

Kurzarbeit – then, now and tomorrow

I. INTRODUCTION

Kurzarbeit (short-time work scheme) as an alternative to redundancy is a social insurance programme based on the reduction of employees' working time and wages, whereby the state covers the staff costs. This labour scheme was first applied in Germany in 1910. Mrs. Diana Hamarová and Mr. Andrej Rolfes, lawyers from the law firm SOUKENÍK ŠTRPKA, s. r. o., deal with Kurzarbeit in Germany and in Slovakia. In this article, they highlight the most significant changes that were made to this social insurance programme after the COVID-19 outbreak.

II. KURZARBEIT IN GERMANY

Generally, in order to be eligible for Kurzarbeit, employers needed to prove to the respective employment agency that they had a substantial loss of work, which:

- had to be caused by an economic reason or an unavoidable event;
- could not be prevented, i. e. the employer exhausted all feasible options concerning the regulation of working time;
- had to be temporary;
- had to significantly jeopardise the company's employment, i. e. at least one-third of the workforce was affected by a loss of working hours of at least 10%.

Furthermore, the employee had to have social insurance. The short-time work allowance was based on the amount of net pay lost. In principle, short-time employees received a full wage for the worked hours from the employer and a short-time work allowance for the hours not worked, amounting to 60% of the standard net remuneration, from the State. Employees who had at least one child living in their household received a short-time work allowance amounting to 67% of the standard net remuneration. Normally, the



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short-time work allowance could be received over the course of 12 months (with a possibility of prolongation by the respective authority of up to 24 months).

During the COVID-19 pandemic, the German government was forced to tweak the above rules and make them more flexible to offer a more attractive and accessible option. For a limited period, from March 1, 2020 to December 31, 2020, it is sufficient if the employer can prove to the employment agency that there has been a "substantial" cut in working hours. The threshold for a "substantial" cut in working hours has been reduced from one-third to 10% of the workforce. Furthermore, the short-time work allowance has also increased as follows:

Length of receiving allowance	Amount of allowance
from 1 st to 3 rd month	60% of the net pay lost
from 4 th to 6 th month	70% of the net pay lost
from 7 th month	80% of the net pay lost

Provided that the employee lives with at least 1 child in a common household, the short-time work allowance is 7% higher. The period for which this allowance may be received was extended to up to 21 months – ending on December 31, 2020 (when Kurzarbeit started before or on December 31, 2019).¹ The short-time work allowance may be calculated from the maximum salary of € 6,900 (gross per month).²

III. KURZARBEIT IN SLOVAKIA

Currently, the law of the Slovak Republic does not regulate Kurzarbeit as a legal institute. Prior to the COVID-19 outbreak, the Ministry of Labour, Social Affairs and Family of the Slovak Republic supported employment with a job retention bonus amounting to 50% of the employee's monthly wage compensation, up to a maximum of 60% of the average monthly wage of the employee contributing to the Slovak economy for the previous year. Generally, the employers were entitled to receive this allowance if they retained job(s) even in the case of temporary limitation of the employer's operational activities caused by persisting substantive operational reasons.

Within the First-aid package, the Slovak government has introduced "Kurzarbeit" as a temporary measure to help the economy, which has been weakened by the coronavirus pandemic. Currently, the following employers are entitled to the allowance:

- employers with a significant reduction in turnover;
- employers whose employees are unable to work on behalf of the employer (temporary "Kurzarbeit" scheme).

Starting on October 1, 2020, the allowances within the First-aid package are as follows (legal status valid as of October 30, 2020):

- 80% of the total labour costs, capped at € 1,100 per month for one employee, or
- flat-rate contribution depending on reduction in turnover, capped at € 810 per month for one employee.

Moreover, the employers who interrupted their operations under the order of the Public Health Office of the Slovak Republic are entitled to receive an allowance amounting to 80% of the total labour costs, capped at € 1,100 per month for one employee. These allowances are covered by taxes and EU funds.

Looking ahead, the Slovak government intends to establish Kurzarbeit as a permanent institute covered by unemployment insurance according to the German model effective until the COVID-19 outbreak. The current amount of social security contributions should remain unchanged, but a special social fund for short-time work as a main financial source for Kurzarbeit should be created. These changes will likely take place in 2022.

IV. CONCLUSION

Kurzarbeit is an excellent crisis management tool supporting employment, the retention of firm-specific human capital and aggregate demand. On the other hand, some economists argue that Kurzarbeit reduces labour market flexibility and competition, and keeps obsolete jobs.³ However, regardless of the negatives of short-time work, we believe that Kurzarbeit should be a stable part of our legal system. We welcome the commitment of the Slovak government to establish Kurzarbeit as a permanent legal institute under the standard German model. Nevertheless, the effectiveness of the Kurzarbeit scheme will depend on its final legal regulation, particularly on the preconditions of the provision of the short-time work allowance.⁴

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¹ For more information: https://www.bmas.de/SharedDocs/Downloads/DE/kug-faq-kurzarbeit-und-qualifizierung-englisch.pdf?__blob=publicationFile&v=2.

² For more information: <https://cms.law/en/media/local/cms-hs/files/publications/newsletters/corona-faq-reduced-working-hours>.

³ For more information: <https://www.imf.org/en/News/Articles/2020/06/11/na061120-kurzarbeit-germanys-short-time-work-benefit>.

⁴ This article is based on the legal status valid as of October 30, 2020.