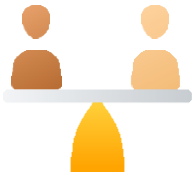
10/01/2023

Annual Overview

January

The year 2022 began with a number of important statutory amendments:

- For example, the periods applicable to the **Works Council's active and passive right to vote** will be reduced from six and twelve months to three months, respectively. This means that 'persons employed within the enterprise' for more than three months may cast votes and nominate themselves as candidates for election. Temp agency workers' employee participation position will also be bolstered. The phrase "persons employed within the enterprise" will then also include temp agency workers who have been employed for at least 15 months (this was formerly 24 months).



- The **diversity quota** for *listed companies* and the mandatory target scheme, in support of a more gender-balanced composition of industry leadership, have been introduced. As a result of the diversity quota, the appointment of a supervisory board member that does not contribute to a "balanced composition" of that board is invalid. A balanced composition is understood to mean at least one third women and one third men. In addition, a target scheme will be introduced that obliges *large companies* to adopt 'suitable' and 'ambitious' objectives in the form of targets. Both the management report and the report to the SER must explain how the diversity plans are being realised.

- From now on, only **mandatory occupational health and safety facilities** will fall within the scope of the specific tax exemption that allows employees to be reimbursed for these free of tax. These facilities include, for example, ergonomic desk chairs, safety shoes, special work clothes, etc. Occupational health and safety facilities that promote employees' general health will no longer fall within the definition of 'mandatory'. Examples of such facilities include offering healthy meals, athletic activities, health check-ups and chair massages.

The first ground-breaking judgments were quick to arrive in 2022.

On **6 January**, the Rotterdam Subdistrict Court held that the triggering of a condition subsequent in an employment contract does not entail that an employer must always meet its reassignment obligation or pay compensation. The case in question involved an employment contract that had terminated by operation of law because the employee had failed to meet the educational requirements for the position. The Subdistrict Court held that in such situation, an employee is not obliged to provide reasons for declining to reassign the employee. Compensation is also not owed because (1) the employee did not claim that compensation within the prescribed term and (2) the statutory exception – which directs that an employee is not entitled to compensation if the termination of an employment contract is dependent on an event rather than on a date – applied.

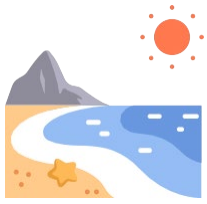
On **21 January**, the Supreme Court held that when assessing whether a dissolution is the consequence of a seriously culpable act or omission on the part of the employer, all the circumstances of the case must be taken into consideration in relation to, and in conjunction with, one another; the circumstances cannot be considered separately. According to the Supreme Court, this means that an employer may be considered to have engaged in seriously culpable acts if it repeatedly engages in inappropriate, careless and/or culpable contract, even if those acts would not be considered seriously culpable if viewed separately. This means that the totality/repetition of the facts and circumstances may constitute serious culpability on the part of the employer.

In that same judgment, the Supreme Court held that if an employee in a dormant employment relationship requests the employer to terminate their employment subject to being paid a transition allowance, the employer may not condition the termination of the employment on the employee's granting the employer a full and final discharge for other claims, such as a claim for fair remuneration.

February

On **8 February**, the Court of Appeal of 's-Hertogenbosch rendered an interesting ruling on deductions from holiday leave during illness. The employee had requested holiday leave for a six-week tour of Norway, which the employer granted. Subsequently, the employee became fully incapacitated (no rehabilitation options). He went on the scheduled holiday and the employer deducted the time from the employee's holiday leave. The employee objected to this.

The Court of Appeal held that in that situation, Article 7:638(8) Dutch Civil Code also applies, as the request for holiday leave had already been granted before the employee became ill and holiday leave can only be deducted if (1) the employee agreed to this deduction during their illness or (2) if this statutory provision has been deviated from in a written agreement, to the extent that the agreement relates to holiday leave that exceeds the statutory minimum. According to the Court of Appeal, a collective bargaining agreement does not qualify as such an agreement. According to the Court of Appeal, should the employer actually wish to proceed with deducting that holiday leave, an employee in situation (1) must, after the illness, consent again and explicitly to that deduction.



