



COVID-19 WATCH ETUC BRIEFING NOTES

HUMAN RIGHTS AND COVID-19

7 MAY 2020

HUMAN RIGHTS AND COVID-19

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Introduction

Due to the Covid-19 outbreak, a range of measures are being taken at EU and national level in different domains to protect public health, the economy but more importantly workers and their jobs and their income. Exceptional circumstances ask indeed for exceptional measures,

However, restrictions on Human Rights introduced by governments seem indeed to spread around the world and Europe almost as fast as the virus itself¹ and manifold signs already indicate that certain governments use the Covid-19 crisis, like it was done in the framework of the 2008 economic crisis, to “temporarily” undermine and curtail human rights in general and workers and trade union rights in particular. (see section II)

For ETUC this is unacceptable as it is in particular in times of crisis that human rights, including workers’ and trade union rights, must be upheld and even enhanced in particular for vulnerable groups like the elderly, women, young persons, persons with disabilities, migrants/refugees but also all workers irrespective of their status (i.e. including self-employed workers, non-

¹ See also [Amnesty International](#) and their guidance ‘[Europe at a cross road](#)’ with ‘do’s and don’ts’ for authorities when responding to the Covid-19 pandemic.



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standard workers, free-lancers and gig/platform workers). ETUC therefore urges that in any response given now by international, European and national instances and authorities it should be ensured that the measures taken and/or envisaged do not infringe human rights standards, including workers and trade unions rights, but instead promote trade unions and collective bargaining as the effective response to the crisis and in the road to recovery.²

This briefing provides inputs on the impacts of such measures on human rights, including trade unions and workers' rights in dealing with the Covid-19 crisis. It looks in particular at guidelines by international and European human rights bodies (UN, ILO and Council of Europe) to ensure the protection of particular rights (of particular groups) in times of crisis. This briefing also provides an outline of the fundamental principles, according to international and European human rights case law, that should be underlined and respected when governments elaborate and adopt (emergency) measures in the framework of any crisis, including this Covid-19 crisis. (see Section I)

Finally, it is clear for ETUC and all its affiliates that vigilance will be key, as in previous emergency situations (remember what happened and is still happening in the wake of the 2008 financial/economic crisis)³. ETUC increasingly receives information on very worrying national developments whereby Governments use the Covid-19 crisis as an alibi for adopting and implementing (emergency) measures which clearly undermine civil and politic rights but, what is more, workers and trade union rights.⁴ Governments are indeed introducing legislative initiatives to reduce trade union rights and workers' rights and protections, particularly related to dismissals, working time, minimum wages, collective agreements and social dialogue. The action put in place by national trade unions with the support of [ETUC](#) has stopped so far these attempts, but it is far from sure that they will not be tried again.

Further information can be found on ETUC dedicated webpages sharing ETUC statements, the European social partner statement, and most importantly national bi-partite and tri-partite agreements on dealing with the impacts of the coronavirus emergency, see '[ETUC Covid-19](#)

² For more information on the positive and key role social dialogue (including collective bargaining) has played in mitigating the economic and social impact of this crisis, see the [ETUC Covid-19 Briefing Note on "Covid-19 and social dialogue developments"](#).

³ For more information see amongst others ETUI Reform Watch and ETUI publications on the [economic crisis in general](#), [labour law reforms](#) and the [impact of the European Semester CSRs in the social policy field](#) in particular.

⁴ While some Member States' constitutions include mechanisms allowing for recourse to a 'state of emergency' or the entrustment of special powers to specific institutions, other Member States' legal orders do not, either for historic reasons or owing to institutional tradition. For an overview of the responses to the coronavirus pandemic in Belgium, France, Germany, Hungary, Italy, Poland and Spain, see the European Parliament briefing on '[States of emergency in response to the coronavirus crisis: Situation in certain Member States](#)'.



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Watch (including different briefing notes) and ETUC 'Trade unions and Coronavirus' website section.

This (and the other) briefing(s), regularly updated, is (are) only possible with the large and much supportive contribution and coordination of ETUC affiliates. Thanks for your solidarity!

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.

This briefing note was originally produced on 7 April 2020 and has been updated on 7 May to take account of developments in the following international organisations and countries: UN, ILO, Council of Europe, Belgium, Hungary, Poland and Turkey.⁵

For ETUC, Human Rights, including trade unions and workers' rights, should be the redline to respect and promote for the EU and Member States in particular in time of this Covid-19 crisis.

The COVID-19 pandemic might legitimately prompt Member States to adopt radical measures to protect public health, the economy and workers jobs and incomes. However, these measures may restrict individual rights and liberties anchored in Member States constitutions and in international and European human rights instruments like the UN International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, ILO Conventions and the Council of Europe European Convention on Human Rights and European Social Charter.

⁵ Note that, with the support of the ITUC-PERC, translations of (earlier) versions of this Briefing Note are available in Russian and Serbo-Croat, respectively at <https://perc.ituc-csi.org/Informacionnyj-dokument-EKP-prava-cheloveka-i-COVID-19?lang=ru> and <https://perc.ituc-csi.org/EKS-lzvjes%CC%8Ctaj-Ljudska-prava-i-COVID-19?lang=sh>.



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Principles

All crisis responses need to be human rights-compliant and ensure respect for all human rights and the rule of law, including respect for fundamental principles and rights at work and for international labour standards

High-level representatives and bodies of the UN, ILO and the Council of Europe recall that the Covid-19 crisis should not be used, even temporarily, to dismantle human rights and social rights, in particular trade unions rights. Such measures risk also to run against EU fundamental rights and Treaties provisions.

Furthermore, ETUC recalls that any derogation from or restriction of Human Rights are strictly regulated. They should respect the very essence of democratic principles and rule of law and can only be established under very clear and strict conditions and in limited circumstances.

Derogations from or restrictions of Human Rights are strictly regulated

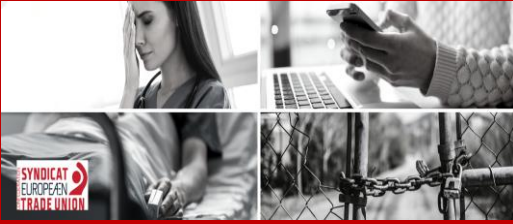
Such derogations or restrictions:

can only be

- *only invoked in time of war or other public emergency threatening the life of the nation,*
- *solely established for the purpose of promoting the general welfare in a democratic society,*

should be

- *consistent with the State's other obligations under international law,*



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- *taken in full respect democratic principles and of the rule of law,*
 - *only adopted/implemented when necessary,*
 - *applied in a non-discriminatory way,*
 - *specific in focus,*
 - *proportionate to the evaluated risk,*
 - *temporary and supervised/monitored on a regular basis,*
 - *using the least intrusive approach possible, and should be*
 - *elaborated and implemented following a permanent and intensive dialogue with the most representative workers' and employers' organization.*
-

For ETUC this is unacceptable as it is particularly in times of crisis that human and trade union rights must be upheld and even enhanced. ETUC therefore urges that any response given now by international, European and national instances and authorities should ensure that the measures taken and/or envisaged do not infringe human rights standards, including workers' and trade unions rights but instead to promote trade unions and collective bargaining as the effective response to the crisis and in the road to recovery.

I. Recalling international and European messages on Human Rights and (Covid-19) crisis

United Nations

The UN High Commissioner for Human Rights Michelle Bachelet was crystal clear when stating that human dignity and rights need to be front and centre in all our responses to the Covid-19 crisis, not an afterthought. The UN Guidance on 'Covid-19 and human rights' is crystal clear in that "respect for human rights across the spectrum, including economic and social rights, and civil and political rights, will be fundamental to the success of the public health response" and that "*although international law allows emergency measures in response to significant threats, measures should be proportionate to the evaluated risk, necessary and applied in a non-discriminatory way. This means having a specific focus and duration and taking the least intrusive approach possible to protect public health*". As for the instalment of state of emergencies, emergency powers must be used for legitimate public health goals, not used as basis to quash dissent or silence the work of human rights defenders (and this includes trade unions of course) or journalists.

This call of the High Commissioner was echoed by 10 high-level UN experts (in different field of expertise) who '*encourage States to remain steadfast in maintaining a human rights-based*



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approach to regulating this pandemic, in order to facilitate the emergence of healthy societies with rule of law and human rights protections.”

