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## **ETUC briefing note on mandatory Covid-19 vaccination schemes**

Mandatory vaccination at the workplace is increasingly discussed. These schemes are being implemented or discussed in Europe for the public sector, within the health sector, but also for the private sector. Other similar initiatives, like ending compensation for unvaccinated employees who are required to observe mandatory quarantine, have also been established in some Member States.

These initiatives raise several questions, e.g., occupational health and safety, labour law, privacy and fundamental rights issues. But it also challenges us as trade unions.

With this Covid-19 briefing, ETUC aims at providing a compilation of evidence from its affiliated members to provide for a better understanding of the different approaches taken across the EU. It will also serve as the basis for an upcoming ETUC debate in the formulation of a trade union response.

Contributions have been received from Austria, Belgium, Croatia, Czech Republic, Denmark, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, The Netherlands, Turkey, and the UK. This version of the briefing note includes information about the latest developments in Slovenia.

This compilation responds to questions on whether compulsory vaccination schemes have been established across the EU, and if in the affirmative, whether they apply to specific sectors and if they have been negotiated by social partners. This document also aims at taking stock of the positions of the different organisations on this issue.

As shown in detail in the compilation, almost no trade union Confederation has taken a decision in favour of compulsory vaccination. Virtually all respondents advocate for voluntary vaccination schemes and engage in campaigns to encourage workers and the whole population to get vaccinated. Many ETUC members have expressed concerns against compulsory vaccination schemes for workers, particularly in matters of potential redundancies and discriminatory practices and on the basis of the respect to fundamental rights.

In countries where mandatory vaccination schemes have been implemented, concerns have been raised, by some respondents, on how trade unions have been bypassed when setting up these measures. There is a strong call to respect social dialogue in the discussion about vaccination schemes and any work-related measure related to the vaccination condition. Some trade union confederations have started to reflect on the implications of vaccination schemes against Covid-19 when it comes to the employers' obligation to provide for the prevention of



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occupational risks at the workplace as well as the interlink between inter alia the fundamental right to integrity of the person and the right to preventive health care.

Considering the great deal of interest on this topic, ETUC will engage in further work on this issue with its member organisations.

At a European level, the European Trade Union Committee for Education is also collecting feedback from its member organisations, as workers in the educational sector across Europe are increasingly reporting concerns regarding ongoing discussions by national governments to make vaccinations mandatory for their workers. In the previous months, ETUCE has been advocating for teachers to be prioritised in the national vaccination campaigns while safeguarding the individual teacher's freedom choice of on whether to get the vaccine or not. While facing increasing attempts from governments to impose the COVID-19 vaccines, ETUCE has taken the decision that vaccinations for teachers and education personnel should remain voluntary-based and that any threat to working conditions and salaries of non-vaccinated education staff is unacceptable. ETUCE further support that any decision taken at the national level needs to be negotiated and agreed with the social partners, taking into account the national context. This is also enshrined in the ILO recommendations, stating that the social partners should be involved in any discussion on whether mandatory vaccinations are the necessary and appropriate means to protect and ensure workers' health and safety. Some developments at national level in this sector are included in the country compilation outlined below.

EPSU conducted a survey from 26 to September 2021, collecting information about the existence of compulsory vaccination schemes at national level, the position of their affiliated organisations and the consequences for workers declining vaccination. The report addresses the situation in a variety of public sectors, including government administration, tax-agencies, penitentiary, energy, chemistry, public services, construction and water supply and private social services care.

Regarding the position of EPSU's affiliated organisations who contributed to the survey, 8 unions explicitly expressed to be against compulsory vaccination, including the healthcare sector division of the trade union GÖD, Austria, the CNE, Belgium, the USLGPSEA, Armenia and the FNME CGT, France. Vårdförbundet, Sweden and UGT - public services, Spain, expressed that such a legislation would be against the respective fundamental laws. Ver.di and DGB in Germany take position against "any compulsory vaccination in any sector". All these unions, however, recommend, encourage, and some campaign for vaccination. F CIW PODKREPA, Bulgaria, the Trade Union of Health and Social Care Employees of Serbia and GPA, Vida and Younion in Austria have not taken position against compulsory vaccination yet. KSS PERGAM, Slovenia, did not start promoting vaccination. In Italy, UIL, CGIL and CISL indicated they would not oppose a national law or governmental regulation.

In matters of the consequences for workers declining vaccination, different measures are reported by EPSU, ranging from testing at the cost of the worker and at a frequency depending



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on the type of test, retaliation for workers not observing the regulations, to the possibility of dismissals.

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

### **Austria**

There is no general compulsory vaccination for employees in Austria. However, some employers have imposed compulsory vaccination against Covid-19 for new employees, e.g., in the educational and in the health care sector. In these cases, vaccination is a precondition to get the job. Also, unvaccinated unemployed workers refusing a job on the grounds of requiring a vaccination, may see their benefits being suspended for up to six weeks. This condition does not apply to people who cannot be vaccinated, and the decision to suspend benefits will be made on a case-by-case basis.

In principle, the ÖGB advocates for a high proportion of the population being vaccinated, but sees voluntary access to vaccination as the more successful way to achieve this goal.

### **Belgium**

The Federal Ministries of Employment and Health requested social partners' opinion on the possibility of an obligatory vaccination and eventual sanctions. The social partners in the National Labour Council (NLC) and the Supreme Council for Prevention and Protection at Work (SCPPW) were asked for their opinion. Because of the complexity of the issue, the social partners worked in two phases. In the first stage (a joint letter dated 13 September 2021), the social partners of the NLC and the Supreme Council merely raised a number of questions, reservations and concerns about the objectives, conditions and modalities of this measure. In the second phase, the social partners of the NLC, joined by the members of the Supreme Council, issued a divided advice in which the trade unions were also not on the same line either.

By the time of the publication of this briefing note they are working on the possibility of a compulsory vaccination scheme for healthcare workers. The question of what all this covers still needs to be clarified. It is certainly that it will concern hospitals, residential care centers, care for disabled people, yet it could also be broader.

