SEVENTEENTH PERIODIC REPORT
ON THE IMPLEMENTATION OF
THE REVISED EUROPEAN SOCIAL CHARTER

SUBMITTED BY THE GOVERNMENT OF FINLAND

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SEVENTEENTH PERIODIC REPORT ON THE IMPLEMENTATION OF THE REVISED EUROPEAN SOCIAL CHARTER

for the period from 1 January 2017 to 30 December 2020, made by the Government of Finland in accordance with Article C of the Revised European Social Charter and Article 21 of the European Social Charter, on the measures taken to give effect to Articles 2, 4, 5, 6, 21, 22, 26, 28, and 29 of the Revised European Social Charter (Finnish Treaty Series 78 and 80/2002), the instrument of acceptance of which was deposited on 21 June 2002.

Finland has accepted the Articles from this group with the exception of Articles 4 §§ 1 and 4.

In accordance with Article C of the Revised European Social Charter and Article 23 of the European Social Charter, copies of this official report in English language have been communicated to the Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK), the Confederation of Unions for Academic Professionals in Finland (AKAVA), the Confederation of Finnish Industries (EK) and the Federation of Finnish Enterprises (FFE).

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ARTICLE 2: THE RIGHT TO JUST CONDITIONS OF WORK

Article 2 § 1: Reasonable daily and weekly working hours

Question A

Working Time Act

1. The Act governing working hours in Finland was reformed in its entirety during the reference period. Entering into force on 1 January 2020, the new Working Time Act contains the provisions governing working time and rest periods.

2. The Act aims to provide appropriate working time protection to people employed under an employment or public service contract, *i.e.* to lay down provisions on maximum working time and minimum rest periods. The broadened scope for flexibility is a counterpart to the Act's broad scope of application. The aim of the regulation was to provide a framework for working time flexibility arising from the needs of employer and employees alike, and also for better work/life reconciliation. The new Working Time Act caters to changes in the labour market and working life, such as the growing popularity of time and location independent working. The new Working Time Act provides workplaces with tools for individual working hours solutions such as more adaptive arrangements regarding flexitime, flexible working hours and the introduction of a working time account. The reform of the Act also caters to the requirements of the Working Time Directive of the European Union and its interpretations.

3. Based on its section 1, the Act applies to all work performed under an employment contract as referred to in section 1, subsection 1 of the Employment Contracts Act (55/2001) or within a public-service relationship, unless otherwise provided elsewhere in law. Additional provisions on work performed by persons under the age of 18 are laid down in the Young Workers Act (998/1993). The provisions laid down in the Act concerning employees also apply to public servants and officeholders, unless otherwise provided elsewhere in law. The provisions laid down in the Act concerning collective agreements also apply to collective agreements for public servants.

4. The provisions on derogation from the Act's scope of application are laid down in its section 2. Under section 2, subsection 1 of the Act, except for section 15, subsections 3 and 4, this Act does not apply to employees whose working hours cannot be determined in advance and whose use of working time is not subject to supervision and who may thus themselves decide their working hours in relation to the following:

1) work which must be considered management of an undertaking, corporation or foundation or an independent part thereof by virtue of the relevant duties and of the employee's position otherwise, or independent work directly comparable to such management;
2) employees who perform religious functions in the Evangelical-Lutheran Church, Orthodox Church or some other religious community;
3) work performed by a member of the employer's family;

4) work which owing to the specific characteristics of the activities concerned is performed in conditions where it cannot be considered a duty of the employer to supervise arrangement of the time spent on the work;
5) work performed by a State public servant as a court officer or referendary, junior district judge, trainee district judge, public legal aid attorney, prosecutor, bailiff, writ server or at a foreign mission;
6) work performed by a public servant employed by the Bank of Finland and excluded from the scope of this Act by the Bank's Parliamentary Supervisory Council.

5. Application of the derogations mentioned is always subject to fulfilment of the criteria for working time autonomy. Employees' working time autonomy is demonstrated by the fact that their working time is not determined in advance and their use of working time is not subject to supervision, meaning that the employees may themselves decide their working hours. An assessment of the autonomy of working time essentially depends on the employee's possibility to influence the duration and arrangement of working hours. The concept of working time autonomy is a new one to Finland's working time legislation. While some of the derogations correspond to the earlier Act, the requirement of working time autonomy constricts the scope of application of other derogations when compared to the earlier Act. When the working time autonomy criteria are fulfilled, no similar need for working time protection for employees in a position referred to in subsection 1 was considered to exist.

6. Under subsection 2 of section 2, the provisions of section 24, subsections 1 and 2, and of sections 25–28 of this Act shall not apply to the work of motor vehicle drivers to which Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (Driving Time and Rest Periods Regulation) applies.

7. Under subsection 3, the Act does not apply to work for which separate provisions are laid down governing the working time to be observed therein. This Act also does not apply to employees who, when assessed as a whole, have, by a national collective agreement referred to in section 34, been secured protection equivalent with the rest periods and maximum working time under this Act in relation to the following:

1) teaching and research personnel who, owing to the nature of the work, have the right to determine themselves a substantial part of their working hours;
2) forest, forest improvement and timber-floating work or to related work, excluding mechanical forest and forest improvement work and short-distance timber transport performed off-road;
3) Border Guard employees or duties referred to in the Pilotage Act (940/2003).

8. Under subsection 4 of section 2, the Act does not apply to work by an employee of a non-profit organisation to the extent that such employee takes part in activities relating to events, competitions or camps when such activities are covered by a national collective agreement as referred to in section 34 that secures for the employee protection equivalent with the rest periods and maximum working time under this Act.

9. The derogations concerning collective agreements enable working time practices based on the collective agreements in the said sectors. The requirement is that the collective agreement secures for employees the working time protection which, when assessed as a whole, is equivalent with the maximum working time and minimum rest periods laid down in the Act.

Statutory organisation of regular working time

10. Under the general provision in section 5 of the Working Time Act, regular working time shall not exceed eight hours per day or 40 hours per week. Alternatively, under section 5 the average weekly working hours may total 40 hours over a maximum period of 52 weeks, provided that the regular daily working time does not exceed eight hours.

11. In the types of work expressly specified in section 7 of the Act, the work may be organised on a period basis. The list of sectors where period-based work is allowed is exhaustive, and the nature of work referred to therein requires continuity 24 hours a day, or at least most of the day, seven days a week. Regular working time may be organised on a period basis in:

1) security and guard duties, surveillance and traffic control duties, rescue duties and prison administration;
2) in press services, editorial radio and television work, and comparable generation and transmission of online content, film production and postal services as well as in telecommunications services requiring night work;
3) family day care referred to in the Act on Early Childhood Education and Care (540/2018), other early childhood education and care services requiring night work, and in social welfare, health care and veterinary services operating for most of the day;
4) passenger and freight transportation and in the loading and unloading of ships and railway cars;
5) mechanical forest and forest improvement work and short-distance transportation of timber carried out off-road;
6) dairy operations;
7) the hospitality and cultural sectors and in camp operations;
8) support functions essential to the ongoing performance of the duties and operations referred to in paragraphs 1–7.

12. In period-based work, working time may not exceed 120 hours during a three-week period, or 80 hours during a two-week period. In order to organise work in a practicable way and to avoid shifts impractical for employees, regular working time may, however, be organised so that it does not exceed 240 hours during two consecutive three-week or three consecutive two-week periods. In this arrangement, regular working time may not exceed 128 hours during either of the three-week periods or 88 hours during any of the two-week periods. These provisions are identical to those of the earlier Working Hours Act.

13. Section 8 of the Working Time Act lays down the conditions for night work. While the regular use of night workers is permitted only in the tasks prescribed by law, the new Working Time Act permits temporary night work.

Regular working time based on agreement

14. Under section 11 of the Working Time Act, an employer and an employee may agree to extend daily regular working time by no more than two hours unless otherwise provided by the applicable collective agreement. In this case, the average weekly regular working time may not exceed 40 hours over a period of no more than four months. Regular weekly working time may not exceed 48 hours.

15. Based on section 12 of the Working Time Act, flexible working hours are to be agreed between the employer and the employee. When working hours are flexible, the regular daily working hours shall be extended or reduced by a flexible period of no more than four hours. The adjustment may take place at the beginning or end of the working day, or in the evening after the working day has ended. In the flexible working hours arrangement, the weekly regular working time may not exceed 40 hours during a four-month reference period. At the end of the follow-up period, the accrued excess hours may not exceed 60 hours and deficit of hours may not exceed 20 hours. The number of accumulated working hours may exceed 60 during the reference period, as long as it decreases to the maximum allowed by the end of the period. To reduce accumulated excess hours, employees can work shorter days or take entire days off. Arrangements may be made under a national collective agreement regarding the maximum accumulation, the four-month adjustment period and the accumulated excess and deficit hours.

16. New provisions have been added to the Working Time Act on the topic of flexiwork (section 13). The employer and the employee may deviate from the provisions of a collective agreement concerning regular duration and placement of working time, and agree on flexiwork whereby the employee may independently decide on the placement and place of performance of at least half of the working time. Flexiwork is an option in job roles that are not tied to a specific time of day, day of the week or place of work. Flexiwork is suitable for specialists whose work is guided by individual targets and objectives, and not simply by performance of work duties at a given time and in a given place. The employer must monitor weekly leave reported and taken by the employee and, if necessary, take necessary action regarding the employee's placement of working hours. As a last resort, the employer may terminate the flexiwork agreement. In flexiwork, the weekly regular working time may not exceed 40 hours during a four-month adjustment period. The employee may occasionally work longer hours and, correspondingly, take longer periods of leave. Flexiwork cannot be used for regular night work.

17. The provisions of section 14 concerning the working time account are also a new element in the Act. A working time account refers to a system for combining work and private life that allows employees to save and combine working hours, earned leave or monetary benefits exchanged for leave. The employer and the shop steward or, when one has not been elected, the elected representative or other employee representative or the employees or a group of employees collectively may agree in writing on the introduction of a working time account. An agreement on a working time account concluded by a representative shall be binding on those employees whom the representative is deemed to represent. With the consent of the employee, given individually for each occasion or for a short fixed term, the employer may transfer the following into the working time account: hours of additional work and overtime; accumulated flexible working hours up to a

maximum of 60 hours per four-month reference period; monetary benefits based on law or agreement after these have been converted into time-based units. When employees use the time saved in the working time account as leave, they will be paid the regular salary to which they are entitled at the time the leave is taken.

18. Benefits saved into the working time account may include additional work and overtime compensation, additional pay for Sunday work, compensation for missed weekly rest period, compensation for reduced working hours, or holiday bonus. However, items that may not be transferred into the working time account include pay for regular working hours, allowances or receivables of an indemnificatory nature, or a monetary benefit after it has matured for payment. The accumulated hours saved into the working time account may not exceed 180 hours over the calendar year, nor may the total hours accumulated in the working time account exceed an amount equivalent to six months' working hours. When transferring the abovementioned items into the working time account, the terms applicable to these items on the basis of law or agreement concerning conversion into time off or maturing of the benefit are replaced with the terms of the working time account.

19. An employee shall be entitled to take at least two weeks of time off saved into the working time account per calendar year. When more than ten weeks of accumulated time off has been saved into the working time account, however, the employee shall be entitled to take at least one fifth of the accumulated time off per year. At the employee's request, the employer shall give the time off within the following six months. If the employer determines the placement of the time off, the employee shall be entitled to exchange the time off for a monetary compensation.

20. A statutory working time account is optional in situations where the collective agreement binding on the employer contains provisions on a working time account. The arrangement referred to in the collective agreement shall be governed exclusively by the relevant provisions of the collective agreement, and the statutory working time account shall be governed exclusively by the provisions of the Working Time Act.

Additional work and overtime

21. The provisions on determination of additional work and overtime are laid down in section 16 of the Working Time Act. Additional and overtime work require the employer's initiative. When a flexitime or flexible working hours system is used, additional work and overtime must be expressly agreed on.

22. Additional work refers to work performed, on the initiative of the employer, in addition to working time shorter than the regular working time of 40 hours laid down in the Act.

23. When daily working time has been agreed at less than eight hours and the employee works hours in excess of the agreed working time, the daily difference between eight hours and the agreed working time and/or the weekly difference between 40 hours and the agreed weekly working time constitutes additional work first before the work becomes statutory overtime.

24. For employees covered by a general working hours arrangement, work exceeding eight hours per day is considered overtime. Weekly overtime consists of working time that exceeds 40

hours per week, excluding work not considered daily overtime. When a shorter weekly working time than 40 hours has been agreed, additional work consists of work performed in addition to the regular working time entered in the work schedule that is not overtime.

25. When working average regular working hours, daily overtime consists of work performed in addition to the regular daily working hours entered in the work schedule. Weekly overtime consists of work performed in addition to regular working time that is not daily overtime. When the average working time has been agreed to average at less than 40 hours per week, work performed in addition to regular working hours shall nonetheless constitute additional work up to a week of 40 hours.

26. In period-based work, overtime shall consist of work in excess of the regular maximum working time under section 7. When shorter regular working time per period than provided in section 7 has been agreed, additional work shall consist of work that exceeds the regular working time without exceeding the maximum hours per period under section 7.

27. When working flexitime, daily overtime shall consist of work in excess of eight hours per day and weekly overtime of work which is performed on days entered in the work schedule as days off and which exceeds 40 hours without being daily overtime. Work performed on the orders of the employer in addition to fixed working hours, due to which the maximum accumulation under section 12, subsection 2 is exceeded at the end of the reference period, shall also constitute overtime. Work performed in addition to regular working time that is not overtime shall constitute additional work.

28. When working flexible hours, daily overtime shall consist of work in excess of eight hours per day and weekly overtime of work that is performed during the weekly rest period agreed in the flexible hours agreement without such work being daily overtime. Work performed in addition to regular working time that is not overtime shall constitute additional work.

29. Under section 17 of the Working Time Act, the consent of the employee is required separately for each occasion that the employee works overtime. Employees can, however, give their consent to overtime for short set periods if the nature of the work arrangements so requires. Employees may only be required to perform additional work with their consent, unless additional work has been agreed in the employment contract. In such cases, however, employees are entitled to refuse additional work on days which are entered as days off on the work schedule, provided they have a justifiable personal reason. When the employee's regular working time agreed in the employment contract varies in the manner referred to in chapter 1, section 11 of the Employment Contracts Act, the employer may require the employee to perform additional work in addition to the working time entered in the work schedule only with the employee's specific consent for each such occasion. Consent may also be given for a short period at a time. Upon agreeing to be on stand-by as referred to in section 4, an employee is deemed to have simultaneously consented to the additional work and overtime required during the stand-by time.

30. Provisions on maximum working time are laid down in section 18 of the Working Time Act. The working hours of an employee, including overtime, may not exceed an average of 48 hours per week over a period of four months. Provisions on the right of national associations

of employers and employees to agree on the length of the adjustment period are laid down in section 34 of the Act. In addition to the provisions laid down in subsection 1, the working time of motor vehicle drivers referred to in section 2, subsection 2 may not exceed 60 hours per calendar week. Provisions on the right of national associations of employers and employees to agree on the length of the weekly maximum working time of motor vehicle drivers are laid down in section 34.

31. Under section 20 of the Act, the remuneration paid for additional work shall be at least equal to the pay for agreed working time. Regular pay plus 50% for the first two hours worked and regular pay plus 100% for each subsequent hour shall be payable for daily overtime. Regular pay plus 50% shall be payable for weekly overtime. In the case of period-based work which has continued for an entire two-week or three-week period, the remuneration for the first 12 or 18 hours of overtime, respectively, shall be pay plus 50% and for hours of overtime in excess of these, pay plus 100%.

32. Furthermore under section 20, when regular working time is based on a collective agreement on exceptional regular working time concluded pursuant to section 34, subsection 5 or on a derogation permit referred to in section 39, subsection 1, paragraph 1, the agreement or permit shall mention the criteria for calculating the premium payable for overtime.

33. Under section 21 of the Act, pay due for additional work or overtime as well as the Sunday work increment may be agreed to be converted, either in part or in full, into equivalent time off during the employee’s regular working time. The duration of the time off corresponding to the overtime shall be calculated according to the provisions laid down in section 20 concerning remuneration of overtime. The time off must be given within six months of the performance of the additional work, overtime or Sunday work in question, unless otherwise agreed. When the employer and the employee do not agree on the placement of the time off, the employer shall determine its placement unless the employee requests monetary remuneration. The employer and the employee may agree to transfer the time off into the working time account referred to in section 14 or to combine it with the carried-over holiday referred to in section 27 of the Annual Holidays Act (162/2005).

34. Under section 23 of the Act, if an employee's pay is determined according to a unit longer than an hour, the pay payable per hour shall be calculated by dividing the agreed pay by the number of regular working hours. In the case of performance-based pay, the hourly pay shall be calculated by dividing the performance-based pay by the hours spent working. Any fringe benefits included in pay shall be taken into account in pay for regular working time. Profit bonuses or corresponding payments, made no more than twice a year and independently of the employee's performance, are not included in income payable on regular working hours. By way of derogation from the provisions of subsection 1 above, it can be agreed that hourly pay is calculated by dividing the income paid for regular working hours by an average divider derived from annual regular working hours or by some other divider, which on average corresponds to the principles laid down in subsection 1.

