

## **Working Group on Business and Human Rights**

### **Report to the 50th session of the Human Rights Council on “COVID-19 pandemic: lessons learnt and moving forward”**

#### **Call for inputs from Member States**

#### **REPLY FROM PORTUGAL**

1) What were the most significant challenges and obstacles for your Government during the pandemic and the recovery period related to ensuring responsible business conduct? What kind of support or/and guidance would your Government welcome to prepare better for business-related human rights abuses linked to other, future crises?

The Covid-19 pandemic interrupted the growth process in Portugal, and required the adoption of measures to control the transmission of the disease, which introduced a deep shock to economic chains. Production and supply chains have been disrupted, with businesses closing, unemployment rising, flows of people and goods and services slowing significantly, and pockets of poverty increasing. The main macroeconomic indicators have deteriorated significantly.

In order to respond to the challenges arising from the Covid-19 disease pandemic, the European Council approved, in July 2020, a financial package, which included the Multiannual Financial Framework 2021-2027 and the Next Generation EU. This will be done through the implementation of economic and social policies for the recovery and promotion of the resilience of the Member States.

The Council of Ministers Resolution no. 98/2020, of 13 November, approved the “Portugal 2030 Strategy”. The Portugal 2030 Strategy was adopted as a general guideline for the definition and implementation of structural public policies in the next decade, and has as its vision: Recover the economy and protect employment, and make the next decade a period of recovery and convergence between Portugal and the EU, ensuring greater resilience and cohesion, social and territorial.

The industrial reconversion and re-industrialization of the country emerges as a lever for economic growth, focused on collective efficiency, research and innovation, productivity, qualified employment, qualification of human resources and investment attraction. Responding to the blockages, the new challenges and the impacts of the global pandemic, therefore, requires a new cycle of structural policies. Policies that promote the dual transition, climate and digital, and reinforce the resilience, cohesion and competitiveness of the economy, and respond to the demographic challenge, aiming to guarantee the necessary structural transformation and the convergence of the living standards of Portuguese citizens with the EU averages.

The objectives for this agenda, in the Labour area, are: to reach a European leadership level of digital skills by 2030, and to increase the participation of adults in lifelong learning.

2) What were the most important lessons learnt from the crisis and how can these lessons help in addressing business-related human rights abuses linked to other, future crises?

In general, business support measures were successful.

As mentioned in the Resolution of the Council of Ministers n. 98/2020, in promoting employment, employability and inclusion, interventions must start from the recognition of the connection between exclusion from the labour market and risk of social exclusion.

We need active measures to protect and promote employment and to prevent unemployment and prolonged absence from the labour market, combined with improved protection for the unemployed.

There should be an increase in the coverage of unemployment benefits, in particular for the long and very long-term unemployed and the self-employed. On the other hand, there must be an articulation between the work of the public employment service and the social security services and other bodies working in the area of health and social protection.

There should be a strengthening of the training of public employment services and other labour market agents, promotion of the activation and inclusion of the unemployed, in particular the long and very long-term unemployed, the less qualified and other vulnerable groups far from the market of work. It is urgent to promote social skills, employability and integration into the labour market of other vulnerable groups, the promotion of culture, tourism, leisure, participation and education, as instruments of social inclusion.

3) Please outline any positive initiatives (highlighting those that were the most effective), including policies, legislation, and plans through which your Government contributed to:

The COVID-19 pandemic has highlighted and exacerbated existing vulnerabilities in the society. This context reinforced the need for Portugal to approve a **National Action Plan on Responsible Business Conduct and Human Rights** (PNACERDH). The draft Plan was drawn up by the Ministry of Economy and Digital Transition in consultation with other Ministries and stakeholders in the framework of the National Human Rights Committee in 2021 and was submitted for consideration of the Cabinet of the Minister of Economy and Digital Transition. It measures aimed at creating a favorable environment for the promotion of respect for human rights in companies, the mitigation of the negative impacts that the activities of the companies may have on human rights and promoting the creation of remedies concerning situations of abuse of human rights in the business environment.

- a. creating and strengthening an enabling environment for businesses to respect human rights in their operations during challenging times and when emerging from the crisis;

Recognizing the exceptionality of the emergency situation triggered by this outbreak, and having heard the social partners, the Government approved a set of extraordinary and temporary measures to grant immediate support to workers and employers affected by this pandemic, with a view to secure jobs and mitigate the crisis and the accompaniment of children, elderly and other vulnerable groups, namely protect families and workers and companies:

