European Network of legal experts in the field of labour law

Contract VC/2012/1232 - Commitment No SI2.641178

Annual Flash Report 2013

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Executive Summary

Legislation of **Belgium, Cyprus, Denmark, Iceland, Liechtenstein, Norway, Slovenia and Sweden** on temporary agency work (Directive 2008/104/EC) was thoroughly modified or draft provisions became effective, aiming to implement the Directive.

Additionally, legislation related to Directive 2003/88/EC on working time and legislation related to Directive 2009/52/EC was issued in **Belgium**. Directive 2009/13/EC will be implemented in **Estonia**. In **Italy** and **Luxemburg**, recent legislation addresses the incomplete implementation of Directive 1999/70/EC. Amendments to legislation on posted workers or self-employed workers have been introduced in **Belgium and Demark.**

Moreover**,** the law implementing Directive 2010/18/EC on parental leave has been voted on or drafted in **Luxembourg and Ireland.**

Legislation on health and safety at work has been approved in **Bulgaria, Germany, Finland and Slovakia** and amendments of the law on the protection of the rights of employees in the event of the insolvency of their employer came into force in **Ireland**. In **Cyprus**, the competent ministry is currently drafting new rules in this area.

New legislation transposing the Single Permit Directive 2011/98/EU has been introduced in **Austria and the Netherlands** and sanctions and enforcing measures against employers of illegally staying third-country nationals were published in **Belgium and Luxembourg.**

The new **Czech** Civil Code became effective in December and will be applied subsidiary to the Labour Code. Amendments to the Civil Code became effective in **Austria and Lithuania** and **Romania** got a new Code on Civil Procedure.

In order to reduce undeclared work, **Estonia** intends to introduce a special system for registering employees. **Greece** has already adopted a bill which provides for penalties against the employer in addition to other penalties provided by law and the **Italian** Government adopted Law Decree No. 145 providing important measures to counter undeclared work.

Significant changes to labour law became effective in **France, Lithuania, Slovakia, Czech Republic and the UK.** Moreover, a Bill on the Labour Code and significant changes to labour law are expected in **Poland. France, Sweden** and **the Netherlands** adopted law on the protection of whistleblower.

Germany has decided to ratify Convention 189 and Recommendation 201 on Decent Work for Domestic Workers in 2013 and the Maritime Labour Convention of 2006 (MLC) of the ILO has already been ratified in **Germany and the Netherlands.**

In 2013, **court rulings** on criteria for distinguishing employment relationships and contracts for services, dismissal law, posted workers, ROME I Regulation, working time (illness and paid leave), part-time and fixed-term contracts, payment in lieu of holiday, collective redundancies and dismissal protection, paid annual leave and transfer of workers have been delivered in various countries.

The Supreme Courts of **Austria** and **Finland** and the **Dutch** Administrative High Court have asked the European Court of Justice for a preliminary ruling dealing with remuneration of employees in the public railway services, regulation on the hired work force in collective agreements (Finish preliminary questions concern the interpretation of the Directive on Temporary Agency Work 2008/104/EC) and the compatibility of Dutch legislation with the Directive on Employer Insolvency.

Constitutional Courts of the **Republic of Croatia, Hungary, Italy, Lithuania, Luxembourg, Portugal and Spain** have established case law in the field of labour law.

Finally, the European Commission has asked **Italy** and **France** to respect the rights of doctors working in public health services to minimum daily and weekly rest periods as required by the Working Time Directive 2003/88/EC.

Austria

I. National Legislation

A proposal to **amend legislation in the field of labour law as well as social law** has been published by the government in January and entered the parliamentary process. It was discussed in the parliamentary sub-committee for labour and social affairs in February, passed Parliament on 21 March 2013 and entered into force on 1 July 2013.

A larger package called "**Act to Amend Social Laws 2013**" entered the parliamentary process and was discussed in the parliamentary sub-committee for labour and social affairs. It deals with various issues. The most important one is the further **qualification of the labour force** and establishing provisions to facilitate **part-time work** in order to pursue further education. The package came into force in April 2013.

New legislation transposing the **Single Permit Directive 2011/98/EU** has been introduced in April. The Single Permit Directive 2011/98/EU aims to establish a single procedure for third country nationals to obtain a combined permit for both residence and work. The Act on the Employment of Foreigners (*Ausländerbeschäftigungsgesetz*) was amended to allow those third country nationals who are not yet in possession of such a combined permit to obtain one. **Changes of the Civil Code** and **amendments to the Act on Holiday Pay and Severance Pay of Construction Workers** became effective in August and the proposed care leave system (*Ministerialentwurf* 517/ME NR 24. GP), has passed the legislative process and entered into force on 1 January 2014.

The head of the trade union of civil servants has proposed a reform of the current system, namely a uniform act **regulating the working conditions of civil servants and workers employed by the state on private contracts.**

The **new Austrian government programme** aims at more flexibility regarding working time, simplification of administrative requirements, increased fairness, improvement of work-family balance and measures targeting undeclared work.

II. Court Rulings

The Austrian **Supreme Court** was requested to decide in proceedings that were initiated by the Trade Union Council, among others, whether the after-effect of a terminated collective agreement also covers employees after the transfer, as Austrian law – like **Directive 2001/23/EC** – only provides for the maintenance of the working conditions specified in the transferor's collective agreement until its termination. The Supreme Court decided to ask the **European Court of Justice for a preliminary ruling** (Supreme Court (*Oberster Gerichtshof – OGH*) – 28 May 2013, 8 Ob A 40/12h).

Moreover, the **Supreme Court** has asked the **ECJ for a preliminary ruling** on issues dealing with the "cost neutral repair" of Austrian laws dealing with the **remuneration of employees in the public railway services**, which had to be modified to accommodate the ECJ ruling in the *Hütter* case.

Belgium

I. National Legislation

The Law laying down **sanctions and measures** against employers of **illegally staying third-country nationals** was published. Moreover, on 4 March 2013, new additional sanctions entered into force for those employers. Royal Decree of 11 February 2013 concerning **the composition and functioning** of the Chambers of the **Administrative Commission to regulate the employment relationship** and the Royal Decree of 11 February 2013 **appointing the members of the Administrative Commission to regulate the employment relationship** came into force.

Moreover, Royal Decree of 19 March 2013 amending the Royal Decree of 20 March 2007 regarding prior notification for **posted workers and self-employed workers** has been introduced. The new royal decree now restricts the amount of information, and clearly states why certain information is necessary.

The social partners in the National Labour Council concluded **three cross-industry collective labour agreements** on 28 March 2013, namely No. 50bis; No. 43duodecies; and No.

43terdecies, with the traditionally reduced guaranteed average minimum monthly salary for employees aged 18-20 years in the private sector.

Since the social partners did not reach an **agreement on the maximum increase of labour costs**, the **federal government determined wage standards** on the basis of the Law of 26 July 1996 in Royal Decree of 28 April 2013 implementing Article 7, Paragraph 1 of the Law of 26 July 1996 on the promotion of employment and the safeguarding of competitiveness.

The new Law of 25 August 2012 provides specific criteria for the first time, including a **rebuttable presumption of the existence of an employment contract for four sectors**. The amendment of this article is linked to the circumstance that a legal presumption based on specific criteria has been introduced in specific branches of industry for the first time. This legal presumption will earmark four (industrial) sectors that carry out the following activities:

1. Construction/building industry and activities referred to as "works of construction" or equivalent activities.
2. Activities involving all forms of monitoring and / or surveillance services.
3. The transport of goods and / or persons on behalf of third parties, with the exception of ambulance services and the transport of persons with disabilities;
4. Activities covered by the joint committee for cleaning (if not already referred to under point 1).

A political agreement among the political parties belonging to the majority in the federal government, and supported by the social partners, brings an end to discrimination between **blue collar workers and white collar employees.** According legislation entered into force on 1 January 2014.

