Studien aus dem Max-Planck-Institut
für Sozialrecht und Sozialpolitik

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Ulrich Becker | Anika Seemann (Eds.)

Protecting Livelihoods

A Global Comparison of Social Law Responses to the COVID-19 Crisis

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Open Access funding provided by Max Planck Society.

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at http://dnb.d-nb.de

ISBN 978-3-8487-7490-6 (Print)
978-3-7489-3281-9 (ePDF)

British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-7490-6 (Print)
978-3-7489-3281-9 (ePDF)

Library of Congress Cataloging-in-Publication Data
Becker, Ulrich | Seemann, Anika
Protecting Livelihoods
A Global Comparison of Social Law Responses to the COVID-19 Crisis
Ulrich Becker | Anika Seemann (Eds.)
540 pp.
Includes bibliographic references.

ISBN 978-3-8487-7490-6 (Print)
978-3-7489-3281-9 (ePDF)

1st Edition 2022

Published by
Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden
www.nomos.de

Production of the printed version:
Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden

ISBN 978-3-8487-7490-6 (Print)
ISBN 978-3-7489-3281-9 (ePDF)
DOI https://doi.org/10.5771/9783748932819

Onlineversion
Nomos eLibrary

Preface

The present study is the result of the second phase of a project that was initiated in March 2020, at the beginning of the COVID-19 crisis. A first publication in May 2020 dealt with early social policy reactions to this crisis in five jurisdictions; an updated version followed in November 2020.

After extending the period of research and broadening its scope, the present study describes, categorises and analyses the policy responses to the pandemic crisis in twenty-one countries, focusing on those legislative and administrative measures that can, directly or indirectly, be attributed to "social law" in the sense of social protection law. With this focus in mind, our study examines how the welfare state has reacted to the COVID-19 crisis.

The measures examined are characterised by their variety and their rapid changeability. It is difficult to keep track, in particular if one wants to include the whole range of measures that were adopted. For this reason, we had to concentrate only on specific aspects of the crisis response, namely job retention, supporting the economy (with a particular focus on the self-employed) and access to social protection.

Our stocktaking reflects the situation as of November 2021, sometimes going beyond (the hyperlinks were last checked at the end of April 2022). This was before the Omicron variant had taken over and restrictive measures were wound down.

The publication of this book would not have been possible without the help and dedication of our colleagues. First of all, we would like to thank the authors for their participation in, and their commitment to, the project. The cooperation was always smooth and a real pleasure. We are also grateful to Christina McAllister for proof reading, as well as to Matthias Elbert and Chantal Urban for their help with editing.

Munich, May 2022

Ulrich Becker
Anika Seemann

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I. Social Policy and Social Law in Times of Crisis: An Introduction

Ulrich Becker

1. Crises in the Social Market Economy

The COVID-19 crisis is changing our world. The measures taken to tackle it have not only led to restrictions of freedom and temporary social isolation. They have also plunged the global economy into a deep recession. Even if its extent cannot yet be predicted[1] – it will leave deep scars.

Deliveries are cancelled at short notice, production comes to a standstill, and the demand for products and services suddenly stops. Companies and self-employed persons are affected in different ways. While – as in most crisis situations – some even benefit from it, others are left without a job and income overnight. In any case, the measures taken to fight the pandemic will only be temporary, even if the process may take longer than many expected when the measures were first implemented, and the economy and society will recover. What the long-term repercussions of the interim shutdowns will be and what the 'New Normal' will look like is hardly foreseeable today. Nevertheless, in times of crisis it is an obvious strategy not to leave the economy to its own devices, but to maintain instead capacities and to ensure that they can be used again later. However, this can be pursued in different ways and with various degrees of vehemence. In this respect, the corona crisis is no different from any other economic slumps triggered by external shocks.

A look at the development of the unemployment rate before, during and after the financial crisis of 2008, which is shown below, is revealing: The curves can be seen as symbolising different social policy approaches.

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1 In its Spring 2020 Economic Forecast, the European Commission was expecting a corresponding decrease by 7.75% in the euro area, by 7.5% in the EU and by 6.5% in Germany. Projections went down in the Summer 2020 Economic Forecast with an expected decrease by 8.7% in the euro area, by 8.3% in the EU and by 6.25% in Germany. The OECD Economic Outlook Interim Report September 2020 came under the header "less pessimistic, but risks and uncertainty remain high" with a forecast of -7.9% for 2020 and +5.1% in the euro area.

The divergence between social models is well reflected in the data for Germany and the USA[2]. While in Germany attempts were made to keep unemployment low through labour and social law measures, the USA banked on "*hire & fire*" or rather, after the beginning of the crisis, on "*fire & hire*". Of course, it is also crucial how, i.e. in what form and to what extent, support is provided to those who have lost their jobs.[3] More generous compensation payments may, under certain circumstances, balance out this loss. To that effect, "*flexicurity*" has been promoted by the European Commission as a combined model[4] within the framework of the common employment policy, i.e. a shift from "workplace security" to "employment security". This is intended to allow more flexibility on the labour market and emphasises the link between protection against dismissal and social security, however without providing a uniform model for its concrete balancing. In the context of the European Semester[5], this goal seems to have lost its significance. It is now pursued to a lesser extent, and other aspects have gained more importance.[6]

In times of crisis-related recessions, balancing employment protection is back on the agenda, but the starting points shift: Whereas the amount of income replacement in the form of social benefits continues to play a role – as higher benefits tend to strengthen social security – it is clear that the question whether, and how, to maintain jobs and companies is not one of organising a social market economy under normal conditions, but rather one of how to react to a major external shock. In other words, in times of crisis it is not only internalising approaches (relying on the existence of employment relationships by restricting dismissals) and externalising approaches (relying on state-organised benefits)[7] to solving the problem that oppose each other. The question is rather whether and how externalising measures are used to tackle the crisis.

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2 OECD Data.

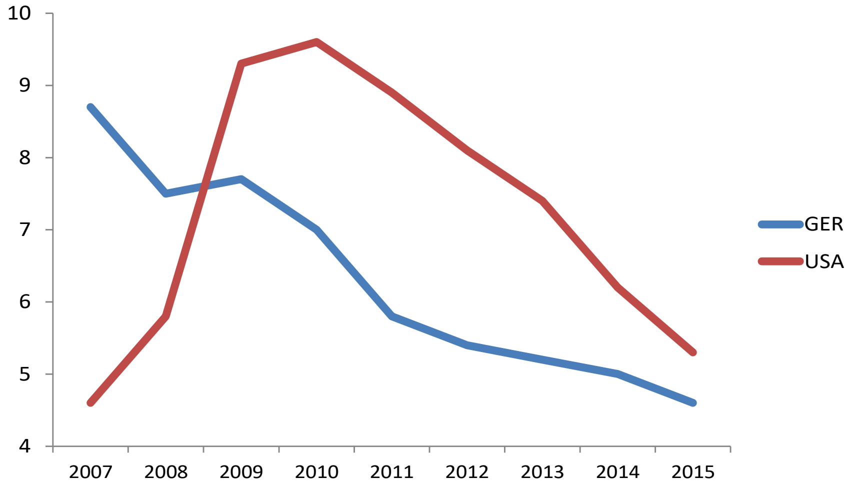
3 Cf. also *Quade*, Verantwortung und ihre Zuschreibung im Recht der Arbeitsförderung, 2009.

4 COM(2007) 359 final.

5 Cf. Annual Strategy for Sustainable Growth 2020, COM(2019) 650 final.

6 Cf. Proposal for a Joint Employment Report from the Commission and the Council accompanying the Communication from the Commission on the Annual Sustainable Growth Strategy 2020, COM(2019) 653 final, pp. 132 f. (the term is mentioned only once in a total of 169 pages).

7 On these variants of social protection, see *Zacher*, Grundtypen des Sozialrechts, in: FS für Zeidler, pp. 571, 579 f.

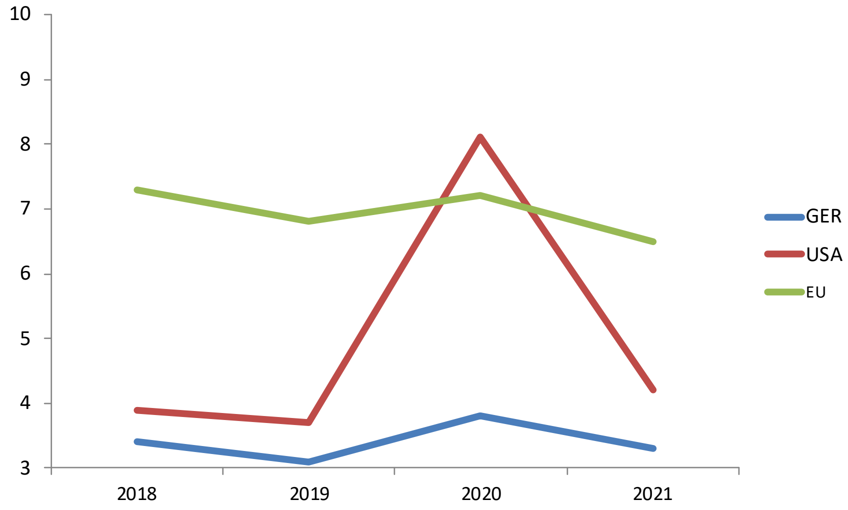


Such measures are particularly revealing in relation to the welfare state and the concrete functioning of social market economies because they combine social policy and other economic policy objectives. This has already been emphasised above for labour market policy: Here, wage replacement benefits are used not only to help people who have to bridge involuntary non-productive work time to support themselves, but also in order to preserve jobs. The situation is similar for companies that are to be kept running by way of liquidity assistance in the form of grants or subsidies. What is referred to here as economic policy, or more precisely structural policy, is possibly (at least in the current crisis) a social policy matter at its core. Benefits to companies and the self-employed can, above all, serve to compensate for losses: namely in cases where disease control has necessitated the closure of businesses and has thus led to a loss of income.

It is remarkable that, as far as the labour market and the unemloyment rates are concerned, the outcome of the measures to combat the pandemic confirm, again, the differences in social models – which also holds true for the situation within the EU as a whole, even if unemployment rates have, over the last years, been higher on average than in Germany.[8] If, however, despite social policy interventions, companies have to close and jobs are lost, the question arises as to whether the existing social benefits to cover loss of earnings and livelihoods suffice or whether special arrangements should be introduced during the crisis. Such changes allow further conclu-

8 OECD Data. Data for 2021 are those of Quarter 4, which are below yearly average.

sions to be drawn about the distribution of individual, societal and state (or in general: political communities') responsibilities in times of crisis. They can also call into question the existing divisions of responsibility, or they can confirm them with the argument that states of emergency also require exceptions under social law – depending on the justification and systematic classification of these exceptions. In this sense, the crisis is like a magnifying glass making the strengths and weaknesses of social protection arrangements clearly visible.



2. *Crisis Management and Social Protection Systems*

It is important to note that the design and implementation of all crisis-related measures are subject to particular challenges. First, fast action is needed, not only to calm the financial markets, but above all to provide effective help to those affected. Second, thousands of cases need to be dealt with. In addition to the increased burden on the authorities, this means, above all, acting under uncertain conditions: typecasting replaces individualisation, as individual case assessments can rarely, or not at all, be conducted. Requirements and procedures must be kept as simple as possible. It is necessary to react to dynamic situations, the further development of which cannot be awaited, but also cannot be predicted in view of the lack of experience with comparable pandemics. Corrective measures must remain possible, even where hurried decisions taken previously will have created new facts. After all, times of crisis are not only times that require an effectively functioning state; they also require strong governments. It is true that political decision-making remains essential: restrictions on freedom must be legitimised just as much as the expansion of redistribution processes. In how far threats of the pandemic may be left to be handled by people on their own or require governmental intervention is not a simple fact but open for valuation and requires decisions, for which political responsibility must be assumed. It is also true that governments have to react effectively, and, in this sense, times of crisis may also become times of strong administrations. Effectiveness is even a justification for policing measures and other restrictions of individual freedoms although the relation between those administrative actions and constitutional rights is not free from tensions. The same holds true for the relation between administrative and legislative powers. The urgency of security measures requires flexible and efficient action. As a consequence, statutory instruments and executive (delegated) legislation is gaining ground, sometimes to an extent which risks jeopardizing prior achievements in relation to the rule of law.

In most countries, crisis-driven legislation has to be implemented, at least as far as social policy is concerned, within pre-existing frameworks of complex institutional arrangements. These arrangements open up certain paths of welfare state intervention while blocking others. In most countries, existing social policy branches are not sufficiently coordinated with one another, because they each serve individual purposes and their emergence is often the result of historical contingencies and political calculations. The challenges for short-term interventions are clear: When simple and fast-acting measures are called for, their incorporation into a given social protection infrastructure is likely to encounter difficulties, and coordination problems may arise. This is not just a question of academic interest. Different types of social protection systems are not – and should not – be chosen arbitrarily. They pursue specific aims, and they are based on different modes of financing (contributions or taxes) and different conditions of eligibility (means-tested or not). Both aspects reflect different forms of responsibilities, put into legal forms, and even if welfare states have a broad margin of appreciation when it comes to circumscribing and defining these responsibilities in the context of benefits schemes, they should act consistently once the schemes have been set up. The legitimacy of their interventions depends essentially on compliance with this consistency, both from an economic and a constitutional point of view and in terms of perceived justice.

Of course, crisis-related measures may be constructed in a way which modifies some of the principles of previously existing benefits schemes, and it is sometimes not clear whether such modifications occur intentionally or not. One may assume that they are a reaction to crisis-driven changes concerning the societal background of specific social protection systems. To give an example, it can make a difference for the design of a social assistance scheme whether it is meant to be applicable under extraordinary circumstances only, or whether it actually covers a majority, or at least a substantial part, of the population on a more long-term basis – which may well be the case once indigence, and not just the fear of economic decline, actually reaches the middle class. Such developments may help to overcome continued (now often semantic) distinctions between those in need who deserve more and those who deserve less[9], as was done especially in England in the 19th century ("deserving and undeserving poor"),[10] and as has been widely discussed in US welfare policy.[11] Yet, if measures to improve access to social assistance are only implemented in order to overcome a crisis and not to modify the structure of a protection system as such, because a pre-existing stigma related to such schemes persists, this leads to the question of whether a distinction between different categories of "poor" still operates in the background of those systems – despite the fact that they should have opened up possibilities to all without

9 The distinction is indeed made; cf. in connection with a normative justification of the minimum wage *Blumkin/Danziger*, Deserving Poor and the Desirability of a Minimum Wage, IZA Journal of Labour Economics (2018) 7:6.

10 The distinction gained significance due to the changes introduced to Elizabethan poor law in the course of the industrial revolution through the English *Poor Law Amendment Act* of 1834, to which the foundation had already been laid in the *old poor law*, cf. 1601 *Poor Relief Act*, Introduction: "to set the Poor on Work: And also competent Sums of Money for and towards the necessary Relief of the Lame, Impotent, Old, Blind, and such other among them being Poor, and not able to work, and also for the putting out of such Children to be apprentices". It is questionable, however, whether the workhouses did actually function to this extent; cf. *Smith*, A Letter to the People of England in Behalf of the Deserving Poor, 1838, p. 3 (LSE Selected Pamphlets): "The deficiency of our workhouse system is, that its classification has no reference to character, and the consequence is that there is little difference made between the good and the bad, the deserving and the undeserving …". Cf. also *Poor Law Commissioners' Report of* 1834, II.1.5.: "But in no part of Europe except England has it been thought fit that the provision, whether compulsory or voluntary, should be applied to more than the relief of *indigence,* the state of a person unable to labour, or unable to obtain, in return for his labour, the means of subsistence. It has never been deemed expedient that the provision should extend to the relief of *poverty;* that is, the state of one, who, in order to obtain a mere subsistence, is forced to have recourse to labour."

11 Cf. *Moffit*, The Deserving Poor, the Family, and the U.S. Welfare System, Demography (2015) 52, pp. 729-749.

any moral underpinning, and although the egalitarian concept of human dignity obliges the state to secure the livelihood of all citizens in the same manner.

In any case, crisis-related social policy measures shed light on the background of social protection schemes and underlying ideas of how to delineate the spheres of responsibility between the individual, societal institutions and the political community. There is one type of social benefit which – in a certain way – is most directly based on the differentiation of those spheres of responsibility, which is public compensation. It is not always recognised as a specific category of social benefits,[12] although it should be as it is based on a specific reason for supporting people. It is true that the actual use of respective benefits schemes differs from one state to the other, and also the way in which they are typically organised at a national level does not follow one universal model.[13] Yet, at least two kinds of compensation benefits are well-established all over Europe: one being compensation for war victims, the other compensation for victims of crimes, and the latter also has a basis in European law[14]. The common background of such benefits is that a person suffers a damage and that the community (regularly the state) bears a responsibility for the situation that has caused this loss. In some cases, not least in the case of victims of crime, one may ask why a community should be held responsible at all. The reason is that such compensation serves to maintain a peaceful social order whenever the state claims a monopoly on the use of force.[15] Even though it is often disputed or questioned because the community's responsibility does not follow from state liability, it can be based on the general assumption that a welfare state has to maintain the legal and social order and to support individuals if they suffer from extraordinary losses. Such responsibility may follow from an obligation of the welfare state to take the appropriate measures although most governments would assume

12 It is not by chance that the term "social compensation" has been put in brackets on the internet site of the European Commission providing general information on social protection in Germany.

13 *Becker*, Soziales Entschädigungsrecht, 2018, p. 63 et seq.

14 See European Convention on the Compensation of Victims of Violent Crimes, ETS No. 116; Directive 2004/80/EC relating to compensation to crime victims of 29 April 2004 (OJ L 261/15); also Directive 2012/29 EU establishing minimum standards on the rights, support and protection of victims of crime of 25 October 2012 (OJ L 315/57). See also the European Commission's EU Strategy on victims' rights.

15 Whereas it is not the obligation to protect people's lives cf. *Becker*, Soziales Entschädigungsrecht, 2018, p. 107 et seq.

that they are rather free to act; in any case, there is no individual right to a compensation benefit without a political decision that has been put into a respective act. Things are different if the state is liable for a damage. Liability requires first that damages have been caused by governmental actions, and second that the state either did wrong, has to guarantee for a specific result (in the sense of strict liability) or had caused individual damages that go beyond the general risks of the vicissitudes of life. The first requirement is often not easily established, as demonstrated in particular by cases in which vaccination is recommended by administrative authorities.[16] In cases of a pandemic crisis, states cannot, at least in most cases, be held responsible for the outbreak of a virus; but a causal link can be established between damages and governmental actions if states impose a lockdown. What will be missing though, is the second condition, at least if lockdown measures are lawful and address major parts of the population. It follows therefore that if a state assumes a legal responsibility for the effects of a pandemic crisis by granting compensation for crisis-related damages and losses, it does so as an expression of its obligations arising from the social state principle.

Various types of compensation benefits tend to follow from major crises.[17] Their actual legal construction may differ according to national traditions of social policy interventions. They may be accompanied by additional types of social benefits and measures, in particular making social security and social assistance benefits available under easier conditions, and they may thus go beyond compensation in the proper sense. In any case, different state interventions made in the present crisis suggest – to varying degrees – that individuals were not held responsible for economic difficulties and that the mechanisms of the market economy were temporarily suspended. Whether they will lead to permanent changes, despite their temporary nature, and whether the crisis leads, in turn, to societal changes to which welfare states have to react by adopting their social benefits systems remains to be seen. This brings us back to the initial question, namely what can be learned from the crisis with regard to the basic structure of the welfare state.

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16 See decision of the Spanish *Tribunal Supremo*, Sala de lo Contencioso, Sección 4, Rec 6878/2010 of 9 October 2012; decision of the Italian *Corte Costituzionale* No. 107/2012 of 16 April 2012.

17 Cf. *Becker*, Soziales Entschädigungsrecht, 2018, preface (p. 5).

3. Questions and Foci

To provide answers, the following chapters illustrate which measures and strategies selected countries have chosen to react to the coronavirus crisis in order to secure economically endangered livelihoods through state intervention. Stocktaking and analysis face a double difficulty: on the one hand, the range of measures is very wide; on the other hand, these measures tended to change within a very short period of time because the lack of suitable blueprints and of experience required constant adjustments.

As to the first point, the study focuses on state support in the form of payments. It is based on three layers of measures.

- The first is labour market policy, where job security and the securing of wages interact. Such measures include internalising and externalising approaches (see I.1.), regulations of employment relations through labour law and the provision of social benefits through social (protection) law. We do not cover questions of general contractual and insolvency law. There are a wide range of crisis-driven changes in these areas, and they also concern the distribution of legal responsibilities in that they concern the existence and suspension of contractual obligations in times of crisis. From a social security perspective, however, these legal responses to crisis-related changes in certain circumstances are a separate matter, as their outcome decides on whether social needs evolve or not. We make only passing reference to functionally equivalent tax law provisions and to regulations for groups of people who are subject to specific social law provisions in all countries, namely students, artists and persons with disabilities.
- A second layer deals with the maintenance of economic activity in general through the granting of subsidies and aids. At first glance, they may form part of economic policy. But they have also to be characterised as social policy measures as the question arises to what extent they are (also) motivated by the assumption of a community responsibility to compensate for damages.
- The third form of intervention concerns measures to facilitate, and to open up, access to social protection.

All those measures will be analysed in light of two questions: (1) how they relate to existing social protection regimes, and (2) to what changes they lead in existing social protection, not only through financial transfers per se, but also through their design in the context of the systematisation, functionality and evaluation of welfare state interventions.

Second, and with regard to the dynamics of the measures, stocktaking remains a challenging task. Most countries experienced three or more waves of the coronavirus. That often called for a prolongation of measures that had initially been planned for only a short period of time; sometimes it also called for more far-reaching measures or new approaches. The following reports therefore provide information about a process, namely how welfare state measures were implemented and have been changed to cope with the crisis. They reflect the situation as of autumn 2021, and partly even beyond.

Even at the end of the winter of 2021/2022, it is unclear whether the pandemic is truly over, and at least some measures dealing with its consequences are still in force. At the same time, a new crisis has broken out with the war in Ukraine. As a consequence, it is hard to predict when the period of crisis-driven measures will be over, and when the world will be back to normal or even a 'new normal'. Nevertheless, every country has had to deal with the pandemic over a period of approximately two years now, and it is safe to say that, within this time span, certain patterns of social policy measures can be identified as reactions to the crisis.

4. *Phases and Countries*

a) *First Phase*

Our project started with a first phase that concentrated on five European countries. It included *Germany*, *France* and the *United Kingdom* – three states which not only pursue different social, employment and industrial policy approaches, but which have also reacted to the corona crisis with different speed and intensity. Concerning the United Kingdom, however, the study concentrates on *England* only, as after the *devolution* special regulations have come to exist in the various regions of the kingdom, the mention of which would either go beyond the scope of this publication or require separate reports. *Denmark* has been included as this allowed to bring in aspects of the Scandinavian welfare state model in general, and to answer the question of how the pandemic is being responded to in the country that has long been a pioneer of "flexicurity" (see I.1.) in particular.[18] Finally, *Italy* was the first European hotspot of the spreading

18 It is not about a potential model role of Danish policy, however; the fact that it cannot simply be transferred to Germany, and the question as to what can

coronavirus; drastic disease control measures were taken early on, and there the need for action in terms not only of health policy but also of social and economic policy became apparent very quickly. A first comparative analysis was published early, in May 2020 in German, and it gave a first systematic overview on the social policy reactions to the pandemic.[19] An updated version followed in November 2020 at the end of the first, and the beginning of the second, wave of COVID-19, allowing us to take in the first steps of a process of crisis reaction measures.[20] We also took stock of the first phase inquiry with a view to the situation of vulnerable groups of persons, focusing in particular on the differences regarding the crisis measures taken to support individuals in 'standard employment' and 'non-standard workers' in each country.[21]

What we did not include in our study was the reaction at regional level – in the sense of regional integration communities here in the European Union. The pandemic has also triggered a discussion about European solidarity and about crisis management at the European level. It raised questions such as: How should, can or must the Union react, and what do EU Member States owe to each other in terms of mutual assistance? Such discussions were familiar from earlier crises. They revolved, especially in connection with the 2008 financial crisis, around financial transfers and the introduction of a European unemployment insurance[22] but did not lead to a solution that would have got to the root of the problem. Then the pandemic hit economies that in some countries still had not recovered from this financial crisis, and although no one in the affected countries could be blamed for its outbreak, the question of national responsibility for combating it remained relevant. Different to the financial crises and despite all the controversy over the form and extent of the measures,

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particularly be learnt from it, has been the subject of numerous socio-political studies (particularly in the first decade of this millenium).

19 *Becker/He/Hohnerlein/Seemann/Wilman*, Existenzsicherung in der Coronakrise: Sozialpolitische Maßnahmen zum Erhalt von Arbeit, Wirtschaft und sozialem Schutz im Rechtsvergleich, MPISoc Working Papers Law Vol. 6/2020.

20 *Becker/He/Hohnerlein/Seemann/Wilman*, Protecting Livelihoods in the COVID-19 Crisis: Legal Comparison of Measures to Maintain Employment, the Economy and Social Protection, MPISoc Working Papers Law Vol. 7/2020.

21 *Seemann, Anika; Becker, Ulrich; He, Linxin; Hohnerlein, Eva Maria; Wilman, Nikola*: Protecting Livelihoods in the COVID-19 Crisis: A Comparative Analysis of European Labour Market and Social Policies, in: Global Social Policy (2021) 2.

22 Cf. only the chapters by *Becker* and *Potacs*, in: Hatje (ed.), Verfassungszustand und Verfassungsentwicklung der Europäischen Union, EuR supplement 2/2015, pp. 19, 31 et seq. and pp. 135, 143 et seq.

there was consensus among the Member States on one point: namely, that the EU could not refuse mutual assistance.[23] The common ground of all reactions both within states and within the EU[24] is the question how to share responsibilities between political communities and their members. Of course, the situation concerning the EU requires separate consideration, in particluar with a view to the legal framework provided by primary EU law. It should be noted though, that this law also concerns the actions of the EU Member States that, in their individual crisis management, remain integrated into this legal framework. In practice, this was and is important in two areas, namely regarding the law on state aid and the free movement of persons. While the European Commission has taken swift and effective action to ensure that internal market rules do not stand in the way of the support for the economy necessitated by the crisis[25], the Union had, at the beginning of the crisis, largely been left out of the picture when internal borders were closed. Things have improved over time, and an overall assessment would come to the result that the EU has taken the opportunity to strengthen its profile, to provide European answers to the pandemic with its 'recovery plan'[26] and 'NextGenerationEU'[27] to lay some

23 Regulation (EU) 2020/672 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak of 19 May 2020 (JO L 159/1) did not establish an EU unemployment insurance scheme but a new form of financial assistance. On 25 September 2020, the Council approved EUR 87.4 billion in financial support for Member States; overall, 19 EU Member States are due to receive a total of EUR 94.4 billion in financial support under SURE. See for the overview of the amounts disbursed so far information of the European Commission.

24 Cf. Regulation (EU) 2020/461 of 30 March 2020 amending Council Regulation (EC) No. 2012/2002 in order to provide financial assistance to Member States and to countries negotiating their accession to the Union that are seriously affected by a major public health emergency (OJ L 99/9); Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ LI 433/23); Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57/17) as a centrepeice of 'NextGenerationEU' (fn. 27).

25 Cf. on the aids declared compatible with the internal market by the Commission on the basis of Art. 107 Para. 3 lett. b TFEU; Communication on the Temporary Framework for State Aid Measures to Support the Economy in the Current COVID-19 Outbreak of 19 March 2020, C(2020) 1863 (OJ C 91I/1). Since its adoption, the Temporary Framework has been amended six times.

26 See information of the Council of the EU.

27 See the EU's 2021-2027 long-term budget.

foundations for future supranantional actions, both in the area of health policy and of financial support of Member States.

b) Second Phase

With this publication, we present the results of a second phase of our project. This phase is about broadening the investigation, first with a view to the time frame (see I.3.), second by adding experiences and analyses taken from 16 more countries.

As far as Europe is concerned, the country report on *Sweden* does not only provide more insight into reactions in Scandinavia but also into those of a country that had chosen to follow its own path of reactions to the pandemic. Observations on *Greece*, *Ireland* and the *Netherlands* help to differentiate the picture by shedding light on the reactions in three smaller European countries with somewhat mixed welfare state systems. Closing a considerable gap in our first project phase, we included four countries from Central and Eastern Europe. Three of them, the *Czech Republic*, *Poland* and *Slovenia* are Member States of the European Union. The fourth is a different and special case, as *Russia* not only belongs to both Europe and Asia but also does not share the legal framework common to the other European states involved in this project. And it has to be added that it has decided to leave any common ground with the global community by starting its war of aggression against Ukraine, a fact that could not have been imagined to become reality at the beginning of the second project phase. In this light, it might be one of the last Russian reports for the forseeable future that accounts for political and economic peculiarities.

We also decided to widen the perspective beyond European borders – although a truly global approach would have had to be based on a greater number of countries. Instead, the selection presented here reflects, again, situations of specific interest. To start with the three countries from the Far East: *China* ist the one where the pandemic began and the virus broke out, and where particularly drastic pandemic control measures are still being taken today in line with the country's zero-COVID strategy. Both *Japan* and *Taiwan* have taken early action against COVID-19, and both countries can rely on elaborate and well-developed social protection systems in the background. They also profited from their geographical location. Quite the same holds true for *Australia* and *New Zealand*. These two countries, too, followed a zero-COVID strategy with quite some impressive success during the first phases of the pandemic, even if Omicron has meanwhile put this strategy into question. The African continent is represented by

South Africa, where the virus hit a country in economic difficulties, but where the authorities were also rather experienced in dealing with epidemic situations. The two countries chosen from Latin America formed, in a certain way, a counterpart to the countries from the Far East and Oceania. Governments both in *Brazil* and in *Mexico* acted reluctantly to the pandemic, and the number of people who died from COVID-19 was comparatively high. This attitude also seems to be reflected in the social policy measures taken by these countries during the COVID-19 crisis.

5. Comparative Insights from the First Phase

A couple of results could be drawn from the first phase of the project. They concern the overall set-up of crisis-related measures (a)), the mix of social policy instruments used as a reaction to the pandemic (b)), and preliminary observations on the outcome of the welfare state architecture in general (c)). To what extent they have to be corrected or supplemented from the analyses presented in the following chapters can be learned from the general conclusions to this volume (see XIII).

a) Crisis Mode

All countries have been in crisis mode for the past two years. Some have been quicker, others more hesitant, in acknowledging the fact that the pandemic would be leading to challenges of an unprecedented scale – a fact that has become undeniable, at least when the second and third waves of coronavirus hit the countries. All countries have been trying to meet these challenges and set up social policy programmes, most of them shortly after the first curfews and contact restrictions had been imposed. Market mechanisms are being corrected through state measures, and social protection is increasing against negative economic consequences that are obviously considered unaccountable or undeserved. At the same time, awareness has quickly grown that despite all the measures taken, this crisis will lead to insolvencies and unemployment and will be harder to control than the last, financial, crisis. Three aspects deserve to be highlighted.

First, the procedures and forms of state intervention correspond to the exceptional situation: legislative procedures have indeed been accelerated in many countries, in some cases considerably, and the possibilities of executive legislation have been expanded, albeit always along the national path of the respective constitutionally framed legislative culture. In addition, there is the sheer volume of regulations that have now been passed to combat the crisis.

Second, the particular pressure to act is reflected in the composition of instruments used. Each country is trying out combinations with different approaches: no country can do without new cash benefits, none without subsidies in the form of tax breaks and by granting special credit conditions; a deferral of social security contribution payments has also become widespread. Specific social policy measures are concentrating on employees, solo self-employed persons and smaller companies as well as those seeking employment.

Third, these instruments are not only introduced as quickly as possible, but also on a temporary basis – although in most countries the periods initially provided for this have already been extended at least once. The recent increase in infection rates has led to either the extension of specific social protection programmes, the introduction of new ones, or, where these programmes had already been cut back over the previous few weeks, to policy U-turns and to a re-booting of such programmes.

b) *Social Policy Instruments*

The social policy toolkit contains various pandemic-specific measures, which can be found in a slightly modified form in all countries. Their configuration responds, above all, to three major consequences of the corona crisis: Entire sectors have come to a complete standstill, many self-employed persons have lost all employment opportunities due to curfews, and families have to look after themselves again. This results in new, or at least changed, needs to which social law must respond.

- One of the most important instruments with the aim of *job retention* are benefit schemes in the event of short-time work or partial unemployment.
- There is little common ground with regard to *labour law* in its role of supporting job retention. While some counutries have refrained from doing so, others have introduced special holiday regulations or special protection against dismissal. Everywhere, however, there has been a reaction to the fact that apart from the many jobs at risk, there are others that are in particular demand in times of crisis. Thus, special grants, tax subsidies and vouchers have been issued to support certain

groups of employees that have to shoulder the burden of the pandemic in some form.

- The self-employed and smaller companies receive *cash benefits* to compensate for loss of earnings, albeit at very different levels and with different starting points: whereas some payments are granted as earnings replacements, others aim at covering business costs and thus supporting livelihoods more indirectly. Some groups of self-employed are covered by existing social protection systems, although it must be borne in mind that the level of protection for self-employed workers varies considerably from one country to another.[28]
- *Sickness benefit* is being used universally – not because there is greater demand for it due to an increase in the number of cases of illness, but because it is used everywhere to compensate for loss of earnings caused by forced quarantine or, in some cases, to assume childcare responsibilities where necessary. At the same time, benefit conditions have been changed in favour of the beneficiaries: where previously waiting periods had to be adhered to, these have been eliminated; payment periods have been extended in some countries, and benefit levels raised.
- Access to *unemployment benefits* is being simplified. This applies in particular to the obligation to make oneself available to the employment service or to provide evidence for a job search or certain work services. As the labour market has collapsed and contact with case managers is limited, activation measures have temporarily become ineffective. In addition, the period for which unemployment benefit is paid has been extended in some countries.
- Finally, there are various measures relating to *social assistance*. They range from the suspension of special conditionalities to special benefits for those most in need, to a partial or flat-rate waiver of a means test.

c) *Crisis Reactions and Welfare State Architectures*

The pandemic has put emphasis on the strengths, but also on the weaknesses of welfare states. Generally speaking, political communities have taken over more or new responsibilities as the mechanisms of social mar-

28 Cf. for the situation in Europe *Becker*, Die soziale Sicherung Selbständiger in Europa, *Zeitschrift für europäisches Sozial- und Arbeitsrecht* (ZESAR) 2018, p. 307 et seq.

ket economies have been suspended by the coronavirus. The pathways taken in the different countries very much depend on the given architecture of the existing social protection schemes. The general tendency, however, is universal.

Many states are struggling to find the right balance between flexibility and the protection of employment relationships and to improve and universalise their social protection systems. This is not surprising in times of major societal changes, including demographic processes and labour markets impacted by digitalisation.[29] The transformation of economies, triggered by the unavoidable fight against a climate catastrophe, leads to further need for social protection reforms. And this is where the pandemic can be expected to be of a certain help, namely because it increases the pressure to reform.

Yet, this is only true if there is already agreement on the necessity and content of reforms. This, however, is unlikely to be the case anywhere. Thus, we are once again taught the same lesson that we have been taught through the last financial crisis:[30] Times of crisis, with their tendency to offer simple and quick solutions, are not very suitable for finding viable and lasting compromises – yet these are essential for welfare states to function. However, each crisis reveals deficits in the design and the coordination of many social protection benefits. This is an opportunity to draw socio-political conclusions and thus provide a variety of impulses for a new discussion of fundamental questions regarding the welfare state once the crisis has been overcome.

29 Cf. *Becker*, New Forms of Social Security? A Comment on Needs and Options for Reform in a National and Supranational Perspective, in: Pichrt/Koldinská (eds.), Labour Law and Social Protection in a Globalized World, 2018, p. 205 et seq.

30 See Becker/Poulou (eds.), European Welfare State Constitutions after the Financial Crisis, 2020.

II. Idiosyncratic but Effective? – Australia's COVID-19 Social Protection

Terry Carney

1. *Introduction*

Australia's social protection response to COVID-19 was typically idiosyncratic. The low replacement rates and tight means testing under its pre-COVID social assistance model of income support proved ill-suited to compensate for loss of wages across the income spectrum;[1] there was no standing machinery to cushion business downturns or shutdowns; and below poverty line social security payment rates were too low for those already outside the labour market.[2] All three features reflected its historic design as a minimalist short-term safety net behind reliance on social protection delivered by participation in work rather than reliance on welfare.[3] Federal division of responsibility between the national and state/territory level of government[4] and neoliberal policy settings compounded that state of unpreparedness. Special ad hoc measures were required to be crafted to meet the emergency.

Under the Australian Constitution the national government is responsible for quarantine and biosecurity, as well as for income security (social security), taxation and economic management. However, a hastily constituted COVID-19 coordinating body, comprising heads of all federal levels of government (grandly called a 'national cabinet'[5]) agreed that states and

1 Carney, Social Security Law and Policy, Sydney, 2006; Ramia, Governing Social Protection in the Long Term, Cham, Switzerland, 2020.

2 Carney, Economic Hardship Payments in Emergencies, in Bennett/Freckelton (ed.), Pandemics, Public Health Emergencies and Government Powers, Sydney, 2021.

3 Carney, Where Now Australia's Welfare State, Diritto Pubblico Comparato ed Europeo [Journal of Comparative and European Public Law], 2013, 1353-1370.

4 Lecours et al., Explaining Intergovernmental Conflict in the COVID-19 Crisis: The United States, Canada, and Australia, Publius: The Journal of Federalism, 2021, PMCID: PMC8344494.

5 The national government lost an argument that it was true 'sub-committee' of federal Cabinet and thus shielded from freedom of information requests, because

territories should assume responsibility for hotel quarantine of inbound arrivals to Australia.[6] Powers over general management of health emergencies are the exclusive province of the states and territories. This includes closing state and territory borders, stay-at-home or other restricted movement orders, curfews or restriction of numbers of people in premises, and shutdown of businesses and public venues. The cumulative 262 days of lockdown over six periods in the second largest state of Victoria was the longest in the world, surpassing that of Buenos Aires.

Over the first 18 months of the COVID-19 pandemic, an 'elimination' target was successfully pursued. This was achieved through very strong public health measures by both the national government (closing inward or outward travel other than by special permission) and state/territory governments (closure of borders between states, extended periods of restrictive lockdowns of movement of people or operation of businesses[7]). However, by August 2021 the Delta variant defeated further pursuit of zero transmission targets for the two most populous states of New South Wales ('NSW') and Victoria. So they opted for suppression until vaccination rates reached stipulated higher levels.[8] Even at this late stage, the remaining jurisdictions remained wedded to policies of zero transmission. This was despite national cabinet agreeing to transition to a 'live with COVID' strategy once vaccination of people over 16 reached levels of 70 (start of easing) and 80 per cent (when measures short of lockdowns were anticipated as sufficing to avoid overburdening hospitals or an excessive incidence of morbidity/mortality).

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its membership was not drawn exclusively from the elected representatives of the federal Parliament: Re Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of Information) [2021] AATA 2719 (White J).

6 This was not the first time that quarantine responsibility has been negotiated in this way: Moloney/Moloney, Australian Quarantine Policy: From centralization to coordination with mid-Pandemic COVID-19 shifts, Public Administration Review, 2020, 671-682.

7 Victoria locked down six times, NSW twice (and once for part of Sydney), with the longest single period running in excess of 100 days in both cases (cumulatively over 200 in total), with regional areas sometimes under lesser restrictions or for shorter periods: generally, Wikipedia, COVID-19 pandemic in Australia (viewed 3/9/2021).

8 For a forensically detailed scientific assessment of the management of the various waves of the pandemic: McLaws, Pandemics Will Happen: How Have We Minimised and Managed COVID-19?, in Bennett/Freckelton (ed.), Pandemics, Public Health Emergencies and Government Powers: Perspectives on Australian Law Sydney, 2021.

The national government was slow to recognise the magnitude of economic response required to meet the COVID-19 pandemic. It initially rejected for a few weeks in late February 2020 opposition calls for wage subsidies, higher levels of income support payments, and underpinning of business turnover. When such national measures were introduced soon afterwards, they were rationalised as designed to embody a policy mantra of being 'temporary, targeted and proportionate'.[9] As it transpired, all measures were temporary (if later extended) and all included a fair amount of targeting. All except the 2020 tranche of support paid to businesses to retain stood-down workers were proportionate ('JobKeeper' support payments were not recouped from businesses which did not suffer the required profit downturn or which even increased profitability).

Measures for citizens reliant on social security ceased to be proportionate in early 2021 when the 2020 'Coronavirus Supplement' ended, returning rates to their previous ungenerous levels, though greater proportionality was restored from mid-2021 for those living in hard lockdown 'hotspot' areas during a subsequent wave of infections. Proportionality was also returned to business support in 2021 as payments made direct to stood-down workers replaced indiscriminate payroll supplementation of business operators under the 2020 JobKeeper measure. So a more fulsome statement of the policy design mantra for COVID-19 social protection measures would add that they were also 'ad hoc' and relatively crude in character.

The only permanent social protection legacy was a pitiable increase in basic rates of working age social security payments (adding AUD $25 a week) and a slight easing of the 'free of income test disregard' for other income in order to provide greater reward for combining social security with small levels of casual or part-time earnings.

2. *Job Retention*

An array of income support measures were unfurled in the first few months of 2020 once the gravity of the COVID-19 pandemic was realised. As of August 2020 twelve of 156 COVID-19 initiatives from all levels of government were income support measures, of which five were from the

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9 Budget 2021, Factsheet: Australia's Successful Response to COVID-19 (May 2021).

national government,[10] even though one of these was revenue neutral (allowing people to draw down monies otherwise preserved for their retirement[11]).

a) *Protection for Existing Employees; the 2020 JobKeeper Wage Subsidy*

A wage subsidy called 'JobKeeper' was the initial means of protection of stood-down workers, but this tapered down from September 2020 and ceased altogether at the end of March 2021.

From its introduction on 30 March 2020 until 24 September of that year, JobKeeper paid businesses and not-for-profits AUD$1,500 per fortnight (pf) for each qualifying employee on their payroll at 30 March if they anticipated experiencing a stipulated decline in turnover (30% if under a billion; 50% if greater). Employees lacking permanent residence status did not qualify, and part-time employees qualified only if employed continuously for 12 months. In September 2020 JobKeeper was extended to 28 March 2021[12] but at a lesser rate that then also tapered away, and was split into two categories. The reduced rate through to 3 January 2021 was $1,200 pf for employees working 20 or more hours and $750 pf for those on fewer hours. This stepped down to $1,000 and $650 respectively after that date.[13] Proof of an *actual* rather than anticipated decline in turnover was required for the first time. JobKeeper ceased altogether at the end of March 2021, before the onset of the second wave of infection.

JobKeeper was effective in providing economic stimulus, preserving ties between employees and their employers (less so for temporary workers), and in putting a floor under business losses from liquidity constraints (but not new businesses lacking a baseline turnover from the previous

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10 Friel et al., Australian COVID-19 Policy Responses: Good for health equity or a missed opportunity?, Centre for Health Governance, 2020. These were legislated by the Coronavirus Economic Response Package Omnibus Act 2020 (Cth), introduced to Parliament on 23 March 2020.

11 The measure allowed drawdown of up to $10,000 of superannuation savings in each of 2019-20 and 2020-21 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Schedule 10.

12 Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Act 2020 (Cth).

13 Friel et al., Australian COVID-19 Policy Responses: Good for health equity or a missed opportunity?, Centre for Health Governance, 2020, p. 14.

year[14]). Reserve Bank research estimated that one in five of all recipients of JobKeeper between April and July 2020, or 700,000 people, would have lost their employment had it not been for the subsidy.[15] Yet, JobKeeper also exacerbated existing inequalities. Loss of waged income at the outset of the pandemic was disproportionately felt by women, young hospitality workers and casual employees. '[M]ost of Australia's 1.1 million temporary visa holders and 1 million short-term casual workers were ineligible for JobKeeper payments, while another 2.1 million multiple job holders had limited eligibility.'[16]

JobKeeper was also wastefully inefficient. No legal requirement was made for businesses to refund payments if forecast revenue downturn thresholds failed to eventuate, or profitability actually increased. Approximately a million businesses and not-for-profits were receiving JobKeeper in mid-2020. Of these, 365,477 did not experience the required degree of downturn in turnover, and 157,650 saw turnover increase; yet there was no basis for recouping the AUD $4.6 billion in subsidies paid to these ineligible businesses.[17] Indeed $370 million was paid to approximately 20,000 businesses whose turnover tripled, and $320 million to approximately 15,000 whose turnover doubled.[18] Over the first six months while the payment was based on an estimate and recoupment was not available, Treasury found that AUD $27 billion was paid to businesses that ultimately did not experience the anticipated downturn. However its analysis concluded

14 Re Cessnock Holden Central Pty Ltd and Commissioner of Taxation (Taxation) [2021] AATA 2576 (Olding SM). This was despite the tax office having advised the applicant that they were qualified.

15 Bishop/Day, How Many Jobs Did JobKeeper Keep?, Reserve Bank of Australia, 2020.

16 Coram et al., Community Service Sector Resilience and Responsiveness during the COVID-19 Pandemic: The Australian experience, Australian Journal of Social Issues, 2022, 559-578, p. 561.

17 Conifer, $4.6bn in JobKeeper Went to Businesses that Increased their Turnover at the Height of the COVID-19 Pandemic ABC News Thursday 22 July 2021; for a partial costing: Commonwealth Parliamentary Budget Office, Costing for Adam Bandt MP, 22 April 2021. Louis Vuitton for instance received $6 million despite increased turnover: Wright, Louis Vuitton puts $6 Million of JobKeeper in its Handbag, Sydney Morning Herald, Friday, 3 September 2021.

18 Conifer, JobKeeper went to Thousands of Companies whose Turnover Tripled at the Height of the COVID-19 Pandemic in 2020 ABC News Thursday, 2 September 2021.

that the scheme served broader purposes of preserving jobs, the viability of small businesses and provision of economic stimulus.[19]

Between the end of JobKeeper in March 2021 and late July 2021 there was no support available to stood-down workers in the small number of shutdowns experienced during a benign 'Indian summer' of low COVID infections. However, June 2021 witnessed large outbreaks of the virulent Delta variant, with lengthy shutdowns in the two most populous states of NSW and Victoria. This forced government to develop replacements for JobKeeper and the COVID Supplement.

b) The 2021 Revised Models of Support for Those With and Without Work

The 2020 levels of support provided for social security recipients by the COVID Supplement proved short-lived, as too did JobKeeper.

Despite analysis indicating that a permanent rate increase of $270 pf was needed,[20] in April 2021 government increased the base rate of working age social security benefits by a very modest $50 pf, coupled with an increase in the 'free of income test' amount able to be earned without affecting the rate, raised from its pre-COVID $106 pf to $150 pf (only half the $300 pf allowed during the life of the COVID Supplement).[21]

The inadequacy of these permanent changes to rates was exposed in 2021 when further extended lockdowns led to further job stand-downs. An extended lockdown in the second most populous state of Victoria in early June saw calls for revival of JobKeeper and the Coronavirus Supplement. Due to the poor targeting and windfall gains retained by some businesses under JobKeeper, government instead switched to a model of direct payment to stood-down workers. This was achieved by broadening eligibility to an already existing short term 'disaster' payment previously catering for serious disruption due to localised emergencies due to floods or wildfires (bushfires).[22]

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19 Treasury, Insights from the first six months of JobKeeper, Australian Department of Treasury, 2021.

20 Whiteford, When the Coronavirus Supplement Stops, JobSeeker Needs to Increase by $185 a Week, (viewed 10/4/2022).

21 Social Services Legislation Amendment (Strengthening Income Support) Act 2021 (Cth).

22 Carney, Economic Hardship Payments in Emergencies, in Bennett/Freckelton (ed.), Pandemics, Public Health Emergencies and Government Powers, Sydney, 2021; COVID-19 Disaster Payment (Funding Arrangements) Act 2021 (Cth).

The new payment was initially set at $500 a week for those normally working 20 hrs a week, but within a matter of a few days was lifted to $600 (on 13 July 2021) and then to $750 (on 28 July), as the economic hardship of the NSW lockdown began to bite. For those previously working fewer hours, the initial rate was $325pw, then $375 (mid-July) and ultimately $450. The fortnightly payment was only made for lockdowns of more than 7 days, payable to adult permanent residents or visa holders with rights to employment, and who lived or worked in geographic 'hotspots' formally declared by the national government. Apart from the soon abandoned need to regularly reclaim the payment, and to not be in receipt of any other social security payment or have access to other entitlements such as pandemic leave, it initially was also subject to conditions such as not having more than $10,000 of available savings (later abolished except for the first week).

The payment was later eased and rendered more routine from late July 2021 onwards, so that its main conditions largely replicated JobKeeper. But the payment still differed in two very important ways in that it went directly to stood-down workers rather than via their employers and was confined to those in declared areas rather than being nation-wide. JobKeeper's other important policy objective of maintaining worker/business *connections* shifted to a new scheme called JobSaver – a jointly-funded initiative of the federal and state governments (see Part 3(c)). Both the co-funding of JobSaver and the restriction of COVID disaster payments to declared hotspots reflected the national government's determination to have the option of bringing economic pressure to bear on state or territory governments thought to 'inappropriately' be imposing lockdowns or closing their borders.

COVID disaster payments were of no help for people already receiving social security. In 2020 their payments had been boosted by the near doubling of rates from the COVID Supplement, but this had tapered away and ended altogether in March 2021 (see Part 4(a)). To partially address loss of spending power for social security recipients no longer able to supplement income from casual work, from late July 2021 recipients who lost 8 or more hours of casual work a week qualified for an additional payment of $200 a week, but subject to meeting the geographic hotspot and other conditions for the disaster payment.[23] Loss of fewer hours of employment

23 Prime Minister of Australia, Covid-19 Disaster Payment Boosted, Media Statement 28 July 2021; Centrelink, Who Can Get It? (viewed 1/9/2021).

or loss of work outside declared hotspots did not qualify for any additional payment.

As rates of vaccination of the adult population in late September 2021 approached nationally agreed targets of 70% for partial easing and 80% for more extensive re-opening to more normal life (with lockdowns expected to be rare and localised), government announced a phased ending of disaster payments. At 70% aggregate vaccination in a State or territory, payments were again required to be re-claimed weekly. At 80% a two-week tapering away of existing payments was triggered (for those who normally worked 20 hours or more, to $450 in week 1 instead of $750, then the $350 unemployment rate in week 2; for those losing 8 or more hours of casual work, $100 in place of a $200 supplement of income support payments, then zero in week 2), with no future grants even in the event of subsequent lockdowns.[24] The emergence of the Omicron variant in late November 2021 did not lead to any social protection changes, merely a precautionary two week closure of recently reopened international borders.

In the smaller COVID-free jurisdictions of WA, Queensland, Tasmania and South Australia, some of whom were reluctant to open borders until rates reached 90% of the eligible adult population, the sudden ending of the higher rates of disaster payments (reverting to lower unemployment rates), served to exert some pressure to reopen earlier than preferred (though in fact this was resisted). The sudden reversion to the Jobseeker unemployment payment for those still without work had the unfortunate effect of necessitating drawing on savings for living expenses for a time to meet its harsh 'available funds' (liquid assets) test.

3. *Supporting the Economy*

Economic stimulus measures were introduced soon after COVID-19 impacted, involving a combination of monetary and fiscal policy measures.

24 Wong, Australian Government to Phase Out COVID-19 Disaster Payments Austaxpolicy: The Tax and Transfer Policy Blog, Friday, 1 October 2021; Martin, 'Covid Disaster Payments to End when Vaccination Rates Hit 80%, Josh Frydenberg says', Guardian Australia Wednesday, 29 September 2021b. Due to differential rates of vaccination, the 80% targets were reached in mid-October in NSW; mid-November in Victoria; and mid-December in Queensland.

a) Monetary Policy

Monetary policy levers were immediately adjusted by the central bank, the Reserve Bank ('RBA'). The official interest rate was cut to 0.5 per cent on 3 March 2020, followed almost immediately to 0.25 per cent (on 19 March). Finally, on 3 November 2020 the rate was cut further to 0.1 per cent (where it remains at the time of writing), along with a substantial AUD $100 billion injection of stimulus through quantitative easing (buying government bonds).

These monetary policy settings remained unchanged into 2021, as quantitative easing was continued for the first three quarters, though with a flexible target in place of $100 billion in the third quarter.[25] In September 2021 the RBA indicated that quantitative easing would continue beyond November into February 2022, but scale down from AUD $5 billion to 4 billion a week.[26] Because the total spent was more than double the bonds on issue, quantitative easing essentially fully funded all government COVID-19 support.

b) Fiscal Policy

All fiscal policy levers were rapidly invoked by government to provide economic stimulus.

Direct economic support measures introduced in 2020 included the previously mentioned Coronavirus Supplement payment, which nearly doubled welfare payments, and the JobKeeper wage subsidies for stood-down workers. Not having a contributory system of social security, the measures to cushion business in general and small-business and self-employed in particular were narrow in compass, as now explained. The October 2020 Budget added a poorly utilised $75 billion subsidy to employers for engaging new employees under age 35.[27] Over calendar 2020, government stimulus and social protection measures accounted for an additional AUD $507

25 Gluyas, Economists Warn that 'Flexible' QE Comes at a Cost, Financial Review 7 June 2021.

26 Wright, RBA Pushes on with Plans to Wind Back QE amid 'Temporary' Delta Setback, Sydney Morning Herald, Tuesday, 7 September 2021.

27 Economic Recovery Package (JobMaker Hiring Credit) Amendment Act 2020 (Cth).

billion, over half of which was for direct economic support.[28] Two 'sugar hit' $750 lump sum stimulus payments were made to all social security recipients at the end of March and in July 2020.[29] This was followed by two further payments of $250 in late December 2020 and another early in 2021.[30] Stimulus measures also included AUD $25.1 billion over 2021-22 from bringing forward previously legislated middle and upper income tax cuts, originally due to operate from 2022,[31] and introduction of a raft of business tax and other stimulus measures.

The economic stimulus measures introduced in March 2020 also included an instant business asset write-off for depreciating assets and any related expenditure of AUD $30,000 to $150,000 made prior to the end of the financial year;[32] accelerated deductions for investment in new plant and other depreciating assets;[33] a boost to business cash flow by bringing forward tax withholding payments;[34] various assistance measures for specific sectors, including aviation industry apprentices and child care;[35] and assistance to severely affected regions, industries or communities.[36]

The May 2021 Budget for fiscal 2021-22 maintained for another 12 months the 'income tax offset' from the previous year (delivering an estimated AUD $7.8 billion to around 10 million low- to middle-income taxpayers[37]) and continued the 2020 temporary 'full expensing' and 'loss carry-back' dispensation for businesses with less than 5 billion turnover, projected to deliver AUD $20.7 billion over the four years of Budget forward estimates.[38] Among other measures, targeted support was continued

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28 Budget 2020-21, Budget Paper No. 1: Budget Strategy and Outlook, Australian Treasury, p 1-1; the May 2021 Budget tallied a then AUD311 billion of expenditure on health and direct economic support: Budget 2021-22, Budget Paper No. 1: Budget Strategy and Outlook, Australian Treasury, p 13.
29 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Schedule 4.
30 Social Services and Other Legislation Amendment (Coronavirus and Other Measures) Act 2020 (Cth).
31 Budget 2021-22, Budget Paper No. 1: Budget Strategy and Outlook, Australian Treasury, 13; Carney, Australia 2019: Staying the "same old/same old" course?, Max Planck Institute for Social Law and Social Policy, 2020, part [2.5].
32 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Sch 1.
33 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Sch 2.
34 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Sch 3.
35 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Schs 7, 9.
36 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Sch 19.
37 Budget 2021-22, Budget Paper No. 1: Budget Strategy and Outlook, Australian Treasury, p. 13.
38 Budget 2021-22, Budget Paper No. 1: Budget Strategy and Outlook, Australian Treasury, p. 14.

for industries such as aviation and tourism (adding $1.2 billion to the $2.7 billion in the previous year) and $15 billion was added to an existing 10 year $110 billion pipeline of major infrastructure investment.[39]

c) 2021 'Second Wave' Responses

In 2021, business support shifted to become a *joint* responsibility of the national and the relevant state/territory levels of government, while as already discussed the national government also remained steadfast in refusing to reinstate JobKeeper due to its actual and perceived defects.

The extended lockdowns in Victoria and especially NSW ultimately led to the announcement on 13 July 2021 of a JobSaver scheme. Its twin policy objectives were preservation of enterprises from collapse and retention of employer-employee links with a view to speedier resumption of business and employment post-lockdown. Companies with an annual turnover of up to $50 million (later lifted to $250 million at the end of July) who experienced at least a 30% reduction in turnover, received a cash flow boost of between $1500 and $10,000 (later $100,000) a week, capped at 40% of payroll. Sole traders received $1,000 a week. These business support payments were conditional on employers not dismissing any existing employee on their books at 13 July 2021.

On 28 July 2021, when it became clear the NSW lockdown would be lengthy, the 50:50 federal/state funding of business was made a standing response for any such future lockdowns, including the one introduced in Victoria a few weeks after NSW. However, the federal government later ended its half of any funding of such business support packages as soon as any jurisdiction reached 80% vaccination of the eligible adult population,[40] adding further to the pressure on the smaller states holding out against lifting public health restrictions and internal border closures with other states before reaching their preferred vaccination targets of 90% of the eligible adult population (a level reached in mid-December in Queensland but not scheduled to be reached until February 2022 in the final 'hard border lockdown' state of Western Australia).

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39 Budget 2021-22, Budget Paper No. 1: Budget Strategy and Outlook, Australian Treasury, pp. 14, 18.

40 Martin, Final Business Package Worth Billions but Covid Assistance to End as States Hit 80% Vaccination Rate Guardian Australia Thursday, 30 September 2021. The NSW state government continued its funding of what became a halved value of support to businesses between mid-October until the end of November.

4. Social Protection

Social protection during COVID-19 for those not already in the workforce was largely subsumed within measures for job protection in Australia, other than in 2020 when discernibly separate social security measures were enacted. Protection of people in residential and commercial tenancy markets (a state and territory responsibility), was another important aspect of social protection during the COVID-19 pandemic. Maintaining the viability of the federally funded but mainly for-profit child care providers during shutdowns, and equity of access to child care services, were yet another.

a) Protection for Those Not in Work; the 2020 'Supplement' and Eased Conditions Model

In 2020, social protection for social security recipients took the form of an across-the-board supplementary payment. But in 2021 this measure was replaced by the new and more surgically targeted disaster payment model already discussed.

The original COVID Supplement for working age recipients of payments such as Jobseeker for the unemployed was initially set at AUD $550 pf between 27 April and 24 September 2020,[41] before stepping down to $250 pf until the end of 2020,[42] and then $150 pf, before ending altogether in March 2021.[43] The supplement initially lifted the 'replacement rate' of income for a low income worker to around 70% of previous earnings (closer to the OECD average replacement level), but even the September 25 2020 step-down quickly dropped it back to rank third last of 37 OECD countries.[44]

41 Coronavirus Economic Response Package Omnibus Act 2020 (Cth), Schedule 11.
42 Social Security (Coronavirus Economic Response—2020 Measures No. 14) Determination 2020.
43 Social Services and Other Legislation Amendment (Extension of Coronavirus Support) Act 2020; Crowe, 'Jobseeker Supplement to be Extended Until End of March' Sydney Morning Herald Tuesday, 10 November, 2020.
44 Analysis by Peter Whiteford of the ANU Crawford School of Public Policy cited in Henriques-Gomes, 'Australia's Jobless Benefits will be Among Worst in OECD after Covid Supplement Cut', Tuesday 8 September 2020.

Income security recipients were also helped by changes suspending and then easing means testing[45] (including a means test normally denying eligibility for savings above a certain level until run down below that threshold), by more generous treatment of part-time earnings to augment benefits,[46] by suspension or easing of activity test obligations,[47] and by allowing nearly 400,000 unemployed to self-manage on-line rather than engage in face-to-face meetings with one of the for-profit and not-for-profit agencies delivering Jobactive reemployment services (privatised versions of a PEP).[48] Temporary widening of the scope of being 'unemployed' assisted those in the twilight zones between self-employment and unemployment,[49] while previously ineligible self-employed or sole traders also qualified for payment on showing that 'the person's business was suspended, or suffered a reduction in turnover, as a result of the adverse economic effects of the coronavirus known as COVID-19'.[50]

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45 For example the asset test ceiling removing payability of Parenting Payment once the figure was exceeded was suspended from the introduction of the initial tranche of COVID Supplement payment (see s 500Q(6)) but that protection was ended from 25 September 2020 in exercise of the power to vary an enactment by issue of a determination: see Social Security (Coronavirus Economic Response—2020 Measures No. 14) Determination 2020, Sch 1.

46 For instance the 'free area' of earnings for Jobseeker recipients was from 25 September 2020 lifted from $106 to $300 pf (but not for partner allowance or a single person who is a principal carer of a child) by substituting new language to that effect as point 1068-G12 in the relevant 'Rate Calculator': see Social Security (Coronavirus Economic Response—2020 Measures No. 14) Determination 2020, item 11 of Sch 1.

47 Non-payment 'waiting periods' prior to becoming entitled to payment of social security were suspended by Social Security (Coronavirus Economic Response—2020 Measures No. 7) Determination 2020, but then reinstated from 25 September 2020 pursuant to Part 1 of Schedule 2 of the Social Security (Coronavirus Economic Response—2020 Measures No. 14) Determination 2020. The 7 day ordinary waiting period was suspended by the Social Security (Ordinary Waiting Period Exemption) Instrument 2020.

48 Henriques-Gomes, 'Unemployment Shock': Will Workers Hardest Hit by the Pandemic be Left to Languish?', Guardian Australia Monday 14 September 2020, (viewed 10/4/2022).

49 The Ministerial determination extended qualification to anyone losing work 'as a result of the adverse economic effects of the coronavirus known as COVID-19': Social Security (Coronavirus Economic Response—2020 Measures No. 2) Determination 2020, Part 2.

50 Social Security (Coronavirus Economic Response—2020 Measures No. 2) Determination 2020, Part 2, item 5(i)(a), (b).

From early 2021, when lockdowns resumed, the previously discussed social security payment (disaster payment) was deployed as the principal measure of protection for stood-down workers, as well as a small number of social security recipients suffering a loss of an ability to supplement social security with casual earnings (see Part 2(b)).

b) Housing Security

Australia's housing market historically favoured owners over private renters (under one third of all occupants are renters, with less than 5% renting social housing). Already unaffordably high residential property prices accelerated further during COVID.

Mortgage relief protection in the form of up to a 6-month deferral of loan repayments was immediately engineered through low-cost government finance to banks. This was followed at the end of March 2020 by national agreement on a six-month moratorium on residential rental evictions (later legislated in all jurisdictions), government encouragement for landlords and tenants to negotiate acceptable repayments, and adoption of a code of conduct for commercial leases.[51] This necessarily patchy overlay temporarily strengthened the position of tenants compared to their weak position under the pre-existing 'mild' consumer protection model of the residential tenancy protection regime (ironically devised in the 1970s by the Poverty Inquiry[52]). The eviction moratoriums and other temporary protections were extended into the first quarter of 2021, save for Queensland, where they expired in September 2020. Queensland, NSW and the NT were the only jurisdictions not to impose a freeze on rent increases during the emergency period.[53] Eviction moratoriums and other protections were reinstated following the 2021 extended lockdowns in NSW,[54] but Victoria instead relied on its recently reformed tenancy laws.[55]

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51 Martin, Australian Residential Tenancies Law in the COVID-19 Pandemic: Considerations of housing and property rights, University of New South Wales Law Journal, 2021, pp. 197-226, p. 198.

52 Ibid, 202.

53 Ibid, 211.

54 Reintroduced for 60 days on 14 July 2021: Tenants Union of NSW, Covid-19 Guide.

55 Cook, Housing Groups Call for 'Ring of Steel' to Protect Struggling Renters, The Age, 30 July 2021.

Assessed across domains of protections against evictions, rent increases and variations, Martin rates Victoria, WA and Tasmania as the strongest set of housing security protections (in that order), with the weakest being the two territories, followed closely by NSW and Queensland.[56] However the post-emergency policy legacy of eviction and rent controls is notoriously fraught, with Martin finding for instance that 'data suggest that the reliance on negotiated and conciliated variations has been only weakly protective and, in a significant minority of cases, deferred rental obligations are mounting over the emergency period and may still put tenancies at risk afterwards.'[57]

c) *Child Care Security*

Ensuring ongoing access to child care for essential workers when otherwise under lockdown was a critical measure to retain a viable workforce for essential medical or community services and transport supply chains.

'Free childcare' between 6 April 2020 and end June 2020[58] and other fee relief for parents losing income during extended periods of lockdown during 2020 was the most generous phase of the special measures introduced to secure this goal.[59] Maintaining viability of the for-profit and not-for-profit providers, and enabling child care centres to retain their workforce was also crucial.

Industry support measures of various kinds continued to be provided for child care after the 'free' childcare measures ended. The August 2021 business support measures for instance covered fortnightly 'continuity payments' to providers of 25% (for child care) or 40% (out-of-hours care) of pre-lockdown revenue for services with a 50% reduction in fee revenue

56 Martin, Australian Residential Tenancies Law in the COVID-19 Pandemic: Considerations of housing and property rights, University of New South Wales Law Journal, 2021, 197-226.

57 Ibid, 222.

58 Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister's Rules 2020; Klapdor, 'COVID-19 Economic response—free child care' Parliamentary Library, Canberra, 6 April 2020.

59 There were three main phases of COVID-19 child care relief in 2020: a 'relief package' (6 April-12 July), transition payments (13 July-27 September) and a recovery package (28 September-31 January 2021). The original provider subsidy measures were extended to local government in July 2020. See: Family Assistance Legislation Amendment (Early Childhood Education and Care Coronavirus Response and Other Measures) Act 2021 (Cth).

in declared geographic hotspot areas (after 7 days if lockdowns limited attendance, or 28 days if not), subject to waiving fees for children not attending.[60] An amount of AUD $288 million was spent on these measures.[61]

5. Conclusion

By comparison with other developed economies, Australia's COVID-19 measures rate well in terms of minimising economic recession (just one 7% growth contraction in the June quarter 2020, the first in 30 years[62]), but then it always has done so over recent decades (being the only country to totally avoid recession during the 2008 Global Financial Crisis). Australia was also one of just four countries out of 120 assessed by the Washington-based International Budget Partnership as rating in the top tier for transparency and accountability for COVID-19 budget responses.[63] However the picture is not entirely a positive one. The trend line deterioration in intergenerational equity for young workers, for example, was exacerbated by COVID-19 because they disproportionately engaged in casual or impermanent employment.[64]

Despite that very deep recessionary quarter (the first for 30 years) the May 2021 Budget reported that the 2020 measures ultimately resulted in higher employment (recovering to hit record highs) and GDP growth for March 2021 than in March 2020.[65] The second wave lockdowns in 2021 did not generate the feared June quarter downturn (instead a 0.7 percent growth),[66] limiting the downturn to a 1.9 percent drop in the September quarter,[67] with the following quarter as yet unknown. That

60 Australian Department of Education Skills and Employment, 'COVID-19 Information for the Early Childhood Education and Care Sector' (accessed 24/8/2021).

61 MYEFO, Mid-Year Economic and Fiscal Outlook 2021-2022, Treasury, 2021, 8.

62 Budget 2020-21, Budget Paper No. 1: Budget Strategy and Outlook, Australian Treasury, p. 1-1.

63 Stewart/Wong, A COVID-19 Check for the Budget System, Austaxpolicy: Tax and Transfer Policy Blog, 6 July 2021.

64 Borland/Coelli, Is It 'Dog Days' for the Young in the Australian Labour Market?, Australian Economic Review, 2021, 421-444.

65 Budget 2021-22, Budget Paper No. 1: Budget Strategy and Outlook, Australian Treasury, p. 5.

66 ABS, Australian National Accounts: National Income, Expenditure and Product (June Quarter), Australian Bureau of Statistics, September 2021.

67 ABS, Australian National Accounts: National Income, Expenditure and Product (September Quarter), Australian Bureau of Statistics, December 2021.

happy outcome has much to do with mineral exports, especially to China, and resilient domestic economic fundamentals.

The social protection measures introduced in 2020 at the outset of the pandemic arguably created Australia's first – if very 'temporary' – genuine welfare state,[68] by boosting replacement levels of payments to more adequate levels, until the rug was pulled in the first quarter of 2021.[69] The job retention subsidy (JobKeeper) was the most controversial of the measures from the outset. It was politicised by initial government opposition to the need for such a measure, and when introduced failed to provide for more marginalised casual workers such as students and temporary visa holders (including migrant workers and backpackers engaged in short-term or multiple insecure contracts).[70] The initial design of a single flat rate payment for all, later split into two tiers of flat rate amounts depending on hours previously worked, was also criticised.[71] The most fundamental concern on the part of economists however centred on adverse labour market impacts (crowding and perverse incentives) or delays to economic recovery post-pandemic in the event of other than a very short-term subsidy.[72]

The advent of long lockdowns in mid-2021 due to rapid infections from the Delta variant of COVID put paid to government hopes of avoiding revisiting the 2020 measures. The 2021 replacement initiatives proved somewhat clunky, especially the delayed and somewhat patchy coverage by disaster payments for stood-down workers and the supplementary payments for those already on welfare, as government resisted the return of either JobKeeper or the Coronavirus Supplement. The business sector,[73]

68 See for example Spies-Butcher, The Temporary Welfare State: The political economy of job keeper, job seeker and 'snap back', Journal of Australian Political Economy, 2020, pp. 155-163.

69 Whiteford, When the Coronavirus Supplement Stops, JobSeeker needs to Increase by $185 a Week; Whiteford/Bradbury, The $50 Boost to JobSeeker Will Take Australia's Payment From the Lowest in the OECD to the Second-Lowest After Greece.

70 Cassells/Duncan, JobKeeper: The Efficacy of Australia's First Short-Time Wage Subsidy, Australian Journal of Labour Economics, 2020, 99-128, pp. 103-4, 107-8, 125.

71 Ibid. Instead the authors proposed a model that 'combines a proportionate wage subsidy with a graduated scale of entitlement depending on the degree of business turnover loss.': ibid, p. 125.

72 Walkowiak, JobKeeper: The Australian Short-Time Work Program, Australian Journal of Public Administration, 2021, 1046-1053.

73 Business NSW, Businesses Want JobKeeper Back (25 July 2021).

supported by the then NSW Treasurer (later Premier),[74] correctly criticised the replacement measures as being much less effective in preserving employer-employee ties, though the magnitude of this effect is not fully known.

The replacement measures were certainly less wasteful (no ability for subsidies ending up boosting business profits) and more surgically targeted (picking up stood-down workers of businesses suffering smaller downturns in profits), and were quicker to deliver support for those able to navigate the claim system. However the disaster payment catered for just 20 per cent of social security recipients in lockdown compared to universal coverage by the COVID Supplement,[75] and the arrangements posed access issues due to their greater complexity.[76] Analysis of anonymised bank account data showed that they also favoured men over women, even though women were disproportionately impacted by loss of employment during the 2021 lockdown.[77]

Assessing the impact and policy design of major building blocks of Australia's response to COVID-19 depends on the choice of evaluative lens. Success in countering the risk of a deep or sustained economic recession is very different from designing optimally effective and efficient social protection measures. Australia's success in avoiding any recession during the global financial crisis was attributed to acceptance of the advice of the then head of Treasury to 'go early, go hard and go households'. Quick, substantial economic stimulus can be favoured at the price of some 'wastage'.

The AUD $27 billion of JobKeeper wage subsidies paid to businesses not experiencing the expected level of downturn of turnover between March and September 2020 is a case in point. On a strict moral analysis the payments to those 'ineligible' businesses should be recouped as debts, but AUD $13.2 billion went to businesses whose turnover did still decline, 99% of which were 'small businesses' with less than $50 million turnover and an average of four employees (the recipients of $22.5 of the $27 billion in question). Treasury analysis suggests that the rapid injection of funds

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74 Karp, Coalition Rebuffs Request by NSW Treasurer to Bring Back Jobkeeper to Curb Sydney Covid Outbreak, The Guardian Australia Sunday 25 July 2021.

75 Davidson et al., COVID Income Support Analysis: Analysis of income support during COVID lockdowns in 2020 and 2021, ACOSS & UNSW Sydney Partnership, 2021, p. 8.

76 Stayner, Unions Concerned People are Struggling to Access COVID-19 Support Payments, SBS News 22 July 2021.

77 Wade/Gladstone, NSW Disaster Payment Recipients Top 1 Million as Men are Getting the Lion's Share, Sydney Morning Herald, Sunday, 12 September 2021.

without strict monitoring or clawback provisions kept businesses afloat while enabling some to transition to more profitable models of operation such as 'take away' food, while others were saved from expected declines because lockdowns eased and profitability rapidly returned.[78]

Analysis by the Melbourne Institute of Applied Economic and Social Research of JobKeeper's impact in saving the jobs of those temporarily laid off due to COVID-19, found that although temporary layoffs were widely used, recall of workers was low (around 100,000 of 300,000 stood down) while total employment in the initial economic recovery phase grew by 440,000 (covering one half of the initial losses). The conclusion drawn was that 'either that temporary layoffs were very long, or that many workers on temporary layoffs were never recalled.'[79] In short, JobKeeper rated well as economic stimulus but poorly on more orthodox economic efficiency or other distributional measures.

By standard social policy targeting analyses, JobKeeper and the COVID Supplement were effective, reaching 44% of the workforce and lowering the pre-pandemic poverty rate from 11.5 per cent (3 million) to 9.9 per cent (2.6 million) in mid-2020.[80] The measures catered for the 70 per cent rise over pre-pandemic levels in the number of people reliant on social security payments, a figure of reliance still 27 per cent higher than beforehand when the April 2021 less generous and less extensive disaster payment replacements ended in October 2021. Analysis reveals ongoing social inequality in lower income regions from the impact of COVID-19 on employment, so the structural legacy of the ad hoc social protection measures was negligible.[81]

As in European countries studied to date, Australia's measures can be characterised as economic stimulus by way of social compensation for

78 Treasury, Insights from the First Six Months of JobKeeper, Australian Department of Treasury, 2021.

79 Borland/Hunt, Did The Australian JobKeeper Program Save Jobs by Subsidizing Temporary Layoffs?, Melbourne Institute: Applied Economic & Social Research: The University of Melbourne, 2021.

80 Davidson et al., COVID Income Support Analysis: Analysis of income support during COVID lockdowns in 2020 and 2021, ACOSS & UNSW Sydney Partnership, 2021, p. 11.

81 Affected regions include, outer north-west and south-east Melbourne, west and south-west Sydney, northern Adelaide, far North Queensland and regions between Brisbane and the NSW border: Davidson et al., COVID Income Support Analysis: Analysis of income support during COVID lockdowns in 2020 and 2021, ACOSS & UNSW Sydney Partnership, 2021, p. 8.

anticipated short-term recessionary disruption,[82] rather than renovation or enhancements to its rather idiosyncratic social assistance welfare state model. Citizens engaged in non-standard employment, such as the self-employed and casual employees were beneficiaries of widened eligibility under that social compensation assistance, but *non-citizen* temporary workers such as students and back-packers remained excluded,[83] casual workers soon saw assistance rolled back and none of the temporary changes resulted in any alteration of the architecture of social protection in the longer term.

82 Seemann et al., Protecting Livelihoods in the COVID-19 Crisis: A comparative analysis of European labour market and social policies, Global Social Policy, 2021, 550-568; Spasova et al., Social protection of non-standard workers and the self-employed during the pandemic, Institute, 2021.

83 Boucher, Immigration: Welfare Rights in a Temporary Immigration State, in McClelland Smyth/Marston (ed.), Social Policy in Australia: Understanding for Action, Melbourne, 2021; Carney/Boucher, Australian Social Law and Migrant Flux, ZIAS, 2022 forthcoming.

III. Social Security in Times of COVID-19 in Brazil

Ingo Wolfgang Sarlet and Jeferson Ferreira Barbosa

1. Introduction

By the end of 2019, Brazil had already been going through an economic crisis, facing difficulties in terms of growth, with a 1.41% increase in the GDP rate[1] and an unemployment rate of 11.9%. In 2020, the pandemic directly and indirectly caused a decrease of 4.1% in the GDP rate and the unemployment rate went up to 13.5%[2]. It is no surprise, then, that while between 2010 and 2014 Brazil had been able to maintain the 7th position in the ranking of the largest economies in the world, the effects of such crises implied the progressive reduction of the GDP, so that in 2019 Brazil was only the 9th and by 2020 the 12th largest economy in the world.[3]

In addition to the negative indexes mentioned above, the levels of economic and social inequality also became more pronounced since the beginning of the pandemic, as well as the concentration of income. In November 2020, 19.6% of the persons who had an occupation had a lower income and 41% of the households received Emergency Aid (a coronavirus relief fund). In the North and Northeast regions that figure reached up to 50%.[4] At the same time, Brazil went through a severe political and institutional crisis which, in turn, had major repercussions on several problems and challenges related to the fight against the pandemic.

In this context, already in the initial months of 2020, the state of the Brazilian nation was characterized by (1) weak national coordination; (2) strong leadership by the states; (3) conflicts between the President and his Minister of Health, particularly during the first months of the COVID crisis; (4) conflict between the President and the state governors; the latter fo-

1 Source: DataSebrae.
2 Cardoso/Domingues/Magalhães/et al. Pandemia de Covid-19: impactos da crise e da renda básica emergencial. In: Políticas Sociais: acompanhamento e análise, Ipea (Instituto de Pesquisa Econômica Aplicada), 28/2021, 539-559 (539).
3 Alvarenga, Brasil sai de lista das 10 maiores economias do mundo e cai para a 12ª posição, aponta ranking. G1. 03.03.2021.
4 Instituto Brasileiro de Geografia e Estatística, PNDA COVID19. The Emergency Aid is discussed below.

cused on the protection of public health and the former on the protection of the economy[5]; (5) tensions and even open conflicts between the state's powers, particularly between the Brazilian Supreme Court and the Federal Government; (6) a rise in the levels of political-ideological polarization and disinformation, as well as appeals of a populist and authoritarian nature.

In an attempt to curb the persistent political-institutional clashes, and to deal with serious social and economic issues concerning a broad range of fundamental rights that arose in the pandemic context, a set of measures was instituted and articulated by the Federal Government, although the above-mentioned tensions and conflicts did continue to a greater or lesser degree. Brazil was henceforth forced to seriously articulate and manage the connection between public health, social protection, maintenance of the economic activity and the protection and effectiveness of the fundamental rights in general – certainly, this was a worldwide concern by this time, but the Brazilian context, as we will see, had a very particular set of challenges.

This article focuses on the measures taken at the federal level by the Legislative, Executive and Judiciary Powers (the latter one particularly by the Brazilian Supreme Court[6]) and occasionally makes reference to important actions undertaken by states and municipalities, with an illustrative character, when necessary.

An overview of the actions undertaken in this period indicates that the Brazilian strategy articulates three sets of measures: (1) social isolation and distancing; (2) increase in the capacity of health care services; and (3) financial aid for the population, businesses, states and municipalities[7]. In the second item the emphasis was put on ensuring resources for health care, and in the third one on maintaining jobs, increasing the availability of resources in the credit market and transferring funds to states and municipalities.[8]

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5 Pereira/Oliveira/Sampaio. Heterogeneidades das Políticas Estaduais de Distanciamento Social diante da COVID-19: aspectos políticos e técnico-administrativos. Rev. Adm. Pública, vol. 54, nº 4, 2020, 678-696.

6 O Supremo Tribunal Federal (STF)/The Brazilian Supreme Court, is the last and highest instance concerning the interpretation of the Brazilian Constitution. It also has jurisdiction over the entire national territory.

7 See Pires. Os efeitos sobre grupos sociais e territórios vulnerabilizados das medidas de enfrentamento à crise sanitária da COVID-19, Nota Técnica, Ipea, 33/2020.

8 Ministério da Economia. Uma breve reflexão sobre o desempenho econômico brasileiro diante da crise da Covid-19. Nota Técnica. 19.10.2021, p. 1 et seq.

Considering that scenario, the present text does not have the purpose of surveying and assessing, not even in the form of an overview, the totality of implemented measures designed to fight the pandemic in Brazil (e.g., social distancing, restriction of economic and cultural activities etc.). Rather, it is limited to the following dimensions: (i) measures to protect employment and income; (ii) measures to aid the economy, and (iii) more general measures in the field of social protection. All measures taken between March 2020 and October 2021 were considered. However, it is essential to note that the world is still facing a pandemic. Therefore, such measures, legal regulation, and even diagnoses are subject to constant change, and it is not yet possible to have an overall picture of the crisis and the countermeasures.

The measures designed to protect jobs and income are dealt with first due to their connection with the measures to aid the economy. In this sense, it should be noted that since Brazil was more focused on aiding the economy, emphasis was put on indirect measures of action through the credit market. The last topic on the more general social protection measures discusses the main initiatives designed to facilitate access to the social protection system by the Brazilian population.

2. *Job Retention*

a) *Special Labor Rules*

One of the first measures taken to counter the effects of the pandemic and the consequences of social distancing and isolation was related to labor and involved a considerable relaxation of the norms protecting workers. Provisional Presidential Decree 927 of 22 March 2020[9] established special labor laws to face the calamity and to keep jobs, which enabled (1) individual contracts between employer and employee, limited only by constitutional norms; (2) telework; (3) granting of collective vacation; (4) advancement of individual vacation periods; (5) use of compensatory time; (6) advancement and use of holidays; (7) referral of workers to additional

9 Provisional Presidential Decrees are norms that have the effectiveness of a law and are issued by the President of the Republic. They have a temporary effectiveness, must comply with the requirements of relevance and urgency, are subject to certain limits regarding their matter and must be converted into a law by National Congress.

training; (8) suspension of administrative requirements related to labor health and safety; (9) postponement of the payment of the Guarantee Fund for Length of Service[10] [FGTS].[11] These are measures of a relatively short duration, since they were in effect until 19 July 2020.[12] Two aspects established by this Decree were suspended by the Supreme Court: the need to prove the existence of a causal connection for the illness to be considered of an occupational nature and the suspension of the activities of labor inspectors for 180 days.[13]

Due to the persistence and further aggravation of the pandemic, Provisional Presidential Decree 1,046 of 27 April 2021 extended the possibility of taking such measures until 7 September 2021, with the addition of a provision that allowed the employer's unilateral emendation of the employment contract, without the need for an individual or collective agreement.[14] These measures, as well as the previous ones, were sharply criticized and came under scrutiny, particularly by the workers, since they imposed major restrictions to the fundamental rights warranted by the Federal Constitution of 1988.[15]

Thus, the above-mentioned measures do not really fit into Brazil's social security scheme, which is structured around the axis of health care, the social pension system and social welfare. However, such unprecedented

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10 The Guarantee Fund for Length of Service (or Severance Indemnity Fund) has the purpose of protecting workers laid off without cause. This protection is granted through the formation of a pecuniary fund that can be withdrawn by the employee in certain situations, such as when they are laid off without cause or get seriously ill. The fund is formed through monthly deposits of 8% of the employee's salary made by the employer in a restricted account of a public bank called Caixa Econômica Federal. An equal amount is discounted from the employee's salary and deposited in the same account. In case of a discharge, the employer must additionally pay a penalty corresponding to 40% of the account's balance.

11 Medida Provisória 927, de 22.03.2020.

12 Ato Declaratório do Presidente da Mesa do Congresso Nacional 92, de 30.07.2020.

13 STF (Supremo Tribunal Federal/Brazilian Supreme Court). Medida Cautelar em Ação Direta de Inconstitucionalidade 6342 - Distrito Federal. 29.04.2020. Informativo 975, 06.05.2020.

14 Medida Provisória 1.046, de 27.04.2021. The possibility of referring workers to additional training was not provided for in this new Decree.

15 Such criticisms can be found, for exemple, in Departamento Intersindical de Estatísticas e Estudos Socioeconômicos (DIEESE). Medida Provisória 927: crise do coronavírus cai na conta do trabalhador. Nota Técnica, 226/2020.

scenario allowed these measures to be regarded necessary for the protection of jobs and, consequently, income.

b) Reduction or Suspension of Working Hours and Aid for Workers

The second implemented measure that was adopted combined the prerogative of the reduction or suspension of working hours with the provision of emergency aid for workers. Provisional Presidential Decree 936 of 1 April 2020, which was later converted into Act 14,020/2020, created the Emergency Program for the Preservation of Employment and Income, the purpose of which is the maintenance of employment, of the employee's income and the mitigation of social impacts of the pandemic. On the one hand, the program created the possibility of reducing working hours, also allowing a temporary suspension of the employment contract for up to 180 days.[16] On the other hand, it correspondingly created a benefit to proportionally compensate for the reduction of workers' income, the limit of which is the amount they would receive[17] as unemployment compensation. During the suspension of the employment contract the employer is also freed from the payment of social entitlements related to workers' rights. If the employer's gross revenue exceeds R$ 4.8 million (= US$ 0.8 million at the exchange rate of R$ 5.41 = US$ 1.00 on 12 November 2021), they would have to pay the employee a compensatory aid equivalent to 30% of the respective salary.[18] Provisional Presidential Decree 936 is still being discussed by the Supreme Court but there is already a provisional decision in favor of the measures that would be adopted should the decree go into effect.[19] Further, Provisional Presidential Decree 1,045 of 27 April 2021 made it possible to extend the adoption of these measures for up to 120 days.[20]

The program also granted provisional job security during the period in which the Emergency Benefit was received and, after working hours

16 Considering here the extensions granted by Decreto 10.422, de 13.07.2020 and by Decreto 10.470, de 24.08.2020.

17 According to the present rules of the unemployment insurance, workers can receive up to R$ 1,909.34 (= US$ 352.92, based on the exchange rate of R$ 5.41 = US$ 1.00 on 12 November 2021).

18 Lei 14.020, de 06.07.2020.

19 STF. Medida Cautelar em Ação Direta de Inconstitucionalidade 6363 – Distrito Federal. 16 e 17.04.2020. Informativo 973, 23.04.2020.

20 Medida Provisória 1.045, de 27.04.2021.

were reestablished, during a period equivalent to their reduction or suspension. In case of a discharge without cause the employer would have to pay, in addition to settling the severance pay already provided for in the legislation, a percentage of 50%, 70% or 100%[21] of the salary to which the employee would have been entitled to during the period of work reduction or suspension.[22]

Examining the impacts of the measures in 2020, one finds that in this period more than 20 million employment contracts were negotiated, involving the suspension or reduction of working hours in combination with the granting of the Emergency Benefit. More than 10 million of these contracts were negotiated in the service-providing sector. The predominant measure was the suspension of the employment agreement, which accounted for 52% of the cases. The largest segment of workers (= 53%) who had their employment agreements renegotiated were those who earned up to minimum wage. The Government expenditures with the program were R$ 33.5 billion (US$ 6.1 billion) in 2020.[23] Under such conditions, this was a measure that predominantly supported workers with lower income.

Reduction of working hours, along with a proportional reduction of wages and even suspension of the employment contract were measures designed to support the economy that had a significant impact on the lives and livelihoods of workers. Conversely, there was a benefit for workers designed to mitigate that impact, besides a provisional protection against layoffs. Thus, the program associated the support of the economy with a compensation related to the workers' income and a provisional maintenance of jobs.

The Emergency Benefit, which basically consists in the compensation of the salary reduction caused by the working hours reduction, is an incipient instrument in Brazil. Something similar was used in 2015 in the framework of the Employment Protection Program, which was designed to counter the economic crisis at that time but included little more than 100 companies.[24] That instrument is similar to the *Kurzarbeitergeld* in Ger-

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21 The percentage is calculated according to the percentages of work reduction provided for in Art. 10, § 1 I, II and III of Act 14,020/2020. The employee termination implies the payment of 100% of the salary.

22 Lei 14.020, de 06.07.2020.

23 Russo/Silva/Corseuil. Programas Federais de Manutenção de Empregos e Garantia de Renda no Contexto da Pandemia em 2020. In: Mercado de Trabalho, Ipea, 27/2021, p. 4 et seq.

24 Id., p. 3.

many.[25] But in the latter country it is a measure that is more disseminated as a social security instrument and the range of situations in which the benefit can be used is wider.[26] One cannot deny that the use of this instrument in Brazil is an advancement but there are indications that it emerged as a temporary alternative for times of crisis. There is no indication that it is actually internalized and articulated in the country's social security system.

In Brazil, unlike in Germany, there is no provision for a social compensation law[27] as a pillar of social security. What is actually recognized are the three basic pillars, viz. health care, the social pension system and social welfare, which, together with the social rights to housing, food, education, leisure, security, work, protection of motherhood and infancy, and transportation, were enshrined in Article 6 of the Federal Constitution as fundamental rights. They are more concretely regulated, still at the constitutional level, in several chapters of the Title on Social Order (as far as social security is concerned, in Arts. 194-204),[28] and, at the non-constitu-

25 Sozialgesetzbuch (SGB) Drittes Buch (III). Arbeitsförderung. See § 95 et seq.

26 See Becker. The Community Steps Up: Changing Responsibilities in Germany. In: Becker/He/Hohnerlein/Seemann/Wilman. Protecting Livelihoods in the COVID-19 Crisis. MPISoc Working Paper 7/2020, p. 25 et seq.

27 Soziales Entschädigungsrecht, in German. In Germany it is considered to be one of the fields of social security and includes, for instance, compensations for victims of injuries suffered in World War II and for their dependents who survived the conflict. See on this topic Becker. Soziales Entschädigungsrecht. Nomos, 2018, p. 34 et seq.

28 The social security system in Brazil is based on three pillars: health care, the social pension system and social welfare (Art. 194 et seq. of the Federal Constitution). Among the general goals of social security are the universality of coverage and services or benefits and the irreducibility of the amount of the benefits (Art. 194, sole paragraph I and IV). The pension system is organized on the basis of social contributions paid in advance, mandatory affiliation (obligatory insurance) and criteria for the financial and actuarial balance (Art. 201, head provision); social welfare is granted based on need and regardless of contributions paid in advance (Art. 203, head provision); health care is defined as a right of everyone (universality and equality) and as a duty of the state (Art. 196 of the Federal Constitution). There is no explicit constitutional provision on the free of charge character and absence of payment of social contribution by insurees, but this is the way how the Unified Health System (public health care system) operates at present.

tional level, in series of sparse laws[29] or constitutional provisions on social security.[30]

The justification presented for the above-mentioned measures clarifies the connection between the need for measures of isolation and quarantine to reduce the number of COVID-19 infections and deaths and the need for measures to reduce the economic and social impacts resulting from the sudden decline of economic activities and the loss of millions of jobs.[31] Perhaps this is an opportunity to start discussing in a systematic and profound manner the state's responsibility in relation to some damages as well as the nature and limits of their compensation as integral elements of social security. However, in Brazil there is, at least for now, no explicit discussion at the level of legislation or of the literature about social compensation or reparation as a specific area of social security.

c) *Credit for the Payroll of Small and Medium Enterprises*

Provisional Presidential Decree 944 of 3 April 2020,[32] later converted into Act 14,043 of 19 August 2020, created an Emergency Program of Support for Employment, to which R$ 17 billion (= US$ 3.14 billion) were allocated.[33] The credit is granted to business people, rural employers, organizations of civil society and general partnerships, enterprises or cooperatives that have an annual gross revenue above R$ 360,000 (= US$ 66,540) and below R$ 50 million (= US$ 6.24 million), and should be exclusively used to pay salaries or mandatory labor expenses. The employer may cover the total amount of their payroll, but with a limit of 4 months and 2 minimum wages per employee. Upon taking the loan, they are prohibited of discharging employees without cause for up to 60 days after the last tranche of the loan becomes available. In this program the credit-granting

29 It should be mentioned that in Brazil, unlike in Germany, social law and social security are not codified.

30 One should mention, among other rights, the right to special pension for ex-combatants or survivor's pension for widows, marital partners or dependents of deceased combatants, provided for in Art. 53, II and III of Ato das Disposições Constitucionais Transitórias (ADCT) da Constituição Federal (CF).

31 Exposição de motivos para a Medida Provisória 936, de 01.04.2020.

32 Medida Provisória 944, de 03.04.2020.

33 Lei 14.043, de 19.08.2020.

policies continue to be in effect, which restricts the scope of the emergency measure.[34]

Eighty-five percent of the credit program's resources come from the Federal Government and 15% from the participating financial institutions. The Government's financial agent is the Brazilian Bank of Social and Economic Development (BNDES in the Brazilian acronym). The interest rate is pre-set at 3.75% per year and the credit period is 36 months, including a grace period of 6 months. R$ 8 billion (= US$ 1.47 billion) were granted to 131,695 companies, so that this amount stayed below the limit of R$ 17 billion (= US$ 3.14 billion) established for the program.[35]

This is a measure which combines support of the economy with the protection of employment and income, as the credit is bound to the payment of salaries and employment expenses and guarantees a provisional protection of jobs. The program also aims at reducing the expenses related to the payment of unemployment insurance by diminishing unemployment.[36] The granting of credit has been primarily focused on small and medium enterprises and is complemented by another one, discussed above, that is directed at larger companies and included a reduction of working hours and the granting of the Emergency Aid to workers.[37]

3. *Supporting the Economy*

Our focus here is on the measures designed to support the economy. However, as seen in the previous section, some measures aimed at the protection of income and work also involve support of the economy, having combined contents and goals. The measures taken to protect the economy were designed to benefit especially the micro and small businesses. One of them is the postponement of the payment of taxes, social contributions and debts in general. Furthermore, specific credit programs subsidized by the Federal Government were created.[38] A recent piece of research points out, regarding credit policies, that 94% of the amount of R$ 155,2 billion

34 Id.

35 Araújo/Alves/Silva/et al. Medidas Fiscais e Parafiscais da Pandemia de Covid-19: Experiências Internacionais Selecionadas. Revista Tempo do Mundo, n. 6, 2021, 35-65 (58 et seq.).

36 Exposição de motivos para a Medida Provisória 944, de 03.04.2020.

37 Id.

38 Ministério da Economia. Medidas de estímulo à economia executadas pelo governo atingem R$ 1,169 trilhão. 18.11.2021.

(= US$ 28.58 billion) were directed at individual microentrepreneurs, micro, small and medium companies.[39]

There are no indications of direct subsidy to the economy. However, there is reflection according to which during the 2008 international economic crisis the National Bank of Economic and Social Development had to offer large companies subsidized credit and that in the present crisis there is already more participation of private institutions in Brazil's credit market, so that large companies go directly to the market in order to guarantee resources, due to more favorable conditions and less bureaucracy. That reflection also considered that the opportunity costs[40] of the loans granted by the National Bank of Economic and Social Development between 2007 and 2014, which are supported by the citizens, are practically equivalent to the amount spent to fight the pandemic in 2020.[41] This allows us to understand the reasoning that led the Federal Government to focus more on the granting of loans to small and medium enterprises, which is equivalent to an indirect action through the market, rather than on granting direct subsidies to companies.

The first element to be highlighted in the area of credit policies is the National Program for the Support of Microenterprises and Small Companies (PRONAMPE in the Brazilian acronym). This program allows micro and small businesses to finance up to 30% of their gross revenue of the previous year, with payment over a 36-month period and at a maximum pre-set interest rate.[42] The credit can be used for investments and working capital.[43] Until the end of 2021, the Federal Government also increased its share in the fund that guarantees such credits.[44] In 2021, it allocated R$ 5 billion (= US$ 0.92 billion) to this fund, thus enabling the granting of R$

39 Araújo/Alves/Silva/et al. Medidas Fiscais e Parafiscais da Pandemia de Covid-19: Experiências Internacionais Selecionadas. Revista Tempo do Mundo, n. 6, 2021, 35-65 (58).

40 Basically, opportunity costs represent that which one sacrifices when making a choice, in this case, for example, the alternative uses of public funds: instead of granting subsidized loans to companies, investments in areas such as education, health and social welfare. See Organisation for Economic Cooperation and Development (OECD). Glossary of Industrial, Organisation, Economics and Competition Law. Entry "Opportunity Costs", p. 64.

41 Ministério da Economia. Uma breve reflexão sobre o desempenho econômico brasileiro diante da crise da Covid-19. Nota Técnica. 19.10.2021, p. 6.

