



A BDO Legal Guide to
THE S IN ESG
Green clauses
in employment
contracts



#Social

Sustainability or ESG (Environment, Social & Governance) is increasingly on the agenda of organisations.

This can be due to intrinsic motivation or the increase in laws and regulations, such as the Corporate Sustainability Reporting Directive "CSRD". Questions from clients, suppliers and employees about an organisations' sustainability goals can also play a role in this. Sustainable or "green" employment conditions can be a way to give substance to the "S"(social) in ESG.



CSRD: REASON TO MAKE CHANGES IN PERSONNEL POLICY

Under the CSRD certain companies are required to report on ESG, including – among other things – their personnel policy. Examples include work-life balance, equal pay and the involvement of the works council. This reporting is based on so-called data points. The outcome of an analysis of the data points regarding the S (social) may give reason to make changes to personnel policy.

On the one hand, these changes can be made from a compliance perspective. On the other hand, updating the personnel policy can also be an opportunity from the perspective of being a good employer and support the retention strategy. For instance, integrating green elements into the employment conditions can be a way to attract and retain employees.

BENEFITS FOR EMPLOYEES: GREEN EMPLOYMENT CONTRACT

Some employees consider green employment conditions to be more important than others. In order to increase an organisation's own sustainability ambitions, it can therefore be useful to facilitate sustainable working conditions by introducing a green employment contract, meaning the establishment of an employment relationship that includes a range of green employment salary and labour conditions.

There are various opportunities to add more sustainable conditions to an employee's contract. For example, the granting of extra holiday pay or extra holidays if the vacation includes a sustainability activity and/or if the employee uses the train instead of the aeroplane to travel to the holiday destination. Sustainability can also be promoted in other ways, such as donating a Christmas gift to charity and/or providing the opportunity to use work hours for home sustainability efforts.

One way to find out what employees need and what would improve their wellbeing in a sustainable way, is to conduct a survey. Needs can also vary depending on the different life stages that employees are in.

TAX & EMPLOYMENT LAW CONSIDERATIONS

Supplementing and changing employment conditions is subject to strict regulation. In addition, a change in an employee's contract can have tax implications that need to be taken into account. Tax and employment law considerations can vary in the different member states of the European Union.

BENEFITS FOR EMPLOYERS

For organisations, there are several advantages for updating the personnel policy and introducing sustainable employment conditions. These include, among others:

- **Complying with (new) laws and regulations in the field of ESG.** The CSRD is a good example of this. But in addition, other European legislation that specifically focuses on the S in ESG, such as the Directive to strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value Between Men and Women Through Pay Transparency and Enforcement Mechanisms (EU Directive 2023/970).
- **Employees find sustainability increasingly important and also set requirements for this when they start working for a new employer.** In addition, it can contribute to employee retention.
- **Meeting the requirements of clients and suppliers who are increasingly asking what the company is doing in the field of ESG.**

This BDO Legal guide is designed to give you an overview of these considerations in some of those countries.



Belgium



EMPLOYMENT LAW CONSIDERATIONS

The introduction of new employment conditions are recommended to be recorded in writing for clarity and validity. Depending on the source in which the benefit was initially granted (i.e contract, work regulations, collective labour agreement, policy, ...), existing employment conditions can be amended by changes to these sources (i.e. in the employment contract, work regulations, collective labour agreements or policies).

As a result new or modified employment conditions will often be included as an addendum to the employment contract, approved by employee and employer. If an employee does not agree to a change in employment conditions but the employer still wants to unilaterally implement sustainable employment conditions broadly across the organisation, the employer should consider the prohibition on changing unilaterally essential elements of the employment contract.

Moreover the hierarchy of legal sources, meaning any applicable legislation as well as national, sectoral or company collective labour agreement, should be respected.

In addition, it is important to adhere to the correct obligations regarding employee participation and social dialogue, in case a works council, committee or union delegation is active in the company.

TAX CONSIDERATIONS

Belgian fiscal and social security regulations foresee a range of initiatives and options to support companies in their sustainable employment (conditions).

The initiatives result in a lower cost or lower taxation for the company or the employee and can therefore be interesting to consider in light of the sustainability strategy. They focus for example on the employment of certain target groups (older, disabled or young people), on employees with lower incomes but also on actual green incentives related to mobility of employees (mobility budget, contribution for commuting by public transport) or sustainable remuneration (specific 'CLA90' bonus).

Within certain legal limits depending on the situation, employers can also offer the possibility for employees to renounce their entitlement to a certain benefit or part of the salary in favour of a green employment condition.

Belgian fiscal and social security regulations foresee a range of initiatives and options to support companies in their sustainable employment.

For further information:



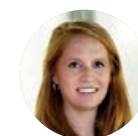
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EMPLOYMENT LAW CONSIDERATIONS

Commonly effectuated by addenda or contract restatements, changes to employment contracts always require the written consent of both parties. Although it is not possible for either party to change terms unilaterally, certain employment conditions, especially ones that are more favourable to the employees, may also be introduced by internal employer policies that can override previous less favourable contract terms.

Collective agreements must also be observed in certain areas, while even some internal policies may need to be pre-negotiated with worker unions. Keeping in mind that this is subject to relatively strict conditions, employers are advised to consult their local counsel, even though they may find the change to be relatively straightforward.

