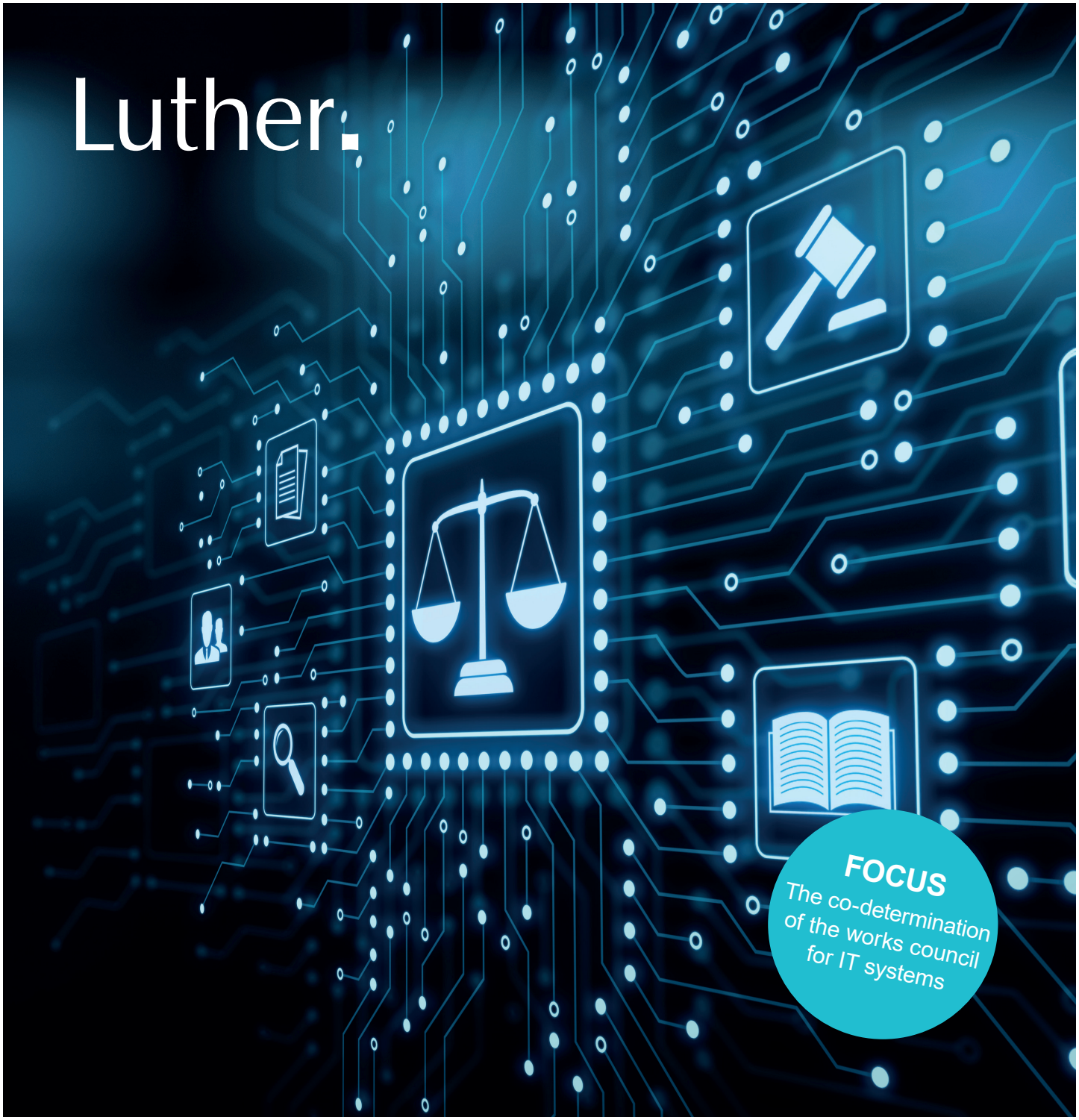

Employment Law Newsletter

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unyer GLOBAL ADVISORS

Content

Dear readers,

The EURO 2024 in Germany is inspiring us and we are enjoying the summer. Many of us are already looking forward to the upcoming holidays – a time of relaxation, travel and family. Whether by the sea or in the mountains, we enjoy this time of rest to recharge our batteries.

Obviously, the right travel reading is indispensable. The summer edition of our employment law newsletter is a good choice to keep you up to date on important employment law topics in Germany. In this issue, we once again focus on current topics relating to the changing and dynamically developing working world.

A significant part of this change is characterised by the rapid digitalisation of work processes. The co-determination of the works council in IT systems is therefore of essential importance in operational practice in Germany. There is hardly any co-determination right that concerns companies as much as the one regarding the introduction and use of technical equipment. Consequently, our Hamburg colleagues Isabel Schäfer, Astrid Schnabel and Nele Mareike Runkowski devote themselves to this topic. In their article, they provide an overview of the latest court decisions regarding the matter and their practical implications.

Unfortunately, increasing digitalisation is also leading to an increase in hacker attacks on companies, who now employ entire departments and invest large sums of money to protect themselves against this issue. Nevertheless, almost every company has been the victim of a cyber attack at some point. In addition to damage limitation, employees can also become the focus of investigations in a variety of ways. Axel Braun and Stephan Sura shed light on this topic and address problems such as data protection reporting obligations, corporate liability, compensation for damages and employment law sanctions.

In this newsletter, we also once again present our international newsflash from unyer and take a look at other European countries. Caroline Ferté from FIDAL, our French unyer member, reports on the effects of the Corporate Sustainability Reporting Directive (CSRD), which obliges certain companies to publish a sustainability report. The central point of the directive is the implementation of certain reporting obligations in the company. Caroline Ferté provides an initial overview.

As always, we also look at developments in case law in this newsletter. We have again selected decisions by the German labour courts that we hope will be of particular interest to you. Let us know if there are any particular topics and developments in the field of employment law that are of particular interest to you in practice. As always, we look forward to your feedback! Please feel free to contact us directly as well if you have any suggestions or questions.

We wish you a great summer and hope you enjoy reading this issue.

Yours

Achim Braner

Employment law in the attorney's practice – Festschrift for Axel Braun

To mark the 65th birthday of our colleague and friend Axel Braun on 25 April 2024, the Service Line Employment of Luther Rechtsanwaltsgesellschaft has published a commemorative publication ("Festschrift"), which is published by Germany's biggest legal publisher C.H. Beck and was presented to the celebrant at a ceremony in Cologne at the end of April.

Axel Braun is one of the most renowned attorneys in German employment law for decades. The commemorative book is therefore intended to honour not only his person, but also his work. The articles within the publication are mainly written by colleagues from Luther's Service Line Employment and all very practically oriented – reflecting Axel Braun's personality as a consultant. They deal with "long-running issues" of labour law such as the collective bargaining unit, mass dismissal procedures or temporary agency work, as well as current topics in Germany, such as the obligation to record working hours, the remuneration of works councils or employee monitoring. Last but not least, the book also contains articles on corporate co-determination penned by Luther's leading company law experts.