On **22 February**, the Zeeland-West-Brabant District Court rendered a ruling on the issue of whether, after a business was transferred, an employee who was unprepared – and *refused* – to transfer from the Netherlands to Germany (approximately 450 km away with a one-way commute of 5-6 hours) could claim compensation. The Subdistrict Court Judge held, briefly put, that established case law dictates that an employment contract with the transferring party terminates by operation of law if an employee does not wish to be employed by the transferee. The travel distance in this case was more than could be reasonably required of an employee, also in light of the fact that the employee had children, which means that the transfer of the business would constitute a substantial change of the terms and conditions of employment that worked to the detriment of the employee. In that case, the employment contract must be considered to have been terminated at the employer's initiative. That is essential for the right to a transition allowance and *compensation* for wrongful termination, which the employee in question was claiming in this case.

With regard to the question of whether there was also a right to fair remuneration, the court held that the mere fact that (a) in this case, the employer waited too long to inform the employees about the transfer of the business *and* (b) the information letter contained incomplete or incorrect information, including the information that the employees had no choice but to transfer to Germany or to leave without any severance pay, still did *not* rise to the level of a finding of serious culpability. In this case, however, the scale was tipped by the employer's hostile attitude during the negotiations (the manager repeatedly approaching the employee personally and the pressure exerted on the employee by e-mail to agree to the proposal). In this case, therefore, the employee was claiming fair remuneration in addition to the transition allowance and compensation.

Purpose is to restrict unnecessary use of non-competition clause

The non-competition clause is not intended to bind the employee, even when the labour market is tight. A non-competition clause is meant to protect the employer's position on the market, such as its know-how and goodwill. This was affirmed by the Supreme Court on 17 June 2022.

In practice, however, 1 in 3 employers use the non-competition clause to prevent staff attrition according to the report published by Panteia. In a parliamentary letter dated **25 February**, the Minister of Social Affairs and Employment (SZW) stated that this report was reason to seek out policy alternatives to restrict unnecessary use of the non-competition clause. The minister listed four policy alternatives:

- The maximum term of a non-competition clause must not exceed one year after the employee leaves the company; the geographical scope of the clause must be specified and substantiated. The clause may only be relied upon if the employee resigns; it lapses in the event of the employer's bankruptcy and in cases of dismissal during the trial period. The employer must inform the employee in good time about whether or not it intends to invoke the clause, so that the employee can take this into account before making a new career move;
- Alternative 1, expanded to include: a mandatory payment (after the fact when the employer relies on the clause, and the option for the employer to be obliged to pay in advance so that the employer can assess whether the clause is genuinely necessary);
- Alternative 1, expanded to include: the clause may only be invoked if the situation involves a substantial business interest, which interest must be justified by the employer when the clause is entered into as is also currently the case for a fixed term contract;
- Alternative 1 + the mandatory payment in Alternative 2 + Alternative 3.

The social partners support the amendment of the statutory rules on non-competition clauses. The trade unions prefer policy alternative 4. Employers believe that policy alternatives 1 and 3 could work. Time will tell how these policy alternatives will be fleshed out.

March

On **29 March**, the Amsterdam Court of Appeal held that a former partner at Deloitte was *not* an employee. The former partner was a part owner of Deloitte, but asserted in the proceedings that he had an employment contract with Deloitte, along with all the protective rules for employees that such contracts entail.

The Amsterdam Court of Appeal was fairly clear and declined to concur. In the first place, according to the Court of Appeal, he did not receive a salary, but remuneration from an enterprise (i.e. a profit distribution). In addition, there was no relationship of authority between the partner and Deloitte. For example, the partner had a right to vote in the General Meeting of Shareholders, he participated in the annual partners' meetings, there were discussions about turnover results, the partners conducted themselves towards one another as equals, and the partner was free to accept or reject client engagements.

When it comes to law firms, consultancies, accounting firms and other advisory firms, the ownership structure is so tax-friendly that it is customary for partners to receive profit distributions rather than salaries. For now, companies can allow themselves a sigh of relief, although whether an employment contract is assumed to be in place is strongly dependent on the circumstances of a given case.

On **31 March**, at the government's request, the SER published an advisory report on the future of hybrid working after the COVID-19 crisis, in which it advised the government to afford employees more control when it comes to utilising (or better utilising) the opportunities for hybrid working. In that context, employers have sufficient options that are suitable for their organisations. The advisory report offers a basis for employers and employees to make agreements on a suitable balance between working from home and working on-site. According to the SER, this will allow everyone to avail themselves of the opportunities hybrid working has to offer.

When organisations set up hybrid working, they need to strike a balance between control and customised solutions so that everyone's interests can be taken into consideration by means of consultation and collective arrangements. The SER thus considers that there are several preconditions that should serve as starting points when setting up hybrid working:

- The employee has sufficient control to be able to avail themselves of the opportunities presented by hybrid working;
- The employer has sufficient options for arriving at customised solutions so that hybrid working can be set up in a way that is suitable for the work done in the organisation;
- The rules regarding control in terms of place and time encourage the parties to consult one another and agree on arrangements together.