TAX CONSIDERATIONS

Employers are of course not prevented from providing employees with various benefits, including ones that are in line with their ESG objectives and/or commitments.

It is important to note, though, that certain benefits must be provided in writing. Otherwise, the employers may be taking the risk that any associated costs may be found non-deductible. Certain benefits may even be taxable by the employees themselves. Tax processing may also naturally vary by tax-residence.

Employers are therefore encouraged to approach their trusted tax advisors to get ahead of any potential complications.

Collective agreements must also be observed in certain areas, while even some internal policies may need to be pre-negotiated with worker unions.

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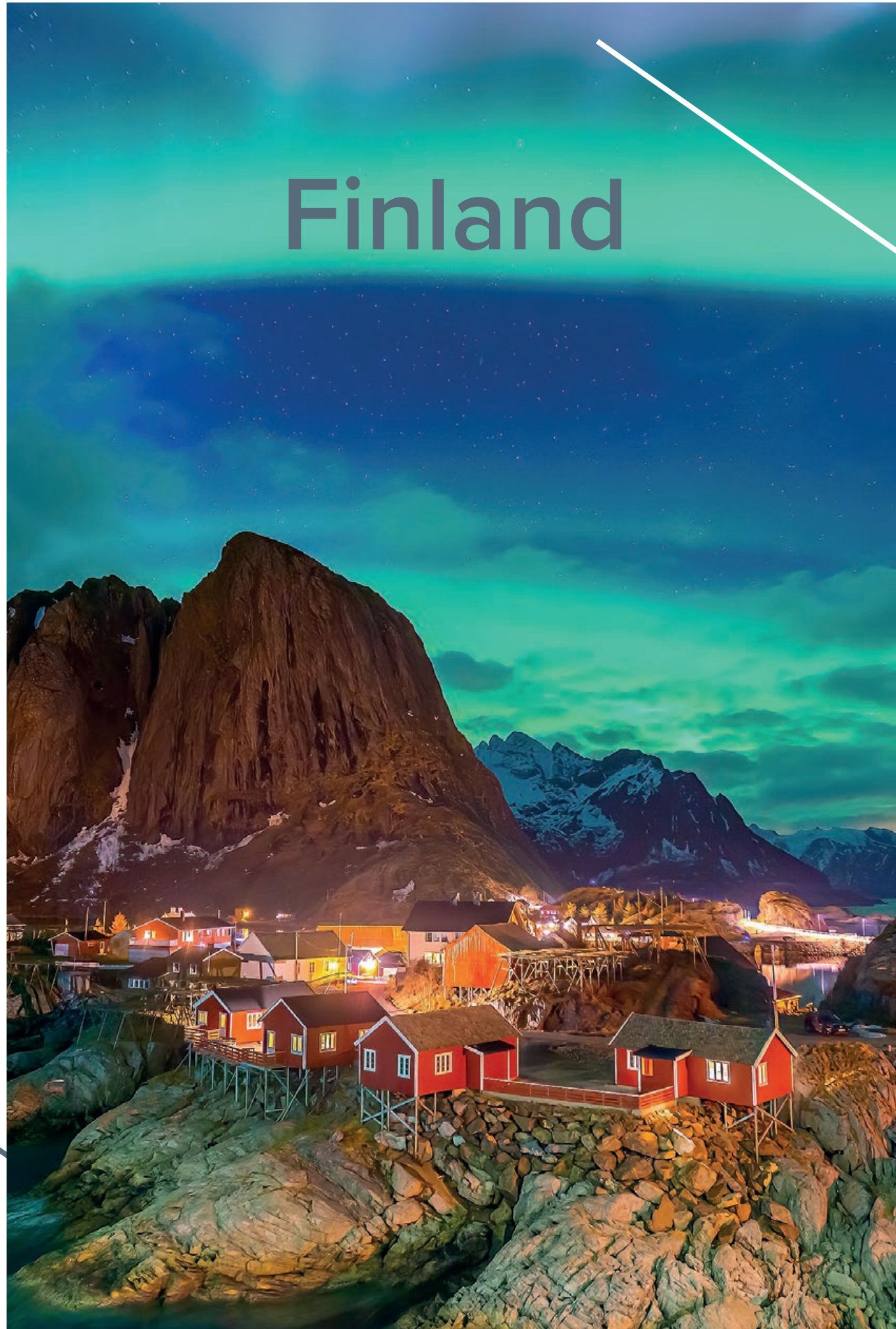
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EMPLOYMENT LAW CONSIDERATIONS

The employer must present the employee with written information on the principal terms of employment applied to the employment relationship. This is usually done in the employment agreement. If the terms of employment change during the employment relationship, the employer must also present information of these changes.

If the changes are relevant, and especially if they can lead to negative outcome for the employee, the employer usually cannot execute them unilaterally - this is subject to strict conditions.

In addition, it is always important to understand and to adhere to the correct obligations regarding the employee participation, the co-operation procedure and other personnel representation systems. This is usually laid down in the Finnish Co-operation Act.

In practice, many terms of employment as well as the obligations are determined on the basis of a collective agreement. So before implementing any changes, it is also important to understand that the applicable collective bargaining agreement is taken into account.

