling was created to help employers anticipate the potential amount of damages they would have to pay in case of unfair dismissal, these employment

tribunal decisions have created some uncertainty—at least temporarily—until the Court of Appeal and/or the French Supreme Court rule on this issue.

### 2.2 Employment status of platform workers

*Court of Appeal of Paris, No. 18/08357, 10 January 2019*

The Paris Court of Appeal decided a [case](#) involving a driver registered on a platform, whose account was definitively deactivated. He referred the matter to the employment court challenging the conditions of this deactivation, which he deemed to be an unfair dismissal and requested the service contract be reclassified as an employment contract.

The Labour Court held that it had competence to hear the case and considered the relationship to be a simple commercial relationship only.

In the second instance, the Paris Court of Appeal, on the contrary, found several indications that an employment relationship had existed and rebutted the presumption of non-salaried status in [Article L. 8221-6 of the Labour Code](#):

- the driver could not build up his own customer stock since he was prohibited from taking other passengers outside the Uber system during the journeys. He could not retain the data of passengers for a possible next trip;
- the rates of pay were contractually determined by means of the platform's algorithms, i.e. the driver had no decision-making power;
- the driver received instructions from the platform on how to behave;
- the platform controlled the driver's activity; after three refusals to solicit, the platform sent a message to the driver and maintained the right to deactivate his account;
- drivers were constantly geo-located and the data collected was analysed by Uber;
- Uber exercised disciplinary power over drivers, which implies the definitive exclusion from the application.

The Paris Court of Appeal stated:

*"La cour en déduit qu'un faisceau suffisant d'indices se trouve réuni pour permettre à M. Maximilien Z de caractériser le lien de subordination dans lequel il se trouvait lors de ses connexions à la plateforme Uber et d'ainsi renverser la présomption simple de non-salariat que font peser sur lui les dispositions de l'article L.8221-6 I du code du travail."*

According to the Court of Appeal, as soon as the driver connected to the platform, he was integrated in an organised service that gave him instructions, controlled his performance and exercised disciplinary power. The presumption of non-salaried employment had to therefore be reversed. The Court of Appeal concluded that an employment contract had existed and that the labour court had jurisdiction to adjudicate the consequences of the termination of the employment contract.

Uber has already announced its intention to appeal the decision before the Supreme Court.

### 2.3 Psychological harassment in the workplace

*Employment Section of the Supreme Court, No. 17-18.190, 19 December 2019*



In the present [case](#), an employee who was a victim of acts committed between 09 February and 02 May 2014 brought a claim for recognition of psychological harassment before the courts on 26 May 2014.

As the rules on the burden of proof of harassment had been modified by the Law of 08 August 2016 by the time of the appeal, the employee referred to the new probationary regime, which was more favourable to him.

The Paris Court of Appeal had ruled in favour of the employee based on [Article L. 1154-1 of the Labour Code](#) in its wording resulting from the [Law of 08 August 2016, No. 2016-1088, JORF n°0184](#), to determine the existence of moral harassment, and stated that "the employee presents elements of facts suggesting the existence of harassment".

The Court of Cassation rejected this reasoning without, however, overturning the judgment handed down by the judges on the merits.

*"Mais attendu que s'il est exactement soutenu par le moyen que les règles relatives à la charge de la preuve ne constituent pas des règles de procédure applicables aux instances en cours mais touchent le fond du droit, de sorte que le harcèlement moral allégué devait en l'espèce être examiné au regard des dispositions de l'article L. 1154-1 du code du travail dans sa rédaction antérieure à la loi n° 2016-1088 du 8 août 2016, toutefois l'arrêt attaqué n'encourt pas la censure dès lors qu'il résulte de ses motifs que le salarié établissait des faits qui, pris dans leur ensemble, permettent de présumer l'existence d'un harcèlement et que la cour d'appel a constaté, au terme de l'analyse des éléments apportés par l'employeur, que celui-ci ne démontrait pas que ses agissements étaient justifiés par des éléments objectifs étrangers à tout harcèlement ; que le moyen est inopérant ;"*

During a previous change in the probationary regime on moral harassment from 2003, the Court of Cassation had already decided that the regulations on the burden of proof applicable at the time of the occurrence should be applied to ongoing disputes. The Court of Cassation applied the same reasoning, stating that the rules on the burden of proof did not constitute procedural rules and therefore did not immediately apply to pending proceedings ([Cass. soc., No. 06-44.080, 13 December 2007](#)).

## 2.4 Economic and Social Committee

*Employment Section of the Supreme Court, No. 17-26.660 P+B, 16 January 2019*

In the present [case](#), the works council of a company decided to appoint an expert firm to assist in examining the annual accounts for the 2016 financial year, the 2017 forecast and the outlook. The employer brought an action before the President of the Regional Court for the annulment of this decision. This appeal was rejected.

The decision to be assisted by chartered accountants rests with the works council. However, the employer can challenge this decision because it bears the costs of such assistance. In companies that consist of separate establishments, the employer must create works councils at each establishment and one central works council. The question of the prerogatives of the works council to be assisted by experts may arise when both bodies exist and each wants to call on an expert to assist them.

Before the Court of Cassation, the employer argued that the establishment did not have its own accounts, that the accounts were drawn up at company level and that the law of 17 August 2015 no longer provides for the use of chartered accountants for the annual examination of accounts.

The Court rejected the employer's argument and confirmed the judgment of the Court of Appeal. First, the Court of Cassation recalled that



*"le comité d'établissement a les mêmes attributions que le comité d'entreprise dans la limite des pouvoirs confiés au chef d'établissement. La mise en place d'un tel comité suppose que cet établissement dispose d'une autonomie suffisante en matière de gestion du personnel et de conduite de l'activité économique de l'établissement."*

In a second step, the court ruled that

*"le droit du comité central d'entreprise d'être assisté pour l'examen annuel de la situation économique et financière de l'entreprise ne prive pas le comité d'établissement du droit d'être assisté par un expert-comptable afin de lui permettre de connaître la situation économique, sociale et financière de l'établissement dans l'ensemble de l'entreprise et par rapport aux autres établissements avec lesquels il doit pouvoir se comparer."*

The decision of the Court of Cassation is therefore not new (see also [Cass. soc., No. 13-16.845, 08 October 2014](#)). This decision is intended to allow the works council to be informed of the economic, financial and social situation of the establishment throughout the company, which is useful for comparisons to other establishments.

## 2.5 Working time

*Employment Section of the Supreme Court, No. 17-18.725 P+B, 19 December 2018*

In the present [case](#), a commercial director challenged the validity of his dismissal and the validity of the working time agreement to which he was subject, and brought a claim before the labour court, in particular for payment of overtime supplements.

On appeal, he was successful. The employer was ordered to pay the employee various amounts for overtime work, related paid leave and for on-call work.

The Supreme Court agreed that the lump sum agreement was ineffective and that the employee was thus entitled to request payment for overtime. The Court of Appeal inferred that the package agreement was ineffective because it was not established by the employer that in the context of the execution of the package agreement, the employee had at some point been subject to control of his workload and the amount of his working time. Thus, the burden of proof in this case was on the employer.