Collective Labour Agreement No. 102 of 5 October 2011, relating to the **safeguarding of employee rights in case of change of employer** as a result of a judicial reorganisation transfer under judicial supervision (declared generally binding by the Royal Decree of 14 April 2013), entered into force on 1 August 2013**.**

Moreover, Belgian legislation on **temporary agency work (Directive 2008/104/EC)** was thoroughly modified with effect from 1 September 2013. The law that governs this adjustment was published on 16 July 2013.

In the period of October 2013, some legislation linked to EU-directives **2003/88/EC and 2009/52/EC** was issued. Art. 17bis of the Law of 28 June 1971 on annual leave of employees

(in force since 1 April 2012) contains the right to additional leave for workers to whom the normal legislation does not apply (entitlement to four weeks of annual leave with pay). The law of 11 February 2013 introduced Article 49/2 of the Social Criminal Code. This article regulates the notification of a client or contractor by the social inspectors that their contractor or subcontractor is employing **illegally staying third-country nationals** (illegal immigrants).

II. Court Rulings

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Bulgaria

I. National Legislation

Ordinance No. 7 of 1999 **on minimum requirements for health and safety at work** and using certain work equipment have been modified by the Minister of Labour and Social Policy and the Minister of Health in March 2013.

In July, a legislative act was published in consideration of **Recommendation No. 202 of the International Labour Organisation on minimum social protection** pursuant to Article 19 (6) of the ILO Constitution (State Gazette No. 63/16.07.13).

A law on **Amendments and Supplements of the Promotion of Employment Act** has been introduced in August 2013 and several deputies have prepared a draft law on Amendments. Moreover, amendments to the regulations on the conditions and intermediation activities for employment have established certain rules of intermediation for maritime persons in September 2013. Additionally, the Minister for Labour and Social Policy issued a **regulation for amendments and supplements to the Regulation for the Organisation and Activity of the National Institute for Conciliation and Arbitration.**

II. Court Rulings

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Croatia

I. National Legislation

In August, a **collective agreement for civil servants and government employees** has been concluded for a period of three years and the Minister of Labour has presented a decree on the **extension of the collective agreement for the humanitarian demining sector** to all employees employed in this sector in Croatia.

The new **Act on Occupational Rehabilitation and Employment of Persons with Disabilities** and the amendment to the Act on Employment Mediation and Rights of unemployed Persons entered into force on 1 January 2014. Moreover, the Government of the Republic of Croatia and two trade unions representing the respective employees have concluded **collective agreements for the health care sector and health insurance** for a period of four years in December.

The **Act on Science and Higher Education; the Act on Education in Elementary and Secondary Schools and the Act on Pre-school Education** (all published in the Official Gazette No. 94/2013) came into force in July 2013. Some of the amended provisions regulate employment in the education sector.

II. Court Rulings

The **Constitutional Court of the Republic of Croatia** (*U-II-1942/2010 and U-I-1943/2010, 8 July 2013)* **changed established case law regarding causes for dismissal** by repealing two Supreme Court judgments. According to well-established case law, just causes for dismissal must take into account the facts and circumstances at the time of dismissal. According to the above-mentioned decision of the Constitutional Court, the Court of Appeals and the Supreme Court had to take into account a subsequent (valid) judgment of the Administrative

Court, which was relevant for solving the labour dispute. According to the Constitutional Court, this approach was too formalistic. Failure to take into consideration the (valid) judgment of the Administrative Court which was given after the dismissal, when such judgment is relevant for a labour dispute, represents a violation of the constitutional right to a fair trial.

Cyprus

I. National Legislation

The Cypriot House of Parliament enacted a new law (modifying the **Port Workers - Regulation of Employment** Law - No. 201 I/2012) enabling the Council of Ministers to set up, whenever necessary, a Council of Port Work, to act in relation to one or more ports together, for the purpose of regulating salaries and working conditions of dockworkers. Moreover, a law was enacted purporting to transpose **Directive 2008/104/EC** concerning **temporary work agencies** (law providing for the setting up and operation of Temporary Work Agencies and other matters N.174(I)/2012).

On 16 February 2013, the Ministerial Cabinet approved a bill granting the right to the Minister of Labour to extend sectoral collective agreements and render them mandatory for the entire sector.

In April, Cypriot Parliament has approved the **Memorandum of Understanding** between its country and the Troika and a major impact on labour relations and terms of employment in the public and in the private sector was expected.

In December, the Ministry of Labour and Social Insurance tabled a new draft amendment to the law on the **protection of the rights of employees** in the event of the **insolvency of their employer**.

II. Court Rulings

In February, the Supreme Court set out **criteria for distinguishing employment relationships and contracts for services** and the court defined criteria for public law and private law employment relationships.

The three smaller opposition parties joined forces on 10 July 2013 to effect a **change in the Constitution permitting the reduction of salaries of judges**, where this is dictated by public interest, as part of the measures taken to reduce the budget deficit in light of the economic crisis. In the landmark case of Alexandros Phylaktou v the Republic of Cyprus (c.f. Αλέξανδρου Φυλακτού, Επαρχιακό Δικαστήριο Πάφου και Κυπριακής Δημοκρατίας, μέσω Γενικού Λογιστή Υπόθ. 397/2012397/2012 και 480/2012), the Supreme Court ruled then in July that the law imposing pay cuts on judges in an effort to help the economy contravenes the Constitution.

III. Miscellaneous

In September, the **European Commission has decided to refer Cyprus to the EU's Court of Justice** for applying discriminatory conditions to the pension rights and unpaid leave rights of former Cypriot civil servants working in another Member State. The view of the Commission is that these amount to discriminatory conditions breach EU rules on the free movement of workers.

Czech Republic

I. National Legislation

In 2012, a new **Specific Medical Services Act** (Act No. 373/2011 Coll., hereinafter, the “SMS Act”) became effective. This act contains a new regulation on medical examinations of employees and stipulates the rights and obligations of employers, employees and medical doctors active in labour medical services. An amendment to the SMS Act No. 47/2013 Coll. was published, effective from 1 April 2013.

In June, the Czech Parliament passed a **new amendment to the Labour Code**, which was published in the Collection of Laws under No. 155/2013 Coll. The amendment became effective on 1 August 2013. Moreover, the **new Czech Civil Code** became effective in December and will be applied subsidiary to the Labour Code.

II. Court Rulings

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Denmark

I. National Legislation

The government published **a draft proposal on the Act of Agency Work** on 18 March 2013, aiming to implement **Directive 2008/104/EC**. The draft proposal entered an administrative procedure of external hearing and was submitted to the Danish Parliament on 17 April 2013. Parliament adopted the Act of Agency Work on 30 May 2013 and the act came into force on 1 July 2013.

In March, the government has formally proposed **an amendment to the Act on Posting of Workers,** which was adopted by the governemt adopted on 28 May.

II. Court Rulings

In spring 2012, the Danish Parliament adopted **an amendment to the Act on Holiday** aiming to bring Danish law in compliance with the **ECJ judgment in C-277/08 (Pereda)** on Article 7 in EU Directive 2003/88/EC on Working Time (employees unable to take holidays due to sickness). In a judgement of 18 December 2013 in Case 205/2012, the Supreme Court held that a private employer is not obliged to give an employee a "compensation holiday" for sickness that occurred during a holiday, if the holiday was taken before the new rules entered into force.

Estonia

I. National Legislation

The Ministry of Social Affairs has prepared a new **draft of the Seafarers Act** in June 2013. The Act will regulate the employment conditions of seafarers. The former Seafarers Act was adopted in 2001 and is outdated. A new Seafarers Act was necessary because the ILO adopted a convention on seafarers' employment conditions in 2006. The new Seafarers Act will also transpose Directive 2009/13/EC. The new draft has not yet been approved by the government and Parliament. It is anticipated, however, that the **new Seafarers Act** will be adopted and enter into force by 1 July 2014.