Whilst the content is not lacking in depth, it is also an aid for HR departments, in-house lawyers and other attorneys – a real "practical guide", so to speak.

Our colleagues Paul Schreiner and Prof. Dr Robert von Steinau-Steinrück are the editors of the book, which is almost 500 pages long with 28 articles. It can be obtained from the online store of C.H. Beck or from any bookshop. We would like to take this opportunity to congratulate Axel Braun once again for his birthday and thank him for everything he has passed on to us over the years!

The co-determination of the works council for IT systems

Hardly any other co-determination right concerns companies as much as the cone regarding the introduction and use of technical equipment intended to monitor performance and behaviour. Summarising the case law of the last 50 years, it would appear that every IT system is subject to co-determination in accordance with Section 87 (1) No. 6 BetrVG (Betriebsverfassungsgesetz – Works Constitution Act). In practice, this leads to a considerable slowdown in processes and digitalisation efforts. However, there are indications in some newer court decisions that offer cautious grounds for optimism.

I. The co-determination element of Section 87 (1) No. 6 BetrVG

Pursuant to Section 87 (1) No. 6 BetrVG and its equivalent in Section 80 (1) No. 21 BPersVG (Bundespersonal-vertretungsgesetz – Federal Law on staff committees in the public sector), the works council or staff council must have a say in the introduction and use of technical equipment designed to monitor the behaviour or performance of employees in the company. While the wording still refers to a "provision", this term is known to be interpreted broadly. According to the established case law of the Federal Labour Court (Bundesarbeitsgericht – BAG), technical devices are not only subject to co-determination if they have a monitoring purpose. Rather, their objective suitability for the behavioural or performance-related monitoring of employees is sufficient. An intention to monitor is not required. However, the technical device must directly, i.e. at least in its core, provide the monitoring service itself (independent monitoring function). This criterion is also often interpreted broadly by the labour courts. The purpose of the right of co-determination is also to protect employees from interference with their personal rights. In contrast, Section 87 (1) No. 6 BetrVG is not an instrument of collective data protection. Nevertheless, experience shows that users are faced with demands that are tantamount to a right of co-determination in data protection. Irrespective of this question of demarcation, data protection considerations naturally play a significant role in negotiation practice, notwithstanding the fact that the processing of personal data must comply with data protection regulations.

II. Immediacy of surveillance and the Facebook-decision of the BAG

The BAG's case law is faced with increasing digitalisation and the acceleration of processes, which co-determination cannot keep up with. Regardless of the legal questions regarding the scope of co-determination, practical questions arise that were not considered when the co-determination right was conceived. Automatic updates for SaaS solutions, which employers only learn about shortly before installation, are an example of this.

Looking at the development of the right of co-determination, it becomes apparent that the understanding of what is subject to it has become increasingly broader over time. While the BAG originally demanded that the technical equipment must directly provide the monitoring service, it also interpreted the "specificity" for monitoring in such a way that the suitability for monitoring is sufficient – regardless of whether the employer pursues this objective and actually evaluates the data obtained through the monitoring (see BAG, decision of 9 September 1975 – 1 ABR 20/74). While the immediacy criterion is sometimes subject of heated debates in practice, the BAG still upheld it in its decision on Google Maps in 2013 and rejected a right of co-determination, pointing out that the monitoring had to be carried out at least in part by the technical equipment itself (BAG, decision of 10 December 2013 – 1 ABR 43/12). In numerous other decisions, the judges developed standards for the existence of a right of co-determination over time, whereby ultimately hardly any IT system was exempt from co-determination.

The BAG's Facebook-decision from 2016 set new standards in this context and revealed a more far-reaching understanding (BAG, decision of 13 December 2016 – 1 ABR 7/15). In this judgement, the court departed from the immediacy criterion of the monitoring function and assumed that, in the case of a company-owned Facebook page, the comment function for visitor posts led to constant monitoring pressure within the meaning of Section 87 (1) No. 6 BetrVG because it enabled users to submit behavioural or performance-related assessments with regard to employees and the possibility of assigning employees to specific situations and names, meaning that employees could be individualised and individually assessed. In this respect, neither an "automatic" data collection by Facebook nor a subjective willingness to use the data by the employer for the purpose of monitoring was necessary. The BAG thus partially abandoned the criterion of an "independent monitoring function". Based on the principles of that decision, a right of co-determination may also exist in the case of intermediate human action (in this case the comparison of Facebook postings with duty rosters or similar).

III. Current decision # 1: BVerwG on co-determination rights for social media presence

Nevertheless, there have been two decisions in the recent past that give hope for a correction with a return to the purpose of Section 87(1) no. 6 BetrVG.

In its decision of 4 May 2023 – 5 P 16/21 on the co-determination of the staff council pursuant to Section 75 (3) No. 17 BPersVG old version (= Section 80 (1) No. 21 BPersVG new version), which applies to employees in federal administration and has an identical wording to Section 87 (1) No. 6 BetrVG, the Federal Administrative Court (Bundesverwaltungsgericht – BVerwG) demanded a "sufficient probability" of actual monitoring by the employer as an additional criterion. The case centred on the operation of social media channels, including Facebook, with a comment function that could not be deactivated. However, the comments could not be automatically analysed by the employer, nor was the subsequent use of analysis programmes planned. Although the Federal Administrative Court applied the broad interpretation standard of the BAG from its Facebook-decision, the judges used a standard of probability as a corrective, for which comments "to a considerable extent" were to be expected or must be made by users. Unlike in BAG's Facebook-decision, which allowed the theoretical, abstract risk of user comments to suffice, the BVerwG takes into account factual circumstances, e.g. the type and design of the website, the volume of user comments as well as corresponding deletion options or (actual) efforts by the employer to delete any comments. The mere abstract risk of comments and their analysis therefore does not constitute a right of co-determination.

If the principles are applied to standard software solutions, which don't have the primary purpose of monitoring, but only to enable monitoring in the abstract (e.g. on the basis of log files), it can be assumed that there is no sufficient probability of monitoring pressure in these cases. This would mean that co-determination pursuant to Section 87 (1) No. 6 BetrVG would not apply. This consequence would also be justified against the background of the purpose of the law. However, a weakness of the new criterion is revealed in the dynamics: As soon as the actual conditions and/or the probability prognosis change, a co-determination obligation may subsequently arise.

IV. Current decision # 2: ArbG Hamburg on co-determination rights in the use of ChatGPT

At the beginning of this year, the Hamburg Labour Court (Arbeitsgericht / ArbG Hamburg) had to deal with co-determination in AI systems, specifically ChatGPT (ArbG Hamburg, decision of 16 January 2024 – 24 BVGa 1/24). According to the decision, in the absence of monitoring pressure, the works council has no right of co-determination

within the meaning of Section 87 (1) No. 6 BetrVG if employees are allowed to use ChatGPT via their privately registered user accounts in the respective (external) web version of the company's Internet access and the employer has no access to usage data recorded only by the provider. Even if questions remain unanswered, the decision is to be welcomed as it clarifies that there is no monitoring pressure if the employer has no de facto access to the relevant data. The court has thus shown another way of restricting the broad interpretation of Section 87 (1) No. 6 BetrVG. Accordingly, the lack of access to any user data is not the subject of a works agreement to be negotiated, but already excludes co-determination.