Rest periods

35. When the employee's daily consecutive working time exceeds six hours and the employee's presence at the workplace is not essential to the continuity of the work, the employee shall be given during the shift a regular break of at least one hour's duration during which the employee is free to leave the workplace. This break may not be placed at the start or end of the workday. When the daily working time exceeds 10 hours, the employee shall additionally have the right to a break of no more than thirty minutes after eight hours of work. When working time in shift work or period-based work exceeds six hours, the employee shall be given a break of at least thirty minutes or the opportunity to have a meal during working hours. The provisions of a collective agreement notwithstanding, the employer and the employee may agree on a shorter break of at least thirty minutes, however.

36. During the 24 hours following the start of each shift, employees shall be given an uninterrupted rest period of at least 11 hours except for work performed during stand-by time.

37. Working time shall be organised in such a manner as to give the employee once in every seven days an uninterrupted rest period of at least 35 hours. Weekly rest may be placed at the beginning of the first work period the next leave at the end of the following seven-day work period. As a result, the maximum gap between weekly rest periods is 12 working days. Whenever possible, the weekly rest period shall occur around a Sunday.

38. However, the weekly rest period may be organised to average 35 hours over a period of 14 days. In this case, the weekly rest period must consist of at least 24 consecutive hours during each seven-day period. In continuous shift work, the rest period may be organised to average 35 hours over a period of no more than 12 weeks. However, the rest period shall consist of at least 24 consecutive hours in each seven-day period.

39. If employees work during their weekly rest period, the time spent working is to be compensated to them as soon as possible, but no later than three months from the performance of work by shortening their regular working time by the time corresponding to the missed rest period. With the employee's consent, monetary compensation for such work may also be given, in addition to possible remunerations for overtime and Sunday work increments.

40. For further information, please see the Reply to Question F concerning Article 2 § 1.

Derogation under a collective agreement

41. The provisions on derogation from the Working Time Act by collective agreement are laid down in section 34 of the Act.

Seamen's Working Hours Act and Act on Working Hours on Vessels in Domestic Traffic

42. The Seamen's Working Hours Act applies, subject to certain exceptions, to work performed by persons serving on board a Finnish vessel plying in foreign transport, for the said vessel or otherwise on the orders of a superior on board the vessel or elsewhere

43. During the reference period, the following substantive amendments have been made to the Seamen's Working Hours Act:

44. The Act was amended by Act 251/2019 in order to implement the Directive concerning workers in the fishing industry[1]. A provision concerning the maximum working time to be observed on a sea-going fishing vessel was added to the Act. The average weekly working time of an employee working on a sea-going fishing vessel may not exceed 48 hours during a 12-month period. The provisions of the Act on maximum working time and rest period shall apply also to fishers working or engaged on a vessel in a capacity other than employment when there are also employees working on the vessel on the basis of an employment contract. In addition, the Seamen's Working Hours Act was amended to apply the provisions on maximum working time and rest period also to fishers paid on the basis of a share of the catch.

45. The scope of application of the Seamen's Working Hours Act as well as its provisions on minimum rest period and working overtime as well as exceptions to restrictions concerning rest periods were amended by Act 436/2020. The aim was to better align the Act with the requirements of the ILO Maritime Labour Convention 2006.

46. Separate provisions on working time were laid down in respect of vessels in domestic traffic. The Act on Working Hours on Vessels in Domestic Traffic (248/1982) applies to work referred to in the Seafarers' Employment Contracts Act (756/2011) on a Finnish vessel used for domestic traffic or, on the order of the employer, temporarily elsewhere.

47. The Act was amended by Act 1339/2016 in order to implement the Directive on working time in inland waterway transport. The amendments mainly concerned vessel traffic in inland waterways. Overtime was limited to no more than 384 hours per year. In fixed-term employment of less than one year's duration, the average maximum overtime is capped at eight hours per week. In each seven-day period, the employee must be given a rest period of at least 84 hours. Employees whose working time and time off are not determined on the basis of a rotation system shall be given an extra weekly rest period of 24 hours when they have worked six days a week during a period of five weeks. The maximum number of consecutive working days based on a rotation system is capped at 31.

48. Act 449/2018 amended section 9a of the Act on Working Hours on Vessels in Domestic Traffic so as to limit total working time instead of maximum overtime. In inland waterway traffic, the weekly working time of an employee may not exceed an average of 48 hours over a period of 12 months or during the term of a fixed-term employment contract if shorter.

[1] Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche).

49. The Act was amended by Act 252/2019 in order to implement the Directive concerning workers in the fishing industry[2]. A provision concerning the maximum working time to be observed on a sea-going fishing vessel. The average weekly working time of an employee working on a sea-going fishing vessel may not exceed 48 hours during a 12-month period of working. The provisions of the Act on maximum working time and rest period shall apply also to fishers working or engaged on a vessel in a capacity other than employment when there are also employees working on the vessel on the basis of an employment contract.

50. Act 437/2020 amended section 10 of the Act concerning exceptions to the restrictions on overtime and rest periods. The aim was to better align the Act with the requirements of the ILO Maritime Labour Convention 2006.

Enforcement

51. The Regional State Administrative Agencies' OSH (occupational safety and health) Divisions, which are the OSH authorities in Finland, carry out enforcement in matters related to OSH as well as in matters related to labour law, such as employment relationships and working hours. Additionally, the OSH authorities enforce other legislation related to product safety, foreign workforce, contractor's liability etc. The enforcement is mostly carried out through inspections. An inspection can cover several matters including OSH and labour law.

Views of the central employee organisations

52. The central employee organisations consider that the Working Time Act does not conform to the interpretation of the European Committee on Social Rights, according to which an employee should be entitled to at least pay plus 100% or alternatively twice the number of days off for work required to be performed on a public holiday when compared to work regularly performed on a public holiday (Conclusions XIX-3, Croatia). The organisations note that the Government proposal for the Working Time Act makes reference to the interpretation of the Committee, yet the case account is provided in a place where few will notice it (Government proposal HE 158/2018, p. 30). The legal rule should have been incorporated into the text proper of the Act or, at the very least, in the detailed reasoning for section 34, subsection 2, paragraph 7 of the Working Time Act.

Question B

Case law

53. During the reference period, the Labour Council has issued a number of opinions on the application of the Working Time Act.

54. In 2020, the Council issued two decisions in which it assessed the applicability of the Working Time Act to the work of food delivery workers. The OSH Division of the Regional State

[2] Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche).

Administrative Agency for Southern Finland had asked the Labour Council for an opinion in respect of two different companies as to whether the Working Time Act (872/2019) applied to the food delivery workers employed by these companies. The requests for an opinion also concerned food delivery workers who were considered to be self-employed. If the Working Time Act was held to apply to the food delivery workers who were considered to be self-employed, the Labour Council was asked for an opinion on whether their work nonetheless fell outside the scope of application of the Working Time Act under its section 2, subsection 1, paragraph 4. By virtue of the reasoning presented in more details in its decisions, the Labour Council found that the work between employers and food delivery workers constituted an employment relationship referred to in section 1, subsection 1 of the Working Time Act. Nothing came to light about the work to indicate the working time autonomy referred to in the first sentence of section 2, subsection 1 of the Working Time Act. Consequently, the work of food delivery workers was subject to the Working Time Act.

55. In 2020, topics addressed by the Labour Council included the question of interpreting the limitation of scope of application concerning performance of religious functions laid down in the Working Time Act to the duties of priest and cantor in the Evangelical Lutheran Church (reference no. TN 1480-20). The Council did not find it possible to issue any general opinion as to the application of the Working Time Act to employees having a specific job title under an employment and/or public service contract. When section 2, subsection 1, paragraph 2 of the Working Time Act requires the performance of religious functions, in the view of the Labour Council, a complete lack of these in the job description of a priest and cantor resulted in non-applicability of the derogation under paragraph 2. The same conclusion was to be drawn when a priest or cantor only occasionally or exceptionally takes part in the performance of religious functions. With regard to the application of section 2, subsection 1 of the Working Time Act, the Labour Council held that in order for the derogations laid down in section 2, subsection 1 to be applicable, the working time autonomy referred to in the first sentence of the subsection must also be fulfilled in the work and duties referred to therein. Working time autonomy requires that an employee can personally decide on the placement of working time and on both daily and weekly working time. When this is not the case without the approval of the employer, the employee does not have the autonomy to decide on working time within the meaning of the provision.

56. In another opinion (reference no. TN 1479-20, opinion requested by the Finnish Confederation of Salaried Employees (STTK)), the Labour Council held that no derogation from the weekly working time laid down in the Working Time Act is possible when agreeing on exceptional regular working time in a national collective agreement. In the work schedule on exceptional regular working time, the rest period shall be provided immediately following the planned work shift. When a work shift exceptionally last longer, the compensatory rest period shall be organised immediately following the end of the work following the planned work shift. The provision of section 25, subsection 4 of the Working Time Act on compensatory rest period is applicable also in the case of exceptional regular working time organised on the basis of section 34, subsection 4 and section 39, subsection 1, paragraph 1 of the Working Time Act. The substance of the compelling reasons due to the organisation of the work which, when present, permit the

timing of provision of the compensatory rest period to be changed may be agreed by national collective agreement.

57. In the opinion of the Labour Council in case TN 1478-20, where the opinion was requested by the Central Organisation of Finnish Trade Unions (SAK), the restriction laid down in section 8, subsection 5 of the Working Time Act concerning the maximum number of consecutive night shifts only applies to work which has in actual fact been organised into periods in accordance with period-based working time.

58. In the opinion of the Labour Council in case TN 1477-20, where the opinion was requested by the Central Organisation of Finnish Trade Unions (SAK), consent to overtime cannot be given in advance in a collective agreement because the Working Time Act expressly provides that the personal consent of the employee must always be obtained. When additional work may validly be undertaken already by virtue of the employment contract, the performance of additional work can also be agreed by collective agreement. However, in such a case the employee must retain the right to refuse additional work for justified personal reason on days off entered in the work schedule. (The opinion was issued on the basis of the earlier Working Hours Act).

59. According to the opinion of the Labour Council in case TN 1474-18, where the opinion was requested by the Finnish Confederation of Salaried Employees (STTK), as a rule the nature of the work cannot influence giving consent to overtime, nor can the fact of a need for emergency medical care through the performance of emergency medical care duties arising during the shift or only towards the end of the shift or at the end of the shift so that the completion of these duties would result in overtime being worked. However, the basic premise is for an employer to plan the work so that no need for overtime arises. In the view of the Council, emergency medical care work may, as a rule, constitute work referred to in section 18, subsection 5 of the earlier Working Hours Act. According to the said provision, if the nature of the work and particularly compelling reasons necessitate additional work or overtime, civil servants or officeholders in a public corporation cannot refuse it. (The equivalent provision appears in section 17, subsection 6 of the Working Time Act). The presence of particularly compelling reasons must be individually evaluated on a case by case basis.

60. During the reference period, the Labour Court has issued certain decisions concerning working time.

61. Case TT 2019:81 involved the question of whether moving from the place of work performance to the place of changing into workwear, inclusive of the time taken up by actually changing into workwear at the place of work, in connection with daily rest period, *i.e.* meal break, was to be included in working time. The Labour Court found that the purpose of the regulation of rest periods was for employees to have the right to make use of their entire rest period and use for their own purposes. The case involved regulation relating to employee safety and health protection, which was to be taken into account in deciding the case.

62. Under the collective agreements for employees and public servants, employees were free to leave the place of work during their rest period. In the situation referred to in the action, employees were obliged to change out of the employer-supplied workwear and into their own

clothes when leaving the workplace area during their 30-minute rest period. For this reason, employees were not free to leave the workplace immediately at the start of their rest period and were thus prevented from using the rest period for their own purposes. The situation was different for these employees than for those to whom no equivalent workwear-related requirement applied. The fact that employees were obliged to use a part of their minimum rest period of 30 minutes to change clothes as required by the employer and to move between the place of work performance and the locker room in order to accomplish this had to be taken into account also when assessing whether the employees in actual fact had an opportunity to leave the workplace during their rest period and to spend a substantial part of their rest period outside the workplace. According to the Labour Court, this opportunity in actual fact was missing in the situation referred to in the action when movement between the place of work performance and the locker room area, inclusive of actual changing, was counted as included in the daily 30-minute rest period.

63. In case TT 2018:116, a municipality in its appeal lodged with the Labour Court against a decision of the Labour Council asked that it be granted the permit referred to in section 26, subsection 1, paragraph 14 (of the earlier Working Hours Act) to require its three cleaners to perform night work on school and gym premises in the manners specified in the appeal. The Labour Court found, with regard to the reasons for limiting night work underlying legislation, that the conditions laid down in section 26, subsection 1, paragraph 14 of the Working Hours Act for requiring the performance of night work were not met, particularly because the work could be performed also at times other than at night.

64. The decision of the Labour Court in case TT 2017:158 involved a situation where a derogation permit concerning the organisation of working time had been granted for organising the working time of firefighters working in rescue services at Helsinki Airport. According to the permit, the duration of the regular shift was 25 hours in such a manner that effective working time per shift did not exceed 12 hours. However, subject to certain conditions an uninterrupted shift could have a duration of no more than 48 hours. The permit allowed weekly regular working time to average 44 hours 10 minutes in adjustment periods of no more than 52 weeks. In addition, the permit required the employer in work schedule planning to ensure that after each shift, the employees were given a period of free time of 72 hours. The further condition applied that when an employee worked a shift of more than 25 hours, that employee was to be given a period of free time of 144 hours following the shift. The Labour Court found that for reasons of occupational safety and health, it was necessary for the conditions of the permit to specify the periods of free time following such shifts. In permit practice, shifts of more than 24 hours were frowned upon and allowing such shifts was highly exceptional. Difficulties relating to the planning of working time gave no cause to modify the decision of the Labour Council with regard to periods of free time or their duration. The appeal was rejected.

65. During the reference period, the Supreme Court has issued one precedent concerning the Working Hours Act (case KKO 2018:10). Parties A, B, C and D had worked as reliefs for foster parents employed by an employer providing family-environment care and maintenance during the annual holidays and other days off of the latter. The working time of the relief workers was defined in the employment contract as full days and the relief work usually took place in periods of several

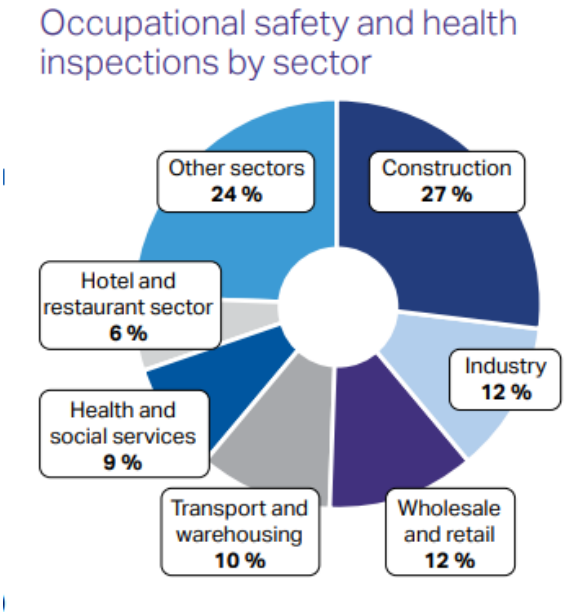
days at a time specified in the work schedule adopted by the employer. During their shifts, the relief workers lived in the children's homes and independently decided on the organisation of practical duties. On the grounds indicated in the judgment of the Supreme Court, it was held that the work fell within the scope of application of the earlier Working Hours Act. The working time compensation claimed was subject to the claim period laid down in section 38 of the Working Hours Act and consequently some of the claims were rejected for being time-barred. The current provisions on claim period appear in section 40 of the Working Time Act.

Enforcement

66. In 2020, the Occupational Safety and Health (OSH) Divisions of the Regional State Administrative Agencies carried out 11,150 sector-specific inspections. Enforcement focused mainly on the construction sector. Other important sectors were industry and wholesale and retail.

67. The following diagram describes the OSH inspections carried out in the various sectors:

Construction 27%
Industry 12%
Wholesale and retail 12%
Transport and warehousing 10%
Health and social services 9%
Hotel and restaurant sector 6%
Other sectors 24%



68. Additionally, 3,440 inspections focused on sector-independent phenomenon-based supervision. Working conditions, fragmented working life and workload are the phenomena that OSH enforcement is currently focusing on.

69. The OSH authorities also carry out enforcement based on customer contacts. Each year, more than 30,000 customers contact the OSH authorities. Around 2,000 of the contacts result in

an inspection. In the remainder, giving advice to the customer is usually sufficient. In 2020, significant themes raised by the customers were matters related to employment relationships (almost half of contacts), harassment and inappropriate treatment at work, the construction sector, and Covid-19 related matters.

70. The inspections carried out by the OSH authorities resulted in 2020 in

- 26,293 cases of written advice issued
- 4,110 improvement notices
- 57 prohibition notices
- 160 binding decisions
- 31 periodic penalty payments
- 102 negligence fees, and
- 371 investigation requests to the police.

Remarks of the central employee organisations

71. Since the most recent round of reporting, the Supreme Court has issued one judgment relating to overtime. In case KKO 2021:52, the representatives of an employer were charged with a work safety offence on the grounds that they had had employees work considerably more overtime than the maximum permitted under the Working Time Act. The Supreme Court found that the provisions of the Working Time Act on the maximum amount of overtime cannot be taken to constitute work safety regulations within the meaning of chapter 47, sections 1 and 8 of the Criminal Code. However, the employer's representatives were in breach of their obligations, arising from the provisions of the Occupational Safety and Health Act, to take care of the safety and health of their employees, by having the employees work overtime to a substantially excessive extent. For this, they were convicted of a work safety offence.