*"Mais attendu qu'il incombe à l'employeur de rapporter la preuve qu'il a respecté les stipulations de l'accord collectif destinées à assurer la protection de la santé et de la sécurité des salariés soumis au régime du forfait en jours ; qu'ayant relevé qu'il n'était pas établi par l'employeur que, dans le cadre de l'exécution de la convention de forfait en jours, le salarié avait été soumis à un moment quelconque à un contrôle de sa charge de travail et de l'amplitude de son temps de travail, la cour d'appel, qui en a déduit que la convention de forfait en jours était sans effet, en sorte que le salarié était en droit de solliciter le règlement de ses heures supplémentaires a, sans inverser la charge de la preuve, légalement justifié sa décision ;"*

## 2.6 Expert consultation by workers' representatives

*Employment Section of the Supreme Court, No. 17-23.150 P+B, 19 December 2018*

A company agreement on the improvement of working conditions and the development of business relations had been concluded between La Poste and several unions representing the company's workforce. In this context, various measures were planned such as the creation of new functions, the organisation of routes in accordance with the workload, allowing the means of transport to be adapted to the

route, and the introduction of a weekly working time that could be adapted according to activity. This affected many employees.

Workers' representatives decided to consult an approved expert because this was a major project modifying the working conditions pursuant to Article L. 4612-8 of the Labour Code (then applicable). This was contested by the employer, arguing that for a project resulting from a collective agreement, there was no legal basis for an expert assessment.

The employer's argument was rejected by the Court of Cassation.

*"Mais attendu d'abord qu'il résulte des dispositions de l'article L. 4614-12 du code du travail alors applicable que le CHSCT peut faire appel à un expert agréé en cas de mise en oeuvre d'un projet important modifiant les conditions de santé et de sécurité ou les conditions de travail, prévu à l'article L. 4612-8-1 code du travail alors applicable, sans qu'il y ait lieu de distinguer selon que ce projet procède d'une décision unilatérale de l'employeur ou d'un accord d'entreprise"*

The Court of Cassation thereby [applied](#) the case law that prevailed for the works council before the adoption of Law No. 2015-994 known as 'Rebsamen' of 17 August 2015.

## 2.7 Professional elections

*Employment Section of the Supreme Court, 19 December 2018, No. 17-27.442 P+B*

A trade union brought a claim before the judge of first instance for the annulment of the pre-election agreement and the forthcoming vote and requested the representative trade union to be convened for negotiations to draw up a new protocol and organise new elections.

The trade union was unsuccessful. The cantonal judge found the first protocol to be valid, ordered the company to set up an electoral process and organise a new vote. The decision was upheld before the Court of Cassation.

The Court of Cassation [rejected](#) the trade union's arguments. It held that the District Court, as the judge of the election, has the power to take all necessary measures for the proper conduct of the election process. Since the elections for which a pre-electoral protocol has been concluded could not be held because of an anomaly affecting the voting materials and since the parties had not reached an agreement on a new electoral calendar during the negotiations with the employer to amend this protocol, the district judge was competent to determine the modalities of organisation and arrangement of the electoral operations.

*"Mais attendu, d'abord, que le tribunal d'instance, juge de l'élection, a le pouvoir de prendre toutes les mesures nécessaires au bon déroulement des opérations électorales ;*

*Attendu, ensuite, que le tribunal, après avoir constaté que les élections en vue desquelles le protocole préélectoral du 24 janvier 2017 avait été conclu n'avaient pas pu se dérouler en raison d'une anomalie affectant le matériel de vote le 24 février 2017 et que, lors de la négociation engagée par l'employeur d'un avenant au protocole préélectoral aux fins de fixer un nouveau calendrier électoral, les parties n'étaient pas parvenues à un accord sur ce point, s'est borné à déterminer les modalités d'organisation et de déroulement des opérations électorales en application des dispositions des articles L. 2314-23 et L. 2324-21 du code du travail, alors applicables ;"*



The Court of Cassation's decision is in line with its established case law according to which the judge has the power to take all necessary measures for the proper conduct of the electoral process.

### **3 Implications of CJEU Rulings and ECHR**

Nothing to report.

### **4 Other relevant information**

Nothing to report.

## Germany

### Summary

(I) A draft law aims to loosen dismissal protection of so-called 'risk carriers' in the banking sector.

(II) The Federal Labour Court has referred questions to the CJEU for a preliminary ruling with regard to the prohibition of a private company's workforce from wearing conspicuous large signs of religious, political and other ideological convictions in the workplace.

(III) The same Court has ruled on the admissibility of fixing the term of a contract of employment without reason and on compensation for leave not taken by the testator.

(IV) According to the Finance Court Berlin-Brandenburg, the statutory minimum wage is due to (foreign) long-distance drivers, even if they work in Germany for a short period of time only.

(V) According to the State Labour Court Baden-Württemberg, the co-determination agreement of a European Company (SE) that was established by a legal transformation does not have to maintain a seat guarantee for trade union representatives, which previously existed in the company.

## 1 National Legislation

### 1.1 Modification of dismissal protection of bankers

Following the submission by the Federal Ministry of Finance in November of a draft bill on the so-called Brexit Tax Accompanying Act ('*Brexit-Steuerbegleitgesetz*'), the Federal Cabinet adopted a [Government Draft](#) in mid-December aiming at facilitating the termination of so-called risk carriers in major credit institutions. The draft is now under consideration in Parliament. The project had already been agreed upon in the coalition agreement between the governing parties. According to the draft, a so-called dissolution application for risk carriers in dismissal protection proceedings would no longer require any justification by the employer.

Section 9 (1) of the Dismissal Protection Act reads as follows:

*"If the court finds that the employment relationship has not been terminated as a result of a dismissal, but the employee cannot reasonably be expected to continue the employment relationship, the court shall, at the employee's request, terminate the employment relationship and order the employer to pay appropriate compensation. The court shall make the same decision at the employer's request if there are grounds that do not give reason to expect further cooperation between the employer and the employee for the purposes of the enterprise. Employees and employers may file an application for termination of the employment relationship until the end of the last oral hearing in the appeal court."*

Section 10 of the same Act reads as follows:

*"The provisions of this chapter (...) shall apply to managing directors, company managers and similar executives, insofar as they are entitled to employ or dismiss employees. Section 9 (1) sentence 2 shall apply with the proviso that the employer's application for termination of the employment relationship does not require justification."*

The new law would amend section 25a of the Banking Act ('Kreditwesengesetz'). Section 25a (5a) sentence 1 of the Act would then read as follows:

*"Section 9 (1) sentence 2 of the Dismissal Protection Act shall apply to risk carriers of significant institutions whose annual fixed remuneration exceeds three times the income threshold for contributions to the general pension insurance scheme within the meaning of Section 159 Social Code VI and who are not managing directors, company managers or similar executives who are entitled to employ or dismiss employees independently, provided that the employer's application for termination of the employment relationship does not require a statement of reasons."*

If these elements are present, the employer will no longer have to justify the termination application in the dismissal protection proceedings on the grounds that further cooperation between the employer and the employee for business purposes is not to be expected. Instead, the judicial termination of the employment relationship could then take place on the basis of a simple application without justification. It is important to note that the definition of a risk carrier does not depend on the status of a senior executive. It is precisely those risk carriers that are not managing directors, company managers or similar executive employees who are entitled to hire or dismiss employees and who shall be covered.

## 2 Court Rulings

### 2.1 Effectiveness of a headscarf ban

*Federal Labour Court, No. 10 AZR 299/18, 30 January 2019*

The Federal Labour Court has referred questions to the CJEU for a preliminary ruling with regard to the prohibition of a private company's workforce from wearing conspicuous large signs of religious, political and other ideological convictions in the workplace. The Court would like to know whether a general arrangement in the private sector, which also prohibits the wearing of conspicuous religious signs, is always justified under discrimination law on the basis of entrepreneurial freedom as protected by Article 16 of the Charter of Fundamental Rights of the EU, or whether the employee's freedom of religion, which is protected by the Charter, the ECHR and the German Constitution, must also be taken into account.

A short version of the decision with the concrete questions is available [here](#).

