



COVID-19 WATCH ETUC BRIEFING NOTE NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

Negotiating Restructuring and Alternatives to Redundancy

The COVID-19 crisis is creating and accelerating existing structural changes in many sectors. This major labour market shock comes at a time when workers and their unions are already adapting to the challenges posed by digitalisation and new forms of work. The only way to ensure fair and sustainable restructuring processes is to respect trade union rights and insist that trade unions are enabled to play a leading role.

Previous covid-19 watch [briefing notes](#) have highlighted the importance of short-time working schemes and specific in supporting workers and companies. These schemes need to be continued into next year to avoid a tsunami of closures and redundancies.

Trade unions are bringing forward plans that work and social partners are playing an effective role. The examples below show how trade unions have been able to support workers when governments and employers are willing to engage, and short time work schemes have in many cases been extended in line with the demands of trade unions. There are many successful examples of the tenacity of trade unions to successfully negotiate agreements with employers which keep workers in jobs and provide them with training opportunities to strengthen their skills.

Challenges persist however, and there are worrying signs that some employers are using the short-time work measures and the threat of redundancies to bypass proper negotiating structures, potentially leading to discrimination and unfairness. Some government support schemes attempt to address this through restrictions on dismissals, but national trade unions have expressed concerns that without proper bargaining such schemes could also form a springboard (or a smokescreen) for harmful restructuring.

One note of caution, this briefing note captures a dynamic situation which is subject to ongoing change. We therefore kindly ask affiliates to provide us with further information on COVID 19- related measures that have been introduced in your country so that we can update this briefing note.

Many of the measures outlined in this briefing note are covered in the [briefing notes already published](#) which go into detail on the different issues. The briefing note on trade union rights is of particular relevance as it gives an overview of important and relevant international and European instruments and case law stressing amongst others the important role social dialogue and social partners have to play in crisis situations like Covid-19 in particular in the design, implementation and enforcement of policies and measures to mitigate the economic and social impact of such crisis.



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

Cyprus

Challenges to negotiate:

Since the beginning of the crisis, the issue and concerns to respect and protect trade union and labour rights was a major priority which was discussed among social partners at the highest level and always under the supervision of the Minister of labour.

So far, no significant violations of workers' rights have been noticed with some few exceptions in workplaces where there is no trade union representation in place. In these very few exceptions we didn't notice any discriminatory practices (age, gender etc)

Generally speaking, the majority of employers have respected trade union rights during the crisis mainly because of the efficient and quite generous supporting measures that benefited both Enterprises and employees. All these measures were strictly related with the obligation of employers to avoid redundancies and to respect union rights.

Which of the following are being negotiated as means to mitigate the consequences of redundancies?

Working time reduction - Very few cases mainly in workplaces without any trade union representation.
Change in work organisation - Despite the fact that the Employers' Associations asked for a discussion to introduce changes in work organization aiming to eliminating specific clauses of collective agreements and negatively affecting labour rights, mainly due to the reaction of SEK and other unions, there have not been introduced such changes.

Has the government provided support to restructuring efforts which save jobs (e.g. wage compensation or other supports such as training courses)?

Yes, the Government has applied a number of restructuring policies and programs in order to avoid both redundancies and the violation of union rights. Programs, among others included:

- Scheme of temporary termination of work. The Government covered 80% of employees' salary with a ceiling of €1214 per month. This particular program covered almost half of the workforce of Cyprus. All employers that benefited from this scheme are obliged to avoid redundancies for a period that is double the period they benefited from the program plus one extra month. In addition, the Ministry of Labour has noticed the employers that if they proceed with any redundancies or unilateral practices they will be excluded from any governments' subsidiary programs and they will be asked to pay themselves the redundancy compensations because such redundancies are considered to be illegal. (According to the Cyprus law temporary changes do not permit employers to implement redundancies)
- Special paid leave for the childcare in line to work-life reconciliation, giving emphasis at single parents.



COVID-19 WATCH ETUC BRIEFING NOTE NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

- Extension of other programs, such as the extension of the temporary termination of work for workers in the hotel industry, a program that is being applied every year from November to March because many hotels terminate their operation during this period.
- Special schemes covering 25% of the salary cost of employees in certain enterprises on the condition that these enterprises apply training programs to their staff, for a period of one week per month, under the supervision of the Cyprus Human Resources Development Authority.

Special programs encouraging the creation of new jobs by financing 90% of salary cost of new-comers in an enterprise for 12 months, in the case where enterprises employ unemployed people, focusing on young unemployed workers (15-29 years old).