V. Conclusion

What the aforementioned decisions of the BVerwG and the ArbG Hamburg have in common is a return to the purpose of the co-determination right under Section 87 (1) No. 6 BetrVG. The criterion of "sufficient monitoring pressure" or a "sufficient probability of monitoring" can be used to counter the finding that almost every IT system is subject to co-determination and prevent a unprecise extension of co-determination. This does not result in any disadvantages for the protection of employees, but does have advantages for the digitalisation needs of companies. Combining both decisions results in a two-stage examination: At the first stage, it must be examined whether the employer has access to the employees' performance and behavioural data at all, whereby hypothetical possibilities of a query are not sufficient. In a second stage, the question then arises as to whether there is a sufficient probability of monitoring. Only if this is also answered in the affirmative, there is a need for protection that triggers co-determination pursuant to Section 87 (1) No. 6 BetrVG.

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Hacker attacks and employees

Almost every company has been the victim of a cyberattack at some point. If such an attack occurs, the focus lies not only on damage limitation – employees can also become the centre of attention in a variety of ways.

I. Target: company

As the Federal Criminal Police of Germany states in its latest "Federal Cybercrime Situation Report", at least one German company on average was the target of a ransomware attack every day in 2022. Naturally, the number of unreported cases is higher, with the damage caused running into billions. In most cases, a hacker attack is aimed at a ransom payment, but it is not uncommon for an attack to be purely destructive in nature or for the purpose of industrial espionage. The methods of cyber attacks are diverse and constantly evolving. Phishing tools and ransomware are still the most popular forms, but botnets and advanced persistent threats are also used to enable extended or more protracted infiltration. The main gateway is not only outdated or inadequate security software. Quite often, employees enable access to the system through negligent behaviour. Phishing e-mails in particular are looking more and more authentic, which is why many employers are now starting to offer more intensive training or test e-mails to check that their employees are handling dubious messages correctly.

II. Reporting obligations

The response to a cyberattack requires steps on several levels. In addition to investigating the internal causes and attempting to stop the attack themselves, companies have data protection reporting obligations in particular. If a personal data breach occurs, which according to the EU General Data Protection Regulation can also involve the loss of data, this must be reported immediately and, if possible, within 72 hours to the responsible supervisory authority – in Germany usually the state's data protection officer. This only does not apply if the breach is unlikely to result in a risk to the rights and freedoms of natural persons, or only a low risk. Both the results of the investigation into the attack and the measures taken to remedy the situation, which will prevent future data breaches as far as possible or at least significantly minimise the risk of them, must be reported. If the notification is not made or not made in time, a fine of up to EUR 10,000,000 or up to 2 % of the total annual global turnover of the previous financial year, whichever is higher, may be imposed. Co-operation with the supervisory authority can often lead to a reduction in the fine.

In addition, data subjects must be informed if the data loss is likely to pose a high risk to personal rights and freedoms. This is the case, for example, if bank data has been leaked. It is not mandatory, but always useful to involve the HR department and a potential data protection officer. The works council also has a right to be informed. In order to ensure a quick and effective response, it is advisable to conclude preventive

works agreements for dealing with cyberattacks, in which emergency protocols, task assignments and data protection aspects can be specified.

III. Liability of the company for damages

In the event of a hacker attack, customers and business partners are initially threatened with claims for damages – in addition to the damage to image and trust, which can also have an indirect economic and equally essential impact. At the same time, employees may also have claims against their employer.

Such a claim for damages also follows from the General Data Protection Regulation, which, however, allows for an exemption from liability if it is proven that the employer is in no way responsible for the circumstances underlying the data breach. Possible misconduct by employees is nevertheless attributed to the employer in this context. Exemption is only possible if all necessary security measures have been taken in accordance with the applicable data protection law. However, the European Court of Justice (ECJ) recently confirmed that unauthorised access to data and its publication does not automatically mean that no suitable protective measures have been taken. It is not required that incidents be completely prevented, but rather that the data breach must have been made possible by disregarding data protection law.

This does not automatically mean that the company is liable for damages – even if this is also possible for immaterial damage due to the loss of control over personal data and the fear of misuse, which can be particularly relevant if data appears on the darknet. This and cryptocurrencies make it more difficult to identify the attackers and to claim damages from the real parties responsible.

IV. Liability of employees?

Conversely, employees may be liable for damages if they have enabled the cyberattack, for example by negligently opening a dubious e-mail attachment or failing to update software. However, in the event of such an error in the course of performing the work owed, the principles of internal damage compensation apply, i.e. even in the event of gross negligence, liability is reduced to three months' salary – which is normally disproportionate to the amount of damage. The fact that employees enabled or encouraged the attack does not change this. The situation is only different if the employee's misconduct occurs when using company IT for private purposes: In this case, there is no work-related activity, meaning that the employee is fully liable – in theory. Finally, the company data protection officer may be liable for damages if, for example, they have not (sufficiently) complied with the employer's advice.

V. Termination for misconduct?

Meanwhile, "sanctioning" employees for enabling a hacker attack can also be considered by taking steps under employment law. Slightly negligent behaviour will generally only justify a warning, whereas termination without notice may be appropriate if the person concerned acts repeatedly and/or with gross negligence, for example contrary to established rules on the use of the digital infrastructure in the company. In this context, the categorisation of negligence must also be based on the employee's position: It is obvious that IT employees are more likely to be expected to recognise hacking attempts. In the labour courts, however, dismissals are often declared invalid if the technical facts of the case involve a certain degree of complexity – and the dismissal of an employee may even be appropriate as a step towards preventing future data protection breaches. The result is the odd situation that an employee must continue to be employed despite the enormous loss of trust. The employer can then only buy its way out of the "dilemma" by paying a severance payment.

Cyberattacks on companies can therefore ultimately lead to claims for damages by employees against the employer and vice versa, at least in theory. A company is only not liable if it has fulfilled all its obligations under data protection law. Above all, this means keeping security software and firewalls up to date. Conversely, if an employee enables or facilitates a hacker attack, they may also be liable for damages; however, the general liability exemptions usually apply. Finally, reactions under employment law are possible, even if they are not always easy to enforce.

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■ COURT DECISIONS

Relevant date for consultation obligation under the Collective Redundancies Directive

In order to determine when the duty to consult arises in the context of a collective redundancy procedure, it is not only the time at which the employer becomes certain of the actual number of employees to be made redundant that is important, but also the moment at which the employer envisages a reduction in jobs as part of a restructuring plan.