All trade unions unanimously considered it important to guarantee alternative employment in the sector in any case (in case of refusal of the vaccination) and jointly opposed sanctions such as dismissal and suspension of the individual labour agreement. Healthcare workers should also be given enough time to comply with a mandatory vaccination, according to the



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Belgian trade union. And during this transition period, they want employees to have access to the appropriate information as well as to individual (psychosocial) support.

FGTB stated its opposition to this obligation on the grounds that it only targets one sector. The Confederation claims that such an obligation is not proportionate to the objective pursued and would lead to an unjustifiable distinction between workers and would also stigmatise them.

According to the Confederation of Christian Trade Unions (ACV/CSC), determining the sectors for a mandatory vaccination should be done on the basis of sectoral risk analyses. And the consequences of a refusal should be subject of social dialogue at the sectoral level. Child care, for example, should be excluded from this obligation. The reason for this is the limited extent of danger of virus transmission. According to the employer's representatives, this sector must be understood as broadly as possible, also including all logistical services and support services around it. ACV does not agree and underlines its opposition to a general obligation to vaccinate and the need to look at the real vaccination coverage sector by sector and risk of transmission of the virus.

The employer's representatives, on the other hand, wanted compulsory vaccination to be introduced as soon as possible, with possible sanctions for those who refuse (except in the case of contraindications). Nevertheless, all social partners were able to find a consensus on the importance of awareness campaign on vaccination (increasing the public's understanding of the benefits of vaccines). In addition, nobody doubted the importance of the adequate legal basis and reasonable transitional period.

Besides this, another employers' federation has expressed its intention to implement a general obligation to get vaccinated. This is the case for metal industrial sector and the technological industry. According to this proposal, non – vaccinated workers would be excluded to enter the works place and would not be paid, as long as they do not present their Covid-safe ticket. These proposals have not yet been discussed between social partners yet.

For occupational physicians there is also a tool available that provides a company's staff vaccination rate, on an anonymous basis, within companies with more than 50 staff. This tool aims at providing information on the percentage of vaccinated employees in order to inform and sensitize employees, if necessary, to still be vaccinated.

At company level, Swiss airlines intends to lay off flying personnel who do not get vaccinated against the coronavirus. The airline made vaccination mandatory for pilots and cabin crew in August and established December 1 as the deadline for every worker to be vaccinated. This measure applies to all flights operated by the airline. However, the intentions of Swiss Airlines have no legal basis in Belgium.



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Problems have been reported of students who have not given a traineeship or apprenticeship on the basis of the vaccination status.

On December 8th, the recently established Belgian Federal Human Rights Institute published a non-binding opinion on the compatibility of mandatory vaccination and human rights standards. According to the Institute, citizens who are vaccinated help to protect the right to life and health of society as a whole. For this reason, compulsory vaccination does not violate human rights. However, the Institute warns that sanctions must remain proportionate.

### **Bulgaria**

There is no general compulsory vaccination for employees in Bulgaria.

At sectorial level, employers in care facilities, comprehensive cancer centres, dialysis centres, hospices and nursing homes shall organise the work process by allowing only employees with valid vaccination, pre-treatment or PCR examination, or rapid antigen test documents to work.

This requirement is being considered for teachers and civil servants.

Access to a range of activities and public facilities is also achieved by presenting a certificate for vaccination, illness, rapid antigen test or PCR.

CITUB defends the position that as much of the population as possible should be vaccinated, but this should be done on a voluntarily basis.

### **Croatia**

Croatia has introduced compulsory COVID certificates for two sectors: health care and social care. This obligation does not impose obligatory vaccination but the possession of COVID certificate (i.e., either a proof of vaccination, proof of recovery from Covid-19 or a PCR negative test). Those without a certificate will have to undergo testing twice a week. The testing will be free of charge during the first month of the introduction of the scheme, and afterwards the cost will have to be paid by the workers.

The scheme has not been introduced as a result of social dialogue negotiations. The trade union of healthcare and social care of Croatia (SSZSSH), an UATUC affiliate, has requested meetings with the Government and the competent ministries, and the issue has been a matter of discussion within a broader debate at a tripartite level concerning the obligatory vaccination, and not within a formal social dialogue procedure. The Trade Union has requested that the decision on compulsory vaccination scheme for healthcare workers is properly tackled through formal social dialogue.

The Croatian government has also decided not to extend job retention schemes for unvaccinated workers [the same relates to the (non)possession of Covid certificates]. More



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precisely, subsidies will be granted for all workers in companies where 70 % of workers have Covid certificates; those where less than 70 % are in possession of these certificates will receive the subsidy proportional to the share of workers with Covid certificates of the total number of workers at the level of the company. This decision is already in force since July 2021.

The issue of vaccination and Covid certificates was a subject of the meeting at a tripartite level (Ministry of Labour, representative trade union confederations, including UATUC, and employers' association) held early September at the employers' initiative, to discuss the question of the (non)refusing the testing (if a worker does not have Covid certificate) as well as the issue of costs of issuing Covid certificates for business trips and if workers may refuse testing, as one of the problems faced in practice. The employers, namely, want to unilaterally (through by-laws or employer's decision) shift the costs of testing on workers. The position of the social partners, at the time being, is that the Ministry will not draft an opinion on steps taken in case when workers refuse testing to get the Covid certificate for business trips, since this affects other issues which fall outside the scope of competence of the Ministry, and courts would rule on a case-by-case basis. Trade union confederations and the Ministry agreed that the issue should be settled at the bipartite level, e.g. through collective agreements, especially since the issue of costs for business trips is not regulated by law.

While UATUC supports broader vaccination efforts, it has also not taken an official position on the matter of compulsory vaccination schemes – Covid certificates. SSZSSH – UATUC, the trade union of healthcare and social care has not taken a formal decision on the issue yet, however the position is that until a law stipulates differently, all workers should be treated equally, including workers in the healthcare and social care, in a way that vaccination is regulated as a right and not an obligation, therefore they oppose compulsory vaccination.