72. A great deal of three-shift work, night work included, is performed in health and social services. Night work has increased in prevalence and spread also to other sectors, however. Retail workplaces, where the majority of workers are women, have adopted 24/7 opening hours, for example. A great deal of night work is also performed in male-dominated sectors, such as industry and transport. Although studies have indicated that the harmful effects of shift work can be reduced through work schedule arrangements, the health and social services sector, for one, is yet to fully take advantage of these opportunities. The effects of night work on the risk of relapse are not taken into account to a sufficient extent with regard to e.g. breast cancer survivors.

73. Night work is classified as a risk factor giving rise to particular risk of illness and night workers are consequently entitled to medical examinations. The organisation of such examinations or the practical implementation of the working time recommendations given on their basis is not always optimally accomplished in the workplace, however.

Question C

74. Under section 3, subsection 1 of the Working Time Act, working time consists of the time spent working and the time an employee is obliged to be present at a place of work at the employer's disposal. Other time constitutes rest periods. Under section 3, the time an employee is

present at a place of work at the employer's disposal also constitutes working time, even if the employee does not perform any work duties during that time. Such time involves a more binding arrangement than the stand-by on which provisions are laid down in section 4. In this arrangement, the employee is at the employer's immediate disposal for the performance of duties assigned to the employee by the employer. Such situations may, for example, be ones where the employee must be present at the place of work but where the employer, at that time, has no work to offer. Situations of this kind may also involve on-call duties at the place of work or other preparedness, tied to location, to immediately start working. On-call time is included in working time when the employee is not free to leave the place of work performance indicated by the employer.

75. Under section 4 of the Working Time Act, an employer and an employee may agree on stand-by and the compensation paid for it. When on stand-by, the employee shall be available to the employer so that the employee can be called for work. Time spent on stand-by shall not be regarded as working time unless the employee is required to remain at the workplace or in its immediate vicinity. Stand-by may not unduly hamper the employee's leisure time. The employee shall be aware of the amount of compensation for stand-by or the grounds for the determination of the compensation and of the terms of the stand-by when concluding an agreement on stand-by. The restrictions imposed by stand-by on the employee's leisure time must be taken into consideration in the amount of the compensation. When stand-by duty is essential due to the nature of the work or for extremely compelling reasons, public servants and officeholders may not refuse it. Under section 34, subsection 2, paragraph 1 of the Act, national associations of employers and employees may, by a collective agreement (national collective agreement), agree otherwise than provided in section 4 of the Act concerning stand-by. Under section 25, subsection 1, during the 24 hours following the start of each shift, employees shall be given an uninterrupted rest period of at least 11 hours' duration except for work performed during stand-by time.

76. Where an employee is called to work during stand-by, the actual hours worked are included in working time.

77. Stand-by obligations must be agreed between the employer and the employee. Compensation for stand-by must be agreed at the same time. The matter may also be agreed in the employment contract. In addition, separate agreement on stand-by may be made for each individual occasion.

78. Stand-by may not unduly hamper the employee's leisure time. This requirement applies to both the duration of stand-by and the recurrence of stand-by shifts. Employees must also be given a sufficient amount of leisure time that involves no ties to work such as stand-by duty. In a decision in which the earlier Working Hours Act was applied, the Labour Council held that the duration of being tied to work based on stand-by was excessive when stand-by covered just under 50% of all hours worked (case TN 1430-08).

79. During the reference period, the Labour Court has issued two decisions concerning stand-by, in both of which the earlier Working Hours Act was applied.

80. Case TT 2020:57 involved the question of whether time deemed as stand-by time was to be considered to be working time in respect of laboratory technicians. The case involved assessment

of aspects such as whether the employees' job duties had recurred at such short intervals during stand-by so as to warrant a finding that the employees were constantly tied to their work. The judgment held that during stand-by, the employees' job duties, when examined on average, had not recurred at such short intervals that on this basis, stand-by would come to be considered working time during the entire period of about a year referred to in the action. For this reason and on the grounds indicated in further detail in the judgment, the action was dismissed.

81. In case TT 2019:91, the availability for departure required of an ambulance driver and the nature of the duties did not in actual fact enable staying anywhere else other than in the lounge set aside for employees on stand-by and its immediate vicinity. When on stand-by, the ambulance driver was found, in actual fact, to be tied to the work in the same manner as when performing actual job duties, and the time deemed by the employer to constitute stand-by time was thus to be included in working time.

82. Under chapter 1, section 11, subsection 1 of the Employment Contracts Act, a variable working hours clause means a working hours arrangement in which the employee's working hours, as a specified period, vary between a minimum and maximum amount under the employment contract, or a working hours arrangement in which the employee undertakes to perform work for the employer when separately asked to do so. The same provisions in respect of time counting as working time and in respect of stand-by apply to employees working variable hours.

83. The Working Time Act contains certain specific provisions regarding variable working time agreements. Under section 17, subsection 3 of the Working Time Act, when the employee's regular working time agreed in the employment contract varies in the manner referred to in chapter 1, section 11 of the Employment Contracts Act (55/2011), the employer may require the employee to perform additional work in addition to the working time entered in the work schedule only with the employee's specific consent for each such occasion. Consent may also be given for a short period at a time. Under section 30, subsection 4 of the Working Time Act, when an employer wishes to assign hours in excess of the minimum working time agreed in the employment contract to an employee who works varying hours, the employee shall be provided with a deadline by which to state the extent and terms on which the employee agrees to work such hours. The deadline shall fall no earlier than one week prior to the preparation of the work schedule.

Question D

84. On 16 March 2020, the Government, in cooperation with the President of the Republic, declared a state of emergency in Finland due to the coronavirus outbreak. For this reason, powers under the Emergency Powers Act were introduced in Finland. Derogation from certain provisions of the Annual Holidays Act (162/2005), the Working Time Act (872/2019) and the Employment Contracts Act (55/2001) was authorised by Government decrees. A total of three such decrees were issued and they were in force as follows: 1st decree on the application of the Emergency Powers Act, from 18 March to 13 April 2020, 2nd from 14 April to 13 May 2020, and 3rd from 14 May to 15 June 2020.

85. The first two decrees on the application of the Emergency Powers Act permitted derogations to be applied to personnel employed in health and social services, rescue services,

emergency services dispatching and policing throughout the country. The derogations under the final decree on the application of the Emergency Powers Act could be applied in health and social services throughout the country. Application in rescue services, emergency services dispatching and policing was no longer considered essential.

86. Underlying the decrees was the assessment of the Covid-19 pandemic possibly causing staff shortages. Subject to the conditions laid down therein, the decrees allowed employers to derogate from the provisions of the Working Time Act on rest periods and overtime limitations as well as the provisions of the Annual Holidays Act on the giving of annual leave in respect of personnel in the aforementioned sectors. In addition, the decrees concerned the right of the employer to extend the notice period observed when notice was given by the employee from the 14 days or one month provided in chapter 6, section 3 of the Employment Contracts Act to no more than four months. The powers of derogation also applied to equivalent provisions in collective agreements for employees and public servants concluded by national associations of employers and employees.

87. Under the provisions on working time included in the decrees on the application of the Emergency Powers Act, the Working Time Act and a collective agreement based on its section 34 notwithstanding, an employer could: 1) require an employee to work overtime without the employee's consent; 2) derogate from the provisions concerning daily and weekly rest period; 3) derogate from the provisions of section 18 of the Working Time Act concerning maximum working time.

88. Application of these was subject to the condition that their application was essential in order to safeguard operations. The further condition applied that the employer was to make available to the employees lounges and resting areas suitable for rest and relaxation as well as welfare facilities and catering. Application was subject to the requirement that the arrangements did not jeopardise occupational safety and health or the health of the employees. In addition, the employer had to ensure that the work load was distributed evenly and that employees had the opportunity to recover from the strain of work.

89. The exceptional emergency powers were used in spring 2020 in hospitals and in municipal health and social services.

90. In its plenary session on 15 June 2020, the Government issued decrees repealing the use of powers under the Emergency Powers Act and announced that the current situation in the country no longer constituted a state of emergency as referred to in section 3 of the Emergency Powers Act.

91. No changes were made to legislation because of the Covid-19 pandemic in respect of other groups of employees mentioned in the Question.

92. For the most part, the Covid-19 pandemic has served to shorten working hours. Working time decreased the most in the hotel and restaurant sector in Q2/2020 (-39% when compared to the previous year). The second highest shortening of working time was seen in the arts and entertainment sector (-21%).

93. In the health and social services sector, working time reported in the Labour Force Survey has remained fairly stable despite Covid-19. During the pandemic, the share of employees working over 44 hours increased by one percentage point. In the sector of public administration and defence, mandatory social security, working time increased by 4% and working time in the education sector by 1% in the second quarter of 2020. Working time in the transport and warehousing sector and the traffic sector increased by 7% over the same period.

Question E

94. Flexible working time arrangements under the Working Time Act and collective agreements have been in use also during the Covid-19 pandemic. No changes apart from those recounted in the above section have been made to working time legislation owing to the Covid-19 pandemic.

Question F

95. Like the earlier Working Hours Act, the current Working Time Act also provides for situations where the daily rest period can be shortened to seven hours (flexitime and flexible working hours) or temporarily to five hours.

96. Under section 25, subsection 1 of the Working Time Act, during the 24 hours following the start of each shift, employees shall be given an uninterrupted rest period of at least 11 hours except for work performed during stand-by time. In period-based work as well, the rest period shall, as a rule, be 11 hours in duration, which represents a change from the earlier Working Hours Act. In period-based work, the daily rest period for reasons relating to the organisation of the work may be reduced to nine hours, however. This reduction to nine hours may not be a regular occurrence. The reduction is an option when required by the nature of the work or work arrangements based on irregular shifts. A reduced daily rest period may be necessary in the context of shift changes, for example. The reason may also be related to the nature of the work, as is the case with shift arrangements that are appropriate in terms of patient care, for example. A further reason for reducing the daily rest period to nine hours may also be to avoid impractical shifts for employees. Employees wishes to have work shifts clustered more closely together and then followed by longer periods of time off may also constitute a reason for shortening the daily rest period to nine hours.

97. In addition, under section 25, subsection 1, the daily rest period may be reduced to seven hours on the employee's initiative when working flexible working hours or flexiwork. In these forms of working time, the employees themselves decide when to start and end work, within the limits laid down in sections 12 and 13.

98. Under section 25, subsection 2 of the Working Time Act, the employer and the employees' shop steward or, when one has not been elected, the occupational safety and health representative or elected representative or other employee representative may agree on temporarily reducing the daily rest period, with the employee's consent, to seven hours when required by the practical organisation of the work. However, reducing the duration of the daily rest period requires an agreement between the employer and the employees. This agreement may apply to an isolated case or remain in force for as long as the appropriate arrangement of the work requires. The daily rest

period cannot be reduced without the employee's consent even when the employees' representative had agreed on doing so. In other words, the employee has the final say on extending the daily working period and reducing the daily rest period. The employee may give consent separately on each occasion or for a short period in the same manner as giving consent to overtime.

99. Under section 25, subsection 3 of the Working Time Act, when the organisation of the work or the nature of the operations requires, the rest period of employees may be reduced to five hours during no more than three consecutive daily rest periods at a time: 1) in the case of shift work as provided in section 6 when the employee is changing shifts; 2) when the work is performed in several periods over a single day; 3) when the employee's workplace and residence or the employee's other workplace are located far from each other; 4) in order to deal with an unforeseeable rush in seasonal work; 5) in the context of accidents or risk thereof; 6) in security and guard work that requires constant attendance to protect persons or property; 7) in work that is essential for the continuity of operations. Reducing the rest period is possible only in cases strictly limited by the law.

100. According to the Government proposal on section 25, subsection 3 of the Working Time Act, the need under paragraph 1 may arise in the case of a shift worker changing shifts. This is especially the case when shifts change counter-clockwise, *i.e.* from night shift to evening shift and from evening shift to morning shift. By contrast, section 8, subsection 5 concerning night work provides for the right of the employee to be given uninterrupted leave of at least 24 hours after five consecutive night shifts. Paragraphs 2 and 3 are based on the express opportunities laid down in the Working Time Directive to derogate from the daily rest period. Paragraphs 4 and 5 on the list are also based on the Working Time Directive. The exception under paragraph 7 may become applicable in uninterrupted three-shift work or in sectors of 24-hour period-based work where the need to reduce the daily rest period may be due to e.g. the employee responsible for taking the next shift falling suddenly ill, meaning that an employee who has already worked one shift will have to take on the next shift as well.

101. The reform of the Working Time Act involved the enactment of stricter regulation of compensatory rest periods. Based on subsection 4 of the aforementioned section, rest periods in compensation of the daily rest period reduced to nine hours pursuant to subsection 1 and the reduced daily rest referred to in subsections 2 and 3 shall be given to the employee in connection with the following daily rest period or, when this is not possible for compelling reasons due to the organisation of the work, as soon as possible and within 14 day s at the latest. The compensatory rest period shall be given as an uninterrupted period and it may not occur during stand-by time. No derogation by agreement is permitted from the provision on compensatory rest period, which secures the compensation of any missed rest period to the employee.

102. The said provision concerns the temporary and short-term reduction of the daily rest period, which is subject to fulfilment of the conditions laid down in the Act. The situations of flexible working hours and flexiwork referred to in section 25, subsection 1 of the Working Time Act involve reduction on the employee's initiative when the employee personally can decide on the placement of working time in the manner laid down in sections 12 and 13 of the Act. In the situations referred to in subsection 2 of the section, reducing the rest period to seven hours requires

fulfilment of the conditions laid down in the Act, agreement with the employees' representative and the employee's own consent to boot. In the situations referred to in subsection 3, the statutory conditions are precisely defined and relate to situations where the reduction may be considered generally acceptable and justified.

103. The Committee has requested a comment on the comments of the central employee organisations in respect of employees working over 48 hours per week. The Government has no knowledge as to the statistics to which the central employee organisations refer.

104. Statistics on regular working time are given in Appendix 1.

105. According to the Labour Force Survey, in 2020 around 9% of full-time employees worked over 44 hours per week on average according to regular working time while 4% worked over 49 hours. The number of people working a long week was somewhat elevated in 2016–2019. In the 2010s, the trend has been towards a rise in the share of long weeks in blue-collar occupations. The same does not apply to white-collar occupations.

106. Generally speaking, people in managerial positions work a longer week than other employees. Finland has a few groups of managerial occupations where regular working time in 2020 was 44–45 hours. The total number of managers in these groups was 22,000. In 2020, a total of 69,000 employees belonged to the main group of managers and their average regular working time was 43.7 hours.

107. In its conclusions for 2014, the Committee in respect of Article 2 § 1 also asks about the regulation of on-call service. In this respect, please see the Reply to Question C.

Remarks of CSOs concerning Article 2 § 1

108. In Finland, there are more than 100,000 employees engaged under a zero-hours contract. They are afforded varying working time protection and may also work hours in excess of the maximum permitted working time. Zero-hours contracts are especially common in the restaurant sector. Pay-related problems are also commonplace, for example the hourly wage not being equal to the level agreed in a universally binding collective agreement or due compensation not being paid for overtime.

Article 2 § 2: Public holidays with pay

Question A

109. In respect of the decrees on the application of the Emergency Powers Act, the Government refers to its above Reply to Question D concerning Article 2(1).

Article 2 § 3: Annual holiday with pay

Question A

110. In respect of the decrees on the application of the Emergency Powers Act, the Government refers to its above Reply to Question D concerning Article 2 § 1.

111. The said three Government decrees authorised employers, the Annual Holidays Act and a collective agreement provision based on its section 30 notwithstanding, in spring 2020 to derogate from the provisions concerning notification of annual leave, to reschedule already notified annual leave and to interrupt annual leave for personnel in the aforementioned sectors. This was subject to the condition that any action taken could not be allowed to jeopardise occupational safety and health or the health of employees. Forfeited leave was to be given to the employee as soon as possible.

Remarks of the central employee organisations

112. The introduction of the powers under the Emergency Powers Act has impacted the health and social services sector in particular. The powers have provided the basis for rescheduling or cancelling annual leave or altering its duration. In a survey commissioned by the Union of Health and Social Care Professionals Tehy, nearly all respondents replied having received no compensation beyond their ordinary employment terms and conditions for the mandatory measures.

Article 2 § 4: Reduction of working hours or additional paid holidays for workers in inherently dangerous or unhealthy occupations

Question A

113. In respect of the decrees on the application of the Emergency Powers Act, the Government refers to its above Reply to Question D concerning Article 2 § 1.

114. Night work is considered to be work that may present a special risk of illness. Medical examinations are regulated by the Government Decree on Medical Examinations in Work that Presents a Special Risk of Illness (1485/2001). The Decree provides that in work that presents a special risk of illness, the employer must arrange medical examinations for employees at its own expense. Consideration of the need for medical examinations and the associated time limits must have regard to such factors as previous medical experience on the incidence of health problems in the respective field and workplace. The initial medical examination of an employee must, wherever possible, be performed prior to the start of the work which presents a special risk of illness and in any case within one month of the start of the work. As the work continues, a periodic examination must be repeated, normally at intervals of 1–3 years, unless there are special reasons for performing examinations more often or subject to an order of an OSH Authority. Medical examinations must be performed for such purposes as to investigate the impact of the employee's health or changes in health on his or her suitability for the work, to provide the employee with information on health

risks present in the work and with instructions for preventing problems, and to monitor the effect of occupational safety measures taken and other changes.