TAX CONSIDERATIONS

Finnish tax laws recognise and facilitate different kinds of employment conditions that can be regarded as sustainable.

An employer can for example encourage employees to use environmentally friendly transportation by offering public transportation tickets or by offering an electric rental bike. The employer can also encourage the employees to move more in their leisure time by offering a sports and culture voucher.

The sustainable employment conditions are usually implemented by offering them as a fringe benefit, which can then be taxed more lightly. The fringe benefits are generally taxed as a wage income and the value of these benefits is added to the taxable income. The Tax Administration issues an official decision each year of different fringe benefits.

The sustainable employment conditions are usually implemented by offering them as a fringe benefit.

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EMPLOYMENT LAW CONSIDERATIONS

The agreement of the employee must be obtained in writing, by mean of an addendum, for the introduction of any green clause resulting in the modification of an essential element of the employment contract, such as the remuneration and its method of calculation, working time, qualification or nature of the functions, or permanent mobility outside of the usual geographical area.

If the employee refuses the amendment, the employer cannot impose the change or sanction the employee for their refusal. For instance, a green clause requiring the employee to perform sustainable duties unrelated to their normal activity would require the employee's prior approval.

Specific provisions may be provided by collective bargaining agreements. In companies with 50 employees or more, the works council ("Comité Social et Economique" or "CSE") must be consulted if the modification is intended to apply collectively to all employees. If the modification is motivated by an economic reason, a specific procedure must be followed.

TAX CONSIDERATIONS

The French wage tax law facilitates green employment conditions. Mandatory reimbursement of at least 50% of the employees' costs of subscription to public transportation and public bicycle rental services by the employer is exempted in part from social contributions and income tax.

This reimbursement can be accompanied by the payment of a mobility premium ("prime transport") or a sustainable lump-sum allowance called "*forfait mobilités durables*", to cover the costs incurred for home-to-work journeys performed by sustainable ways of travelling (carpooling, rechargeable hybrid or hydrogen vehicles, electric car-sharing, personal or rental bicycle, free floating electric scooters...).

The amount, terms and criteria for allocating the payment of the allowance are determined by a company-wide collective bargaining agreement or, failing that, by unilateral decision of the employer, after consultation with the works council ("CSE"), if any, and is exempted in part from social contributions and income tax.

Specific provisions may be provided by collective bargaining agreements.

