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# **Covid-19 and Health and Safety at Work: Trade Union Dilemmas in Germany, France and Luxembourg (March 2020-December 2021)**

## **Abstract**

Given the traditional commitment of trade unions to occupational health and safety standards, unions might have been expected to be strongly involved in containing the Covid-19 pandemic. This article focuses on their policy positions at national and sectoral level towards the occupational health and safety measures taken to limit the spread of Covid-19 in Germany, France and Luxembourg from the beginning of the pandemic in March 2020 until the surging fourth wave of infections in November-December 2021. Our data shows that unions have found it increasingly difficult over the course of the pandemic to develop policy positions in the domain of occupational health and safety that address the variegated situations and needs of their different member groups and that achieve a balance between membership logics and public health considerations.

Keywords: Covid-19, occupational safety and health (OSH), trade unions, risk assessment, Germany, France, Luxembourg.

## 1) Introduction

The protection of the health and safety of workers has always been a core concern of trade unions. The Covid-19 pandemic has posed manifold challenges in this respect for workers and their representatives around the world (Purkayastha et al. 2021), with workplace transmission of the SARS-CoV-2 virus a centre of attention since the beginning of the outbreak. Numerous clusters were recorded early in the pandemic, leading to the assumption that workplaces as well as commuting settings were ideal places of transmission (WHO 2021). This was one of the reasons why many countries imposed lockdowns in various industries. These lockdowns reduced the likelihood of a further spread of the virus, thereby also protecting workers' health.

Trade unions have been involved in numerous countries in the policy decisions on how to mitigate the social and health impacts of the Covid-19 pandemic on workers, either through tripartite social dialogue or collective bargaining (ILO 2021). In Europe, unions have been involved at all levels with the consequences of the Covid-19 pandemic, calling for stricter policies to protect workers from the risk of workplace infections and to maintain the economic security of workers negatively affected by the pandemic through income support and short-time work schemes (Eurofound 2021).

Given the traditional commitment of trade unions to occupational safety and health (OSH) standards, this article investigates union positions on OSH policies adopted to limit the spread of Covid-19 in Germany, France and Luxembourg between the beginning of the pandemic in March 2020 and the surging fourth wave of Covid-19 infections in November/December 2021. It focuses on the positions taken by union confederations at national level and on union positions in the healthcare sector. In addition to its specific role throughout the pandemic, healthcare is a sector characterised by high levels of interactive work. Social interactions with patients make social distancing almost impossible, leading to high risks of contagion (Doerflinger 2022).

The purpose of the article is to discuss how unions have engaged with Covid-19-related OSH policies and, more generally, how they positioned themselves vis-à-vis the challenging situation caused by the pandemic, and what factors shaped their positions, rather than to evaluate whether trade unions have reduced the number of Covid-19 infections. Considering their traditionally strong engagement for the protection of the health and safety of workers and the fact that they are backed up by comprehensive European and national OSH

regulations, one could assume that unions generally supported government measures to fight the Covid-19 outbreak, and that they were proactive in proposing measures to protect workers' health and safety. Yet, our empirical material indicates that engaging with Covid-19 related OSH policies confronted unions with various dilemmas.

The article is structured as follows. We begin by sketching the engagement of trade unions in the field of OSH. After setting forth our research design and methodology, we turn to the empirical evidence, examining trade union positions in the three investigated countries at the national level and in the healthcare sector. The discussion and conclusion section explains and reflects on the dilemmas involved in trade unions' engagement with the Covid-19 pandemic.

## **2) Trade unions, occupational safety and health and the Covid-19 pandemic**

### ***2.1. Trade unions and OSH***

Unions have been involved in developing OSH policies since the 19<sup>th</sup> century (Dembe 1996, Quinlan et al. 2010, McIvor 2020), with the prevention of work-related accidents and the minimisation of risks resulting from industrial pollution on workers a key concern (Elling 1986). Unions have traditionally operated at various levels to establish and enforce health and safety norms. At international and national level, they have lobbied policymakers to establish binding norms, while at industry level they have pursued health and safety objectives in collective bargaining. Similarly, at company level union representatives have contributed to the enforcement of standards with a view to reducing workers' health risks (Elling 1986, ILO 2002, Rosental 2017). At workplace level, unions may incite employers to directly reduce occupational hazards, influence the intensity of regulatory oversight and educate workers about on-the-job hazards (Morantz 2009, Ollé-Espluga et al. 2015). Following the deindustrialisation of many developed countries, attention has shifted from workplace fatalities and injuries to psychosocial issues, such as work-related stress and burn-out (McIvor 2020). Despite this shift in focus, unions have continued to play an active role in protecting workers from potential occupational hazards.

At present, the legal basis for the regulation of OSH in the European Union (EU) is the so-called 'Framework Directive' 89/391/EEC. The directive defines the main principles for healthy and safe workplaces throughout the EU, thereby guaranteeing minimum standards

across member states (Gagliardi et al. 2012, Niskanen et al. 2012). Complementing the Framework Directive, various other EU directives regulate specific OSH aspects. So-called ‘risk assessments’ constitute a key element in identifying potential work-related hazards. Moreover, Principle 10 of the European Pillar of Social Rights states that “workers have the right to a high level of protection of their health and safety at work” and “to have their personal data protected in the employment context” (European Commission 2021). Highlighting prevention and protection, this bundle of regulations stresses the obligation of employers to take action to ensure safe and healthy workplaces; as a consequence, OSH has become an important aspect of general management processes. Importantly, trade unions have been involved in shaping EU OSH legislation as members of the Advisory Committee of Safety and Health at Work, a tripartite body including government representatives and the social partners. At member state level, trade unions are involved in the management of OSH through participation in various bodies.