115. The Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006) regulates the issues to be handled in cooperation on occupational safety and health between employers and employees at workplaces. According to section 26 of the Act, the issues to be handled include, among other things, matters immediately affecting the safety and health of any employee, and any changes in those matters; principles and manner of investigating risks and hazards at the workplace, as well as such factors generally affecting the safety and health of employees that have come up in connection with the investigation or a workplace survey carried out by an occupational health care organisation; development objectives and programmes relating to workplace health promotion, supporting longer careers or otherwise affecting the safety and health of employees; matters affecting the safety, health and working ability of employees and relating to the organisation of work or workload, or to any essential changes in the organisation or workload; statistics and other follow-up information relating to the work, work environment and the state of the work community and describing safety and health at work; and follow-up of how the matters referred to above have been carried out, and follow-up of their effects. Most of the issues described above, including night work and the related arrangements, are dealt with at the workplace by an occupational safety and health committee, and in the absence of such committee, between the employer and an occupational safety and health representative. Thus, workers' representatives have an opportunity to discuss night work and the related conditions with employers' representatives.

Question B

116. Under section 10 of the Occupational Safety and Health Act (738/2002), the employer is obliged to analyse and assess the risks at work. If the assessment of risks at work referred to in section 10 shows that the work may cause a particular risk of injury or illness, such work shall be done only by an employee who is competent and personally suitable for it or by another employee under the direct supervision of such an employee. Access to the danger area by other persons shall be prevented by appropriate measures.

117. The Act also contains provisions on topics including the design of the working environment and the work, instructions and guidance to be provided to workers, and providing personal protective equipment. The Occupational Health Care Act (1383/2001) contains provisions on organising occupational health care for employees (which is obligatory for employers), and on medical examinations.

118. The OSH Divisions enforce the Occupational Safety and Health Act as well as the Occupational Health Care Act and, through their inspections, supervise employers' compliance with them. In addition, information is provided for workplaces through a variety of forums, such as the website of the OSH authorities, the nationwide telephone service, and through trainings and webinars.

Article 2 § 5: Weekly rest period

Question A

119. In respect of the decrees on the application of the Emergency Powers Act, the Government refers to its above Reply to Question D concerning Article 2 § 1.

Question B

120. Under the Working Hours Act, the number of working days between weekly rest periods cannot exceed 12. This regulation conforms to the Working Time Directive (see Court of Justice judgment C-306/16).

121. The provisions on weekly rest periods are laid down in section 27 of the Working Time Act that entered into force on 1 January 2020. Under this section, working time shall be organised in such a manner as to give the employee once in every seven days an uninterrupted rest period of at least 35 hours. Whenever possible, the rest period shall occur around a Sunday. However, the weekly rest period may be organised to average 35 hours over a period of 14 days. The weekly rest period must consist of at least 24 consecutive hours during each seven-day period. In continuous shift work, the rest period may be organised to average 35 hours over a period of no more than 12 weeks. However, the rest period shall consist of at least 24 consecutive hours in each seven-day period. When required by the organisation of the work and with the employee's consent, the rest period may be organised in the manner referred to above. When the employee's daily working time does not exceed three hours, the employee may be given a rest period of at least 24 consecutive hours instead of 35 hours once in every seven days.

122. The provisions on derogations from weekly rest periods are laid down in section 28 of the Act. The provisions of section 27 may be derogated from when the employer, in order to maintain the continuity of its operations, requires the employee temporarily to work during the employee's rest period or when reasons relating to the technical nature or the organisation of the work do not allow some employees to be fully relieved of work. If employees work during their weekly rest period, the time spent working is to be compensated to them as soon as possible and no later than within three months from the performance of work by shortening their regular working time by the time corresponding to the missed rest period. Such work may also be compensated for, with the employee's consent, by paying, in addition to possible remuneration for overtime and Sunday work increments, a separate monetary increment determined according to the basic amount of overtime remuneration referred to in section 23. According to the relevant Government proposal (HE 158/2018), the former reason for derogating from the weekly rest period might exist when some workers must work during the weekly rest of others in order to perform temporary maintenance or repairs, for example. By contrast, no derogation from the weekly rest period would be permitted in the case of regular maintenance carried out on Sundays or during a weekly rest period given at another time. Derogation from the weekly rest period is also permitted for the latter reason when the technical nature or the organisation of the work do not allow some employees to be fully relieved of work. The work involved during the weekly rest period may be of fairly short duration. In this respect, the regulation corresponds to that under the earlier Working Hours Act.

123. The conditions for derogation from the weekly rest period are defined in the Act. The derogations only apply to temporary and short-term exceptional needs relating to the work. Compliance with the Working Time Act is overseen by the OSH Authority.

124. The basic premise is for a forfeited rest period to be compensated for with a rest period equal to the work performed during the rest period when derogating from the weekly rest period pursuant to section 28. The compensatory weekly rest period is thus given by reducing the worker's regular working time. With the consent of the employee, compensation may also take the form of weekly rest period remuneration.

Article 2 § 6: Informing workers of the essential aspects of the contract or employment relationship

Question A

125. In respect of the decrees on the application of the Emergency Powers Act, the Government refers to its above Reply to Question D concerning Article 2 § 1.

Article 2 § 7: Measures benefitting workers performing night work

Question A

126. In respect of the decrees on the application of the Emergency Powers Act, the Government refers to its above Reply to Question D concerning Article 2 § 1.

ARTICLE 4: THE RIGHT TO A FAIR REMUNERATION

Article 4§ 2: Right of workers to an increased rate of remuneration for overtime work

Question A

127. Overtime for employees called in to work as necessary and under a zero-hours contract is determined in the same manner as for other employees. The occurrence of overtime is always examined relative to the statutory maximum regular working time and the working time agreed in the employment contract or a collective agreement is irrelevant in this respect.

128. In variable hours contracts, zero-hours contracts included, the employer is subject to the obligation under section 30 of the Working Time Act to ask for the employee's consent to enter hours in excess of the minimum working time agreed in the work schedule. In this case, hours entered in the schedule with the employee's consent are regular working time. If work was offered after the completion of the work schedule, these hours are deemed additional time until considered overtime.

129. The provisions on stand-by are laid down in section 4 of the Working Time Act. In the Working Time Act, stand-by refers to a contractual obligation on the part of the employee to be

available to the employer during the employee's leisure time so that the employee can be called to work. Time spent on stand-by shall not be regarded as working time unless the employee is required to remain at the workplace or in its immediate vicinity. However, if the employee is called to work while on stand-by, the time spent working constitutes working time. Stand-by ends when the employee, upon being called to work, starts to work, and depending on the agreed duration of stand-by, may again continue after working has ended. The work performed constitutes either additional work or overtime, depending on the situation. When agreeing to stand-by, the employee at the same time gives consent to additional work and overtime work performed during stand-by time. Overtime and additional work are determined in accordance with section 16 of the Working Time Act.

Question B

130. The Working Time Act and its provisions on overtime also apply to remote work. The place of work performance does not determine the scope of application of the Working Time Act. No special legislation on remote work or overtime worked remotely has been enacted owing to the Covid-19 pandemic.

Remarks of the central employee organisations

131. In spring 2020, the Government issued decrees on the implementation of certain powers under the Emergency Powers Act. These decrees ceased to be in force on 15 June 2020 and have not been reinstated since. Derogation from certain working time provisions was possible in health and social services up to 15 June 2020. According to the derogations, at the time the employer could require an employee to work overtime without the employee's consent, derogate from the provisions concerning daily and weekly rest periods, and derogate from the provisions of section 18 of the Working Time Act concerning maximum working time, under which the working time of an employee, including overtime, could not exceed an average of 48 hours per week over a period of four months. Application of the derogations was subject to the condition that the measures were necessary because of the Covid-19 pandemic. A further condition to the application of the derogations was that it had to be essential in order to safeguard operations.

132. A survey commissioned by the Union of Health and Social Care Professionals Tehy indicates that health and social services professionals were subject to mandatory measures while the Emergency Powers Act was in use. The respondents to the survey were also asked about the manner in which their employer compensated or made up for the consequences of these mandatory measures. Nearly all (97%) replied that they had received no compensation beyond their ordinary employment terms and conditions for the mandatory measures. Only 3% had received an increment on the compensation paid for responding to an urgent work alert or some other lump-sum increment. No Covid-19 increment had been paid either. The aforementioned remarks concern the mandatory measures under the Emergency Powers Act in general and not only overtime and the compensation paid for it.

Question C

133. The Government has no new information to report for this reporting period.

Question D

134. With regard to the question posed by the European Committee on Social Rights in its 2014 Conclusions concerning section 22 of the Working Hours Act, the Government states that under section 20, subsection 4 of the new Working Time Act, the collective agreement or the derogation permit shall mention the criteria for calculating the premium payable for overtime. The pay for overtime must be higher than the pay for regular working time.

135. With regard to the negative conclusion concerning Article 4 § 2 presented by the Committee in its Conclusions, the Government states that under section 21 of the Working Time Act, pay due for additional work or overtime as well as the Sunday work increment may be converted either in part or in full into equivalent time off during the employee's regular working time. The duration of the time off corresponding to the overtime shall be calculated according to the provisions laid down in section 20 concerning remuneration of overtime. The employer and the employee can thus agree that compensation for additional work or overtime is given as time off, either in part or in full. One hour of overtime, compensable with pay plus 50%, for example, would thus result in giving 1.5 hours of time off. Unlike the Committee states in its Conclusions, the overtime increment is thus taken into account also when overtime is compensated for with time off.

136. In addition, the Committee wishes to know the limits of daily and weekly working time for family day carers in period-based work. In this respect, the Government states that pursuant to section 7, subsection 1, paragraph 3 of the Working Time Act, the regular working time of family day carers may be organised so that over a period of three weeks, it does not exceed 120 hours or 80 hours over a period of two weeks. Under subsection 2 of the section, in order to organise work in a practicable way or to avoid shifts impractical for employees, regular working time may, however, be organised so that it does not exceed 240 hours during two consecutive three-week or three consecutive two-week periods. Regular working time may not exceed 128 hours during either of the three-week periods or 88 hours during any of the two-week periods.

137. The daily rest period is determined in accordance with section 25 of the Working Time Act. During the 24 hours following the start of each shift, employees shall be given an uninterrupted rest period of at least 11 hours except for work performed during stand-by time. In period-based work, the daily rest period for reasons relating to the organisation of the work may be reduced to nine hours.

Remarks of the central employee organisations

138. Under section 34, subsection 2, paragraph 7 of the Working Time Act, the remuneration payable for overtime may be agreed otherwise than provided in the Act by collective agreement. The relevant Government proposal lacks any elucidation as to the meaning of "agreed otherwise". However, the wording of the provision gives the impression that it could be agreed by collective agreement that, for example, only ordinary pay without any increments is paid for overtime, or that overtime is unpaid. The central employee organisations consider that the provision does not conform to the requirements of the Revised European Social Charter.

Article 4 § 3: Right to equal pay for work of equal value

Question A

Unemployment

139. In 2020, employment decreased especially among young people and women. The total employment rate went down by one percentage point from 2019. In 2020, the employment rate was 71% for women and 73% for men (in age group 15–64 years). The number of employed men was 12,000 lower and that of employed women 25,000 lower than the previous year.

140. The Finnish labour market is strongly segregated by gender. At the very beginning of the pandemic, the sectors most affected by the Covid-19 crisis were the female-dominated accommodation and restaurant sector and retail trade. During the Covid-19 crisis, jobs have also been lost in male-dominated industries and construction, but the change there has been clearly smaller. In 2020, 20% of women and 10% of men were employed part time. The percentage of part-time employees is the highest, 40%, in the hospitality sector. As employment decreased sharply in this sector, the share of part-time employees among female wage earners also decreased.

141. In 2020, the average number of unemployed was 213,000. Of all the unemployed, 114,000 were men and 98,000 women. The number of unemployed men was 12,000 higher and that of unemployed women 17,000 higher than the previous year. Some of those who had lost their jobs had moved outside the labour force. The number of women outside the labour force was 10,000 higher and the number of men 4,000 higher than the year before.

Lay-offs

142. In 2020, the number of laid-off employees averaged 49,000, which is 41,000 more than in 2019. Laid off men numbered 26,000 and laid off women 23,000.

143. In spring 2020, the Covid-19 pandemic brought the share of women among those laid off to from less than a quarter to just over half of all persons laid off. Their share has since fallen (43% in June 2021) but not to pre-pandemic levels. It should be noted that the lay-offs of women tend to fall more often in the summer months than those of men, even in normal times. This change is explained by the lay-offs in the services sectors when compared to earlier times, when lay-offs were mainly seen in industry.

144. Employees are not paid in Finland for the duration of their lay-off. General information on the Finnish system of lay-offs and the temporary changes to the regulation of lay-offs in effect during the Covid-19 pandemic is presented below.

Lay-off

145. In the Finnish lay-off system, the employer temporarily terminates work and the payment of wages and salaries, while the employment relationship remains in effect in other respects.

146. An employee can be laid off as a result of a reduction in the work available or a deterioration in the prerequisites for offering work. The lay-off may be implemented for financial or production-related reasons. A lay-off can be based on a unilateral decision by the employer or an agreement

between employer and employee. Even in these cases, the lay-offs may only be based on the employer's action or its financial situation.

Implementing lay-offs

147. A lay-off can be implemented for an indefinite or a fixed period and it may mean termination of all work or shortening of working hours. An employee working on a fixed-term contract may be laid off only when they are working as a substitute for a permanent employee and the employer would have the right to lay off the permanent employee.

148. The employer must notify the employee of the lay-off well in advance. The employer must also provide the employee with a personal lay-off notification no later than 14 days before the start of the lay-off, specifying the reason for and start date and duration of the lay-off.

149. During the lay-off, an employee is entitled to look for and do other work. Laid-off workers receive unemployment benefits during the lay-off period if they have registered as unemployed jobseekers and the other conditions for receiving the benefit are also met.

150. For further information, please see chapter 5, sections 1–7 of the Employment Contracts Act.

Exceptions during the Covid-19 pandemic - Shorter period of notice of lay-off

151. The period of notice before lay-off was temporarily reduced from 14 days to five days. In other words, the employer was required to inform employees of the lay-off no later than five days before the lay-off began. This amendment was in force from 1 April to 31 December 2020. It was intended to help companies to overcome the acute crisis and to avoid unnecessary bankruptcies.

152. The amendment did not affect the notice period of lay-off in the public sector.

153. *Note:* Many collective agreements contain provisions regarding notice periods. If a collective agreement binding on the employer contained such a provision, it was applied instead of the provisions of law. Exceptional solutions were adopted in many sectors owing to the Covid-19 pandemic.

Exceptions during the Covid-19 pandemic - Right to lay off an employee in a fixed-term employment relationship

154. From 1 April to 31 December 2020, employers were entitled to lay off an employee in a fixed-term employment relationship subject to the same conditions as an employee with an employment contract of indefinite duration (see above).

155. This amendment did not apply to the public sector. Public sector employers are entitled to lay off an employee in a fixed-term employment relationship only if the employee is working as a substitute for a permanent employee and if the employer would be entitled to lay off the permanent employee.

Exceptions during the Covid-19 pandemic - Shorter duration of co-operation negotiations regarding lay-offs

156. The duration of co-operation negotiations regarding lay-offs was shortened from the generally observed six weeks or 14 days to five days. The duration of negotiations was shortened because a company's financial capacity to overcome the difficult situation caused by Covid-19 could be significantly weakened if the negotiations took longer. This amendment was in force from 1 April to 31 December 2020.

157. A negotiation period of 14 days and six weeks still applied to negotiations on dismissals (for financial or production-related reasons) or conversion of the employment contract into a part-time contract.

158. Note: Some collective agreements contain provisions on matters such as the duration of negotiations. If a collective agreement binding on the employer contained such a provision, it was applied instead of the provisions of law. Exceptional solutions were adopted in many sectors owing to the Covid-19 pandemic.

Equal pay

159. In the entire labour market, women earned 84.2% of men's earnings in 2020. To date, no more detailed analysis is available of the impact of the Covid-19 pandemic on the gender pay gap.

Remarks of the central employee organisations

160. With regard to pay equality between women and men, it should be noted that the most common topic of messages and calls to the Office of the Ombudsman, as recounted in the annual report 2020 of the Ombudsman for Equality, was discrimination on the basis of pregnancy and family leave. Discrimination in recruitment and pay discrimination also stood out among the concerns expressed to the Ombudsman. According to the annual report of the Ombudsman for Equality, 29 enquiries made to the Office in 2020 concerned pay discrimination.

Remarks of CSOs

161. Women's earnings continue to lag an average of 16% below men's earnings. The slow pace hampering the achievement of the pay equality goal gives justified reason to question whether Finland, in the manner required by the European Committee on Social Rights, has made use of all available resources to reach the pay equality goal within a reasonable period of time.

Question B

Legislation

162. The Act on Equality between Women and Men (609/1986, so-called Equality Act) was amended in connection with the enactment of the new Non-Discrimination Act (1329/2014). The amendment entered into force on 1 January 2015.

163. The Equality Act now includes prohibitions of discrimination based on gender identity and gender expression, as well as provisions on preventing such discrimination. The amendment ensures that the prohibition of discrimination against members of gender minorities – for example against persons with transgender identity – is implemented as the Constitution requires. The prohibition of discrimination was also clarified by prohibiting discrimination regardless of whether

it is based on a reason concerning the victim of discrimination or another individual (so called discrimination by association) and regardless of whether it is based on fact or assumption.