ECJ, decision of 22 February 2024 – C-589/22 (Resorts Mallorca Hotels International case)

The case

The defendant in the main proceedings originally operated 20 hotels with 43 employees in Spain. In 2019, it sold 13 of its hotels, seven to a group of companies. In the course of this, the defendant agreed with the new operators that all existing employment contracts of the hotel staff would be transferred. Subsequently, the defendant asked its employees whether they would be willing to hold talks with the new operators to take ten new jobs that needed to be filled due to the increase in workload resulting from the takeover of the hotels. Following the discussions held, nine employees declared their voluntary resignation to the defendant and signed new employment contracts with the group of companies. A short time later, the defendant gave notice of termination to nine of its remaining employees for organisational and production-related reasons.

Two of the affected employees then filed a lawsuit against their termination, based on the allegation that the defendant should have initiated collective redundancy proceedings. After the action was dismissed at first instance because the necessary threshold was not reached, the Spanish Court of Appeal referred the question of the relevant point in time when the obligation to consult arises under the Collective Redundancies Directive 98/59/EC (MRL) to the ECJ for a preliminary ruling.

The decision

At the core of the decision was the question of whether the duty to consult, i.e. to inform and advise the works council in the context of a mass redundancy, arises as soon as the employer considers reducing the number of jobs as part of a

restructuring plan, or whether it only arises after the employer has already taken measures to reduce the number of employees and subsequently becomes certain that it will actually have to make redundancies beyond the thresholds standardised in the EU Collective Redundancies Directive 98/59/EC.

The ECJ first referred to its previous judgements, according to which the consultation and notification obligations already arise before the employer's decision to dismiss. It based this on the fact that the obligation to consult after the employer has already taken a decision to dismiss would run counter to the objectives of the Directive – namely the avoidance or at least the limitation of the number of dismissals. On the basis of previous case law, the consultation procedure provided for in Art. 2 of the Directive must therefore be opened as soon as strategic or economic decisions have been taken that force the employer to consider collective redundancies. According to the Luxembourg court, such a strategic or operational decision could be seen in the present case in the decision to enter into talks on the transfer of the hotels. Already at this point in time, the defendant had to expect that the transfer of the hotel business would lead to a reduction in the workload and that mass redundancies would necessarily have to be considered. It was therefore already incumbent on the defendant at this point in time to initiate the consultation measures provided for in Art. 2 (1) of the Directive.

Our comment

Hardly any other area of employment law has been as dynamic in recent years as the case law surrounding the topic of collective redundancy notifications. In addition to the actual notification to the relevant employment agency, the consultation procedure to be observed as part of the collective redundancy process is also of great importance. According to previous case law, errors in the consultation procedure as well as errors in the actual mass redundancy notification could lead to the notification being null and void and thus to the dismissal being invalid. It remains to be seen whether this will also apply in the future. The BAG has currently referred questions to the ECJ for clarification in two proceedings in connection with the legal consequences of an incorrect collective redundancy notification (BAG, order for reference of 23 May 2024 – 6 AZR 152/22 (A) and of 1 February 2024 – 2 AS 22/23 (A)). Until a final decision is made by the court, great caution is therefore still required in the context of collective redundancies. With the decision here, the ECJ reaffirms its previous case law on the relevant point in time for the involvement of the works council in the context of a collective redundancy. However, there is no general rule of thumb in this regard. In practice, it will therefore continue to be relevant to identify the specific point in time for the involvement of the works council. However, it should be noted that the obligation to consult employee representatives arises at a very early stage and not only directly in connection with the decision to terminate an employment relationship.

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Replacement of a collective commitment by a works agreement

A collective commitment is open to a works agreement if it contains an express or implied reservation of replacement by a subsequent works agreement. In this context, a corresponding implied agreement may result from the subject matter of the agreement, a reference to consultation with the works council and a reservation of revocation.

BAG, decision of 24 January 2024 – 10 AZR 33/23

The case

The employment contract of the plaintiff employee contained a reference to the Federal Collective Agreement for Workers in Public Administrations and Enterprises (BMT-G II), which provides for a collectively agreed holiday allowance. In 1992, the defendant employer announced in a letter that it would pay the employees an above-standard holiday allowance that could be revoked at any time. The details were to be announced after consultation with the works council; from 1993, the holiday allowance was paid as announced.

Later, in 1999, the employer concluded a works agreement with the works council on the granting of holiday pay (BV Urlaubsgeld). This provided for a holiday allowance above the standard pay scale for employees hired before 1 January 2000. In 2007, the BMT-G II was replaced by the collective agreement for the public sector (TVöD), which no longer provides for holiday pay. The employer subsequently terminated the BV Urlaubsgeld with due notice on 30 June 2021 and stopped paying holiday pay. The plaintiff accordingly demanded payment of holiday pay for 2021. The Labour Court and the Higher Labour Court dismissed the claim and the appeal respectively.

The decision

The BAG ruled in the same way. The plaintiff's claim did not arise from the collective commitment made in 1992. With its letter from that year, the employer had effectively issued an overall commitment that was open to a works agreement. Such a commitment is an express declaration of intent by the employer, addressed in general form to all employees of the company or a part of them determined according to abstract characteristics, to provide certain benefits; this offer is accepted by the employees through the unconditional acceptance of the benefit. The granting of the benefit then becomes a supplementary content of the employment contract.

However, the collective commitment was not subject to a works agreement. This only applies if an overall commitment contains an express or tacit reservation of later replacement by a works agreement. In this case, the employer had implicitly reserved the right to a later replacement by a general commitment on the basis of the subject matter of the agreement, the reservation of revocation and the express reference to the announcement of further details after consultation with the works council. It was therefore

recognisable to the employees that the overall commitment could be changed in future on the basis of an agreement with the works council. After the cancellation of the BV Urlaubsgeld, the collective commitment was not revived either, as they had finally restructured the benefits previously granted under the contract. Furthermore, due to the complete cessation of payments, the BV Urlaubsgeld does not continue to apply pursuant to Section 77 (6) BetrVG.

Our comment

The BAG does not place excessive requirements on the openness of collective agreements, which is a welcome development for advising clients. In previous decisions, the judges have already affirmed the general openness of collective agreements (e.g. in BAG, decision of 30.1.2019 – 5 AZR 450/17 or decision of 10.3.2015 – 3 AZR 56/14). The court does not deviate from this case law with its current decision. Employers are nevertheless well advised to make a collective commitment with a transparently formulated provision subject to the provision that the subject matter of the regulation can be amended in the future by means of a works agreement. As a result, employers can not only amend overall commitments by means of works agreements in favour of the employees if they introduce a more advantageous regulation for the entire workforce, but also to their disadvantage – as long as the overall commitment has been effectively designed to be open to works agreements.

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Access of the works council to digital application documents

The works council's right to inspect application documents is satisfied if it is granted access to the digital documents that were also decisive for the employer's decision.