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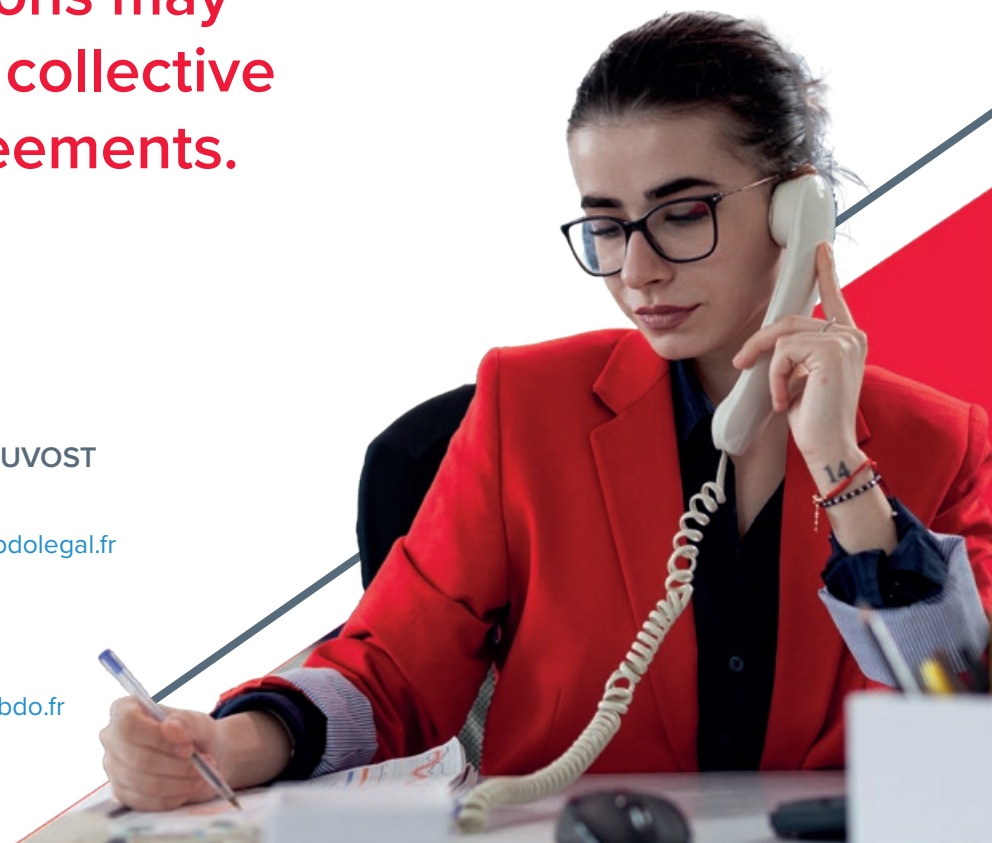
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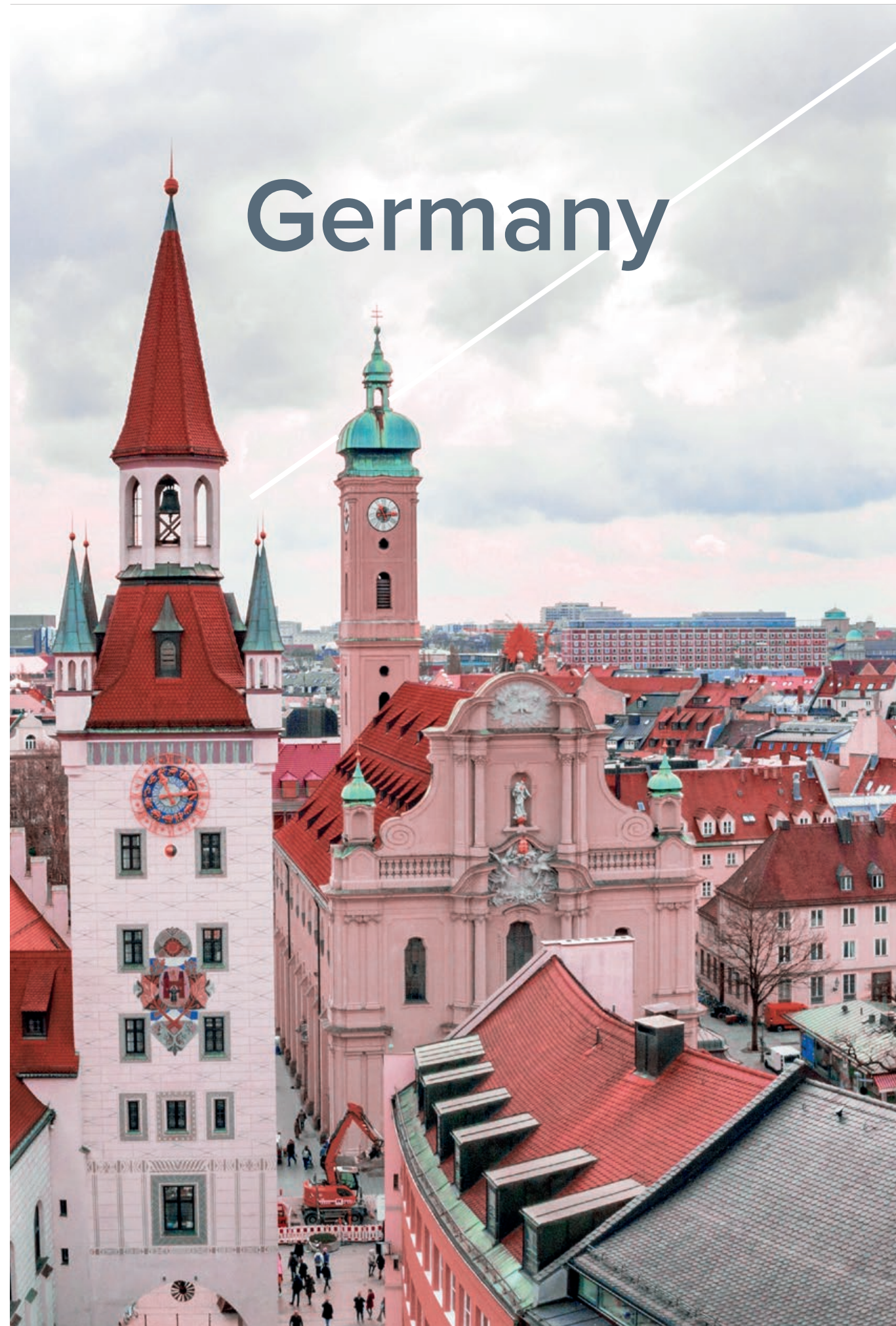
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Germany

EMPLOYMENT LAW CONSIDERATIONS

The introduction of green clauses into existing employment relationships or the amendment of existing employment contracts with green clauses would commonly constitute an amendment respectively supplement to existing employment contracts.

Under German law, an employment contract can always be amended or supplemented by mutual agreement. A unilateral amendment is possible if the amendment is within the scope of the employer's right to issue instructions which is limited by the individual provisions of the specific employment contract. Beyond the right to issue instructions, a so-called dismissal for variation of contract is required, which is subject to strict conditions.

It should also be noted that the intention to collectively anchor ESG standards in the HR area, in particular through green clauses, can trigger numerous participation rights of a formed works council. The scope of co-determination must be carefully examined in each individual case and appropriate lead times must be taken into account.

Under German law, an employment contract can always be amended or supplemented by mutual agreement.

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TAX CONSIDERATIONS

The question of whether the introduction or amendment of individual sustainable working conditions through green clauses in employment contracts has tax implications cannot actually be answered in general terms, as green clauses can be structured in a variety of ways.

It is therefore advisable to analyse each individual case also from a tax perspective. Special considerations may arise, in particular, in relation to the introduction of new mobility concepts. For example, wage tax implications for the private use of electric company cars, job tickets and e-bicycles are conceivable. Special depreciation allowances for electric delivery vehicles and subsidies for charging infrastructure may also be considered.