UATUC and NHS have opposed the introduction of additional criteria for granting subsidies for preservation of jobs, based on percentage of vaccinated workers i.e. possession of the Covid certificate.

### **Czech Republic**

So far there is not any legislation in the Czech Republic that would make compulsory vaccination schemes possible, and it is neither planned in near future (especially not one that would be applicable to general population). However, the situation could rapidly change with the outbreak of the new epidemic wave.

Vaccination schemes in the Czech Republic are so far based on voluntary personal decisions. Social dialogue on the company level has been mostly concerned with voluntary vaccination schemes based on vaccinated employees receiving benefits. At tripartite level, the Government of the Czech Republic so far has been fairly successful at communicating its intentions and measures countering the epidemic.



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Czech Republic celebrated recently general parliamentary elections and the formation of new Czech executive is in process.

ČMKOS opts for voluntary vaccination schemes like those currently in effect. However, should the epidemic situation continue to deteriorate, ČMKOS would not oppose compulsory vaccination in specific circumstances and under very specific conditions, for example in health and social sectors or critical infrastructure with the possibility of refusal due to health, religion, conscience and similar reasons.

## **Denmark**

The government has introduced a new act that implements the tripartite agreement that was made on 12 November 2021 and gives employers the right to require employees to present a valid "corona passport". Employers will also be able to require employees to be tested for covid-19 and disclose the test results as quickly as possible. The employer may impose employment-related penalties on employees if they do not meet any statutory requirements.

## **Finland**

No general compulsory vaccination schemes have been established, but according to the Act for Infectious Diseases (not the labour code), vaccination schemes are compulsory in the health sector. This Act came into force prior to the outburst of Covid and at the time of its discussion, trade union participated in hearing where they expressed their opposition to compulsory vaccination, yet the Ministry of Health passed the law anyway which was latterly adopted in the Parliament.

The three Finnish confederations believe vaccination should be voluntary. They have, however, taken an active role in supporting and promoting vaccination, both for the general public and for specific professional groups (and especially in the health sector), as well as for the importance of observing the protective and preventive measures recommended, both for those who are vaccinated and for those who are not. The trade union confederations state that vaccination is an invasive measure and may include side effects or risks for certain people (e.g., due to their previous health condition). For this reason, both privacy and freedom of choice should be respected. An exception in this principle now would pose an unprecedented and undesirable example for other potential situations in the future.

In the light of the increase of infection cases due to the spread of the omicron variant, the Finnish Parliament approved on Dec 28th a temporary clause for year 2022, putting an obligation on the Finnish employers in the sector of health care and social services. These Employers must ensure their personnel working with vulnerable or aged patients has got covid vaccine protection. The employer should seek tasks without contact to vulnerable patients if the worker refuses to get vaccinations, but if such tasks are not available the Employer may stop offering employment without any compensation nor social security. Dismissal is not allowed. Only the workers with a diagnosed personal health issue preventing them to get a



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vaccine have the choice of continuing working by showing a negative Covid test every 72 hours.

Trade Unions did not oppose this legislation. There have been a few anti-vaccine demonstrations organized by groups of individuals.

The government has also called a working group in order to prepare a general “Covid-passport” for working life. It should be ready by February. The Finnish Trade Unions are actively participating in this working group.

### **France**

After a quite radical legal proposal, the final revised text by the Constitutional Council does not mention dismissal.

The Constitutional Council have modified a first quite radical legal proposal in which workers could be made redundant if they reject to get vaccinated. The new version stipulates that if workers in the identified sectors or workplaces where vaccination is deemed mandatory refuse to get vaccinated, employers can suspend the work contract and remuneration but not dismiss the worker. Within 3 days since the communication of the worker on his / her refusal to get vaccinated, employers have to consult with the worker in question to find an alternative (within the enterprise).

### **Germany**

On September 22<sup>nd</sup>, the Health Ministers for the Federal State and the 16 Länder decided the end salary compensation for employees who have not been vaccinated against Covid-19 and who have to undergo quarantine. Compensation shall continue to be granted to persons for whom there was no public recommendation for vaccination against COVID-19 in a period of up to eight weeks prior to the order of discontinuation or the ban on activities. The same applies if a medical contraindication to COVID-19 vaccination is confirmed by a medical test.

There is no legal obligation to be vaccinated against Sars-CoV-2, not even for certain occupational groups. It is also not currently expected that such an obligation will be introduced. In principle, the employer cannot demand employees are vaccinated.

As there is no obligation to be vaccinated, the employer cannot take action against those who have not been vaccinated or do not intend to be. The employer therefore remains obliged, under the employment contract, to employ, regardless of the vaccination status. There must also be no discrimination in the employment relationship on the basis of vaccination status.

In contrast to this, in some federal states (e.g. Hamburg and Baden-Württemberg) there are legal ordinances that allow establishments to introduce a so-called “2G option”, which allocates





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some public functions exclusively for vaccinated and recovered persons. Employees who work with the public or with customers are also to be covered by the “2G option”, according to the regulations of the Länder. The effects of these models on employment relationships are to be very critically evaluated, but a legal classification is only possible by considering all aspects of the individual case and legal advice is therefore recommended.

A real debate on compulsory vaccination schemes has not taken place so far, since all politicians were against it until now. DGB supported this position. Vaccination is not an instrument of occupational safety and health and cannot replace it. Occupational health and safety must ensure safety and health at work regardless of the vaccination status of workers.

DGB also supports campaigns to get more people vaccinated voluntarily since it is more effective to promote the vaccination than to keep increasing the pressure on those who are not vaccinated. For months, the DGB and its member unions have been playing an active role in accelerating the pace of vaccination in Germany and they called on employers to promote vaccination and make them possible during working hours.

Nevertheless, as the example of Hamburg shows, there are some attempts to implement an indirect compulsory vaccination. DGB has taken a critical stand against this. Besides, DGB is against ending compensation for unvaccinated employees who are required to observe mandatory quarantine.