On 14 April, the UN expert on the rights to freedom of peaceful assembly and of association, Mr. Clément Voule, called up on governments that “[States responses to Covid 19 threat should not halt freedoms of assembly and association](#)” . In particular, the Special Rapporteur would like to emphasize ten key principles to be taken into account for any response given in this area:

- ensuring that new legal measures respect human rights,
- ensuring that the public health emergency is not used as a pretext for rights infringements,
- democracy cannot be indefinitely postponed,
- ensuring inclusive participation,
- guaranteeing freedom of association and assembly online,
- protecting workplace rights to freedom of association and assembly (and recalling that the latter includes the right to strike!),
- freedom of expression must be ensured,
- civil society’s participation in multilateral institutions must be secured,
- international solidarity is needed more than ever, and
- prepare for future implications of Covid-19 and responding to popular calls for reform including citizens’ calls and protests for more democratic governance structures, to enhance rights protection and fulfilment, to end austerity, to reduce inequality, and to ensure that the transition to greener and more sustainable energy sources.

1. International Covenant on Economic, Cultural and Social Rights

The International Covenant on Economic, Cultural and Social Rights clearly spells out in its Article 4 that “(...) *in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society*”.

For instance, in its General Comment on Article 7 on ‘the right to just and favourable conditions at work’ (including i.a. the right to fair (minimum) wages and healthy and safe working conditions, the Committee on Economic, Social and Cultural Rights, clearly stated that:



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52. State parties should avoid taking any deliberately retrogressive measure without careful consideration and justification. When a State party seeks to introduce retrogressive measures, for example, in response to an economic crisis, it has to demonstrate that such measures are temporary, necessary and non-discriminatory, and that they respect at least its core obligations. A State party may never justify retrogressive measures in relation to aspects of the right to just and favourable conditions of work that are subject to immediate or core obligations. States parties facing considerable difficulties in achieving progressive realization of that right due to a lack of national resources have an obligation to seek international cooperation and assistance.

The core obligations referred to above in the field of just and favourable conditions entail the following:

C. Core obligations

65. States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to just and favourable conditions of work. Specifically, this requires States parties to:

- (a) Guarantee through law the exercise of the right without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, sexual orientation, gender identity, intersex status, health, nationality or any other status;
- (b) Put in place a comprehensive system to combat gender discrimination at work, including with regard to remuneration;
- (c) Establish in legislation and in consultation with workers and employers, their representative organizations and other relevant partners, minimum wages that are non-discriminatory and non-derogable, fixed by taking into consideration relevant economic factors and indexed to the cost of living so as to ensure a decent living for workers and their families;
- (d) Adopt and implement a comprehensive national policy on occupational safety and health;
- (e) Define and prohibit harassment, including sexual harassment, at work through law, ensure appropriate complaints procedures and mechanisms and establish criminal sanctions for sexual harassment;
- (f) Introduce and enforce minimum standards in relation to rest, leisure, reasonable limitation of working hours, paid leave and public holidays.' [Emphases added]

2. International Covenant on Civil and Political Rights

Also the [International Covenant on Civil and Political Rights](#) provides in its Article 4 that '*in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from*



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their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin’.

On 30 April, the Human Rights Committee (HRC), main supervisory body to the ICCPR, provided a [‘Statement on derogations from the Covenant in connection with the COVID-19 pandemic’](#).

Also, the Office of the UN High Commission of Human Rights (OHCHR) launched on 27 April a Guidance on “Emergency measures and Covid-19” mainly related to rights in the International Covenant on Civil and Political Rights (ICCPR), including the freedom of association and assembly.

3. Other relevant UN material and guidance

In the meantime, several other UN bodies have elaborated guidance and statements in relation to the UN Human Rights instruments they are responsible for.

- The Independent Expert on debt and human rights issued two statements on the need to put human rights at the centre of the response to the economic recession induced by COVID-19. On 20 March 2020, the Independent Expert recalled that the [best response to a potential economic and social catastrophe provoked by the COVID-19 crisis is to put finance at the service of human rights](#) and to support the less well-off through bold financial approaches, today said a UN human rights expert. On 15 April 2020, the Independent Expert released a [Guidance note on a human rights response to the economic recession in the context of COVID 19](#) (also available in French, Spanish and Portuguese).
- The Office of the UN High Commission of Human Rights (OHCHR) launched several guidance notes in relation to the **‘Protecting the right to housing** in the context of the COVID-19 outbreak’ including on aspects like evictions, protection of homeless as well as renters and mortgage payers.
- The UN Committee on the **Elimination of Discrimination against Women** (CEDAW) launched on 21 April 2020 its statement for a “Call for joint action in the times of the COVID-19 pandemic” recalling amongst others the specific guidance and recommendations on the CEDAW Convention it had prepared as well as the more general OHCHR guidance on ‘Covid-19 and Women’s Human Rights of 15 April 2020.
- On 30 April, the UN Commission for Human Rights, launched a [new guidance](#) setting out key actions in different areas including the area of work and income to counter the risks faced by persons with disabilities in the COVID-19 pandemic and amongst the key actions Member States can take are such as providing financial aid for persons



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with disabilities, including self-employed, without any income or with reduced incomes and increasing. This followed up on [a Joint Statement on “Persons with Disabilities and COVID-19”](#) by the Chair of the United Nations Committee on the Rights of Persons with Disabilities, on behalf of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility.

International Labour Organisation (ILO)

Over time, the ILO supervisory bodies have had to pronounce themselves on the application of standards in situations of crisis.

1. Committee on Freedom of Association (CFA)

The **Committee on Freedom of Association (CFA)**, a tripartite body entrusted with the examination of complaints alleging infringements of freedom of association principles, has a long-standing record of decisions on the need to align structural adjustment programmes with in particular the respect to collective bargaining structures and agreements. For the CFA, the fundamental principles require that any restrictive measures in times of crisis, “should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers’ living standards”. The Committee also recalled that measures that might be taken to confront exceptional circumstances ought to be temporary in nature having regard to the severe negative consequences on workers’ terms and conditions of employment and their particular impact on vulnerable workers. It also highlighted the importance, in the context of an economic crisis, “of maintaining permanent and intensive dialogue with the most representative workers’ and employers’ organizations” in particular in the process of adopting legislation, which may have an effect on workers’ rights, including those intended to alleviate a serious crisis situation. (ILO, CFA Digest of Decisions, 2018, paras. 1434, 1437, 1456, 1461, 1463 and 1546).

2. Committee of Experts on Applications of Conventions and Recommendations (CEACR)

Also the **Committee of Experts on Applications of Conventions and Recommendations (CEACR)** adopted in the context of the then global financial crisis a statement in which the importance of the role of international labour standards in dealing with the crisis and emphasised that the crisis must not be used as an excuse for lowering standards. Furthermore, it also made a general observation on the application of the ILO social security standards in which it emphasised the need to avoid the risk of social regression. The CEACR also underlined that in such unprecedented circumstances, governments must manage the skyrocketing levels of budgetary deficit in such a way not to endanger the social guarantees of the population and that measures taken by governments to salvage private providers could not be taken at the expense of cutting the resources available to public social security schemes (ILO, 2009, para. 68 ff.).



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3. Other relevant ILO material

It should also be recalled that already in 2009 and in view of recovering from the crisis, the ILO adopted a Global Jobs Pact, in which it proposes a balanced and integrated set of policy measures that countries, can adopt in both the economic and social policy sphere to address the crisis and many of which are also still or will become even more relevant to combat (the aftermath of) the Covid-19 crisis.

As for the handling of the Covid-19 crisis in particular, reference could be made to the following recent ILO guidelines and documents:

- In a brief of 23 March on “ILO Standards and Covid-19 (Corona virus)”, the ILO brought together the provisions of international labour standards relevant to the evolving COVID19 outbreak relating to safety and health, working arrangements, protection of specific categories of workers (including nursing personnel, domestic workers, migrant workers, seafarers or fishers, who we know are very vulnerable in the current context), non-discrimination and equality, social security or employment protection and of course trade union rights including collective bargaining. The key message is that all crisis responses need to ensure respect for all human rights and the rule of law, including respect for fundamental principles and rights at work and for international labour standards. A particular reference is also made to the very recent Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) that outlines a strategic approach to crisis response, including the adoption of a phased multitrack approach implementing coherent and comprehensive strategies for enabling recovery and building resilience (in different areas like employment/income generation, social protection, labour law, labour market institution, social dialogue (including capacity building) and special groups like refugees and migrant workers).
- A joint statement issued by the Officers of the Special Tripartite Committee of the Maritime Labour Convention (MLC, 2006), representing **seafarers**, ship owners and governments, called on ILO member States (including labour supplying States and port and flag State authorities) for seafarers to be treated as ‘key workers’ and be exempted from travel restrictions during the COVID-19 pandemic” and “do all that they can to facilitate the delivery of essential medical supplies, fuel, water, spare parts and provisions to ships”.
- On 30 March, the ILO and UNICEF, with contributions from UN Women, formulated some guidelines formulated calling upon employers (organisations) to consider the impact of their decisions on **workers’ families**. A particular call relates also to the need to prioritise improved social protection where and whenever possible and to provide additional support, especially to those on low incomes.

