Global HR Lawyers
Ius Laboris

Ius Laboris Webinar

Executive pay in the time of COVID-19

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SPEAKERS

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WHY TALK ABOUT EXECUTIVE PAY NOW?

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INTRODUCTION

- Impact of COVID-19 on executive pay
- May become visible in annual remuneration reports to be published soon
- Topic for the general assembly season in the spring?
- Regulation of executive pay is not going away

TRANSPARENCY: THE PAY REPORT

TRANSPARENCY: THE PAY REPORT

INTRODUCTION

- What is disclosed?
  - Collective or individual disclosure?
  - Link between variable pay and company strategy
- Pay ratio disclosure
- Does disclosure have an impact on pay levels?

ITALY – TRANSPARENCY: THE PAY REPORT

DETAILS

Sector-specific rules:

- Banks and financial institutions
- Insurance companies
- Listed companies

Collective disclosure:

- Online - for listed companies: in due time (21 days) before the annual shareholders' meeting
- To the relevant bodies governing the sector locally (Banca d'Italia for credit institutions and banks, and IVASS for insurance companies)
- to the shareholders during a shareholders' meeting (for their approval)
  - For banks, credit institutions and insurance companies: at least yearly
  - For listed companies: according the duration of the remuneration policy, when it is amended and at least every three years or the shortest period provided for in specific provisions

Detailed information on pay policy:

- criteria to identify risk takers and personnel to whom the various regulations apply
- the pay-mix, i.e. the ratio between variable and fixed pay
- the variable pay structure
- deferral of payments
- clawback and malus mechanisms
- a description of the amounts paid in the previous year
- golden parachute

USA – TRANSPARENCY: THE PAY REPORT

DODD-FRANK ACT AND PAY RATIO DISCLOSURES

- Section 953(b) of the Dodd-Frank Act instructed the Securities & Exchange Commission to adopt rules requiring reporting companies (publicly listed companies) to disclose pay ratio.
- The pay ratio rule requires reporting companies to disclose in their proxy and information statements, annual reports on **Form 10-K**, and **registration statements**:
    - the median annual total compensation of all company employees other than the chief executive officer (CEO)
    - the CEO's total compensation
    - the ratio between these two numbers
- The fallout from the 2019 novel coronavirus disease (COVID-19) pandemic for companies and their workers, including furloughs, layoffs, and compensation changes (whether reductions or increases), will complicate the pay ratio process.

RUSSIA – TRANSPARENCY: THE PAY REPORT

MANDATORY REPORTS

A listed company must file a pay report, that includes:

- information on the amount of pay, bonuses and (or) compensation of expenses payable to each management body of listed companies (except for the general manager if this is an individual) within the accounting period
- general provisions of the listed company’s pay policy and (or) expenses policy

The following joint-stock companies must disclose information about executive pay:

- public joint-stock companies
- certain non-public joint-stock companies:
  - if the number of shareholders exceeds 50
  - if the company has publicly placed bonds or other issued securities, except those converted into shares

SHAREHOLDER ‘SAY-ON-PAY’

SHAREHOLDER 'SAY-ON-PAY'

INTRODUCTION

- Shareholders' Rights Directive II (SRD II) is now implemented in the EU – this calls for approval of pay policies within listed companies

ITALY – SHAREHOLDER ‘SAY-ON-PAY’

NEW PRINCIPLES IMPLEMENTED

- Binding vote of the shareholders on the pay policy
- Advisory vote of the shareholders on remuneration paid/granted in the previous year
- The pay policy governs the remuneration of the supervisory bodies’ members (auditors)
- The policy can be derogated from only in exceptional, temporary and limited circumstances, which must be set out in the policy itself
- **Resolution of the Italian Authority for Companies and for the Stock Market (CONSOB),** includes information on:
  - any exceptions to the pay policy
  - the application of *ex-post* correction mechanisms for variable pay (malus and clawback)
  - a comparison between annual changes in the pay of top managers, company results and the pay of employees in the last five years
  - the fixed and variable remuneration ratio
  - performance targets reached, compared to those envisaged
  - severance

USA – SHAREHOLDER 'SAY-ON-PAY'