In sum, OSH has always been a core topic for trade unions. In the EU, their role is supported by a comprehensive regulatory framework which foresees an active role for unions and worker representation bodies at different levels. Hence, considering unions’ traditionally strong engagement with OSH and the fact that they are backed up by a comprehensive regulatory framework, one could expect a strong union involvement with regard to the protection of workers’ health during the Covid-19 pandemic. This potentially concerns two aspects: first, the support of protective measures taken by governments; second, own initiatives and demands to increase the protection of workers.

## ***2.2. Trade unions and OSH in the context of the pandemic***

The Covid-19 pandemic has raised numerous OSH issues. Workers in critical services such as (health-)care, retail or public transport where social distancing is often difficult have been confronted with high risks of infection and increased work demands (Amossé et al. 2021, Mutambudzi et al. 2021, Purkayastha et al. 2021). Workers have faced job losses or income cuts in branches of the service sector reliant on mobility and close social interactions such as hospitality, tourism, or arts and entertainment (Eurofound 2021). Working conditions in other industries have changed through the massive recourse to remote and hybrid work, in many cases heightening existing labour market inequalities and bringing to the fore new occupational risks (Holst et al. 2021, Moulac et al. 2022).

Trade unions have been involved in tripartite social dialogue with governments and employers over the measures to be taken to counter the health and socio-economic effects of the pandemic, for instance with regard to short-time work schemes, income protection and support for businesses (Brandl 2021, Eurofound 2021, ILO 2021). In numerous instances, unions have asked for stricter health and safety policies at workplaces in Europe (Purkayastha et al. 2021). Furthermore, they have taken legal action against employers not adequately fulfilling their legal obligation to carry out risk assessments in the context of the Covid-19 pandemic (Pereira 2021, Tonneau 2021). More specific aspects of the impact of the pandemic on industrial relations have also been analysed, such as the negative effect of the pandemic on company-level collective bargaining (Dupuy and Simha 2021) and union demands targeting groups of vulnerable workers such as non-standard and platform workers (Spasova et al. 2021).

In the context of the Covid-19 pandemic, there were no binding OSH policies at European level. Instead, a number of recommendations were issued to Member States by the European Agency for Safety and Health at Work (EU-OSHA), with a twofold aim: to reduce the risk of workplace contagion, and to ensure the protection of (home-based) workers. These were complemented by special recommendations on updating risk assessments (EU-OSHA 2021). Given that health policies are to a large degree the prerogative of Member States, a certain heterogeneity can be expected in national policies, but also in trade union responses.

### ***3) Research design and methods***

This contribution is based on a cross-national comparative qualitative methodology. It combines the analysis of selected international and national documents (particularly trade union statements, media and legal sources) and a small number of expert interviews with trade union officials at both national and sectoral level (Germany: 3; France: 6; Luxembourg: 3) to reconstruct the positioning of trade unions vis-à-vis Covid-19-related OSH policies in the three investigated countries. The number of experts on the topic – also within trade unions – is still relatively limited because Covid-19 is a new disease and the situation the pandemic caused is unprecedented. This explains the relatively limited number of interviews. The combination of primary and secondary data also serves the purpose of triangulation, as interviews are useful to cross-validate the contents of the documents and vice versa.

The selection of countries follows the rationale of comparing similar systems in a contextualised way (Locke and Thelen 1995), as illustrated in Table 1. Hence, we select countries with similar “starting points” (Locke and Thelen 1995: 359) to investigate trade union positions regarding Covid 19-related OSH policies to reveal and explain cross-national variation. The three neighbouring countries Germany, France and Luxembourg belong to the cluster of coordinated market economies in continental Europe. Traditionally and despite differences in the concrete institutionalisation of specific rights, worker participation through workplace representation structures and the social protection of workers have been important in these countries, and trade unions as representatives of the workforce have had a strong position in this respect. Despite changes in the last two decades across countries and differing unionisation levels, trade unions continue to be relevant actors when it comes to policymaking and exerting workplace influence (Gumbrell-McCormick and Hyman 2013). The political systems of Germany and Luxembourg share neo-corporatist traits allowing unions to exert influence on political decisions (Thomas et al. 2019), whereas French unions, despite membership losses, have demonstrated their continued ability for collective mobilisation (Giraud et al. 2018). Moreover, health and safety representation at workplace level is ensured across the three countries. In Germany, works councils do not only have codetermination rights on certain OSH-related aspects, they also send representatives to the joint health and safety committee. The employee delegation in Luxembourg covers all aspects related to OSH. Similarly, in France, the social and economic committee deals with everything related to OSH. In the same vein, important EU directives – like the aforementioned Framework Directive on OSH (89/391/EEC) – ensure the same minimum level of protection in all three countries.