- **Outstanding support for the maintenance of employment contracts in companies in a situation of business crisis (temporary suspension – total or partial – of the employment contract)** (Article 3 of Decree-Law 10-G /2020, regulated by article 4 of Order 94-A /2020). Temporary measures with the aim of having a swift and immediate response to the urgent needs of supporting the maintenance of employment in companies especially affected by the outbreak of COVID-19, as a result of a total or partial interruption of economic activity, suspension or cancellation of orders, or break of 40% of the billing (30 days before requesting the support from Social Security services, referring to the monthly average of the two months prior to that period, or compared with the same period of the previous year, or, even, for those who started the activity less than 12 months ago, the average of that period). The financial support is 2/3 of the employee's gross remuneration, up to a maximum of three National Minimum Wages (EUR 1,905); Social Security ensures the payment of 70% and the other 30% is ensured by the employer (excluding Social Security contributions). Under this measure it is not possible to dismiss workers. This support lasts from a minimum of one month and up to three months.
- **Development of an extraordinary training plan** (Article 7 of Decree-Law 10-G /2020). Extraordinary training support for companies that, due to a decision from the Health Authority, cannot work properly. Each worker covered by this plan receives an extraordinary support ensured by the Institute for Employment and Vocational Training, referring to the hours of training to be attended, up to the limit of 50% of the gross remuneration and not exceeding the value of the National Minimum Wage.
- **Extraordinary financial incentive to support the resumption of the company's activity** (Article 10 of Decree-Law 10-G/2020). Extraordinary financial incentive to support the resumption of the company's activity (that benefited from support for the maintenance of employment contracts) having as reference one national minimum wage per worker for one month. This value aims to support companies returning to normality, in order to support the maintenance of jobs.
- **Temporary exemption of employer's Social Security contributions payments** (Article 11 of Decree-Law 10-G/2020). During the COVID19 period, companies benefiting from the above-mentioned measures are exempted from Social Security contributions payments.
- **Prohibition of dismissal** (Article 13 of Decree-Law 10-G/2020). Prohibition of dismissal: during the period of application of the planned support measures, as well

as in the following 60 days, the employer cannot terminate employment contracts except for reasons attributable to the worker.

- **Prophylactic isolation** (Article 19 of Decree-Law 10-G/2020), in a first phase, the Government adopted measures to safeguard the social protection of workers who are temporarily prevented from exercising their professional activity as ordered by the Health Authority, due to COVID-19. In this case, workers are entitled to the payment of an allowance corresponding to 100% of the reference remuneration.
- **Sickness Benefit** (Article 20 of Decree-Law 10-G/2020), the provision of the sickness benefit is not subject to a waiting period, meaning that, exceptionally, it applies from the application day on. The reference remuneration to be considered is the total remuneration registered in the first six months preceding the second month prior to the month in which the temporary incapacity for work began.
- **Exceptional regime of justified absences** (Article 22 of Decree-Law no. 10-A/2020 and Article 2 of Decree-Law no. 10-K/2020, as amended by Article 2 of Decree-Law no. 12-A/2020). The following work absences are justified: i) assistance to a child or other dependents under 12 years of age or, regardless of age, with a disability or a chronic illness; ii) during school holidays, assistance to a grandson of a teenage mother or son, under the age of 16, both living with the worker; iii) assistance to a spouse or person living in a de facto union or common economy with the worker, relative or similar in the descendent direct line in charge of the worker and who frequent social equipment whose activity is suspended by order of the health authority or by the Government, as long as there is no other alternative; iv) within the scope of COVID-19, provision of assistance or transport by volunteer firefighters with an employment contract with an employer from the private or social sector, called by the corresponding fire department.
- **Extraordinary support for reducing the economic activity of self-employed workers, managing partners or members of statutory bodies** (Article 26 of Decree-Law no. 10-A/2020, as amended by Article 2 of Decree-Law no. 12-A/2020, Article 2 of Decree-Law no. 14-F/2020 and regulated by article 3 of Order no. 94-A/2020). All temporary exceptional measures implemented due to COVID-19 aimed at self-employed workers are also covering individual entrepreneurs. Therefore, individual entrepreneurs, with or without organized financial accounting, have access to the following support: i) sickness benefit; ii) exceptional family support; iii) temporary suspension of the activity (total or partial); iv) deferral of payment of contributions (not removing the obligation to submit the quarterly declaration); v) tax deferrals; vi) credit moratorium.
- **Extraordinary support for the Reinforcement of Workers of Social and Health Facilities** (Ordinance No. 94-C/2020). Extraordinary support for the reinforcement of Workers of Social and Health Facilities from Private Institutions of Social Solidarity with short-term staff need by integrating: unemployed (regardless of whether they are registered in the Public Employment Service); workers with a suspended contract or reduced working hours; workers with part-time employment contracts; people that are receiving the social allowance guaranteed minimum income; and students and trainees aged 18 or over. Those working under this measure will receive a monthly financial contribution as a complement to any allowance already being received. 90%

is paid by the Institute of Employment and Vocational Training and 10% by the beneficiary institution.

- **Reinforcement of the inspection activity of the Authority for Working Conditions (ACT)** (Article 26 of Decree-Law no. 2-C/2020 and Order no. 4698-D/2020) enabling it to act in favour of strengthening the workers' rights and guarantees, namely by giving the possibility to suspend unlawful dismissals.
  
- b. mitigating the negative human rights impacts evident during the pandemic and likely to be present during future crises;
  
- Implementation support measures - companies, workers and the general population, during COVID 19, made available by the National System for Social Security here <https://www.seg-social.pt/covid-19>.
  