The preliminary guidelines for employers, including examples, are as follows:



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- Observe good practices when implementing policies based on social dialogue, national labour laws and international labour standards. Ensure that workplace support measures are available to all, without discrimination, and that all workers know, understand, and are comfortable with them,
- Monitor and follow national advice from local and national authorities and communicate it to the workforce,
- Combat discrimination and social stigma at work by ensuring that support measures are available to all, without discrimination, ensuring confidential and safe reporting mechanisms and support training,
- Adopt family-friendly working arrangements, in line with amongst others ILO Convention 156 on Workers with Family Responsibilities (1981) by ensuring flexible working arrangements and, if not possible, by considering other forms of support for working parents, such as childcare,
- Prevent and address workplace risks by strengthening occupational safety and health measures, including with guidance and training on occupational safety and health and hygiene, encouraging workers to seek appropriate medical care and better supporting workers coping with stress,
- Support government social protection measures in line with the ILO Social Protection Floors Recommendation No. 202. This can include subsidies for workers to access health, unemployment and inability to work insurance, maternity protection, and should extend to workers in the informal economy.
- Reference should also be made to the ILO and WHO joint manual on Occupational safety and health in public health emergencies: A manual for protecting health workers and responders to ensure a full protection of those workers who are now in the frontline to save lives. The manual is also intended to assist organizations and workplaces to better prepare and respond to the outbreak of infectious diseases and other public health emergencies.
- The ILO has also set up a monitoring system, which is regularly updated, on how ILO member States are responding to the crisis in particular in the world of work caused by the COVID-19 pandemic. It provides a mass of information on the field of workers' protection as well as the role played by social dialogue and/or separate trade union and employers' activities.
- In written statements to the International Monetary Fund (IMF) and the World Bank (WB) of mid April, ILO Director General Guy Ryder urged the IMF and WB to focus their response on providing immediate relief to workers and enterprises in order to protect businesses and livelihoods, and to pay priority attention to unprotected workers, and those in the informal economy, and to make sure that any policy response makes '*full use of social dialogue between governments, and*



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workers and employers' organisations, which has a proven record of generating effective, practical, and equitable solutions to the type of challenges now confronting the world of work'.

But also the **social partners within the ILO** already reacted. In a [joint statement, ITUC and IOE](#) call for urgent action in amongst others the following key areas:

- Ensure business continuity, income security and solidarity to prevent the spread and protect lives and livelihoods and build resilient economies and societies.
- Important role that social dialogue and social partners play in the control of the virus at the workplace and beyond, but also to avoid massive job losses in the short and medium term
- Ensure policy coordination and coherence whereby consideration must be given to the need for protecting employment and income through strengthening social protection measures in both the resolution of the pandemic and in setting the foundation for the employment and economic conditions for recovery
- Ensure strong and functioning health systems and governments are urged to deploy all possible resources.

Also the **ILO's Bureau for Workers' Activities (ACTRAV)** prepared a note on ["COVID-19: what role for workers' organizations?"](#) highlighting the importance of ILO Recommendation No 205 on Employment and Decent Work for Peace and Resilience (R205) (see above) as an effective instrument for governments, employers and workers organizations to address the Coronavirus (COVID-19) pandemic.

Council of Europe

Dunja Mijatović, the Council of Europe Commissioner for Human Rights launched on 26 March a call to "respect human rights and stand united against the coronavirus pandemic." Although recognising that "it is necessary to respond to the unprecedented challenge we are facing. At the same time, it is clear that the enjoyment of human rights is affected by the pandemic and the measures adopted to encounter it. **The right to health, the broader range of economic and social rights, and civil and political freedoms, are all very relevant in the present context. It is therefore crucial that the authorities take measures that do not lead to discrimination and are proportionate to the aims pursued.**"

1. European Convention on Human Rights



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As for the **European Convention on Human Rights** in particular it grants 'to the governments of the States parties, in exceptional circumstances, the possibility of derogating, in a temporary, limited and supervised manner, from their obligation to secure certain rights and freedoms under the Convention. The use of that provision is governed by the following procedural and substantive conditions' (Article 15 ECHR regulating derogation in time of emergency):

- the right to derogate can be invoked only in time of war or other public emergency threatening the life of the nation.
- a State may take measures derogating from its obligations under the Convention only to the extent strictly required by the exigencies of the situation.
- any derogations may not be inconsistent with the State's other obligations under international law.
- certain Convention rights do not allow of any derogation: Article 15§2 thus prohibits any derogation in respect of the right to life, except in the context of lawful acts of war, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and servitude, and the rule of "no punishment without law"; similarly, there can be no derogation from Article 1 of Protocol No. 6 (abolishing the death penalty in peacetime) to the Convention, Article 1 of Protocol No. 13 (abolishing the death penalty in all circumstances) to the Convention and Article 4 (the right not to be tried or punished twice) of Protocol No. 7 to the Convention;
- lastly, on a procedural level, the State availing itself of this right of derogation must keep the Secretary General of the Council of Europe fully informed.⁶

According ELDH (European Association of Lawyers for Democracy & World Human Rights ELW-Network Coordinating Committee) and the ELW (European Lawyers for Workers Network), notifications of intention to derogate from provisions of the ECHR have been submitted to the Secretary General of the Council of Europe amongst others by Latvia, Romania, Armenia, Moldova, Estonia, Georgia, Albania, North Macedonia, and Serbia. This number of derogations because of COVID-19 is unprecedented.⁷

End of March, the Council of Europe Secretary General also launched a [new toolkit for governments across Europe to guarantee the respect of human rights, democracy and the rule of law](#) during the COVID-19 crisis and to ensure that measures taken by member states during the current crisis remain proportional to the threat posed by the spread of the virus and are limited in time. The toolkit covers several areas including: 1) derogations from the European Convention on Human Rights in times of emergency, 2) Respect for the rule of law and democratic principles in times of emergency, including limits on the scope and duration of emergency measures and 3) Fundamental human rights standards including freedom of

⁶⁶ For more detailed information on see the ECtHR Guide on Article 15 '[Derogations in emergency times](#)' (for French version click [here](#)).

⁷ ELDH and ELW, [European lawyers' declaration on May Day: Anti Covid-19 policies threaten workers' rights](#), 29 April 2020.



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expression, privacy and data protection, protection of vulnerable groups from discrimination and the right to education. The new toolkit was accompanied with an updated version of the **free online course on an “[Introduction to the European Convention on Human Rights](#)”**, a 5-hour interactive training course aimed at legal professionals, public authorities, civil society and students.

2. European Social Charter

In relation to the European Social Charter (ESC), Article 30 and 31 (and similarly Article G for the 1996 Revised ESC) state amongst others the following:
Article 30 –Derogations in time of war or public emergency

- 1) In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
(...)

Article 31 –Restrictions

- 1) The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.
- 2) The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Also the President of the European Committee of Social Rights (ECSR), the main supervisory body to the European Social Charter, was clear when launching in March its Conclusions 2019 (in relation to the rights guaranteed by the ESC to young persons, families and migrant workers) that *“the COVID-19 crisis is a brutal reminder of the importance of ensuring lasting progress with respect to social rights enjoyment. It is crucial that the European Social Charter, also known as the Social Constitution of Europe, should be used to shape and analyse decisions during the COVID-19 crisis. The Charter serves as a key tool for states in ensuring that their responses to the Covid-19 pandemic is human rights-compliant – both in the short and the longer term.”*

In this framework it might be also more than appropriate to recall some of the (general) case law of the ECSR in relation to (austerity) measures taken following the 2008 economic crisis.



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Both in the framework of the reporting and the collective complaint procedure, the ECSR expressed its views on the protection of social rights in times of economic crisis. In the general introduction to its Conclusions 2009⁸, the ECSR stated that the implementation of the social rights guaranteed by the Charter had acquired greater importance in a context of global economic crisis:

“The severe financial and economic crisis that broke in 2008 and 2009 has already had significant implications on social rights, in particular those relating to the thematic group of provisions ‘Health, social security and protection’ [...]. Increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while [...] revenues decline. [T]he Committee recalls that under the Charter the Parties have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realized. From this point of view, the Committee considers that the economic crisis should not have as a consequence the reduction of the protection of the rights recognized by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.”