42 See Art. 2 § 1 Art. 3 Lei 13.999, de 18.05.2020.

43 Art. 2 § 10 Lei 13.999, de 18.05.2020.

44 Art. 2 Lei 14.161, de 02.06.2021.

25 billion (= US$ 4.62) in credits.[45] The program was created through Act 13,999/2020 and was made permanent by Article 1 of Act 14,161/2021.[46]

The second highlight is the Emergency Program for Access to Credit (PEAC in the Brazilian acronym), which enabled the granting of credit to small and medium companies until 31 December 2020. The program's goal was to shield businesses from the economic impacts of the pandemic and to protect employment and income.[47] The companies reached by the program had, in 2019, a gross revenue between R$ 360,000 (= US$ 66,540) and R$ 300 million (= US$ 55.45 million). The grace period is 6 to 12 months and the credit payment period ranges from 12 to 60 months. The interest rate is set by a regulation.[48] The Federal Government also increased its share in the fund that guarantees such credits to R$ 30 billion (= US$ 3.69 billion).[49]

This program also includes another kind of credit aimed at small companies, microbusinesses and individual microentrepreneurs, with a limit of R$ 50,000 (= US$ 9.24 thousand) per contracting party.[50] The credit period is 36 months, including a grace period of 6 months, with a maximum annual interest rate of 6% that is compounded on a monthly basis.[51] The granting of credit is effected entirely through funds from the Union directed at the program and estimated at R$ 10 billion (= US$ 1.84 billion).[52]

The third highlight is the Working Capital Program for the Preservation of Companies (CGPE in the Brazilian acronym), which granted credit to microbusinesses and small and medium companies with a gross revenue of up to R$ 300 million (= US$ 55.45 million) in 2019.[53] These loans were available until 31 December 2020.[54] As a measure to make the granting of credit easier, it was established that companies did not have to prove their fiscal compliance.[55] What distinguished this program is that it required no transference, guarantee or equalization of interest rates by the Federal Government and was offered using resources of the participating financial

45 Ministério da Economia. Medidas de estímulo à economia executadas pelo governo atingem R$ 1,169 trilhão. 18.11.2021.
46 Lei 14.161, de 02.06.2021.
47 Art. 1 Lei 14.042, de 19.08.2020.
48 Art. 3 Lei 14.042, de 19.08.2020.
49 Art. 4 and art. 14 IV Lei 14.042, de 19.08.2020.
50 Art. 10 Lei 14.042, de 19.08.2020.
51 Art. 14 I, II and III Lei 14.042, de 18.08.2020.
52 Art. 15 and art. 20 Lei 14.042, de 19.08.2020.
53 Art. 1 and art. 2 Medida Provisória 992, de 16.07.2020.
54 Art. 2 § 2 Medida Provisória 992, de 16.07.2020.
55 N. 22 da Exposição de Motivos da Medida Provisória 992, de 16.07.2020.

institutions themselves.[56] The attractiveness of this program offered by the Federal Government to companies was associated with a more favorable fiscal treatment given to institutions that had difficulty recouping losses, provided they granted loans in the same proportion to the companies previously mentioned.[57] The program's goal was to generate an amount of up to R$ 120 billion (= US$ 22.18 billion) for credits.[58] In 2021, the Federal Government granted subsidies (in amounts adjusted until August 31) of 1.592 trillion (= US$ 0.294 trillion).[59]

A recent study indicates the increase of credit benefits to micro and small businesses during the pandemic, but that the volume was not sufficient to meet the demands of these sectors. Furthermore, it also indicates a significant reduction in the interest rates, possibly due to the choice of public policies. However, an analysis of the correlation demonstrates that the interest rates are not the main hindrance and other factors must be taken into account, such as excessive bureaucracy and lack of guarantees. As far as the granting of credit is concerned, the protagonists have been the public banks, which indicates their importance in the execution of the Government's public policies. Finally, it points to the scarcity of academic research on the credit market. In relation to the pandemic, it recommends studies that examine whether the programs were implemented timely, so as to avoid the shutting down of small companies, and also recommends that the above-described credit policies become permanent.[60]

Although, because of the pandemic and its consequences, the relevance of the above-described support programs for the economy is clear, one can see that Brazil adopted a rather indirect form of action through the credit market, which is distant from a typically social security-based approach. The relationship of the adopted measures with social security becomes more apparent in the programs, combining support of the economy and protection of employment and income described in the previous section. In the topic below about the social protection measures, the Emergency Aid is embraced. Although this program includes self-employed workers and individual microentrepreneurs, it also represents support of the econ-

56 Art. 2 § 6 Medida Provisória 992, de 16.07.2020.
57 Exposição de Motivos da Medida Provisória 992, de 16.07.2020.
58 N. 14 da Exposição de Motivos da Medida Provisória 992, de 16.07.2020.
59 Ministério da Economia. Medidas de estímulo à economia executadas pelo governo atingem R$ 1,169 trilhão. 18.11.2021.
60 Pereira. O Papel dos Bancos Públicos na Concessão de Crédito para os Pequenos Negócios Brasileiros durante a Pandemia COVID-19. Dissertação, Universidade Federal do Ceará, 2021.

omy and guarantee of income, which indicates connections between the chapters.

4. Social Protection

a) Protection of Informal Workers, Self-Employed Workers, Beneficiaries of the Family Allowance Program[61] and of Persons without Social Protection

Brazil is a country plagued by great inequalities and high levels of poverty, in which the protection of informal, self-employed workers, and of persons who still do not enjoy social protection posits an additional challenge. In this sense, Act 13,982 of 2 April 2020 implements a monthly Emergency Aid of R$ 600.00 (= US$ 119.90) that was planned for a period of 3 months and was then extended for 3 more months for the following groups of workers: (1) workers above 18 years of age, with the exception of adolescent mothers, who may be younger; (2) those who have no formal active employment; (3) those who do not receive any other kind of benefit from the pension system, social welfare, unemployment insurance or other federal income transfer program, except for the Family Allowance; (4) who do not exceed a per capita family income of ½ the minimum wage or a total family income of 3 minimum wages; (5) who have not received a taxable income above R$ 28,559.70 (= US$ 5,279.05) in 2018; (6) are individual microentrepreneurs, individual contributors to the General Pension Regime[62] or informal workers registered in the Single Registry for Social Programs of the Federal Government in terms of a self-declara-

61 The Family Allowance Program is a social welfare benefit. It is not a benefit that replaces income but complements the income of poor and extremely poor families, especially when they include children and youth. See Paiva/Mesquita/Jaccoud/Passos. O Novo Regime Fiscal e suas Implicações para a Política de Assistência Social no Brasil, Nota Técnica, Ipea, 27/2016, p. 22. The program offers a basic benefit to extremely poor families (with a per capita income of up to R$ 85.00 [= US$ 15.70]) and a flexible benefit to poor families (with a per capita income of up to R$ 170.00 [= US$ 31.40]). The latter is granted in cases of pregnancy, when there are children of 12 years or younger and youth aged between 12 and 17 in the family). There are conditions such as prenatal tests and a preestablished percentage of school attendance. See Art. 2 I, II, III, IV, § 2, § 3 and Art. 3, head provision and sole paragraph of Lei 10.836, de 09.01.2004. It will be soon replaced by the Brazil Aid Program, as explained below.

62 The General Pension Regime is Brazil's public pension and retirement system, encompassing private workers as obligatory contributors. However, public em-

tion.[63] This benefit was later extended until 31 December 2020, but the monthly payments were reduced to R$ 300.00 (= US$ 55.45). In both cases, two benefits per family are allowed, and monoparental families headed by mothers could receive two quotas of the benefit.[64]

The aid was renewed and extended for four months in 2021, with variable amounts of R$ 150.00 (= US 27.72), 250.00 (= US$ 46.21) or R$ 375.00 (= US$ 69.31) to be paid regardless of application, provided the criteria for eligibility were met.[65] Besides a reduction of the amounts to be received, there is also a restriction of the eligible target group so as to prioritize the neediest persons, either through refined control mechanisms or through additional criteria such as the limit of one benefit per family or the prohibition of granting the benefit to scholarship holders. The inclusion of a criterion of proportionality in the granting of the benefits, considering different situations, seems to be an evolution. Accordingly, as a rule the amount to be received is R$ 250.00 (= US$ 46.21), and in the case of families made up of one person the amount drops to R$ 150.00 (= US$ 27.72) and in the case of monoparental families headed by women the amount is raised to R$ 375.00 (= US$ 69.31).

In this context, the need for continued support by the Government becomes evident, since the impossibility of obtaining income affects primarily the most vulnerable people due to the continuity of either intermittent or permanent lockdown measures in some municipalities and the slowdown of the economy. Inversely, the decrease of the benefit amounts is justified by the loss of the Federal Government's financial capacity and by the need to keep the public debt at manageable levels.[66] During 2021, this aid was extended for three more months, until October.[67]

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ployees are usually protected by special social security regimes, controlled by the Federal Government, states, or municipalities.

63 Lei 13.982, de 02.04.2020.

64 Medida Provisória 1000, de 02.09.2020.

65 Medida Provisória 1039, de 18.03.2021.

66 Exposição de Motivos da Medida Provisória 1039, de 18.03.2021.

67 Decreto 10.740, de 05.07.2021. It is important to mention the existence of special measures for the cultural sector and specific measures to fight the pandemic in indigenous territories, Quilombola communities and with regard to artisanal fishermen provided for in a law of July 2020. Lei 14.017, de 29.06.2020; Lei 14.021, de 07.07.2020; Other support measures are described in Sarlet. Social Security in Brazil: Public Pension Reform and Responses to the COVID-19 Pandemic, Social Law Reports, Heft 6, 2021.

According to an assessment of the Emergency Aid's impact made in 2020,[68] in a scenario of recession the poorest families suffer the negative effects in a lopsided manner due to the fact that in this population group there is a higher rate of informal insertion in the labor market, which is aggravated by the fact that most of individuals in this group work in the service sector, which has been heavily affected by the crisis. This analysis is of an economic nature and includes the consideration of variables, along with the simulation and projection of scenarios.

Initially, the assessment had provided a scenario in which the Emergency Aid of R$ 600.00 (= US$ 110.90) would be made available only in the initially planned three-month period. Further, in a second scenario, the aid would be extended until the end of 2020.[69] In both scenarios direct effects on the families belonging to the lowest classes were found, with an indication of a comparative gain of 45% when aid was extended. However, indirect effects on the other social classes were also noted, resulting from externalities on the production, jobs, investments, salaries, capital revenue and family income. Such externalities had a more intense bearing on the lower strata, which benefit from the aid – incidentally, although with a lower impact, the higher classes, which are not the program's focus, also had positive prospects in the scenarios. In the first scenario the direct positive impacts on income have had a duration of three months, whereas in the second they last up to three quarters.[70]

As a matter of fact, an aid granted only throughout 2020 has already shown positive prospective impacts on Brazil's GDP in 2021. In the first scenario, the impact on employment is 0.11% per year, and in the second

68 Cardoso/Domingues/Magalhães/et al. Pandemia de Covid-19: impactos da crise e da renda básica emergencial. In: Políticas Sociais: acompanhamento e análise, Ipea, 28/2021, 539-559.

69 The term "simulation", used here, means that there is a need to assess what would have been the effect of the presence or absence of the Emergency Aid. In this sense, the impact analysis, although referring to the past, is estimated. On the one hand, the aid of R$ 600.00 was not limited to three months. On the other hand, it also did not last until December 2020 with the amount of R$ 600.00. In the last three months of 2020, the amount was R$ 300.00. Therefore, the data analysis was probably begun before the last extension of 2020 or could not consider the variation of the benefit amount. Another aspect to consider is that the study by Cardoso/Domingues/Magalhães/et al., quoted above, was published in March 2021, so there was not sufficient time for an analysis that included 2021. Another relevant aspect is that we are still experiencing the crisis generated by the pandemic so that it would hardly be possible to analyze the whole picture.

70 Id.

it is 0.3% in 2021. Positive effects are also found in the tax revenue, so that in the first scenario 24% of the aid's costs would be covered by the tax revenue increase, and 45% of them would be covered in the second scenario. The conclusion to be drawn is that the non-extension of the Emergency Aid in 2020 would have had a higher cost to the public treasury. Moreover, the consequences for the above-mentioned data and projections in this study, when compared with the actual developments in the granting of the aid, is that there was an initial extension for three months in 2020 and a second one until December with a reduced amount of R$ 300.00 (= US$ 55.45) and then later, in 2021, a resumption with significantly lower amounts. Externalities notwithstanding, the indicators show a significant positive impact on the income of families, on the economy and on public finances.[71]

This benefit is of an unprecedented magnitude both in terms of the amounts spent and of the number of beneficiaries. Another important aspect is the overcoming of considerable difficulties caused by sociocultural diversity and inequality. In this sense, a large number of people had difficulties related to registration, submission of documents, lack of internet access and difficulties in using the cell phone app made available to apply for the Emergency Aid. For this reason, many sought assistance from Caixa Econômica Federal, the public bank in charge of the payment, and the social welfare teams of the municipalities had to face a work overload. Just to give an idea of the problem's magnitude, in August 2020 up to 50.6% of the Brazilian population claimed benefits within this system. In the North and Northeast region this percentage was 60%, whereas in the South it was 35.8%, which also reveals great regional disparities.[72]

b) "Brazil Aid"

The end of the Emergency Aid in 2021 and the prospect of a post-pandemic scenario that would demand governmental initiatives designed to mitigate the losses of the most vulnerable families, promoting economic recovery through structured actions, led to the creation, on 9 August 2021,

71 Id.
72 Russo/Silva/Corseuil. Programas Federais de Manutenção de Empregos e Garantia de Renda no Contexto da Pandemia em 2020. In: Mercado de Trabalho, Ipea, 27/2021.

of a new benefit – the so-called Brazil Aid, to replace the present Family Allowance.[73]

Another factor related to this context is the trial of Writ of Injunction 7,300 by the Brazilian Supreme Court on 27 April 2021. In the judgment, the Court ordered the Executive Power to establish the amount of the benefit for 2022, in order to include it in the budget estimate and to start paying the benefit corresponding to the basic citizenship income[74] provided for in Act 10,835 of 8 January 2004 (Act 10,835/2004), focusing on poor and extremely poor persons. It also called on the Legislature and the Executive to adjust the amounts of the Family Allowance Benefits and to improve the social programs of income transference, particularly the basic citizenship income provided for in Act 10,835/2004.[75]

The main characteristics of Brazil Aid are the extension of its scope vis-à-vis the Family Allowance so as to include more families as well as the expansion and unification of social benefits. It is basically made up of a benefit for children aged 0 to 36 months, a benefit for pregnant women and persons in the age group between 3 and 21 and a benefit to overcome extreme poverty. It also includes provisions designed to stimulate the sports and scientific performance of children, aid for access to nursery or daycare, aid for inclusion in rural production directed at family farmers and for inclusion in urban production to encourage the beneficiaries to get inserted into the labor market and increase their income.[76]

If implemented, Brazil Aid could benefit up to 17 million people, which is an increase in comparison with the Family Allowance, which covers 14 million, but is still a much lower figure than the 40 million people who received the last monthly allowance of the Emergency Aid in October 2020. The average benefit of the Family Allowance is R$ 189.00 (= US$ 34.93), whereas the new program proposes a raise of 20%, thus reaching an amount of R$ 226.80 (= US$ 41.92). However, at the request of the President, the minimum benefit will be R$ 400.00 (= US$ 73.03),

73 Exposição de Motivos da Medida Provisória 1.061, de 09.08.2021.

74 "The Basic Citizenship Income" is provided for by law but has not yet been regulated. The STF has limited itself to determining the regulation of a benefit value for poor and extremely poor people. Still, the program's scope is more extensive, covering the protection of the entire population. Although "Brazil Aid" does not bear the name "The Basic Citizenship Income", the theme of the program shows the connection.

75 STF. Mandado de Injunção (MI) 7.300 Distrito Federal, 27.04.2021. DJE (Diário de Justiça Eletrônico/ Electronic Justice Gazette) 167, 20.08.2021.

76 See Medida Provisória 1.061, de 09.08.2021 and Exposição de Motivos da Medida Provisória 1.061, de 09.08.2021.

with a limit of R$ 500.00 (= US$ 92.42). This will be organized in the form of a temporary benefit to be granted until the end of 2022, which is the last year of the present Government's term in office.[77] Some of the main regulations within the program are still going through debates with the National Congress and the political sphere in general. The latest releases connected to the program have indicated that benefit payments within the program could start in December 2021, with payments of R$ 400.00 for about 17 million people – there are, however, conflicting reports indicating that the value of the benefit is already set, but not its scope or date of full implementation. The program has already started a "soft" implementation as beneficiaries of the defunct Family Allowance have migrated into Brazil Aid.[78]

Thus, a significant raise of this family benefit of social welfare can be expected, but a more substantial increase will be subject to political instability. An important aspect to be highlighted are the safeguards contained in the program's rules, according to which the benefits will not generate an entitlement, are dependent on the availability of budget funds and must comply with criteria of priority.[79] This indicates that there is a continuity of the logic guiding the Family Allowance Program in the sense that there is a possibility of limitation in the number of beneficiaries or in the amount of the benefit according to the availability of budget funds and the program's goals. Furthermore, as far as the Family Allowance is concerned, it is claimed[80] that this is not a social right in the sense of a subjective right and of a corresponding obligation to grant the benefit to everyone who submits the application and meets the criteria established in law.[81] This is, at any rate, a point that needs additional reflection. Further, the program may need adjustments, since a benefit situated in the framework of the fundamental right to social welfare (Art. 6 of the Federal Constitution) must be granted to all persons who submit the application and meet the requirements.

77 Ventura/Gullino. Ministro da Cidadania confirma Auxílio Brasil em novembro com benefício mínimo de R$ 400, mas não esclarece origem dos recursos. O Globo. 21.10.2021.

78 See Art. 83 Caput e 93 do Decreto 10.852, de 08.11.2021.

79 See Art. 87 and 88 of Decreto 10.852, de 08.11.2021.

80 In contrast with another major social welfare benefit, viz. the Continuous Cash Benefit, which is discussed below in the section on measures in the field of social protection in general.

81 Ipea. Políticas Sociais: Acompanhamento e Análise, 22/2014, 43-142 (63).

c) *Measures to Make Access to Social Security Easier*

Before going into the general measures designed to render access to social security easier, it is necessary to offer a brief explanation of the Continuous Cash Benefit, which is part of social welfare. It is regulated by law, is supported by the Constitution and consists in social benefits that implement the fundamental right to social welfare, enshrined in Article 203 of the Federal Constitution. It guarantees one minimum wage per month (in 2021: R$ 1,100.00 [= US$ 203.32]) for persons with disabilities or persons aged 65 or older. These persons must prove that they are not able to provide for their sustenance, either on their own or with family support. This condition is considered to be met if the per capita monthly income of the family is lower than ¼ of the minimum wage (R$ 275.00 [= US$ 50.83]).[82]

This social welfare benefit has the purpose of replacing income and has a restricted circle of eligible people. It is not tied to a contribution but is clearly a justiciable subjective right. This becomes especially clear in the Constitution itself as it defines the beneficiaries and the amount of the benefit.[83] In this case, the law cannot provide that there is no entitlement and the budget may be restricted for political reasons.[84] Once the application is submitted and the requirements are met, the benefit must be granted.

Recently, Act 13,981/2020 raised this limit to ½ of the minimum wage (R$ 550.00 [= US$ 101.66]), thus enlarging the group of eligible persons. A suit against this rise was filed in the Supreme Court under the argument that there was a lack of funds that had been aggravated by the crisis created by pandemic.[85] The President of the Republic vetoed the provision for enlargement and the National Congress rejected the veto, but the effectiveness of the alteration was suspended by a provisional decision by the

82 Art. 20 da Lei 8.742, de 07.12.1993. There are already decisions made by the Brazilian Supreme Court determining that a per capita income lower than ¼ of the minimum wage cannot be the sole criterion to ascertain the existence of neediness. STF. Recurso Extraordinário (RE) 567.985, 18.04.2013. DJE 194, 02.10.2013; STF. RE 580.963, 18.04.2013. DJE 225, 13.11.2013; STF. Reclamação 4.374, 18.04.2013. DJE 173, 03.09.2013.

83 Art. 203 V combined with art. 6 of the CF.

84 Ipea. Políticas Sociais: acompanhamento e análise. 24/ 2016, 63-130 (112).

85 Haje. Publicada lei que amplia acesso ao Benefício de Prestação Continuada. Câmara dos Deputados. Agência Câmara de Notícias. 24.03.2020.

Supreme Court.[86] The decision did not recognize an exception to the rule of indicating a source of funding for the increase of the benefit, especially since it is of a continuous and permanent nature.

Later, Act 13,982/2020 defines as incapable of providing the subsistence of an elderly person or a person with disabilities any family that until 31 December 2020 had a per capita income of up to ¼ of the minimum wage.[87] Thus, it recognizes an additional parameter to ascertain the existence of social vulnerability for the granting of the Continuous Cash Benefit due to the pandemic. For the same reason, it establishes that the income can be increased to ½ of the minimum wage per capita taking into account a regulation that considers the following: (1) degree of disability; (2) dependence on third parties for basic activities; (3) personal, familial, environmental and socioeconomic factors that diminish a full participation in society; (4) expenses for health treatments, diapers and special foodstuffs that are not made available by the public systems.[88] These measures became permanent in June 2021 through Act 14,176/2021.[89]

The measure implies a relaxation of the criterion of maximum income required for qualifying for the benefit but does not alter the other elements of social welfare, particularly the requirement to demonstrate vulnerability, which has, from the start, been connected to the per capita income. Ultimately, the measure was not implemented due to lack of the necessary regulation.[90]

Act 13,982/2020 also provides the possibility of excluding from the calculation of the per capita income the Continued Cash Benefit or any social security benefit that is already being received by another person with disabilities or elderly person belonging to the family.[91] The applications for the benefit that have already been submitted but are still pending are allowed an advance payment of three tranches in the amount of R$ 600.00 (= US$ 110.90). The checking of information is done through the public

86 STF. Medida Cautelar na Arguição de Descumprimento de Preceito Fundamental 662 – Distrito Federal, 03.04.2020. DJE 85, 07.04.2020.
87 Before that, the per capita income had to be lower than ¼ of the minimum wage.
88 Lei 13.982, de 02.04.2020.
89 Lei 14.176, de 22.06.2021.
90 Paiva/Pinheiro. BPC em Disputa: como alterações operacionais e regulatórias recentes se refletem no acesso ao benefício. Publicação Preliminar. Texto para Discussão. Ipea, 2021, p. 39 et seq.
91 Lei 13.982, de 02.04.2020.

administration systems. If the application is ultimately turned down, restitution will not be required unless there is evidence of bad faith.[92]

However, there are reports of difficulties, particularly due to claim denials because of register problems and the referral of applicants to social assessment without stating the reason for denial. The Brazilian Social Security Institute (INSS in the Brazilian acronym)[93] has adopted this procedure to avoid frauds but, in this way, it reduces the chances of solving the applicant's problem. There are also cases in which people are not aware of the right to the advance payment, which calls for a mobilization of the state and municipal social welfare agencies to inform the beneficiaries. Another problem is that the assessments and medical examinations for the granting of the benefit must continue to be made face to face, although they were suspended between 2019 and 2020, which caused significant delays in the granting of the benefit. This problem was only tackled after the topic was brought to court, which resulted in an agreement between the Social Security Institute, the Public Prosecutor's Office and bodies of the Federal Judiciary in November 2020.[94]

In view of the health risk, other procedures have also had some requirements waived or relaxed, and there has been an articulation of efforts in order to enable the social welfare system to reach the highest possible number of people. Some outstanding examples are the following:[95]

aa) On 19 March 2020, there was a suspension of the blocking of benefit payments (blockings may occur out of suspicion towards the beneficiary or because of non-compliance with certain bureaucratic procedures).

bb) On 20 March 2020, there was a suspension of procedures for the investigation and revision of enrollment, suspension and cancellations related to the Family Allowance Program and to the Single Register for social programs of the Federal Government.

cc) Social welfare has, as is the case in the area of public health, a federative structure, which involves agencies and competences concerning the Federal Government (Union), the states and the municipalities and

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92 Portaria Conjunta 3, de 05.05.2020.

93 The Brazilian Social Security Institute (Instituto Nacional de Seguridade Social – INSS) is the institution responsible for paying pensions of the General Social Security System and the Continuous Cash Benefit.

94 Paiva/Pinheiro. BPC em Disputa: como alterações operacionais e regulatórias recentes se refletem no acesso ao benefício. Publicação Preliminar. Texto para Discussão. Ipea, 2021, p. 42.

95 Ministério da Cidadania no Combate ao COVID-19; see also: Planalto. Legislação Covid-19.

constitutes a single or unified system. For this reason, the Federal Government suspended, until November 2021, the investigation of requirements to be met by entities of the Federation in order to receive transferences related to co-funding by the Union.[96] The purpose of the suspension was to avoid the interruption of the social welfare programs.[97] The system also includes private organizations that are active in social welfare and receive a certification issued by Government for this purpose attesting that they are social welfares entities. If some certification had been denied, the term for appeal against the decision was suspended until December 2021.[98]

dd) There was a relaxation of the procedures for registration, submission of documents and personal interviews, which, during the pandemic, may be done by telephone, electronic means, and, if necessary, opinions or forms replacing the documents may be drafted or filled in by a public employee. It was also established that there should be an active search for the vulnerable population groups.[99]

Most measures designed to make access to social protection easier are tied to the declaration or continuation of the state of public calamity. They will remain for as long as the latter lasts. Hence, for long-term changes, there is still a lack of regulation and organization regarding essential details like the above-mentioned new criteria for the Continuous Cash Benefit.

5. Conclusions

There is a considerable difference between the strategies. As shown in the item regarding the granting of credit to enable small and medium enterprises to cover their payroll, the Federal Government's strategy seems to consist primarily in an internalization,[100] i.e., it attempts to finance the

96 Art. 7 Portaria 109, de 22.01.2020.

97 Portaria 337, de 24.03.2020.

98 Art. 3 of Portaria 419, de 22.06.2020 (altered by Portaria 647, de 16.06.2021).

99 Instrução Operacional 4/2020 – SAGI/DECAU, de 30.04.2021.

100 As regards strategies of internalization and externalization for the solution of social problems, the latter occurs when the state tries to mobilize rules existing in the same field where the problem occurs in order to articulate its solution proposal – this is the case with regulation by means of labor norms. Externalization takes place when the state articulates its solution at another level by creating an external system, which is the case with the creation of social security systems. See Zacher. Das soziale Staatsziel. In Isensee/Kirchhof. Handbuch des Staatsrechts. Vol. 1, C. F. Müller, 1987, 1046-1111, No. 72.

payment of salaries made by the companies themselves and to provisionally protect employees against layoff by acting indirectly, i.e., through the credit market and the regulation of labor relations. The opposite partly applies to large companies as the state facilitates the reduction or suspension of working hours along with a reduction of salaries, accompanied by a proportional compensation given to employees by the state. This can be seen in the item which discusses the reduction or suspension of working hours and the aid to workers. This implies a partial externalization of the solution for the social problem as the state takes measures against part of the costs. The state takes the overload from companies and partly takes on the task of guaranteeing workers' income.

The measures described above combine the protection of employment and income with support of the economy. (i) Thus, the granting of credit to cover the payroll of small and medium enterprises is connected to the purpose of paying salaries. On the one hand, it maintains temporary employment stability and thus guarantees workers' income; on the other hand, it helps companies to continue their activities. This can be seen in the item which deals with the granting of credit to small and medium companies to cover the payroll. (ii) This relationship becomes more explicit in the possibility of reducing working hours or suspending the employment contract combined with the benefit paid to workers to compensate the reduction or loss of salary. These elements are found in the item which discusses the reduction or suspension of working hours and the aid to workers. In this case, there is a guarantee of workers' income, although it is a partial one, and a temporary protection of employment, while the Federal Government takes part of the overload from companies by giving workers a compensation and suspending the payment of mandatory labor charges, thus reducing the costs of companies and enabling the resumption of their activities. (iii) The relaxation of labor norms described in the item on special labor rules, although it is a polemical measure, is seen in the context of the protection of employment, income and aid to the economy. (iv) The target group of the *Emergency Aid*, described in the item on the protection of informal and self-employed workers, includes individual microentrepreneurs and, in this sense, also constitutes a guarantee of income and support of the economy.

In 2020, the fiscal and parafiscal measures implemented in Brazil were equivalent to 17.2% of the GDP. The Emergency Aid accounts for 56% of the Federal Government's expenditures. Another important measure was the implementation of the Emergency Benefit, combined with other measures, particularly credit policies focused on micro, small and medium businesses. But even regarding these topics there were mismatches: at the end of 2020, the pandemic reached an alarming level again, but the payment of the Emergency Aid was only resumed in April 2021, credit programs were frozen and the federal budget for 2021 is in a slow process of approval.[101]

In the areas of taxes and budget, there was a quick response by the institutions in the sense of relaxing the fiscal regime, creating a parallel budget free of hindrances and articulating complex administrative actions. However, Brazil is not an exemplar of successful fight against the pandemic: it has the seventh highest death rate, occupies the 17th position in terms of GDP drop and the 10th position in the ranking of the size of fiscal measures. And precisely this correlation can also be seen in other countries: a higher death rate corresponds to bigger GDP drops and bigger fiscal stimulus packages.[102]

Since the precise extent of the losses caused by the pandemic in the medium and long range is not known yet, not to mention all other difficulties to be faced, but also in view of the amount of political, social and economic resources mobilized by Brazil on a highly insecure basis due to institutional conflicts and organizational deficiencies, it is possible to start from the assumption that there is a significant risk of instability for Brazil's social security system.

On the other hand, there are novel experiences, such as the Emergency Benefit to counterbalance the reduction or suspension of working hours, which, at the same time, offer opportunities to discuss the responsibility of the state and its limits in relation to some forms of damage or loss occurring in the course of the pandemic.

Even the measures aimed at maintaining employment and income have an unprecedented synergy with the protection of the economy, but probably this is not peculiar to Brazil.

The Emergency Aid, as well as the Brazilian Supreme Court's decision on Writ of Injunction 7,300, is at the basis of a reframing, improvement and refounding of the Family Allowance Program, now called Brazil Aid, generating an increase, better articulation and unification of benefits. In monetary terms, the increased benefit amount seems to be partially tied to short-term electoral interests in view of the general elections to be held in 2022 and the negotiation between the Federal Government and National

101 Araújo/Alves/Silva/et al. Medidas Fiscais e Parafiscais da Pandemia de Covid-19: Experiências Internacionais Selecionadas. Revista Tempo do Mundo, n. 6, 2021, 35-65 (62 et seq.).

102 Orair. Política Fiscal e Resposta Emergencial do Brasil à Pandemia. In Políticas Sociais: acompanhamento e análise, Ipea, 8/2021, 561-582 (575 et seq.).

Congress around the approval of two constitutional amendments designed to generate resources. They are generated by changing the method of updating the Executive Branch's spending limit and by establishing a ceiling for payments, ordered by the judiciary and to be paid by the Executive Branch. The limitation will occur until 2026 and will lead to delayed payments. Alternatively, there is a possibility to speed up payment, which is conditioned, however, to a forty percent waiver of the amount receivable. The budgetary space generated was tied, in short, to social security and a fund of resources for education. At the same time, a fundamental social right to basic family income for people in vulnerable situations was inserted in Article 6, sole paragraph, and in Article 203 VI of the Federal Constitution, however, conditioned to regulation, which should occur by the end of 2022. This circumstance, of course, does not preclude an improvement of the program but represents, nonetheless, a considerable fragility.[103]

Most policies of subsidized credit created in the context of the pandemic are of a transitory nature, but one of them was transformed by the law into a permanent policy. Although it is not an initiative focused on social security, it arises from the context of the synergy between economic matters and social security and it is expected to have a positive effect on the latter.

The description of the measures of facilitation of access to social protection shows a relatively contradictory scenario, marked by regulatory gaps, bureaucratic hindrances in mismatch with the legislation and the programs produced, so that in this sense there are no indications of a significant change that would make access to social protection easier.

103 See: Emenda Constitucional 113, de 08.12.2021 e Emenda Constitucional 114, de 16.12.2021.

IV. Measures to Protect Livelihoods during the COVID-19 Pandemic in China

Yifei Wang

1. Introduction

a) Historical Overview[1]

The COVID-19 pandemic broke out first in Wuhan, China, the provincial capital of Hubei, at the end of 2019. Compared with other countries, at that time, China faced quite different conditions in terms of the huge psychological distress and the lack of knowledge of the new virus. About one month later, the new lung disease was legally confirmed as an infectious disease.[2] The disease was soon proven to be so severe that the national emergency response of the highest level was launched on 15 January 2020. The central leading body[3] and the leading and coordinating working agency of the State Council[4] were then established and national administration began to take the major responsibility for the prevention and control of the pandemic. On 23 January 2020, Wuhan was sealed off, and from 23 to 29 January 2020, all provinces successively launched provincial emer-

1 See the white paper "China's Action to Fight the COVID-19 Pandemic" (抗击新冠肺炎疫情的中国行动) released by the State Council Information Office on 7 June 2020.

2 On 20 January, the National Health Commission (NHC) announced to include the new lung disease as a Class B infectious disease of and allowed the state to adopt measures to cope with infectious diseases of Class A. This procedure is stipulated in Section 4 Para. 1 Law of Prevention and Treatment of Infectious Diseases (2013 Amendment) of 29 June 2013 (中华人民共和国传染病防治法). All normative documents cited in this paper, unless otherwise specified, can be found in the database "北大法宝".

3 The Central Leading Group for Responding to the COVID-19 Pandemic (中央应对新型冠状病毒肺炎疫情工作领导小组) was established on 25 January 2020 and works under the leadership of the Standing Committee of the Political Bureau of the CPC Central Committee. The team leader is Keqiang Li, the Premier of the State Council.

4 The State Council's Joint Prevention and Control Mechanism against the COVID-19 Pandemic (国务院应对新型冠状病毒肺炎疫情联防联控机制).

gency responses at the highest level. Comprehensive and strict measures were taken in all provinces, especially in Hubei. The Spring Festival (25 January) holiday was prolonged. Travelling across the country was strictly limited and a large number of migrant workers who had gone home for the Chinese New Year were stranded in their hometowns. Economic and social activities were to a large extent stopped. Another month later, starting from 21 February 2020, provinces gradually lowered the level of the provincial emergency response and lifted traffic restrictions. On 19 March 2020, no infection had been confirmed in any province except Hubei for 7 consecutive days. After this period of intensive and rapid responses, infections in China occurred only sporadically on a small scale and thus remained controllable.

b) *General Introduction of the Measures*

China adopted a zero-tolerance policy on the COVID-19 pandemic from the very beginning. This came from an understanding of the normality that people should never live with the virus, which was based on a common understanding that the novel virus was extremely dangerous and could bring unbearable suffering to society. It was partly based on the painful memory of the SARS pandemic in China 17 years ago. Seen from the viewpoint that the pandemic would bring problems that cannot be solved by individuals privately, state interventions are to a large extent justified. This applies also to the later stages of a pandemic where controllability is often the main goal. The measures taken in China to cope with the pandemic are thus, in the public perception, to some extent comparable to a war, where all are required to act by fulfilling their specific functions in this war. During such a period, the central government decides on the collective goals. In the early stages of the pandemic it was emphasised that "people's life safety comes first".[5] As the pandemic showed first signs of being controllable, it was decided to "balance pandemic prevention and control with economic and social development".[6] The focus then changed to poverty alleviation in rural areas[7] and the comprehensive goal of the "six stabilisations and six protections"[8].

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5 According to the instructions of Jinping Xi on 20 January, see white paper (fn. 1).
6 According to the instructions of Jinping Xi on 19 February, see white paper (fn. 1).
7 According to the instructions of Jinping Xi on 6 March, see white paper (fn. 1).
8 "Stabilisation of employment, finance, foreign trade, foreign investment, investment and expectations, protection of employment, basic livelihood, market sub-

The livelihood protection measures are very fragmented and lack general systematisation. Benefits were provided according to a mixture of considerations, not referring to specific legally discernible reasons. Many measures were based on political and administrative decisions, which sometimes deviated from legal provisions. Rules, principles, guidelines and policies were mixed in many governmental documents and were usually temporary, although some measures might have been prolonged even several times. One could hardly say that legal institutions played a major role.[9] The effective implementation of the decisions was mainly ensured through accountability mechanisms in the bureaucracy.

Meanwhile, these measures also show a considerable degree of continuity. Many measures were taken in the framework of the existing schemes of employment promotion, social assistance, social insurance and poverty alleviation. The pandemic just sharpened the problems the schemes had been dealing with and helps accelerate the reforms and transformations that had already started to take place in China.

In some cases, the state participated directly in the production and distribution of medical materials and food and provided relevant services. This was the case in areas where normal economic activities were not possible due to pandemic prevention and control measures or were not effective enough to meet urgent needs. As Wuhan was "locked down", the state established a joint supply mechanism,[10] mobilising eight provinces with a large vegetable production to collectively ensure the supply of daily necessities in Wuhan – also the central frozen pork reserve[11] had been included in the supply measures. The residential communities in Wuhan took the responsibility of delivering living necessities to the residents quarantined at home. The state provided Wuhan citizens with medical

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jects, food and energy security, stability of industrial supply chain and grassroots operations." The Political Bureau of the CPC Central Committee proposed "Six Stabilisations" on 31 July 2018 and "Six Protections" on 17 April 2020.

9 It is interesting to read the three batches of guidance cases (疫情防控和企业复工复产律师公益法律服务指导案例) the Ministry of Justice released for the guidance of lawyers to better solve pandemic-related lawsuits with emphasis on the goal of maintaining overall social stability during the pandemic. The cases can be found in the database "北大法宝".

10 The Ministry of Commerce established the "joint supply cooperation mechanism" (联保联供协作机制) on 23 January.

11 "National meat reserves" include live pig reserves and frozen meat reserves set up by the Ministry of Commerce in various provinces and cities across the country, see Measures for the Operation and Management of the National Meat Reserve of 9 December 1996 (国家储备肉操作管理办法).

materials, dispatched medical staff and built modular hospitals there, and coordinated 19 provinces to provide medical support for other cities in Hubei. In other areas, the vegetable basket project[12] and the food security measures[13] secured sufficient food supply. The state subsidised persons providing medical services[14] and also imposed wide-range obligatory PCR tests and financed them.[15]

In most cases, especially since the pandemic is under control, people are expected to be more self-responsible. The state generally took measures in the framework of the mechanism of market economy: on the one hand, the state ensured workers could stay active in the labour market (2), supported productive institutions in using the productive forces profitably (3a), and facilitated the combination of workers and other productive forces through employment promotion (3b); on the other hand, the state protected the subsistence of people and furthered their ability to participate in economic activities mainly as labour providers and consumers (4). In the following, the individual measures will be presented.

2. *Job Retention*

Measures taken to protect the jobs and income of employees have been the responsibility of enterprises and unemployment insurance.

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12 In 1988, the Ministry of Agriculture started the "vegetable basket project" to ensure the nationwide supply of non-staple food by coordinating the production and circulation of non-staple food across regions. The implementation of this project is the mayor's responsibility.

13 See Several Opinions of the State Council on Establishing and Improving the Responsibility System of Provincial Governors for Food Security of 31 December 2014 (国发〔2014〕69 号).

14 Persons providing medical services for pandemic prevention and control were paid CNY 200 or, respectively, CNY 300 per day by the central government; expenses of medical institutions for purchasing medical equipment for prevention, diagnosis, treatment and rapid diagnostic reagents were paid through local financing with subsidies from central finance. See Section 2 Notice of the Ministry of Finance and the NHC on the Relevant Funding Guarantee Policies for the Prevention and Control of the Corona Pandemic of 25 January 2020 (财社〔2020〕2 号).

15 Section 2 Para. 1, Section 5 Para. 3, Implementation Opinions on Accelerating the Promotion of PCR Tests against COVID-19 of 8 June 2020 (联防联控机制综发〔2020〕181 号).

a) Ban on Terminations and Job Stabilisation Subsidy

The Minister of Human Resources and Social Security issued a short document[16] and announced the two most important measures for job retention: a ban on terminations, and a job stabilisation subsidy.

Accordingly, the employer is not allowed to terminate the labour contract and should pay wages when an employee is unable to provide labour due to an infection with COVID-19, suspected infection, or due to having been in close contact with somebody who is infected and in quarantine for medical treatment or observation, or due to quarantine obligations or other emergency measures stipulated by government, unless the employer has the right to unilaterally terminate the labour contract due to the fault of the employee according to Section 39 of the Labour Contract Law (LCL).[17] If the labour contract expires during such period, it should be extended to the end of the medical treatment or observation, the quarantine or other emergency measures taken by the government.[18] This special rule expanded the restrictions stipulated in LCL on dismissal by employers (Section 42 LCL) and situations of non-termination of the labour contract when it expires (Section 45 LCL). However, the legal basis for this extension is unclear, since such an extension is only allowed through the laws or regulations of the State Council (Section 42 No. 6 LCL).

Enterprises were provided with job stabilisation subsidies (稳岗补贴) if they faced difficulties but avoided layoffs during the pandemic. Meanwhile, when suspending its business, an enterprise shall pay wages as stipulated in the labour contract within one pay period; after that, it should pay a wage not lower than the local minimum wage standard if an employee provides normal labour, and pay a living allowance (standard set by provinces) if he does not.[19] The basic idea of the job stabilisation subsidy, also called job stabilisation rebates of the unemployment insurance (失业保险稳岗返还), is to encourage enterprises to bear the responsibility for retaining the respective jobs and incomes of their employees, during difficult or normal times, by giving enterprises the possibility to get a

16 Notice by the General Office of the Ministry of Human Resources and Social Security of Issues Concerning Properly Handling Labour Relations during the Prevention and Control of the Outbreak of COVID-19 of 24 January 2020 (人社厅明电[2020]5 号).

17 Labour Contract Law of the People's Republic of China (2012 Amendment) of 28 December 2012 (中华人民共和国劳动合同法).

18 Section 1 人社厅明电[2020]5 号 (fn. 16).

19 Section 2 人社厅明电[2020]5 号 (fn. 16).

refund of the money they paid to the social insurance funds. This subsidy is paid out of unemployment insurance funds. However, it is neither prescribed as an insurance benefit in the Social Insurance Law[20] nor in the Unemployment Insurance Regulation of the State Council.[21] Although extended several times, provision of the subsidy remained temporary and subject to political change.[22] It was introduced in 2014 to help solve the problem of unemployment in the process of industrial upgrading, applied just to enterprises that needed specific support regarding transformation[23] until the end of 2020.[24] The subsidy was, originally, not very generous, being restricted access and in a low amount.[25] In 2019, it was expanded to all insured enterprises, with an increased amount,[26] and further increased

20 Social Insurance Law of the People's Republic of China (2018 Amendment) of 29 December 2018 (中华人民共和国社会保险法).

21 Unemployment Insurance Regulation of the State Council of 22 January 1999 (失业保险条例).

22 According to the policy introducing this measure, the job stabilisation subsidy will be provided until the end of 2020, Section 3 Notice of the Ministry of Human Resources and Social Security, the Ministry of Finance, the National Development and Reform Commission, and the Ministry of Industry and Information Technology on Issues concerning Granting Support in Respect of Unemployment Insurance to Enterprises for Stabilising Employment of 11 June 2014 (No. 76 [2014] of the Ministry of Human Resources and Social Security).

23 Section 1 No. 76 [2014] of the Ministry of Human Resources and Social Security (fn. 22).

24 Section 3 No. 76 [2014] of the Ministry of Human Resources and Social Security (fn. 22).

25 Enterprises that have participated in unemployment insurance and paid full unemployment insurance contributions meet the requirements of national and regional industrial restructuring policies and environmental protection policies and have a sound financial system and standardised management and operation, etc. could apply to the human resources and social security apartment for the subsidy, which amounted to a certain percentage (not more than 50%, the specific proportion determined by the provincial human resources, social security and financial departments) of the total amount of unemployment insurance contributions actually paid by the enterprise in the previous year, if they had no layoffs in the previous year or where layoff rates were lower than the regionally registered urban unemployment rate of the previous year, Sections 2, 3 No. 76 [2014] of the Ministry of Human Resources and Social Security (fn. 22).

26 All insured enterprises, if they do not have any or fewer layoffs, could be returned 50% of the unemployment insurance contributions they had paid in the previous year. From 1 January to 31 December 2019, enterprises facing temporary difficulties in production and business could get subsidies with increased amounts: The subsidy amounts to 6 times of the result of the amount of the local average monthly unemployment benefit multiplied with the number of insured employ-

during the pandemic.[27] All enterprises in Hubei, as well as medium-sized, small and micro-enterprises with fewer layoffs could be returned 100% of the unemployment insurance contributions they paid in the previous year. An enterprise facing difficulties could get a subsidy amounting to not more than 6 times the result of the amount of the local average monthly unemployment benefit multiplied with the number of insured employees in this enterprise, or amounting to all social insurance contributions to be paid by the enterprise for 3 months. This measure was extended until 31/12/2021. However, the amount of the subsidy decreased and it was more precisely distinguished between enterprises of different sizes so that the subsidy was especially beneficial for small enterprises.[28]

b) *Unemployment Insurance*

In case of unemployment, unemployment insurance benefits are granted. In China, unemployment benefits are relatively low (between minimum

ees in the enterprise, or amounts to 50% of all social insurance contributions to be paid by the enterprise for 6 months, Section 1 Notice of the Ministry of Human Resources and Social Security, the Ministry of Finance, the National Development and Reform Commission, and the Ministry of Industry and Information Technology on Granting Support in Respect of Unemployment Insurance to Enterprises for Stabilising Employment of 11 June 2014 (No. 23 [2019] of the Ministry of Human Resources and Social Security).

27 Section 2 Implementation Opinions of the General Office of the State Council on Strengthening Measures to Stabilise Employment in Response to the Impact of the Corona Pandemic of 18 March 2020 (No. 6 [2020] of the General Office of the State Council).

28 Insured enterprises with no layoffs or a layoff rate not higher than the previous year's national urban survey unemployment rate control target and insured enterprises with less than 30 people (inclusive) whose layoff is not higher than 20% of the total number of insured employees can apply for job stabilisation rebates; large enterprises shall refund not more than 30% of the unemployment insurance contributions paid by the enterprises and their employees in the previous year, and small, medium-sized and micro-enterprises shall refund not more than 60%, Sections 1, 9 Notice of the Ministry of Human Resources and Social Security, the National Development and Reform Commission, the Ministry of Education, the Ministry of Finance, the Central Military Commission, and the National Defense Mobilisation Department on the Continuation of the Implementation of Some Policies and Measures to Reduce Burdens, Stabilise Jobs and Expand Employment of 20 May 2021 (No. 29 [2021] of the Ministry of Human Resources and Social Security).

living allowance and minimum wage),[29] so that besides their social security function, granting is even more guided by the labour market objectives of motivating the labour force population to stay active in the labour market. That is why it is presented in this section instead of Section 4. In reaction to the pandemic, there were mainly three changes. (a) The prolongation of unemployment benefit for older people: For those who were less than one year away from the legal retirement age when the period of receiving unemployment benefit expires, the benefit could be paid further until these persons have reached legal retirement age.[30] This measure was not introduced specifically to combat the consequences of the pandemic, but aimed to solve the general unemployment problem in China.[31] It factually played an important protective role during the pandemic, so that the Ministry of Human Resources and Social Security extended it in 2020 without prescribing a termination date.[32] (b) Introduction of temporary unemployment subsidy (失业补助金):[33] Those who were not employed after the expiration of the period of unemployment benefit receipt and those who were insured but do not meet the conditions for receiving unemployment benefit could be provided an unemployment subsidy not higher than 80% of the local unemployment benefit for 6 months. The unemployment subsidies were paid by unemployment insurance funds.[34] (c) Introduction of temporary living subsidy (临时生活补助) for unemployed

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29 According to Section 47 Social Insurance Law, the local government sets the amount of unemployment benefit and this must not be less than the minimum living allowance. According to Section 18 Unemployment Insurance Regulation of the State Council, the unemployment benefit is to be set lower than the local minimum wage. The benefit is therefore not dependent on the salary of the insured person. Accordingly, it does not aim to maintain the previous living standard in the sense of a wage replacement, but rather to prevent the insured person to fall into poverty on the one hand, and to motivate him to work on the other hand.

30 Section 20 Opinions of the State Council on Further Stabilising Employment of 13 December 2019 (No. 28 [2019] of the State Council).

31 See preface of No. 28 [2019] of the State Council (fn. 30): "Recently there are more and more risks and challenges inland and abroad and the pressure to stabilise employment has increased." The pandemic belongs also to these "risks".

32 Section 2 Notice by the Ministry of Human Resources and Social Security and the Ministry of Finance on Expanding the Coverage of Unemployment Insurance of 29 May 2020 (No. 40 [2020] of the Ministry of Human Resources and Social Security).

33 Section 14 No. 6 [2020] of the General Office of the State Council (fn. 27).

34 Section 3 No. 40 [2020] of the Ministry of Human Resources and Social Security (fn. 32).

insured workers with rural household registration who do not meet the conditions for receiving a one-time living subsidy[35]. From May to December 2020, an unemployed worker with rural household registration who had joined the insurance after 1 January 2019 and for less than one year was provided a monthly temporary living subsidy according to the urban minimum living standard of the city he got insured in for no more than 3 months.[36] The temporary unemployment subsidy and the temporary living subsidy were extended until 31/12/2021.[37]

3. *Measures to Support the Economy*

a) *Measures to Support Companies*

Special loan programmes applied to "key enterprises for pandemic prevention and control" ("key enterprises") that produced important goods and provided essential services for combating the pandemic.[38] The central and provincial governments decide on the national and local lists of key enterprises upon application. The People's Bank of China issued special central bank lending to national banks and local corporate banks to grant beneficial loans to these key enterprises. On the basis of that, the central government provided to them interest subsidies for not more than 1 year. The key enterprises were required to use beneficial loans and interest

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35 According to Section 21 Unemployment Insurance Regulation of the State Council, an insured employee with rural household registration is provided a one-time living subsidy in the case of unemployment, if he has continuously worked for one year and the employer has paid unemployment insurance contributions for him. Compared with other employees, employees with a rural household registration do not have the obligation to pay unemployment insurance contributions, and get a one-time benefit rather than a monthly unemployment benefit. This is to facilitate their movement between different regions as migrant workers. However, if a worker chooses to pay contribution for himself, he could also get normal unemployment benefits like other employees.

36 Section 4 No. 40 [2020] of the Ministry of Human Resources and Social Security (fn. 32).

37 Sections 6, 9 No. 29 [2021] of the Ministry of Human Resources and Social Security (fn. 28).

38 Definition see Section 1 Para. 1 Emergency Notice of the Ministry of Finance, the National Development and Reform Commission, the Ministry of Industry and Information Technology, etc. on Winning the Battle of Pandemic Prevention and Control and Strengthening the Financial Support for Key Enterprises in Pandemic Prevention and Control of 7 February 2020 (财金〔2020〕5 号).

subsidies only for the purposes of operating businesses related to pandemic prevention and control measures, and they were to follow the unified allocation plans of the state as regards their production. Beneficial guarantee programmes applied to small and micro-enterprises and agricultural companies of a moderate scale (农业适度经营主体). In addition, a series of tax reductions applied to key enterprises, enterprises of industries in difficulties (transportation, catering, accommodation and tourism, etc.), individual industrial and commercial households (个体工商户)[39], small and micro-enterprises (with special tax exemption for those in Hubei),[40] pharmaceutical and medical equipment enterprises, import and export enterprises, agricultural businesses and so on.[41] Some of the tax breaks for small and micro-enterprises, individual industrial and commercial households and farmers have been extended until the end of 2023.[42]

The most important measures were the exemptions of social insurance contributions and possibilities of deferring their payment. Starting from February 2020, in all provinces besides Hubei, micro-, small and medium-sized enterprises were exempted from the employer's contributions towards the basic pension, unemployment and occupational accident insurance ("the three social insurances") for no more than 5 months; for large enterprises the employer's contributions towards the three social insurances had been reduced to 50% for no more than 3 months. In Hubei, starting from February 2020, all enterprises were exempted from paying employer's contributions towards the three social insurances for not more than 5 months.[43] In addition, insured enterprises nationwide in serious difficulties could apply to defer the payment of employer's contri-

39 According to the legal definition of Section 54 Para. 1 Civil Code (中华人民共和国民法典), an individual industrial and commercial household is a natural person conducting industrial and commercial operations upon registration in accordance with the law.

40 From 1 March to 31 May 2020, small-scale taxpayers in Hubei Province were exempted from value-added tax and the rate of value-added tax for small-scale taxpayers in other regions was reduced from 3% to 1%.

41 For a summary of these measures see "Q&A on Policies and Measures for Fiscal Support for Pandemic Prevention and Control" provided by the Ministry of Finance.

42 Announcement of the Ministry of Finance and the State Administration of Taxation on Continuing the Implementation of Beneficial Tax Policies for Inclusive Finance of 20 April 2020 (财政部、税务总局公告 2020 年第 22 号).

43 Sections 1, 2 Notice by the Ministry of Human Resources and Social Security, the Ministry of Finance and the State Taxation Administration on the Temporary Reduction and Exemption of Social Insurance Contributions Payable by Enterprises of 20 February 2020 (人社部发〔2020〕11 号).

butions towards the three social insurances within 2020 for no more than 6 months.[44] Upon agreement between the employer and the employee, the payment of the employee's contributions can also be deferred. However, in this case, the employee loses the interest for the period of non-payment in his individual account of the basic pension insurance.[45] It is emphasised that the contribution exemption and deferred payment should not affect the rights and interests of the insured.[46] However, the prerequisite for claiming benefits of the basic pension and unemployment insurance is that the deferred contributions must first be redeemed. The claiming of occupational injury benefits should never be affected.[47] These measures of reduction and deferring payment of contributions towards the three insurances were once extended in 2020[48] and should no longer apply since 2021.[49] Meanwhile, the state has decided to continue the measures of reducing the contribution rates towards the three insurances at least until 30/04/2022.[50]

In China, the basic medical insurance has, since 2018, been managed separately by the newly established National Healthcare Security Administration (NHSA, 国家医疗保障局), directly subordinate to the State Coun-

44 Section 3 人社部发〔2020〕11 号 (fn. 43).

45 Section 6 Para. 2 Notice of the General Office of the Ministry of Human Resources and Social Security, the General Office of the Ministry of Finance, and the General Office of the State Administration of Taxation on Issuing the "Implementation Opinions on Issues Concerning the Temporary Reduction and Exemption of Social Insurance Contributions Payable by Enterprises" of 28 February 2020 (人社厅发[2020]18 号).

46 Section 5 人社部发〔2020〕11 号 (fn. 43).

47 Section 6 Para. 2 人社厅发[2020]18 号 (fn. 45).

48 Notice by the Ministry of Human Resources and Social Security, the Ministry of Finance and the State Taxation Administration on Extending the Implementation Period of the Policies Regarding the Temporary Reduction and Exemption of Enterprises' Social insurance Contributions and Other Issues of 22 June 2020 (人社部发〔2020〕49 号).

49 Notice of the General Office of the Ministry of Human Resources and Social Security, the General Office of the Ministry of Finance, and the General Office of the State Administration of Taxation on Issues Related to Social Insurance Payments in 2021 of 26 Februar 2021 (人社厅发[2021]2 号).

50 In 2019, the central government decided to reduce the contribution rate towards the basic pension insurance and temporarily reduce the contribution rate towards unemployment insurance and occupational injury insurance until 30/04/2020. See Notice of the General Office of the State Council on Issuing the Comprehensive Plan of Reducing Social Insurance Contribution Rates of 1 April 2019 (国办发〔2019〕13 号). This contribution rate reduction measure has been prolonged for another year until 30/04/2022, see 人社厅发[2021]2 号 (fn. 49).

cil. From February 2020, all provinces could decide, according to the financial conditions of the funds and actual needs,[51] to halve the employer's contributions towards the basic medical insurance for no more than 5 months. Deferring the payment of contributions was possible for no more than 6 months.[52] The contribution rate towards the basic medical insurance was reduced in recent years in some cities in order to support the economy. NHSA confirmed this practice, but forbade to cut the contribution by 50% if the contribution rate had been already reduced.[53]

In addition, other financial burdens had been reduced. Before 30 June 2020, enterprises affected by the pandemic could apply for a deferral of contribution payments towards housing funds[54]; in areas with severe pandemic spread, enterprises could also – following consultation with employees – decide whether to pay housing funds and at what rate.[55] Before 30 June 2020, the payment of migrant workers' wage security deposits[56] could be deferred and enterprises with good wage payment

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51 In principle, contributions could be halved where the accumulated balance of the funds can be paid for more than 6 months, otherwise the provinces should make overall arrangements if it is really necessary to reduce the contribution.

52 Sections 1, 2 Guiding Opinions of the NHSA, the Ministry of Finance and the State Taxation Administration on the Temporary Reduction of the Contributions of Basic Medical Insurance for Employees of 21 February 2020 (医保发[2020]6号).

53 Section 5 医保发〔2020〕6 号 (fn. 52).

54 The scheme of housing funds has been the Chinese housing security scheme since the 1990s. An employee and his employer should deposit a certain percentage of the wage (not less than 5%) to the housing fund which is owned by the employee himself and can only be used for buying and renting a house. The scheme is regulated in the Regulation on the Administration of Housing Accumulation Funds (2019 Revision) of 24 March 2019 (住房公积金管理条例).

55 Notice of the Ministry of Housing and Urban-Rural Development and the Ministry of Finance and the People's Bank of China on Properly Implementing the Temporary Support Policy of the Housing Fund in Response to the Corona Pandemic of 21 February 2020 (建金〔2020〕23 号).

56 This system was firstly introduced in 2016, Section 7 Opinions of the General Office of the State Council on Comprehensively Solving the Problem of Unpaid Wages for Migrant Workers of 17 January 2016 (No. 1 [2016] of the General Office of the State Council). The wage deposit is the special account that is set up in the bank, in which the general construction contractor should deposit a certain proportion of the contract value of the project. The fund is used to pay the owed wages of migrant workers who provide labour for the contracted projects. For concrete details about this system see Notice of the Ministry of Human Resources and Social Security, the Ministry of Housing and Urban-Rural Development, and the Ministry of Transportation on Issuing the "Regulations on the Wage Security

records could be exempted from payment.[57] The state also took measures to reduce the rental costs of small and micro-enterprises and individual industrial and commercial households in service sectors.[58] Among them, the most effective measure was to order state-owned enterprises to exempt the abovementioned companies in difficulties from payment of at least 3 months' rent in the first half of the year.[59]

b) *Measures to Promote Employment*

The State Council issued a guiding document providing a series of measures to promote employment.[60] It referred to many terms and benefits in the framework of Employment Promotion Law (EPL).[61] These benefits are paid from the employment promotion funds allocated by local governments from the fiscal budget (Section 15 EPL); the use of the funds is regulated in detail in "Measures for the Administration of Employment Subsidy Funds" (ESM).[62]

Measures to support employment were taken against frictional unemployment. Enterprises in industries that absorb the majority of the working population were provided assistance in terms of sanitation and pandemic prevention. For migrant workers who constitute a large part of the

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Deposit of Migrant Workers in the Field of Engineering Construction" of 17 August 2021 (人社部发〔2021〕65 号).

57 Section 1 Para. 2 No. 6 [2020] of the General Office of the State Council (fn. 27).

58 See Guiding Opinions of the National Development and Reform Commission, the Ministry of Housing and Urban-Rural Development, and the Ministry of Finance on Further Helping Small and Micro-Enterprises and Individual Industrial and Commercial Households in the Service Sector to Reduce Housing Rental Pressure in Response to the Corona Pandemic of 9 May 2020 (发改投资规〔2020〕734 号).

59 Notice of the General Office of the State-Owned Assets Supervision and Administration Commission of the State Council on Further Doing a Good Job in the Rent Reduction and Exemption for Small and Micro-Enterprises and Individual Industrial and Commercial Households in the Service Sector of 20 May 2020 (国资厅财评〔2020〕158 号).

60 No. 6 [2020] of the General Office of the State Council (fn. 27). The following, if not specifically cited, is based on this document.

61 Employment Promotion Law of the People's Republic of China (2015 Amendment) of 24 April 2015 (中华人民共和国就业促进法).

62 Notice of the Ministry of Finance and the Ministry of Human Resources and Social Security on Issuing the Measures for the Administration of Employment Subsidy Funds on 13 October 2017 (No. 164 [2017] of the Ministry of Finance).

working population, special measures such as the "point-to-point" return-to-work service and mutual recognition of health information between exporting and importing places were taken. Also, job agencies were subsidised and active support was provided to older and low-skilled workers, such as pushing job information through phone calls and text messages.[63]

Measures were also taken to boost employment with industrial policies. Investment was guided towards labour-intensive projects. In order to further simplify the procedure of environmental impact assessment of those projects, a positive list shall be established.[64]

In particular, entrepreneurship, flexible employment[65] as well as platform employment were strongly encouraged. The "street vending economy" model and the construction of infrastructures like pedestrian streets were promoted, which is especially meaningful for the employment of residents in rural areas. Platform employees who purchased the necessary equipment for their businesses could apply for secured loans and interest subsidies for entrepreneurship. Platform enterprises were guided to relieve entry conditions and reduce management service fees.[66] The social security of flexibly employed people was improved, applying two measures: Firstly, the restrictions for participation in the basic pension insurance schemes for enterprise employees within provinces, based on urban and rural household registration, were removed – this means that those in flexible employment with rural household registration could participate in the basic pension insurance for enterprise employees in urban areas where they worked and thus enjoy higher pension benefits. This measure shall remain in place, since the central government has ordered that as of 2021, all localities, except some super cities, shall loosen the restrictions stipulated by household registration requirements for flexibly employed persons, allowing them to participate in basic pension and basic medical

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63 Section 18 No. 6 [2020] of the General Office of the State Council (fn. 27).

64 Section 3 No. 6 [2020] of the General Office of the State Council (fn. 27).

65 According to the Social Insurance Law, persons in flexible employment (灵活就业人员) are self-employed persons registered as 'individual industrial and commercial households' without employees, part-time employees not participating in the scheme through their employers, and other persons in this catalogue. Usually, workers employed in new forms who get employed through Internet platforms and have not established labour relations with the platform companies also belong to this category, see for example the administrative regulation in Henan (豫人社规[2021]3 号) and in Anhui (皖人社发[2021]17 号).

66 Section 1 Para. 5 No. 6 [2020] of the General Office of the State Council (fn. 27).

insurance schemes for enterprise employees in the place of employment.[67] Secondly, compared to the provision of ESM,[68] college graduates who had not been employed for long (1 year instead of 2 years) after graduation could get subsidies to social insurance contributions if they were flexibly employed.

In rural areas, local employment has been supported by upgrading the economic model and carrying out more projects extending rural infrastructure and improving environmental measures. New types of agricultural companies and industries like specialty breeding, intensive processing, ecotourism have been supported.

Special measures aimed to support the employment of major social groups were taken, including migrant workers, graduate college students, persons with employment difficulties, and people in Wuhan. (a) In addition to the abovementioned "point-to-point" return-to-work service, vocational training programmes for migrant workers were carried out. The employment of the poor labour force population in rural areas, which was during the pandemic mainly composed of migrant workers who failed to return to work or to get employed, was supported through poverty alleviation schemes.[69] (b) Medium-sized, small and micro-enterprises that employed college graduates in the graduation year and had signed labour contracts for more than one year were provided a one-time employment subsidy.[70] Compared to the provision of ESM,[71] this new benefit encouraged also more enterprises (also medium-sized) to employ college graduates. State-owned enterprises were asked to employ more college graduates in

67 Section 1 Para. 8 Guiding Opinions of the Ministry of Human Resources and Social Security, the National Development and Reform Commission, the Ministry of Transport, and Other Ministries and Commissions on Protecting the Labour Rights and Interests of Workers Employed in New Forms of Work of 16 July 2021 (No. 56 [2021] of the Ministry of Human Resources and Social Security).

68 According to Section 7 No. 2 ESM, those with employment difficulties and college graduates who have not been employed within 1 year after graduation are paid social insurance contribution subsidies if they can obtain flexible employment.

69 According to Section 8 No. 6 [2020] of the General Office of the State Council (fn. 27), leading poverty alleviation enterprises and workshops are supported; localities can pay enterprises which employ a large number of poor workers a one-time reward from the poverty alleviation funds.

70 Section 9 No. 6 [2020] of the General Office of the State Council (fn. 27).

71 According to Section 7 No. 2 ESM, small and micro-enterprises that employ college graduates within the graduation year and sign labour contracts of more than one year are given social insurance subsidies.

2020 and 2021 without requiring internship in these enterprises.[72] College graduates of some majors could be exempted from examinations to obtain the relevant vocational qualification certificates.[73] Enterprises were encouraged to establish more trainee positions, and the trainee subsidy which is paid to enterprises that provide trainee positions for graduates with employment difficulties (Section 10 ESM) was improved: If the training is temporarily interrupted due to the pandemic, the trainee subsidy is extended accordingly; if an enterprise signs labour contracts with the trainee before the probationary period expires, the trainee subsidy for the remaining probation period is still to be given.[74] Public institutions, residential communities and the military should also recruit more graduates. (c) Persons with employment difficulties (就业困难人员) get various kinds of support in the framework of EPL (Sections 52 ff. EPL). These are persons who have difficulties becoming employed due to physical conditions, skill levels, family factors, loss of rural land, etc. (Section 52 Para. 2 EPL). During the pandemic, the State Council required that the criteria for identifying persons with employment difficulties should be dynamically adjusted in order to include those affected by the pandemic and to ensure the number of families with no member employed dynamically remains zero.[75] This means that the subjective criterion in EPL was objectified and more flexibility was required. In addition, temporary public posts such as related to disinfection, pandemic prevention and sanitation were established and post subsidies and social insurance contribution subsidies were paid for no more than 6 months,[76] while the maximum subsidy period for these subsidies is normally 3 years (Section 7 No. 1, Section 8 Para. 3 ESM). (d) At last, special measures were taken to support employment in Hubei.[77] An important measure was to provide a one-time job-seeking and entrepreneurial subsidy to graduates of Hubei colleges and college graduates with household registration in Hubei in 2020. This subsidy is, according to ESM, provided for college graduates from poor families only (Section 11 ESM). Thus, a certain compensation character was added to this benefit that was based on previous need.

72 Section 9 No. 6 [2020] of the General Office of the State Council (fn. 27).
73 Section 10 No. 6 [2020] of the General Office of the State Council (fn. 27).
74 Section 12 No. 6 [2020] of the General Office of the State Council (fn. 27).
75 Section 15 No. 6 [2020] of the General Office of the State Council (fn. 27).
76 Section 15 No. 6 [2020] of the General Office of the State Council (fn. 27).
77 Section 16 No. 6 [2020] of the General Office of the State Council (fn. 27).

4. Social Protection

The pandemic challenged the effectiveness of the social security system not only in terms of procedures, but also in terms of the ability of the system to achieve its social protection goals. Chinese social insurance and social assistance systems aim, in principle, to provide security of a basic level. A moderate social security level could be then achieved only if people also have enough ways to protect themselves on this basis. The pandemic weakened the opportunities of residents to obtain income by participating in economic activities for self-protection; thus, basic social protection must be improved accordingly.

a) Improvements in Different Social Security Schemes

aa) Basic Medical Insurance

Chinese basic medical insurance schemes only pay partial medical expenses and below a certain amount.[78] The rest of the expenses are partly covered by critical illness insurance schemes[79] as supplementary insurance schemes, and by medical assistance as special social assistance benefits. In reaction to the pandemic, the medicines and medical services for persons diagnosed with a COVID-19 infection were temporarily included in the payable items of the basic medical insurance.[80] The state fully subsidised

78 See the two framework documents for basic medical insurance schemes for employees and for rural and urban residents, Decision of the State Council on Establishing the Urban Employees' Basic Medical Insurance System of 14 December 1998 (No. 44 [1998] of the State Council) and Opinions of the State Council on Integrating the Basic Medical Insurance Systems for Urban and Rural Residents of 3 January 2016 (No. 3 [2016] of the State Council).

79 For the framework document concerning the critical illness insurance scheme for urban and rural residents see Opinions of the General Office of the State Council on Comprehensively Implementing Critical Illness Insurance for Urban and Rural Residents of 28 July 2015 (No. 57 [2015] of the General Office of the State Council). No national scheme of critical illness insurance applies to employees. They can participate in critical illness insurance schemes on a local basis.

80 Section 3 Notice of the NHSA and the Ministry of Finance on Doing a Good Job in Medical Security during the Corona Pandemic of 22 January 2020 (国医保电〔2020〕5 号).

uncovered medical expenses for persons with a diagnosed infection[81] and also for persons with a suspected infection.[82]

bb) Occupational Injury Insurance

In reaction to the pandemic, the scope of people eligible to receive insurance benefits has been broadened. Accordingly, insurance benefits have been paid in cases where uninsured people providing medical, nursing and related services got infected with COVID-19 or died of COVID-19 infection due to the performance of their working duties in the prevention and medical treatment work of the pandemic. The benefits shall be paid by the employer, and if the employer receives financial subsidies from the state,[83] the expenses shall be subsidised by state finance.[84] According to the regulation of the State Council, the employer only has the obligation to have all "employees" (职工) – these are, in the Chinese context, those who have established labour relationships with the employer – covered by the occupational injury insurance and pay contributions for them; only employees have the right to insurance benefits accordingly.[85] If an uninsured employee suffers an occupational injury, the employer shall pay the insurance benefits.[86] The idea behind this rule is that the employer is liable for any violation of the law. Compared to the legal provisions, the specific measure in reaction to the pandemic is in three aspects remarkable: First, not only illegally uninsured employees, but all uninsured people providing

81 Section 2 国医保电〔2020〕5 号 (fn. 80), Section 1 Notice of the Ministry of Finance and the NHC on the Relevant Funding Guarantee Policies for Pandemic Prevention and Control of 25 January 2020 (财社〔2020〕2 号).

82 Section 2 国医保电〔2020〕5 号 (fn. 80), Section 2 Supplementary Notice of the General Office of the NHSA and the General Office of the Ministry of Finance on Doing a Good Job in Medical Security during the Corona Pandemic of 27 January 2020 (国医保电〔2020〕6 号).

83 In this context it refers to public institutions (for example public hospitals) that obtain business funds from state finances.

84 Notice by the Ministry of Human Resources and Social Security, the Ministry of Finance, and the NHC on Issues Concerning the Protection of Medical Staff and Other Related Staff Infected with COVID-19 due to the Performance of Duties of 23 January 2020 (Letter No. 11 [2020] of the Ministry of Human Resources and Social Security).

85 Section 2 Regulation on Occupational Injury Insurance (2010 Revision) of 20 December 2011 (工伤保险条例).

86 Section 62 Para. 2 Regulation on Occupational Injury Insurance.

medical, nursing and related services are to receive insurance benefits from the employer. Thus, this obligation of the employer is based rather on the social responsibility the state has imposed on the former. Second, not all uninsured people, but only those providing specific services combating the pandemic could receive insurance benefits. It has a character of compensation for special damages. Third, again, the financing of social insurance benefits was part covered by the state.

cc) Other Social Insurances

In respect to unemployment insurance, the prolongation of unemployment benefit for older people and the provision of temporary benefits for those who are insured but do not fulfill the eligibility criteria have been mentioned above (Section 1 b). Broadened access for flexibly employed persons to participate in basic pension insurance has also been mentioned.

dd) Social Assistance

In recent years, Chinese social assistance has been undergoing structural reform. The Social Assistance Law was drafted in 2020; the draft (SAL draft) was published with a call for public opinion.[87] Access to social assistance is to be broadened and benefits are to be generalised in order to solve the problem of poverty more effectively. The outbreak of the pandemic has, to some extent, facilitated and accelerated the reform process, since it increased the pressing and widespread poverty problem. During the pandemic, temporary assistance played a particular role to cover all those in need as promptly as possible and the process of integrating poverty alleviation measures into social assistance was accelerated.

The influence of the pandemic on the social assistance system can only be clarified by looking at the structure of this system and its recent reforms. Its legal base is the regulation of the State Council of “Interim Measures for Social Assistance” (SAIM)[88]. The main social assistance benefit is

87 Notice of the Ministry of Civil Affairs and the Ministry of Finance on Public Comments on the “Social Assistance Law of the People’s Republic of China (Draft for Comment)” of 7 September 2020.

88 Interim Measures for Social Assistance (2019 Revision) of 2 March 2019 (社会救助暂行办法).

the minimum living allowance (最低生活保障), paid monthly to a "*Dibao* family" (最低生活保障家庭) after passing a means-test.[89] Another important recipient category for social assistance is that of "extremely poor people" (特困人员), who are older, with disability or children who have no working capacity, income or family support. They are provided with mainly goods and services (Sections 14 ff. SAIM). The family members of the *Dibao* family and extremely poor people have access to special social assistance benefits, including sickness assistance, educational assistance, housing assistance and job-finding assistance (Sections 27-46 SAIM). Among them, only sickness assistance is also accessible to other people in difficulties as defined by local governments (Section 28 Nr. 3 SAIM). The special social assistance benefits are relatively generous, while to apply for the status of *Dibao* family is extremely difficult due to the very low minimum living standard and other strict requirements. These benefits constitute the main body of the social assistance system, in which higher amounts of benefits are obtained by a small number of the poorest people.[90] More accessible are temporary benefits (临时救助). According to SAIM, they are mainly "temporary assistance due to an emergency" (急难型临时救助) provided to families temporarily in need, and "temporary assistance due to increased expenditure" (支出型临时救助) provided to *Dibao* families,[91] and are also provided to families in other special difficulties (Section 47 SAIM) as well as homeless people and beggars (Section 50 SAIM). They are specifically regulated by the local governments (Section 49 SAIM). Besides, specific national assistance schemes apply in the case of natural disasters (Section 20 ff. SAIM).

Under the reforms, social assistance is extended to low-income families that are not recognised as *Dibao* families and their family members according to local regulations.[92] The temporary assistance is becoming

89 These are families in which the per capita income of its family members living together is lower than the local minimum living standard and the assets do not exceed the local standard, Sections 9 ff. SAIM.

90 For this reason, Dibao families are sometimes even regarded as belonging to a privileged class.

91 Section 47 SAIM: "Temporary assistance is provided to families that temporarily have serious difficulties in basic life due to emergencies such as fires, traffic accidents or sudden serious illnesses of family members, Dibao families when a sudden increase in the necessary cost of living leads to serious difficulties in basic life temporarily…".

92 The low-income standards are set by the local governments concerning the per capita income of family members and family assets. These families originally only had access to housing security benefits according to Several Opinions of the State

more and more accessible and functioning with increasingly systemic importance. Temporary assistance due to an emergency is also provided to individuals[93], and temporary assistance due to increased expenditure has been extended to all families with a lower income.[94] In 2020, the central government clarified the multi-layer structure of the social assistance system and the reform goal of enhancing its timeliness and effectiveness.[95] Accordingly, the special assistance shall be accessible to more families, and temporary assistance is provided under much-generalised conditions with a clearer function as a final protection net. The SAL draft stipulated that the temporary assistance "should be provided to families or persons in sudden, urgent or temporary difficulties, who are not covered by other social assistance benefits or who still have difficulties in basic life after receiving other social assistance benefits." (Section 37 SAL draft).

Council on Solving the Housing Difficulties of Urban Low-Income Families of 7 August 2007 (国发〔2007〕24 号). As the reforms of the social assistance system are going on, they are gradually entitled to more benefits of social assistance.

93 "…who are temporarily suffering difficulties in their basic life due to emergencies and are unable to receive family support", Section 3 Para. 1 Notice of the State Council on Comprehensively Establishing a Temporary Assistance System of 3 October 2014, (国发〔2014〕47 号).

94 These are families in which the available per capita income of the family is lower than the available local per capita income of the previous year and the sudden increase in the necessary costs of living are in principle limited to costs in the areas of medical care and education, Section 2 Para. 1 Opinions of the Ministry of Civil Affairs and the Ministry of Finance on Further Strengthening and Improving Temporary Assistance Work of 23 January 2018 (民发[2018]23 号).

95 "Opinions on Reforming and Improving the Social Assistance System" Issued by the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council of 25 August 2020 (中办发〔2020〕18 号). These layers are (1) the regular assistance for Dibao families and extremely poor people; (2) the special assistance for Dibao families, extremely poor people, low-income families and families with large rigid expenditures that cause serious difficulties in basic life (they are categorised in Section 18 SAL draft as "poor families with high expenditures" (支出型贫困家庭). Compared to the definition of the families receiving temporary assistance due to increased expenditure (fn. 94), the necessary expenses of medical care and education of a family do not need to be a sudden increase in its expenditure for it to get social assistance. When these expenses exceed a proportion of the total costs of living or the amount provided in local regulations, this family is entitled to special assistance); (3) the emergency assistance for families and people whose are temporarily facing difficulties, including temporary assistance and assistance for the homeless and beggars; and (4) the disaster assistance.

A key aspect of China's poverty problem is rural poverty. That's why schemes of poverty alleviation run parallel to social assistance schemes. These schemes have separate budgets and administrations (Poverty Alleviation Office of the State Council) and are highly politics-oriented. A reason for this is the underdeveloped economy and social security in rural areas. In urban areas, social protection has long been based on employer responsibility through the institutions of *Danwei* (单位). The minimum living allowance was originally only introduced in urban areas in 1997[96] to solve urban poverty due to the declined ability of *Danwei* institutions to effectively avoid unemployment and provide social security. In rural areas, very limited basic protection was provided to those most in need through a quite informal "five guarantees" scheme, administered by villages on their own terms. Meanwhile, the schemes of poverty alleviation in rural areas commenced in the 1980s. Despite the undergoing process of integrating urban and rural schemes of combating poverty into one unified social assistance system,[97] its implementation in rural areas has always been ineffective. This was not only caused by corruption, but also by the fact that in rural areas, due to the underdeveloped economy, every person living in a village or an area faced a similar degree of poverty. On the other side, urban poverty is exceptional and mainly due to unemployment. That is why there is a need to apply special poverty alleviation programmes rather in rural areas. Since 2014, "targeted poverty alleviation" schemes have been introduced to improve the effectiveness of poverty alleviation. It is partly to combat corruption, but the more fundamental reason is that, with the development of the rural economy, poverty has increasingly become an individual rather than a general problem. Correspondingly, the programme of "Creating Archives and Identification Cards" (建档立卡) was started to collect detailed information of households in rural areas, accurately identify those in need, find out the specific causes of their poverty and accordingly carry out assistance measures on a case-by-case basis. Digital archives and databases were established and families received identification cards according national poverty alleviation standards. They could get vari-

96 Announcement of the State Council on Establishing a Minimum Living Security System for Urban Residents in the Nation of 2 September 1997 (国发[1997]29号).

97 The minimum living security scheme was introduced in rural areas in 2007, Announcement of the State Council on Establishing a Rural Minimum Living Security System in the Nation on 11 July 2007 (国发[2007]19 号). The "five guarantees" schemes have gradually become a unified assistance system for the extremely poor which is applicable to both urban and rural areas.

ous specific subsidies or support under the schemes of poverty alleviation, which are very flexible depending on policies, administrative discretion and decisions on a case-by-case basis. In recent years, targeted poverty alleviation has increasingly been integrated into the social assistance system in order to further improve the effectiveness of combating rural poverty.[98] In this process, temporary assistance, due to its wide accessibility, provides benefits in a more flexible way and functions as a final protection net. It has therefore become an important bridging instrument.[99]

Against the abovementioned background, during the pandemic it was generally required to accelerate the inclusion of those persons according with national poverty alleviation standards under the protection of the social assistance system and to give full weight to the role of temporary assistance.[100] An example was to temporarily provide a one-time temporary assistance payment to unemployed persons without insurance if they are in difficulties.[101] This measure shows the function of social assistance in terms of supplementing social insurance deficiencies, which is remarkable as it implies the idea of normalising social assistance – it should no longer be limited to a lower social class within the traditional understanding, but be extended to more working poor persons. Also, the amount of temporary assistance could be increased on a case-by-case basis for those encountering huge difficulties[102] and for families in which members died

98 Letter of the Ministry of Civil Affairs to Reply to the Proposal on Strengthening the Effectiveness of Bridging Social Assistance and Targeted Poverty Alleviation and on Focusing on Improving the Effectiveness of Poverty Alleviation of 27 August 2019 (民函〔2019〕785 号).

99 Opinions of the Ministry of Civil Affairs, Ministry of Finance and the State Council Poverty Alleviation Office on Giving Full Weight to the Role of Temporary Assistance in Poverty Alleviation of 19 September 2019 (民发〔2019〕87 号).

100 Notice of the Central Leading Group for Responding to the Corona Pandemic on Further Doing a Good Job in Safeguarding People in Difficulty during Pandemic Prevention and Control of 6 March 2020 (国发明电〔2020〕9 号).

101 Uninsured workers, such as migrant workers who are unable to return to work due to the pandemic, who have no income for three consecutive months, are living in difficulties and are neither covered by the unemployment insurance nor by minimum living security, can apply for a one-time temporary assistance payment by the government of the place of work or of habitual residence, Section 2 Notice of the Ministry of Civil Affairs and the Ministry of Finance on Further Doing a Good Job regarding Basic Living Guarantees for People in Difficulty of 3 June 2020 (民发〔2020〕69 号).

102 Section 2 民发〔2020〕69 号 (fn. 101).

due to infection with COVID-19.[103] In addition, special measures were taken to expand the access to social assistance. Severely disabled or seriously ill persons in low-income families could apply for a minimum living allowance as a "single-person household".[104] In areas seriously affected by the pandemic, the requirements of *Dibao* families could be appropriately relieved.[105] The age limit for minors (persons younger than 18 years of age) to receive benefits for extremely poor people has been extended also to 16- and 17-year-olds.[106]

ee) Price Subsidy Mechanism

The price subsidy (物价补贴) mechanism has existed since 2011, which links social security benefits with price increases. The mechanism is activated when prices rise significantly and reach a specific level; conversely, when prices stabilise or fall, subsidies will be suspended. Before the pandemic, the price subsidy applied for people receiving regular special national subsidies and the minimum living allowance, extremely poor people and people receiving unemployment benefit.[107] In reaction to the pandemic, from March to June 2020, this subsidy was doubled and extended to scattered orphans, children factually not entrusted to anyone's care, and those receiving unemployment subsidies.[108] Since 2021, scattered orphans and children factually without care have been permanently included in

103 Section 1 Para. 4 国发明电〔2020〕9 号 (fn. 100).

104 Section 1 Para. 1 民发〔2020〕69 号 (fn. 101). The low-income families here are defined as "those in which the per capita income is higher than the local urban and rural minimum living standard and lower than 1.5 times of that, and the family assets comply with relevant local regulations."

105 Section 1 Para. 2 民发〔2020〕69 号 (fn. 101).

106 Section 3 民发〔2020〕69 号 (fn. 101).

107 Notice of the National Development and Reform Commission, the Ministry of Civil Affairs, the Ministry of Finance, etc. on Further Improving the Linkage Mechanism of Social Assistance and Security Standards and Price Increases of 22 August 2016 (发改价格规〔2016〕1835 号).

108 Sections 1, 2 Notice of the National Development and Reform Commission, the Ministry of Civil Affairs, the Ministry of Finance, etc. on Further Doing a Good Job in Periodic Price Subsidies of 8 April 2020 (发改电〔2020〕876 号). The increased expenditures will be paid through local finances and the unemployment insurance funds respectively, and central finances will give subsidies to the eastern, central and western regions in different proportions.

this mechanism.[109] It is another example showing that the pandemic stimulated the long-term improvement of social security.

b) More Effective Procedures

In respect to social assistance, providing temporary assistance was especially accelerated through decentralising the financial authority to use funds. According to the law, governments at or above county level are responsible for the financing of social assistance through their budgets (Section 5 Para. 1 SAIM). Governments of township and the sub-district offices, which belong to an administrative level below county level, are responsible for the implementation of concrete work including accepting social assistance applications and investigation (Section 4 Para. 1 SAIM). Accordingly, applications for temporary assistance should be approved by the civil affairs department of the respective county government after the investigation and publicity procedures are finished. For assistance regarding small amounts, the county government may entrust the township government or sub-district office with the approval (Section 48 SAIM). This procedure was much simplified by establishing "temporary reserve funds" (临时救助备用金) at the level of township governments and sub-district offices, entrusting them with carrying out "first assistance" (先行救助).[110] The county government allocated in advance part of the funds from the temporary assistance budget to towns or sub-district offices for their disposal. In some areas where conditions permit, or in Hubei and other areas severely hit by the pandemic, financial authority to provide temporary assistance as "first assistance" could even be given to residential communities (villages).[111] The establishment of "temporary reserve funds" belongs also to an important aspect of the future reform of social assistance.[112]

In addition, it is remarkable that residential communities, the grassroots institutions of social management, played an important role in im-

109 Notice of the National Development and Reform Commission and other Departments on Further Improving the Linkage Mechanism of Social Assistance and Security Standards and Price Increases of 3 November 2021 (发改价格〔2021〕1553 号).

110 Section 2 Para. 2 民发〔2020〕69 号 (fn. 101).

111 Section 2 Para. 2 民发〔2020〕69 号 (fn. 101), Section 1 Para. 4 国发明电〔2020〕9 号 (fn. 100).

112 Section 15 中办发〔2020〕18 号 (fn. 95).

proving the effectiveness of implementation and information collection concerning social assistance.[113]

(3) In general, digital methods were widely adopted following the no-contact requirement, which also helped accelerate the procedures. Meanwhile, large-scale information collection has been carried out.[114]

5. Conclusions and Outlook

The measures taken to protect livelihoods during the pandemic in China show how a strong and active state acts to achieve specific goals. A large number of political and administrative decisions concerning nearly all aspects of social and economic activities were made according to the guidelines of central politics. It is remarkable that many decisions were jointly made by multiple departments, reflecting that the state intervened in a much more comprehensive way. This made it nearly impossible to separately and statically analyse the acts of the state. One could expect budget laws and regulations on authorities regarding the management and use of various funds to factually play a more important regulatory role in the future.

The measures taken to protect livelihoods during pandemic were embedded in the wider processes of transformation in China. It is clear that different goals such as the absorption of excess labour released in the process of urbanisation and industrial upgrading, urban-rural integration, or the reduction of economic burdens of enterprises have also played a

113 For example, when people have to go into quarantine because they are confirmed or suspected of infection with COVID-19, got fever or have close contacts with COVID-19-infected people, if they are responsible for taking care of elderly, disabled or minor persons who cannot take care of themselves, especially those in extreme poverty, the residential community (village) where they live should visit them and arrange for relevant personnel or institutions to provide guardianship or care services. The residential community (village) should keep regular contacts and carry out visits to elderly widows and widowers, orphans, left-behind children and elderly people, severe ill and disabled persons and any other people in difficulty who are isolated at home, and provide them with timely help, Section 3 国发明电〔2020〕9 号 (fn. 100).

114 For example, in the process of integrating poverty alleviation into social assistance, the Minister of Civil Affairs has since 2021 been constructing a national low-income population dynamic monitoring information platform (全国低收入人口动态监测信息平台) and building the national low-income population database (全国低收入人口数据库).

specific role in decision-making with a view to social protection. Against this complex background, it has become increasingly necessary and urgent to find the normative bases for social goals in the future.

The pandemic is a common risk to all. It causes people damages in ways that are very different from the social risks of a traditional industrial society. Similar risks are climate disasters, environmental hazards, as well as falling objects from high buildings since in China, in the process of urbanisation, more and more buildings are built as skyscrapers. Also, these risks may be combined with one another in more complex ways.[115] New instruments against these risks are thus necessary. In the case of the COVID-19 pandemic, different instruments such as social insurance, social assistance, social promotion, poverty alleviation, enterprise social responsibility and general financing were, to a large extent, combined in terms of financing or institutional assignment. Especially the reason for granting a specific benefit could be very interpretable. At least, it is not enough to just vaguely describe every measure as a necessary compensation based on certain collective responsibilities. As for implementation, more effectiveness and flexibility are required. One could expect more framework laws, more administrative bodies with integrated functions, financial and institutional decentralisation, and greater participation of enterprises and residential communities with a view to fulfilling public tasks.

115 For example, concerning the combination of pandemic and environmental pollution measures see Notice of the Ministry of Finance and the Ministry of Ecology and Environment on Strengthening the Management of Pollution Prevention and Control Funds to Win the Battle of Pandemic Prevention and Control of 20 February 2020 (财资环〔2020〕3 号).

V. The Czech Way of Dealing with the COVID-19 Pandemic as a Social Risk

Martin Štefko[1]

1. Introduction

This paper analyses the state support to employers and freelancers as well as the general aid measures which were implemented to facilitate access to social protection in light of the COVID-19 pandemic in the Czech Republic in 2020 and 2021. The centre-left government under Prime Minister Andrej Babiš created a new benefit for self-employed persons, changed and prolonged sick leave benefits for employees with children, and almost depleted the state budget on the state subsidy programme intended to finance short-time work and a list of aid programmes for various branches of the Czech economy.

Despite its efforts, Babiš' party lost the parliamentary elections in October 2021 and went into opposition. Although Babiš' party won the parliamentary elections, it was not able to continue in government as both of its partners, the Social Democratic Party and the Communist Party, had been deselected from the House of Commons of the Parliament for at least the next four years. In November 2021, with the number of COVID-19 infections higher than ever before and the state of emergency having been invoked once again, the new Fiala's government seems to be trying a different approach: to hold out without a complete lockdown, to keep the economy open, and to minimise the huge deficits. Despite experiencing the highest inflation in the past 20 years, the new government has proclaimed a different goal from its predecessor: to run a modest welfare policy.

1 This article has been written and published thanks to the financial support of the grant project Cooperatio/LAWS.

2. Job Retention

Considering social laws, the government focused on mitigating the collateral damage caused by several lockdowns. Two main measures were employed: the state subsidy programme 'Antivirus' and changes to attendance benefits.[2] However, there are a few other changes to laws that are also worth mentioning. The legislator for example established the legal presumption that persons who were qualified to perform their jobs on 11 March 2020 are qualified to do so during the lockdown period. Those presumed qualifications were linked to occupational safety, health care standards and other similar regulations.[3] Said employees retained their qualifications even in cases where they became invalid due to failure to pass the prescribed qualification renewal exams. Parliament allowed for the payment deferral of social security insurance premiums and contributions to the state's employment policy paid by employers as taxpayers. Employers could pay insurance premiums for May, June and July until 20 October 2020 with a penalty of only 4% p.a.[4]

a) Antivirus

Czech public employment policy has been based on the model that employers are obliged to preserve jobs and pay employees wage compensation even in cases where the latter are not able to work for public policy reasons, such as quarantine proclaimed by the state. The restrictions on employers are set forth in Sections 207–210 of the Labour Code. These sections list all circumstances where an employer may not order an employee to work (e.g. downtime or work stoppages for reasons of bad weather). However, in response to the pandemic, the government developed a new financial aid programme to subsidise employers called the Antivirus pro-

2 See section 2.2. of this paper.
3 Cf. Act No. 539/2020 Coll. on certain measures to mitigate the adverse effect of COVID-19 on qualifications and their evidence (in Czech: zákon o některých opatřeních ke zmírnění dopadů epidemie koronaviru označovaného jako SARS CoV-2 v oblasti prokazování plnění kvalifikačních předpokladů pro účely pracovněprávních vztahů).
4 Act No. 255/2020 Coll. on the reduction of penalties on social security contributions and state employment policy contributions paid by employers as taxpayers in connection with emergency measures during the pandemic in 2020 and amending certain acts.

gramme.[5] Although there were some opposing opinions, mainly among academics, employers respected the state policy.[6] The government offered employers state support provided that they continued to pay their employees who were not able to work.

The Czech government extended and amended all schemes of the original Antivirus programme, i.e. Antivirus A, Antivirus B and Antivirus A Plus, as the situation worsened and lasted.[7] Under the Antivirus programme, employers applying for financial support were obliged to fulfil the following conditions:

- they must comply with the provisions of Czech Labour Code (i.e., employees are not carrying out work duties);
- they must pay wages to the employees and also the mandatory contributions to the respective authorities;
- employees must continue to be in an employment relationship with the employer (i.e., they have not been dismissed).

State aid was paid to the employers on the basis of a written contract concluded between employers and the Czech Labour Office. Conditions imposed by the state changed several times as the state apparatus adjusted the scheme to respond to malpractice and fraud.[8]

Employers were provided with financial support from the public funds under two regimes (A or B): the former allowed for a grant for employers with a reduction of business operation and/or quarantine ordered, while the latter financed employers with related economic difficulties.

5 On 31 March 2020, on the basis of Section 120 of Act No. 435/2004 Coll. on Employment, as amended, the Government of the Czech Republic approved by Resolution No. 353 the Targeted Employment Support Programme called “Antivirus” (hereinafter referred to as the “Antivirus Programme”).

6 Not all employers accepted the scheme and eventually received support paid by the scheme. The reasons were varied. Some employers preferred to dismiss employees, others ordered employees to stop working for other reasons. Finally, other employers, in agreement with some experts, believed that the government was acting on the basis of flawed legislation and simply did not use the support.

7 The government’s changes to the Antivirus program have been relatively hasty and rather opaque. Approved measures were revoked and reaffirmed as the pandemic situation changed.

8 The Labour Office insisted on fulfilment of a number of conditions, for example: employers must strictly follow the Labour Code, employees must not be in their probationary period, and the employer must pay wages and make all legal deductions.

If quarantine was imposed on an employee (regime "A"), their employers were provided with financial support from public funds for up to 80% of the super-gross wage (i.e. the amount paid by the employer, including social and health insurance contributions) up to a maximum amount of CZK 39,000 (with regard to each employee).

If operation of a business was closed as a result of anti-pandemic measures (regime "A Plus"), employers were provided with financial support from public funds in the amount of 100% of the wage + social and health insurance contributions paid by the employer up to a maximum amount of CZK 50,000 (per employee for the respective month).

Under the B programme, employers were provided with financial support from public funds of 60% of the wage + social and health insurance contributions paid by the employer up to a maximum amount of CZK 29,000 (per employee for the respective month). This applied in the following situations: When there were obstacles to work on the employers' side due to an obligation to quarantine or due to the obligation to provide child care among a significant proportion (at least 30%) of employees, employees (except for those in quarantine or taking care of children) were entitled to receive 100% of their average earnings. When there were obstacles to work on the employers' side due to shortages of supplies, employees were entitled to receive 80% of their average earnings. When there were obstacles to work on the employers' side due to a drop in sales of the employer's products or a drop in demand for services rendered by the employer, employees were entitled to receive 60% of their average earnings.[9]

It must be added that there was a programme C as well. Under this subcategory of the Antivirus programme, there was a statutory waiver of social security premiums and contributions to the state employment policy paid by employers as taxpayers. This programme applied, under specific conditions, to employers with less than 50 employees and to the months of June, July and August 2020.[10]

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9 The government has also launched a new website with detailed information on COVID-19 and FAQs with respect to the current measures imposed. Government Resolution 1208 of 29 December 2021 suspended the eligibility period for Mode B Antivirus expenditure from 1 January 2022.

10 Act No. 300/2020 Coll. on the waiver of social security premiums and state employment policy contributions paid by certain employers as taxpayers in connection with extraordinary epidemic measures in 2020 and amending Act No. 187/2006 Coll. on sickness insurance, as amended. Schedule C applied only to the

b) Long-Term Attendance Benefits

One of the first measures invoked by the government was the closure of elementary schools, secondary schools and universities and colleges as of 11 of March 2020. It was intended to last 14 days, but ultimately continued for more than 6 months. More than 1.7 million pupils and students were not allowed to return to schools until May or June of the same year. The second closure followed from mid-October 2020 and, save minor exceptions, ended at the end of May 2021. Before the pandemic, parents of pupils up to the age of 10 were eligible for 9-day-long or 16-day-long attendance benefits as regulated under the Sick Leave Insurance Act.[11] The latter benefits were guaranteed to single parents.

Therefore, the government decided to prolong attendance benefits (in Czech: *ošetřovné*) accordingly. In March 2020, Parliament passed a new law that increased the rights of beneficiaries in question. Parents were eligible to care benefits for the whole period that their children stayed at home. In addition, the age limit was increased to include children of up to 13 years of age.[12]

Employees could apply for long-term attendance benefits through their employers provided their children were in need of care because their school was closed by the respective state agency. Self-employed persons could file their applications directly with the District Social Security Administration (DSSA) office where they are registered. The benefit amounted to 60% of the daily assessment base. The daily assessment base was calculated as a percentage of the insured person's gross daily earnings in 2020: 90% of gross daily earnings up to CZK 1,162, 60% from CZK 1,162 to CZK 1,742, and 30% from CZK 1,742 to CZK 3,545. The number of long-term attendance benefit recipients had been relatively low since the introduction of the benefit. However, in 2020, numbers skyrocketed for

premiums employers were required to pay as premium payers for June, July and August 2020.

11 The benefit is intended to support insured workers while they look after a sick member of their household or a relative.