DODD-FRANK ACT SAY ON PAY

- The Dodd-Frank Act includes provisions that offer stockholders a non-binding advisory vote on certain aspects of executive compensation. Because this is part of the proxy rules, the 'say-on-pay' vote requirements are not applicable to non-US issuers.
- At least once every three years, listed companies must submit a resolution for stockholders to approve the compensation of executives, as disclosed in the proxy statement under Item 402 of Regulation S-K.
- At least once every six years, listed companies must include a separate resolution for stockholders to vote on whether this 'say-on-pay' vote should be held every one, two or three years.
- However, the two types of 'say-on-pay' votes do not:
    - bind the company
    - overrule any decisions made by the company or its board
    - create any new fiduciary duties or change any existing fiduciary duties of the company or its board or
    - restrict stockholders' ability to issue any other proposals regarding executive compensation

RUSSIA – SHAREHOLDER ‘SAY-ON-PAY’

APRROVAL OF PAY

- **Limited Liability Companies (LLC):** Statutory obligation of the general assembly of shareholders or board of directors (if any) to approve the pay of executives (CEO or Management Board members)
- **Joint Stock Companies (JSC):** No statutory obligation. However, JSC follow the Corporate Governance Code recommendations
- **The Corporate Governance Code recommends to: (1)** approve the pay policy of the members of the board of directors, executive bodies (CEO) or other key managers by the board of directors; **(2)** establish a pay committee to approve the pay policy.
- **Major transactions or interested-party transactions:** employment and other contracts with CEOs and other employees setting out their pay and benefits, including bonuses, incentives and severance pay may be recognized as ‘major transactions’ or ‘interested-party transactions’ that require corporate approval

FINANCIAL SECTOR EXECUTIVE PAY REGULATION

FINANCIAL SECTOR EXECUTIVE PAY REGULATION

INTRODUCTION

- What has been the impact of:
  - caps on variable pay
  - caps on severance pay
  - deferral and payment in financial instruments
  - malus and clawback

ITALY – FINANCIAL SECTOR EXECUTIVE PAY REGULATION

FINANCIAL SECTOR RULES

- **Pay-mix:** variable remuneration cap is 100% (and possibly up to 200%) of fixed remuneration
- **Malus and clawback mechanisms:** are mandatory
- **Financial instruments:** must account for 50% of variable pay
- **40% (or 60% if the variable pay is significant)** needs to be paid at least 3-5 years afterwards
- **The rules on variable pay:** apply to golden parachutes
- **Consequences:**
  - pay plans must be drafted in compliance with the new rules
  - agreements on executives' severance are considered void if they do not meet all the requirements
- **Less strict rules:** for smaller, less complex credit institutions may be introduced

USA – FINANCIAL SECTOR EXECUTIVE PAY REGULATION

DODD-FRANK ACT REQUIREMENTS FOR FINANCIAL INSTITUTIONS

- The Dodd-Frank Act imposes additional disclosure and reporting requirements relating to executive compensation on ‘covered financial institutions’ with more than USD 1 billion in assets.
- In 2011, the federal regulators approved a joint rule proposal on incentive-based compensation:
    - prohibit incentive-based compensation arrangements that encourage inappropriate risk by providing excessive compensation or that could lead to material financial loss, both according to standards set by the rule
    - require at least 50% of incentive-based compensation be deferred over a period of at least three years for certain individuals at covered financial institutions with total consolidated assets of USD 50 billion or more and
    - require covered financial institutions to submit an annual report describing their incentive-based compensation structures to the SEC and maintain policies and procedures, approved by the institution's board, governing the award of incentive-based compensation.
- In, 2016, the National Credit Union Administration issued a re-proposal of the 2011 rules that established a uniform set of enforceable standards that apply to a larger group of financial institutions than the 2011 Proposal and divided them into three categories based on asset size.

RUSSIA – FINANCIAL SECTOR EXECUTIVE PAY REGULATION

PAY CAPS IN RUSSIAN CREDIT ORGANISATIONS

- At least 40% of the total target pay of the members of the executive bodies and other employees taking risks must be variable; for employees of compliance departments and risk management departments, fixed pay must comprise at least 50% of their total pay.

SEVERANCE PAYMENT IN RUSSIAN CREDIT ORGANISATIONS

- The amount of severance pay cannot be random
- In the case of employment termination as a result of insolvency, severance pay for the CEO, his/her deputies, members of the collegial executive bodies, the chief accountant and his/her deputies, must be at least three months' average salary.

DEFERRAL PAYMENTS IN RUSSIAN CREDIT ORGANISATIONS

- At least 40% of the variable component of pay must be deferred
- Internal policies must provide for the option to reduce or eliminate a variable portion of the remuneration if the financial result is negative, either in general or within a particular business activity.