**Table 1: Country selection**

	<b>Germany</b>	<b>France</b>	<b>Luxembourg</b>
<b>Trade union structure</b>	DGB as the main union confederation	CGT, CFDT, FO, CFTC and CFE-CGC	OGBL and LCGB
<b>Dominant level of collective bargaining</b>	Sector (and company)	Sector and company	Sector and company

<b>Workplace representation</b>	Works council (many representatives are union members)	Social and economic committee and trade unions	Employee delegation (many representatives are union members)
<b>Health and safety representation</b>	Health and safety committee (also includes Works council members).	Through the Social and economic committee (includes in some instances a Commission for health, security and working conditions)	Through the Employee delegation and the dedicated Delegate for safety and health

Own table (mainly based on <https://www.worker-participation.eu/National-Industrial-Relations/Map-of-European-Industrial-Relations>)

Alongside these socio-economic, political and institutional similarities, Germany, France and Luxembourg have one more relevant aspect in common: relatively low full vaccination rates (two doses) of 70.8%, 73% and 68.8% of the total population respectively at the end of 2021 (ECDC, 26 December 2021).

The collected data was analysed by country based on predefined common themes (e.g. links between unions and politics, test strategies, mandatory vaccinations, etc.). On the one hand, this ensured a certain degree of comparability across cases; on the other hand, it left ample space for considering national specificities. Once the three country narratives had been constructed, the authors discussed them to subsequently sharpen them by spotlighting particularly compelling aspects – also in the light of what could have been expected based on the reviewed literature – and identify areas to be elaborated in the paper’s discussion.

#### **4) Unions and Covid-19 occupational health and safety measures at national level**

Trade unions in Germany, France and Luxembourg found themselves confronted with both the socio-economic and health-related consequences of the Covid-19 pandemic. During the first phase of the pandemic, workplace OSH measures were implemented in all three



countries (protective equipment, social distancing, mandatory mask-wearing, adaptation of workplaces), non-essential shops and venues closed, and teleworking arrangements promoted wherever possible. Businesses received public subsidies to keep afloat, while short-time work schemes were used to avoid lay-offs. Unions criticised the lack of health and safety equipment in some sectors and called for stronger measures to safeguard workers' incomes. Over the course of 2021, in a context of insufficient vaccination rates, the issues of mandatory vaccinations and test requirements have moved to the foreground.

#### ***4.1. Germany: a revival of crisis corporatism?***

The pandemic hit Germany in mid-March 2020, leading to a first lockdown. On 28 March 2020, the “epidemic state of crisis” (*Epidemische Lage von nationaler Tragweite*) was declared, allowing the government to take decisions without the involvement of parliament. Since then, infection numbers have varied, reflecting lockdown periods and periods with less stringent rules. Specific work-related rules were first implemented in April 2020, when the Federal Ministry of Labour and Social Affairs introduced the so-called *SARS-CoV-2 Arbeitsschutzstandard* (BMAS 2020) containing a specific set of workplace OSH rules to reduce the risk of infections at work. Regularly updated, these rules have been concretised in the so-called *SARS-CoV-2 Arbeitsschutzregel* (BAUA 2021), clearly defining an employer's responsibility for infection protection: its main pillars are social distancing, face masks and hygiene at work. Risk assessments are a key instrument and are to be extended to cover pandemic-related hazards. The results of the assessments need to be translated into concrete actions and should be implemented in consultation with employee representatives. Furthermore, a specific Covid OSH committee was established on which the Confederation of German Trade Unions (DGB, *Deutscher Gewerkschaftsbund*) and the German Employers' Association (*Bundesvereinigung der Deutschen Arbeitgeberverbände*) each have two seats. According to the Ministry of Labour and Social Affairs, the German social partnership model is essential in times of pandemic, as it contributes to implementing protective measures at work and to getting workers to accept them (BMAS 2021).

German unions mainly relied on lobbying at the national level and on their institutional clout to influence OSH policies. As the social partners were involved in defining the set of OSH rules applying to companies during the pandemic, it is hardly surprising that the DGB unions generally agree with them. In April 2020, the DGB published a position paper entitled “OSH in times of pandemic requires collaboration to protect people and strengthen the economy”

(DGB 2020). The paper stresses that effective protection is not only important for workers and their families but also ensures the functioning of organisations. The pandemic has, however, revealed a lack of protection in those sectors and occupations most exposed to potential hazards. As a result, the paper calls for OSH-related actions during and after the pandemic. These include functioning OSH policies enabling quick reactions to crisis situations, the involvement of employee representatives and an expansion of their co-determination rights in this respect. Risk assessments are considered the key instrument for identifying and mitigating potential hazards. The paper also highlights working time issues, as some occupational groups (particularly those in essential services) could be exposed to long working hours and high work intensity. It thus calls for sufficient rest times for workers. Turning to the post-pandemic period, the DGB sees a need for action to be taken by several actors. Employers should negotiate collective agreements with employee representatives on mobile work and tackling situations like a pandemic. The state should compel organisations to carry out risk assessments covering both physical and mental hazards. Legislation on mobile work and telework should follow. The DGB also calls for changes to be made to the mandatory accident insurance scheme. Those working from home need to have the same level of (accident) protection as in the workplace. In the same vein, Covid-19 should be recognised as an occupational disease in particular sectors.