In its Decision on the merits on the Greek “austerity” collective complaint n° 111/2014, the ECSR⁹ stated amongst the following:

83. The Committee recalls that Article 31 indeed opens up a possibility for States to restrict rights enshrined in the Charter. Given the severity of the consequences of a restriction of these rights, especially for society's most vulnerable members, Article 31 lays down specific preconditions for applying such restrictions. Furthermore, as an exception applicable only under extreme circumstances, restrictions under Article 31 must be interpreted narrowly. Restrictive measures must have a clear basis in law, i.e. they must have been agreed upon by the democratic legislature, and need to pursue one of the legitimate aims defined in Article 31§1. Additionally, restrictive measures must be "necessary in a democratic society", they must be adopted only in response to a "pressing social need" (Conclusions XIII-1, Netherlands, Article 6§4, see also European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on the merits of 2 December 2013, §207

85. While, in a democratic society, it is in principle for the legislature to legitimize and define the public interest by striking a fair balance between the needs of all members of society, and while it from the point of view of the Charter has a margin of appreciation in doing so, this does not imply that the legislature is totally free of any

⁸ Conclusions 2009: General introduction, <http://hudoc.esc.coe.int/eng>.

⁹ ECSR Decision on the merits, Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, adopted 23 March 2017.



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constraints in its decision-making. Under public international law, States having ratified human rights treaties such as the 1961 Charter are bound to respect the obligations thereby undertaken including when defining the public interest. More particularly, obligations undertaken cannot be abandoned without appropriate guarantees of a level of protection which is still adequate to meeting basic social needs. It is for the national legislature to balance the concerns for the public purse with the imperative of adequately protecting social rights. and seq.).

87. Nevertheless, the Committee considers that States cannot divest themselves of their obligations by surrendering the power to define what is in the public interest to external institutions (see *mutatis mutandis* IKA-ETAM v. Greece, Complaint No. 76/2012, op.cit., §§50-52). In transposing restrictive measures into national law, legal acts must ensure proportionality between the goals pursued and their negative consequences for the enjoyment of social rights. Consequently, even under extreme circumstances the restrictive measures put in place must be appropriate for reaching the goal pursued, they may not go beyond what is necessary to reach such goal, they may only be applied for the purpose for which they were intended, and they must maintain a level of protection which is adequate.

In a [statement of interpretation](#) issued on 22 April on **the right to protection of health (Article 11 of the European Social Charter)** in times of pandemic, the ECSR endorsed several measures adopted by states in response to COVID-19 (such as testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and 'lockdown' arrangements). However it also warns that all such measures must be designed and implemented having regard to the current state of scientific knowledge but more importantly in accordance with relevant human rights standards. The ECSR also points to a range of other social human rights affected by the pandemic, including the right to health and safety at work or the rights of children and older persons, to which authorities must pay attention. **The ECSR also foresees to offer further guidance to states on social rights exigencies in the response to COVID-19 via its dedicated website on "[Social Rights in times of pandemic: Covid-19 and the European Social Charter](#)". Furthermore, it will also scrutinise closely action taken by states in response to the pandemic in terms of their social rights obligations.** ETUC informs on a regular basis the ECSR on the detected violations of human, workers and trade union rights, in particular by providing them (the updates of) this and other [ETUC Covid-19 Briefing Notes](#).

Reference should also be made to a special note by the Special Representative of the Secretary General on Migration and Refugees of the Council of Europe, together with the EU Agency for Fundamental Rights (FRA) on the main fundamental rights safeguards for refugees, asylum seekers and migrants applicable at their member states' external borders and which aims to support EU and Council of Europe member states in their duties when taking protective measures, including to contain the spread of the Covid-19 virus, and addressing questions related to public order, public health, or national security challenges.



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3. Other relevant Council of Europe material and guidance

In the meantime, several other Council of Europe bodies have elaborated guidance and statements in relation to the Council of Europe Human Rights instruments they are responsible for¹⁰.

- In a [joint statement](#) of 28 April, the Chair of the Council of Europe's data protection "Convention 108" committee, Alessandra Pierucci, and the Council of Europe's Data Protection Commissioner, Jean-Philippe Walter, have warned of the **possible side effects of digital contact tracing applications** used to help combat the COVID-19 pandemic, and call for adequate safeguards to be put in place to prevent risks to personal data and privacy. This statement follows a first [Joint Declaration on the right to data protection in the context of the COVID-19 pandemic](#) issued on 30 March.

European Union

In a [statement](#) of 5 May 2020, the **EU High Representative Josep Borrell, on 'human rights in the times of the coronavirus pandemic'** stresses that 'respect for all human rights must remain at the heart of fighting the pandemic and supporting the global recover' and the need to address the heavy impact of the crisis on economic and social rights. He recalls also that *'the coronavirus pandemic should not be used as a pretext to limit democratic and civic space, the respect of the rule of law and of international commitments, nor to curtail freedom of expression, freedom of the press and access to information online and offline. The **measures should not be used to restrict the work of human rights defenders**, journalists, media workers and civil society organisations. Digital technologies that have the potential to help contain the pandemic should be used in full respect of human rights including the right to privacy'* and that *'the European Union recognises that the role of civil society and human rights defenders is more important than ever to encourage solidarity, support those who are most in need, and defend human rights, fundamental freedoms and democratic space, and to promote accountability.'* He also indicates that the European Union will promote coordination in all relevant multilateral fora, including working with the UN, WHO, the Council of Europe, the OSCE and other regional organisations.

II. However, experience so far shows a mixed picture, including some most worrying national experiences, but trade unions are fighting back!

¹⁰ Updates can be also found by clicking [here](#).



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ETUC demands

ETUC has been informed that at national level there unfortunately have been several attempts to put human rights and in particular workers and trade unions rights aside under the excuse of Covid-19 emergency measures and on the grounds of maintaining and relaunching economic activity. However, such measures will also increase inequalities and put the burden of the pandemic outbreak on the shoulders of workers, including the most vulnerable ones and the ones working already under precarious working conditions, as well as citizens at large.

Governments are indeed introducing legislative initiatives to reduce trade union rights and workers' rights and protections, particularly related to dismissals, working time, minimum wages, collective agreements and social dialogue. The action put in place by national trade unions with the support of ETUC has stopped so far these attempts, but it is far from sure that they will not be tried again. Therefore, [ETUC](#) has addressed on 30 March all EU institutions asking amongst others :

- Member States to refrain from any initiative aimed at reducing wages, rights and protections of workers, or to undermine social dialogue.
- Member States to put urgently in place measures for short-time work and income compensation arrangements, covering all workers including non-standard/self-employed/precarious/undeclared workers – and all companies of any size and in all sectors.
- Member States to provide access to unemployment benefits without restrictions or waiting periods, extend sick leave duration, extend its coverage to all workers and increase the level of income compensation.
- The European Commission to urgently establish a European Scheme for Unemployment Reinsurance (SURE) to intervene not only in support of unemployment systems, but particularly for short-time work and income compensation arrangements, to enable such measures to be established, operational and universally accessible in all Member States.
- The European Council, the Eurogroup and the European Commission to make sure that such a European Scheme is supported by sufficient financing, through the establishment of a common debt instrument.
- The ECB, all EU and national financial institutions, the European Commission and Member States to set clear conditionalities for all types of funding provided to companies, the banking and financial sectors and services of general interest: no worker lay-offs, no reduction of wages and rights, no distribution of dividends to beneficiaries of public funding.



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In a statement of 22 April, ETUC and more than 50 (I)NGOs called for ‘[For a Europe that cares for all – during the COVID-19 pandemic and beyond](#)’ and more in particular on European decision-makers to come together, across borders, to show the vision and courage to set Europe on the path to a sustainable future; a future of resilient democracies built on human dignity, freedom, democracy, equality, human rights and the rule of law. **The European Union was urged to take action amongst others to:**

- Ensure that restrictive emergency measures serve the purpose of combating the pandemic only, are time-limited, and are compatible with the rule of law and the EU’s fundamental values. Simultaneously, dialogue with, and support for, organised civil society must be maintained,
- Guarantee that any use of digital technologies, including apps and Artificial Intelligence, to monitor the spread of the virus and the behaviour of human beings is lawful, ethical, and strictly temporary. Private companies must not be allowed to access this data for commercial purposes,
- End the age of austerity in Europe, and work towards a macroeconomic framework that prioritises tackling inequality, and invests in human wellbeing and the preservation and protection of the natural environment that sustains us. Tax wealthy companies and individuals to help pay for the costs of the rescue and recovery packages, and to
- Strengthen workers’ rights, safeguard employment, support people’s income, and introduce measures to protect those left out of the labour market. Measures should address the situation in Europe and the EU’s partner countries, and should especially consider health workers, care-givers and those in precarious work, the overwhelming majority of whom are women.