- Extraordinary simplification in the access provided to the beneficiaries of social insertion income (RSI) and its attribution according to the current remuneration and not that of the last 3 months.
  
- Extension of the exceptional conditions for the granting of social unemployment benefit.
  
- Attribution of financial support for persons who are not necessarily covered by a national or foreign Social Security System and who declare the start or resumption of independent activity to the tax authorities. The support, aimed at avoiding situations of social vulnerability, is granted for a maximum period of two months in an amount corresponding to half of the amount of Social Support Index per month (219.41 euros).
  
- Application of credit moratoriums on individuals, owners, public institutions of solidarity and social security, small and medium-sized companies, and companies of the non-financial sector. These moratorium cover loans and other credit operations, and they are available until 30 September 2020. During this period, credit agreements are suspended.
  
- Creation of a teleworking portal (<https://covid19estamoson.gov.pt/regimes-de-teletrabalho/>) that offers a set of free digital tools, with a view to supporting the adoption of the teleworking regime by citizens, public and private organizations, and schools.
  
- c. ensuring effective access to remedy for business-related human rights abuses caused during times of crisis.
  
- Creation of the COVID-19 “Dúvidas Laborais” Line (telephone and e-mail), to clarify doubts regarding the impact of the pandemic at work, both for employers and workers.
  
- Adoption of a set of extraordinary and temporary measures (<https://covid19estamoson.gov.pt/medidas-de-apoio-emprego-empresas/>), implemented with a significant social impact. They were aimed to supporting

workers, families and employers affected by the pandemic, guaranteeing household incomes and reducing the risks of job losses.

4) What are those opportunities that would allow your Government to build back better by ensuring stronger and more decisive action to protect human rights in the context of business activities?

The negotiations between the European Parliament and the Council on the EU's next long-term budget and the post-COVID-19 crisis recovery fund reached a final agreement for the European economic recovery with a view to financing for the period 2021-2027, in a global package of 1 824.3 billion euros.

Portugal is expected to raise €45.1 billion in transfers over the next seven years, a sum that includes €15.3 billion in grants (non-refundable, comprising €13.2 billion, by 2023, through the Recovery and Resilience Mechanism, the main instrument of the Recovery Fund - Next Generation EU/Next Generation EU) and €29.8 billion in grants from the EU's long-term budget 2021-2027.

The Recovery and Resilience Mechanism will provide a total of €723.8 billion (at current prices) to support investment and reform in all Member States. Portugal's Recovery and Resilience Plan is part of the effort made by the EU to emerge stronger from the COVID-19 crisis, promoting ecological and digital transitions and strengthening the resilience and cohesion of our societies.

5) What efforts were made by your Government to engage in constructive and meaningful dialogue with various stakeholders, including civil society actors, to address business-related human rights abuses during the pandemic, including to protect workers and to build a resilient society and economy based on inclusive recovery able to prevent human rights abuses in future crisis situations?

In Portugal there was a constant effort to maintain social dialogue with all interested parties.

Due to the constraints caused by Covid-19 disease pandemic, there was a need to reach agreements with all social partners, which resulted, in many of them, in meaningful solutions, such as simplified lay-offs.

This social dialogue included, in particular, the meetings of the Permanent Commission for Social Dialogue (composed by representatives of the government and of the social partners), which, since March 2020, have taken positions that allowed the government to adopt measures aimed at ensuring that companies maintain of their productive capacity, the maintenance of employment and to families the level of income.

In March 2020, the Government heard “the social partners about their concerns, namely about the way the situation has evolved and also about doubts that was raised about the measures applied (...)”, namely by proceeding to “identify situations that are unprotected by the measures that were created for us to create them, monitoring the situation at every moment». In April 2020, the Government and the social partners worked on a common document to establish guidelines for safety and health in the workplace in the context of

the Covid-19 pandemic situation. In May 2020, a commitment was signed between the government and the social partners, in order to resume economic activity according to the standards defined by the Directorate-General for Health. Also, in May 2020, the social partners were heard about the economic recovery. In October 2020, government heard the social partners in the preparation of the 2021 State Budget.

It should be noted that, under the terms of the labour code (article no. 470), whenever there are legislative changes, in the area of labour law, the social partners must be heard.

Civil society was heard, namely self-employed workers, during the Covid-19 disease pandemic, remembering, for instance, workers in the field of culture. A new allowance for suspension of cultural activity has been created, which covers all professionals in the field of culture and extension of social protection to all eventualities (suspension, parenthood, illness and occupational diseases), under the terms of Decree-Law no. 105/2021, of November 29.

Also, The Portuguese National Contact Point for the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, established contact in 2021 with the Portuguese Focal Point of the International Labour Organization (ILO), with the aim of creating synergies, namely the carry out of joint events, with the view to promote dialogue on Responsible Business Conduct and Human Rights in Portugal, as well as a multidisciplinary approach to this matter.