### 2.2 Fixed-term employment

*Federal Labour Court, No. 7 AZR 733/16, 03 February 2019*

According to the Federal Labour Court, the fixing of the term of an employment contract without a reason as specified in section 14 (2) sentence 2 of the Part-Time and Fixed-Term Contracts Act ('Teilzeit- und Befristungsgesetz', hereinafter TzBfG), is inadmissible if an employment relationship had already existed between the employer and the employee eight years earlier and if this relationship lasted approximately one and a half years and involved a comparable work task. However, the prohibition of fixing the term in case of existence of a previous employment relationship (section 14 (2) sentence 2) can be unreasonable, in particular, if a previous employment relationship was too far in the past, of a completely different nature or of a very short duration.

Section 14 (2) reads as follows:

*"(2) The fixing of the term of an employment contract according to the calendar without the existence of an objective reason is permissible up to a duration of two years; up to this total duration of two years, the extension of a fixed-term employment contract by a maximum of three times is also permissible. A fixed term in accordance with sentence 1 is not permissible if a fixed-term or indefinite employment relationship had already existed with the same employer."*

In 2011, the Federal Labour Court ruled that section 14 (2) sentence 2 TzBfG, interpreted in conformity with the Constitution, did not cover previous employment relationships that occurred more than three years ago. However, this case law cannot be upheld due to the decision of the Federal Constitutional Court of 06 June 2018 (1 BvL 7/14, 1 BvR 1375/14). The Constitutional Court had then held that the Federal Labour Court, by assuming that a fixed term was only inadmissible if a previous employment relationship existed less than three years ago, had exceeded the limits of a justifiable interpretation of statutory provisions because the lawmaker clearly did not want to set such a waiting period. However, in the opinion of the Federal Constitutional Court, the specialised courts can and must also restrict the scope of application of section 14 (2) sentence 2 by an interpretation in conformity with the Constitution, insofar as the prohibition enshrined in section 14 (2) sentence 2 is unreasonable, because there is no danger of exploiting the structural inferiority of the employees and because the prohibition enshrined in section 14 (2) sentence 2 is not necessary to maintain the indefinite employment relationship as the standard form of employment.

A press release on the judgment is available [here](#).

### **2.3 Compensation for leave not taken by the testator**

*Federal Labour Court, No. 9 AZR 45/16, 22 January 2019*

The Federal Labour Court has ruled that if the employment relationship ends with the death of the employee, the employee's heirs, in accordance with section 1922 (1) of the Civil Code (*'Bürgerliches Gesetzbuch'*) in conjunction with section 7(4) of the Federal Holiday Act (*'Bundesurlaubsgesetz'*), are entitled to compensation for leave not taken by the testator. The heirs' entitlement to compensation does not only include entitlement to paid leave in accordance with sections 1, 3 (1) of the Federal Holiday Act, as well as entitlement to additional leave for severely disabled persons in accordance with section 125 (1) Social Code (*'Sozialgesetzbuch'*) IX (old version) and entitlement to leave in accordance with section 26 of the collective agreement applicable to the public service, which exceeds the statutory minimum leave.

With this decision, the Court takes into account the decisions of the CJEU (of 06 November 2018 – C-569/16 and C-570/16 – *Bauer and Willmeroth*).

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

### **2.4 Minimum Wage Act**

*Financial Court Berlin-Brandenburg, No. 1 K 1161/17 and 1 K 1174/17, 16 January 2019*

In two judgments dated 16 January 2019, the Berlin-Brandenburg Finance Court (*'Finanzgericht'*) dismissed claims brought by Polish freight hauliers against the validity of the Minimum Wage Act (*'Mindestlohngesetz'*), thus at the same time confirming the power of control of the customs authorities over transport companies operating in Germany only temporarily. In the Court's view, the statutory minimum wage is to be paid to (foreign) long-distance drivers, even if they work in Germany for



a short period of time only. In the Court's view, the obligation to pay the statutory minimum wage violates neither European law nor constitutional law.

A press release relating to the decision is available [here](#).

### 2.5 Co-determination after a legal conversion

*State Labour Court of Baden-Wuerttemberg, Nr. 19 TaBV 1/18, 09 October 2018*

According to the State Labour Court Baden-Württemberg, the co-determination agreement of a European Company (hereinafter SE) that was established by a legal transformation does not have to maintain a seat guarantee for trade union representatives, which previously existed in the company.

In the present case, a software company was subject to the Co-determination Act ('*Mitbestimmungsgesetz*'). The 16-strong Supervisory Board of that public limited company ('*Aktiengesellschaft*') consisted of eight employee representatives, two of whom were union representatives as required by section 7 (2) of the Co-Determination Act. In 2014, the legal form of the company was changed to an SE. An SE is no longer governed by the Co-determination Act, but by the SE Participation Act ('*SE-Beteiligungsgesetz*'). Under that law, the primary requirement is to agree on corporate co-determination within the framework of negotiations. In the company, an agreement was concluded on the participation of employees in the SE. The Supervisory Board should initially have consisted of 18 members; depending on the proportion of seats held by employee representatives on the Supervisory Board in Germany, up to two seats should be reserved for trade unions. The agreement also provided for the Supervisory Board to be reduced to twelve members at the proposal of the Executive Board to the Annual General Meeting. However, the reduction would mean that the unions would no longer be entitled to reserved seats on the Supervisory Board. Two trade unions took legal action against this.

The Court rejected the trade unions' complaint. In the Court's view, it was already inadmissible to file a motion against the Management Board to prohibit a proposal to the Annual General Meeting to amend the Articles of Association to reduce the size of the Supervisory Board. In addition, the participation agreement was not objectionable since it did not violate the provisions of the SE Participation Act. The Court argued that the wording of section 21 (6) of the SE Participation Act ("all components of employee involvement") indicated that the lawmaker did not intend to comprehensively protect existing rights relating to co-determination and that the term 'employee involvement' was—also in accordance with Art. 4 (4) of the SE Directive—not to be understood as a (procedural) component of co-determination, but as a generic term only. The Court decided that appeal shall be admissible.

Section 21 (6) of the SE Participation Act reads as follows:

*"Without prejudice to the relationship of this Act to other provisions for co-determination in the company, the agreement shall, in the case of an SE established by conversion, ensure at least the same level of all components of employee involvement as exists in the company to be transformed into an SE. This also applies if the company changes from a dualistic to a monistic organisational structure and vice versa."*

A short summary of the judgment is available [here](#).

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.



#### **4 Other relevant information**

Nothing to report.



## Greece

### Summary

The minimum wage was increased by ministerial decision.

### 1 National Legislation

A Decision of the Ministry of Employment signed on 29 January 2019 increased the standard minimum monthly wage by about 11 per cent. It is the first such increase since the country's debt crisis erupted several years ago. The minimum wage will increase from EUR 586 to EUR 650 and the lower wage category (EUR 486) for younger employees (less than 25 years old) will be abolished. The above increase will take effect from 01 February 2019.

Employers' representatives say that the increases announced are out of line with the much smaller growth of productivity and the economy in Greece.

### 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 decided that a contractual penalty imposed on an employer attributable to the fault of the employee can be recovered from that employee.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Employees' liability

*Kúria Mfv.II.10.027/2018*

The disputed point of the collective agreement concluded with the employer (defendant) determined the employee's liability for damages as follows: an employee who caused damage—including for a penalty imposed within the scope of the current public service contract—must reimburse the employer, unless she acted as might normally be expected in the given circumstances.

The management of the employer has published workplace rules on the 'Treatment of penalties imposed on the employee'. According to this document, the employer can demand reimbursement for the amount of a contractual penalty which the employer has paid as a result of the employee's misconduct.

The trade union (as plaintiff) applied for the collective agreement to be declared null and void, and thus unlawful.