Examples of restrictive measures

Some examples in the area of workers’ and trade union rights:

- **Croatia:** The Croatian Ministry of Labour and Pension System was end of March in the mid, without informing let a lot consulting the trade unions, drafting an Act on regulating labour relations in the circumstances of the COVID-19 epidemic and by which bring some important changes to fundamental social rights as they are currently enshrined in the Croatian Labour Code.

The law would “**temporarily**“ amongst others:



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- Enable employers to cut wages through company by-laws up to the level of the minimum wage, and to abolish workers' rights to payment of one-off material rights, but in practical terms it would thus abolish collective agreements and allow the employers to unilaterally exclude certain provisions /material rights from collective agreements,
- Temporarily suspend certain provisions of the Labour Code by allowing a different regulation of the entitlement to wage compensation in case of termination of work due to the COVID-19 epidemic, i.e. reductions in the amount of compensation,
- Enable employers to unilaterally shorten workers' working time (and thus lowered wages) by simply putting an annex to their employment contracts,
- Enable employers to organize annual leave without further notice of 15 days and an obligation of periodic medical check-ups of workers employed on jobs with specific working conditions would also be abolished,
- Enable employers to unilaterally decide to organize work on a dislocated place of work; and no sanctions will be put on employers who have already organized telework, but who have not ensured OSH protection,
- and finally, the law would abolish the obligation to consultation of the employer with the works council prior to adopting any such decisions.

Following immediate and strong reactions of ETUC affiliates, SSSH/UATUC and NHS, and with the full support of ETUC (as well as EPSU and ITUC), however, the Croatian government announced those reform plans will be abandoned.

Regarding the public sector, the Government issued a Conclusion stating that it would launch negotiations with the social partners on the amount which will serve as the base for the salary calculation for civil servants and employees in the state administration and for other employees in the public sector. Apart from this, they will negotiate reducing other financial rights guaranteed to the civil and public servants and employees in the public sector by the applicable collective agreements¹¹

- **France:** The French government has adopted a series of decrees allowing derogations to labour law for the food, energy, transport and logistics sectors for the (not yet determined) time of emergency to increase regular working time of 48 hours/week to 60h/week, reducing rest time to 9h instead of 11h, and suspending the rest day of Sunday, so that business can operate 7/7, as well as unilaterally modifying of the use of RTT (reduction of working time). Derogations to such an extent of the maximal working and rest times constitute a clear breaches of ILO conventions and the

¹¹ Grgurev, I. (2020) COVID-19 and Labour Law: Croatia, in Italian Labour Law e-Journal, [Special Covid-19 and Labour Law. A Global Review, Issue 1, Vol. 13\(2020\)](#).



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European Social Charter, and endanger workers' health and safety, which is particularly at stake in the present crisis.¹² In addition, these measures are not taken with complementary measures that would reinforce the safety for workers, be it in terms of additional sanitary equipment or with security measures. This is particularly true when it comes to logistics and transport, sectors particularly affected already with poor working conditions and work environment. The transport workers suffer dramatically during the crisis, as truck drivers e.g. do not have any possibility to rest or even to eat during their missions, due to the shut-down of most motorway service stations.

The Cabinet of Ministers intended passing a bill extending the state of health emergency by two months until July 23 on Saturday, May 2. Announced Tuesday April 28 during the presentation of the deconfinement plan before the National Assembly by the Prime Minister, Edouard Philippe, this text was to include, in addition, provisions to be able to put in isolation people with the virus and the creation a record of patients, and even people who may be infected with the virus. But the government was forced to revise its copy in the last few hours due to the risks of unconstitutionality raised by it. If the extension of the state of health emergency for two months does not seem to be debated, one of the measures envisaged by the government, on the other hand, questions as to the respect of public freedoms. Article 2 of the preliminary draft law, provided that a person tested positive for Covid-19 could be forced to isolation at his/her home or in a place assigned to him/her "in the event of repeated refusal of medical prescriptions for prophylactic isolation", because it would run "a serious risk of infecting other people". Such placement in solitary confinement would be ordered by the prefect at the request of the regional health agency. Under similar conditions, people suspected of having been in contact with a sick person could be placed in quarantine by the administrative authority. These administrative police measures are far more restrictive than those incorporated in November 2015 into the State of Emergency Act in the name of the fight against terrorism. At the time, the Constitutional Council had validated house arrest without supervision by the judicial judge because house arrest was limited to twelve hours a day. A posteriori review of the administrative judge was possible. Here, in a more severe isolation or quarantine regime, it is no longer a "restriction of liberty", but a "deprivation of liberty" of which only the judge is able to assess the justification. This time, the government intended to dismiss the administrative judge and allow, if the person does not agree with the measure, an appeal to the liberty and detention judge (juge des libertés et de la détention (JLD)), the same magistrate who is seized when it involves incarcerating a person without waiting for him to be found guilty. The provisions were had raised concerns amongst academic lawyers, but also amid members of both majority and opposition parties. Also

¹² On how the emergency measures constitute a de facto derogation of the ECHR, see Sudre, F. (2020) [La mise en quarantaine de la Convention européenne des droits de l'homme](#), Les Club des Juristes, Blogpost 20/04/2020 and [La Convention EDH face au Covid-19 : dépasser les apparences](#), idem, Blogpost, 27/04/2020 (French only).



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another article (Article 6) in the text created concern as it creates an "information system" making it possible to identify people infected with the coronavirus "or likely to be", and people who have been in contact with them. Doctors will be "on the front line" to identify these cases, then report their identity to Medicare, which will be assisted by "brigades" who will have to draw up Excel files/lists, or alert the persons concerned to invite them to be tested. This IT infrastructure will also collect information related to "medical isolation prescriptions" as well as data related to medical test results. The bill authorizes the government to legislate by ordinance to set up this "information system". The system would be "centralized and created for one year", although the extension of the state of health emergency is (for the moment only) for two months. The government's bill was expected to be discussed in the Senate on Monday 4 May and then in the National Assembly which is a very short calendar and not conducive to an in-depth debate on such fundamental questions.¹³ Following its debate, the Senate already rejected the proposed bill.

- **Hungary:** Next to the fast track law adopted on 10th March 2020 to flexible labour law during the pandemic crisis, Hungary had also declared a state of emergency on March 11 to fight the Covid-19. On 21 March, four Hungarian Trade Union confederations (LIGA, MASZSZ, SZEF and ÉSZT) published a press release regarding those government measures introduced in the state of emergency. Although trade unions welcome some of the measures mentioned above in safeguarding jobs, they express concern that the Labour Code changes endanger employees unproportionally. The new measure states that "The employee and the employer may deviate from the provision of the Labor Code in a separate agreement" is basically eliminating the entire Labour Code and autonomous collective agreements. The trade unions also find it unacceptable that such decisions regarding working life have been unilaterally made by the government without any consultation with the social partners.¹⁴

On 30 March, a further step was taken when the Hungarian Parliament gave the green light for a law that offers Prime Minister Orban the opportunity to extend the state of emergency for an indefinite period of time, without requiring the consent of Parliament and, through special decrees, suspend certain laws and take exceptional measures to guarantee "public health, the safety of citizens and the economy". Also, prison sentences are provided for the dissemination of "fake news" about the virus and government measures. This new demarche by the Hungarian government has already strongly condemned by the Council of Europe Secretary General Marija Pejčinović

¹³ Le premier ministre, Edouard Philippe, et le ministre de l'éducation, Jean-Michel Blanquer, à l'Assemblée, le 29 avril, Sarah Belouezzane, Olivier Faye, Jean-Baptiste Jacquin et Alexandre Lemarié, Le Monde, 04/05/2020.

¹⁴ For more details, see also Gyulavári, T. (2020) COVID-19 and Labour Law: Hungary, in in Italian Labour Law e-Journal, [Special Covid-19 and Labour Law. A Global Review, Issue 1, Vol. 13\(2020\)](#).



