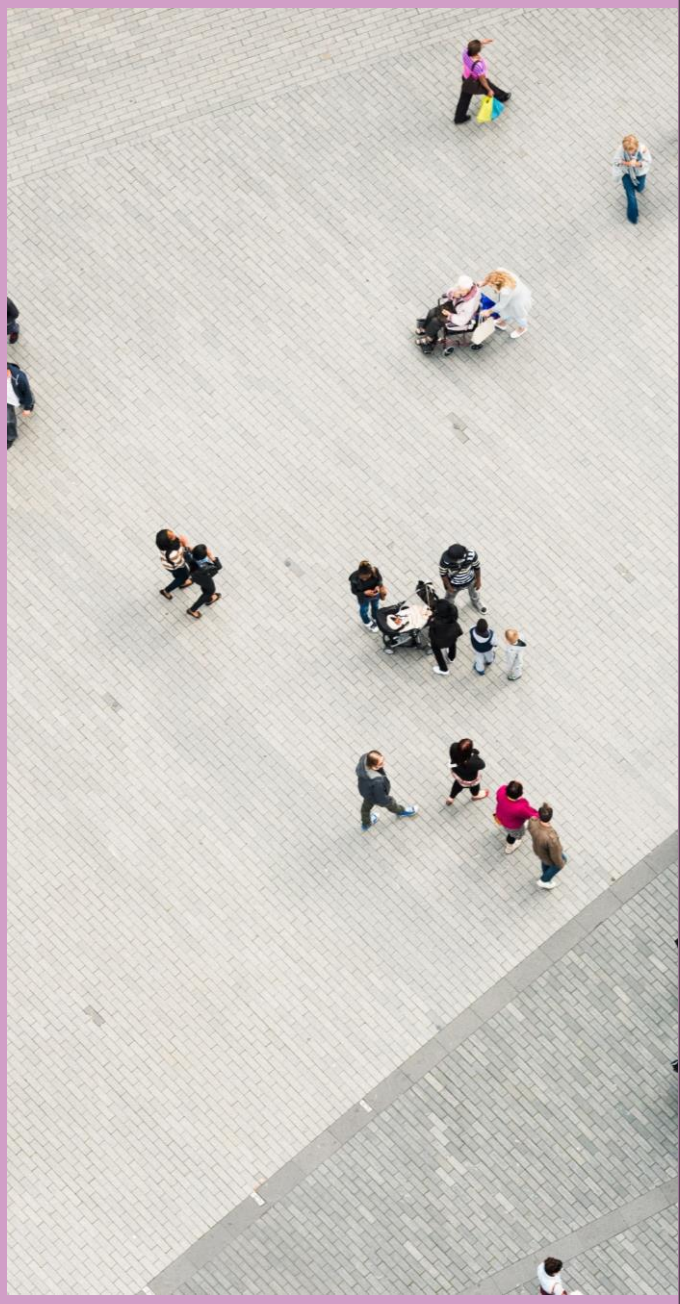
Bird & Bird

EU Employment Law Report 2024

January 2025



Introduction

This Report by the Brussels team of Bird & Bird's International Employment Group reviews the key EU employment law developments of 2024, focussing on legislative initiatives and laws that are directly relevant to legal and HR practitioners.

The Report does not cover certain social policy issues, as these tend to only impact specific sectors (e.g. sea vessels, aviation, and transport in general). It also does not cover issues that are not of immediate concern for private practice or the corporate community (e.g. social security benefits, civil servants' legal status, industry specific related health and safety, etc).

During the final year of the 'von der Leyen I' tenure, a considerable number of legislative projects came to fruition, in terms of the announcement of new Directives or implementation programs of Directives. In a wide variety of business relevant areas, and consistent with the tendencies in its entire tenure since 2019, they have all aimed to improve protection of workers and their rights in the EU. This materialized through enhanced flexibility rights (TPWC), reinforced information rights (CSRD, CS3D, Pay Transparency), incentives for wider spread collective bargaining (Minimum Pay), basic protection of workers' status (Platform), or stricter enforcement rules and rights (TPWC, Pay Transparency, EU Labour Authority).

Certain new groups of individuals attracted the attention of the EU legislator (platform workers, lowest paid workers, workers in a situation of forced labour), and the role, rights and responsibilities of trade unions were further institutionalised on a number of occasions (Minimum Pay, Pay Transparency, draft EWC Directive).

In all, it is fair to say that the pendulum of law making swung far in the direction and to the benefit of the workers' movement, that clearly had the ear of the institutions. It is hard to find any legislative development in 2024 in the employment (or social policy) space which can be seen as favouring business, to alleviate financial and other obligations imposed on the business community or to create opportunities for businesses to address the HR aspects of current and future fundamental economic challenges, i.e. dealing with disruptive innovation, the need for greater flexibility, less bureaucracy and streamlined processes and procedures within the EU.