The government is drafting an "Agenda for the Future of Hybrid Working" (*Agenda voor de toekomst van hybride werken*) to provide additional support for the vision of the new way of working. The SER advisory report will be used as one of the building blocks for the Agenda.

April

On Tuesday, **19 April**, the House of Representatives adopted the bill for the Transparent and Predicable Working Conditions Directive Implementation Act. That act entered into force as at 1 August. Employers must be aware that employment law has been amended in several respects:

- From now on, employment contracts must provide employees with much more **information**, such as information regarding all types of paid leave, dismissal rules and overtime compensation, as well as the name of the hirer
of the services of a temp agency worker or an employee working through a payroll service. Employers will be able to satisfy some elements by simply referring to
the law, a manual or a collective bargaining agreement. That collective bargaining agreement or manual must reflect the new statutory requirements;
- **Study expense clauses** for mandatory schooling are void. The employee will no longer be required to bear, after the fact or otherwise, any costs relating to training required by law;
- Employees **with unpredictable work days**, such as on-call workers, can no longer be obliged to work on days that were not designated as reference days by the employer in advance;
- An **ancillary activities clause** is invalid if the employer has not provided an objective ground justifying the prohibition against working elsewhere. Incidentally, employers are not obliged to include the objective reasons in the ancillary activities clause itself. Therefore, employers will still have to provide objective grounds for invoking the clause against an employee. If an employer cannot do so, the clause will be void.

If things have gone as expected, your employment contracts and/or manuals were recently amended to reflect these rules!

On **26 April**, for the first time (!), a court set aside an employment contract on the "f ground" (Article 7:669(3)(f) Dutch Civil Code). The case involved an pharmacy assistant who, for religious reasons, did not want keep her lower arms bare while working, a requirement imposed by the hospital to optimise infection prevention.
After the employee had rejected alternative positions, the employer applied to the court to terminate her employment contract. The court held that 'the employee's refusal to perform mandatory work' also includes the situation in which the employee cannot and does not wish to perform the work in the manner demanded by the employer due to a serious conscientious objection. According to the Subdistrict Court, since the modesty in dress requirements of her religion (long sleeves) severely limited her possibilities for reassignment, the only option left was the termination of her employment contract. The pharmacy assistant did receive the statutory transition allowance, however.

On **28 April**, after the Advocate General of the ECJ issued an opinion on 9 December 2021 in the *FNV/Heiploeg* case, to the effect that a "pre-pack" qualified as the transfer of a business, it was the ECJ's turn to render an opinion on the nature of the pre-pack. The pre-pack, also known as a "pre-packed bankruptcy sale", is a construction in which preparations for the relaunch are already made prior to the bankruptcy. If the business is subsequently declared bankrupt, the relaunch immediately follows, so that the business suffers little, if any, loss.

Pre-pack, or pre-packaged bankruptcy, still an option

The most important question to be answered was whether the pre-pack fell within the exception provided in European directive that excludes employee protection when a business is transferred while in the midst of bankruptcy or similar proceedings with a view to liquidating the transferor's assets under the supervision of an authorised government agency (i.e. a trustee in bankruptcy). The ECJ held that pre-pack proceedings, followed by bankruptcy proceedings are intended to ensure that, as much as possible, joint creditors are paid and jobs are retained. The purpose of a pre-pack with a view to liquidation is intended to increase the chances that creditors will be paid. Pre-pack and bankruptcy proceedings can therefore be considered as intending to liquidate the business within the meaning of the European directive. And the pre-pack construction was thus saved.

May

On **20 May**, the Supreme Court rendered a judgment on the scope of the ban on obstruction in respect of self-employed persons without employees ('self-employed persons'). The ban on obstruction ensures that an employer that assigns an employee to work for a third party cannot obstruct that employee from entering that third party's employment after the assignment ends. The issue in this case was obstruction by means of a non-solicitation clause in the contract.

The ban on obstruction has been the frequent subject of litigation in recent years. In a previous judgment, the Supreme Court held that the ban on obstruction regarded not just 'employment contracts', but 'employment relationships' as well. The question that arose in response to this judgment was whether the ban on obstruction also applied to the assignment of a self-employed person. The Supreme Court qualified its answer, holding that the Waadi – the Placement of Personnel by Intermediaries Act – does not automatically apply if a temporary employment agency assigns a self-employed person to work under the guidance and supervision of a hirer. That act only applies if the self-employed person can actually be equated with an employee. The ban on obstruction can apply to self-employed persons, therefore, but it does not apply automatically.