In order to reduce **undeclared work**, Estonia intends to introduce a **special system for registering employees.** The purpose of registering all employees is the prevention of tax violations, prevention of the evasion of social security payments and to make it easier to control employment conditions.

II. Court Rulings

The Estonian Supreme Court dealt with the question of determining the wage for **posted workers**. The Supreme Court ruled that if there is no determination of applicable law, the law applicable to the employment contract should be determined according to the **ROME I Regulation** (i.e. determined by the Finnish law) and that the minimum requirements of **Directive 96/71/EC** ought to also be taken into account.

In December, the Supreme Court also raised the question whether the **Employment Contracts Act violates the Constitution.** This concerns the termination of the employment contract. According to the court, it is impossible for the employees to demand reinstatement in case the employment contract was terminated illegally.

III. Miscellaneous

Trade unions, employers' associations, the Ministry of Social Affairs and the Ministry of Justice have started discussions in August about a **reform of collective labour law**. The major issue is the right to organise strikes, particularly with regard to the possibility to organise support (sympathy) strikes opposed by the employer.

Finland

I. National Legislation

In January, Government Proposals on amending the **Occupational Safety and Health Act (738/2002)** and the **Annual Holidays Act (162/2005)** were published. The second amendment relates to **ECJ cases Land Tirol and ANGED.** The Occupational Health and Safety Act entered into force on 1 June 2013.

In June, the Government published a labour law Bill on the **new Act on Subscribers' Responsibility and Obligation to provide information about the use of external labour and the new Act amending the Public Procurement Act** (348/2007. The proposal's objective is the prevention of the use of unreported employment and other types of underground economy in the construction industry. The Act entered into force on 1 July 2013

Moreover, the agreement **Pact for Employment and Growth 30 August 2013** between employers´ main federations and workers´ central organisations has entered into force.

II. Court Rulings

The Labour Court sent a request for **a preliminary ruling to the European Court of Justice**. The request concerns the **regulation on the hired work force in collective agreements.** The preliminary questions concern the interpretation of the Directive on **Temporary Agency Work (2008/104/EC)**.

III. Miscellaneous

In January, the Ministry of Employment and Economy hired two experts to examine whether the so-called "**term of organisation**" is legal or not. The reason for this study is the decision of **the Deputy Chancellor** of Justice of 17 August 2012 on the fundamental rights of employees who are not members of a trade union. The Chancellor stated that provisions in collective agreements which entail more benefits for members than for non-members are not acceptable and are thus in breach of the Constitution.

France

I. National Legislation

Since 1 January 2013, **paternity leave** can be taken by persons linked to the mother of the child through a civil solidarity pact or through co-habitation (new article L. 1225-35 of the Labour Code).

Moreover, the bill on the **"*contrat de génération*"** was adopted by Parliament on 14 February 2013. The aim of this contract is the promotion of youth employment and the retention of senior employees at the same time. The law establishing the "*contrat de génération*" has also been the subject of an appeal to the Constitutional Council which on 28 February 2013 declared that the law is in compliance with the French Constitution.

The "*contrat de génération*" is based on the following principles:

- a company should hire persons younger than 26 on permanent contracts (CDI);
- young employees should be accompanied by a senior employee of the company as part of a formal mentoring programme;
- companies must commit keeping their senior employees until their age of retirement.

In May, French Parliament adopted Law No. 2013-316 concerning the **independence of health and environment experts and the protection of whistleblowers**. Moreover, the French Parliament adopted a **new important employment regulation** which will have a significant impact on the French labour market. The new employment regulation especially

includes: New procedures for implementing collective redundancies, two new mandatory consultations of the works council and as of 1 January 2013 minimum-part-time working time is set at 24 hours a week.

Act No. 2013-504 "***loi portant sécurisation de l'emploi***" was published on 16 June 2013 in the Official Journal. These clauses allowed the social partners to impose a unique industry-wide agreement, which provides for compulsory affiliation to a scheme for supplementary reimbursement of healthcare costs for all undertakings within the respective sector, without any possibility of exemption. The **Constitutional Council** has declared this act to be **in compliance with the French Constitution** with the exception of the provisions pertaining to "*designation clauses*"*).*

On 10 July 2013, the social partners of the temporary employment sector (trade unions CFDT, CFE-CGC and CFTC for employees and Prism'emploi for employers) concluded a **collective bargaining agreement on indefinite contracts for temporary workers**.

EU legislation has driven negotiations on working time, providing guidelines for EU Member States, particularly **Directive 2003/88/CE** of the European Parliament and the Council of 4 November 2003. According to Article 2 of this directive concerning certain aspects of the organisation of working time, 'working time' means any period during which the worker is at the employer's disposal and carries out activities or duties for the employer in accordance with national laws and/or practice. The Labour Code and French jurisprudence provided in 2013 a definition for working time that is in compliance with this European definition *(Article L. 3121-1 of the Labour Code).*

In December, a **new consultation procedure of work`s committee** has been implemented.

II. Court Rulings

In a decision of 13 March 2013, the Supreme Court ruled that an absence from work due to **illness** does not entitle the employee to **paid leave.** The Court stated that periods of suspension of work due to illness (which are not considered working time in the current Labour Code for the right to paid leave) do not entitle an employee to acquire paid leave, despite EU legislation. According to the Court of Cassation, **Directive 2003/88/EC** does not - in a dispute between private parties – allow an exclusion of the effects of a conflicting

national provision (therefore, a directive cannot in itself impose obligations on an individual and cannot be used as such against an individual).

Case law issued by national **French** judges focuses on night work, bringing the regulation strictly in line with EU legislation *in September (Court of Appeal of Paris, 23 September 2013, Social Chamber of the Court of Cassation of 18 September 2013 No. 12-18.065)*

III. Miscellanous

The **European Commission** has called attention to **hospital doctors' working hours** and the minimum rest period based on an infringement procedure against France in September.

Germany

I. National Legislation

The new **Act on Marginal Employment** was officially published in the government gazette on 13 October 2012 and entered into force on 01 January 2013.

In June 2011, the government, employee and employer delegates of the ILO adopted **Convention 189 and Recommendation 201 on Decent Work for Domestic Workers** which aim at improving the working and living conditions of tens of millions of domestic workers worldwide. The Federal Government in Germany has decided to ratify this Convention in 2013.

On 16 August 2013, the German Federal Government issued a deed containing the instrument of ratification of the **Maritime Labour Convention of 2006 (MLC) of the ILO** and it replaces the existing Act on the Employment of Seafarers.

In May, the German Federal Council (*Bundesrat*) approved a **draft regulation on the protection against hazards caused by mental stress at work**. On 27 June 2013, the Federal Parliament (*Bundestag*) voted in favour of a bill that will amend the Labour Protection Act (*Arbeitsschutzgesetz*). Under the new Act, mental stress will be included in the so-called risk

assessment procedure (*Gefährdungsbeurteilung*) and employers are obliged to undertake to determine measures that may be necessary to protect the health and safety of workers.

Far-reaching amendments of existing labour law are foreseen in the program of the new government. Among the measures that will be taken in the context of labour law are the following:

- Extension of the area of application of the Act on Posting of Workers (*Arbeitnehmerentsendegesetz*) with the aim to make possible declarations of generally binding in branches presently not covered by the Act.
- Relaxation of the requirements of declarations of generally binding under the Act on Collective Bargaining Agreements (*Tarifvertragsgesetz*): In the future, for such a declaration to come into existence, employers that are bound by the agreement are not required anymore to employ at least 50 per cent of all workers who are within the scope of the agreement (see section 5(1) sentence 1 no. 1 of the Act).
- Introduction of a nationwide statutory minimum pay of EUR 8.50 per hour as from 01 January 2015. Deviations on the basis of collective bargaining agreements may be possible but limited in time.
- Abuse of civil law contracts will be combatted, i.a. by "substantiating" information and consultation rights of works councils. In addition, the criteria developed by the courts in order to draw a line between proper temporary agency work and "abusive use of third party staff" will be laid down by law.
- Hiring-out of workers will be subject to a maximum period of 18 months. The parties to collective bargaining may set aside this statutory period if certain conditions are met. At the latest after 9 months there will be equal pay.
- The government will look into the question whether the rules on public procurement which apply at the Federal level should be amended "in conformity with EU law" in order to ensure that applicable collective agreements are fully respected.
- The principle of "unity of collective agreements" (*Tarifeinheit*) that was abolished by the Federal Labour Court some time ago will be re-established.