The current regulation on the employee's liability in Act I of 2012 on the Labour Code (hereinafter LC) is as follows:

*"Section 179*

*Sub 1: Employees shall be subject to liability for damages caused by any breach of their obligations from the employment relationship stemming from their failure to act as might normally be expected in the given circumstances.*

*Sub 2: The burden of proof to verify the facts referred to in subsection (1), the occurrence of loss, as well as the causal link lies with the employer.*

*Sub 3: The amount of compensation may not exceed four months' average pay payable to the employee. Compensation for damage caused intentionally or through grave negligence shall cover the full extent of losses.*

*Sub 4: No liability shall apply with respect to any damage that is considered unforeseeable or that resulted from the employer's wrongful conduct, or that was incurred due to the employer's failure to perform his obligations to mitigate the damage."*

The Administrative and Labour Court (in first instance) decided that the employer's workplace rules were unlawful but the Court rejected the application to the collective agreement concerned. The Court of Law (second instance) partially changed the decision of the Administrative and Labour Court and concluded that the provisions of the collective agreement are null and void with regard to the stipulation on contractual penalties.

The Kúria (Supreme Court) in its judgment repealed the decision of the Court of Law. It stated that the lump sum of the consensual penalty is determined by the customer. However, the payment of the contractual penalty is a damage for the defendant. It was proven during the proceedings that the reason for the contractual penalty imposed in the present case was the employee's mistake/omission. For this reason, the responsibility could be shifted to the employee.

The Kúria referred to Section 191 of the LC:

*"Section 191*

*Sub 1: Derogations from the provisions of this Chapter (Employee's Liability for Damages) in the collective agreement are only allowed to the benefit of the employee, excluding the extent of liability for inventory shortages.*

*Sub 2: Where so provided in the collective agreement, the extent of liability for damages in case of negligence may not exceed the employee's absentee pay due for eight months."*

The Kúria stated that the collective agreement did not contain less favourable provisions than the rules of the LC on employees. For this reason, they were in line with section 179 of the LC.

The Kúria did not decide on the workplace rules nor the procedural standing of the trade union in this process due to the absence of claims (see analytical part).

If the employer has an obligation to pay a contractual penalty to a customer, and this penalty was caused by the employee, the payment of this amount triggers the employee's liability. The workplace rule constitutes a normative order (instruction, direction) of the employer. This order is addressed to employees. Consequently, the trade union has no capacity to bring an action.

### **3 Implications of CJEU Rulings and ECHR**

Nothing to report.

### **4 Other relevant information**

Nothing to report.

## Iceland

### Summary

The Court of Appeal decided a case on safety at work.

### 1 National Legislation

Nothing to report.

### 2 Court Rulings

#### 2.1 Safety at work

*Court of Appeals Judgment No. 402/2018, of 25 January 2019*

The [judgment](#) concerned, inter alia, Art. 9 of Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, which has been transposed into Icelandic law by Art. 65 a of Act No. 46/1980, on working environment, health and safety at work.

In the present case, an employee had suffered an accident in a cold storage during work with a racking system. The employee had not received proper instructions on the use of the racking system and a risk assessment on the system had not taken place, although the operations manager of the employer had noted that the system had dangerous elements. In addition, appropriate security measures had not been taken with regard to the system. Thus, the employer had not fulfilled its duty to conduct a risk assessment and take the necessary steps as a consequence, cf. Art. 65(2) of the aforementioned Act and Art. 7 of Regulation No. 367/2006, on the usage of machinery. The employee was therefore awarded damages for the incident.

### 3 Implications of CJEU Rulings and ECHR

Nothing to report.

### 4 Other relevant information

Nothing to report.

# Italy

## Summary

A new Law Decree has been published introducing the so-called citizenship income.

## 1 National Legislation

### 1.1 Law Decree on citizenship income

On 28 January 2019, the Law Decree No. 4/2019 was published on the OJ n. 23 introducing and regulating, among the others, the so-called citizenship income (*‘Reddito di cittadinanza – Rdc’*), an active labour market policy measure aimed at guaranteeing the right to work, fighting poverty and promoting the right to information, education, professional training and culture, through income support and social inclusion measures of those at risk of social exclusion. The Law Decree shall be transformed into law by Parliament within 60 days.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Liechtenstein

## Summary

The EEA Joint Committee has decided to transpose Directive 2014/67/EU into the EEA Agreement (Decision No. 215/2018 of 26 October 2018). The Liechtenstein government has requested Parliament to approve this Decision. One of the main concerns is to facilitate the fight against bogus posting and bogus self-employment. To achieve this goal, key terms in the law on posting shall be defined more clearly. Furthermore, the possibilities for asserting wage claims against an employer's client have been improved. Finally, the amendment aims to ensure close cooperation between Liechtenstein and the other EEA Member States.

## 1 National Legislation

### 1.1 Enforcement Directive on Posting of Workers

To adequately enforce the protection of workers in cross-border services, it was decided at EU level to leave the European law on the posting of workers unchanged in substance, but to enable this law to be enforced as effectively as possible. This is why the Enforcement Directive 2014/67/EU was introduced. The EEA Joint Committee decided to transpose Directive 2014/67/EU into the EEA Agreement (see [Decision No. 215/2018 of 26 October 2018](#)). The Liechtenstein government has requested Parliament to approve this Decision of the EEA Joint Committee.

Four central points should be mentioned:

- One of the main objectives is to facilitate the fight against bogus posting and bogus self-employment. To achieve this goal, key terms in the law on posting shall be defined more clearly.
- Posted employees are given more precisely defined opportunities to assert their wage claims against their employer's client under certain circumstances. Care is taken to ensure that the liability rules are non-discriminatory. The foreign contractor may not be disadvantaged compared to a Liechtenstein contractor.
- A further goal is to ensure close cooperation between Liechtenstein and the other EEA Member States. This includes, in particular, prompt exchange of information, which is primarily intended to determine the facts of the case. Furthermore, it also includes the obligation to notify and enforce foreign decisions in the field of law on the posting of workers. For example, if a Liechtenstein company has infringed the law on the posting of workers abroad and does not pay the imposed fine, Liechtenstein is required to collect the fine from its domestic company. Conversely, Liechtenstein can demand the same from the foreign authorities.
- In addition to the implementation of Directive 2014/67/EU, the planned amendment shall also be used to better formulate some existing provisions or introduce additional ones based on experience in enforcement.

Currently, the Liechtenstein government [is requesting Parliament](#) to approve Decision No. 215/2018 of 26 October 2018 of the EEA Joint Committee.

The next step following Parliament's approval will be for the government to submit a report and motion (*'Bericht und Antrag'*) to Parliament on how Directive 2014/67/EU is



to be transposed into national law. To date, it is not possible to project when this will be the case.

Directive 2014/67/EU of the European Parliament and of Council of 15 May 2014 on the enforcement of Directive 96/71/EC on the posting of workers in the framework of the provision of services and amending Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') is available [here](#).

The amendment departs from previous lines of reasoning because the substantive law on the posting of workers will not be changed. As already stated above, the only objective is to make its enforcement more efficient. In addition, no new laws are being created, but the existing structures shall be used to implement the changes.

A public consultation was held to give the government an idea of the likely implications in the legal and political area. Depending on the outcome, the government's proposal will be adapted before the draft is submitted to Parliament.

The main purpose of the amendment is to transpose Directive 2014/67/EU.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Lithuania

## Summary

(I) A pending proposal aims to exclude agreements that 'improve the situation of employees' from the scope of application of competition laws.

(II) A proposed law would require employers to indicate salaries in job advertisements.

