

Appendix

Questions on Group 3 provisions (Conclusions XXII-3 (2022))

Labour rights

This questionnaire covers Thematic Group 3 - Labour rights, comprising Articles 2 (right to just conditions of work), 4 (right to fair remuneration), 5 (right to organise), 6 (right to bargain collectively) and Articles 2 (right of workers to be informed and consulted) and 3 (right of workers to take part in the determination and improvement of working conditions and working environment) of the Additional Protocol.

However, the Committee will pursue the targeted and strategic approach adopted in 2019 and continued in 2020 (Conclusions XXII-1 (2020) and XXII-2 (2021) respectively). It is therefore not asking that national reports address all accepted provisions in the Group. Certain provisions are excluded, except:

- when connected to other provisions which are the subject of specific questions
- when the previous conclusion was one of non-conformity
- When the previous conclusion was one of deferral due to lack of information
- When the previous conclusion was one of conformity pending receipt of specific information.

Moreover, given the magnitude, implications and expected longer-term consequences of the COVID-19 pandemic, the Committee will pay particular attention to pandemic-related issues. In this connection, it is relevant to note that the reference period for Conclusions 2022 is 1 January 2017 to 30 December 2020. The Committee draws attention to relevant parts of its Statement on COVID-19 and social rights adopted on 24 March 2021.

Given the date of transmission of this questionnaire, the Committee requests that state reports be submitted by **31 December 2021** (and not the usual deadline of 31 October).

ESC Part I – 2. All workers have the right to just conditions of work.

Article 2 of the Charter guarantees the right of all workers to just working conditions, including reasonable daily and weekly working hours (Article 2§1), annual holiday with pay (Article 2§3) and weekly rest periods (Article 2§5).

The Committee refers to its long-standing jurisprudence on what constitutes reasonable working hours and recalls that the defined outer limits must not be exceeded except in situations of force majeure. In this respect, it also recalls that overtime work must be paid at an increased rate of remuneration pursuant to Article 4§2 of the Charter.

New forms of work organisation such as teleworking and work from home practices often lead to de facto longer working hours, inter alia due to a blurring of the boundaries between work and personal life. Consideration must therefore be given to ensuring that home-based workers can disconnect from the work environment.

The Committee has been alerted to grievances repeatedly expressed in some sectors of economic activity about working hours (upwards of 80 hours per week for example in the

health sector / hospital work). Allegedly, the pandemic and the demands placed on healthcare as a result of the COVID-19 crisis exacerbated this for many workers.

There is also a higher risk of abuse of working hours in the catering industry, sub-contracted non-unionised hospitality industry work, domestic and care work.

As regards the platform or gig economy, workers may be confronted with long working hours and inadequate rest periods in order to make a decent living, or they may have to accept unreasonable numbers of gigs in order not to lose the “privilege” of getting more or “better” work from the platform.

Precarious and low-paid workers, including in the gig economy and those on zero-hour contracts, are particularly vulnerable to the impacts of the COVID-19 crisis and States Parties must ensure that these categories of workers enjoy all the labour rights set out in the Charter. This includes not only those pertaining to safe and healthy working conditions, reasonable working hours and fair remuneration (see below), but also rights relating to notice periods, protection against deduction from wages, dismissal protection, trade union membership, information and consultation at the workplace (notably Articles 4 and 5 of the Charter and Articles 2 and 3 of the Additional Protocol).

Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

- a) *Please provide updated information on the legal framework to ensure reasonable working hours (weekly, daily, rest periods, ...) and exceptions (including legal basis and justification). Please provide detailed information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorates (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).*
- b) *The Committee would welcome specific information on proactive action taken by the authorities (whether national, regional, local and sectoral, including national human rights institutions and equality bodies, as well as labour inspectorate activity, and on the outcomes of cases brought before the courts) to ensure the respect of reasonable working hours; please provide information on findings (e.g. results of labour inspection activities or determination of complaints by domestic tribunals and courts) and remedial action taken in respect of specific sectors of activity, such as the health sector, the catering industry, the hospitality industry, agriculture, domestic and care work.*
- c) *Please provide information on law and practice as regards on-call time and service (including as regards zero-hours contracts), and how are inactive on-call periods treated in terms of work and rest time as well as remuneration.*
- d) *Please provide information on the impact of the COVID-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. As*

regards more specifically working time during the pandemic, please provide information on the enjoyment of the right to reasonable working time in the following sectors: health care and social work (nurses, doctors and other health workers, workers in residential care facilities and social workers, as well as support workers, such as laundry and cleaning staff); law enforcement, defence and other essential public services; education; transport (including long-haul, public transport and delivery services).