A compulsory vaccination scheme for workers in healthcare and care was established on 15th of March 2022. Since this date, people working paid or voluntarily in companies or institutions like hospitals, healthcare facilities, medical or dental practices, rescue services, public health institutions or care for elderly or people with disabilities (both inpatient and outpatient facilities) will have to show proof of vaccination or recovery. The law establishing the scheme was not the outcome of a social dialogue and was introduced to protect highly vulnerable groups. It will be repealed again on 1st of January 2023.

DGB has criticized the implementation of mandatory vaccinations for particular groups of workers. The law fails to effectively protect vulnerable groups, as their contacts by far cannot be not limited to the workers in the aforementioned sectors. Instead, it wrongly reduces the responsibility for protecting vulnerable persons to people working in certain institutions. The best protection will be achieved if the total number of infections in the entire population is significantly reduced and then remain constantly low, as thereby the risk of infections and breakthrough infections for both vulnerable people and people in contact with vulnerable people will stay low. Therefore, DGB claims that every person in the entire population who can be vaccinated also should be vaccinated. In addition to an improved strong vaccination campaign, the introduction of a general compulsory vaccination scheme could contribute to this purpose.

## **Hungary**



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Vaccination has been declared compulsory in the health by law Government Decree 598/2021 (the Decree) which allows employers to order their employees to be vaccinated against covid-19 since 15 November 2021. If workers refused to take up the vaccines until the given date they were fired by the power of the regulation. No social dialogue negotiations took place at this regard.

SZEF adopted a closing resolution at its congress of May 15<sup>th</sup>, it recommended all workers to be vaccinated voluntarily and wear the masks where it is mandatory by the local regulations (available at: <https://szef.hu/index.php/hirek/3884-a-szakszervezetek-egyuttmukodesi-foruma-2021-majus-15-en-megtartott-xx-kongresszusanak-kongresszusi-zaronyilatkozata>).

This call was complemented with a demand to restoring and strengthening social dialogue, since this issue and other similar questions should be discussed with the social partners.

## Italy

Mandatory vaccination schemes for the prevention of SARS-CoV-2 infection have been set out in Italy for: the health professionals and healthcare workers who carry out their activities in public and private health, social and care facilities, pharmacies, para-pharmacies and professional practices; and workers employed in residential, social care and medical facilities. These are obliged to undergo free vaccination.

Where possible, the employer shall assign the worker who has not been vaccinated to duties that do not entail any risk of spreading the infection (even inferior in the occupational scale to those previously performed). When it is not possible to assign the worker to different tasks, no salary or any other remuneration shall be paid for the period of suspension. The suspension shall remain in effect until the mandatory vaccination is carried out or, in case of no vaccination, until the national vaccination plan is completed and, in any case, no later than December 31, 2021.

The mandatory vaccination requirement does not apply to the people exempted from the being vaccinated on the basis of appropriate medical certification.

There has been no consultation with the social partners on the above-mentioned measures regarding vaccination.

In Italy, besides the mandatory vaccination requirement for the workers of the sectors described above, there is a Green Pass requirement, which certifies one of the following conditions:

- Completed vaccination against SARS-CoV-2 at the end of the prescribed cycle.
- Recovery from COVID-19, with simultaneous termination of the prescribed isolation following infection with SARS-CoV-2, in accordance with the criteria established in the circular letters of the Health Ministry.



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- Negative quick antigenic or molecular test for SARS-CoV-2 (the molecular test makes the Green Pass valid for 72 hours, while the quick antigen test is valid for 48 hours).

A decree adopted on September 21 and currently known as "Super Green Pass", established that the Green Pass will be mandatory from October 15, 2021 for all workers, both public and private, self-employed, professional firms, lawyers, commercial agents, domestic workers, caregivers, taxi drivers, freelancers and, in general, all subjects who carry out their work, training or voluntary activities in the workplace for any reason.

Public and private workers will not be allowed to enter the workplace if they do not show the Green Pass. In the absence of the Green Pass, both public and private workers will be considered unjustified absentees, from the first day. Special arrangements are in place for workers in private companies with up to 15 workers where, in the event of failure to provide the Green Pass, after the fifth day they will be suspended from work and may be replaced for the whole duration of the contract (but not beyond 10 days), renewable once. In all the above-mentioned cases, there is no pay or any other remuneration, starting from the first moment of unjustified absence, with the right, however, to maintain the employment relationship, without disciplinary consequences.

Penalties are envisaged for the worker found without Green Pass in the workplace and for the employer who does not draw up the organisational arrangements for checks. The employer can formally appoint another person to carry out checks, which should preferably take place at the point of access to the workplace.

Measures regarding the mandatory application of the Green Pass have been discussed with the social partners, but the request to make the tests free for all unvaccinated workers has not been accepted. The free test is envisaged only for the workers exempt from being vaccinated on the basis of appropriate medical certification.

A decree law issued by the Italian government on 7 January contains new measures aiming at preventing the increase of Covid-19 infections, all employees over the age of 50, in both the private and public sectors, will be required to be vaccinated against Covid or have recovered from the virus to access their workplace.

## **Ireland**

There are not compulsory vaccination schemes against Covid-19 in Ireland. There are a number of legal obstacles to this, in particular rights to bodily integrity under the constitution that have been established by the Supreme Court. In 1965, the Supreme Court first recognised that the right to bodily integrity is protected by Article 40.3.2 of the Constitution. That was more recently affirmed by the Supreme Court in a case about talking blood for a test from an infant whose parents objected to the procedure. It is now well settled that a person may not be required to undergo a medical procedure against their will. Even where a person is incapable of making a decision concerning their own welfare, a necessary medical procedure can only



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be undertaken when there is a court order. The right to bodily integrity is also protected by Article 8 of the European Convention on Human Rights.

In regard to the second question, ICTU has encouraged vaccination and Ireland now has one of the highest vaccination rates in Europe. Notwithstanding the fact that there has been widespread participation in the vaccination programme, there are cohorts of workers who may not be vaccinated. However, ICTU agrees with the Government's non-mandatory approach and accepts that there are strong Constitutional, legal and human rights reasons underpinning same. While the issue will inevitably result in some conflict in workplaces, ICTU believes that this should be managed within an overall framework agreement with the employer, in both the public and private sectors.