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## 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 Exemption of agreements from competition law

Members of Parliament belonging to the governing party of Greens and Farmers have registered a proposal to amend the Law on Competition No. VIII-10999. The proposal ([Draft Law No XIIIIP-3184](#) on the amendment of Article 6 of the Law on Competition) was triggered by the rejection of the Competition Council to the initiative of the Ministry of Social Security and Labour to conclude an agreement with the Employers' Association of Retail Enterprises (*Lietuvos prekybos įmonių asociacija*) not to work on Christmas Day 2018. The Council had warned the Ministry and Association that the agreement could be judged illicit. In [response](#), the members of Parliament are calling for an amendment of the Law on Competition to exclude those special agreements that 'improve working conditions of workers in the given sector' from the prohibited agreements.

The draft law does not identify what agreements qualify as exceptions. There is no collective agreement in the given sector, and the Association can be characterised as an interest representative without bargaining power. A few major chains have announced that they would not work on Christmas Day but these are voluntary examples.

The political desire to restrict the working hours of workers in shopping malls is not new on the agenda of the ruling parties. Previous proposals to amend labour legislation were not successful, so political and social initiatives have been taken. Criticism was expressed from the Legal Department of Parliament as well as the Competition Council, but the future of the proposal remains unclear.

### 4.2 Indication of salaries in job advertisements

Another legislative initiative of the Members of Parliament (supported by the major national trade union) is [Draft Law No. XIIIIP-3183](#) on the amendment of Article 25 of





the Labour Code. The Draft Law aims to introduce a requirement for employers to include an indication about salaries in public job advertisements. The proposal sparked intense debate about competition, but in the view of the initiators, the requirement would be beneficial for employees.

# Luxembourg

## Summary

A bill has been deposited to transpose an additional day of annual leave and an additional public holiday (Europe Day).

## 1 National Legislation

### 1.1 Public holiday and annual leave

As announced in the recent coalition agreement, a bill has been deposited (Projet de loi n° 7399) to:

- implement a new public holiday, Europe Day (*Journée de l'Europe*) on 09 May (as mentioned in the European treaties); the total number of public holidays will thus be 11;
- implement an additional day of legal annual leave (*congé annuel légal*), which will increase annual leave days from a total of 25 to 26. According to the parliamentary documents, this should not lead to an additional day for all employees benefitting from more favourable conditions in their collective agreements. In my opinion, this question will strongly depend on the wording and interpretation of these agreements (i.e. whether they set a total amount or whether they refer to the legal provisions and grant additional days).

## 2 Court Rulings

### 2.1 Annual leave

*Cour Supérieure de Justice, cases 2e, 3e, 25.10.2018, 44386; 8e, 20.12.2018, 45030 and 3e, 8.11.2018, 45143.*

The court of appeal reiterated that once annual leave is granted and accepted by the employer, it can no longer be withdrawn without the employee's consent (see *Cour Supérieure de Justice 2e, 3e, 25.10.2018, 44386*).

It was decided that if over multiple years, the employer has accepted to defer an employee's annual leave entitlements to the following year, the employee has a legitimate expectation, and thus the right for this alternative to continue. The court of appeal also arrived at the conclusion that such a deferral is in line with EU law (Directive 2003/88) (see *'Cour Supérieure de Justice' 8e, 20.12.2018, 45030*).

The court of appeal also reiterated that any annual leave the employee could not take due to sick leave is deferred to the following year, but must then be taken before 31 March (see *'Cour Supérieure de Justice', 3e, 8.11.2018, 45143*).

### 2.2 Fixed-term contracts

*Cour Supérieure de Justice, cases 3e, 25.10.2018, 45360; 3e, 25.10.2018, 44620 and 3e, 18.11.2018, 45303*

The court of appeal deemed that it was possible to enter into an open-ended contract (*'contrat à durée indéterminée'*) for a specific task where—especially if he is informed—the employee can be legally dismissed for economic reasons after the completion of the task. This approach might facilitate circumvention of the legal

framework on fixed-term contracts (*'contrat à durée déterminée'*) (see *'Cour Supérieure de Justice'*, 3e, 25.10.2018, 45360).

In the context of a fixed-term contract signed in violation of the legal restrictions, the court decided (as provided by the Labour Code) to requalify the contract as an open-ended contract. The employer was thus required to continue the contract and refusal to do so was qualified as dismissal. However, the judges stated that during the court proceedings, there was a 'period of legal uncertainty' during which the employee is required to undertake efforts to find a new job; there is no automatic salary entitlement for this period (see *'Cour Supérieure de Justice'* 3e, 25.10.2018, 44620).

The court of appeal dealt with an employer who had dismissed an employee after signing the fixed-term contract, but before it came into effect. The employer argued that the dismissal had thus occurred during the trial period (*'période d'essai'*). The court of appeal, however, decided that the rules on the trial period do not apply, hence the dismissal was unfair and the employee could ask for damages (see *'Cour Supérieure de Justice'*, 3e, 18.11.2018, 45303).

### 2.3 Collective labour law

*Cour Supérieure de Justice, cases 8e, 20.12.2018, 44669 and 3e, 6.12.2018, CAL-2018-00139*

It was decided that an employer can (and even must) intervene in the functioning of employee representation if the purpose is to remedy a dysfunction. In the present case, the employer, without legal entitlement, had decided to convene the employees' delegates at a meeting because they had not managed to designate an occupational safety representative (*'délégué à la sécurité'*). The court of appeal stated that it was the employer's responsibility to ensure the proper functioning of employee representation. The author does not fully agree with this statement; it is certainly up to the employer to organise social elections and to inform and consult the delegates when required by the law. The internal functioning or dysfunction should not, however, be the employer's concern (see *'Cour Supérieure de Justice'*, 8e, 20.12.2018, 44669).

Employee delegates are released from work during a certain number of hours, and in larger companies, one or more delegates must be fully released from work (*'délégué libéré'*). They are entitled to their salary 'as if they had worked during their hours of delegation'. An assistant nurse filed a claim because she was no longer paid the premiums for night, public holiday and weekend shifts. The judges, however, rejected her claim, stating that as a full-time delegate, she was only entitled to her basic salary, i.e. as though she had worked during her regular working time (see *'Cour Supérieure de Justice'*, 3e, 6.12.2018, CAL-2018-00139).

### 2.4 Others

*Cour Supérieure de Justice, cases 8e, 22.11.2018, 45332; 8e, 20.12.2018, 44669; 3e, 6.12.2018, 45227 and 8e, 22.11.2018, 44861.*

It was decided that if an employment contract contains a flexibility clause, the employee can be required to work in the border region (*'zone frontalière'*). It should be emphasised that the given employee was a cross-border commuter and was thus asked to work in his country of residence. On the other hand, such a change has multiple implications for the applicable individual and collective labour law, as well as social security and tax law. It is thus questionable if by agreeing to flexible workplaces, the employee implicitly accepts all these side effects.

*Reference: CSJ, 8e, 22.11.2018, 45332*



In the first instance labour court, the professional magistrate is assisted by two lay judges elected amongst the employer's and employees' candidates. It has been decided that there is no automatic lack of impartiality if one of the lay judges is affiliated to a union that is a party to the court proceedings.

*Reference: CSJ2, 8e, 20.12.2018, 44669*

Employees on parental leave are protected against dismissal and entitled to return to their former post or a similar post at the end of their parental leave. In the present case, the court of appeal stated that it is possible to dismiss the employee for economic reasons after the parental leave ends. The dismissal was motivated by the fact that during the parental leave, it turned out that the employee's tasks could be carried out by existing staff; this argumentation convinced the judges, so the dismissal was deemed to be fair.