In 2024, the European Court of Justice ('**ECJ**') continued in the employment and social policy space to confirm its pivotal role in protecting workers' rights, based on fundamental social rights or derived EU law. In doing so, the Court focused particularly on the more vulnerable workers, be it those with fixed-term or part-time contracts, domestic workers, pregnant workers or those on maternity leave. From a subject matter perspective, discrimination cases or protection of individual rights stood high on the list, rather than usual topics such as the transfer of undertakings, collective dismissal, or information/consultation rights.

Looking ahead into 2025, a few predictions have materialised in the first days of the year:

First, the political focus on social policy matters at EU level appears to be fading, in the wake of the current critical geopolitical and economic tensions. With reference to its published policy program, the Polish presidency for one does not appear to have very ambitious plans and objectives in the social policy area.

Second, the widespread criticism of EU '*regulitis*' also in the legal HR space may well impact the intensity and granularity of upcoming legislative initiatives in a downward trend. One of the priorities in the new EU Commission's policy programme is to enhance speed, simplification and coherence for businesses. A case in point is the upcoming consolidation of the numerous ESG, CSRD and CS3D obligations into one "omnibus" regulation, with a view to alleviate red tape and other regulatory burdens on companies, by streamlining the increasing number of (reporting) obligations that companies currently face. Due to be published in 2025, this omnibus is one of the 12 action points set out in the Budapest Declaration on the New European Competitiveness Deal[1], that aims to boost the EU's economic prosperity.

Simultaneously, the new EU Commission is also seeking to put in place an action plan for implementing the EU Pillar of Social Rights, including the introduction of an EU wide right to disconnect, incentives to widen

[1] Budapest Declaration on the New European Competitiveness Deal - Consilium

collective bargaining coverage (particularly to provide proper transition mechanisms to aid those affected by innovation changes) and the conclusion of a pact for European social dialogue.

It remains to be seen how these important but sometimes conflicting intentions will be implemented in practice and how they will impact your business. The Brussels Bird & Bird office will continue to regularly keep you abreast of the latest developments in 2025.

We hope that you will enjoy reading our Report. For any comments, suggestions or queries, you can always contact any of us at the addresses below.

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Regulatory developments

2024 was a transitional year for legislative initiatives at EU level, due to EU elections in June 2024 for a new EU Parliament followed by the renewal of the EU Commission in the Autumn. However, in the final months of the previous Commission's mandate (2019-2024), several legal initiatives were finalised. Furthermore, numerous Directives adopted in recent years are due to be implemented into national legislation in the coming years. One thing is certain: the EU regulator has been very active in the employment space.

Our overview of relevant EU legislation during the past year in the wider area of social policy draws a distinction between:

(i) EU legislation adopted prior to 2024 and in the implementation stage;

(ii) Legislation that was adopted in 2024; and

(iii) EU legislation currently in the pipeline for adoption in 2025.

(i) EU Legislation in the implementation stage (adopted prior to 2024)

(A) Whistleblowing: Directive 2019/1937 on the protection of persons who report breaches of Union law – the "***Whistleblowing Directive***"

Status:

The Whistleblowing Directive is fully in force since 17 December 2023 and has been implemented by all Member States.

Summary:

Since December 2023, Member States must require local entities with 50+ workers to also have internal reporting channels ensuring proper follow up and whistleblowers' protection from retaliation. Before that date, this obligation normally only applied to companies with 250+ workers. Large groups with local entities employing 50+ workers (or the headcount of which is close to this number) that do not have proper systems in place should take immediate action.

Comments:

Newsletter, EU Whistleblower Directive – Prepare for Potential Policy Adjustments - Bird & Bird, 10 December 2024

(B) Minimum Wage: Directive 2022/2041 on adequate minimum wages in the European Union

Status:

The Minimum Wage Directive has been in force since November 2022 and required transposition by Member States by 15 November 2024. Overall, Member States have made limited progress in implementation. Many consider themselves already compliant, while those requiring further action show a lack of urgency.

The scattered and somewhat vague terms of the Directive also complicate the verification of national implementation. It remains to be seen whether the Commission will take any steps against Member States for failing to implement the Directive.

Summary:

The Minimum Wage Directive does not impose an overall minimum wage throughout the EU, nor does it require Member States to impose minimum wages by law. Rather, it seeks to combat in-work poverty by imposing mechanisms by which Member States must ensure that minimum wages are adequate, i.e. by (i) promoting social bargaining, (ii) taking into account certain criteria when setting statutory minimum wages, (iii) providing enforcement measures to enhance effective access of workers to minimum wage protection and (iv) collecting data and reporting it to the Commission in order for it to be able to monitor the coverage and adequacy of minimum wages.

Comments:

Newsletter, Partial transposition of EU Directive on Adequate Minimum Wages into Belgian law, 13 January 2025

(C) Gender Pay Transparency Directive: Directive 2023/970 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms

Status:

The Directive is in force since May 2023 and is to be transposed by Member States by 7 June 2026. Employers with 250+ workers will be required to submit their first annual gender pay gap reports in 2027. Those with 150-249 workers must submit their first triannual report in 2027 and those with 100 to 149 workers will be required to report every three years from 2031.