12 Cf. Act No. 133/2020 Coll. on certain amendments to social laws in connection with epidemic measures in 2020 (in Czech: zákon č. 133/2020 Sb. o některých úpravách v sociálním zabezpečení v souvislosti s mimořádnými opatřeními při epidemii v roce 2020).

obvious reasons and the whole scheme was pushed into red numbers for the first time in the past 27 years.[13]

3. Supporting the Economy

The government and Parliament used several instruments to mitigate the adverse effects the outbreak of the COVID-19 pandemic had on the Czech economy. The government introduced new measures to support the self-employed. It also created three liberation packages on taxes, a moratorium law, as well as special aid programmes for culture, tourism, sport, real estate and other branches of the Czech economy. Additional measures implemented by the government included the amendment to the Act on Banks and an amendment to the Act on Recovery Procedures and Resolution of the Crisis in the Financial Market. These were intended to strengthen the banking sector, increase the efficiency of supervision and adjust the rules for a possible resolution of the banks' problems.

a) Support for the Self-Employed

At the beginning of the pandemic, ordinary social laws did not offer solid welfare rights to self-employed individuals[14] because the appropriate schemes of social insurance, e.g. sick leave insurance, were optional and not mandatory for them. The state helped self-employed persons who were taking care of children aged 6 to 13 and were not able to go to work due to the coronavirus, to the value of CZK 500 per day. All self-employed persons who had income only from their business were given six months' holidays on the payment of health and social insurance. These holidays covered the amount of the minimum insurance premium, i.e. CZK 4986. However, these amounts were not waived by the respective agencies.

In addition, self-employed persons were granted compensation bonuses which directly supported self-employed persons to the amount of CZK

13 Cf. iRozhlas, Systém nemocenské je v nejhlubším deficitu za 27 let. Schodek 13 miliard způsobila pandemie koronaviru, 5 August 2020 (accessed on 19 November 2021).

14 It must be added that rights of disabled persons were omitted as well. However, public employment policy boldly disregarded the respective stipulations of Act No. 435/2004 Coll. as amended until it was amended by the legislator.

25,000,[15] and later CZK 31,150. Self-employed persons were eligible to compensation benefits if the following conditions were met:

aa) the person must be self-employed under the definition of the Pensions Insurance Act;
bb) the activity performed is the principal activity (under clearly defined conditions it may also be an ancillary activity);
cc) the decrease in gross sales during the period from January to March 2020 was at least 10% compared to the period from January to March 2019 (if a business was set up after January 2019, the comparison counts with regard to the first 3 months after setting up the business),
dd) the entity achieved at least CZK 180,000 of gross income in 2019 or at least CZK 15,000/month in the case of a business set-up after January 2019.

An amendment to the Act on the Coronavirus Compensation Bonus was approved. This enabled the reimbursement payment per day to self-employed persons until 8 June 2020.[16]

b) Loan Guarantees and Payment Deferrals

In May 2020, the Czech Republic launched a guarantee programme through which the state supported companies with up to 500 employees by securing their debts in the total amount of CZK 150 billion in guarantees.[17] State aid covered operating loans of up to CZK 50 million, which were provided to companies until 31 December 2020. Depending on the number of employees, companies were able to apply for an operating loan of up to 80-90% of the principal of the guaranteed loan.

The state adopted the so-called Liberation packages, of which some measures were approved by the Ministry of Finance, some by the govern-

15 Cf. Act No. 159/2020 Coll. on compensation (in Czech: zákon o kompenzačním bonusu v souvislosti s krizovými opatřeními v souvislosti s výskytem koronaviru SARS CoV-2).
16 The law anticipates that, under certain conditions (maximum of 2 partners and not profiting from another form of state financial aid), owners of small limited liability companies could also benefit from the compensation bonus.
17 This was the COVID III programme, which ended on 31 December 2020. Resolution of the government of 18 May 2020 No. 553.

ment, and some were passed by Parliament.[18] The Ministry of Finance decided that it would not impose fines for late submission of personal and corporate income tax returns, for late payment of a tax claim and for late submission of control tax reports.[19]

The Liberation packages were subsequently extended to defer payment of road tax due in April and July to 15 October and to include a proposal for VAT exemption from goods that are supplied free of charge (e.g. COVID-19 test kits, protective clothing, other medical supplies, etc.).[20] The government agreed on the suspension of the obligation to electronically record sales for entities in all phases of EET.[21] A bill on the abolition of real estate acquisition tax was adopted with retroactive effect.[22] Anyone who acquired property by December 2019 at the latest was exempted from the obligation to pay this tax. Taxes already paid were refunded.[23] A bill on an anti-crisis tax package intended to help the most affected sectors of the Czech economy.[24] The package mainly set forth a VAT reduction from 15 to 10 percent in the area of accommodation services, admission fees to cultural events and sporting events, admission fees to sports grounds, fares of ski lifts and admission fees to saunas and similar facilities. The package also included the reduction to 25 percent in road tax on lorries over 3.5 tonnes, a shortening of the deadline for refunding the overpayment of excise duty on so-called "green diesel", and the introduction of a loss carry-back for income taxes for all natural and legal persons. Another bill aimed to mitigate the impact of the decline in tax revenues of municipali-

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18 They used to be approved on regular bases, the first package of which in March 2020.

19 Decision of the Minister of Finance on remission of the tax and administrative fee due to an extraordinary event No. MF-7108/2020/3901-2.

20 Decision of the Minister for Finance on the remission of value-added tax due to an extraordinary event No. 3369/2021/3901-2.

21 Electronic sales registration (EET) or online sales registration is a method of sales registration where data on every transaction of a trader is sent online to the state administration.

22 The tax on the acquisition of immovable property was abolished on 25 September 2020 by Act No. 386/2020 Coll., with retroactive application to deposits permitted by the Land Registry from 1 December 2019.

23 Act No. 386/2020 Coll. on the abolition of real estate acquisition tax (in Czech: zákon, kterým se zrušuje zákonné opatření Senátu č. 340/2013 Sb., o dani z nabytí nemovitých věcí, ve znění pozdějších předpisů, a mění a zrušují další související právní předpisy).

24 Act No. 609/2020 Coll. amending certain acts in the field of taxation and certain other acts.

ties in 2020. Each municipality was to receive a bonus of CZK 1,200 per inhabitant, which amounted to a total sum of almost CZK 13 billion.

Parliament passed a moratorium law on the repayment of loans and mortgages signed before 26 March 2020, which was binding on all banks and non-banking companies.[25] Both natural persons and corporate debtors were able to suspend their repayments for either three or six months, as they chose. The debtor had to notify the creditor by declaration that he would be taking this action because of the negative economic impact of the coronavirus pandemic. However, there was no obligation to provide proof of this. Companies which were forced to close their premises due to government orders were entitled to defer their rent payments. The deferral applied from 12 March to 30 June 2020 and deferred payments will have to be paid back within 2 years. In addition, a ban was adopted on terminating the rental contracts of persons unable to their pay rent due to financial distress caused by the COVID-19 pandemic. The moratorium law was contested in the Constitutional Court of the Czech Republic. The constitutional complaint was rejected and the law upheld.[26] The state also adopted a subsidy programme for the payment of rents for establishments of entrepreneurs who were affected by restrictive government measures. To obtain this subsidy, the entrepreneur had to submit a confirmation from the landlord in the form of an amendment to the lease agreement that the latter had granted the tenant a 30% rent discount.

c) *Sector-Specific Measures*

Moreover, a special bill to mitigate the impact of the crisis in the tourism sector was approved on 16 April 2020.[27] It aimed to help travel agencies facing bankruptcy. The bill proposed a year's transition period for the

25 Cf. Act No. 210/2020 Coll. on certain measures to mitigate the negative effects of COVID-19 on tenants and businesses (in Czech: zákon č. 210/2020 Sb., o některých opatřeních ke zmírnění dopadů epidemie koronaviru SARS CoV-2 na nájemce prostor sloužících podnikání).

26 Cf. judgment was published under No. 29/2021 Coll.

27 Cf. Act No. 185/2020 Coll. on certain measures to mitigate the adverse effects of of COVID-19 on tourism (in Czech: o některých opatřeních ke zmírnění dopadů epidemie koronaviru označovaného jako SARS CoV-2 na odvětví cestovního ruchu). Thanks to the COVID-Tourism promotion programme, tour operators were able to apply for subsidies, and could receive up to 2.75 percent of the planned revenues from the sale of tours and from the sale of tourism services which are part of combined travel services for 2020.

reimbursement of holidays already paid for, during which the travel agency would offer its clients a voucher for a package tour to the value of the package tour for which they had originally paid. The travel agency must only return money in the event that the client failed to make use of the voucher within 12 months. Such vouchers could also be used by organisers of cultural events. In 2021, new programmes were launched. These also concerned travel agencies, in particular small and medium-sized ones, which were able to draw a state-guaranteed loan to cover legally mandated bankruptcy insurance.

Other laws shaped under the same pattern were adopted to mitigate the negative effects experienced by the culture, sport,[28] fairs and congresses,[29] restaurants,[30] food production[31] and real estate sectors.[32] The package for culture alone was worth more than CZK 1 billion.[33] The COVID-Sport subsidy programme – intended to provide financial assistance to organisers of sports events, operators of sports facilities and sports organisations that had to pay rent for the use of sports facilities – was approved in November 2020. A total of CZK 1 billion was set aside for the programme, which was initiated mainly because the above-mentioned were mainly non-profit or-

28 Cf. No. 249/2020 Coll. (in Czech: zákon o některých opatřeních ke zmírnění dopadů epidemie koronaviru označovaného jako SARS CoV-2 v oblasti sportu).

29 Cf. Act No. 247/2020 Sb. (in Czech: zákon o některých opatřeních ke zmírnění dopadů epidemie koronaviru označovaného jako SARS CoV-2 na oblast kulturních akcí).

30 The state launched a subsidy programme called COVID-Gastro to help the gastronomy sector, with the government earmarking a total of CZK 2.5 billion from the state budget for the programme. An additional programme named Agricovid Food industry subsidy programme was launched as well. Its mission was to help the food and agriculture industries that have been affected by the closing of restaurants and other public dining establishments. There were up to three billion crowns available for this purpose.

31 The Agrocovid Foodstuffs programme focused on supporting food producers whose output went to public catering, which had been heavily restricted by the government's crisis measures. This support covered approximately 8,500 to 10,000 entities according to the government, and aimed to set aside three billion crowns for the programme.

32 Cf. Act No. 249/2021 Coll. (in Czech: zákon o některých opatřeních ke zmírnění dopadu epidemie koronaviru označovaného jako SARS CoV-2 na oblast realitního zprostředkování a o změně zákona č. 39/2020 Sb., o realitním zprostředkování a o změně souvisejících zákonů (zákon o realitním zprostředkování), ve znění pozdějších předpisů).

33 The independent arts segment will receive CZK 440 million; CZK 300 million went to regional culture support and subsidised organisations in the sector received CZK 300 million.

ganisations ineligible for financial assistance from any of the earlier governmental programmes. The support programme for fairs or congresses was intended to help entrepreneurs who lost at least 30 percent of their turnover between March and October 2020 against the same period in 2019. They could apply for support to the extent of 60 percent of uncovered costs, with the rate for state-owned entities or territorial self-governments being at 40 percent. The COVID-Spas programme was extended for the period from 1 January 2021 to 31 December 2021. Businesses could receive increased support from EUR 800,000 to 1.8 million. Spa facilities were allowed to offer clients a customer discount on curative sojourns and preventive spa visits amounting to CZK 4,000. The discount was provided in the form of a voucher that potential clients would be able to print out from the website kudyznudy.cz,[34] or request directly at the spa facility.

Finally, the government announced the Czech Rise Up 2.0 subsidy programme, for which the government allocated up to CZK 300 million. The programme targeted projects that focus on the use of existing technologies for the development of medical and non-medical solutions, the aim of which were, for example, to manage all the consequences of the crisis or prepare for a possible second wave of the coronavirus pandemic.

4. Social Protection

Legislative activity in 2020 and 2021 was essentially entirely focused on managing the pandemic. There is no full-fledged unemployment insurance scheme in the Czech Republic. Employees are provided with unemployment insurance through a benefit system financed by employer contributions to state employment support. This system has not been reformed in 2020 and 2021, with the exception of the Antivirus program, which has already been described in Section 2 of this paper.

With effect from 1 July 2021, it is now possible to apply for the so-called substitute maintenance. This is a benefit that is intended to provide temporary financial support to dependent children in a situation where a parent is ordered by a court to pay maintenance (on the basis of an enforcement order) but fails to fulfil his or her maintenance obligation towards the child(ren). That is, he/she does not pay maintenance at all or pays it in a lower amount.

34 The www address is composed of Czech words that can be translated as “where to go from the boredom”.

To qualify for the benefit, the following conditions must be met:

- the maintenance obligation (ordinary maintenance) is established by an enforcement order based on a court decision, but the obligor (parent-debtor) does not pay maintenance at all or in a lower amount,
- the child must be dependent according to the Act on State Social Support (Act No. 117/1995 Coll.),
- the dependent child must be a permanent resident of the Czech Republic, unless the law provides otherwise,
- the dependent child must be resident in the territory of the Czech Republic under the Act on Assistance in Material Need (Act No. 111/2006 Coll.), unless otherwise provided by law,
- the process of recovery of the maintenance owed has been initiated and the maintenance owed is thus recovered as a claim in enforcement proceedings or in proceedings for judicial enforcement of a decision (the aim is therefore that the beneficiary or his/her legal representative should consistently make use of the instruments available to him/her to enforce the right to maintenance by filing a petition for enforcement or a petition for judicial enforcement of a decision). This condition is fulfilled even in cases where the judicial enforcement of the decision or the execution has been suspended due to the obligor's lack of means, in the last 4 months before the application for replacement maintenance was filed, or during the course of these proceedings, or after the awarding of the right to replacement maintenance.

The myriad of measures and laws passed and enacted to mitigate the adverse effect of the pandemic can be classified and generalised in order to describe a trend in social security. A number of measures were intended to encourage people, included poor people, to obey preventive rules and wear face masks, to not use public transport if they belong to a risk group threatened by a higher COVID-19 mortality, to stay at home and to broaden and strengthen the resilience of hospitals and welfare assistance facilities. We can classify those as preventive measures. For example, from 3 February to 3 April, sellers were empowered to reduce prices on respirator masks classed FFP2 and higher. The full pardon waived the value added tax for the delivery of filtering half masks and respirator masks that meet the parameters of protection classed at least FFP2, KN95 or N95 or have the same or higher filtering effect. It must be mentioned that the full pardon has been extended and repeated several times.

There were adjustments to state social support benefits and the care allowance in order to limit to the essential minimum any public contact with workplaces of the Labour Office of the Czech Republic. Applicants for state social support benefits and care allowance were no longer required to provide the required documents at these offices. The authorities had to automatically take over documents from the previous quarter. The government increased old age pensions several times. Because it was done in close connection with the parliamentary elections, it is hard to consider whether the cause was the pandemic or the desire entertained by the government to be re-elected.

Other laws, orders or other measures invoked by Parliament, government or various state agencies, were to mitigate adverse economic circumstances created by the pandemic. Parliament passed a bill to mitigate the impact of the coronavirus pandemic in the area of employee protection in case of the insolvency of the employer. Thanks to this bill, employees of an insolvent employer were to be satisfied by partial wage claims from the Labour Office of the Czech Republic. Said bill broadened the definition of insolvent employer to cover also those employers who stopped to pay wages even so as not to be proclaimed to be in a state of bankruptcy. The mere application for bankruptcy sufficed as well. The Labour Office became competent to consider the insolvency of the employer.[35] Another example: support through the Care Allowance for the Self-Employed Programme was also intended for self-employed persons who care for a dependent child up to the age of 26 whose level of dependency on the help of another person is at least mild (level I). This benefit was increased to CZK 400 per day, and the Ministry of Industry and Trade allocated CZK 200 million from its budget to this programme.

As the pandemic raged and weakened health workers by the dozens, the government called in the military, students and qualified volunteers and lay persons. Hundreds of military personnel, mainly qualified medics, and students of medicine were to strengthen or even replace undermanned key hospitals and aid workers at providers of welfare assistance. The army was ordered to build up two field hospitals and prepare for the worst case scenario. In addition to state measures, an unseen wave of solidarity emerged among the nation: aid workers cocooned in homes for the elderly and stayed with them for weeks, if not months, without returning to their families and homes. Volunteers came to the boundaries of those facilities to hand over meals, play music or just support in silence those who neglected their personal lives to help others.[36]

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35 See Act No. 248/2020 Sb.

36 Whereas some helped, others searched for ways of how to violate the state measures and live their lives as they used to. Police had to close down several

The state took a few measures to increase and strengthen the network of health care providers. A bill on the compensation to persons providing paid health services was approved.[37] The law obliged health insurance companies to reimburse any costs of health care providers that are connected to the ongoing coronavirus pandemic.[38] The state increased insurance premiums paid for state insurees to health care insurance companies.[39] The Ministry of Health approved a debt relief for selected state-run hospitals in long-term financial difficulties whose situation has worsened due to the pandemic.[40] More or less the same steps were taken with regard to welfare assistance providers. During the second wave of financing social services related to coronavirus, nearly a billion CZK were released to cover the increased costs of social services operators.

Of the high number of preventive and mitigating laws and governmental measures, there is one adversary measure that has been applied by the Ministry of Health that goes in the opposite economical direction and concerns the informal limit of recognised victims of occupational diseases: although COVID-19 has been recognised as an occupational disease, the Ministry of Health declared that only health and aid workers are eligible to claim compensation in the event of illness. This narrow interpretation has been pushed forward by internal opinions and is not supported in the language of the respective laws.[41] However, it can be a way to limit the scope of compensation for recognised and compensated victims. The reason can be found in the current compensation scheme. The valid occupational injury scheme neither follows the German approach with self-governed insurance associations funded by employers' contributions, nor the approach

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private parties and celebrations. Media reported and ostracised ministers, high state officials and politicians who took part in private parties.

37 Act No. 301/2020 Coll. on the compensation of persons providing reimbursed health services taking into account the impact of the COVID-19 epidemic in 2020.

38 According to the Ministry of Health, the final sum may amount to CZK 5 billion.

39 The government increased the payment for each person insured by the state by CZK 500 per month from 1 June 2020, and by a further CZK 200 per month from 1 January 2021.

40 Almost CZK 6.6 billion were allocated from the government's budget reserve.

41 The definition of what constitutes a disease is provided in secondary legislation in the form of a list. According to Act No. 290/1995, which provides the list of occupational diseases, diseases include, for example, carpal tunnel syndrome or cancer due to exposure to asbestos. There is also a legal definition of 'occupational accident' in Sections 380 and 387 of the Labour Code. An occupational accident is a sudden, short-term, physical, external impact on an employee's health that is not due to neglect on the part of the employee.

of the second state-administered scheme whose system for compensating occupational injuries and diseases as part of its wider provision for social security levies contributions from employers to finance it. It is a mix of public insurance operated by only two domestic insurance companies and civil tort liability on the part of the employer. The old communist model was enhanced at the beginning of the 1990s by mandatory public insurance operated by two state-chosen private insurance companies. The current scheme has one huge advantage for beneficiaries. Unlike elsewhere in Western Europe (except for Luxembourg), full compensation is made for lost earnings to injured employees in case of permanent benefits. In addition, liability for harm caused by occupational accidents or diseases is regarded as a liability of result. This means that the breach of a legal duty is not a requirement or condition for establishing the liability. The employer is liable under the following conditions:

- occurrence of occupational accident or disease;
- harm to an employee or his/her relatives;
- nexus (connection: harm suffered because of occupational accident or disease).

Thus, persons in accident- or illness-prone occupations ("preferred occupations") such as health or aid work who actually contracted COVID-19 are sure to be compensated. However, those in other jobs and occupations – such as janitors working in the same health or welfare assistance facilities – must prove, according to the government, that they have contracted COVID-19 in the course of employment. Although such an interpretation fails to meet the requirements set forth in the Labour Code, it can prevail in practice seeing that injured employees in "unpreferred occupations" must go to court. The Ministry cannot be sure that trial judges will uphold this legal opinion, but it is sure enough that a solid case-law will be long in coming. In addition, such cases tend to end before the trial courts and are rarely appealed to the higher courts due to high court tolls. The case law of trial courts is not published and it is hard to access even for experts.

5. Conclusion

This paper has described how the Czech government tried to offer social protection to its citizens and preserve the Czech economy during the COVID-19 pandemic. It proclaimed the state of emergency (and prolonged it five times) and called in the military, fire fighters, students and volunteers to keep the health care system going. During the first wave, many people helped a lot without being asked to do so. An unseen wave of solidarity swept the nation. In addition, Parliament approved a number of special laws supporting various branches of the Czech economy. Billions of CZK were spent to maintain social cohesion without having to introduce mandatory vaccinations or scrutinise citizens with regard to their health status. The Czech government tried to safeguard some sort of normality. However, the labour market changed, and not only the government but also individual employers encroached on employees´ liberties. Both the government and employers disregarded the Labour Code and declared home-based office work without any previous agreement with the majority of the workforce. More than 30,000 people have died because of COVID-19 and dozens are still suffering from severe health problems. The number of people with mental problems has gone up. An increased demand for psychopharmaceutic drugs can be discerned. During the second, third and fourth waves of the pandemic many people lost hope and started to question the authorities. Some scholars have pointed out that governments could be assessed and rated in accordance with their ability to manage the state during the pandemic.[42] In the end, they argued that the Czech government did not perform as well as other states like Germany or Demark.

Although it is still unclear how big a loss in revenues the state suffered in 2021, we know that the Czech government ended the year 2020 with a deficit of CZK 367.4 billion. The deficit threshold had to be increased three times within the same year.[43] The state debt is around 39.1% of GDP,[44] and all circumstances considered, public finances seem to be in good shape.[45] The financial situation could be a lot worse. However, the pandemic is not over, at least not in the Czech Republic as per this winter

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42 Zakaria, F.: Ten Lessons for a Post-Pandemic World, USA 2020.

43 Cf. the respective state report (accessed on 19 November 2021).

44 Cf. the respective state report (accessed on 19 November 2021).

45 It must be mentioned that there was generous help form abroad. For example, the Czech Republic received a very advantageous loan from the Development Bank of the Council of Europe, thanks to which it was able to obtain up to EUR 300 million. This money was used to cover the extra costs in health care incurred due to the fight against coronavirus. The government consented to make an agreement on irrevocable and unconditional guarantees payable on demand within the meaning of Article 11 of the Council Regulation on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak. Thanks to this agreement, the Czech Republic will be able to obtain up to EUR 374 million to pay programmes announced by EU member states to support the employment rate.

of 2021. The number of new infections peaked in November and 2021 even exceeded the numbers of 2020.

The inflation rate in the Czech Republic increased to 5.80% in October 2021 and it is still on an upward trend. Relevant institutions anticipate that the rate of inflation will be at 8% at the end of 2021, and that it will stay high for the first half of the next calendar year. First rough data[46] seem to support the outcome that the stratification of Czech society was accelerated, seeing that there is a rise in wage disparities and household income. This trend might be exacerbated by the new government, which plans to freeze old age pensions. The results of the Czech parliamentary elections seem to indicate that voters prefer a more conservative approach to public affairs and support a government that preserves public finances or at least tries to do so.

What is clear from the available statistical data is that unemployment remained low in 2020 and 2021. However, it is difficult to verify whether the reason for this was massive support from the state or rather the lack of available and qualified labour force that the Czech Republic was already facing before February 2020. As there has been no noticeable increase in unemployment, there has also been no increased pressure on benefits and services provided under the social system, with the exception of health services and sickness insurance benefits. As regards the health sector, the shortage of skilled labour has proved to be a significant constraint. This was illustrated by the state's efforts to increase the capacity of the system by developing two military hospitals at a critical time, when it became clear that qualified military personnel were fully utilised in helping out in civilian hospitals. A similar shortage of qualified personnel was also seen in the security forces. In short, the inadequacy of the contemporary concept of civil defence was demonstrated, not only in the field of training, but especially in the subsequent trained workforce within the necessary professions.

However, even if the new government were to find additional sources of moneys to fund the ambitious policies launched by the Babiš government, it is obvious that this would inevitably lead to high inflation rates, poverty and a further stratification of Czech society. Since COVID-19 is unlikely to just disappear, the Czech government will likely see the efforts of the earlier policies limited if not bashed. It is those limits that can define or derail the financial sanity of the official policy. The third year of the pandemic seems to conjure up the breakdown of the Czech welfare policy

46 See the analysis of household incomes and costs (citation on 29 November 2021).

and even society. The legislator has come to realise that measures have been exhausted, that nothing more can be done for those who by nature are vulnerable to this horrible virus; and that the agency of even a social and democratic state can appear limited when anti-waxers do not trust the government and are not willing to limit themselves and obey state measures for the common cause.

VI. “Collective Agreement”– Danish Social and Labour Market Policy in the COVID-19 Crisis

Anika Seemann

1. Introduction

As was the case in countries across the globe, the COVID-19 pandemic initially led to a dramatic downturn of Denmark’s national economy. On 11 March 2020, Prime Minister Mette Frederiksen first announced comprehensive measures to contain the spread of the coronavirus, which had the effect of radically limiting market activity and reducing everyday life to a minimum. Restaurants, gyms and a wide range of businesses and factories were forced to close. In addition, schools, kindergartens and universities were shut, and all public sector employees who were not needed in a ‘critical’ function were ordered to work from home. When numbers of infections began to lower from April 2020 onwards, Denmark saw an easening of restrictions. In May and June 2020, the country had comparatively low infection rates and began to focus on economic reopening. This picture changed again in September 2020, when, given a new surge in case numbers, renewed restrictions on public life and the economy became necessary – albeit on much more limited scale than the measures taken in March of that year. Since then, the Danish approach has been one of swiftly reintroducing restrictions during new pandemic waves, followed by a quick phase-out when infection rates ease. The labour market and economic policy measures have mirrored this approach, with several of the schemes initially introduced in spring 2020 being phased out and reintroduced repeatedly over the course of the pandemic, so as to provide support when needed but without hampering long-term economic recovery. Throughout the course of the pandemic, measures to retain jobs and support the economy have been combined with a series of social policy measures aimed at limiting the specific hardships that the restrictions brought.

The Danish labour market model is known for its comparatively low employment protection, but also for the generous social security provided in the event of unemployment (‘flexicurity’). Due to the dramatic effects of the COVID-19 pandemic on the Danish economy, a first consequence that was to be expected when the first shutdowns were ordered in March 2020 was a rapid increase in redundancies. In order to forestall this, the Danish government, the trade unions and the employees' associations on 14 March 2020 reached a tripartite agreement concerning the introduction of a comprehensive salary compensation scheme for employers.[1] The measures adopted as a result of the tripartite agreement of 14 March 2020 were improved and expanded by way of additional tripartite agreements reached on 30 March 2020 and 18 April 2020 respectively.[2] Several further tripartite agreements were made throughout the course of the pandemic, aiming to deliver a focused response to the industries and professions that required it the most. Tripartite agreements are an established mechanism of labour market regulation in Denmark. The scope of the measures laid down over the course of the pandemic, however, has been of historic dimensions.

In order to counter the negative effects of the COVID-19 pandemic on the economy as a whole, the Danish government and the parties represented in the Danish Parliament (*Folketinget*) reached a cross-party agreement on 19 March 2020 concerning the introduction of comprehensive liquidity measures, public compensation schemes and the deferral of tax payment obligations for businesses and the self-employed.[3] For the self-employed, the most relevant aspect of the agreement of 19 March 2020 was an income support scheme modelled on the salary compensation scheme for employers. On 18 April 2020, the Danish government and the parties of the Danish Parliament reached a further agreement by which they improved the existing measures and, in most cases, extended the period of their applicability.[4] Sectors and professional that had initially been overlooked were included, including freelancers such as artists, and the measures overall refined.

In addition to measures aimed at preventing redundancies and stabilising the economy, some provisions concerning social protection were

1 Trepartsaftale om midlertidig lønkompensation for lønmodtagere på det private arbejdsmarked of 14 March 2020.

2 Aftale om styrkelse af trepartsaftalen om midlertidig lønkompensationsordning of 30 March 2020; Aftale om forlængelse af trepartsaftalen om midtlertidig lønkompensation of 18 April 2020.

3 Aftale om covid-19 initiativer of 19 March 2020.

4 Aftale om hjælpepakker til lønmodtagere og virksomheder mv. i forbindelse med gradvis genåbning af Danmark of 18 April 2020; Aftale om forlængelse og udvidelse af kompensationsordning til arrangører of 18 April 2020.

adapted to the distinct challenges of the COVID-19 crisis. In the cross-party agreement of 19 March 2020, for example, the Danish government and the parties of the Danish Parliament agreed to introduce a series of measures that would help recipients of social benefits during the crisis. These included an extension of maximum benefit periods and the adaption of 'benefit conditionalities' to the specific challenges resulting from the initial 'shutdown'– first and foremost the physical closure of social authorities and the radical reduction of available jobs.[5]

But despite the generosity that has characterised the Danish measures, the focus began to shift early on in the pandemic on economic recovery and on limiting the scope of the support measures. Already in May 2020, the generous support packages of March and April 2020 were considered unsustainable in the long run because of the ways in which they artificially maintained the 'status-quo' of the pre-crisis economy. An economic expert committee was entrusted with making suggestions for the phase-out of the support packages that would limit individual hardships while ensuring the least possible damage to the Danish economy as a whole. The committee delivered a report on 25 May 2020, in which it suggested measures that would involve continued support for those affected by public restrictions and an increase in unemployment protection, while phasing out the cost-intensive public compensation schemes of March and April 2020.[6]

The measures that followed were initially more targeted. While a full phase-out of the early measures had been agreed by the labour market parties and the government on 5 June 2020[7], and the political parties of the *Folketing* on 15 June 2020 respectively, this soon proved to have been premature. New restrictions introduced in light of rising infection rates in August 2020 concerned in particular the early closure of restaurants, bars and cafés, first at a local level, with a nationwide 10 p.m. curfew introduced for the hospitality sector on 19 September 2020. By way of a tripartite agreement of 31 August 2020, the government and labour market parties agreed on new measures to seek to prevent redundancies in the most severely hit sectors.[8] The parties of the *Folketing*, too, reached new agreements with the government on 28 August and on 20 September

5 Aftale om covid-19 initiativer of 19 March 2020.

6 Report by the economic expert group concerning the phase-out of the compensation schemes.

7 Aftale om gradvis udfasning af den midlertidige lønkompensationsordning of 5 June 2020.

8 Trepartsaftale om en ny midlertidig arbejdsfordelingsordning på det private arbejdsmarked of 31 August 2020.

2020 concerning those sectors affected by the new restrictions.[9] As with the restrictions as such, however, the measures introduced from August 2020 onwards were more tailored to the specific needs of those affected by the more limited measures. The original, broad-sweep measures, meanwhile, were initially phased out on 29 August 2020.[10] One of the chosen strategies to prevent hardships from this phase-out was to simultaneously ease eligibility for unemployment benefits for both the self-employed and employees. Both agreements also introduced new support measures for specific labour market groups and businesses, in addition to expanding existing economic stimulus measures and lending schemes and increasing job training opportunities. A further agreement reached on 19 June 2020 introduced a DKK 700 million support package with a view to promoting summer tourism in Denmark.[11]

Since then, the Danish government, labour-market parties and the *Folketing* have continued the 'dance' of opening and closing parts of the economy and public life as required by infection numbers and identified locations of transmission. As renewed shutdowns became necessary, some of the original generalised schemes from spring 2020 were reintroduced, operating alongside the more targeted schemes that had subsequently been introduced over the course of the summer 2020. In addition, social protection measures were introduced or extended for individuals for whom the phaseout of the modifications introduced during the pandemic would have been too harsh.[12] The Danish measures overall have been characterised by transparency and generosity, combined with a focus on economic recovery and avoiding public subsidies for unviable businesses. This is in line with the new Epidemic Act, which entered into force on

9 Aftale om Bedre vilkår til særligt hårdt ramte dele af dansk erhvervs-, idræts- og kulturliv of 28 August 2020; Aftale om kompensation til barer, restauranter og caféer mv. ved begrænsninger på åbningstiden of 20 September 2020.

10 Aftale om udfasning af hjælpepakker, stimuli-initiativer og eksportinitiativer of 15 June 2020.

11 Aftale om sommerpakken of 19 June 2020.

12 Aftale mellem regeringen (Socialdemokratiet), Venstre, Radikale Venstre, Socialistisk Folkeparti, Enhedslisten, Konservative og Alternativet om Udvidelse af hjælpepakker of 27 October 2020; Aftale mellem regeringen (Socialdemokratiet), Venstre, Radikale Venstre, Socialistisk Folkeparti, Enhedslisten, Konservative og Alternativet om tillæg til aftale om genåbning af generelle kompensationsordninger of 16 December 2020. In November 2020, the generalised schemes had been introduced for seven municipalities in North Jutland following local shutdowns. However, this was soon expanded.

1 March 2021 and which rests on the principle that compensation for measures other than expropriation needs to be well justified.[13]

Despite some initial oversights and complaints about increasing complexity, the measures overall have been deemed highly successful. Denmark's BNP was above pre-pandemic levels by the second quarter of 2021, while the EU average was the third quarter of 2021.[14] It is estimated that up to 81,000 jobs were saved due to the support measures, and the decrease in employment numbers was 60,000 lower than it would have been without the measures.[15] One explanation for the relative success of the measures is the inclusion of trade unions and the Danish style of cross-party consensus seeking ahead of major decisions. The labour market and social policy measures adopted since March 2020 in response to the crisis have predominantly been the result of a high level of agreement between the Danish government, the labour market parties and the political parties represented in the *Folketing*. As the crisis continued over spring and summer 2020, some disagreement did begin to emerge concerning the assessment of how successful these measures have been and whether and in what ways they should be continued or phased out. Specific industries and labour market groups were harder hit than others, causing frustration among specific industry representatives. Political disagreement also began to arise over the government's spending policy. Overall, however, the agreements taken over the course of the pandemic have been supported by a vast majority of policital parties, and all key decisions concerning the labour market have been taken in conjunction with the labour market parties.

The distinct type of decision-making in Danish labour market policy appears to have forestalled friction that could have impeded the swift implementation of effective measures. In addition, the universalist features of the Danish social security system have proven an asset during the crisis. In 2017, Denmark had carried out a reform of its unemployment insurance system, which made it easier for self-employed individuals, freelancers, and so-called hybrid workers (*kombinatører*) to claim unemployment benefits. This allowed policy makers to rely on the unemployment insurance system for individuals across the labour market as the compensation schemes were phased out. The comparatively effortless transition between employment

13 Rapport fra arbejdsgruppen Principper for hjælpepakker ved nye epidemier (Erhvervsministeriet, 2012), p. 4.

14 Ibid., p. 3.

15 Finansministeriet, Økonomisk redegørelse 2021, p. 35.

and unemployment in Denmark, and the inclusivity of the unemployment system, appear to have proven an asset. The crisis appears, most of all, to have highlighted the strengths of the Danish labour market approach and its social security systems in times of economic downturn.

2. *Job Retention*

The initiatives jointly agreed by the Danish government and the Danish labour market parties in March and April 2020 included a range of instruments aimed at preventing redundancies in the private sector. At the same time, these measures served a number of more general economic purposes; first and foremost to support businesses more generally, and to place the economy in a position that would facilitate speedy economic recovery once the crisis was over. The express aim of the measures was therefore not only to prevent individual job losses, but also to avoid losing good 'job matches' at a cost to employers and the economy as a whole.

a) *Salary Compensation*

The most important component of the agreement of 14 March 2020 between the Danish government, the trade unions and the employees' associations was a comprehensive salary compensation scheme (*lønkompensationsordning*) for the private sector. The compensation scheme allowed private employers to receive compensation for the salary of their employees for a period of up to four months in the period between 9 March and 8 July 2020 (originally up until 8 June, with a one-month extension agreed on 18 April 2020). Employers were able to receive 75% of salary cost for salaried employees, and 90% of salary cost for non-salaried workers. One condition that needed to be met was that without financial support, the employer would be forced to make redundant at least 30% or 50 members of their work force. Moreover, employees needed to be furloughed, meaning that they received full pay without carrying out any work-related duties during the period in which compensation was received. Companies were not allowed to dismiss for economic reasons *any* of their employees while they received compensation (this included those employees who still carry out their duties). It was a further condition for receipt of salary compensation that employees take five days of (paid or unpaid) holiday leave during any three-month period of salary compensation (in the case of shorter or longer periods, the number was adapted proportionately). By way of a separate agreement reached by the government and the labour market parties on 14 March 2020, apprentices were included in the salary compensation scheme.[16] The rights and obligations of employers and employees were laid down in a law adopted on 24 March 2020.[17] By way of an additional agreement reached on 30 March 2020, the government and the labour market parties agreed to raise the maximum monthly amount that can be received in compensation to DKK 30,000 (approx. EUR 4,023).[18] Originally, the maximum rate was DKK 23,000 (approx. EUR 3,085) for salaried employees and DKK 2,000 (approx. EUR 3,487) for non-salaried employees.[19]

Following a tripartite agreement of 5 June 2020, the salary compensation scheme was extended once more to cover the period from 9 July until 29 August 2020. The agreement aimed to extend the salary compensation scheme mainly to help businesses through the summer months, but it was modified slightly and made subject to additional requirements. Salary compensation over the summer months was granted only with a three-week payment break during the period for which compensation was sought. Employers were granted a corresponding right to make their employees take up to three weeks of holiday leave.[20]

While the salary compensation scheme was considered an overall success, there was agreement among the labour market parties, the political parties and economic experts that a phase-out would be necessary in order to forestall more long-term detrimental effects to the Danish economy, and the tripartite agreement of 5 June 2020 expressly stated that it would be phased out by 29 August 2020. This was confirmed in the cross-party agreement of 28 August 2020 and the tripartite agreement of 31 August.[21] The scheme was granted an extension only for businesses affected by a con-

16 Trepartsaftalen om midlertidig lønkompensationsordning til arbejdsgivere omfatter lærlinge og elever of 14 March 2020.

17 Lov 2020-03-24 nr. 264 om arbejdsgiveres og lønmodtageres retsstilling ved lønkompensaion af virksomheder i forbindelse med covid-19; the salary compensation scheme is regulated further in the decrees BKG 2020-03-25 nr. 267 and BKG 2020-03-31 nr. 329. The financial basis of the scheme is provided in Aktstykke nr. 108 (FT 2019-20) of 17 March 2020.

18 All figures have been rounded to the closest full amount. The exchange rate used is that of 21 May 2020.

19 See footnote 2.

20 Lov 2020-06-26 nr. 958 om varsling af ferie i den forlængede lønkompensationsperiode.

21 See footnotes 8 and 9.

tinued mandatory closure taken as part of measures to restrict the spread of the virus. However, the original generalised compensation scheme was reintroduced based on a collective agreement of 10 December 2020, when increased infection rates made comprehensive restrictions necessary.[22] The reintroduced scheme was virtually the same as the original scheme, and it was in place for the duration of the new restrictions being in place. Alongside the regular schemes, a series of targeted schemes were in operation for various periods throughout the pandemic for sectors particularly severely affected by closures, such as the tourism and nightlife sectors and businesses affected by closures during the Christmas period.[23]

b) Work Reduction

In addition to the salary compensation scheme, the government made the existing regulations on 'work reduction' (*hjemsendelse på grund af arbejdsfordeling*) more flexible in March 2020. 'Work reduction' means that an employee is exempt from work for at least an average of two days per week and their salary reduced accordingly. This allows employers to divide work among all employees, rather than making individuals redundant in times of limited need. The basis for work reduction can be either a sector-wide agreement or a collective agreement reached within a company. In the case of work reduction, an employee is entitled to supplementary unemployment benefits (*supplerende dagpenge*) for the lost hours, provided they are a member of an unemployment insurance fund (*a-kasse*). In the absence of membership in an unemployment insurance fund, an individual may be entitled to social assistance (*kontanthjælp*). The daily rate for supplementary unemployment benefits is identical to the standard rate for unemployment, which at present amounts to around 90% of the previous salary up to a maximum of DKK 19,083 per month (approx. EUR 2,559). In the case of work reduction, the maximum rate is reduced by the number of hours spent in work. Supplementary unemployment benefits are paid for a maximum of 30 weeks within any 140-week period. Around 70% of the Danish work force are members of an unemployment insurance fund.[24] In order

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22 Trepartsaftale om forlængelse af midlertidig arbejdsfordelingsordning og lønkompensation of 10 December 2020.

23 Ibid.

24 Arbejdskraftundersøgelsen, First Quarter 2019; Danmarks Statistik; A-kassernes afregning af medlemsbidrag, 1. Januar 2019, Styrelsen for Arbejdsmarked og Rekruttering.

to prevent layoffs, the Danish authorities eased the notification requirements for work reduction in March 2020, with any requirements for advance notification to the authorities that an employer is planning to implement work reduction removed entirely.[25]

Given the phasing-out of the salary compensation scheme on 29 August 2020, the regulations on work reduction were supplemented by a new scheme in an attempt to prevent redundancies. In a tripartite agreement of 31 August 2020, the government and the labour market parties agreed that new, temporary provisions on work reduction should be enacted by law, which would operate alongside the existing tools for work reduction.[26] The scheme involves a modification of existing mechanisms of work reduction, including an increase in the supplemental unemployment benefit level to up to DKK 143.50 per hour (the equivalent of DKK 23,000 in case of full-time unemployment, roughly a 20% increase from the regular rate).[27] Participation in this scheme does not eat into an individual's maximum eligibility period for unemployment benefits. In addition, and this is the most central aspect of the temporary scheme, individuals who are not members of an unemployment insurance fund can become eligible for supplementary unemployment benefits. Under the temporary scheme, they are allowed to become members of an unemployment insurance fund and claim supplementary benefits immediately, provided they pay triple the membership fee per month. Employees gaining eligibility to unemployment benefits through the special provisions in this scheme will not be entitled to regular unemployment benefits after the scheme runs out. The scheme applies to the entire private sector, both those parts governed by collective agreements and those without. Unlike under the regular rules concerning work reduction, the employee is granted fewer rights. If he or she refuses to participate in the work reduction scheme, they can be made redundant. The temporary legal measures were deemed a success in cushioning the repeated challenges of phasing out the more generous salary compensation schemes once restrictions ended, and were extended

25 See the press release of the Ministry of Employment of 12 March 2020.

26 Lov 2020-09-11 nr. 1336 om adgang til iværksættelse af midlertidig arbejdsfordeling som led i håndteringen af covid-19; lov 2020-09-11 nr. 1337 om ændring af lov om arbejdsløshedsforsikring m.v., lov om sygedagpenge og barselsloven.

27 In addition, employers have to contribute the equivalent of 3 G-dage to the scheme per month per employee; on G-dage, see below, section 1. c).

several times, most recently until 31 March 2022.[28] The scheme as a whole reduces state spending, while providing new instruments for employers to prevent redundancies.

c) *Additional Measures*

On 26 March, the Danish Parliament passed a law that suspended the employer's obligation to pay unemployment benefits to employees covered by unemployment insurance during the first two days of work reduction (so called *G-dage*).[29] The amended provisions on *G-dage* were in force from 27 March 2020 until 31 August 2020 and reintroduced in January 2021 for the period from 19 January 2021 until 28 February 2021.[30] The provisions did not apply in the case of a dismissal. In this case, the employer remained obliged to pay unemployment benefits during the first two days of unemployment. The amended rules on the *G-dage* were introduced mainly to ease the implementation of work reduction so as to prevent redundancies by limiting the financial burden on employers when instating such schemes.

In conjunction with the above measures, training opportunities were expanded for individuals out of work or on reduced working hours. The service, tourism, hotel and catering sectors have been particularly hard hit by the corona crisis. In order to prevent redundancies in these industries, the trade union *3F*, the employer's association *Horesta* and the Ministry of Employment in March 2020 developed a 30-day online training course that employees can complete while there was no work for them to do during closures (while still receiving full pay). Upon successful completion of the course, the state and the trade unions reimbursed 100% of salaries to the employers.[31] Training opportunities were subsequently expanded significantly. By way of the tripartite agreement of 30 August 2020, opportuni-

28 Lov 2021-12-21 nr. 2529 om ændring af lov om adgang til iværksættelse af midlertidig arbejdsfordeling som led i håndteringen af covid-19 og lov om arbejdsløshedsforsikring m.v.

29 Lov 2020-06-26 nr. 960 om ændring af lov om arbejdsløshedsforsikring m.v. og lov om sygedagpenge; Lov 2020-04-22 nr. 473 om ændring af lov om aktiv socialpolitik, lov om arbejdsløshedsforsikring m.v. og lov om sygedagpenge; Lov 2020-03-26 nr. 274 om ændring af lov om arbejdsløshedsforsikring m.v. og lov om arbejdsgiveres og lønmodtageres retsstilling ved lønkompensation af virksomheder i forbindelse med covid-19.

30 Lov 2021-01-19 nr. 58 om ændring af lov om arbejdsløshedsforsikring m.v.

31 Press release of the Ministry of Employment of 22 March 2020.

ties for staff training during periods of work reduction were introduced, both for the regular work reduction model and the temporary scheme. Additional training schemes have been introduced for the unemployed, see below (4).

In an additional effort to ease the financial burden of the crisis on employers and prevent redundancies, the rules concerning statutory sick pay have been adapted to the distinct situation brought about by the coronavirus. Usually, an employer is obliged to pay either salary or sick pay for the first 30 days of an employee's absence due to sickness, before they can claim a refund from the municipality. Under the amended rules, which were in place until 1 July 2021 in the first instance[32] and reintroduced during the height of the 2021/22 winter wave[33], an employer can claim a refund from the municipality already from the first day of an employee's absence, if the absence is the result of a COVID-19 infection or a publicly mandated quarantine, which makes the performance of work duties impossible.[34] The provisions support employers financially, thereby ensuring that they do not exert economic pressure on employees for turning up to work when there is a possible infection risk to others. In addition, employees at risk of a severe COVID-19 infection were eligible also for sick pay.

A novel measure introduced in September 2020 on the basis of an additional tripartite agreement reached on 10 September[35] concerned the granting of state-funded parental leave benefits to both employees and the self-employeed when they are forced to take time out of work to look after a child infected with COVID-19, or when the school, kindergarten or other childcare facility that their child attends has had to shut due to a COVID-19 outbreak. The law granted up to ten days of parental leave benefits per child under the age of 14. The law expressly stated that a parent is not entitled to the benefit if they can carry out their work from home, and that the scheme is subsidiary to other social benefits, including regular child sick pay.

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32 Lov 2021-03-27 nr. 527 om ændring af lov om sygedagpenge og barselsloven.

33 Ibid.

34 Lov 2020-03-17 nr. 212 om ændring a lov om sygedagpenge.

35 Trepartsaftale om midlertidig ordning med barselsdagpenge til forældre med hjemsendte børn som følge af covid-19 of 10 September 2020.

3. Supporting the Economy

The measures adopted by the Danish government and the parties of the *Folketing* that seek to support the overall economy can be subdivided into three categories: a. access to loans and innovation support; b. public compensation and c. deferral of tax and social contribution payments.

a) Access to Loans

As early as 11 March 2020, the Danish government announced that it would release the countercyclical capital buffer established in the wake of the global financial crisis of 2008. This was to ensure that banks would remain in a position to issue loans. On 12 March 2020, the Danish government announced that it would guarantee loans by up to 70% between 1 March 2020 and 30 September, provided that they had been taken in order to compensate for revenue losses of more than 30% caused by the crisis.[36] The details of the loan guarantee scheme were subsequently set out in a ministerial decree.[37]

The cross-party agreement of 18 April 2020 also established a scheme which allowed small and medium-sized businesses, which on 2 March 2020 had already paid to the authorities their value-added tax for the second half of 2019 (small businesses) or the fourth quarter of 2019 (medium-sized businesses), to have the payments returned as an interest-free loan. A corresponding mechanism was subsequently introduced for businesses that pay payroll tax rather than VAT. Under a law passed on 5 May 2020, such businesses can receive any payments made in the first quarter of 2020 as an interest-free loan.[38] A new corresponding loan scheme was introduced for value added tax, payroll tax and AM paid during the

36 See the information sheet of 12 March 2020 on the website of the Ministry of Economic Affairs.

37 Bekendtgørelse 2020-04-06 nr. 384 om ændring af bekendtgørelse om garantiordning for udlån til store virksomheder; Bekendtgørelse 2020-03-26 nr. 276 om garantiordning for udlån til store virksomheder.

38 Lov 2020-05-05 nr. 572 om rentefrie lån svarende til angivet moms og lønsumsafgift og fremrykket udbetaling af skattekreditter m.v. i forbindelse med covid-19.

remainder of 2020 and in 2021, with repayment deadlines extended several times and now reaching into 2023.[39]

In order to keep the private credit insurance market afloat (in particular with a view to the exports market), the parties to the agreement of 18 April 2020 decided that the Danish State would assume part of the risk of private credit insurers in return for an obligation on the part of credit insurers to maintain a certain level of market activity in Denmark. In addition, loan guarantees by the state were increased to 80%. In addition, a temporary state fund was created that was intended to be able to act as an "investor of last resort".

b) *Public Compensation*

On 25 March 2020, the Danish government announced the introduction of a compensation scheme for fixed costs. The compensation scheme was a result of the cross-party agreement reached on 19 March 2020. Under the scheme, businesses that due to the crisis faced a decrease in turnover of at least 30% (originally 40%, but subsequently reduced to 35% and then 30%), or which were forced to shut as a result of public measures to contain the COVID-19 pandemic, could apply to have a certain percentage of their fixed expenditure compensated, depending on the decrease in turnover. The rate of compensation was up to 90% of expected revenue losses. The fixed costs included rent, interest rates and leasing costs (but not wages, taxes and social contributions). The maximum compensation that could be issued under this scheme was DKK 110 million (ca. EUR 15 million) per company (increased from DKK 60 million by way of the agreement of 18 April 2020). The compensation scheme was regulated in a ministerial decree.[40] Businesses that were *forced* to shut entirely due to the restrictions could receive 100% of fixed costs in compensation. The period

39 Lov 2021-05-04 nr. 779 om ændring af lov om rentefrie lån svarende til indberettet A-skat og arbejdsmarkedsbidrag i forbindelse med covid-19, lov om rentefrie lån svarende til angivet moms og lønsumsafgift og fremrykket udbetaling af skattekreditter m.v. i forbindelse med covid-19 og lov om midlertidig udskydelse af angivelses- og betalingsfrister m.v. på skatteområdet i forbindelse med covid-19.

40 Bekendtgørelse 20-05-05 nr. 574 om kompensation for faste omkostninger til virksomheder i økonomisk krise som følge af COVID-19, earlier: Bekendtgørelse 2020-04-08 nr. 398 om ændring af bekendtgørelse om midlertidig kompensationsordning for virksomheders faste omkostninger; Bekendtgørelse 2020-04-02 nr. 350 om midlertidig kompensationsordning for virksomheders faste omkostninger.

for which compensation could be sought was originally from 9 March until 8 August 2020, but the scheme has been reintroduced and extended several times in slightly modified versions since then. In addition, several targeted compensation schemes for specific businesses and specific seasons were introduced, including for businesses and self-employed individuals in the tourism and nightlife sectors and those affected by closures over the Christmas period.[41] Over time, the compensation schemes were in part simplified in terms of the documentation requirements (*kompensation 'light'*), and a more simplified model concerning the compensation percentages was introduced.

On the basis of the cross-party agreement of 19 March 2020, the Danish government introduced a compensation scheme for the self-employed that was modelled on the salary compensation scheme for private businesses. In accordance with a ministerial decree issued on 1 April 2020, predicted revenue losses of self-employed individuals could be compensated if they were a result of the COVID-19 crisis and amounted to at least 30%. The scheme was only meant to compensate for the loss of personal income of the self-employed, not the loss of overall company turnover. The period for which compensation could be sought was initially from 9 March until 8 July 2020.[42] The rate of compensation was 90% of the predicted revenue loss (originally 75%, but subsequently increased), up to a monthly maximum of DKK 23,000 (EUR 3,085) per applicant. It was a condition for receiving compensation under this scheme that the applicant's annual income did not exceed DKK 800,000 (EUR 107,294) in 2020. The scheme extended to all self-employed whose companies – regardless of their legal form – had been registered in the Danish Central Business Register (*Det Centrale Virksomhedsregister* = CVR) by 9 March 2020 at the latest. To be eligible, companies could not have more than 25 employees (increased from 10 employees by way of the cross-party agreement of 18 April 2020), and the applicant had to both work in the company and own a minimum of 25% of the company. It was possible for more than one application to be filed per company. Under specific circumstances, the scheme also applied to individuals not registered in the Central Business Register, such as freelancers. In this case, the monthly average income prior to the crisis had to have amounted to at least DKK 10,000 (EUR 1,341). For their employees, the

41 Aftale mellem regeringen (Socialdemokratiet), Venstre, Radikale Venstre, Socialistisk Folkeparti, Enhedslisten, Konservative og Alternativet om tillæg til aftale om genåbning af generelle kompensationsordninger of 16 December 2020.

42 Bekendtgørelse 2020-04-01 nr. 332 om en midlertidig kompensationsordning for selvstændige mv. i økonomisk krise som følge af Covid-19.

self-employed could seek salary compensation via the salary compensation scheme discussed above, 1. Special compensation schemes were subsequently introduced in April 2020 to cater for the distinct problems arising for self-employed individuals and freelancers with mixed income sources including artists. As was the case with the salary compensation scheme, the compensation schemes for the self-employed were extended, but slightly modified for the period after 9 July 2020. The compensation scheme for the self-employed was extended until 8 August 2020, in the first instance, and then extended once more until 31 August 2020. For the summer scheme, the maximum compensation rate was increased to 100% for businesses affected by publicly mandated closures, but with the cap of DKK 23,000 (EUR 3,085) remaining in place. As was the case for other compensation schemes, the scheme remained in place for those facing continued restrictions, but phased out otherwise. However, the generalised scheme was reintroduced with slightly modified form during the winter waves of 2020/21 and 2021/22 during times in which more widespread restrictions were in place. In addition, special compensation schemes with an increased compensation rate were introduced over the course of the pandemic for self-employed individuals and freelancers whose main income is usually generated in the summer or Christmas seasons.[43]

The right to sick pay for the self-employed was also expanded, so as to grant the self-employed similar relief to that offered to employers. Pursuant to a law passed on 17 March 2020, the self-employed could receive sick pay during the first two weeks of sickness, if they are unable to perform their work due to a COVID-19 infection. Usually, a self-employed individual can only apply for sick pay after two weeks of sickness. Self-employed individuals who cannot carry out their work due to a quarantine mandated by the health authorities have a right to sick pay for the entire period in which they are unable to perform their work due to the quarantine.[44] The self-employed can also receive parental benefits in case of a school closure or a COVID-19 infection of their child.[45]

Under a further compensations scheme, financial losses could be compensated for events with more than 350 participants, which would have been held in Denmark between 6 March and 30 September 2021 (*arrangørordningen*), and which had to be cancelled due to public measures

43 Bekendtgørelse 2020-07-14 nr. 1168 om en midlertidig kompensationsordning for sæsonafhængige selvstændige mv. i økonomisk krise som følge af COVID-19.

44 § 43, Lov 2020-03-17 nr. 212 om ændring af lov om sygedagpenge; Lov 2021-12-14 nr. 2380 om ændring af lov om sygedagpenge og barselsloven.

45 Lov 2020-09-29 nr. 1427 om ændring af barselsloven.

to contain the virus.[46] In addition, from August 2020 onwards, a series of new, highly targeted compensation schemes was introduced. The backdrop to the new measures was a nationwide 10 p.m. curfew for restaurants and bars, as well as a limitation on public and private gatherings to 50 people. On the basis of a cross-party political agreement of 20 September 2020, the compensation scheme for fixed costs was modified for businesses in the hospitality and culture sectors for the lost profits incurred due to the 10 p.m. curfew. The amended scheme was backdated to 19 August 2020, when the first local curfews were imposed. An additional compensation scheme was agreed by the political parties on 13 October for caterers for private functions which had to be cancelled due to the new restrictions.[47] In addition, the political parties agreed that compensation would be made available for losses incurred due to the purchase of perishable foods for consumption on 26 and 27 September, the two days immediately following the introduction of new additional restrictions. These types of specialised schemes were reintroduced throughout the pandemic depending on the restrictions introduced. It emerged, however, that these targeted schemes did not always cover all of those affected by the new restrictions, and for example sub-contractors often fell outside their scope.[48]

The public compensation schemes introduced since March 2020 need to be seen in relation to the laws on public compensation in existence prior to the COVID-19 pandemic. On 20 March 2020, the Danish legislator repealed § 27 of the Epidemic Act (*Epidemiloven*), which contained a comprehensive right to public compensation for economic losses incurred as a result of public measures to contain an epidemic. The legislator repealed the provision based on the argument that it was impossible to determine its economic consequences for the state budget in light of the COVID-19 pandemic.[49] The specific compensation schemes introduced since March 2020 must therefore be seen as a partial replacement of § 27 of the Epidemic Act. However, the new measures may also be better suited to address

46 Initially, the minimum number of participants was 1000 (500, if the target group was particularly vulnerable in regard to Covid-19). The minimum number of participants was subsequently reduced as a result of the cross-party agreement of 18 April 2020; Bekendtgørelse 2020-03-18 nr. 233 om kompensation for tab ved aflysning af større arrangementer som følge af COVID-19-afværgeforanstaltninger.

47 Aftale om yderligere kompensation til særligt hårdt ramte virksomheder mv of 13 October 2020.

48 Rapport fra arbejdsgruppen Principper for hjælpepakker ved nye epidemier, p. 111.

49 § 27, Lov 2020-03-17 nr. 208.

swiftly and in a targeted way the economic challenges of the current situation, without draining the state's finances or damaging the economy in the long run.

The pandemic response since March 2020 has gone from including only very generalised measures for the economy as a whole, to a combination of very targeted schemes concerning losses in specific sectors, on specific days or in specific contexts, in addition to the reintroduction of the generalised schemes for limited periods only. This is in line with the overall political aim of avoiding the 'status quo bias' of compensation schemes, in order to maintain a certain element of dynamism and adaptability within the labour market, and thereby to limit long-term damage to the economy.

c) *Deferral of Tax and Social Contribution Payments*

In March 2020, the Danish government and parties represented in the *Folketing* reached an agreement concerning the deferral of a number of public payment deadlines. The deferrals aim to safeguard the liquidity of businesses during the crisis. By way of a laws passed in March and June 2020, the public payment deadlines for income tax and value added tax as well as the so-called labour market contribution were extended.[50] A law passed on 30 April 2020 introduced a similar extension for payroll tax payments.[51] A corresponding law was adopted for the 2021 payment deadlines.[52]

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50 Lov 2020-03-17 nr. 211 om midlertidig udskydelse af betalingsfrister for indeholdt A-skat og arbejdsmarkedsbidrag, B-skat og foreløbigt arbejdsmarkedsbidrag samt midlertidig udskydelse af angivelses- og betalingsfrister og forlængelse af afgiftsperioder for moms m.v.

51 Lov 2020-05-05 nr. 572 om rentefrie lån svarende til angivet moms og lønsumsafgift og fremrykket udbetaling af skattekreditter m.v. i forbindelse med covid-19.

52 Lov 2021-02-23 nr. 248 om ændring af lov om midlertidig udskydelse af angivelses- og betalingsfrister m.v. på skatteområdet i forbindelse med covid-19, lov om rentefrie lån svarende til indberettet A-skat og arbejdsmarkedsbidrag i forbindelse med covid-19 og lov om rentefrie lån svarende til angivet moms og lønsumsafgift og fremrykket udbetaling af skattekreditter m.v. i forbindelse med covid-19.

4. Social Protection

In order to prevent social hardship during the crisis, the Danish government and the parties of the *Folketing* agreed on 19 March 2020 to extend the maximum payment periods for unemployment benefits and sick pay, as well as to introduce new higher education loans for students. The necessity for other adaptions within social security legislation was only identified later, and specific rules on social assistance and the 'pensioners premium' were adapted to the distinct situation of the COVID-19 pandemic in March and April 2020 respectively. The unemployment insurance system has played a significant role in connection with the phase-out of the major public compensation schemes, and has therefore been subjected to a series of modifications over the course of the pandemic. In addition, special training opportunities have been introduced for the unemployed.

Unemployment insurance is voluntary in Denmark ('Ghent System') and is administered via a state-subsidised system of unemployment insurance funds (*a-kasser*) that are closely aligned with the country's trade unions. Crucially, and in contrast to many unemployment schemes across the world, the Danish unemployment system is available to the self-employed, freelancers and so-called hybrid workers with mixed income sources (*kombinatører*). The new system was introduced in 2017 and in contrast to the pre-existing system also allows mixed income sources to serve as the basis for calculating benefits. For a self-employed individual to claim unemployment benefits, they usually have to have abandoned their business altogether, with a temporary laying down of business activity insufficient.[53] Unemployment benefits are usually granted for a period of up to 24 months and are paid by the unemployment insurance funds.[54] In light of the current crisis, this period was initially extended by three months on the basis of the cross-party agreement of 19 March 2020.[55] Following the cross-party agreement of 18 April 2020, an extension of this period by a further month was agreed, bringing the exempted period up to 30 June 2020.[56] The period was subsequently extended once more, until 31

53 § 53, Lov vom arbejdsløshedsforsikring.
54 § 55, ibid.
55 Lov 2020-03-26 nr. 274, see footnote 29.
56 Lov 2020-04-22 nr. 473 om ændring af lov om aktiv socialpolitik, lov om arbejdsløshedsforsikring m.v. og lov om sygedagpenge.

August 2020.[57] It was reintroduced for the period from 1 January until 30 June 2021.[58]

In conncetion with the phasing out of the public compensation schemes for the self-employed, the government's economic advisory committee recommended utilizing the unemployment insurance system to prevent potential hardships. The membership rates for the the self-employed before the crisis stood at only around 50%, compared to around 70% for employees, meaning that this group would be particularly exposed to social hardship. The self-employed were therefore given an opportunity to opt into an unemployment insurance fund without having to fulfil the usual requirement of a 12-month membership period before unemployment benefits can be claimed. Under temporary legal provisions, self-employed individuals were temporarily able to join an unemployment insurance fund and claim benefits immediately, provided they paid 12 months of membership fees retrospectively, and committed to remaining members for another 12 months.[59]

In a further important move by the legislator, the conditions for the self employed to be able to claim benefits were amended for those businesses affected by a closure due to COVID-19-related measures: if the business of a self-employed person was otherwise viable, a self-employed individual was able to claim unemployment benefits even without the usual requirement of *permanently* shutting down the business. A temporary closure thus suffices, making it easier to claim unemployment benefits for a short duration of time.

The amendments to the existing unemployment insurance system in conjunction with the repeated phase-out of the generalised schemes reflect a general policy aim of returning to traditional means of social policy and labour market interventions. The government's economic advisory group, which first recommended the measures in May 2020, had pointed out that there was no experience with the novel measures adopted at the early stages of the pandemic, and that the potential detrimental effects of these measures had to be limited and the 'status quo bias' of the initial crisis

57 Lov 2020-06-26 nr. 960 om ændring af lov om arbejdsløshedsforsikring m.v. og lov om sygedagpenge.

58 Lov 2021-01-19 nr. 57 om ændring af lov om arbejdsløshedsforsikring m.v. og lov om sygedagpenge; Lov 2021-03-20 nr. 467 om ændring af lov om arbejdsløshedsforsikring m.v., lov om sygedagpenge, lov om aktiv socialpolitik og lov om en aktiv beskæftigelsesindsats.

59 Lov 2021-06-29 nr. 1438 om ændring af lov om arbejdsløshedsforsikring m.v., lov om sygedagpenge og barselsloven.

measures removed. It also pointed out that redundancies were inevitable in the current crisis, and that they should not be avoided at all cost.

A further measure introduced in June 2020 concerns job training schemes for unskilled unemployed individuals.[60] For unskilled workers and skilled workers with outdated job training over the age of 30, a special scheme was adopted that grants an increased unemployment benefit level amounting to 110% of the regular sum.[61] The scheme grants the increased benefit rate for such types of job training for which the authorities estimate that there will be a societal demand following the crisis. While undergoing job training as part of this scheme, an individual is exempt from the usual requirements to be actively jobseeking and to participate in activation measures. This training scheme is an expansion of job training schemes initiated before the crisis, adapted to the distinct needs of the post-crisis economy. The government has issued a list of eligible jobs and the scheme will remain in place for individuals beginning job training in eligible jobs by the end of 2022.[62]

On the basis of the cross-party agreement of 19 March 2020, a law passed on 26 March 2020 extended the right to sick pay (*sygedagpenge*) by three months (1 March 2020 until 31 May 2020). By way of the subsequent cross-party agreements of 18 April 2020 and 15 June, this period was extended by one more month until 31 August 2020. A corresponding amendment law was passed on 22 April 2020.[63] A further three-month extension was granted to those whose sick pay expired between 1 November 2020 and 1 November 2021.[64] Sick pay is usually granted for a maximum period of 22 weeks, before the municipality conducts a work capacity assessment. The current rate for sick pay is a maximum of DKK 4,405 (EUR 591) per week. The extension of the period of eligibility to sick pay aims mainly to prevent recipients from having to undergo a work fitness evaluation during the time of lockdown.

60 Aftale om ekstraordinært løft af ledige of 17 June 2020.
61 Lov 2020-06-30 nr. 1051 om ændring af lov om en aktiv beskæftigelsesindsats og lov om arbejdsløshedsforsikring m.v.
62 Lov 2021-06-11 nr. 1238 om ændring af lov om en aktiv beskæftigelsesindsats og lov om arbejdsløshedsforsikring m.v.
63 Lov 2020-04-22 nr. 473 om ændring af lov om aktiv socialpolitik, lov om arbejdsløshedsforsikring m.v. og lov om sygedagpenge; Lov 2020-03-26 nr. 275 om ændring af lov om sygedagpenge.
64 Lov 2020-11-19 nr. 1642 om ændring af lov om arbejdsløshedsforsikring m.v., lov om sygedagpenge, lov om aktiv socialpolitik og lov om seniorjob.

An additional amendment to the rules on sick pay grants sick pay to individuals who are at risk of complications from COVID-19. The basis for this measure was the cross-party agreement of 18 April 2020, in which it was agreed that DKK 200 million would be set aside for employees especially at risk of complications from COVID-19, and initial measures were put into place in May 2020.[65] Following an extension in August, the scheme remained in place until 31 December 2020. The law grants sick pay to individuals at heightened risk for complications related to COVID-19, as well as close relatives of such individuals. Sick pay under this provision requires an individual medical assessment, meaning that it does not apply in general to what may be termed 'risk groups'.

A further component of the agreement of 19 March 2020 entailed the creation of improved loan opportunities for students within the framework of the state 'Students' Grants and Loans Scheme' SU (*statens uddannelsesstøtte*). The main reason for this extension was that many students faced the loss of their work income through side jobs. A law passed on 31 March 2020 contains a provision that allows students to apply for an additional student loan, provided that they are already recipients of SU. This applies to the vast majority of students in Denmark, meaning that almost all students are eligible for the additional loan. The additional student loan period was initially limited to March and April 2020. However, the relevant amendment law of 31 March 2020 granted the responsible Ministry the authority to extend the period for which an additional loan may be granted. The Ministry has already made use of this provision twice and extended the period by a total of four months to include May, June, July and August 2020.[66] The law on extended loans for students expired on 1 March 2021.[67] In addition, the legislator adopted provisional legislation to the effect that individuals who were in education but had exceeded the income thresholds in 2020 and 2021 because they had served in a medical or public capacity as part of the corona response would not face repayment claims.[68]

On 6 April 2020, the Danish Parliament decided to suspend the '225-hour rule' for recipients of social assistance (*kontanthjælp*) for a period of three months beginning on 9 March 2020.[69] The 225-hour rule entails

65 Lov 2020-05-20 nr. 657 om ændring af lov om sygedagpenge.
66 Bekendtgørelse 2020-04-28 nr. 544 om udvidede muligheder for studielån som følge af covid-19.
67 Lov 2020-03-31 nr. 328 om ændring af SU-love.
68 Lov 2021-02-27 nr. 293 om ændring af SU-loven.
69 Press release of the Ministry for Employment of 6 April 2020.

that recipients of social assistance need to demonstrate that they remain available to the labour market by working at least 255 hours annually. The extension was made so as to align social assistance with the extensions already granted for recipients of unemployment benefits and sick pay. Because the parties to the cross-party agreement of 18 April 2020 had in the interim decided to extend the maximum receipt periods by another month, the relevant legislation of 21 April 2020 ultimately also provided for a four-month suspension of the 225-hour rule.[70] In June, the period was extended once more, until 8 September 2020[71] and once more from 1 November 2020 until 30 June 2021.[72]

In the cross-party agreement of 18 April 2020, the parties also laid down that the minimum work requirement for recipients of the ‘pensioner’s premium’ would be reduced. The pensioner’s premium is a supplementary payment granted to pensioners who remain in work after their retirement. The usual requirement of 1,560 hours of work per year was reduced to 1,040 for the current year, the equivalent of a reduction of four months.

By way of the cross-party agreement of 15 June 2020, a one-off payment of DKK 1,000 was agreed to be made to individuals who had been on social benefits in April 2020. The measure was subsequently approved by Parliament and the payouts were made in September.[73]

In sum, many of the existing social security systems were thus provisionally amended to cater for the needs of the crisis, often in combination with special job training opportunities. The strong reliance on the unemployment insurance system during the phase-out of the major compensation schemes of March and April 2020 reflects the robustness of the Danish welfare state in stemming the consequences of the crisis for large segments of the labour market.

5. Conclusion

By way of established labour market mechanisms, the Danish government and the Danish labour market parties jointly and swiftly agreed on comprehensive measures to stabilise the labour market and the economy following the first shutdowns in March 2020. Joint agreements taken by the

70 Lov 2020-04-22 nr. 473 om ændring af lov om aktiv socialpolitik, lov om arbejdsløshedsforsikring m.v. og lov om sygedagpenge.

71 Lov 2020-06-26 nr. 959 om ændring af lov om aktiv socialpolitik.

72 Lov 2021-05-12 nr. 878 om ændring af lov om aktiv socialpolitik.

73 Lov 2020-08-21 nr. 1222 om engangstilskud til modtagere af forsørgelsesydelse.

political parties of the Danish Parliament introduced support for the self-employed as well as economic stimulus measures, and led to the adaption of existing social legislation to the needs arising from the coronavirus pandemic. The measures initiated in March 2020 were subsequently amended and supplemented in order to adapt them to the changing situation and to correct initial oversights. Following the Danish government's announcement on 7 May 2020 that the initial shutdown would be brought to an end, the focus began to concern the phasing-out of the compensation schemes, and the question of how to provide targeted support for sectors of the economy that continued to face restrictions. The compensation schemes were initially replaced with more targeted ones, but the general schemes had to be reintroduced several times during the following pandemic waves.

The initial decision to phase out the schemes by late August 2020 was carried by a broad, political consensus involving trade unions and employees' associations. Following the economic expert commission's report in May 2020, there was a general agreement that these novel and highly interventionist, state-funded measures could hamper the country's economic recovery, and would therefore be of detriment to overall societal prosperity in the long run. The phasing-out of the schemes was possible primarily due to the careful adaption of the provisions on work reduction and the unemployment insurance system. This, in conjunction with the tool of 'work distribution', suggests that the pre-crisis 'flexicurity' model still formed a guiding rationale during the crisis, despite the aim to retain 'job matches'. However, the repeated phasing-in and phasing-out over the coming 18 months also highlighted how there could not be too much rigidity around following a singular approach. Denmark therefore saw a dynamic mix of reintroducing the generalised schemes from the first wave of the pandemic and introducing targeted schemes, followed by their quick phasing-out once restrictions were lifted.

In regard to individual social protection, the Danish government and the political parties of *Folketing* swiftly agreed on measures aimed at preventing social hardship. This, of course, could not avoid some individuals being hit hard by the crisis. In particular the voluntary nature of the Danish unemployment insurance system might be seen as a problem in this context. Instead of applying for salary compensation, but in order to still be able to prevent lay-offs, some sectors of the economy have relied heavily on unpaid leave.[74] In this case, the employees are able to apply for benefits from an unemployment insurance fund – provided that they are a member. Without membership, they will have to apply for social assistance. In particular unpaid leave will therefore hit the weakest members of the work force the hardest, as it is often low-paid workers who decide not to join an unemployment insurance fund in order to save membership fees. But access to unemployment benefits has also become easier during the crisis, at least for some parts of the labour market, and the fact that the unemployment insurance system in principle covers all labour market participants has meant that the available safety net is comparatively broad.[75] In addition, training opportunities have been made available to the unemployed, often in conjunction with increased benefit rates, which will place individuals in a good position to secure employment in the post-crisis labour market.

Overall, the crisis appears to have highlighted the strengths of the Danish labour market and its welfare state. Decision-making by way of tripartite agreements has been able to forestall friction between political parties, the economy and employees. The constant dialogue has meant that specific needs could be listened to, but that the needs of the economy as a whole, both during the crisis and in future, were kept in mind. In addition, a number of measures helped to prevent fraud. This included the automatic validation against the registered previous taxed income and other information on the company. If the automatic validation procedure flagged up inconsistencies, the case was, for example, transferred to manual handling by a case worker.[76] In addition, the payments were dependent on transparent reporting requirements, and a whistleblower scheme was introduced.[77]

For individuals, the well-developed and inclusive social security systems of the country have been able to offer a safety net for most of the labour market as the compensation schemes were phased out. And by focusing on job training, the labour market parties and Danish politicians have also

74 See for example Organisationsaftale Mellem DI og CO-industri Vedrørende force majeure og hjemsendelse efter Industriens Overenskomst grundet COVID-19 of 17 March 2020.

75 It is important to note, however, that there is a minimum prior income threshold, meaning that some marginal part-time workers will not be eligible for unemployment benefits.

76 Rapport fra arbejdsgruppen Principper for hjælpepakker ved nye epidemier, p. 117.

77 Ibid.

ensured that the labour force will be in a good position to meet the challenges of the post-pandemic labour sector, in particular with regard to jobs in the digital economy. This is not to say that the schemes have been flawless, however. As in most countries, select groups have fallen between the cracks of compensation schemes, first and foremost artists and freelancers below the necessary income thresholds, and some of those self-employed persons indirectly affected by the cancellation of events who were not included by the targeted scheme (*arrangørordningen*). The introduction of new schemes and changing eligibility periods of the generalised schemes at times also made it a challenge for businesses to navigate the increasingly complex langscape of measures and to understand what compensation they were entitled to and what documentation demands were needed.[78]

While no structural changes can be expected in Denmark, it would be mistaken to assume that the labour market will remain the same. The Danish approach to labour market and social policy is centred around dynamism and change. In the current crisis, this means that livelihoods are protected not only in the short-term, but also in the long-term, through job training and innovation at a time when changing consumer behaviour caused by the pandemic, the digital revolution and climate change confronts workers and the labour market as a whole with new challenges. It can also be assumed that the Danish welfare state will be better prepared should a similar crisis arise. A comprehensive report has been issued on the principles of crisis measures in any future pandemic, which identified 18 key principles of labour and economy support measures. These included help to self-help, the importance of speed and transparency, an ex-post accounting to be done by those entities that received compensation, as well as the importance of the reestablishment of a well-functioning market. Based on the lessons learnt during the current pandemic, including a clearer idea of the legal principles at play, decision-makers in any comparable future crisis will hopefully be well-equipped to respond with appropriate measures.

78 Ibid., 110.

VII. (Still) Too Little, Too Late? – Crisis Management in England[1]

Nikola Wilman

1. Introduction

In favourable terms, the UK government's handling of the corona pandemic could be described as hesitant: Initially, the strategy seemed to focus on protecting the economy, accompanied by isolation of the elderly and the clinically vulnerable (referred to as 'shielding'). Even the idea of 'herd immunisation' through the 'controlled' infection of the rest of the population was not initially considered to be out of the question.[2] It was not until mid-March 2020 that a new study conducted by the Imperial College London persuaded the government to change its strategy, as it was predicted that the number of deaths in the UK could reach hundreds of thousands if transmission continued unchecked.[3]

Meanwhile, public life in the country largely reached a standstill with a UK-wide mandatory lockdown announced on 23 March 2020: all schools[4] in the UK were closed, as well as most non-essential businesses[5], particu-

1 Measures in Wales, Scotland and Northern Ireland may partly deviate due to the devolution (transfer of legislative and executive competencies to the Regions).

2 Boseley, Herd Immunity: Will the UK's Coronavirus Strategy Work?, The Guardian, 13 March 2020. See also Hunter, Covid-19 and the Stiff Upper Lip – The Pandemic Response in the United Kingdom, The New England Journal of Medicine, 20 March 2020.

3 Grey/MacAskill, Special Report: Johnson Listened to his Scientists about Coronavirus – but They Are Slow to Sound the Alarm, Reuters, 7 April 2020. On the study itself see: Walker et al., Report 12: The Global Impact of COVID-19 and Strategies for Mitigation and Suppression, Imperial College COVID-19 Response Team, 26 March 2020.

4 With the exception of children of so-called 'critical workers' as well as particularly vulnerable children. See Department for Education/Cabinet Office, Critical Workers Who Can Access Schools or Educational Settings, updated 28 September 2020.

5 Ministry of Housing, Communities & Local Government/ Cabinet Office, Closing Certain Businesses and Venues, 23 March 2020.

larly in the retail, hospitality and leisure sectors.[6] Also, lockdown regulations made it an offence for any person to leave their house to go to work if their work could be reasonably done from home.[7] The government warned that up to one-fifth of employees might be absent from work during peak weeks of the pandemic.[8]

Despite the lockdown, the number of cases continued to rise.[9] Since the beginning of the crisis, particular attention has therefore been paid to the *National Health Service* (*NHS*). The *NHS* is considered chronically underfunded and ill-prepared for a pandemic[10]: "The UK Government's Contain-Delay-Mitigate-Research strategy failed. […] The UK now has a new plan – Suppress-Shield-Treat-Palliate. But this plan, agreed far too late in the course of the outbreak, has left the NHS wholly unprepared for the surge of severely and critically ill patients that will soon come." The UK has been hit hard: Between Monday 3 February 2020 and Sunday 18 April 2021, the total number of confirmed COVID-19 cases per 100,000 people was 6,740 for the EU-27 as a whole; in the UK it was 6,512. The total number of deaths per 100,000 people was 151 for the EU-27 versus 188 in the UK.[11]

In addition to the health crisis, the magnitude of the recession caused by the pandemic is unprecedented in modern times: Economic output as measured by GDP declined by 9.7% in 2020. This was the steepest drop since consistent records began in 1948 and equal to the decline in 1921

6 For further details, see Department of Health & Social Care, Coronavirus Outbreak FAQs: What You Can and Can't Do, 1 May 2020. The Coronavirus Act 2020 passed on 25 March 2020 and the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350) ('lockdown regulations'), enacted on 26 March 2020, put the lockdown measures on a legal basis.
7 Health Protection Regulations 2020, reg. 6 (2) (f) (see fn. 6).
8 BBC News, Coronavirus: Up to Fifth of UK Workers 'Could Be off Sick at Same Time', 3 March 2020; Department of Health and Social Care, Coronavirus Action Plan: A Guide to What You Can Expect Across the UK, 3 March 2020.
9 On this see: Linton, When Will the Covid-19 Pandemic Peak? Cambridge-INET Working Paper Series, No. 2020/11.
10 Horton, COVID-19 and the NHS – "a National Scandal", The Lancet 2020, p. 1022.
11 Bradshaw/Bennet et al., ESPN Thematic Report on Social Protection and Inclusion Policy Responses to the Covid-19 Crisis, United Kingdom, 2021, p. 4.

on less precise estimates.[12] During the first lockdown, UK GDP was 25% lower in April 2020 than it was two months earlier in February.[13]

In an initial response, in Budget 2020 on 11 March 2020, the UK Chancellor of the Exchequer, *Rishi Sunak*, set out plans for a GBP 12 billion (around EUR 14 billion) package of "temporary, timely, and targeted measures" to support public services, individuals and businesses through the economic disruption caused by coronavirus.[14] On 17 March 2020 the Chancellor announced an additional extensive economic aid package worth a total of GBP 330 billion (around EUR 395 billion) ("equivalent to 15% of GDP") and promised "to do whatever it takes to support our economy through this crisis".[15]

The considerable financial volume of the aid package is particularly surprising, as it seems to turn the previously neoliberal ideology of the conservative government, characterised by little state control, low debt and the free play of market forces, on its head.[16] In 2020/21 the budget deficit reached a peacetime record of GBP 323 billion (around EUR 387 billion), or 15% of GDP.[17] The measures in the rescue package were initially focused on providing financial support to businesses, in particular through interest-free loans, cash-flow-supporting measures such as emergency loans and deferrals of VAT payments, as well as sectoral support for the tourism and retail sectors[18]. Only after heavy criticism by a number of MPs[19] did the government focus on job preservation, and the aid package was accordingly expanded to include a wage compensation programme (*Coronavirus Job Retention Scheme*) of remarkable (financial) proportions: "We have been working round the clock so that we can today confirm an unprece-

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12 Office for National Statistics (ONS), Coronavirus and the Effects on UK GDP, 6 May 2020.

13 ONS, Monthly GDP and Main Sectors to Four Decimal Places, 10 December 2021 release. To put this into some context, this is over three times the 7% decline in GDP recorded during the financial crisis in 2008/9. See ONS, Coronavirus and the Impact on Output in the UK Economy, April 2020, 12 June 2020.

14 HM Treasury, Budget 2020, HC 121, March 2020, Para 1.83.

15 HM Treasury, Chancellor of the Exchequer, Rishi Sunak on COVID19 Response, 17 March 2020.

16 See, inter alia Kettle, After Coronavirus, Boris Johnson`s Tories Will Be a Very Different Party, The Guardian, 16 April 2020.

17 ONS, Public Sector Finances – October 2021.

18 For a summary of measures: HM Revenue & Customs et al., Financial Support for Businesses During Coronavirus (Covid-19), 27 April 2020.

19 Urgent Question on Coronavirus Employment Support, HC Deb 19 March 2020, cc1137-1153.

dented package of support to protect people's jobs and wages. And we are strengthening our safety net at the same time."[20]

In spring 2020, the UK government published COVID-19 recovery strategies, setting out plans for the phased re-opening of the economy.[21] The summer of 2020 saw a strong rebound in economic activity with the easing of the strict lockdown restrictions[22], increases in consumer spending and the full impact of the government's support measures being felt. GDP grew by 6.6% in July 2020, following an 8.7% increase in June 2020.[23] Nevertheless, GDP was still 12% below its pre-pandemic level.[24]

However, in autumn 2020 new national restrictions[25] as well as tighter localised measures[26] in response to rising COVID-19 cases[27] cast a cloud over the economic outlook, particular in sectors like hospitality. Against this backdrop, on 24 September 2020, the Chancellor announced his *Winter Economy Plan*[28], including a further series of measures to support businesses and jobs. On 31 October 2020, the Prime Minister announced a second national lockdown across England from 5 November 2020 until

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20 HM Treasury et al., Chancellor Announces Workers' Support Package, 20 March 2020.

21 Cabinet Office, Our Plan to Rebuild: The UK Government's COVID-19 Recovery Strategy, 11 May 2020, last updated 24 July 2020.

22 In England, the legal restrictions on going to work were removed entirely on 1 August 2020, putting it at the employer's discretion to ask people to return to work.

23 ONS, Coronavirus and the Impact on Output in the UK Economy: August 2020, 9 October 2020.

24 Ibid.

25 Cabinet Office, Coronavirus (COVID-19): What Has Changed – 22 September, 22 September 2020. There is now a government recommendation for office workers to work from home over the winter if they can effectively do so.

26 Department of Health & Social Care, Local Restrictions: Areas with an Outbreak of Coronavirus (COVID- 19), 27 July 2020, last updated 20 September 2020. On 12 October, the Prime Minister announced a new three-tier lockdown system for England of medium, high and very high alert areas, with the most severe restrictions on social contact and businesses coming in the last category. Department of Health & Social Care, Local COVID Alert Levels: what you need to know, 12 October 2020, last updated 27 October 2020.

27 As of 1 November 2020, there were 1,034,914, positive tests in total, 23,254 new cases that day and there had been 46,717 deaths in total (of those who had tested positive; 58,925 deaths with COVID-19 on the death certificate). See Government UK, Coronavirus in the UK, updated daily.

28 HM Treasury, Winter Economy Plan, 24 September 2020.

2 December 2020, confirming extensions to various support schemes.[29] After having initially described such a measure as “the height of absurdity” that would “turn lights out”, the Prime Minister relented after warnings from the government’s scientific advisers that the virus could kill 85,000 people over the winter, and that local measures were not sufficient.[30] These restrictions led to a 2.3% fall in GDP in November 2020, the first monthly decline since April 2020.[31]

By the beginning of January 2021, a surge in Covid-19 cases, driven by the new Alpha variant, led to the re-introduction of lockdowns across the nations of the UK.[32] As a result, the economy did see a downturn in economic activity, with UK GDP falling by 1.4% during the first quarter of 2021 compared with the previous quarter.[33] However, this was less of a decline than many economists had been expecting as consumers and businesses had adapted over the previous year.[34]

During the early 2021 lockdown, the government published on 22 February 2021 its ‘roadmap’ to easing restrictions in England which consisted of reopening the economy in stages over the subsequent months against the backdrop of a relatively fast vaccine rollout.[35] On 3 March 2021, the Chancellor presented the Budget, of which “setting the path for recovery” was the main theme.[36] Optimism over the economic outlook was boosted during the spring as virus caseloads fell, the vaccination rate rose, and strong economic data was published.[37] GDP grew by 5.5% in the second quarter (April to June) 2021, compared with the lockdown-affected first quarter.[38]

29 Cabinet Office, New National Restrictions from 5 November, 31 October 2020, last updated 1 November 2020.
30 Sample, Covid: Ministers Ignored Sage Advice to Impose Lockdown or Face Catastrophe, The Guardian, 13 October 2020.
31 ONS series ECYX, 10 December 2021 update.
32 HM Government press release, Prime Minister Announces National Lockdown, 4 January 2021.
33 ONS series IHYQ; ONS, GDP First Quarterly Estimate, UK: January to March 12, 12 May 2021.
34 For example, the Bank of England’s February forecast of a 4% decline. See Bank of England, Monetary Policy Report, February 2021, p. 2.
35 HM Government, COVID-19 Response – Spring 2021, CP 398, 22 February 2021.
36 HM Treasury, Budget 2021: Protecting the Jobs and Livelihoods of the British People, HC 1226, 3 March 2021.
37 For example, BBC News, UK Set for Stronger Post-Covid Recovery, Says OECD, 31 May 2021.
38 ONS, GDP First Quarterly Estimate, UK: July to September 2021, 11 November 2021.

During June and July 2021, the rising case numbers due to the Delta variant led to the final stage of the reopening roadmap for England to be delayed by a month from 21 June to 19 July.[39] Many firms reported staff shortages due to the increasing number of workers having to self-isolate (which was dubbed a 'pingdemic').[40] As of October 2021, GDP was still 0.5% lower than before the pandemic.[41]

2. *Job Retention*

At the beginning of the year 2020, the UK labour market had its highest employment rate of 76.5% since comparable records began in 1971.[42] The UK unemployment rate was 4% in in the three months to February 2020[43] before coronavirus social distancing measures began.

However, behind this initially positive figure lies a highly fragmented labour market with an increasing number of atypical employment relationships which for many people are no longer a transitional phenomenon. This is characterised by the significant increase in the number of self-employed persons (approx. 15% of all workers[44]) and temporary agency workers (approx. 5% of all workers[45]) in recent years, as well as the sharp decline in the number of jobs in the public sector due to privatisation[46]. Labour market policy measures tend to concentrate on placement and counselling measures as well as financial (tax) incentives to promote the taking up of low-paid employment in the sense of a "make work pay" approach.[47]

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39 *HM Government* press release, Vaccination Programme Accelerated as Step 4 is Paused, 14 June 2021.
40 For example, BBC News, Government Pingdemic Response Chaotic, Say Food Supply Firms, 25 July 2021.
41 ONS series EXYX, 10 December 2021 update.
42 ONS, Employment in the UK: March 2020, 17 March 2020.
43 ONS, Unemployment Rate (aged 16 and over, seasonally adjusted). At the end of 2011 the unemployment rate was still at 8.5%.
44 See ONS, Labour Market Economic Commentary: March 2020, 17 March 2020.
45 See ONS, EMP01 SA: Full-Time, Part-Time and Temporary Workers (seasonally adjusted), 17 March 2020.
46 See, inter alia, Meager, Self-Employment: Independent 'Enterprise', or Precarious Low-Skilled Work? The Case of the UK, in: Conen/Schippers, Self-Employment as Precarious Work, 2019, p. 64.
47 Hick/Lanau, Tax-Credits and In-Work Poverty in the UK, Social Policy & Society, 2019, p. 220 ff.

It is therefore not surprising that since the first lockdown, young workers and those in precarious employment have been disproportionately affected by wage losses and unemployment.[48]

According to the British Chamber of Commerce, around 37% of companies intended to lay off at least two-thirds of their staff.[49] In order to counteract these mass redundancies and to preserve jobs in companies whose operations have been severely restricted due to the corona crisis, on 20 March 2020 the government announced a temporary wage compensation programme, the so-called *Coronavirus Job Retention Scheme (CJRS)*.[50] The scheme was initially intended to run from 1 March to 30 June 2020, but was revised several times. It did not close until 30 September 2021.

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48 See Adams-Prassl et al., Inequality in the Impact of the Coronavirus Shock, Cambridge-INET Working Paper Series, No. 2020/18. 58% of workers below age 30 earned less than the week before, as compared to 36% of workers between 40 and 55 years. 10% of workers below the age of 30, who had still been gainfully active a month ago, were already unemployed, as compared to 6% of persons between 40 and 55 years old. Furthermore, 15% of persons engaged in flexible or, respectively, zero-hour contracts stated that they were unemployed due to the corona crisis, as compared to 4% of persons engaged in gainful activity with unlimited contracts.

49 British Chambers of Commerce, BCC Coronavirus Business Impact Tracker, 8 April 2020.

50 The statutory basis for the Scheme is s. 76 of the Coronavirus Act 2020. On 15 April, the government published the first Treasury Direction under this power: The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Coronavirus Job Retention Scheme) Direction (CJRS Treasury Direction No. 1). The government has published five further Directions: on 22 May CJRS Treasury Direction No. 2 (which replaced the CJRS Treasury Direction No. 1, extended the Scheme and set out the rules that applied from 1 April to 30 June 2020); on 25 June CJRS Treasury Direction No. 3 (which set out new rules that applied from 1 July to 30 October 2020); on 12 November CJRS Treasury Direction No. 5 (which set out the rules that applied from 1 November 2020 to 31 January 2021; (Treasury Direction No. 4 did not concern the CJRS); on 26 January CJRS Treasury Direction No. 6 (extending the CJRS until 30 April 2021; the rules under the CJRS Treasury Direction No. 5 will continue to apply with some modifications); on 15 April 2021 CJRS Treasury Direction No. 7 (which set out the rules that applied from 1 May 2021 to 31 September 2021). In addition, there is also a range of Government Guidance which has been updated multiple times. The Treasury Directions are not subject to parliamentary approval, though they are a form of legislation and are subject to the ordinary rules of statutory interpretation. The power of HM Treasury to make these Directions is one of the temporary powers under the Coronavirus Act 2020 due to expire on 24 March 2022. (See: HM Government, Covid-19 Response: Autumn and Winter Plan 2021, 14 September 2021, Para. 104).

Under the initial *CJRS*, employers in the UK could apply for compensation of 80% of monthly salary costs for furloughed employees, up to a maximum of GBP 2,500 (EUR 2,995).[51] In addition, employers could claim *Employer National Insurance Contributions (NICs)* and auto-enrolment pension contributions that were payable on the reduced rate of pay, so that a maximum grant of GBP 2,804 (EUR 3,359) could be received per employee.[52]

Employers could only make a claim for employees that were designated as 'furloughed', a new concept in UK employment law: Employees remained technically employed but had to be instructed by their employer to cease paid work for at least three weeks (by mutual agreement[53]).[54] Initially, a partial reduction of working hours was not possible. In this respect, the measure was not comparable with, for example, the German short-time work model.[55] However, on 12 June 2020, the government published details of a *flexible furlough scheme*[56], running from 1 July 2020 to 31 October 2020.[57] Under the revised rules, employees could carry out part-time work for their employer with the government continuing to pay 80% of salaries for any usual hours they did not work.[58] Only employees who had been furloughed for a full three weeks before 30 June 2020 could be furloughed under the revised scheme[59], unless they were returning

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51 CJRS Treasury Direction No. 1 (fn. 50) Para. 8.2.

52 CJRS Treasury Direction No. 1 (fn. 50), Para. 8.1 (b) (c).

53 This requires a furlough agreement between employer and employee agreeing the relevant terms and conditions incorporated into the employee's employment contract (also possible in electronic form). See CJRS Treasury Direction No. 1 (fn. 50), Para. 6.7.

54 CJRS Treasury Direction No. 1 (fn. 50), Para. 6.1.

55 The UK has no history of state-led, short-time working or furlough support. The so-called Statutory Guarantee Pay scheme, regulated in Chapter III, Part XI of the Employment Rights Act 1996 (ERA), applies only to contracts that foresee the possibility of temporary lay-offs without pay, which are common in volatile sectors such as construction. According to this, employees are only entitled to a "statutory guarantee pay" if their wages have been reduced by at least 50 percent. The entitlement exists for up to 5 days within a three-month period. Amount of the guarantee payment: GBP 29 (from 6 April 2020: GBP 30); maximum amount: GBP 145 (GBP 150 from 6 April 2020). See also here.

56 HM Revenue & Customs (HMRC), Policy Paper: Changes to the Coronavirus Job Retention Scheme, up-dated 1 July 2020; CJRS Treasury Direction No. 3 (fn. 50).

57 CJRS Treasury Direction No. 3 (fn. 50), Para. 40 (a).

58 CJRS Treasury Direction No. 3 (fn. 50), Para. 10.1.

59 CJRS Treasury Direction No. 3 (fn. 50), Paras. 10.2 (a) and 10.3.

from family-related leave[60]. Also, from 1 August 2020, employers were required to make steadily increasing contributions towards the costs of furloughed employees.[61]

On 24 September 2020, the *Winter Economy Plan*[62] confirmed that the *CJRS* would close by the end of October 2020, to be replaced by a significantly less generous wage support programme, the *Job Support Scheme (JSS)*: Under the initial proposal, employers could furlough employees who worked at least 33% of their hours. For hours not worked, employers would cover one-third and *HMRC* (*HM Revenue & Customs*) would cover one-third up to GBP 698 per month (EUR 836). In practice this meant that employers would have covered at least 55% of the total wage bill and *HMRC* would have covered not more than 22%. Organisations like the Resolution Foundation noted that employers would have financial incentives to cut jobs instead of using the *JSS*.[63]

However, announcing the second national lockdown on 31 October (see above, *1.*), the Prime Minister declared that the original furlough scheme, the *CJRS*, would remain open, initially until December 2020. In order to give businesses certainty over the winter months, a last-minute U-turn by the Chancellor led to the scheme being extended until 30 April 2021, with the level of the grant mirroring levels available under the *CJRS* in August 2020: Under the extended *CJRS*, employees could be flexibly furloughed with the government paying 80% of wages for any usual hours not worked up to a cap of GBP 2,500 (EUR 2,995). Employers were required to pay *NICs* and pension contributions only for the hours the employee did not work.[64]

In the Spring Budget 2021[65] the Chancellor announced that the *CJRS* would be extended until 30 September 2021. The grant continued to cover 80% of an employee's wages (up to GBP 2,500 per month/ EUR 2,995) un-

60 CJRS Treasury Direction No. 3 (fn. 50), Paras. 10.2(b) and 11.

61 From August 2020 the grant no longer covered employer NICs and pension contributions; from September 2020, employers were required to pay 10% of a furloughed employee's salary, from October 2020 it was 20%. See CJRS Treasury Direction No. 3 (fn. 50), Paras. 33.1, 31.3 and 31.4.

62 See above fn. 28.

63 Bell et al., The Winter (Economy Plan) is Coming, Resolution Foundation, 25 September 2020.

64 HMRC, Check if You Can Claim for Your Employees' Wages through the Coronavirus Job Retention Scheme, 26 March 2020, last updated 15 October 2021.