*Reference: CSJ, 3e, 6.12.2018, 45227*

In the context of the transfer of a restaurant, it was emphasised that a transfer of undertaking is given as long as the activity is similar (a fast food restaurant), even if the type of meals changes and if the new owner modifies the interior installations.

*Reference: CSJ, 8e, 22.11.2018, 44861*

### **3 Implications of CJEU rulings and ECHR**

Nothing to report.

### **4 Other relevant information**

Nothing to report.

# Netherlands

## Summary

The amendments to the Minimum Wage Act introduced changes to the rules to compensate overtime hours.

## 1 National Legislation

### 1.1 Changes in the Minimum Wage Act

Changes in the Minimum Wage Act (*Wet Minimumloon*) entered into force on 01 January 2019.

Under the new rules (Article 13a Minimum Wage Act), overtime, as a rule, needs to be paid (as part of the employee's salary) instead of being compensated by extra leave (holiday hours). The Minimum Wage Act now stipulates that an employee needs to receive the hourly minimum wage for all hours worked within a normal payment period (four weeks or a month). Overtime and extra hours cannot be compensated for by free time to be taken at a later date.

Compensation within a payment period would still be possible under the condition that the employee still receives the minimum wage for the hours actually worked. Time for time compensation is also possible if an employee earns a wage that is (significantly) above the monthly minimum wage, and still earns at least the minimum wage per hour, having taken the extra hours worked into account.

Finally, it should be noted that time for time compensation can be made possible in a collective agreement as well (Article 13a Section 2 and 3 Minimum Wage Act). Compensatory leave should be taken or be paid out on 01 July of the year following the year in which it was accrued.

Sources:

Find publication in the Official Journal (*Staatsblad*) [here](#).

Find Parliamentary Papers on Changes of the Minimum Wage Act [here](#).

## 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) The amount of statutory minimum wage for work has been increased.
- (II) Work in commercial establishments is only permitted on a single Sunday per month.

## 1 National Legislation

### 1.1 Minimum remuneration

On 01 January, the Regulation of the Council of Ministers of 19 September 2018 on the amount of minimum wage for work and the amount of minimum hourly wage in 2019 (see Journal of Laws 2018, item 1794), took effect. In 2019, the minimum wage amounts to PLN 2 250 for employment contracts (around EUR 530), and PLN 14.70 per hour for civil law contracts. The change for employment contracts implies a raise in the minimum wage by 7.1 per cent.

The text of the regulation can be found [here](#).

The Law of 10 October 2002 on minimum wage for work (consolidated text, see Journal of Laws 2017, item 847), which constitutes the legal basis for enacting the regulations for each year, can be found [here](#).

The information provided by the Ministry for Family, Labour and Social Policy can be found [here](#).

For further references, see also September 2018 Flash Report.

In recent years, the statutory minimum wage for work has continuously increased. The regulation that took effect on 01 January 2019 maintains this tendency.

### 1.2 Ban of work on Sundays in commercial establishments

The Law of 10 January 2018 on limiting trade on Sundays, public holidays and some other days (see Journal of Laws 2018, item 305) implies a gradual implementation of the ban of work on Sundays in commercial establishments. Since 01 March 2018, shops have been closed every second Sunday. Since 01 January 2019, shops can only be open on a single Sunday per month (as a rule: the last Sunday of the month). After 01 January 2020, the general prohibition to carry out trade activities on Sundays will take effect.

The law on limiting trade on Sundays, public holidays and some other days is available [here](#).

For further references, see also the January 2018 Flash Report Poland.

Moreover, the abovementioned law is currently subject to a legislative process, intended to clarify the scope of exceptions, i.e. in practice to reduce them. For further information, see also the November 2018 Flash Report Poland.

The information on the current development provided by the Ministry for Family, Labour and Social Policy is available [here](#).

The ban to carry out trade activities on Sundays has been the topic of public debate as well as the legislative process. The planned amendment is subject to a parliamentary debate and its final outcome has not yet been settled.



### **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) Law No. 4/2019, of 10 January establishes a system of quotas for persons with disabilities.

(II) Decree Law No. 6/2019, of 14 January amends the rules of the General Laws of the Public Sector (LTFP).

(III) The Supreme Court has issued a ruling on the organisation of working time.

(IV) The implications of the Advocate General's Opinion on the obligation to implement working time registries and the CJEU's ruling on public holidays and religion are analysed.

## 1 National Legislation

### 1.1 Persons with disabilities

[Law No. 4/2019](#) of 10 January 2019 establishes a system of quotas for persons with disabilities, aiming to increase the hiring of disabled persons by private sector employers and by public sector agencies not covered by [Decree Law No. 29/2001](#) of 03 February. It is applicable to medium-sized enterprises (with 75 or more employees) and large enterprises (with 250 or more employees). These companies shall hire disabled workers of at least 1 per cent and 2 per cent of staff (Articles 2 (3) and 5 (1) and (2)). For this purpose, the workers concerned are individuals who due to a loss or anomaly—congenital or acquired—of bodily functions or structures, including psychological functions, have difficulties, in combination with the environment, that may limit their activity and equal participation with other workers (Article 2 of Law No. 38/2004, of 18-8). Their degree of incapacity shall be equal to or greater than 60 per cent (Article 2 (1)). Failure to comply with the obligations imposed by this law constitutes a serious administrative offence (Article 9 (1)).

### 1.2 Public sector employment

[Decree Law No. 6/2019](#) of 14 January 2019 amends the rules of the General Laws of the Public Sector (LTFP) to allow for (i) a disciplinary sanction in case of a new contract for the same functions and the breach was committed within the scope of the previous contract which has expired, and (ii) public sector' retirees to work past 70 years of age.

## 2 Court Rulings

### 2.1 Working time

*Supreme Court ruling 2066/15.0T8PNF.P1.S1 of 09.01.2019*

According to the Portuguese Supreme Court's [judgment](#):

- The obligation to remain at the employer's premises in periods when the worker is not performing any activity but is at the disposal of his employer, is relevant for qualifying such a period as working time.
- Since the worker, who was a driver of trailers, was not required to remain at the employer's premises but only to remain at the disposal of the employer 24 hours a day and to carry out towing services whenever necessary, only the



periods during which he actually performed those services must be considered working time.

- If the periods of availability are not deemed working time and the periods of service actually provided have not been proven by the worker, and if the worker has not suffered any damages as a result of permanent availability, the employer is not obligated to compensate her for non-material damages based on the violation of the right to rest.

The Portuguese Supreme Court did not agree with the argument based on the obligation to ensure a minimum daily period of rest ([Article 3 of the Directive 2003/88/EC](#) of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time). However, such working time arrangements could negatively affect the minimum rest period of 11 hours per day, because the worker would not be able to plan her personal life, notably to define the time dedicated to her family and friends and the rest period. In fact, the employer could request her to work at any time and without any relevant notification period.

### 3 Implications of CJEU rulings and ECHR

#### 3.1 Working time

*CJEU case C-55/18, 31 January 2019, Federación de Servicios de Comisiones Obreras (CCOO)*

In [this case](#), the Advocate General issued the following opinion:

- Article 31(2) of the Charter of Fundamental Rights of the European Union and Articles 3, 5, 6, 16 and 22 of Directive 2003/88/EC of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time must be interpreted as imposing on undertakings an obligation to set up a system for recording actual daily working time for full-time workers who have not expressly agreed, individually or collectively, to work overtime and who are not mobile workers or persons working in the merchant navy or railway transport workers and precluding national provisions from which no such obligation can be inferred.
- The Member States are free to determine what method of recording of actual daily working time is best suited to achieving the effectiveness of those provisions of EU law.
- However, the referring courts must determine, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, whether they can arrive at an interpretation of domestic law that is capable of ensuring the full effectiveness of EU law. In the event that it is impossible to interpret national provisions such as those at issue in the main proceedings in a manner consistent with Directive 2003/88 and Article 31(2) of the Charter of Fundamental Rights, it follows from the latter provision that the referring courts must disapply such provisions and ensure that the obligation on undertakings to equip themselves with an adequate system for recording actual daily working time is met.