- e) *The Committee would welcome additional general information on measures put in place in response to the COVID-19 pandemic intended to facilitate the enjoyment of the right to reasonable working time (e.g. flexible working hours, teleworking, other measures for working parents when schools and nurseries are closed, etc.). Please include information on the legal instruments used to establish them and the duration of such measures.*
- f) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

- 2. to provide for public holidays with pay;
- 3. to provide for a minimum of two weeks' annual holiday with pay;
- 4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed
- 5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;

- a) *No information is requested on these provisions, except insofar as they concern special arrangements related to the pandemic or changes to work arrangements following the pandemic: public holidays (Article 2§2), annual holiday (2§3), reduced working time in inherently dangerous or unhealthy occupations, in particular health assessments, including mental health impact (2§4), weekly rest period (2§5).*
- b) *However, if the previous conclusion concerning provisions in Article 2, paragraphs 2 through to 5, was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

ESC Part I – 4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.

Fair remuneration is a key Charter right (Article 4§1 of the Charter). This provision guarantees the right to a remuneration such as to ensure a decent standard of living. It applies to all workers, regardless of the sector or employment regime.

The requirement that workers be remunerated fairly and sufficiently for a decent standard of living for themselves and their families applies equally to atypical jobs and to emerging arrangements such as the gig or platform economy, and the work relations stemming from zero hours contracts. It goes without saying that circumventing through any means fair

remuneration requirements is unacceptable. Areas of concern also include —but are not limited to— agriculture and food-processing sectors, hospitality industry, domestic work and care work.

In some cases, prevailing wages or contractual arrangements lead to a significant number of so-called working poor, including persons working two or more jobs or full-time workers living in substandard conditions. It should be underlined that the concept of “decent standard of living” goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.

“Remuneration” relates to the compensation — either monetary or in kind — paid by an employer to a worker for time worked or work done. It covers, where applicable, special bonuses and gratuities. On the other hand, social transfers (e.g. social security allowances or benefits) are taken into account only when they have a direct link to the wage.

To be considered fair, net minimum wages should not fall below 60% of average wage in the labour market; 50% if explained and duly justified as to how it amounts to fair remuneration sufficient for a decent standard of living for the workers concerned and their families. The Committee will only be satisfied that lower wages are fair on the basis of compelling or convincing evidence provided to it.

States Parties must devote necessary efforts to reach and respect this minimum requirement and to regularly adjust minimum rates of pay, including during the COVID-19 crisis. The Committee also considers that the right to fair remuneration includes the right to an increased pay for workers most exposed to COVID-19-related risks. More generally, income losses during lockdowns or additional costs incurred by teleworking and work from home practices due to COVID-19 should be adequately compensated.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

The exercise of [this right] shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

- a) *Please provide information on gross and net minimum wages and their evolution over the reference period, including about exceptions and detailed statistics about the number (or proportion) of workers concerned by minimum or below minimum wage. Please provide specific information about furlough schemes during the pandemic, including as regards rates of pay and duration. Provide statistics both on those covered by these arrangements and also on categories of workers who were not included.*
- b) *The Committee also requests information on measures taken to ensure fair remuneration (above the 60% threshold, or 50% with the proposed explanations or justification) sufficient for a decent standard of living, for workers in atypical jobs, those employed in the gig or platform economy, and workers with zero hours contracts. Please also provide information on fair remuneration requirements and enforcement*

activities (e.g. by labour inspectorates or other relevant bodies) as well as on their outcomes (legal action, sanctions imposed) as regards circumvention of minimum wage requirements (e.g. through schemes such as sub-contracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).