Summary:

This Directive seeks to enhance the principle of equal pay for equal work by means of (i) increased transparency through pay gap reporting measures and (ii) stringent enforcement mechanisms as well as (iii) an obligation to remedy pay gaps of 5% or more. Employers shall be required to provide more transparency on wages, both to prospective and current employees.

Comments:

- Newsletter, Gender-based equal pay rules: no more barking, but biting! - Bird & Bird, 13 April 2023
- Newsletter, https://www.twobirds.com/en/insights/2024/global/mind-the-gender-pay-gap-a-critical-analysis-of-eu-gender-pay, 21 February 2024
- Newsletter, The Pay Transparency Directive - the end of the gender pay gap? - Bird & Bird, 11 June 2024

- Newsletter, The new EU directive on Pay Transparency and its implications for employers - Bird & Bird, 23 January 2024
- Report on the EU Gender Pay Gap Transparency Directive

(D) Corporate Sustainability Reporting (CSRD): Directive 2022/2464 of 14 December 2022 amending Regulation 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting

Status:

This Directive is in force since January 2023 and Member States had until 6 July 2024 to transpose the Directive into national law, with phased implementation. The first list of companies (large public-interest companies with over 500 workers who are already subject to the non-financial reporting directive) will have to apply the new rules for the first time in the 2024 financial year, for reports published in 2025. Large companies (250+ workers and/or €40 million in turnover and/or €20 million in total assets), not presently subject to the non-financial reporting directive, will have to submit their reports in 2026. Listed small and medium-sized enterprises (SMEs) by 2027, with a possibility for SMEs to opt-out until 2028.

Summary:

This Directive will require a broad group of small, medium-sized and large companies to report on sustainability, with a view to making their organisation's impact on people and the environment more transparent. Reporting shall be done on the basis of a streamlined, uniform set of criteria, the European Sustainability Reporting Standards (ESRS). The "social" information to be reported on focuses on workers' rights across a broad range of issues (e.g. equal treatment, non-discrimination, adequate wages, diversity, working conditions, work-life balance, respect for human rights).

(ii) EU Legislation adopted in 2024

(A) Platform Workers: Directive 2024/2831 of the EU Parliament and of the EU Council of 23 October 2024 on improving working conditions in platform work

Status:

The Platform Workers Directive entered into force on 2 December 2024. Member States have until 2 December 2026 to implement the Directive into national legislation.

Summary:

- The main aim of the Directive is to ensure that the platform workers are correctly classified. Most platform workers in the EU currently do not work as employees but rather as self-employed or freelancers depriving them of the protection employment legislation usually offers. The Directive introduces a (rebuttable) legal presumption, forcing platforms to qualify workers as employees when triggered. How this presumption is triggered and on the basis of what criteria needs to be determined by Member States. The general principle is that if, in the actual performance of platform work, control and direction is exercised by the platform over the worker, the worker is deemed to be an employee and benefits from all applicable protective labour regulations.

- The Directive furthermore provides for specific rules on algorithmic management. When an automated monitoring or decision-making system is used, the platform needs to ensure human oversight over important decisions that directly affect the platform worker. Moreover, when significant decisions are taken by the system, such as a promotion or a dismissal, human review before implementing the decision is required.

- The Directive also introduces specific transparency obligations for platforms using automated monitoring or decision-making systems.

- And finally, the Directive prohibits the processing of certain personal data such as private conversations, data on the emotional or psychological state of the platform worker or data generated when the person is not working on the platform.

Comments:

- Newsletter, Update: EU Directive on platform work - Bird & Bird, 20 March 2024
- Newsletter, The latest developments on the Platform Directive - Bird & Bird, 25 January 2024

(B) AI Act: Regulation 2024/1689 of the EU Parliament and the EU Council of 13 June 2024 laying down harmonised rules on artificial intelligence

Status:

The AI Act entered into force on 1 August 2024 and will become fully applicable on 2 August 2026. However, certain provisions, such as prohibitions on specific AI practices, will start to apply earlier, beginning on 2 February 2025.

Summary:

- The EU AI Act is a significant legal framework that aims to regulate the use of AI applications and systems within the European Union.

- The regulatory framework is determined by the system's risk classification. AI systems deemed to pose an unacceptable risk are entirely prohibited, while those categorised as high-risk are subject to stringent requirements. Meanwhile, AI systems that do not fall into these categories generally remain unregulated.

- Many AI systems that can be used in an employment context are categorised as high risk. This is the case for AI systems used for recruitment or selection, particularly targeted job ads, analysing and filtering applications, and evaluating candidates. The same goes for AI systems making decisions on promotions and terminations of contracts, AI systems allocating tasks based on personality traits or characteristics and behaviour and applications and systems used for monitoring and evaluating performance.

- The applicable requirements for these AI applications and systems include setting up a risk management system, drawing up technical documentation, providing user instructions, keeping records, implementing the possibility of human oversight, and establishing a quality management system to ensure compliance.