BAG, decision of 13 December 2023 – 1 ABR 28/22

The case

The parties are in dispute regarding the replacement of the works council's consent to an individual personnel measure. The works council has access to laptops and recruiting software with an integrated applicant portal at the employer's premises. External applicants use this for job applications within the company; those received by the employer in paper form are recorded manually. In this context, the works council has a right of access to certain information, e.g. personal details and documents of applicants, i.e. cover letters, CVs and references.

When a position at the employer became vacant, 33 external applicants applied. Even after receiving additional documents (such as interview transcripts), the works council refused to approve the final hiring decision. It was of the opinion that all documents should have been submitted to it in paper form. The employer subsequently applied to the court for a substitution of consent and for a declaration that it was urgently necessary to carry out the recruitment on a provisional basis. The first two labour court instances upheld this.

The decision

The BAG also ruled in this way and dismissed the works council's legal complaint accordingly. The works council had been duly informed within the meaning of Section 99 (1) 1 BetrVG. According to the established case law of the BAG, the employer must inform the works council of a planned individual personnel measure by submitting the necessary documents. However, it is sufficient to enable the works council to check whether one of the grounds for refusal of consent specified in Section 99 (2) BetrVG exists on the basis of the facts communicated. In the case of recruitment, the employer must, according to Section 99 (1) 2 BetrVG, in particular inform the works council of the prospective job and the intended classification. In addition to this information, the employer also provided the works council with the necessary personal data of the applicants and their application documents, as the works council was able to view these in the recruiting programme. There was no obligation to additionally submit the application documents to the works council in paper form, as an employer could also fulfil the obligation to submit them in digital form. The wording of Section 99 (1) 1

BetrVG conveys that application documents available in digital form must also only be submitted to the works council in digital form, as it is irrelevant for the subsequent selection decision in which form the works council takes note of the relevant information. It is only important that the works council is given the opportunity to properly exercise its right to comment and influence the employer's decision. This is satisfied if the employer grants the members of the works council the right to inspect and read the digitally available application documents of all interested parties so that the works council receives the same level of information as the employer.

Our comment

The BAG makes it pleasingly clear that the provision of application documents in electronic form meets the requirements of Section 99 (1) BetrVG, which significantly facilitates digital application processes instead of thwarting them with a "printout obligation". The judges have thus interpreted the works council's participation rights in the context of new technologies and digital processes in a way that is both realistic and needs-based. If digital access to the necessary information is guaranteed, e.g. by a works council laptop, the employer is not obliged to submit application documents to the works council in paper form. This assessment can also be generalised to the extent that all information requirements of the works council can regularly be fulfilled by a digital right of access to (the respective) relevant documents and information.

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Limits for late retirement and minimum retirement clauses in occupational survivors' pensions

If a general reference is made in an employment contract of an executive employee to the employer's pension scheme, this is not to be understood, without specific indications, as also referring to a pension scheme that came into existence after the conclusion of the contract in the legal form of a works agreement.

BAG, decision of 21 November 2023 – 3 AZR 44/23

The case

The parties are in dispute about claims from a survivor's pension. The plaintiff's husband, born in 1954, to whom she had been married since 5 January 2018, died on 15 September 2018 as a result of a car accident. His employment contract from 1992 promised an entitlement to a company pension. The relevant pension scheme contained the following provision, among others: "The surviving spouse of an employee (applicant) acquires the entitlement to a widow(er)'s pension upon the employee's death. Additional conditions for entitlement are that the employee (prospective employee) must have married before reaching the age of 60 and that on 1 December prior to his death both the waiting period must have expired and the marriage must have lasted at least one year."

The decision

The BAG confirmed the decision of the Higher Labour Court in the instance before, according to which the invalidity of a late retirement clause (in this case reaching the age of 60) was to be assumed in principle due to age discrimination. Deviations apply if special structural principles of the pension system justify such an age limit. There were no such reasons in the case to be decided. In addition, the BAG confirmed that the minimum retirement period did not stand up to a general terms and conditions review. This clause was invalid because it constituted an unreasonable disadvantage within the meaning of Section 307 (1) 1 BGB (Bürgerliches Gesetzbuch – German Civil Code). According to previous decisions of the court, the employer's interest in limiting the group of pension beneficiaries and, in particular, excluding pension marriages from a survivor's pension is (still) adequately taken into account with a period of one year between the marriage and the death of the direct pension beneficiary. Even these minimum requirements were not met by the clause. It excludes a survivor's pension if the marriage had not existed for at least one year on 1 December prior to the employee's death. Thus, a minimum duration of marriage dependent on the date of death is set from – in the shortest case – one year and one day (date of death on 2 December of a year) up to one year and 364 days (date of death on 1 December of a year), both of which exceed the still permissible minimum duration of marriage of one year.

Nor is the reference to the date of 1 December prior to the employee's death for the calculation of the period justified by legitimate interests. Ultimately, the calculation date only extends the specified minimum retirement period by chance by a variable period, the determination of which depends solely on the time of death. Irrespective of this, the minimum marriage duration clause is also invalid because it prevents the beneficiary from proving that there was no pension marriage.

Our comment

The decision is to be endorsed and once again makes it clear that the need to review existing pension provisions for adjustment due to the financial impact of an inadmissible clause should not be underestimated. This applies both to frequently encountered minimum marriage duration clauses and to late marriage clauses. With regard to the permissibility of a minimum marriage duration clause, two aspects again became clear: Firstly, the clause should be based on the annual limit confirmed as permissible, i.e. the duration of one year should not be exceeded under any circumstances, which is why a link to a cut-off date can prove problematic. In addition, the employee or their spouse must be able to prove that there was no pension marriage despite the short duration of the marriage. Unsurprisingly, the BAG is employee-friendly and considers late marriage clauses to be generally inadmissible. Deviations only apply if special structural principles of the pension system justify such an age limit. Whether this is actually the case should be critically scrutinised in each individual case.

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Reduction in the remuneration of a works council member regarding hypothetical career development

Even in the event of a reduction in remuneration by the employer, the works council member bears the burden of presentation and proof that there is a claim to the previously received remuneration asserted in the lawsuit.

LAG Niedersachsen, decision of 14 February 2024 – 6 Sa 559/23

The case

The plaintiff employee worked for the defendant employer, a car manufacturer, as a plant operator until May 2002 and was classified in pay grade 13. In May 2002, he became a member of the works council and was completely released from his work duties. From this point onwards, his pay grade was increased several times until he reached pay grade 20 in 2015. An internal commission set up at the defendant decided on the level of remuneration, and the defendant informed the plaintiff of its decisions in writing on each occasion.

In 2015, the plaintiff declined the defendant's offer to take on a position as production coordinator, as he had recently taken over the chairmanship of two works council committees and did not want to give up these positions. The parties agreed that the plaintiff would have to be remunerated according to pay grade 20 if he had taken on the position of production coordinator. Following the decision of the German Federal Supreme Court (BGH) of 10 January 2023 (6 StR 133/22), the defendant reviewed the remuneration of its works councils and reduced the plaintiff's remuneration to pay grade 18 from March 2023. The plaintiff asserted his claim for remuneration at pay grade 20. The first instance Labour Court upheld the claim.