While there has been consideration by the national authorities of the situation for Health Care Workers (HCWs) there is no change in the policy of voluntary vaccination. The current agreed position with HSE (national health body) and the Trade unions is that vaccination is voluntary not mandatory. All parties favour and encourage it on an informed basis.

Where a HCW refuses a vaccine there is a Mandatory Risk assessment to establish whether there is any higher risk to themselves or others by remaining in their current position. Redeployment to alternative work is only considered if the risk assessment determines that the risk requires it. The take up of vaccines by HCWs in Ireland is high. The overall rate of vaccine uptake in Ireland is high, with 170.3 doses per 100 inhabitants administered, among the higher rates in the EU.

## **Latvia**

The government has introduced the obligatory vaccination for almost all sectors of economy. The decision was passed despite objections by trade unions.

The state of emergency is announced from 11.10.2021 to 11.01.2022 with telework announced to all workplaces where this is possible and curfew hours every day 20:00-05:00.

In the public sector:

- Obligatory vaccination is required for all employees in the public sector, including municipalities, educational institutions, medical institutions, security and rescue services and prisons in force from 15.11.2021 disregarding whether they work remotely or perform work duties on site
- State paid COVID-19 test is provided for those who started vaccination (received 1 dose of vaccine).
- Unpaid suspension or downtime for workers without Covid-19 certificate (proof of vaccination or recovery).

In the private sector:



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- Office/on site work is allowed only if telework is not possible, and with Covid-19 test to be presented every day for both vaccinated/recovered and non-vaccinated persons
- The employer has a duty to assess the work duties and working conditions on site of each employee, including volunteers and persons with outsourced service contracts, determining the risk of infection and the potential risk to health of other persons. On the basis of the abovementioned assessment of the risk of infection at the working place, assessing each case individually and taking into account the principle of proportionality, justice, and equality, an employee shall be requested to have a vaccination certificate or certificate of recovery if any of the following circumstances exist:
  - If the employee, during performance of work duties, is in direct contact with customers, comes into physical contact, or continuously is closer than two metres from a customer, or several employees perform work duties in continuous mutual communication, come into physical contact, or continuously are closer than two metres.
  - If the employee has increased possibilities to become infected by being in direct communication and contact with a large number of persons whose state of health is unknown.
  - If the on-site work duties of the employee are of critical importance to the public, and also to ensuring the continuity of the operation of an undertaking or institution.
  - From 15 December 2021 employees, including volunteers and persons with outsourced service contracts who are not mentioned in previous points and who perform work duties on site shall need a vaccination certificate or certificate of recovery. Therefore, from 15 December all employees in all sectors of economy will be required to be vaccinated or recovered.
  - Employees who do not present proof of vaccination or recovery have to be suspended from duties or sent to downtime. The employer has no obligation to provide payment for this period and has a right to search for new employees to fill the position.

The emerging regulation to be confirmed by the Parliament in the next days

The government developed the draft amendment to the Covid-19 Infection Control Law to deal with the gap in legal regulation, namely, the employer has to require COVID-19 certificate, however, has no right to dismiss employee if there is no certificate. In this case the employee will be entitled to a severance payment in the amount of only one monthly salary disregarding the previous period of employment. This is a significant deterioration of employees' rights, as currently the Labour Law provides for the length of service to be taken into account when calculating the amount of severance pay.

The draft law has to be adopted by the Parliament. The draft amendment to the Covid-19 Infection Control Law stipulates that after January 11, the employer will have the right to immediately dismiss an employee if he or she does not have an active Covid-19 vaccination or disease certificate. The Ministry of Justice points out that if an employee has not obtained a Covid-19 vaccination or disease certificate, which is necessary for the performance of work duties, this is a sufficient reason to consider that this person does not correspond to the work



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to be performed. Among other things, the draft law stipulates that if it is not possible for the employer to transfer the employee to another suitable job or position or ensure the employee's duties remotely, the employer has the right to suspend the employee from work or determine downtime due to the employee's fault, without paying him/her for the time of suspension or downtime.

LBAS maintains strong objections to the adopted possibility provided for the employer to suspend an unvaccinated employee (official) without maintaining remuneration and calls on the Parliament not to support the disproportionate and redundant legal regulation developed by the government allowing to dismiss workers without proof of vaccination or recovery.

LBAS understands the concerns and desire to achieve faster levels of public immunity through vaccination and disease, while LBAS supports voluntary vaccination and positive motivation of people.

At the same time, LBAS underlines that the right to work means not only the right to be professionally realised but also a possibility to provide means of subsistence for workers and their families. This right can be restricted only in limited cases where there are no alternative means to reach legitimate aim. LBAS considers the adopted and planned regulation as unproportionate and emphasizes that the virus transmission chain can be interrupted by other alternative instruments that are less "painful" for workers and employers and more socially friendly, such as telework, the use of nose and mouth shields, company and industry safety protocols, regular testing, isolation of patients, stricter border control.

The absence of vaccination or disease certificates is not acceptable as a reason for dismissing an employee.

The draft law envisages a significant deterioration of the legal position of an employee, as it entitles the employer to pay a lower severance pay (only one monthly salary) than is labour laws.

The draft law does not provide for the possibility for an employee who does not wish to be vaccinated to terminate the employment relationship immediately and receive a severance pay, as provided, for example, in Section 100, Paragraph five of the Labour Law.

LBAS draws attention that these issues have not been discussed in the social dialogue. LBAS has repeatedly appealed to the Cabinet of Ministers and the Parliament, but the opinion of the social partners has not been taken into account, therefore LBAS together with its member organizations are considering the possibility to apply to the court for these significant deteriorations of employee rights.

In addition, the existing Law must stipulate that prior to making decisions that may significantly affect working conditions and employment, such as epidemiological requirements at the work



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place, in accordance with the provisions of Article 11 of the Labour Law, the employer shall consult the trade union of employees (officials).