164. Provisions on gender equality plans at work were specified to make them more effective in the promotion of equality between men and women in working life. The content of a pay survey included in every equality plan is now defined in more detail in the Equality Act, which also contains a separate section on pay surveys. Also personnel participation in drawing up a gender equality plan was strengthened so that the plan shall be prepared in cooperation with the shop steward, elected representative, occupational safety and health delegate or other personnel representative. Personnel representatives shall have sufficient opportunities to participate in and influence the drafting of the plan. The Act also includes an obligation to communicate the gender equality plan and the associated pay survey to personnel and to inform them of any updates. In future, a gender equality plan at work may be drafted at least every other year. It is the employer who is responsible for undertaking gender equality plans and pay surveys, which shall be drawn up in cooperation with personnel representatives.

165. Equality planning in educational institutions was extended to apply to institutions that provide basic education. The purpose of gender equality plans is to ensure that schools engage in systematic equality efforts.

166. The legislation and provisions on the supervision of the Equality Act were likewise revised. The Act on the Ombudsman for Equality and the Equality Board was repealed. Instead, separate Acts were laid down on the Ombudsman for Equality and the Non-Discrimination and Equality Board. The provisions on the independent status of the Ombudsman for Equality were reinforced by including the provisions in the Act on the Ombudsman for Equality. The Ombudsman for Equality was also given the powers to appoint public servants to his or her office and to adopt its rules of procedure. According to the new Act, the Ombudsman for Equality shall submit to the Government annual reports on his or her operations and, once every four years, a report to Parliament on the attainment of gender equality. The earlier two boards, the Discrimination Board and the Equality Board, were merged to form the new Non-Discrimination and Equality Board. Since 1 January 2015, the Ombudsman for Equality and the new Non-Discrimination and Equality Board have been based in the administrative branch of the Ministry of Justice.

167. The Equality Act provides that if pay discrimination is suspected, pay will be compared between employees working for the same employer. The employer usually means the legal entity who is the other party in the employment relationship. The comparison has not been limited to the same work unit or operational unit, however. The effects of different pay levels in different regions need to be taken into account in the comparison.

168. EU legislation and its interpretation must also be taken into account when interpreting the Equality Act. According to the ‘single source concept’ applied by the European Union, the pay subject to comparison has to have one single source, on the actions of which the pay gap depends. The idea behind this is that only the party who is in a position to guarantee equal treatment can be responsible for equal pay. Municipalities are considered a single employer when applying the Equality Act. The issue is more complex in respect of central government because the decision-

making concerning pay and pay systems is decentralised. According to the case law of national courts, though, the district judges working for different district courts are considered to work for the same employer. In legal literature it is accepted that consolidated group management may be responsible for the provision of equal pay within their entire group when the decision-making regarding pay takes place at the level of consolidated group.

Main reforms in 2016

169. As from November 2016, regulations on the promotion of reconciliation entered into force in the Equality Act. This reform allows the Ombudsman for Equality to take measures to reconcile a discrimination matter referred to in the Act. This covers also pay discrimination.

170. In addition, the parties to the reconciliation in a discrimination matter jointly, or the Ombudsman for Equality with the consent of the parties, may apply to the National Non-Discrimination and Equality Tribunal for confirmation of reconciliation in a discrimination matter. The Tribunal confirms the reconciliation between the parties if the reconciliation is not contrary to law or clearly unreasonable and it does not violate the right to the third party. A reconciliation confirmed by the Tribunal shall be enforced in the same manner as a final judgment.

Other measures to bridge the pay gap 2019–2023

171. Since 2006, the Government and the central labour market organisations have been carrying out an Equal Pay Programme in order to bridge the gender pay gap. The pay gap decreased from about 20% to 16%, which means that development has been slow. That is why the Government promotes equal pay using a wide range of methods in a diverse manner. The Programme of Prime Minister Sanna Marin's Government puts great emphasis on equal pay and the gender pay gap is to be bridged in 2020–2023 with an extensive set of measures. These include improving pay transparency by means of the Equality Act, various development projects, and the shared action of the Government and the central labour market organisations (the Tripartite Equal Pay Programme 2020–2023).

Reinstatement

172. With regard to reinstatement, the Government refers to its earlier submissions. Finland's position on reinstatement was most recently recounted in the 13th Periodic Report of the Government in respect of Article 24 and in the 14th Periodic Report in respect of Article 8 § 2.

173. As Finland's labour legislation does not provide for the possibility of reinstatement of employment, it also does not apply to the situation referred to in the Question. Neither Article 4 nor Article 20 of the Revised European Social Charter mentions reinstatement.

174. In Finland, labour legislation is drafted on a tripartite basis. Based on previous experience, it has been concluded that the possibility of reinstatement would not work in practice in the Finnish system.

175. It has been considered in Finland that the continuity of an employment relationship and, on the other hand, the position of a dismissed person are safeguarded by other means, such as a high threshold for dismissal, liability for compensation for groundless termination of employment,

compensation for breaching the Act on Equality between Women and Men, the unemployment security system, and public services. A significant percentage of disputes relating to termination of employment are settled in a negotiation system based on collective agreements. Introducing the possibility of reinstatement would require a more comprehensive review of the entire employment security system. This review should also take into account the collective agreement system, unemployment security and public services, and the court system.

176. The Government refers to the recommendation issued to Finland in consequence of the collective complaint *University Women of Europe v. Finland* (no. 129/2016), in which the Committee of Ministers acknowledges that Finland, by demonstrating the existence of sufficient safeguards in labour legislation, has provided acceptable justification for the absence of the possibility of reinstatement under Finnish law.

Remarks of the central employee organisations

177. Pay discrimination on the basis of gender is prohibited by the Act on Equality between Women and Men (Equality Act). 'Countermeasures' in working life also constitute discrimination prohibited under the Equality Act. Countermeasures refer to a person being given notice or otherwise treated less favourably after they have invoked the Equality Act or taken part in investigating a matter concerning gender discrimination. Compensation for violation of the law may be sought pursuant to the Equality Act.

Remarks of the business and industry organisations

178. The Federation of Finnish Enterprises considers Finnish legislation to be appropriate and in conformity with Articles 4, 26 and 28 of the revised European Social Charter. A literal reading of these Articles does not contain an obligation for reinstatement. Consideration of the concrete substance of the Articles must be left to national legislation and practice.

179. The possibility for reinstatement did once exist in the Finnish Employment Contracts Act, but was never exercised. A reinstatement obligation is not an appropriate remedy in cases of adverse treatment, harassment, or unlawful dismissal. Generally, an obligation for reinstatement is not appropriate relief in cases of dismissal, as it means forcing the parties to the employment relationship to continue their contractual relationship against the parties' mutual will. Also, from a practical point of view, forced reinstatement would not be a suitable solution for the parties to an employment relationship.

Article 4 § 5: Limitations on deductions from wages

180. In its Conclusions, the Committee asks whether employers may waive their rights concerning limitations on deductions from wages. The Government points out that chapter 2, section 17 of the Employment Contracts Act is a peremptory norm. Under chapter 13, section 6, subsection 1 of the Employment Contracts Act, any agreement reducing the rights of and benefits due to employees under this Act shall be null and void unless otherwise provided in this Act.

Remarks of the central employee organisations

181. In 2014, the Committee held that Finland's legislation was not in conformity with the Social Charter, as the attachable amount of wages leaves workers who are paid the lowest wages and their dependants insufficient means for subsistence. The central employee organisations note than in 2021, the protected portion in attachment in Finland was EUR 22.71 per day for a single person, coming to EUR 681.30 per month.

ARTICLE 5: THE RIGHT TO ORGANISE

Question A

Rate of organisation among employees

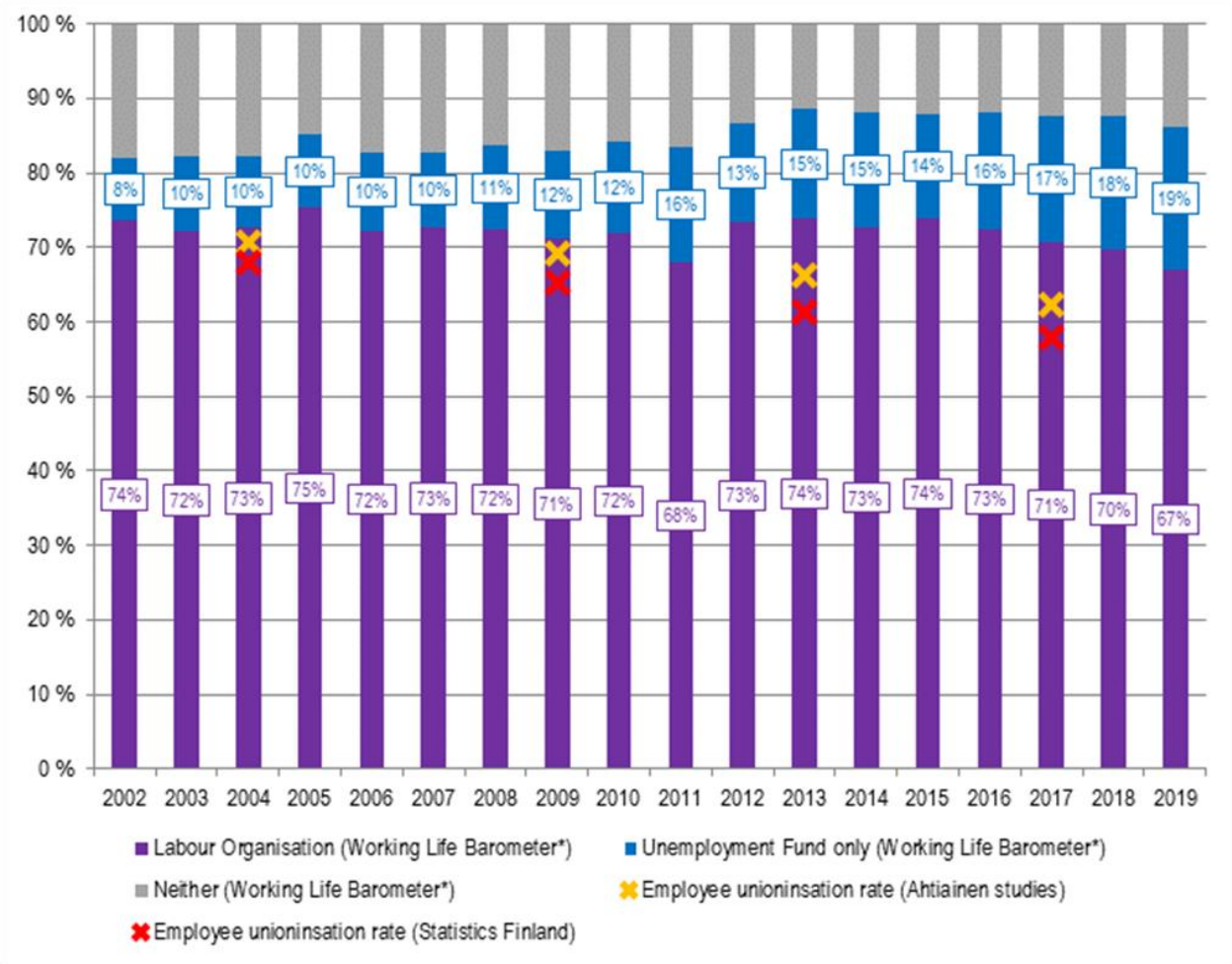
182. The data on the rate of organisation among employees vary slightly depending on research source.

183. The Working Life Barometer survey has included questions on trade union and unemployment fund membership since 2002. Union membership has been in steady decline since 2015. According to the Working Life Barometer for 2020, the Covid-19 pandemic appears to have somewhat increased trade union membership from 2019: in 2020, 69% of employees belonged to a trade union, compared to 67% in 2019. There has also been slight growth in unemployment fund membership only: one in five employees said in 2020 that they had only joined an unemployment fund. Throughout the time series, the rate of organisation has been higher among women than among men. In 2020, 77% of women belonged to a trade union, while for men, the figure was clearly lower at 61%. Trade union membership in 2020 was the highest among the age group of 45–64 years (76%) and the lowest among the youngest age group (18–34 years, 61%).

184. According to the aforementioned survey, the differences in union membership between socioeconomic groups were fairly small in 2020 (professional/managerial and other white-collar 70%, blue-collar 67%). When examining unemployment fund membership only, the differences grow somewhat greater (professional/managerial 23%, other white-collar 18%, blue-collar 17%). Trade union membership had increased by a couple of percentage points from 2019 among professional/managerial employees and blue-collar employees. Among blue-collar employees, 16% belonged to neither a trade union nor an unemployment fund. The figures for professional/managerial employees and other white-collar employees and were 7% and 12%, respectively.

185. According to the Working Life Barometer, union membership was clearly more commonplace in the public sector, *i.e.* in local government (86%) and central government (83%) than in industry (72%) or private services (58%). Since 2019, union membership has become more prevalent among industry employees in particular (62% in 2019, 72% in 2020).

186. The rate of unionisation among employees has also been examined in other studies.



Legislation

187. Employment legislation imposes no restrictions on workers' freedom of organisation.

Remarks of the central employee organisations

188. The trend in trade union membership has been in decline, which the central employee organisations find a matter of concern.

189. No national Covid-19 measures directly relating to Article 5 have been taken.

190. In workplaces, there have been and continue to arise, to an increasing extent, situations where the employer refuses to accept the shop steward elected by the employees. Employers argue that on the basis of universal applicability, they comply with the collective agreement. The central employee organisations hold that legislation must be specified in order to obtain clarity to the situation.

191. Shop stewards are a part of the system of collective agreements based on the freedom to organise. The case law of the Supreme Court expressly finds that employees working for a non-organised employer may choose from among themselves a shop steward, and that the provisions of the relevant collective agreement shall apply to these shop stewards (Supreme Court judgments

in cases KKO 1991:174 and KKO 2001:119, among others). The equivalent view has been adopted already earlier in Finnish legal literature, and in this context, no relevance has been attached even in the case that the scope of application of a shop steward agreement included in a collective agreement had expressly been limited to the member undertakings of the employer organisation that is party to the collective agreement. Electing shop stewards is a requirement to the freedom to form trade unions and organise secured by the Constitution of Finland, and the employer being tied to the collective agreement based on the Collective Agreements Act cannot be made to constitute an obstacle to the exercise of this right. Consequently, trade union chapters and workers in general should have the right to elect a shop steward also in non-organised workplaces where a collective agreement containing a shop steward agreement is applied on the basis of universal applicability.

192. This view finds support in both legislation in force and the draft history of such legislation. The government proposal (HE 157/2000) concerning chapter 13, section 3 of the Employment Contracts Act on elected representatives expressly states that the provisions of the said section do not affect the application of shop steward systems under universally applicable collective agreements also in non-organised undertakings, nor do they affect such procedure in general nor the associated agreements. The said government proposal also speaks of the right of workers to elect an elected representative in cases where the workers are not represented by a shop steward elected on the basis of a collective agreement. The government proposal specifically makes the elected representative secondary to a shop steward, and the elected representative shall be elected expressly when a group of workers is not represented in the workplace by a shop steward. This was at issue also in Supreme Court case KKO 2017:29 in which the Supreme Court ruled on the right of a group of workers to elect an elected representative to represent them in statutory co-operation negotiations. In the said case, managerial workers organised in their own organisation could not take part in the election of shop steward elected on the basis of the collective agreement applicable to them and the matter had to be weighed in light of provisions including those on negative right to organise.

193. However, the nature of the prevailing legal status has been challenged by non-organised undertakings. The opportunity of organised workers to elect a shop steward from among their number has been denied, mainly on the grounds that a non-organised undertaking would not be subject to an obligation to acknowledge a shop steward referred to in the collective agreement when the employer complies with the collective agreement on the basis of universal applicability and the workers have been offered the option of electing an elected representative. This interpretation would mean that the provisions of the collective agreement on the shop steward would become applicable on the basis of the universal applicability of the collective agreement only when a shop steward has been elected and has been approved by the employer. Even though an interpretation of organised employees always having the right to elect a shop steward from among their number to represent them would be more consistently aligned with earlier case law and the positions put forward in legal literature, the courts are yet to address a direct precedent case involving this problem of interpretation.

194. Likewise, section 10 of the now repealed Working Hours Act operated on the logic that also non-organised undertakings could have a shop steward, and this assumption was carried over 'as is' also to the corresponding provision in the current Working Time Act, more specifically its section 36. This was the conscious choice of the legislator. The interpretation has been confirmed in the reports on the reform of the Working Time Act and the subsequent government proposal on the Act. The said proposal (HE 158/2018) also confirms the effects of the aforementioned Supreme Court case KKO 2017:29 on the regulation of shop stewards and elected representatives, and consequently it also confirms that the elected representative is not an alternative to a shop steward. With regard to case KKO 2019:79, the government proposal states the following: *By contrast, the judgment takes no stand on whether the managerial workers would have had the right to elect an elected representative to represent them also in negotiations concerning interpretation of the collective agreement or in local bargaining negotiations based on the collective agreement. Likewise, the Supreme Court in its judgment makes no comment as to the rights and obligations of the elected representative on a general level and only comments on the right of a group of workers to elect an elected representative to represent them in statutory co-operation negotiations. Therefore the judgment of the Supreme Court has no impact on the legislative proposal now under consideration.*

195. By virtue of case law, legal literature and also legislation in force, it would be logical for universal applicability to provide the foundation for compliance with the terms agreed in both the collective agreement and the shop steward agreement that is to be considered a part of the collective agreement. The regulation concerning elected representatives should in no way prevent the election of a shop steward in a non-organised undertaking. By nature, this regulation is a complementary procedure to this election, for example in cases where a group of workers in accordance with the Act on Co-operation within Undertakings would otherwise be left without representation in the workplace. The legal status that is unclear as to whether an employer complying with a collective agreement on the basis of universal applicability should recognise the shop steward elected by the workers is not wholly in conformity with Article 5 of the Revised European Social Charter. International instruments guarantee the inviolability of the right of organised workers to elect a shop steward. Such elections are a key component of realising the freedom to organise. The state of affairs must be clarified by a legislative reform, as situations where the shop steward elected by the workers is rejected by the employer have occurred and continue to occur in workplaces.