Throughout the pandemic, more specific policy positions on such topics as vaccinations were developed. Although the DGB considers vaccinations to be the most effective way of fighting the pandemic, it is not calling for mandatory vaccinations for the whole adult population or for particular occupational groups (DGB 2021a). There are two reasons for this. First, there was a debate over the interpretation of the right to physical integrity set forth in the EU Charter of Fundamental Rights and the German constitution. This has since been settled by the 10 December 2021 decision of the German parliament to introduce mandatory Covid-19 vaccinations in the health and care sectors, a decision upheld by the Federal constitutional court in May 2022. Before this decision, the DGB instead called on employers to offer free rapid (lateral flow) tests to workers. In April 2021, this demand was accepted as an update to the existing regulation, meaning that employers now have to offer their employees two free tests a week. Second, the DGB is a member of the specific Covid OSH committee and thus directly involved in policymaking. Given this role, it would be unlikely for the DGB to take a position fundamentally different to that of the government. According to a union officer, there is one further potential explanation. The DGB and its affiliated unions are avoiding taking a

stance as there is no clear position on mandatory vaccinations within these organisations and their membership.

When the government introduced the so-called “3G-rule” – meaning that only those employees who are vaccinated, recovered or tested negative are allowed to access their workplaces – in late November 2021, the DGB solely issued a comment instead of a clear evaluation (DGB 2021b), stating that the 3G-rule could contribute to avoiding infections at work but only if combined with the existing OSH rules. Moreover, the collection of personal data on employees was to be kept to a minimum, with clear rules defining when data was to be deleted.

Despite the large overlap between the positions of the DGB and the state, the two disagreed on one topic: the government decision to discontinue the payment of wages during quarantine or isolation for unvaccinated workers from November 2021 onwards. In the DGB view, it would be better to promote voluntary vaccinations instead of putting more pressure on the unvaccinated, especially as the discontinuation of wages “is basically synonymous with mandatory vaccinations” (RND 2021).

#### ***4.2. France: mistrust and sidelining***

The pandemic struck France in a troubled context for the labour movement: the almost uninterrupted four-year protest against neoliberal reforms of the “French social model,” and more widely against the deterioration of the living conditions of large sections of the working population (Yon 2019, 2020). As a first consequence, the health crisis put an end to the confrontation between the unions and the government over a reform of the pension systems, forcing the government to suspend the reform and concentrate on the urgent public health issues. In his televised address announcing the first lockdown on 17 March 2020, President Emmanuel Macron declared “war” on the virus, resulting in the adoption of the law of 23 March 2020. Introducing a “state of health emergency”, it concentrated management of the health crisis in the hands of the President, sidelining not only parliament and the social partners (Turlan 2020), but also the government itself: the main decisions are taken in a “National Defence and Security Council” gathered around the head of state. While trade unions and employers’ organisations were only informally consulted at the national level, “social dialogue” continued to be encouraged closer to the ground, in line with previous trends fostering company micro-corporatism (Howell 2009, Baccaro and Howell 2017). Since

then, there have been four phases during which trade unions have taken action on different issues.

During the first lockdown, the labour administration, in conjunction with medical advisers, public health experts and government officials, drew up practical recommendations for preventive measures to be implemented by employers, such as the use of teleworking, hygiene and physical distancing rules, the provision of masks and ventilation measures in enclosed spaces<sup>1</sup>. Drawing on their organizational power resources (Gumbrell-McCormick and Hyman 2013), trade unions put forward proposals in defence of workers' health, calling for suspension of work in industries deemed non-essential and for the effective implementation of appropriate health protocols in the other industries. This union mobilisation, backed by work stoppages and recourse to the courts, was most visible in large companies such as La Poste, Amazon or Renault (Tonneau 2021). Depending on the balance of power and the level of trade union presence, OSH protocols were negotiated in a number of instances at industry level (for example in construction or the audiovisual sector) or at company level (as in banking). Other protocols were implemented under the control of *ad hoc* local health committees (as in car plants), or defined by the employer alone (as in fast-food restaurants) (DIASOCOV 2021).

At the end of the first lockdown, in May-June 2020, trade unions focused on the “world after”, understood as a world having learned the lessons of the health crisis and of the social and ecological crises that it brought to light. The trade unions worked with other civil society organizations (associations, NGOs and foundations) on drawing up demands for a social and ecological transition, with the aim of influencing the political agenda. Two rival coalitions were formed, one around the French Democratic Confederation of Labour (CFDT, *Confédération Française Démocratique du Travail*) and the other around the General Confederation of Labour (CGT, *Confédération Générale du Travail*), though without really succeeding in making themselves heard in the political field.

In autumn 2020, the successive implementation of a curfew (from mid-October) and a second lockdown (from 30 October to 15 December) were a reminder that the “world after” was not yet within reach. In this context, the social partners were strongly encouraged by the government to conclude a collective agreement on telework, a measure which had covered almost 30% of the workforce in the spring and was once again a pressing need. Due to employer hostility to greater supervision of telework, the national agreement signed at the end of November was nothing more than a recapitulation of the existing rules (Binet et al. 2021).

Finally, as “living with the virus” became the new norm in the wake of the third lockdown (from 3 April to 3 May 2021), two issues preoccupied the unions: jobs and mandatory vaccinations. Even though the health crisis had caused numerous job losses (Ghraiiri 2021), the unions were unable to change the state’s doctrine of non-interference in employer decisions (Bérourd and Gourgues 2021). The policy of massive recourse to short-time work thus proved to be a parenthesis intended to “dampen the fire”. The rejection of any policy to prohibit redundancies was further justified by situations of job shortages in certain sectors.