The decision

The second instance LAG Niedersachsen dismissed the defendant's appeal against the decision of the Labour Court. The LAG first clarified that the plaintiff had no contractual entitlement to remuneration in accordance with pay group 20. The defendant had not made an offer to conclude a contractual agreement that the plaintiff could have impliedly accepted. It had merely informed him of the remuneration determined by the Remuneration Commission without any intention to be legally bound. A claim under Section 37 (4) BetrVG, i.e. for an adjustment of the salary in line with the customary development of the company, does not exist, as the plaintiff has not demonstrated the requirements for it. The employee bears the burden of presentation and proof for the claim under Section 37 (4) BetrVG even if the employer had previously increased the remuneration with a view to the customary development and is now reducing the remuneration. The LAG rejected a reversal of the burden of presentation and proof in accordance with the principles established by the BAG on the limited protection of the employee's legitimate expectations in the event of corrective reclassifications.

However, the plaintiff's claim is based on Section 611a (2) BGB in conjunction with Section 78 Sentence 2 BetrVG. The

plaintiff had been able to demonstrate that he had not accepted the position as production coordinator only because of his works council activities. According to the BAG's established case law, this was sufficient to justify the works council member's claim to remuneration corresponding to the position not taken on. The decision of the BGH of 10 January 2023 does not contradict this.

Our comment

The decision is unsurprising and ultimately correct with regard to the amount of remuneration determined for the plaintiff. Since the plaintiff was able to prove that he would have been assigned the position of production coordinator, had he not exercised his works council office. He can also claim remuneration for this position. The LAG's comments on any contractual claims of the works council member and on the burden of presentation and proof in the event of a reduction in remuneration are much more relevant. The view taken by the LAG makes it easier for the employer to conduct proceedings in the remuneration process with works council members, as it does not have to prove that the remuneration previously granted constitutes an unlawful favour within the meaning of Section 78 Sentence 2 BetrVG. However, it remains to be seen whether this view of the LAG will be upheld. In any case, the authorised appeal is pending before the BAG (7 AZR 46/24).

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Remuneration character of bonuses for achieving corporate goals – ineffectiveness of a cut-off date clause

A special payment for the achievement of business results constitutes consideration for the work performed by the beneficiary and can therefore not be made dependent on the existence of the employment relationship at the end of the reference period, not even by means of a corresponding cut-off date provision in a works agreement.

BAG, decision of 15 November 2023 – 10 AZR 288/22

The case

The plaintiff employee was employed by the defendant employer until 30 April 2020. According to his employment contract, he was entitled to a "variable remuneration [...] in the form of a [...] performance-related target bonus of 15 % of the gross base annual salary, which is at the discretion of [the employer] and can be changed or supplemented at any time." The exact provisions should be regulated in a company agreement.

This agreement then stipulated, among other things, that the bonus should be based on the company's overall financial success. However, an entitlement to this was completely excluded if the employee resigns before the end of the financial year (in each case on 31 May). In 2020, the plaintiff terminated his employment relationship with effect from 30 April 2020 and, in accordance with the works agreement, did not receive a bonus for the 2019/2020 financial year. With his lawsuit, he is claiming the full bonus, as this has the character of remuneration and the works agreement therefore violates Section 77 (3) BetrVG. The Labour Court dismissed the claim, the second instance Higher Labour Court upheld the plaintiff's appeal on a pro rata basis.

The decision

The BAG confirmed this decision and dismissed the appeals of both parties. The plaintiff was entitled to a bonus in the amount decided by the Higher Labour Court. The reservation of voluntariness in the works agreement does not stand in the way of this because it is ineffective due to unreasonable

disadvantage pursuant to Section 307 (1) BGB. The clause is not based on the reason why claims arise and, moreover, cannot be interpreted within the meaning of Section 305c BGB. In addition, the clause could be interpreted in accordance with Section 305c (2) BGB in such a way that the reservation also covers subsequent individual agreements on the payment of other services, although these take precedence in accordance with Section 305b BGB. The clause is also non-transparent pursuant to Section 307 (1) 2 BGB.

In turn, the plaintiff's claim does not fail due to the invalidity of the entire works agreement, as it was validly concluded. Pursuant to Section 87 (1) No. 10 BetrVG, the works council has a say in the company's wage structure, whereby the authorisation of the parties to the company to conclude the agreement arises in any case from Section 88 BetrVG. Furthermore, corresponding provisions are not covered by the blocking effect of Section 77 (3) BetrVG. Moreover, the invalidity of the provision on self-termination does not lead to the invalidity of the entire works agreement. Only the cut-off date provision of the works agreement was invalid. The fact that the bonus claim is made dependent on the continuation of the employment relationship until the end of the respective financial year violates the principles of law and equity pursuant to Section 75 (1), (2) 1 BetrVG, which also includes the employer's obligation to pay the agreed remuneration pursuant to Section 611a (2) BGB. In any case, the bonus in question also constitutes remuneration in the sense of additional remuneration for work performed, which at 15 % also constitutes a significant part of the total remuneration. Otherwise, remuneration already earned would be withdrawn again in an unauthorised manner. The parties to the works agreement were also bound by this assessment in accordance with Section 88 BetrVG when concluding the works agreement.

Our comment

The fact that remuneration that (also) depends on the company's success constitutes consideration for the employee's work is nothing new. However, with regard to a cut-off date clause, the BAG has so far only ruled that special payments of a remuneration nature in works agreements or individual contracts cannot be linked to the existence of an employment relationship after the end of the reference period (BAG, decision of 12 April 2011 – 1 AZR 412/09). This is only possible in collective agreements. This judgement adds to the fact that a provision that requires an existing employment relationship at the end of the reference period is also invalid in a works agreement. Leaving the company during the year therefore leads to a pro rata entitlement; the bonus can only be cancelled if the defined targets are not or only partially achieved, but these cannot be divided. The regulatory competence of the parties to the works agreement therefore ultimately does not go any further than that of the parties to the employment contract, even if there is no review of the content of works agreements due to Section 310 (4) 1 BGB.

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■ CASE LAW IN A NUTSHELL

Offsetting of double holiday entitlements after unlawful dismissal

BAG, decision of 5 December 2023 – 9 AZR 230/22

If an employee takes up a new job after an unlawful dismissal, holiday entitlements arise cumulatively for both employers. In accordance with Section 11 No. 1 KSchG (Kündigungsschutzgesetz – Termination Protection Act) and Section 615 Sentence 2 BGB, the holiday entitlements of the new employment relationship must be offset against those of the old employment relationship for the calendar year.

The case

The plaintiff is claiming holiday pay for the years 2020 and 2021 from her former employer, a butcher. The defendant gave the plaintiff extraordinary notice of termination without notice. The competent court decides that the termination is invalid, however, the plaintiff started a new job during the termination dispute. Afterwards, she claims that the holiday granted in the new employment relationship should not be offset against the additional holiday entitlement with the defendant. The Labour Court dismisses the action with regard to the requested holiday pay, the Higher Labour Court rejects the plaintiff's appeal.