Remarks of the business and industry organisations

196. The Federation of Finnish Enterprises considers that Finnish legislation is not in conformity with Article 5 of the Revised European Social Charter, as the legislation contains provisions which are less favourable for those employers who have exercised their negative right to organise.

197. Chapter 13, section 7 of the Employment Contracts Act (55/2001) authorises national trade unions and employer organisations to derogate from certain provisions of the Employment Contracts Act, which are listed in section 7. However, chapter 13, section 8 of the Act contains a provision under which a (non-organised) employer is not allowed local collective bargaining on

the issues mentioned in section 7, even though the applicable collective agreement would permit such local bargaining.

198. The universal applicability of collective agreements is stated in chapter 2, section 7 of the Employment Contracts Act. According to it, also those employers that are not members of employers' organisations are obliged by law to comply with the collective agreement which is declared generally applicable in their sector of business.

199. In other words, all employers in a certain sector of business are obliged to comply with the universally applicable collective agreement. However, if the collective agreement authorises local bargaining (between the employer and workers' representative or group of workers) in respect of some provision concerning an issue listed in chapter 13, section 7, only those employers that are members of an employers' organisation may engage in this local bargaining. Consequently, those employers that have decided to exercise their negative right to organise are less favourably placed to negotiate on working conditions.

200. A similar approach to negotiations and a similar prohibition of local bargaining for non-organised employers is also included in the Working Time Act (872/2019), Annual Holidays Act (162/2005) and the Study Leave Act (273/1979).

201. The Federation of Finnish Enterprises considers that the prohibition of local bargaining for non-organised employers (*i.e.* not members of that employer organisation which is a contractual party to a collective agreement) violates the negative right to organise as set out in Article 5 of the Revised European Social Charter.

Remarks of CSOs

202. In the view of the Finnish Society of Social Rights, there is currently a trend underway in the Finnish labour market that threatens the right to nationwide and also local bargaining due to a change in the attitudes of the employer organisations. For several years now, employers have strongly advocated for the notion that bargaining should take place at the local and not the national level. This notion is now becoming reality. Finnish Forest Industries has announced that going forward, it will no longer conclude national collective agreements. Technology Industries of Finland has followed suit in that the employer organisation only represents a part of the industry and the remaining undertakings engage in local bargaining on the collective agreement individually in each workplace. This means that the universal applicability also of future national collective agreements will be jeopardised. There is the risk that without universally applicable collective agreements and a minimum wage (save for the hourly rate required in order to qualify for unemployment security), employers will start offering wages that are considerably lower than those at present.

Question B

203. The Confederation of Finnish Industries (EK), Local Government and County Employers KT, Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK) and the Confederation of Unions for Academic Professionals in Finland (AKAVA) submitted to the Government on 18 March 2020 a proposal on safeguarding

employment and income in business in the economic crisis caused by Covid-19. The central labour market organisations proposed measures aimed at lowering the costs of employment, introducing greater flexibility to employment legislation, and improving social security for persons who had become unemployed or laid off. The package comprised measures including a temporary reduction in the employer's pension contribution, postponement of paying earnings-based insurance contributions, and greater flexibility in the employment legislation applied in the private sector. The organisations also proposed measures to strengthen social security for persons becoming unemployed or laid off. Temporary amendments to legislation were drafted in tripartite procedure on the basis of the proposal.

204. The temporary amendments to employment legislation drafted on the basis of the proposal were initially in force for three months as from 1 April 2020 and their term was extended until the end of 2020 at the motion of the labour market organisations. The temporary legislative amendments reduced the lay-off notice period to five days and the duration of statutory co-operation negotiations on lay-offs also to five days, allowed workers under a fixed-term employment contract to be laid off and also the cancellation of an employment contract during the trial period for financial or production-related reasons, and extended the re-employment obligation to nine months. Temporary amendments were also made to other legislation including unemployment security legislation.

ARTICLE 6: THE RIGHT TO BARGAIN COLLECTIVELY

Article 6 § 1: Joint consultation

205. In its Conclusions, the Committee has requested information on joint consultations within and between sectors.

206. The terms of employment are negotiated between employer and employee organisations on a sector-specific basis. The parties to these negotiations also engage in consultation regarding development of the collective agreement during the periods in which the collective agreement is in force. Collective agreements typically contain provisions to organise the relationship between the parties and concern matters such as validity and termination of contract, industrial relations between the parties, and the exchange of information. Collective agreements also contain provisions on the order of consultation in the event of interpretation of the collective agreement or disputes concerning it. Collective agreements may contain provisions on the efforts of working groups or investigations to be undertaken while the agreement is in force. The topics of these may relate to development of the agreement or matters such as training provision. Most collective agreements also contain provisions on the principle of ongoing consultation in various matters between the parties. Ongoing consultation may involve clarifying or further developing the collective agreement, or productivity and the competitiveness of the sector on a more general level, for example.

207. The central organisations of employer and employee associations also engage in discussion on topics such as the quality of working life. An example of this can be found in the

aforementioned joint proposal of the central labour market organisations to the Government on the measures required in the face of the Covid-19 pandemic to reduce the costs of employment, introduce greater flexibility to employment legislation, and improve social security for persons who had become unemployed or laid off, and the subsequent continuation of these measures. While the proposals included motions for temporary amendments of legislation in the pandemic, they also contained other initiatives on topics including Covid-19 testing and training provision. During the pandemic, the central organisations have also issued a joint recommendation on adopting the remote working recommendation as widely as possible, for example.

208. The central organisations have moreover issued recommendations and positions on matters relating to the quality of working life, for example. One such example is the central organisations' digital recommendations 2019 having to do with the expertise required by digitalisation and artificial intelligence, supporting workplaces in the introduction of new technologies and new approaches, and outlining a common set of ground rules.

209. The legislation on employment and pensions is drafted in tripartite procedure so that both employers and employees are represented, usually at the level of central organisation. The many advisory boards based in numerous ministries also provide the central organisations with a forum for discussion. Examples of such forums include the ILO Advisory Board established to address ILO matters, the Advisory Board on Seamen's Affairs and the Committee on Corporate Social Responsibility, which functions in pursuit of a stronger national and international social responsibility policy, and economically, socially and ecologically responsible operation and production methods among undertakings and other organisations.

Article 6 § 2: Machinery of voluntary negotiations

210. The Government has no new information to report for this reporting period.

Article 6 § 4: Right to collective action

Question A

211. The Government has no new information to report for this reporting period.

Question B

212. In its Conclusions, the Committee asks for information on a certain decision of the Supreme Court.

213. Case TT 2012:75 involved a decision of Helsinki District Court to impose a provisional precautionary measure to enjoin, under pain of a fine, the respondent associations in a case before the Labour Court from continuing or repeating the industrial action measures against the

companies involved in the said case before the Labour Court concerning breach of the obligation of industrial peace.

214. According to the reasoning of the Labour Court's judgment, under chapter 7, section 8 of the Code of Judicial Procedure, if the reason for which the precautionary measure has been undertaken no longer exists, the precautionary measure shall be cancelled. The cancellation shall be ordered, on request of the party, by the court or another authority that is dealing with the main issue. Under section 9 of the same chapter, in the context of the decision it shall be determined how long the precautionary measure remains in force. The question before the Court was whether the Labour Court was competent to decide on cancelling or maintaining the precautionary measure in proceedings where the claimant had asked that the respondents be sentenced to pay a compensatory fine for breach of the industrial peace obligation. The Labour Court held that by its judgment, it could only impose a sanction on which provisions were laid down in the Collective Agreements Act or in the collective agreement. Any other kind of sanction was up to a general court or other authority to impose. The Labour Court found that issuing an injunction was not within its competence, nor was any injunction even requested from the Labour Court in the case. No proceedings in the main issue within the meaning of chapter 7 of the Code of Judicial Procedure were thus even pending. The Labour Court ruled the respondents' claim for cancelling the precautionary measure to be inadmissible.

215. The said decision of the Supreme Court (KKO 2016:14) involved a question of the lawfulness of a precautionary measure decision issued by a district court. An employee organisation had initiated a strike at the employer undertaking while the collective agreement was in force. The undertaking had asked the district court to impose a provisional precautionary measure to enjoin the strike. On the grounds indicated in the decision of the Supreme Court, the employee organisation had a legal interest in bringing to the court for consideration, by means of a complaint, the question of the lawfulness of the provisional precautionary measure. Since a judgment to enjoin the strike could not be issued by the district court any more than in any other procedure, the district court should have ruled the application inadmissible. According to the judgment, the main issue in the matter of the precautionary measure would have been the question of the sanction to be imposed in consequence of breach of the obligation of industrial peace under the collective agreement, the only sanction possible being a compensatory fine. The sole competence to impose such a fine rests with the Labour Court. Owing to the sole competence of the Labour Court, a general court of law on the one hand lacks competence to enjoin an industrial action measure and, on the other, a decision to enjoin industrial action based on a breach of the obligation of industrial peace arising from a collective agreement could not be obtained in any other proceedings referred to in chapter 7, section 6, subsection 1 of the Code of Judicial Procedure, either.

Remarks of the central employee organisations with regard to Article 6

216. In respect of the right to collective bargaining and consultation on terms of employment, Finland has been seeing concerning developments since 2020, with employers seeking to withdraw from collective bargaining at the national level. The forest industries, a major export sector, will no longer negotiate union-level collective agreements, and it appears that the technology industries

are headed in the same direction. The Finnish system is based on the determination of terms of employment on the basis of collective agreements which support employment legislation, and many minimum terms and conditions, including wages and salaries, are directly governed by collective agreements. Under the Revised European Social Charter, Finland has an obligation to promote joint consultation between employees and employers and the aim is for the terms and conditions of employment to be determined in the collective agreements for employees and public servants. The central organisations of employees hold that the state should ensure, ultimately through legislation, that terms and conditions of employment are determined by means of comprehensive collective agreements.

217. In its 5th Periodic Report, Finland refers to decision TT 2007-105 (vote) of the Labour Court, according to which mass resignation was not permissible industrial action to the extent that officeholders were among those involved in the mass resignation. In their earlier statements, Finland's central employer organisations have already held the prevailing legal state to be unclear. The Committee for Social Rights has repeatedly stated that the right of public servants to strike should be examined from the viewpoint of the nature of their duties and not from the viewpoint of their legal status. Public servants who do not exercise public authority should consequently be fully entitled to engage in industrial action. This interpretation of the Revised European Social Charter would therefore appear to be inconsistent with Finland's legislation on collective agreements for public servants.

218. In its 9th Periodic Report, Finland raises the judgments issued by the Labour Court in cases TT 2012:74 and TT 2012:75, both of which involved breach of industrial peace and the relevance of a provisional precautionary measure imposed by a district court. In their earlier statement, Finland's central employee organisations have already held that the use of a civil-procedure precautionary measure in the context of industrial action violates the right to collective bargaining and the freedom of association at least with regard to the case law of the ILO Committee on the Freedom of Association (CFA).

219. In its decision KKO 2018:61, the Supreme Court ruled on a provisional precautionary measure imposed by a district court and enforced with a penalty payment of EUR 500,000 to enjoin a loading embargo against a Vietnamese ship organised by seamen's unions. The aim was to secure for the crew a collective agreement that would have delivered a level of wages commonplace in the Baltic area. The wages paid were in fact even below the level based on the then ILO Recommendation No. 187. Moreover, there were workers on the ship who had worked for as long as 15–20 months without any annual holidays. The Supreme Court upheld the precautionary measure sought by the shipping company. The central organisations of employees hold that the Supreme Court acted in violation of Article 6 § 4 of the Revised European Social Charter in basing its decision – besides the principle of the law of the flag – ultimately on the fact that Vietnam "had not undertaken" to comply with the said ILO Recommendation, as if a recommendation required any undertaking or in any way limited the right to industrial action safeguarded under the Social Charter and other international law.

Remarks of CSOs concerning Article 6

220. The National Council of Women of Finland has raised the need to examine the extent to which the collective bargaining mechanism safeguards gender equality and the right to equal pay for the same work and work of equal value, as well as equal gender representation in collective bargaining.

ARTICLE 21: THE RIGHT TO INFORMATION AND CONSULTATION

Question A

221. The Government has no new information to report for this reporting period.

Question B

222. In its Conclusions, the Committee asks for information on the limitations to the scope of application of the legislation on the right of personnel to information and consultation on the basis of the number of personnel.

223. The Act on Co-operation within Undertakings (334/2007), under its section 2, subsection 1, applies to undertakings normally employing at least 20 persons as parties to an employment relationship, subject to certain exceptions, however. Provisions of section 15, section 17, subsections 3 and 4, sections 18 and 19 and section 27, subsection 1, paragraphs 2—4 only apply to undertakings normally employing at least 30 persons as parties to an employment relationship.

224. Matters to be handled in the co-operation procedure are the principles and practices applied in recruitment, under section 15 of the Act; contract on the use of temporary agency force contemplated by the employer, under section 17, subsections 3 and 4; the principles and practices of internal communication in the undertaking, under section 18; and certain other plans, principles and practices based on other legislation, under section 19. Under section 27, subsection 1, paragraphs 2–4 of the Act, the employer or representative of a personnel group can present an initiative for negotiations to handle and agree upon the following matters: 2) the working rules complied within the undertaking or in a part thereof and any amendments thereto; 3) rules for suggestion schemes and amendments thereto; 4) principles to be followed in the allocation of company accommodation, determination of shares by personnel groups and division of accommodation excluding accommodation intended for members of the management.

225. When calculating number of employees, all persons in an employment relationship with the undertaking are to be included. Part-time employees and employees under a fixed-term employment contract are thus also included in the number of employees. In undertakings which use temporary agency force, agency workers are not taken into account when calculating the number of employees for the purpose of the application threshold. According to the draft history of the Act on Co-operation within Undertakings, when calculating the number of employees provided as the threshold for application of the Act, employees working only in exceptional or temporary duties with regard to the work performed in the undertaking as well as employees engaged in fairly short-term work of a seasonal nature may be excluded from the calculation. In

other words, when calculating the number of employees referred to in section 2 of the Act on Co-operation within Undertakings, account shall be taken of such fixed-term employees who perform work belonging to the regular activities of the undertaking even when fixed-term employees, for example substitutes, change for one reason or another, for example during the family leave taken by a permanent employee. Additionally, the draft history of the Act states that part-time employment relationships concluded for an indefinite term shall be included in the headcount because the duration of working time has little significance with regard to the matters addressed in the co-operation procedure.

226. The Supreme Court has ruled in a case involving the counting of employees (KKO 2017:86). According to the Supreme Court, the conditions for application of the Act on Co-operation within Undertakings should, with justification, be determined so as to make the application of the Act as predictable as possible for employers and employees. Moreover, sufficient regard should be had, when applying the Act, to the objectives of the Act and to the particulars of the matter in hand. Every effort should be made to avoid any unnecessarily formulaic approach that fails to promote the aims sought with the Act. When one employee on leave is substituted by more than one fixed-term employee and there is regular churn in these fixed-term employees, they shall count as one employee when evaluating the conditions for application of the Act on Co-operation within Undertakings.

227. In another ruling (KKO 1995:51) the Supreme Court finds that derogation from the main rule in calculating number of employees may be justified in exceptional circumstances when the employment relationships concerned are atypical by nature. In such a case, it may be justified to pay attention to the little volume of work performed in such an employment relationship. The Supreme Court held that when adhesive labelling workers had carried out labelling equivalent to the work performance of one part-time employee, it was justified to count them as a single employee when considering whether to apply the Act on Co-operation within Undertakings.

228. Only temporary changes in the number of employees are intended to be excluded from the calculation, and only employees working on an exceptional and temporary basis are not to be included (Labour Court case TT 1455-14).

229. Chapter 2 of the Act on Co-operation within Finnish and Community-wide Groups of Undertakings, concerning Finnish groups of undertakings, applies to Finnish groups of undertakings having a minimum of 500 employees in Finland. The provisions shall apply to those Finnish undertakings within a group of undertakings which have at least 20 employees. Chapter 3 of the Act on co-operation in a community-wide group of undertakings and an undertaking applies to private or public groups of undertakings and undertakings engaged in economic activity, which have a total minimum of 1,000 employees within the European Economic Area (EEA) when: 1) a community-wide group of undertakings has at least two undertakings located in at least two EEA member states and each undertaking has a minimum of 150 employees; or 2) a community-wide undertaking has in each of at least two EEA member states a minimum of 150 employees. Provisions on calculating the number of employees are laid down in section 5 of the Act. The number of employees referred to in sections 7 and 13 within a Finnish group of undertakings and

an undertaking are calculated, taking into account part-time and fixed-term employees, as an average of the employees employed within the undertaking during the past two years.