LBAS demands that the legislative acts provide for a special state-paid rehabilitation program, as well as for receiving “green corridor” services, state compensation for treatment, examinations, care and other costs from the state budget if a vaccinated person has complications, loss of ability to work, or death.

## **Lithuania**

No compulsory vaccination schemes have been established in Lithuania. However, mandatory test should be undertaken every 7-10 days in the following sectors: health care; social services and activities; education; pharmacies; international freight transport; public transport and private transport of passengers; leisure; entertainment; and cultural activities (if organising events or providing visitor service); catering; public administration; industry; army; retail; and migration services. Vaccinated workers or those who can proof recovery are exempted from this obligation.

The development of these schemes is a result of an uneven process of social dialogue. The Lithuanian trade unions secured that those workers who are not vaccinated would not be suspended from work and that tests would be free for workers. Currently the Lithuanian Trade Union Confederation is seeking to ensure that the testing time would be considered as working time, a demand that faces opposition from some employers.

While supporting the importance of vaccination for workers, LPSK is against mandatory vaccination schemes. The Confederation states that those workers who are not vaccinated should not be suspended from their work, a demand which has successfully been respected.

## **Luxembourg**

No mandatory vaccination schemes have been implemented in Luxembourg.

On October 18th, a new controversial Covid law was passed by the Luxembourgish government with a small majority and it was in place until December 18th. Starting November 1st, the Covid Check system (“3G”, meaning vaccinated, recovered or certified test) becomes mandatory and it will not only cover hospitals and care facilities but also the hospitality sector. Employers could introduce the Covid Check system in their companies. However, self-administered Covid tests (rapid self-tests) were no longer valid, and the costs of certified PCR-tests had to be borne by the individuals unless prescribed by a doctor. Trade unions criticized the ambiguity of the text of the law, which could lead to abuse by the employer and place further financial burden on workers. They demand that employees should not be sanctioned in any case, any direct costs related to the Covid Check system must be paid by the employer, the time needed to take a (certified) test to enter the workplace, must be credited as working



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time and the provisions regarding the protection of personal data (GDPR) must also be respected in the context of the Covid Check system.

On December 16<sup>th</sup> 2021, the Luxembourgish Chamber of Deputies voted a new Covid law that introduces legislative modifications. The new rules will apply from 17 December 2021 on and will remain in force until 28 February 2022. From 15 January 2022 employees will have to present a complete vaccination certificate, a recovery certificate, a certified PCR-Test or a certified rapid antigen test at their workplace (the so-called 3G-regime). To verify if workers are in possession of one of the above-mentioned documents, the employer is granted the permission to keep record of this information. However, the listing of employees must be voluntary and should only contain the name of the employees and the period of validity of their vaccination or recovery certificate. As soon as the validity is expired, the list must be destroyed.

It should be noted that the validity of Covid-Tests has also been adjusted. PCR tests that had a validity of 72 hours are from now on only valid for 48 hours. The validity of a SARS-CoV-2 certified rapid antigen tests has been reduced to 24h instead of the previous 48h.

Major modifications have also been foreseen for gatherings:

- 1-10 people: no restrictions
- 11-50 people: social distancing + mask. In case of a private event, the Luxembourgish health department must be informed (can be replaced by CovidCheck regime without social distancing + mask)
- 51-200 people: social distancing + mask+ people must have to sit down (can be replaced by CovidCheck regime without social distancing + mask)
- 201-2,000 people: Covid-Check 2G regime is mandatory. This means that people attending such an event must be able to present either a valid vaccination certificate or a certificate of recovery (except for gatherings for demonstration purposes, outdoor markets, and public transport)
- Above 2,000 people: a health protocol must be presented to the Health Department in advance, who can later decide to accept or refuse the request.

After the introduction of a former Covid law on 18 October 2021, trade unions had criticized the ambiguity of the text which could lead to abuse by the employer. In fact, trade unions placed particular emphasis on specific key issues to protect workers. 1) The Covid-Check should not lead to dismissals, and 2) that the absence of a valid CovidCheck should not lead to disaffiliation from social security. The new Covid law brings more clarification on these points, inter alia, it is stipulated in the text that the inability or the unwillingness to present a valid CovidCheck is not a valid reason for dismissal. Similarly, social security affiliation will be maintained.

**Malta**





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Until Spring 2021, the government had publicly reiterated that it would not impose inoculation upon Maltese residents or citizens. Nevertheless, in July 2021, the prime minister stated that employers should try to convince workers to get vaccinated.

### **Poland**

On 18 January 2022 all Polish social partners (the 3 trade union confederations NSZZ Solidarność, OPZZ, and FZZ and the 6 association of employers), members of the Social Dialogue Council called the Polish Government to introduce in Poland a compulsory vaccination scheme for COVID-19.

### **Portugal**

In Portugal, vaccination against COVID 19 is not mandatory under any circumstances. Vaccination in Portugal is generally not mandatory.

The CGTP-IN understands that the requirement to be vaccinated would be completely unacceptable and a clear violation of the Constitution of the Portuguese Republic, as it would violate the principle of equality that the fundamental law stipulates. The CGTP-IN understands that any discrimination in access to employment and work, namely in terms of health conditions, should be prohibited. The Confederation supports nonetheless the importance that companies develop, as part of their occupational health and safety services, information campaigns advising workers to opt for vaccination against COVID-19.

Regarding the compulsory testing schemes, the CGTP-IN also understands that there is no legal basis for employers to demand systematic and massive testing of workers and to impose on workers the cost of testing (as some employers have been trying to do).

### **Slovenia**

ETUCE and ZSSS reported for the COVID-19 WATCH ETUC BRIEFING NOTE ON MANDATORY VACCINATION SCHEMES 4 OCTOBER 2021 that the government adopted the "Ordinance on the method of meeting the condition of morbidity, vaccination and testing to curb the spread of SARS-CoV-2 virus infections" in which the article 10.a stipulated that from 1 October 2021 on civil servants in state administration (government, ministries and administrative units) must meet PC criteria (either the proof of vaccination or proof of recovery from Covid-19). As in practice this meant compulsory vaccination or risk in some cases of losing their job, the policemen trade union demanded the ruling of the Constitutional court on this.