Hungary

EMPLOYMENT LAW CONSIDERATIONS

Ensuring that employment conditions comply with regulations is the responsibility of the employer. The establishment of an employment relationship is subject to an employment contract, but employment contracts do not yet contain green clauses.

One reason for this is that in Hungary the parties only agree on those questions in employment contracts which are explicitly required - e.g. the use of different rules from labour law where that is possible - but in all other cases employers prefer to settle the question unilaterally, in policies. They have the opportunity to do this due to industrial relations being very limited compared to other Western European countries, and there are a limited number of workplaces where the participation of trade unions or works councils is necessary. In workplaces that have works councils, the employer is obliged to consult the works council about any changes involving a large group of employees.

The employers make unilateral commitments on work-life balance, social responsibility, green office, smoke-free workplace, etc., typically in the form of a code or policy. The implementation of these is not usually considered as a reason to amend or supplement the employment contract.

TAX CONSIDERATIONS

The Hungarian tax regulations also contain provisions to promote green employment conditions. For example, at least 86% of the cost of a public transport ticket for daily travel to work and home travel at weekends is tax and contribution-free, but employers can also provide employees with tax-free bicycles, either by renting them or by using a bicycle-sharing scheme.

For work-life balance, the employer may provide a tax- and contribution-free reimbursement of 10% of the current minimum wage to employees who work remotely (as fully or semi teleworking).

The Hungarian tax regulations also contain provisions to promote green employment conditions.

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Italy

EMPLOYMENT LAW CONSIDERATIONS

The implementation of sustainable employment conditions may happen in multiple ways such as the use of smart working or remote working and/or sustainable welfare services (i.e., vouchers/cards to buy e-mobility equipment). In Italy, a legal review of these matters by lawmakers it is not expected to take place, but the introduction of so-called “green clauses” can take place through different contractual schemes.

From a contractual standpoint, there are multiple schemes to amend the employment contracts to apply and/or introduce a type of green clause as follows:

- **Individual and express consent of each relevant employee:** signing of an addendum to the existing contract.
- **Second-level agreements with the relevant unions/internal works council:** in this case, the employee’s individual and express consent is not necessary since it is implicit in the Unions who are already acting on their behalf.
- **Unilateral company policies:** there is no need to obtain the employee’s consent given the unilateral nature of this scheme although if it is collected the enforceability of the “green measures” is enhanced.

TAX CONSIDERATIONS

In Italy, there are a few provisions from a tax and social security point of view to implement sustainable employment practices, such as social security for employers with over 50 employees who have obtained gender equality certification.

Additionally, tax relief applies to sustainability initiatives such as offering e-bicycles or free floating electric scooters and payment of public transportation subscriptions as part of corporate welfare options to the extent that they apply to all employees or homogeneous categories of the same. However, these measures are at the employer’s discretion unless otherwise provided by the applicable collective agreements.

The introduction of so-called “green clauses” can take place through different contractual schemes.

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Latvia

EMPLOYMENT LAW CONSIDERATIONS

Currently, neither the Labour Law of Latvia nor other laws or regulations provide for changing an employment contract with the purpose of introducing green clauses. There are also no planned amendments in the foreseeable future.

One of the mechanisms for supporting sustainability from a tax perspective is corporate income tax incentives for sustainability activities.

TAX CONSIDERATIONS

In Latvia, there are currently only a few conditions for tax considerations for sustainable employment conditions. One of the mechanisms for supporting sustainability from a tax perspective is corporate income tax (CIT) incentives for sustainability activities.

Article 8 of the CIT law provides that the expenditure for sustainable activities of personnel which in total in the reporting year does not exceed 5% of the total gross work remuneration calculated for employees in the previous reporting year for which State social insurance payments have been made. According to CIT law, the expenditure for sustainable activities of personnel are:

- **Expenditures for ensuring motivating** or team-building activities intended for employees.
- **Other expenditures** for motivation of employees.
- **Expenditures for the activities provided** for in a collective labour agreement which are not subject to personification.
- **Expenditures incurred for accommodations**, for employees working night shifts.

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Netherlands

EMPLOYMENT LAW CONSIDERATIONS

Introduction of new employment conditions - such as green clauses - or modifying existing ones, must be recorded in writing for clarity and validity. Ideally, this should be included as an addendum to the employment contract.

If an employee does not agree to a change in employment conditions but the employer still wants to implement sustainable employment conditions broadly across the organisation, it may be necessary to invoke an unilateral modification of employment conditions. This is subject to strict conditions. Any applicable collective employment agreement (*collectieve arbeidsvoorwaarden* or “*cao's*”), should always be taken into account.

In addition, it is important to adhere to the correct obligations regarding employee participation, as laid down in the Works Councils Act in the Netherlands (“*Wet op de Ondernemingsraden*”).

TAX CONSIDERATIONS

The Dutch wage tax law partially facilitates green employment conditions. For example, refurbished mobile phones, laptops and tablets are free of wage tax if needed for the work.

No wage tax is also due regarding employees using means of public transport for commuter and business travel. Lower wage taxes than usual are applicable if employers want to encourage employees to go to their place of work with a rented bicycle or with a rented electric car.