65 HM Treasury, Budget 2021: Protecting the Jobs and Livelihoods of the British People, March 2021.

til 30 June 2021.[66] From 1 July, the grant covered 70% of wages and employers were required to top up an additional 10%. From 1 August 2021, the grant covered 60% of wages and employers were required to top up 20%. The *CJRS* closed on 30 September 2021.[67]

Under the *CJRS*, the term 'employee' was defined expansively by reference to UK tax law[68], i.e. all those employees could be furloughed who were registered for payroll accounting via the *Pay As You Earn Scheme*, *PAYE*, on or before 19 March 2020/30 October 2020 and whose income amounts were reported to *HMRC* (no later than the date of salary payment (so-called *Real Time Information*, *RTI*). It therefore covered many workers who would not normally be 'employees' for the purposes of UK employment law.[69] Yet, it excluded those who were not paid through *PAYE* even if they would be found by an Employment Tribunal to be 'limb (b) workers'[70] or even 'employees'[71] for the purposes of employment law.[72] This excluded many atypical workers who are falsely classified as 'self-employed' for tax purposes.[73] The *Independent Workers' Union of Great Britain* (*IWGB*) brought a judicial review of the decision to limit the *CJRS* to those who are paid through *PAYE*. They argued that this violated Article 14 (prohibition of discrimination) of the European Convention on Human Rights read with Article 1 of Protocol 1 (protection of property). Specifically, they argued that limb (b) workers who are not paid through *PAYE* are analogous to those who are and that the differential treatment was unjustified. The High Court accepted that limb (b) workers who are and are not paid through *PAYE* are analogous. However, the court dismissed the claim on the basis that the different treatment was justified, accepting the government's argument that a key feature of the *CJRS* is preserving employer/employee links. Moreover, it accepted that in order to

66 CJRS Treasury Direction No. 5 (fn. 50), Para. 10.
67 HMRC, Changes to the Coronavirus Job Retention Scheme from July 2021, 3 March 2021 (withdrawn on 29 October 2021); CJRS Treasury Direction No. 7 (fn. 50).
68 See CJRS Treasury Direction No. 1 (fn. 50), Paras. 13.1, 13.2 and 13.3; CJRS Treasury Direction No. 5, (fn. 50), Para. 35.1 (h).
69 Commons Library Briefing Paper, Employment Status, CBP-8045, 28 March 2018.
70 HM Government, Employment Status.
71 Ibid.
72 See e.g. Autoclenz Ltd v Belcher [2011] UKSC 41.
73 Cabrelli/D'alton, Furlough and Common Law Rights and Remedies, UK Labour Law Blog, 8 June 2020.

set up the *CJRS* at pace while also protecting against the risk of fraud, the government had been justified in using bright line rules.[74]

The government emphasised that the programme included not only full-time and part-time employees but also employees with flexible or zero-hour contracts who are on *PAYE.*[75] However, for workers on flexible or zero-hour contracts, the right to pay is contingent on work being provided and generally the employer is not under a contractual obligation to provide them with work. As the decision to furlough rested fully with the employer, the employer or agency could therefore simply reduce the working time of these employees to zero hours without designating them as furloughed.[76] Also, the employer still had the option for the sake of convenience to dismiss an employee or initiate redundancies, which exposes the limitations of UK dismissal law.[77] A number of companies, particularly in the aviation industry, had already announced significant mass redundancies.[78]

Also, it was often unclear how the programme related to other labour law provisions, in particular concerning the payment of statutory sick pay[79], protection against dismissal[80] and taking annual leave. In the context of dismissal, one of the key questions was whether it was 'fair'[81] for an employer to dismiss employees as redundant when the *CJRS* was available to provide employers with financial support to retain staff. In the case of annual leave, one of the issues under discussion was whether the employer could require workers to take annual leave before or while they were on furlough. This question arose in particular due to an amendment of the

74 R. (Adiatu) v HM Treasury [2020] EHWC 1544 (Admin.).

75 HMRC, Check Which Employees You Can Put On Furlough to Use the Coronavirus Job Retention Scheme, 14 May 2020, last updated 2 October.

76 Likewise, Hendy, The Gaps in the Government's Coronavirus Income Protection Plans, Institute of Employment Rights, 2020, p. 8 ff. See also Ford/Bogg, Not Legislating in a Crisis? The Coronavirus Job Retention Scheme, Part 2, UK Labour Law Blog, 31 March 2020: "Unless it happens to be motivated by altruism, it is easier for it [the agency] to rely on its contractual provisions and do nothing at all."

77 On this problem see in detail: Ford/Bogg (fn. 76).

78 Partington/Partridge, Airline Job Losses Could be On Scale of 1980s Mining Industry, Report Warns, the Guardian, 10 June 2020.

79 See CJRS Treasury Direction No. 1 (fn. 50), Para. 6.3.

80 See on this: Practical Law Employment, COVID-19: Coronavirus Job Retention Scheme (furlough), Thomson Reuters.

81 Office for Budget Responsibility (OBR), Fiscal Sustainability Report, July 2020, (fn.), Para. 3.12.

working time regulations[82], according to which under certain conditions a carry-over of the holiday entitlement to the following two years can be granted.[83]

Nevertheless, in the UK, where working age social protection is traditionally dominated by social assistance, the *CJRS* can be considered a rather unusual policy measure. Previously, those temporarily laid off would have had to rely on *Jobseeker's Allowance (JSA)* at the same rate as their unemployed counterparts[84], so that through the *CJRS* their maximum allowance had increased.[85]

Furlough levels largely rose and fell with changes in lockdown restrictions and changes to the *CJRS* scheme. By midnight on 14 October 2021, 11.7 million jobs had been furloughed since the start of the scheme, costing the government GBP 70 billion (around EUR 84 billion).[86] The use of the scheme peaked during the first lockdown in early May 2020, when 8.9 million were furloughed at one time – around one third of private sector employees.[87] Levels have fallen steadily since April 2021, when public health restrictions had been gradually lifted across the UK. According to preliminary *HMRC* estimates, 1.1 million jobs were still on furlough on 30 September 2021 (approx. 5% of eligible jobs), the last day of the *CJRS* before it ended.[88]

The *CJRS* is widely perceived to have been effective in reducing redundancy during the pandemic. Likely largely due to the government support schemes[89] the labour market has "proved more resilient"[90] than one might have expected given the scale of the recession. Unemployment levels rose by around 400,000 to 1.8 million by the end of 2020, with the unemployment rate rising from 4% to 5.2%. During 2021, unemployment fell and stood at 1.4 million during August-October 2021, with an unemployment

82 Working Time (Coronavirus) (Amendment) Regulations 2020 (SI 2020/365).
83 Bogg /Ford, Furloughing and Fundamental Rights: The Case of Paid Annual Leave, UK Labour Law Blog, 6 April 2020. They argue that under lockdown circumstances, furlough is more akin to sick leave as it "is subject to extensive physical and psychological constraints".
84 Equivalent to GBP 322 (EUR 382) per month, albeit with the option of claiming UC on top of that depending on savings and total household income.
85 Harris et al., Coronavirus and Social Security Entitlement in the UK, Journal of Social Security Law 2020, p. 55, 73.
86 HMRC, Coronavirus Job Retention Scheme Statistics, 4 November 2021.
87 HMRC, Coronavirus Job Retention Scheme Statistics, 4 November 2021.
88 HMRC, Coronavirus Job Retention Scheme Statistics, 4 November 2021.
89 OBR, Economic and Fiscal Outlook, 27 October 2021, pp. 61-64.
90 OBR, Economic and Fiscal Outlook, 27 October 2021, Para. 1.8.

rate of 4.2%.[91] However, it should be noted that furloughed workers are classed as employed in official statistics. Also, there were other notable impacts from the pandemic such as an initial big fall in total hours worked in the economy with a peak decline of 20% in April-June 2020.[92] And, the *CJRS* did not protect all jobs. According to the Institute for Fiscal Studies (IFS), around 1 million people were made redundant between April 2020 and June 2021, comparing with 550,000 for the same period in 2019.[93] From the beginning of the scheme, there had been concerns about significant numbers of workers being "excluded", either because they were not eligible or they were eligible but did not receive adequate support. These "excluded" workers included those who were not paid through *PAYE* (e.g. gig workers), those eligible but whose employers had refused to furlough them (e.g. zero-hours and agency workers as well as workers on maternity leave) and those eligible who receive a significant portion of their pay in the form of dividends (e.g. directors of limited companies).[94] It has also been observed that while the *CJRS* preserved jobs, it may have prevented workers from being allocated to growing sectors.[95]

3. *Supporting the Economy*

a) *The Self-Employment Income Support Scheme (SEISS)*

A possible safety net for those in precarious employment not covered by the *CJRS* (see above) was the *Self-Employment Income Support Scheme (SEISS)*[96] which was intended to be formally comparable to the furlough

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91 ONS, Labour Market Overview, UK: December 2021, 14 December 2021.
92 ONS, Employment in the UK: December 2021, 14 December 2021.
93 Institute for Fiscal Studies, Employment and the End of the Furlough Scheme, October 2021.
94 House of Commons Treasury Committee, Economic Impact of Coronavirus: Gaps in Support, 15 June 2020; National Audit Office, Implementing Employment Support Schemes in Response to the COVID-19 Pandemic, 23 October 2020.
95 Financial Times, The Mixed Success of Furlough Schemes, 1 October 2021.
96 On 30 April, the government published The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Self-Employment Income Support Scheme) Direction (SEISS Treasury Direction) the statutory guidelines for HMRC to administer SEISS. HMRC have also published guidance on SEISS:

scheme. The scheme initially paid taxable[97] grants amounting to 80% of past profits for a three month period, limited to GBP 2,500 (approx. EUR 2,995) per month.[98] In order to be eligible, the past[99] profits were not to exceed GBP 50,000 (approx. 59,900 Euro). Also, the eligibility criteria excluded those who became recently self-employed (i.e. after April 2019) and those whose trading profit from self-employment constituted less than 50% of their total annual income.[100] According to calculations, the programme therefore covered at most 62% of all self-employed persons.[101] Also, to make a claim, the self-employed had to carry on trade that had been "adversely affected" by the pandemic[102], a requirement deviating from the *CJRS* where the guidance seemed to expand the scope beyond employers directly affected by coronavirus.[103]

The payment was made as a one-off payment at the end of June 2020 for March to June. Thus, self-employed persons on low incomes and without savings were disproportionately affected by the lack of payment for three months.[104] The then Shadow Chancellor John McDonnel suggested that there was "a real risk that without support until June the self-employed will feel they have to keep working, putting their own and others' health at risk."[105]

SEISS was opened for applications on 13 May 2020 and was to close initially on 13 July 2020.

On 29 May 2020, the government announced a second round of *SEISS*, with those eligible able to claim a second grant, worth 70% of their average monthly trading profit, for a further three months, capped at GBP

HM Revenue & Customs, Check if You Can Claim a Grant through the Coronavirus (COVID-19) Self-Employment Income Support Scheme, 26 March 2020, last updated 1 October 2021.

97 The grants are subject to income tax and self-employed NIC (Finance Act 2020, s. 106 and Sch. 16).

98 SEISS Treasury Direction (fn. 96), Para. 6.1.

99 Either in the previous year or averaged over three years.

100 SEISS Treasury Direction (fn. 96), Para. 4.2.

101 Adam et al., Fast Choices by Government Provide Generous Income Support to Most Workers, but Leave Some with Nothing and Others with Too Much, Institute for Fiscal Studies, 2 April 2020.

102 SEISS Treasury Direction (fn. 96), Para. 4.2(a).

103 Mangan, COVID-19 and Labour Law in the United Kingdom, European Labour Law Journal, 2020, p. 341.

104 Hendy, 2020 (fn.76), p. 13 ff.

105 BBC News, Coronavirus: UK Government Unveils Aid for Self-Employed, 26 March 2020.

6,570 (EUR 7,871) in total and again paid out in a single instalment.[106] The online service for applications for the second grant was opened on 17 August, and closed on 19 October 2020.[107]

On 24 September 2020, the Chancellor announced a six-month extension to the *SEISS*, to apply from November 2020 to April 2021.[108] The extension would be in the form of two taxable grants, paid in two lump sum instalments. Initially, the first grant (covering three months' worth of trading profits from 1 November 2020 to 31 January 2021) was proposed to cover 20% of average monthly trading profits, capped at GBP 1,875 (EUR 2,246), but this figure was revised three times: On 22 October 2020, the Chancellor announced the grant would cover 40% of average monthly trading profits, capped at GBP 3,750 (EUR 4,493) in total.[109] After announcing a second national lockdown on 31 October 2020, the Prime Minister stated on 2 November 2020 that the payment for the first month of the grant (November) would be set at 80% – increasing the total level of this grant to 55% of trading profits, capped at GBP 5,160 (EUR 6,182).[110] Subsequently, on 5 November 2020, the Chancellor announced that all three months of the grant would be based on 80% of average trading profits, up to a maximum of GBP 7,500 (EUR 8,985).[111]

On 24 November, the government published a further Treasury Direction to cover this third *SEISS* grant.[112] Applications for the third *SEISS* grant opened on 29 November 2020 and closed on 29 January 2021.

On 3 March 2021, the Chancellor presented the 2021 Budget in which he set out the details of the fourth *SEISS* grant, to cover the period February to April 2021, and announced a fifth grant to cover up to the end of September 2021.[113] The fourth grant was set at 80% of three months' average trading profits, paid out in a single instalment, capped at GBP 7,500 (EUR 8,985). Unlike earlier *SEISS* grants, the grant took into account the

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106 The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Self-Employment Income Support Scheme Extension) Direction.

107 HM Treasury, Millions of Self-Employed to Benefit from Second Stage of Support Scheme, 17 August 2020.

108 HM Treasury, Winter Economy Plan, 24 September 2020, (fn. 28), Para. 2.5.

109 HC Deb 22 October 2020 c1250.

110 HM Treasury, Government Increases Support for the Self-Employed Across UK, 2 November 2020.

111 HM Treasury, Government Extends Furlough to March and Increases Self-Employed Support, 5 November 2020.

112 The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Self-Employment Income Support Scheme Grant Extension 3) Direction.

113 HC Deb 3 March 2021 c252.

2019/20 tax returns and was open to those who became self-employed in the 2019/20 tax year.[114] Applicants were required to declare that they "reasonably believe there will be a significant reduction" in their trading profits.[115] The online claims service for this grant was launched on 21 April 2021, and closed on 1 June 2021.

The fifth and final grant covered May to September 2021. The size of the grant was determined, in part, by the amount a claimant's turnover had reduced in the year April 2020 to April 2021: "[…] as the economy reopens over summer, it is fair to target our support towards those most affected by the pandemic [….]"[116]. The grant was worth 80% of three months' average trading profits, capped at GBP 7,500 (EUR 8,985) for those with a turnover reduction of 30% and more and worth 30% of three months' trading profits, capped at GBP 2,850 (EUR 3414) for those with a turnover reduction of less than 30%.[117] Applications opened on 29 July 2021 and closed on 30 September 2021.[118]

Over the history of the *SEISS* – the first four *SEISS* grants, and claims paid under the fifth grant up to 15 August 2021 – 9.9 million claims have been paid to 2.9 million people. The value of these payments has been GBP 27.1 billion (around EUR 32 billion). The average value of claims made has been GBP 2,700 (EUR 3235).[119]

To compensate for the cost of the programme, the Chancellor announced an adjustment of social security contributions for the self-employed and employees: "But I must be honest and point out that in devising this scheme […] it is now much harder to justify the inconsistent contributions between people of different employment statuses. If we all want to benefit equally from state support, we must all pay in equally in the future."[120] Currently, the self-employed pay an income-related social security contribution of 9% (compared to 12% for employees); also, they

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114 The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Self-Employment Income Support Scheme Grant Extension 4) Direction.
115 HMRC, Claim a Grant through the Self-Employment Income Support Scheme, 13 May 2021.
116 HC Debate 3 March 2021 c252.
117 The Coronavirus Act 2020 Function of Her Majesty's Revenue and Customs (Self-Employment Income Support Scheme Extension 5) Direction.
118 HMRC, Claim a Grant through the Self-Employment Income Support Scheme, 28 July 2021 [now withdrawn].
119 HMRC, Self-Employment Income Support Scheme Statistics: September 2021, 9 September 2021.
120 HM Treasury, Chancellor Outlines New Coronavirus Support Measures for the Self-Employed, 26 March 2020.

do not pay any equivalent of the current 13.8% employer's contribution. Reporting on the announcement, BBC economics editor Faisal Islam described this as the "sting in the tail" for the support scheme.[121] However, the government's recently announced new tax, the *Health and Social Care Levy*[122], will rather increase the tax differential between employment and self-employment, given there is no equivalent to employer *NICs* for the self-employed. According to the IFS, "today's NICs increases increase the gap and therefore move the tax system further in the wrong direction."[123]

Although *SEISS* seemed to have been widely welcomed when it was first announced[124], there had been concerns that some groups were excluded from its scope: directors of smaller limited companies[125], the recently self-employed, those whose profits exceeded the GBP 50,000 (EUR 59,901) cap and freelancers who did not make over 50% of their income from self-employment.[126]

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121 Islam, Coronavirus: UK Government Unveils Aid for Self-Employed, BBC News, 26 March 2020.

122 In a statement on 7 September 2021 (HC Deb 7 September 2021 cc153-4) the Prime Minister announced the new Health and Social Care Levy, based on NICs, to raise an estimated GBP 11.4 billion (EUR 14 billion) a year over the next three years, for health and social care. The tax would be introduced in two stages: In 2022/23 the rate of primary Class 1 NICs for employees and the rate of secondary Class 1 NICs for employers and the rate of Class 4 NICs for the self-employed, will be increased by 1.25 percentage points. In 2021/24 a separate levy set at 1.25% will be introduced, replacing this temporary increase in NICs rates, liability to which will be extended to individuals in employment who are over State Pension age (at present pensioners are not liable to pay NICs on any earnings they receive from employment). For further details see the Health and Social Care Levy Bill 2021/22.

123 Institute for Fiscal Studies, An Initial Response to the Prime Minister's Announcement on Health, Social Care and National Insurance, 7 September 2021.

124 See, e.g. The Times, Sunak Reveals Coronavirus Bailout for Self-Employed, but They Must Wait until June, 27 March 2020.

125 So-called company owner-managers (i.e. people running their own company as opposed to an incorporated business, i.e. self-employment) were not eligible for the SEISS. They were eligible for CJRS in relation to their salary if they stopped working. However, many owner-managers pay themselves a very small salary and take the rest of their income from dividends as this is the more tax-efficient choice. This meant that the CJRS, which only covered salary only replaced a small part of their actual income. See Adam/Miller/Waters, Income Protection for the Self-Employed and Employees during the Corona Crisis, Institute for Fiscal Studies, 2 April 2020, pp. 4-5.

126 Federation of Small Businesses (FSB) Press Notice, FSB Highlights Gaps in Coronavirus Income Support Measures for Self-Employed, 1 April 2020; Trea-

The IFS, in an initial analysis of the government's first Covid-19 income support schemes (*CJRS* and *SEISS*), concluded that neither of the schemes were "as well targeted as we would expect in normal times. […] Many of the self-employed will be left financially better off as a result of this crisis, while some will get no support at all."[127] In a report, published in October 2020, the National Audit Office (NAO) concluded that the schemes had been "largely successful in protecting jobs through the lockdown period, with at least 12.2 million people benefitting from support", although "a combination of policy decisions and constraints in the tax system meant that as many as 2.9 million people were not eligible for the schemes."[128]

b) *Liquidity Assistance*

In the March 2020 Summary of Business Conditions, which is regularly carried out by the Bank of England, the companies surveyed assessed the economic situation as more threatening than during the financial crisis of 2009.[129]

The government had therefore put together a comprehensive package of measures to secure the liquidity of companies. These liquidity programmes included in particular the *Coronavirus Business Interruption Loan Scheme (CBILS)*[130], launched on 23 March 2020, the *Coronavirus Larger Business Interruption Loan Scheme (CLBILS)*[131], launched on 20 April 2020 and a simpler scheme for all businesses, the *Bounce Back Loan Scheme (BBLS)*[132],

sury Select Committee, Government Must Act over Gaps in Support during Lockdown, 15 June 2020.

127 Institute for Fiscal Studies, Fast Choices by Government Provide Generous Income Support to Most Workers but Leave Some with Nothing and Others with Too Much, 2 April 2020.

128 National Audit Office, Implementing Employment Support Schemes in Response to the Covid-19 Pandemic, HC 862, 23 October 2020, p. 8.

129 Bank of England, Agent's Summary of Business Conditions, 26 March 2020.

130 Department for Business, Energy & Industrial Strategy/British Business Bank, Apply for the Coronavirus Business Interruption Loan Scheme, 23 March 2020, last updated 1 May 2020.

131 Department for Business, Energy & Industrial Strategy, Apply for the Coronavirus Large Business Interruption Loan Scheme, 3 April 2020, last updated 28 May 2020.

132 Department for Business, Energy & Industrial Strategy, Apply for Coronavirus Bounce Back Loan, 27 April 2020, last updated 4 May 2020.

launched on 4 May 2020. A successor scheme – the *Recovery Loan Scheme*[133] – was launched on 6 April 2021. The schemes were overseen by the British Business Bank, a government-owned business development bank, but applications were made to and funding decisions were made by a range of accredited lenders. No interests and fees would be charged to the beneficiary enterprises for the first year and no repayments were due for that period either.

The three original schemes were initially due to close between September and November 2020, but the closure date was extended on several occasions. They closed eventually on 31 March 2021 and were replaced by the *Recovery Loan Scheme*.

The *CBILS* supported small and medium-sized enterprises[134] with financing of up to GBP 5 million (approx. EUR 6 million) with a term of 6 years. The loans were 80% backed by the government. Although the scheme was widely welcomed, concerns were expressed that it was failing to reach enough businesses quickly enough and that lending rules were too restrictive.[135]

The *CLBILS* extended the standard *CBILS* approach to larger businesses[136], financing up to GBP 25 million (EUR 30 million).

With the *Coronavirus Bounce Back Loans*[137], the government introduced a further financing programme for all businesses, regardless of turnover, for loans of up to GBP 50,000 (approx. EUR 59,901) or 25% of turnover with a term of up to 6 years (start: 4 May 2020). The scheme offered streamlined application procedures and loans were 100% backed by the government.

On 6 April 2021, the new *Recovery Loan Scheme*[138] was launched which was initially to run until the end of the year ("subject to review"). It aimed to "provide support as businesses recover and grow following the disruption of the pandemic and the end of the transition period." The

133 HM Treasury/ Department for Business, Energy & Industrial Strategy, Recovery Loan Scheme, 3 March 2021 (last updated 27 October 2021).
134 With an annual turnover under GBP 45 million (EUR 54 million).
135 See, among others, The Guardian, Just £ 1.1 bn of Covid-19 Bailout Loans Have Been Issued to Small UK Firms, 15 April 2020.
136 With an annual turnover between GBP 45 million and 500 million (between approx. EUR 54 and 594 million).
137 Department for Business, Energy & Industrial Strategy, Apply for a Coronavirus Bounce Back Loan, 27 April 2020, last updated 4 May 2020.
138 HM Treasury/Department for Business, Energy & Industrial Strategy, Recovery Loan Scheme, 3 March 2021 (last updated 27 October 2021).

government would offer an 80% guarantee, as in *CBILS*. In the Autumn 2021 Budget, the scheme was extended to 30 June 2022.[139]

There were two further general loan schemes: The *Covid Corporate Financing Facility (CCFF)*, a support programme of the Bank of England, was aimed at larger companies to overcome short-term liquidity or financing bottlenecks. It closed to new applications on 31 December 2020. The *Coronavirus Future Fund* was aimed in particular at those companies that are dependent on equity investments and do not have access to other government support programmes because they are pre-revenue or pre-profit, typically start-ups.[140] The scheme closed on 31 January 2021.

Other (sector-specific) financial assistance included, for example, the *Retail and Hospitality Grant Scheme*[141], which supported companies in the retail, hospitality and leisure sectors with direct grants of up to GBP 25,000 (EUR 29,950). Smaller companies could also receive grants under the *Small Business Grant Fund* (*SBGF*)[142]. The *Eat Out to Help Out Scheme* offered a 50% discount off the cost of food and/or non-alcoholic drinks eaten-in at participating businesses[143].

c) *Relief in Taxes and Social Security Contributions*

In addition to the abovementioned financial assistance, relief measures for a number of public-law dues intended to maintain the liquidity of companies: for example, the business rates for all businesses in the retail, hospitality and leisure sector were suspended for the tax year 2020/2021 ('business rates holiday')[144]. The March 2021 Budget extended 100% relief for the retail, hospitality and leisure sectors as well as for childcare nurseries, for the first three months of the 2021/22 financial year and then 66% for

139 HM Treasury, Autumn Budget and Spending Review 2021: A Stronger Economy for the British People, HC822, October 2021, p. 65.
140 Department for Business, Energy & Industrial Strategy et al., Apply for the Coronavirus Future Fund, 20 April 2020, last updated 20 May 2020.
141 Department for Business, Energy & Industrial Strategy et al., Financial Support for Businesses during Coronavirus, 3 April 2020, last updated 9 July.
142 Ibid.
143 Treasury Direction made under Section 71 and 76 of the Coronavirus Act 2020: Eat Out to Help Out Scheme, 9 July 2020.
144 Ministry of Housing, Community & Local Government, Check if Your Retail, Hospitality or Leisure Business is Eligible for Business Rates Relief due to Coronavirus, 18 March 2020.

the remainder year.[145] The same sectors were then eligible for a 50% discount in 2022/23, up to a maximum of GBP 110,000 (EUR 131,783) relief per business.[146]

In addition, a number of payment deferrals were granted: the deadlines for payment of *Value Added Tax* (*VAT*) were extended by three months[147]; for self-employed persons, income tax payments due in July 2020 were postponed to January 2021.[148] As part of his *Winter Economy Plan* in September 2020 the Chancellor announced a new *VAT* referral scheme which allowed businesses that had deferred their *VAT* payments to repay what they owed over 11 interest-free payments in 2021/22.[149] The new scheme was opened on 23 February 2021 and closed on 21 June 2021.[150] Also, self-assessment tax payers will have additional time to pay back their taxes due in January 2021.[151]

On 26 May 2020, the government launched the *Coronavirus Sick Pay Rebate Scheme* which is available to small and medium-sized enterprises with fewer than 250 employees. Eligible employers can claim *Statutory Sick Pay* (*SSP*) costs for up to 14 days for employees who were incapable of work because they had to self-isolate or shield in accordance with public health guidance.[152] The iteration of the scheme stipulated that employers could only claim for employees who were off work on or before 30 September 2021. But the scheme reopened as part of the government's further announcement in December 2021.[153]

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145 HM Treasury, Budget 2021: Protecting the Jobs and Livelihoods of the British People, HC 1226, 3 March 2021.

146 HM Treasury, Autumn Budget and Spending Review 2021: A Stronger Economy for the British People, HC822, October 2021, p. 143.

147 HM Revenue & Customs, Deferral of VAT Payments due to Coronavirus, 26 March 2020, last updated 26 September.

148 HMRC, Defer Your Self-Assessment Payment on Account due to Coronavirus, 15 May 2020, last updated 15 October 2020.

149 HM Treasury, Winter Economy Plan, September 2020, (fn. 28), Para. 2.12.

150 HMRC, Pay VAT Deferred due to Coronavirus (Covid-19), updated 27 July 2021.

151 HM Treasury, Winter Economy Plan, September 2020, (fn. 28), Para. 2.13. See also: HMRC, Self-Assessment Customers to Benefit from Enhanced Payment Plans, 1 October 2020.

152 Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) Regulations 2020 (SI 2020/512). The maximum refund is GBP 191.70 (EUR 228) (equivalent to two weeks' maximum SSP) multiplied by the number of employees enrolled in PAYE schemes, reg. 3.

153 HM Treasury, GBP 1 Billion in Support for Businesses Most Impacted by Omicron across the UK, 21 December 2021.

4. Social Protection

The drastic public health interventions necessary to deal with the pandemic have had a significant economic impact, leading to the closure of whole sectors of the economy. This has, in turn, affected household finances and continues to do so.

Although some labour market measures, such as the *CJRS* and *SEISS*, may have alleviated demand on the benefits system, there has been a rapid increase in claims of social security benefits in general, and of *Universal Credit (UC)* as the UK welfare system's main 'safety net' for people of working age in particular. In response, the government implemented a number of changes to the benefits system, such as increases to the level of some benefits, the suspension of work-related conditionality (conditions such as meeting work-search requirements and attending regular interviews at Jobcentres were temporarily halted) as well as measures to facilitate social distancing (e.g. changes to assessments and Jobcentre appointments) and to support those who need to isolate or shield (e.g. changes to *Statutory Sick Pay, SSP* and to sickness and carer benefits).[154]

The total number of people on *UC* in Great Britain rose from around 3 million in March 2020 to around 5.9 million by the end of 2020, and has remained steady up to September 2021.[155]

By October 2021, although many had earlier been extended as the crisis drew on, most of the rule changes introduced to the benefits system in spring 2020 had been withdrawn. Only a small number of the benefit measures introduced in response to the pandemic remain fully in place, with no plans announced for their withdrawal, such as the higher maximum levels for private renters. This is consistent with the government's express intention not to alter the fundamental design and architecture of the benefits system and to keep policy changes "to an absolute minimum".[156]

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154 Most of these measures are, however, intended to be temporary or remain under review.

155 DWP Stat-Xplore: People on UC and Starts to UC datasets (accessed 12 November 2021).

156 Work and Pensions Committee, Oral Evidence: DWP's Response to the Coronavirus Outbreak, 23 April 2020, HC 178 2019-21, Q83 and Q118.

a) *Enhanced Sick Pay Entitlement and Support during Self-Isolation*

Under British law, 'employees'[157] who are unable to work due to illness are entitled to *Statutory Sick Pay (SSP)* for up to 28 weeks.[158] However, the benefit level is very low (GBP 96.35 = EUR 115 per week since 6 April 2020), which is less than 30% of the national minimum wage.[159] In this respect, one can hardly speak of a wage replacement benefit, but rather of minimum social security.[160] Moreover, it is only available to 'employees' earning above GBP 120 (EUR 144) per week (GBP 118 or EUR 132 before 6 April 2020)[161], which will in principle exclude those in precarious forms of employment[162], notably care workers.[163] The entitlement now starts on the first day of "limited capability for work" (and not, as is usually the case, on the fourth consecutive day of illness)[164] for those who are incapable of work because they suffer from a COVID-19 infection or because they had to self-isolate in accordance with public health guidance.[165] Since 16 April 2020, this extension of the definition of "limited capability for work" had also applied to employees who were deemed clinically extremely vulnerable and at very high risk of severe illness from the virus and who had been

157 Employees' in this sense are those employees that pay Class 1 National Insurance Contributions (NICs).

158 Social Security Contributions and Benefits Act 1992, Part XI, Sections 151-163; Statutory Sick Pay (General) Regulations (SI 1983/894).

159 Hendy, 2020, (fn. 76), p. 1 ff.

160 Flat-rate benefits, which focus on covering a certain minimum level of need are however typical of Beveridge-type social security systems.

161 I.e. the lower earnings limit (LEL) for the requirement to pay National Insurance Contributions (NICs): Social Security Contributions and Benefits Act 1992, s. 153(3) and Sch. 11 Paras. 1 and 2.

162 Novitz, COVID-19 and Labour Law: United Kingdom, Italian Labour Law e-Journal, 2020, p. 3. According to a government survey from July 2019, this excludes about 2 million employees from receiving statutory sickness benefit. See Government UK, Health Is Everyone's Business: Proposals to Reduce Ill Health-Related Job Loss, CP 134, 15 July 2019, Para. 97. See also Trade Union Congress, Sick Pay for All, 3 March 2020.

163 Hayes/Tarrant/Walters, Care and Support Workers' Perception of Health and Safety Issues in Social Care during the COVID-19 Pandemic: Initial Findings, 15 April 2020.

164 Disapplication of the Social Security Contributions and Benefits Act 1992, s. 155(1) by the Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020 (SI 2020/374), reg. 2 in connection with the Coronavirus Act 2020, s. 40(1) to (4).

165 Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations (SI 2020/374), reg. 3.

officially advised to follow shielding measures.[166] From 1 April 2021, the advice to shield paused and from 15 September 2021, the shielding programme ended in England.[167]

Unless there is an intervention to continue the measure, coronavirus-related *SSP* waiting time will automatically revert to three days on 25 March 2022.[168]

Low earners (see above) and the self-employed do not qualify for *SSP*. They can, however, apply for *Employment and Support Allowance (ESA)*[169] if they have a "limited capability for work"[170], however normally only from the eighth day of illness.[171] The government had announced that this would also be available from the first day for those affected by COVID-19.[172] *ESA* is worth GBP 74.35 (EUR 88) per week for the first 13 weeks.[173] The changes to *ESA* were introduced through time-limited regulations, which have twice been extended and are now due to expire in mid-November 2021.[174]

Existing claimants of *Carer's Allowance* and *Jobseeker's Allowance* have also been allowed to continue to claim during breaks in care or job search if affected by the virus.[175] Regulations for these measures were originally to be in place for eight months, but were twice extended, along with other public health measures.[176]

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166 Statutory Sick Pay (General) (Coronavirus Amendment) (No. 3) Regulations 2020 (SI 2020/427).

167 Department of Health & Social Care, Guidance for People Previously Considered Extremely Vulnerable from Covid-19, updated 21 December 2021.

168 The amendment of the SSP rules was made under the Coronavirus Act 2020 which contains an expiry date (s. 89 (1)) under which the suspension of the general law will cease two years after the date of Royal Assent.

169 The income-based element is currently being phased out and replaced by Universal Credit, however, the contribution-based element remains available.

170 Welfare Reform Act 2007, s. 1 (3) (a).

171 Welfare Reform Act 2007, Sch. 2 Para. 2; Employment and Support Allowance Regulations 2008 (SI 2008/143), reg. 144(1), as amended.

172 Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020 (SI 2020/289), reg. 2.

173 Department for Work & Pensions, Benefit and Pension Rates 2020 to 2021, 9 April 2020.

174 Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020, SI 2020/289 (as amended).

175 See explanatory notes to The Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371).

176 Social Security (Coronavirus) (Further Measures) (Amendment) and Miscellaneous Amendment Regulations 2020 (SI 2020/1201): extension to 12 May 2020.

As a response to concerns that some people may find it difficult to self-isolate due to financial constraints, the government announced, on 20 September 2020, a GBP 500 (EUR 594) lump sum *Test and Trace Support Payment* for people on low incomes required to self-isolate and who cannot work during their self-isolation period.[177] Local authorities administer the scheme, with the costs reimbursed by the UK government. To qualify, a person must be employed or self-employed, and must normally be receiving certain benefits or tax credits.[178]

b) Extra Support for Those on Low Incomes or Without Work

On 20 March 2020, at the beginning of the coronavirus pandemic, the Chancellor announced temporary increases to the following working-age, means-tested benefits and tax credits: The standard allowances of *Universal Credit (UC)*; the basic element of *Working Tax Credit (WTC)* and *Local Housing Allowance (LHA)* rates.[179]

All persons who are in work but on low incomes as well as those who are unemployed or whose capability for work is limited by sickness or disability and who have not yet reached the legal retirement age can apply for *Universal Credit (UC)*[180]. The increases in *UC* and *WTC* amounted to an ad-

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Social Security (Coronavirus) (Miscellaneous Amendments) Regulations 2021 (SI 2021/476): extension until 31 August 2021.

177 Prime Minister's Office, New Package to Support and Enforce Self-Isolation, 20 September 2020. Whilst the UK government and the NHS have published advice on self-isolation as far back as February 2020, on 28 September 2020, the UK government introduced a new legal duty in England requiring individuals to self-isolate if they test positive for coronavirus or are identified as a contact by NHS Test and Trace. See: The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (SI 2020/1045).

178 A person must be currently receiving Universal Credit or other means-tested 'legacy' benefits or tax credits. However, there is also a "discretionary fund" which allows local authorities "flexibility to support individuals who require corresponding financial support to self-isolate while falling outside [the] strict eligibility criteria." See UK Health Security Agency, Claiming Support under the Test and Trace Support Payment Scheme, updated 14 January 2022.

179 HM Treasury, The Chancellor Rishi Sunak Provides an Updated Statement on Coronavirus, 20 March 2020.

180 Universal Credit is a means-tested benefit which is in the process of replacing six existing means-tested benefits (so-called 'legacy' benefits) and tax credits for working-age households: Income-Based Jobseeker's Allowance; Income-Related Employment and Support Allowance; Income Support; Working Tax Credit;

ditional GBP 1,000 per year, or GBP 20 (EUR 24) per week for each household claiming benefits. For a single *UC* recipient (over 25 years of age), the standard monthly rate thus increased from GBP 317.82 to GBP 409.89 (from approx. EUR 378 to approx. EUR 487).[181] The increases to *UC* and *WTC* were originally announced as a temporary uplift for the 2020/21 tax year. Ultimately, the Chancellor extended the uplift of *UC* for a further six months, until October 2021, in the March 2021 Budget.[182] A one-off GBP 500 (EUR 594) payment was made to claimants of *WTC* in April 2021.[183]

Also, the maximum *Local Housing Allowance* (*LHA*)[184], for the purposes of *UC* and *Housing Benefit,* has been increased to cover a higher proportion of rent.[185] The *LHA* rates, which set the maximum amount available in housing support for private renters, had been frozen in cash terms for four years and had fallen behind rising rents in many places. These were restored to the 30th percentile of local rents.[186] The Secretary of Work and Pensions has since confirmed that this was a "permanent uplift".[187]

However, rather problematically, the increase in *UC* and *WTC* was not matched for those receiving so-called 'legacy' benefits[188], therefore prioritising new claimants, who are likely to have become unemployed as a result of the pandemic, over those who were already receiving state support. This seems to echo the long-standing Victorian poor laws which

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Child Tax Credit, and Housing Benefit. See Welfare Reform Act 2012, Part I. UC is now the only option for any working-age individual or family wishing to apply for a means-tested benefit, i.e. it is no longer possible to make a new claim for any of the six 'legacy' benefits or tax credits which are being replaced. UC is administered and delivered by the Department of Work and Pensions (DWP) and is managed and accessed almost entirely digitally.

181 Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371) Reg. 3(1) to (2).

182 Universal Credit (Extension of Coronavirus Measures) Regulations 2021 (SI 2021/313).

183 HMRC, New One-Off GBP 500 Payment for Working Households Receiving Tax Credits, updated 28 April 2021 (withdrawn on 17 August 2021).

184 The LHA rate determines the maximum amount of housing support that tenants in privately rented accommodation can receive as part of their UC housing cost element or Housing Benefit claim.

185 Social Security (Coronavirus) (Further Measures) Regulations (SI 2020/371) reg. 4.

186 For further details on changes to housing support, see Commons Library Briefing, The Rent Safety Net: Changes since 2010, SNO565638, 17 August 2021.

187 House of Lords Economic Affairs Committee, Oral Evidence: The Economics of Universal Credit, 2 June 2020, Question 119.

188 See above fn. 180.

differentiate between the 'deserving' and 'undeserving' recipients of support.[189]

Also, there has been no corresponding increase of the 'benefit cap' which limits the total amount of out-of-work benefits a household can receive.[190] Many families subject to the cap were therefore not reached by the temporary increase in the safety net and the benefit increases meant that more families became subject to the cap.[191] Of 154,000 households now affected by the cap, 52,000 are single parents with at least one child under five.[192] Moreover, the two-child limit, which limits *UC*- or *WTC*-tied payments to two children in a given family, remained untouched – a reduction now affecting 250,000 households.[193]

For the self-employed receiving *UC* there has been a suspension of the *Minimum Income Floor* (*MIF*)[194]. Initially, this applied only to those self-employed claimants directly affected by coronavirus, but the *MIF* was soon suspended for all claimants.[195] This suspension was originally due to expire on 12th November 2020, but was twice extended until the end of July 2021[196], when it began to be reintroduced. Regulations allow for a phased reintroduction of the *MIF* up to July 2022, with easements remaining in place until the *DWP* conducts an interview and determines that the claimant is in gainful self-employment.[197]

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189 Meers, Social Security under and after Covid-19, p. 171, 174 ff., in: Cowan/Mumford (eds.), Pandemic Legalities – Legal Responses to Covid-19 – Justice and Social Responsibility, Bristol, 2021.

190 Universal Credit Regulations 2013 (SI 2013/376) reg. 82, as amended by Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017 (SI 2017/138) reg. 2.

191 Institute for Fiscal Studies (IFS), If the Cap Doesn't Fit?, 7 April 2020.

192 BBC News, Coronavirus: Huge Increase in Families Hitting Benefit Cap, 6 August 2020.

193 Meers (fn. 189), p. 176.

194 After a UC claimant has been self-employed for a certain amount of time, their award is calculated as if they earned the National Minimum Wage for the hours they are expected to work, even if their actual earnings are lower. See Universal Credit Regulations 2013 (SI 2013/376) reg. 62.

195 Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371) reg. 2.

196 The Social Security (Coronavirus) (Further Measures) (Amendment) and Miscellaneous Amendment Regulations 2020 (SI 2020/1201) gave effect to an extension of the suspension until the end of April 2021, the Universal Credit (Extension of Coronavirus Measures) Regulations 2021 (SI 2021/313) extended the suspension until 31 July 2021.

197 The Universal Credit (Coronavirus) (Restoration of the Minimum Income Floor) Regulations 2021 (SI 2021/807).

Certain groups of claimants were temporarily given eligibility for benefits during the crisis, or allowed to retain benefits in situations where they might normally have ceased to be eligible: For example, prisoners on temporary release as part of the *End of Custody Temporary Release Scheme*[198] were given entitlement to *UC* and other benefits.[199] People placed on the *Coronavirus Job Retention Scheme* were also allowed continued access to *Maternity Allowance* and other family-related benefits, which would normally only be available to people in work.[200] Entitlement for *WTC* could continue even where a claimant was working fewer hours than would normally be needed to qualify, and critical workers were given longer to report changes of circumstances.[201] Either through amendments to regulations, or because they were linked to the *CJRS* or *SEISS*, these measures were extended until the end of September 2021, when they were withdrawn.[202]

Regulations in force from 30 March 2020 suspended work availability and work search conditionality for claimants of *UC* and *Jobseeker's Allowance* for a three-month period[203], thereby recognising the added difficulty many claimants face in returning to the labour market.

It has been argued that the changes to benefit levels and conditionality requirements have turned the *UC* into "a rather different animal"[204] from the benefit it was originally designed to be. However, the *Department of Work & Pensions* (*DWP)* has stated that these policy changes were only meant to be temporary during a moment of acute crisis and that there was no intention "to change the fundamental principles or application of Universal Credit"[205].

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198 Ministry of Justice, Measures Announced to Protect NHS from Coronavirus Risk in Prisons, 4 April 2020; Prison Advice and Care Trust, End of Custody Temporary Release (ECTR).

199 Social Security (Coronavirus) (Prisoners) Regulations 2020 (SI 2020/409) (as amended).

200 The Maternity Allowance, Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay, Statutory Shared Parental Pay and Statutory Parental Bereavement Pay (Normal Weekly Earnings etc.) (Coronavirus)(Amendment) Regulations 2020 (SI 2020/450).

201 Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020 (SI 2020/534) reg. 2 and reg. 4.

202 For an overview see House of Commons Library Briefing, Coronavirus: Withdrawing Crisis Social Security Measures, CBP08973, 26 October 2021, pp. 37 ff.

203 Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371) reg. 6(1),(2).

204 Bennet, Coronavirus – the Making or the Unmaking of Universal Credit, University of Bath Institute for Policy Research Blog, 6. April 2020.

205 House of Commons, Covid-19: DWP Update, 4 May 2020, Vol. 675.

The suspension of conditionality was lifted from the beginning of July 2020 as the *DWP* began the process of reopening Jobcentres to begin "a return to normal" in order to "help people to get ready again for the world of work".[206] However, the government was careful to stress that it would take "a phased approach to deliver a tailored and effective service for our customers, recognising the individual and prevailing circumstances including COVID restrictions."[207] The process of fully opening Jobcentres was interrupted by fresh public health restrictions introduced in autumn 2020. On 19 March 2021, however, the *DWP* announced that Jobcentres across Britain would return to normal opening hours from 12 April 2021.[208]

The government has put in place various initiatives aimed at getting (particularly young) people back into employment. The government reported that young people are two and a half times more likely to be in a sector that had to close as a result of the pandemic, and were particularly vulnerable to become unemployed due to their lack of work experience.[209]

For this purpose and to help replace the employment support schemes, the government published, on 8 July 2020, a *Plan for Jobs*[210]. The plan includes employment support measures relating to *UC*, such as the *Kickstart Scheme* which provides funding to create job placements for those aged 16-24 who are on *UC* and are deemed at risk of long-term unemployment. An expansion of this package worth over GBP 500 million (EUR 594 million) was announced in October 2021. Employers were able to apply for funding until 17 December 2021, and *Kickstart* jobs need to be started by 31 March 2022.[211]

c) *Support for Local Authorities*

The ongoing funding crisis[212] in local authority budgets is likely to be aggravated by the pandemic, leading to further reductions in key social ser-

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206 House of Commons, Covid-19: DWP Update, 29 June 200, Vol. 678.

207 PQ 68348 [on reintroducing conditionality], 7 July 2020.

208 Department for Work and Pensions, Normal Jobcentre Opening Hours Resume from 12 April, 10 March 2021.

209 HM Treasury, Plan for Jobs, 8 July 2020, p. 8.

210 HM Treasury, Plan for Jobs, 8 July 2020 (fn.).

211 HM Treasury/Department for Work and Pensions, GBP 500 Million Plan for Jobs Expansion, 4 October 2021.

212 Spending power is down by a quarter in real terms since 2011/12. See Housing, Communities and Local Government Committee, Local Government Finance and the 2019 Spending Review, 22 July 2019.

vices, such as direct payment support for the disabled and homeless services.[213] In response, the government launched an initial GBP 16 billion (EUR 19 billion) package to local authorities on 19 March 2020 and another GBP 1.6 billion package on 18 April 2020. In addition, the Chancellor announced a *Hardship Fund* of GBP 500 million (EUR 594 million) to be paid out to the local authorities, through which they are to counter-finance a reduction in council tax[214] for particularly vulnerable persons.[215]

5. Conclusion and Outlook

While the government's coronavirus support package's initial focus on (repayable) business loans could still be seen as corresponding with a neo-liberal view of society based on personal responsibility, this can hardly be said of the extensive schemes to stabilise the labour market and support the self-employed. The former can surely be described as one of the most remarkable announcements in the history of peacetime labour law[216] and as being seemingly at odds with the UK social assistance model. These extensive measures taken in relation to the labour market have undoubtedly helped to preserve jobs during the crisis, however they did not necessarily provide effective protection for all those at work. *SSP* and *SEISS* only benefited employees or self-employed persons with a certain income level. Also, so-called 'limb (b) workers' who are classed neither as employed nor self-employed frequently fell outside the scope of both the *CJRS* and the *SEISS* schemes. According to the IFS, around 1 million people were made redundant between April 2020 and June 2021. This compares with 550,000 for the same period in 2019.[217]

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213 Graby/Hosmayoun, The Crisis of Local Authority Funding and its Implications for Independent Living for Disabled People in the United Kingdom, Disability & Society 2019, p. 320.

214 Council tax is a municipal tax levied on domestic real estate. It is paid by the person who is liable for the property, which is usually the person(s) living in the house.

215 Ministry of Housing, Communities & Local Government (MHCLG), Council Tax: Covid-19 Hardship Fund 2020-21 – Local Authority Guidance, 24 March 2020, p. 4 f.

216 Bogg/Ford, Legislating in Times of Crisis: The Coronavirus Job Retention Scheme, UK Labour Law Blog, 23 March 2020.

217 Institute for Fiscal Studies, Employment and the End of the Furlough Scheme, October 2021.

According to the government, social partners in the form of umbrella organisations such as the Trades Union Congress (TUC) and the Confederation of British Industry (CBI) were involved in the development of both the C*JRS* and the *SEISS* in an advisory capacity.[218] However, the limited extent of social dialogue and the probably rather negligible influence of the trade unions[219] on the concrete design of the programmes, their operation and withdrawal is particularly evident in their low focus on the protection of the most vulnerable participants in the labour market, notably those in precarious employment.[220]

These persons are particularly hard hit by the consequences of the crisis and were affected at an early stage. However, *UC* frequently remains their only option, the level of which, despite the temporary increase, remains very low. Many benefits were also paid out with a considerable delay[221] or as lump sum payments for the next few months.

This low focus on workers in precarious employment, such as agency workers or gig economy workers can also be seen, for example, in occupational health and safety regulations: only 'employees' have the right to refuse to attend work for health and safety reasons.[222] With more people returning to work, there is no indication that this entitlement will be extended to more precarious workers.

Although the government's response to the crisis can be regarded as an unprecedented state intervention in the market and a huge increase in public expenditure, the support measures taken were neither comprehensive nor inclusive and mostly limited in time. It is estimated that approximately 3 million individuals have been excluded from the government

218 As expressed by the Chancellor of the Exchequer: "[...] thanks to the Trade Union Congress, the CBI and other business groups, for our constructive conversations."

219 According to etui, just over a quarter (26%) of workers in the UK are currently union members, with the degree of union organisation in the public sector (55%) being much higher than in the private sector (14%).

220 Novitz, 2020, p. 6 (see fn. 162). Nevertheless, the TUC has been successfully advocating changes to the CJRS, namely its extension to those in employment on 19 March 2020 (rather than 20 February) and the more recent extension of the scheme in accepting phasing-in of part time work.

221 See e.g. British Chambers of Commerce, BCC Coronavirus Business Impact Tracker, 8 April 2020, (fn. 49).

222 Employment Rights Act 1996, s. 44 and 100. See on the mentioned problem: Bales, COVID-19 and the Future of Work, University of Bristol Law School Blog, 2 April 2020; Brittenden, The Coronavirus: Rights to Leave the Workplace and Strikes, UK Labour Law Blog, 27 March 2020.

support schemes.[223] The UN Special Rapporteur on extreme poverty and human rights criticised the UK government's response to the pandemic as "utterly hypocritical" and warned that many effects of austerity policies "cannot and will not be undone".[224]

The policy transformation is therefore hardly sufficiently profound to speculate about a paradigm shift as some commentators seem to indicate[225]. Rather, moving into the next stage of the pandemic and finally into an endemic phase, existing inequalities seem to be at risk of being perpetuated: The IFS Deaton Review of Inequalities has noted that some of the main risks of the pandemic include the exacerbation of a range of inequalities across society, including wages and employment, health and ethnicity as well as generational, gender and educational inequalities.[226] Inequality at work can for example be seen in the fact that younger and/or low-paid workers were exceedingly more likely to have been furloughed, whereas higher paid workers on furlough were more likely to have received salary top-ups by their employers.[227] It was also more common for mothers to explicitly request furlough, raising questions about their longer-term job security without adequate provisions of childcare.[228]

Also, concerns regarding the financial sustainability of measures taken at the beginning of the crisis led to the planned reduction of the state's contribution to the job retention schemes in autumn 2020. The Chancellor emphasised that the new scheme was designed only to "protect viable jobs", stressing that the government could not sustain the same level of spending seen at the beginning of the crisis.[229] Facing increasingly stringent restrictions due to the second phase of the pandemic, the level

223 Hitchings, Unprecedented Times, Journal of Social Welfare and Family Law, 2020, p. 277.
224 Booth, UK Coronavirus Response Utterly Hypocritical, Says UN Poverty Expert, The Guardian, 26 April 2020.
225 Elliot, The Coronavirus Crisis May Lead to a New Way of Economic Thinking, The Guardian, 22 March 2020.
226 Blundell et al., COVID-19 and Inequalities, Fiscal Studies, June 2020, pp. 291-319.
227 Cominetti et al., The Full Monty: Facing up to the Challenge of the Coronavirus Labour Market Crisis, Resolution Foundation, 2020, p. 24 ff.
228 Adam-Prassl et al., Furloughing, Fiscal Studies, 2020, p. 591, 592 f.
229 HM Treasury, Chancellor of the Exchequer Rishi Sunak on the Winter Economy Plan, 24 September 2020. Public sector net borrowing from April to August 2020 is estimated to have been GBP 173 billion, GBP 146.9 billion more than in the same period last year and the highest borrowing in any April to August period since records began in 1993. See Office for National Statistics (ONS), Public Sector Finances, UK: August 2020, 25 September 2020.

of state contributions had then been (repeatedly) revised back upwards (see above, *2.*). This frequent revision of government measures reflects the political challenges of phasing out the crisis measures, in particular against the backdrop of a residualist welfare state. Commentators have also argued that the government's repeated prevarication over extensions of the furlough scheme (initially beyond October 2020) and uncertainty over its long-term future have had a negative impact on the labour market as redundancies in the three months to November 2020 increased to a record high of 395,000.[230] Some organisations, such as the TUC, have called for the introduction of a permanent short-time work scheme to protect against future disruptions of the labour market, such as future pandemics or technological change[231]. However, the government has not indicated it will implement such a scheme, suggesting that the post-September 2021 period is highly uncertain for those workers returning from furlough. Provisional government data suggests 1.14 million jobs were still on furlough when the scheme ended.[232] A pessimistic outlook thus suggests that the furlough schemes offered little more than a 'waiting room' for redundancy as, importantly, no obligation had been placed on employers to retain furloughed staff beyond the *CJRS*.[233] While the unemployment rate has not risen sharply[234], wider signs of a labour market conducive to heightened job insecurity are evident. Notably, the benefit claimant count increased by 115% between March and May 2020, while 738,000 fewer people were registered on payroll in the 12 months to April 2021.[235]

Some measures introduced to mitigate the impact of the crisis have been successful, such as the furlough schemes but also the scientific contribution and the early vaccination roll-out. However, from the outset of the pandemic, crisis management in England has been characterised by measures introduced "too little – too late" and a policy of repeated U-turns and late decision making. The pandemic has exposed long-standing systemic problems such as a continuous cut-back in public services and the welfare

230 Stuart et al., COVID-19 and the Uncertain Future of HRM: Furlough, Job Retention and Reform, Human Resource Management Journal, 2021, pp. 908, 911.
231 Trade Union Congress, "Daughter of Furlough" – TUC calls for permanent short-time working scheme to protect jobs in times of economic crisis and change, 12 August 2021.
232 HMRC, Coronavirus Job Retention Scheme Statistics: 4 November 2021.
233 Stuart et al. (fn. 230), pp. 908, 911.
234 See above section 2.
235 Francis-Divine/Powell, Coronavirus: Impact on the Labour Market, Briefing Paper No. 8898, House of Commons Library.

state in recent decades as well as persistent economic and socio-cultural inequalities which have left the country ill-prepared for an adequate emergency response.[236]

236 See for example Marmot, Why did England have Europe's Worst Covid Figures? The Answer Starts with Austerity, The Guardian 2020; Williams et al., Covid-19 in the UK, p. 225.

VIII. Living with COVID-19: Entering the "New Normal" Era in France

Linxin He

1. Introduction

Two years after the beginning of the COVID-19 pandemic, a new war – a real, military one – is raging in Ukraine and threatening Europe. The sense of emergency is constantly present in the spirit of Europeans, especially in France where the use of state of emergency by the government has been widely criticised.[1] At least, the martial rhetoric has already been part of the French official discourse since 2020. "We are at war", French President *Emmanuel Macron* had declared during his television address on 16 March 2020 with reference to the COVID-19 epidemic. Within the EU, the first cases of corona infections were registered in France at the end of January.[2] After a meeting of more than 2,000 people in a Protestant Free Church in Mulhouse from 17 to 21 February 2020, where the virus was suspected to have spread and made the meeting a virus hotspot, the number of infections in the country rose rapidly. Daycare centres, schools and universities were closed on 16 March 2020 by presidential decree, and a nationwide lockdown was put in place on 17 March 2020 and lasted until 11 May 2020.

When the whole country started to shut down, a law on the "*Etat d'urgence sanitaire*" (public health emergency) was passed by parliament on 23 March 2020 in an accelerated procedure (Art. 45 Para. 2 of the French Constitution).[3] This law served as a basis for crisis measures to be taken by the government, as it authorised the executive branch to issue regulations in numerous areas to combat the epidemic by means of decree-laws (*ordonnances*) or simple decrees (*décrets*) for a period of two months, which had

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1 See *inter alia*, Hennette-Vauchez, *La démocratie en état d'urgence*, Seuil, Paris, 2022.

2 Retrospectively, several cases of suspected infections (without proof via genetic sequences of the virus) had already taken place in November 2019.

3 The French government submitted the draft on 18 March 2020. The full title of the final law reads: *Loi n° 2020-290* du 23 mars 2020 d'urgence pour faire face à l'épidémie de COVID-19.

initially been extended until 10 July 2020 and eventually until 31 July 2022, *i.e.* until after the 2022 French presidential election.[4] An almost unmanageable number of regulations have been created around this law. Interventions under labour and social law can, in principle, be grouped into three normative constellations, namely the *broadening* of access to state support, the *increase* in the level of social benefits and the *extension* of expiring benefits. The basic idea behind these measures is obvious: the pandemic has paralysed economic activity and the French GDP shrank by 7.9% in 2020.[5] As a result, both individuals and companies have been losing their "life resources" and must therefore be provided for through government intervention. An aid package of EUR 45 billion was initially announced on 17 March 2020 by Minister of the Economy *Bruno Le Maire*, but on 9 April 2020 already the government increased its support to EUR 110 billion.[6] After the joint proposal of France and Germany for the recovery in the whole EU, French Prime Minister, *Jean Castex*, has announced on 3 September 2020 a recovery plan of EUR 100 billion for France which aims at reconstructing the French economy with new ambitions (ecological transition; industrial sovereignty or independence; and social cohesion). One year after the announcement, the French Ministry of Economy explained in a note that EUR 47.4 billion had already been spent on different initiatives and "by the end of August, France Relance will have supported 8885 industrial companies, 86% of which are very small or small and medium businesses, to make EUR 11.7 billion in productive investments and to maintain or create 231,000 industrial jobs".[7]

The general development of the French reaction to the corona pandemic can thus be described as three successive periods: "React" or limiting the expansion of the virus by a general lockdown (from March to May); "Rebound" or short-term adjustments leading towards an exit of the public health emergency (from May to August); and "Reconstruct" or long-term recovery program with important changes in the economic structure (from

4 In the economic and the social sector, see Art. 11 of Law n° 2020-290. According to Art. 37 of the 1958 Constitution, matters not subject to a parliamentary reservation (Art. 34) or the possibility of issuing ordonnances (Art. 38) may be regulated by decrees (*décrets*) of the President or Prime Minister and *arrêtés* of the rest of the administration. For the latest law extending the emergency period, cf. Loi n° 2021-1465 du 10 novembre 2021 portant diverses dispositions de vigilance sanitaire.

5 Cf. Data published by the French Statistical Office (INSEE).

6 The promise of the government has meanwhile become law. See Art. 27, Law n° 2020-473 of 25 April 2020 (Loi de finances rectificative pour 2020 II).

7 France Relance, un an après (6 September 2021).

September onwards). The latest strategy is, basically, to live with the virus and France is said to be recovering from the "fifth wave" of COVID-19 caused by the Omicron variant. From late 2020 to the beginning of 2022, Emmanuel Macron and his cabinet announced night-time curfews, whereas lockdowns have been avoided, even during the most complicated period of the fifth wave (*i.e.* January 2022) which saw almost 400,000 new COVID cases daily.[8]

This strategy of progressive return to "normality" is based on a vast campaign of vaccination: according to the statistics of the government, more than 90% of adults in France have been completely vaccinated against COVID-19 in 2022.[9] The latest stage of this strategy consists in the abolition of the general requirement to show a COVID certificate ("Pass sanitaire") since 14 March 2022 (exceptions only exist for access to hospitals, and the obligation of wearing a mask still applies in all public transportation).[10] With these new measures, France is trying to maintain its economic and social life in a status where COVID-19 should only play a minor role. This "New Normal" is clearly stated in a document of the French Ministry of Labour, where measures against COVID-19 in companies do not seem different from any other health measures against, for example, an ordinary flu.[11]

In the field of social policy, the main focus is on stabilising the labour market (2), supporting companies and the self-employed (3) and securing the income of individuals and families (4). Throughout the whole pandemic period, the support of the state has undergone a transformation which can be analysed as a process of specification: whereas the initial phase of the crisis was characterised by a general enlargement of the short-time work scheme, the following periods have seen a restriction of this support and the creation of more and more measures for specific groups (for small businesses, for businesses suffering more intensively from the social distancing measures, for families with low income, etc.) and it is

8 Données relatives aux personnes vaccinées contre la Covid-19 VAC-SI (updated daily).

9 Rosier, Covid-19 : le pic de la cinquième vague enfin franchi en France, *Le Monde*, 3 February 2022.

10 *Décret* n° 2022-352 du 12 mars 2022 modifiant le décret n° 2021-699 du 1er juin 2021 prescrivant les mesures générales nécessaires à la gestion de la sortie de crise sanitaire ; see also, Ministère des solidarités et de la santé, Recommandations sanitaires générales dans le cadre de la lutte contre le COVID-19, 15 March 2022.

11 Ministère du travail, Guide repère des mesures de prévention des risques de contamination au Covid-19, 15 March 2022.

expected today that these measures are going to be restricted further and will eventually disappear altogether when the social and economic life gets back entirely on its traditional course (some measures have already been abolished; see hereafter). Whatever the measures, they all reflect the strong will of the government to participate actively in the safeguarding of the social and economic life during the pandemic. This is possible only thanks to national solidarity (5).

2. *Job Retention*

The first visible consequence of the pandemic is an increase in unemployment. Before the corona crisis hit the French economy, a continuous fall in unemployment had been observed for 2019.[12] The corona pandemic put an end to this trend. The data from the French employment agency show an increase in unemployment of 0.8% in the first quarter of 2020 (around 28,000 more unemployed persons than in the last quarter of 2019)[13] and the National Statistics Institute predicted in early September 2020 that the unemployment rate would rise to about 9,5% by the end of the year.[14] In March 2020 alone, over 24,000 workers lost their jobs (amounting to an increase of 7.1%)[15] and the unemployment rate arrived indeed at its peak in late 2020, staying at the level of 9%. Despite the crisis, this increase is not easy to understand and is more indicative of a certain proliferation of precarious work in recent years as normally in France workers and their jobs receive strong protection.

As far as health protection is concerned, for example, the French legislator has, on grounds of a law passed in 1982, recognised the right of workers to refuse to work (*droit de retrait*, literally: right to withdraw from work) in situations where there is a serious risk to life or health.[16] Employees who make use of this right must not be punished by the employer, neither through disciplinary sanctions nor by wage or salary deductions. The prohibition of dismissal in such cases must be particularly

12 A total of 3.1% less unemployment as compared with the previous year. See statistical data of the French Employment Agency (Pôle emploi).

13 Pôle emploi, Demandeurs d'emploi inscrits à Pôle emploi au 1er trimestre 2020, 27 April 2020.

14 Insee, Notes et points de conjoncture de l'année 2020, 8 September 2020.

15 Dares, Les demandeurs d'emploi inscrits à Pôle emploi: statistiques mensuelles nationales, 27 April 2020.

16 Loi du 23 décembre 1982. Today Art. L4131-1 ff. French Labour Code.

emphasised: the Chamber of Social Affairs of the Court of Cassation (*Cour de cassation*) has always declared such dismissals null and void in its jurisprudence.[17] In order to keep employees despite the closure of a company, employers usually resort to “partial employment” or short-time work, for which easier access conditions were created during the corona crisis. At the beginning of July 2020 – almost two months after the end of the general lockdown, the authority registered more than 14 million “partial workers” – affecting over 60% of workers in the private sector.[18] In addition, the crisis has forced the government to provide further funds or authorisations for appropriate work organisation in times of crisis, such as special bonuses for employees and flexible holiday planning. Two years after the implementation of the measures that will be presented below, the statistics regarding the French labour market seem to show that the aim of job retention has been globally achieved. The unemployment rate descended to 7.4%, which is a significant decrease since the highest rate reached in autumn 2020 (8.8%).[19]

a) “Partial Work” or Short-Time Work (activité partielle)

So-called “partial work[20] or short-time work, as it is entitled in many countries such as Germany, allows companies to temporarily not employ all or part of their workforce if the company closes for a certain period

17 E.g. Chamber of Social Affairs, 28 January 2009, n° 07-44556. For more information see Mouly, “Conditions du droit de retrait et impartialité du juge”, Droit social, 2015, p. 189. An interesting exercise of this right in the current corona crisis can be found in a lawsuit against Amazon (France). The company had obviously taken inadequate measures to protect workers’ health. Several workers exercised their right of withdrawal, and a trade union federation took the company to court, resulting in an order for the company to reduce activities. See *Tribunal judiciaire de Nanterre, Ordonnance* no. 20/00503 of 14 April 2020. The Court of Appeal of Versailles rejected the appeal (no. 20/01993, 24 April 2020).

18 Cf. Ministère du travail, Situation sur le marché du travail au 7 juillet 2020. This number began to decline afterwards, since the government had restricted the benefits of short-time work at the beginning of June 2020.

19 INSEE, Au quatrième trimestre 2021, le taux de chômage diminue de 0,6 point à 7,4 %, 18 February 2022.

20 This term was only introduced in 2013. Before, it was called either “partial unemployment” or “technical unemployment”. In 2013, the various systems were standardised and made easier. See Baugard, “L’indemnisation de l’activité partielle après la loi du 14 juin 2013 et le décret du 26 juin 2013”, Droit social, 2013, p. 798.

of time or reduces its activities due to extraordinary circumstances.[21] Employees affected receive the "short-time work benefit", which is financed proportionally by the state and the unemployment insurance fund *Unédic*. Normally, this benefit amounts to 70% of gross wages (it is increased to 100% if the beneficiary is undergoing training and cannot be less than the minimum wage)[22] and only contributions to unemployment insurance are deducted[23]. As in Germany, this mechanism was already used during the 2008 financial crisis.[24] An administrative authorisation is required to claim "short-time work benefits". The employer's application for such authorisation must contain specific information such as the reasons for the short-time work, the names of the employees concerned and the expected duration.[25] This is to prevent abuse. In principle, the procedure involves considerable time and material expenditure for the companies concerned, which can be particularly difficult to manage in crisis situations.

In the corona crisis, the government placed particular emphasis on short-time work in order to "avoid dismissals" and "mitigate the economic consequences for the companies".[26] In order to provide better and more efficient support to these companies, executive regulations in the form of a *décret*[27] and an *ordonnance*[28] have been issued, which had led to the following changes:

- The scope of application has been extended: almost all employment relationships are covered. For example, homeworkers employed by individual employers can now also be given short-time work status if they have to accept a reduction in working hours.[29] Companies that do not have a business in France but employ workers in France can also apply for short-time work benefits.[30]
- In terms of the amount of the benefit, nothing changes for the employees – they still receive 70% of their wages, but the costs are fully

21 Art. L5122-1 seq. French Labour Code.
22 Art. R5122-18 French Labour Code.
23 Art. L5122-4 French Labour Code.
24 Calavrezo and Lodin, "Le recours au chômage partiel entre 2007 et 2010: forte augmentation de la fin 2008 à l'automne 2009", diminution ensuite, DARES analyses, January 2012, n° 004.
25 Art. R5122-2, French Labour Code.
26 Art. 11, I, 1), b) of Law n° 2020-290.
27 *Décret* n° 2020-325, 25 March 2020.
28 *Ordonnance* n° 2020-346, 27 March 2020.
29 Art. 7 *Ordonnance* n° 2020-346.
30 Art. 9 ibidem.

covered by the state. Normally, reimbursement by the state is limited to an hourly wage of around €7.50[31], and the difference between the state funding and the actual benefit (i.e. 70% of the gross wage) paid to the employee is borne by the employer. However, the decree of 25 March 2020 provides for a new regulation under which the state will fully finance the benefits, subject to an upper limit (to a maximum of 4.5 times the minimum wage) and a lower limit (i.e. equal to the minimum wage).[32]

– The maximum duration of benefit receipt is extended from 6 to 12 months.[33] Paid short-time work is usually limited to 1,000 hours per year. This volume was increased to 1,607 hours in March for the year 2020.[34]
– To speed up and simplify matters, the approval procedure has been temporarily suspended.[35] In principle, it is sufficient if the employer sends an application to the administration within 30 days of the start of the part-time work. However, even the 30-day retroactive effect of the application made possible by this has been extended: on 9 April, the Ministry of Labour set 30 April as the deadline for the unrestricted retroactive effect of applications.[36] The time limit for a response from the administration has been greatly reduced, from 15 days to two days.[37] Failure by the administration to respond continues to be considered as an approval.

In order not to exclude employees whose working hours are difficult to calculate (e.g. artists, freelance journalists, etc.) from short-time work benefits, the government has adopted several simplifications via the decree of 16 April 2020.[38]

After the end of the lockdown, the government has gradually modified these exceptional measures.

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31 Art. R5122-12 and D5122-13, French Labour Code.
32 Art. 1, 7) Décret n° 2020-325, 25 March 2020.
33 Art. 1, 6) ibidem.
34 See *Arrêté* of 31 March 2020.
35 Art. 1, 2) ibidem.
36 This means that hereby all applications made by this key date can be granted retroactively. See directives on the internet page of the French Ministry of Labour, Employment and Economic Inclusion.
37 Art. 2, 3) ibidem.
38 *Décret* n° 2020-435 du 16 avril 2020 portant mesures d'urgence en matière d'activité partielle.

First of all, the state has reduced its share in the financing of short-time work benefit. From 1 June 2020 to 31 May 2021, the state did not fully finance the benefit any more, but only 85% of the benefit (or 60% of the wages of the employee). The rest had to be paid by the employer. From 1 June 2021 to 31 March 2022, this rate was further reduced to 74% of the benefit (or 52% of the wages). After 31 March 2022, the state would only pay for the normal part of its contribution to the short-time work, namely 60% of the benefit (for sectors which are severely affected by the pandemic such as the catering sector, hotels, cultural and sport sectors, there were exceptions putting higher charges on the state.[39]) Employees have also seen their benefits reduced after 1 July 2021. If they received 70% of their gross wages before, the rate returned to the normal rate of 60% of the gross wage on 1 July 2021. As already indicated in the introduction, one sees clearly here the will of the government to return to the normal regime without further overloading the budget of the state.

Secondly, the government has put up a special benefit called "long-term short-time work benefit" (*activité partielle de longue durée*).[40] Its main characteristic is the possibility for the employer to benefit from short-time work for at most 24 months within a time span of 36 months. Furthermore, this benefit presupposes the conclusion of a collective agreement. This benefit scheme is only of a temporary nature and will end in December 2022. According to a study of *Unédic* published in February 2022, around 4,000 collective agreements have been concluded, yet in August 2021 more than three out of four employees worked for an employer who had not concluded an agreement and who does not have the intention to do so. The reason given by the employers who are not using the scheme are the following: some have only experienced the need for the basic partial activity scheme for some vulnerable workers, some believe that the restrictions were about to expire within a few months, and some consider it too complex to apply.[41]

In addition to the short-time work benefit, employers are free to grant additional payments. For example, car manufacturer PSA has reached an

39 See *inter alia*, *Décret* n° 2020-810 du 29 juin 2020 portant modulation temporaire du taux horaire de l'allocation d'activité partielle ; *Ordonnance* n° 2021-1214 du 22 septembre 2021 portant adaptation de mesures d'urgence en matière d'activité partielle.

40 Décret n° 2020-926 du 28 juillet 2020 relatif au dispositif spécifique d'activité partielle en cas de réduction d'activité durable.

41 Unédic, Activité partielle (2020-2021). Etat des lieux et perspectives, February 2022, p. 36.

agreement with the trade unions that provides for a company solidarity fund.[42] This initiative aims to achieve the goal of full payment of gross wages.

b) *Temporary Change in the Right to Leave and the Regulation of Working Hours*

Besides short-time work, companies could counter the effects of the crisis by introducing new holiday arrangements or reducing working hours. The Regulation of 25 March 2020 allowed employers to unilaterally order leave of absence for employees on the basis of a collective agreement.[43] The maximum number of such leave days could not exceed six working days, and the employer had to inform the employees concerned of this decision at least one day before the leave. These rules had been modified and extended in May 2021. The new rules lasted from 2 June 2021 to 30 September 2021 and the maximum number of leave days was brought up to eight working days.[44]

A similar rule applied to the use of company rest days (*jours de repos*) due to a reduction in working hours (*réduction du temps de travail, RTT*). The employer could unilaterally set these RTT days under certain conditions, up to a maximum of 10 working days.[45] The bank LCL, for example, chose this option instead of short-time work. A corresponding agreement was signed on 7 April 2020 and contained a new plan for the organisation of work.[46] On 15 April 2020 this regulation was extended to public employees (including civil servants).[47]

In addition, the Regulation of 25 March 2020 provided for special arrangements to make working time more flexible in key economic sectors

42 PSA Automobiles, 7 April 2020, Accord social et solidaire, protecteur de la santé des salariés et de l'entreprise du groupe PSA.

43 Art. 1, *Ordonnance* n° 2020-323, 25 March 2020, portant mesures d'urgence en matière de congés payés, de durée du travail et de jours de repos.

44 *Loi* n° 2021-689 du 31 mai 2021 relative à la gestion de la sortie de crise sanitaire.

45 *Ordonnance* n° 2020-323, 25 March 2020, Art. 2 ff.

46 There are, of course, alternative methods, such as rearranging one's holiday or one's working hours. See e.g. an LCL agreement.

47 *Ordonnance* n° 2020-430 relative à la prise de jours de réduction du temps de travail ou de congés dans la fonction publique de l'Etat et la fonction publique territoriale au titre de la période d'urgence sanitaire.

(e.g. the maximum working time was 60 hours per week until 31 December 2020).[48]

c) Bonuses for Workers in Key Economic Sectors

In order to keep the economy running despite the pandemic, a functioning supply system is needed, including delivery via food stores and many other food and beverage companies. At the beginning of the crisis, the right to refuse to work (*droit de retrait*) was frequently exercised. With a view to this, the government has introduced incentives to improve conditions for workers in systemically important enterprises. In concrete terms, this support consisted of a premium exempt from taxes and social security contributions, which the employer can grant as a lump sum of up to EUR 2,000.[49] This bonus was introduced as a placatory measure on the occasion of the yellow vest protest (which is why it is called "Macron Premium"). Its granting was subject to a company agreement on profit sharing. Decree No. 2020-385 of 1 April 2020 abolished this condition. If there is no such agreement in the company, the premium is limited to EUR 1,000. However, its effect remains controversial and its legal nature is unclear.[50] Special attention has been paid to the health sector: staff members of certain public health establishments especially engaged in the treatment of COVID-19 have the right to a premium of EUR 1,500[51] and the remuneration of overtime work has also been increased.[52] The premium was reconfigured in 2021 in order to benefit workers not only on the frontline, but also "on the second line" under certain conditions.[53]

48 *Ordonnance* n° 2020-323 du 25 mars 2020 portant mesures d'urgence.
49 *Ordonnance* n° 2020-385 du 1er avril 2020 modifiant la date limite et les conditions de versement de la prime exceptionnelle de pouvoir d'achat.
50 The criteria for differentiated granting of premiums are strongly disputed. Cf. explanations of the French Ministry of Labour, Employment and Economic Inclusion of 17 April.
51 *Décret* n° 2020-568 du 14 mai 2020 relatif au versement d'une prime exceptionnelle.
52 *Décret* n° 2020-718 du 11 juin 2020 portant indemnisation et majoration exceptionnelle des heures supplémentaires.
53 *Loi* n° 2021-953 du 19 juillet 2021 de finances rectificative pour 2021.

d) Granting of Sickness Benefit in Cases of "Incapacity to Work"

The government already decided by decree in January 2020 to grant sickness benefits to people in quarantine or isolation because of COVID-19.[54] The entitlement to this benefit was independent of whether the person had already been covered by statutory health insurance before the isolation. The waiting period of 3 days, which is common for the normal sickness benefit, was abolished due to the pandemic. The original aim of this measure, which was based on national solidarity, was to enable French citizens who had been brought back from abroad to join the statutory sickness insurance scheme immediately. Since 9 June 2021, quarantine measures have been abolished for employees who are fully vaccinated. For those who are still subject to an isolation, sickness benefits can always be granted after their return to France and a declaration by their employer.[55]

The use of sickness benefits to face the challenge of COVID-19 has undergone several revisions: A first modification[56] in March 2020 was an extension allowing parents to receive sickness benefit if they have to look after their underage children (up to the age of 16) at home, and if they are therefore unable to work; in April, the government included the parents of children with disabilities and did not impose an age limit.[57] The duration of the receipt of benefit was also extended.[58] Concerns about fraud through this new extension have been pointed out in certain discussions.[59]

In similar situations, employees are at the same time entitled to a supplement to sickness benefit from their employer.[60] The total benefit is then 90% of the gross salary. From 1 May 2020, however, these beneficiaries received only the short-time work benefit instead of sickness benefit, as this became more favourable for employees.[61] This measure was first planned

54 *Décret* n° 2020-73 du 31 janvier 2020 portant adoption de conditions adaptées pour le bénéfice des prestations en espèces pour les personnes exposées au coronavirus.

55 For a summary of these measures, see Assurance maladie, Covid-19: isolement des salariés à la suite d'un retour de l'étranger, 22 novembre 2021.

56 *Décret* n° 2020-227 du 9 mars 2020.

57 *Décret* n° 2020-459 du 21 avril 2020.

58 Previously, the duration of benefit receipt was restricted to 20 days. Now, it has been extended until isolation measures have ended.

59 Morvan, "Arrêts maladie fictifs et Covid-19: une pratique contagieuse", Droit social, 2020, p. 373.

60 Art. L1226-1, French Labour Code. See also, *Décret* n° 2020-193 and *Décret* n° 2020-434.

61 Art. 20, Loi n° 2020-473 du 25 avril 2020 de finances rectificative pour 2020.

to last until the end of 2020, but a decree in August 2020[62] decided that the exceptional measure would expire on 31 August 2020. Only several groups of vulnerable persons were allowed to continue to benefit from the short-time work scheme beyond 1 September 2020. They also had to obtain from their doctor an isolation certificate that indicated their need of protection. The certificate was re-evaluated in September 2021. The decree mentioned these groups in a short list: it covers, for example, patients already suffering from an active cancer, people of at least 65 years of age and with diabetes, and certain patients suffering from AIDS. These groups of persons can also obtain free masks supplied by the government.[63]

3. *Supporting the Economy*

a) *Deferral and Abolition of Taxes and Social Security Contributions*

To address the financial difficulties of companies, the government first approved a deferral of taxes and social contributions in March 2020. The payment of contributions, for instance, was postponed for three months.[64] The measure was extended for a further two months. This meant that all tax deadlines until the end of May 2020 were postponed by three months. In April 2020, the Minister of the Economy *Bruno Le Maire* announced that the government did not rule out the possibility of a general abolition of levies in principle.[65] This measure was adopted by parliament in the third "Amending Law of Finances for 2020".[66] The concrete conditions were fixed by a decree on 1 September 2020.[67] The scope of the abolition covered the activities of companies with less than 250 employees from 1 February to 31 May 2020 which had been severely affected by the pandemic or which depended on such activities. For companies with less

62 *Décret* n° 2020-1098 du 29 août 2020 pris pour l'application de l'article 20 de la loi n° 2020-473 du 25 avril 2020 de finances rectificative pour 2020.

63 Arrêté du 10 juillet 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de Covid-19.

64 See decision of URSSAF.

65 Hue, "Coronavirus: les entreprises risquant la faillite pourraient être exonérées de charges", RTL, 8 April 2020.

66 *Loi* n° 2020-935 du 30 juillet 2020 de finances rectificative pour 2020.

67 *Décret* n° 2020-1103 du 1er septembre 2020 relatif aux cotisations et contributions sociales des entreprises, travailleurs indépendants et artistes-auteurs affectés par la crise sanitaire.

than 10 employees, activities from 1 February until 30 April 2020 that did not enter the former scope were not to be counted for social security contributions. However, in order to apply for the relief, a company also had to prove that it had suffered from a clear decrease in turnover during the lockdown, and the government has also fixed a maximum sum for the total relief.

These measures have been continuously reviewed and consolidated during the following waves of COVID-19.[68] Without going into too many details, it is useful to point out that the focus of the existing measures concern primarily companies with less than 250 employees that have suffered from administrative shutdown or a significant loss of their turnover. In December 2020, the "Social Security Financing Law for 2021"[69] created a subsidy for the payment of social security contributions for certain employers equal to 20% of the amount of gross salaries due for the periods of pandemic. According to the spirit of a gradual return to normality, the exemption of social contributions has been abandoned (except for shutdown cases) and subsidies have been decreasing progressively, but are still maintained today.[70] At the same time, the government equally created a "transitional fund" in September 2021, in order to help companies that have difficulties in obtaining liquidities for their various payments. In effect, it is important to take a closer look now at the financial support granted by the state.

b) *Financial Support for Small Enterprises and Self-Employed Persons*

In accordance with the Public Health Emergency Act (Article 11(1)(a)), the government set up a solidarity fund for a minimum period of three months.[71] This fund was intended to support small businesses with a maximum of 10 employees, an annual turnover of no more than EUR 1 million

68 In practice, expressions such as subsidies "Covid 2" and "Covid 3" are frequently used to name the measures adopted at each new wave of shutdown or curfew.
69 *Loi* n° 2020-1576 du 14 décembre 2020 de financement de la sécurité sociale pour 2021.
70 For more details, see the recent *Décret* n° 2022-170 du 11 février 2022.
71 *Ordonnance* n° 2020-317 du 25 mars 2020 portant création d'un fonds de solidarité à destination des entreprises particulièrement touchées par les conséquences économiques, financières et sociales de la propagation de l'épidémie de COVID-19 et des mesures prises pour limiter cette propagation. See also, *Décret* n° 2020-371, 30 March 2020.

and a taxable profit of no more than EUR 60,000, which were severely affected by the curfew, i.e. which had to keep their business closed due to the crisis or lost more than 50% of their normal turnover. There are also measures in favour of companies in certain sectors such as the catering trade and the tourism industry. They initially receive a lump sum cash payment of a maximum of EUR 1,500. In a second step, companies that have suffered heavy losses (especially if they are unable to pay their debts) can again receive up to EUR 5,000. The self-employed are included in these schemes. In addition to the new unemployment benefit established in 2019[72], they will receive a further EUR 1,500 from the solidarity fund if they have lost more than 50% of their income.[73] The fund is mainly financed by the state, but the regions are free to contribute. Such support through national solidarity can be understood as social compensation. The approach does not appear to be new, but here it offers an example of the rapprochement between natural and legal persons: it is about the rescue and compensation of (legal) persons severely affected by the corona crisis. The question remains, however, whether such compensation is sufficient. Originally planned for three months, the fund was extended and adapted to new situations continuously.[74] Since September 2020, the government decided to extend its access to companies with less than 50 employees in the cities affected by the curfew (instead of the initial limit of 10), while the latest regulation concerning the fund in January and February 2022 shows a clear restriction of the beneficiaries[75].

As is the case for social contributions, the solidarity fund will progressively disappear from the landscape of support for companies and the government has been trying to replace it with other measures: since 2021, the government has set up a new subsidy called “fixed expenses of companies” (*coûts fixes des entreprises*). This scheme compensates 90% (70% for companies with more than 50 employees) of the loss. The amount of aid received by companies under the “fixed expenses” scheme is limited to EUR 12 million per group for the duration of the crisis. A recent decree adds that the amount of this aid cannot exceed the effective loss of the

72 Art. L5424-25, French Labour Code.
73 *Ordonnance* n° 2020-317 du 25 mars 2020.
74 *Ordonnance* n° 2020-705 du 10 juin 2020 relative au fonds de solidarité à destination des entreprises particulièrement touchées par les conséquences économiques, financières et sociales de la propagation de l’épidémie de covid-19 et des mesures prises pour limiter cette propagation.
75 Cf. *Décret* n° 2022-348 du 12 mars 2022.

company.[76] Similar subsidies have also been created in order to help start-ups[77] or to overcome temporary difficulties due to a rebound of the pandemic[78].

Moreover, the state is offering companies a guarantee for new bonds so that companies of all sizes can receive immediate liquidity assistance.[79] The government has also decided to grant aid to small businesses (including self-employed persons) that are no longer able to pay their rent, water, gas and electricity costs because of the corona epidemic.[80] Their access to the infrastructure of general interest must remain guaranteed despite late payment. Here, too, one can speak of a comparability between natural and legal persons, whose "existence" must be protected from the consequences of the virus. With the new recovery plan, the government is going to adopt different measures to promote employment, especially through vocational training and support for small and medium-sized businesses in recruitment. Recently, the guarantee has been extended to 30 June 2022, with the ambition of equally helping companies that might encounter financial difficulties due to the war in Ukraine.[81]

4. *Social Protection*

The crisis has not only affected continuing employment relationships. Except for those who are in quarantine and can no longer work (see 2.d) above), the unemployed will no longer be able to find access to the labour market and beneficiaries will lose their rights if they are unable to submit

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76 *Décret* n° 2022-223 du 21 février 2022 modifiant l'aide dite « coûts fixes consolidation » visant à compenser les charges fixes non couvertes des entreprises dont l'activité est particulièrement affectée par l'épidémie de covid-19 instaurée par le décret n° 2022-111 du 2 février 2022.

77 *Décret* n° 2022-221 du 21 février 2022 instituant une aide dite « nouvelle entreprise consolidation ».

78 *Décret* n° 2022-222 du 21 février 2022 instituant au titre du mois de novembre 2021 une aide dite « coûts fixes novembre ».

79 *Arrêté* du 23 mars 2020 accordant la garantie de l'Etat aux établissements de crédit et sociétés de financement.

80 *Ordonnance* n° 2020-316 du 25 mars 2020 relative au paiement des loyers, des factures d'eau, de gaz et d'électricité afférents aux locaux professionnels des entreprises dont l'activité est affectée par la propagation de l'épidémie de COVID-19.

81 See the information given by the French Ministry of Economy, Prêt garanti par l'Etat.

their documents in time. There are also people who need help for medical treatment. All these people should be protected with a greater income security.

a) Extension of Unemployment Benefits

As mentioned before, unemployment has risen sharply due to the corona crisis, before its stabilisation due to the emergency measures. Many unemployed workers risk losing their rights to unemployment benefits because they cannot find new employment. For this reason, the government had initially extended the granting of expiring unemployment benefits until 31 July 2020 at the latest.[82] This may be accompanied by an increase in the level of benefits: the introduction of a new assessment base through the reform of unemployment insurance in 2019, which could lead to a reduction in current benefits, was suspended during the two first waves of the pandemic[83] and entered into force only on 1 October 2021.[84] Due to the lockdown during the second wave of the pandemic, the rights of the unemployed were further extended from October 2020 to June 2021.[85]

b) Special Assistance for Low Income Families

The Public Health Emergency Act identifies various areas (such as minimum security, family benefits and housing benefits) in which people are particularly at risk.[86] In a press release, the Ministry of Health announced a special assistance for families with low income.[87] This aid consisted of a lump sum that was to be automatically transferred on 15 May 2020 by the family benefit funds (*Caisses d'allocations familiales*). The aid was intended

82 *Ordonnance* n° 2020-324 du 25 mars 2020 portant mesures d'urgence en matière de revenus de remplacement mentionnés à l'article L. 5421 2 du code du travail.
83 *Décret* nº 2020-361 du 27 mars 2020 portant modification du décret nº 2019-797 du 26 juillet 2019 modifié relatif au régime d'assurance chômage.
84 *Décret* n° 2021-1251 du 29 septembre 2021 fixant la date d'entrée en vigueur de certaines dispositions du régime d'assurance chômage.
85 *Ordonnance* n° 2021-135 du 10 février 2021 portant diverses mesures d'urgence dans les domaines du travail et de l'emploi.
86 Art. 11, I, 6), Loi n° 2020-290.
87 Ministry of Health and Solidarity, 15 April 2020, COVID-19: le Gouvernement annonce le versement d'une aide exceptionnelle de solidarité aux foyers les plus modestes.

for persons and families already receiving the minimum benefit (*Revenu de solidarité active* and *Allocation de solidarité spécifique*). In principle, a family should receive EUR 150 and an additional EUR 100 per child. In total, more than four million families were to receive this aid. Persons who receive housing benefit (*Allocation pour logement*) can also receive support if they have children. It is not difficult to see that through these measures the government wants to support families in providing childcare at home, since the closure of schools and daycare centres has burdened families with additional costs. In total, the government will have raised about EUR 880 million for all the measures mentioned above.[88] The government also decided to increase the benefit for the start of school (or "back-to-school allowance", *Allocation de rentrée scolaire*) in 2020 by EUR 100 (the total sum is about EUR 490 per child).[89] About three million families were eligible for this benefit.

Following the decision on the curfew in late 2020, the government also decided to renew its support for modest persons and households. The benefit of EUR 150, always completed by the additional benefit for children, was paid again to those who satisfied the aforementioned requirements. A federation for social work (*Union nationale interfédérale des œuvres et organismes privés non lucratifs sanitaires et sociaux*) denounced the insufficient state aid for the "new poor" caused by the pandemic.[90] It is also evident that the French government has chosen a minimum reaction to the highly heterogeneous situations of persons who have been in precarious employment. In his interview on 14 October 2020, President *Macron* justified the renewal of the lump sum benefit by the necessity to incentivise people to return to work. It is true, as has already been mentioned above, that the recovery plan "Relance France" has focused on the creation of new jobs.

As a recent report of the French National Assembly points out, around EUR 2.2 billion were paid as a special benefit to persons and families with modest revenues.[91] After the two payments, no supplementary benefit was

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88 Art. 27, Law n° 2020-473 of 25 April 2020 (Loi de finances rectificative pour 2020 II).

89 *Décret* n° 2020-985 du 5 août 2020 relatif à la majoration exceptionnelle de l'allocation de rentrée scolaire en 2020.

90 UNIOPSS, « Booster » les minimas sociaux: une priorité, dès maintenant !, 15 October 2020.

91 Assemblée Nationale, *Rapport d'information sur l'évaluation de l'adaptation des politiques de lutte contre la pauvreté au contexte de crise sanitaire*, 17 février 2022, p. 55.

granted by the government and with the return to normality, it seems that the only way to gain more resources is to actively search for a job.

c) Recognition of COVID-19 as Occupational Disease

Since the beginning of the pandemic, legal scholars have been discussing the possibility to recognise COVID-19 as an occupational disease in order to activate the corresponding social protection. However, it was argued that the disease, as well as flu, was difficult to be associated with working conditions and the causal link was thus hard to establish. However, the public authority has gradually increased its will to recognise the specific working conditions for employees in the health sector or in similar conditions. Finally, with a decree on 14 September 2020, the government added COVID-19 to the list of occupational diseases.[92] However, the conditions for the recognition remain relatively strict: the patient must present severe breathing difficulties (which means the necessity of an oxygen therapy) and should have been working directly in person in places of medical care, hospital services etc. In May 2021, a decree was adopted in order to regulate the procedure of the recognition of COVID-19 as an occupational disease.[93]

d) Other Measures

Social protection has also seen temporal extensions in other areas, e.g. an extension of expiring contracts for supplementary health insurance and supplementary health assistance (*protection complémentaire santé*).[94] Furthermore, medical care for illegal residents has been extended by three months[95] and benefits for disabled persons that require an administrative

92 More precisely, the change happens both in the general scheme for employees and in the agricultural scheme. See, *Décret* n° 2020-1131 du 14 septembre 2020 relatif à la reconnaissance en maladies professionnelles des pathologies liées à une infection au SARS-CoV2.

93 *Décret* n° 2021-554 du 5 mai 2021 relatif à la procédure de reconnaissance et à la réparation des accidents du travail et des maladies professionnelles.

94 Art. 1, I, II, *Ordonnance* nº 2020-312 du 25 mars 2020 relative à la prolongation de droits sociaux.

95 Art. 1 IV, *ibidem*.

decision by six months[96]. In addition, access to medical care has been made easier, for example in the case of requests for such care from persons residing illegally.[97] Guarantees of unemployment benefits have been offered to persons working in the drama and film industry.[98] Special temporal benefits have been granted to students (adults under 25 years old), etc.[99]

The specific measures cannot be presented in full[100] and it can be said that the measures are generally occasional and sporadic in nature. The total amount of subsidies is certainly important (more than EUR 2.5 billion), but the level of poverty is still alarming. Reform suggestions have been made to reinforce the protection of those who are especially in need during the pandemic.[101]

5. Outlook

The COVID-19 epidemic has presented France with unusual challenges and the French government has reacted with exceptional measures. Even in a state of emergency, the government must remain loyal to its commitment with regard to the mandate of the "Social Republic" (Article 1(1) of the French Constitution). The measures taken with a relatively remarkable speed are essentially based on national solidarity (Art. 1 of the French Social Code). The protection of life and health (above all, but not only of workers) takes precedence over economic calculations, at least in the official declarations of the government.[102] The extension, increase and prolon-

96 Art. 2, *ibidem*.

97 Art. 1, III, *Ordonnance* nº 2020-312 du 25 mars 2020 relative à la prolongation de droits sociaux.

98 *Décret* n° 2020-928 du 29 juillet 2020 portant mesures d'urgence en matière de revenus de remplacement des artistes et techniciens intermittents du spectacle.

99 *Décret* n° 2020-769 du 24 juin 2020 portant attribution d'une aide exceptionnelle de solidarité liée à l'urgence sanitaire aux jeunes de moins de vingt-cinq ans les plus précaires.

100 For a list of all measures, see France Stratégie, *La lutte contre la pauvreté au temps du coronavirus*, 18 October 2021, p. 15.

101 Assemblée Nationale, *Rapport d'information sur l'évaluation de l'adaptation des politiques de lutte contre la pauvreté au contexte de crise sanitaire*, 17 février 2022, p. 108 ff.

102 French health policy (organisation and financing of hospitals, treatment of medical and long-term care personnel, etc.) was last year and has now during the crisis been strongly criticised. In reply to this criticism, President E. Macron announced, in his television address to the nation of 13 March 2020, a massive investment plan for the health system.

gation of social benefits places a heavy burden on public finances. The unemployment insurance fund was required to spend between EUR 800 million and EUR 2 billion per week due to short-time work[103] alone. The desired preservation of social protection has led to the establishment of a solidarity fund using the method of social compensation[104]. Even if other forms of solidarity play a role in overcoming the crisis, national solidarity in France is clearly in the foreground. However, rising financial pressure has led the government to privilege the economic reconstruction of the country. Due to the temporary nature of the measures, the pandemic seems to have brought about only minor changes to the French social system, as well as to the social policy of the government. National solidarity has served as the last protective shield against the pandemic, whereas the government sees the future of the French social system in a more activating and flexible economy. This vision is certainly helpful for the ecological transition which has been taken into account in the recovery plan. But it also contains the risk that social cohesion – the third part of the plan – is merely seen as an instrument to reach the new economy, instead of an end in itself. Facing all the blatant and latent tensions – or even contradictions – in the governance of the pandemic in France, one can only hope that the return of solidarity will not be lost in the "new normal" French welfare state.

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103 UNÉDIC, Continuité et maîtrise du pilotage de l'Assurance chômage, 26 March 2020.

104 Cf. Knetsch, *Haftungsrecht und Entschädigungsfonds*, Mohr Siebeck, Tübingen, 2012, pp. 46 seq., 144.

IX. The Community Steps Up: Changing Responsibilities in Germany

Ulrich Becker

1. Introduction

After a short period of hesitation, German governments reacted quickly to the COVID-19 crisis in March 2020. Public life was shut down, public events were prohibited and curfews were imposed. These reactions also made some peculiarities of federalism visible: the Federal Infection Protection Act (*Infektionsschutzgesetz* – IfSG), which serves as their legal basis, is to be implemented by the federal states (*Länder*)[1], which in turn employ various authorities at this end[2]. This background led to the fact that crisis management strategies were pursued with varying degrees of stringency. However, the initial federal competition for best practice was restricted by agreements between the Federal Government and the *Länder*[3], and also by new federal responsibilities[4]. This led to a largely harmonised approach that was aimed not least at emphasising the seriousness of the crisis situation. Unfortunately, the crisis measures continue to be fragmented and

1 Bavaria has, in the course of the crisis, passed a law of its own (Bavarian Infection Protection Act – BayIfSG of 25 March 2020, GVBl. p. 174). North Rhine-Westphalia, too, has passed an Infection Protection and Competence Act (IfSBG-NRW of 14 April 2020, GV. NRW. 2020. p. 218b). What remains to be clarified is the extent to which the Infection Protection Act within the meaning of Art. 72 Para. 1 GG (Basic Law) leaves scope for individual *Länder* regulations (sceptical, and yet cursory elaboration of the Scientific Service (*Wissenschaftlicher Dienst*) of the German Bundestag of 9 April 2020, WD 3-3000-081/20 on the Bavarian Infection Protection Act – BayIfSG).

2 Cf. only *Giesberts/Gayger/Weyand*, COVID-19 – Hoheitliche Befugnisse, Rechte Betroffener und staatliche Hilfen, NVwZ 2020, p. 419.