But the main issue dividing the unions is that of mandatory vaccinations. In the summer of 2021, the government pushed through a health crisis management law introducing two controversial schemes: making a large number of public places only accessible to people carrying a “health pass” attesting that they are fully vaccinated against Covid-19 or have tested negative in the past 24 hours with either a PCR or antigen test; and an obligation for employees in the medical and medico-social sector to be vaccinated against Covid-19. While the country’s leading trade union confederation, the CFDT, backed the health pass and mandatory vaccinations without much fanfare, the CGT, the second largest confederation, along with other trade unions such as Solidaires and the Unitary Union Federation (*Fédération Syndicale Unitaire*), strongly opposed the government measures. While declaring themselves in principle in favour of vaccination, they criticised the coercive nature of the government text, deeming it to be liberticidal and repressive, and rejecting any strengthening of the disciplinary power of employers. Indeed, in a first version of the bill, a refusal to be vaccinated or to present a health pass would have allowed an employer to terminate the employment contract. Following the joint intervention of the trade unions and the constitutional council, eventually only a suspension of the employment contract (and consequently of pay) was authorised. Whatever they were, the trade union positions gave rise to internal controversy, in a context marked both by the resurgence of the pandemic and a surge of major demonstrations against the health pass throughout the summer of 2021, in which many trade unionists participated, even though the demonstrations were often characterised by the presence of the far right.

### ***4.3. Luxembourg: between consensus and conflict***

In Luxembourg, many of the decisions taken to contain the pandemic were decided by the government under the “state of crisis” in effect from 18 March to 24 June 2020 and allowing the government to rule by decree, without the assent of parliament. This limited the scope for

consulting trade unions, which are usually routinely consulted on many public policy issues. Unions nevertheless generally supported the first wave of government measures to contain the spread of Covid-19, though with some debate over their extent. In the early phase of the pandemic, for instance, the Luxembourg Confederation of Christian Trade Unions (LCGB, *Lëtzebuenger Chrëschtliche Gewerkschaftsbond*) requested that all non-essential companies be shut down, including those in the manufacturing sector, in order to protect the health and safety of workers. A regulation on Covid-19-related OSH rules dated 17 April 2020 stressed the need for employers to carry out risk assessments with the goal of avoiding risks in relation to the Covid-19 pandemic and to minimize unavoidable risks. Given the strong service orientation of Luxembourg's economy, focused on financial services, most employees were able to work remotely, making Luxembourg the EU country with the largest share of employees working from home in 2020, according to the EU Labour Force Survey.

With the end of the first lockdown in May 2020 and the imminent return to the workplace of a large share of the workforce, union attitudes became more critical over the speed and scope of the lifting of restrictions. In April 2020, the General Public Sector Confederation (CGFP, *Confédération Générale de la Fonction Publique*) called for stricter workplace health measures and for vulnerable employees to be released from work, while the LCGB asked for mandatory testing before employees returned to work after the first lockdown and for mandatory Covid-19-related health and safety training for staff representatives in the construction industry. To limit transmissions, the government implemented a “large-scale testing” strategy, where the resident population and cross-border workers were grouped into representative categories and invited on a regular but random basis to take voluntary PCR tests (Wilmes et al. 2021). Subsequently focusing more on the social and economic impact of the Covid-19 crisis and less on its health and safety implications, the unions demanded to be consulted more by the government. When, in November 2020, a second lockdown became necessary in the face of soaring infection rates, the Chamber of Employees (*Chambre des salariés*), in which all unions are represented, questioned the necessity of many of the measures taken to contain the pandemic, without however putting forward any alternative proposals (CSL 2020a).

With the start of the vaccination campaign in late 2020, the prioritisation of vaccinations and the issue of testing requirements became key issues of debate. With medically vulnerable citizens and health workers the only groups prioritised during the vaccination campaign, the public sector union CGFP called for the priority vaccination of its strongest member groups,

teachers and police. By contrast, the Luxembourg Independent Trade Union Confederation (OGBL, *Onofhängege Gewerkschaftsbond Lëtzebuerg*) declared that, lacking expertise, it was unable to state which occupational groups should be prioritised.

With the onset of the fourth wave of Covid-19 infections, discussions started over how to increase the vaccination rate that had remained stagnant since the summer months (at around 60% of the general population in October 2021). When in October 2021 the government gave employers the possibility to only give vaccinated, recovered or negatively tested workers access to their workplaces under the “Covid-Check” health pass system similar to the German 3G arrangements, it met with strong union opposition. Regretting that they had not been sufficiently consulted, unions in particular criticised that non-vaccinated workers would have to pay for the regular tests out of their own pockets and denounced possible sanctions for workers refusing to comply. As larger companies were required to negotiate with staff delegations over the implementation of the Covid-Check, the negative attitude of unions represented an obstacle to its implementation. Luxembourg’s national airline Luxair was for instance unable to introduce it due to staff delegation opposition. Amid mounting worries over the surge of infections during the fourth wave of the pandemic, the government held tripartite negotiations (government, employers, trade unions) in December 2021 over making the Covid-Check system mandatory at workplaces. This time, together with the umbrella employer organisation, Union of Luxembourg Enterprises (*Union des Entreprises Luxembourgeoises*), trade unions endorsed, albeit without much conviction, the Covid-Check pass. The only concession achieved by unions was that the government removed dismissal as a sanction for workers refusing to be tested, though created the possibility of putting them on leave without pay.