For other green employment conditions, such as providing solar panels to employees, no specific wage tax ruling is applicable. These could be wage tax free, but the possibilities thereto are generally limited in practice.

The Dutch wage tax law partially facilitates green employment conditions.

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Norway



EMPLOYMENT LAW CONSIDERATIONS

If the employee and the employer agree, the parties are relatively free to make changes in an employment relationship (except for mandatory regulations). Furthermore, the employer is free to offer better conditions to the employee.

The issue arises primarily when considering what unilateral adverse changes, the employer can make. It is a question of the employer's right to management ("Arbeidsgivers styringsrett"). The boundaries of the employer's right to management depend, among other things, on what is regulated in law, collective agreements, and employment contracts. "Arbeidsgivers styringsrett" is a residual competence for the employer, after all limitations have been removed.

The employer's right is developed through case law and is often referred to as the right to "direct, distribute, and control the work in the enterprise". As a general rule, minor changes in job tasks can always be made by the employer. For example, you can adapt an employee's tasks to new technology, equipment, or systems in the enterprise.

TAX CONSIDERATIONS

Norway does not have any specific tax considerations for sustainable employment conditions. Furthermore, benefits in the form of welfare measures in employment are taxable income for the employee.

Welfare measures may be tax-free when the welfare measure is reasonable and is for all or a significant group of employees in the company. Reasonable welfare measures will typically include company cabins, Christmas and summer parties, subsidies to company sports teams and discounted prices in the cafeteria.

As a general rule, minor changes in job tasks can always be made by the employer.

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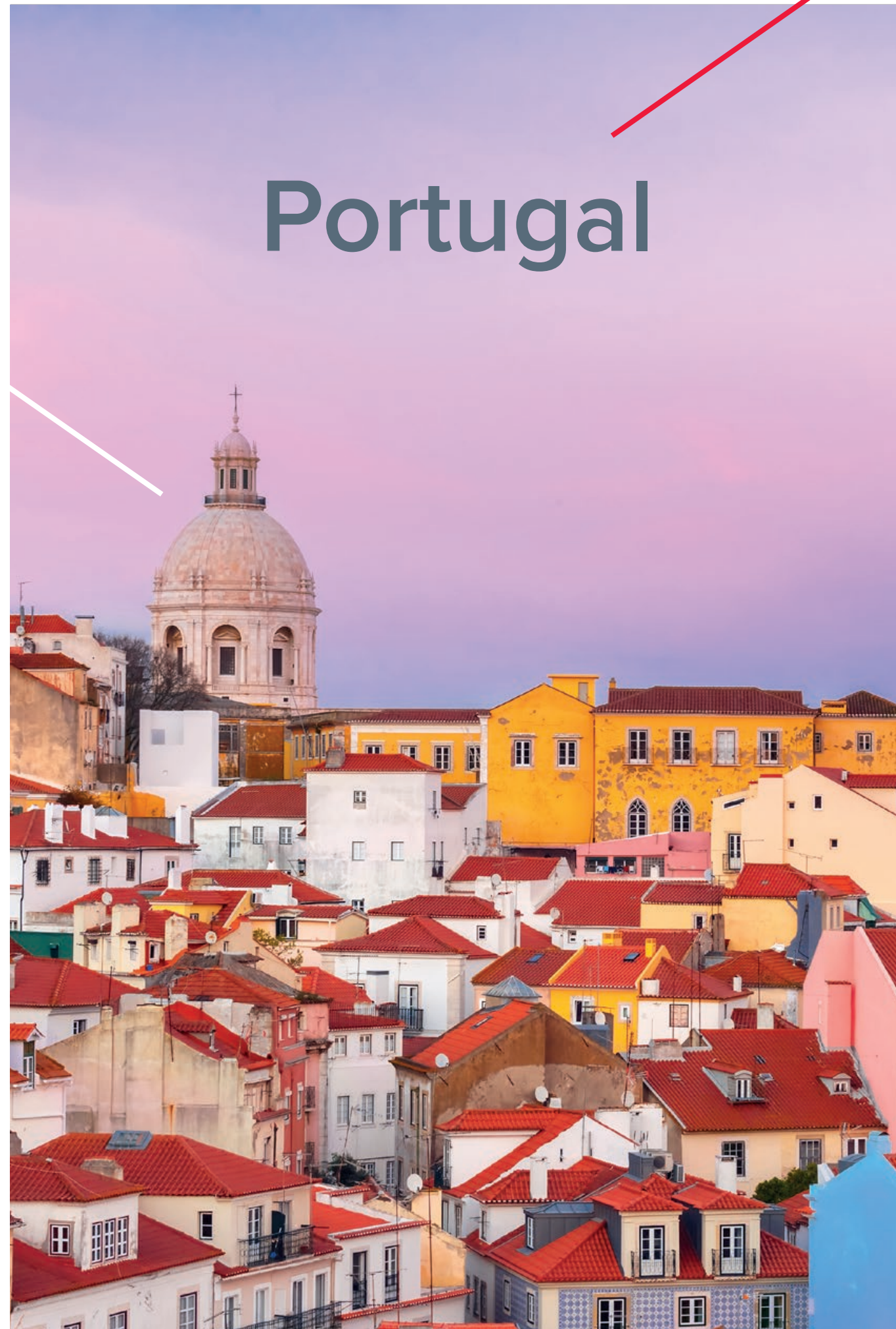
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Portugal

EMPLOYMENT LAW CONSIDERATIONS

The Portuguese legislator has not yet pronounced on these matters. ESG clauses are not yet commonplace in Portugal and the CSRD has not yet been transposed into the Portuguese law.