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Burić, recalling that “an indefinite and uncontrolled state of emergency cannot guarantee that the basic principles of democracy will be observed and that the emergency measures restricting fundamental human rights are strictly proportionate to the threat which they are supposed to counter.” Also [ETUC](#) has expressed and addressed its serious concern about these new developments to both Prime Minister Orban and the (President of the) European Commission highlighting thereby in particular that those developments put in danger Hungary’s respect of and commitment to the EU values and EU (employment) secondary law as well several ILO Conventions and the Council of Europe European Social Charter. [ETUC](#) also called upon the Commission to fully back Article 7 proceedings and to launch urgent actions to challenge the emergency law before the EU Court of Justice, to immediately increase scrutiny of the use of EU funding by Hungary to ensure that no EU funding can be misused or used to reinforce the democratic deficit and considers and to launch an investigation as a matter of urgency into what amounts to a manifest invitation to employers to breach EU employment rights.

This law also triggered a lot of reaction from other EU member states. In a [diplomatic statement of 1st April, 17 Member States](#) (Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Spain, Sweden) recalled that emergency measures should be limited to what is strictly necessary, should be proportionate and temporary in nature, subject to regular scrutiny, and respect the aforementioned principles and international law obligations. They supported the European Commission initiative to monitor the emergency measures and their application to ensure the fundamental values of the Union are upheld, and invite the General Affairs Council to take up the matter when appropriate.

To note also is the reaction of the [European Parliament Committee of Civil Liberties, Justice and Home Affairs](#) of 24 March in which they call upon the Commission to “to assess if the [then proposed] bill complies with the values enshrined in Article 2 of the Treaty on European Union and to remind member states of their responsibility to respect and protect these common values”. Furthermore, at its [Plenary session of 17th April](#) as well as the session of the Civil Liberties Committee of 23 April, discussed the emergency measures adopted in Hungary (and Poland). The MEPs voiced strong concerns regarding steps taken by the Hungarian government to prolong the country’s state of emergency indefinitely, to rule by decree without a time limit and to weaken the parliamentary emergency oversight. They call on the European Commission to urgently assess whether the emergency measures taken are in line with the EU Treaties, and to make use of all available EU tools and sanctions to address this serious and persistent breach, including budgetary ones. The Council shall put the discussions and procedures related to the ongoing Article 7 procedures against Poland and Hungary back on its agenda.



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Just before the Easter break, the Hungarian Government proposed a new change by taking away the „public service employee” (also known as “civil servant”) status -and as provided for by the Hungarian special labour law ‘KJT’) from cultural workers (working in e.g. museums, libraries, archives and public cultural institutes). On the last working day at 7:45 pm before Easter, the trade union KKDSZ (affiliated to EPSU) received the bill from the responsible Ministry for Human Resources for social partner consultation. However, this day was followed by four public holidays and the Ministry was awaiting for the opinion of the KKDSZ until 8:30 am on the first working day after Easter. This constitutes **an unacceptable social dialogue process** and during the Easter celebrations KKDSZ as well as the five Hungarian confederations affiliated to the ETUC (SZEZ, ÉSZT, LIGA, MASZSZ, MOSZ) to the government requesting for a real negotiation with social partners immediately. It is feared that the same approach will be used also towards public sector workers. EPSU has addressed its [concerns](#) to both Prime Minister Orbán (as well as the European Commission and European Parliament) calling for an immediate withdrawal of this proposal and guarantee the right to social dialogue and collective bargaining across the public sector.

Government Decree 104/2020 (of 10 April 2020) on the amendment of the labour law regulations within the framework of the Economic Protection Action Plan of the Government Decree 47/2020 (III. 18.) on the immediate measures necessary to mitigate the impact of the coronavirus pandemic on the national economy gives all the powers to the employer to unilaterally order a 24 month long working time frame, while prohibiting any derogations by collective agreements. The new changes allow **the employer to order a reference period (in other words working time banking) for a maximum period of 24 months (and may extend the reference period ordered prior to the entry into force of the decree for a maximum period of 24 months)**. The reference period that could be ordered unilaterally by the employer until now was maximum of 4, in special cases 6 months. Longer reference period - of up to 36 months - , could only be ordered on the bases of a collective agreement in agreement with the trade union.) This measure complements the previous Government Decree on the measures “to mitigate the Covid-19 impacts on national economy” (18. 03), which suspended the provisions of the Labour Code „for the period of state of emergency” – making employees vulnerable and repealing collective agreements. The change of the Labour Code was made with the argument “to make employment regulations more flexible, in order to facilitate future agreements between employers and employees.” **It needs to be stressed that this decision, as well as all previous ones, was unilaterally made by the Government without consultation with the trade unions** while business organisations have been regularly invited to discuss preparations of measures. The trade unions in Hungary protest against this decision. **Furthermore it needs to be highlighted that Hungary is also living a time of restricted collective action (protests, etc.), no meaningful social dialogue is taking place and there exists a totally pro government public media (and great part of the private one),**



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which all means that there is a very limited way trade unions can get their opinions heard.

- **Lithuania:** Our ETUC' Lithuania affiliates LPSS (LDS) "Solidarumas" and LPSK informed end of March ETUC about the unacceptable proposals recently laid down in the Tripartite Council by the employers' organisations on how to apply the Labour Code during the quarantine period which would amongst others considerably increase working time, and allow for laying-off workers without paying them severance packages.
 - The employers' proposals for changing the Labour Code provisions for a period of at least 6 months include amongst others the following:
 - to suspend forfeitures for workers when payments are late and to leave valid only the provision on the interest of late payments (article 147);
 - to introduce a principle that all employees, irrespective of the length of service, would be warned only 14 days before terminating their employment agreements (article 57);
 - to renounce payments of 2 months salaries worth severance compensations when employees are fired (article 57). Alternative suggestion in this regard had been: to leave this provision valid but in that case, all severance compensations should be financed from the 'Long-term Job Benefit Fund (lt. Ilgalaikio darbo išmokų fondas) or by other financial means provided by the State;
 - to give a right to employers to change work functions of their employees unilaterally (salaries would stay the same). Employers' organisations state that this change would give them an opportunity to assign alternative tasks instead of announcing downtimes (article 45);
 - to permit that a workday could reach 12 hours (agreements on additional work or ordinary overtime are not included) and the workweek could be extended to 48 hours on average;
 - to reduce current restrictions for signing fixed-term contracts; • to set that the new summarized working time accounting period would be 6 months (with some exceptions);
 - to permit employers to force their employees to take a vacation (their agreement would not be needed); these employees would be warned only 3 days before;
 - to suspend the duty of employers to pay a severance compensation, if an employee terminates his/her work agreement during a downtime period (article 56). Alternative suggestion had been: to leave this provision valid but in that case



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compensations should be financed from the 'Long-term Job Benefit Fund' or by other financial means provided by the State;

- to lengthen a pay period to settle with a fired employee to 30 days (article 146).
- **Lithuania:** Our ETUC' Lithuania affiliates LPSS (LDS) "Solidarumas" and LPSK informed end of March ETUC about the unacceptable proposals recently laid down in the Tripartite Council by the employers' organisations on how to apply the Labour Code during the quarantine period which would amongst others considerably increase working time, and allow for laying-off workers without paying them severance packages.
- **Poland:** By way of general remark, it should be noted that no state of emergency has been introduced in Poland. This is due to the fact that the government seeks to hold presidential elections on May 10 (on their previously foreseen date) and the Polish Constitution prohibits the organization of elections during such a state (state of emergency, martial law, or state of natural disaster). This means that the above acts were "theoretically" adopted in the normal legislative procedure with the "usual" involvement of the Sejm and Senate (the first and second chamber of the Polish Parliament) and should be "normally" consulted with the Social Dialogue Council (RDS) and social partners within the usual statutory deadlines. Both chambers of the Parliament held their proceedings remotely (online), often at night and in a simplified manner, at maximum speed and without any debate. The social partners nor the RDS were properly or not consulted on these projects, in particular the so-called 'Anti-Covid-Shield Two' (see below).