After a lengthy conflict, the Arnhem-Leeuwarden Court of Appeal held on **30 May** that the former CFO of Volksbank did actually have an employment contract with Volksbank. The Court of Appeal weighed all the circumstances of the case, including the fact that the CFO received a monthly payslip, had annual performance reviews, ran no entrepreneurial risk, and the position of CFO was part of Volksbank's job classification system. Since the case involved an employment relationship, Volksbank was not entitled to terminate the contract without reason. The CFO was entitled to fair compensation equal to nine times his monthly salary. There is a thin line between being an employee and being self-employed!

June

Once an employee has been on sick leave for more than two years, the employer is no longer obliged to continue paying their salary (this is also referred to as a 'dormant employment relationship') and the employee may apply to the Employee Insurance Agency UWV ('UWV') for leave to dismiss the employee. In that case, the sick employee is entitled to a transition allowance. The transition allowance compensation scheme enables the employer to recoup the transition allowance from the UWV. It was for that reason that, a few years ago, the Supreme Court held that an employer must reasonably grant the request of an employee who has been sick for longer than 104 weeks to terminate the employment contract subject to the payment of a transition allowance.

On **1 June**, the Central Appeals Tribunal held that the UWV mishandled this compensation scheme in a specific situation. This case centred on the issue of whether there is a claim for compensation for payment of a transition allowance if the two years of incapacity for work elapsed prior to 1 July 2015 and the employment relationship was terminated on or after 1 July 2015. Specifically, there was no requirement before 1 July 2015 that an employee had to be paid a transition allowance upon termination of their employment. A majority of the judges recently held that there is no obligation to terminate the employment contract if the two years of illness ended before 1 July 2015. In those cases, after all, the UWV did not grant compensation for the payment of a transition allowance, because they only did so if the two years of illness ended after 1 July 2015.

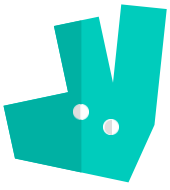
The Central Appeals Tribunal has now held that this is an overly strict reading of the law. The UWV's interpretation contravenes the purpose of the compensation scheme, which is to incentivize employers to terminate dormant employment relationships. That means that an employer is also entitled to compensation for paying a transition allowance in a situation in which the employment relationship was terminated after 1 July 2015, but the two-year period of incapacity for work ended before 1 July 2015.

On **17 June**, the Advocate General of the Supreme Court rendered an opinion that people delivering meals for Deliveroo work on the basis of an employment contract. According to the Advocate General, when answering the question of whether the Deliveroo meal delivery persons had an employment contract, the primary factor is the interpretation of the criterion 'in service of the other party' (i.e. the authority criterion). In that context, according to the Advocate General, it is relevant to determine whether the work is embedded in the enterprise of the party providing the work. Aspects of this are:

- core activities are being performed;
- the work is permanent in nature;
- the organisational framework within which the work was being performed.

The authorisation of the party providing the work to issue instructions has become far less relevant to assuming whether or not there is a supervisory element involved. This is because the 'authorisation to issue instructions' criterion does not have a sufficiently distinctive character. Specifically, in a relationship governed by a contract for services, the principal is always authorised to issue instructions to the contractor. Employees are also working more independently, which means fewer instructions are required. Technological developments make it possible for instructions to be given by software and algorithms rather than by traditional methods. It is almost impossible to establish whether a worker receives instructions. The question is whether the Supreme Court will concur with the Advocate General.

The Supreme Court's judgment was initially scheduled for publication on 23 December, but publication has been postponed to 10 February 2023.



On **24 June**, the Supreme Court rendered judgment in a case in which a physical education instructor's engaged in transgressive behaviour, holding that there was no legal basis for the rule of thumb that transgressive behaviour in a relationship of dependence inherently constituted seriously culpable conduct that would deprive the employee of their right to a transition allowance.

July

On **5 July**, the House of Representatives passed the Work Where You Want Act. This act is changing the statutory rules for employers who receive employee requests to work from an alternative location.

The current Flexible Working Act allows employees to submit a statutory request to work elsewhere (such as at home). Currently, it is fairly easy for the employer to disregard this request; all the employer needs to do is consider the request and engage in a discussion on the matter. In contrast to requests made regarding work duration or working hours, the employer does not have to have a serious business or service interest to a reject a request to work elsewhere. The Dutch Work Where You Want Act is about to change this criterion.