- c) Please also provide information on the nature of the measures taken to ensure that this right is effectively upheld as regards the categories of workers referred to in the previous paragraph (b) or in other areas of activity where workers are at risk of or vulnerable to exploitation, making in particular reference to regulatory action and to promotion of unionisation, collective bargaining or other means appropriate to national conditions.
- d) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

- a) Please provide up to date information on the rules applied to on-call service, zero-hour contracts, including on whether inactive periods of on-call duty are considered as time worked or as a period of rest and how these periods are remunerated.
- b) Please explain the impact of the COVID-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. Please include specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, remuneration, increased compensation).
- c) The Committee would welcome information on any other measures put in place intended to have effects after the pandemic which affect overtime regulation and its remuneration/compensation. Provide information on their intended duration and the time frame for them to be lifted.
- d) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

3. to recognise the right of men and women workers to equal pay for work of equal value;

- a) Please provide information on the impact of COVID-19 and the pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.
- b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

- a) *Please provide information on the right of all workers to a reasonable period of notice for termination of employment (legal framework and practice), including any specific arrangements made in response to the COVID-19 crisis and the pandemic.*
- b) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

No information requested, except where there was a conclusion of non-conformity or a deferral in the previous conclusion for your country. For conclusions of non-conformity, please explain whether and how the problem has been remedied and for deferrals, please reply to the questions raised.

ESC Part I

5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.

6. All workers and employers have the right to bargain collectively.

AP Part 1

2. Workers have the right to be informed and to be consulted within the undertaking.

3. Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.

The right to organise, the right to collective bargaining and social dialogue guaranteed notably by Articles 5 and 6 of the Charter have taken on new dimensions and new importance in the COVID-19 crisis. Trade unions and employers' organisations should be consulted at all levels on employment-related measures to fight and contain COVID-19 here and now and to recover from the economically disruptive effects of the pandemic in the longer term. Agreements to this effect, whether tripartite or bipartite, should be concluded where appropriate.

The importance of dialogue and participation (good democratic governance) in the post-COVID-19 reconstruction process cannot be overestimated. Given that trade unions and workers organisations are sine qua non participants in this process, it is incumbent on States Parties to promote, enable and facilitate such dialogue and participation.

This is called for at all levels, including the industry/sectoral level and the company level. New health and safety requirements, new forms of work organisation (teleworking, work-sharing,

etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers' representatives in terms of Articles 2 and 3 of the Additional Protocol.

Under Article 6§4 of the Charter the right of workers in essential services to take collective action may be subjected to limited restrictions in order to ensure the continued operation of such services, for example during a public health emergency. However, any such restrictions must satisfy the conditions laid down by Article G of the Charter

In this respect, the ECSR notes that Article 6§4 of the Charter entails a right of workers to take collective action (e.g. work stoppage) for occupational health and safety reasons. This means, for example, that strikes in response to a lack of adequate personal protective equipment or lack of adequate distancing, disinfection and cleaning protocols at the workplace would fall within the scope of the Charter's guarantee.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

- a) *Please provide data on trade union membership prevalence across the country and across sectors of activity, as well as information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations. Also provide information on recent legal developments in these respects and measures taken to promote unionisation and membership (with specific reference to areas of activity with low level of unionisation, such as knowledge workers, agricultural and seasonal workers, domestic workers, catering industry and workers employed through service outsourcing, including cross border service contracts).*
- b) *Also provide information on measures taken or considered to proactively promote or ensure social dialogue, with participation of trade unions and workers organisations, in order to take stock of the COVID-19 crisis and pandemic and their fallout, and with a view to preserving or, as the case may be, restoring the rights protected under the Charter after the crisis is over.*
- c) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;

No information requested. If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

Please provide information on specific measures taken during the pandemic to ensure the respect of the right to bargain collectively. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

No information requested. If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

a) *Please provide information on specific measures taken during the pandemic to ensure the right to strike (Article 6§4). As regards minimum or essential services, please provide information on any measures introduced in connection with the COVID-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.*

b) *If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was*

deferred or conformity pending receipt of information, please reply to the questions raised.

Article 2 of the Additional Protocol – The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

- a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
- b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

- a) *Please provide information on specific measures taken during the pandemic to ensure the respect of the right to information and consultation. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.*
- b) *If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

Article 3 of the Additional Protocol – The right to take part in the determination and improvement of the working conditions and working environment

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

- a. to the determination and the improvement of the working conditions, work organisation and working environment;
- b. to the protection of health and safety within the undertaking;
- c. to the organisation of social and socio-cultural services and facilities within the undertaking;
- d. to the supervision of the observance of regulations on these matters.

- a) *Please provide information on specific measures taken during the pandemic to ensure the respect of the right to take part in the determination and improvement of the working conditions and working environment. Please make specific reference to the*

situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

- b) If the previous conclusion concerning the provision, was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*