In November, the three parties that now form the new German government published their **agreement on the "grand coalition"**. Among the measures that will be taken in the context of labour law are: the extension of the area of application of the Act on Posting of Workers

(*Arbeitnehmerentsendegesetz*); the relaxation of the requirements of declarations of generally binding under the Act on Collective Bargaining Agreements (*Tarifvertragsgesetz*); the introduction of a nationwide statutory minimum pay of EUR 8.50 per hour as from 01 January 2015; hiring-out of workers will be subject to a maximum period of 18 months; the principle of "unity of collective agreements" (*Tarifeinheit*) that was abolished by the Federal Labour Court some time ago will be re-established; employee data protection will be fixed by statute if there is no agreement on a General Data Protection Regulation and rules on protection of whistleblowing will be examined to ensure that German law is in conformity with international requirements.

II. Court Rulings

According to section 14(2) sentence 1 of **the Part-Time and Fixed-Term Contracts Act** (*Teilzeit- und Befristungsgesetz*), the fixing of a term according to the calendar is admissible without the existence of objective reasons, if the duration of the contract does not exceed two years. On 05 December 2012, the Federal Labour Court ruled that section 14(2) may be applied without any limitations and **Articles 7 and 8 of Directive 2002/14/EC and Articles 27, 28 and 30 of the EU Charter of Fundamental Rights,** if an employment contract was fixed with a (substitute) member of a works council. The court further held that section 14(2) sentence 3 is in conformity with clauses 5 No. 1 and 8 No. 1 of the Framework Agreement on fixed-term work.

The Federal Labour Court also delivered an important **judgement on payment in lieu of holiday** and the conformity of German law with EU law. According to a recent judgement of the Federal Labour Court (Federal Labour Court of 14 May 2013) employees are free to waive their right to pay in lieu of holiday leave. In the view of the court, such a waiver is neither prohibited by national nor by European Union law.

Moreover, the German Federal Labour Court delivered important **judgements on collective redundancies and dismissal protection.** According to the judgement of the Federal Labour Court of 21 March 2013 – 2 AZR 60/12, a dismissal is null and void if the employer failed to comply with section 17(2) of the Act on Dismissal Protection. In the view of the Court, consultation with the works council represents an independent legal requirement which renders a termination null and void in case of non-fulfillment. According to the Federal

Labour Court of 29 August 2013 – 2 AZR 809/12 the employer is under no obligation to offer further employment within an undertaking abroad before terminating the employment relationship for business reasons.

On 13 March 2013 the Federal Labour Court delivered another two judgements which are important in the area of **temporary agency work**. According to the judgement of the Federal Labour Court of 13 March 2013 (7 ABR 69/11) temporary agency workers must be taken into account when determining the number of workers that are employed in an undertaking for the purpose of applying section 9 of the Works Constitution Act (*Number of works councils in relation to the number of workers*). The other judgment (5 AZR 954/11 a.o.) dealt with the consequences of an earlier ruling of the court on the lack of collective bargaining capacity of *CGZP* which is an umbrella organization of employers´ associations in the area of temporary agency work. The court ruled that employees can claim equal pay under section 10(4) of the Act on Temporary Agency Work (*Arbeitnehmerüberlassungsgesetz*).

On 10 July 2013 the Federal Labour Court delivered an important ruling on **temporary agency work.** The judgment is ground-breaking in the sense that for the first time the court made it clear that the word **"temporarily"** leads to far-reaching legal consequences. As a result the works council at the user undertaking can refuse its consent if the assignment is not temporary irrespective of the legal consequences of a breach of section 1(1) sentence 2 of the Act on Temporary Agency Work for the legal relationship between the user undertaking and the temporary agency worker.

According to the Federal Labour Court of 15 October 2013 – 1 ABR 31/12, workers are not allowed to spread a **union's call for strike** via their business e-mail accounts.

Greece

I. National Legislation

In March, a bill was debated in the Greek Parliament that seeks to combat the **undeclared employment** of workers who **illegally receive unemployment benefits.** It provides for

penalties against the employer in addition to other penalties provided by law. In April, it was adopted by the Greek Parliament. The Labour Inspectorate will remain the body responsible for the enforcement of labour law. However, the new Law (4144/2013) provides that the Financial Police is equally competent to control undeclared employment of workers.
Moreover, a bill has been presented in December which the Greek Parliament's plenary will soon be voting on, providing for significant increases in fines for cases of undeclared work.

II. Court Rulings

Greek law provides that every worker is entitled to **paid annual leave** during each calendar year. The Greek Supreme Court has stated (1683/2012) that if annual leave is not taken during the annual leave cycle, it is not possible to take the leave in the following year, even if the employee agrees to it. If annual leave is not granted by the end of the relevant calendar year, the employer is obliged to pay the employee an allowance in lieu with, possibly, a 100 percent increase. The above solution does seem to be in compliance with **ECJ judgement C-124/05,** according to which the significance of rest periods remains, even if it is taken during a later period.

Hungary

I. National Legislation

The Hungarian Parliament has passed an Act to **promote social dialogue between the employer and employees at the intermediate level**. The aim of the legislator is to establish institutional conditions for concluding collective agreements. Hence, the Act LXXIV of 2009 on Dialogue Committees at Sectoral Level and on Certain Issues of Intermediate Level Social Dialogue was published. The extension of the collective agreement of the bakery industry is regulated by this Act.

II. Court Rulings

In October, a decision of the **Constitutional Court** (No. 23/2013 (IX. 25.)) on the removal of retirement pension before reaching retirement age has been issued.

Iceland

I. National Legislation

In March, amendments to Act 139/2005 on **temporary agency work** and Act 88/2003 on the **Wage Guarantee Fund** have been accepted in Parliament.

II. Court Rulings

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III. Miscellaneous

The EFTA Surveillance Authority has delivered a reasoned opinion to Iceland in June concerning the late implementation of **Directive 2009/38/EC** on the establishment of a **European Works Council** or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting workers.

Ireland

I. National Legislation

In January, the Minister for Justice and Equality confirmed that legislation is being drafted to give effect to Council **Directive 2010/18/EU** on the revised framework agreement on

Parental Leave. With effect from 8 March 2013, this Framework Agreement on Parental Leave annexed to Council Directive 2010/18/EU has been implemented by Irish ministerial regulations.

In November, the Irish government has introduced the **Social Welfare and Pensions (No. 2) Bill 2013** which is designed, in part, to address the Court of **Justice's decision in Case C-398/11, *Hogan v Minister for Social and Family Affairs* -** which found that Ireland had not adequately transposed Article 8 of what is now Parliament and Council **Directive 2008/94/EC** as regards pension benefits where the employer and the scheme are insolvent. The passed all stages in the Irish Parliament and was signed into law by the President of Ireland on the 25 December 2013.

II. Court Rulings

In May, a **Rights Commissioner** has ruled that the relevant provisions of the **Organisation of Working Time Act 1997** can only be interpreted as - notwithstanding ECJ decisions such as Case C-350/06, Schultz-Hoff, as requiring a person to work in order to accrue an annual leave entitlement - persons on sick leave do not accrue such entitlements because they are not working.