Notwithstanding, it should be noted that in order to introduce new employment conditions in an existing employment contract or to modify the content of existing ones, as for example green clauses, they must be implemented in writing by signing an addendum to the employment contract.

This addendum has to be signed both by the employer and by the employee, who has to always be in agreement with the alterations, despite very few specific exceptions (e.g. regarding a change in the work schedule of the employee, if allowed by the employment contract). The applicability of a collective employment agreement should always be catered for, as it may have implications on the matter.

TAX CONSIDERATIONS

As mentioned above, the Portuguese legislator has not yet pronounced or regulated these matters, therefore, there is a lack of tax considerations on this issue.

Considering the Portuguese Labour Code only allows the payment of components to the employee in exchange of effective work, the obvious interpretation is that eventual components related to green clauses should not be paid/exist.

However, considering that the European regulation on this matter has to be transposed to Portuguese legislation, the path will in principle be the alteration of the Portuguese Labour Code to include this possibility. It should be noted that any component paid by the employer related to these kind of green clauses shall be subject to the standard tax regulations and social security contributions, until otherwise regulated.

ESG clauses are not yet commonplace in Portugal and the CSRD has not yet been transposed into the Portuguese law.

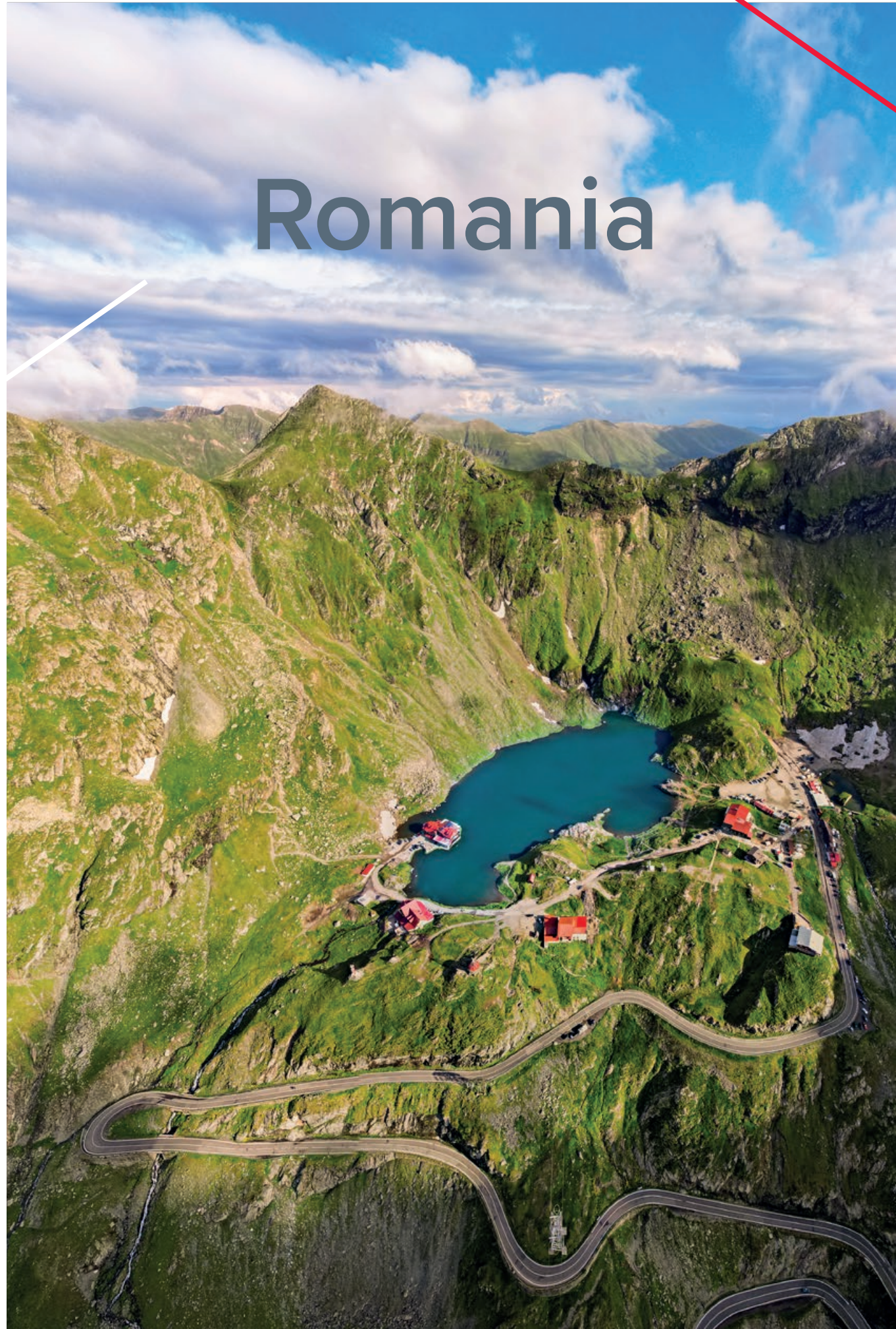
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Romania

EMPLOYMENT LAW CONSIDERATIONS

Including green clauses in employment contracts represents a commitment to sustainable and socially responsible business practices. These clauses represent the intent of the employer to provide a safe and healthy work environment, support diversity and inclusion initiatives, and promote employee well-being through flexible work arrangements. Green clauses contribute to fostering a positive workplace culture that values employees' rights, dignity, and overall quality of life.