The decision

According to the BAG, in the case of a double employment relationship due to the invalid termination, holiday entitlements exist in both employment relationships in accordance with the BUrlG so that employees do not bear the risk of non-fulfilment of holiday entitlements alone. The EU Working Time Directive does not provide for double entitlements, so that the BUrlG grants employees greater protection here. According to Sections 11 No. 1 KSchG, 615 Sentence 2 BGB by analogy, however, the leave granted by the new employer should be offset against the leave entitlement with the old employer, as a person affected, such as the plaintiff here, cannot fulfil her obligations from both employment relationships cumulatively. A duplication of entitlements is to be avoided, the offsetting in this context is based on the calendar year in order to take into account the regulatory system of the BUrlG. The annual offsetting also applies to multi-year leave, unless an exclusion has been agreed.

Online evaluation portal for employers must disclose real names or delete negative online evaluations

OLG Hamburg, decision of 8 February 2024 – 7 W 11/24

If the operator of an employer review portal does not provide the name of the author of a negative review, the employer concerned is entitled to have the review deleted.

The case

"Kununu" is an online rating portal in Germany where employers can be rated by current and former employees as well as applicants. Various rating categories are provided. After the plaintiff, an employer, received two negative reviews, it asked Kununu to delete them because they contained negative statements about the employer in several review categories. The employer denied any actual contact with the two authors. Due to a lack of information about their identity, it was not possible to determine whether such any relationship had existed. The operator initially asked the employer to provide further justification for the untrue facts contained in the reviews and the violation of its rights. After the proceedings at issue were initiated, the portal operator contacted the two reviewers and then sent anonymised activity records to the employer as proof of the business contact.

The resolution

The Higher Regional Court of Hamburg (OLG Hamburg) upheld the employer's subsequent immediate appeal and prohibited the portal operator from publishing the two challenged reviews. The court justified this with the liability principles developed by the Federal Supreme Court (BGH) for operators of internet review portals, which are also applicable to employer reviews. If the platform operator could easily recognise an infringement of the law from the objection to a review, i.e. without conducting its own factual or legal review, it was necessary to clarify and assess the entire facts of the case. This was precisely the case here, as the employer had limited its warning to the lack of business contact, so that no further submission on the infringement was required. It was only possible for the portal operator to recognise an infringement with regard to the business contact, which was disputed with nescience. However, the portal operator would not have been able to recognise infringements of the law resulting from the content of the review without further

clarification, as these were predominantly value judgements made by the reviewers. The provision of anonymised job descriptions was not sufficient clarification. The employer could not use these to check who the authors of the assessment were and whether they had worked or applied for a job with the employer. The employer has a right to independently verify the business contact.

The OLG also pointed out that the verification of a business contact is not per se easier for employers than for operators of other review platforms. The special need for protection of employees does not change this. It is true that employees - unlike reviewers of a one-off business contact - have to fear possible consequences for their employment relationship. However, this does not justify employers having to accept the submission of negative reviews on a public platform without the possibility of review. The individualisation of the reviewer vis-à-vis the reviewee is also not precluded by data protection reasons.

Exclusion of fixed-term employees in the social plan

BAG, decision of 30 January 2024 – 1 AZR 62/23

Employees who are not hired until a certain date can be excluded from a social compensation plan by means of a cut-off date provision, even if they are temporary employees.

The case

The defendant employer was responsible for refuelling aircraft at Berlin-Tegel Airport. It planned to shut down its operations for the opening of Berlin Brandenburg Airport (BER) scheduled for 3 June 2012. When the opening of BER was delayed, the defendant concluded several agreements with the airport operator to extend its services; since the first agreement, the defendant has only hired employees on a temporary basis. In March 2014, the defendant agreed a social plan with the works council it had formed, which was to apply to all employees who were in an employment relationship with it on 30 June 2012. Employees who were in a fixed-term employment relationship were excluded, regardless of when this was established. The plaintiff employee, who was employed by the defendant from 8 July 2013 to 30 November 2020 on the basis of two fixed-term employment contracts as an aircraft refuelling attendant, demanded severance pay in accordance with the social plan after the end of his employment. In his opinion, the agreements discriminate fixed-term employees without objective reason. The subsequent action was dismissed by the Labour Court, the Higher Labour Court upheld it on appeal by the plaintiff.

The decision

The BAG upheld the defendant's appeal as well. The plaintiff was not entitled to the requested severance payment because of the cut-off date provision in the social plan, which was effective. When drafting social plans, the parties to the agreement have a margin of discretion that includes standardisations and generalisations. In doing so, they must observe the principle of equal treatment under works constitution law pursuant to Section 75 (1) BetrVG. However, the relevant objective reason for a (permissible) group formation is generally based on the purpose pursued with the respective regulation, i.e. in social plans according to the future-related equalisation and bridging function. According to these standards, the cut-off date regulation did not raise any legal objections. As a result of the group formation carried out, employees hired after 30 June 2012 and employed exclusively on the basis of fixed-term employment contracts were excluded from the social plan. This differentiation was objectively justified because it was aligned with the purpose of the social plan and also did not indirectly violate the prohibition of discrimination against fixed-term employees standardised in Section 4 (2) TzBfG (Teilzeit- und Befristungsgesetz – Part-Time Work and Fixed-Term Act). Because the social compensation plan serves to compensate for or mitigate such economic disadvantages that arise as a result of the planned operational change, the parties to the company may typically assume that the employees who have established an employment relationship after the (originally) intended closure of the company have no such disadvantages. Temporary employees could not have the expectation from the outset that their employment relationship would not only be temporary.

Inadmissibility of evidence from private chats even on company devices

LAG Bremen, decision of 7 November 2023 – 1 Sa 53/23

If the employer obtains knowledge of alleged breaches of duty by the employee by viewing private chat histories on a work computer, this evidence is inadmissible in court proceedings even if the use of the work computer for private purposes is prohibited.

The case

The plaintiff had been employed as a paralegal by the defendant, who runs a law firm specialising in criminal law, since 2020. At the beginning of 2022, she was initially in official quarantine due to a COVID infection and was subsequently on sick leave for a further week. In autumn 2022, EUR 50 were stolen from the wallet of a student assistant at the defendant's office, while only the plaintiff was present. The defendant then checked the plaintiff's work computer, in particular chat histories stored on WhatsApp, the browser version of which the plaintiff used, although she was prohibited from using her work PC privately. The defendant's "research" went back to February 2022. He terminated the employment relationship without notice in a letter dated 26 October 2022. On the same day, the plaintiff called another colleague and asked her to lend her the office key so that she could deposit a EUR 50 note in the student assistant's work area. The Labour Court upheld the plaintiff's subsequent action for unfair dismissal.