The Labour Court has again interpreted **the Protection of Employees (Fixed-Term Work) Act 2003** in a manner consistent with **Council Directive 99/70/EC** so as to find that two fixed-term workers were entitled to contracts of indefinite duration.

The High Court (*The Commissioner of An Garda Síochána v Ravinder Singh Oberoi, 30 May 2013)* has ruled that an **unpaid volunteer is not an employee** and falls outside the scope of employment protection legislation. Also in May 2013, the Supreme Court held that the powers conferred on the Labour Court as regards registration of collective agreements were incompatible with Article 15 of the Irish Constitution which provides that the "sole and exclusive power of making laws for the State is hereby vested in the *Oireachtas* (the Irish Parliament)".

Moreover, the High Court has upheld a Labour Court determination that *An Post* - the national postal company - was **in breach of the Protection of Employees (Fixed-Term Work) Act 2003** (hereafter referred to as "the 2003 Act"), because its fixed-term employees were

denied access to its Voluntary Severance/Voluntary Early Retirement scheme: see *An Post v Monaghan and Wade* (2012 No 272 MCA) judgement delivered on 26 August 2013.

III. Miscellaneous

Following an informal meeting of the Ministers of Labour and Social Affairs, which took place alongside the 102nd International Labour Conference in Geneva on 18 June, the Minister for Jobs, Enterprise and Innovation announced that the Irish Presidency would deliver the Council decision authorising EU Member States to ratify **ILO Convention No. 189 on improving the working conditions of domestic workers.** The Minister also indicated that Ireland would be among the "early ratifiers of this important Convention".

Italy

I. National Legislation

On 31 May, the Italian social partners (Confindustria, CGIL, CISL and UIL) signed a Framework Agreement which for the first time defines the criteria for assessing trade unions representativeness for **collective bargaining purposes**.

Moreover, Law Decree of 28 June 2013, No. 76 entitled **"Initial urgent measures for youth employment promotion, for the enhancement of social cohesion and on VAT and other taxes"** has been issued and Article 4 of Law Decree No. 101/2013 has added a new paragraph (5-ter) to Article 36 of Legislative Decree No. 165/2001 (Regulation on the organisation and the employment of individual and collective relationships in the public sector) which deals with the consequences of violations by public administrations of the rules on flexible work (fixed-term contracts, in particular). Law Decree No. 101/2013 has become Act of 30 October 2013, No. 125.

According to Article 12 of Act of 6 August 2013 No. 97, Italy has responded to **the infraction procedure 2010_2045 regarding its non-conformity with Article 8 of Legislative Decree No. 368/2001** to the requirement laid down by clause 7 of the Framework Agreement attached to **Directive 1999/70/EC** on fixed-term work.

Moreover, the Italian Government adopted Law Decree No. 145 providing important measures to counter **undeclared work**.

II. Court Rulings

On 23 July, the **Constitutional Court** decided that Article 19 lett. b) of Act No. 300 of 1970 (Workers Statute) contravenes Article 2, 3 and 39 of the Italian Constitution by only entitling trade unions that have signed a collective agreement, which is applicable in the company, to establish a workers' representative body (RSA or RSU) at plant level, and not trade unions that only participated in the bargaining process but did not sign the agreement.

III. Miscellaneous

The European Commission has asked Italy to respect the **rights of doctors** working in public health services to minimum daily and weekly rest periods as required by the Working Time **Directive 2003/88/EC.**

Latvia

I. National Legislation

In April the government announced **amendments to the Labour Law**. The amendments envisaged several changes of the legal regulations that fall within the scope of EU law. Changes were expected in the field of collective redundancies and working time.

In September, the Labour and Social Committee of Parliament supported draft amendments to labour law which have been submitted for adoption in a first reading to the Plenary Session of Parliament and in October. The draft amendments were submitted and were adopted in the first reading on 3 October.

II. Court Rulings

On 26 April 2013, the Senate of the Supreme Court (Case SKC-1106/2013) adopted a decision on the interpretation of **Directive 98/59/EC on collective redundancies**. The Court found that non-compliance with the obligation to provide consultation may not serve as a legal basis for reinstatement.

Liechtenstein

I. National Legislation

The Liechtenstein government opened consultations on the **amendment of the Act on Employment Services and the Hiring** of Services (*Gesetz über die Arbeitsvermittlung und den Personalverleih*). This amendment aims to **implement Directive 2008/104/EC** on **temporary agency work.**

II. Court Rulings

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Lithuania

I. National Legislation

The Vice-Chairman of the **Lithuanian** Parliament has registered a proposal to **amend Article 129 of the Labour Code**, which would allow the dismissal of employees of public employers on the grounds of age once the employee reaches the age of 65.

In August, the Law on Trade Unions has finally been modified (Law No. XII-364 of 13 June 2013, State Gazette, 2013, No. 68-3405) to address some current problems and to **bring the law in line with the Labour Code and European legislation.** The Vice-Chairman of the

Lithuanian Parliament and Member of the Parliamentary Committee on Social Affairs registered proposal No. XIIP-900 to amend Article 188 (2) of the Labour Code which regulates the **organisation of remuneration for work**. The proposed novelty would imply that the wages shall be specified in collective agreements only after an assessment of the professional risks and after consultation with workers' representatives.

In October, the Vice-Chairman of the Lithuanian Parliament and Member of the Parliamentary Committee of Social Affairs, registered proposal No. XIIP-1144 to liberalise the regulation of strikes in Lithuania. The proposal aims to restrict courts from adapting civil law principles when interpreting the right to change the existing collective agreement and in applying provisions of civil procedures when investigating the legality of a strike and the possibility to temporarily postpone strikes.

Moreover, the Lithuanian Ministry of Social Security and Labour has proposed a **new legislation to meet employers' demands for greater flexibility** and an easing of the administrative burden in employment relationships.

II. Court Rulings

On 22 February 2013, the Supreme Court of Lithuania delivered an important judgement in Case No.3k-7-156/2013 concerning the **rights of the individual arising from the collective bargaining agreement.**

The **Constitutional Court** clarified the principle of **differentiation of statutory established working conditions** with respect to workers who work under specific conditions deviating from normal working conditions. The Labour Code introduces a different statutory period of annual leave (Art. 167) and the daily period of work (Art. 148) for those workers, but the government was obliged to indicate the groups of such workers and to set the exact number of leave days and working time in accordance with the distinctiveness of their working conditions. The Constitutional Court held that these decisions on equal working conditions regardless of activity type of health care workers are unconstitutional, since the Labour Code requires a differentiation. The Government Decrees have been amended accordingly.

Luxembourg

I. National Legislation

The laws **on European Works Councils**, on **illegally staying third-country nationals**, on **flexible working time schemes** and on **minimum wage** have been published. A new bill aims to fight **youth unemployment** by adapting the contracts for job insertion.

Moreover, two labour law Bills have been deposited. One Bill aims to substantially reform social dialogue within undertakings by restructuring employee representatives. Another Bill modernises insolvency procedures and is thus also of interest for employees and their representatives.

To fight youth unemployment, the legislator has decided to modify the special subsidised contract schemes for young jobseekers (according to an Act of 29 March 2013, Bill No. 6521). These special contracts have existed for quite some time, were reformed in 2006 and were then extended during the financial and economic crisis.

Moreover**,** the law implementing **Directive 2010/18/EU on parental leave** has been voted on in a first reading. The new Act introduces the right for employees returning from parental leave to request flexible working arrangements and increases the duration of unpaid parental leave from three to four months in order to comply with the Directive. It became effective e as of June.