Under Romanian legislation changes at an individual level of the conditions of an employment contract must be made in writing for validity and agreed upon by both the employer and the employee. These changes may relate to salary, working hours, work duties, or the introduction of new employment conditions - such as green clauses. Changes in the employment conditions made at the level of the company that affect all employees irrespective of seniority, position, or attributes may be made unilaterally by the employer through internal policies or regulations. These changes must observe the legal provisions in force and must be done with the prior consultation of the employees.

Green clauses contribute to fostering a positive workplace culture.

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TAX CONSIDERATIONS

Tax considerations for sustainable employment conditions in Romania primarily revolve around incentives and deductions offered by the government. Creating jobs has been supported by the Labor Force Employment Strategy, which translates into a lower unemployment rate. Tax incentives, included in updates to the Tax Code, exempt employees in the IT sector from income taxes.

A coherent framework of social and fiscal protection has been created for atypical professional categories engaged in artistic and cultural activities, through the Professional Cultural Worker Status.

Investments in industry have been supported through the Start-up Nation - ROMANIA Program to stimulate the establishment of SMEs, improve economic performance, and achieve smart, sustainable, and inclusive economic growth based on digitalisation, sustainable development, innovation, entrepreneurial training, and the creation of new jobs.

Companies receive tax benefits for providing sustainable employment conditions to their employees. This includes tax deductions for expenses related to employee wellness programs, such as gym memberships, and health subscriptions.

Additionally, certain expenses related to employee training or education are also eligible for tax relief.

Slovak Republic



EMPLOYMENT LAW CONSIDERATIONS

The terms and conditions negotiated in an employment contract are binding for both the employer and the employee throughout the duration of the employment relationship.

Under the Labour Code, the negotiated content of the employment contract may only be changed if the employer and the employee agree to such changes. Therefore, if the employer is interested in implementing sustainable employment conditions by adding more sustainable clauses to an employee's contract, this can only be done in the form of an addendum to the employment contract.

In addition, the employer has the option to implement sustainable employment conditions through internal regulations, or through collective agreements negotiated with employees' representatives. In both cases, strict material and formal conditions of the Labour Code must be adhered to as well. In principle, any such internal regulations or collective agreements may not be less favourable than those resulting from the Labour Code or employment contracts.

TAX CONSIDERATIONS

In the current labour law environment of the Slovak Republic, the topic of sustainability has not yet been extensively elaborated and published. Nor is there any specific legislation in the Slovak Republic that expressly regulates sustainable employment conditions. However, Slovak employers can address ESG requirements by the concept of "corporate volunteering" and employee engagement. This concept allows employers to engage their company in voluntary "green" activities to support the community and environment, in which the company operates. Employers may allocate a specified time for these activities, which is considered to be the regular working hours of employees and employees are entitled to salaries for conducting such green activities.

Alternatively, employers may provide paid time-off to employees for these activities. In addition to the agreed salary, the employers may also provide employees with variety of tax deductible "green" benefits, e.g. electric company cars, home wall-box chargers etc.

Slovak employers can address ESG requirements by the concept of "corporate volunteering".

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Spain

EMPLOYMENT LAW CONSIDERATIONS

Despite the fact that there is a growing awareness of sustainability and care for the environment, and that the legislator has introduced measures to encourage its promotion, **there is no specific labour legislation in Spain that obligates companies to include sustainability policies in employment contracts, and ESG clauses are not yet common in Spain.**

However, telecommuting and teleworking policies are increasingly being promoted, and although they directly contribute to promoting sustainability, they are not currently adopted as green clauses, but rather from the point of view of labour flexibility and reconciling the personal and family life balance of employees.

In the event that companies wish to introduce green clauses without being legally obliged to do so and, above all, without there being an amendment to the **Workers' Statute** - the law that establishes the general legal regime for ordinary employment relations in Spain - it would first be necessary to assess the nature of the measures they intend to introduce and to evaluate whether they constitute benefits for employees or, on the contrary, changes that could be considered as substantial modifications of the employee's job. In the latter case, in addition to the need to demonstrate the reason for the change (economic, productive, organizational or technical), the employer should follow a formal procedure for informing employees.

TAX CONSIDERATIONS

Like the labour legislator, the tax legislator has not established any benefits exclusively linked to the adoption of labour measures through the so-called green clauses. Under current legislation, any benefit/incentive paid to employees would be considered a salary and therefore taxed as such.

There is no specific labour legislation in Spain that obliges companies to include sustainability policies in employment contracts.

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