- The Act imposes obligations not only on AI providers but also on deployers, which includes employers utilising AI tools. Employers will therefore need to carefully consider how AI is used in the workplace, especially for high-risk applications.

(C) Corporate Sustainability Due Diligence (CSDDD or CS3D): Directive (EU) 2024/1760 of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU)2023/2859

Status:

This Directive came into effect on 25 July 2024. Member States will have until 26 July 2026 to transpose the Directive.

Summary:

This Directive seeks to ensure that companies of a certain size identify adverse impacts on human rights and on the environment within their “chain of activities” and take measures to prevent, mitigate or end such adverse impacts. The Directive also defines minimum requirements regarding the liability regime that Member States will be required to set up in order to ensure certain stakeholders (e.g. trade unions and civil society organisations) can hold companies accountable for breach of their duties under the CSDDD. The company’s

accountability will depend on its ability to show it has taken all appropriate measures to identify, prevent, mitigate or remediate certain social and environmental risks.

(D) Health & Safety – Directive 2024/869

Status:

- Directive 2004/37/EC on the protection of workers from the risks related to the exposure to carcinogens, mutagens or reprotoxic substances ("CMR") at work as well as Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work have undergone several amendments during the period 2017-2024, aimed at improving workers' protection against cancer.

- The latest amendments were made in 2024. On the 13 March 2024, the Directive 2024/869 was adopted, amending Directives 2004/37/EC and 98/24EC as regards the limit values for lead and its inorganic compounds and for diisocyanates.

- Member States must comply with the 2024 amendments by 9 April 2026.

Summary:

- The Directives include provisions related to:

    - Exposure and biological limit values: limit values are established at EU level, and Member States must establish limit values applicable on national level, taking into account the limits established at EU level.

    - Risk assessment: employers are obliged to assess and manage risks on a regular basis.

    - Prevention measures: employers are obliged to implement prevention measures, to eliminate or reduce exposure to CRM and chemical agents.

    - Training and information: employers are required to organise appropriate training on health risks, precautions, hygienic requirements, protective equipment and steps to be taken in case of incidents. They are also obliged to inform workers about, among other things, the presence of CMR and/or chemical agents and abnormal exposure incidents.

    - Consultation and participation of workers: workers and/or workers' representatives must be engaged in the application of the directive.

    - Medical surveillance: medical surveillance should be organised by employers. Special attention should be given to female workers of childbearing age.

- The 2024 amendments concern the introduction of new and revised limit values. If the exposure reaches certain limits (e.g. a concentration of lead in the air that is greater than 0,015 mg/m^3), then medical surveillance is to be carried out.

(E) Forced Labour Regulation: Regulation 2024/3015 of the EU Parliament and of the EU Council of 27 November on prohibiting products made with forced labour on the Union market

Status:

- On 27 November 2024, the EU Council adopted this Regulation banning products that are made using forced labour.

- The Regulation was published in the OJ on 12 December 2024, entered into force on 13 December 2024 and it shall apply from 14 December 2027.

Summary:

- The basic rule of the Regulation is that economic operators shall not place or make available on the Union market products that are made with forced labour, nor shall they export such products. An economic operator may be, for the purposes of the Regulation, an individual, company or business placing or making products available in the EU or exporting products from the EU.

- The Regulation establishes a structured framework to prohibit the use of forced labour in the production of goods available in the EU and within supply chains. It empowers the EU to prohibit and remove a product from the internal market if it is made by forced labour, regardless of whether it is produced within the EU or imported into the EU market.

- The EU Commission will set up a central database for identifying forced labour risk areas or products, based on publicly available data.

- An 'EU Network Against Forced Labour Products' will also be established, as a platform for coordination and cooperation and for streamlining enforcement of the Regulation, comprised of national representatives and customs authorities.

- To help businesses and national authorities in detecting violating products and ensuring proper enforcement of the Regulation, the EU Commission will issue guidelines.

- In addition, the EU Commission will also have investigative powers to detect violating products, by prioritising on the basis of the scale and severity of suspected forced labour, the quantity or volume of products placed on the market, and the share of the product suspected to have been made with forced labour.

Comments:

Newsletter, EU Regulation banning products made using forced labour - Bird & Bird, 29 November 2024

(iii) Draft Directives in the pipeline, to be adopted in 2025 (?)

(A) European Works Council

Status:

- On 3 February 2023, the EU Parliament adopted a report and recommendation (on the basis of an art 225 TFEU procedure) calling for a thorough revision of EU Directive 2009/38 (on the EWC).
- The EU Commission's proposal for a revised Directive was tabled on 24 January 2024, calling for substantive comments on all sides of the spectrum (EU Parliament, and the social partners).
- The EU Parliament has given final mandate on 19 December 2024 to start the so-called 'trilogue' negotiations (between the EP, the EU Commission and the EU Council) on the definitive text of the revised Directive.
- The timing for finalising the legislative process is unpredictable, but if not in the first half of 2025, then it is expected that the Danish presidency will certainly clear the job in the second half of 2025.