If the CJEU follows the opinion of the Advocate General, the Portuguese system is in line with this understanding, because there is an obligation to register regular and overtime work (see [Articles 202 and 231 of the Labour Code](#)).



### 3.2 Public holiday

*CJEU case C-193/17, 22 January 2019, Cresco Investigation*

In [this case](#), the CJEU ruled:

Articles 1 and 2(2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that national legislation under which, first, Good Friday is a public holiday only for employees who are members of certain Christian churches and, second, only those employees are entitled, if required to work on that public holiday, to a payment in addition to their regular salary for work done on that day, constitutes direct discrimination on grounds of religion.

The measures provided for by that national legislation cannot be regarded either as measures necessary for the protection of the rights and freedoms of others, within the meaning of Article 2(5) of that directive, or as specific measures intended to compensate for disadvantages linked to religion, within the meaning of Article 7(1) of the directive.

Article 21 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that, until the Member State concerned has amended its legislation granting the right to a public holiday on Good Friday only to employees who are members of certain Christian churches, in order to restore equal treatment, a private employer who is subject to such legislation is obliged also to grant his other employees a public holiday on Good Friday, provided that the latter have sought prior permission from that employer to be absent from work on that day, and, consequently, to recognise that those employees are entitled to a payment in addition to their regular salary for work done on that day where the employer has refused to approve such a request.

In Portugal, public holidays are established for all workers, regardless of their religion or beliefs (see [Articles 24, 24, 234-236 of the Labour Code](#)).

## 4 Other relevant information

[Draft Law No. 136/XIII](#) and [1025/XIII](#) are still under discussion in the Portuguese Parliament.

# Romania

## Summary

(I) A new fiscal regime of value tickets entered into force on 01 January 2019.

(II) The rights and duties of labour inspectors are currently regulated in a new piece of legislation.

## 1 National Legislation

### 1.1 Employee benefits

[Government Decision No. 1.045/2018](#), published in the Official Gazette No. 24 of 09 January 2019, approved the methodological rules for the application of [Law No. 165/2018](#) on the issue of value tickets, which entered into force on 01 January 2019 (see also July 2018 Flash Report). Value tickets are employee benefits provided in addition to wages. They include meal vouchers, gift vouchers, nursery vouchers, cultural vouchers and holiday vouchers. Their use is accompanied by a range of tax incentives.

### 1.2 Labour inspectors

[Law No. 337/2018](#) on the status of the labour inspector has been published in the Official Gazette No. 1107 of 28 December 2018. It regulates the status of civil servants appointed to the specific public function of the labour inspector, namely the rights, specific duties and incompatibilities of the labour inspector.

Labour inspectors exercise their prerogatives to ensure compliance with the legal provisions in employment, safety and health at work and an overview of the labour market by adopting the measures provided by the law, mainly combating undeclared work, preventing work accidents and diseases, restricting the selling of non-compliant products and preventing and combating discrimination in the labour market.

Labour inspectors must be assured stability of employment and independence of changes of government and improper external influences which may affect their freedom of exercise, decision or control in the performance of duties, appreciation and decision and which may restrict or prevent them from carrying out their control function.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Slovenia

## Summary

A ruling of the Supreme Court on the irregular distribution of working hours is analysed.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Supreme Court on irregular distribution of working hours

*Supreme Court of the RS VIII Ips 159/2018, 20 November 2018*

The plaintiff was a soldier in the military service. During the period 01 July 2010 – 30 June 2016 (nine reference periods of six months), his working hours were distributed irregularly<sup>1</sup> (the term 'irregularly', as used in the Employment Relationships Act (ERA-1), relates to the institute covered by the provisions of Directive 2003/88/EC on the derogations from the maximum working time). Despite the fact that he was afforded equivalent periods of compensatory rest, he accumulated a surplus of working hours by the end of the individual reference periods, which were transferred to the following reference period. The surplus of working hours was never taken into consideration. During the entire nine-month reference periods, his wage was calculated for full-time work. This implied that the employer did not understand the essence of irregular distribution of working hours and violated its obligations on payment of overtime work.

The labour courts of first and second instance stated that the surplus of working hours ought to be counted and paid as overtime work. It was obvious that the two Courts did not correctly distinguish between the 'current and the past' surplus of working hours, which is important when calculating the payment to a worker. The Supreme Court therefore allowed a revision, which was only limited to the correct calculation of the supplements for the surplus working hours as provided in the law.

The Supreme Court took relevant provisions of the ERA-1 (Article 143 on the definition of full-time work into consideration, Article 148 on the distribution of working time, the irregular distribution and redistribution of working time, Article 146 on overtime work and its limitations) and the Defence Act (see Official Gazette of the RS No. 103/04- official consolidated Act-ZObr, 95/15, Article 97 b.). It took a clear position that in the case of irregular distribution of working hours, the compensation/even distribution of working hours must be reached within the reference period. Compensatory rest periods must be granted to workers within the individual reference period. Any working hours exceeding full-time working hours are not deemed (real) overtime work because, as a rule, they must be compensated as rest periods. If compensation is not possible, the established surplus of working hours represents overtime and must either be paid as overtime work (supplement) or transferred to the next reference period. The transferred surplus of hours is included in the working hours of the new reference period. The Supreme Court underlined that it is important to not equate the hours for which compensatory rest periods may be granted with surplus working hours transferred to the current reference period and included in the working hours of the current reference period. The so-called current surplus of hours



within a reference period does not mean real overtime hours and is not paid. If compensatory rest periods within the reference period are not possible and an even distribution of working hours at the end of the reference period is not achieved, the surplus represents hours of overtime. It must be paid (130 per cent of the basic wage). Compensatory rest periods (with 100 per cent wage compensation) at the ratio 1:1 together with the supplement for overtime work (30 per cent) are another possibility.

Long working hours have become a serious problem in Slovenia. The working hours of many workers exceed the statutorily defined full-time work. The reasons for this differ: endeavours of the employers to reduce the labour costs as much as possible, the shortage of workers, etc. Provisions on overtime work are, in practice, also violated and very often, overtime work is not paid in accordance with the law. Employers try to avoid fulfilling their legal obligations by using different institutions provided by the law. The irregular distribution of working hours is one of them.

Often, its essential characteristics are not correctly understood or implemented by employers. The employer is required to give the worker an equivalent of compensatory rest period for the surplus hours performed within the scope of the reference period of maximum six months due to the irregular distribution of working time. If compensation was not possible and the even distribution of the working hours was not reached until the end of the reference period, the surplus is deemed to be overtime work. See also the [Judgment of the Supreme Court VIII Ips 149/2018](#), 04 December 2018.

### **3 Implications of CJEU rulings and ECHR**

Nothing to report.

### **4 Other relevant information**

Nothing to report.

# Spain

## Summary

- (I) The catalogue of vacant jobs for foreigners has been published.
- (II) The implications in Spain of CJEU case Cresco Investigation are analysed.

## 1 National Legislation

### 1.1 Employment of foreigners

In accordance with the provisions of the legislation on the employment of foreigners, this Resolution published the 'Catalogue of jobs difficult to fill' in Spain for the first quarter of 2019. As follows from its name, this catalogue lists the occupations or jobs every three months that do not usually get filled by Spanish workers, and the recruitment of foreign workers for these jobs is therefore allowed.