## **5) Union responses in the healthcare sector**

Covid-19 related OSH issues were particularly salient in the healthcare sector. As frontline fighters against Covid-19, healthcare workers even received daily applause from the public during the first lockdown in Germany, France and Luxembourg. The sector is nevertheless confronted with longer-standing issues of understaffing, difficult working conditions and ward closures. From the start of the pandemic, concerns over Covid-19 transmissions in hospitals and other care facilities were high. Numerous early studies were quick to demonstrate that healthcare workers were disproportionately exposed to patient to health worker transmission of the SARS-CoV-2 virus, in particular due to the significant shortage of

protective gear and other equipment in the first weeks of the pandemic. Subsequent studies of the genome sequences of the virus circulating among healthcare workers soon pointed to transmissions between health workers being an equally important issue (Schneider et al. 2020, Ellingford et al. 2021, Paltansing et al. 2021).

### ***5.1. Mandatory vaccinations in Germany: unions divided***

There are two unions active in the German healthcare sector: the United Services Union (Ver.di, *Vereinte Dienstleistungsgewerkschaft*) represents all kinds of occupational groups working in the sector, while the *Marburger Bund* (MB) is a professional association and union of medical doctors with the right to bargain collectively. In contrast to Ver.di, MB is not affiliated to the German union confederation, the DGB.

In its 6 November 2021 general meeting, the MB voted for mandatory vaccinations for certain occupational groups – particularly those working in medical facilities, nursing homes, childcare and schools (Marburger Bund 2021). In its opinion, care staff needed to be vaccinated to effectively protect vulnerable groups like children or old people. Hence, the rationale behind demanding mandatory vaccinations was not to protect healthcare professionals (and MB members) but to protect vulnerable groups. MB was thus the first union in Germany to call for mandatory vaccinations despite legal concerns over their practical implementation.

By contrast, Ver.di has not called for any mandatory vaccinations. In accordance with the DGB policy position, it encourages vaccinations but stresses the personal freedom of every individual to decide whether or not to be vaccinated. According to a union official, Ver.di will not take a stance for or against mandatory vaccinations as there is no consensus internally or among its members on this topic. Consensus, however, is the precondition for any clear position publicly taken by Ver.di. In addition, there are internal concerns about the impact of any clear positioning, with Ver.di chairman Frank Werneke fearing that even more care staff would leave the sector, should vaccinations become mandatory (Ver.di 2021). This would in turn not only increase pressure on remaining staff but might also – according to an interviewed union officer – lead to membership losses. Due to these concerns and the internal disagreement on mandatory vaccinations, Ver.di prefers to refer to the DGB positions. On 10 December 2021, the German parliament decided to implement mandatory vaccinations in the care sector as of 15 March 2022.

### ***5.2. French unions between support of and opposition to mandatory vaccinations***



In France, the doctors' and healthcare workers' unions used the contrast between the deterioration of the public health service and public recognition of the sector's efforts during the first lockdown to force the government to negotiate a general pay rise for staff in public healthcare institutions in July 2020. In July 2021, a second round of negotiations was held with the employers of private health facilities to pass on this increase. Notwithstanding these initial advances on the pay front, unions continued to denounce the lack of resources for public hospitals, where the fourth wave of the pandemic, in November 2021, quickly saw certain hospital departments reaching full capacity.

From summer 2021 onwards, the main challenge for health sector unions has been to adopt positions on the health pass and mandatory vaccinations. Together with firefighters, healthcare workers were the first to be affected by these rules, while police officers, another group in close contact with the public, managed to escape the obligation. Trade union pluralism in the healthcare sector has led to a range of positions being expressed. The CFDT's health federation spoke out in favour of mandatory Covid-19 vaccinations for health professionals, stressing that certain other vaccinations were already mandatory for them. However, it regretted that they were thus stigmatised. For its part, the CGT's health federation opposed the government measures, pointing out that healthcare workers, just recently celebrated for their dedicated fight against the pandemic, were now being singled out. Like the Force Ouvrière's health federation, it opposed the suspension of recalcitrant staff, considering that "far from protecting hospitals, mandatory vaccinations are killing them" (CGT 2021). By mid-September 2021, around 3,000 people had been suspended for not being vaccinated. While denouncing sanctions and the new "work permit", the CGT nevertheless defended the need for vaccination "which has proved its worth" and warned employees about "biased information" fostering vaccine distrust (CGT 2021). By contrast, the SUD health union federation took a much more complaisant stance on vaccination refusals, solely declaring that it was "not hostile to vaccination" and that it "respected the right of every individual to freedom of choice" (Sud Santé Sociaux 2021a). However, in mid-summer 2021, it had called for people to join the anti-health-pass demonstrations, which it described as "defending freedoms" (Sud Santé Sociaux 2021b), despite the controversy surrounding them and the clearly "anti-vax" nature of many of them. In its view, the health crisis management law was part of an "authoritarian continuum" (Sud Santé Sociaux 2021c).

### ***5.3. Luxembourg: rejection of mandatory vaccinations***

Luxembourg's health and care sector is a sector with a strong union presence. The mostly self-employed medical doctors are organised in the Association of Medical Doctors and Dentists (AMMD, *Association de médecins et médecins dentistes*), an organisation focused on upholding the economic interests of medical doctors and with no tradition of broader societal involvement. Most of the unionised staff of hospitals and care facilities are members of the OGBL and 75% of workers in the health and social work sector were covered by a collective agreement in 2018. During the Covid crisis, staff delegations were part of the "crisis units" set up in the various hospitals. Working hours in the healthcare and care sector were extended by law to up to 60 hours per week during crisis peaks to cope with the rise of hospitalisations and ensure service continuity. While the OGBL's health federation drew attention to the risks involved for care workers in extending working hours (work-related stress, medical errors), the Chamber of Employees, in which union representatives from all industries are represented, supported the temporary extension when consulted by the government on the proposed legislation (CSL 2020b).