3 By way of several agreements between the government and the *Länder*; cf. guidelines for concerted action regarding the further restriction of social contacts in public areas in view of the corona pandemic in Germany of 16 March 2020.

4 In the event of an "epidemic situation of national import" in line with Sec. 5 IfSG, introduced via Art. 1 of the Law on the Protection of the Population in the Event of an Epidemic Situation of National Concern of 27 March 2020 (Federal Law Gazette = *Bundesgesetzblatt* – BGBl. I, p. 587).

diverse from one region to another due to a certain obstinacy of *Länder* governments.

Since the end of April 2020, gradual easing measures had been announced and implemented[5] – and taken back again in November 2020, in order to react to the second wave of the COVID-19 pandemic. From the beginning, the legal bases have had to be (re)adjusted,[6] and the question remained open as to the extent to which local differentiations were reasonable or even necessary. However, it has always been clear that this question had to be raised and answered. After all, lifting restrictions is legally and politically much more difficult than introducing them. While a quick and comprehensive elimination of interpersonal contacts will seem obvious at the first moment of crisis perception and without alternative in a collective state of shock of sorts, the situation changes with the realisation that a quick return to the previously practiced lifestyle will not be possible. Hygiene concepts have been introduced,[7] putting emphasis on social distancing, washing hands and protecting the nose and mouth, in which context also *Lüften* (airing out with 'impact and cross ventilation'[8]) gained a rather dubious fame. From this point on, there was and still is a growing need to comprehensively balance legally protected interests and justifing restrictions of freedom in individual cases, always taking into account the principle of equal treatment – especially since the many implementation measures are now, as was to be expected in Germany, intensively discussed in legal terms[9] and brought before courts for review.[10] In November 2021, the Federal Constitutional Court took a landmark

5 Cf. on the decisions of the Federal-Länder-Conference of 30 April 2020 the information provided by the Federal Government. A good overview of the measures taken by the Government and the *Länder* is found on the websites of the Federal Bar Association – BRAK.

6 See for the most recent developments *Kießling*, Corona-Maßnahmen in Herbst und Winter 2021/22 nach Ende der "epidemischen Lage". Update, Neue Zeitschrift für Verwaltungsrecht (NVwZ) 2022, pp. 15 et seq.

7 See *Bund-Länder-Beschluss* of 6 May 2020.

8 See The Guardian of 30 September 2020.

9 With an emphasis on the impact of fundamental rights on the one hand, and the rule of law as well as the principle of democratic legitimacy on the other; see on the latter point *Kingreen*, Der demokratische Rechtsstaat in der Corona-Pandemie, Neue Juristische Wochenschrift (NJW) 2021, p. 27 66 et seq. On the first point see *Kersten/Rixen*, Der Verfassungsstaat in der Corona-Krise, 2nd ed. 2021, pp. 95 et seq.; *Gärditz*, Grundrechtsschutz in der Pandemie, Neue Juristische Wochenschrift (NJW) 2021, pp. 2761 et seq.

10 See for an overview information of the Federal Bar Association (*Bundesrechtsanwaltskammer*).

decision on the constitutionality of contact restrictions, accepting a broad margin of appreciation of the legislature.[11]

A certain federal diversity was also noticeable in terms of economic and socio-political reactions.[12] As early as mid-March 2020, both the Federal Government[13] and the *Länder*[14] introduced supplementary budgets to provide additional funds for the fight against the virus and to compensate for the consequences thereof. This enabled the Federal Government alone to take out additional loans amounting to almost EUR 156 billion[15] that is intended to keep the economy running,[16] with federal funds being supplemented by state funds in varying amounts. A second supplementary budget is aimed at financing a recovery package with an amount of EUR 103 billion.[17] Although the long economic upswing in recent years has left considerable scope for support measures, the pandemic did lead to some insolvencies and may still change the economic landscape as it is uncertain how effective and how useful government rescue efforts will ultimately be. It is also possible that the corona crisis will lead to an increase in unemployment[18] – even though it will be difficult to draw a line as at the same time in which the COVID-19 crisis started to slow down, a new crisis formed with the illegal war of aggression in the Ukraine. In any case, right

11 *BVerfG* of 19 November 2021, 1 BvR 781/21.

12 We here leave out the important measures concerning health care; see in this context *Eichenhofer*, Pandemiebekämpfung durch Sozialrecht, Sozialer Fortschritt 2021, pp. 585, 587 et seq.

13 Cf. Budget Supplement Law (*Gesetz über die Feststellung eines Nachtrags zum Bundeshaushaltsplan für das Haushaltsjahr* 2020 – Nachtragshaushaltsgesetz 2020) of 27 March 2020, BGBl. I, p. 556. On the budget constitutional implications see *Schwarz*, COVuR 2020, p. 74.

14 Cf. for Bavaria the law amending the budget law 2019/2020 (Budget Supplement Law 2019/2020 – NHG 2019/2020) of 19 March 2020, GVBl. 2020, p. 153 and the second law amending the budget law 2019/2020 (2nd Budget Supplement Law 2020 – 2. NHG 2020), GVBl. 2020, p. 238; for NRW see Budget Supplement Act 2020 (*Gesetz über die Feststellung eines Nachtrags zum Haushaltsplan des Landes Nordrhein-Westfalen für das Haushaltsjahr* 2020 – Nachtragshaushaltsgesetz 2020 – NHHG 2020) of 24 March 2020, GV. 2020, p. 189.

15 Sec. 2 Para. 1 Budget Supplement Act 2020 (fn. 13).

16 See for financial support in extension of digital infrastrucutre and child care infrastructure *Gesetz über begleitende Maßnahmen zur Umsetzung des Konjunktur- und Krisenbewältigungspakets* of 14 July 2020 (BGBl. I, p. 1683).

17 Law of 14 July 2020 (BGBl. I, p. 1669); see information of the Federal Treasury (BMF).

18 For further details on this – and also the effects of prolonged unemployment and statistical recording – see Bundesagentur für Arbeit, Auswirkungen der Corona-Krise (fn. 37), p. 8 et seq.

at the start of the pandemic, steps were taken not only to preserve the liquidity of companies but also to safeguard jobs and, in this sense, direct labour market policy objectives were also pursued.

2. *Job Retention*

a) *Short-Time Work Benefit*

It was possible to fall back on an instrument that had proved to be extremely successful in overcoming the last financial crisis around ten years ago: the short-time work benefit (*Kurzarbeitergeld – Kug*)[19]. It is granted within the framework of unemployment insurance, i.e. in accordance with the rules of social insurance. On the one hand, this means that it is embedded in a special form of self-administration and is basically financed by contributions. On the other hand, this basis precludes the *Länder* from following different routes, as *Kug* is paid uniformly throughout the country. As an instrument for crisis management, it had been expanded by the so-called *Economic Stimulus Package I* at the end of 2008[20] and been reduced again from 2012[21]. The fact that *Kug* is still intended to serve to preserve jobs in addition to providing compensation for employees affected by short-time work is fully in line with its traditional orientation, even if its purpose is no longer explicitly mentioned in the qualifying conditions of the Social Code Book (SGB) III[22]. Corresponding links between the labour

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19 The short-time working benefit (*Kurzarbeitergeld – Kug*) of Social Code Book (SGB) III is also referred to as "economic trend-dependent *Kug*" ("*konjunkturelles Kug*"), in order to distinguish it from its special forms, i.e. "seasonal Kug" ("*Saison-Kug*") and "*Transfer-Kug*", cf. Sec. 101 and 111 SGB III). On the benefits and the distribution of costs of *Kug*, see short reports (*Kurzberichte*) of the Institute for Employment Research (IAB) 14/2009 and 17/2009.

20 Measures package of the Federal Government "Beschäftigung durch Wachstumsstärkung", November 2008.

21 Through the Law on Improving the Chances of Integration in the Labour Market (Gesetz zur Verbesserung der Eingliederungschancen am Arbeitsmarkt) of 20 December 2011 (BGBl. I, p. 2854).

22 Unlike in Sec. 63 Para. 1 Sent. 1 last phrase of the previous law (*Arbeitsförderungsgesetz* - AFG): "…when it can be expected that through the granting of the short-term work benefit workplaces are retained for employees and trained employees are retained for the company". Similarly, Sec. 116 Para. 1 Sent. 4 of the Law on Employment Services and Unemployment Insurance (*Gesetz über Arbeitsvermittlung und Arbeitslosenversicherung* – AVAVG (in the version of 3 April 1957, BGBl. I, p. 322), which provided, however, that "the Federal Government, after

market and socio-political objectives[23] have always been characteristic of the German unemployment insurance and do not per se lead to particular problems in the interpretation of the qualifying conditions[24].

Building on the experience gained around ten years ago and spurred on by the fact that the budget of the Federal Employment Agency was well-stocked due to the economic growth that had soon followed[25], the government introduced a draft law on 12 March 2020 to improve the regulations for short-time work benefits[26] for a limited period in response to the crisis. It was discussed and adopted one day later in three deliberations

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hearing the Administrative Council, decides in relation to the situation on the labour market and through a regulation in which economic areas and branches the granting of the short-time work benefit is admissible" (Sec. 116 Para. 1 Sent. 2 AVAVG). This purpose had not yet been mentioned in the regulation of "support for short-time workers" ("Kurzarbeiterunterstützung" in Sec. 130 AVAVG of 16 July 1927 (RGBl. I; p. 187), which, however, had to be authorised or mandated respectively.

23 Cf. *Drucksache* of the German Federal Parliament (BT Dr.) V/2291, p. 55 on the purposes of *Kug*: "Its socio-political value is that it reduces the employee's burdening uncertainty concerning his professional existence. From an economic policy point of view, the short-time working benefit, which is paid to allow companies to retain the workers they have trained, serves to balance out short-term economic fluctuations and to bridge structural changes in the company caused by economic development. The significance of the short-time working benefit for the labour market is that it stabilises employment relationships.

24 What could be questionable might be the depth of judicial control as the interpretation of individual conditions requires special expertise of the competent administrative authority with regard to the labour market policy background; on this in general *Schuler-Harms*, Die gerichtliche Kontrolldichte sozialrechtlicher Entscheidungen, SDSRV 62 (2012), p. 59, 77 et seq. See for a non convincing distinction between primary and secondary purposes *Hase*, Legitimation des Funktionswandels, in: Funktionswandel der Sozialversicherung – von der Arbeitnehmer- zur Unternehmenshilfe und zum Marktakteur, ZAAR Schriftenreihe 33 (2013), pp. 37, 39 et seq.; for more details and differentiation see *Bieback*, in: Gagel, SGB II/SGB III (as per 2020), before Sec. 95 SGB III, recital 4 et seq.

25 The projected reserve for 2019, according to the Federal Employment Agency, was EUR 24.3 billion. The underlying problems cannot be discussed here. On the importance of budgetary autonomy and the past shifts between social security budgets, see *Becker*, Verfassungsrechtliche Vorgaben für Sozialversicherungsreformen, ZVersWiss. vol. 99 (2010), pp. 585, 599; on the fundamental (albeit in the specific case too limited) control under constitutional law of the connection between the obligation to pay contributions and the obligation of social security schemes see also Federal Constitutional Court (*Bundesverfassungsgericht* – BVerfG) of 22 May 2018, 1 BvR 1728/12, recital 78.

26 BT Dr. 19/17893.

in the Bundestag[27]. The law was published in the Federal Law Gazette[28] on the same day and entered into force on 15 March 2020. The speed with which the procedure was conducted is remarkable[29]. However, it can also be explained by the fact that the statute of Parliament contains only two provisions empowering governmental authorities and thus places the regulation of instruments previously tested – as in addition to short-time work benefits, the remuneration of temporary agency workers is also affected[30] – in the hands of the executive, albeit for a limited time until the end of 2021[31].

On this basis, the Federal Government Regulation on the Facilitation of Short-Time Work (*KugV*) was issued on 25 March 2020[32]. It initially changes two conditions: It is sufficient for *Kug* to be granted if at least ten per cent of the employees have a loss of earnings of more than ten per cent[33]; negative working time accounts (agreed upon by the company) will not be set up; yet, an existing positive balance first has to be worked off.[34] In addition, the employer is fully reimbursed for any social security contributions incurred[35]. A further improvement was brought about by the regulation on the Period of Entitlement to the Short-Time Work Benefit (*KugBeV*) of 16 April 2020[36]: through this statutory instrument, the granting of the benefit is extended retroactively from 1 January 2020 to a maximum period of 21 months and (in this respect including old cases)

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27 BT PlPr. 19/153 (*Zusatzpunkt 19*).
28 BGBl. I, p. 493.
29 Cf. on "acceleration phenomena", their classification and evaluation see *Schwerdtfeger*, Krisengesetzgebung, 2018, p. 27 et seq., 156 et seq.
30 According to Sec. 3 KugV (fn. 32) the right stipulated in Sec. 11 Para. 4 Sent. 2 of the Law on Temporary Agency Work (*Arbeitnehmerüberlassungsgesetz* – AÜG) of temporary agency workers to remuneration is, in the event of an agreement entered into on short-term work, revoked for the loss of work and the period during which the temporary agency worker is paid the short-term work benefit. On the background see *Waltermann*, Kurzarbeit und Arbeitnehmerüberlassung, NZS 2020, p. 337.
31 Sec. 109 Para. 5 SGB III and Sec. 11a AÜG, Art. 1 and 2 of the law on temporary crisis-related improvement of regulations on the short-term work benefit of 13 March 2020.
32 Kurzarbeitergeldverordnung (BGBl. I, p. 595).
33 Sec. 1 No. 1 KugV, by derogation from Sec. 96 Para. 1 Sent. 1 No. 4 SGB III.
34 Sec. 1 No. 2 KugV, by derogation from Sec. 96 Para. 4 Sent. 2 No. 3 SGB III.
35 Sec. 2 Para. 1 KugV.
36 Regulation on the period of receipt of short-term work benefit (*Kurzarbeitergeldbezugsdauerverordnung*), BGBl. I, p. 482.

to 31 December 2020 at the latest, as it is foreseeable that the economic recession will last for a longer period of time.

Shortly after the adoption of these measures, a debate broke out about the amount of the payments. This was due to several reasons. First, it was predictable that more people than ever before would have to resort to *Kug*[37]. In June 2020, about 13% of all employees in Germany received this benefit.[38] Second, the loss of working hours was very high at least in the sectors that have been hit particularly hard by the crisis[39], and while *Kug* covers temporary minimum wage losses, it does not limit the amount of these losses in individual cases – in other words, it is also paid when short-time work is actually 'zero'[40]. Third, economic recovery will take time, even if catch-up effects had been expected to occur relatively quickly once the consequences of the pandemic will have been overcome.[41] In some sectors the loss of wages is cushioned by collective agreements that provide for an increase in *Kug*, to some extent under differentiated condi-

37 In March and April there were 751,000 applications (cf. Sec. 99 SGB III) reported for 10.1 million persons, an unprecedented number, according to the Federal Employment Agency, showing the effects of the corona crisis on the labour market, Arbeitsmarkt kompakt, April 2020, p. 6. It should be noted that this figure is always higher than the actual number of benefits granted; for example, in 2009 up to around 1.4 million people received Kug, which was reported to have been applied for by 3.3 million people, Federal Employment Agency, Inanspruchnahme konjunkturelles Kurzarbeitergeld nach Sec. 96 SGB III, Arbeitsmarkt kompakt, April 2020, p. 8. The actual number reached its peak in April with 5.95 million recipients of KUG; since then, ist has started to decrease (May: 5.92 million, June: 4.63 million, July: 4.24 million), see BA, Arbeitsmarktbericht September 2020, p. 9.

38 Employees subject to mandatory social insurance, preliminary findings of the BA, see Arbeitsmarktbericht September 2020, p. 9.

39 In April 2020, 93.4% of employees subject to social insurance contributions in the catering industry and 87.2% in the accommodation sector were notified of short-time working, cf. on this and other industry branches Federal Employment Agency, Inanspruchnahme konjunkturelles Kurzarbeitergeld (fn. 37), p. 7.

40 On loss of salary see Sec. 96 Para. 1 Sent. 1 SGB III; it may, according to No. 4 "also amount to 100 percent of the monthly gross salary". Hesitant on the possibility of "short-term work zero" ("Kurzarbeit Null"), i.e. being temporarily laid off while receiving short-term work benefits, see Federal Social Court (*Bundessozialgericht* – BSG) of 14 September 2010, B 7 AL 21/09 R, recital 12 et seq.; clarifying remarks in BT Dr. 17/6277, p. 86.

41 In September, the BA already observed a decrease in unemployment for the first time since the outbreak of COVID-19. See for the mode of calculation of specific "Corona effects" on the unemployment rates Arbeitsmarktbericht September 2020, p. 12 et seq.; on this basis, the BA follows that there have been no more observable effects of the pandemic since July 2020.

tions and at levels of between 70% and 97%[42]. Under the Second Social Protection Package[43] which was adopted on 20 May 2020[44], *Kug* was raised ("topping-up"), in the event of a loss of income of at least 50%, from the previous 60% (or, respectively, 67% for persons who have at least one child)[45] to 70% (or 77%) after the fourth reference month, and to 80% (or 87%) after the seventh reference month[46]. Furthermore, the possibility of earning additional income up to the full amount of the usual monthly income in addition to *Kug* by means of a second job is to be prolonged until December and extended to all jobs[47]. It is remarkable that through the realisation of these measures, *Kug* is not only higher than ever before – with the argument that more often than in the past, many people will no longer be able to work at all[48]; but also that a longer period of absence leads to higher benefits, which reverses the approach otherwise adopted for compensation payments. This can be explained only in part by the fact that the extension of benefits is relatively limited in time. In fact, we can observe that the political community takes over specific responsibility as the intention is to provide "targeted support"[49] for employees who have been affected by the pandemic in an exceptional way, obviously with the aim of protecting those affected from having to claim so-called basic security benefits, i.e. social assistance[50].

In 2020, both generous conditions for granting the short-time work benefit were prolonged. The Second Regulation on the Facilitation of

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42 Cf. overview provided by the German Trade Union Confederation, DGB.

43 Information provided by the German Federal Ministry of Labour and Social Affairs, BMAS.

44 Law on Social Measures to Fight the Corona Pandemic (Social Protection Package II) (BGBl. I, p. 1055); see corresponding draft of 27 April 2020, BT Dr. 19/18966.

45 Sec. 105 SGB III; on the requirements for the increase see Sec. 149 No. 1 SGB III in connection with Sec. 105 No. 1 SGB III.

46 Sec. 421c Para. 2 SGB III.

47 Sec. 421c Para. 1 Sent. 1 SGB III; the relaxation of the supplementary income limit initially referred to "systemically important occupations and sectors"; for the interpretation of these terms, see Federal Employment Agency (BA), Weisung 202003015 of 30 March 2020 item 2.1.8, and on its ambiguity *Löwisch*, Das Gesetzespaket zum Sozialschutz, BB 2020, pp. 948, 950; cf. also below, fn. 71. Cf. on additional income *Zieglmeier*, Corona-Schutzschirm: Kurzarbeit und Kurzarbeitergeld, DStR 2020, pp. 729, 733 et seq.

48 BT Dr. 19/18966, p. 26.

49 BT Dr. 19/18966, p. 27.

50 On this motive see blog entry by *Bispinck/Schulte* of the Institute of Economic and Social Research (WSI) of 14 April 2020.

Short-Time Work of 12 October 2020 (2nd *KugBeV*[51]) increased, until the end of 2021, the duration of the benefit for up to a maximum of 24 months in order to build 'a bridge of job-security and to secure long-term planning'.[52] With its amendment of 15 September 2021, the further extension lasted until 31 March 2022. At the same time, the increase in the benfit was successively extended, most recently also until 31 March 2022.[53] The most recent prolongation goes back to a law of 23 March 2023 and allows for a maximum period of 28 months of short-time work benefit payment until 30 Juni 2022, and for the better condition including the possibilty to extend the duration of benefits through the respective regulation until 30 September 2022.[54]

On annual average, 2.94 million persons received short-time work benefits in 2020.[55] According to the rules laid down in Social Code Book III (*SGB III*), short-time work benefits are financed through contributions from employers and employees (Sec. 340 SGB III). Yet, the intake from contributions was not sufficient in order to cover the expenses. The Federal Employment Agency spent a total of EUR 61 billion in 2020 to cushion the impact of the pandemic on the labour market. This expenditure was offset by income of around EUR 33.7 billion, so that the deficit of EUR 27.3 billion had to be made up. Around EUR 20 billion could be used from the Federal Employment Agency's reserves in 2020. The remaining EUR 7 billion had to be covered from the federal budget, first as a sort of liquidity assistance which then had been transformed into a non-repayable subsidy at the end of 2021.[56] The reserve came from contributions paid in previous years that had not to be spent in the years of economic

51 BGBl. I, p. 2165.

52 Information of the Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales) on the 2nd Act regulating Short-Time Work Benefit Receipt Duration.

53 Last amended by Art. 12a of Gesetz zur Stärkung der Impfprävention gegen COVID-19 und zur Änderung weiterer Vorschriften im Zusammenhang mit der COVID-19-Pandemie of 10 December 2021 (BGBl. I, p. 5162).

54 Law to Extend Special Regulations in Connection with the COVID-19 Pandemic on Short-Time Work Benefits and Other Benefits (*Gesetz zur Verlängerung von Sonderregelungen im Zusammenhang mit der COVID-19-Pandemie beim Kurzarbeitergeld und anderen Leistungen*) of 23 March 2022 (BGBl. I, p. 482).

55 Press Release of the Federal Employment Agency (Bundesagentur für Arbeit) of 4 January 2022.

56 Based on Sec. 12 of the Budget Law 2021, granting exemption from the general rule laid down in Sec. 365 *SGB III* which only allows for deferred payment, see press release of *Bundesagentur für Arbeit* of 26 February 2021.

growth. Its overall amount was EUR 25.8 billion. The remaining sum of around EUR 6 billion was then spent in 2021.[57] In 2022, the Federal Employment Agency will remain without any reserve fund, and it started into the year with an estimated deficit of around EUR 1.3 billion.[58]

b) *Other Measures in a Divided Labour Market*

The job support measures also include the new regulation in Sec. 56 Para. 1a IfSG, according to which persons who have to look after children themselves due to the closure of childcare facilities or schools and who suffer a loss of earnings as a result, receive compensation of 67% of their average monthly income for a maximum of six weeks[59]. The time limit is reminiscent of the right to continued pay of wages[60], without any explanations having been given by the legislator[61].

The situation is somewhat different with regard to efforts to counteract pandemic-related changes in the demand for labour[62]. These include, on the one hand, the expansion of marginal employment through the Social

57 State subsidies became necessary in 2020 as the *Bundesagentur für Arbeit* had not been able to spent the whole amount of its reserves immediately, due to a longer-term investment strategy, see press release of *Bundesagentur für Arbeit* of 26 February 2021.

58 See WirtschaftsWoche of 22 January 2022. Also cf. 2022 budget plan of the Federal Employment Agency.

59 At a monthly maximum amount of EUR 2,016, Sec. 56 Para. 2 Sent. 3 IfSG and, upon receipt of insurance protection according to Sec. 57 Para. 6 IfSG. On the background under labour law see *Hohenstatt/Krois*, Lohnrisiko und Entgeltfortzahlung während der Corona-Pandemie, NZA 2020, pp. 413, 414 et seq.

60 Sec. 3 Para. 1 Law on Continued Pay of Wages (*Entgeltfortzahlungsgesetz* – EntgFG). On the configuration and open questions see *Fuhlrott/Fischer*, Arbeitsrecht und Corona 2.0 – Weitere gesetzliche Änderungen, NZA 2020, pp. 409, 411.

61 Rather, the draft (BT Dr. 19/18111, p. 26) contains the apodictic sentence: "The amount of a compensation benefit provided by the state is to be limited."

62 In this context, mere reference should be made to the provisions of the act on the use of facilities and social services to combat the coronavirus SARS-CoV-2 crisis ("Gesetz über den Einsatz der Einrichtungen und sozialen Dienste zur Bekämpfung der Coronavirus SARS-CoV-2 Krise", which is part of the Social Protection Package) in connection with a mandate to guarantee sufficient medical services (Social Services Provision Act = *Sozialdienstleister-Einsatzgesetz* – SodEG) of 27 March 2020 (BGBl. I, pp. 575, 578) and stipulated in the law on the compensation of COVID-19-related financial burdens of hospitals and other health care facilities (COVID-19 Hospital Relief Act = *COVID-19-Krankenhausentlastungsgesetz*) of 27 March 2020 (BGBl. I, p. 580).

Protection Package[63], which is primarily intended to benefit the agricultural sector[64], the expansion of additional income opportunities for pensioners[65], the change in the crediting of income for recipients of student funds under the Federal Education Assistance Act (*BAföG*)[66] and flexibilisation of parental leave[67]. Another aspect is the increased flexibility of working hours[68]. On the basis of the COVID-19 Working Time Regulation[69], the working day can be extended, rest periods shortened and work on Sundays and public holidays can be arranged for[70]. All this applies to certain activities which, in this context, are not labelled as "system-relevant"[71] but are listed in detail as being in the special general interest[72].

The amendment is a response to the fact that, although the pandemic has resulted in the loss of a lot of work, other activities are in greater demand than before, and that meeting this demand may be in the public interest, especially for the supply of essential goods and services to the population. Employers have been given the option of granting tax-free subsidies; these were, in principle, subject to social security contributions

63 Sec. 115 SGB IV in the version amended by Art. 3 of the Law for Facilitated Access to Social Security and the Use and Protection of Social Service Providers Due to the Coronavirus SARS-CoV-2 of 27 March 2020 (*Gesetz für den erleichterten Zugang zu sozialer Sicherung und zum Einsatz und zur Absicherung sozialer Dienstleister aufgrund des Coronavirus SARS-CoV-2*) of 27 March 2020 (BGBl. I, p. 575).

64 BT Dr. 19/18107, p. 27.

65 Sec. 302 Para. 8 SGB VI in the version amended by the Social Protection Package (fn. 63). On this see *Schlegel*, Ausweitung der Hinzuverdienstmöglichkeiten für Rentner, NZS 2020, p. 336 et seq.

66 Sec. 53 Para. 2 BaföG in the versions amended by the law on the compensation of COVID-19-related financial burdens of hospitals and other health care facilities (COVID-19 Hospital Relief Act –COVID-19-Krankenhausentlastungsgesetz) of 27 March 2020 (BGBl. I, p. 580).

67 Sec. 27 Law on Parental Pay and Parental Leave (*Bundeselterngeld- und Elternzeitgesetz* – BEEG) as amended by Law of 20 May 2020 (BGBl. I, p. 1061).

68 By way of introducing the power to issue statutory instruments in Sec. 14 Para. 4 Law on Working Time (*Arbeitszeitgesetz* – ArbZG).

69 Regulation on derogations from the Working Time Act as a result of the COVID-19 pandemic (COVID-19- ArbZV) of 7 April 2020 (BAnz. AT of 9 April 2020 V2).

70 Sec. 1 Para. 1 Sent. 1, 2 Sent. 1 and 3 Para. 1 Sent. 1 COVID-19-ArbZV.

71 Cf. on this fn. 47 above; generally also *Hildebrandt/Schneider*, „Systemrelevanz" und „Kritische Infrastruktur" in den Corona-Verordnungen der Länder und ihre Konkretisierung durch die BSI-KritisV, COVuR 2020, p. 78 et seq.

72 Sec. 1 Para. 1 Sent. 2 and Para. 2 COVID-19-ArbZV.

but later on exempted.[73] A special bonus for care workers was introduced in May.[74] The possibilities under labour law for ordering overtime remain unchanged[75] – just as, conversely, with regard to other activities no new possibilities have been created for partially bridging the loss of work by ordering leave.

3. *Supporting the Economy*

a) *Putting up a "Protective Umbrella"*

The Federal Government has, within the framework of the aid declared compatible with the internal market by the European Commission[76], used the consultations on the supplementary budget, among other things, to set up an emergency aid programme for micro-enterprises from all sectors of the economy, self-employed persons, and members of the liberal professions with up to ten employees, as well as farmers. The first package (which introduced so-called "emergency aid", now also referred to as "bridging aid I") amounts to a volume of EUR 50 billion and provided for a one-off payment for three months of EUR 9,000 for companies with up

73 On the basis of a communication by the Federal Treasury (BMF). Critical with regard to the content and the initially missing legal basis *Haupt*, Zusätzlicher steuerfreier Zuschuss für Arbeitnehmer wegen Corona per Verwaltungsanweisung – ein populistischer Schnellschuss, DStR 2020, pp. 967, 968 et seq. See now Law on the Implementation of Tax Law Support Measures in the Corona Crisis (*Gesetz zur Umsetzung steuerlicher Hilfsmaßnahmen zur Bewältigung der Corona-Krise – Corona-Steuerhilfegesetz*) of 19 June 2020 (BGBl. I, p. 1385).

74 Sec. 150a SGB XI introduced by Art. 5 of the second law on the protection of the population in the event of an epidemic situation of national import (*Zweites Gesetz zum Schutz der Bevölkerung bei einer epidemischen Lage von nationaler Tragweite*) of 19 May 2020 (BGBl. I, p. 1018).

75 *Greiner*, Änderung des Arbeitszeitgesetzes, Erlass einer COVID-19-Arbeitszeitverordnung, NZS 2020, pp. 338, 339; cf. also on the possibilities *Sagan/Brockfeld*, Arbeitsrecht in Zeiten der Corona-Pandemie, NJW 2020, pp. 1112, 1115. A more open approach on the possibilities of imposing "company holidays" *Dehmel/Hartmann*, Das Coronavirus (COVID-19) auf dem Vormarsch, BB 2020, pp. 885, 888.

76 Cf. above, I.3.a). On this see official statements of the Federal Ministry for Economic Affairs and Energy (BMWi) on the Federal Framework "small amounts of compatible aid" ("Bundesregelung Kleinbeihilfen 2020") of 26 March 2020 and "guarantees 2020" ("Bundesregelung Bürgschaften 2020") of 20 March 2020, BAnz. of 31 March 2020 B 1 and B 2.

to five employees (full-time equivalents), and of up to EUR 15,000 for those with up to ten employees (full-time equivalents). In accordance with the EU legal framework, the prerequisite is that companies had not been in economic difficulties prior to March 2020[77]. On the basis of an administrative agreement between the Federal Government and the *Länder*, the aid was paid out via the *Länder* authorities (in some cases including local authorities); applications have to be handed in until end of May 2020.[78] They are supplemented by state-owned programmes, some of which also include larger companies.[79] As a result of this, but also due to different regulations regarding accumulation or crediting, implementation problems arose not only in the first few days. The bottom line is that the exact amount of the subsidy depends on the location of the affected companies.[80] What the subsidies have in common, however, is that they serve to compensate for a shortfall in current material costs, but not in personnel costs.[81]

In July 2020, the first package was supplemented by a bridging aid programme for small and medium-sized enterprises (*Corona-Überbrückungshilfe für kleine und mittelständische Unternehmen* – "bridging aid II")[82] providing a further volume of EUR 24.6 billion. Enterprises meeting the conditions as well as self-employed individuals can claim for compensation of accrued costs (rents, incidental expenses, but *not* wages) for up to three months and up to EUR 150,000. The maximum amount for enterprises with up to five employees (full-time equivalents) is EUR 3,000 per month, and up to EUR 5,000 for those with up to ten employees (full-time equivalents). Eligibility condition is a loss of sales of at least 60% in June, July and / or August, compared to the respective months of the previous year; with the exclusion of enterprises with sales of more than EUR 750 billion

77 Cf. the key points decision by the cabinet of 23 March 2020.

78 Overview on this in a joint press release by the the Federal Ministry for Economic Affairs and Energy (BMWi), the Federal Treasury (BMF) and the Bavarian Ministry of Economic Affairs, Regional Development and Energy (BayStMWi) of 29 March 2020. On the modalities see information of the Federal Government.

79 In Baden-Württemberg up to 50 employees; in Bavaria up to 250.

80 The maximum amount in Bavaria is EUR 50,000 (for up to 250 employees), in North Rhine-Westphalia it is EUR 25,000 (for up to 50 employees) and in Baden-Württemberg it is EUR 30,000 (for up to 50 employees).

81 Cf. below, fn. 121.

82 See cornerstones of the Federal Treasury (*Bundesfinanzministerium*); see also *Jahn*, Corona-Erleichterungen beim Bezug von Kurzarbeitergeld werden verlängert, NWB 2020, p. 2174.

and those that had already been in difficulties[83] before 31 December 2019. Payments from the first and the second package could be cumulated but had to cover different damages (accrued costs). Applications had to be filed with federal agencies, the *Länder* are still competent for the payment.[84] At the beginning of October 2020, about more than 124,000 applications had been filed with a volume of EUR 1.5 billion; the actual payments of bridging aids amounted to EUR 982 million, and those out of the emergency aid programme to about EUR 13.8 billion.[85]

With the upcoming new wave of the pandemic in autumn 2020, the Federal Government decided to prolong the measures and to introduce follow-up allowances (*Corona-Überbrückungshilfe für kleine und mittelständische Unternehmen* – "bridging aid III and III plus"). They were based on the rules described above; in the case of Bridging Aid III, the group of eligible persons was enlarged and a capital grant was provided. In addition, and as a reaction to lockdowm measures, the Federal Government introduced so-called extraordinary economic aids for the months of November and December 2020 (*November- und Dezemberhilfe*) which was intended to provide further support to companies and the self-employed particularly affected by the Corona restrictions. These aids amounted to 75% of average weekly sales in the respective month of the previous year, up to a maximum of EUR 1 million.[86] These aids were not linked to actual operating costs incurred, but to sales losses. Finally, an allowance in order to support the restart of economic activities (*Neustarthilfe* and *Neustarthilfe Plus*) was intended help those self-employed who were not eligible for bridging assistance as they did not have to cover actual costs.

The bridging aids were extended on an ongoing basis, so that at the beginning of 2022, Bridging Aid IV continued to support companies and the self-employed in all sectors with annual sales of up to EUR 750 million in 2020.[87] The above-mentioned programmes have been supplemented by state programmes for cases of specific hardships (*Härtefallprogramme* of the

83 For the term 'undertaking in difficulty' see Art. 2 No. 18 of Commission Regulation (EU) No. 651/2014 of 17 July 2014 (ABl. L 187/1 of 26 June 2014).

84 See implementation notes as annex to the administrative agreement (*Verwaltungsvereinbarung*) between the Federation and the *Länder*.

85 BMWi (IC3) – BMF (IA5), *Corona-Pandemie Dashboard Wirtschaft Deutschland*, 6 October, 6 p.m., pp. 1, 2.

86 Cf. information of the Federal Government.

87 Cf. joint press release of the Federal Ministry for the Economy and Climate Protection and of the Federal Treasury of 7 January 2022. Special conditions will be in place for the pyrotechnic industry as a result of the ban on the sale of New Year's Eve fireworks.

Länder).[88] Until the end of 2021, the aids paid out of the federal budget summed up to an amount of about EUR 55 billion.[89] According to information provided by the Federal Government, the following specific payments have been made (as of 31 December 2021 for Corona Soforthilfe and as of 19 January 2022 for all others)[90]:

Programme	**Eligibility period**		**Volume spent €**
Corona-Soforthilfe	2020	March to May	13.43 bn.
Überbrückungshilfe I	2020	June to August	1.24 bn.
Überbrückungshilfe II	2020	September to December	2.41 bn.
Überbrückungshilfe III	2020	November to June 2021	27.23 bn.
Überbrückungshilfe III Plus	2021	July to December	1.73 bn.
Novemberhilfe	2020	November	6.66 bn.
Dezemberhilfe	2020	December	7.17 bn.
Neustarthilfe	2021	January to June	1.60 bn.
Neustarthilfe Plus 3. Quartal	2021	July to September	0.29 bn.
Neustarthilfe Plus 4. Quartal	2021	October to December	0.20 bn.
Härtefallhilfen der Länder	2020	March to March 2022	0.07 bn.

Without going into details, it should be noted that two groups of particularly vulnerable persons do not, or at least only partially, qualify for the above-mentioned programmes and have to rely on specific measures. The first consists of artists and professionals in the cultural sector; they are addressed by support programmes of the *Länder*,[91] although their support remained rather modest,[92] and many practical problems with the implementation of such programmes have been reported. As far as benefits based on federal laws are concerned, they could only claim the above-mentioned *Neustarthilfen* and social assistance (see 4.). At least, Federal Government introduced a special fund for cultural events with a budget of EUR 2.5 billion, covering both support for those events that had to take place with a limited number of spectators and losses for events that had to be cancelled

88 For an overview see: Härtefallhilfen. Förderprogamm der Länder.

89 Communication from the Federal Government of 4 January 2022 on "*Corona-Wirtschaftshilfen der Bundesregierung*".

90 See answer of State Secretary *Sven Giegold* in a Q&A session of the German Parliament, on the question by MP *Uwe Schulz*, BT-Drs. 20/534, p. 13.

91 Cf. for Bavaria, Guidelines for Granting Financial Aid for Artists Hit by COVID-19 (Richtlinien für die Gewährung von finanziellen Hilfen für die von der Corona-Virus-Pandemie [SARS-CoV-2] betroffenen freischaffenden Künstlerinnen und Künstler – "Künstlerhilfsprogramm") of 27 May 2020 (BayMBl. 2020 No. 301).

92 E.g. in Bavaria up to EUR 1,000 per month for up to three months, overall volume EUR 140 million.

altogether.[93] However, a major part of this fund was not utilised.[94] The second group are students who received support from a bridging aid set up by the Federal Ministry for Education and Research[95]; it had a volume of EUR 182 million and consisted of two elements: a non-repayable grant of EUR 100 to EUR 500 per month for June, July, August and September 2020; and a study loan (*KfW-Studienkredit*)[96] covering up to EUR 650 per month which is interest-free, but only until the end of 2021. Up until August 2021, more than 403,000 applications from 108,000 students had been accepted, which amounts to about 3 percent of all students.[97] The bridging aid expired as scheduled on 30 September 2020.[98] The student loan remains interest-free until the end of September 2022.[99]

For larger companies, the Federal Government set up an economic stabilisation fund at the same time as the emergency aid[100]. It is thus building on the measures it took to support financial market companies in the course of the last financial crisis[101]. The new fund is intended to support companies in the real economy, provided they were not in economic difficulties by the end of 2019[102]. It aims to preserve jobs and supplier structures under the assumption that companies "increasingly face liquidity

93 Cf. No. 3 of the Execution Instructions for the Granting of Aid to Organisers of Cultural Events – "Special Fund of the Federation for Cultural Events" (Ziffer 3 der Vollzugshinweise für die Gewährung von Hilfen für Veranstalter von Kulturveranstaltungen ("Sonderfonds des Bundes für Kulturveranstaltungen")).

94 See www.spiegel.de of 12 January 2022, Coronamilliarden für die Kultur werden bislang kaum genutzt.

95 See additional implementation guidelines (*Zusätzliche Nebenbestimmungen zur Durchführung der Überbrückungshilfe für Studierende in pandemiebedingten Notlagen*) of 20 August 2020.

96 See information of the *Kreditanstalt für Wiederaufbau – KfW*.

97 See press release of Federal Ministry of Education and Research of 25 August 2021.

98 Ibid.

99 See information of of Federal Ministry of Education and Research of 1 December 2021.

100 Law on the establishment of an economic stabilisation fund (Economic Stabilisation Fund Act – Wirtschaftsstabilisierungsfondsgesetz – WStFG) of 27 March 2020 (BGBl. I, p. 543).

101 Through the Financial Market Stabilisation Acceleration Act (Finanzmarktstabilisierungsbeschleunigungsgesetz – FMStG) of 17 October 2008 (BGBl. I, pp. 1982, 1986).

102 Sec. 25 Para. 1 Sent. 3 StFG. The definition under Union law applies, cf. Guidelines on State Aid for Rescuing and Restructuring Non-Financial Undertakings in Difficulty (*Leitlinien für staatliche Beihilfen zur Rettung und Umstrukturierung nichtfinanzieller Unternehmen in Schwierigkeiten*) of July 2014 (OJ C 249/1).

shortages through no fault of their own as a result of measures to reduce the speed at which the coronavirus is spreading" and are "exposed to a risk of insolvency that threatens their very existence"[103]. A prerequisite for stabilisation measures[104] is that other financing options are not available and that these "provide clear independent prospects of continuing operations after the pandemic is over"[105]. The federal states have followed this example. With the Law on the Bavaria Fund and the Bavarian Finance Agency (*BayernFonds- und Finanzagentur-Gesetz – BayFoG*)[106], Bavaria has set up a so-called *BayernFonds* (Bavaria Fund), which serves to "stabilise companies in the real economy in Bavaria by overcoming liquidity bottlenecks and creating the framework conditions for strengthening the capital base of companies" (Art. 2 Para. 1 BayFoG). The state of North Rhine-Westphalia has also provided a special fund[107].

The two measures highlighted here are supplemented by further loan programmes with an 80 or 90 percent risk assumption by the German Reconstruction Loan Corporation (*Kreditanstalt für Wiederaufbau – KfW*)[108], various tax breaks[109] and a guarantee programme for farmers[110]. All in all, the Federal Government refers to a "protective shield"[111] or, respectively, a "protective umbrella for the economy with grants, guarantees, tax relief

103 BT Dr. 19/18109, p. 22. Cf. also Sec. 25 Para. 2 Sent. 1 and 2 StFG, whereby companies "which benefit from stabilisation measures of the Economic Stabilisation Fund ... must guarantee a sound and prudent business policy" and "in particular intend to contribute to stabilising production chains and securing jobs".

104 These are guarantees of up to EUR 400 billion for debt instruments and justified obligations of companies to remedy liquidity bottlenecks and support refinancing on the capital market (Sec. 21 Para. 1 StFG) and for the recapitilisation of enterprises (Sec. 22 Para. 1 StFG).

105 Sec. 25 Para. 1 Sent. 1 and 2 StFG.

106 GVBl. 2020, p. 230.

107 Through Act on the Establishment of a Special Fund for the Financing of all Direct and Indirect Consequences of Coping with the Corona Crisis (NRW Rescue Scheme Act, GV 2020, p. 189).

108 With differentiation according to the company's amount of years in business, cf. information provided by KfW.

109 Such as adjustments of advance payments, deferrals and tax exemptions of premiums for employees, cf. information provided by BMF.

110 Combined with loans of up to EUR 3 million; cf. information provided by Rentenbank.

111 Joint press release of BMWi and BMF of 13 March 2020.

and unlimited liquidity assistance", which it has put up to help those who "are facing economic difficulties"[112].

Outside this protective umbrella and in addition to the improvements to the granting of the short-time work benefit discussed above – which also include the assumption of social security contributions by the Federal Employment Agency (above, 2.a)) – the umbrella organisation *Spitzenverband Bund der gesetzlichen Krankenkassen* (GKV-Spitzenverband – Federal Association of Health Insurance Funds) has granted the possibility of deferring the payment of social security contributions already owed under simplified conditions. However, this is subject to the proviso that other support measures are not sufficient and that without the deferral, the collection of contributions "would be associated with considerable hardship for the employer"[113].

b) Legal Character

Neither the above-mentioned grants from the emergency aid programmes of the Federal Government and the *Länder* nor the stabilisation measures of the Economic Stabilisation Fund differ according to the direct cause of the economic difficulties associated with the pandemic. They accompanied the measures to combat the epidemic. In mid-March 2020, the Federal Government and the *Länder* had already agreed on joint guidelines according to which many facilities (bars, discotheques, theatres, trade fairs, public sports facilities, etc.) were to be closed to the public; following an extension decided on 22 March, this was also to apply to catering and personal hygiene service companies[114]. The restrictions were put into legally binding form vis-à-vis those affected by the *Länder*, for example in Bavaria first by a general ruling[115] and then by a regulation[116]. These

112 With a general overview provided in the information for companies and self-employed persons published on the homepage. Cf. also charts provided by BMF.

113 Newsletter (Rundschreiben 2020/197) of GKV-Spitzenverband of 24 March 2020, p. 3.

114 Cf. information provided by the Federal Government.

115 General ruling (Allgemeinverfügung) of BayStMGP of 16 March 2020, Az. 51-G8000-2020/122-67, amended by official statement of 17 March 2020, Az. Z6a-G8000-2020/122-83, concerning the prohibition of public events and operating bans due to the corona pandemic; on their lifting see official statement of 3 April 2020 (BayMBl. No. 174).

116 Operating bans in line with Sec. 2 of the Bavarian Infection Prevention Measures Regulation (*Bayerische Infektionsschutzmaßnahmenverordnung* – BayIfSMV) of 27

acts had their legal basis in Sec. 32 IfSG[117] – which was in principle (still) accepted in the first time[118] although this statutory provision conferring powers to the executive was quite general and rather vaguely formulated which raised some concern with regard to the rule of law and the necessary democratic legitimisation. The legislator therefore amended the existing law by introducing a new legal basis for statutory instruments with Sec. 28a IfSG.[119] The Federal *Länder* Conference agreed in November 2020 on a so-called "lockdown light" to counter the ever-increasing infection figures in the fall of 2020 and to allow Christmas to be celebrated under "normal conditions". When the accompanying contact restrictions failed to achieve the desired success, the states, by mutual agreement, moved to a hard, second lockdown shortly before Christmas 2020, which lasted until May 2021. With the start of the vaccination campaign, protective measures started to change their nature and were, first of all, intended to restrict access to shops, restaurants and other public places, requiring proof of vaccination, recovery or negative testing in order to obtain permission to enter (2G, 3G, 3Gplus). Since the spreading of the Omicron variant, the infection rate has been increasing at the beginning of 2022 whilst the number of those in need of intensive care beeds stayed relatively low. As a result, the Federal Government decided to reform the Federal Infection

March 2020 (BayMBl. No. 158) and in line with Sec. 2 of 2nd BayIfSMV of 16 April 2020 (BayMBl. No. 205). Cf. now also Sec. 4 of 3rd BayIfSMV of 1 May 2020 (BayMBl. No. 239). The (for the present) latest one is the 16th Regulation of 1 April 2022 (BayMBl. No. 210).

117 Which was "adjusted" via the law of 27 March 2020 (fn. 4), and came into force on 28 March 2020, if only for reasons of "clarity of legal rules", cf. BT Dr. 19/18111, p. 25.

118 Cf. for more details on this, the amendments and the forms of action *Rixen*, Gesundheitsschutz in der Coronavirus-Krise – (Neu)-Regelungen des Infektionsschutzgesetzes, NJW 2020, p. 1097, 1098 et seq. However, the Bavarian Administrative Court of Justice (BayVGH) had already pointed out quite early that it appeared "doubtful whether the reservation of the law as an essential principle of a parliamentary form of government can be maintained without the enactment of a law on measures by the parliamentary federal legislature as a legal basis for measures with medium and long-term effects", Decision of 27 April 2020, 20 NE 20.793, recital 45. See for the landmark decision of the Federal Constitutional Court in this context fn. 11.

119 Introduced by the Third Law on the Protection of the Population in the Event of an Epidemic Situation of National Concern (*Drittes Gesetz zum Schutz der Bevölkerung bei einer epidemischen Lage von nationaler Tragweite*) of 18 November 2020 (BGBl. I, p. 2397).

Protection Act once more[120], to end the restriction measures to a large extent and to place the competence to decide on new measures in the hands of the state parliaments under narrow conditions (Sec. 28a Para. 8 IfSG new).

However, the payment of the afore-mentioned benefits in the framework of emergency and bridging programmes was not directly linked to such restrictions and lockdown measures. To receive them, it was sufficient to evidence a threat to the economic existence due to "liquidity bottlenecks as a result of the corona crisis"[121]. It was not necessary to establish, and to prove, a causal link between a specific act of any *Länder* authority restricting personal and economic freedoms on the one hand, and a loss of income or any other damage on the other. This broad definition of the qualification conditions for benefits was, and still is, certainly due to the fact that in an exceptional situation like the outbreak of an epidemic, financial support has to be provided to a broad group of people as quickly and as unbureaucratically as possible.

It might also be an expression of the assumption that this form of financial support is not about the fulfilment of a legal obligation. Payments in the context of the mentioned emergency and bridging programmes are described as voluntary and as being "equitable benefit"[122]. This category of benefits has its legal roots in budgetary law, as a provision of the German Federal Budget Law (*Bundeshaushaltsordnung*) states that benefits for rea-

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120 Act of 18 March 2022 (Federal Law Gazette = *Bundesgesetzblatt* – BGBl. I, p. 466).

121 Cf. No. 1 of the guidelines for the granting of bridging aid by the Federal Government for companies and solo self-employed persons in Bavaria who have incurred losses due to the corona virus pandemic (SARS-CoV-2), official statement of 3 April 2020 (BayMBl. No. 175); according to No. 2.2, an applicant must "affirm that he has got into economic difficulties as a result of the corona pandemic which threaten his existence as the continuous income from business operations is expected to be insufficient to pay the liabilities in the three months following the application from the continuous commercial material and financial expenses (e.g. commercial rents, leases, leasing instalments) (liquidity bottleneck)". More generally, the key points of the BMWi and the BMF state that federal subsidies should be used "to secure the economic existence of the applicants and to bridge acute liquidity bottlenecks such as, among other things, ongoing operating costs such as rents, loans for business premises, leasing instalments, etc. (also complementary to the *Länder* programmes)".

122 Cf. e.g. I.1 of the relevant guideline in Schleswig-Holstein (Richtline zur Gewährung von Überbrückungshilfen als Billigkeitsleistung für von der Corona-Krise 03/2020 in ihrer Existenz besonders geschädigte kleine Unternehmen, Angehörige der Freien Berufe und Soloselbstständige mit finanzieller Unterstützung des Bundes, ABl. SH 2020, p. 812): "in Form einer Billigkeitsleistung".

sons of equity may only be granted if special funds are made available for this purpose.[123] In this sense, payments out of the COVID-19 programmes are not intended to suggest state liability. At the same time, there have always been specific legal provisions for 'social compensation' in the context of epidemic crises, namely in Art. 56 IfSG,[124], which promises "compensation in money" to a person who, on the basis of this law, "is subject to prohibition in the exercise of his or her previous occupation and thereby suffers a loss of earnings"[125]. Sec. 56 IfSG is only applicable to administrative measures based on specific other provisions of the statute, and not to general security measures such as the above-mentioned lock-down orders and operating bans.[126] In the meantime, this result was confirmed by the German Federal Court of Justice in its ruling of 17 March 2022.[127]

The origins of the corona programmes and of the compensation under Sec. 56 IfSG are otherwise the same: the compensation provision was also designed as an "equity regulation"[128], which was intended to replace certain claims founded on state liability (general and unwritten *Aufopferungsanspruch*).[129] And it is remarkable that the origins of this provision date back to the second last turn of the century and the time when the Law on Combating Dangerous Diseases (*Reichsgesetz betreffend die Bekämpfung gemeingefährlicher Krankheiten*, in short: *Reichsseuchengesetz*) of 30 June

123 Sec. 53 Bundeshaushaltsordnung (Federal Budget Code).

124 The rule was first established with the *Reichsseuchengesetz* of 1900 (Sec. 28) and was taken over into the *Bundesseuchengesetz* of 1961 (Sec. 49), the predecessor of the IfSG; see for the history and the contents *Becker*, Öffentliches Entschädigungsrecht, in: Huster/Kingreen (eds.), Handbuch des Infektionsschutzrechts, 2nd ed. 2022, Sec. 9 Para. 45 et seq., 109 et seq. with further references. Clearly not relevant here is the compensation regulation in Sec. 65 IfSG concerning the destruction of contaminated objects; for more detail see *Cornils*, Corona, entschädigungsrechtlich betrachtet, On Matters Constitutional (Verfassungsblog) of 13 March 2020.

125 The exact amount is regulated in Sec. 56 Paras. 2-4 IfSG.

126 Different and for direct applicability some voices raised in the early literature in 2020; see now comprehensively with complete references *Becker*, in: Huster/Kingreen, HIfSR (fn. 124), Sec. 9 Para. 109 et seq.

127 *Bundesgerichtshof* (BGH), III ZR 79/21.

128 Explicitly BT Dr. III/1888, p. 27, with reference to the fact that the purpose of the provision is "not to compensate fully for the damage, but to provide a certain degree of protection from material hardship to those affected by a prohibition of occupation".

129 BT Dr. 14/2530, p. 88 on the revised version as amended by IfSG.

1900[130] had been discussed.[131] Already then, a special commission set up by the Parliament in order to take care of the matter argued in favour of the predecessor provision of Sec. 56 IfSG (Sec. 28 RSeuchG) that, even if it was not possible to provide comprehensive compensation, it nonetheless did not consider it appropriate to waive compensation altogether, stating that "it would be just and equitable to award compensation to such persons as are prevented by direct police interference with their personal freedom of movement and the power to dispose of their labour from performing their regular day's work and earning the wages they would have been certain to earn if they had been free to move about unimpeded".[132]

4. *Social Protection*

To accompany the economic and social policy measures summarised above, and to improve the situation of people who nevertheless lose their job or employment, access to various social benefits is being simplified or temporarily extended. The first group includes changes brought about by the First Social Protection Package[133] to child benefits[134], and the second group includes the prolongation of the receipt of unemployment benefits[135] as provided for in the Social Protection Package II[136]. This is intended to prevent the unemployed from "being directly referred to the basic security for job-seekers […] at a time when the possibilities and

130 RGBl. 1900, p. 306.

131 See for the procedure *Hess* Seuchengesetzgebung, 2009, pp. 292 et seq.

132 Minutes of the *Reichstag* (*RT Prot.*) B. 170, 1898/1900, 179th Meeting on 24 April 1900, p. 5085: "[es] entspreche der Gerechtigkeit und Billigkeit, wenn solchen Personen eine Entschädigung zugesprochen werde, die durch direkte polizeiliche Eingriffe in ihre persönliche Verkehrsfreiheit und in die Verfügungsgewalt über ihre Arbeitskräfte daran gehindert würden, ihrer regelmäßigen Tagesarbeit nachzugehen und den im Falle unbehinderter Verkehrsfreiheit ihnen sicher in Aussicht stehenden Lohn zu verdienen".

133 Gesetz für den erleichterten Zugang zu sozialer Sicherung und zum Einsatz und zur Absicherung sozialer Dienstleister aufgrund des Coronavirus SARS-CoV-2 (Sozialschutz-Paket) of 27 March 2020 (BGBl. I, p. 575).

134 By linking it to the previous month's income and expanding the range of authorisations, Sec. 20 Law on Child Benefit (*Bundeskindergeldgesetz* – BKGG) as amended by Art. 6 of the Social Protection Package I.

135 By three months via a new Sec. 421d SGB III.

136 See fn. 44.

opportunities for finding and taking up new employment are seriously restricted"[137].

Already with the Social Protection Package I, access to this scheme of social assistance (basic security or basic provision for job-seekers as regulated in Social Code Book II) has been facilitated in a particularly comprehensive and early manner[138]. In addition to a series of procedural simplifications, the assessment of whether a rent is appropriate has been suspended[139] for an initial period of six months[140]. Assets are not taken into consideration if the applicant declares that s/he does not have substantial assets[141]. What is to be regarded as "substantial" remained completely open both in the legislative procedure[142] and in initial reports[143]. The legislator's main aim was to provide for benefits as quickly and unbureaucratically as possible so that "no one has to face existential hardship due to the economic effects of this crisis"[144]. The Federal Employment Agency decided to apply the new provision in accordance with the guidelines on housing benefit[145]. The reason for this is that the term "substantial" is also

137 BT Dr. 19/18966, p. 27.

138 Via Art. 1 and 5 of the Social Protection Package I. See for more details *Amborst*, Die leistungsrechtlichen Regelungen der Coronagesetze im SGB II und ihre Auswirkungen, Informationen zum Arbeitslosenrecht und Sozialhilferecht (info also) 2021, pp. 195 et seq.; *Ekardt/Rath*, Anpassungen im SGB II, V und XII in der Corona-Krise: Rechtsfragen und Wirksamkeit, Neue Zeitschrift für Sozialrecht (NZS) 2021, pp. 417 et seq.

139 Sec. 67 Para. 3 SGB II, Sec. 141 Para. 3 SGB XII.

140 If the approval period starts between 1 March and 30 June 2020. The period can be extended until 31 December 2020 by decree, Sec. 67 Para. 6 SGB II and Sec. 141 Para. 6 SGB XII. On the problem of compatibility with the principle of taking an approval decision for a scope of 12 (Sec. 41 Para. 3 Sent. 1 SGB II) *Burkiczak*, "Hartz IV" in Zeiten von Corona, NJW 2020, pp. 1180, 1181.

141 Sec. 67 Para. 2 SGB II, Sec. 141 Para. 2 SGB XII.

142 BT Dr. 19/18107, p. 25.

143 Without attempting to define the term, but pointing out that it cannot be a question of substantiality for the existence of a benefit entitlement, *Burkiczak*, NJW 2020 (fn. 140), pp. 1180, 1181; with reference to the fact that the administrative bodies must "find directing guidelines", *Bittner*, Befristete Regelungen für den erleichterten Zugang zu Leistungen der Gewährung des Existenzminimums […], NZS 2020, pp. 332, 333. See now *Meßling*, in: Schlegel/Meßling/Bockholdt, COVID-19, Corona Gesetzgebung Gesundheit und Soziales, 2020, Sec. 2 Para. 15 et seq.

144 BT Dr. 19/18107, p. 24.

145 Federal Employment Agency, directives on the law for easier access to social security and on the use and protection of social service providers due to the coronavirus SARS-CoV-2 (Social Protection Package) and supplementing regulations

used in the Law on Housing Benefit (*Wohngeldgesetz* – WoGG), even if there the claiming of housing benefit in the case of one's own "substantial assets" is classified as "abusive"[146]. Nevertheless, the 'borrowing' from the Law on Housing Benefits is understandable if one follows the case law of the Federal Administrative Court (*Bundesverwaltungsgericht* – BVerwG) in whose view the question of whether a person can rely on substantial assets has to be answered solely on the facts and not on any personal fault.[147] However, it enhances at the same time the ambiguities in the relationship between housing benefit and social assistance in the form of basic security for job-seekers.[148] In any case, the changes introduced by the Social Protection Package mean that social assistance is paid for six to nine months without a means test, with a retroactive review being provided for under certain conditions only.[149] Although one reason named for this is the administrative burden associated with such a test, as has repeatedly been pointed out, the regulations go beyond mere administrative simplification. They are, in fact, introducing a new temporary unconditional minimum income benefit. In this respect, social assistance changes its nature and becomes a social compensation benefit. It fits into this context that payments from the emerging and bridging programmes mentioned (above, 3.a)) are not considered a functionally equivalent benefit and are, therefore, in principle not considered as income when applying for social assistance.[150] And it is quite remarkable that the Federal Minister of Social Affairs based his planning to extend the granting of an unconditional

(Weisungen zum *Gesetz für den erleichterten Zugang zu sozialer Sicherung und zum Einsatz und zur Absicherung sozialer Dienstleister aufgrund des Coronavirus* SARS-CoV-2 [*Sozialschutz-Paket*] *sowie ergänzende Regelungen*), as per 22 April 2020, 1.2 Para. 4 and 5. Reference is made to 21.37 of the administrative regulation of housing benefit (WoGVwV) of 28 June 2017 (BAnz AT 10.07.2017 B5).

146 Sec. 21 No. 3 housing benefit law (WoGG).

147 It should rather be based on actual circumstances, BVerwG of 18 April 2013, 5 C 21/12, according to which it is the lack of need for support that counts (recital 13) and approximate values are not to be understood as fixed limits (recital 14); on the last point see also BeckOK SozR/*Winkler*, WoGG (as per 1 March 2020), Sec. 21 recital 9. For a different interpretation and on the requirement of a "subjective element" see *Zimmermann*, WoGG, 2014, Sec. 21 recital 5.

148 Which are by no means clarified by the exclusion in Sec. 7 WoGG; cf. on this *J. Becker*, in: Ruland/Becker/Axer (eds.), Sozialrechtshandbuch, 6th ed. 2018, Sec. 29 recital 13 et seq.

149 Directive of the Federal Employment Agency (BA) (fn. 144), 1.2 Para. 10 with reference to Sec. 45, 48 SGB X.

150 Directive of the Federal Employment Agency (BA) (fn. 144), 2.4 with further references.

minimum protection benefit until the end of 2021 on the argument that he does not want “to bother” those concerned with “a means test or with the question whether their dwelling is possibly too large”[151]. Yet, it is remarkable that at least until spring 2021, the number of benefit recipients did not rise as feared, and in any case did not reach the predicted level, in particular also with regard to the self-employed.[152]

The last extension via Social Protection Package III came into force on 1 April 2021.[153] Simplified access to the social assistance schemes was thus extended until 31 December 2021. At the same time, beneficiaries of these schemes received a one-time payment of EUR 150 per person for the first half of 2021, accompanied by a ‘child bonus’ in the same amount on the basis of the Third Corona Tax Assistance Act.[154] The Act Amending the Infection Protection Act and Other Acts on the Occasion of the Repeal of the Determination of the ‘Epidemic Situation of National Significance’ of 22 November 2021[155], extended the aforementioned period to 31 March 2022, and by decree of the Federal Government (see Section 67 (5) of the Second Book of the Social Code) to 31 December 2022.

5. Outlook

a) When the pandemic hit Germany, a favourable budgetary situation allowed for rapid and, compared with other countries, relatively generous support measures to be taken to secure jobs and businesses. The measures which are based on three pillars, are marked by the emergence of a “community responsibility”: the payment of emerging and bridging aids, the increase in short-time work benefits and the waiver of means-testing for the granting of social assistance serve to compensate for damages.

This approach is probably based on the assumption that such compensation might successfully balance out losses at least for a foreseeable and rather short period of time. It leads to a dominance of social policy objectives over other economic policy objectives which is certainly related

151 Minister Heil as cited by the ZDF on 30 October 2020: “Wir wollen diese Menschen nicht ab 1. Januar mit einer Vermögensprüfung behelligen oder mit der Frage, ob ihr Wohnraum womöglich zu groß ist.”

152 See *Voelzke/König*, Sozialstaat und Pandemie – ein Überblick, Sozialgerichtsbarkeit (SGb) 2022, pp. 69, 73 et seq.

153 BGBl. I 2021, p. 335.

154 BGBl. I 2021, p. 330.

155 BGBl. I 2021, p. 4906.

to the fact that the direct trigger of the recession is the fight against a disease. In a society based on freedoms and a market economy, everyone has a responsibility for the result of her and his actions. Everyone has to take precautions, and companies also have a responsibility for sound economic management. However, the consequences of a pandemic can hardly be attributed to individual fault. Therefore, it is an obvious solution that the welfare state evokes its own responsibilities. And there is another argument for a quick and strong reaction of governments: It is generally difficult to pursue economic structural policies in times of crisis. Before all other things, what is broken must be mended, and only then can the cleaning-up resume – which will have to take into account other pressing issues and ongoing developments, in particular digitalisation, climate change and now also the consequences of the war of aggression in the Ukraine. This means at the same time that general lessons cannot be learned before experience has been gained. However, debates of this kind will soon follow in connection with economic policy programmes,[156] as the disputes over subsidies for the car and aviation industries indicate. And there are two points that merit to be highlighted as preliminary conclusions. One concerns the crisis-driven social policy measures as such, the other the overall social protection architecture on which the crisis with all its hardships sheds a spot light.

b) Besides its undeniable strengths, the establishment of a special "crisis compensation law" following the tradition of other ad hoc aid such as support for flood victims[157] also has its shortcomings. It is rooted in a lack of consideration for the fundamental questions involved as well as a lack of putting the new benefits into a systematic order. Against the often repeated hints to equity, the granting of compensation benefits is an obligation of a welfare state – even if this obligation does not follow from the rules of state liability but from the social state principle as such,[158] and even if there are no corresponding subjective rights of persons hit by the crisis.[159] It is not by chance that the extraordinary economic aid currently being provided can be regarded as recognising this obligation for

156 See for the recovery package with different measureas and an overall volume of EUR 130 billion information of the Federal Government.

157 Cf. *Becker*, Soziales Entschädigungsrecht, 2018, p. 133 et seq.

158 See *Becker*, in: Huster/Kingreen, HIfSR (fn. 124), Para. 130 et seq.

159 See to the false consideration that the assumption of responsibility based on the welfare state is in contrast to the requirements of the rule of law when implementing such compensation *Becker*, Soziales Entschädigungsrecht, 2018, p. 90 et seq.

a first time. In relation to the contents, there is a lack of proven standards and models: it remains an open question which level of compensation for damages is both affordable and appropriate. Their overall volume reflects the expectation of a not too distant economic recovery. Yet, while more people are affected than in the case of a natural disaster, and certainly in a very existential way, many others are not, or hardly at all, at least not directly. As a consequence, it is difficult to find a quick and effective solution that comes without too much bureaucracy when it has, at the same time, to take equality issues into account. With a view to the systemic aspects, the relationship between "corona compensation benefits" and other social protection benefits remains unclear. This holds particularly true with regard to the compensation provisions of the Federal Infection Protection Act (*Infektionsschutzgesetz* – IfSG). Even more problematic is that the differences between specific types of benefit systems are being blurred. Social assistance is largely decoupled from its characteristic condition of means testing – and yet the government does not consider it appropriate for short-term workers to have to (additionally) claim it.[160] This means that, as a result, a non-conditional cash benefit has been introduced in practice which comes very close to the concept of a "citizens' income" – without any discussions on the fundamental differences in the conceptual bases of social assistance on the one hand and unconditional income on the other, and also without reflecting on what social protection individuals actually should enjoy, or to put it differently, how the social risk of poverty should be divided between the individual and the community.

c) Corona compensation benefits keep being linked to special causes of damage. This might explain why governments hazard the afore-mentioned difficulties: Measures leading to legal uncertainty and a certain disorder may be accepted as far as they are expected to be overcome within a short period of time. Still, the question remains at what time, and how quickly, the responsibilities should be shifted back in order to be able to return to a well-balanced societal and economic life. For how long should social assistance be uncoupled from means-testing, or when should we return to the principle of self-responsibility? For how long and to what extent should short-time work benefit be granted, or when should we return to a market economy allowing for structural changes?

Fading out crisis measures is a task on its own in order to overcome the crisis. Learning from the crisis is another. The German social state has, generally speaking, proven strong and stable. Nevertheless, the pandemic

160 On the background see above, I.2.

also unveils shortcomings of, and gaps in, the existing German social protection systems. Access to social protection for the self-employed has to be improved. What also becomes visible, is the necessity to put much more effort than before into the support of children and of families. To open up equal opportunities, particularly as participation in education is concerned, becomes more important than ever.

X. Social and Labour Market Policy during the COVID-19 Pandemic in Greece

Anastasia Poulou

1. Introduction

The outbreak of COVID-19 was declared a public health emergency of international concern by the World Health Organization on 30 January 2020[1]. In Greece, the first COVID-19 case was confirmed on 26 February 2020. Compared to many other countries in Europe, where cases and fatalities exploded quickly, the pandemic progressed slowly in Greece. Nevertheless, and within a relatively narrow time window from the first confirmed COVID-19 case, key measures were put in place to slow the spread of the pandemic, such as school closings, closing of all nonessential workplaces, suspension of all public religious services, ban on gatherings of more than 10 people, internal and external travel restrictions and finally, a general stay-at-home order was implemented on 23 March 2020.

Greece is a particularly interesting case, since it entered the pandemic crisis just as it seemed to be finally emerging from the deep recession the country had endured since the financial crisis that had begun more than a decade earlier. After declining every year from 2008 to 2013, Greece's real gross domestic product (GDP) had been experiencing a modest growth since 2014, with an annual increase of about 2% in 2018 and 2019[2]. At the same time, after peaking at over 27% in 2013, the unemployment rate had slowly but consistently declined to 14.3% in March 2020, the lowest monthly rate in a decade. Even though Greece did not suffer from unexpected escalations in cases and deaths, as elsewhere, the pandemic and lockdown measures adopted as a response to it affected all aspects of everyday life and had a substantial impact on the country's economy. In-

1 See WHO website (last accessed 2 March 2022).
2 See Betcherman/Giannakopoulos/Laliotis/Pantelaiou/Testaverde/Tzimas, Reacting Quickly and Protecting Jobs: The Short-Term Impacts of the COVID-19 Lockdown on the Greek Labor Market, in: Monastiriotis/Katsinas (eds.), The Economic Impact of COVID-19 in Greece, Hellenic Observatory Papers on Greece and Southeast Europe, LSE, September 2020, p. 21.

dicative is the relevant announcement of the Hellenic Statistical Authority, according to which on a seasonally adjusted basis, the GDP declined by 1.6% in the first quarter of 2020 compared to the fourth quarter of 2019[3].

In order to help employers and workers weather the economic consequences of the lockdown, the government adopted a series of social and labour market policy measures. Those measures included the suspension of employment contracts and the provision of compensations of special cause for employees, the introduction of employment support mechanisms, the stipulation of special purpose leave for working parents, the provision of financial support for self-employed persons, artists, farmers and trainees, the partial or full exemption from the obligation to pay commercial rents, as well as the extension of health care insurance and the provision of social protection for unemployed persons.

In view of the emergency character of the pandemic, the majority of the measures were firstly introduced through a fast-track legislative procedure that allowed the government to adopt emergency measures, after consultations with a team of experts consisting of medical doctors and virologists, and that were subsequently ratified by laws of the parliament[4] and further implemented by detailed ministerial decisions. The main beneficiaries of the economic support measures were employees, enterprises of the private sector, the self-employed and freelancers. In total, more than 800,000 enterprises with more than 1.7 million employees were eligible to receiving support measures, as well as more than 700,000 self-employed persons, freelancers and sole proprietorships, covering more than 80% of the private sector[5].

Against this background, one can hardly deny that the COVID-19 pandemic has brought about tectonic changes and new realities in the world of industrial relations and social protection. This paper presents the economic and social policy measures aimed at protecting the income and livelihoods of individuals affected by the COVID-19 pandemic in Greece. In doing so, the paper attempts to reveal the legal nature and reach of the measures taken during the pandemic crisis, as well to expound the changes they brought about in labour and social protection law.

3 See Press Release of the Hellenic Statistical Authority (ELSTAT) of 04/06/2020 (last accessed 2 March 2022).

4 This procedure is provided for in Article 44 Paragraph 1 of the Greek Constitution.

5 See Hellenic Republic, Ministry of Finance, Stability Programme 2020, April 2020, p. 12 (last accessed 2 March 2022).

2. *Job Retention*

The COVID-19 pandemic has brought about enormous changes to the work landscape. From March 2020 onwards, lockdown and mandatory closure or suspension of operation of businesses led to new legislative acts that aimed at mitigating the negative impact on labour relations and to prevent the rise in unemployment. More specifically, the measures taken included the suspension of employment contracts either by law or upon the decision of the businesses, the introduction of an employment support mechanism, the provision of remote working, as well as the stipulation of a special purpose leave for parents.

a) *Suspension of Employment Contracts and the Compensation of Special Cause*

In Greece, lockdowns including varying degrees of restrictions were imposed during the first wave of the pandemic and were also re-imposed during the second wave. During those lockdowns, many businesses remained closed for two reasons. First, from March 2020 onwards, several business operations were suspended by law in order to avoid the spread of the coronavirus. Second, many businesses that could legally operate had to interrupt their activity due to the significant impact of the COVID-19 pandemic on their operations. It goes without saying that the interruption of business operations unavoidably led to the suspension of employment contracts in the respective businesses. In order to tackle this phenomenon, the Greek state introduced the so-called compensation of special cause, an amount of financial support which intended to substitute the employee's loss of income for the duration of the business closure.

More precisely, in the first case of businesses, whose activity was prohibited by law, employees were released from the obligation to provide work and employers were not obligated to pay their wages, since the prohibition of operation by order of a public authority constitutes a *force majeure*[6]. As a result, employees' employment contracts were suspended for as long as the respective business activity was prohibited by law. After the expiration of the suspension period, the employment contracts continued for the agreed

6 See Article 11 of the Act of Legislative Content of 20/03/2020 as ratified by Law 4683/2020 and Article 1 Para. 1 of Chapter A.1 of the Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 12998/232 (28/3/2020).

remaining time[7]. Unpaid leave agreed between the employee and the employer, whose business activity was suspended by law, was automatically revoked. Employees whose contracts were suspended were entitled to the so-called compensation of special cause, which amounted to EUR 800 for a period of 45 days (i.e. EUR 534 per month) and were neither taxable nor subject to social security contributions[8]. Moreover, during the suspension of the employment contract, employees were entitled to social security benefits, without having to pay the respective social security contributions due[9]. At the same time, employers, whose business activity was suspended by order of a public authority, were not entitled to dismiss their employees[10].

In the second case of businesses that were significantly affected by the pandemic, employers had the option to suspend the employment contracts, for a continued irrevocable period of 45 calendar days, of all or part of their employees who worked for them on the 21st of March 2020[11]. After the expiration of the suspension period, the employment contracts continued for the agreed remaining time. During the period of suspension of the employment contracts, the employer could not terminate any employment contracts. Moreover, employers who benefitted from the financial support measure were required to maintain the same number of job positions after the suspension period had ended for a period equal to that of the suspension. Nevertheless, the requirement to retain the same number of jobs did not include employees who had voluntarily left their jobs, whose contracts ended due to retirement, as well as fixed-term employees whose employment contracts expired after the end of the suspension period. Employees whose contracts were suspended upon the choice of their employers were also entitled to the same compensation of special cause, amounting to EUR 800 for a period of 45 days, under the same conditions as described above. Furthermore, the employees benefitted from full social

7 See Article 1 Para. 3 of Chapter A.1 of the Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 12998/232 (28/03/2020).

8 See Article 3 Para. 1 of Chapter A.1 of the Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 12998/232 (28/03/2020).

9 See Article 3 Para. 2 of Chapter A.1 of the Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 12998/232 (28/03/2020).

10 See Article 1 Para. 1 of Chapter A.2 of the Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 12998/232 (28/03/2020).

11 See Article 1 Para. 5 of Chapter A.2 of the Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 12998/232 (28/03/2020).

security coverage calculated on the basis of their regular wages for a period of 45 days, financed from the state budget[12].

b) The "Cooperation" Employment Support Mechanism

As of 15 June 2020, a mechanism to support employment called "cooperation" (in Greek "synergasia") was established in order to maintain full-time jobs in the private sector[13]. The duration of this mechanism was initially set from 15 June 2020 to 15 October 2020 and was subsequently extended until 30 June 2021[14] and finally until 31 March 2022[15]. The mechanism was introduced as a way for the employer to manage the reduction of business turnover, without having to lay off employees or to convert the full-time employment contracts into part-time ones.

More precisely, all businesses with either continuous or seasonal operations were eligible to join the mechanism, as long as they had recorded at least a 20% reduction in their business turnover. Once eligible to participate, businesses could unilaterally reduce the weekly working hours of their full-time employees by up to 50% with a corresponding reduction in salary, depending on businesses' operational needs. Employees included in the mechanism continued to receive their wages from their employer for their reduced working hours and were additionally entitled to financial support provided by the state equal to 60% of their net remuneration for the hours they did not provide any work. In any case, the final amount that the employee would receive could not be lower than the minimum statutory wage, otherwise the difference had to be covered by the state.

The legal framework did not explicitly determine whether the reduction of the working time might take place through the reduction of working hours per day or through the reduction of entire working days, in other

12 See Article 2 Para. 2 of Chapter A.2 of the Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 12998/232 (28/03/2020).

13 See Article 31 of Law 4690/2020. This system resembles the "short-time work" arrangement adopted in Germany in the context of COVID-19, see: Becker, The Community Steps Up: Changing Responsibilities in Germany, MPISoc Working Paper 7/2020, p. 25. The framework for the implementation of the employment support mechanism "cooperation" was further defined by the Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs No. 23103/478 (14/06/2020).

14 See Article 105 of Law 4790/2021.

15 See Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs No. 108743/2021 (30/12/2021).

words through the introduction of a job rotation system. Hence, both options were left available to the employer to decide. At the same time, it was provided that employers were not allowed to terminate the employment contracts of employees participating in this mechanism and, in case they did, such terminations were considered null and void.

Moreover, from 15 June 2020 to 30 June 2020, 40% of the social security contributions corresponding to the working hours during which the employee did not provide work were paid by the employer, while the remaining 60% were covered from the state budget, as well as 100% of the workers' contributions. From 1 July 2020 onwards, the social security contributions in full were paid at a rate of 100% from the state budget. On the other hand, the employer still had to pay his share of the social security contributions in accordance with the employees' reduced working hours.

c) *Teleworking*

Remote work has been widely used as a tool to combat the spread of the coronavirus and through subsequent extensions, the possibility of teleworking was extended until 31 May 2021[16]. More precisely, the employer could unilaterally decide that the work performed by the employee at the place of work shall be carried out remotely. Moreover, employees belonging to vulnerable groups could request to work remotely and the employer had to accept the request, under the condition that the work could be performed at a distance. In case distance work was not applicable due to the nature of the work provided, the employer had to take measures in order to ensure that employees belonging to vulnerable groups did not come into contact with the public during their working schedule.

During the COVID-19 pandemic, vulnerable groups were defined as people with severe heart diseases, persons with severe lung diseases, people with unregulated diabetes, cancer patients undergoing active chemotherapy or radiotherapy or immunotherapy, transplant patients under active immunosuppression therapy receiving two or more drugs, persons over

16 See Article 4 Para. 2 of the Act of Legislative Content of 11/03/2020 as ratified by Law 4682/2020, Article 235 of Law 4727/2020 and Joint Decisions of the Ministers of Finance and of Labour and Social Affairs No. 40000/1269 (02/10/2020), No. 20788/610 (30/05/2020), No. 26308/768 (01/07/2020), No. 30742/1002 (30/07/2020), No. 36124/1194 (15/09/2020), No. 48690/1476 (26/11/2020), No. 52241/1567 (18/12/2020), No. 3813/102 (27/01/2021), No. 4012/111 (27/01/2021) and No. 23182/2021 (27/04/2021).

65 years of age with persistent hypertension, chronic respiratory diseases, chronic cardiovascular diseases, chronic end-stage renal failure, as well as women who were pregnant[17]. Overall, the list of vulnerable groups was not closed, since it was periodically updated in order to include persons who were more exposed to the dangers of the coronavirus due to their pre-existing health conditions.

According to empirical studies conducted in order to depict the situation of the Greek labour market, teleworking has been the most widespread measure implemented during the COVID-19 pandemic both in the public and private sector. More specifically, eight out of ten companies in Greece declared that they made a shift to teleworking during the pandemic and 79.17% of the employees responded that they had implemented the home office model[18]. At the same time, the legal framework regulating teleworking that existed before the COVID-19 pandemic stipulated that the employer bears the costs that occur as a result of remote work, i.e. the cost of the equipment used by the employee, unless it is agreed differently[19]. Nevertheless, this provision has not been adhered to during the coronavirus crisis, as employers were not even covering a minimum of the costs related to distance working.

d) *Special Purpose Leave for Working Parents*

During the pandemic a special purpose leave was introduced for working parents who cared for their minor children at home during school lockdowns. The parents who could benefit were those whose children were enrolled in nurseries and day care centres, were attending compulsory education or special schools or special education facilities, regardless of age, as well as working parents of persons with disabilities who, regardless of age, were eligible for open care services[20]. For as long as the above educational units remained closed in order to limit the spread of coronavirus, working parents had the right to take a special purpose leave of at least three days, provided that they used one day of their regular leave for every three days of the special purpose leave. Hence, the special purpose leave was a special

17 See Joint Ministerial Decisions No. 8030/2020 (18/03/2020), No. 431/9188 (11/05/2020), No. 346/9011 (14/05/2020).
18 See SEPE official website (in Greek, last accessed 2 March 2022).
19 See Article 5 Para. 3 of Law 3846/2010.
20 See Article 4 Para. 3 of the Act of Legislative Content of 11/03/2020 as ratified by Law 4682/2020.

three-day leave scheme followed by the granting of one day of regular annual leave and was cyclically repeated every four days, for as long as employees were entitled to annual leave.

The special purpose leave could at first be obtained until 10 April 2020, provided that at least one parent worked in the private sector as an employee, even if the other parent was self-employed. In case both parents were employed by the same or different employers, they had to declare to their employer(s) which one of them would make use of the leave or, respectively, the periods of leave that were to be used by each of them.[21] In case one parent was a private sector employee and the other a public servant, the public servant had to declare to the private sector employer that he or she had not used the special purpose leave in order for the private sector employee to be able to make use of it.[22]

In any case, in order to be eligible for the special purpose leave, an employee had to meet the legal requirements for taking at least six days of regular annual leave for six-day work and five days for five-day work. If those requirements were not met, the employee was entitled to the special purpose leave in proportion to the number of days of regular leave to which he or she was entitled.[23] With regard to the financing of the special purpose leave, two-thirds were granted with remuneration by the employer, and one-third was subsidised by the regular budget, whereas, for employees of the public sector the three days of special purpose leave were covered by the employer.[24]

Finally, it was stipulated that the special purpose leave was to be granted under the abovementioned conditions for the entire period of the suspension of the operation of care or education units, without any other time limit or the need to issue a new regulation to this effect[25].

21 See Article 4 para 3 of the Act of Legislative Content of 11.03.2020 as ratified by Law 4682/2020.

22 See Article 4 para 3 of the Act of Legislative Content of 11.03.2020 as ratified by Law 4682/2020.

23 See Article 4 para 3 of the Act of Legislative Content of 11.03.2020 as ratified by Law 4682/2020.

24 See Article 4 para 3 of the Act of Legislative Content of 11.03.2020 as ratified by Law 4682/2020.

25 See Article 1 of Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs No. 17787/520 (10/05/2020).

3. *Supporting the Economy*

In order to counter the negative effects of the COVID-19 pandemic on the Greek economy as a whole, measures were taken that included the provision of financial support for self-employed persons, the introduction of compensation of special cause for artists, the deferral of social contribution payments, the partial or full exemption from the obligation to pay commercial rents, as well as actions to support farmers and trainees.

a) *Financial Support for Self-Employed Persons*

During the pandemic, targeted relief measures for self-employed persons were also introduced. Initially, the Greek state provided training vouchers of EUR 600 for the distance training of self-employed professionals, such as lawyers, doctors, engineers, architects, economists, accountants and researchers. Those vouchers were intended as income replacement, were conditional upon training attendance and financed by the European Structural and Investment Fund. As of May 2020, self-employed persons, freelancers and individual businesses with up to 20 employees affected by the coronavirus became eligible for a special allowance of EUR 800 on a 45 days basis (i.e. EUR 534 per month)[26]. This special allowance was tax-free, unseizable in the hands of the state or third parties, not subject to any deduction, levy or charge and could not be calculated among the income that defines the eligibility for social security or welfare benefits.

b) *Compensation of Special Cause for Artists*

Given that cultural activities, such as theatrical plays, cultural events and concerts were restricted during the pandemic either due to the lockdown or due to the measures to prevent overcrowding, a special purpose compensation was also introduced for artists. More precisely, artists, creators and professionals of art and culture who were registered in a special electronic platform of the information system "ergani" of the Ministry of Labour and Social Affairs before 20 October 2020 could benefit from a

26 See Article 8 of the Act of Legislative Content of 20/03/2020 as ratified by Law 4683/2020 and Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs No. 39162/2020 (16/04/2020).

compensation of special cause of EUR 534 per month, with full insurance coverage provided for the months of September and October 2020[27]. The prerequisites to receive the compensation were that the artists did not have an employment contract during the above subsidised period and did not receive a regular unemployment subsidy from the Employment Agency of Labour (OAED) for the above period of time. The provision of the compensation of special cause to artists was further extended under the same preconditions to the months of November and December 2020, to January until July 2021[28], as well as to January 2022[29].

c) *Deferral of Social Contribution Payments*

Social security contributions for the period of employment of February, March and April 2020 that were receivable until 31 March 2020, 30 April 2020 and 31 May 2020, respectively, were deferred at first until 30 September 2020, 31 October 2020 and 30 November 2020, respectively[30], and finally until 30 April 2021[31]. The same legal framework clarified that the social security contributions deferred are the contributions of the employee and the employer, for all insurance branches (main insurance, health care, supplementary insurance, lump-sum benefit), except for contributions towards voluntary insurance.

Moreover, the deadline for the payment of social security contributions for self-employed persons and freelancers for the employment periods of February, March, April and May 2020, as well as any instalments of debt

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27 See Article 20 of Law 4722/2020 and Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs No. 43110/1078 (21/10/2020).

28 See Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs No. 1638/45 (18/01/2021).

29 See Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs No. 109435/2021 (31/12/2021).

30 See Article 1 of Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs 13226/325 (26/03/2020), Article 1 of Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs 18044/575 (30/05/2020) and Article 1 of Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs 16484/499 (09/05/2020).

31 See Article 1 of Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs No. 37618/1492 (30/09/2020).

from supplementary settlement of insurance contributions of previous years were extended until 30 April 2021[32].

d) Exemption from the Obligation to Pay Commercial Rents

Tenants of commercial leases for the establishment of businesses whose operations have been suspended or temporarily prohibited for preventive or repressive reasons related to the COVID-19 pandemic, were exempted from the obligation to pay 40% of the total rent for the months of March, April, May and June 2020[33]. Furthermore, tenants of commercial leases for the establishment of businesses which have been drastically affected by the COVID-19 pandemic, were exempted from the obligation to pay 40% of the total rent for the months of April and May 2020, notwithstanding the existing provisions on leases. Similarly, tenants of commercial leases for the establishment of businesses that have been financially affected by the COVID-19 pandemic, were exempted from the obligation to pay 40% of the total rent for the months of June, July, August and September 2020, notwithstanding the existing provisions on leases. Moreover, tenants of commercial leases for the establishment of businesses which were located in a regional unit that was classified for at least fourteen days in the month of October 2020 at an epidemiological level of "very high" danger, and whose operations have been suspended or temporarily prohibited for preventive or repressive reasons related to COVID-19 or which were economically affected by the COVID-19 pandemic, were exempted from the obligation to pay 40% of the total rent for the month of October 2020, notwithstanding the existing provisions on leases. Finally, tenants of commercial leases for the establishment of businesses whose operations have been suspended or temporarily prohibited for preventive or repressive reasons related to COVID-19 or which are economically affected by the epidemic of COVID-19 were exempted from the obligation to pay the total rent also for the months of January, February, March and April 2021.[34]

32 See Article 1 of Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs No. 37620/1493 (30/09/2020).

33 See Joint Ministerial Decision of the Ministers of Finance and of Labour and Social Affairs No. 1228/2020 (14 and 16/10/2020).

34 See Article 44 of Law 4797/2021.

e) Other Measures

A special measure of support for farmers in sectors hit particularly hard by the effects of COVID-19 was adopted[35]. The aim of the measure was to ensure the continuation of the farmers' activity especially in the olive oil sector, which has been severely affected by the pandemic. Beneficiaries of the assistance were the main occupational farmers based on the Register of Farmers and Agricultural Holdings until the end of submission of their tax return for the year 2020 (income for the year 2019), who were in legal possession of eligible land.

Furthermore, trainees who had an active trainee contract on 11 March 2020 were granted a special allowance of EUR 700, plus the costs of their full basic social security coverage was granted for the period from 11 March 2020 until 18 May 2020, when vocational training institutes resumed their operations[36].

4. Social Protection

a) Extension of Health Care Insurance

The insurance eligibility for health care benefits in kind was retroactively extended for the period from 1 March 2020 to 28 February 2021 for insured persons under the unified social security institution (e-EFKA), their family members, as well as for unemployed persons[37]. More specifically, for the year 2020, health care insurance coverage was extended from 1 March 2020 to 31 December 2020 for the self-employed who were insured on 28 February 2020[38]. The extension was enacted with the exception of any contrary provision and, in any case, only until 31 December 2020. The above extension was valid retroactively from 1 July 2020. In addition, the insurance coverage for health care benefits in kind was extended for the period from 1 March 2020 to 28 February 2021 without the precondition of having accumulated the required insurance period for certain groups of

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35 See Ministerial Decision of the Minister of Agriculture No. 2850/2020 (23/10/2020).
36 See Joint Decision of the Ministers of Finance and of Education No. 16/154871 (17/11/2020).
37 See Articles 29, 30 and 31 of Law 4722/2020.
38 See Article 31 of Law 4722/2020.

persons, such as certain categories of employees, farmers, persons working on shipyards, unemployed persons and their family members[39].

b) Social Protection for Unemployed Persons

In order to mitigate the impact of the pandemic on unemployed persons, the range of social protection measures applicable to them was amplified. First, the duration of the regular unemployment benefit that expired or would expire within the first quarter of the year 2020 was extended for two months from the expiration date[40]. Soon after, it was stipulated that beneficiaries whose regular unemployment benefits expired within May, September, October, November or December 2020 and who had not benefited from the abovementioned extension, could benefit of an extension of a duration of two months[41]. The same provision was repeated for regular unemployment benefits that expired within the first three months of the year 2021, and finally the duration of regular unemployment benefits receipt expiring in April 2021 was extended for one month[42]. Second, long-term unemployed persons who were registered as unemployed but not eligible to any unemployment benefit and had acquired the status of long-term unemployed either on 1 April 2019 or on 1 March 2020 were granted a one-time financial assistance of EUR 400[43].

5. Outlook

The spread of COVID-19 revealed that in order to combat a pandemic it does not suffice to adopt measures that prevent the spread of the virus, such as lockdowns, self-isolation and social distancing measures.

39 See Article 29 of Law 4722/2020.

40 Article 7 Para. 1 of the Act of Legislative Content of 20/03/2020 as ratified by Law 4683/2020.

41 See Article 1 of Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 24760/550 (22/06/2020) and Article 1 of Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 47166/1180 (16/11/2020).

42 See Article 1 of Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 8534/279 (26/02/2021) and Article 1 of Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 23930/2598 (27/04/2021).

43 See Article 1 of Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 15687/282 (16/04/2020) and Article 1 of Joint Decision of the Ministers of Finance and of Labour and Social Affairs No. 48222/1215 (25/11/2020).

Those measures have to be accompanied by supplementing measures that enhance and support the national health care system, foster the economy, shield labour relations and guarantee the provision of social protection. As has been shown in this paper, in Greece a new legal framework has been put into place in order to deal with the extraordinary circumstances of the coronavirus crisis. While scattered at first, this framework has been continually renewed and reinforced, with the aim to retain jobs and workers' social security rights. Nevertheless, it is doubtful whether the provisional enforcement of emergency measures was able to provide a safety net for all groups of affected persons with regards to their working and social security status.

Moreover, regarding the making of the measures, the majority of them were first introduced through a fast-track legislative procedure that allowed the government to adopt emergency measures, after consultations with a team of experts consisting of medical doctors and virologists, without thorough prior consultation with the parliament or social partners. Those measures were then ratified by laws passed through the legislative procedure. Even though a flexible and fast response of the executive to an emergency situation is desirable, the exclusion of social partners and affected groups of individuals continued further in all the stages of the drafting of the measures. Given, however, that the measures started as provisional and temporary but have been so far, in many cases, applicable for a period of two years, it is crucial to reconsider the role of social partners in the drafting of the respective labour and social protection law regulations.

At the same time, the fight against the pandemic also brought about some positive developments that need to be highlighted. First, in order to prevent direct in-person contact, e-governance and digitalisation of many processes have been developed in several sectors of the Greek public administration. This has to be welcomed as a very positive step towards a citizen-friendly administration that is effective and accessible regardless of one's residence. Second, the concept of decentralised and remote work could be a useful tool also in the aftermath of the pandemic crisis in order to facilitate the working conditions of employees and to eventually help them achieve a positive work-life balance.

XI. "No Man is an Island Entire of Itself": Learning from the Past and Fostering Relationships Steers Ireland Through the Initial Rough Waters of the Pandemic

Elaine Dewhurst

1. Introduction

The Irish state responded swiftly when the first case of COVID-19 was identified on 29 February 2020. Within a matter of weeks, the virus had spread to all parts of the country and the state responded with a due level of concern. Closing schools, universities, childcare facilities, cultural institutions, hospitality and encouraging working from home (followed by more restrictive measures in the weeks that followed), the Taoiseach Leo Varadkar on 12 March 2020 reiterated the uncertain nature of the pandemic: "We have not witnessed a pandemic of this nature in living memory. This is unchartered territory"[1]. However, he also intimated that Ireland has suffered many trials in its history from which it has been possible to learn and develop strategies for success: "We have experienced hardship and struggle before. We have overcome many trials in the past with our determination and our spirit. We will prevail."[2] The interconnectedness of Ireland, particularly to its European neighbours, was emphasised repeatedly in the weeks that followed, "both in terms of [the] interconnectedness as the disease has transmitted around the world and as well as [the] capacity to influence, support and collaborate with one another to try to suppress it and mitigate its effects"[3].

The measures taken by Ireland to combat the virus were some of the harshest and longest-lasting in the European Union and included, for a portion of time, stay-at-home orders. According to the Blavatnik School

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1 Varadkar, Statement by An Taoiseach Leo Varadkar on measures to tackle Covid-19, Washington, 12 March 2020.
2 Varadkar, Statement by An Taoiseach Leo Varadkar on measures to tackle Covid-19, Washington, 12 March 2020.
3 Government of Ireland, COVID-19 Resilience and Recovery 2021: The Path Ahead (Dublin: Government Publications, 2021), p. 1.

of Government at the University of Oxford, COVID-19 Stringency Index in March 2021, Ireland had a stringency index of 84.26 behind only Greece and the United Kingdom at that time.[4] From early on in the pandemic, Ireland developed a Framework for Restrictive Measures in their Resilience and Recovery Plan 2020-2021. This created a framework of levels of restrictions (1 being lowest and 5 being highest) which allowed the state to adapt to public health and scientific advice as necessary.[5] This naturally had a very significant negative economic effect. However, vaccine uptake has been one of the highest in Europe equivalent to more than 90% of the adult population and this has given the state a huge opportunity to ease restrictions earlier and limit the impact on the health services.[6]

The lessons from the past and Irish interconnectedness to other nations has also played a unique role in the economic and welfare response of the state to the pandemic. The economic impact of these strict measures came to light very quickly. From an unemployment perspective, monthly unemployment figures rose sharply from approximately 4.9% pre-COVID to a height of 7.7% mid-lockdowns. However, these figures do not take into account persons in receipt of COVID support payments who would potentially have been counted as unemployed if not for these supports. When the figures are adjusted to take this into account, the number of people unemployed in March 2020 jumped to 21.3% and at its peak rose to 29.8% in May 2020. At the end of 2021, the unemployment estimates (adjusted for COVID-19 supports) stand at 6.9%.[7] Other economic indicators also highlight the severity of the shock to the Irish economy with modified domestic demand falling by just under 15% during the first lockdown, the largest quarterly fall on record. A general budget deficit of EUR 18.5 billion was recorded in 2020 and predicted in 2021 to be similar, although crucially this was within the "norm" for other EU Member States and the Irish government were keen to stay "in the pack" of EU Member State expendi-

4 Blavatnik School of Government, COVID-19 Government Response Tracker. The Stringency Index is a composite measure based on nine response indicators including school closures, workplace closures, and travel bans, rescaled to a value from 0 to 100 (100 = strictest).

5 Government of Ireland, Resilience and Recovery 2020-2021: Plan for Living with COVID-19 (Dublin: Government of Ireland, 2020), p. 11.

6 Government of Ireland, Budget 2022: Macroeconomic Projections and Estimates (Dublin: Government of Ireland, 2020), p. 2.

7 Central Statistics Office, COVID-19 Adjusted Monthly Unemployment Estimates.

ture.[8] Ireland was one of the few European countries to see an increase in GDP in 2021 (+13.2%)[9] reflecting the performance of sectors dominated by foreign-owned multinationals such as pharmaceuticals and service provision. The OECD reported, however, that the domestically-oriented part of the economy, with a history of weaker productivity growth, "was less resilient".[10]

Ireland had experienced such economic shocks only 10 years previously during the world financial crash and was also in the midst of a potential no-deal Brexit which has also had widespread implications for the economy. To counter the economic impact, the government employed counter-cyclical fiscal measures to stimulate the economy to the tune of approximately EUR 38 billion. Drawing on the economic lessons from the last recession, Social Justice Ireland commended the government on their approach.[11] In June 2021, the government announced a National Economic Recovery plan based on four key pillars: ensuring public finances that are sustainable for a lasting recovery, helping people back into work by extending labour market supports and through intense activation and reskilling, rebuilding sustainable enterprises through targeted supports and policies, and a balanced and inclusive recovery through strategic investment in infrastructure and reforms that enhance the long-term capacity for growth, balanced regional development and by improving living standards. These pillars were also supported by an EU support package of up to EUR 2.5 billion.

This report aims to analyse the measures imposed in Ireland, to protect jobs and income, to support the economy and to provide effective social welfare supports during the pandemic. The main purpose of the report is to outline the main supports implemented, how these were operationalised within existing legislative structures and how effective these have been given the limited data available. The long-term implications of these measures will also be addressed.