Denmark

A tripartite agreement to revise the short-time work system has been reached. The 31 August 2020 agreement marks the completion of a process of reflection that commenced in March, during the first wave of the coronavirus pandemic, and that focused on revising the short-time working system.¹

In March 2020 the social partners and the government signed a tripartite agreement to adapt the system to deal with the coronavirus emergency situation. Companies looking to continue paying 100% of their employees' salaries could benefit from substantial state aid of up to 75% to 90% of salary. This salary compensation scheme, initially scheduled to run until 09 June, was subsequently extended to 29 August. As part of these support initiatives the government approved the idea of revising the 'work-sharing' scheme.

The major novelty of the 31 August agreement, which culminates the process, is that implementation will be framed within legislation. The previous conventional system only applied to employees who were members of the signatory trade unions, or if companies operated without a collective agreement, to all employees who individually approved the system, something which often proved challenging. This new 'work-sharing' system will be established by law and will therefore allow the implementation of work-sharing in all companies upon the employer's initiative.

Another departure is that unemployment benefits will be able to be paid to all employees. The rule will still be that only employees affiliated to an unemployment fund will be entitled to supplementary unemployment benefits during 'work sharing' periods, however uninsured employees will be able to register with an unemployment fund retroactively and be eligible for an allowance after paying 3 months of contributions.

The maximum rate of monthly unemployment benefit is increased to DKK 23,000 (EUR 3,145), which is just over 20% above the standard rate of unemployment benefit.

The agreement also provides for better training opportunities in that those covered can undertake career training courses that take place in whole or in part during periods when employees are unemployed. Employer have strong incentives to explore training opportunities with the unions and employees, which can accommodate those directly concerned by work sharing, alongside financial support via training funds.

¹ <https://www.planetlabor.com/en/legal-developments/national-legislation/denmark-a-tripartite-agreement-to-revise-the-short-time-work-system/>



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

Work-sharing arrangements are also becoming more flexible. Previously, work-sharing agreements operated along a pre-established formula.

Employers wishing to use this temporary work-sharing scheme have to inform and consult their employees and their representatives beforehand, in accordance with the rules already in force in collective agreements and in the law. Discussions most often focus on finding an equitable distribution for the reduction in activity (this regime has to cover either a company in its entirety, or a specific business department or business production unit), that takes into account employees' wishes regarding their working hours, relevant training plans, and company-related constraints. Each employee then has one (working) day to decide whether he or she wishes to participate in the plan. If the employee does not wish to participate, the employer may decide to terminate the employee's employment contract. During the work-sharing period, any employee may also leave the company without notice.

The previous work-sharing system continues to exist as is and will also be reviewed following the results of an evaluation of the new system.

Estonia

Have trade union rights and information and consultation rights been respected with a view to reaching an agreement which mitigates the consequences of redundancies? (In law and in practice)

During the COVID-19 crisis the information and consultation rights have been respected, where the trade union organisations exist. With some exceptions, were employers want only to inform union after they have made their own decisions. The information -consultation is regulated in law but problems occur in practice.

Have you experienced any problems with employers using the furlough schemes to reduce negotiations on restructuring?

Trade unions are rather left out of consultation.

Which of the following are being negotiated as means to mitigate the consequences of redundancies:

Working time reduction – yes

Redesign of jobs - yes

Change in work organisation – yes

Training and skills development – yes

Has the government provided support to restructuring efforts which save jobs (e.g. wage compensation or other supports such as training courses)?

On March 19, 2020 the Estonian government approved a package of economic measures² to alleviate the impact of coronavirus on the economy, and to support working people and companies (The

² <https://www.valitsus.ee/en/news/emergency-situation-government-supports-estonian-workers-and-economy-least-eur-2-billion>



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

package of measures of 2 billion euros, or nearly 7 percent of GDP). Among them is the labour market support measure – temporary subsidy – up to 250 million euros for the employees whose employers are significantly impacted by the current extraordinary circumstances caused by COVID-19.

The Temporary subsidy was combined with and complements the regulation of the current Employment Contracts Act (article 35 and special regulation of article 37).

- The employer is applying article 35 or 37 and the subsidy is paid when the employer complies with at least two of the following terms:
 - the employer must have suffered at least 30% decline in turnover or revenue for the month it applies for the subsidy as compared to the same month last year;
 - the employer is not able to provide work for at least 30% of it's employees;
 - the employer has cut the wages of at least 30% of it's employees by at least 30% or down to the minimum wage.
- Both private and public sector were eligible for the subsidies, despite the size of the organisation.
- The amount of the subsidy was 70% of the average monthly wage of the employee. The maximum amount of the subsidy was €1000 per employee per month. The employer must pay a wage of at least €150 to the employee. The rest was paid by the Unemployment Insurance Fund. The employee will receive at least the statutory minimum wage of €584 from the Unemployment Insurance Fund and employer collectively. The Unemployment Insurance Fund will pay social security tax, unemployment insurance tax and mandatory funded pension, and income tax on the subsidy. The employer will pay the aforementioned taxes on the employee's wage.
- The subsidy is paid up to two months for every employee during a three-month-period from March till May 2020. The employer is applying for the temporary subsidy but it will be paid directly to the employees.
- If the employer terminates the contract with the employee due to redundancy during the same or the following calendar month it has received the temporary subsidy, the subsidy is to be returned to the Unemployment Insurance Fund.
- The Unemployment Insurance Fund started to pay the temporary subsidies on April 8. Almost 25 million euros of subsidies were paid to almost 30 thousand employees with the first two weeks. There's a possibility to extend the measure, if needed. There is no such decision made.
- See also: <https://www.tootukassa.ee/eng/content/temporary-subsidy-program>.