The Constitutional Court's final decision is that article 10.a of the Ordinance infringes the Constitution of Republic Slovenia. The court argued that PC criteria is comparable to mandatory vaccination and should be, therefore, regulated in the articles 22 and 25 of the Communicable Diseases Act and not in a government ordinance. The constitutional Court in



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its decision did not take a stand on the proportionality of the measure in certain occupations. It simply clarified that it should be regulated in a law (adopted by the parliament and not by the government). The Constitutional Court, however, remarked that the article 10.a of the ordinance was exclusively about accessibility to the workplaces in state administration.

According to [Ordinance on the temporary measures for the prevention and control of infectious disease COVID-19](#) the PCR testing must be carried out every 72 hours and in case of HAG testing every 48 hours.

The employer's cost for testing is covered by the state budget in the amount of 92,50 euro per worker per month (article 56 of the new [Act on Additional Measures to Stop Spreading and Mitigate, Control, Recover and Eliminate the Consequences of COVID-19](#)).

ZSSS has issued several documents in which it explains that the employer may recommend vaccination to the employees but shall not discriminate in any way workers who are not vaccinated.

ZSS has no intention to take a stand on compulsory vaccination. While understanding that vaccination is a personal decision, ZSSS recommends to its members and all Slovenian workers to get vaccinated against Covid-19. A considerable amount of people in Slovenia have strong personal concerns regarding safety of covid vaccines and the anti-vaccination civil movement is very active on social media. The results of the last government survey on the vaccination situation in Slovenia reported that as many as 29,1 % of surveyed persons said that they have no intention to be vaccinated.

The Slovenian Communicable Diseases Act stipulates that new annual rules on the vaccination and chemoprophylactic programme that determines which vaccines are mandatory for different groups of people should be adopted every year. The groups set up so far are: 1- pre-school youth, 2- youth included in all levels of education, 3- employed, 4- the rest of population, 5- international passengers, 6- groups with special risk that need medication protection, 7- emergency situations in which population needs protection by vaccination and medication.

A public consultation on the draft Rules on the vaccination and chemoprophylactic programme for 2022 was launched and remained open until January 18<sup>th</sup> (see <https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=13787>). For the first time covid-19 was included to the draft list of mandatory vaccinations for workers. The instruction of the draft rules is that the individual employer in their OSH safety statement and risk assessment document determines which are the workplaces where covid-19 vaccination is mandatory.

Since this issue was not discussed through social dialogue at national level, ZSSS communicated its position on the draft rules within the public consultation process (see in SI <https://zssszaupnikvzd.si/wp-content/uploads/2022/01/Pravilnik-o-programu-obveznega->



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cepljenja-2022-stalisce-ZSSS.pdf). The position of ZSSS is that the proposed rules for 2022 are unacceptable as: (first) this would be infringement on Slovenian constitution as covid-19 is still not listed in the Communicable Diseases Act as mandatory vaccination disease, (second) the individual employer is free to include also workplaces where mandatory vaccination is a disproportionate measure and (third) because such rule would cause inequality within the same profession groups.

At the moment the draft rules are still in the process of intergovernmental coordination following the end of public consultation.

Some employers are pressuring their employees to get covid-19 vaccinated. Some of the threats reported against non-vaccinated workers include layoffs, wage reduction, or salary downgrading. Some of those threats have been even carried out. Worker performance might also be evaluated according to their vaccination status. Another employer tactic is to introduce group bonus which is paid out only if the entire worker group is vaccinated. This causes disputes among the vaccinated and non-vaccinated co-workers. All this goes in some cases to the point of harassment and discrimination.

### **Slovakia**

Vaccination schemes are voluntary and financed by the public health insurance (without any additional fees for all categories of employees).

The trade union movement has not taken a position on the vaccination schemes.

### **Spain**

Spanish legislation establishes, as a general principle, that vaccination is a right not an obligation, however, specific regulations provide for the possibility of compulsory vaccination under very specific conditions.

Following decisions being taken in other EU countries, Spain has also opened the debate on the compulsory nature of vaccines, but this is limited to workers in the health and social-health sector, and not to the population as a whole. Recently, the authorities have recommended the possibility of carrying out 2 diagnostic tests per week for workers who refuse to be vaccinated.

The Spanish strategy on Covid-19 vaccination includes the record cases of refusal of vaccination in the public register, in order to know the possible reasons for reluctance in different population groups.

Some Autonomous Communities (regions) are in favour of compulsory vaccination in the health and social sectors. Some of these autonomous governments have already carried out several attempts that have been suspended by the Constitutional Court or the High Courts of Justice (regional Courts). In any case, the Ministry of Health is, for the moment, against this



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measure. As an example, it is worth mentioning that the Constitutional Court recently suspended, as a precautionary measure, the Galician Health Law, which included the obligation to be vaccinated against COVID-19 and provided for fines for those who did not do so. The suspension is based on the fact that this regulation implies "a coercive bodily intervention practiced outside the will of the citizen".

The position on Covid-19 vaccination of the two main Spanish Confederations is very similar.

UGT states that vaccination among workers should not be mandatory, unless the health authorities require it. Vaccination is in any case advisable. No worker should be forced to be vaccinated, since it is a personal decision, an individual freedom. This decision should not be left in the hands of companies as it can lead to discriminatory situations, for example, in access to jobs or internal promotions. UGT also asserts that the request of the Covid passport for accessing the catering industry can be a limitation for unvaccinated workers who eat outside their workplaces and cannot access restaurants.

CCOO supported the decisions of the health authorities. CCOO considers compulsory vaccination unnecessary, given the high level of acceptance and the high vaccination rates of the Covid vaccine in Spain.

### **Sweden**

There is no general obligation to get vaccinated, which virtually means that workers have the right to refuse.

This means that employers cannot make such demands either. According to the Employment Protection Act, it is not legal to dismiss an employee due to refusal of being vaccinated.