End of March, the government began work on the so-called "anti-crisis shield" which was composed of a series of solutions aimed at ensuring financial liquidity of enterprises and minimum level of income for employees. Before presenting the first proposals, consultations in the form of video conferences were held with the participation of representative organizations of social partners. After the first phase of consultations, the government presented the assumptions of the "shield" and key solutions included amongst others:

- Changes in the Public Procurement Law covering the obligation to inform about the impact of the circumstances related to the occurrence of COVID-19 on the proper performance of the contract, the possibility of amending the contract, non-pursuance of dues, including contractual penalties, and exemption from fines imposed on the basis of the Act on Violation of public finance discipline, waiver of recovery.
- For employers introducing demurrage or reducing working time in the event of a decrease in economic turnover following COVID-19, subsidies of up to 50% of the minimum wage for a full-time employment contract (in cases when working time is



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reduced but no more than by 20% and to no less than 0.5 full-time employment, subsidies will amount to half of the minimum wage, but not more than 40% of the average salary)

- Co-financing of a part of the employee remuneration costs and social security contributions due in the event of a decline in economic turnover following the occurrence of COVID-19 during any of 2 consecutive months after January 1, 2020:
- Demurrage benefit, with no tax and social contributions deducted from it:
- for contractors (on civil law contracts) and self-employed people – in the amount of 80% of the minimum wage if the income has fallen by at least 15% compared to the previous month, provided that the income in the previous month was lower than 300% of the average remuneration,
- for persons with simplified tax settlement (tax card or registered income lump sum tax) exempted from VAT payments, in the amount of 50% of the minimum wage.
- Expanding the number of people entitled to additional care allowance with:
 - a. the insured exempted from work due to the necessity to personally take care of a person holding a severe disability certificate up to the age of 18 or a disability certificate of any level in the event of the institution closing,
 - b. persons caring for a sick, adult, disabled family member in the event of suspension of day care facilities.
- Increasing the base amount of monthly co-financing of the remuneration for disabled employees (from 1,800 to 1,950 PLN in the case of a severely disabled person, from 1,125 to 1,200 PLN for moderate levels of disability, addition to the base amount: from 600 to 1,200, and 900 PLN respectively).
- Allowing employers to use more flexible rules for determining employees' working time and modifying employment conditions in order to preserve jobs (limiting uninterrupted daily and weekly rest, introducing an equivalent working time system without having to meet the requirements from the Labor Code).

After presenting the assumptions of the “shield”, the government prepared a draft, which was forwarded to social partner organizations for urgent consultation. NSZZ Solidarnosc presented amongst others the following key concerns on it:

1. Increase in the unemployment benefit, in particular for those who have lost their jobs as a result of the impact of COVID-19 and have paid social security contributions, because the demurrage benefit for self-employed persons and persons on civil law contracts will be higher than the unemployment benefit for persons on regular employment contracts,



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2. The project lacks proposals on how to facilitate the use of sickness benefit during the period of epidemic emergency and epidemic state, e.g. in connection with quarantine,
3. Childcare allowance should be extended and granted to parents with children under the age of 15,
4. Support for domestic workers should also be provided for,
5. The amount of subsidies during the period of economic downtime and the amount for co-financing remuneration during the period of reduced working time for a period of 3 months will cover a maximum total of approximately 141,400 workers. The amount allocated seems inadequate, number of employees covered by these solutions is too low.
6. The adoption in the Act of a two-day period for the conclusion of an arrangement or agreement and the decisive position of the employer in the event of failure to conclude the relevant agreements within that period leads to the conclusion of only virtual role of trade unions in shaping the conditions and mode of work performance during periods of economic downtime or reduced working time. The proposed two-day period is outrageously short, not adequate to the weight of the provisions to be regulated. The optimal solution would be to introduce a seven-day deadline.
7. A very explicitly negative opinion on the proposal to reduce the daily rest from 11 to 8 hours and weekly rest from 35 to 32 hours as well as the way this change is being introduced. Referring to the method of introducing the reduction of daily uninterrupted rest, the strong opposition results from the fact of total freedom of employers to introduce the proposed solution. Referring to the possibility of concluding an agreement on the use of less favorable employment conditions for employees than resulting from employment contracts concluded with these employees, it should be indicated that the provision does not specify the maximum period for which such agreements may be concluded.
8. As for the demurrage benefit for persons conducting non-agricultural business activity and persons on civil law contracts, there were doubts concerning the use of the condition of not being subject to social insurance for other reasons. It seems that the right to an demurrage benefit should be associated with the premise of the absence of other sources of income for the self-employed or the contractor at a level not exceeding a certain threshold.
10. Co-financing of remunerations should be extended also to large enterprises. The decrease in the production level will also affect these companies, so it is difficult to justify their omission in the program.



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11. There are no solutions in the program regarding exemption from income tax of the aid received by workers from trade union or company social benefits funds or increases in tax-free amounts in this respect.

On the act of 31 March as well as to the next act adopted on the 17th of April, also OPZZ submitted proposals. (More info in next update)

On 31 March the Polish Parliament 'Sejm' adopted this Act on Special Solutions Related to the Prevention, Counteracting and Combating of Covid . However it also seriously restricts the independence of social partners. Initially, the government intended the bill to exclude trade unions from representing workers if, during the crisis, employers planned to introduce special measures amending workers' terms and conditions. Following union protests, the regulation was removed from the draft before submission to parliament. Despite the rejections and opposition in Senate, the Sejm did however the adopt the amendments which **allow the Prime Minister to dismiss members of the Social Dialogue Council** and the law came into force the same day. On the request of NSZZ Solidarność, the President promised to submit the regulations on the council to the Constitutional Tribunal, to assess whether they were in line with the Polish constitution, but this Constitutional Tribunal is however totally dependent on the leading Polish party PiS, which has appointed almost all of its judges (in a process heavily criticised by the European Commission). So far nothing concretely has happened however. Whereas Article 85 allows the prime minister to dismiss members of the council only during this emergency, another Article 46 allows him to do so under two circumstances: if members of the Council co-operated with the Communist security authorities under the former regime or when they are engaged in inappropriate actions against the council which was unable to conduct transparent, substantive and regular dialogue among workers and employers' organisations and the government side. The second very vague and ambiguous reason can thus be easily used to remove any member who did not support government policies in the future. In April, a group of parliamentarians of the opposition submitted a bill to revise the act by removing the articles related to the council, but it was remitted for its first reading in the relevant commission of the Sejm.

ETUC Polish affiliates consider this as the possible end of social dialogue in Poland. Following joint protests and letters by the Polish national social partner organisations (including all ETUC Polish affiliates Solidarność, OPZZ, and FZZ Trade Unions Forum), on 1st April, also the European social partners, ETUC, BusinessEurope, SMEUnited and CEEP, wrote a [joint letter](#) to the President and Vice-Presidents of the Commission as well as the Commissioner for Jobs and Social Rights, to express their concern and highlighted that the autonomy of Social Partners is a founding element of social dialogue, guaranteed by international and European law. They also stressed that social dialogue is a key instrument to fight against the economic and social consequences of Covid-19 and Governments, all over Europe, should be supporting social partners for them to succeed in this endeavour. The EU social partners thus called upon the



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Commission to open a discussion with the Polish Government aiming at the immediate withdrawal of these new regulations.

To note also is that Furthermore, at its [Plenary session of 17th April](#) as well as the session of the Civil Liberties Committee of 23 April, discussed the emergency measures adopted in Poland (and Hungary). The MEPs voiced strong concerns regarding the Polish government's decision to change the electoral code which they consider unlawful and that holding presidential elections in the middle of a pandemic to be totally incompatible with European values. They call on the European Commission to urgently assess whether the emergency measures taken are in line with the EU Treaties, and to make use of all available EU tools and sanctions to address this serious and persistent breach, including budgetary ones. The Council shall put the discussions and procedures related to the ongoing Article 7 procedures against Poland and Hungary back on its agenda.

By the Act of April 9 2020, known as the 'Anti-COVID-19 Shield Two' solutions were introduced to reduce employment in the civil service and other public administration units, and whereby the potential reductions in employment will take place without the participation of trade unions, since the legislator excluded the use of the Act on collective redundancies (which requires negotiations with the trade union to conclude an agreement on the mode and scope of collective redundancies). The regulation provides amongst others that:

1. In the event of negative economic effects of COVID-10 causing a threat to public finances of the state, the Council of Ministers, at the motion of the Chief of the Chancellery of the Prime Minister, may issue a regulation which will result in limiting personnel costs in the civil service and indicated government administration units (such as offices servicing government administration in the province)

2. Personnel costs may be reduced by way of:

- termination of employment
- introduction of less favorable employment conditions (for a limited period until the end of the financial year), simply saying a reduction in salary
- failure to conclude another contract following the expiry of the contract for the trial period or a fixed-term contract
- reduction of the employee's working time with a simultaneous proportional reduction of salary.

3. The Act on collective redundancies shall not apply to the processes carried out. The trade union will be informed about the reduction of personnel costs and will be able to provide its opinion only within 7 days.



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4. The provisions of the Labor Code limiting the possibility of terminating the employment relationship (with the exception of those related to maternity protection) shall not apply to termination of employment relationship or reduction of salary.

