

Information about pre-closure of a multiple complaint on an alleged breach by Lithuania of EU rules on occupational health and safety

Reference number: CHAP (2022) 00390

The European Commission has received a large number of complaints about an alleged breach by Lithuania of Article 6(5) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work¹.

Background

On 11 November 2021, the Lithuanian Parliament adopted Law No XIV-620 amending Articles 18 and 40 of Lithuanian Law No I-1533 on the prevention and control of communicable human diseases, which had been in force until 1 December 2021, with the introduction of an exemption from the general rule on payment for health tests.

Following the entry into force of Law No XIV-620, the testing of workers who, in the absence of contraindications, refuse to be vaccinated against the disease for which the State-level emergency and/or quarantine has been declared throughout the national territory, and who must be periodically tested for the absence of the communicable disease during the performance of their work or activities, shall be paid for by the workers or, at the employer's decision, by the employer.

EU provisions in the field of occupational health and safety and the potential breach of Article 6(5) of Council Directive 89/391/EEC

The central piece of EU legislation on the health and safety at work of workers is Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (the so-called Framework Directive). The Framework Directive applies to all sectors of activity, both public and private. It lays down, among others, the general principles concerning the prevention of risks, the protection of safety and health of workers at the workplace, as well as general guidelines for the implementation of the said principles, and imposes a number of obligations on employers and workers. The employer is required to assess all risks to which workers are or can be exposed and to establish the resulting preventive and protective measures, taking into account the nature of the activities of the enterprise and/or establishment.

Furthermore, Article 6(5) of the Framework Directive states that '*Measures related to safety, hygiene and health at work may in no circumstances involve the workers in financial cost*'.

As the new Lithuanian law was introduced to combat epidemiological threats in the still ongoing sanitary crisis as a measure aiming at the protection of public health, it falls outside the scope of application of the mentioned provision of the Framework Directive, which primarily concerns measures taken by the employer as an outcome of the risk assessment in the enterprise or establishment. Namely, although the new Lithuanian measure might indirectly affect precautionary measures taken by individual employers at the enterprise/establishment level, it is a part of the Lithuanian public health policy, and not the Lithuanian occupational health and safety policy, since the Lithuanian law in question addresses the prevention and control of communicable diseases.

¹ OJ L 183, 29.6.1989, p. 1, as amended.

The Commission services consider that an obligation for workers to present a proof of vaccination against a communicable disease or to be periodically tested for the absence of a communicable disease during the performance of their work or activities does not constitute a breach of Article 6(5) of Council Directive 89/391/EEC. Such an obligation is a general measure to fight serious health threats and seems to be imposed in a wider context, and not only in the working environment. In addition, it is necessary to highlight that in the exceptional circumstances of the COVID-19 pandemic the measure in question genuinely addresses an important public health crisis, and does not seem, as such, to be disproportionate.

Consequently, the Commission services consider that there is no breach of Article 6(5) of Council Directive 89/391/EEC.

Public health policy

In addition, please note that public health is one of the fields in which Member States still largely retain their own legislative and administrative competences. Pursuant to Article 168(7) of the Treaty on the Functioning of the European Union, Union action shall respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care. The responsibilities of the Member States shall include the management of health services and medical care and the allocation of the resources assigned to them. Particularly as regards vaccination policies against COVID-19, the European Commission has clarified that “[a] common EU approach will always respect the principle of subsidiarity and Member States’ competences in health policy: vaccination policies remain in the hands of Member States”².

Conclusion

The Commission services have therefore concluded that there are no grounds for pursuing this case further and that this case should be closed. However, if the complainants have any new information suggesting that Lithuania has committed an infringement of Union law not covered by the above assessment and that might warrant further examination of the complaint in line with the Commission Communication “*EU law: Better results through better application*”³, they are invited to submit this new information to the European Commission within four weeks from the publication of this notice. If no new information is received within four weeks, or if the new information received does not lead to a different conclusion, the Commission will close the case.

² Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank, EU Strategy for COVID-19 vaccines, 17 June 2020, COM(2020)245 final, available at: [EUR-Lex - 52020DC0245 - ES - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0245).

³ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119(01)).