The trade unions do not have the legal authority to enter into negotiations that aim at collective agreements stating that it directly or indirectly means a requirement for members/employees to get vaccinated. LO is not aware that a collective agreement has been reached that regulates the issue of access to the workplace for people who have not been vaccinated. On the other hand, we know that there have been discussions between the trade unions and employers at different levels about how infection control in workplaces should be handled, especially in sectors like care, where workers are exposed to physical contact with people during their working days. Non-vaccinated workers in these sectors can be reassigned to other duties that do not imply taking care of patients in elderly care/healthcare sector. In the absence of such alternative duties, the consequences could be a dismissal. Some employers are testing the possibility to require a Covid-19 vaccination when hiring new employees. This is an unseen criterion which is not found in labour law, so praxis has not been set yet.

TCO does not have a position in this regard.



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LO states that the employer must encourage and facilitate, in every way, employees to be vaccinated. This means, for example, that no deduction should be made from the salary if employees have to go to be vaccinated during working hours. Employers are responsible for the work environment and must ensure that the workplace is safe. For an employee, it can in some cases mean a temporary relocation if safety cannot be achieved in any other way.

## **Switzerland**

The Swiss Covid Law rules that social partners should be consulted before any decision by the government when it appertains to labour or economic issues. The Swiss trade union confederations are members of the different taskforces and commissions on Covid.

The government introduced a home office obligation when and wherever this is possible due to the nature of the activity. The employer must pay all costs derived from the home office. When home office is not possible due to the nature of the work (as it is the case in the construction and industrial sectors, among others) protective equipment should be paid and/or distributed by the employer. Wearing masks is mandatory in closed workspaces.

After consulting the workers, an employer can establish a so-called “3-G rule” (obligation to certified having been tested negative, vaccinated or recovered against Covid-19).

Persons at particular risk are specifically protected by this law. This applies inter alia to pregnant women and other people who cannot be vaccinated against Covid-19 due to the presence of certain diseases for which the vaccination is proven to have negative consequences (high blood pressure with end-organ damage, severe cardiovascular diseases, severe chronic respiratory diseases, etc.). These workers are granted the right to telework, and employers must take the appropriate organizational and technical measures for this purpose. The approach follows the principle of STOP, meaning substitution, technical measures, organizational measures, and personal protection. If it is not possible for employers to employ workers in accordance with these requirements, they are given leave of absence with the obligation to pay salary. A simple medical certificate presented by the worker is enough to receive a leave of absence. The salary is covered by a government insurance.

## **The Netherlands**

Vaccination is not compulsory in the Netherlands but administered on a voluntary basis. Some healthcare occupations and vulnerable groups have been given priority with the vaccination scheme. Furthermore, the vaccination was offered on the basis of age from old to young.

The explicit lack of legal justification for submitting a test and vaccination evidence means that processing this information (including obtaining it without saving the data, or under a promise to destroy it later) is prohibited under the privacy legislation (GDPR).



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In line with this, an employer cannot impose a testing or vaccination obligation, because the data that forms the basis for such a policy cannot be processed.

At this moment there are no legal options in the Netherlands for employers to record the vaccination status of employees. However, the occupational doctor can check the vaccination status of the employees. The occupational doctor can give anonymous feedback about the vaccination status of the staff to the employer.

As a social partner, FNV shall be entitled to communicate its position on this issue to the government. However, the government has been determining the vaccination policy unilaterally.

At this moment, problems arise for workers in an international context, such as offshore work, international transport and cabin crew flying to various Europe countries. An unambiguous policy within Europe in which the rights of employees are guaranteed is therefore needed. The union stands against compulsory vaccination on the basis of respect of fundamental rights, more concretely the rights to privacy and physical integrity.

Whereas the situation in the Netherlands has not changed from a legal perspective, an increasing number of companies and organisations are requesting that their employees are either vaccinated or tested before entering their premises. While this is not permitted according to the legislation, the labour inspectorate is not taking enough action against this. This situation is driving the discussion on the need for about if there should be legislation regarding these situations. CNV is against any form of mandatory vaccination or a check on the workplace. Medical information is private and under no circumstances should workers be made to share that information.

### **Turkey**

There are no compulsory vaccination schemes implemented in Turkey. Alternative measures in place require non-vaccinated teachers and education personnel to take a PCR test twice a week, yet current data suggests that it is not actively implemented.

There are however informal Governmental discussions that point at the possibility of making vaccination mandatory for public employees.

### **UK**

The UK government will make covid vaccination mandatory for care home staff from October and is considering whether to extend the policy to NHS staff (the whole of the national health system). From November 11<sup>th</sup>, non-vaccinated workers in the care sector can be dismissed.



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The UK government ran a public consultation on mandatory vaccination for frontline health and social care staff in England, so it is not reserving social partners a privileged channel of negotiation.

Two companies (Wessex Water and Ikea) have reduced sick pay for unvaccinated employees who need to isolate. Workers under these circumstances will only receive statutory sickness benefit, if they have to self-isolate as a result of being a close Covid-19 contact (the basic benefit is much lower than the amount usually paid by the employer).

In early January the TUC joined the Let's Vaccinate Britain campaign.

<https://www.tuc.org.uk/blogs/lets-vaccinate-britain-time-trade-union-members-step>

And our teachers' union NEU also called for teachers and other education personnel to be a key target of national vaccination campaigns.

However, the TUC remains of the view that compulsion is not the right way to approach this issue: it could be discriminatory and reduce trust and morale. Employers should instead encourage care (and other) workers to get paid time off to get vaccinated and guarantee decent sick pay. The TUC also warned against some employers' 'no jab, no job' policy.

<https://www.tuc.org.uk/news/tuc-compulsory-vaccinations-care-staff-ill-thought-through>

See also our care workers' union GMB <https://www.gmb.org.uk/long-read/why-compulsory-vaccination-not-way> and

Unite <https://www.unitetheunion.org/news-events/news/2021/june/proposals-for-compulsory-vaccination-of-care-home-staff-condemned-by-unite/>

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