The Estonian Trade Union Confederation was one of the developers of the measure and we think it was a very useful instrument and was worked out in time.

Have Short-Time Work schemes being extended? If so, for how long?

Salary subsidy was later extended for one more month. The subsidy is paid, when an employer has suffered at least a 50% decline in turnover or revenue as compared to the month of June last year. In addition, they must comply with at least one of the following terms:

- The employer is not able to provide at least 50 percent of their employees with work and the work load of the employees has been cut by at least 30%.



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

- The employer has cut the wages of at least 50% of employees by at least 30% or down to the minimum wage. The employer must have cut the wages or work load of their employees for the whole month of June.
- Both private and state organisations are eligible for the subsidies, independent of the size of the organization.
- Only employers without tax debt or paying their tax debt in instalments (as agreed with the Tax and Customs Board) can apply to have the June salaries of their employees subsidised.
- An employer can apply for the salaries of contracted employees to be subsidised, in case the contract was signed and registered in the employment register of the Estonian Tax and Customs Board before March the 1st, 2020.
- Subsidies will be paid to employees whose employers are not able to provide them with work or whose wages have been reduced.
- The amount of the subsidy will be 50% of the average monthly wage of the employee. The maximum amount of the subsidy is €800. In addition to that, the employer must pay a wage of at least €150 to the employee. The employer must make their payment before applying for the subsidy.
- The employee will receive at least the minimum wage of €584 from the Unemployment Insurance Fund and their employer, collectively. In case the employee has thus far received less than the minimum wage due to working part-time, their income will remain the same as before.
- In July, employers may apply to have the June salaries subsidized for the same employees whose salaries were subsidized in March, April or May. Thus, an employee's salary may be subsidized for a maximum of three months instead of two.
- The Unemployment Insurance Fund will pay social security, unemployment insurance tax and mandatory funded pension, and income tax on the subsidy, the employer will pay the aforementioned taxes on the employee's wage.

France

Challenges to negotiate:

- *Have trade union rights and information and consultation rights been respected with a view to reaching an agreement which mitigates the consequences of redundancies? (In law and in practice)*

According to CFDT there is a mixed outlook - on one hand laws have been reviewed in order for collective bargaining to be possible (video-conference), but on the other hand delays for workers consultations have been temporarily shortened. The CFDT is concerned about the Government desire to keep this derogation applicable and to enshrine it in the Labour Code. For the CFDT, the rules on the delays for workers consultations must be the common and the former one.

Force Ouvrière (FO) notes that during the sanitary crisis, and especially during the Lockdown, measures have been taken in a hurry without prior information nor consultation of workers and workers' representatives. For example, many companies started to use telework for the first time without any collective agreement.



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

Experiences may vary across companies. In some case cases, effective social dialogue has been put in place with numerous exchanges and some interactivity among the different actors; while in other cases, the employer has refused to associate workers' representatives and trade unions' steward in the management of the crisis. We have seen that in some companies, workers' representatives have been put aside, by limiting especially their freedom of movement in the company, and employers' have passed through unilateral decisions by force. Some employers have used the sanitary crisis to come back on some social rights. In some companies, abuses and excesses have been identified, in particular in the framework of individualized use of short-time work scheme, in order to avoid to carry out prior consultation or to obtain the favourable opinion of the employee' representative body on the matter at hand.

During the Lockdown, Orders have been enacted in order to adapt the French legislation to the crisis including important parts of the French Labour law. Procedures' timetables have been drastically shortened, including on information and consultation of employees' representative bodies and collective bargaining. For example, the period to launch a referendum of workers has been reduced from one month to 8 days at company level. At sectoral level, the period to issue an opposition from the majority of representative trade unions has been shortened from 15 to 8 days.

- *Have you experienced any problems with employers using the furlough schemes to reduce negotiations on restructuring?*

FO has noted that, regarding the French short-time work scheme, there have been some abuses from certain companies that declared some workers in partial activity to gain the support from the State while they were effectively teleworking. Besides, the use of this scheme doesn't provide any protection for workers of the companies using it against dismissals. The French government has announced a reinforcement of ex post controls on the use of this scheme.