Summary:

- The draft proposed by the EU Commission seeks to amend the current Directive 2009/38 on a number of key aspects, including
    - The phasing out of legacy agreements (about 35% of current EWC agreements)
    - Stricter definitions of 'transnational' and 'consultation', including stricter rules on confidentiality of data
    - More onerous financial obligations of management
    - Strong enforcement and remedies mechanisms, leaving ample room for Member States to introduce measures and sanctions
- In its position, the EU Parliament wants to go much further than the EU Commission, essentially on the following points
    - The abolishment of legacy EWC agreements
    - Stricter rules on the set-up process
    - Enforcement with injunctive relief and suspension of management decisions
    - Financial sanctions similar to GDPR sanctions (2 to 4% of worldwide turnover)
- Content-wise, it is generally expected that the final text of the revised Directive will lean more towards the EU Commission proposal rather than the EU Parliament's proposal, because of the EU Council impact (which has already submitted amendments to the EU Commission proposal leaning towards the business position), the more business friendly composition of the EP in general, and the widely recognised (and feared) draconian nature of some European Parliament proposals.

Comments:

- Newsletter, Great expectations but limited outcome: on the EU Commission draft proposal for a revised EWC Directive - Bird & Bird, 6 February 2024
- Newsletter, Newsletter - Revision of the EWC Directive: the EU Parliament strikes back? - Bird & Bird, 21 February 2024
- Newsletter, Newsletter - Next step in the revision process of the 2009 European works council Directive - Bird & Bird, 24 June 2024
- Newsletter, The final negotiations for the revision of EWC Directive 2009/38 are to start - Bird & Bird, 6 January 2025

Case law of the ECJ

1. Successive fixed-term contracts: national laws must align with framework agreement to prevent abuse and ensure fair compensation

The Court ruled that national legislation allowing the exclusion of employees from protections against the misuse of successive fixed-term contracts, without providing other effective measures, is not permissible. It emphasised that reasons related to the organisational needs of schools were not capable of "constituting 'objective reasons' justifying the renewal of such contracts". The Court underlined the importance of preventing the abuse of fixed-term contracts and ensuring fair compensation for terminated contracts. Ultimately, it stressed that national laws must align with the Framework Agreement's objectives (on fixed-term work concluded by ETUC, UNICE and CEEP) to prevent such abuse of fixed-term contracts and safeguard workers' rights.

M.M. v Ministero della Difesa, ECJ, 8 January 2024, C-278/23, CURIA-Documents

2. Are employees with untaken holiday at retirement entitled to payment?

An Italian employee, planning for retirement, decided to resign and sought financial compensation for unused holiday days. However, his employer rejected the request. The Court ruled that the refusal was justified, confirming that an employer could withhold holiday pay if the employee knowingly chose not to take their annual leave and was properly informed of the potential loss of holiday rights. Nonetheless, the Court emphasised that in other circumstances, such non-payment would not be permissible.

BU v Comune di Copertino, ECJ, 18 January 2024, C-218/22, CURIA-Documents

3. Can a worker be dismissed on account of his permanent and total inability to perform his job? The ECJ's stance on disability and dismissal under Spanish law

A driver was left disabled following an accident at work. His employer initially adjusted his professional duties to suit his medical condition. However, the driver was later found permanently and totally incapacitated to perform his normal duties. In accordance with Spanish law, the employer proceeded with his dismissal. The Court ruled that Spanish law permitting dismissal due to a worker's permanent inability to perform their role breached EU non-discrimination laws and equal treatment in employment and occupation rules that require the employer to first make or maintain reasonable accommodations in order for the worker to maintain his job or demonstrate that such adjustments would constitute a disproportionate burden on the employer.

This decision reiterates the Court's standing on the concepts of disability, the prohibition of discrimination of workers and the employer's primary duty to make reasonable accommodations, even when a worker is found unable to perform the tasks he was hired for in the course of his occupation.

J.M.A.R. v Ca Na Negreta, ECJ, 18 January 2024, C-631/22, CURIA-Documents

4. Why am I fired? Employees hired under a fixed-term contract are also entitled to know

A Polish employee, hired under a fixed-term employment contract, successfully challenged Polish law that requires employers to inform only permanent workers of the reasons of their dismissal. A difference in treatment that was considered discriminatory by the ECJ: depriving fixed-term workers of information that would allow them to make a fully informed assessment of whether to challenge the dismissal in Court, restricts their fundamental right to an effective remedy (art 47 Charter of Fundamental Rights of the European Union). That fundamental right alone is sufficient and does not need to be made more specific to grant individuals a right on which they may rely.

The Polish state had argued that this distinction between fixed-term and permanent workers was justified as part of the legitimate pursuit of a national policy aimed at full employment, as the former category of workers

provide for increased labour market flexibility, an argument that was roundly rejected by the Court: neither was there an objective justification for such unfavourable treatment, nor was the regulation necessary to achieve that objective of increased flexibility.