5. Employees of whom employment will be terminated will receive severance pay (in the amount of one month's salary if the employee has been employed in a given entity for less than 3 years; two-month salary if the employee has been employed in the given entity from 3 to 10 years; three-month salary if the employee has been employed in a given unit for over 10 years), but employees will not be entitled to re-employment (this right is included in the Act on Collective Redundancies).

NSZZ Solidarność demanded the withdrawal of these provisions, indicating, among other things, that civil servants have had their remunerations frozen for many years, and as a result they are now already abnormally low. The text of the Decision also indicates that the government allocates now huge financial resources for the support of self-employed persons and persons under civil law contracts, which, unlike employees, have contributed to social security and other public funds in a very limited way. Therefore, placing the burden of the consequences of the COVID-19 epidemic on civil servants and government administration employees is, in their opinion, socially unjustified.

- **Portugal:** In the Portuguese declaration of State of Emergency issued by the Portuguese President and implemented by the Law- Decree of the Socialist Party government foresees the limitation of workers' fundamental rights. The new measures allow the Prime Minister government to restrict movement of people, temporarily suspend the right to strike in vital sectors — such as health care units, civil protection, security and defence as well as 'economic sectors vital to the production and supply of essential goods and services to the population' — and ban protests and social or religious meetings. The Emergency Decree was renewed on 3rd April for another 15 days and contains two new elements: suspension of the right to strike for all essential public services and the suspension of the right to participate in the drafting of new labour legislation (enshrined in Constitution for trade unions and in the Labour Code for trade unions and employers associations) insofar as the exercise of such right may delay the entry into force of urgent legislative measures for the purposes provided for in this Decree. The law also provides for the possibility of forced mobilities of public sector workers, in particular in the health sector, to reinforce help in some sectors. Also, prohibition to terminate work contracts for health staff in the national health service is now in force¹⁵. The UGT-P has expressed publicly some concerns regarding the

¹⁵ Free translation: It can be determined by the competent public authorities that any employee of public or private entities or the social sector, regardless of the type of contract, have to present themselves to the service and, if necessary, start to perform functions in a different place, in a different entity and under conditions and working hours different from those corresponding to the existing contract, namely



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suspension of the right to participate in the drafting of new labour legislation in order to prevent abuses and not to undermine our capability of influencing (a priori and a posteriori) new legislation that is coming out all the time. Nevertheless, in practice the national social dialogue body is functioning and informal communications with the Government to and we are confident that, even if formalities are suspended, we still have a word to say. Also regarding the limitation on the right to strike, in practice it will not add much to what already existed and so far no issues arose because trade unions in those sectors are not initiating any strikes at the moment given the situation although a public sector strike that was to take place in March 20th was cancelled. However, ETUC's Portuguese affiliates, CGTP-IN and UGT, informed us however that remaining vigilant on how these measures will indeed apply in practice remains key for the moment.

- **Romania:** In accordance of the Presidential Decree of 16 March 2020, in order to prevent the spread of COVID-19 and the achievement of managing the consequences, in relation to the evolution of the epidemiological situation, during the state of emergency, **the exercise of the following rights is restricted**, in proportion to the degree of fulfilment of the criteria provided by art. 4 paragraph (4) of the Decree: Free movement; the right to family and private life; inviolability of the home; the right to education; **the freedom of assembly**; the right of private property and the **right to strike**.

Via an [Emergency Ordinance no. 34 of March 26, 2020](#) amending and completing of the Government Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency, a new Article 33§1 was inserted which provides that: *"During the state of siege or the state of emergency, the legal norms regarding decisional transparency and social dialogue do not apply in the case of draft normative acts establishing measures applicable during the state of siege or state of emergency or which are a consequence of the establishment of these states."* For the public service unions

in the case of workers in the health care, protection and civil defense, security and defense and other activities necessary for the treatment of patients, support for vulnerable populations, elderly people, people with disabilities, children and young people at risk, in residential structures, home or street support, prevention and fight against the spread of the epidemic, production, distribution and supply of essential goods and services, the functioning of vital sectors of the economy, the critical networks and infrastructures and the maintenance of public order and the democratic rule of law, the possibility of terminating the respective industrial relations or cumulating functions between the public and private sectors may be limited.

The regime of temporary reduction of the normal period of work or suspension of the employment contract can be extended and simplified. The right of workers' commissions, trade unions and employers' associations to participate in the drafting of labour legislation is suspended, insofar as the exercise of such right may delay the entry into force of urgent legislative measures for the purposes provided for in this Decree. The exercise of the right to strike is suspended insofar in the exact measure not to jeopardize the functioning of critical infrastructures or of units providing essential health care and public services, as well as in economic sectors vital to the production and supply of goods.



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(including in the health sector), this has meant that no social dialogue has taken place since mid-April.

- **Turkey:** Since beginning of April, President Recep Tayip Erdogan installed curfews during weekends starting on Friday until Sundays. On 27 April, he announced that at midnight of the eve before 1st May Day, another such three-day lockdown would be introduced in 31 Turkish provinces (including Istanbul and Ankara cities) to combat the spread of the corona virus. Thus indirectly banning and prohibiting 1st May festivities and demonstrations. Despite this, ETUC affiliate DISK held a symbolic wreath action outside their building but their the President, General Secretary as well as other trade union delegates have been arrested. [ETUC](#) demand their immediate release without charges, to respect democratic rights and to stop the harassment of trade unions.

In addition, across Europe restrictions on **civil and political** fundamental rights and freedoms are increasing. Bans on assembly, traffic subject to authorization, limited movement of individuals, use of drones to track offenders, collection of geolocation data, governing by emergency laws, etc. The state of health emergency decreed in several Member States of the European Union puts clearly severe tests to those fundamental freedoms and rights which are at the heart of our democracies.

- **Belgium:**
 - A minority government, although with the support of a large majority of the opposition is allowed to govern by emergency laws without involving properly the federal Parliament. Also the obligatory advice competence of the Conseil d'Etat is not applicable. Any measures taken by this minority government under this regime can however later on be challenged before courts. Drones are being used (e.g. in Brussels) to detect eventual trespassers of the isolation measures and telephone operators tracking mobile phones to inform the public authorities about the extent of traffic and movements of individuals. This emergency power mandate is intended to end by end of June and more and more voices from both governing as well as opposition parties are calling to not renew this mandate.
 - In order to cope with the Covid-19 outbreak, the Belgian government decided to engage more than 2.000 so-called “contact tracers” (i.e. persons who will call persons with whom an infected person has recently been in contact) and to put all that data in a central database. The “Ligue des Droits de l’Homme” (Liga voor de Mensenrechten) expressed concerns as it is unclear which data is collected, how the data will be stored or with which other (governmental) databases this existing database will be connected. From an opinion of the Data Protection Commission the data would be erased as soon as the Covid-19 crisis is over but this is formulated quite vaguely (e.g. if the virus is not over



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won, is the crisis then over or not?) and the regulatory framework under which the whole mechanism is elaborated is considered to be very insufficient.

- The mainly French-speaking trade union front SETCa, CGSP and CEN heavily criticized two Royal Decrees that were published in the Official Journal beginning of May (and apply until 31 December) whereby one allows provincial governors for the opportunity to requisition health workers in the event of a serious staff shortage. The trade unions also complained about a lack of consultation when implementing the measures.
- **Italy:** Telephone operators tracking mobile phones (e.g. in Milan) to inform the public authorities about the extent of traffic and movements of individuals

Examples for successful interventions

In some countries, however and following strong reactions and interventions by parliamentarians as well as trade unions, it could be avoided that emergency laws/measures became even more detrimental to the respect of human rights:

- **Bulgaria:** President Roumen Radev (socialist) vetoed part of the project adopted by the conservative majority in Parliament, as part of the state of emergency thereby holding back the proposal to toughen the sanctions for "spreading false information", which could have been punished by three years in prison and which would have led to a self-censorship by experts, journalists and citizens at large.
- **Denmark:** Corrections were also necessary where the initial text of the emergency law provided for authorizing the police to enter the homes of citizens, suspected of being contaminated, without the authorization of a magistrate. This paragraph has since been deleted. The law still allows to take care, under duress, of people infected with the virus and, if necessary, to impose vaccination of the entire population. On March 24, the Directorate of Patient Safety, which encouraged the citizens to denounce suspicious behaviour of an infected person, also backtracked on this measure after facing a surge of criticism.
- **Norway:** Whereas the initial draft foresaw to give full powers to the government, a series of safeguards were built in after the adoption of the emergency law on 21 March such as that the law only being applicable for one month, with the possibility of extension. The supervision exercised by the courts has been strengthened; and most importantly, it takes just one third of members of Parliament to oppose a government initiative to make it obsolete.