CFDT highlighted that the majority of the workers' representatives have not been consulted on the recourse for short-time work scheme. Moreover, several employers have abused the short-time work system by making the employees work, while many of them were not informed nor aware about their situation and their legal working hours. Also, many employees were forced to work on public holidays. All of these has led to short-time work schemes frauds from the employers. In addition, there are some problems of inequality when it comes for the employer to choose which of the employees to put on short-time work scheme and on telework. There is no objective criteria for it.

- *Is Covid-19 being used to disguise discriminatory company practices in redundancy decisions? (e.g., a way to make long-term permanent staff redundant, age, gender...)*

The Covid-19 crisis makes it easier to have restructuring plan and job saving plans. One such restructuring measures in France is the Collective mutual termination agreements (Rupture Conventionnelle Collective) which is a framework agreement (requiring the majority of TU signatures to be valid) that determines in advance the conditions for the possible voluntary redundancy of several employees in return for a consideration. This Collective mutual termination agreement is a way to



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

foster discrimination on the grounds of age (but this kind of discrimination already existed before the covid crisis). For this reason the CFDT asks for objective criteria in order to select the employees who are candidates for departure within the Collective mutual termination framework. There is currently a lot of ongoing litigation over the abusive termination of the probation period.

Which of the following are being negotiated as means to mitigate the consequences of redundancies:

Working time reduction: Yes. There is no negotiation strictly on the working time reduction, but the issue is dealt with among others (mobility, remuneration...) when it comes to negotiate a collective performance agreement (and in this case, the content of the agreement can be less positive for the employees) or to negotiate the long term short-time work, called “activity reduction for employment retention” (see below).

Redesign of jobs: Yes, there is a poly-skills (“poly-compétences”) development. For example, the cashiers of a supermarket are required to work on other tasks such as in the supermarket departments (it is the case in the supermarket Auchan).

Change in work organisation/ changement dans l’organisation du travail: Yes, at the national level, there is an ongoing interprofessional discussion between social partner on telework. Several companies have launched discussions or negotiations on telework. For instance, there is a discussion to implement 4 days telework a week in the Company PSA Peugeot-Citroën. Some companies have adopted changes in work organisation to tackle the health protocol requirements.

Training and skills development: Yes, it is possible for an employee to use training schemes while he/she is on short-time work, such as the professional training account (“Compte professionnel de formation») or the national employment fund (Fonds national pour l’emploi) in order to develop professional skills.

Additionally, short-time work (partial unemployment) has been largely used and there is also the long term short-time work scheme, called “activity reduction for employment retention” (see below).

As a result of the reform of the French Labour law in 2017, “agreements of collective performance” are multiplying in the context of the covid crisis. Created to “respond to the necessities linked to the operation of the undertaking or to preserve or develop employment”, these agreements can:

- Adjust working time, its modalities of organization and repartition;
- Adjust wages but limited by the hierarchical minimum wages;
- Determine the conditions of professional mobility within the company.

Unlike the “classical” agreements, they cannot be opposed by the workers with a direct effect on their employment contract. If the worker is opposed to the changes, the employer has a period of 2 months, after the formal notification of the refusal of the worker, to launch a dismissal procedure under the modalities of a dismissal for personal reasons – under a specific



COVID-19 WATCH ETUC BRIEFING NOTE NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

motive constituting just cause. The content of this kind of agreement is weakly framed and the only obligation was to define a preamble defining the objectives pursued. By end of March 2020, there were 142 such agreements (*around 100 for SMEs only*). By end of June 2020, in the context of the covid crisis, this number had increased to 371 – an increase of 229 in only two months – covering more sectors.

These agreements have been signed in the industry sector (*food/automobile/chemistry*); retail sector; engineering sector; transport sector; and services. 3 branches are particularly concerned: metallurgy, plastics, consulting. The majority of the signed agreements are in SMEs and micro-companies. Working time is the main topic of the agreements signed but some of them go beyond the scope of this agreements by impacting trial period or notice of dismissal. But there is generally no alternative to “agreements of collective performance” or voluntary severance schemes. Negotiations are under stress and workers’ representatives are faced with the choice between massive dismissals or an “agreement of collective performance”.

Has the government provided support to restructuring efforts which save jobs (e.g. wage compensation or other supports such as training courses)?

The main support of the French government for employment has been the French short-time work scheme. This scheme has been renewed, with further limitations reducing its scope, until summer 2021. Its main objective, according to the French government, is to reduce activity and guarantee training opportunities during the time not worked in order to maintain jobs and a skilled worker force at company level as well as to reinforce the existing skill levels to be stronger after the crisis. In March 2020, emergency measures have been taken to support companies like the freezing of social contributions or further State aid but without any conditionality to limit or prohibit dismissals while benefiting of these measures. Further support has been planned in the French recovery plan presented in September 2020 but still without further conditionality against dismissals. The French Finance Act that will be presented soon will offer further perspective.