Remarks of the central employee organisations

230. The central employee organisations point out that the supervision carried out by the Cooperation Ombudsman only extends to compliance with the Act on Co-operation within Undertakings. This Act applies to undertakings normally employing at least 20 persons as parties to an employment relationship. By contrast, the Cooperation Ombudsman does not supervise co-operation in public sector workplaces. The Committee asked how supervision had been taken care of in respect of the public sector. Co-operation in the public sector is governed by the Act on Co-operation within Government Agencies and Public Services and the Act on Co-operation between the Employer and Employees in Municipalities and Wellbeing Services Counties. Unlike the Act on Co-operation within Undertakings, the aforementioned Acts contain no provision on supervision of compliance with the Act.

ARTICLE 22: THE RIGHT TO TAKE PART IN THE DETERMINATION AND IMPROVEMENT OF THE WORKING CONDITIONS AND WORKING ENVIRONMENT

Question A

231. No particular changes have taken place during the pandemic related to ensuring the respect of the right to take part in the determination and improvement of the working conditions and working environment. Therefore, these matters have been inspected in the same way as before the pandemic. In Finland, a remote working recommendation has been issued, and many employees have worked from home since spring 2020. Remote work was quite common in Finland even before the pandemic. Meetings concerning OSH matters at individual workplaces have been held by videoconferencing when meeting physically has not been possible.

232. The OSH authorities have received quite a fair amount of customer enquiries related to the pandemic and have set up a website with replies to frequently asked questions.

233. The OSH authorities have taken part in the preparation of sector-specific guidance issued by the Finnish Institute of Occupational Health for workplaces (in sectors including construction, education and cleaning) on the assessment of risks related to Covid-19.

Remarks of the central employee organisations

234. The Occupational Safety and Health Act and the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces require cooperation between employers and employees. Cooperation on occupational safety and health addresses matters and measures affecting the safety, health and work ability of employees as well as the monitoring of their accomplishment and impacts.

235. The central organisations emphasise that the employer's statutory occupational safety and health obligation applies also in emergency conditions, yet in practice Covid-19 has caused problems in the workplace. In the healthcare sector, for example, not all employers included employee representatives in the drafting of emergency measures, which is highly problematic vis-à-vis the employees. Likewise, according to a survey commissioned by the Central Organisation of Finnish Trade Unions (SAK), in the first year of the pandemic, in 2020, employee representatives were genuinely included in managing the crisis ensuing from Covid-19 only at half of all workplaces. The time of the pandemic has also had a detrimental effect on wellbeing at work, especially in the sector of health and social services but also in other female-dominated sectors.

Question B

Protection of health and safety

236. The employees can participate in decisions on protection of health and safety through the cooperation on occupational safety and health, which is regulated in the OSH Enforcement Act (44/2006) part II "Cooperation on occupational safety and health". The goal of the cooperation is to improve the interaction between the employer and the employees, and to make it possible for the employees to participate in and influence the handling of matters concerning safety and health at the workplace.

237. At workplaces where at least ten employees work regularly, the employees shall choose from among themselves an occupational safety and health representative and two vice-representatives to represent them in the OSH cooperation.

238. At workplaces where at least 20 employees work regularly, an occupational safety and health committee shall be established for a period of two years at a time. Both the employer and the employees of the workplace are represented on the committee.

239. In inspections, the safety management system as well as the functions of the OSH cooperation are scrutinised.

Organisation of social and socio-cultural services and facilities

240. According to Part II of the Revised European Social Charter, the terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

241. Act 725/1978 was repealed by the Act on Co-operation within Undertakings (334/2007) which entered into force on 1 July 2007. Under its section 1, the Act promotes the undertaking's and its personnel's interactive co-operation procedures, which are based on timely provided sufficient information to the personnel on the state of the undertaking and its plans. The objective is to collectively develop operations of an undertaking and the employees' opportunities to exercise influence in the decisions made within the undertaking relating to their work, their working conditions and their position in the undertaking. The purpose is also to strengthen co-operation between the employer, the personnel and the employment authorities to improve the

position of the employees and to support their employment in relation to changes in the operations of the undertaking.

242. The Act lays down provisions on the parties to the co-operation, the information to be provided to representatives of personnel groups, and the co-operation negotiations and the matters to be handled in these.

243. Under section 27 of the Act, the employer or representative of a personnel group can present an initiative for negotiations to handle and agree upon matters including the following: 4) principles to be followed in the allocation of company accommodation, determination of shares by personnel groups and division of accommodation excluding accommodation intended for members of the management; 5) the use and planning of personnel rooms and other similar premises at the work place, the arrangement of childcare and catering at work within the limits of the funds earmarked by the employer; and 6) the general principles for allocation of contributions earmarked by the employer for hobbies, recreational and holiday activities of the personnel.

244. Under section 28 of the Act, after having presented or received an initiative for negotiations, the employer shall provide the representatives of the personnel groups concerned with all information necessary for handling of the matter. If the employer considers the negotiations presented in the initiative by a representative of a personnel group unnecessary, the representatives of the personnel groups concerned have to be informed thereof and of the grounds thereto without delay. The invitation to negotiations is presented by the employer. The negotiations are conducted in the spirit of co-operation with the objective of reaching agreement on the matters handled. Agreement made in the co-operation negotiations has to be in writing unless the content thereof is evident from the minutes or their appendices prepared in the negotiations. The agreement can be made for a fixed-term or until further notice. Each contracting party is allowed to serve notice of termination of an agreement made until further notice. The period of notice is six months unless otherwise agreed

245. Under section 30 of the Act, if agreement cannot be reached between the employer and the representatives of the personnel groups concerned on matters including the allocation of company accommodation or the matters referred to in paragraphs 5 or 6 above, the representatives of the personnel groups concerned shall decide the matters

246. Under section 31 of the Act, if agreement cannot be reached on matters including the principles for allocation of company accommodation or determination of the shares for each personnel group referred to in paragraph 4, the employer shall within his power decide the matters.

Legal remedies and sanctions

247. There are different ways for employers, employees and other parties to act if they feel that the supervision has not been carried out in accordance with OSH Enforcement Act. An employer, occupational safety officer, employee or other party subject to supervision may submit a written objection. The objection must be submitted to the OSH Division within two months of the inspection report being sent to the employer or the employer being notified of another enforcement measure.

248. The OSH Division will process the objection and inform the party that submitted it in a reasonable time in writing of any measures the objection may have led to.

249. An administrative complaint can be filed for unlawful or incorrect actions by an occupational safety inspector or other person performing a public task in an OSH Division. An administrative complaint must be filed with the OSH authority in writing in compliance with the provisions of the Administrative Procedure Act. An administrative complaint is not a means of appeal by nature. In other words, an OSH authority cannot, on the basis of it, revoke the obligations imposed or implement other measures. Instead, the correctness of the procedure will be examined afterwards on the basis of an administrative complaint.

250. After receiving an administrative complaint, an OSH Division will investigate whether the matter has been carried out in accordance with the law and the principles of good administration. After the reports have been submitted, the OSH Division will send the complainant an administrative decision on the administrative complaint.

251. The OSH inspector monitors the employer's compliance with the issued written advice and improvement notices in order to correct deficiencies in the workplace that violate labour legislation. If the inspector finds that the employer or other obligated party does not take the necessary measures or the matter cannot be delayed due to its nature, the inspector will refer the matter to the OSH authority.

252. Processing by OSH authorities means that the OSH Division will consider whether further measures are necessary. Possible further measures are the issue of a binding decision, prohibition notice or negligence fee, or submitting the matter to the police for investigation by filing a police report.

Binding decision

253. If the improvement notice issued by the inspector is not complied with, the OSH authority shall adopt a decision that obliges the employer or other party subject to the obligation to correct the condition of non-compliance within a specified time limit. A notice of conditional fine, enforced compliance or enforced suspension may be imposed to enforce the obligation.

254. The aim is that compliance with the obligation will help in attaining the minimum requirements laid down in legislation. The employer can choose what steps to take to meet the obligation. After the deadline, the OSH authority monitors compliance with the decision.

255. The employer or other obligated party as well as any other interested party will be reserved the opportunity to be heard in the matter. In addition, the OSH officer will be reserved the opportunity to be heard. This decision may be appealed to the Administrative Court.

Prohibition notice

256. The OSH authority may prohibit the use of machinery, work equipment or other technical equipment, a product or a work method until the unlawful condition has been rectified. The prohibition can be enforced with a conditional fine.

257. Before imposing a prohibition, the OSH authority consults the parties concerned and the occupational safety and health officer. The decision can be appealed to the Administrative Court.

Negligence fee

258. The OSH authority may impose a negligence fee for certain omissions concerning the obligations laid down in the Act on the Contractor's Obligations and Liability when Work is Contracted Out and in the Act on Posting Workers.

259. As a rule, the imposition of a negligence fee requires that the party concerned be given an opportunity to be heard before a decision is made. A payment decision can be appealed to the Administrative Court.

Criminal matters

260. In criminal matters, the OSH authority acts in close cooperation with the police and the prosecutor. For example, an OSH authority may notify the police of any unlawful activities observed during an OSH inspection or issue a statement to the prosecutor on the basis of pre-trial investigation data.

261. If the employer is suspected of having committed a serious employment offence punishable under the Act enforced by OSH authorities or the Criminal Code, a report will be filed with the police on the activities observed at the workplace. In the Criminal Code, the most serious offences include occupational safety offences, working hours offences, discrimination at work, extortionate discrimination at work and the use of unauthorised foreign labour.

262. The administrative measures of the OSH focus on the future. The assessment of criminal sanctions, on the other hand, focuses on the past. In other words, it involves evaluating negligence that has already occurred. Administrative and criminal processes are not mutually exclusive, and both can be pending at the same time.

263. The table describes the exercise of competence in 2020:

Means for exercise of competence	Number
Binding decisions	160
Prohibition notices by OSH authority	57
Negligence fees for contractor liability	84
Negligence fees related to posted workers	18
Investigation requests to the police	371

Remarks of the central employee organisations

264. The Committee has asked whether any provisions on legal remedies are laid down expressly in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces and whether any legal remedies are otherwise associated with it. Under section 54 of the said Act, the occupational safety and health authorities enforce occupational safety and health cooperation. Under subsection 2 of section 54, the occupational

safety and health authorities do not, however, enforce the provisions on cooperation when an agreement has been made on the cooperation in accordance with the provisions in section 23, subsection 1 or 2 or section 43b, subsection 1. The central employee organisations wish to draw the attention of the Committee to the fact that besides the occupational safety and health policy, no procedures have been laid down in law to safeguard cooperation in occupational safety and health.

ARTICLE 26: THE RIGHT TO DIGNITY AT WORK

Article 26 §§ 1 and 2: Sexual harassment and recurrent reprehensible or distinctly negative and offensive actions in the workplace or in relation to work, other than sexual harassment

Question A

265. The Finnish Occupational Safety and Health Act (738/2006) prohibits all kinds of harassment that puts employees' health at risk or in danger. Harassment refers to systematic and persistent offensive conduct or behaviour. These kinds of conduct have the potential to damage employees' health.

266. Harassment includes, for example

- repeated threats
- intimidation
- malicious or suggestive comments
- belittling or scornful remarks
- persistent unwarranted criticism and sabotage of performance
- attacks on reputation or status
- systematic ostracism or exclusion
- sexual harassment

267. Employers have a duty to monitor their employees and proactively intervene in any signs of harassment.

268. The OSH Divisions monitor the legislation in inspections where risk assessment, harassment prevention policies and procedures, education of employees and training of line managers are checked.

269. In case an employee experiences harassment at work and if the employer does not react to the employee's report of harassment or if the actions prove inefficient, the employee can turn to the OSH Division, which can provide instructions and advice and order the employer to act on the report of harassment. However, the OSH divisions cannot provide representation for individual employees or resolve conflicts. It is also not the OSH Divisions' responsibility to lay blame or settle disputes, or to help employees seek damages for harassment.

Question B

270. No particular changes have taken place during the pandemic related to the risk for harassment at work. Therefore, matters related to harassment have been inspected in the same way as before the pandemic. In Finland, a nationwide recommendation on remote working has been issued, and many workers have worked from home since spring 2020. The OSH authorities have received quite a fair amount of customer enquiries related to the pandemic and have set up a website with replies to frequently asked questions. The OSH authorities have taken part in the preparation of sector-specific guidance issued by the Finnish Institute of Occupational Health for workplaces (in sectors including construction, education and cleaning) on the assessment of risks related to Covid-19.

Question C

271. Compensation related to victims of harassment is not a task of the OSH authorities. It is not the OSH Division's responsibility to seek damages for harassment. It is a matter of civil liability.

Question D

272. The Government notes that while the Non-Discrimination Act (1325/2014) remains in force, it is currently under revision.

273. Section 28 of the Occupational Safety and Health Act (738/2002) provides that if harassment or other inappropriate treatment of an employee occurs at work and causes hazards or risks to the employee's health, the employer, after becoming aware of the matter must, by available means, take measures for remedying the situation. The provision applies to all kinds of harassment. Under section 18 of the Act, employees must follow the orders and instructions given by the employer within its competence. Thus, if the employer, after becoming aware of harassment against an employee (or another person at the workplace), gives another employee instructions and orders concerning the matter, this employee must observe them. Section 18 also specifically provides that employees must avoid such harassment and other inappropriate treatment of other employees at the workplace which causes hazards or risks to their safety or health.

274. At a shared workplace, *i.e.* a workplace where one employer exercises main authority and more than one employer operates or more than one self-employed worker works in return for compensation simultaneously or successively in such a way that the work may affect other employees' safety or health, the employers and self-employed workers must, each for their part and together in adequate mutual cooperation and by information, ensure that their activities do not endanger the employees' safety and health. The employer exercising the main authority at a shared workplace must, among other duties, ensure that the working conditions and working environment are safe and healthy in general. In the case of harassment at a shared workplace, the employer exercising the main authority must intervene. This includes situations where an employee harasses a self-employed worker at a shared workplace.

275. In its 2014 Conclusions, the Committee asked whether the right to reinstatement was guaranteed to employees who have been unfairly dismissed or pressured to resign for reasons related to moral harassment. The Government points out that since Finland's labour legislation

does not provide for the possibility of reinstatement of employment, it also does not apply to the situation in question. In respect of this, please see the comments provided in the context of Article 4 § 3.

Remarks of the central employee organisations concerning Article 26

276. Finland implemented an overall reform of equality and non-discrimination legislation, which entered into force on 1 January 2015. Under the transitional provisions, workplaces having at least 30 employees were required to prepare an equality and non-discrimination plan no later than by 1 January 2017. The central employee organisations were involved in the drafting of the legislation.

277. The organisations consider the reform to be significant.

278. At present, the Non-Discrimination Act in Finland is subject to partial reform, in which the impacts of the earlier overall reform will be reviewed. The central employee organisations are closely involved in both impact assessments and the drafting of the necessary legislative amendments.

Views of the Non-Discrimination Ombudsman on Article 26

279. The observance of the Non-Discrimination Act (1325/2014) is supervised by the Non-Discrimination Ombudsman, which is an independent equality body. The Non-discrimination Act prohibits discrimination on the basis of age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics (non-exhaustive list).

280. The Act of Equality between Women and Men (1986/609) provides for the prohibition of gender discrimination (including gender identity and gender expression), and is supervised by the Equality Ombudsman.

281. According to the Non-Discrimination Act (1325/2014), the Non-Discrimination Ombudsman cannot deal with complaints of discrimination in employment. The mandate of the National Non-Discrimination and Equality Tribunal extends to employment only when the matter before the Tribunal falls within the scope of application of the Equality Act (discrimination based on gender or sex). However, according to the Non-Discrimination Act, the mandate of the Tribunal does not cover complaints concerning discrimination in employment.

282. Prime Minister Sanna Marin’s Government Programme (2019) states that the Non-Discrimination Act will be partially reformed. In summer 2021, the Government set up a working group to prepare the reforms to the Act. The sections of the Act concerning employment as well as the aforementioned mandate issues, are being considered by a tripartite working subgroup for employment. The Tribunal’s right to grant compensation is also included on the agenda of the working group. The Non-Discrimination Ombudsman emphasises that so far, there is no progress.

283. The Non-Discrimination Ombudsman has for years advocated that national legislation should grant the same mechanisms to tackle discrimination in every walk of life in order to achieve

coherent legal protection for individuals. Extending the Ombudsman's operating possibilities would substantially support the Ombudsman's general task of promoting equality in employment.

284. To strengthen the legal protection of victims of discrimination, the Non-Discrimination Ombudsman should, alongside the OSH authorities, be authorised to assess also discrimination occurring in employment.

Intersectional harassment

285. The Non-Discrimination Ombudsman emphasises that intersectional harassment usually combines elements from both sexual harassment and moral harassment. This is shown in the Non-Discrimination Ombudsman's report Racism and discrimination – everyday experiences for People of African descent in Finland (2020). According to the report, racist discrimination and harassment occur especially in public urban spaces, at work or when applying for work, and in education. Harassment against women of African descent often involved sexualised racism.

286. Intersectional discrimination (including harassment) is covered by the mandate of the Non-Discrimination Ombudsman. However, the mandate does not extend to harassment cases in the field of employment.