A new Act of 23 December addresses the criticism of the European Commission regarding the incomplete implementation of **Directive 1999/70/EC** concerning the Framework Agreement on **Fixed-Term Work.**

II. Court Rulings

The **Constitutional Court** (*Cour Constitutionnelle, 12.4.2013, n° 97 ; Mémorial A n° 76, 24.4.2013, p. 938)* issued a decision on fixed-term contracts that is of particular interest with regard to **Directive 1999/70/EC.** The Constitutional Court decided that the principle of equal treatment is not violated by arguing that although regular employees and researchers/professors at Luxembourg University are performing a dependent/subordinate

work and are thus in a comparable situation, most of the researchers/professors are assigned to research projects on specific subjects and that these projects are mostly of a temporary nature.

Malta

I. National Legislation

In order to address "**precarious employment**", the Maltese Government has qualified the mandatory criteria which must be observed by contractors who participate in public procurement procedures to ensure that regulations on the condition of work are not violated – also knows as precarious work.

In October, the Protection of the Whistleblower Act (Chapter 527 of the Revised Edition of the Laws of Malta), has been enacted to protect employees who make a disclosure to a whistleblowing reporting officer or a whistleblowing reports unit, and whether it qualifies as a protected disclosure or not under the Act (Article 2).

II. Court Rulings

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The Netherlands

I. National Legislation

On 21 February 2013, the First Chamber of Parliament adopted an **amendment to the Act on Works Councils** and a bill has been introduced to the Parliament to establish a '**House for Whistleblowers'**. This bill aims to improve the position of whistleblowers, e.g., by introducing extra protection against unfair dismissal and financial support. On 18 December

2013, the Bill on the Establishment of a House for Whistleblowers was passed by the Second Chamber of the Dutch Parliament.

On 20 August 2013, the **Maritime Labour Convention (MLC, 2006)** entered into force so the Netherlands has already ratified the Convention on 13 December 2011 and adopted an Act on 6 July 2011 implementing all provisions of the Convention into Dutch legislation.

On 29 November, a Bill containing **reforms of dismissal protection law, of Acts regulating flexible work, and of unemployment insurance** was sent to the Dutch Parliament. The Bill, called the Wet **Werk en Zekerheid** (WW&Z, Work and Security Act), contains measures agreed upon by the Government and social partners agreed in the Social Agreement ("*Sociaal akkoord*") in April 2013.

In October, the Netherlands introduced a Bill to implement **Directive 2011/98/EU** on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

II. Court Rulings

The Supreme Court *(Supreme Court, 05-04-2013*, Case number 12/00667) has confirmed the ruling of the Amsterdam Court of Appeals on the transfer of **undertaking in cases of transfer of workers** posted within a concern (Albron; see ECJ, 21 October 2010, Case number C-242/09)

The Dutch Administrative High Court *(Centrale Raad van Beroep, 4 June 2013 Case Number 10/719 WW-P, LJN CA0789)* has submitted prejudicial **questions to the ECJ regarding the compatibility of Dutch legislation with the Directive on Employer Insolvency.**

Moreover, the Cantonal Judge of Amsterdam decided that the Dutch Act of Temporary Extension of the **Chain System** is not in conflict with **Directive 2000/78/EC**, and that the Dutch Extraordinary Labour Relations Decree is applicable when Dutch socio-economic relations are highly intertwined with the labour contract.

III. Miscellaneous

On 11 April 2013, the national trade unions and employers' organisations concluded a so-called **Social Agreement** ("Sociaal akkoord") with the government. A new infrastructure to support jobseekers is to be established; the maximum duration of unemployment benefits will be reduced to 2 years; the reform of dismissal law that was planned to be implemented in the course of 2014 will be postponed until 2016, in the expectation that the economic situation of the country will have improved by then.

Norway

I. National Legislation

The new provisions in the **Working Environment Act sections** 14-12a and 14-12b implementing the **Temporary Agency Directive** entered into force on 1 January 2013 and the amendments were approved on 14 June 2013.

On 15 March 2013, the Government proposed new legislation aimed at preventing and limiting the **unlawful use of temporary agency workers**. The main contents of the proposed new legislation are:

- Unions are allowed to file lawsuits on the unlawful use of temporary agency workers.
- The powers of the Labour Inspection Authority have been extended.
- A fine for violations of the rules has been introduced.

II. Court Rulings

On 5 December 2013, the European Court of Human Rights (Vilnes and others v. Norway, Applications nos. 52806/09 and 22703/10) awarded compensation to seven North Sea divers, due to violation of Article 8 of the Convention and the damage to their health because of diving operations during the "pioneer era" of oil exploration between 1965 and 1990.

Poland

I. National Legislation

On 1 January 2013, the Regulation of the Councils of Ministers of 14 September 2012 on **minimum wage** in 2013 (Journal of Laws 2012, item 1026) took effect.

On 5 February, the government proposed a far-reaching amendment to the Labour Code on **working time**. The proposal concerns two basic issues: extending the reference period and introducing flexible working time. On 8 March 2013 the draft on amendments to the Labour Code provisions on working time was subject to a parliamentary discussion and was subsequently passed for further deliberation in the parliamentary commission.

Another draft on working time presented by *Platforma Obywatelska* ("Civic Platform", a political party) in December 2012 is also under parliamentary discussion.

Moreover, the law on the amendment of the Law of 16 April 2004 on **road transport** and the law on Working Time of Drivers was enacted in Poland. On 5 April 2013, the law on the amendment of the Law of 16 April 2004 on road transport and Law on Working Time of Drivers was enacted (published in the Journal of Laws of 16 May 2013, pos. 567). The law was introduced to comply with the requirements of **Directive 2002/15/EC** on the organisation of working time of persons performing mobile and road transport activities, with special regard to Art. 2 item 1 (inclusion of self-employed drivers within the scope of the Directive).

On 28 May 2013, the Parliament unanimously enacted the amendment to the Labour Code provisions concerning **maternity and paternity leave** related to the personal care of the child after his/her birth.

On 13 June, the *Sejm* adopted the Act on the Amendment to the Labour Code concerning **working time.** The Act introduces flexible organisation of working time which reflects the assumptions of the anti-crisis law in force in the period 2009 – 2011. The main changes relate to longer reference periods and irregular working time. The Act of 12 July 2013 on amendments to the Labour Code on working time was published in the Journal of Acts of 8 August (pos. 856). The Act took effect on 23 August. The Act introduced flexible working

time, i.e., a one-year reference period and the possibility to settle irregular working time in companies.

Moreover, on 27 September, the Parliamentary Commission for Social Affairs submitted the Bill of the Act on **specific regulations for employees and entrepreneurs for job protection** to alleviate the effects of the economic slowdown or economic crisis. It was enacted by Parliament in October. The main objective behind the Act is to provide financial assistance to entrepreneurs and workers in times of economic slowdown and to prevent dismissals.

A **Bill on the Labour Code** was also submitted to Parliament by the political party "*Ruch Palikota*" for a "first reading", i.e., the first step of the legislative process. The draft provides far-reaching **amendments to the employment contract**, i.a. contracts not concluded in written form are presumed to be employment contracts, unless the employer proves otherwise on the basis of the nature of the contract; new provisions on fixed-term employment contracts; protection against discrimination and mobbing will be enhanced.

II. Court Rulings

The Supreme Court delivered a ruling which confirms that **fixed-term contracts** are within the scope of the Law on Collective Dismissals and **Directive 98/59/EC.**

III. Miscellaneous

On 20 December, the **European Commission** decided to initiate i**nfringement proceedings against Poland** on the incompatibility of Polish law with Directive **1999/70/EC on fixed-term employment** contracts. The Commission's action is a response to a complaint submitted by the "Solidarity" trade union.