The legislative proposal now states that the employer must assess the employee's request "according to the standards of reasonableness and fairness". This means that the employer must carefully weigh all the various employer and employee interests involved before making its decision. At the same time, the employee will be required to provide "sound reasons" for their request. The legislative amendment gives the employee a stronger position from a legal point of view, while the employer will retain its freedom in terms of customisation. The legislative proposal now lies before the Senate for approval.

In this respect, too, Minister Van Gennip also sent a "framework letter" to the House of Representatives on **5 July** outlining the labour market reforms desired by the cabinet. The government believes that the labour market requires fundamental changes to be put in place to ensure it is future-proof. Given the importance of having a balanced labour market package in place, the government is striving to reach decisions by no later than early 2023 on the details of measures that will make being an employer more attractive and increase the agility of enterprises. In the same period, the government expects to be able to present concrete legislative proposals to better regulate flexible contract forms. These involve government intentions to make a number of significant improvements to the regulations governing work. To provide greater security to workers who have flexible contracts, the government states that, in principle, structural work will be organised on the basis of open-ended employment contracts, in line with the SER's criterion. The reason behind this is also to achieve more sustainable employment relationships.

The following desirable measures stand out:

- On-call contracts in their current form must be abolished (the exceptions being pupils and students);
- The government wants to curb revolving-door arrangements. The desire is therefore to put regulations in place ensuring that the "chain" of contracts does not restart after an interim period, but that all previous work is part of the chain;
- Continued payment of salary during illness will be improved by, in principle, focusing rehabilitation in the second year of illness on returning to work at a different employer (emphasis only on the second track);
- Temporary employment contracts are further regulated and restricted so that the position of temporary workers
- is improved; mandatory invalidity insurance for self-employed persons;
- The enforcement moratorium on sham arrangements will be lifted by no later than 1 January 2025, earlier, if possible; the introduction of a
- rebuttable presumption that a self-employed person is an employee.

Whether and to what extent the government's intentions will all be implemented remains to be seen, but it certainly provides insight into how the government want to move forward.

August

On **1 August**, the Transparent and Predictable Working Conditions Act entered into force.

On **2 August,** the Paid Parental Leave Act entered into force. Under this law, parents receive unemployment benefits amounting to 70% of their daily pay (up to 70% of the maximum daily pay) during the first 9 of the 26 weeks of parental leave. The precondition is that they take these 9 weeks in the child's first year of life. The remaining weeks can be taken as unpaid parental leave.

September

The provision in temporary employment collective bargaining agreements regarding immediate termination of the temporary employment contract in event of illness or a work-related accident affecting the temporary worker, is not legally valid. That's what Advocate General de Bock advised the Supreme Court in her opinion dated **23 September**.

A temporary employment clause states that in the event of illness or accident affecting the temporary worker, the posting will be deemed terminated with immediate effect at the request of the hirer. Consequently, if the temporary worker reports sick, the employment contract with the temporary employment agency will end immediately.

The collective bargaining agreements for the NBBU (Dutch Association of Intermediary Organizations and Temporary Employment Agencies) and the ABU (Dutch Federation of Private Employment Agencies) both include such a provision. The Advocate General argues that this is not valid. First, the fiction included in the clause that the hirer is deemed to have made a termination request upon reporting sick is contrary to the law. Indeed, the law requires the hirer to request that the temporary worker's posting be terminated.

Second, the construction opted for – the temporary worker reporting sick serves as a condition precedent to the employment contract between the temporary worker and the temporary employment agency, and by fulfilling such condition precedent the employment contract ends by operation of law – is not permitted. This condition precedent is at odds with the statutory system of dismissal. The fact that the temporary worker is immediately dismissed on reporting sick is contrary to the legal protection the legal dismissal system offers the sick employee. The Advocate General argues that including such a condition precedent in the temporary employment contract is not allowed.

The Supreme Court's judgment is expected on **17 March 2023.**

October

On **7 October**, the Supreme Court held that a request for dissolution of the employment contract could constitute interference with an employee's freedom of expression. The case involved an employee who had published a critical book about her experiences in relation to a new form of education introduced by her colleagues at the ROC (Central Netherlands Regional Education and Training Centre).