While healthcare and care workers were prioritised during the vaccination campaign, personnel working for subcontractors in hospitals and care homes were not vaccinated along with regular staff, a situation criticised by the unions. Despite low vaccination rates among workers in care homes for the elderly (estimated at approximately 60% in July 2021) and numerous reported deaths among care home residents, the OGBL – as the main union in the healthcare sector – did not support the mandatory regular testing requirements introduced in June 2021 for non-vaccinated personnel in the health and care sector. The union demanded that these tests be strictly voluntary and that personnel refusing to take them should not be sanctioned. Stressing data protection issues (despite the fact that Article 9 of the EU General Data Protection Regulation specifically sets exemptions for the processing of health data), unions also insisted that staff should not be placed under any obligation to disclose their vaccination status to the employer. Representing medical doctors, the AMMD did not call for mandatory vaccinations in the health and care sector, pleading in November 2021 for a cautious approach in order to avoid divisions.

## **6) Discussion and conclusion**

Our initial assumption that trade unions would be strongly involved in containing the Covid-19 pandemic through supporting protective measures taken by governments as well as own initiatives and demands to increase the protection of workers is not entirely confirmed by the

collected empirical data. Our data shows that union positions on Covid-19-related OSH policies in Germany, France and Luxembourg have varied, and that unions have often found it difficult to develop proactive policy positions on Covid-19. At the time of the first lockdowns, unions across countries generally emphasised the precautionary principle and called for suspensions of business activities. They raised demands for better protective equipment and supported government recommendations on social distancing, mandatory mask-wearing and adaptation of workplaces. Unions also supported the closure of non-essential businesses and called for measures to uphold the economic security of workers affected by the pandemic. However, after the end of the first lockdowns, unions' positions became increasingly differentiated. Two issues were particularly challenging for unions – finding clear positions towards workplace test strategies and mandatory vaccinations.

The growing variety of union positions over time raises the question of the factors that may have shaped their positions and that led to different responses than assumed. In the following sections, we will identify and discuss the dilemmas involved for unions in articulating membership logics and public health considerations in a context of political polarization, the influence of varying relationships between unions and the state, and the limits of risk anticipation mechanisms.

### ***6.1. Membership logics and public health considerations***

Public policies aiming to heighten vaccination rates confronted unions with the need to choose between the preferences of part of their membership and public health imperatives. In a general climate of uncertainty and lack of knowledge about the virus, this choice has challenged unions. From a public health point of view, vaccinations contribute to limiting infections and prevent severe illness, in turn helping to keep the economy and society running. Despite vaccine breakthrough infections during the fourth Covid-19 wave in late 2021, studies show that vaccinated individuals still have high levels of protection (Shah 2021). In the health sector, the issue of vaccinations is especially important because of the high risk of transmissions between health workers and between health workers and patients. The combination of vaccinations, specific health and safety policies (such as protective equipment) and so-called barrier nursing techniques is key to cutting down transmissions in the health sector (ECDC 2021).

Despite such evidence, unions in Germany, France and Luxembourg were struggling to define a clear position regarding vaccination policies. This became even more difficult since public

opinion was also influenced by vocal and sometimes radicalised minorities criticizing Covid-19 policies and propagating vaccine scepticism. In this context of political polarization, unions felt pressure from their unvaccinated members and feared membership losses. Consequently, they have been reluctant to support concrete policies aiming to increase vaccination rates, such as testing requirements for non-vaccinated workers or mandatory vaccinations. With a few exceptions such as the CFDT in France or Marburger Bund in Germany, unions representing healthcare workers have generally opposed mandatory vaccinations. They put forward arguments ranging from not requiring workers to become vaccinated after being exposed to extraordinary pressure during the pandemic to the value of the individual freedom not to be vaccinated. Data protection issues were also strongly emphasised by unions.

Generally, when unions address issues that have implications beyond the workplace, they face the challenge of balancing the points of views of segments of their membership and common goods (Flanders 1970, Hyman 2015, Thomas 2017). In the case of Covid-19, the internal heterogeneity of members' interests and preferences regarding Covid-19 policies have represented a further obstacle to reaching an internal consensus over the definition of members' interests. Depending on their perception of infection risks, many workers supported workplace tests and mandatory vaccinations while others did not. The reluctance to openly take a more active pro-vaccination position may also be due to the fact that unions, after having frequently seen their representativeness questioned by governments and employers, tend to conceive their representational function in terms of a simple reflection of member attitudes rather than a political mandate built through dialogic democracy (Offe and Wiesenthal 1980). The sharp inter-union competition in France (Giraud et al. 2018), and to a lesser extent in Luxembourg (Thomas et al. 2019), has been an additional obstacle to trade unions' acquiescence with government policies targeting high levels of population immunity. Such competition can restrain unions from entering into agreements with the government that risk not being supported by sections of their membership and subsequently leading them to join another union.

## ***6.2. Union power resources and union-state relations***

Positions towards Covid-19 policies have also been shaped by unions' power resources and previous trends and patterns of interaction between unions and the state. Unions in Germany and Luxembourg mainly relied on institutional power resources and on lobbying at national

level. In contrast, French unions combined the use of organizational and institutional power resources (Gumbrell-McCormick and Hyman 2013).