This decision shows how fundamental rights enshrined in EU law can pose an important challenge to statutory national law provisions in the field of employment law. The ECJ requires national courts to ensure that individuals are fully granted the judicial protection of these fundamental rights, even if this implies disapplying contrary provisions of national law.

K.L. v X sp. z.o.o., ECJ, 20 February 2024, C-715/20, CURIA - Documents

5. Consultation on collective redundancies: The obligation applies if the initial potential redundancies exceed the threshold, even if voluntary redundancies ultimately reduce the number of dismissals

An employer with 43 employees was planning a reorganisation and asked workers if they were willing to participate in job interviews with another company. Nine employees accepted, voluntarily terminated their contracts, and joined the new employer. Subsequently, another nine employees were dismissed for organisational and production reasons. Two of the dismissed employees argued that a collective redundancy procedure should have been initiated, claiming that the voluntary departures were used to bypass this obligation.

The ECJ was asked whether EU law requires a consultation process to be triggered when a business anticipates a number of terminations that may exceed the collective redundancy threshold, even if the final number of dismissals does not reach that threshold. The Court answers this question affirmatively.

More information can be found via: When to start consultations on a prospective and potential collective lay-off in the EU? Has the ECJ set the bar too high? - Bird & Bird (twobirds.com)

J.L.O.G. & J.J.O.P. v Resorts Mallorca Hotels International, ECJ, 22 February 2024, C-589/22, CURIA-Documents

6. Employee-initiated termination as a result of an employer's breach entitles the employee to insolvency guarantee protection

Some employees terminated their contracts due to serious breaches by their employer, who later entered insolvency proceedings. The employees sought compensation from the guarantee institution for unpaid wages and other entitlements, but national law excluded coverage for claims arising from terminations initiated by the employees, even though the employer's breaches were acknowledged. The referring court sought clarification on whether this exclusion was compatible with EU Directive 2008/94, which aims to protect employees in cases of employer insolvency.

The ECJ ruled that the Directive does not support the exclusion of claims from employee-initiated terminations. Such terminations, if stemming from serious employer breaches, are analogous to those initiated by administrators or liquidators. Since the social purpose of Directive 2008/94 is to ensure minimum protection for employees in insolvency situations, the exclusion of such claims would be contrary to this objective. Consequently, national laws which exclude them from guarantee institution coverage are inconsistent with EU law.

V, W, X, Y and Z & the liquidator of company K v AGS de Marseille, ECJ, 22 February 2024, C-125/23, CURIA-Documents

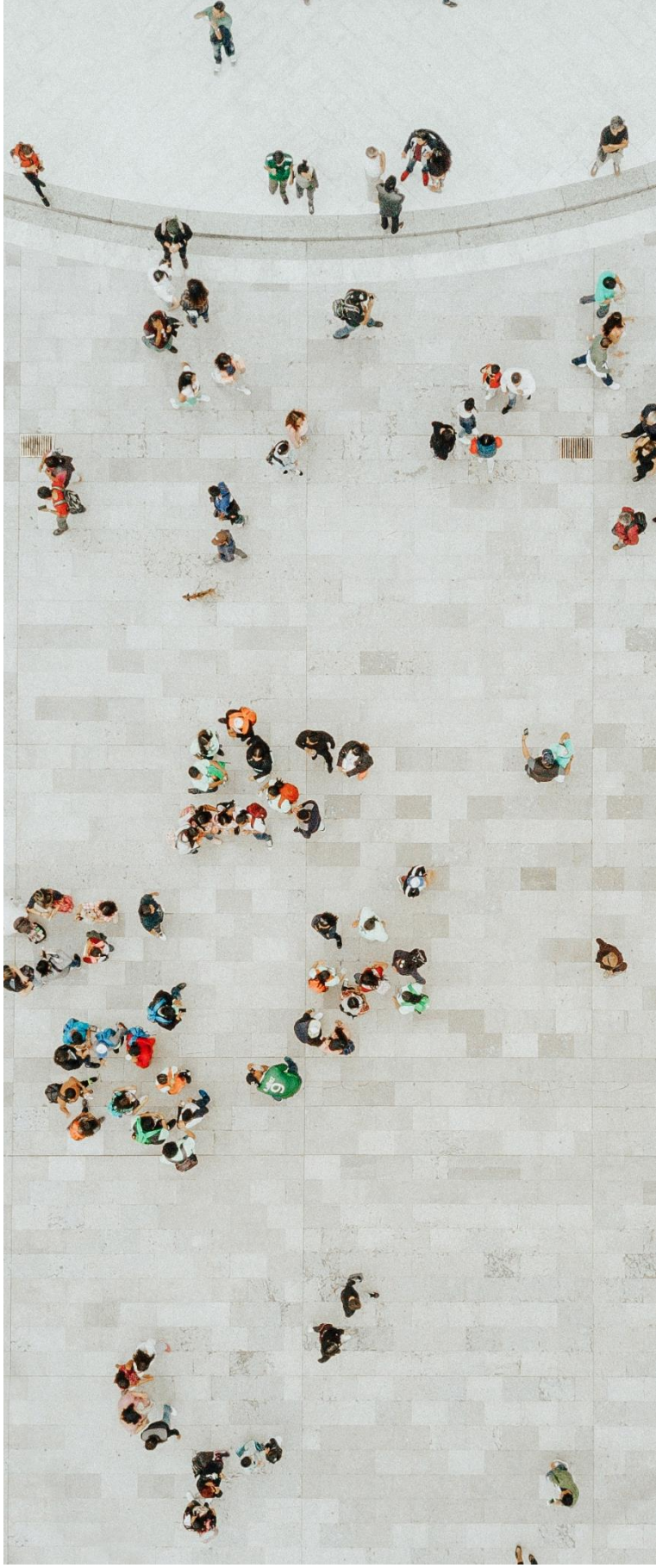
7. ECJ declines to rule on maternity leave for single parents due to scope and timing