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8 Donohue, The Irish Economy: Recovery from Covid and Beyond – Speech by Pascal Donohue, T. D. Minister for Finance to the Institute of Directors in Ireland, 26 May 2021.

9 Muggenthaler, Schroth and Sun, The Heterogeneous Economic Impact of the Pandemic Across Euro Area Countries, ECB Economic Bulletin, Issue 5/2021.

10 OECD, Economic Policy Reforms 2021: Going for Growth: Report on Ireland, p. 2.

11 Social Justice Ireland, Economic Lessons from the Last Recession, 2020.

2. *Job Retention*

In common with many other countries, job and household income preservation and security were the primary foci of the measures introduced by the Irish government during this period. Faced with potentially unprecedented levels of unemployment, the Irish government acted swiftly to avoid job losses (which had been a key feature of previous recessions in Ireland) and encouraged employers to use alternative means, such as shorter working hours, to ensure a measure of employment security.[12] Part of the essential focus then of the package of measures introduced by the government to support jobs and income security was the maintenance of a link between employers and their workers to ensure a clear route back into employment during recovery from the initial shock of the pandemic. Many of these were designed and created as temporary measures but the uncertainty of the pandemic has meant that many of these have had to be extended.

The Emergency Measures in the Public Interest (Covid-19) Act 2020 introduced a temporary wage subsidy scheme (TWSS)[13] which lasted from March to August 2020. The provisions of the Act indicated the importance of this link between the employer and the employee requiring, as a precondition to receiving the support offered, that the employer had a "firm intention" of continuing to employ the employee.[14] The scheme was essentially a subsidy scheme, i.e. providing employers with a sum of money up to a maximum amount to subsidize the payment of wages to their employees while the employer was required to pay full wages to their employees. The employer had to show a forecast reduction in turnover and the employee was paid tax-free on the subsidy where the tax liability is recovered in future years. Given the rather open-ended nature of this commitment, the government amended the scheme to move towards tiered supports based on 70-85% of the weekly average take-home pay of employees. In addition, to discourage redundancies, employee pay-related social insurance (PRSI) did not apply to the subsidy amount and employer PRSI applied at a discounted rate of 0.5%. According to Acheson, the overall cost to the Exchequer was EUR 2.8 billion, "with 664,500 employees receiving subsidies

12 Acheson, Job Turnover and Policy Response in the COVID-19 Era (2021) 52(2) Economic and Social Review 139-159, p. 156.
13 Emergency Measures in the Public Interest (Covid-19) Act 2020, Section 28 (as amended).
14 Emergency Measures in the Public Interest (Covid-19) Act 2020, Section 28(2)(b).

through 66,600 employers".[15] Despite the cost, the TWSS was in the short-term very effective in maintaining links between employers and employees and maintaining job and income security. However, the medium to longer-term impact was not so positive with "the rate of job destruction in supported firms…similar to all other employers".[16] The benefit to low-income and vulnerable households was more significant with Beirne et al. reporting that one-third fewer families lost income beyond 20% as a result of the support.[17]

The TWSS was replaced by the Employment Wage Subsidy Scheme (EWSS) from August 2020[18]. The stated broad objective of the EWSS was twofold: (a) to mitigate the effects of COVID-19 on the economy through necessary stimulus and (b) to mitigate the effects of the economy apprehended as a result of the lack of any Brexit deal at the time.[19] It is clear that the formulation of the TWSS was unsustainable and the replacement by the EWSS was necessary to ensure the "efficient use" of the scheme so as to "minimise the cost of the Exchequer" presently and in the future.[20] There were concerns that the TWSS was too broad in its allocation and direct stimulus was not being provided where it was most acutely needed and account was not taken of the alteration in circumstances of individual claimants (who may have been able to avail of other state financial supports).[21] Activation was clearly central to the motivation behind the move to the EWSS with the importance of childcare supports for parents and carers being mentioned in the legislation as key to ensuring that individuals could return to active employment.[22] The EWSS, despite its title, operates as an employment support grant rather than a wage subsidy scheme with more stringent criteria and less generous financial protections. The application of the scheme is limited to those employers who can demonstrate at least a 30% reduction in turnover or customer orders

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15 Acheson, Job Turnover and Policy Response in the COVID-19 Era (2021) 52(2) Economic and Social Review 139-159, p. 156.

16 Acheson, Job Turnover and Policy Response in the COVID-19 Era (2021) 52(2) Economic and Social Review 139-159, p. 156.

17 Beirne et al., The Potential Costs and Distributional Effect of COVID-19 Related Unemployment in Ireland. (2021) 1 Budget Perspectives, The Economic and Social Research Institute, Dublin, p. 9.

18 Section 28B, Emergency Measures in the Public Interest (Covid-19) Act 2020 as inserted by Financial Provisions (Covid-19) (No. 2) Act 2020, Section 2.

19 Section 28A, Emergency Measures in the Public Interest (Covid-19) Act 2020.

20 Section 28A, Emergency Measures in the Public Interest (Covid-19) Act 2020.

21 Section 28A, Emergency Measures in the Public Interest (Covid-19) Act 2020.

22 Section 28A, Emergency Measures in the Public Interest (Covid-19) Act 2020.

within a defined period (excluding those who have, for example, had some recovery) or those employers who are childcare providers. PRSI contribution reductions are also maintained. The financial protections are also more limited than the TWSS consisting of flat-rate payments depending on the gross income of each employee and the number of employees on the payroll. The flat-rate subsidies are aligned with existing unemployment support payment levels. The scheme is expected to continue to April 2022.

Income loss and job insecurity could also derive from ill health associated with COVID-19. To overcome this, the COVID-19 Enhanced Illness Benefit[23] (available to those workers who must self-isolate for a variety of reasons) was introduced. This payment has fluctuated depending on the severity of the restrictions in Ireland and currently stands at EUR 350 per week up to a maximum of 10 weeks for those diagnosed with COVID-19 or for the period of self-isolation necessary up to a maximum of two consecutive isolation periods. Compared to traditional illness benefit, the payment kicks in immediately and is significantly enhanced rate-wise (EUR 203). It has been effective in indirectly maintaining work relationships and protecting income during the pandemic.

3. *Measures to Support the Economy*

A range of stimulus measures were announced very early on in the pandemic. The measures included a mixture of capital provision with a reduction in rates and charges to stimulate business (by reducing the cost-base) and reduce problems caused by restricted cash flow. These measures were either grounded in existing schemes or were developed specifically to meet the needs of businesses during this particularly difficult time. These initiatives represent one of the largest cash injections in the history of the Irish economy.

a) *Capital Provision*

A variety of the capital provision measures promoted during the pandemic pre-existed but were identified as being particularly useful for businesses

23 Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020, Section 5 amending Section 40 of the Social Welfare Consolidation Act 2005.

to access during the pandemic. These include: the Future Growth Loan Scheme, the General grant supports, the Trading Online Voucher scheme, LEAN for Micro scheme, Digitalisation Voucher, Sustaining Enterprise Funds, and the E-merge programme. The majority of these schemes either provide loans in the short to medium term[24], grants[25] or consultancy support[26] or money for such support[27]. All of these supports are made available through either government departments[28] or through state agencies[29].

It was, however, also necessary to develop specific pandemic-related stimulus packages to mitigate the impact of the lockdown restrictions on business. This package of measures has a dual aim: to ensure businesses have sufficient capital to maintain and grow their businesses through the restrictions imposed as a result of the pandemic and to support recovery and growth of businesses in a post-pandemic Ireland. While many of these measures provided small sums of money to business from government departments or agencies to assist with various aspects of the business including financial planning or applications for finance[30], other schemes required the development of more complex legislative initiatives. A useful

24 Future Growth Loan Scheme.
25 For example, the General grant supports; Trading Online Voucher scheme, which is a grant for small businesses with up to 10 employees and financial assistance of up to EUR 2500 with training and advice; the Sustaining Enterprise Fund, which is aimed at firms in the manufacturing and international services sectors with 10 or more employees and which is operated by Enterprise Ireland and provides advances of up to EUR 800,000 which are only repayable when a business returns to good financial health. For more information see: Supports for business: COVID-19 and ongoing.
26 LEAN for Micro, which is available to businesses to assist them in building resilience through their Local Enterprise Office. See for more information: Supports for business: COVID-19 and ongoing.
27 E-merge programme, which is £2,500/EUR 2,800 fully-funded consultancy support to help businesses develop online sales and eCommerce solutions. Those in the manufacturing and internationally traded service sectors can apply for the Digitalisation Voucher up to a value of EUR 9,000 to get technical or advisory services from an approved provider, in order to adopt digital tools and techniques across the business. For more information see: Supports for business: COVID-19 and ongoing.
28 For example, the Department of Enterprise, Trade and Employment and/or the Department of Agriculture, Food and the Marine and the Strategic Banking Corporation of Ireland.
29 For example, Enterprise Ireland, IDA Ireland, Local Enterprise Office and Údarás na Gaeltachta and InterTradeIreland.
30 See for example the COVID-19 Business Financial Planning Grant.

example is the COVID-19 Credit Guarantee Scheme[31], which effectively amounts to a state guarantee of credit facilities, a measure which would normally fall foul of state aid rules. The scheme facilitates up to EUR 2 billion in lending provided by financial intermediaries to eligible businesses with up to 499 employees which have been negatively impacted by the pandemic and offers a partial government guarantee of 80% to finance providers against losses. The scheme is available to small and medium-sized enterprises, small Mid-Caps and primary producers. The scheme was approved by the European Commission under the state aid Temporary Framework. The Executive Vice-President, Margarethe Vestager, said that this scheme would "enable Ireland to support companies affected by the coronavirus outbreak through the provision of State guarantees". The Commission was of the opinion that the scheme was necessary, appropriate and proportionate to remedying "a serious disturbance in the economy of a Member State"[32]. So far, over EUR 539.41 million has been loaned to businesses in Ireland under this scheme.[33]

Other smaller (EUR 5-25k) business loans are available to microenterprises from state agencies such as MicroFinance Ireland[34] or larger loans (EUR 25k-1.5m) from government departments with lower interest rates than commercial lenders.[35] This latter initiative is also supported by the European Union under Horizon 2020 Financial Instruments. As of 30 September 2021, 984 loans had been progressed to sanction at a bank level to a value of EUR 130 million.[36] The COVID Restrictions Support Scheme[37] offers credit (not a loan) to businesses impacted by the restric-

31 For more information see the COVID-19 Credit Guarantee Scheme. This was set up under the COVID-19 Credit Guarantee Scheme 2020 (SI No 325 of 2020) which is regulated by Section 5 of the Credit Guarantee Act 2012 (No. 26 of 2012) (as amended by the Credit Guarantee (Amendment) Acts 2016 and 2020 (No. 1 of 2016 and No. 5 of 2020)).

32 European Commission, Press Release, State Aid: Commission Approves Irish Loan Guarantee Scheme Mobilising EUR 2 Billion Support for Companies Affected by the Coronavirus Outbreak, 14 August 2020.

33 Strategic Banking Corporation of Ireland, Performance Report on Covid-19 Credit Guarantee Scheme to the Department of Enterprise, Trade and Employment (Dublin: 2021).

34 Such as the COVID-19 Business Loan. For more information see: Supports for business: COVID-19 and ongoing.

35 COVID-19 Working Capital Loan Scheme.

36 Strategic Banking Corporation of Ireland, Quarterly Report of the Covid-19 Working Capital Loan Scheme as at 30 September 2021 (Dublin: 2021). This scheme is now closed.

37 Implemented by Section 11, Finance Act 2020.

tions imposed as a result of the pandemic. Under the Finance Act 2020, businesses can make a claim to the Revenue Commissioners for an Advanced Credit for Trading Expenses (ACTE) paid weekly for each week of disrupted trade. The ACTE is equal to 10% of the average weekly turnover of the business in 2019 up to EUR 20,000, plus 5% on turnover over EUR 20,000. In the case of new businesses established after 26 December 2019, the turnover is based on the average actual weekly turnover in a reference period, depending on the date that the business was established. The ACTE is subject to a maximum weekly payment of EUR 5,000. If a business is eligible, they must meet certain qualifying conditions to receive the payment, namely: the business must be located in an area affected by COVID restrictions, members of the public are restricted or prohibited from attending the business premises, the turnover of the business is no more than 40% of the average weekly turnover in 2019 (in the case of a new business there is a calculation to determine a particular reference period), and the business intends to resume trading after the government restrictions are lifted. Certain costs of disrupted trade in the live performance industry can also be recouped under the Live Performance Support Scheme.

Focus was also placed in these measures on stabilisation and recovery of businesses post-pandemic. The Pandemic Stabilisation and Recovery Fund, operated by the Ireland Strategic Investment Fund, focuses on investment in medium and large-scale enterprises in Ireland which have been impacted by the pandemic or who are critical to Ireland's recovery. The fund, worth approximately EUR 2 billion, can make capital available to eligible enterprises at commercial rates. 90% of the investments made by the Irish Strategic Investment Fund in 2020 were made to pandemic-impacted businesses.[38] Additionally, the Accelerated Recovery Fund for businesses in manufacturing or internationally traded services sectors who had a 15% reduction in turnover or profit as a result of COVID-19 can apply for funding to adapt their operations to ensure a smooth and profitable recovery.

Many of the COVID-19-specific measures are set to end in December 2021[39] or January 2022[40] or have already closed.[41] The Pandemic Stabilisa-

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38 National Treasury Management Agency, Ireland Strategic Investment Fund Publishes 2020 Update (Dublin: 2020).

39 For example, the COVID-19 Loan Support Scheme.

40 For example, the COVID Restrictions Support Scheme and the Live Performance Support Scheme.

41 For example, the COVID-19 Working Capital Loan Scheme.

tion and Recovery Fund, crucial to economic recovery post-pandemic, will be maintained for the foreseeable future.

b) Reduction in Rates and Charges

Many existing rates and charges applicable to businesses pre-pandemic were reduced or eliminated to facilitate businesses, ensure smooth re-adjustment to the re-opening of the economy and promote recovery from the impact of the restrictions imposed on their businesses. Waivers of commercial rates[42], licence fees for street furniture and court fees and excise duties for vintners were funded by government departments[43]. Many of these waivers continue to be provided to ensure the greatest negative impact on businesses is avoided.[44] Taxation rate reductions, e.g. Value Added Tax (VAT) from 13.9% to 9%, which was initially introduced temporarily for the hospitality and tourism sector, will remain in place until August 2022. A general VAT reduction from 23% to 21% was also introduced as a temporary measure in September 2020 and it ended in early 2021. Certain tax debts (namely, VAT and PAYE[45] Employer debts) continue to be "warehoused" by the Revenue Commissioners where these debts are associated with the COVID-19 crisis. "Warehousing" effectively means that debts can be parked interest-free for a period of 12 months from January 2022 to December 2022. After the 12-month interest-free period, the warehoused debts can be repaid at a low interest rate of 3% per annum. Relief on certain payments has also been given to importers. For example, Revenue has introduced a relief on import duties and VAT for goods imported to combat the effects of COVID-19 (a decision which was made in response to EU initiatives[46]). Additionally, relief has been given from excise duty (Alcohol Products Tax) to the manufacturers of hand sanitizer products.

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42 Commercial rates waiver by Department of Housing, Local Government and Heritage.

43 Commercial rates waiver by Department of Housing, Local Government and Heritage.

44 Commercial rates waiver has been extended until March 2022.

45 PAYE includes employer tax, pay-related social insurance and universal social charge contributions.

46 C 2020/2146 of 3 April 2020 providing for the importation of goods to combat the effects of Covid-19 from outside the European Union without the payment of Customs Duty and Value-Added Tax from 30 January 2020 to 31 July 2020.

In addition to these waivers, reliefs and warehousing of debts, the Central Bank of Ireland announced payment breaks available for mortgages, personal and business loans for up to six months which would not affect credit records. The focus on reliefs as opposed to debt accumulation has been commended by economists as "appropriate given the nature of the shock" and will ensure that "indebtedness levels do not hinder recovery which was a factor following the financial crisis".[47] The measures introduced have been unprecedented in Irish history but certainly appear to have hit the right note with businesses: packages of funds, support and financial advice have been made available in combination with reliefs from some of the day-to-day costs of running a business. These measures also help to combat the impacts of Brexit. The most recent Fiscal Assessment Report indicated that the Irish economy has recovered strongly from the restrictions led in part by the fiscal support provided by the government to businesses.[48] However, this could turn out to be more of a risk than a benefit if the temporary nature of the spending turns out to be "more long-lasting" than initially considered.[49]

c) *Economic Stimulus*

Finally, economic stimulus initiatives were put in place to encourage those who could afford to spend to engage in economic activities. Individuals were given income tax credits to encourage spending including up to EUR 125 for a single person or EUR 250 for a married couple for qualifying expenditure between October 2020 and April 2021 defined as holiday accommodation listed on the National Tourism Development Authority register, eating in hotels, restaurants, cafes and bars (excluding alcoholic purchases). Other advantages include the Enhanced Help-to-Buy scheme which gives an increased income tax refund of up to EUR 30,000 to quali-

47 O' Toole et al., New Survey Evidence on COVID-19 and Irish SMEs: Measuring the Impact and Policy Response (2021) 52(2) The Economic and Social Review 107-138, p. 135.

48 Irish Fiscal Advisory Council, Fiscal Assessment Report, December 2021, p. 14.

49 Irish Fiscal Advisory Council, Fiscal Assessment Report, December 2021, p. 67. For more rich assessment of these issues see: Wass, Ireland Extends Covid-19 Credit Guarantee Scheme Until Year-End, SNL European Financials Daily (2021); Andreosso-O'Callaghan, Industrial Policy Response to the Covid-19 Crisis in Ireland – A Filière Approach (2020) 2 The New European Industrial Strategy: Companies and Territories 85.

fying first-time buyers to purchase their first home. While the scheme has been in place for many years, the maximum tax refund was increased to assist first-time buyers during the pandemic.

4. Social Welfare Measures

One of the key priorities of the Irish government throughout the pandemic has been household income maintenance, particularly for those on lower incomes and it has made key commitments in Budget 2021 and Budget 2022 to continue to protect the most vulnerable citizens.[50] One of the key initial decisions taken was to allow applicants for the Pandemic Unemployment Payment (PUP) to also claim concurrent support from social welfare such as the working family payment, one-parent family payment and the back to work family payment dividend.

a) Income Maintenance: Pandemic Unemployment Payment (PUP)

The aim of the EWSS and the TWSS was clearly to maintain employment and income for as long as possible with the hope that the pandemic would eventually end and recovery could begin. However, many businesses were not able to withstand the financial shock of the pandemic and naturally there were many thousands of workers for whom redundancy and job loss (either permanent or temporary) were inevitable. Unemployment levels soared at the outset of the pandemic in Ireland and the government enacted legislation in August 2020 to put on a legislative footing an emergency COVID-19 Pandemic Unemployment Payment (PUP) which had been available since the beginning of the pandemic[51]. This payment is available to anyone aged between 18 and 66 years who has lost their job due to the COVID-19 pandemic or has been temporarily laid off or who was self-employed and whose trading income has ceased or reduced to such an extent that they would be able to take up full-time employment. Additionally, the recipient must not be in receipt of any income from an employer and must be genuinely seeking work. The payment was also extended to students and those in direct provision who had also lost their jobs due

50 McGrath, Statement of the Minister for Public Expenditure and Reform on Budget 2021 and Budget 2022.
51 Section 11, Social Welfare (Covid-19) (Amendment) Act 2020.

to the pandemic but who would normally not qualify for unemployment allowances. There is no social insurance contributory history required and the payment is not means-tested. The PUP closed to applications in July 2021 but was reopened temporarily in December 2021 to mitigate the impacts of the Omicron variant spread and associated restrictions.

PUP was initially linked to income levels of the individuals prior to their job loss and was paid at a flat rate of EUR 350 per week for those on the higher average weekly income levels which was substantially higher than existing unemployment benefits. However, the rates have become more staggered. Currently the rates for those previously earning over EUR 400 per week are a flat rate of EUR 250 and those earning between EUR 300-EUR 400 receiving EUR 203 which is equivalent to the maximum unemployment benefit. From 9 November 2021, the PUP ended for those earning previously under EUR 300. However, due to the strict restrictions imposed by Ireland in December 2021 due to the Omicron variant, new PUP rates have been launched for those who lost their job after December 2021. These are at a higher level up to a maximum amount of EUR 350.[52] The incremental alterations to the rates in line with restrictions and easing of restrictions has meant that there has been a "better alignment to pre-pandemic earnings".[53]

Unlike the TWSS and the EWSS, which were generally very welcomed, there have been numerous criticisms launched at the PUP. The common thread in these criticisms is the inequality inherent in the system which has manifested itself in three distinct ways: (a) disincentivising work for low- and middle-income workers; and (b) creating an unfair distinction between those who are unemployed due to the pandemic and those who are long-term unemployed.

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52 Weekly PUP rate for people who lost their employment on or after 7 December 2021.

Average weekly earnings	Personal rate
EUR 400 or over	EUR 350
EUR 300 - 399.99	EUR 300
EUR 200 - 299.99	EUR 250
EUR 151.50 - 199.99	EUR 203
Less than EUR 151.50	EUR 150.

53 Brioscú, O'Reilly, Dwan and Coates, The COVID-19 Pandemic and Ireland's Labour Market: Insights through the Lens of the Pandemic Unemployment Payment and the Characteristics of Impacted Workers (2021) 52(2) The Economic and Social Review 193-216, p. 215.

First, there is a concern that the PUP, despite reference to activation and job-seeking in the requirements, has disincentivised a return to work for many categories of workers. Kirwan comments that "[t]he ambition to minimise welfare dependency and increase activation appeared juxtaposed to the bi-weekly payment of EUR 350 for those made unemployed by lockdown conditions".[54] Research does not suggest that this is the case for higher income workers where, due to the "nature of work held by these individuals and the ability for some sectors and occupations to adapt to their modes of service delivery and to facilitate remote working"[55], the majority closed their payments and returned to work. However, this does appear to be potentially true with respect to lower- and middle-income workers where such adaptations to modes of working were not possible. Prior to the pandemic, the Irish economy had one of the highest rates of low-paid workers in Europe and the pandemic mostly affected low-pay workers in sectors such as hospitality.[56] McGann intimates that the concern is that "welfare has replaced market earnings as their means of subsistence" creating a "major adjustment not only in the economic lives of these citizens but also in the 'productivist' footing of Ireland's welfare state".[57] This is because PUP effectively amplified compensation (outstripping regular unemployment payments) at the expense of regulatory and behavioural conditions (reducing conditions such as the need to sign on and attend JobPath (a state agency charged with assisting those who are long-term unemployed).[58] This is particularly concerning for Ireland due to its historically underdeveloped activation practices.[59] Pre-pandemic, there were signs in the Pathways to Work Strategy 2016-2020 that was implementing a much

54 Kirwan, The 'Playing a Blinder' Myth: The Republic of Ireland's Pandemic Response Revisited (2021) Irish Journal of Sociology 1–8, p.3.
55 Brioscú, O'Reilly, Dwan and Coates, The COVID-19 Pandemic and Ireland's Labour Market: Insights through the Lens of the Pandemic Unemployment Payment and the Characteristics of Impacted Workers (2021) 52(2) The Economic and Social Review 193-216, p. 215.
56 McGann, The Political Economy of Welfare in a Time of Coronavirus: Post-Productivism as a State of Exception (2020) 28(2) Irish Journal of Sociology 225-230, p. 227.
57 McGann, The Political Economy of Welfare in a Time of Coronavirus: Post-Productivism as a State of Exception (2020) 28(2) Irish Journal of Sociology 225-230, p. 225.
58 McGann, The Political Economy of Welfare in a Time of Coronavirus: Post-Productivism as a State of Exception (2020) 28(2) Irish Journal of Sociology 225-230, p. 227.
59 Murphy, Low Road or High Road? The Post-Crisis Trajectory of Irish Activation (2016) 36(3) Critical Social Policy 432-452, p. 433.

tougher and more robust "work-first" activation regime, albeit that this was itself criticised as involving the state in "marketmaking" and the "unequal, competitive shape of the labour market"[60] and leaving behind those "people who already had a history of long-term unemployment coupled with complex non-vocational issues impacting their participation such as mental health, caring responsibilities, homelessness or housing insecurity"[61]. For now, Dukelow is of the opinion that "security has trumped sacrifice"[62] and she highlights the lack of austerity and welfare retrenchment in the existing governmental responses to the pandemic clearing a "huge challenge for activation services for the next phase of the Pathways to Work policy"[63]. The real question is whether this challenge to activation strategies is temporary or in fact may lead to a more "enabling, supportive activation and social protection system" in the future. However, not everyone is convinced that this is the case. Kirwan rightly points out that the alteration of rates to bring them more in line with regular unemployment payments, the halting of payments to those engaging in international travel and the introduction of taxation of the PUP indicates that the payment is now entirely in line with the labour activation model of welfare normally adopted by the Irish state.[64]

Second, and linked very closely to activation and disincentives to work, is what Dukelow refers to as the "'two-tier' pandemic response between the 'pandemic unemployed' and those already unemployed" reiterating the perception that structural unemployment is the exception.[65] Indeed, disincentives to work can arise from generous welfare supports, but it can also arise from poor-quality low-paid work which is a factor unaddressed by the existing government policies. The PUP initially at least served to highlight significant gaps in the existing welfare payments where "payments for the 'conventionally' unemployed are well below the poverty

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60 Dukelow, Sacrificial Citizens? Activation and Retrenchment in Ireland's Political Economy (2021) 69(2) Administration 43-65, p. 60.

61 McGann and Murphy, The Dual Tracks of Welfare and Activation Reform – Governance and Conditionality (2021) 69(2) Administration 1-16, p. 12.

62 Dukelow, Sacrificial Citizens? Activation and Retrenchment in Ireland's Political Economy (2021) Administration 43-65, p. 61.

63 Dukelow, Sacrificial Citizens? Activation and Retrenchment in Ireland's Political Economy (2021) Administration 43-65, p. 61.

64 Kirwan, The 'Playing a Blinder' Myth: The Republic of Ireland's Pandemic Response Revisited (2021) Irish Journal of Sociology 1–8, p. 4.

65 McGann, The Political Economy of Welfare in a Time of Coronavirus: Post-Productivism as a State of Exception (2020) 28(2) Irish Journal of Sociology 225-230, p. 228.

line" and which potentially creates a "pandemic of low-paid, precarious work"[66].

It was also recognised very early on in the pandemic that job loss was not the only way in which income might be affected by the pandemic. For many workers a reduction in hours of work (and therefore significant income loss) is also a common scenario. The situation of these workers is not entirely clear.[67] Two schemes potentially could be accessed: a short-time work support and/or jobseekers benefit. However, unlike the PUP which does not require a contribution history, access to either of these supports requires sufficient contribution history for support to be activated. This potentially disadvantages those on short-term contracts or working on zero-hour contracts where contribution history may be patchy.

b) Other Measures

Increases to certain key social security payments were maintained throughout 2021 and into 2022. Low-income families were identified as a particular group of concern: fuel allowances were increased to compensate those on lower incomes for additional energy costs (by EUR 3.50 in 2021 and by EUR 5 in 2022); qualified child payments were increased (by a further EUR 5 for over 12s in 2021 and by EUR 3 in 2022 and EUR 2 for under 12s in 2021 and EUR 2 in 2022) to reduce child poverty; carer's support grant was increased by EUR 150 in 2021; parent's benefit was extended by a further three weeks in 2021 and by two further weeks in 2022 to 7 weeks. In addition, the government applied a Christmas bonus in December 2020 and 2021 not only to those who had been on long-term social welfare payments or out of work for more than 15 months, but also those who had been out of work in the previous 4 months. Many of those on PUP in December 2020 and 2021 were entitled to this Christmas bonus. Budget 2022 was one of the largest social welfare expenditures in many years in Ireland worth EUR 558 million; the government raised many social welfare payments by EUR 5 including increases for working age and pension age recipients, increases to rates for Qualified Children, Living Alone and Fuel

66 McGann, The Political Economy of Welfare in a Time of Coronavirus: Post-Productivism as a State of Exception (2020) 28(2) Irish Journal of Sociology 225-230, p. 228.

67 Mangan, Covid-19 and Labour Law in Ireland (2020) 11(3) European Labour Law Journal 298-305, p. 302.

Allowance rates and a package of measures for carers and persons with disabilities.[68]

While these increases are welcomed, there are still very high levels of income inequality in Ireland. The Nevin Economic Research Institute[69] reporting in June 2021 indicated that Ireland had one of the "most unequal distributions" of household market income inequality in the developed world. Even prior to the pandemic, Ireland had the second highest rate of low-wage earners out of 11 high-income EU countries. The pandemic has clearly exacerbated this. Yet the research indicates that it is the households with higher incomes which have benefited most from changes in the recent Budget, allowing those dependent on social welfare to fall even further behind.[70] Social Justice Ireland have reported that in the past five years there has been a notable decrease in poverty risk in Ireland caused by a combination of budgetary decisions which prioritised welfare-dependent households. However, Social Justice Ireland also warn that the Budgets in 2020 and 2021 have shifted their approach with the implication that much of this progress could be reversed.[71]

One of the most pressing issues in Ireland in the past five years has been housing and particularly the lack of availability of affordable housing and state-owned housing. This has been exacerbated by the pandemic with many families failing to meet private rental or mortgage commitments. In order to resolve this, the government introduced moratoriums on evictions and rent increases. This will run until January 2022.[72] The emergency rules provide that if a notice of termination is served on a tenant during the emergency period that cites as a reason for termination the failure by the tenant to pay an amount of rent, that notice of termination shall not specify a termination date that falls earlier than 12 January 2022.[73] Despite this protection, the Residential Tenancies Board recorded a significant in-

68 McGrath, Statement of the Minister for Public Expenditure and Reform on Budget 2022.

69 Nugent, Hourly Earnings Inequality in High-Income EU Countries and the UK: Evidence from the Structure of Earnings Survey, (2021) Nevin Economic Research Institute, Report Series No. 7, p. 4.

70 Social Justice Ireland, National Social Monitor: Ireland Social Scoreboard (2021), p. 17.

71 Social Justice Ireland, Poverty Focus 2021, p. 3.

72 Kirwan, The 'Playing a Blinder' Myth: The Republic of Ireland's Pandemic Response Revisited (2021) Irish Journal of Sociology 1-8, pp. 4-5. See also the Residential Tenancies and Valuation Act 2020 (as amended), Section 5.

73 Residential Tenancies and Valuation Act 2020, Section 5 (as amended).

crease in tenancy terminations during the pandemic.[74] The most common reason recorded for termination was that the landlord was considering selling the property (which legally allows the landlord to terminate the tenancy).[75] Whether this is true or not is difficult to say but it is clear that the legislation failed to protect many tenants during this time.

5. Conclusions

There is no doubt that the economic impact on the pandemic thus far on Ireland has been particularly severe. Nevertheless, the Irish authorities have been commended by international bodies, like the IMF, for its "comprehensive policy support" which essentially limited the impact of the pandemic and allowed the state to see strong increases in its GDP in 2020 and 2021. The government set out very early in the crisis that they would rise to the challenge by initiating a three-pronged approach: building up a healthcare capacity, protecting household income and supporting employment.[76] While healthcare has not been discussed here, the measures initiative by the Irish government do essentially meet these aims through economic stimulus packages, a reduction in business burdens, temporary employment wage subsidies, pandemic unemployment payments, supports for those who are ill or on short-time work and those who are self-employed with some additional increases in social welfare to ensure those who are most vulnerable were not unduly impacted. Whether these latter increases are sufficient to protect the most vulnerable is however debatable.

However, as John Donne presciently noted: no man is an island entire of itself. Ireland is a case in point. Ireland has benefited fiscally as a result of policy initiatives which have, over many years, channelled foreign direct investment into Ireland. The information technology and pharmaceutical industries have been the biggest beneficiaries of these investments and both industries have flourished during the pandemic and further supported the fiscal base.[77] Consequently, despite the cost of the pandemic mea-

74 Residential Tenancies Board, Summary Notice of Termination received by RTB between Q2 2019 - Q3 2021.

75 Residential Tenancies Board, Notice of Termination received by RTB between Q2 2019 – Q3 2021 broken down by reason for notice.

76 Donohue, Statement of the Minister for Finance: Budget 2021, p. 2.

77 OECD, Economic Policy Reforms 2021: Going for Growth: Report on Ireland, p. 2.

sures, the fiscal situation remains stronger than predicted allowing Ireland to shoulder the main burden of the costs. Additionally, as a member of the European Union, Ireland has been able to have significant confidence in the support of their European neighbours. Ireland is set to receive significant funds from Recovery and Resilience Facility Grants (EUR 1 billion), under REACT-EU (EUR 89 million) and from the Just Transition Fund (EUR 85 million). Ireland will also receive almost EUR 1.2 billion in Cohesion Policy allocations, as well as EUR 8.3 billion from the European Agricultural Guarantee Fund. The European Commission recently transferred EUR 2.47 billion worth of financial support to Ireland under the SURE instrument in the form of loans granted on favourable terms to support the TWSS and the EWSS. Financial support for the tourism sector and entertainment sectors has also been secured from the EU. Ireland will, in addition, be the largest recipient of the Brexit Adjustment Fund.[78]

COVID-19 was an unprecedented "invisible enemy" arising at a time when Ireland was already facing significant economic threats from Brexit. Despite this, Ireland has managed to draw on its vast experiences since independence and to work closely with its European neighbours to meet this enemy with "greater determination, resolve and resources than ever before"[79]. The Irish approach has been one of humility and solidarity from the outset and it has so far (with few exceptions) been successful in achieving light from a what was and still is potentially a very dark period in Irish economic history.

78 European Commission, The Recovery Plan for Ireland (2021).
79 Donohue, Statement of the Minister for Finance: Budget 2021, p. 2.

XII. Social Policy Measures to Mitigate the Effects of the COVID-19 Pandemic in Italy between Continuity and Change

Eva Maria Hohnerlein

1. Introduction

Italy was the first European country to be seriously affected by the coronavirus pandemic. On 31 January 2020, the government declared the "state of national health emergency" (*stato di emergenza sanitaria*), originally intended to last for six months (from 1 February to 31 July 2020) but later extended several times.[1]

Since the end of February 2020, the Italian government has issued an abundant set of decree laws[2] as well as implementing decrees[3] and other regulations to gain control over the spread of the virus.[4]

By March 2020, the massive restrictions on public life with closure of business activities and social distancing, initially limited to a few "red zones" in Lombardy and Veneto, were gradually expanded throughout the national territory, extending their scope and coverage. One of the earliest measures was the closure of all daycare centres, schools and universities, as mandated by DPCM of 4 March 2020, later followed by an unprecedented lockdown of all non-essential economic activities and of social life

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1 The first extension lasted until 15 October 2020, further protracted until 31 December 2021. With the spread of the Omicron variant, the state of emergency was extended until 31 March 2022.

2 A decree law (D.L.) is a decree having the force of law, adopted by the government in case of necessity and urgency, and immediately introduced to parliament to be converted into law, often with modifications. Approval by parliament must take place within 60 days, or the decree law loses effect from the beginning.

3 Administrative instructions are adopted by Decrees of the President of the Council of Ministers (Decreto del Presidente del Consiglio dei Ministri – DPCM) and serve to implement the emergency decrees.

4 According to a report in the daily newspaper "La Repubblica", 160 coronavirus-related decrees, ordinances, ministerial circulars, etc. were produced within 100 days at the national level alone, not counting the no less productive flood of norms at the regional level, cf. La Repubblica, 4 May 2020, p. 17.

throughout the country.[5] The massive restrictions initially applied until May 2020, but a variable set of restrictions remained in force or were later re-introduced.[6] In autumn 2020, regions were classified as yellow, orange or red zones, corresponding to a moderate, a serious or a high risk of infection. Each zone was associated with differentiated restrictive measures.[7]

As of the second half of 2021, vaccination played a more prominent role in containing the spread of the virus and its changing variants. Italy introduced mandatory COVID-19 vaccination for health and education personnel already in April 2021, later extended to administrative staff in the health and education sectors, as well as to the military, police and emergency services.[8] Access to certain activities required a Green Pass certificate which proves the holder (aged 12 or older) has been vaccinated, recovered or (negatively) tested. As of 15 October 2021, this certificate has been a mandatory requirement for access to any workplace.[9] In December 2021, stricter access rules came into force.[10]

The measures taken to contain the pandemic have had and still have far-reaching consequences for the economy, the labour market and thus for many families facing significant income losses: by mid-April 2020, 60% of industrial enterprises had come to a standstill and every second

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5 The DPCM of 11 March 2020 extended the list of suspended activities (in particular activities with the highest risk of infection), and also recommended companies to use "smart working", paid rest periods and holiday leave. For the essential sectors (health, agriculture, food) that are allowed to continue their activities cf. DPCM of 22 March 2020.

6 Cf. DPCM of 26 April 2020, which, from 4 May 2020, envisaged a gradual relaxation of the restrictions on the freedom of movement and the resumption of production or operations for various sectors affected by the forced closure. A second (more differentiated) lockdown was imposed around Easter 2021 (31/03-30/04/2021).

7 Cf. DPCM of 24 October 2020.

8 Cf. Art. 4-bis D.L. 44/2021, converted by Law 76/2021, as modified by D.L. 122/2021 of 10 September 2021.

9 For the Green Pass cf. D.L. 52 of 22 April 2021, converted by Law 87/2021, as modified by D.L. 127 of 21 September 2021, converted by Law 165/2021 (inserting Art. 9-quinquies, 9-sexies and 9-septies to D.L. 52/2021). Workers who refuse to present a valid certificate are suspended and do not receive a salary.

10 D.L. 172 of 26 November 2021, converted by Law 3/2022 ("Super Green Pass" as of 15 December 2021).

enterprise (a total of 2.2 million companies) was blocked.[11] Many citizens literally ran out of money due to lack of income, especially in the poor regions of Southern Italy.[12] The travel and tourism sector has been affected particularly hard.[13]

While GDP declined by 8.9% in 2020, measures based on the National Recovery Plan helped generate positive developments, including GDP growth of 6.5%, and some improvements in the labour market situation by the end of 2021.

The 2020 economic shock linked to the pandemic hit a country that had not yet recovered from the preceding recessions and suffered from major inequalities, regional disparities and large fragmentation of the labour market. While the unemployment rate had fallen to just below 10% at the beginning of 2020[14], the average duration of unemployment had already been at 27 months before the corona crisis. Other anomalies of the Italian labour market, in particular the spread of precarious employment with very short-term contracts and unregistered employment in the informal sector, leave relevant segments of the labour force at the margins of social protection.

To cushion the economic and social impact of the closure of many economic activities, provided for under DPCM of 9 March 2020 and further developed by subsequent decrees, the government adopted a series of "economic packages".[15] These packages were intended to support businesses,

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11 For a breakdown by economic sector cf. INAPP, COVID-19: Misure di contenimento dell'epidemia e impatto sull'occupazione, Policy Brief No. 17/2020, April 2020.

12 As La Repubblica reported on 23 April 2020, 10 million citizens were only a small step away from absolute poverty.

13 The travel industry generates 13.2% of national product and employs 15% of the workforce.

14 Men: 8.7%; women: 11.5%; the regional peak was highest in the South with an average rate of 17.4%.

15 For a first overview cf. Gaglione/Purificato/Rymkevich, COVID-19 and Labour Law: Italy, Italian Labour Law e-Journal, Special Issue 1, vol. 13 (2020), with update of 16 June 2020; Tiraboschi, Il caso italiano, in: www.cielolaboral.com; Pileggi (ed.), Il Diritto del Lavoro dell'emergenza epidemiologica, Lav. Prev. Oggi, Special Issue, 2020; for further legal analysis of the support packages see e.g. the contributions Cairoli, Calderara and Mezzacapo, in: Bellomo et al. (eds.) Lavoro e tutele al tempo del Covid-19, 2020; the contributions by Brollo, Carinci, Cester, D'Ascola, Del Punta, Ferrante, Maresca, Perulli, Pessi, Romei, Scarpelli, Sgroi, Verzaro and Zoli, in: Mazzotta (ed.), Diritto del lavoro ed emergenza pandemica, 2021; Contrino and Farri (eds.), Pandemia da "COVID-19" e sistema tributario. Problematiche dell'emergenza, misure di sostegno e politiche

as well as workers and families, with a special focus on wage guarantee schemes which have a long tradition in Italy and had been successfully used in previous economic crises.[16] According to labour market statistics for December 2021, the strategies adopted during the pandemic resulted in stabilising the employment rate at 59%, while the unemployment rate dropped to 9%.[17]

The first package, the so-called *Cura Italia* Decree No. 18/2020,[18] was supplemented by the "Liquidity Decree" No. 23/2020,[19] followed by a set of additional emergency decrees, aimed at addressing persistent economic challenges by either strengthening traditional social protection schemes for standard workers or providing new temporary income support for non-standard workers and financial support for businesses.[20]

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fiscali, 2021; Pantalone, Italian Measures in Support of Work at the Time of Coronavirus: Between Emergency Legislation and (the Need for a) More Resilient Administration, (2021) 28 Journal of Social Security Law, Issue 3, pp.189-199.

16 The Italian experience with wage guarantee programs (Cassa Integrazione Guadagni, CIG) dates back to the 1940s. CIG measures were part of the comprehensive 2015 labour market reform. Calls for further reform continued during the pandemic.

17 Even female and youth employment rates had increased impressively by the end of 2021, cf. ISTAT, Statistiche Flash, Employment and Unemployment (Provisional Estimates) – December 2021, Press Release 01/02/2022.

18 Decree Law No. 18 of 17 March 2020 on "Measures to strengthen the National Health Service and to provide economic support for families, workers and businesses in the context of the epidemiological emergency caused by COVID-19. Extension of the deadlines for legislative decrees", converted by Law No. 27 of 24 April 2020. Under D.L. 18/2020, the National Social Security Institution INPS approved and, to a large extent, paid out benefits for 11.5 million people, totalling EUR 10.2 billion by 23 April 2020.

19 Decreto-Legge 8 aprile 2020, n. 23, on "Urgent measures regarding access to credit, tax law compliance for companies, special powers in the essential sectors as well as interventions for health, labour, extension of administrative and procedural deadlines", converted by Law No. 40 of 5 June 2020. D.L. 23/2020 provided additional funding of EUR 400 billion.

20 Decree Law No. 34 of 19 May 2020 ("Relaunch" Decree) converted by Law No. 77 of 17 July 2020 with additional funding of EUR 155 billion for interventions from 18 May to 31 July 2020; Decree Law No. 52 of 16 June 2020 (not converted); Decree Law No. 104 of 17 August 2020 ("August" Decree), converted by Law No. 126 of 13 October 2020; Decree Law No. 137 of 28 October 2020 ("Ristori" Decree), converted by Law No. 176 of 18 December 2020. The first "Ristori Decree" was supplemented by three additional decree-laws: D.L. 149 of 9 November 2020, D.L. 154 of 23 November 2020, and D.L. 157 of 30 November 2020.

The 2021 Budget Law[21] confirmed the government's main lines of action, as to supporting businesses and families, and incentivising employment, with a specific focus on young people and women.[22] In 2021, pandemic-related support policies for workers and businesses continued, with vaccination measures providing new parameters for the gradual relaxation of restrictions. The normative production was not less abundant than in 2020, as most of the emergency provisions had to be extended in time, as well as adjusted to the evolution of the pandemic and targeted towards those most affected by the economic and social restrictions.[23]

All 2020 and 2021 social protection measures based on emergency decrees have been adopted for a defined period of time, with a limited annual budget to be supervised by the National Institute for Social Protection INPS. However, the annual Budget Laws for 2021 (Law 178/2020) and 2022 (Law 234/2021)[24] have introduced important structural reforms to improve income continuity for non-standard workers and advance the goal of more universal social protection.

2. *Job Retention*

During corona-related business closures, short-time working solutions and a temporary general ban on redundancies were the preferred means to pre-

21 Law No. 178 of 30 December 2020 "Bilancio di previsione dello Stato per l'anno finanziario 2021 e bilancio pluriennale per il triennio 2021-2023".

22 The Budget Law also envisaged some structural reforms, such as the single universal child allowance, and a new income guarantee scheme for the self-employed.

23 Decree Law No. 30 of 13 March 2021 (Misure urgenti per fronteggiare la diffusione del COVID-19 e interventi di sostegno per lavoratori con figli minori in didattica a distanza o in quarantena,), converted by Law 61/2021; Decree Law No. 41 of 22 March 2021 (Misure urgenti in materia di sostegno alle imprese e agli operatori economici, di lavoro, salute e servizi territoriali, connesse all'emergenza da COVID-19 – First Support Decree), converted by Law 69/2021; Decree-Law No. 52 of 22 April 2021 (Misure urgenti per la graduale ripresa delle attivita' economiche e sociali nel rispetto delle esigenze di contenimento della diffusione dell'epidemia da COVID-19), converted by Law 87/2021; Decree-Law No. 73 of 25 May 2021 (Misure urgenti connesse all'emergenza da COVID-19, per le imprese, il lavoro, i giovani, la salute e i servizi territoriali – Second Support Decree), converted by Law 106/2021; Decree-Law No. 146 of 21 October 2021 (Misure urgenti in materia economica e fiscale, a tutela del lavoro e per esigenze indifferibili – Fiscal Decree), converted by Law 215/2021.

24 Law No. 234 of 30 December 2020 "Bilancio di previsione dello Stato per l'anno finanziario 2022 e bilancio pluriennale per il triennio 2022-2024".

vent unemployment, protect existing employment contracts and stabilise the labour market.[25] Other instruments for preserving jobs under labour law provisions included the use of “flexible working” (*lavoro agile* or smart working)[26] whenever possible, but also the exhaustion of paid leave periods and holiday leave[27]. However, in case of fixed-term employment of short duration, trial employment or apprenticeship contracts, these measures cannot guarantee job retention or income security.

a) Adjustments to Wage Guarantee Schemes

As in previous economic crises in Italy, the instrument of short-time work benefits through the “Ordinary Wage Guarantee Fund” (*Cassa Integrazione Guadagni Ordinaria, CIGO*)[28] for temporary suspensions of work or reductions of working time played a central role in 2020 and 2021. It offers protection for existing employment during temporary productivity problems linked to an exogenous crisis. The scheme guarantees to maintain 80% of previous earnings when working time is reduced or activities are suspended, with a fixed maximum.[29]

25 The initial general ban on redundancies was established for 60 days only (Art. 46 D.L. 18/2020), extended subsequently various times, albeit with modifications restricting the scope of application (see below).

26 Art. 39, 75, 87 D.L. 18/2020. In practice, it is usually simple telework.

27 Under Italian labour law, employers cannot force their employees to take holidays for a certain period. An exception to this rule applies to leave remaining from previous calendar years. For the use of residual leave cf. Adapt, Scheda No. 4, Congedi retribuiti e utilizzo delle ferie durante la crisi da COVID-19.

28 The CIGO is the main wage guarantee instrument to cushion temporary suspensions of work or reductions of working time due to problems in production activity, normally available for a period of 13 weeks (extendable to 52 weeks). The “Extraordinary Wage Guarantee Fund” (Cassa Integrazione Guadagni Straordinaria, CIGS) was used to cover restructuring processes in larger companies in specific sectors for a period varying between 12 to 24 months within a mobile five-year period; access requires authorisation by the Ministry of Labour and Social Policies. Coverage has been extended after the 2009 economic crisis, by means of a temporary “derogation scheme” (CIG in deroga) or by contractual schemes (Bilateral Solidarity Funds). On the evolution of these schemes see Cinelli, Diritto della previdenza sociale, 15th edition 2020, p. 329 et seq.

29 Efforts to extend the statutory wage guarantee scheme to smaller companies remained limited. The pre-pandemic legal framework (Decreto Legislativo = D.Lgs. 148/2015) comprises the statutory social insurance schemes (CIGO and CIGS), some contractual instruments established through collective agreements, such as the Bilateral Solidarity Funds (Fondi di solidarietà bilaterali), and Alternative

During the corona crisis, emergency legislation has given consent to companies to use wage guarantee schemes in the most comprehensive, easiest, and simplest way possible, in particular by introducing the novel justification of "COVID-19 emergency" (*Emergenza COVID-19*).[30] Thus, employers did not have to prove the temporary character of the crisis nor the absence of fault. Access conditions to wage guarantee schemes were relaxed with regard to contractual Solidarity Funds (which were allowed to grant benefits in the absence of financial resources), and more generally by the re-introduction of the wage guarantee scheme in special cases (*Cassa Integrazione Guadagni in Deroga*, *CIGD)* for small companies in the private sector with less than five employees.[31] Coverage by CIGD was extended to professional athletes who are employed by a sport association and insured by the Statutory Pension Fund for Professional Athletes.[32]

Maintenance of employment was granted above all by the contextual ban on dismissals for economic reasons,[33] and by the adoption of comprehensive derogations from the pre-existing CIG rules, including the maximum duration of this instrument. The initial period of 9 weeks in 2020[34] was subsequently increased by additional periods.[35] As of August 2020, access was targeted more and more towards the most affected sectors.

Bilateral Solidarity Funds for the craft and temporary agency work sectors. As a residual statutory instrument, the Wage Integration Fund (Fondo di Integrazione Salariale, FIS) has been set up for companies with an average of more than five employees. For details see Gaetani/Marrucci, Il sistema degli ammortizzatori sociali dopo il Jobs Act, 2017; Nicolini (ed.), Gli ammortizzatori sociali riformati, 2018; Spattini, Le tutele sul mercato del lavoro: il sistema degli ammortizzatori sociali, le politiche attive e la condizionalità, in: Tiraboschi (ed.), Le nuove regole del lavoro dopo il Jobs Act, 2016, pp. 408-470.

30 Mesiti, La tutela previdenziale temporanea speciale dei lavoratori nell'emergenza Covid-19, in: Pileggi (ed.) op.cit. (supra fn. 14), pp. 115-127; Del Punta, Note sugli ammortizzatori sociali ai tempi del Covid-19, Rivista italiana di diritto del lavoro (RIDL), 2/2020, part I, pp. 251-265.

31 Art. 22 D.L. 18/2020. Private households as employers remained explicitly excluded.

32 Introduced by Art. 2 Para. 2 D.L. 104/2020, modifying Art. 22, Para. 1-bis D.L. 18/20.

33 INPS 2021, L'innovazione dell'INPS per il rilancio del Paese. XX Rapporto Annuale, p. 66.

34 Art. 19 D.L. 18/2020. Access to the wage guarantee scheme required that the short-time work has been registered by certain key dates.

35 Art. 69 of D.L. 34/2020 (+5+4 weeks); Art. 1 D.L. 104/2020 (+ 9 weeks); Art. 12 D.L. 137/2020 (+ 6 weeks); Art. 1 Para. 300 Law 178/2020 (13 weeks); Art. 8 D.L. 41/2021 (for enterprises covered by CIGO +13 weeks between April and June 2021; for enterprises covered by CIGD or by Solidarity Funds: + 28 weeks be-

The government also introduced derogations by exempting employers who activated the wage guarantee scheme from special social security contributions, and by suspending various eligibility conditions for employers and workers. Furthermore, provisions dealing with the involvement of trade unions in terms of consultation and information procedures were relaxed for some time. Access was also supported by provisions which allowed employers to request direct payments to employees in short-time work by INPS.[36]

In addition, access to the ordinary wage guarantee scheme *CIGO*, based on the new "COVID-19" justification, was granted to companies for which the extraordinary wage guarantee scheme (*CIGS*) had been activated.[37] Likewise, the range of eligible companies has become more flexible under COVID-19 rules since employers could extend fixed-term employment contracts without losing the possibility to access the wage guarantee schemes.[38]

As to the benefit level, the replacement rate of up to 80% of total gross wages for hours not worked (with an upper ceiling depending on total wages) has been maintained.[39] The scheme does not provide for any minimum level of the benefit. Benefits used under the corona-related short-time work scheme are not counted towards the statutory maximum duration for regular benefits under the various wage guarantee schemes.

The approach towards the pandemic-related use of short-time work has been very cautious. In view of budgetary constraints the Italian government tended to offer protection in a gradual way for rather short periods of time, with subsequent extensions and adjustments for better targeting.

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tween June and December 2021); Art. 50-bis Para. 2-7 D.L. 73/2021 (for specific sectors, including the textile industry: +13 weeks); Art. 11 D.L. 146/2021 (up to 13 weeks if covered by CIGD or by Solidarity Funds; + 9 weeks under regular CIGO conditions for the specific sectors protected under Art. 50-bis D.L. 73/2021, albeit all extensions granted without additional contribution requirement).

36 Art. 22-quater (for CIGD) and Art. 22-quinquies (for CIGO and Bilateral Solidarity Funds) of D.L. 18/2020, as amended by Art. 71 D.L. 34/2020.

37 Art. 20 D.L. 18/2020. Such transition is normally excluded.

38 Cf. Art. 93 D.L. 34/2020 (Relaunch Decree) and Art. 8 D.L. 104/2020 (August Decree).

39 The maximum benefit amounts to EUR 940 in 2020 if the monthly wage is below the threshold of EUR 2,159.48, and to EUR 1,130 for wages above the threshold. In the event of receipt beyond 12 months, the amounts are to be reduced in the same way as unemployment benefit, i.e. by 3% for each additional month, but the maximum duration for benefits provided so far under COVID-19 rules amounts only to a total of 36 weeks.

Some extensions were aimed at extending coverage to workers previously excluded, as in the case of agricultural enterprises. In a modified approach adopted since August 2020, some mandatory social security contributions have been re-established if the loss in turnover has been less than 20%,[40] with differentiated contribution rates according to the revenue losses incurred, and exemptions were further restricted in 2021.

The Budget Law for 2021 introduced an incentive for employers not to activate wage guarantee schemes but to use the possibility of a partial exemption of social security contributions instead. In 2021, emergency legislation introduced the alternative solution that companies that had experienced a decline in turnover of 50% due to the pandemic measures compared to the first semester of 2019 could apply to access the extraordinary wage guarantee scheme "in derogation" for up to 26 weeks. The application required a collective agreement with trade unions in view of reducing working time and maintaining employment levels during the period of post-pandemic recovery.[41] The benefit level for hours not worked was set at 70% of the usual salary, without upper ceiling.

In order to support rapid access to wage guarantee benefits during the initial phase of the pandemic, the government, the social partners and the Italian Banking Association ABI signed an agreement on 30 March 2020 so that banks could anticipate the payments of wage guarantee benefits up to EUR 1,400.[42] Nevertheless, the promise of rapid assistance was often not kept during the first lockdown in 2020, partly because the social administrations had difficulties tackling the sheer amount of applications, partly because applicants themselves committed errors in the application procedure.[43] Another critical aspect consisted in a temporary lack of priorities in

40 Art. 1 D.L. 104/2020. The contribution rate is 9% of total wages for hours not worked when turnover losses are less than 20%, and 18% for employers without any disruption in turnover. The exemption continues to apply to employers who have suffered a reduction in turnover of at least 20%, and to employers that have started their business activities later than 1 January 2019.

41 Art. 40 D.L. 73/2021. The provision encompassed also enterprises of smaller dimensions (regular staff up to 15 employees) which normally are not covered by the CIGS system.

42 This agreement, in force until 31 December 2020, was aimed at supporting workers waiting for the payment of income support measures by the National Social Security Institute (INPS).

43 A total of 7.35 million eligible workers were registered with the INPS for wage guarantee benefits as of 23 April 2020. The unprecedented role of wage guarantee benefits in the 2020 crisis is demonstrated by the sheer number of short-time work authorised in the first semester of 2020, reaching 3 billion hours. This repre-

times of limited financial resources, subsequently corrected by better targeting.[44]

Overall, the wage guarantee schemes were the most important instrument for job retention during the pandemic, accounting for 6.4 million beneficiaries in 2020 (up from 620,000 in 2019), albeit with considerable variations as to duration and intensity.[45]

In response to reform proposals debated during the pandemic, the Budget Law for 2022 introduced significant modifications to the ordinary wage guarantee schemes, aimed at a more inclusive welfare state by expanding coverage to employees previously excluded, by improving benefits, and by harmonising access conditions, and equalising benefit rules.[46] According the principle of a “differentiated universalism”, the wage guarantee system will cover home-based workers (*lavoratori a domicilio*) and all types of apprenticeship relations, as of January 2022. The requirement related to the effective prior employment with the company is reduced (from 90 to 30 working days). At the same time, benefits are improved through the elimination of the lower cap on benefit amounts, while the upper cap (of EUR 1,199.72 in 2021) is maintained.

Bilateral Solidarity Funds (as contractual schemes) can be set up by all enterprises and sectors not covered by the CIGO system, regardless of the number of employees; the replacement rate of theses contractual schemes must not be lower than in the statutory CIGO scheme (80%). The inclusion of very small enterprises with less than five employees via mandatory affiliation to the Wage Integration Fund of INPS (*FIS*), and the extension of the scheme for the agricultural sector (CISOA) to dependent workers

sents an increase by 988% for the period January to August 2020, as compared to the year 2019. Cf. INPS, Report Mensile Settembre 2020. Cassa integrazione guadagni e Disoccupazione, 25/09/2020.

44 Data analysis of direct CIG payments by INPS revealed that about 34% of businesses (almost 189,000 out of about 552,000) which had claimed at least one hour of short-time work had not suffered any decrease in their turnover, cf. INPS, INPS tra emergenza e rilancio. Relazione annuale del Presidente INPS, October 2020, p. 6.

45 For details cf. INPS, XX Rapporto Annuale 2021, pp. 66 ff; the number of authorised short-time work hours amounted to 2.8 billion hours in 2021 (35% less than in 2020); on average across the different sub-schemes, only 39% of the total amount was used in 2021, against 46% in 2020. Cf. INPS, Report Mensile. Cassa integrazione guadagni e Disoccupazione, 20/01/2022.

46 Law 234 of 30 December 2021 (Art. 1 Paras. 191-257) and D.L. 228/2021 of 30 December 2021 (“Milleproroghe”), establishing comprehensive changes to Legislative Decree 148/2015.

in the fishery and maritime sector are further steps towards universal coverage beyond the pandemic. More inclusive coverage is also granted by expanding access to the extraordinary CIGS scheme to employers with more than 15 employees, irrespective of the economic sector. Thus, the pandemic can be considered as a catalyst facilitating structural changes in the much-debated area of social shock absorbers from 2022 onwards.

b) Adjustment to the Renewal of Fixed-Term Contracts

The COVID-19 rules also introduced some adjustments for fixed-term employment contracts. Some of the restrictions related to the renewal or extension of fixed-term contracts have been waived. In particular, companies that benefitted from the wage guarantee scheme were permitted to renew or extend the duration of fixed-term employment contracts already in place, even without any objective reason generally required by law.[47] Subsequent legislation confirmed and extended the relaxed renewal of fixed-term contracts to any company, even without any link to the wage guarantee scheme. Such measures have been confirmed under further emergency legislation.[48]

c) Ban on Dismissals as New Temporary Measure

From the date of entry into force of the *Cura Italia* Decree (17 March 2020), collective redundancies and individual dismissals for economic reasons were prohibited for 60 days. Any collective redundancy procedures already in progress and initiated after 23 February 2020 were mandatorily suspended.[49] Accordingly, those who wished to close their company had to look for alternatives (namely wage guarantee schemes). Only dismissals based on personal misconduct were still possible. The ban on dismissals has been extended several times in 2020, but as of August 2020 the gov-

47 Art. 19-bis D.L. 18/2020 as amended.

48 Art. 93 Para. 1; Para. 1-bis D.L. 34/2020 (Relaunch Decree), Art. 8 D.L. 104/2020, Art. 17 D.L. 41/2021.

49 Art. 46 D.L. 18/2020. Cf. Biasi, COVID-19 and Labour Law in Italy, European Labour Law Journal 2020, vol. 11(3), 306-309 (309). The intensity of this measure (taken without involvement of social partners) was not only new for Italy, but also quite unique among the EU countries.

ernment introduced important exceptions and modifications.[50] The ban on dismissals has been restricted to those companies which had not yet exhausted all possibilities to use short-time work or the alternative alleviation in social security contributions. Thus, the duration of the ban became blurred and turned into a mobile ban depending mainly on the use or non-use of wage guarantee schemes. The prohibition was continued up to 31 December 2021, albeit for a limited number of specific cases.[51]

d) Temporary Leave Provisions for Parents and Family Carers

The closure of schools and childcare facilities which initially lasted from 5 March 2020 up to the beginning of the school year 2020/21 prompted the government to adopt provisions for extended parental leave and family care leave and the right to smart working for parents and carers.[52] The provisions were more generous than regular parental leave with respect to the child's age, the number of days, and the corresponding leave benefit. A paid ad hoc parental leave (*congedo parentale*) of an initial duration of 15 days, later extended to a total of 30 days per parent was created for parents for the care of children up to the age of 12 (and disabled children without age limit) due to the suspension of all educational, didactic and care-related services, including specialised care services for severely disabled children. The corresponding COVID-19 parental leave benefit was available to employees in the private sector, self-employed persons and atypical workers registered with INPS social security schemes.[53]

The reopening of schools in September 2020 brought additional parental leave provisions to meet childcare needs due to various COVID-19 measures, in particular quarantine imposed on students, but also local closures of educational services, or periods of "distance learning" (home

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50 Art. 14 D.L. 104/2020 provided for a flexible period, at most up to 31 December 2020, extended to 31 January 2021 by D.L. 137/2020 (Art. 12). An exemption from the ban was also allowed as part of collective agreements, and in case of business closure.

51 Cf. Art. 40 D.L. 73/2021; Art. 11 D.L. 146/2021.

52 The pandemic legislation also introduced a right to smart (agile) working for parents with at least one child under the age of 14, even without any individual agreement normally required.

53 Art. 23 D.L. 18/2020; Art. 72 D.L. 34/2020. The leave had to be used between 5 March and 31 August 2020.

schooling). Coverage depending on the child's age was increased from 12 years to 14 years of age.[54]

The parental leave benefit was set at 50% of the usual monthly earnings or income and thus higher than the regular parental leave benefit (of only 30%). Both parents are entitled to paid leave, but not simultaneously.[55] Parents of older children up to the age of 16 were entitled to unpaid parental leave for the total period of school closure and suspension of educational services, and without pension rights acknowledged for this period.[56] Paid and unpaid leave periods for employees are protected by a job guarantee and a ban on dismissal, so the instrument serves to retain employment for parents. About 300,000 children benefitted from the paid leave and about 784,700 children from the babysitting bonus.[57]

In 2021, the protection via paid leave for working parents of children up to age 14 has been extended exclusively for salaried workers, as well as unpaid leave in case of children aged 14-16.[58] Starting from the 2021/22 school year, the provisions on paid parental in case of quarantine of the child and suspension of classes have been unified and extended until 31 March 2022.[59]

As an alternative to paid parental leave, parents who needed to be present at the workplace were entitled to a voucher for "babysitter" services, initially amounting to a maximum of EUR 600, increased to EUR 1,200 in May 2020, to meet the costs for childcare services used during the general closure period (5 March 2020 to 31 August 2020). Parents working in the healthcare, rescue and defence sectors were entitled to an increased bonus, initially of EUR 1,000, subsequently raised to

54 E.g. D.L. 104/2020, as modified by D.L. 111/2020 (in case of infections among teaching staff or students); Art. 5 D.L. 111/2020, modified and converted by Law 126/2020 (students under imposed quarantine); D.L. 137/2020, converted by Law 176/2020 (suspension of educational activities in presence).

55 The benefit is not accessible if the other parent receives wage guarantee benefits (or unemployment benefits) or is unemployed.

56 The lower age limit for children with regard to unpaid leave was originally set at 12 years, but has been raised to 14 years since the 2020/21 school year.

57 INPS, XX Rapporto Annuale, 2021, pp. 219 ff.

58 D.L. 30/2021, converted into Law 61/2021 (up to 30 June 2021).

59 Renamed "congedo parentale SARS CoV-2", cf. Art. 9 D.L. 146 of 21 October 2021, converted by Law 215/2021; Art. 17 of D.L. 221 of 24 December 2021. The benefit during the leave was again 50% of previous earnings and covered dependent workers, autonomous workers registered with INPS and self-employed workers registered exclusively with the separate scheme of INPS.

EUR 2,000.[60] In contrast to the additional parental leave entitlement, also self-employed persons not insured with INPS (encompassing the liberal professions affiliated to specific professional schemes) were entitled to the babysitting voucher.[61]

In 2021, emergency childcare benefits have been re-adjusted: working parents of children up to 14 years of age, insured by the separate INPS insurance scheme, the INPS schemes for autonomous workers, or insured as dependent workers in public health services, as health professionals, security forces and other essential services, could apply for a weekly childcare bonus of up to EUR 100 for the time when face-to-face classes were interrupted and for periods of infection or quarantine imposed by the health authority.[62]

With respect to caregiver leave, employees and self-employed workers taking care of a severely disabled family member were entitled to 12 days of paid caregiver leave in addition to the regular paid leave of three days per month under the Disabilities Act.[63] Entitlement to this caregiver leave required that the carers could not work from home during the pandemic and that they did not stay at home on grounds of a short-time working agreement. The wage replacement benefit was set at 100% of the effective daily or hourly earnings.

e) *Sickness Benefits in Cases of Infection and Quarantine*

The government introduced some adjustments to the sickness benefit scheme. Workers who are infected with the COVID-19 virus are entitled

60 Art. 23 Para. 8 D.L. 18/2020; Art. 25 Para. 3 D.L. 18/2020; Art. 72 D.L. 34/2020. The bonus could be used for summer camps and for care provided by grandparents.

61 At the end of 2020, another voucher for the purchase of childcare services of up to EUR 1,000 was introduced for parents insured exclusively in the Special Fund for atypical workers or a special scheme of INPS when secondary school classes were temporarily suspended in regions classified as red zones (limited to the period 9 November to 3 December 2020), Art. 14 D.L. 149/2020; Art. 13-terdecies D.L. 137/2020.

62 Art. 2 Para. 6 D.L. 30/2021, converted by Law 61/2021.

63 Art. 24 D.L. 18/2020; Art. 33 Para. 3 Law No. 104/1992 (Legge-quadro per l'assistenza, l'integrazione sociale e i diritti delle persone handicappate). The leave for carers was subsequently extended for another 12 days (Art. 73 D.L. 34/2020).

to sick pay or sickness cash benefits under the statutory scheme.[64] Sickness benefits are provided upon medical proof of sickness and until the end of the prognosis, for a maximum duration of 180 days per calendar year. The initial COVID-19 legislation extended the entitlement to such benefits to workers in mandatory quarantine or in mandatory domestic isolation: the period of 14 days imposed by the competent health authority in case of contact with infected persons or after a stay in COVID-19 hot spot countries has been equalised to a sickness period.[65] All workers covered by sick pay provisions in case of sick leave are thus entitled to cash benefits in accordance with the social protection or security scheme that applies. Income protection through sickness benefits covers private and public sector employees and assimilated workers, the unemployed, apprentices, para-subordinate workers and other "new self-employed" under the separate mandatory pension scheme of INPS.[66]

For private sector workers the income replacement rate may vary according to the sector and is normally 50% of average daily earnings, and 66.66% from day 21 onwards up to a maximum of 180 days per calendar year.[67] Periods spent in mandatory quarantine are not included in the maximum number of days for which a worker is entitled to sickness benefits. Contrary to the usual rule, the state bears the costs for sick pay or sickness benefits instead of the employer or the INPS.

Special rules were created to maintain employment for dependent workers with severe disability or suffering severe medical conditions (e.g. treatment with immunosuppressive drugs and similar conditions of high vulnerability). They were entitled to a special, extended sick leave which was considered equivalent to a hospital stay, with corresponding sickness

64 If a COVID-19 infection occurred at the workplace, it is considered an occupational injury with corresponding social security benefits from the National Institute for Work Injury Insurance INAIL (also for COVID-related quarantine and self-isolation), Art. 42 Para. 2 D.L. 18/2020. The work injury scheme covers all employees and some self-employed workers, in particular para-subordinate workers.

65 Art. 26 Para. 1 D.L. 18/2020; the provision has been extended various times up to 31 December 2021.

66 The traditional self-employed workers enrolled at the corresponding special pension schemes of INPS for farmers, craftsmen or dealers are not covered by the statutory sickness cash benefits. As of July 2007, all professionals with no pension scheme other than the one offered by the gestione separata at INPS are mandatorily insured for sickness cash benefits. Duration of the benefits is limited to 1/6 of the insured working period with a maximum of 61 days per year.

67 For self-employed professionals the daily rate of sickness cash benefits depends on the number of previous contribution periods.

benefits.[68] Finally, reinforced sanitary surveillance of workers at high risk of contamination according to their age and/or state of health has been put in place, with the prohibition to dismiss them if they are declared unfit for work within the framework of this surveillance.[69] In general, periods of absence from work due to the pandemic are not included in the calculation of the maximum period of sick leave.[70]

3. *Supporting the Economy*

The measures to support businesses pursue different objectives. On the one hand, the aim is to prevent companies from laying off their workforce or suspending wage payments.[71] On the other hand, the self-employed who no longer generate a turnover and have had to stop their activities due to corona should also receive non-means-tested income support to compensate for income losses. In addition, various measures sought to restore liquidity, in particular for small and medium-sized enterprises (SMEs), which often have little or no financial reserves. Instruments adopted for this purpose include non-repayable subsidies, tax credits, relaxed access to credit through the guarantee fund for SMEs, deferred deadlines for payment of tax and social security obligations, in order to ensure the continuation of business activities during and after the emergency.

Moreover, as part of labour market policies, with particular emphasis since the relaunch phase, the creation of new employment opportunities

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68 Art. 26 Para. 2 D.L. 18/2020, Art. 87 Para. 1 D.L. 18/2020, as amended and extended subsequently up to 31 December 2021 by Law 178/2020 as modified by D.L. 111/2021, converted by Law 133/2021. The level of sickness benefits during a hospital stay is determined by statutory provisions or by collective agreement. As a rule, fragile workers should perform their work under agile working modalities or participate in specific online professional training activities. In the future, the protection should be based exclusively on smart working, cf. Art. 17 D.L. 221 of 24 December 2021. The Budget Law for 2022 provided for a new one-off payment of EUR 1,000 EUR for insured workers who had exhausted the maximum period of sick leave in 2021 (Art. 1 Para. 969 Law 234/2021).

69 Art. 83 D.L. 34/2020, converted by Law 77/2020. This protection tool has been extended several times by subsequent decrees adopted in 2021, most recently up to 31 March 2022 by D.L. 221/2021.

70 Art. 15 D.L. 41/2021.

71 Italian labour law allows the employer to suspend payment of wages if the business activities have to be discontinued for reasons of “force majeure” for which he is not responsible (e.g. natural disasters, failure of the electricity supply or an officially ordered closure).

has been incentivised and rewarded by temporary exemptions from social security contributions.[72] The instrument of temporary rebates on social contributions has been adopted also as a temporary regional policy measure to incentivise job creation in the depressed areas of Southern Italy (*Bonus Sud*).[73] Many of the government measures are supplemented by regional interventions.[74]

The various instruments have been continued over 2021, in particular non-repayable subsidies to specific sectors exposed to extensive closure or restrictions.[75]

a) *Deferral and Exemptions of Taxes and Social Security Contributions*

An important element in providing relief in the event of a drop in turnover or loss of revenue is the deferral of tax payments and social security contributions for companies, self-employed persons and freelancers who generate income of less than EUR 2 million annually.[76] The deadlines for this have been postponed several times. The Decree Law of August 2020 added a new alternative extending the respite period for 50% of the suspended tax and social security contributions to up to 24 months.[77]

In addition, special tax exemptions have been adopted during the pandemic, including the regional tax for industrial activities IRAP, the real

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72 Art. 6 D.L. 104/2020: total exemptions for 6 months in case of permanent contracts (except for industrial accident premiums), up to a maximum amount of EUR 8,060 per year. The exemption does not apply to agricultural and domestic workers; Art. 7 D.L. 104/2020: temporary exemption of three months in case of new fixed-term contracts for seasonal workers in the tourism and spa sectors.

73 Art. 27 D.L. 104/2020 provides for a 30% rebate on social security contributions in the period of October to December 2020.

74 Cf. the compilation of regional measures by ANFIA (Associazione Nazionale Filiera Industria), Emergenza COVID-19. Misure regionali a sostegno delle imprese, Bollettino Adapt, 6 April 2020.

75 E.g. 26 D.L. 41/2021; Art. 1, 2; 24 D.L. 73/2021, Art. 11 D.L. 105/2021 converted by Law 126/2021. Public funding allocated via the Economy Support Fund amounted to EUR 350 million in 2021.

76 Art. 61 and 62 D.L. 18/2020; Art. 18 D.L. 23/2020. Private households as employers of home help personnel may also defer the payment of social security contributions, Art. 37 Para. 1 D.L. 18/2020.

77 Art. 97 D.L. 104/2020. 50% of the suspended payments had to be paid as a lump sum by 16 September 2020 or with four instalments starting on 16 September 2020.

estate municipal tax IMU, and other minor charges like the stamp duty.[78] Employers particularly affected by the restrictive measures adopted in the wake of the second wave were allowed to defer payment of social security contributions due for September 2020 by four months.[79]

The *Ristori* Decree introduced additional contribution exemptions under particular circumstances.[80] The approach, based on partial exemptions instead of simple postponement of payments, was continued in 2021 in order to protect the liquidity of enterprises particularly affected by the pandemic.[81]

b) *Restoring Liquidity*

The liquidity of craftsmen and merchants is supported by special tax credits to compensate for the rental costs of business premises amounting to 60% of the rental costs[82] and tax credits for special corona disinfection measures.[83] Subsequently, the Relaunch Decree extended financial measures in favour of businesses, providing support for the purchase of equipment and instruments to reduce the risk of contagion in the workplace, and introducing a tax credit equal to 50% of expenses incurred up to 31 December 2020 for adapting the work environment to COVID-19-related health regulations.

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78 Art. 24 D.L. 34/2020 (IRAP); Art. 9 D.L. 137/2020 (IMU); a variety of support measures, addressing specific economic sectors can be found in Art. 25 to 52-ter D.L. 34/2020.

79 Art. 13 D.L. 137/2020.

80 Exemption of up to four weeks for employers who refrain from claiming benefits under the wage guarantee scheme (Art. 12, Para. 14 D.L. 137/2020); further contribution exemptions apply to the agricultural sector (including fisheries), cf. Art. 16 D.L. 137/2020.

81 Up to 31/12/2021, cf. Art. 1 Para. 20 Law 178/2020 (2021 Budget Law), Art. 43 D.L. 73/2021.

82 Art. 65 D.L. 18/2020 (for March 2020). Tax credits for non-residential properties have been extended in particular for the tourism sector by Art. 28 D.L. 34/2020 and Art. 77 D.L. 104/2020 (up to 31 December 2020); further extensions in time and coverage were provided for by D.L. 137/2020.

83 According to Art. 64 D.L. 18/2020, companies and freelancers are entitled to a tax credit of 50% of the costs of products for disinfecting the workplace and equipment up to a maximum of EUR 20,000; the tax credit has been extended by Art. 30 D.L. 23/2020 to cover the costs of personal protective equipment, face masks and eye protection.

Certain sectors, such as the agricultural and fisheries sectors, could benefit from advance subsidies from the special funds of the European agricultural policy.[84] In addition, financial assistance could be provided for access to bank loans. A key instrument have been state guarantees (sureties) for business loans totalling around EUR 200 billion and other state guarantees for exports and to top up the guarantee fund for SMEs. Depending on the size or turnover of the business, the guarantees covered between 100% and 70% of the amount financed.[85] The measures were primarily designed to ensure the survival of those enterprises that were not at risk before the crisis. A new loan conditionality fostering social dialogue during the pandemic has been introduced which required companies that benefit from the state loan guarantee to "undertake to manage the occupational levels by means of collective agreements".[86] To cushion the restrictive measures adopted after the onset of the second wave, new sector-specific funds were provided to sustain enterprises in sectors particularly affected (e.g. travel agencies, culture, publishers, hotel industry).

4. Social Protection

In addition to the abovementioned benefits (in particular the short-time working benefits) access rules for existing social insurance and welfare benefits have been adjusted in various ways during the pandemic. The emergency legislation also introduced a whole set of temporary ad hoc allowances for non-standard workers, self-employed professionals, and for private households that were facing losses of income from work or were excluded from social benefits.[87] Some measures established new income support schemes for low income families with special needs, or introduced

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84 These advances could be increased from 50% to 70%, Art. 78 D.L. 18/2020.

85 For details cf. Art. 49-59 D.L. 18/2020 and Adapt, Scheda No. 6, Misure finanziarie e fiscali di sostegno alle imprese per far fronte all'emergenza da COVID-19. State guarantees have been extended – with modifications – up to 30 June 2022, cf. Art. 1 Para. 53-58 Budget Law 234/2021.

86 Art. 1 Para. 2, litt. l) D.L. 23/2020.

87 E.g. by provisions that impede the expiry of exclusion and limitation periods (Art. 34, Art. 37 Para. 2 and Art. 42 Para. 1 D.L. 18/2020). Several temporary measures have strengthened housing support for low income households, by suspending mortgage payments, or providing subsidies to reduce rental costs for tenants to avoid the risk of evictions. For details cf. Jessoula et al., ESPN Thematic Report: Social protection and inclusion policy responses to the COVID-19 crisis. Italy, EU Commission 2021, p. 29 f.

new instruments for professional categories previously not covered by "social shock absorbers", in a more structural perspective.

a) Adjustments and Innovations with regard to Unemployment Protection

Due to the long-time ban on lay-offs for all dependent workers as of 23 February 2020 and some other measures aimed at retaining employment, the pandemic had a rather modest impact on the unemployment insurance scheme consisting of three subschemes: the general unemployment insurance scheme (*Nuova Assicurazione Sociale per l'Impiego, NASpI*)[88], its special scheme for workers with a coordinated and continuous collaboration contract and project workers (*Disoccupazione per Collaboratori, DIS-COLL*)[89] and the unemployment insurance for the agricultural sector.[90] Nevertheless, the *NASpI* and *DIS-COLL* schemes have been subject to slight adjustments during the pandemic. The maximum duration of the benefits was extended by two additional months at two occasions.[91] In addition, eligibility criteria for accessing the *NASpI* benefit were relaxed: during the pandemic period 2020/2021, the only condition was having paid thirteen weeks of contributions in the four years before the dismissal. The requirement of a qualifying period of 30 days of actual working days in the 12 months preceding the dismissal was suspended[92] as well as the progressive reduction by 3% per month of the benefit from the fourth month (91st day) onwards.[93] Access to unemployment benefits was also fa-

88 Legislative Decree (D.Lgs.) No. 22/2015 (Disposizioni per il riordino della normativa in materia di ammortizzatori sociali in caso di disoccupazione involontaria e di ricollocazione dei lavoratori disoccupati, in attuazione della legge 183/2014).

89 This special unemployment insurance covers freelance workers without a VAT number who are insured exclusively under the Separate Fund (gestione separata) at INPS, and holders of research grants.

90 D.L. 338/1989 as amended by Law 389/1989.

91 Art. 92 D.L. 34/2020: Art. 5 D.L. 104/2020.

92 Art. 16 D.L. 41/2021.

93 Art. 4 D.Lgs. 22/2015. The unemployment benefit amounts to 75% of the average monthly wage (or reference earnings, respectively) up to a fixed, dynamic earnings limit (2020: EUR 1,227.55), and to 25% of earnings above this limit, with a maximum benefit of EUR 1,335 per month (2020).

cilitated by waiving some conditionalities for labour market integration[94] and by postponing application deadlines.[95]

The Budget Law for 2022 (Law 234/2021) transformed some of the temporary adjustments into permanent ones.[96] For workers who become unemployed in 2022, the benefit requirement of a minimum period of 30 working days in the last 12 months has been abolished. The reform also extended coverage to agricultural workers employed in permanent contracts by cooperatives, changed the mechanism by which the benefits are reduced progressively,[97] and enhanced protection for workers on co-ordinated and collaboration contracts under the *DIS-COLL* scheme by reducing the disparities in treatment as compared to the *NASpI* scheme.[98]

By contrast, the special allowance aimed at bridging the period until old-age pension is accessible for certain vulnerable groups,[99] including unemployed senior workers aged 63 with a contribution period of 30 or 36 years, has been extended in 2022,[100] but not transformed into a structural measure. Although introduced on an experimental basis before the pandemic, it helped to secure income for some senior workers during the pandemic.

Some important structural changes adopted in the course of the pandemic seek to improve the protection of self-employed professionals through new contributory social security schemes.

The first novelty has been the Extraordinary Allowance to Guarantee Income and Business Continuity (ISCRO), introduced by the 2021 Budget Law as a pilot project for 2021-2023 for certain self-employed workers who have suffered a serious reduction in labour income, with the objective to provide income continuity similar to that of wage guarantee schemes.[101]

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94 Art. 40 D.L. 18/2020, albeit for the condition to participate in vocational counselling and training measures, and to accept reasonable job offers within their own community of residence.

95 The deadline for claiming the benefit was extended by 60 days (from 68 to 128 days), Art. 33 D.L. 18/2020.

96 Art. 1 Para. 221 Law 234/2021.

97 The 3% benefit reduction of NASpI applies as of the 6th month, and as of the 8th month for workers older than 55.

98 Art. 1 Para. 222-223 Law 234/2021.

99 “Anticipo pensionistico” (APE sociale), introduced by Art. 1 Para. 179 Law 232/2016 (Budget Law for 2017).

100 Art. 1 Para. 91 Law 234/2021 (up to 31/12/2022).

101 Indennità straordinaria di continuità reddituale e operativa, ISCRO), Art. 1 Paras. 386-401 Budget Law for 2021 (No. 178/2020). The scheme requires an additional contribution (0.26% in 2021, and 0.51% as of 2022).

Coverage has been restricted to self-employed professionals who are holders of a VAT number and affiliated to the separate scheme for atypical workers of INPS. The new measure requires a significant drop in income, of at least 50% of average income compared to the average of the last three years, while the income of the year when the benefit is claimed must not exceed EUR 8,145. The monthly benefit covers 25% of the average income over the 3-year period, varying between EUR 250 and EUR 800, with a maximum duration of six months, and can be claimed only once in a three-year period. Despite these limitations it is the first income support scheme in Italy targeting the self-employed insured in the INPS Separate Fund without access to any unemployment scheme.[102]

The second novelty has been the creation of the new contributory unemployment benefit *ALAS* as of January 2022, as part of the scheme for autonomous workers of the entertainment sector – a sector exposed to intensive employment discontinuity and thus excluded from standard unemployment protection schemes. The new scheme constitutes a structural innovation, covering artistic and technical work activities, directly linked to the artistic production and performance. The prerequisites for entitlement are 15 days of work covered by contributions in the previous year and an income limit of no more than EUR 35,000.[103]

In 2020/2019, the average number of *NASpI* beneficiaries per month increased by 3.6% (from 1.199 million to 1.242 million recipients), but decreased in 2021/2020 by 23.1% (from 1.242 million down to 0.956 million recipients). The average number of *DIS-COLL* beneficiaries per month increased by 34.9% in 2020/2019 (from 5,835 to 7,872 recipients), but decreased by 15.5% in 2021/2020 (from 7,872 down to 6,655 recipients). From 2019 to 2020, total spending for the *NASpI* scheme has increased by 5%, amounting to EUR 15.932 million in 2020.[104]

102 The new scheme involves about 290,000 persons, cf. *Jessoula* et al., ESPN Thematic Report: Social Protection and Inclusion Policy Responses to the COVID-19 Crisis – Italy, Luxembourg, 2021, p.21.

103 *Assicurazione lavoratori autonomi dello spettacolo (ALAS)*, introduced by Art. 66 D.L. 73/2021 (Decree “Support”), as modified by Law 106/2021. The benefit is calculated according to the rules of general unemployment insurance, but the duration has been limited to 6 months.

104 For details cf. INPS, Report mensile Febbraio 2022. Cassa Integrazione Guadagni e Disoccupazione, p. 24; INPS, XX Rapporto Annuale, 2021, pp. 83 ff.

b) *Adjustments to Existing Minimum Income Protection Schemes*

Minimum income protection during the pandemic has been subject to various adjustments. In the early phase of the pandemic, provisions amended some eligibility criteria of the general means-tested minimum income scheme, the citizenship income (*Reddito di Cittadinanza, RdC)*, and granted additional relief through shopping vouchers, rental subsidies, and temporary suspension of domestic charges. In the second phase, the government introduced a new emergency income support, followed by special support for vulnerable families. Despite considerable spending for means-tested income support, the number of households in absolute poverty increased from 1.6 million in 2019 to 2 million in 2020, involving a total of 5.6 million individuals.[105]

The *RdC* scheme, introduced in 2019,[106] is granted to destitute households having resided in Italy for at least 10 years and satisfying several conditions concerning income and wealth. The benefit comprises two components (economic subsistence and housing needs) at a maximum monthly rate of up to EUR 780 for a single person household. It is granted for 18 months, subject to strict access criteria concerning conditionalities for job offers, and complicated means-testing rules that use income indicators not updated to the current income situation.[107] The main adjustments to the *RdC* benefit scheme included the temporary suspension of conditionalities

105 Cf. ISTAT, Statistiche report, 16/06/2021; the number of households receiving at least one monthly instalment of the RdC benefit increased from 1.4 million in 2020 to 1.6 million in 2021; cf. INPS, Reddito/Pensione di Cittadinanza. Reddito di Emergenza. Report January 2022.

106 Art. 1-13 D.L. 4/2019, as converted by Law No. 26 of 28 March 2019 on "Urgent provisions in matters of Citizenship Basic Income and Basic Pension". The benefits differentiate between the Citizenship Income (RdC) and the Citizenship Pension (PdC).

107 The economic indicator for the assessment of poverty for 2020 (indicator of the equivalent economic situation = ISEE 2020) is referred to the 2018 income data; the updated indicator (ISEE corrente) is referred to 2019 (Art. 4-sexies D.L. 34/2019, as amended by Law No. 58/2019, thereby excluding income disruptions as those incurred during the pandemic. For the various criticalities of the RdC scheme see Comandè, I confini del rischio sociale di povertà attraverso i requisiti soggettivi e oggettivi del reddito di cittadinanza, in: Giubboni (ed.) Reddito di cittadinanza e pensioni: il riordino del welfare italiano. Commentario aggiornato ai decreti "Cura Italia" e "Rilancio", 2020, pp. 31-45; Alaimo, Il reddito di cittadinanza: il beneficio economico, il patto per il lavoro e il patto per l'inclusione sociale, in: Giubboni (ed.), cit., pp. 47-66; Pascucci, Note critiche sparse a margine del reddito di cittadinanza, RDSS 2/2020, pp. 273-300; on the difficult

for job searching activities over several months and of the corresponding sanctions for non-compliance,[108] and the suspension of certain notification obligations for the period from 23 February to 1 June 2020.[109] Beneficiaries were permitted to earn up to a limit of EUR 2,000 in 2020 by taking up temporary employment in agriculture for 30 days (extendable to another 30 days) without impact on benefit entitlement.[110] A further novelty concerned the possibility of topping up the *RdC* amount for recipients who belonged to a professional category entitled to one of the flat-rate allowances for self-employed, para-subordinate, seasonal or intermittent workers when the flat-rate allowance was higher.[111] Yet, various access barriers, such as qualified residence requirements, qualified residence permit or means-testing rules that do not take into account current income losses have not been suspended or relaxed. Instead, the Budget Law for 2022 (Law 234/2021) tightened the conditions for beneficiaries regarding the acceptance of job offers as of January 2022.[112]

The number of households receiving at least one monthly *RdC* benefit increased significantly in 2020 to 1.6 million (involving 3.7 million persons in total), and coverage went further up to almost 1.8 million households (involving slightly less than 4 million persons in total) in 2021. Despite the increasing numbers of beneficiaries, many impoverished households affected by income losses during the lockdown remained excluded. As a result, incidence of absolute poverty increased as compared to pre-pandemic times.

In addition to the general minimum income scheme, adjustments have also been made to family support schemes that affect household income. Access to the so-called family card (*carta della famiglia*)[113] has been extended to needy families with only one or two children (instead of at least three) under the age of 26 until the end of 2020.[114] In 2021, an important structural reform for child benefits was enacted, aimed at increasing

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interaction with activation policies see various articles in RGL 3/2021 (thematic issue).

108 Art. 40 D.L. 18/2020; the same exceptions as for receipt of unemployment benefits apply, cf. Art. 40 Para. 1-bis D.L. 18/2020, introduced by Conversion Law No. 27/2020.

109 Art. 34 Para. 1 D.L. 18/2020, INPS, Messaggio No. 1608 of 14 April 2020.

110 Art. 94 D.L. 34/2020.

111 See below.

112 Art. 1 Para. 74 Law 234/2021.

113 The digital card designed for buying goods and services on special discount was introduced by Law 208/2015 in order to relieve large families.

114 The extension of coverage was not refinanced in 2021.

child benefits and extending coverage as compared to the previous family benefit scheme.[115] Although not yet fully implemented, the new scheme will help stabilise household income for families with dependent children, during the pandemic and beyond.

c) *The Emergency Income Support (REM)*

Decree Law 34/2020 introduced the Emergency Income Support (*REM*) as a new anti-poverty cash benefit for households in financial difficulties due to the pandemic. It is aimed at poor households not covered by the general *RdC* scheme or any other extraordinary COVID-19 income support benefit.[116] The *REM* benefit required only a legal residence of the claimant (instead of ten years as for the *RdC*) and was not conditional on job searching activities. Initially, the benefit covered two monthly instalments between May to July 2020, later extended by additional payments for up to five months in 2020 and seven more months in 2021.[117] The benefit amount is determined by multiplying the basic amount of EUR 400 with the scale of equivalence corresponding to the household composition, using the same parameters as for the *RdC* benefit[118], but the upper benefit cap was set at a slightly lower level[119]. The benefit amounts ranged from EUR 400 to 800 (up to EUR 840 in special circumstances). The criteria for the means test were more lenient than for the *RdC* benefit, which emphasised the more inclusive approach of this measure.[120]

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115 Decree-Law No. 79 of 8 June 2021 – Urgent measures in matters of temporary allowance for minor children (Misure urgenti in materia di assegno temporaneo per figli minori, in GU n. 135 del 8-6-2021); Legislative Decree No. 230 of 29 December 2021, establishing the single and universal allowance for dependent children, implementing the delegation conferred on the government pursuant to Law No. 46 of 1 April 2021.

116 Art. 82 D.L. 34/2020.

117 Art. 23 D.L. 104/2020 (August 2020); Art. 14 D.L. 137/2020 (November and December 2020); Art. 12 D.L. 41/2021 (March to May 2021); Art. 36 D.L. 73/2021 (4 instalments for June, July, August, September 2021). No refinancing was provided for 2022 (Budget Law for 2022).

118 The equivalence scale value attributed is 1 for the first adult member, 0.4 for any additional adult and 0.2 for any member younger than 18 years of age.

119 The maximum level for the REM scale is 2 (or 2.1 if there are household members with severe disability or long-term care needs), but 2.1 (2.2 in special cases) for the RdC benefit.

120 Movable assets should not exceed EUR 10,000, increased by EUR 5,000 for any additional family member, up to a maximum of EUR 20,000, the ISEE indicator

The benefit was extended in 2021 to unemployed persons whose insurance benefits had expired between July 2020 and February 2021, with even more lenient income conditions.[121]

In 2020, 425,000 households benefitted from the *REM* scheme, with an average monthly amount of EUR 550. Coverage increased consistently in 2021, with about 595,000 households under D.L. 41/2021 (involving about 1.352 million persons), and about 556,000 households under D.L. 73/2021 (involving about 1.232 million persons).[122]

d) *Flat-Rate Support for Self-Employed Persons and Other Non-Standard Workers*

Italy has adopted unprecedented measures, not linked to any means test, to support a wide variety of heterogeneous professional groups severely affected by the initial lockdown and subsequent suspensions of commercial, cultural or sporting activities that are associated with a high risk of contagion.

Initially in March 2020, various groups of non-standard workers not covered by any wage guarantee scheme were granted a uniform one-off allowance (*indennità*) of EUR 600. The occupational categories entitled to this allowance comprised three main groups: certain groups of self-employed professionals and autonomous workers, dependent workers with atypical, mostly discontinuous, employment relationships, in particular intermittent and seasonal workers in the tourism and the spa sector, certain agricultural workers, and workers in the cultural and the sport sectors, and finally domestic workers (*lavoratori domestici*) and formal caregivers (*badanti*).[123] The flat-rate allowances were incompatible with statutory old-age pensions, but could be used to supplement a lower means-tested benefit of the general minimum income scheme (*RdC*).[124] With respect to dependent workers, entitlement required involuntary termination of an em-

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should not exceed EUR 15,000 (against EUR 9,360 for the RdC benefit), while real estate assets and durable goods were not considered at all.

121 The ISEE for these privileged beneficiaries was set at EUR 30,000 per year, double the "normal" value.

122 With an average amount of EUR 545 and EUR 539, respectively. INPS, Reddito/Pensione di Cittadinanza. Reddito di Emergenza, Report January 2022, p. 10.

123 Arts. 27-30; Art. 38; Art. 96 D.L. 18/2020.

124 This combination was introduced only in May 2020, Art. 84 Para. 13 D.L. 34/2020 (Relaunch Decree).

ployment contract and being without such a contract at a given key date. With few exceptions, the initial conditions of access to this benefit did not depend on a previous period of contributions[125] or a means test and were therefore more flexible than unemployment benefits or minimum income benefits. However, the procedures of paying out the ad hoc allowances often proved to be complicated and lengthy.

Subsequent legislation replicated and refinanced the allowances various times for single additional months and finally switched to a new and more consistent lump-sum subsidy for non-standard workers, always according to predefined budget limits supervised by INPS. While coverage was gradually extended to employment sectors initially excluded,[126] the amount of the ad hoc allowances and the comprehensive subsidy varied consistently across different professional sectors.[127] In May 2020, the Relaunch Decree renewed support measures for the benefit of specific groups of non-standard precarious workers particularly affected by COVID-related restrictions, such as seasonal workers of all branches, occasional workers, self-employed home sellers, domestic workers not living with their employer who work at least 10 hours per week, as well as certain maritime workers.[128] For professionals insured with the INPS Separate Fund, the eligibility criteria for accessing the allowance available for May 2020 (increased to EUR 1,000) have been tightened, requiring them to demonstrate a loss of income of at least 33% in the second half of 2020 compared to the second half of 2019. The new comprehensive subsidy was continued and extended into 2021, again with differentiated amounts.[129]

To support employees and the self-employed, particularly freelancers who have suffered economic harm as a result of COVID-19 measures that have resulted in the reduction, suspension or termination of their professional activity, the government has established a new temporary fund to

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125 As an exception, previous contributions to the pension fund and the respect of an income limit was required in case of stage artists, Art. 38 D.L. 18/2020.

126 Art. 84 Para. 8 and 10 D.L. 34/2020. For frontier workers cf. Art. 103-bis D.L. 34/2020, as amended by Law 77/2020.

127 In 2020 mainly between EUR 600 and EUR 1,000 per month, Art. 98 D.L. 34/2020 (Relaunch Decree); Art. 9 D.L. 104/2020; Art. 15 D.L. 137/2020 (for seasonal workers most affected); Art. 10 Para. 2 D.L. 41/2020 (comprehensive subsidy of EUR 2,400 for the spring period 2021).

128 Art. 84 Para. 8 D.L. 34/2020; Art. 85 D.L. 34/2020; Art. 10 D.L. 104/2020.

129 D.L. 41/2021; D.L. 72/2021. The comprehensive subsidy of EUR 2,400 for the spring period 2021 required in general a minimum period of previous employment, while entitlement to the statutory old-age pension or to the unemployment benefit (NASpI) excluded eligibility as well as any employment contract.

provide an income of last resort (*Reddito di Ultima Istanza*).[130] The novelty was to extend the one-off allowance (EUR 600 for the month of April 2020) to entrepreneurs and freelancers not registered with INPS, but covered by one of the autonomous mandatory pension funds for the liberal professions, established under private law. The allowance was increased to EUR 1,000 for May 2020,[131] but refinancing was delayed until March 2021.[132] The entitlement was limited to those freelancers and professionals whose income did not exceed certain income limits and whose professional activities suffered disruptions or termination due to corona-related restrictions.

The 2020 expenditure for the ad hoc INPS allowance was almost EUR 6 billion, with 8.8 million payments made. Beneficiaries (4.2 million) received an average of about EUR 1,400. The maximum amount for a seasonal worker in the tourism sector was EUR 5,200. The take-up rate of the 2.848 million self-employed workers insured in the Separate Fund was 85%.[133]

e) *Food Aid*

Emergency aid was also provided by granting shopping vouchers for food and medicines to secure the livelihoods of the poorest population groups. The vouchers were distributed via the municipalities and civil defence services during the spring lockdown of 2020. For this purpose, the municipalities received an early allocation of EUR 4.3 billion, while another EUR 400 million were made available to the civil defence authorities.

f) *Support for Particular Families in Need*

During the pandemic, some special support needs emerged regarding families. In 2020, a new support scheme for women who have been victims of

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130 Art. 44 D.L. 18/2020, based on the new special "Fund for Income of Last Resort" (Fondo per il Reddito di Ultima Istanza); Interministerial Decree of 28 March 2020. The subsidy cannot be cumulated with any payments serving the same purpose, namely any of the analogous emergency allowances under Arts. 27-30 D.L. 18/2020, pensions or the RdC minimum income under D.L. 4/2019.