GENDER EQUALITY

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INTRODUCTION

- Gender quota on Boards
- Gender pay-gap reporting

ITALY – GENDER EQUALITY

POSITIVE DISCRIMINATION

- **2/5** of appointed directors must be of the less-well represented gender on the BoD of listed companies
- The Bank of Italy's intention to introduce a **gender pay neutrality principle** (i.e. remuneration policies must be neutral with reference to gender) as a requirement of remuneration policies for credit institutions
- The Code for Equal Opportunities between Women and Men provides an obligation on companies employing more that 100 employees to report on gender issues (including salaries paid, the number of each gender hired by the company, job qualifications, dismissals and the retirement of male and female employees) at least every 2 years

USA – GENDER EQUALITY

POSITIVE DISCRIMINATION

- California was the first US state to adopt a mandatory gender quota, requiring all national and foreign companies headquartered in California to have at least one female director on their board by the end of 2019.
- By the end of 2021, California will require two female directors to be appointed to boards with five members; three female directors will be required to sit on boards of six or more members.
- The California statute is non-criminal, but penalties include a payment of USD 100,000 for the first violation, and USD 300,000 for each subsequent violation.
- The Equal Pay Act prohibits gender-based wage discrimination in the United States and mandates equal pay for equal work by forbidding employers from paying men and women different wages or benefits for doing jobs that require “equal skill, effort, and responsibility, and which are performed under similar working conditions.”
- The law also includes guidelines for when unequal pay is permitted, specifically on the basis of merit, seniority, workers’ quality or quantity of production and other factors not determined by gender.

RUSSIA – GENDER EQUALITY

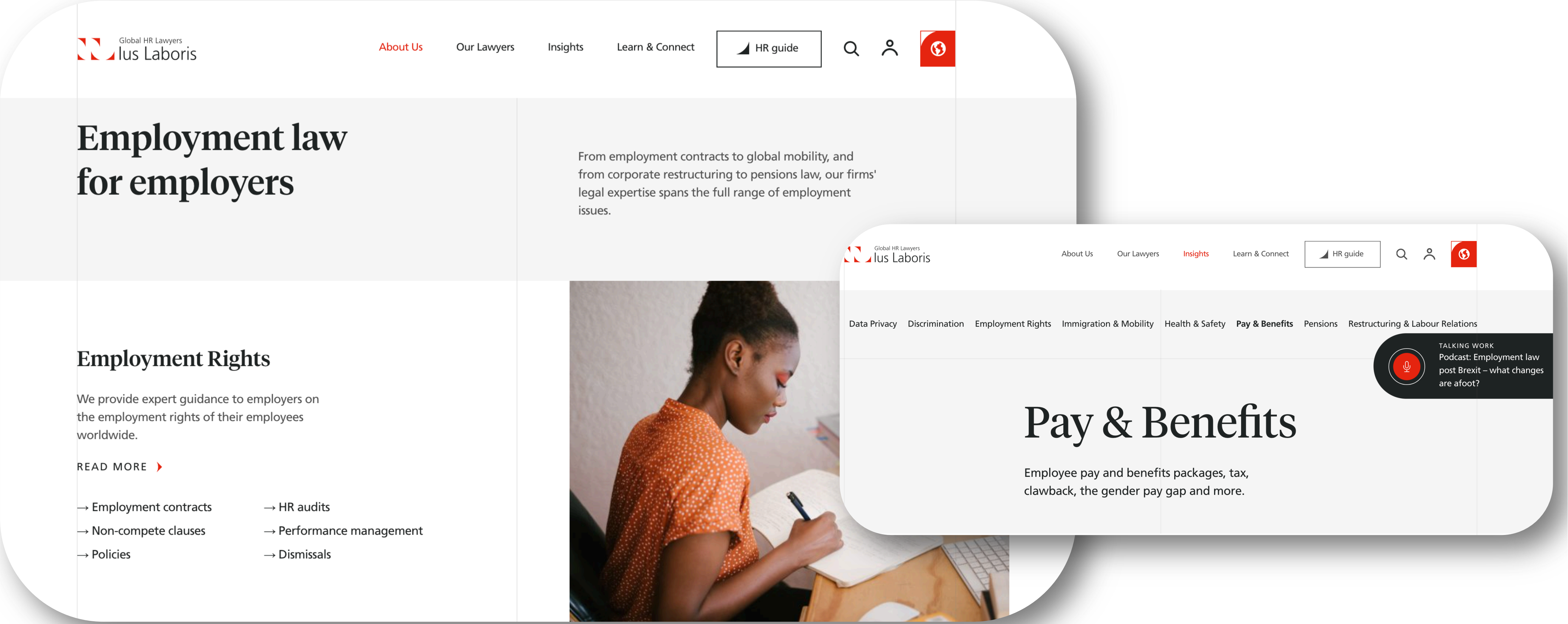
NO SPECIAL REGULATION IN RUSSIA

There are no special requirements on gender equality in Russia, however:

- A general prohibition of discrimination on any grounds not related to professional skills and qualities is set out in Russian labour law
- The principle of equal opportunities and equal pay for labour is provided by the Russian Constitution and Labour Code
- There is a requirement to increase salaries according to the increase of prices for goods and services for all employees on a non-discriminatory basis

IUS LABORIS WEBSITE

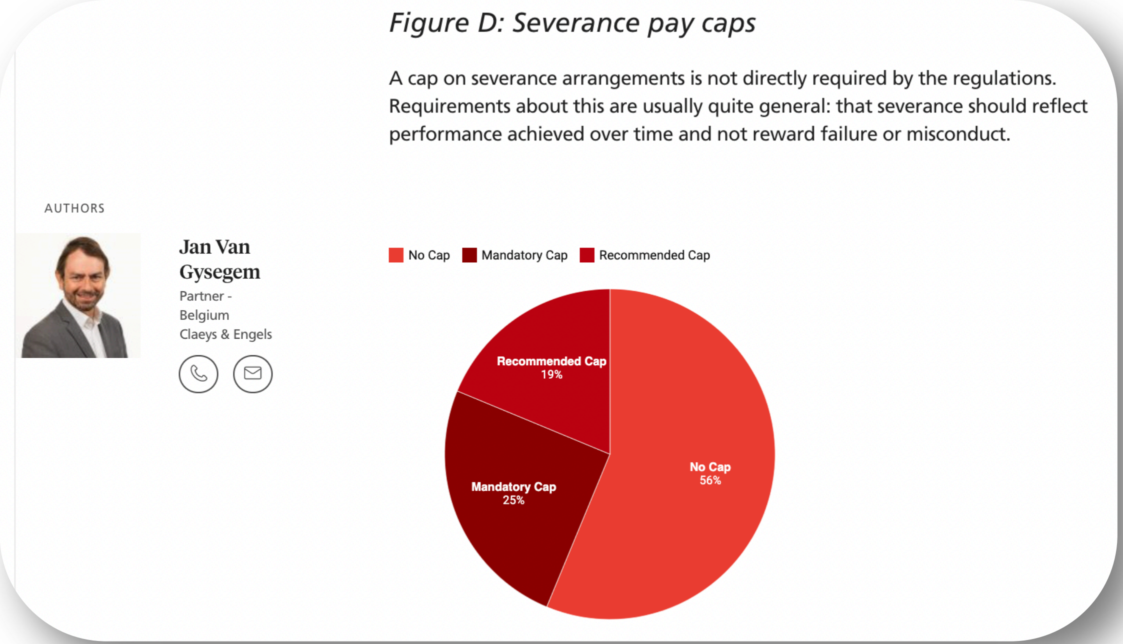
Website (Pay & Benefits): https://iuslaboris.com/topic/compensation-benefits/