A woman in Spain, after giving birth, applied for maternity leave benefits and received the standard 16 weeks' leave. However, as a single mother, she requested an extension, arguing that Spanish law discriminates

against single-parent families by not offering the same extended leave benefits available to two-parent families. In two-parent households, the second parent can take additional parental leave, resulting in a total of 32 weeks' leave.

No decision was taken on the merits of the case, as the ECJ ruled that the request was inadmissible as it deemed the question referred by the national court as hypothetical, because (1) the court sought clarification on Directive 2019/1158 related to parental leave, while the matter at hand concerned maternity leave and (2) because the Directive was not yet applicable in the case at hand, given the fact that the transposition deadline had passed after the events in question.

CCC v the Tesorería General de la Seguridad Social (TGSS) & the Instituto Nacional de la Seguridad Social (INSS), ECJ, 16 May 2024, C-673/22, CURIA-Documents



8. Statute of limitations cannot prevent pregnant workers from challenging dismissal

A care assistant employed under a one-year contract was dismissed. After the announcement of the dismissal, the care assistant was medically certified as seven weeks pregnant, which meant that she was pregnant at the time of the dismissal. She considered challenging the dismissal, but under German law, she had to do so within a specific deadline, which had already expired. An extension can be applied for, but she did not make such application, as a result of which she could no longer challenge her dismissal in a timely manner.

The ECJ confirmed that Directive 92/85/EEC prohibits the dismissal of pregnant workers, except in exceptional cases. Member States must enable workers to pursue legal action if they believe their rights have been violated. While time limits for pursuing actions can be set for legal certainty, the ECJ ruled that such limits should not excessively hinder the worker's ability to assert their rights, and that current German national law should be re-examined to ensure compatibility with EU law.

TC v Firma Haus Jacobus Alten- und Altenpflegeheim gGmbH , ECJ, 27 June 2024, C-284/23, CURIA-Documents

9. German system of overtime pay for part-time female workers can lead to indirect discrimination

Two part-time care assistants claimed gender discrimination, arguing they were denied overtime pay for hours worked beyond their contract, while full-time employees received overtime compensation. They pointed out that most part-time workers are women.

The ECJ ruled that national laws offering overtime pay only for hours worked beyond full-time employees' normal hours constituted "less favourable" treatment of part-time workers. The ECJ also found this policy could indirectly discriminate against women, as they are more likely to work part-time. Such discrimination, the Court concluded, cannot be justified by the policy's objectives such as discouraging employers from requiring overtime or preventing full-time workers from being treated unfairly.

IK & CM v KfH Kuratorium für Dialyse und Nierentransplantation, ECJ, 29 July 2024, C-184/22 & C-185/22, CURIA-Documents

10. Retroactive accounting of fixed-term employment period for compensation and benefits purposes

This case involves an employee who worked under three fixed-term contracts between 1993 and 2001, before securing an indefinite contract in 2001 after passing a public competition. The institution, however, did not count his previous fixed-term service when determining his length of service. The employee initiated legal proceedings, claiming that his length of service under fixed-term contracts should be recognized, citing Directive 1999/70, which regulates fixed-term employment.

The Italian court referred the case to the ECJ to clarify whether the directive applies to contracts which ended before the transposition deadline (July 10, 2001). The ECJ ruled that prior service under fixed-term contracts must be counted when determining salary upon conversion to a permanent position, even if the fixed-term contract terminated before the transposition deadline, unless there is a valid reason for exclusion.

KV v Consiglio Nazionale delle Ricerche (CNR), ECJ, 19 September 2024, C-439/23, CURIA-Documents

11. Equal pay for work of equal value: different allowances between cabin crew and pilots do not compensate work of equal value and therefore cannot constitute indirect discrimination

In the employment relationship between Air Nostrum and its cabin crew, a collective agreement provides for allowances for travel expenses. These allowances are much lower than those for pilots, set out in a separate collective agreement. The union, supported by the public prosecutor, argued that this difference constitutes indirect sex discrimination, as 94% of cabin crew members are female, while 93% of pilots are male.