The catalogue of 'jobs difficult to fill' must be approved by the government every quarter, so it is not a major development. It is an implementation of the Law on Foreigners. For several years (since the onset of the economic crisis), these occupations have been very few, and are currently reduced to professional sports sectors (both for athletes and coaches) and work at sea.

Find the official communication of the Ministry of Labour, Migration and Social Security [here](#).

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR

### 3.1 Religious freedom

*CJEU case C-193/17, 22 January 2019, Cresco Investigation*

According to the CJEU in case C-193/17, *Cresco Investigation*, 22 January 2019:

*"1. Articles 1 and 2(2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that national legislation under which, first, Good Friday is a public holiday only for employees who are members of certain Christian churches and, second, only those employees are entitled, if required to work on that public holiday, to a payment in addition to their regular salary for work done on that day, constitutes direct discrimination on grounds of religion. The measures provided for by that national legislation cannot be regarded either as measures necessary for the protection of the rights and freedoms of others, within the meaning of Article 2(5) of that directive, or as specific measures intended to compensate for disadvantages linked to religion, within the meaning of Article 7(1) of the directive.*

*2. Article 21 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that, until the Member State concerned has amended its legislation granting the right to a public holiday on Good Friday only to employees who are members of certain Christian churches, in order to restore equal treatment, a private employer who is subject to such legislation is*



*obliged also to grant his other employees a public holiday on Good Friday, provided that the latter have sought prior permission from that employer to be absent from work on that day, and, consequently, to recognise that those employees are entitled to a payment in addition to their regular salary for work done on that day where the employer has refused to approve such a request”.*

This ruling has no impact in Spain, because there are no additional public holidays based on the beliefs of workers. However, it is worth mentioning that Spain has reached cooperation agreements with several religious denominations, and those agreements include rules on public holidays. For example, the agreement with the Islamic Religious Community (which can be found [here](#)) allows the deals between employers and workers to replace the public holidays mentioned in the Labour Code for dates with greater meaning for that religion. Therefore, the total amount of public holidays does not change, but the date for taking public holidays may differ for religious motives.

#### **4 Other relevant information**

Nothing to report.



# Sweden

## Summary

(I) Some legislative changes came into force at the beginning of the year relating to liabilities for unpaid wages in supply chains in the construction sector. The new provisions introduce liability for outsourcers and entrepreneurs if the ordinary employer does not pay the wages.

(II) The new government has agreed on a reform agenda with the centre-liberal parties. The labour conflict in the Swedish harbours intensified in January 2019.

## 1 National Legislation

### 1.1 Liabilities for unpaid wages

As of 01 January 2019, several new pieces of legislation relating to the labour market came into force. [The new Act](#) on Entrepreneurial (supply chain) Responsibilities for Workers' Claims on Wages (*'lagen (2018:1472) om entreprenörsansvar för lönefordringar'*) and the subsequent [changes to the Posting of Workers Act](#) (*'lagen (1999:678) om utstationering av arbetstagare'*), states that an employee who is not paid by her employer in the construction industry can request another entrepreneur in the supply chain to pay outstanding wages. The primary liability for payment of such claims is attributed to the outsourcer (*'uppdragsgivare'*) who engaged the worker's employer as a sub-contractor. Secondary liability can be applied to the main entrepreneur (*'huvudentreprenören'*). The employer as well as the main entrepreneur and the outsourcer are, according to the Act, obligated to provide relevant information to the employee about such proceedings. The legislation is semi-dispositive and the responsibility can change—also to the disadvantage of the employee—through collective agreements.

The draft law (Prop 2017/18:214 *'Ett entreprenörsansvar för lönefordringar i bygg- och anläggningsbranschen'*) is available [here](#).

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

### 4.1 New government

The Swedish Parliament has accepted a new government after the general election in September 2018. The new government is a coalition between the Social Democrats (Prime Minister Stefan Löfven) and the Green Party. However, to pass the voting process in Parliament, the coalition has been forced to agree with the central-liberal parties (the Center Party and the Liberals) on a number of issues, not least related to the labour market.





The two parties in the government and the two centre-liberal parties have agreed on [a 73 points agenda](#) for the future politics. The most important labour reforms concern the introduction of a flexicurity model in Swedish labour and social security law, the flexibilisation of the selection criteria for redundancies in the Employment Protection Act and the strengthening of the corporate competence development of employees.

The programme also suggests the removal of the highest marginal income taxes (for income above EUR 65 000 per year, an additional income tax of five per cent is added to the ordinary 52-53 per cent income tax that applies to income above EUR 45 000 per year). Furthermore, the 73 point programme suggests significant changes to be made to the unemployment benefits and the Swedish Public Employment Service. The overall aim of the reforms is to improve the competitiveness of the Swedish labour market and improve flexibility.

### **4.2 Labour conflict**

The previously reported industrial conflict in the Swedish harbours escalated significantly during January 2019, resulting in a number of Swedish harbours being affected by strikes and lockouts. The long-lasting conflict refers to the position and influence of the Harbour Workers Union on workplaces where the traditional Transportation Workers Union already have a collective agreement. Swedish labour law is very favourable, in this regard, to the trade union that concludes the collective agreement and prioritises this union over other trade unions.

Information from the Harbour Workers Union is available [here](#).

Information from the Swedish Harbour (Employer) Federation is available [here](#).

## United Kingdom

(I) The government issued a press release explaining EU citizens' rights in the event of a no-deal Brexit.

(II) The Department for Business, Energy and Industrial Strategy issued guidance on the right to an itemised payslip.

### 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 Brexit

In the event of no deal, EU citizens will be able to enter the UK to visit, work or study after 29 March 2019. For stays longer than 3 months, European Temporary Leave to Remain will be required. On 28 January 2019, the government issued [a press release](#) explaining what will happen. It says:

*"If Britain leaves the EU without agreeing a deal, the government will seek to end free movement as soon as possible and has introduced an [Immigration Bill](#) to achieve this. For a transitional period only, EEA citizens and their family members, including Swiss citizens, will still be able to come to the UK for visits, work or study and they will be able to enter the UK as they do now.*

*However, to stay longer than 3 months they will need to apply for permission and receive European Temporary Leave to Remain, which is valid for a further 3 years.*

*EU citizens wishing to stay for longer than 3 years will need to make a further application under the new skills-based future immigration system, which will begin from 2021.*

(...)

The [information set out today](#) also confirms that if there is no deal:

- *EU citizens arriving in the UK who wish to stay longer than 3 months and apply for European Temporary Leave to Remain will be subject to identity, criminality and security checks before being granted permission to stay for three years*
- *non-EU family members who wish to accompany an EU citizen under these arrangements will need to apply in advance for a family permit*
- *EU citizens will be able to enter and leave the UK as they do now, using e-gates when travelling on a biometric passport*



- *the initial 3 months' leave to enter for EU citizens will be free of charge but applications for European Temporary Leave to Remain will be paid for. Fees will be set out at a later date*
- *Irish citizens will not need to apply for European Temporary Leave to Remain and will continue to have the right to enter and live in the UK under the Common Travel Area*

*The Home Secretary has set out plans for a new single skills-based immigration system which will operate from 2021. It will enable employers to attract the skills they need from around the world, while ensuring net migration is reduced to sustainable levels."*

### **4.2 Itemised payslips**

The [Employment Rights Act 1996](#) (Itemised Pay Statement) (Amendment) (No. 2) Order 2018 (SI 2018/529), due to come into force on 06 April 2019, provides all workers with a right to an itemised payslip, a right which they can enforce at an employment tribunal. The Department for Business, Energy and Industrial Strategy has now issued [guidance](#) on who qualifies for 'worker' status and highlights that additional information must be included in payslips for workers whose pay varies depending on the number of hours they have worked.

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