Portugal

I. National Legislation

At the end of February/March, staff teams from the **European Commission, European Central Bank, and International Monetary Fund** were in Lisbon for the seventh quarterly review of Portugal's economic programme. During this Review Mission, the Troika evaluated the pace and progress of the measures included both in the *Memorandum of Economic and Financial Policies* **("MEFP")** and the *Memorandum of Understanding on Specific Economic Policy Conditionality* **("MoU").**

Accordingly, a new version of the MoU and of the MEFP (including on Employment Protection Legislation) were disclosed shortly. In particular, new rules providing for a further reduction of **severance payments** (already reduced from 30 to 20 days of basis remuneration and seniority per year of contract) were expected. So the Bill No. 120/XII was approved by Parliament, providing for further reductions of severance payments. These amendments comply with the obligations foreseen in the MoU (measure 4.2).

Moreover, Bill No. 147/2012 was presented to Parliament on 16 May, foreseeing the creation of a "**compensation fund**" to partly finance severance payments due to employees in case of termination of the employment contracts (*e.g.*, in case of termination of a fixed-term employment contract, collective dismissal, extinction of the work position, dismissal for unsuitability, etc.).

II. Court Rulings

Council **Directive 98/59/EC** of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies has been transposed into Portuguese Labour Code (approved by Law No. 7/2009 of 12 February), mainly in Articles 359 ff. In its decision of 24 April 2013, the Lisbon **Court of Appeal** ruled that a predictable reduction of the enterprise's activity (due to a negative market evaluation) should be considered a valid ground for termination, - even if such a reduction did not yet apply at the time of the dismissal. In addition, the Court decided that the selection of employees to be made redundant has to be

in accordance with the declared grounds for the termination and thus affects those employees for whom a future reduction of activity due to market reasons is expected. Regarding the selection criteria to be applied to a group of employees affected by an expected market contraction, the Court stressed that the employer had to apply objective and non-discriminatory criteria, such as lower capacity for team work, seniority or level of commitment.

On 20 September 2013, through its ruling No. 602/2013, the Constitutional Court declared as **constitutional** most of the rules subject to its assessment, namely, **the expansion of the legal framework of the working hours' account**, **the revision of the minimum additional pay for overtime established in the Labour Code and the elimination of the compensatory time off equal to 25% of overtime hours worked, the reduction of 4 compulsory holidays, the elimination of 3 additional vacation days employees could be entitled to depending on their level of attendance and the possibility of the enterprise to compulsorily close its operation for one day** (and counting that day as a day of annual leave), if it is prior to or following a day that is a public holiday set on a Tuesday or Thursday. Also, most of the amendments introduced into the legal regime on dismissal for unsuitability and to turn it into a more flexible procedure were held to be in conformity with the Constitution (Portuguese Constitutional Court decision No. 602/2013 of 20 September).

III. Miscellaneous

As part of the measures taken to implement its commitments and as part of the austerity plan, the Government included in the Budget Act for 2012 (Articles 21 and 25 of Act No. 64-B/2011 of 30 December) the **suspension of the holiday and Christmas allowances for public servants and pensioners** – in cases in which the amount received was above EUR 600 (for the duration of the international assistance programme – i.e. at least for 2012, 2013 and 2014). On 5 July 2012, the **Constitutional Court** (*ruling No. 353/2012*) held that the suspension was unconstitutional and breached the equality principle enshrined in Article 13 of the Portuguese Constitution. In July 2012, the Prime Minister reacted to this ruling, stating that the State Budget Law for 2013 would include the Constitutional Court's decision. Nevertheless, it was announced that, given the fiscal targets and the obligations Portugal must comply with, the Government would have to consider new austerity measures in 2013.

Romania

I. National Legislation

After postponing and resuming debates numerous times, Law No. 134/2010 – **the new Code on Civil Procedure** – entered into force on 15 February 2013. It will have certain implications on the procedure to resolve labour litigations because, according to these new regulations, the decisions of the court of first instance will no longer be remedied through recourse, but through appeal.

In March, the collective dismissal legislation which implements **Directive 98/59/EC** has been applied, as the number of collective dismissals has increased. Given this huge number of **collective dismissals** in Romania, especially in public companies, the government has **adopted Emergency Ordinance No. 36/2013** to be applicable between 2013-2018, and to introduce social protection measures for employees laid-off as a result of collective dismissals. Moreover, new rules for registration of day labour contracts were introduced. The sanctions for violations of this Act have become more rigid.

Moreover, Act No. 279/2005 on apprenticeships at the **workplace** was modified by Act No. 179/2013, published in the Official Gazette No. 348 of 13 June 2013. This Act has been modified in order for Romania to **meet the European requirements** on employment and lifelong professional training and, in this regard, training at the workplace through apprenticeships. The legislative framework of this form of training requires modifications meant to contribute to the fulfilment of the objectives defined by the European Council on 30 January 2012.

Act No. 259/2013 published in the Official Gazette No. 612 of 2 October 2013 approved Governmental Emergency Ordinance No. 36/2013 regarding the enactment, between 2013 - 2018 of special social protection for employees who are dismissed by collective dismissal.

II. Court Rulings

A decision of the **High Court of Justice and Cassation** ***(****No. 4916 of 11 December 2012)* clarifies a controversial issue, namely that a **legal strike cannot be a *force majeure* situation**.

Slovakia

I. National Legislation

On 26 April 2013, two proposals by Members of Parliament to **amend the Labour Code** were delivered to Parliament (National Council). Both proposals were discussed in May (first reading) The key issue of the first Bill is dismissals of employees (termination with notice) after he/she reaches legal retirement age. The second Bill delivered to Parliament is to re-establish the legal regulation that was introduced by the amendment of the Labour Code by Act No. 257/2011 Coll. on balancing rights and duties between employers and employees.

In May, the government proposal to amend Act No. 124/2006 Coll. **on safety and health at work** was discussed as well. The Slovakian Parliament adopted the amendment of Act No. 124/2006 Coll. on health and safety at work. In the interest of preventing the occurrence of occupational diseases, the employer shall be obliged to provide for reconditioning stays for employees in selected occupations.

II. Court Rulings

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Slovenia

I. National Legislation

In January, the debate on the new ERA and the **amendments to the Regulation of the Labour Market Act** were extended. The last negotiations took place on 30 January and on 1 February 2013.

On 5 March 2013, the new **Employment Relationships Act (ERA)** and the **amendments to the Regulation of Labour Market Act** were adopted by the National Assembly. Both Acts are supposed to represent the so-called Labour Market Reform.

Moreover, changes have been introduced to promote the reduction of fixed-term employment relationships and of the segmentation of the labour market and a new provision has been set forth according to which the **temporary work agency** is obliged to guarantee the agency workers vocational training and new provision have been introduced regarding the reinforcement of the liability of the transferor.

In July, the Slovenian **Ministry of Labour, Family, Social Affairs and Equal Opportunities** prepared three draft Acts. The new Acts are the **Parental Protection** and **Family Benefits Act, Labour Inspection Act (ZID-1),** and **Prevention of Undeclared Work and Employment Act.**

In August, the draft of the Prevention of Undeclared Work and Employment Act was finally discussed within the Tripartite Economic and Social Council. The text of the draft act is expected to be improved on the basis of comments/proposals made by the social partners and submitted to the government/parliamentarian procedure.The Act on Emergency Measures in the Field of Labour Market and Parental Care finally entered into force on 1 August 2013 and in mid-November, the Slovenian Government presented the text of the draft of the Labour Inspection Act (ZID-1) and sent it to Parliament. On 19 December 2013 the Government approved the draft Prevention of Undeclared Work and Employment Act. It falls into the Government's project to reduce the grey economy and is included in the 2013-2014 plan of development programmes.

In October, the Government adopted the **draft text of the amendments to the *Labour Market Regulation Act*.** According to the draft amendments, trade union confederations and federations as well as employers' organisations with representative status for the entire State shall be placed among those subjects which may be granted concession to carry out services in the labour market (lifelong career orientation, brokerage of employment).