The decision

The Higher Labour Court of Bremen (LAG Bremen) upheld the plaintiff's appeal. There was good cause for the extraordinary dismissal pursuant to Section 626 (1) BGB. The court considered itself sufficiently convinced that the plaintiff had stolen the EUR 50 within the meaning of Section 286 (1) 1 ZPO (Zivilprozessordnung – German Code of Civil Procedure) due to the witness examination of the colleague who called the plaintiff on the day of the dismissal. However, the content of the WhatsApp messages should not be taken into account, as these are inadmissible as evidence. A procedural ban on the presentation of facts and the use of evidence could arise due to a violation of the right of privacy. If the employer monitors an employee's recognisably private communication following a merely vague reference to a criminal offence or breach of duty, the associated data collection and processing is also not prohibited under Sections 5 et seq. of the EU General Data Protection Directive in conjunction with Section 26 BDSG (Bundesdatenschutzgesetz – German Data Protection Act). This also applies if the use of the workplace computer for private communication is prohibited. In the present case, the defendant analysed at least eight months of the plaintiff's private WhatsApp conversations – allegedly to discover that the plaintiff had deliberately contracted COVID. This constituted a serious and unjustified interference with the plaintiff's right to privacy. However, the extraordinary termination was ultimately justified because the theft was to be regarded as proven and the relationship of trust between the parties was decisively disturbed as a result. The appeal was not allowed, although the decision was exactly the opposite of a more recent one by the BAG (BAG, decision of 29 June 2023 – 2 AZR 296/22, presented in our Newsletter 3/2023).

No compensation for data leaks in the event of a purely hypothetical risk of misuse

ECJ, decision of 14 December 2023 – C-340/21 (VB/ Natsionalna agentsia za prihodite) and decision of 25 January 2024 – C-687/21 (BL/MediaMarktSaturn Hagen-Iserlohn GmbH)

If there is a causal link between non-compliance with data protection law and damage, the loss of control over one's own data alone can also constitute non-material damage to a data subject; however, the purely hypothetical risk of misuse is not sufficient for a claim for damages if no third party has viewed the data.

The case

In two consecutive cases, the ECJ had to decide when non-material claims for damages can exist in the event of data loss. In the first case, which originated in Bulgaria, it became public in mid-2019 that the federal authority responsible for the collection and administration of taxes and social security contributions had suffered a cyberattack in which the personal data of six million citizens had been stolen and published on the internet. Hundreds of data subjects subsequently claimed non-material damages for the disclosure of their data, including the plaintiff in the main proceedings. In their view, non-material damage also consists of the fear that their personal data, which was made public without their consent, will be misused in the future. The Supreme Administrative Court of Bulgaria referred various questions to the ECJ regarding the nature and conditions of the claim for damages pursuant to Art. 82 General Data Protection Directive.

The second case comes from Germany. The plaintiff there visited a branch of the electronics retail chain "Saturn", where he purchased an appliance and took out financing for it. However, the associated purchase and credit documents were mistakenly given to another customer on site. An employee of the shop noticed the mistake and arranged for the other customer to return the documents about half an hour

later without having seen them. The plaintiff nevertheless claimed compensation for non-material damage that he believed he had suffered due to the error and the resulting risk of losing control of his personal data. The Civil Court (AG) Hagen referred a number of related questions to the ECJ concerning the claim for non-material damages.

The decision(s)

The ECJ first commented on the question of whether unauthorised disclosure of or access to personal data by third parties alone is sufficient to assume that the technical and organisational measures taken by the controller for the processing in question are not "appropriate" within the meaning of the General Data Protection Directive. The measures should take into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing in question, so that they are technically and organisationally appropriate to the risks presented by the data processing in question. The Directive does not require the risk of data breaches to be (completely) eliminated. Unauthorised disclosure or unauthorised access to data is not sufficient to conclude that the measures taken were not suitable in this sense. At the same time, the responsible party is not released from its obligation to pay damages simply because the damage was caused by a third party. Exemption from liability is only possible if the controller proves that it is not responsible in any way for the circumstance that caused the damage. A data breach by third parties – such as cyber criminals – can only be attributed if this was made possible by the controller disregarding the provisions of the Directive. The mere fact that a data subject fears that their data will be misused as a result of a breach of the Directive could constitute non-material damage within the meaning of its Art. 82 (1) in this context. In this respect, the "loss of control" over one's own data also falls under the concept of "damage", even if no misuse has actually taken place.

In the second case, the ECJ stated that the disclosure of individual data to an individual is not in itself sufficient to assume that the controller has not taken appropriate technical and organisational measures for data protection. An erroneous disclosure of data to an unauthorised third party could indeed indicate a lack of suitability if the controller does not specifically take the respective risks into account due to negligence or organisational deficiencies. However, the circumstance of erroneous disclosure should not be taken into account alone; rather, all evidence submitted must be taken into account to prove the suitability of the measures. With regard to a potential claim for damages, the severity of the infringement does not affect the amount of damages, even if the damage is immaterial. However, a mere breach of the General Data Protection Directive is not sufficient to justify a claim for damages; a causal link between the breach and the damage is always required. The latter could already exist because the data subject fears that their data will be disseminated or even misused. Meanwhile, a purely hypothetical risk does not lead to compensation, for example if no third party has de facto taken note of the data in question.

■ INTERNATIONAL NEWSFLASH FROM UNYER

France: The CSR Directive as an acceleration of a new, sustainable business model

The Corporate Sustainability Reporting Directive (CSRD) adopted as part of the European "Green Deal" obliges certain companies to publish a sustainability report based on the ESG criteria environment (E), social (S) and governance (G). The CSRD is an important step towards greater transparency in corporate social responsibility policy.

The CSRD, which came into force in France on 6 December 2023, is being introduced gradually and affects around 50,000 companies across Europe. In the current year, it already applies to large companies (more than 500 employees, EUR 50 million net turnover and/or EUR 25 million balance sheet total). In 2025, it will be extended to companies with at least 250 employees and a net turnover of EUR 50 million or a balance sheet total of EUR 25 million. Another year later, it will be extended to small and medium-sized enterprises listed on a European market (excluding micro-enterprises). In 2028, it will apply to large foreign groups – this time excluding those listed on a European market.

The CSRD is an important lever for strengthening CSR/ESG policy in six specific social and governance-related areas:

- promoting social, economic and societal dialogue by addressing issues such as the environment, integration and parenthood;
- strengthening due diligence along the entire value chain;
- implementation of value sharing measures;
- investment in skills development and ongoing training;
- protection of whistleblowers;
- involvement of the management and the Executive Board.

Expert advice is key to implementing the new reporting obligations. The legal implications of the new regulations are complex. As managing directors and other responsible parties must not only report correctly, but also develop sustainable strategies without the risk of "greenwashing", the consequences must always be carefully weighed up – especially in order to avoid legal proceedings.

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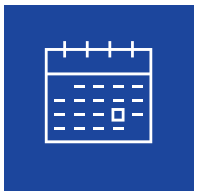

You will find an overview of our events here.

You will find a list of our current publications here.

You will find our blog here.

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