FO recalls that in the past, under the pressure of shareholders, many companies have stopped or delocalized their activity, leading to massive dismissals, at the term of the State aid. FO advocates for further control and sanction mechanisms to avoid any uptake of State aid for fiscal optimization or to increase or support the compensation of shareholders, especially from “mother companies” against subcontractors or suppliers impacting mostly SMEs and micro-companies and their workers.

The government has provided for a fast-track procedure for extending sectoral collective agreements. In addition, new negotiations rules (at sectoral and at company) for using for video-conferencing and new means of communication.

Moreover, the national employment fund (FNE formation) used for the professional training has been financed 100% by the State.

Have Short-Time Work schemes being extended? If so, for how long?



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

The main French short-time work scheme has been extended to new categories of workers and adapted during the covid 19 crisis (at the beginning of the lock-down). A large part of these adaptations are temporary and apply until 31 December 2020. The French Government plans to review this scheme in November.

Besides this main short-time work scheme, a new long-term partial work scheme (“Activité partielle longue durée”) was created and is called “activity reduction for employment retention” (“Activité réduite pour le Maintien de l’Emploi”).

The long term short-time work scheme, called “activity reduction for employment retention” (Activité réduite pour le Maintien de l’Emploi) aims to ensure the employment retention in companies facing a sustainable reduction of their activity, that is not likely to compromise their sustainability. The activity reduction must be partial and cannot be more than 40% for a minimum length of 6 months and a maximum length of 24 months. This specific scheme must be set by a collective agreement (negotiate at sectoral or company level) requiring the majority to be valid (that means the signature of one or several representative Trade unions which represent more than 50% of the votes at the 1st ballot of professional elections). If the agreement is at the sectoral level, then the employers must present the detailed setting up at the company level to the Work Council.

CFDT notes that this specific scheme aims, through the negotiation, to prevent job losses/redundancies and to protect skills while waiting for the restart of the activity. The risk is that this specific scheme can apply with other restructuring instruments which have impact on jobs, employment contracts and working conditions. These are:

- The collective performance agreement (accord de performance collective) which is an instrument that allows employers to negotiate with unions or other employee representatives at company level to organise working time, wages as well as the terms and conditions for the internal professional and geographical mobility of employees ‘to meet the needs related to the operation of the company or to safeguard or develop employment’. This means that this kind of collective agreement may also be concluded without any specific economic difficulties faced by the company.
- Collective mutual termination agreements (Rupture Conventionnelle Collective) which is a framework agreement (requiring the majority of TU signature to be valid) that determines in advance the conditions for the possible voluntary redundancy of several employees in return for a consideration.
- Job saving plan (“plan de sauvegarde de l’emploi”)

Sectors have also taken up this issue with a comprehensive collective agreement in the metallurgy sector and in the “Syntec” sector (*engineering and consulting*). The sectoral agreement for the “Syntec” sector is applicable until the 31st of December 2022. It will enable companies of the sector to reduce working time for certain workers up to 40% with a conventional compensation yet to determine. In return, the company has to commit to not draft any « agreement of collective performance » and to not rise the fixed compensation of



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

company executives. The French government recommends companies and branches to negotiate on this scheme by the 1st of November 2020 in order to protect employment while waves of restructuring are ongoing.

Finland

Changes to collective agreements due to the coronavirus epidemic

Trade unions have agreed temporary changes to collective agreements together with employers' federations to help workers to get through the crisis.

Both employees and businesses are suffering from the uncertainty caused by the coronavirus epidemic. Both are worried for health and financial reasons. To make the impact of the epidemic as short-lived as possible, necessary actions should be taken quickly. Therefore, on the proposal of the Finnish government and labour market organisations, Parliament amended labour legislation and trade unions have negotiated temporary changes to collective agreements together with the employers' federations.

Below are some examples of the agreed temporary changes by collective agreement. In the spring, the changes were agreed to end in the summer, but have now been extended so that most of them will remain in force until the end of 2020. More information available [here](#).

- **Layoff notice period shortened** - Employers must give employees notice of a layoff. A layoff must now be notified to an employee 5 days (normally 14) before it starts.
- **Deadlines for co-operation negotiations shortened** - The minimum negotiation period decreases in lay-off situations to 5 days, whereas the negotiation period normally is 14 days or 6 weeks. The sudden and serious weakening in demand for a company's products and services as a result of the coronavirus situation is a sufficiently weighty reason for an employer to lay off employees prior to the initiation of co-operation negotiations. This assessment will be done on a case-by-case basis and once there are no longer grounds to deviate from the co-operation obligation, the employer must immediately initiate co-operation negotiations.