II. Court Rulings

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Spain

I. National Legislation

Royal Decree Act 4/2013 of 22 February, which introduces measures to **support entrepreneurship and to stimulate growth and job creation,** is part of the European Union guidelines on **youth employment.** The aim is to boost economic growth and reduce unemployment, especially for young people.

Following the major reform approved in 2012, the Spanish Government continues its mission of adjustments and a gradual **reform of labour legislation**. The latest measure is Royal Decree Act 11/2013 of 2 August 2013 for the protection of part-time workers and other emergency measures in the economic and social order, which includes some modifications of core labour standards.

Act 14/2013 aims to contribute to economic recovery in light of the severity and persistence of the **economic crisis in Spain**. The content of the Act is economic by nature, but it is also an employment policy, because it seeks to promote autonomous employment, especially for young people.

Moreover, the Spanish system introduced the possibility several years ago for workers, who are subject to **dismissal for economic and business reasons** and who remain unemployed, to receive special benefits in order to offset the loss of their job and the lack of income. Royal Decree 908/2013 modifies this regulation and provides for **temporary benefits and the payment of social security contributions to protect the unemployed individual's future retirement pension.**

Royal Decree Act 16/2013 of 20 December has introduced some additional amendments into Spanish labour law in the light of the experience of implementing the 2012 labour reform. Its primary objective is to promote the hiring of employees. It also aims to better match the needs of enterprises and take account of the actual situation on the labour market.

II. Court Rulings

In July, rulings on **collective redundancies, protective orders** (selection criteria), as well as on the transfer of **undertakings and collective agreements/ freedom to conduct a business**, have been issued (*Supreme Court, 25 June 2013)*.

Traditionally, Spanish legislation qualified contracts between an employer and a foreign worker who did not hold the proper permit to live and work in Spain as non-existent. The Organic Act on Rights and Freedoms of Foreigners in Spain of 2000 states that the foreign worker retains his/her labour rights despite the lack of authorisation. In its ruling of 17 September 2013, the Supreme Court clarifies that the employment contract is non-existent in these cases, but the worker can claim the rights attached to a valid contract, including compensation for unfair dismissal.

Moreover, several years ago, the **Constitutional Court** ruled that responsibility to provide minimum services lies with the government authority responsible for ensuring the provision of the given (essential) service (health authority, transportation authority, etc.). This 2013 ruling confirms that airports are of general interest for the entire country, hence, the **State Government has authority to determine the minimum provision of services during a strike.** The judgement clarifies certain doubts that could arise in this area following the publication of the new Statute of Autonomy of the Autonomous Community of Catalonia.

Sweden

I. National Legislation

The government appointed a new Government Inquiry in 2013 on **temporary agency work, employment protection** and the priority right to **re-employment after dismissal for reasons of redundancy**. The aim of the Government Inquiry is to investigate the extent to which temporary agency workers are hired in place of employees who have previously been dismissed for reasons of redundancy and have a priority right to re-employment according to section 25 of the (1982:80) Employment Protection Act.

Moreover, the government appointed a new Governmental Inquiry on increased protection of **whistleblowers** in February. The aim of the Governmental Inquiry is to investigate the current legal situation and protection and to explore ways to increase the protection of whistle blowers and how the interest of increased protection for whistleblowers is to be weighed against other interests, such as the interest of protecting someone's reputation and the commercial interests of the employer.

Most important recent development in April concerned a Government Bill on **sanctions within the working environment and working time area,** a Governmental Inquiry Report on raising the pensionable age and the Government's response to the reasoned opinion of the **European Commission** on the implementation of **the Fixed-Term Work Directive**. On 17 June, Parliament approved a Governmental Bill (Prop. 2012/13:143) on sanctions in the working environment and the working time area. The amendments to the (1982:673) Working Time Act and the (1977:1160) Working Environment Act will enter into force on 1 July 2014.

In May, the Swedish Parliament approved a Governmental Bill regarding the introduction of an obligation to **register for Foreign Service providers posting workers to Sweden** and the Government presented different proposals, emanating from earlier tripartite consultations, aimed inter alia at tackling **youth unemployment**.

The most important recent development in July concerned the European Commission's approval of a state scheme in support of 'Introduction Agreements' for young persons and a complaint to the European Commission from the employers' organisation *Bemanningsföretagen* regarding the implementation of the **Temporary Agency Work Directive** and the Enterprise.

II. Court Rulings

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United Kingdom

I. National Legislation

In February, the **draft Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment) Order 2013** on changes to collective redundancy rules has been published which implements some of the government's plans to reduce the burden of collective redundancy. Most importantly, it provides that:

- if there are 100 or more redundancies, the 90-day minimum period before the first redundancy can take effect is reduced to 45 days (but no change to the 30-day minimum for 20-99 redundancies)
- Excluding the expiry of fixed-term contracts from the scope of collective redundancy consultation.

In March 2013, **Legislative proposals** were drafted to implement a **new employee shareholder status**; they are to be inserted in Clause 27 of the Growth and Infrastructure Bill. The British Government also continues to reform employment law following its '**red-tape challenge' with the Growth and Infrastructure Act 2013** and the Enterprise and Regulatory Reform Bill 2013.

Moreover, the coalition government is going to introduce a fee system for litigants planning to go to an Employment Tribunal (ET) and then again if they decide to appeal to the EAT.

As of the UK's reforms of its dismissal law, the draft Unfair Dismissal (Variation of the Limit of Compensatory Award) Order 2013 (under powers set out in section 15 of the Enterprise and Regulatory Reform Act 2013) has been laid before Parliament. The order will vary the upper limit to the lower of 52 weeks' pay or the current limit (£74,200).

In July, the **Enterprise and Regulatory Reform Act 2013** has made significant changes to UK rules on unfair dismissal. On 29 July, some of the key reforms came into force, namely:

- the introduction of fees into the employment tribunals,
- new tribunal rules of procedure,
- a new cap on the unfair dismissal compensatory award,

- the inadmissibility of pre-termination negotiations in unfair dismissal cases, and
- compromise agreements being renamed as settlement agreements.

Moreover, the **Working Time (Amendment) Regulations 2013 (SI 2013/2228)** came into force on 1 October 2013, amending provisions in Schedule 2 of the Working Time Regulations 1998 (SI 1998/1833). The effect of these new regulations is to align the position of agricultural workers with all other workers and regarding **TUPE**, the long awaited response to the consultation on proposed changes has now been published.

Due to **TUPE,** there are changes to the rules on information and consultation, on the meaning of the phrase changes in the workforce, to include changes in the place where employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer, and changes to reflect the Court's case law on collective agreements.

II. Court Rulings

In June. the EAT has found in favour of the trade union representing former employees of **Woolworths** in claims for protective awards, overturning the employment tribunal's decision that each store was a separate establishment for the purposes of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA). The collective consultation obligations in TULRCA apply where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. For some time, it has been acknowledged that the words "**at one establishment" are incompatible with the underlying EU Collective Redundancies Directive (Directive 98/59/EC),** although the UK courts have previously been unwilling to adopt a purposive interpretation. What amounts to an "establishment" for these purposes has been the subject of much case law.

A press release issued by the claimants' lawyers in USDAW and others v WW Realisation 1 Ltd (in Liquidation) and another states that the EAT has ruled that the words "at one establishment" in section 188(1) of TULRCA are to be "disregarded" for the purposes of any **collective redundancy involving 20 or more employees.** This would be a **significant change to the law,** meaning that once it is proposed that at least 20 employees in a single business

are to be made redundant, their place of work would be irrelevant for the purposes of triggering the consultation obligations.

UK`s law is more generous than the **Working Time Directive** in the proviso of paid leave. It provides workers with an additional 1.6 weeks of paid leave. The question is whether the conditions laid down in the Directive as to, e.g., carryover of that leave, apply equally to the 1.6 weeks. In *Sood Enterprises Ltd v Healy UKEATS/0015/12,* the EAT said no.