Remarks of CSOs concerning Article 26

287. The National Council of Women of Finland calls to mind that sexual and gender-based discrimination and harassment in working life remain very commonplace in Finland. A higher than average risk of violence is faced in the sectors of security, patient care in health care, customer work in social services and employment services, the hotel and restaurant sector, the transport sector, retail and education. In a survey commissioned by the Union of Health and Social Care Professionals Tehy in 2020, 30% of respondents had been subjected to sexual harassment in the workplace in the course of their career. Harassment was particularly prevalent in social services, where it had been encountered by 36% of employees. Harassment is directed at young employees in particular: 45% of employees under the age of 35 had experienced harassment in the course of their career. Nearly half of women working in the service sectors and one fifth of women in academia reported having been subjected to sexual harassment in their workplace. Based on the survey, 85% of those who had experienced sexual harassment had been harassed by customers and patients, 26% by colleagues and 12% by the attendants or family members of customers.

288. Only a small portion of harassment cases are reported to the authorities. In a survey commissioned by the Confederation of Finnish Industries EK, 58% of those who had been subjected to sexual harassment in the past two years had not reported the matter to anyone. The most common reason given for non-reporting was fear of the matter not being taken seriously. The second most common reason was fear of reprisals.

ARTICLE 28: THE RIGHT OF WORKERS' REPRESENTATIVES TO PROTECTION IN THE UNDERTAKING AND FACILITIES TO BE ACCORDED TO THEM

Question A

289. The Government has no new information to report for this reporting period.

Question B

290. The rights of representatives of employees are safeguarded through legislation and also, to some extent, through collective agreements for employees and public servants. According to case law, the burden of proof regarding the grounds for dismissal rests with the employer.

291. As Finland's labour legislation does not provide for the possibility of reinstatement of employment, it also does not apply to the situation in question. In this respect, please see the account given in the context of Article 4 § 3.

292. Under chapter 7, section 10 of the Employment Contracts Act, the employer shall be entitled to terminate the employment contract of a shop steward elected on the basis of a collective agreement or of an elected representative referred to in chapter 13, section 3, on the basis of grounds related to the employee's person only if a majority of the employees whom the shop steward or the elected representative represents agree. The employer shall be entitled to terminate the employment contract of a shop steward or an elected representative on financial or production-related grounds, in the context of debt restructuring or because of the employer's bankruptcy only if the work of the shop steward or the elected representative ceases completely and the employer is unable to arrange work that corresponds to the person's professional skill or is otherwise suitable, or to train the person for some other work in the manner referred to in section 4. Equivalent provisions are laid down in chapter 8, section 9 of the Seafarers' Employment Contracts Act.

293. Under chapter 12, section 2 of the Employment Contracts Act, if the employer has terminated an employment contract contrary to the grounds laid down in this Act, it must be ordered to pay compensation for unjustified termination of the employment contract. If the employee has cancelled the employment contract on the grounds laid down in chapter 8, section 1, arising from the employer's intentional or negligent actions, the employer must be ordered to pay compensation for unjustified termination of the employment contract. The exclusive compensation must be equivalent to the pay due for a minimum of three months or a maximum of 24 months. Nevertheless, the maximum amount due to be paid to shop stewards elected on the basis of a collective agreement or to elected representatives referred to in chapter 13, section 3, is equivalent to the pay due for 30 months. Depending on the reason for terminating the employment relationship, the following factors must be taken into account in determining the amount of compensation: estimated time without employment and estimated loss of earnings, the remaining period of a fixed-term employment contract, the duration of the employment relationship, the employee's age and chances of finding employment corresponding to his or her vocation or education and training, the employer's procedure in terminating the contract, any motive for termination originating in the employee, the general circumstances of the employee and the employer, and other comparable matters. In determining the compensation, account must be taken

of any compensation adjudicated for the same act by virtue of the Non-discrimination Act. If the employer has terminated the employment contract contrary to the grounds laid down in chapter 7, sections 3 or 7, or cancelled it contrary to the grounds laid down in chapter 1, section 4, or solely contrary to the grounds laid down in chapter 8, section 1, the provision in subsection 1 on minimum compensation shall not apply.

294. Equivalent provisions are laid down in chapter 12, section 2 of the Seafarers' Employment Contracts Act. However, if the employer has terminated the employment contract contrary to the grounds laid down in chapter 8, sections 3 or 6, or cancelled it contrary to the grounds laid down in chapter 1, section 5, the provision in subsection 1 on minimum compensation shall not apply. If the employer has cancelled the employment contract solely in contravention of the grounds laid down in chapter 9, section 1, the compensation payable shall be equivalent to the pay due for a minimum of two months.

> Certain other employee representatives also enjoy the same employment protection as shop stewards and elected representatives. They include the occupational safety officer, the co-operation representative under the Act on Co-operation within Undertakings and the personnel representative whose status is based on the Act on Personnel Representation in the Administration of Undertakings (725/1990). However, the special protection afforded to them is not directly based on the Employment Contracts Act but rather on provisions on protection included in other legislation.

295. Several collective agreements moreover contain provisions on the employment security of shop stewards. The collective agreements also contain provisions on the protection afforded during candidacy in shop stewards and on post-contractual protection. Candidates for election as chief shop steward and as occupational safety officer are usually afforded employment protection under the collective agreement already during their candidacy, however no earlier than three months before the beginning of their term, and also for a fixed period after the termination of their service in the post.

296. Work discrimination is criminalised under chapter 47, section 3 of the Criminal Code. According to the provision, an employer, or a representative thereof, who when advertising for a vacancy or selecting an employee, or during employment without an important and justifiable reason puts an applicant for a job or an employee in an inferior position because of reasons including political or industrial activity shall be sentenced for work discrimination to a fine or to imprisonment for at most six months.

297. Chapter 47, section 4 of the Criminal Code, meanwhile, provides for the criminal law protection of employee representatives. An employer, or a representative thereof, who without a justification based on law or a collective employment or civil service agreement dismisses, otherwise discharges or puts on compulsory unpaid leave an employee representative, a trustee referred to in chapter 13, section 3 of the Employment Contracts Act (55/2001), a work safety trustee or a personnel or employees' representative referred to in the Act on Personnel Representation in Company Administration (725/1990) or in the Act on Cooperation in Finnish or Community-wide Companies (335/2007), or a cooperation representative referred to in section 8 of the Act on Cooperation in Companies (334/2007) or in section 3 of the Act on Cooperation

between Employers and Personnel in Municipalities (449/2007) or in section 6, subsections 3 and 4 of the Act on Cooperation in Government Offices and Institutions (1233/2007), or puts him or her on part time, shall be sentenced, unless the act is punishable as work discrimination, for violation of the rights of an employee representative to a fine.

298. An employer shall exercise its right to direct and supervise the work of employees within the confines of the law and the accepted principles of morality. Provisions on the obligation of equal treatment and prohibition of discrimination are laid down in chapter 2, section 2 of the Employment Contracts Act. The obligation of equal treatment applies to all employees, employee representatives included. According to chapter 2, section 2 of the Employment Contracts Act, the employer must treat employees equally unless there is an acceptable cause for derogation deriving from the duties and position of the employees. Any adverse measures directed at employee representatives for the sole reason of measures relating to employee representation or status as employee representative would usually be contrary to the equal treatment obligation.

299. Employees are also afforded protection against impairment of the terms of employment on the basis of the employer’s unilateral decision. The established view has been adopted in case law that based on its right to direct, the employer may not by unilateral decision change the material terms and conditions of the employment contract in the absence of grounds for termination of the employment contract provided in the Employment Contracts Act. Material terms and conditions of the employment contract, on a case by case basis, have been judged to be terms concerning aspects such as remuneration, job duties, working hours and place of work performance.

300. The conditions for lay-off laid down in the Employment Contracts Act also protect employee representatives. An employee may be laid off only on the financial and production-related grounds on which provisions are laid down in chapter 5, section 2 of the Employment Contracts Act. The relevant government proposal (HE 157/2000) holds that an employee may not be laid off in the event of fulfilment of the termination grounds related to the person of the employee referred to in chapter 7, section 2 or the grounds for cancellation referred to in chapter 8, section 1, subsection 1. Lay-off cannot be used as a disciplinary measure of sorts unless agreed in the relevant collective agreement. Chapter 1, section 4, subsection 4 of the Employment Contracts Act prohibits the cancellation of an employment contract during the trial period on discriminatory or otherwise inappropriate grounds with regard to the purpose of the trial period. Under chapter 7, section 11, the employer is entitled to change the employment relationship unilaterally into a part-time relationship only on the termination grounds referred to in chapter 7, section 3.

301. Under chapter 13, section 2 of the Employment Contracts Act, the employer must allow employees and their organisations to use suitable facilities under the employer's control free of charge during breaks and outside working hours in order to deal with employment issues and matters forming part of the function of trade unions. Exercise of this right of assembly must not have a harmful impact on the employer's operations.

302. Collective agreements for employees and public servants contain general provisions on the status of shop stewards and their release from work obligations, their compensation and participation in training, and the facilities, tools and information provided to them.

303. Under chapter 13, section 3 of the Employment Contracts Act, employees who do not have a shop steward referred to in a collective agreement applicable to the employer under the Collective Agreements Act may elect a representative from among themselves. The duties and scope of competence of such an elected representative are determined in the manner laid down separately in the Employment Contracts Act and elsewhere in labour legislation. The employees may further take majority decisions to authorise the elected representative to represent them in matters of employment relationships and working conditions specified in the authorisation. Elected representatives are entitled to any information that they need to carry out the duties referred to in law and to sufficient release from work obligations. The employer must compensate for any loss of earnings caused thereby. Release from work obligations in order for the elected representative to carry out other duties and compensation for any loss of earnings must be agreed on with the employer.

304. Under section 56 of the Act on Co-operation within Undertakings, a representative of a personnel group is entitled to be released from his or her work for such time as is required to carry out the duties referred to in this Act as well as for co-operation training. The employer and the representative of the personnel group have to agree upon the times for the co-operation training. The employer shall compensate any consequent loss of earnings due to release from work. Any other release from work and related compensation for loss of earnings shall be agreed upon case by case between the representatives of the personnel group concerned and the employer.

305. In so far as a representative of a personnel group takes part in co-operation negotiations referred to in the Act on Co-operation within Undertakings outside his working hours or discharges any other duty on which he has reached agreement with the employer, the latter shall pay him compensation for the hours used for carrying out the task in the amount corresponding to his salary for regular working hours.

306. Under section 55 of the Act on Co-operation within Undertakings, the representatives of the personnel groups are entitled to consult and request information from the experts in the operational unit concerned and as far as possible from other experts within the undertaking when preparing for the co-operation procedure and in the co-operation negotiations when necessary for handling the matter.

307. Section 10 of the Act on Personnel Representation in the Company Administration lays down provisions on the release from work of the personnel representative referred to in the Act as well as compensation for loss of income and other possible compensation. The provision of section 9 of the Act on the rights, duties and responsibility of the personnel representative is also material. Under the section, the personnel representatives and the members elected by the company to the administrative body shall have the same rights and duties, unless otherwise stipulated below in the Act. Whenever applicable, the provisions set forth elsewhere for the administrative body shall also apply to a body supplemented with personnel representatives. Personnel representatives and their

deputies shall have the right to examine the materials on any issue at hand to the same extent as the other members in the administrative body. Personnel representatives shall not, however, have the right to participate in the handling of matters that concern the election, dismissal and contract terms of the management of the company, the personnel's terms of employment, or industrial actions. The personnel representative's voting rights may be restricted through an agreement referred to in section 4 of the Act. If only one personnel representative is nominated to the company's board of directors, the representative's deputy shall also be entitled to participate in meetings and voice his or her opinions.

Remarks of the central employee organisations concerning Article 28

308. Finland's legislation contains elements seeking to ensure workers' representatives the right to protection against action harmful to them. However, there is no provision in legislation on the reinstatement of an unlawfully dismissed employee in the private sector.

309. In addition, the central employee organisations note that nowadays, the facilities available to shop stewards are regulated by collective agreements. The announcement of Forest Industries Finland that it will no longer engage in negotiations with employee trade unions on national collective agreements will have a considerable impact also on the status of shop stewards in undertakings and the facilities available to them. The phenomenon of non-negotiation would appear to be spreading to the technology industries as well. Considering the withdrawal of employers from national collective bargaining, the central employee organisations consider that the facilities to employee representatives should be secured by law.

310. Under legislation currently in force, an employer may terminate the employment contract of a shop steward only if a majority of the employees whom the shop steward represents agree or if the work of the shop steward or the elected representative ceases completely and the employer is unable to arrange work that corresponds to the person's professional skill. Despite legislation, serious problems have arisen in the real world. The central employee organisations indeed hold that further efforts should be made to strengthen the status of shop stewards through legislation.

ARTICLE 29: THE RIGHT TO INFORMATION AND CONSULTATION IN COLLECTIVE REDUNDANCY PROCEDURES

Question A

311. The Covid-19 pandemic caused an amendment to be made to the Act on Co-operation within Undertakings. This amendment, in force from 1 April to 31 December 2020, was part of a larger package of measures based on a joint proposal by the central labour market organisations. The aim was to allow employers to adapt their activities more quickly in a situation where the Covid-19 pandemic has suddenly and dramatically weakened the demand for products and services. Section 51 of the Act was temporarily amended to read that when an employer considered the lay-off of one or more employees, the employer was deemed to have fulfilled the duty to negotiate laid down in chapter 8 when at least five days had elapsed since the commencement of the negotiations. In other words, the period of negotiations was shortened from either six weeks or

14 days to five days. Otherwise there would have been a risk of further deterioration of the operating environment for undertakings while co-operation negotiations were underway. To the extent that the national collective agreement provided for minimum negotiation periods that were longer or shorter than five days, the negotiation and lay-off notice periods laid down in the collective agreement applied. Temporary amendments corresponding to the amended legislation were widely agreed for the collective agreements. A majority of the universally applicable collective agreements were temporarily amended.

> In the context of their proposal of 18 March 2020 to the Government, the labour market organisations stated that they were in agreement that any sudden and intense decline in the demands for an undertaking's products or services, which results in the undertaking experiencing a need to lay off a substantial portion of its employees, constitutes exceptional circumstances within the meaning of section 60 of the Act on Co-operation within Undertakings. This determination shall be made on a case by case basis. When there are no more reasons to deviate from the co-operation obligations, the employer shall without delay commence the co-operation negotiations.

Remarks of the central employee organisations

312. While the temporary amendment of the Act on Co-operation within Undertakings was in force, the minimum negotiation period was reduced in lay-off situations. The temporary amendment made it possible to lay off an employee under a fixed-term employment contract in observance of the same procedure as the one concerning an employee under an indefinite employment contract. The temporary amendment of the Act did not apply to situations where the undertaking was considering measures leading to dismissals or reduction of contracts to part-time contracts. In practice, the number of those laid off increased considerably during the Covid-19 pandemic and numerous employees were involved in statutory co-operation negotiations during the pandemic.

Question B

313. Provisions on the co-operation procedure in reducing the use of personnel are laid down in chapter 8 of the Act on Co-operation within Undertakings. The provisions of the chapter apply when the employer considers measures which may lead to notice of termination, lay-off or reducing a contract of employment to a part-time contract of one or several employees on financial or productive grounds. The provisions also apply if the employer intends to otherwise serve notice of termination, lay -off or reduce a contract of employment to a part-time contract of one or several employees on aforesaid grounds. The provisions of the chapter do not apply, however, if the undertaking has been declared bankrupt or is in liquidation or if the parties to a deceased's estate consider termination of a contract of employment as provided in chapter 7, section 8, subsection 2 of the Employment Contracts Act. The chapter contains detailed provisions on the procedures with which the employer must comply in situations of reducing the use of personnel within the scope of application of the chapter. The minimum duration of the negotiations is also defined in section 51 of the Act.

> Under section 51 concerning duty to negotiate, if the employer is considering to serve notice of termination, lay-off or reduce a contract of employment into a part-time contract of under ten employees or lay-off for a period of a maximum of 90 days of over ten employees the employer

shall be considered to have fulfilled his duty to negotiate referred to in this chapter once 14 days have elapsed since the commencement of the negotiations conducted in a manner referred to in this chapter unless otherwise provided in the co-operation negotiations.

If the employer is considering to serve notice of termination, lay-offs for a period over 90 days or reduce a contract of employment into a part-time contract of at least ten employees, the employer shall be considered to have fulfilled its duty to negotiate referred to in this chapter once six weeks have elapsed since the commencement of the negotiations unless otherwise provided in the co-operation negotiations. However, the negotiation period is 14 days in an undertaking normally employing at least 20 but fewer than 30 employees in an employment relationship.

If the undertaking is under the restructuring procedure referred to in the Restructuring of Companies Act (47/1993), the negotiation period shall be 14 days from the commencement of the negotiations.

314. Under section 62 of the Act on Co-operation within Undertakings, an employer, who has deliberately or negligently failed to observe the provisions of sections 45–51 (chapter 8) in respect of an employee, whose contract has been terminated or reduced to a part-time contract or who has been laid off shall be liable to pay to the employee, whose contract was terminated or reduced to a part-time contract or who was laid off a maximum indemnification amount of EUR 30,000. When determining the amount of the indemnification, consideration shall be given to the degree of neglect in respect of the co-operation obligation, the general circumstances of the employer, the nature of the measure applied in respect of the employee and duration of his employment relationship. If an undertaking in control as an employer has served notice to terminate to at least ten employees, the fact that the employer has not received adequate information required in the co-operation procedure from the controlling undertaking within the group of undertakings shall not be considered a factor to reduce the amount of indemnification.

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Appendix 1