131 Art. 13 D.L. 104/2020.

132 Art. 13 D.L. 41/2021.

133 Cf. INPS, XX Rapporto Annuale, 2021, pp. 205 ff.

violence and are in economic difficulties has been introduced to promote economic independence for these victims. A cash benefit of EUR 400 for one year was provided for women victims of violence, without children or with minor children, followed by anti-violence centres recognised by the regions and social services in their pathway out of violence, to promote life in autonomy. The "Income for Liberty" (*Reddito di Libertà*) should cover costs for housing autonomy, education and training for minor children, and for the re-acquisition of personal autonomy.[134] However, funding was very limited.[135]

Another novelty linked to the pandemic has been the creation of a fund to ensure the continuous payment of maintenance allowance for working parents in need who are separated or divorced. The monthly benefit of up to EUR 800 is targeted at working parents who have ceased, reduced, or suspended employment due to the pandemic and therefore are unable to guarantee the payment of child support.[136] To be eligible, employment must have been interrupted or reduced for at least 90 days after 8 March 2020, or earned income must have decreased by at least 30% compared to 2019.

Another special support measure introduced during the pandemic was a monthly income support to one of the unemployed or single-income parents belonging to a single-parent family with dependent children having a recognised disability of not less than 60 percent. The support, provided for each of the years 2021, 2022 and 2023, was set at EUR 150, 300 or 500 net, respectively, depending on the number of children with disability.[137]

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134 Funding was assigned to a special fund ("Fondo per il Reddito di Libertà"), connected to the Fund for Equal Opportunities. Cf. Art. 105-bis D.L. 34/2020, DPCM of 17 December 2020. The measure was refinanced by the 2021 and 2022 Budget Laws.

135 Funds allocated covered only 600 women in 2021, thus many applications were not accepted.

136 Art. 12-bis D.L. 41/2021, as modified by Art. 9-bis of Fiscal Decree D.L. 146/2021, converted by Law 215/2021. Due to the lack of implementation decrees the measure was postponed until 2022.

137 Initially, entitlement had been restricted to mothers: Art. 1 Para. 365 f. Law 178/2020 (2021 Budget Law), later extended to fathers by Art. 13-bis Para. 1, D.L. 41/2021. Implementation was delayed, as the required Interministerial Decree was adopted only on 12 October 2021. The authorised expenditure is up to EUR 5 million per year.

5. Conclusions

The pandemic pushed Italy towards a more inclusive approach in social protection, by strengthening the pre-existing social security systems, by adopting new interventions to cover the self-employed and atypical workers, with particular attention to discontinuous employment patterns and vulnerable groups. This resulted in a jungle of micro-measures across various economic sectors. Most of the emergency measures were of a temporary nature and fitted into the existing welfare architecture. Thus, standard workers received most of the funding provided during the pandemic, whereas non-standard workers, including above all the female workforce and the younger cohorts, remained more exposed to unemployment and to income losses.

Although the legislature has been particularly concerned with providing rapid assistance through short-time work schemes and flat-rate benefits for non-standard workers, implementation of the measures has encountered bureaucratic obstacles. At times, interventions have been implemented with significant delays as the adoption of administrative instructions by INPS or other actors has lagged behind. However, overall, state efforts generally increased social protection for non-standard workers during the pandemic, and helped to attenuate the effects of the emergency. The financial responsibility for the 2020 welfare costs equalled about 2.7% of the GDP of 2019. In 2020, the state increased job protection measures (+EUR 31.2 billion), minimum income schemes and other forms of social assistance (+EUR 7.35 billion), unemployment benefits (+EUR 1.9 billion) and emergency leave allowances (+EUR 680 million).[138]

Despite this effort, the overall impact of the support measures raised some concern, not only for the lack of prioritisation and consistency of temporary benefits during the initial phase, but above all for the inefficiency of Italy's anti-crisis policies, especially in light of the increase in absolute poverty rates despite the increase in spending on minimum income protection.[139]

While most interventions have remained ad hoc measures, some recent legislative responses indicate a new commitment to shift towards a more

138 Jessoula et al. 2021, op.cit., p. 33 f.

139 Brambilla and Forlani, Redditi di cittadinanza ed emergenza: Aumentano i sussidi ma anche la povertà. Analisi sull'efficacia di reddito di cittadinanza, pensione di cittadinanza, reddito di emergenza e altre misure di contrasto alla povertà economica in Italia, Centro Studi e Ricerche Itinerari Previdenziali, Rome, 05/04/2021.

inclusive welfare state. Examples of this commitment involving a structural change in the welfare architecture include the creation of new contributory income protection schemes for non-standard workers (the *ISCRO* and the *ALAS* scheme). In addition, the pandemic acted as a catalyst to accelerate long-overdue reform efforts, as in the case of the new universal child benefit scheme and the "social shock absorbers": some of the changes to unemployment insurance and short-time working schemes introduced during the pandemic have been transformed into permanent features by the 2022 Budget Law, improving benefit levels, expanding coverage, and reducing differences in treatment. In contrast, the structural reforms of the general minimum income adopted by this Budget Law did not replicate the more inclusive residence requirement used in the Emergency Income Scheme (*REM*) with respect to third-country nationals. Thus, the general minimum income scheme continues to exclude a substantial portion of families exposed to extreme poverty.

In any case, the pandemic provided a clear picture of the multiple inadequacies plaguing Italian protection schemes and the urgent need for structural change. It highlighted protection gaps resulting from insecure and fragmented labour market conditions, as well as persistent gender gaps in unpaid care work, and the need to improve the equal opportunity framework. It remains to be seen whether the new impetus to reform Italy's fragmented social protection landscape and to address long-standing systemic inequalities will be sustained.

XIII. Reoccuring Problems in Securing Employment and Livelihoods in Japan

Katsuaki Matsumoto

1. Introduction

In January 2020, the first person infected with coronavirus was confirmed in Japan. In February, the emergence of a mass infection aboard an international cruise ship calling at a port of Japan attracted the attention of the Japanese population. Meanwhile, coronavirus was spreading within Japan. Given these circumstances, the Japanese government called for major events to be cancelled or postponed and for all primary, middle and high schools[1] across Japan to be closed from early March to early April. In April 2020, the declaration of emergency in accordance with the "Act on Special Measures against Novel Influenza, etc." (ASMNI)[2], was issued for the first time.[3]

This emergency declaration had already been made four times by October 2021 and has been the main basis for the measures to protect the population from coronavirus infection. The Prime Minister of the Japanese government can issue the declaration of emergency if the coronavirus spreads rapidly throughout Japan and could greatly affect the lives of the population and the economy (Section 32(1) ASMNI). He shall then set out the relevant matters for the implementation of measures against coronavirus infection in a directive (Section 32(6) ASMNI). The emergency declaration applies to all prefectures[4] in Japan or to part thereof. The affected prefectures are obliged to implement the necessary measures according to

1 In Japan, primary school comprises grades 1 to 6 for six- to twelve-year-olds. Middle school comprises grades 1 to 3 for those aged twelve to fifteen. Secondary/high school comprises grades 1 to 3. Compulsory education applies to primary and middle school.

2 Law No. 31 of 2012.

3 The scope and content of ASMNI comprise not only infection with novel influenza viruses, but also infection with coronavirus.

4 Japan is divided into 47 prefectures. A prefecture is divided into several cities and municipalities. The total number of cities and municipalities in January 2021 was approx. 1,700.

the directive. Governors may require residents and businesses within their regions to implement the respective anti-corona measures (Section 31-6 Paras. 1 and 2 ASMNI).

So far, the governors of the affected prefectures have mainly required residents to wear face masks, keep their distance from fellow residents, refrain from leaving the house unless absolutely necessary or urgent, and pay attention to hand hygiene. They also demanded that companies encourage home office work and, above all, that the operators of restaurants, pubs, department stores, large shopping malls and entertainment venues keep these facilities closed or reduce their opening hours.

The declaration of emergency is not legally binding on individual residents or individual businesses. However, most have actually followed these requests so far. This has helped reduce the number of new infections and seriously ill COVID-19 patients. This relationship between the government and the citizens is a remarkable feature of Japan's policy against the spread of coronavirus infection. Critics pointed out that this attitude of Japanese citizens showed their overdependence on the government.

It was proposed to introduce stricter, legally binding measures by amending the law to allow a lockdown as effected in European countries and the USA. But the government was reluctant to accept the proposal.[5]

The first emergency declaration was made on 7 April 2020 for seven prefectures. From 16 April, it applied to all prefectures in Japan. Via this declaration, governors asked residents to refrain from going out and operators of restaurants and pubs to close their businesses. In the first phase of the spread of coronavirus, there was insufficient information about its characteristics. Therefore, the measures taken were intended to reduce as much as possible the radius of movement of people and the number of contacts between. Since the spread of the virus could be curbed by these measures, the state of emergency was lifted in stages starting as early as May 2021.

But the declaration of emergency had a major impact on the economy, employment and the lives of people. Gross domestic product (GDP) fell by 7.9% in price-adjusted terms in the second quarter of 2020 compared to the previous quarter[6] because the anti-corona measures led to many economic activities being suspended. Although GDP grew again in the

5 Cf. "Government Expert Commission Members Called for Legislation to Enable Lockdown", Tokyo Shimbun, 17 Aug 2021 (in Japanese).

6 Cf. Cabinet Office, Quarterly Estimates of GDP for April - June 2021 (Second Preliminary Estimates) 8/09/2021.

third and fourth quarter of 2020, GDP fell by 4.4% year-on-year in 2020 in price-adjusted terms. GDP fell by 1.1% in price-adjusted terms in the first quarter of 2021 due to the impact of the emergency declaration made in January 2021, but rose again by 0.5% in the second quarter as against the previous quarter (Table 1).

Table 1: Quarterly Real Growth Rate (Seasonally Adjusted Series, Quarter to Quarter)

	2020 Q2	2020 Q3	2020 Q4	2021 Q1	2021 Q2
Growth Rate (%)	-7.9	5.4	2.8	-1.1	0.5

Source: Cabinet Office, Quarterly Estimates of GDP for April - June 2021 (Second Preliminary Estimates) 8. September 2021.

If we compare the figures with those of the global financial crisis of 2008, GDP fell more significantly in the second quarter of 2020 than in the first quarter of 2009. The reason for this is that private consumption, which accounts for over 50% of GDP, fell more sharply this time. This shows how much the abandonment of going out and the closure of restaurants and pubs affected the lives of the population and the economy.

One can also note the same tendency in the development of the number of employees. Many enterprises were to limit or stop their economic activities under the circumstances in which the declaration of emergency was made. They made efforts to maintain the employment of their employees by granting leave. This led to a rapid increase in the number of employees taking leave in April 2020. At the same time, the number of employees, especially female employees who were in atypical employment (e.g. part-time employment), decreased significantly.[7] Since then, the number of employees in regular employment has been slowly increasing again. On the other hand, the number of employees in atypical employment remains below the pre-pandemic level. The decline in the number of workers in atypical employment is most pronounced in hotels, restaurants and pubs, wholesale and retail trade, and entertainment establishments. Although the number of employees decreased, the unemployment rate did not increase as much. It rose from 2.4% in January 2020 to 3.1% in October 2020, attributed to the fact that many unemployed persons refrained from

7 Cf. Ministry of Internal Affairs and Communications, Annual Report regarding the Study of the Labour Force.

looking for work because they were afraid of contracting the coronavirus.[8] The declaration of emergency was also made in January, April and July 2021. But the unemployment rate increased less than in April 2020 and was 2.8% in August 2021 (Table 2). One reason is that these anti-corona measures were not as strict as a year earlier, and the number of affected prefectures was smaller. Nevertheless, the unemployment rate still remains at a higher level than before the corona pandemic.

Table 2: Unemployment Rate in %

					2020						
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Okt	Nov	Dez
2.4	2.4	2.5	2.6	2.8	2.8	2.9	3.0	3.0	3.1	3.0	3.0
					2021						
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug				
2.9	2.9	2.6	2.8	3.0	2.9	2.8	2.8				

Source: MIC “Labour Force Survey”

The level of total earnings per worker dropped significantly shortly after the first declaration of emergency and remained lower after its lifting than before. According to the results of a survey conducted in December 2020[9], 40% of respondents answered that the spread of coronavirus had an impact on their employment and income. Approximately 60% of the respondents answered that their income had decreased. This shows that not only people who lost their jobs because of the spread of coronavirus, but also people who were held in employment experienced a decrease in their income.[10]

Home office work quickly became common. The reason for this is not only the request issued by the state and prefectures to stay at home, but also the need to care for children whose schools were temporarily closed. According to a survey by the Cabinet Office[11], one-third of employees switched to home office work in spring 2020. The proportion varied by industry and employment status. It was over 50% in the ‘education’ sector, but only a weak 10% in the ‘medical, social services and child education’

8 Cf. Ministry of Health, Labour and Welfare, Annual Health, Labour and Welfare Report 2020 (in Japanese), p. 4.

9 Cf. The Japan Institute for Labour Policy and Training, Results of the Survey on the Impact that Spreading Novel Coronavirus Infection Has on Work and Daily Life (December 2020 Survey).

10 Their income decreased particularly due to a decrease in overtime pay.

11 Cf. Cabinet Office, Survey on Changes in Attitudes and Behaviors in Daily Life under the Influence of Novel Coronavirus Infection, 21/06/2020.

sector. It was 42% and 18% for regular and atypical employment respectively.

2. *Job Retention*

a) *Leave at the Request of the Employer*

Measures to maintain employment have been taken on an unprecedented scale. Employers are to pay their workers a leave allowance of at least 60% of their pay if the latter are to take leave for a reason for which the employer is responsible (Section 26 Labour Standards Act[12]). The unemployment insurance scheme provides subsidies to the employer if he is to limit his business activities for economic reasons and pays the leave allowance to his employees whom he asks to take leave. The subsidies amount to 2/3 of the cost of holiday pay for a small and medium-sized enterprise and 1/2 of the cost of holiday pay for a large enterprise, which is at most 100 days of holiday in one year or 150 days of holiday in three years per employee. The subsidies to an employer amount to a maximum of JPY 8,370 (EUR 64[13]) per day per worker who has received holiday allowance from the employer. These subsidies require that the employer and his workers receiving the holiday allowance meet the following conditions: The turnover or production of the employer's business shall have been 10% less in the last three months than in the same months of the previous year. The workers shall have been insured under the unemployment insurance scheme for six months. The unemployment insurance scheme covers workers who are expected to be employed for more than 31 days and whose regular working hours exceed 20 hours per week (Section 6 No. 1 and 2 Employment Insurance Act[14]).

The scope and the content of these subsidies have been exceptionally extended and improved for the period between April 2020 and November 2021 as follows[15]: During this period, the employer may receive the subsidies if his business activity is affected by the spread of coronavirus and the turnover or production of his business in the last month was 5% less than

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12 Law No. 49 of 1947.

13 1 euro (EUR) = 130 Japanese yen (JPY).

14 Law No. 116 of 1974.

15 Section 15-4-3 of the Supplementary Provisions, Ordinance of the Ministry of Health, Labour and Welfare No. 3 of 1975.

in the same month of the previous year. Workers who are not covered by unemployment insurance (e.g. workers with a regular working week of less than 20 hours) are also included in the scope of the subsidies. In principle, the subsidies amount to 4/5 of the cost of holiday pay for a small and medium-sized enterprise and 2/3 of the cost for a large enterprise. The subsidies to an employer shall not exceed JPY 15,000 (EUR 115) per day per employee who has received the holiday allowance from the employer. If the employer has not made any worker redundant, the share of the costs covered by the subsidies is increased to a maximum of 10/10.

Compared with the global financial crisis, when from December 2008 to March 2010 (16 months), a total of JPY 660 billion (EUR 5 billion) was paid to employers for the cost of holiday pay, from February 2020 to March 2021 (14 months), the subsidies totalled about JPY 3.15 trillion (EUR 24 billion). One reason for this difference in the total amount of subsidies is that the exemption, which relates to the conditions and amount of the subsidies, is more generous this time than during the global financial crisis.

In fact, there may be cases when workers can neither receive wages nor holiday pay from their employer, even though they are supposed to take holiday according to his request.[16] To assist such workers, the unemployment insurance system exceptionally granted them a cash benefit from April 2020 to November 2021 which was 80% of their pay if they worked in a small or medium-sized enterprise[17] or were doing shift work, etc. in a large enterprise.[18] However, the amount of the benefit could not exceed JPY 11,000 (EUR 85) per worker per day. Workers who were not covered by unemployment insurance could also receive this benefit. The total cost of these benefits, which were granted until the end of March 2021, was approximately JPY 88 billion (EUR 677 million).

16 This is the case if, for example, the employer does not pay his workers wages or holiday pay under the pretext that the business is not doing well.

17 Within the meaning of this grant scheme, a small or medium-sized enterprise is an enterprise in the retail industry whose capital is less than JPY 50 million (EUR 385,000) or which employs fewer than 50 persons; an enterprise in the service industry whose capital is less than JPY 50 million or which employs fewer than 100 persons; an enterprise in the wholesale industry whose capital is less than JPY 100 million (EUR 770,000) or which employs fewer than 100 persons; and a company in any other industry whose capital is less than JPY 300 million (EUR 2.3 million) or which employs fewer than 300 people.

18 Section 3 of the Ordinance of the Ministry of Health, Labour and Welfare No. 125 of 2020.

b) Leave for Child Care

When an underaged child was infected with coronavirus or the primary school, kindergarten or day care centre he or she attended was temporarily closed due to the spread of corona infections, his or her mother or father would sometimes not be able to work because of child care duties. To alleviate the financial burden of such mothers and fathers, the following system was introduced: If the employer granted paid leave to his employees who were to take care of their minor children for the abovementioned reason, he could receive subsidies from unemployment insurance. The amount of these subsidies was equal to the amount of pay paid by the employer, but could not exceed JPY 13,500 (EUR 104)[19] per employee per day.[20] If a person working on behalf of a third party was to take care of their minor children for the reason mentioned above, they could receive a cash allowance of JPY 6,750 (EUR 52)[21] per day from the unemployment insurance fund.[22] The total cost of these allowances and cash benefits granted until the end of March 2021 was approximately JPY 57 billion (EUR 400 million).

c) Sickness Benefit

The Japanese statutory health insurance system basically consists of an employee health insurance scheme (EHIS) and a people's health insurance scheme (PHIS) as well as a health insurance scheme for persons aged 75 and over.[23] Persons under 75 years of age are insured under the EHIS and PHIS. In the EHIS, employees and their family members who meet certain requirements are subject to compulsory insurance. Employees who work more than 30 hours per week must be insured under the EHIS. Employ-

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19 In prefectures for which the state of emergency was declared, the amount was increased to JPY 15,000 (EUR 115).

20 Section 17-2-4 of the Supplementary Provisions, Ordinance of the Ministry of Health, Labour and Welfare No. 3 of 1975.

21 In prefectures for which the state of emergency was declared, the amount was increased to JPY 7,500 (EUR 58).

22 The eligibility requirements and the amount of the benefit are provided for in the administrative regulation of the Ministry of Health, Labour and Welfare on this benefit.

23 The Employee Health Insurance Law (Law No. 70 of 1922), the People's Health Insurance Law (Law No. 192 of 1958) and the Law on Guaranteed Medical Care for the Elderly (Law No. 80 of 1982) provide for these insurances.

ees whose weekly working hours are between 20 and 30 hours are also compulsorily insured under the EHIS if they meet certain conditions.[24] Persons who are not insured under the EHIS are compulsorily insured under the PHIS. In fact, many workers who are in atypical employment are not insured in the EHIS but in the PHIS because they do not meet the abovementioned requirements. If a worker who is insured under the EHIS is infected with coronavirus and, due to this, cannot work, the EHIS will grant him sickness benefit.[25]

On the other hand, sickness benefit in the PHIS is not a compulsory benefit. Therefore, workers who are insured under the PHIS can receive sickness benefit as long as their health insurance institution has a regulation that provides for the granting of sickness benefit. If a PHIS institution grants the sickness benefit to its insurees who are unable to work due to a coronavirus infection, the state will exceptionally bear the costs of the sickness benefit.

d) *Effects of the Measures*

During the period of the global financial crisis, the unemployment rate rose from 4.0% in September 2008 to 5.5% in July 2009. During the corona pandemic, it rose from 2.4% in January 2020 to 3.1% in October 2020.[26] This means that this time it did not rise as much as during the period of the global financial crisis. On the other hand, this time the number of employees who were asked to take leave increased much more. This development indicates a trend in employer behaviour. Most of them asked their workers to take leave rather than to lay them off. There are two possible reasons for this. First, there was a shortage of staff just before the corona pandemic. Therefore, many employers tried to maintain the employment of their workers. Secondly, the conditions and the amount of allowances and cash benefits for maintaining employment were, exceptionally, more relaxed and increased this time.

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24 It is required that
1. the employee is expected to be employed for a minimum of one year,
2. the monthly salary amounts to more than JPY 88,000 (EUR 677),
3. the employee is not a student and that,
4. the employee is employed in a company with more than 500 workers.

25 The sickness benefit is 2/3 of regularly received wages. The insuree is entitled to sickness benefit for a maximum of 18 months.

26 Cf. Ministry of Internal Affairs and Communications, Labour Force Survey.

3. *Supporting the Economy*

The cabinet decided on a package of measures[27] in April and in December 2020 respectively. The two packages provided for many different measures to support the economy, which was affected by the corona pandemic. These included support for enterprises facing difficulties in short-term financing and small and medium-sized enterprises facing difficulties in continuing their business by increasing public spending and granting a loan under more favourable conditions (e.g. interest-free loan and loan without pledge). In addition, measures were taken to recover consumption in the sectors of travel, transport, catering and entertainment. The April package of measures and the December 2020 package of measures projected that public spending would be JPY 48.4 trillion (EUR 372 billion) and JPY 40.0 trillion (EUR 308 billion), respectively, and total spending on them would be JPY 117.1 trillion (EUR 901 billion) and JPY 73.6 trillion (EUR 566 billion). By the end of 2020, spending on corona-related economic support measures exceeded 40% of GDP.[28] The following sections describe a few notable anti-corona measures.

A new benefit was introduced to help small and medium-sized enterprises and the self-employed who were affected by the spread of coronavirus to maintain their business. This benefit was granted to them on a one-off basis[29] if their turnover in any month of 2020 was 50% less than in the same month of the previous year.[30] The benefit was equal to the difference between the turnover of the previous year and 12 times the turnover of that month. However, it could not exceed JPY 2 million (EUR 15,385) for small or medium-sized enterprises and JPY 1 million (EUR 7,692) for self-employed persons.

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27 Cabinet Decision of 7 April 2020 about “Emergency Economic Measures to Cope with the Novel Coronavirus (COVID-19)” and Cabinet Decision of 8 December 2020 about “Comprehensive Economic Measures to Secure People’s Lives and Livelihoods toward Relief and Hope”.

28 According to the International Monetary Fund, the rate is higher in Japan than in Germany (cf. IMF, Fiscal Monitor Database of Country Fiscal Measures in Response to the COVID-19 Pandemic, Fiscal Monitor, January 2021).

29 The government is currently working on a plan to grant this benefit once more.

30 Section 4 of the Regulation on the Benefit that Supports Small and Medium-Sized Enterprises in Maintaining their Business and Section 4 of the Regulation on the Benefit that Supports Self-Employed Persons in Maintaining their Business. These are administrative regulations of the Ministry of Economy, Trade and Industry.

In addition, these enterprises, as well as self-employed persons, could receive another benefit to relieve their rental costs if their turnover in any month between May and December 2020 was 50% less than in the same month of the previous year, or 30% less than in the same three months of the previous year for three consecutive months between May and December 2020.[31] The amount of the benefit was six times 75% of their monthly rental costs. However, it cannot exceed JPY 6 million (EUR 46,154) for small or medium-sized enterprises and JPY 3 million (EUR 23,077) for the self-employed.

In order to help these enterprises and self-employed persons as quickly as possible, the procedure for claiming these benefits was simplified. However, this led to many cases of fraud.

In the prefectures covered by the state of emergency, the operators of restaurants, pubs, department stores, large shopping centres and amusement facilities were ordered to close their businesses or reduce their opening hours.[32] In order to limit their financial damage and encourage their participation in the anti-corona measures, the prefectures provided financial aid to operators who complied with the requirements. Their amount varied between prefectures. For example, in the Osaka Prefecture in September 2021, it depended on the operator's turnover or decrease in turnover.[33] The lower and upper limits were JPY 40,000 (EUR 308) and JPY 100,000 (EUR 769) per day, respectively.[34] In many cases, the decrease in turnover could only be partially compensated by the financial aid. Some of the affected operators therefore refused to close their businesses or shorten their opening hours. They also had doubts about the impact of the measures, which only applied to certain sectors. With each new declaration of emergency, the number of operators who did not want to comply with the requests grew. Nevertheless, many operators still implemented the anti-corona measures. One possible reason was that these operators did not want to get a bad reputation.

31 Section 4 of the Regulation on the Benefit to Relieve the Burden of Rental Costs of Small and Medium-Sized Enterprises and Section 4 of the Regulation on the Benefit to Relieve the Burden of Rental Costs of Self-Employed Persons. These are administrative regulations of the Ministry of Economy, Trade and Industry.

32 Pursuant to Section 24(9) of ASMIN, the governors of the prefectures concerned requested the operators to take these measures.

33 Cf. Press Release of Osaka Prefecture of September 2021.

34 If the amount of the benefit was calculated according to the decrease in turnover, it was a maximum of JPY 200,000 (EUR 1,528) per day.

Measures to recover consumption in the travel, transport, catering, events and entertainment industries were met with strong criticism. To support businesses in these sectors, a system was introduced in which consumers were given discounts on travel costs and fares, costs for food and drink in restaurants and pubs, entrance fees for events and fees for amusement facilities.[35] The costs incurred for these discounts were borne by the state. The package of measures adopted in April 2020 stipulated that this rebate system would be launched after the corona pandemic had stabilised. But the government started it already in July 2020. As infection rates went up again rapidly in early November 2020, the government was accused of having taken this decision without considering the circumstances and prioritising the recovery of the economy over the prevention of infections. As a result, the government discontinued the rebate system in November 2020.

4. Social Protection

a) Lump-Sum Benefit for All Residents.

With a view to the impact of the spread of coronavirus on citizens' employment and income, a lump-sum cash benefit of JPY 100,000 (EUR 770) was given to each citizen in 2020.[36] Of course, not all residents faced financial difficulties. The decision to grant this benefit was therefore met with criticism because the circle of recipients was too large.[37] However, in the first phase of the pandemic, it was not easy to see who needed help – and who did not. It was perhaps important for the government to be able to show its citizens its willingness to help them as quickly as possible.

35 Cf. Ministry of Agriculture, Forestry and Fisheries, "Go To Eat Campaign" and Ministry of Economy, Trade and Industry "Go To Event".

36 Communication from the Minister of Internal Affairs and Telecommunications to the Governors, etc. dated 20 April 2020.

37 Cf. The Sankei News of 19/12/2021, "Saving the Lump Sum Cash Benefit of JPY 100,000?".

b) *Support for Families with Children*

In Japan, a parent can receive child benefit if he or she is raising a child under the age of 15 (Section 4(1) Child Benefit Act[38]). In 2021, the child allowance was JPY 15,000 (EUR 115) per month for children under the age of three and JPY 10,000 (EUR 77)[39] for children between the ages of three and 15. If the recipient's annual income exceeds a certain limit[40], the child benefits he or she can receive is JPY 5,000 (EUR 38) per month. Single parents with lower incomes can also receive child maintenance allowance if their children are under 18. The child maintenance allowance in 2021 is JPY 43,160 (EUR 332) per month for the first child, JPY 10,190 (EUR 78) for the second child, and JPY 6,110 (EUR 47) for the third and each additional child. Entitlement to child maintenance allowance is fully or partially suspended if the recipient's income exceeds a certain limit.[41]

In order to support families with children affected by the corona pandemic, a cash benefit of JPY 10,000 (EUR 77) per child entitled to child allowance was granted to each recipient of the April 2020 child allowance.[42] Each recipient of the June 2020 child maintenance allowance[43] and each lower-income child-raising household was granted JPY 50,000 (EUR 385) for the first child and JPY 30,000 (EUR 231) for each additional child to support lower-income single parents (special benefit for single parents).[44] In addition, each recipient of the special benefit for single parents could receive JPY 50,000 (EUR 385) in December 2020. In addition, recipients of the April 2021 child maintenance allowance and lower-income child-raising households were granted JPY 50,000 (EUR 385) for each child.

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38 Law No. 73 of 1971.

39 For the third and each additional child between the ages of three and twelve, it was JPY 15,000 (EUR 115) per month.

40 For example, if he maintains a spouse with no income and one child, the limit of annual income in 2021 is about JPY 7 million (EUR 53,846).

41 For example, the right to child maintenance allowance is not suspended if the annual income of the recipient who has to maintain a child is less than JPY 1.6 million (EUR 20,615).

42 Communication from the Director General for Economic and Fiscal Management of the Cabinet Office to the Governors dated 26 November 2021.

43 Persons whose entitlement to child maintenance allowance was suspended due to their claiming a pension were included in the group of recipients of this special benefit.

44 Communication from the Head of the Children and Family Division of the Ministry of Health, Labour and Welfare to the Governors, etc. dated 17 June 2020.

c) Loans

Each Social Welfare Council at the prefectural level[45] shall provide an interest-free loan or a loan with lower interest rates to persons who are in distress due to a decrease in income.[46] The funds for these loans are provided by the state.

In this loan system, temporary exceptions have now been made to the terms of the loan (Table 3) for persons who are in distress due to the decrease in income because of the corona pandemic.[47] These persons can take out a loan if they need money for temporary and urgent livelihood financing. The upper limit of this loan is JPY 200,000 (EUR 1,538) per one case. The repayment period is 2 years at the longest and the grace period is 1 year at the longest. Borrowers do not need to provide a guarantor or pay interest on this loan.

Table 3: Loan Conditions

a) Smaller Loans

	Normally	*During Corona Pandemic*
Amount	JPY 100,000 maximum	JPY 200,000 maximum
Grace Period	2 months maximum	1 year maximum
Repayment Period	12 months maximum	2 years maximum
Interest	None	None

b) Loans for Maintenance Costs

	Normally	*During Corona Pandemic*
Amount	JPY 450,000 maximum or JPY 600,000 maximum	JPY 1,350,000 maximum or JPY 1,800,000 respectively
Grace Period	6 months maximum	1 year maximum
Repayment Period	10 years maximum	10 years maximum
Interest	None (if with guarantor) 1.5 % p.a. (if w/o guarantor)	None

In addition, they can take out another loan for a maximum of three months' living expenses if they need money to rebuild their lives. The up-

45 A Social Welfare Council is established in each prefecture in accordance with Section 110(1) of the Social Welfare Act (Law No. 45 of 1951). Its members mainly include operators of social services within the prefecture.

46 Communication from the State Secretary of the Ministry of Health, Labour and Welfare to the Governors etc. dated 28 July 2009.

47 Communication from the Director General for Social Welfare and War Victims' Relief Bureau of the Ministry of Health, Labour and Welfare to the Governors dated 11 March 2020.

per limit of this loan is JPY 150,000 (EUR 1,154) or JPY 200,000 (EUR 1,538) per month for a single-person household or a household with two or more persons, respectively. The repayment period is 10 years at the most, and the grace period is 1 year at the most. No guarantor needs to be provided, nor interest paid for this. Later, the system was further improved and this has made it possible for persons involved to take out a loan for a maximum of nine months' living expenses.

With the former and latter loan, the total loan amount cannot exceed JPY 2 million (EUR 15,385). If the annual income of the person taking out these loans is below a certain limit, he or she can be exempted from repayment. For example, the limit for a person living alone is about JPY 1 million (EUR 7,692). The total amount of these loans granted within one year (from April 2020 to March 2021) totalled JPY 77 billion (EUR 592 million) in 1.9 million cases.[48] This means that 27 times as many people as during the global financial crisis received 32 times the average annual total of 2009 to 2012.

d) *Social Assistance*

The number of applications for social assistance rose rapidly to 21,486 in April 2020, when the first emergency declaration was made, and was 24.9% higher than in April 2019. But it was lower in May 2020 than in May 2019 and has remained relatively stable since then. The number of households receiving social assistance remained between 1.63 and 1.64 million in 2020 and the first half of 2021, meaning that the number of applications for social assistance and the number of households receiving social assistance did not increase significantly even though the economy was affected by the corona pandemic.

The Japanese government stated that the abovementioned measures to secure the employment and livelihood of the population affected by the corona pandemic contributed to this development.[49] On the other hand, it has been pointed out that it was not easy, especially for employees who were supposed to take a leave or became unemployed due to the effects

48 According to a news item in the Yomiuri newspaper (online) on 14/07/2021, the total amount of loans in July 2021 was over JPY 1 trillion (EUR 7.7 billion).

49 Cf. Ministry of Health, Labour and Welfare, Annual Health, Labour and Welfare Report 2020 (in Japanese), p. 40.

of the corona pandemic, to claim social welfare benefits.[50] One reason for this was that the principle of subordination of social assistance is applied more strictly to persons who are able to work. The Japanese government therefore took some measures to relax the application of this principle in order to solve this problem. This made it possible for unemployed persons who could not actively seek work because of the corona pandemic to still receive social assistance.[51] In addition, it was recognised that unemployed persons who were temporarily in need of assistance because of the corona pandemic could keep their car to travel to the office.[52] Another measure relating to maintenance through family members of the claimant attracted the attention of the mass media.[53] When a person in need of assistance applied for social assistance at a social welfare office, the office would usually ask his family members if they could help him. This practice was criticised for delaying the application for social assistance in cases where people did not want to inform their family members of their plight. The Ministry of Labour, Health and Welfare therefore informed the social welfare offices as follows: If an applicant does not allow the social welfare office to ask his or her family members for help, the office should listen to his or her explanation of the reason for refusal and then decide whether he or she can be granted social welfare benefits.

e) *Securing Housing*

If a person who is unemployed or has given up self-employment is in need and therefore faces difficulties in securing his or her housing, he or she may receive a cash benefit equal in amount to the rent of his or her housing.[54] However, the amount of the benefit cannot exceed that of housing assistance under Section 14 of the Social Assistance Act.[55] This benefit is generally paid for the duration of three months. It may be extended

50 Cf. Sakurai K., "Why is the Number of Welfare Recipients not Increasing even in the Corona Pandemic?", President Online of 18/02/2021.
51 One example is that the unemployed person could not actively look for work due to his fear of being infected with coronavirus.
52 Persons applying for social assistance must normally first sell their car(s) for maintenance purposes in accordance with the principle of subordination of social assistance.
53 Cf. news item of public television station NHK of 2/03/2021.
54 If the total income of the person‘s household exceeds a certain ceiling, this benefit is reduced by the exceeding amount.
55 Law No. 144 of 1950.

to a maximum of nine months if the recipient of the benefit is seeking work. Entitlement to this benefit requires that the benefit recipient has registered with the unemployment office and is honestly and diligently seeking work.

Persons who have to take leave because of the impact of the corona pandemic and who face difficulties in securing their housing because of a reduction in income have also been included in the beneficiary group of this benefit since April 2021.[56] In addition, the period of receipt of the benefit for which the application was made in 2021 has been extended to a maximum of 12 months.

f) Effects of the Measures

Average gross pay per employee was lower from April 2020 to February 2021 than in the same months of the previous year.[57] However, gross income per household was higher in most months of 2020 than in the same months of the previous year. In particular, it was over 9% higher in May, June and July than in the same months of the prior year.[58] This was the result of special income payments (e.g. the lump-sum benefit of JPY 100,000). This means that the various benefits mentioned above had the effect of offsetting the reduction in income to some extent.

5. Conclusion

During the global financial crisis, too, many different measures were taken to maintain employment and support the lives of people. In the receding economy due to the global financial crisis, many workers who were in atypical employment and many self-employed persons who worked on behalf of third parties fell into hardship. They could not receive unemployment insurance benefits because they were not covered by unemployment insurance. It was not easy for them to claim social assistance benefits. One reason for this was that the principle of subordination of social assistance

56 Section 3 of the Ordinance of the Ministry of Health, Labour and Welfare No. 16 of 2015.

57 Cf. Ministry of Health, Labour and Welfare, Monthly Labour Survey.

58 Cf. Ministry of Internal Affairs and Communications, Survey of Household Economy.

was applied strictly, especially with regard to people who were capable of working. It was therefore heavily criticised that unemployment insurance and social assistance did not play a suitable role as a safety net for people in need. It had been pointed out that there was an urgent need to adapt these schemes to the changes in the world of work.

Against this background, some changes were made after the financial crisis.[59] In unemployment insurance, the circle of insured persons was expanded. In addition, a new law was passed to support certain jobseekers.[60] These included unemployed persons who were not insured under unemployment insurance or who could no longer receive unemployment insurance benefits due to the expiry of the period of entitlement, as well as self-employed persons who have had to give up their economic activity. These jobseekers can receive free training and are paid JPY 100,000 (EUR 769) per month as contribution to their maintenance during their training if their income does not exceed a certain limit. The duration of the training is to be between two and six months.

A new law was also passed for persons who came to face difficulties in supporting themselves but could not actually receive social assistance benefits due to the principle of subordination.[61] According to this law, they are entitled to individual counselling aimed at helping them rebuild their independent lives. They can receive subsidies for rental costs for a certain period of time, but no assistance for living expenses.

These measures were introduced to help people who receive neither unemployment insurance benefits nor social assistance benefits. Yet, it has been criticised that these measures have not been able to achieve their goal sufficiently, the reason being that the former provides only short-term support to job seekers and the latter does not give any livelihood assistance to persons facing difficulties in making a living. This problem has now arisen again during the corona pandemic. The pandemic has had a great impact on the entire population. Therefore, it has become necessary to expand employment and livelihood measures. This includes the provision of unemployment and health insurance subsidies and benefits to those who are not insured.

In addition, the loan system for persons who cannot receive social assistance benefits was expanded. This has made it possible for very many

59 Cf. Ministry of Health, Labour and Welfare, Annual Health, Labour and Welfare Report 2020, p. 115.
60 Law on Support given to Certain Jobseekers (Law No. 47 of 2011).
61 Act on Indigent Independent Support (Law No. 105 of 2013).

people to take out a loan that temporarily supports their livelihood. It can also be said that this loan system partly took over the task of social assistance. This loan is granted only on the basis of the applicant's statement about a decrease in his income due to the corona pandemic. As the number of applications for this loan increased very much, the borrowers could not be offered sufficient individual counselling to rebuild their lives. However, unlike social assistance, which is money granted as a benefit, the borrowers have to start paying back the loan after just one year. It is to be feared that these persons will not be able to repay this loan because of the perpetuating corona pandemic and will have to take out additional loans at higher interest rates.[62] This could also lead to the collapse of their lives. It is therefore necessary to continue to provide support to persons who fell on hard times due to the corona pandemic so that they can rebuild their lives.

62 Cf. Imai J., "What will the Extension of the Special Livelihood Loan System Lead to?" (in Japanese).

XIV. Mexico: Between the So-Called “Fourth Transformation” and Protecting Livelihoods in the COVID-19 Crisis

Gabriela Mendizábal Bermúdez

1. Introduction

The health emergency caused by the SARS-CoV-2 / COVID-19 virus (COVID-19) has revealed that health systems in all countries around the world were not prepared to face a challenge of this magnitude. Likewise, several things became evident: the difficulty for many people to access social insurance in the social security systems of their respective states and the clear importance of formal and informal workers to have access to social insurance, not only for the purposes of receiving medical care, but also for obtaining economic wage replacement benefits (e.g., unemployment benefits or pensions).

In addition to the above, the measures implemented by the federal government and most state governments in Mexico are often torn between the goals of the “Fourth Transformation” and the needs of the population as they face this crisis. On taking office, Andrés Manuel López Obrador, the current president of Mexico, called the transition to a new administration (including changes in the institutional and legislative framework) “the Fourth Transformation”.[1] As a result, every single measure to respond to the COVID-19 crisis has been conceived from that perspective.

Overall, it can be said that, on the one hand, the lack of leadership that led to an almost non-existent labour and social security policy for the benefit of workers and their families, as well as the lack of support to employers, is unfortunately evident.

On the other hand, the administration strengthened its delivery of economic resources through the assistance programmes established before the pandemic, which are vital for the subsistence of millions of Mexicans. It also pushed for changes in the health sector to achieve universal health

1 According to his speech, the three previous transformations in Mexico were Independence (1810-1821), the Reform (the war between liberals and conservatives from 1858 to 1861), and the Revolution (1910-1917).

coverage in the event of infection with the virus. This is a daunting challenge for Mexico since it has an insured population of 81.3 million people,[2] while 48.8 million only receive health benefits through social assistance.[3] Nonetheless, by the end of October 2021 (counting the period from March 2020 to October 2021) the country had officially lost 282,227[4] inhabitants to COVID-19 and its rate of infection was 1,186 per 100,000 inhabitants.[5]

Following the declaration of the pandemic by the World Health Organization (WHO), the Mexican General Health Council issued the "Agreement declaring the epidemic of the disease caused by the SARS-CoV 2 virus (COVID-19) as a health emergency due to force majeure,"[6] where measures like social distancing were established through sheltering people in their homes. One of the purposes of this agreement was to shut down all activities in the country that were not considered essential in order to prevent contagion among people who went to workplaces, businesses, schools, or other places where, due to their very nature, crowds of people could lead to mass infections.

On 23 April 2020, a Presidential Decree[7] established the austerity measures to be observed by agencies and entities of the Federal Public Administration, among which it was determined to postpone and suspend any type of government actions and expenses, except social programmes involving cash transfers, as well as the implementation of actions deemed priorities for the government, such as: the creation of the National Guard, the development on the Isthmus of Tehuantepec; the strengthening of the free zone along the northern border; oil production, Internet for all and the defence of human rights. Also included "as a priority" were the administration's construction projects: the General Felipe Ángeles Airport;

2 Presidencia de la República, Segundo Informe de Gobierno 2020, Gobierno de México, Mexico, 2020, p. 241, accessed on 7 January 2021.
3 Ibidem, p. 242.
4 Expansión, Datos Macro, México-COVID-19-Crisis del coronavirus, accessed on 12 October de 2021.
5 Gobierno de México, Covid-19 México, Gobierno de México, Mexico, 2021, at: https://datos.covid-19.conacyt.mx/, accessed on 7 January 2021.
6 Secretaría de Gobernación, Acuerdo por el que se declara como emergencia sanitaria por causa de fuerza mayor, a la epidemia de enfermedad generada por el virus SARS-CoV2 (COVID-19), DOF, Mexico, 2020, s. p., accessed on 17 April 2020.
7 Secretaría de Gobernación, Diario Oficial de la Federación, 23/02/2020, Decreto por el que se establecen las medidas de austeridad que deberán observar las dependencias y entidades de la Administración Pública Federal bajo los criterios que en el mismo se indican, accessed on 21 October 2021.

the refurbishment of six oil refineries; the construction of the Dos Bocas Oil Refinery; the retrofitting of power plants and hydroelectric plants to generate electricity; highway maintenance and conservation; the Mexico City three-airport system; the Mexico City-Toluca Intercity Train; the completion of dams and canals; the Texcoco Lake Ecological Park; the Urban Improvement Programme; the National Reconstruction Programme; the Mayan Train; and the Guadalajara Train. Each of these are among the objectives of the Fourth Transformation.

The declaration is still in effect and evolved into an epidemiological traffic light system, which determines the activities that can be carried out in each state. This has produced serious consequences as in the field of education, for example, where in-person school activities were suspended from March 2020 to August 2021 but have yet (October 2021) to be fully re-established.

The pandemic exposed deficiencies in all social security systems around the world, but in Mexico, the pre-existing conditions made it more difficult to meet health, economic and labour needs. The level of poverty and extreme poverty in the country is high. The latest report released by the National Council for the Evaluation of Social Development Policy, with data from 2020, states that Mexico had 55.7 million people living in poverty, representing 43.9% of the total Mexican population. It also reported that 10.8 million people (8.5% of the total population) lived in extreme poverty,[8] which means they do not have the resources to buy the basic foodstuffs a person needs.

Informal employment is widespread in the country. According to data provided by the National Survey of Occupation and Employment in the fourth quarter of 2021, informal work in Mexico reached 59% of employed persons,[9] i.e., 57.7 million people. This means that more than half of the employed people in Mexico depend on day-to-day activities to earn income. This suggests that this social group did not have the choice of staying at home to protect themselves from the COVID-19 virus since they do not receive a fixed income, lack social security and do not have guaranteed health care.

Another important factor worth mentioning is the survival of micro-, small and medium-sized enterprises (MSMEs) as in Mexico micro-enter-

8 Consejo Nacional de Evaluación de la Política de Desarrollo Social, Medición de la pobreza, CONEVAL, 2020, Mexico, s. p., accessed on 13 October 2021.

9 Instituto Nacional de Estadística y Geografía, INEGI, Resultados de la encuesta nacional de ocupación y empleo, nueva edición, cifras durante el segundo trimestre de 2021, accessed on 21 October 2021.

prises[10] account for 97.3% while only 2.7% correspond to small and medium-sized Enterprises.[11] Therefore, the closure of businesses and the subsequent termination of their workers due to this health emergency was imminent, especially if taking into consideration that these companies cannot survive without constant production and can even less afford to pay their workers' wages without it.

The implications of the temporary closure of sources of non-essential work, as well as generalised sheltering, had a strong impact, but the above-mentioned conditions of micro-enterprises, informal workers and extreme poverty made it very difficult to apply legal measures and even impossible to shut down activities in the informal economy.

It is worth noting that Mexico is a federal republic made up of 32 federal entities (states), which are in turn made up of municipalities. It is organised into three branches of government (legislative, executive and judicial) and three levels of government (federal, state and municipal).

This division became very apparent in the measures put in place by the different levels of government. While the federal government introduced very few measures, state governments strove to respond to the crisis caused by the pandemic. These measures depended on the resources of each state, and therefore the governments of poorer states have suffered more from the effects of the pandemic.

Table 1 briefly outlines the measures that have been implemented and that will be discussed in more detail later.

Table 1 Economic measures implemented by state governments

State	Aid and subsidies to guarantee family income	Aid and subsidies to compensate for damage to companies	Aid and subsidies for job protection
Aguascalientes	X	X	X
Baja California Sur			X
Campeche		X	X
CDMX	X		X

10 Micro-enterprises are businesses with less than 10 workers, generate annual sales of up to $4 million Mexican pesos and represent 40% of employment in the country, In addition, they produce 15% of the Gross National Product, Secretaría de Economía, México emprende, Microempresas, accessed on 21 October 2021.

11 Instituto Nacional de Estadística y Geografía, INEGI presenta resultados de la encuesta nacional sobre productividad y competitividad de las micro, pequeñas y medianas empresas (ENAPROCE) 2018, INEGI, Mexico, 2019, accessed on 17 April 2021.

State	Aid and subsidies to guarantee family income	Aid and subsidies to compensate for damage to companies	Aid and subsidies for job protection
Chiapas			X
Chihuahua	X	X	X
Coahuila		X	X
Colima			X
Durango		X	X
Mexico State	X	X	X
Guanajuato			X
Guerrero		X	X
Hidalgo	X	X	X
Jalisco		X	X
Michoacán		X	X
Morelos		X	
Nayarit		X	X
Nuevo León		X	X
Oaxaca		X	X
Puebla		X	X
Querétaro	X		X
Quintana Roo			X
San Luis Potosí		X	X
Sinaloa		X	
Sonora	X		
Tlaxcala			X
Veracruz			X
Yucatán	X	X	X
Zacatecas	X		X

Source: Created by the author based on data from the Laboratorio de Nacional de Políticas Públicas of the CIDE, Me-didas Económicas Covid-19[12].

From the above, it can be said that 30 out of the 32 Mexican states offered aid and subsidies to protect workers' jobs, 18 states endeavoured to offer some type of aid to companies in an attempt to compensate for the damage caused by the pandemic, and only some of them were able to provide direct support to families to ensure them a regular income, thus helping

12 Centro de Investigación y Docencia Económicas (CIDE), Laboratorio Nacional de Políticas Públicas, Medidas Económicas Covid-19, accessed on 25 October 2021.

those who were left without jobs or who depended on economic activities that, due to the emergency, were suspended.

2. *Job Retention*

During the pandemic, one would have expected governments to implement a clear labour market policy whereby job security and guaranteed wages interact for the benefit of workers and as a measure of economic stability. However, this did not happen in Mexico. The federal government did not establish measures to guarantee wages, although some state governments provided aid during the health emergency.[13]

It should be clarified that labour laws fall under federal competence (Constitutional Article 123); therefore, it was in the hands of the federation to make any changes regarding labour that might stem from the pandemic. This was also the case for health reforms, which were coordinated by the federation, from the Federal Executive and through the Ministry of Health.[14]

For instance, Mexico City, Quintana Roo, Yucatán, Mexico State and Querétaro, among others,[15] gave income support to families or workers between the ages of 16 and 65, to both salaried and non-salaried workers. In other cases, a COVID-19 medical kit and food support, among other things, was distributed.

For example, in order to provide support to workers between 16 and 68 years of age who were affected by the temporary closure and in some cases the definitive loss of their sources of work because of the health emergency, the Mexico City government launched the "Social Action of Emerging Support" program. Those who carry out activities in restaurants, banquet halls and food establishments; construction workers, musicians, urban artists, mariachis and actors; and people who work in other types of similar activities were asked to register on the program's electronic portal

13 In this regard, it should be clarified that the Mexican constitution establishes a federal government, in which the federation, states and municipalities have different competencies. Articles 117, 118 and 124 stipulate the limits on the exclusive competencies of the federal government and also specify the competencies that are reserved to the states. Some powers overlap, such as those exercised simultaneously by both the Federation and the states, as in the case of health, education and public safety, among others.

14 Article 13 General Health Law.

15 Entidades Federativas. Medidas Económicas, accessed on 27 September 2021.

to be able to participate in this programme. Between April and August 2020, or until the allocated budget is depleted, financial support in the amount of 75 USD a month was granted for a period of two months. The benefit was limited to people who reside or work in Mexico City and whose income was affected or reduced by the health measures adopted to prevent the spread of the virus.

It should be pointed out that the measures implemented by the Mexican federal government were limited to providing safety for workers in the performance of their jobs, which is why it began to be known as a "health emergency".

On 30 March 2020, an agreement issued by the General Health Council was published, declaring the epidemic of the disease caused by the COVID-19 virus as a health emergency due to force majeure, which gave rise to legal uncertainty in labour issues. This is due to the fact that Federal Labour Law Articles 42 bis, 427 Section VII and 429 Section IV regarding the suspension of labour relations do not contemplate the case of a health emergency, but a declaration of health contingency, which has different legal consequences.

This had the negative effect of preventing employers from legally suspending labour relations with their employees, which led to an increase in dismissals and other irregular measures (unpaid vacations, wage reductions, etc.).

The only labour-related legislative measure so far has been the labour reform[16] defining telework as a *form of subordinated labour organisation* which consists of performing paid activities in places other than the employer's establishment. This modality does not require the physical presence of the employee at the workplace, as it primarily uses information and communication technologies for contact with the employer and therefore grants the same rights and obligations as those of employees working on site in person.

The other measures can be briefly presented by issuing government institution:

- Ministry of Labour and Social Welfare. On 1 April 2020, the Ministry issued the Guidelines to Implement Telework at Workplaces within

16 Art. 330-A de la Ley Federal del Trabajo, Decreto por el cual se reforma el artículo 311 y se adiciona el capítulo XII bis de la Ley Federal del Trabajo, en materia de teletrabajo, del 11 de enero de 2021, accessed on 29 September 2021.

the Framework of Actions to Face COVID-19.[17] This informative guide establishes the process for implementing telework under a series of aspects to be considered, such as: performing a diagnosis by the companies, communication, training and work tools, monitoring schedules and assessments. This measure is more comprehensive than the legislative reform, but since it is not legislative in nature, it is not mandatory. An Action Plan for Workplaces in the COVID-19 Crisis[18] was also published with a view to compiling a classification of risks to workers by occupation or condition of vulnerability, as well as a series of practical recommendations for planning, training, prevention, protection and monitoring.

- The Mexican Social Security Institute (IMSS) has included criteria to consider COVID-19 an occupational illness in order to adequately establish the cause-effect relationship for workers diagnosed with the infection. In the case of front-line workers, it implies that once the illness is confirmed, the worker will receive 100% of their base pay for the duration of their sick leave.[19] A Health Safety Protocol for Companies was also created for the purpose of providing information on measures to prevent the spread of infection at the workplace through sanitising, hygiene and social distancing.[20]
- The Federal Labour Protection Agency (PROFEDET) created a digital tool called COVID-19 Digital Protection Agency for Workers to provide workers with assistance and support in cases of temporary dismissal without pay due to the pandemic.[21]
- The Ministry of the Interior issued a Manual of Specific Technical Guidelines for the Reopening of Economic Activities, which contains specific measures that must be implemented within the framework of the "new normal" strategy, including health promotion and protection,

17 Secretaría de Trabajo y Previsión Social, Guía para implementar el teletrabajo en los centros de trabajo en el marco de las acciones para enfrentar el COVID-19, STPS, Mexico, 2020, accessed on 27 September 2021.

18 Idem.

19 Instituto Mexicano del Seguro Social, Criterios de calificación para casos de CORONAVIRUS (COVID 19) como enfermedad de trabajo, accessed on 29 September 2021.

20 Gobierno de México, Lineamientos técnicos de Seguridad Sanitaria en el entorno laboral, accessed on 20 September 2021.

21 Procuraduría Federal de la Defensa del Trabajo (PROFEDET), accessed on 29 September 2021.

social distancing, entry and exit control, infection prevention measures in companies and the use of personal protection equipment.[22]

The protection provided by these measures has been limited, which is why the involvement of judges has been very active in this regard. For instance, the collegiate courts have issued case law by the reiteration of criteria[23] to the effect that the state, as the employer in public health care institutions, must guarantee the appropriate and necessary measures to health care personnel who work in hospitals and are exposed to the COVID-19 virus so as not to endanger their lives in the performance of their duties.

This case law emerges from the fact that IMSS health care workers have filed several *amparo* proceedings[24] [25] against the Institute for its refusing to provide them with sufficient and quality medical equipment to perform their work and safely treat patients arriving at the hospital with symptoms of or infection with the COVID-19 virus, given that the Social Security Institute did not have the necessary supplies to protect its workers from exposure to the virus.

Lastly, it should be noted that Mexico has introduced very few job protection measures, having implemented only two of the eight measures recommended by the Economic Commission for Latin America and the Caribbean (ECLAC), namely: remote work (teleworking) and the prohibition of layoffs, with no tax exemptions for companies or direct wage subsidies.[26]

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22 Secretaría de Gobernación, Lineamientos Técnicos específicos para la reapertura de las actividades económicas, accessed 29 September 2021.

23 Tesis: XVII.1o.P.A. J/31 K (10a.), Semanario Judicial de la Federación y su Gaceta, Décima época, Tribunales Colegiados de Circuito, octubre, 2020, Virus Sars-Cov2 (Covid-19), al constituir su brote una emergencia de salud pública de importancia internacional amerita el establecimiento de medidas preventivas urgentes para la protección del personal que presta sus servicios en los hospitales públicos y está expuesto al contagio.

24 Amparo proceedings or trial: Articles 103 and 107 of the Constitution define this as a procedural means in the Mexican legal system specifically used to protect the human rights established in the Constitution and in international treaties to which Mexico is party from any act of any national authority when these authorities violate said fundamental rights and their guarantees.

25 Queja 79/2020, Queja 80/2020, Queja 82/2020, Queja 87/2020, Queja 107/2020 presentada en el Primer Tribunal Colegiado en Materias Penal y Administrativa del Décimo Séptimo Circuito.

26 Comisión Económica para América y el Caribe, Estudio Económico para América y el Caribe. Dinámica Laboral y Políticas de Empleo para una recuperación sostenible e inclusiva más allá de la crisis del COVID-19, accessed on 29 September 2021.

3. Supporting the Economy

To counter the effects of the health crisis, the Mexican government has used two economic strategies: The first focuses on the measures contained in the 2019-2024 National Development Plan (NDP), adapted to the emergency situation by means of the Economic Reactivation Plan, and the second establishes measures through circulars and agreements,[27] published on the official websites of the Bank of Mexico (Banxico), the Ministry of Finance and Public Credit (SHCP).

State governments played a decisive role in implementing the agreed and authorised economic measures to bolster the Mexican economy in the face of the effects of the health emergency.

a) Measures Contemplated in the 2019-2024 National Development Plan Adapted to the Emergency Situation through the Economic Reactivation Plan (ERP)

One of the proposals made in the NDP was to trigger growth through the so-called "welfare economy", the premise of which is "for the good of all, the needs of the weakest and most underprivileged members must be given first priority," proposing on the one hand, economic growth with austerity and without corruption, and on the other hand, putting an end to indebtedness.

Thus, the ERP emphasises welfare economics and has produced the following measures:

aa) The coverage and amount of some of the financial benefits provided by social programmes (to be analysed in the corresponding section) were increased. It should be noted that the only social assistance protection measure introduced as a result of the pandemic was the now defunct Financial Support Programme for Family Micro-Enterprises (*Crédito a la Palabra*, literally "Your Word"). This programme granted family businesses

27 Agreements are executive acts issued by a collegiate body of officials and issued in this particular case by the Ministry of Finance and Public Credit. Circulars consist of issuing written orders or instructions and are essentially administrative acts through which senior government agencies interpret the meaning of legal provisions in specific cases, as in the case of those issued by Banxico. In both cases, they must be published in the Federal Official Gazette for their validity to be acknowledged and for them to become effective. Each agreement or circular determines the form and date on which they enter into effect.

a loan so that their businesses could stay afloat during the months of the emergency. The loan amount was $1,200 USD to be paid over 3 years at a low interest rate.[28] This programme benefited 53,524 people or companies. In this sense, it was a programme designed to address the problem of low income arising from the pandemic.[29]

bb) Regional projects and infrastructure works (mentioned above) such as the Santa Lucía Airport, the refurbishment of the six oil refineries included in the National Refinery Plan (Salamanca, Minatitlán, Madero, Cadereyta, Salina Cruz and Tula), the construction of the Dos Bocas Refinery in Tabasco, energy generation projects, the modernisation of the railroads and ports in the Isthmus of Oaxaca, and the Mayan Train project, were maintained as priorities.

cc) In economic matters, the ERP decided to postpone and suspend any type of government actions and expenditures that were not essential. This idea and the need of financing for the ERP resulted in the closing[30] of 109 public trusts related to health, sports, science, technology, environment, civil protection, culture and cinematography, among others, which has increased polarisation within Mexican society, as assistance to the poor was targeted on the one hand and resources for the already reduced middle class were cut on the other.

Financing for the ERP comes from the Budgetary Revenue Stabilisation Fund, from the resources obtained from the closed trusts, from the Development Bank and, lastly, from the sale of the goods seized by the Institute to Return to the People what was Stolen, another presidential campaign measure, established in the NDP and reinforced in the ERP.

This means that additional resources are not being allocated to respond to the crisis caused by the pandemic but are being redirected to other areas. However, these decisions, along with those taken before the pandemic, such as the cancellation of projects like the Mexico City Airport and the Constellation Brands brewery in Mexicali, Baja California, have sparked uncertainty for foreign investors.[31] As a result, foreign investment

28 Gobierno de México, Programa Crédito a la Palabra, Gobierno de México, México, 2020, accessed on 7 September 2021.

29 Gobierno de México, Op. cit, p. 411.

30 Cámara de Diputados, Nota No. 7410, Publica DOF decreto que extingue 109 fideicomisos, accessed on 20 September 2021.

31 Cota, Isabella, “La economía mexicana se desploma un 17,3% en el segundo trimestre de 2020, la peor caída de su historia”, El País, 30 July 2020, accessed on 24 September 2021.

in Mexico[32] fell by 11.7% and has also caused a contraction in the GDP, going from $1.222 billion USD in 2018 to $1.076 billion USD in 2020.[33]

The lack of additional economic stimulus led to a 16% decline in consumption during the second and third quarters of 2020, with no significant recovery so far.

Lastly, the austerity policy proposed in the NDP permeates the ERP, so that by using the pandemic as a justification (23 March 2020), the closure of half of the government offices was decreed in an effort to save on the rental of the real estate used for such activities, ordering the relocation of public servants considering the type of activity.[34]

As a result of these actions, according to data from the Ministry of Public Administration, as of September 2020, savings of close to $27 billion USD had been achieved, making it possible to better respond to the COVID-19 pandemic.[35]

Based on the above, it can be said that the decisions and proposals made by the Federal Executive did not provide concrete or extraordinary actions to reduce the economic effects taking place around the world as a result of the health emergency.

dd) Lastly, it is worth noting an increase in a measure that, although not linked to the pandemic (because it had been proposed during the presidential campaign of the current president), has undoubtedly had a positive effect on the country's economy during this period of COVID-19. This is the annual increase of the general daily minimum wage (8 hours

32 Expansión, 10 golpes que el COVID dio a la economía mexicana durante 2020, 28 February 2021, accessed on 20 September 2021.

33 Banco Mundial, PIB (US$ aprecios actuales)- México, datos sobre las cuentas nacionales del Banco Mundial y archivos de datos sobre cuentas nacionales de la OCDE, accessed on 13 October 2021.

34 Secretaría de Gobernación, Diario Oficial de la Federación, 23/02/2020, Decreto por el que se establecen las medidas de austeridad que deberán observar las dependencias y entidades de la Administración Pública Federal bajo los criterios que en el mismo se indican, accessed on 20 September 2021.

35 La Jornada, SFP reporta ahorro de 560 mmdp con Política de Austeridad Republicana, 23 September 2020, accessed on 24 September 2021.

of work), going from $102.68 pesos[36] ($5.04 USD)[37] in 2019 to $123.22 pesos[38] ($6.05 USD) in 2020 and to $141.70 pesos[39] ($6.95 USD) in 2021.

b) *Measures from the Bank of Mexico, the Ministry of Finance and Public Credit and State Governments*

Between March and April 2020,[40] Banxico enacted a series of monetary and financial policy decisions through various circulars in an attempt to counteract the increased volatility and deterioration of the operating conditions on the financial markets. Notably among these are the measures to strengthen credit channels:

- Providing banks with resources to extend credit to MSMEs and individuals.
- Guaranteed funding opportunities for commercial banks to receive corporate loans to finance MSMEs.

In order to keep MSMEs running and generating jobs and consumption, one of the first actions taken was to reduce the target for the Overnight Interbank Interest Rate by 50 basis points (bps) to 6.50%. This decision was consistent with the international scenario in which central banks of other countries were making similar decisions.[41]

Also worth mentioning is the measure adopted by the SHCP to authorise individuals who had to file annual returns with the Tax Administra-

36 Comisión Nacional de los Salarios Mínimos, Tabla de Salarios Mínimos Generales y Profesionales por Áreas Geográficas, CONASAMI, 2020, Mexico, accessed on 12 February 2022.
37 The exchange rate used for this report is $20.36 Mexican pesos = 1 USD, data from the Bank of Mexico on 13 January 2022, available at: Banco de México, Tipo de cambio, Mexico, Banco de México, 2022, accessed on 13 January 2022.
38 Comisión Nacional de los Salarios Mínimos, Tabla de Salarios Mínimos Generales y Profesionales por Áreas Geográficas, CONASAMI, 2021, Mexico, accessed on 12 February 2022.
39 Idem.
40 These are administrative provisions authorised by the Banxico Board of Governors.
41 Gobierno de México, Gaceta económica, Covid-19 plantea retos importantes para la política monetaria y la economía en general: Minuta-Banxico, 3 April 2020, accessed on 20 September 2021.

tion System (SAT) to extend the deadline for compliance by two months in 2020[42] and 30 days in 2021.[43]

c) State Economic Measures

Lastly, it is important not to forget the subsidies and aid that formed part of the economic policy and were prompted by the state's responsibility to compensate for or mitigate the damage caused by the pandemic. These measures stand out because they were established through state decrees,[44] i.e., an order issued by the state executive branch, published in an official gazette and effective immediately upon publication, for all legal purposes.

Generally speaking, the measures can be classified as follows:

aa) Aid for Rural Farmers

Emergency programmes were established (only for 2020) to provide financial resources for purchasing seeds, manure, fertilisers, feed and food supplements for livestock and for purchasing inputs and work tools for people engaged in different types of farming activities. Some examples are the Campeche Produce Programme or loans for corn growers in Jalisco. Requirements were also adjusted as in the case of resources for the Yucatán Agricultural and Fishing Loan Fund, which extended its coverage to this sector and made the process to obtain a loan more accessible.

One of the states that allocated the most resources to these programmes was Mexico State, which allotted $300 million pesos ($14.734 million USD) for the purchase of inputs, equipment and fertilisers for farmers.

One of the states that implemented a significant number of programmes focused on this sector was Yucatán, giving cash benefits to workers in the fishing sector and farmers for inputs, tools and machinery, as well as for producing, processing, transporting and marketing agricultural,

42 Secretaría de Gobernación, Diario Oficial de la Federación, Primera Resolución de Modificaciones a la Resolución Miscelánea Fiscal para 2020, 12 May 2020, accessed on 28 September 2021.

43 Expansión, El SAT da prórroga de un mes para la declaración anual de impuestos, el 5 de abril de 2021, accessed on 28 September 2021.

44 Centro de Investigación y Docencia Económicas (CIDE), Laboratorio Nacional de Políticas Públicas, Medidas Económicas Covid-19, accessed on 25 October 2021.

forestry and fishing products; inputs and support for beekeepers, poultry farmers, pig farmers, cattle breeders, and, in general, to small farmers.[45]

bb) Aid for Entrepreneurs

Financial loans and economic support were granted to "entrepreneurs". Some of these consisted of interest-free or low-interest loans with easy-to-meet requirements in order to enable people engaged in independent activities to expand their activities or start their own business. For instance, in Yucatán, loans ranging from $25,000 pesos ($1,227 USD) to $100,000 pesos ($ 4,911 USD) were granted with repayment terms of up to 24 months; Baja California Sur focused specifically on women entrepreneurs and Sinaloa targeted young people between 18 and 25 years of age.[46]

cc) Tax Exemptions

During the early months of the health emergency, states granted tax benefits and incentives applicable to both individuals and companies.

As an initial support, widespread in almost all states, the domiciliary summons for payment, seizures and collections derived from non-payment of taxes or duties were suspended. At the same time, extensions, discounts, waivers, suspension of surcharges and postponements were granted to comply with the obligations for tax, utilities and duty payments.

A second type of economic stimulus was given through support directed at certain sectors important for state economies. For instance, the state of Morelos authorised the deferral of payment on Waterparks and Resort Services tax. Monterrey exempted the payment of payroll tax for companies with between 1 and 10 employees with revenues of less than $4 million pesos, as well as for those in the restaurant, hotel, casino, gymnasium, theatre, bar, cinema and entertainment sectors. Puebla exempted the payment on gambling and sweepstakes tax, to mention a few.

45 Yucatán Travel. Yucatán frente al Covid-19, accessed on 15 February 2022.
46 Op. Cit. Centro de Investigación y Docencia Económicas (CIDE).

dd) Aid for Employers

In an attempt to ensure that business owners could continue operating and providing jobs to their workers, they were given tax extensions and tax payments were deferred, reduced or suspended.

Social programmes called *Programa de Crédito a la Palabra* [Your Word Programme] were created specifically for micro-entrepreneurs (with 1 to 10 employees in their companies) without access to bank loans with or without a credit history. Temporary employment was provided to the unemployed and financial assistance was extended to workers who could not perform their jobs due to the health emergency (as in the case of supermarket baggers, informal vendors and health personnel).

Some noteworthy examples are:

(1) Worker protection guidelines. One example is the case of Mexico City[47] with agreements that include health protection measure guidelines that professional, scientific and technical services directly linked to industries operating during the red and orange light alert levels must follow in order to resume activities towards a safe return to the "new normal" and health protection measure guidelines that the corporate office sector must follow in order to resume activities for a safe return to the "new normal".[48]

(2) Support to businesses. State governments offered a wide range of measures, such as: programmes were opened to train entrepreneurs in e-commerce, foreign trade and exporting goods; Internet sites were created to promote local commerce; local merchants became their main suppliers; contact directories were compiled for business owners to get to know local merchants and their products; immediate payment of pending government invoices was authorised; credit facilities were given to micro-enterprises that, due to their characteristics, could not obtain bank loans or loans with low interest rates, and a deferral of payments was extended to MYPIMES (micro-, small and medium-sized enterprises). Financial resources were provided for businesses to

47 Gobierno de la Ciudad de México. Lineamientos de medidas de protección a la salud que deberán cumplir los servicios profesionales, científicos y técnicos directamente vinculados con las industrias que operan en el semáforo rojo y naranja para reanudar actividades hacia un regreso seguro a la nueva normalidad en la Ciudad de México, accessed on 20 September 2021.

48 Idem.

subsidise inactive workers so these could receive training and a cash income during this time. Most of these measures have been temporary.

(3) Payroll tax exemptions. In the early months of the health crisis, some states (Jalisco, Yucatán, Aguascalientes, Puebla and Mexico State) waived payroll taxes in their entirety and later waived 50%. A period of grace was granted for the payment of utilities and fees, while legal action for the non-payment of monies owed to the state was suspended for a period of time.

These incentives were temporary and in force for 2020. They were gradually suspended until they were completely discontinued.

4. Social Protection

In the area of social protection and social insurance, the Mexican federal government has repeatedly pushed for in-kind and cash benefits that already existed, but except for the case of health, there were no significant changes during the pandemic.

However, as seen in Table 1, state governments adopted measures, mainly through social programmes, to respond to the coronavirus crisis and to ensure the livelihoods that were financially threatened. Because such aid largely depends on financing possibilities, there is much disparity between one state and another.

a) Social Insurances

aa) Overview

Among the measures implemented by social insurances, there are several actions focused on health care, as well as income protection measures.

Undoubtedly, the most important of these was the pension reform that entered into force in January 2021. While not directly caused by the pandemic, it has allowed workers to retire with fewer years of contributions. The main contribution of the reform consists of reducing the contribution weeks from 1250 to 750 to be entitled to the benefits of old-age severance and old-age.

The required number of contribution weeks (750) will increase annually by 25 weeks until 2031 to reach 1000.

It should be clarified that if the worker's retirement savings are not enough to obtain a pension, the worker may opt for a guaranteed minimum pension, which corresponds to a minimum wage, on reaching at least 60 years of age and 750 contribution weeks.

As of 15 December 2021, the National Commission of the Retirement Savings System (CONSAR) reported that more than 27,000 workers have retired under the new pension scheme owing to the reduced number of contribution weeks, which is a considerable increase, considering that a total of 18,646 workers retired 2020.[49]

bb) Temporary Social Insurance Measures

(1) Collaboration agreement between the Mexican government and the National Association of Private Hospitals and the Mexican Hospital Consortium, effective from 1 April 2020 to 30 September 2020, so that beneficiaries of the public health system (IMSS, ISSSTE, INSABI, PEMEX O ISSFAM)[50] could receive medical and hospital care in private hospitals, as long as the treatment was not related to illnesses caused by COVID-19.
The purpose of this measure was to ensure that public health institutions would give priority to the care of COVID-19 patients and prevent them from becoming overcrowded. During its effective period, a total of 17,728 beneficiaries were attended to through this agreement.[51]

(2) National Housing Fund Institute Measures
- Unemployment Insurance: Despite having been published in Bulletin No. 22 issued by the INFONAVIT,[52] this measure already

49 Data provided in the first and second annual government reports of the current President of Mexico Andrés Manuel López Obrador, Presidencia de la República, Informes de gobierno 2019/ 2020, accessed on 12 February 2022.

50 Mexican Social Security Institute (IMSS), State Employees' Social Security and Social Services Institute (ISSSTE), Health Institute for Well-Being (INSABI), Mexican Petroleum (PEMEX) or Social Security Institute for Military Forces in Mexico (ISSFAM).

51 Instituto Mexicano del Seguro Social, El director general del IMSS sostiene reunión de trabajo con el Consorcio Mexicano de Hospitales para realizar un balance de los resultados obtenidos en el trabajo conjunto, IMSS, Mexico, 2021, accessed on 23 September 2021.

52 Instituto del Fondo Nacional de la Vivienda para los Trabajadores, INFONAVIT, Sala de prensa, Mexico, 2020, accessed on 23 September 2021.

existed in the law[53] and consisted of covering 100% of the monthly mortgage payments for 12 two-week periods, i.e., six months or, if applicable, an interest-free extension for IMSS beneficiaries with current housing loans who lost their jobs. This was an important measure at the onset of the pandemic since most of the jobs in the country were lost during this period. Based on data provided by INFONAVIT, a total of 200,829 beneficiaries received this benefit from April to June 2020.[54]

– Payment tolerance: In an effort to provide support in cases of unemployment and wage reduction, this programme grants an extension in making payments for up to three months, during which time no interest is incurred, and the worker's balance is frozen. In this case, the payments are not covered, but deferred for collection at a later date. Requests for this measure were made on an individual basis unless a mandatory work lockout had been decreed. In this case, it is generally automatically activated. For those workers who, despite receiving this benefit, decided to make their payments, the advantage is that 100% of the payment would be credited to the capital of their debt.

cc) Measures Still in Effect

(1) Recognition of COVID-19 as an occupational hazard.[55] This agreement enables workers who are diagnosed with COVID-19 when performing priority activities to process their temporary sick leave

53 Second paragraph of Article 41 of the Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores, accessed on 26 October 2021. This article states, "When a worker has received a loan from the Institute, as of the date the worker ceases to receive salary income, the Institute shall grant the worker extensions in the monthly payments on principal and ordinary interest. In order to do so, the borrower must present a request to the Institute no later than one month the date of ceasing to receive said income. During these extensions, payments to the principal and ordinary interest generated will be capitalised to the unpaid balance of the loan. If the worker does not request the extension within 30 days, said extension shall not be authorised." Author's translation of Article 41 of the Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores.

54 Instituto del Fondo Nacional de la Vivienda para los Trabajadores, INFONAVIT, Soluciones para ti, Mexico, 2020, accessed on 23 September 2020.

55 Secretaría de Gobernación, Diario Oficial de la Federación, DOF: 29/07/2020, Acuerdo ACDO.AS2.HCT.240620/173.P.DPES, dictado por el H. Consejo Técnico en sesión ordinaria el día 24 de junio de 2020, por el que se autorizan estrategias para prorrogar las prestaciones en especie y/o en dinero a los asegurados con incapacidad temporal para el trabajo que lleguen a término de ley y a los beneficiarios hijos incapacitados que cumplen 16 años, así como reconocimiento de la

before the IMSS, which allows them to justify absences from work during their recovery period. The measure would also guarantee economic benefits and benefits in kind for them and their beneficiaries under the classification of occupational risk and not only as a general illness. This measure undoubtedly guarantees social protection to workers who have had to work in person, taking into consideration that, as of 11 October 2021, 4,484 people lost their lives in direct relation to COVID-19.[56]

(2) Lastly, a pre-existing measure that was widely publicised early in the pandemic is the Partial Unemployment Withdrawal.[57] This measure is a procedure by which workers can make a partial withdrawal of the amount accumulated in their individual retirement savings account in case of unemployment. This income protection measure led 1.7 million workers to withdraw from their Afore savings accounts during the pandemic. Between May 2020 and February 2021, withdrawals amounting to $885.63 million USD were reported.[58]

Depending on the applicable modality, withdrawal amounts can equal:

- Modality A (for accounts open for less than three years and with two years of IMSS contributions): 30 days from their last Base Contribution Salary with a limit of 10 Units of Measurement and Actualisations ($131.40 USD for 2021).
- Modality B (for accounts open longer than five years): The lesser of 90 days of the worker's Base Contribution Salary in the last 250 weeks or the number of weeks they may have and 11.5% of the resources accumulated in the Retirement, Severance at Old Age and Old Age sub-account.[59]

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enfermedad COVID-19 como riesgo de trabajo en trabajadores IMSS, durante el periodo de contingencia, accessed on 21 October 2021.

56 Secretaría de Salud, Covid-19 México, Personal de Salud 11 de octubre de 2021, accessed on 21 October 2021.

57 Article 191, Section II, of the Artículo 191 fracción II de la Ley de Seguro Social, accessed on 21 October 2021.

58 Carbajal, Braulio, "Por la pandemia, 1.7 millones usaron ahorros de su Afore", La jornada, 15 de marzo de 2021, accessed on 28 October 2021.

59 Instituto Mexicano del Seguro Social, Personas que perdieron su empleo durante emergencia sanitaria pueden tramitar Retiro Parcial por Desempleo: IMSS, IMSS, Mexico, 2020, accessed on 7 September 2021.

b) Social Programmes

As to the measures implemented by the Mexican state through social programmes, five aimed at protecting income, as well as health care, stand out.

- The Programme for the Well-Being of Older Adults grants a pension of $124.63 USD every two months to persons 65 years of age or over in Mexico.[60] As of June 2021, a total of 8,352,010 beneficiaries have received this assistance.[61]
- The Benito Juarez Scholarship Programme grants scholarships to elementary, middle and high school students in the amount of $39.1 USD a month. During the 2020-2021 school year, 10.4 million students have benefited from this programme.[62]
- The Youth Building the Future Programme links people between 18 and 29 years of age who do not study or work with companies, workshops, institutions or businesses where they can learn or strengthen work habits and technical skills to increase their employability possibilities in the future. While training, beneficiaries receive a monthly allowance of $210.65 USD, as well as health insurance for illness, maternity and occupational risks. Since 2020 and up to June 2021, 704,428 young people were connected with and trained in 171,435 workplaces.[63]
- The INSABI Programme – by the Institute of Health for Welfare, which is currently in force, focused on healthcare and came into effect on 1 January 2020, to provide and guarantee free health services, medicine and other related supplies to the population without social security. It is estimated that 69 million people without social security have been attended to through this programme.

The four programmes presented actually existed before the pandemic and only two months of payments were to be made in advance for the older adult pensions, the Benito Juarez Scholarship Programme and the Youth

60 Gobierno de México, Pensión universal para personas adultas mayores, Bienestar, Mexico, 2021, accessed on 29 September 2021.

61 Gobierno de la República, Tercer informe de gobierno, Gobierno de México, Mexico, 2021, p. 210, accessed on 29 September 2021.

62 Ibidem, p. 214.

63 Ibidem, p. 215.

Building the Future Programme.[64] These advances were repeated on two occasions during 2020, which helped the beneficiaries during the labour and economic complications that arose because of the pandemic.

c) *State Social Protection for Families*

Programmes run by state governments that focused on mitigating the impact of COVID-19 on Mexican families can be classified as follows:

aa) *Measures for providing food*

At least 10 states[65] have implemented programmes designed to guarantee access to food through community kitchens or the delivery of essential staple food products.

The target population of these programmes are people in vulnerable situations, directly or indirectly affected by the health emergency, as well as the homeless, the unemployed, older adults and groups living in priority attention zones.

It should be said that these programmes were already being developed before the onset of the pandemic, which is why only the number of beneficiaries was expanded. These programmes are governed by the operational rules published in the official gazette of each state.[66] Lastly, in-kind support is provided on a permanent basis (like the community kitchens in the state of Baja California) while others indicate that food baskets will be delivered until the authorities declare the end of the health emergency or the allotted budget (e.g., the extraordinary food basket programme in Baja California Sur or the Food Assistance Programme in Yucatán).

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64 Gobierno de México, Adultos mayores recibirán bimestre adelantado de pensión, anuncia presidente; programas sociales se fortalecerán ante COVID-19, Gobierno de México, Mexico, 2020, accessed on 7 September 2021.

65 Baja California, Baja California Sur, Chiapas, Guerrero, Morelos, Oaxaca, Puebla, Tabasco, Yucatán, Zacatecas, accessed on 15 February 2022.

66 For example: Periódico Oficial del Estado de Baja California, Reglas de Operación para la ejecución del "programa extraordinario de despensas", 30 de Abril de 2020, accessed on 7 September 2021 y Periódico oficial "Tierra y libertad", Reglas de Operación del Programa de Apoyo Alimentario Básico Emergente, POTL, Mexico, 2020, accessed on 15 February 2022.

bb) Payment extensions and subsidies for essential public services

These actions centred on subsidising the cost of some public services for a certain amount or giving extensions for a limited time to pay utilities, specifically those related to the right of access to water and electricity.

In this area, two states stand out (Hidalgo and Yucatán).

For example, Hidalgo established a three-month extension on cut-off and reconnection charges for potable water services for all Hidalgo state residents. At the same time, all residents were provided with potable water whether they had a service contract or not.[67]

Meanwhile, Yucatán introduced a discount of up to 50% on electricity bills and implemented the State Plan to Boost the Economy, Employment and Health, which aims to protect the health of Yucatán residents and reduce the economic impact on individuals and businesses by offering a two-month extension (April-May 2020) on the payment of domestic potable water and garbage collection services.[68]

5. Conclusions

To conclude, it may be noted that Mexico had pre-existing economic problems that were aggravated by the epidemic.

On the one hand, it was observed that the health conditions and the context of poverty and labour informality have made managing the health and economic consequences of the pandemic more difficult. On the other hand, the government prioritised the continuation of its government plan that envisions "the Fourth Transformation", so it continued with its works, considering them essential.

Despite the fact that resources of $9.1 billion USD were assigned to the Ministry of Social Welfare[69] for social programmes and to continue with the aforementioned government projects, the federal government was

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67 Lineamientos de operación de "acciones emergentes en apoyo a la economía familiar por la contingencia sanitaria" en el Estado de Veracruz, accessed on 7 September 2021.

68 For example: Diario Oficial del Estado de Yucatán, Decreto 200/2020 por el que se establece el Plan Estatal para Impulsar la Economía, los Empleos y la Salud, accessed on 15 February 2022.

69 Id Velázquez Marisol, El Economista, Presupuesto 2021: Bienestar (programas sociales, salud, adultos mayores), 8 de septiembre de 2020, accessed on 25 October 2021.

highly criticised, because – as this research shows – the measures driven by the assumption of community responsibility to repair the damage were minimal.

The legislative reforms are restricted to Article 330-A of the Federal Labour Law, which addresses the issue of teleworking and published guidelines, criteria, protocols and administrative measures.

State-level social programmes focused on providing support measures through social programmes, conditioned to their budgetary availability, which led to a disparity between the programmes, depending on each state's financial capability.

At the federal level, there were some measures consisting of advancing the payment of already existing social programmes and, as a new feature, only the *Crédito a la Palabra* for companies was implemented.

Tax exemptions mainly consisted of the extension granted by the SHCP for filing tax returns in 2020 and 2021.

In terms of health care, it can be reported that the good management of the pandemic that began with the signing of the Collaboration Agreement between the Mexican Government and the National Association of Private Hospitals, which along with the hiring of medical personnel and inoculation of the population, as well as the expansion and conversion of public hospitals to provide specialised COVID-19 care, prevented extreme cases of shortages or lack of attention to the general public, as has happened in other countries.

Based on the above, it can be concluded that social policy during the pandemic did not introduce any lasting changes but is simply reduced to temporary assistance measures that cannot reverse the negative effects on employment, the economy and social security. The long-term changes consisted in legislative amendments, like the 2021 pension reform (effective in 2021) or the annual increase of the minimum wage and the increased coverage and cash benefits of social programmes, which were not measures arising from the pandemic, but had already been planned. The pandemic merely contributed to further heightening the needs of the poorest populations in Mexico and thus, these measures were accepted, thereby ensuring the loyalty to the president of 55.7 million people living in poverty. This loyalty will most certainly be reflected in the 2022 poll for his ratification as president.

XV. All Hands on Deck: Dutch Emergency Support Policies in the COVID-19 Pandemic

Maarten Bouwmeester[1]

1. Introduction

On 27 February 2020, the Dutch Minister for Medical Care and Sport reported the first known case of COVID-19 in the Netherlands to the House of Representatives.[2] Following this, the government rapidly started to develop a strategy to counter the spread of the novel coronavirus. In their press conference of 12 March 2020 (one of many to follow), the Prime Minister and the Minister for Medical Care and Sport announced stay-at-home orders for people with flu-like symptoms, the cancellation of events with over 100 attendees and the request to work from home as much as possible.[3] On that same day, the Ministers of Economic Affairs, Finance and Social Affairs presented a letter to the House of Representatives containing the introduction of economic support measures to counteract the negative economic impact from the virus and the restrictive measures.[4] While the Ministers emphasised first of all that the implementation of large-scale government intervention appeared so far unnecessary due to the strength of the economy and the presence of sufficient financial buffers,[5] a range of instruments was announced, to be taken into consideration should the need for them arise. This first list of possible measures discussed

1 The author thanks Prof. Dr. Gijsbert Vonk for his input (especially on the cross-border application of Tozo), insightful comments and helpful feedback during the writing of this contribution.
2 Letter to Parliament, 27 February 2020.
3 Press conference from the Prime Minister and the Minister of Medical Care and Sport, 12 March 2020.
4 Letter to Parliament, 12 March 2020.
5 The government referred to the historically low level of unemployment, the strong financial position of both the private and the public sector and the resilience of the financial sector.

short-time work compensation, credit loans to counter liquidity shortages and fiscal measures (e.g., labour tax deferrals for employers).[6]

While the Dutch government was initially optimistic about the regular legal framework's potential to deal with the imminent economic threats, the realisation that additional intervention was necessary followed soon. On 17 March 2020, only 5 days after the first press conference, the government disclosed the deployment of a large-scale *Emergency Plan for Employment and the Economy* (*Noodpakket banen en economie*) bringing additional policies to aid employers, employees and self-employed workers in overcoming the difficulties posed by the coronavirus and the measures against its spread.[7] This emergency package (with estimated costs of between EUR 10 and 20 billion)[8] largely aligned with the earlier exploration of possible measures, with the exception that it had become clear that the existing arrangements were unable to cope with the pandemic-specific circumstances. This emergency plan was the first of several waves of support to follow. On 20 May 2020, the *Emergency Plan for Employment and the Economy 2.0* was announced. The duration of the previously established emergency schemes was extended, and new 'exceptional measures' were added.[9] At the end of August 2020, yet another new emergency plan was introduced, a plan that started to show signs of a shift towards a longer-term strategy.[10] The need for long-term vision was harshly confirmed at the end of 2021, when the government found itself forced to implement a strict lockdown strategy (remaining active up to 14 January 2022) in an attempt to mitigate the rising numbers of infections caused by the highly contagious Omicron variant.[11] Following these recent developments, yet anoth-

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6 Letter to Parliament, 12 March 2020.

7 Letter to Parliament, 17 March 2020.

8 Algemeen Dagblad, 'Kabinet steekt vele miljarden in noodpakket om coronacrisis te bestrijden', 17 March 2020.

9 Kamerstukken I, 2019/20, 35420, G.

10 This plan sought to 'offer perspective' by not only continuing on the basis of short-term measures but also providing longer-term investment and social protection. It was described as containing three pillars: continuing existing support measures, incentivising investments and stimulating economic prosperity, and committing to social support (with an investment of over EUR 1 billion directed at career development and reskilling, combating unemployment and fighting poverty and debt problems). Kamerstukken I, 2019/20, 35420, M, p. 2.

11 Government of the Netherlands website, 'Slowing the Spread of the Omicron Variant: Lockdown in the Netherlands', 18 December 2021.

er comprehensive support package (amounting to EUR 4.4 billion) was developed for the first quarter of 2022.[12]

This chapter provides a general overview of the various emergency support policies the Dutch government has implemented to alleviate financial burdens caused by the COVID-19 pandemic. Focusing on job retention (1), economic support (2), and social protection (3), the main set-up of the different categories of emergency schemes is discussed. Moreover, some attention is given to the implementation process of emergency schemes, their impact and effectiveness and the question of whether these temporary emergency measures may have a lasting effect within the Dutch social security system.

2. *Job Retention*

In times of economic crisis, demand for labour may fall short for various reasons. In such cases, employers are incentivised to reduce the number of hours worked by employees (or to even lay off employees). One of the most prominent instruments to deal with such situations are short-time work schemes that grant financial support to companies in times of economic difficulties, facilitating them to retain their employees by providing financial compensation for the employees' wages paid out for non-worked hours.[13]

In the Netherlands, a short-time work scheme has been in operation for many years, called *Regulation for Short-Time Work* (*wtv-regeling*).[14] It did not take the government long to realise that this existing scheme was unable to cope with the gravity of the COVID-19 pandemic. The acute fall in labour demand resulted in a rapid increase in requests to reduce working hours (55,000 requests for almost 800,000 employees).[15] The existing procedures within the *wtv-regeling* had not been designed to deal with so many claims in such a short period of time. Therefore a substitute scheme was created, the *Temporary Emergency Scheme for Job Retention* (*Tijdelijke noodmaatregel overbrugging voor werkbehoud*, NOW), in order to facilitate a swift process of financial compensation to many employers in a short timeframe. NOW

12 Letter to Parliament, 14 December 2021.

13 Cremers, J. (2021). Job Retention Schemes in Europe: The Netherlands. In "COVID-19 Observatory": Short time work schemes during the pandemic (pp. 1-6). ETUI.

14 Beleidsregels ontheffing verbod van werktijdverkorting 2004.

15 Kamerstukken II, 2019/20, 35420, 13.

was implemented on 31 March 2020 and put under the responsibility of the Employee Insurance Agency (UWV). Since then, the *Temporary Scheme* has been extended a multitude of times, with NOW-6 being the latest stretching from 1 January to 3 March 2022.[16] NOW is the most comprehensive scheme in the government's support package,[17] and it is to be seen as the main job retention scheme applicable to the population of 'standard' workers.[18] There have been two separate schemes for non-standard workers, one for flex workers and another for self-employed and freelance workers. As these schemes are mainly relevant from a perspective of social protection, these schemes are discussed in more detail under paragraph 4. The remainder of this section discusses the NOW.

Article 3 of the *First Temporary Emergency Scheme for Job Retention* (NOW 1.0) states that employers are assisted in the payment of their wage costs in the event of an acute drop in turnover of at least 20% over a period of 3 months (between 1 March 2020 and 1 July 2020) caused by a reduction in activity due to extraordinary circumstances that cannot reasonably be attributed to the 'normal entrepreneurial risk'.[19] These systematics have significantly diminished the complexity (and thereby raised administrative feasibility) of the system of short-time work compensation, mainly because instead of a rather complex formula to calculate working capacity (like under the *wtv-regeling*), turnover loss is used as a measure.

The NOW subsidy comprises two components. First, the employer's wage sum is subsidised up to a maximum of 90%, reduced proportionally to continuing partial turnover.[20] Second, this sum is complemented by a surcharge of 30% aimed at covering additional costs like pension premiums, taxes, and holiday pay. The maximum amount for this total subsidy

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16 Government of the Netherlands website, 'Informatie voor vaststelling NOW', accessed 2 February 2022.

17 Dutch Central Planning Bureau, 'Economische analyse steunpakket 2020', September 2021.

18 Cf. Cremers, J. (2021). Job Retention Schemes in Europe: The Netherlands. In "COVID-19 Observatory": Short time work schemes during the pandemic (pp. 1-6). ETUI.

19 The Minister of Social Affairs and Employment has explicitly declared that loss of turnover caused by the COVID-19 pandemic by definition falls under the scope of extraordinary circumstances, and that employers do not have to demonstrate how exactly the pandemic has caused loss of turnover. Letter to Parliament, 31 March 2020.

20 Article 7 Eerste tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid, 31 March 2020.

was set at EUR 9,538 per month per employee.[21] The financial support is granted in the form of an advance payment of 80% of the subsidy. Subsequently, a final calculation is made in which the actual wage sum and turnover are compared to the expected sums as determined at the time the subsidy was granted.[22] Next to the main eligibility criterion of turnover losses, three additional requirements exist. First, employers are not permitted to terminate employment contracts (after 18 March 2020) on the basis of Article 7:669 paragraph 3 sub a of the Dutch Civil Code, a provision that normally allows employers to lay off employees for business-economic reasons.[23] Second, the employer must keep the wage bill as even as possible,[24] and third, the employer is only allowed to spend the subsidy on employees' wages.[25]

In May 2020, the government realised the necessity to extend the NOW scheme (next to a range of other socio-economic support measures).[26] On 22 June 2020, NOW 2.0 was introduced to cover the period from 1 June 2020 to 30 November 2020. While it essentially took the same shape as NOW 1.0, it brought a number of changes. Most fundamentally, the purpose of the legislation shifted from complete preservation of employment to adaptation to the new economic reality of the COVID-19 pandemic. This is clearly reflected in the declared policy objective; while NOW 1.0 sought to 'maintain the employment of workers for the hours worked before the downturn [in productivity], NOW 2.0 stated the less strictly formulated goal of maintaining the employment of 'as many people as possible'. In line with this shift, the 50% fine for dismissal of employees was withdrawn, and employers were from then on only confronted with a deduction of the dismissed employees' wages from the subsidy.[27] Next to this, the surcharge for additional costs was raised from 30 to 40%. Finally,

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21 Article 10 Eerste tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid, 31 March 2020.

22 Article 14 Eerste tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid, 31 March 2020.

23 Article 13 sub b Eerste tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid, 31 March 2020.

24 Article 13 sub a Eerste tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid, 31 March 2020.

25 Article 13 sub b Eerste tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid, 31 March 2020.

26 Kamerstukken II, 2019/20, 35420, 38.

27 Article 8 paragraph 9 Tweede tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid.

requirements for employers receiving subsidies were tightened in various ways.[28]

Since NOW 2.0, many extensions have followed. Changes have been made congruent to the continually changing state of the COVID-19 pandemic and the government's strategy to limit the spread of the virus. With the introduction of NOW 3.1 (for the period from 1 October 2020 to 31 December 2020), the government expressed its commitment to initiate a gradual phase-out to recalibrate legislation in accordance with the 'new normal' economic situation, but this perspective quickly lost relevance when the government realised the need to implement a new wave of lockdown measures in October 2020.[29] Subsequently, NOW 3.2 continued financial support to employers – albeit showing some aspects of phasing out, predominantly by setting the maximum subsidy at 85% instead of 90% – from 1 January 2021 to 31 March 2021, followed by NOW 3.3 for 1 April 2021 to 30 June 2021.[30] NOW-4 continued the subsidy scheme for the period from 1 July 2021 to 30 September 2021, bringing only incremental changes.[31] NOW-5 extended the support for 1 November to 31 December 2021, and from then onwards start-up companies (meaning companies that had started between 1 February 2020 and 30 September 2021) have also been eligible for subsidies.[32] Most recently, NOW-6 has been introduced (running from 1 January to 31 March 2022). While at the moment of writing the government is still working on its design, it is clear that it largely follows the design of NOW-5. A notable aspect is that the government is attempting to increase the selectivity of the subsidy scheme by preventing the provision of financial support to companies that have had only one trimester of poor business results (and relatively good

28 Employers were no longer allowed to repurchase their own shares, pay out dividends or hand out bonuses (Article 18 Tweede tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid), were required to make efforts to encourage employees to participate in career development or reskilling, and a fine was introduced to counter large-scale layoffs (20 or more employees at once) (Article 15 Tweede tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid).

29 Kamerstukken II, 2019/20, 35420, 217, p. 7.

30 Kamerstukken II, 2019/20, 35420, 105.

31 Among other small changes, measures were taken to reduce employers' administrative burdens.
Letter to Parliament, 26 July 2021.

32 Kamerstukken II, 2021/22, 35420, 458.

performance in the rest of the year) by the implementation of a 'yearly turnover-loss threshold'.[33]

The NOW scheme was introduced because the pre-existing short-time work scheme could not cope with the enormous amounts of requests caused by the COVID-19 crisis. In a short timeframe, the Dutch government has succeeded in coming up with an effective emergency scheme that brought a more flexible, transparent, and less administratively burdensome scheme for short-time work compensation. For employers, it has become easier to demonstrate their need for financial support (turnover loss instead of diminished working capacity as a measure), financial support is granted immediately in the form of advance payments, and the procedures allow companies to retroactively apply for the subsidy. These temporary changes to the Dutch system of short-time work compensation have brought many employees the advantage of remaining employed and having their wages continued to be paid, rather than having to fall back on unemployment insurance.