The Supreme Court held that the publication of a book falls within the protected right to freedom of expression. Pursuant to established case law handed down by the European Court of Human Rights, an interference in the freedom of expression exists not only when a publication ban is imposed, but also when employment-law penalties are attached to an expression. A request for dissolution of the employment contract is deemed a penalty imposed under employment law. The Court of Appeal held that the request for dissolution was in response to the impact that the content of the book had on the internal and working relationships, resulting in the disruption of the employment relationships. According to the Supreme Court, this means that there is a causal link between the publication of the book and the request for dissolution, and thus that the request for dissolution constitutes an interference with freedom of expression. Such interference is legally tenable only if the interference can be justified.

On **25 October**, the Roermond Subdistrict Court handed down an interesting judgment on unlawful trial period dismissal. It concerned an employee who entered into a fixed-term employment contract which commenced 1 May 2022 with a one-month trial period. On 12 April, the employee was diagnosed with an aggressive form of lung cancer. The soon-to-be employer issued the trial period dismissal by letter dated 28 April 2022, two days prior to the employment contract taking effect. The employee believes that termination was discriminatory, and that she is entitled to fair compensation.

The Subdistrict Court ruled that the only conclusion that could be drawn was that the dismissal given by the employer was inextricably linked to the employee's illness. Thus, the employer acted in violation of Article 4 of the Equal Treatment of Disabled and Chronically Ill People Act. In other words, the Subdistrict Court ruled that this constituted unlawful and discriminatory dismissal. The Subdistrict Court then awarded the employee fair compensation of EUR 33,000, working on the basis of a one-year employment contract.

A dismissal during the trial period does have limits, particularly if it involves discrimination on grounds of illness, chronic or otherwise.

November

On **11 November**, the Supreme Court held that the compensation in lieu of notice is always owed if the notice of termination or continuance of a fixed-term employment contract was not given in writing. The Supreme Court held that the fact that the employee had already received oral notice that the employment contract would end and was not disadvantaged by the fact that no written notice had been given (the employee immediately found a new job) does not alter this. In short, always give **written** notice of termination of the employment contract at least one month before the employment ends in order to avoid a possible notice penalty of up to one month's salary (this risk can be mitigated if the notice is included in the employment contract in advance).

Notice of termination or continuance of a fixed-term employment contract must always be given in writing!

In another judgment on **11 November**, the Supreme Court held that employers are also entitled to compensation for the transition payment in cases involving dormant or semi-dormant employer/employee relationships. This is a follow-up to the *Xella* judgment, which held that employers must reasonably agree to a proposal for termination of the employment of dormant employees subject to the award of the transition payment.

The Supreme Court held that:
(1) employers may also receive compensation for the transition payments made in respect of dormant employment relationships entered into prior to 1 July 2015.
(2) the *Xella* obligation only covers employment termination proposals made by employees on or after 20 July 2018.

December

On **16 December**, the government announced that it would present improved legislation to combat sham self-employment before the summer. New legislation will need to provide clarity on who is deemed self-employed and who is not. In this respect, the legal concept of "organisational embedding" will, in addition to the "relationship of authority", play a prominent role in determining whether self-employment or employment exists. Embedding is about the extent to which someone is part of, or in other words "embedded in" the organisation. If a self-employed person performs essentially the same work as an employee of the organisation, they will soon be deemed part of the organisation.

The government's objective is to achieve more balanced labour markets and clearer rules regarding self-employment. The government intends improving the situation in broad outline, in three key areas:

- Creating a more level playing field; differences in terms of taxes and social security between employees and self-employed persons should be reduced;
- More clarity on the assessment of the employment relationship (self-employed person or employee). In addition to the "relationship of authority", the concept of "embedding in the organisation" should be codified in law;
- Strengthening and improving enforcement relating to bogus self-employment in the short term (probably from 1 January 2025).

The impact of these new laws is likely to be significant. Indeed, the use of the term "embedding" in legislation will mean that some self-employed persons will no longer qualify as self-employed persons. Consider, for instance, self-employed healthcare workers, who perform practically the same work as their colleagues who have employment contracts. Interest groups representing self-employed persons have expressed disappointment at the government's plans. It remains to be seen how the government will flesh out these plans.

On **22 December**, the House of Representatives adopted the Future Pensions Act, but only after an exceedingly in-depth debate. This brings a new pension system one step closer to formation. The Senate must still pass the law. Given the upcoming Provincial Council Elections in March 2023, this is not yet a done deal, as this could significantly change the composition of the Senate. If the Senate gives passes the law, the Future Pensions Act will enter into force on 1 July 2023.

If you have any questions, please feel free to contact any one of our legal team!

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