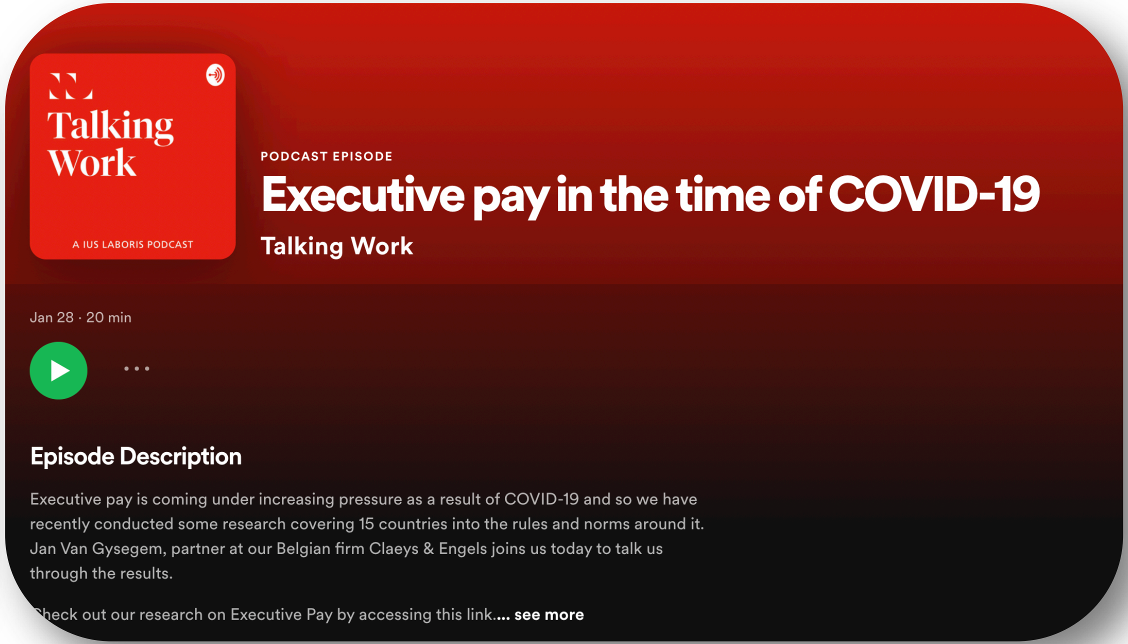


MORE ON EXECUTIVE PAY

Report: https://iuslaboris.com/insights/executive-pay-and-the-challenges-for-boards-of-directors/

Podcast: https://open.spotify.com/episode/6zurvVdtTNttYnU4ukaaoy?si=OSWIY1ybRb2jGiDj5Wb5WA





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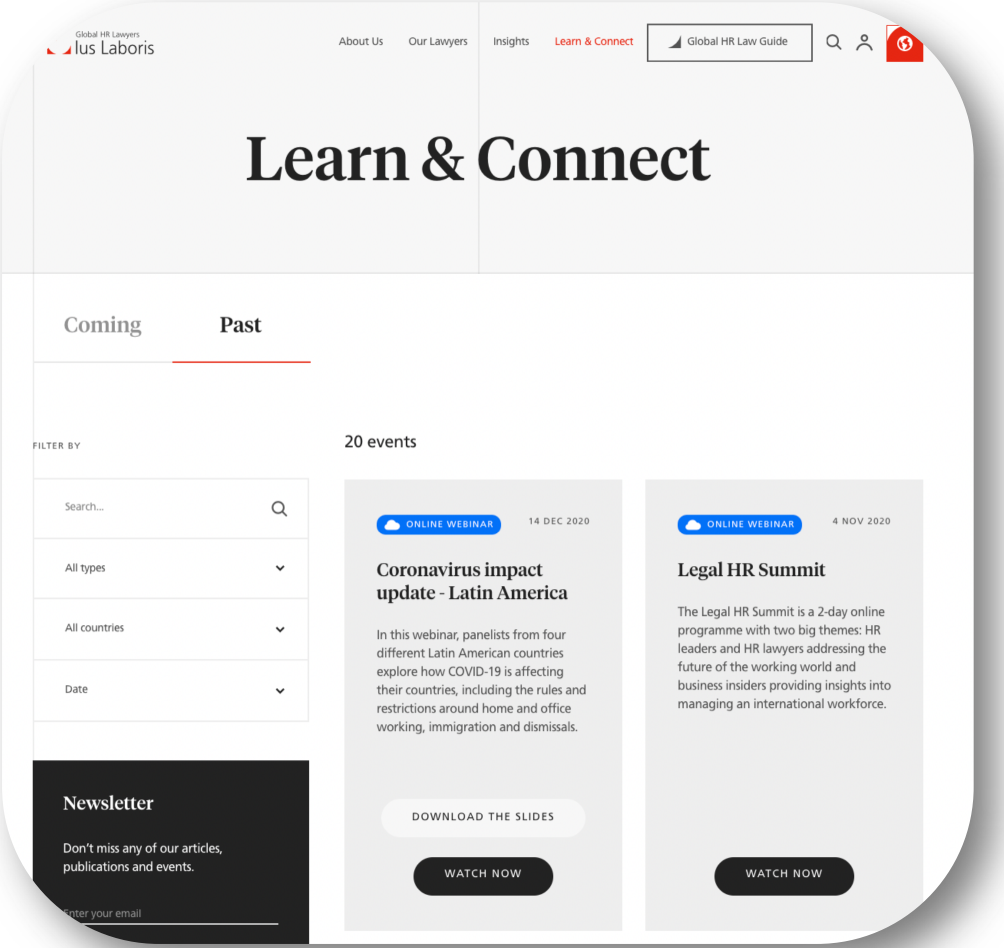

Also on YouTube:
https://www.youtube.com/playlist?list=PLeUyNj3RGNKRA_nf47k-BTvO-8mBHNApF