Germany

Has the government provided support to restructuring efforts which save jobs (e.g. wage compensation or other supports such as training courses)?

The Federal Government has changed the regulations for short-time work. Particularly those businesses and their staff that are directly or indirectly affected by the consequences of the Corona crisis shall in this way receive effective support. The legislator has increased short-time work benefits and has thus met an important demand of the unions.³

Work stoppage needed to affect at least a third of a business's staff, but the new provisions reduce this threshold, so that now only 10 percent of staff need to be affected by work stoppage. What is new

³ www.dgb.de/-/WA5



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

is that the amount of short-time work allowance depends on the amount of reduction in working hours and the duration of short-time work. It generally represents around 60 percent of the flat-rate loss of net wages in the entitlement period (calendar month) for employees without children and 67 percent for employees with children. If the working time is reduced by more than 50 percent, the short-time work allowance in the first three reference months still represents 60 percent or 67 percent (for employees with children), of the net salary for the diminished working hours due to short-time work. Starting from the fourth month however, the amount rises to 70 or 77 percent, starting from the seventh month to about 80 or 87 percent. This regulation only applies for the limited period between April 1st, 2020 and December 31st, 2020.

Normally, employers need to try to prevent short-time work at all costs. Thus, they are also obliged to try and use the leeway provided to them via working time accounts. The new provisions, however, waive the obligation to accumulate a negative working time balance before issuing short-time work allowances. The employer pays only social security contributions in relation to the short-time work allowances. The current system of short-time work allowances does not foresee contributions to unemployment insurance. The new provisions of the regulation state that the employer is reimbursed for the above social security contributions in full. According to the new provisions, temporary agency workers (“Leiharbeiter*innen”) are also eligible for short-time work allowance. These employees had been excluded from receiving such payments since 2012. The temporary employment agency is the employer of such employees, and thus obliged to submit the necessary applications. In these cases also, the short-time work allowances shall only be granted once work time surpluses (additional hours) have been compensated.

In May, the so-called 'Work of Tomorrow Law' was passed⁴. After a decade of economic growth, the Corona crisis has shaken up the labour market, which is robust in itself. But even before Corona, it was clear that restructuring and structural change towards a low-emission and digital economy would lead to a transformation of the world of work. This change has massive consequences for the demands on the qualifications and skills of employees.

With the law, a comprehensive package of support options for training and further education was developed, in which central Trade union demands were taken up. The idea is to keep employees in the company where possible and to train them for new tasks. When transitioning to new employment, employees are to be supported by qualification offers and thus unemployment to be avoided. Targeted qualification, also in the case of unemployment, is a key factor in managing the transformation process. This must also include the development of skilled workers. We were finally able to enforce the right to catch up on a professional qualification.

The extent to which all the new possibilities are effective depends crucially on whether and how intensively they are used. Works councils and staff councils in particular have a crucial task here to demand the new help and rights. Because one thing is clear: even if employers are responsible for the qualification of their employees, the timing of the qualification seldom suits them.

⁴ www.dgb.de/-/WIL



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

Italy

Trade union organisations participated in many negotiations with the government in order to discuss on how to use resources to finance short time work schemes (partial or full time reduction; workers on such schemes are to date 7.5 mln); agree guidelines for safe workplaces and anti-contagion measures. A tripartite protocol agreement has been concluded by the government and social partners. The protocol has been subsequently accompanied by a list of measures and workplace committees have been set up in order to ensure the implementation of such measures. One of the most important measures included in such protocol is the possibility to suspend the activity in case safety measures are not in place.

The protocol has been annexed to a government decree and adapted in legislation.

After the confederal protocol was concluded, specific protocols have been agreed by the federations at sectoral level to adapt the rules to the specific needs of the sectors (building and construction, transport, education – also involving the Ministries). Such national protocols have set up guidelines for workplace negotiation on shift, entry and exit, working time schedules.

Most of the agreements do not include measures on training: millions of workers have been working from home or remotely without the necessary basic training and the needed instruments. There are very few exceptions where workers have been properly trained on smart working.

In July specific funds have been allocated for training to compensate employers of the working hours spent by the worker in training sessions.

Dismissals on economic grounds have been prohibited. Specific regulations are now in place when an employer wants to dismiss workers.