The ECJ, after first determining that the allowances qualify as "pay" under Directive 2006/54, ruled that the difference did not amount to indirect sex discrimination, on the basis that pilots and cabin crew do not perform the same work or work of equal value, given their distinct responsibilities and training requirements. Therefore, the difference in allowances is not prohibited.

Sindicato de Tripulantes Auxiliares de Vuelo de Líneas Aéreas (STAVLA) v Air Nostrum, ECJ, 4 October 2024, C-314/23, CURIA-Documents

12. Not all disparities constitute discrimination: different retirement policies for judges and civil servants are based on different functions, not on age

The case concerns a judge at the German Federal Court of Justice who faced mandatory retirement. Despite other civil servants having the option to request an extension of their retirement age, he could not, and therefore argued that this differential treatment amounted to age discrimination.

The ECJ ruled that the claim was not founded. It emphasized that the distinction between federal judges and other civil servants is based on the specific functions and legal framework governing the different categories of public servants, not on their age.

HB v Bundesrepublik Deutschland, ECJ, 17 October 2024, C-349/23, CURIA Documents

13. Clarification of rights under temporary agency work Directive in the event of dismissal during pregnancy

After completing an internship at Microsoft and working for companies providing services to Microsoft, the claimant was employed by Leadmarket, a company offering services to Microsoft. During her pregnancy, Microsoft terminated the contract with Leadmarket and upon her return from maternity leave, she was informed of her dismissal due to a reduced demand in services. She sought to have the dismissal declared invalid, holding both Leadmarket and Microsoft responsible. The court exonerated Microsoft, holding Leadmarket solely liable, and deemed the dismissal unlawful (yet not discriminatory).

The ECJ addressed several issues. It first confirmed that Directive 2008/104 applies to any entity hiring workers with the intention of assigning them temporarily to another company, even if the employer is not a recognised temporary employment agency, as long as the key elements of temporary employment, such as supervision and direction, are present. The ECJ further affirmed that temporary workers must receive the same pay as direct employees of the user company. For relatively obscure reasons, the Court did not address the final questions raised by the referring court, i.e. the required re-instatement of an unlawfully dismissed employee, and the joint liability of both employer and user.

LM v Omnitel, Leadmarket, ECJ, 24 October 2024, C-441/23, CURIA Documents

14. Protecting employee data: A key ruling on GDPR compliance

An employee in Germany filed a claim for damages against his employer, alleging that his personal data had been unlawfully transferred to a server in the United States through cloud-based software, violating existing collective agreements. The referral to the ECJ sought to address whether German national laws comply with the GDPR and under what conditions damages can be awarded for unlawful data processing.

The ECJ clarified that Member States flexibility to adopt additional national rules does not exempt them from adhering to the core principles of the GDPR, notably Articles 5, 6(1), and 9, to ensure the protection of employees' rights; it also confirmed that collective agreements governing personal data processing under Article 88 of the GDPR must also align with these standards. Additionally, the discretion granted to the parties in a collective agreement to assess the “necessity” of data processing must be consistent with the GDPR’s requirements, including its overarching goal of harmonisation and strong data protection. Finally, the ECJ confirmed that national judges are empowered to fully assess the compliance and necessity of data processing with the GDPR, and to dismiss any provisions of collective agreements that do not meet the regulation’s standards.

This decision highlights the importance of safeguarding employee data rights and ensuring that national laws, including negotiated social law, aligns with GDPR standards, underscoring the ongoing need for robust data protection in employment settings.

MK v K GmbH, ECJ, 19 December 2024, C-65/23, CURIA Documents

15. Landmark decision on the obligation of employers who employ domestic workers to record working hours

HJ, a domestic worker, was employed from 2020 to 2021 by a household in Spain. Before the Spanish courts, she claimed that her dismissal was abusive and sought payment for overtime and unused leave. She stated that her working hours increased from 46 hours per week initially to 79 hours per week. While the Spanish court ruled that her dismissal was abusive and awarded compensation for unused leave, it rejected her overtime compensation claim. The applicable Spanish royal decree exempts certain employers, including those employing domestic workers, from the obligation to record working hours. Therefore, she could not prove the overtime work.

The ECJ ruled that this Spanish exemption violates EU law, as it prevents domestic workers from accurately tracking their working hours and ensuring compliance with rest periods and maximum working hour limits. The ECJ concluded that national legislation must require all employers, including those employing domestic

workers, to implement systems for recording working hours to protect workers' rights under EU law. The Court did acknowledge that national laws may provide for exceptions to this general rule.

This decision confirms and builds further on the landmark CCOO/Deutsche Bank case of 14 May 2019 (C-55/18, also a Spanish matter). It could influence similar cases throughout the EU, reinforcing the protection of domestic workers' rights and emphasising the need for transparent and accountable employment practices for all workers.

HJ v US & MU, ECJ, 19 December 2024, C-531/23, CURIA Documents

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