In Germany, the active involvement of unions in managing the pandemic in the tradition of corporatist decision-making under a coalition government of Christian and Social Democrats – two parties attached to corporatist forms of governance (Streeck 2006) – has probably fostered their general agreement with the policy measures adopted. While unions in Luxembourg were critical of many measures adopted over the course of the pandemic, they were involved in the negotiations over the introduction of the Covid-Check pass at workplaces, which they eventually supported. In contrast, in France, the centralised management of the pandemic (Bandelow et al. 2021) left little space for social concertation with trade unions or employer organisations. In addition, relations between French unions and the state were tense after numerous conflicts over government policies in the years preceding the Covid-19 pandemic (Yon 2020). Nonetheless, at the onset of the Covid-19 pandemic, unions in France succeeded through collective and legal action in imposing better health protection at some workplaces where they have a strong presence (Pereira 2021, Tonneau 2021). This mobilization of organizational power resources is remarkable as Covid-19 containment has often implied limitations to the basic rights upon which trade unions rely to defend their members' interests, such as the right to assemble and to protest.

In Germany, Luxembourg and France, unions' reluctance or lack of outright support towards mandatory testing policies for unvaccinated workers may also be explained by the fact that these policies transfer responsibility for monitoring and sanctioning recalcitrant employees to employers. This turns employers into the only legitimate actor in the domain of workplace health and safety policies, instead of using workers' representatives or imposing mandatory vaccinations in the name of public health. But union scepticism towards mandatory workplace tests and vaccinations gives testimony to a lack of strategic foresight as unions risk jeopardising a key principle of OSH: the legal obligation of employers to protect workers once the necessary means to do so are available (Alli 2008). Indeed, if workers are free to choose to remain unprotected or to deliberately expose themselves to hazards, the employer obligation regarding OSH is in danger of being nullified.

### ***6.3. Risk assessments and workplace OSH bodies***

Unions in Germany, France and Luxembourg have not been able to take advantage of the pandemic to push through stronger OSH policies. Unions have rather stressed the usefulness

and importance of existing European and national regulations on risk assessments, under which such assessments have to be carried out in workplaces to minimise risks to workers' physical and mental health (Gagliardi et al. 2012, Niskanen et al. 2012). However, even before the pandemic, the ESENER survey (EU OSHA 2019) underlined the unequal implementation of risk assessments among EU Member States (Germany, Luxembourg and France scored relatively low), dependent on sector and company size. Workplace representatives – often unionised in the three investigated countries – play an important role in monitoring risk assessments and in checking whether they are really carried out.

The pandemic has demonstrated that the risks involved in many jobs and tasks have never been properly assessed. In France, the 2017 abolition of the health, safety and working conditions committees reduced the clout of workplace representatives in health and safety matters, further undermining a workplace “culture of prevention” already extremely fragile in smaller companies (Darbus and Legrand 2021). Indeed, in 2016, only 45% of French private-sector employers said they had an updated risk assessment document (*Document unique d'évaluation des risques*); in establishments with fewer than 10 employees, the figure was just 38% (Dares 2021). Moreover, successive reforms of occupational health services and labour inspections have resulted in lower numbers of professionals and state representatives responsible for prevention and control – precisely those able to support employee representatives in the field (Mauroux 2021). In Luxembourg too, the representative bodies specifically in charge of OSH in larger companies were abolished as part of the 2015 reform of social dialogue. The effects of this measure remain unclear. In 2013, however, OSH was the issue most discussed by workplace representatives according to a survey carried out by LISER, in front of working conditions and training. In Germany, the number of works councils as well as the number of employees represented by a works council has shrunk in recent years (Ellguth and Kohaut 2019). Consequently, workplace monitoring and enforcement of risk assessments have become even more patchy. This development has led to a situation in which numerous workers' jobs and tasks have never been assessed with regard to potential risks.

Against this background, unions in Germany, France and Luxembourg could demand (legal) sanctioning mechanisms for those establishments not (regularly) carrying out risk assessments. The 2019 ESENER survey reveals indeed that risk assessments are more likely to be carried out in countries where sanctioning mechanisms apply; for example in Denmark, a prison sentence of up to one year is possible (EU OSHA 2019). In addition, concrete

regulations on the protection of teleworkers remain lacking in all countries, meaning that teleworkers continue to perform their work in a legal grey zone (Moulac et al. 2022).

Although OSH has always been an important topic in the world of work, it was sidelined in the years preceding the pandemic, as standards were already considered to be high and because other topics, such as digitalisation, became dominant in the public discourses on work and employment. The current situation, however, stresses the need to re-prioritise the topic of safe working conditions and its practical shopfloor implementation. Risk assessments are a key tool, insofar as they are carried out regularly and cover a range of potential physical and mental hazards. As the necessary legislation already exists, unions could be(come) key actors in implementing the related rules in practice – provided they make this a strategic priority in the years to come.

Risk assessments could also be crucial in the context of another major development likely to change the world of work and heighten the importance of OSH: climate change. The International Labour Organization is forecasting that, by 2030, 2.2% of all working hours will be lost due to heat stress (ILO 2019). Extended heatwaves will thus confront many industries with unprecedented difficulties, requiring sustained and coherent strategies for risk anticipation and mitigation.

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<sup>1</sup> These documents were brought together on 30 August 2020 in a “national protocol to ensure the health and safety of employees in companies faced with the Covid-19 epidemic”, which has since been regularly updated.