The Netherlands

The Dutch Temporary Emergency Bridging Measure for Sustained Employment that provides employee salary compensation support is to be extended in an altered form until July 2021. An agreement reached between the government and trade union and management organisations on 27 August extends the provision under new and adjusted salary payment conditions, which will be paid to companies during periods of reduced business activity.⁵

The current 90% salary cost reimbursement rate is to be lowered to 80% as of 01 October, with the 10% differential going towards a career change assistance fund. Between January to March 2021 the applicable reimbursement rate will be lowered to 70% and between April and June 2021 it will be a further reduced to 60%. As a result of the progressively lower reimbursement rates, companies will

⁵ <https://www.planetlabor.com/en/legal-developments/national-legislation/the-netherlands-tripartite-agreement-to-extend-support-measures-for-companies-dealing-with-a-fall-off-in-business/>



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

have an option to gradually reduce their total payroll number (from between 10% and 20% via salary waivers or short-time working arrangements) without their subsidy payments being negatively impacted. The obligation for employers applying for the scheme to encourage their employees to participate in training remains intact, as does the ban over dividend payments and bonuses. However, the previous reduction in support payments in the event of economic layoffs is to be discontinued. The requirement to manage up to a 20% drop in turnover is maintained until the end of 2020, and is raised to 30% on 01 January 2021.

Portugal

Have trade union rights and information and consultation rights been respected with a view to reaching an agreement which mitigates the consequences of redundancies? (In law and in practice)

In Portuguese law we can find a set of consultation and information mechanisms concerning Collective Dismissals. For example, in our labour code the following possibilities and rights of worker's representatives participation exist:

- Trade Unions can participate through an information and consultation process on collective dismissals process (article 359.º and following articles);
- Worker's councils have the possibility of participation in restructuring processes and to be consulted (is mandatory) about decisions that implicates reduction of manpower (articles 423.º and 425.º of Labour Code);
- Trade Unions also have to be consulted and informed about any process that has to do with a "lay-off" process, because of structural, economic or technical reasons, making no difference if it is the general lay-off process, or the "light" lay off process (that is, the so-called simplified layoff regime), created because of Covid-19 crisis;

It is important also to underline that during lay-off and the period of two months after it is prohibited for employers to proceed with collective dismissals. However, employers tend to develop similar processes to achieve the same results. For example, they use fear, mental pressure and sometimes moral harassment to convince workers to agree with the termination of working contracts, through a mutual agreement process. In these processes, employers present to the worker the possibility of accessing to unemployment public support to convince them to terminate their contract.

Trade union participation on these "negotiations" processes tend to be minimal, if not totally absent.

Resuming, decisions about redundancies tend to have minimal limitations imposed by law, in practical terms. Only when trade Unions have a strong presence in the workplace, it's possible to mitigate and fight the consequences of redundancies. Otherwise, those redundancies are made only fitting employer's needs.

Have you experienced any problems with employers using the furlough schemes to reduce negotiations on restructuring?

Yes, through the access to furlough schemes, employers are able to get a whole set of public supports. So, when they need to reduce manpower and when it's possible to invoke structural, technical or



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

economic damage in a way that is possible for them to proceed to collective dismissals, employers tend to require public support for the activity reduction or suspension.

By this, employers gain some months before they proceed to collective dismissals. In conclusion, it is true that employers use furlough schemes as the first step to a restructuration. They can use the following schemes:

- Regular lay off (Labour Code);
- The simplified lay off regime, created after the outbreak of the pandemic, is a deregulated regular lay-off, simplified in order to facilitate the access by employers and avoiding to a great extent the intervention of trade unions;
- Mechanism for the return to activity (the so-called “progressive recovery scheme”, see 4.2), which is, in practical terms, an extension in time of the “simplified” lay off.

Is Covid-19 being used to disguise discriminatory company practices in redundancy decisions? (e.g., a way to make long-term permanent staff redundant, age, gender...)

First, Covid-19 was used to make redundant a huge amount of non-permanent and precarious workers. Those are the first to whom against the Covid-19 was used for. Mostly affecting low wage, low qualification and younger workers.

Older, better well paid and unionized workers tend to be the second group to whom the redundancy processes are used against. Also, workers that are parents and have to use parental leave rights. However, since those processes are taken over through individual negotiation agreements, so far it's very hard to prove that discriminate tactics are being used.

Which issues are being negotiated as means to mitigate the consequences of redundancies?

The onset on pandemic in Portugal was 2 March. Portuguese authorities announced containment measures on 12 March and a State of Emergency was declared on 18 March. The State of Emergency had consequences not only in terms of restrictions on mobility but also on the worker's rights, including the right to strike.

During March and the following months, the Portuguese government approved several measures to tackle the economic, social and work impact of the pandemic, the most important being the working time reduction and suspension of work contracts (the so-called layoff). Although this measure was already foreseen in the Labour Code, the number of beneficiaries was always limited even during the 2008-2010 financial where there was a limited increase. This time was different and soon after the breakout of the COVID-19 the Economy Ministry announced a new scheme that would cover a very high number of workers (a million).

A second important measure with a profound impact in the field of work organisation was teleworking. Its adoption became mandatory, whenever the functions performed allowed it, under the declaration of the State of Emergency and later with the state of calamity. The closure of educational establishments and preventative isolation situations also contributed to its dissemination. In the 2nd



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

quarter of 2020, the employed population who indicated having exercised their profession at home was estimated at 1,1 million people, which represented 23.1% of the total employed population. The main reason for having worked at home was the COVID-19 pandemic.

The provision of teleworking ceased to be compulsory as of June 1 in the context of the measures of deconfinement, becoming subject to agreement between the employer and the worker. However, many workers continue to work in this regime, in some cases because they consider it to be in their interest, in others because of pressure from employers who see this regime as a way of reducing costs and weakening the contractual power of workers due to their isolation.

Short-time working schemes (the new simplified lay-off regime) and teleworking have been the measures with the strongest labour market impact but there was been many other measures in several fields. These measures cover domains like: the extraordinary support for families with children in school (in particular, children up to 12 years) during the confinement period; the extraordinary support for the reduction of self-employment economic activity; the extension of unemployment and poverty benefits; paid sick leave in cases of prophylactic isolation; the protection of self-employed and informal workers; reinforcement of active labour market policies; and others.

There has been a tripartite consultation process with trade unions and employers' confederations at the Standing Committee for Social Concertation but not a negotiation process. In the opinion of CGTP-IN, the simplified lay-off regime, the most relevant measure, met mainly employer claims.

Has the government provided support to restructuring efforts which save jobs (e.g. wage compensation or other supports such as training courses)?

The most relevant measure, taking into account the number of workers involved, was the new regime of lay-off (lay-off simplified regime, Decree-Law No. 10-G/2020 of 26 March 2020). The regime applies to companies in a crisis situation as a result of a complete halt in the activity or abrupt and sharp decrease of activity of at least 40% of invoicing. It was designed as an exceptional and temporary applicable until June 30.

The simplified lay-off scheme represents a significant wage cut because the employee receives only 2/3 of gross normal pay with a limit value of 3 minimum wages (1905€). This 2/3 is financed by social security (70% of the total income support received by the worker) e by the employer (30%). The state budget will cover the financing of the part of wages provided by social security.

The measure has had a strong impact. Workers in simplified lay-off regime represent more than 20% of wage employment (22% at the beginning of July with reference to 2nd quarter wage employment).

The aim invoked by the Portuguese Government is the protection of jobs and the maintaining of labour contracts. The effectiveness of the measure in terms of employment is difficult to evaluate. The measure cushions the impact of the fall in GDP on the employment and unemployment variables. GDP decreased much more sharply than employment (16,3% and 3,8%, respectively, in the second quarter), but it cannot be said that all jobs were saved nor that the number of workers in lay-offs corresponds to jobs preserved. The situation in the labour market is very complex and much will depend on the



COVID-19 WATCH

ETUC BRIEFING NOTE

NEGOTIATING RESTRUCTURING

25 SEPTEMBER 2020

recovery of the economy in the coming months. The second quarter will have corresponded to the lowest point of the economic cycle, but many questions remain about the recovery. It is likely that we will have this year a GDP fall of 10% in real terms.

Concerning the training measures, only a very small number of companies has used professional training in conjunction with lay-off.

Have Short-Time Work schemes being extended? If so, for how long?

The lay-off simplified regime is exceptional and temporary by nature. It was planned for a limited duration (until the end of June) although a prolongation was not excluded. In early June, the Government approved the Economic and Social Stabilization Program (ESSP). The government considered that the most critical phase of the epidemic crisis was over, so it would move on to a stabilization phase, to run until the end of the year, which would finally be followed by a phase of economic recovery in early 2021.

The ESSP includes several measures in the area of employment and income support: the extension of the simplified lay-off scheme during July; the maintenance of the simplified lay-off scheme for companies that remain closed by the government (e.g. bars and nightclubs); the creation of a progressive recovery scheme, which would replace the simplified lay-off scheme and would run from 1 August to 31 December; the creation of an extraordinary financial incentive for the normalization of business activity; the creation of a Stabilization Complement.

The support for progressive recovery introduces changes concerning the wages of workers under layoff: the workers will receive between 77% and 83% of their wages from August to September, and between 88% and 92% from October to December 2020.

The Stabilization Complement covers workers with a basic salary above 1 minimum wage and up to 2 minimum wages and aims to provide extraordinary support to workers who have had a reduction in income as a result of the pandemic, mitigating the loss of income. Its value varies between 100 euros and 351 euros (DL n° 27-B/2020 of June 19th). The CGTP-IN considers that this measure should cover all the workers with wage losses due to application of the lay-offs.