Unlike with the restrictive set-up of the pre-existing short-time work scheme (*wtv-regeling*), with the NOW the government has extended its responsibility for supporting private businesses, spending large amounts of money to maintain employment levels. The persistence of the NOW scheme throughout the different phases of the pandemic until today demonstrates that we can expect it to remain active as long as the COVID-19 pandemic still causes serious downfalls in labour productivity. Whether it will continue to exist further in the future, however, is a different question. While an emergency scheme like the NOW is highly unlikely to remain active under normal economic circumstances, it may be likely that some traces of the scheme will. The Dutch Social Economic Council (SER) for instance has advised to start allowing employers to unilaterally reduce their employees' working time by up to 20% for business-economic reasons that otherwise would have resulted in the dismissal of employees, thereby falling back on the NOW's financial compensation systematics. The Council posed this as one of several measures to incentivise employers to provide more permanent contracts,[34] thereby aligning with the spirit

33 Kamerstukken II, 2021/22, 23466, p. 2.

34 Dutch Social Economic Council (SER), 'Ontwerpadvies sociaal-economisch beleid 2021-2025: Zekerheid voor mensen, een wendbare economie en herstel van de samenleving', June 2021, p. 21.

of the landmark report from the Commission on the Regulation of Work (Commission Borstlap).[35]

Either way, the currently active procedures and provisions under the NOW can be used again in future times of economic downturn (caused by a pandemic, or other types of crises) that confront employers with problems that fall outside the scope of the normal entrepreneurial risk. For reasons of administrative feasibility, it seems convenient to maintain loss of turnover as a standard rather than loss of work capacity as this reduces complexity for both executive agency and employer. Moreover, the COVID-19 pandemic has demonstrated that emergency circumstances may last longer than 24 weeks (the time span under the *wtv-regeling*), meaning the longer term exemption for employers (from the prohibition on working hours reduction) adopted in the NOW scheme may remain necessary in future crises. Finally, holding on to the incentives and additional requirements (introduced under NOW 2.0) for employers to commit to investments in reskilling or the posting of redundant workers elsewhere (prior to reducing working hours or dismissing their employees) seems like a good option.[36]

On a final note: while the Dutch government has speedily delivered an effective scheme of emergency short-time work compensation in a short timeframe, the NOW scheme also has its downsides. While the subsidised preservation of employment yields the important economic advantage of countering rising unemployment levels, to a certain extent it also disturbs good economic incentives; some companies should ideally restructure by reducing their number of employees, and they end up incentivised not to do so due to their eligibility for the subsidy.[37] Next, the NOW system of subsidisation by advance payment based on estimates made by employers (eventually followed by a final calculation based on a comparison with the actual figures) has postponed administrative costs to a later phase in the procedure. Many of the past estimates were too high (because the expected lower productivity turned out to be less dramatic), necessitating

35 Commission on the Regulation of Work, 'In wat voor land willen wij werken?', 23 January 2020.

36 See also A. J. Jacobs, 'Werktijdverkorting, het juiste medicijn?', TRA 2009/13.

37 F. den Butter, 'Pas corona regeling aan om baancreatie niet af te remmen', Mejudice.nl, 14 April 2020. As also concluded by the Dutch Central Planning Bureau, 'Economische analyse steunpakket 2020', September 2021.

procedures of repayments that confront both companies and the government with future administrative burdens.[38]

3. Supporting the Economy

While the COVID-19 pandemic has confronted the Netherlands with substantial economic repercussions, the downturn of the economy and the fiscal balance have both remained limited when viewed in international comparison.[39] The Dutch government's extensive attempts to assist the economy should be understood in this context; disposing of the funds needed to order businesses to lay down their work during lockdowns and compensate them for their lost profits, the government has decided to deploy a large range of economic support measures.[40] These instruments were introduced in waves of both big packages of support measures and small, specific measures. The first *Emergency Plan for Employment and the Economy* (March 2020) consisted of a diverse set of measures that, next to employment preservation, sought to preserve businesses' liquidity through tax relief, compensation and the provision of additional credit

38 Schellekens, M., Cnossen, A. L. & 't Jong, R. (2021). Terugvordering coronasteun wordt miljardenoperatie, ESB, July 2021. In January 2022, the Minister of Social Affairs and Employment reported that almost 75% of the employers who received NOW subsidy had to (partially) reimburse the advance payments. However, despite this large number, the Minister stated that the reimbursement procedures pose little administrative problems so far. Letter to Parliament, 26 January 2022.

39 In the second trimester of 2020, the Dutch economy shrank by 8.4 percent as compared to the previous three months, a shrinkage that had not been measured by the Dutch Central Bureau for Statistics (CBS) ever before. Despite this, the Dutch economy has proven to be rather resilient in the face of the pandemic; in the third quarter of 2020, the GDP increased by 7.7 percent compared to the first quarter, thereby almost recovering to the 2019 pre-crisis level. Central Bureau for Statistics, 'Economic Impact of COVID-19', accessed 2 February 2022.
While the Netherlands' debt-to-GDP ratio rose 5.4 percentage points, public debt did not supersede the European norm (EMU standard) of 60 percent, largely due to the fact that the deterioration of the Dutch economy has remained limited in comparison to other European countries such as Belgium, France and Italy. Consequently, government revenue (taxation) differed only slightly from the 2019 figures, meaning missed government revenues only modestly impacted the Netherlands' fiscal balance. Central Bureau for Statistics, 'De Nederlandse overheidsfinanciën tijdens de coronacrisis in Europees perspectief', accessed 2 February 2022.

40 Lejour, A. (2020). Fiscale steunmaatregelen tijdens de coronarecessie. Weekblad Fiscaal Recht, 149(7337), 441-445.

possibilities.[41] The several following waves of the *Emergency Plan* brought a number of additional arrangements that continued along the same set-up.[42] These business-economic support measures can be classified into four types of measures; safeguarding business liquidity (by broadening access to credit and guaranteed loans), financial compensation (alleviating the burden of continuing fixed costs), tax instruments and, finally, sector-specific packages constituting a combination of these different instruments. Without pretending to provide a fully exhaustive overview, the section below provides examples that illustrate this variety of economic support measures.

a) *Safeguarding Liquidity by Broadening Credit Possibilities*

A range of schemes has been developed to facilitate entrepreneurs to more easily borrow money to overcome profit reductions caused by the pandemic and the restrictive measures. A first example is the *Borgstelling MKB-kredieten Corona (BMKB-C)*, established with the introduction of the first *Emergency Package*, aimed at supporting small- and medium-sized businesses (maximum 250 employees) seeking resources with credit providers (such as banks).[43] Later on, more arrangements were specifically developed for small- and medium-sized businesses.[44] An important scheme that was

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41 Kamerstukken II, 2019/20, 35420, 11.

42 Next to the big waves of reform, this included frequent incremental changes. For example, on 28 April 2020 the Ministry of Economic Affairs and Climate already announced that it would provide additional financial assistance by relaxing eligibility criteria for several schemes (including the Borgstelling Midden- en Kleinbedrijf and the Tegemoetkoming Ondernemers Getroffen Sectoren COVID-19) and raising the ceiling of subsidy schemes. Government of the Netherlands website, 'Coronavirus: verdere uitbreiding en versoepeling regelingen voor ondernemers', 28 April 2020.

43 This measure has increased the size of the credit fund in the regular BMKB regulation from 50% to 75%, making it easier for banks to expand their lending budget and thereby providing companies (as well as self-employed workers) with more possibilities to loan funds. Government of the Netherlands website, 'Vragen over de Borgstelling MKB-kredieten Corona (BMKB-C)', accessed 2 February 2022.

44 Such as 'Small Credit Corona' (Klein Krediet Corona, introduced in May 2020), aimed at assisting some tens of thousands of small businesses access to loans between EUR 10,000 and EUR 50,000. Letter to Parliament, 8 May 2020. For even smaller loans (microcredit) a 'corona bridging loan' has been organised within private credit company Qredits, offering businesses a micro-credit of maximum

established for companies seeking larger credit is the *Garantie Ondernemersfinanciering-regeling Coronamodule*, guaranteeing business corporations access to loans between EUR 1.5 and 150 million in size.[45] Next to this, 'Time Out Arrangement'-credit was established to prevent bankruptcies and to facilitate businesses in debt to undertake a relaunch.[46] There has also been a specific credit scheme to solidify the liquidity position of startups and scale-ups (with the underlying goal of facilitating growth and innovation).[47]

b) *Financial Compensation*

The Dutch government has also provided financial compensation in the form of subsidies. The most prominent of these were two consecutive schemes that were both aimed at helping companies that were confronted with turnover losses to deal with paying their fixed costs. The *Tegemoetkoming Ondernemers Getroffen Sectoren* (TOGS), open for applications from June to December 2020, granted a one-time payment of EUR 4,000 (to be spent freely according to their preferences) to companies that were directly affected by the restrictive measures. The main requirements for applying businesses were twofold: at least EUR 4,000 of turnover loss (due to the restrictive measures), and at least EUR 4,000 of fixed costs due.[48] The TOGS scheme was succeeded by the *Compensation for Fixed Costs* (Tegemoetkoming Vaste Lasten).[49] From June 2020, businesses could apply for this subsidy if they were confronted with a turnover loss of at least 30% per quarter as a result of the corona measures. Since June 2020, the government has facilitated easier access to the scheme. In December 2021, the choice was made to lower the 30% income loss threshold to 20%, as well as to extend the application phase by two weeks. For the fourth trimester of

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EUR 25,000 to bridge the period in which they are confronted with lower income due to the COVID-19 pandemic and the health regulations. Qredits, 'Corona-overbruggingskrediet', accessed 2 February 2022.

45 Government of the Netherlands website, 'Vragen over de Garantie Ondernemersfinanciering (GO-C)', accessed 2 February 2022.

46 Qredits, 'TOA-credit', accessed 2 February 2022.

47 Government of the Netherlands website, 'Coronavirus: overbruggingskrediet gericht op startups en scale-ups vanaf 29 april beschikbaar', accessed 2 February 2022.

48 Beleidsregel tegemoetkoming ondernemers getroffen sectoren COVID-19, 27 March 2020.

49 Regeling subsidie vaste lasten financiering COVID-19, 9 February 2021.

2021, the maximum subsidy could amount to up to EUR 550,000 for small- and medium-sized enterprises, and EUR 600,000 for bigger businesses.[50] A separate scheme was introduced for starting businesses that fell outside the scope of the regular VTL.[51] The VTL scheme has been extended five times so far, and after the most recent extension (23 November 2021) it is currently active until at least 1 July 2022.[52]

c) *Tax Relief*

In the first *Emergency Plan for Employment and the Economy* of 17 March 2020, the government also announced a series of fiscal measures aimed at alleviating businesses' liquidity issues caused by the measures against the coronavirus. Soon, this was complemented by a relaxation of entitlement criteria, simplifying application procedures, expanding the scope to more tax instruments and facilitating small businesses in particular to receive longer periods of tax deferral (longer than three months).[53] Since these first steps, various additional forms of tax relief have been implemented[54] (some for a short timeframe, and some remaining active until this day) resulting in a diverse compilation of tax relief instruments. In the early stage of the crisis, perhaps the most effective measure in terms of quickly alleviating liquidity problems has been the possibility for businesses to request an adjustment of their preliminary tax bills from the Tax Administration. This instantly lowered the tax bill for companies with lower expected profits, and if companies had already paid a higher tax rate the Tax Administration paid out the difference to them.[55]

Another type of measure was tax deferrals. A universal measure for all businesses is a special deferral of payment for a broad range of tax schemes (including income tax, corporate tax and turnover tax).[56] Later on, ener-

50 Government of the Netherlands website, 'Tegemoetkoming Vaste Lasten (TVL) Q4 2021', accessed 2 February 2022.
51 Netherlands Enterprise Agency (RVO), 'Tegemoetkoming Vaste Lasten (TVL) Q1 2021 Startende ondernemingen', accessed 2 February 2022.
52 Kamerstukken II, 2021/21, 35420, 423.
53 Letter to Parliament, 2 April 2020.
54 Letter to Parliament, 24 April 2020.
55 Lejour, A. (2020). Fiscale steunmaatregelen tijdens de coronarecessie. Weekblad Fiscaal Recht, 149(7337), 441-445.
56 Recently, this general tax deferral has been extended until 31 March 2022. Fiscale tegemoetkomingen naar aanleiding van de coronacrisis (Besluit noodmaatregelen coronacrisis), 26 January 2022.

gy tax bills were added to this list, reinforcing the liquidity position of big users of electricity, gas and durable energy.[57] A range of additional measures has been organised in the fiscal system to support businesses. Fines for overdue payments were temporarily abolished for income tax and turnover tax from March 2020.[58] Additional relaxations were implemented later on in the crisis, for example in the assessment of self-employed workers' entitlement to previously introduced tax breaks.[59] Next to this, the government introduced exemptions of the aforementioned financial support measures from taxation.[60] Finally, specific sectors were granted a temporary reduction of tax rates.[61]

d) *Sector-Specific Support Measures*

Finally, the Dutch government has rolled out a multitude of sector-specific support packages. On 16 March 2020, a credit fund was established to provide liquidity loans to travel organisations affected by the COVID-19 regulations. This fund was aimed at helping travel organisations deal with the high number of cancellations and obligatory reimbursements by funding travel organisations so they could reimburse travel vouchers to their consumers.[62] A month later, the Minister of Education, Culture and Science announced that EUR 300 million would be spent on additional subsidies for (among others) museums, music venues and cinemas.[63] Moreover, the media sector received support in the form of relaxed subsidy procedures, as well as specific measures such as a temporary relief fund for local broadcasters and door-to-door newspapers.[64] On 7 May 2020, an action plan for the agriculture and fishing industries was announced, predominantly aimed at guaranteeing companies access to loans by expanding the total

57 Kamerstukken II, 2019/20, 35420, 13.
58 Letter to Parliament, 27 March 2020.
59 Dutch Tax Authority, 'Versoepeling urencriterium', accessed 2 February 2022.
60 For example, retailers that were forced to close their doors receiving TVL subsidy were granted an exemption of the subsidy from corporate and income taxation in January 2021. Kamerstukken II, 2020/21, 35420, 214.
61 For instance, the government has supported gyms offering online sport classes in the periods they were forced to close by lowering their value-added tax rate. Kamerstukken II, 2020/21, 35420, 214.
62 Kamerstukken II, 2020/21, 35420, 252.
63 Kamerstukken I, 2019/20, 35441, B.
64 Letter to Parliament, 7 April 2020.

credit budget.[65] Later that month, a subsidy was introduced for owners of fishing vessels who were forced to halt their fishing activities.[66] Other examples of sector-specific support measures are deferral of payments for airlines,[67] and financial compensation for amateur sports clubs.[68] Financial support has also been granted to multiple sectors at once, such as with the Regulation R&D for Mobility Sectors (introduced in November 2021), a subsidy dedicated to combating the downfall of research and development investments in the automotive, maritime and aviation industries.[69] Finally, financial support has been granted to individual companies. Large corporations including KLM (national airline), IHC (shipbuilding) and HEMA (department store) received financial impulses as last-resort measures to ensure continuity and the preservation of employment. While the national Court of Audit's evaluation of the 'last-resort nature' of these individual support measures has been generally positive,[70] some critics interpret it as a move towards 'industry politics' in which companies' viability threatens to depend too much on government subsidies instead of the functioning of the free market.[71]

4. *Social Protection*

The COVID-19 pandemic has confronted the Netherlands with considerable issues for citizens' social welfare. Flexible and low-educated workers in particular, in the most directly affected sectors (including culture, sports and the hospitality industry) have seen their job security and income positions threatened.[72] These developments were reflected in the number

65 Kamerstukken II, 2019/20, 35420, 30.
66 Regeling van de Minister van Landbouw, Natuur en Voedselkwaliteit van 13 mei 2020, nr. WJZ/ 20087172.
67 Regeling van de Minister van Landbouw, Natuur en Voedselkwaliteit van 13 mei 2020, nr. WJZ/ 20087172.
68 Government of the Netherlands website, 'Tegemoetkoming amateursportorganisaties COVID-19', accessed 2 February 2022.
69 Kamerstukken II, 2021/21, 35420, 460.
70 Netherlands Court of Audit, 'Individuele steun aan bedrijven tijdens de coronacrisis', 12 November 2020.
71 Verdoes, T. L. M. (2020). Steunverlening aan individuele bedrijven gedurende de CORONA-crisis: een terugkeer naar de oude industriepolitiek?. De Credit Manager, 2020(2), pp. 24-25.
72 Netherlands Labour Authority, 'Impact coronacrisis op het stelsel van Werk en Inkomen', 28 April 2021, p. 32.

of social assistance recipients. For the first time since 2017 an increase (+2,000) was demonstrated in the quarterly figures, mainly caused by an increase in applications for social assistance by people under 27 years old.[73] The Dutch government has increasingly acknowledged the need to provide additional social protection.[74] As both the existing system of social assistance (under the Participation Act) and the newly designed job protection regime (NOW) could not provide sufficient assistance to certain target groups, several additional temporary social assistance schemes have been created from March 2020 onwards. This section shifts attention to three of the most salient temporary schemes of social assistance, being social assistance to self-employed workers (a), financial support to flexible workers (b) and special assistance for housing costs (c).

a) *Social Assistance to Self-Employed Workers*

One of the major schemes created with the introduction of the government's first *Emergency Plan* in March 2020 was the *Temporary Scheme for Independent Entrepreneurs* (*Tijdelijke Overbruggingsregeling Zelfstandige Ondernemers*, Tozo). This scheme was aimed at providing social assistance to self-employed workers whose income had sunk below the subsistence level. It is narrowly related to the regular system of social assistance for the self-employed codified in the *Besluit bijstandverlening zelfstandigen 2004* (Bbz 2004, flowing from Article 78f of the Participation Act). The set-up of Tozo was similar to the Bbz 2004, but due to its temporary emergency nature, there are two important differences. First, the absence of a test on the viability of the company; according to the government, an inquiry into the viability of a company would not be in line with the purpose of the Temporary Scheme, i.e. to process a request for assistance quickly and

73 Dutch Central Bureau for Statistics, 'Vooral meer jongeren met bijstand in tweede kwartaal 2020', 31 August 2020.

74 From August 2020 in particular, the government expanded its focus (previously mainly confined to economic incentives and job retention) by allocating approximately EUR 1.4 billion to the protection of vulnerable groups of citizens in an 'additional social package' for the years 2020-2022. This strategy consisted of restructuring the economy and labour market (i.e., incentivising investments in training and re-skilling), facilitating swift exits from unemployment insurance and social assistance, as well as the provision of social protection to counter vulnerable citizens from falling into poverty and problematic debt. Kamerstukken I, 2019/20, 35420, M.

easily so that the self-employed person can be offered financial security quickly. Second, the applicant's capital was disregarded.[75]

The target group of Tozo consisted of various categories of self-employed entrepreneurs (self-employed workers, small businesses, sole proprietors, etc.) who were confronted with financial difficulties caused by the pandemic. From March to May 2020 alone, between 200,000 and 250,000 Tozo allowances were recorded monthly.[76] Self-employed persons could receive Tozo support on the condition that they were between the age of 18 and the state pension age and registered at the Chamber of Commerce before 17 March 2020. The scheme was put under the responsibility of municipalities, being fully financed by the central government. The first Tozo scheme (*Tozo 1*) was active until 30 June. After this, the scheme was extended multiple times, Tozo 5 as the final scheme having been closed on 1 October 2021.[77]

Like the Bbz, the Tozo scheme had two components to provide financial aid to self-employed individuals. The first component is narrowly related to the previously discussed economic support measures. Self-employed workers could apply for a business capital loan of a maximum of EUR 10,157 intended for alleviating liquidity problems.[78] The second Tozo component concerned not a loan, but income support in the form of a social assistance benefit. The main eligibility criterion thereby was that the restrictive measures against the coronavirus caused the applicant's monthly income to sink below the minimum subsistence level for three consecutive months. If that was the case, they could receive a monthly social assistance benefit raising their (remaining) income up to the minimum subsistence

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75 Uitvoeringsregels tijdelijke overbruggingsregeling zelfstandige ondernemers (Tozo), 18 August 2020.

76 Early data (March 2020 to September 2020) show that especially self-employed people in sectors like hairdressing, consumer goods repair and the catering, hospitality and cultural sectors used the scheme. Cremers, J. (2021). Job Retention Schemes in Europe: The Netherlands. In "COVID-19 Observatory": Short time work schemes during the pandemic (pp. 1-6). ETUI.

77 Uitvoeringsregels tijdelijke overbruggingsregeling zelfstandige ondernemers (Tozo), 18 August 2020.

78 The attached duration was 3 years, and the interest rate was set at 2%. For the first months of support (Tozo 1 and Tozo 2), repayment was not required before 1 January 2022 (and interest was not accrued until then).
Uitvoeringsregels tijdelijke overbruggingsregeling zelfstandige ondernemers (Tozo), 18 August 2020.

level,[79] varying on the basis of the applicant's living situation.[80] An important change was brought with the introduction of Tozo 2 in May 2020. The individual income test was transformed into a household income test (incorporating the partner's income), meaning the income of the self-employed applicant's partner became relevant in the assessment of eligibility (the calculation of income being below the threshold of the social minimum).[81] In combination with the relaxation of the pandemic measures, this policy change resulted in a substantially lower number of Tozo applications (between 65,000 and 90,000 per month).[82] A capital test was envisaged as well, but after having postponed its introduction before, the government decided to not implement it at all in January 2021, because it would too negatively impact income security among the self-employed.[83]

As of 1 October 2021, the Tozo support has come to an end. From then onwards, self-employed persons had to return to a modified version of the regular scheme for social assistance for the self-employed (the aforementioned Bbz 2004). This modified version has three main deviations as compared to the regular set-up of the Bbz 2004. Municipalities do not have to subject applicants to an assets test, applicants can invoke their right to financial support retroactively (max. 2 months), and municipalities calculate applicants' income and the benefit level on a monthly instead of a yearly basis.[84] These modifications applied until the end of 2021, and on 14 December 2021 the government decided to extend the simplified scheme until 1 April 2022.[85] Despite these amendments, the modified Bbz works out significantly less generous than the Tozo support due to two important differences. First, unlike Tozo the Bbz includes the previously mentioned

79 Uitvoeringsregels tijdelijke overbruggingsregeling zelfstandige ondernemers (Tozo), 18 August 2020.

80 To illustrate these differences, a person living alone (single parent or person without children, above the age of 21, younger than the pension age) received EUR 1078.70, whereas two persons living together received EUR 1541. Association of Netherlands Municipalities, Handreiking Tijdelijke overbruggingsregeling zelfstandig ondernemers (Tozo), 23 December 2021, p. 27.

81 The definition of partner flowing from Article 3 of the Participation Act.

82 Cremers, J. (2021). Job Retention Schemes in Europe: The Netherlands. In "COVID-19 Observatory": Short time work schemes during the pandemic (pp. 1-6). ETUI.

83 Letter to Parliament, 21 January 2021.

84 Association of Netherlands Municipalities, Handreiking Tijdelijke overbruggingsregeling zelfstandig ondernemers (Tozo), 23 December 2021, p. 8.

85 Government of the Netherlands website, 'Bbz biedt een alternatief voor de Tozo', accessed 2 February 2022.

viability test, aimed at making sure that financial support is only granted to entrepreneurs of whom it can be expected that they are able to independently successfully continue their enterprises after the abolishment of the health measures against the coronavirus.[86] Second, the cost sharing norm applies to the Bbz scheme (laid down in Article 22a of the Participation Act), meaning the benefit level is reduced in line with the number of fellow residents (above 21 years) living with the applicant (the more cost sharing co-residents, the lower the amount paid out). The cabinet justified the transition from Tozo to the less generous set-up of the Bbz by remarking that in this new phase of the pandemic – with less restrictive health measures, allowing self-employed workers to resume their activities again – it would again be suitable to expect a larger degree of self-responsibility from self-employed workers to support their own livelihood.[87]

A final noteworthy consideration is the cross-border application of Tozo. This has been somewhat of a controversial issue due to the fact that the scheme is not payable to those who live outside the Netherlands. According to the main eligibility criteria, the self-employed person must be a legal resident in the Netherlands and his activities must be carried out in the Netherlands. By subsequent decision, the Minister for Social Affairs and Employment retroactively extended the Temporary Scheme for the self-employed to cross-border situations.[88] Income assistance was thereby also made available to Dutch residents with a business in another member state. However, the residence condition itself has not been fully dropped. For those living outside the Netherlands there was no right to income assistance. Non-residents merely qualified for the business capital loan component. The consequence was that frontier workers living outside the Netherlands in Germany and Belgium were excluded from income support. According to the Dutch government this is justified by the fact that those extraterritorial residents are subject to the neighbouring countries' responsibility to provide minimum income support. Following questions raised in the European Parliament, the European Commission and the Dutch government have entered into a dialogue on the status of Tozo under the EU regime for the freedom of movement. One of the questions has been whether Tozo is to be qualified as social assistance, or as a special non-contributory benefit for unemployment falling under the

86 This viability test constitutes an extensive examination, see Divosa, 'Werkwijzer Levensvatbaarheidsonderzoek en begeleiding Bbz', June 2013.
87 Kamerstukken I, 2020/21, 35420, BE.
88 Tijdelijke regeling overbruggingsregeling zelfstandig ondernemers, 29 April 2020.

scope of Regulation (EC) No. 883/2004. The Dutch government and subsequently the Roermond District Court maintained it was social assistance.[89] This viewpoint was eventually also adopted by the European Commission itself,[90] but not without having questions raised about the compatibility of the residence condition with the regime for the freedom of establishment and services. The latter discussion has, however, not led to any tangible results.

b) *Financial Support for Flexible Workers*

On 11 June 2020, the Minister of Social Affairs and Employment introduced a separate scheme for flexible workers who were confronted with a loss of income, called the *Temporary Scheme for Flexible Workers* (*Tijdelijke Overbruggingsregeling voor Flexibele Arbeidskrachten*, TOFA).[91] This scheme was meant to protect the livelihood of flexible workers who were not eligible for benefits under the ordinary schemes of unemployment insurance (*Werkloosheidswet*) and social assistance (*Particpatiewet*). An important target group under TOFA were students with side jobs.[92] The system was put under the responsibility of the Employee Insurance Agency (UWV).[93]

Flex workers had to meet the following eligibility criteria. First, they had to have received an income in February 2020 higher than the threshold level of EUR 400, and at least EUR 1 in March 2020. Second, they had to have lost at least half their income in April 2020, while having their remaining income not exceed EUR 500. Third, following the last resort-nature of the benefit, the recipient could not receive any other type of benefit, as they had to rely on the TOFA benefit to support their livelihood.[94] Flex workers who met these requirements qualified for a gross one-time payment of EUR 1,650 (EUR 550 per month for March, April and May

89 Rechtbank Limburg 21 August 2021, ECLI:NL:RBLIM:2021:6765.
90 Letter of the European Commission, 9 February 2021, annex to Kamerstukken I 2020/2021, 35 542, I.
91 Tijdelijke overbruggingsregeling voor flexibele arbeidskrachten, 8 June 2020.
92 Cremers, J. (2021). Job Retention Schemes in Europe: The Netherlands. In “COVID-19 Observatory”: Short time work schemes during the pandemic (pp. 1-6). ETUI.
93 Tijdelijke overbruggingsregeling voor flexibele arbeidskrachten, 8 June 2020.
94 Van der Beek, J.W.M. & Zwemmer, J.P.H. (2020). NOW: Flexwerknemers (en flexwerkgevers) tussen wal en schip en de TOFA-regeling, Tijdschrift voor Arbeidsrecht in Context(3), 2020.

2020).[95] The size of this lump sum was set at 70% of the gross monthly salary of the average temporary worker. A fixed sum was chosen because a targeted, income-related benefit was deemed unfeasible due to the limited time available and a lack of capacity among executive agencies.[96] On 10 July 2020 the government announced that the TOFA scheme would be extended by two weeks (until Sunday 26 July 2020).[97] Since then, employers have been able to apply for NOW subsidy for flexible workers, with the subsidy being determined on the basis of the flex worker's average salary over an extended reference period.[98]

As recognised beforehand by the Minister of Social Affairs and Employment, the system of working with a fixed sum may have raised administrative feasibility, but it also came with its drawbacks. Providing the same sum to everyone in the target group implied that some workers would receive a benefit that was higher than their income loss. Moreover, like any simple and generic (non-targeted) scheme, it came with risks of improper use.[99] Furthermore, TOFA has been criticised from the perspective of the existing discussion on labour market inequalities between flexible workers and standard workers. In comparison to standard workers – many of whom received full wage continuation due to the NOW subsidy granted to their employers – TOFA delivered a meagre form of financial support. While it is true that some workers received a benefit higher than their income loss, many others received a benefit that did not fully compensate for their income losses. As such, the pandemic seems to have reinforced the already known labour market divide between standard workers and temporary workers, as emphasised in recent reports by the Scientific Council for Government Policy[100] and the Commission on the Regulation

95 Tijdelijke overbruggingsregeling voor flexibele arbeidskrachten, 8 June 2020.

96 Van der Beek, J.W.M. & Zwemmer, J.P.H. (2020). NOW: Flexwerknemers (en flexwerkgevers) tussen wal en schip en de TOFA-regeling, Tijdschrift voor Arbeidsrecht in Context(3), 2020.

97 Government of the Netherlands website, 'Tegemoetkomingsregeling flexwerkers twee weken langer open', accessed 2 February 2022.

98 Cremers, J. (2021). Job Retention Schemes in Europe: The Netherlands. In "COVID-19 Observatory": Short time work schemes during the pandemic (pp. 1-6). ETUI.

99 Kamerstukken II 2019/20, 35420, 40.

100 Dutch Scientific Council for Government Policy, 'Het betere werk. De nieuwe maatschappelijke opdracht', 15 January 2020.

of Work (Commission Borstlap),[101] demonstrating injustice towards flex workers.[102]

c) *Special Assistance for Housing Costs*

Another scheme entered into effect from 1 January 2021, called *Temporary Support for Necessary Costs* (*Tijdelijke Ondersteuning voor Noodzakelijke Kosten*, TONK). It initially ran until 30 June 2021, and has been extended once until 30 September 2021. The goal of TONK was to support households confronted with serious financial problems (as a result of the COVID-19 restrictions) in being able to pay their basic housing costs (rent, mortgage payment and interest, and utilities). As such, TONK was not a form of general social assistance aimed at alleviating poverty or compensating for income loss, but a tied benefit specifically linked to housing costs. While it did not have a specific target group, it was especially intended to be a last-resort safety net for people who could not rely on the previously established (emergency) support schemes. This included, for example, self-employed workers who were no longer entitled to Tozo support since the introduction of the partner test.[103]

TONK was not a law in itself; the temporary support was incorporated in the regular social assistance regime that falls under the responsibility of municipalities, falling under the scope of 'special assistance' as meant in Article 35 of the Participation Act. Therefore, municipalities could use the already existing application procedures under the Participation Act, meaning start-up costs were limited. In most cases, this financial support was granted in the form of a benefit, but in some cases municipalities could provide it in the form of a loan.[104] As the policy was organised under the decentralised social assistance scheme, municipalities had a substantial de-

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101 Commission on the Regulation of Work, 'In wat voor land willen wij werken?', 23 January 2020.

102 Van der Beek, J.W.M. & Zwemmer, J.P.H. (2020). NOW: Flexwerknemers (en flexwerkgevers) tussen wal en schip en de TOFA-regeling, Tijdschrift voor Arbeidsrecht in Context(3), 2020.

103 See Coronaregelingen.nl, Tijedelike Ondersteuning Noodzakelijke Kosten (Tonk), accessed 11 May 2022.

104 To illustrate, some municipalities have chosen to grant a loan instead of a benefit in the case of a recipient who will receive a large sum of money from elsewhere in the near future (soon taking away the need for income support). See ZZP service desk, 'Wat je moet weten over de Tijdelijke Ondersteuning Noodzakelijke Kosten (TONK)', accessed 2 February 2022.

gree of discretion in terms of how to shape the provision of support. This resulted in substantial inter-municipal differentiation in the calculation of the applicant's financial capacity. For example, while some municipalities used a combination of income, housing costs and wealth, others only regarded income to determine the applicant's right to financial support.[105] The central government gave few guidelines for implementation, apart from the general instruction that municipalities had to be generous in the allocation of benefits. This generosity was facilitated by a financial impulse of EUR 260 million into the Municipal Fund. On the one hand, this provided flexibility to municipalities, as they could shape the procedures according to regional circumstances and policy preferences. On the other hand, it was a challenging task. It was difficult for municipalities to forecast the number of applications, and therefore they were challenged with finding a suitable balance between generosity and diligent use of the available funds.[106]

5. Conclusion

Since the moment it became clear that the COVID-19 pandemic would bring serious economic repercussions, the Dutch government has increasingly committed itself to providing economic and social support. Departing from the country's economic resilience and its deep pockets (viewed in international comparison), a large range of measures has been deployed between 2020 and 2022. The government has increasingly embraced a long-term approach, especially since the end of 2021, demonstrating a shift from crisis-thinking to long-term strategising about support measures in the COVID-19 pandemic.[107]

From the first *Emergency Plan for Employment and the Economy*, a broad range of general economic support measures has been marshalled to keep the economy going by safeguarding companies' liquidity positions, ensuring their capacity to pay fixed costs and incentivising a continuation of investments. The most comprehensive support scheme, the *Temporary Emergency Scheme for Job Retention* (NOW), importantly helped to prevent mass unemployment and delivered income security through wage continu-

105 This table provides an overview of these inter-municipal differences, appendix to Kamerstuk 021Z07460.

106 Stimulansz, 'TONK: Tijdelijke Ondersteuning Noodzakelijke Kosten', accessed 2 February 2022.

107 Letter to Parliament, 14 December 2021.

ation for many workers since the early days of the COVID-19 pandemic. However, the scheme's initial closedness towards non-standard workers did emphasise the already salient inequalities between standard workers and flexible workers.[108] Nevertheless, the NOW scheme has demonstrated an expansion of government responsibility for private businesses (in comparison to the regular short-time work scheme). Whether NOW will leave its traces in the future legal framework remains to be seen, but in view of the Dutch Social Economic Council's keenness about some of its characteristics this appears far from unlikely.[109]

With regard to the domain of social protection, a number of final interesting observations can be made. First, the Dutch government has taken different approaches in trying to solve the existing social protection system's shortcomings. On the one hand, temporary emergency schemes (like TOFA) have been developed in order to fill the gaps of the existing legal framework. On the other hand, solutions were found by making use of the flexibility offered within the legal framework (TONK, organised on the basis of special assistance as laid down in Article 35 Participation Act), or by making modifications to existing arrangements (From Tozo to modified Bbz 2004). A second observation relates to TOFA, the Temporary Scheme for Flexible Workers. With the TOFA scheme, the Dutch government opted for a quick and simple strategy to quickly alleviate financial problems among flexible workers. The choice to provide the same one-time payment of EUR 1,650 to the entire target group (without incorporating additional standards) clearly diverges from the government's strategy in the aftermath of the financial crisis of 2008, when the Unemployment Insurance Agency took a considerably more selective approach in the provision of benefits.[110] Third, the introduction of Tozo has shown the government's readiness to step in when it comes to protecting the livelihood of self-employed workers. The Tozo scheme was shaped significantly more generously than the regular system of social assistance for self-employed workers (Bbz 2004), as a range of selective conditions was disregarded (viability test, capital test and cost sharers norm). As such, the Tozo characteristics have demonstrat-

108 Van der Beek, J.W.M. & Zwemmer, J.P.H. (2020). NOW: Flexwerknemers (en flexwerkgevers) tussen wal en schip en de TOFA-regeling, Tijdschrift voor Arbeidsrecht in Context(3), 2020.

109 Dutch Social Economic Council (SER), 'Ontwerpadvies sociaal-economisch beleid 2021-2025: Zekerheid voor mensen, een wendbare economie en herstel van de samenleving', June 2021, p. 21.

110 Cf. Unemployment Insurance Agency, 'De WW in coronatijd', 4 September 2020.

ed somewhat of a break with the principle that self-employed workers should be held accountable for supporting their own livelihood. Be that as it may, as soon as the circumstances allowed for it, self-employed workers' self-responsibility was once again emphasised in August 2021, and this was translated into the substitution of Tozo by the modified Bbz's introduction of selective conditions.

On a final note, all in all it does seem safe to say that the Dutch government's economic and social support measures in the COVID-19 pandemic demonstrate a certain degree of good faith and generosity. Large expenses have been made with relatively few concerns about fraud and improper use. Seen in relation to developments like the newly formed government's commitment to raise the minimum wage (and by that, the social minimum that determines the level of social assistance benefits),[111] one might conclude that the paradigm of bureaucratic efficiency, welfare conditionality, and fraud prevention[112] has begun to partially lose its relevance in the Dutch welfare state. The future will have to point out whether a true turning point in thinking about the provision of social assistance is near.

111 Coalition Agreement 2021-2025 (VVD, D66, CDA, ChristenUnie), 'Omzien naar elkaar, vooruitkijken naar de toekomst', 15 December 2021.

112 Cf. Vonk, G. (2014). Repressive Welfare States: The Spiral of Obligations and Sanctions in Social Security. European Journal of Social Security, 16(3), 188-203; Watts, B., & Fitzpatrick, S. (2018). Welfare Conditionality. Routledge.

XVI. Government's Social and Economic Protection Responses to COVID-19 in the Context of an Elimination Strategy: The New Zealand Example

Michael Fletcher

1. Introduction

To date, the New Zealand government's handling of the COVID-19 coronavirus pandemic has been relatively successful. The general approach was to adopt an elimination strategy[1], which kept case numbers and deaths low, at least until the late-2021 arrival of the Omicron variant. In respect of the economy, the Minister of Finance, Grant Robertson's, mantra has been 'a strong public health response is the best economic response'[2], albeit, of course, like governments in most jurisdictions, the health response has been coupled with large-scale debt-funded increases in public spending to support economic activity and protect livelihoods.

To date (1 February 2022) there have been 16,622 cases and 53 deaths, the latter figure representing a death rate of 1.08 per 100,000 people, the fourth lowest rate of any nation.[3] It is expected that the Omicron variant of the virus, now spreading within the community, will result in a large spike in case numbers. Hopefully though, vaccination rates in excess of 90 percent and Omicron's milder nature means the increase in deaths will be relatively small.

The first COVID-19 case in New Zealand, a traveller returning from Iran, was reported on 28 February 2020.[4] Other cases followed shortly thereafter and in mid-March, government announced that everyone entering New Zealand (except, initially, persons from the Pacific Island nations)

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1 Ministry of Health, COVID-19: Minimisation and protection strategy for Aotearoa New Zealand, updated 7 December 2021.

2 See RNZ, Grant Robertson: A strong public health response is still the best economic response, of 24 August 2021.

3 Johns Hopkins University Coronavirus Resource Center, updated 1 February 2022.

4 Ministry of Health, Single case of COVID-19 confirmed in New Zealand, 28 February 2020.

must self-isolate for 14 days. On 19 March, the borders were closed to all arrivals except New Zealand citizens and permanent residents. As case numbers began to grow, the government announced a 4-tiered 'Alert Level' system, with different levels of restrictions to apply at each level.[5] On 25 March, the whole country was moved on to the highest Level 4 restriction.[6] At the same time, a state of national emergency was declared under the Civil Defence Emergency Act 2002, giving the Director of Civil Emergency Management various powers including to close public places and roads and exclude people from specified premises.[7]

Under the Level 4 lockdown, schools and other educational facilities, most businesses, shops, and public facilities were closed. Essential services such as supermarkets, petrol stations, pharmacies and essential health services remained open although with access restrictions. Only localised, necessary travel was permitted and aside from exercising locally, people were required to stay home. It is estimated that during this period approximately 20 percent of the labour force were working as essential workers, 24 percent were working from home, and the remainder were unable to work.[8] New Zealand remained under lockdown at Alert Level 4 or the almost as strict Level 3 for eight weeks until 13 May. From then until August 2021 there were periods with no cases in the community followed by periods of regional restrictions mainly in Auckland (New Zealand's largest city) and Northland as cases emerged there. Up to that date, there had been a total of 26 COVID-related deaths in New Zealand, 19 of which had occurred at the beginning of the pandemic in April 2020 mostly associated with two outbreaks in residential aged-care facilities. In August 2021 the Delta variant was detected in the community and the Auckland region was placed under Level 3 restrictions for what turned out to be four months through to December. There were shorter lockdowns in some other regions as well. With the arrival of the much more infectious Omicron variant, the attempt to eliminate COVID from New Zealand was abandoned in early December and the Alert Levels system was ended

5 New Zealand Government, About the COVID-19 Alert System, retrieved 1 March 2022.

6 Rt. Hon. Jacinda Ardern, New Zealand moves to COVID-19 Alert Level 3, then Level 4 in 48 hours, 23 March 2020.

7 New Zealand Gazette, Declaration of National Emergency by Minister of Civil Defence, 26 March 2020.

8 Ministry of Business, Innovation and Employment, Essential Services workforce factsheet, 5 May 2020.

in favour of a three-tier 'protection framework'[9], popularly known as the 'traffic light' system. This system is aimed at managing the spread of the disease through continued public health measures like mask wearing, Rapid Antigen Tests, self-isolation, and a reliance on high vaccination rates.

One aspect of the government's health response which attracted increasingly wide disgruntlement was the system of Managed Isolation and Quarantine ("MIQ") using temporarily co-opted hotel facilities to isolate all cross-border arrivals including returning New Zealanders.[10] While mostly successful in keeping new COVID cases from arriving in the community, the lottery system administered by the Ministry for Business, Innovation and Employment (MBIE) has been criticised by both overseas New Zealanders unable to get home, and by employers seeking to bring in overseas workers to fill job vacancies.

Most recently, the widespread use of vaccine mandates preventing unvaccinated people from doing certain jobs or entering some businesses has attracted loud protests from a small minority of people. Currently two 'convoys' of vehicles from the north and the south have converged on, and occupied, an area around the Parliament Buildings in Wellington.[11]

Looking forward, government is signalling that it expects border restrictions, self-isolation requirements and vaccine mandates will start to be loosened once the Omicron wave has peaked in a couple of months (and assuming a new variant has not emerged).

As in most other countries, in its first year the pandemic also entailed a massive economic shock. In New Zealand this was driven by both declines in export revenue, especially international tourism (the country's second largest export-earner) and tertiary education services; and by the decline in domestic activity such as retail and construction disrupted by the lockdowns. Not surprisingly, there was considerable uncertainty among economic forecasters initially, both as to the likely magnitude of the output decline and its duration. Most suggested a brief "V-shaped" downturn; but some commentators expected a more prolonged "U-shaped" recession. In June 2020, published forecasts of real GDP growth for the March year 2021

9 New Zealand Government, The traffic lights (COVID-19 Protection Framework), retrieved 13 March 2022.

10 See New Zealand Government website: Managed Isolation and Quarantine.

11 The protest attracted widespread daily media coverage. See, for example, Malpass, Convoy protest: The protest fiefdom that no-one wants to take responsibility for, 19 Februar 2022.

ranged from -6.6 annual average percentage change (aapc) to -11.8 aapc[12]. Forecasts for the following year ranged from 1.3 to 13.1 aapc. As it turned out, the -2.9 percent fall in GDP in the 2020 year was considerably smaller than forecast.

The increase in unemployment also proved to be less severe that many first predicted. In June 2020 forecasters were predicting a peak in the unemployment rate of somewhere between 7.1 percent and 9.6 percent, up from 3.9 percent in December 2019. In fact, unemployment peaked at 5.1 percent in September 2020. Moreover, it has fallen back to 3.2 percent by September 2021, lower than at any time since the current Household Labour Force Survey began in 1986.[13]

While the official unemployment rate is now at historically low levels, other measures of unemployment show less impressive improvements. The broader labour under-utilisation rate, which includes people who want work but do not fit the tight definition of being unemployed and actively seeking a job and part-timers who want more hours of work, rose from 10.0 percent pre-pandemic to 12.8 percent in September 2020 before falling back to 8.9 percent by September 2021. The number of working aged people (18-64 years) in receipt of a welfare benefit rose by 24 percent over the year to 31 December 2020. Although it fell during 2021, the number remains 17 percent higher than before the pandemic began.[14]

Overall, the government's economic response strategy has been to focus on employment protection by keeping workers attached to their pre-pandemic jobs even if temporarily unable to work and by maintaining the viability of small and medium-sized firms as far as practical. The unemployment figures above show that this strategy was relatively successful. Indeed, many employers now argue that the bigger problem they face is labour and skill shortages, especially in areas such as construction and agricultural and horticultural work. While true, it must also be pointed out that so far we have seen little evidence of the wage growth which would typically be expected in a tight labour market.

Its responses to the economic shock have had a huge impact on the government's budget. As at mid-December 2021, government had signalled a total of NZ$69.1 billion (EUR 42.8 billion) as part of the COVID-19 re-

12 New Zealand Institute for Economic Research, Consensus forecasts, June 2020, 15 June 2020.

13 These figures are not seasonally adjusted. The seasonally adjusted figures show a similar pattern however.

14 Statistics New Zealand, Household Labour Force Survey; Ministry for Social Development, Benefit statistics.

sponse and recovery packages[15], equivalent to over 26 percent of total annual GDP. By December 2021, NZ$64.8 billion (EUR 40.2 billion) of this fund had been allocated, with NZ$4.3 billion (EUR 2.7 billion) remaining for future use if needed. Government's first economic response was a NZ$12.1 billion (EUR 7.5 billion) support package, most of which was allocated to the temporary Wage Subsidy scheme, and assistance for business to support employment through the first lockdown. Details of these initiatives are discussed in Sections 2 and 3 below. The subsequent May 2020 Budget included the establishment of a NZ$50 billion (EUR 31 billion) COVID-19 Response and Recovery Fund (CRRF), part of which was allocated in the Budget itself and part held in reserve for future initiatives. Later, in September 2021, government was forced to add an additional NZ$7 billion (EUR 4.3 billion) to the fund. The additional expenditure has been deficit-funded but with a 29 percent government debt-to-GDP ratio in 2019, the increase (to around 48 percent) remains well within manageable levels.

a) Job Retention

The mainstay of the government's initial March 2020 response package was the introduction of a wage subsidy scheme, with an initial estimated budget of between NZ$9 and NZ$12 billion (EUR 5.6 billion to EUR 7.4 billion).[16] The objective of the scheme was to maintain workers' employment relationships even if they were unable to work during the period of the lockdown or were forced onto short hours. The design of the programme was broadly modelled on the wage subsidy scheme used after the 2011 earthquake which severely affected Christchurch city. Employers who's actual or predicted revenue had fallen by 30 percent or more due to COVID-19 effects could apply for the subsidy in respect of each affected employee. The subsidy amount was NZ$585.80 (EUR 363.20) per full-time

15 The Treasury, COVID-19 funding allocation and expenditure.

16 The legislation for managing epidemic responses and for implementing the response package was contained in the COVID-19 Response (Urgent Management Measures) Legislation Bill and the COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020 (both passed under urgency on 25 March), and the COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Act 2020 (passed 30 April). Some programmes were implemented by way of Orders in Council under the Social Security Act 2018 and the Tax Administration Act 1994.

worker, equivalent to approximately 55 percent of median weekly earnings.[17] People working fewer than 20 hours per week could receive a maximum of NZ$350 (EUR 217) per week.[18] The payment was made to qualifying employers in advance in eight-week blocks.

Before applying for the subsidy employers were expected to have taken 'active steps' to mitigate the impact on their business including by drawing on cash reserves, insurance or bank facilities. Then, while receiving the subsidy, firms were expected to 'use best endeavours' to pay at least 80 percent of normal wages to staff they were claiming in respect of and, at a minimum, to pass on the full value of the subsidy. Notwithstanding these various rules around the use of the scheme, the Minister of Finance acknowledged that the need to get funding out to workers very rapidly meant that the subsidy was operating on what he called a 'high-trust model'.[19] Later in the year there was some public criticism of firms who had claimed the subsidy but who subsequently turned out to have strong profits for the year and, in some cases, increased their dividend pay-outs to shareholders. A small percentage of firms opted to pay back the subsidy; and the Ministry of Social Development investigated others, although there have been no charges or formal enforcement actions taken. The Office of the Auditor-General also undertook an analysis of the management of the Wage Subsidy scheme and made recommendations for improving the implementation of 'high-trust' schemes where these are deemed necessary in future.[20]

Subsequent support measures, both in the May 2020 Budget and later, continued the focus on using the Wage Subsidy programme as the mainstay of support for employment and incomes during lockdowns. The Wage Subsidy was extended twice during 2020 to cover lockdowns, and then again in a slightly modified form during the second half of 2021.[21] Following the long Auckland region lockdown in 2021 and with the switch to the traffic light system, government has indicated that it does not intend to use the Wage Subsidy (or lockdowns) again during the pandemic. This may be partly due to waning public willingness to abide by lockdown rules but is

17 The amount was set equal to the maximum rate of the tax-funded paid parental leave, presumably on the basis that a period on parental leave was the closest comparable situation to being unable to work due to COVID-19 restrictions.

18 Ministry of Social Development, Work and Income.

19 Minister of Finance.

20 Controller and Auditor-General, Management of the Wage Subsidy scheme, 2021.

21 The main differences were a higher expected revenue loss (40 percent), and that applications were for two-week periods at a time.

also because the Omicron variant's higher transmissibility would probably render lockdowns ineffective.

In total, approximately NZ$19 billion (EUR 11.8 billion) was spent on the Wage Subsidy programme, an amount that represents approximately two-thirds of total annual expenditure on all social security and welfare programmes, including the universal New Zealand Superannuation pension. The Ministry of Social Development reported that, by September 2020, 62 percent of all jobs (not including self-employed sole-traders) had been supported by the Wage Subsidy at some point. Male employees were significantly more likely than female employees to receive the subsidy (69 to 54 percent); and almost half of all employees receiving the subsidy worked in small firms with fewer than 10 employees.[22]

b) *Supporting the Economy*

Support for the economy cannot of course be separated cleanly from support for jobs since both provide incomes and promote economic activity. This section focuses on measures that were taken where the prime objective was to minimise the pandemic's direct or indirect effects on economic activity. These measures can be broadly divided into three categories: monetary policies, supports for business, and new spending on government activities intended to stimulate demand by providing jobs and incomes.

Monetary policy. Under the Reserve Bank Act 1989, the Reserve Bank of New Zealand (RBNZ) is statutorily independent of government and operates according to the Act and a Policy Targets Agreement with the Minister of Finance. In May 2020 it signed a Memorandum of Understanding with the Minister to indemnify it against loss risks associated with using what it calls alternative monetary policy tools, that is alternative to the standard tool of periodic adjustments to the Official Cash Rate (which, in common with many other countries, was already near zero).[23] The main policy used by the RBNZ was quantitative easing, officially called the Large Scale Asset Purchase Programme (LSAP), which involved it purchasing just over NZ$100 billion (EUR 62 billion) of government bonds from trading banks and other institutions as a way of injecting cash into the economy.

22 Ministry of Social Development (2021), Who received the COVID-19 wage subsidies?.

23 Memorandum of Understanding between the Minister of Finance and RBNZ regarding the use of Alternative Monetary Policy tools of May 2020.

The second main monetary policy support for the economy was the Funding for Lending Programme (FLP).[24] Under the FLP, the RBNZ made up to NZ$28 billion (EUR 17.4 billion) in loans available to qualifying banks at an interest rate equal to the Official Cash Rate (0.25 percent). Similar to programmes employed by central banks in other jurisdictions, the intention of the programme was to stimulate economic activity by reducing the cost of mortgages and business lending. Both these monetary policies undoubtedly played a large role in stimulating economic activity during 2020 and 2021, however, one unwelcome side effect is the extent to which they have exacerbated the already rapid increase in house prices.

Support for business. The range of programmes to support businesses' continuity and recovery has evolved and expanded as the pandemic progressed. An early scheme, the Business Finance Guarantee Scheme (BFGS) was introduced in March 2020 and ran until 30 June 2021.[25] In total, over NZ$1.7 billion was distributed under the scheme. The objective was to support firms by encouraging banks to continue to lend to them. Under the scheme borrowers remained liable for loans, but banks were protected from the risk of default by a guarantee up to 80 percent of the loan value. Initially cover for up to NZ$6.25 billion was set aside but by the end of the scheme total government exposure only reached NZ$2.9 billion.[26] The first package also included a number of business tax changes including commercial building depreciation deductions and discretion for Inland Revenue to remit use-of-money penalties for late tax payments. In April 2020, a tax loss carry-back scheme was introduced which allowed firms anticipating losses in 2020 or 2021 to receive a refund from tax paid in earlier, profitable years. Officials estimated that the scheme would result in refunds of approximately NZ$1.2 billion in the 2019/20 tax year and NZ$1.9 billion in the following year.

The largest economy-wide business support programme was the COVID-19 Resurgence Support Package (RSP).[27] This was available to all ongoing businesses and organisations including sole traders and could be claimed in addition to other assistance such as the Wage Subsidy. The primary eligibility criterion was a 30 percent or greater decline in revenue due to the effects of the pandemic and Alert Level restrictions. In total, 10 RSP payment rounds were made between 15 February 2021 and 20

24 See Reserve Bank of New Zealand, Funding for Lending Programme.
25 New Zealand Treasury, Business Finance Guarantee Scheme.
26 The Treasury, Business Finance Guarantee Dashboard - 30 June 2021.
27 Inland Revenue, COVID-19 Resurgence Support Payment (RSP).

January 2022. Initially, the maximum payment was set at NZ$1,500 plus NZ$400 per FTE worker up to a maximum of 50 FTEs. These amounts were later doubled to NZ$3,000 plus NZ$800 per FTE, meaning a maximum total payment of NZ$43,000. Initial rounds were smaller, but by the time the scheme finished approximately 230,000 businesses, mostly companies or sole traders, were receiving payments in each round, with the total cost per round of approximately NZ$2.9 billion.

With the rapid spread of the Omicron variant of COVID in the community, government has announced a short-term modified version of the RSP programme to help businesses manage staff shortages due to self-isolation requirements and supply chain disruptions. The COVID-19 Support Payment (CSP) will comprise three fortnightly payments (beginning on 28 February 2022) for firms experiencing a 40 percent or greater loss of revenue.[28] The payment will be NZ$4,000 plus NZ$400 per FTE worker up to a maximum of NZ$20,000.

Generally speaking, the government has tended not to opt for industry-specific targeted support programmes, preferring to rely instead on the Wage Subsidy and economy-wide business supports discussed above. There are however a number of exceptions. In aviation, NZ$800 million was allocated to maintaining air freight capacity and reducing supply chain risks. In addition, government extended loan facilities to Air New Zealand, which is 50 percent government-owned. To date, loans to Air NZ have grown to almost NZ$2 billion. In tourism, which has also been particularly hard hit because of the border closures, there have been a number of schemes, with a total value in excess of NZ$100 million (EUR 62 million) put in place, including to support what government deems 'strategic tourism assets'. Industries that provide training through apprenticeships are also eligible for a subsidy in order to minimise negative impacts on trade training. The main scheme pays a subsidy of NZ$1,000 (EUR 620) per month per first-year apprentice and half that for second-year apprentices.

In addition to these larger schemes, there have been various smaller-scale support programmes for sectors that have been affected by the restrictions on public gatherings. These include the arts and entertainment sector and the racing industry. In most cases, these programmes are not still open for applications.

Government activities and spending projects. The third leg of government's support for the economy has been to undertake or bring forward a

28 Inland Revenue, COVID-19 Support Payment (CSP).

substantial number of investment projects. The largest programme is the so-called 'shovel ready' infrastructure investments. On 1 April 2020, the economic development and infrastructure ministers established the Infrastructure Reference Group and tasked it with identifying projects that could be ready to begin work within six months.[29] By September 2021, approximately 150 projects of various sizes and distributed through the country had been identified and contracted.[30] The total value of the projects contracted to date is approximately NZ$4 billion, with government's funding being NZ$2.5 billion. The projects 'owners' are a mix of local government, central government, Māori iwi authority, NGO and private sector organisations and cover housing, transport, community and environmental infrastructure investments. The overall objective is to offset the economic shock of the pandemic by increasing government investment in infrastructure activities and providing additional jobs and income, especially in provincial regions of the country.

c) *Social Protection*

New Zealand, like Australia, has a flat-rate, tax-funded system of social assistance rather than an insurance-based system as is common in European jurisdictions. Benefits for the unemployed and those unable to work due to sickness, disability or childcare responsibilities are paid according to family circumstances and are means-tested against joint family income. As in most countries, targeted supplements are available for accommodation costs, and additional assistance is provided through tax credits for families with dependent-aged children.

The level of assistance is not generous, with a high percentage of benefit-dependent households falling below the 50 percent-of-median-income poverty measure. In early 2019, the government-commissioned Welfare Expert Advisory Group had presented its report which included recommendations for large increases in the level of financial support provided through welfare benefits.[31] Only minor changes had been enacted prior to the arrival of COVID, however.

29 Hon Shane Jones, Government seeks infrastructure projects, 1 April 2020.
30 Infrastructure Reference Group, Contracted projects, 30 September 2021.
31 Welfare Expert Advisory Group, Whakamana Tāngata: Restoring dignity to social security in New Zealand, February 2019.

The first response package in March 2020 included a permanent NZ$25 (EUR 15.50) per-week increase in the core rate of benefit and a temporary one-year doubling of the Winter Energy Payment, which is paid to beneficiaries and superannuitants for 5 months over winter. The additional Winter Energy Payment amounted to a total of NZ$17.30 (EUR 10.70) per week for a single person and NZ$26.90 (EUR 16.70) for a couple averaged over a full year.

As part of the declaration of a national emergency, regional Civil Defence Emergency Management (CDEM) Groups were allocated an initial NZ$27 million for support for local authorities, foodbanks and other social service providers to supply food and welfare assistance to those in need. A further NZ$30 million was allocated in April[32] and additional funding has been made at various times through 2020 and 2021. Whānau Ora, a government-funded family support network was funded as part of this to deliver care and hygiene packages to families in need. During usual times, Foodbanks in New Zealand rely largely on donations so in a sense the objective of this funding was to make use of their infrastructure and networks into communities as a way of providing government-funded support for those most badly affected by the lockdowns and income losses.

Beginning from 8 June 2020, workers who had lost their job due to COVID could apply for the new COVID-19 Income Relief Payment (CIRP). The CIRP was a limited-term, eight-week payment intended to cushion the effect of job loss on families and households. The rate of payment was NZ$490 (EUR 303.80) per week for full-time workers (over 30 hours) and NZ$250 (EUR 155) per week for those who had been working 15 to 29 hours per week. CIRP was an untaxed payment and these rates were approximately equal to the after-tax rate of the wage subsidy maximum. CIRP was an unusual – and somewhat controversial – payment. Unlike the main provisions of the New Zealand welfare system, CIRP was effectively individualised and not affected by a partner's income except in cases where that income exceeded NZ$2000 (EUR 1240) gross per week. In addition, CIRP was paid at a considerably higher rate than the benefit available to people unemployed for non-COVID reasons (NZ$250 (EUR 155) per week net for a single adult over 25 years). It therefore created, albeit temporarily, a two-tier benefit system, which although common in other countries is contrary to New Zealand's approach.

32 Hon. Peeni Henare, Govt approves further $30m to meet immediate welfare and food security needs, 22 April 2020.

Based on high unemployment forecasts the initial expectation was that CIRP receipt would peak in August 2020 at around 160,000 people. However, this proved to be an over-estimate and there were never more than 25,000 recipients at any one time.[33] By the end of 2020, the number of recipients had fallen to under 3,000 and the programme ended shortly afterwards.

Sick leave and self-isolation support. Employees are entitled to 10 days sick leave per year under the Holidays Act 2003.[34] Government has been clear throughout the pandemic that employment entitlements and agreements, including to annual leave and sick leave, are unaffected by any COVID-related disruptions.[35] From mid-2020 it did, however, put in place two additional leave support provisions for those unable to work because of the isolation rules. Until late 2021, the Covid-19 Leave Support Scheme paid a lump sum of NZ$1,176 for full-time workers and NZ$700 for part-time workers for a two-week period for people who were required to stay home and could not work because they had COVID or were close contacts of a COVID-positive person. The payment has been amended more recently to pay a lump sum of NZ$600 for full-time and NZ$359 for part-time for people required to isolate for between four and ten days. Second and third lump sums are available on a weekly basis if the isolation period extends beyond ten days.

A COVID-19 Short-Term Absence Payment is available for businesses, including the self-employed, to help pay workers who are required to stay home for two or three days while they are waiting on a COVID-19 PCR test result.[36]

Finally, in terms of social protection, the 2021 government budget included significant increases in core benefit rates and changes to the Working for Families family tax credit provisions. These initiatives were in response to the Welfare Expert Advisory Group's 2019 recommendations, rather than directly to COVID but obviously provided considerable extra assistance to benefit-dependent households. The increases ranged from an extra NZ$32 per week to NZ$55 per week depending on benefit type

33 Ministry of Social Development, Trends in Jobseeker Support – Work Ready and the COVID-19 Income Relief Payment during 2020, September 2021.
34 See Holidays Act 2003. The statutory entitlement to sick leave was increased from five to ten days under the Holidays (Increasing Sick Leave) Amendment Act 2021 as part of a 2017 Labour Party election promise.
35 See, for example, Employment New Zealand, COVID-19 and the workplace.
36 Rapid Antigen Tests (RATs) which take only 20 minutes to give a result, are now widely available but follow-up PCR tests are also commonly used.

and family structure. The changes are to come in in two stages: an initial NZ$20 per adult per week from July 2021 and the remainder will be paid from 1 April 2022.[37]

Tertiary students. COVID has affected university students both through loss of part-time earnings used to help fund their studies and by disruptions to in-person teaching. Increased income support was provided in 2020 through changes to the Student Loan Scheme, targeted mostly at additional study costs needed for online learning. In 2021, government also increased the Hardship Fund for Learners by NZ$20 million. This fund is available to tertiary education providers to give additional financial support for students who need it. It is noteworthy that, although international student numbers are down, domestic university enrolments are 11 percent higher in 2021 than they were in 2019.[38]

Temporary migrants on work visas. Border closures applying in other countries resulted in visa problems and a lack of income support for many temporary workers in New Zealand. This included workers from some Pacific Island nations who were in New Zealand as part of the Recognised Seasonal Employer (RSE) Scheme which employs agricultural and horticultural workers for up to seven months each year. Other temporary work visa and working holiday visa holders were also affected. Typically, visitors in New Zealand on temporary visas are not eligible for welfare support, but from March 2020 through to August 2021, a COVID-19 Emergency Benefit for temporary visa holders was made available, payable at the same rate as the Jobseeker benefit. Immigration New Zealand also continued to operate a repatriation fund to help those in hardship with the cost of returning home.

2. *Conclusion*

New Zealand's approach to managing the social, labour market and economic impacts of the pandemic has been strongly underpinned by a 'health first' strategy. Aided by distance and geography (and a willingness to listen to epidemiological expert advice), the government adopted an

37 New Zealand Treasury, Tackling inequality and child poverty: Main benefit increases. Budget papers, May 2021.

38 Ministry of Education, The impact of COVID-19 on tertiary education in New Zealand: Initial impact on participation, Education Counts, December 2021.

elimination goal.[39] Using border closures and early, strict lockdowns this strategy proved successful in public health terms, with relatively low case numbers and few deaths, at least up until the arrival of the Omicron variant. The government would argue – and with some justification – that this approach also minimised the social and economic shock caused by COVID. Certainly, the impact on economic output and on job losses was considerably less severe than early forecasts predicted. Nonetheless, the impact on workers was widespread. A survey conducted during the first Alert Level 4 nationwide lockdown in April 2020 reported that 44 percent of respondents lived in a household where at least one adult had lost either employment or income (or both) as a result of the lockdown.[40]

New Zealand does not have the strong social partnership tripartite-based tradition that the Scandinavian countries have. Nor does it have a state, federal or provincial system like the US, Australia or Canada. Thus, the policy responses to COVID were mostly led by central government, although with broad support from local and regional councils, employer groups and trade unions. In public terms, this meant a very centralised, Cabinet-driven decision-making process and, unsurprisingly, an especially high public focus on the Prime Minister, three or four other key ministers plus a small number of public officials, most notably the Director-General of Health.[41]

As described above, the government's social and economic response policies have focused on protecting jobs and industry as far as possible, rather than on unemployment benefits and other cash payments to households. The strategy (not unique to New Zealand) has been to spend heavily on keeping businesses viable and on maintaining workers in their pre-existing employment arrangements during periods when either work was impossible because of lockdowns or firms' revenue was being severely affected. In

39 See, for example, Morton, Coronavirus: Keep it out, stamp it out – What's in NZ's pandemic plan?, New Zealand Herald, 5 March 2020.

40 Prickett, K., Fletcher, M., Chapple, S., Doan, N. and Smith, C., Life in lockdown: The economic and social effect of lockdown during Alert Level 4 in New Zealand. Working Paper 20/3, 2020, IGPS, Wellington.

41 The high profile of the Director-General, Dr. Ashley Bloomfield, has been unusual for New Zealand, where public servants mostly play behind-the-scenes roles. Dr Bloomfield's prominence (and widespread public popularity) has been due in part to him appearing regularly with the Prime Minister in daily public updates, and also because he has a legal role, separate from government, in promulgating public health orders. At the start of the pandemic, such orders were made under the Health Act 1956. In May 2020 these were transferred to a standalone act, the COVID-19 Public Health Response Act 2020.

terms of the New Zealand government's budget, this approach has been fiscally expensive in the short-term. It has also inevitably involved some spending that would not pass a value-for-money test if inspected closely. However, because the elimination strategy was broadly successful quite quickly in the original wave, and only lasted for an extended period in the upper North Island in the Delta outbreak, the wage subsidy/business support approach was fiscally manageable.

Alongside this approach, the government's reliance on modest benefit increases and targeted welfare assistance for those most in need has left many benefit-dependent households still struggling but has avoided a big increase in severe hardship. Other groups of people, such as trade apprentices, migrants and university students have all also had additional supports provided.

An important conclusion from the New Zealand experience to date is that the existing welfare and labour market support systems have proven capable of handling a very large, very sudden shock such as the pandemic. Some new assistance programmes did need to be put in place quickly and some, such as the Wage Subsidy, needed to be brought back from when they were last used. But the fundamental structures, legal systems, and delivery mechanisms through the Ministry of Social Development, Inland Revenue and other agencies have proved adequate. All in all, New Zealand's experience since March 2020 does not suggest any fundamental weakness in the capacity of the system to cope; nor the need for radical reform to protect against future similar events. To the extent that there may – or may not – be a case for wholesale restructuring of the country's social and job protections, it rests on longer-term social and labour market trends rather than on the COVID-19 pandemic experience.

XVII. Anti-Crisis Shields – Special Regulations of Labour Law and Social Law to Mitigate the Negative Effects of the COVID-19 Pandemic in Poland

Agnieszka Górnicz-Mulcahy and Ariel Przybyłowicz

1. Introduction

The European Commission points out that in the current epidemiological crisis, which has had a significant impact on the employing entities' and the workers' situation, it is very important to not only protect sectors that are critical to our economy, but to also protect our assets, technologies, and infrastructure and, even more importantly, we must protect jobs and workers[1]. The Member States have put in place budgetary liquidity support and other national policy measures to strengthen the capacity of national health systems and to help citizens and sectors particularly affected by the impact of the pandemic. In Poland, such solutions are primarily regulated by a range of provisions of the Act of 2 March 2020 on specific solutions relating to the prevention, counteraction and elimination of COVID-19, other infectious diseases and crisis situations caused by them[2]. The laws enacted in connection with it covered such areas as the possibility of changing the terms and conditions of employment, the employment of foreigners, the determination of the status of insured persons[3] during

1 European Commission, Jobs and Economy during Coronavirus Pandemic.

2 Consolidated text: Journal of Laws 2021, item 2095, hereafter referred to as the Anti-Crisis Law or the Shield; original title in Polish: ustawa z dnia 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych.

3 It should be pointed out here that Polish social insurance (in particular pension and disability pension insurance) covers a wide range of persons performing paid work (e.g. employees, entrepreneurs [incl. self-employed persons], persons employed on the basis of civil law contracts for the provision of services, clergy), but also certain categories of persons not performing paid work (e.g. unemployed persons collecting unemployment benefits, persons collecting maternity benefits,

an epidemic or the granting of benefits to persons who have lost their employment.

A feature of these solutions is their flexibility. The provisions of the Anti-Crisis Law, in many forms of support, provide for the authorisation of the Council of Ministers to extend the period for which subsidies may be granted. When assessing whether to extend this period and by how much, the Council of Ministers should be guided by the duration of the (epidemic) state of emergency and the effects they have caused. At the same time, considering the dynamics of solutions proposed by the legislator in this matter and the frequency of introduced changes, it would be difficult, from the authors' perspective, to include all of them. Therefore, the prepared text concerns the legal status as of 31 December 2021.

2. Job Retention

a) Remote Work (Article 3 of the Anti-Crisis Law)

Remote working is one of the modalities introduced by the Anti-Crisis Law precisely in order to fight pandemics. Remote work is understood to mean the possibility of performing employee's duties outside the employer's office, for a predetermined period. Pursuant to Article 3(1), in the period of validity of an epidemic threat or state of emergency declared due to COVID-19, and for the period of 3 months following their cancellation, to counteract COVID-19, an employer may order an employee to perform, for a specified period, work specified in the employment contract, outside the place of its regular performance (remote work). This means that the regulation currently in force was introduced for a fixed period, determined by the limits of validity of the state of epidemic risk or the epidemic state of emergency, declared due to COVID-19, and for the period of 3 months after their cancellation.

The subjective scope of competence to perform remote work is wide and, apart from employees (within the meaning of Article 2 of the Labour Code), it also includes service officers (including Police, Internal Security Agency, Central Anticorruption Bureau, Border Guard, State Fire Service, Customs and Treasury and the Prison Service).

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persons collecting social benefits in relation to care for dependent family members).

The introduction of remote work to the Polish legal order allowed employees – for a predetermined period – to perform their duties outside the employer's office, but the choice of the place of performance of those duties should belong to the employee (most often remote work is performed from home). It is a new mode of work which currently operates alongside telework[4] and the home office[5]. For the effectiveness of work performed in this form, it is crucial that employees are prepared for it through proper training and tested procedures. However, in Poland, until the enforced isolation caused by the COVID-19 pandemic (March 2020), remote work (working from home) was rare.

The issuance of an order to an employee to perform remote work belongs to the competences of the employer and constitutes his unilateral decision. It results from the managerial competences of the employing entity (in particular Article 22 § 1 of the Labour Code, Article 100 § 1 of the Labour Code, and Article 3 of the Anti-Crisis Law). In parallel, the employer has the general power to withdraw the order to perform remote work at any time. Remote work should also correspond to the employee's skills and, as a rule, may not result in a reduction of his remuneration[6].

Remote work relates to 'work specified in the employment contract' and therefore only concerns the type of work that has been agreed on in advance by the parties[7]. This is important as certain types of activity cannot, by their very nature, be performed remotely. Pursuant to Article 3(3) of the Anti-Crisis Law, the conditions for ordering the remote work depend on the employee's skills (operation of certain ICT systems or Internet applications enabling direct contact between interlocutors), his technical possibilities (e.g., access to fast Internet) and local conditions (appropri-

4 Article 67(5) § 1 of the Labour Code.

5 The possibility for the employer to grant permission for occasional work at home is not regulated by Labour Law (in particular, it does not imply a change in the working time system in which the employee is employed) and does not require an amendment to the Labour Regulations.

6 K.W. Baran, D. Książek, W. Witoszko, Komentarz do art. 3 [w:] Komentarz do niektórych przepisów ustawy o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych [w:] Tarcza antykryzysowa 1.0 - 4.0, ustawa o dodatku solidarnościowym i inne regulacje, jako szczególne rozwiązania w prawie pracy, prawie urzędniczym i prawie ubezpieczeń społecznych związane z COVID-19. Komentarz, red. K. W. Baran, Warsaw 2020, online access LEX.

7 L. Mitrus, Remote Work de Lege Lata and de Lege Ferenda — Modification of Place of Work Performance or New Concept of an Employment Relationship? Part 1, Labour and Social Security Journal, 10/2020, p. 3.

ate space) to perform such work, and at the same time on the question whether the type of work allows for it. On the other hand, employees who do not have the necessary skills or technical or local conditions – for example if they do not have the appropriate computer equipment at home or a home environment that allows them to maintain the standards of confidentiality of data transfer – are not obliged to undertake remote work. However, if the refusal is not justified by specific and important reasons, in particular by the lack of technical or accommodation conditions, it may be qualified as a serious breach of basic employment obligations and constitute grounds for termination of the contract by the employer without notice due to the fault of the employee. The legitimacy of the termination of the employment relationship under this procedure is always determined by the circumstances of the case.

The scope of remote work is wide. It may be carried out by means of direct remote communication or concern the performance of manufacturing parts or material services. The tools and materials needed to carry out the remote work and the logistical support for the remote work shall be provided by the employer. However, in performing remote work an employee may use tools or materials not provided by the employer, if this allows for the respect and protection of confidential information and other legally protected secrets, including business secrets or personal data, as well as information the disclosure of which could expose the employer to damage.

The provisions do not regulate the issue of controlling the place of work of an employee working remotely. Therefore, the employer should also regulate this issue in the agreement signed with the employee specifying the rules of performing remote work. However, without the employee's consent, the employer will not be able to conduct such inspection. The Anti-Crisis Law also lacks regulations concerning liability in the scope of remote performance of employees' duties. Thus, the general provisions of labour law regulating the liability of an employee will apply. Performing work in this form does not release the employer from the obligation to keep records of the employee's working time. At the employer's request, the employee performing remote work is obligated to keep records of the work performed, including in particular the description of such work, as well as the date and time of its performance. Such records are necessary for the purpose of accounting for working time, e.g., for calculating overtime or for complying with the right to rest.

b) Financial Support for Employers – Salaries and Contributions (Article 15g, Article 15gg, Article 15gb of the Anti-Crisis Law)

While the possibility of introducing remote work is addressed at all employers, aid benefits are provided for entrepreneurs (certain other categories of entities[8]) who have experienced a drop in business turnover and for whom the legislator wishes to facilitate business operations and offer financial support (assuming that this may contribute to overcoming difficulties and saving at least some workplaces). The legislator has defined the scope of entities to which aid is directed in the form of benefits for the protection of workplaces and co-financing of the remuneration of employees affected by economic downtime or reduced working hours, as a result of COVID-19[9], from the resources of the Guaranteed Employee Benefits Fund. Additionally, the legislator provided for the possibility of applying to the Guaranteed Employee Benefits Fund for funds to cover social insurance contributions due from the employer. The shape of these solutions proves that their basic purpose is the protection of workplaces.

Beneficiaries of these forms of co-financing are entrepreneurs[10], non-governmental organisations[11], cultural institutions, and church legal persons. In order to benefit from these forms of aid, the legislator requires the fulfilment of several conditions. These are: existence of the entity for at least 14 months, employment of staff (or persons employed on the basis of a contract on mandate work or a contract for the provision of

8 This applies to non-governmental organisations within the meaning of Article 3(2) of the Act of 24/04/2003 on public benefit activity and voluntary work (consolidated text: Journal of Laws of 2019, item 688, as amended), entities referred to in Article 3(3) of the Act (ecclesiastical persons), and other entities. Article 3 of the Act (church persons, associations of local government units, social cooperatives, non-profit organisations operating in the form of a limited liability company and a joint stock company), state legal persons within the meaning of the Act of 27/08/2009 on public finance (uniform text: Journal of Laws of 2021, item 305, as amended).

9 Article 15g of the Anti-Crisis Law.

10 An entrepreneur is a natural person, a legal person or an organisational unit that is not a legal person but has legal capacity, performing a business activity. Entrepreneurs are also partners in a civil partnership within the scope of their business activity.

11 Non-governmental organisations are units of the public finance sector or enterprises, research institutes, banks and commercial law companies that are state or local government legal persons not operating for profit.

services), occurrence of a fall in economic turnover[12] or a fall in income, a causation between a fall in economic turnover (or a fall in revenue) and the occurrence of COVID-19, i.e. a causation in temporal and subject-matter terms broader than the link with the effects of the introduction of an (epidemic) state of emergency and the inclusion of employees in the economic downtime or reduced working hours.

At the same time, these entities must not have been in arrears in the payment of tax liabilities, contributions to social insurance, health insurance, the Guaranteed Employee Benefits Fund, the Labour Fund or the Solidarity Fund until the end of the third quarter of 2019, i.e., until 30/09/2019 (although here the legislator has provided for exceptions) and must not have met the conditions for declaring the entity bankrupt[13].

The period of entitlement to (or payment of) benefits and other measures has been limited to three months from the month in which the application was submitted, but the Council of Ministers may extend this period.

Financial support, in the form of benefits specified in the Anti-Crisis Law, is to be paid during the period of economic downtime or reduced working hours. "Economic downtime" should be understood as a period of non-performance of work by an employee for reasons not related to the employee remaining on standby for work (a state in which the employee is physically and mentally capable of performing work, and where there are no obstacles to its performance)[14]. On the other hand, "reduced working time" should be understood as the working time of an employee reduced by the employer for reasons not related to the employee, to not more than half the working time.

An employee subject to an economic standstill is paid by the employer a remuneration reduced by no more than 50%, but not less than the amount

12 A decrease in turnover is a decrease in sales of goods or services in terms of quantity or value. Such a decline in turnover is a decline in turnover of not less than 15% when the turnover of two consecutive calendar months falling after 31/12/2019 is compared with the turnover of two corresponding months of the previous year. A decrease in turnover within the meaning of COVID-19 will also be a decrease in turnover of not less than 25% calculated by counting any month falling after 1/01/2020 within the month preceding that month. In both cases, where the comparative period starts on a day other than the first day of the month, the month is considered to be 30 consecutive calendar days.

13 See K.W. Baran, W. Bigaj, D. Książek, K. Księżyk, A. Przybyłowicz, Komentarz do art. 15g [w:] Komentarz do niektórych przepisów…, op. cit., online access LEX.

14 Article 2 of the Act of 11 October 2013 on special solutions related to the protection of workplaces, i.e. Dz. U. of 2019, item 669.

of the minimum remuneration for work, considering the time of work. At the same time, the remuneration should be understood only as the rate of basic remuneration determined by the parties in the employment contract or other act constituting the basis for the employment relationship.

The co-financing is paid from the Guaranteed Employee Benefits Fund. It is granted in the amount of 50% of the minimum remuneration for work in 2020, considering the working time dimension, for each employee affected by the economic downtime. The amount of the co-financing is therefore PLN 1,300 per month per employee, assuming that they are employed on a full-time basis. Employees whose remuneration is higher than 300% of the average monthly remuneration are excluded from this possibility.

The remuneration of employees subject to reduced working hours is co-financed (from the Guaranteed Employee Benefits Fund) up to half of their remuneration. This payment has a more individualised dimension and is related to the remuneration of a particular employee rather than applying a lump-sum calculation of benefits. At the same time, the monthly amount of subsidy per one employee covered by the reduced working hours may not be higher than 40% of the average monthly remuneration from the previous quarter. Also, in this case there is a mechanism limiting the amount of co-financing for employees whose remuneration was higher than 300% of the average monthly remuneration.

The application for benefits is combined with the signing of a relevant agreement with the relevant provincial labour office. Pursuant to this agreement, the applicant undertakes that the employees covered by the subsidy will not be made redundant for reasons not related to the employee during the period in which the employee receives the benefits.

The legislator introduced the possibility of concluding an agreement specifying the conditions and procedure of performing work in the period of economic downtime or reduced working hours, hereinafter referred to as the "anti-pandemic agreement"[15]. It is concluded between the employer and trade unions, or employee representatives elected by employees.

A separate group of entitlements includes the possibility of reducing an employee's working hours or placing an employee on economic downtime if there is a decrease in revenue from the sale of goods or services because of COVID-19. This entitlement is dedicated to employers who meet a combination of two conditions. These are: a decrease in revenue from

15 This agreement has the status of a source of labour law within the meaning of Article 9 § 1 of the Labour Code.

the sale of goods or services following the occurrence of COVID-19 and a significant increase in the employer's wage fund burden. The second condition must be the result of a decrease in revenue from the sale of goods or services following the occurrence of COVID-19.

Another group of beneficiaries includes entrepreneurs who have experienced a drop in economic turnover as a result of COVID-19. They can apply to the director of the respective provincial labour office for benefits to protect workplaces from the resources of the Guaranteed Employee Benefits Fund to co-finance the salaries of employees not covered by downtime or economic downtime, or reduced hours. The salaries of these employees are subsidised from the resources of the Guaranteed Employee Benefits Fund to the amount of half the salaries, but not more than 40% of the average monthly salary.

The Anti-Crisis Law has also provided for the possibility of co-financing part of the costs of remuneration of employees and social insurance contributions due from them in the event of a decrease in economic turnover. However, the granting of co-financing does not require the employed persons to be subject to economic slowdown or reduced working hours (as opposed to the previously indicated co-financing), or that an agreement is concluded. The subsidy is granted at the request of an entrepreneur by a competent starost[16], but these funds can only be used for remuneration or due social insurance contributions of an employee who was indicated in the application for subsidy and the agreement concluded on its basis. This aid is non-refundable.

The scope of entities entitled to apply for these funds is also much narrower. It has been restricted to micro-entrepreneurs and small or medium-sized enterprises. From the perspective of the protection of workplaces, what is important about this regulation is that it applies to employees as well as people employed on the basis of an employment contract, contract of mandate or other contract for the provision of services. At the same time, the entrepreneur is obliged to maintain in employment employees covered by the subsidy agreement for the period for which it was granted.

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16 The starost is the chairman of the county board; he is also the employment authority to which the county employment offices report; the application for funding itself is submitted to the county employment office with jurisdiction over the location of the entrepreneur applying for funding. The costs of servicing these benefits are financed from the resources of the Labour Fund referred to in the Act of 20 April 2004 on employment promotion and labour market institutions.

c) *Solutions for Working Foreigners (Art. 15z1, 5, 7), Art. 15zzq of the Anti-Crisis Law)*

In response to the postulates of entrepreneurs to be able to continue employing foreigners without fear of the expiry of documents legalising their work, the Anti-Crisis Law introduced significant changes to the employment of foreigners. The Anti-Crisis Law extended the validity period of work permits by law and the permissible period of work without a permit in connection with a declaration of entrusting work to a foreigner, for the duration of an epidemic emergency or an epidemic state declared in connection with SARS-CoV-2 infections and the following 30 days. This means that if the last day of validity of a work permit (including a seasonal work permit) was during an epidemic emergency or an epidemic, the period of validity of the permit was extended by law until the expiry of the 30th day following the day of cancellation of the last of the respective states. During this period, the foreigner's stay is considered legal. The above rule applies to work permits of all types and applies accordingly to the decision on the extension of the work permit (also regardless of its type). The effect of extending the validity periods of work permits and seasonal work permits, as well as the periods of permissible work on the basis of declarations on entrusting work to foreigners occurs automatically, by law.

Similarly, if in the declaration on entrusting work to a foreigner the period of work, the end of which fell within the period of an epidemic emergency or an epidemic, was indicated, a foreigner may continue to perform work for the entity that submitted the declaration in the period or periods not covered by the declaration until the expiry of the 30th day following the day of cancellation of the last of the respective conditions.

It should be emphasised that the Anti-Crisis Law does not abolish the obligation to have work permits. The conditions for issuing work permits and declarations on the commission of work remain unchanged.

During the period of legal stay, foreigners residing in the Republic of Poland on the basis of: a Schengen visa; a visa issued by another Schengen area country; a residence permit issued by another Schengen area country; an entitlement resulting from the visa-free regime; a long-term visa issued by another European Union Member State not being a Schengen area country, if, in accordance with European Union law, it entitles them to stay in the territory of the Republic of Poland; a residence permit issued by another European Union Member State that is not a Schengen State, if it entitles the holder to reside in the territory of the Republic of Poland in accordance with the provisions of European Union law – are entitled to perform work during their stay if they hold a valid work permit or a valid seasonal work permit. The work performed by these persons may only be the work that was indicated in the work permit or seasonal work permit obtained. These foreigners are also entitled to perform work during their stay if they have a statement on entrusting work entered into the register of statements. On the basis of the statement on entrusting work, a foreigner may perform work specified by the statement only for the entity (no possibility to change the employing entity) that submitted the statement and in circumstances specified in the entry to the register of statements.

The performance of work by a foreigner under conditions other than those specified in the documents being the basis for legal work of a foreigner is also possible under the conditions specified in Article 15z5 of the Anti-Crisis Law, in connection with the employing entity taking advantage of aid solutions. This means that changes to the permit (temporary residence and work permit, temporary residence permit for the purposes of highly qualified employment, work permit, seasonal work permit)[17] or obtaining a new permit or entering a new statement on entrusting work to a foreigner in the register of statements will not be required in the case of changing the conditions of work of a foreigner as a result of issuance by the employer of an order to perform remote work; reduction of the working time; making a change in the system or schedule of working time of employees; making an introduction of an equivalent working time system or an introduction on the basis of an agreement on the application of less favourable conditions of employment of employees than those arising from contracts of employment, within the scope and for the period determined in the agreement and changes to other conditions of employment of a foreigner.

The Anti-Crisis Law also provides for exceptions to the obligation of a foreigner to hold a work permit and the obligation to extend the work permit referred to in Article 88 of the Act of 20 April 2004 on employment promotion and labour market institutions, including the seasonal work permit. The permit is not required (or is extended accordingly) during the state of an epidemic emergency or a case of epidemic declared in relation to COVID-19 and until the 30th day following the cancellation of the state which was in force last, if a foreigner performs seasonal work and had: 1) a work permit valid after 13 March 2020 or 2) a statement on entrusting

17 I. Florczak, Komentarz do art. 15z(5) [w:] Komentarz do niektórych przepisów…, op. cit., online access LEX.

work to a foreigner entered in the register of statements, where at least one day of the work period specified in the statement falls after 13 March 2020.

3. *Supporting the Economy*

a) *Financial Shields of the Polish Development Fund*

Thanks to the Polish Development Fund's Financial Shield (1.0 and 2.0), small and medium-sized entrepreneurs were able to obtain funding on preferential terms. The co-financing was partly non-refundable. The programme consisted of aid in the form of financial subsidies for micro-enterprises and co-financing of fixed costs not covered by revenues in the form of financial subsidies for small and medium-sized enterprises. The value of the subsidies granted depended on two factors: the number of employees and the amount of decrease in sales revenue in any month after 1 February 2020 compared to the previous month. The granting entity responsible for implementing the Financial Shield measures was the Polish Development Fund (PFR). The programme was intended to prevent a significant drop in revenue and loss of liquidity and, consequently, to reduce the risk of job losses and bankruptcy of the most affected enterprises. In other words, the solution was to ensure liquidity and financial stability during a period of serious disruption in the economy because of the COVID-19 pandemic.

b) *Suspension of the Employer's Obligations in Connection with the Establishment or Operation of the Social Fund, Basic Deductions, and Holiday Pay (Art. 15ge of the Anti-Crisis Law)*

Another solution introduced by the Anti-Crisis Law in order to protect the interests of the employer during the conditions of the coronavirus epidemic and the economic crisis caused by it is the possibility of suspending the obligation to create and operate the company social benefits fund and the obligation to pay holiday pay during the state of epidemic threat or the case of epidemic declared due to COVID-19. Article 15ge of the Anti-Crisis Law is addressed to employers within the meaning of Article 3 of the Labour Code[18] who have suffered negative financial consequences due to

18 The employer is an organisational unit (even if not a legal person) as well as a natural person if they employ workers.

the epidemic – i.e. to those who have recorded a fall in economic turnover in the amount specified in Article 15g(9) or in the event that there has been a significant increase in the burden on the remuneration fund as referred to in Article 15gb(2)[19].

The mode of suspension of social activities will depend on whether the employer has representative company trade union organisations. If there are no trade union organisations, the employer decides on the suspension of social obligations. If there are representative trade union organisations on the employer's premises, the suspension of social obligations will take place by agreement with these trade union organisations. It should be remembered that an agreement on the suspension of obligations under the Act on the Company Social Benefits Fund is a source of labour law within the meaning of Article 9 of the Labour Code. It is therefore based on the Act and must contain provisions of a general and abstract nature which will shape the rights and obligations of employees and employers[20].

The material scope of suspension of social activity is wide. The Anti-Crisis Law allows for the suspension of the obligation to establish or operate the company social benefits fund, to make a basic write-off[21] (which is a real limitation of employers' costs) and to pay holiday benefits[22]. It should also be recognised that the suspension may cover all manifestations of the employer's social activity, or it may concern only some of them.

On the other hand, the possibility of suspending the operation of the company social benefits fund seems hardly rational and unjustified. The legislator will thus deprive employees of the possibility of obtaining social benefits, even though their social situation has significantly worsened

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19 A significant increase in the burden on the remuneration fund is an increase of no less than 5% in the quotient of the costs of remuneration of employees including social security contributions in the part financed by the employer and revenues from the sale of goods and services from the same calendar month, compared to the quotient of these elements from the month preceding the month under review. At the same time, this month is indicated by the entrepreneur and must fall after 1/03/2020, but not later than the day preceding the employer's use of this entitlement.

20 K. Jaworska, Komentarz do art. 15ge [w:] Komentarz do niektórych przepisów…, op. cit., online access LEX.

21 The law defines three types of basic deductions: 1) for employees employed in normal conditions; 2) for employees employed in special conditions or performing work of a special nature – within the meaning of the provisions on bridging pensions; 3) for juvenile employees.

22 An employer with fewer than 50 full-time employees as at 1 January of a given year shall pay holiday pay once a year to each employee who takes a holiday of at least 14 consecutive calendar days in a given calendar year.

due to the pandemic. In other words, the possibility of suspending the operation of the fund means that it is not possible to make social benefit payments to employees from funds already accumulated in the fund.

c) *Provisions Facilitating the Payment of Social Insurance Contributions*

The Anti-Crisis Law also introduces several support instruments on the grounds of social insurance aimed at preventing and minimising the negative consequences related to the COVID-19 pandemic. A significant part of these instruments concerns entrepreneurs employing employees, contractors, managers, and other persons in relation to whom the entrepreneurs act as payers of contributions[23].

aa) *Resignation from the Prolongation Fee (Article 15zb of the Anti-Crisis Law)*

Payment of social insurance contributions is one of the basic obligations of contribution payers[24]. The Polish legislator imposes administrative and criminal sanctions in the event of failure to meet this obligation. At the same time, considering various situations affecting the ability to pay contributions, the legislator also provides instruments facilitating debtors in meeting their obligations in this respect. The provisions of the Act of 13 October 1998 on the social insurance system[25] provide for facilitating the payment of contributions, consisting in the possibility to pay the dues for contributions in instalments or to postpone their payment (Article 29(1) of the Act on the Social Insurance System). The Social Insurance Institution (ZUS) may, at the debtor's request, postpone the payment deadline of dues for contributions and pay the dues in instalments – for economic or other reasons that deserve consideration. ZUS then takes into account the debtor's payment capacity and the state of the social insurance finances. It is worth noting here that the debtor's application may only concern dues for contributions financed by the payer of contributions (i.e., it may not concern dues for contributions financed from the funds of an insured per-

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23 Ł. Prasołek (ed.), Pomoc dla pracodawcy w sprawach pracowniczych w dobie kryzysu. Tarcza antykryzysowa, prawo pracy, RODO, ZUS, PIT, Warsaw 2020, Beck Legalis, online access www.sip.legalis.pl 20.12.2021 r.

24 I. Sierocka, Komentarz do art. 15zb [w:] Komentarz do niektórych przepisów…, op. cit., online access LEX.

25 Consolidated text, Journal of Laws 2021, item 423 as amended.

son who is not the payer of contributions). The amounts due for contributions include not only the social insurance contributions themselves, but also interest on arrears, enforcement costs, reminder costs and an additional fee (which may be imposed by ZUS in the event of failure to meet the obligation to pay contributions). If the application for a deferment of payment of dues for contributions or their division into instalments is granted, pursuant to Article 29(4) of the Act on the Social Insurance System, ZUS concludes an agreement with the debtor on the deferment of payment of dues for contributions or their division into instalments (a positive decision is therefore not an administrative decision, but an act of authoritative nature). Negative resolution of the debtor's request takes place exclusively by issuing a decision, against which the party is entitled to appeal to the Social Insurance Court. Pursuant to Article 29(4) of the Act on the Social Insurance System, in case of contribution receivables being paid in instalments or the payment date is postponed, the Social Insurance Institution (ZUS) determines a prolongation fee – this fee is obligatory and ZUS is obliged to calculate it. The regulation of Art. 15zb of the Anti-Crisis Law thus establishes an exception from Art. 29 Sec. 4 of the Act on the Insurance System. In view of the difficulties caused by the pandemic in fulfilling obligations, including contributions, the legislator allowed ZUS to postpone payment dates or divide liabilities into instalments without the necessity to pay the prolongation fee. However, this exception does not apply to all contribution receivables, but only to receivables in respect of contributions for the period from 1 January 2020. If the debtor's application pertains to such dues and it has been filed during the period when a state of epidemic danger or a case of epidemic is in force (the case of epidemic has been in force since 20 March 2020 and has not been cancelled as at the date of preparing this text) or during the 30 days following their cancellation, ZUS, considering the application, does not charge the prolongation fee. However, this exemption does not apply to dues which arose before 01/01/2020 (i.e. those whose emergence was not related to the COVID-19 pandemic).

bb) Abandonment of Interest for Late Payment (Article 31zy10 of the Anti-Crisis Law)

One of the above-mentioned instruments, the aim of which is to encourage insurees to pay social insurance contributions on time, is the obligation to pay interest for delays. Pursuant to Article 23(1) of the Act on the Social Insurance System, interest for late payment is payable by the payer of contributions on time, according to the rules and in the amount specified in the Tax Ordinance[26]. The obligation to calculate interest for late payment does not depend on the circumstances in which the arrears in contributions arise or on the intention of the parties to maintain the insurance relationship. It arises by law, regardless of whether or not the payer is aware of the arrears in the payment of contributions[27]. The interest also has a compensatory aspect – it is intended to compensate for the loss that arises as a result of the need for the Social Insurance Institution to provide funds to cover the difference between the amount of the benefits paid and the revenue obtained from contributions[28].

In the Anti-Crisis Law, the legislator provided for the possibility to waive the collection of default interest, pursuant to Article 23(1) of the Act on the Social Insurance System. Article 31zy[10](1) of the Anti-Crisis Law indicates that ZUS may, at the request of the debtor, waive the collection of default interest on dues for contributions for the period applicable after 31 December 2019, if this is justified by economic reasons related to the occurrence of COVID-19. This is possible if three conditions are met: (1) the debtor has applied for a waiver of interest on late payment during the period in which the epidemic emergency or epidemic state is in force or during the 30 days following their revocation; (2) the application relates to interest on contributions due for the period after 31/12/2019 (and, therefore, arising in connection with the pandemic); (3) economic difficulties have arisen in connection with the spread of COVID-19 (e.g. difficulties in selling goods or services, restriction of activities due to the declaration of an epidemic emergency or epidemic state).

The debtor's application binds ZUS, which only 'may' waive the collection of interest. When issuing a refusal decision, ZUS must indicate the reasons which guided its decision, which excludes the arbitrariness of decisions taken in this respect. The payer of contributions is entitled to apply to the President of the Social Insurance Institution (ZUS) for reconsideration of the case pursuant to the rules applicable to a decision issued by a minister in the first instance and to lodge a complaint with an administrative court against the decision issued by the President of the Social Insurance Institution (ZUS).

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26 Act of 29 August 1997 – Tax Ordinance, consolidated text, Journal of Laws 2021, item 1540 as amended.

27 I. Sierocka, Komentarz do art. 31zy(10) [w:] Komentarz do niektórych przepisów…, op. cit., online access LEX.

28 See M. Łabanowski [w:] Ustawa o systemie ubezpieczeń społecznych. Komentarz, ed. J. Wantoch-Rekowski, Toruń–Warsaw 2007, p. 192.

d) Exemption from the Obligation to Pay Contributions (Articles 31zo-31zy of the Anti-Crisis Law)

The introduction of the possibility of exemption from the obligation to pay social and health insurance contributions[29] (as well as other funds to which contributions are paid from the salaries of insured persons) was one of the main forms of support that the legislator introduced in connection with the negative impact of COVID-19 on the economy in terms of social insurance. Indeed, preventing the spread of the virus required extraordinary measures, such as closing down entire sectors of the economy (banning certain types of business). In practice, many entrepreneurs lost their ability to operate and earn income. However, labour legislation required them to pay their employees, and social security, health insurance and other fund contributions had to be paid on salaries.

The exemption from the obligation to pay social and health insurance contributions is regulated in the provisions of Articles 31zo-31zy of the Anti-Crisis Law. The provisions specify several groups of entities which may benefit from such an exemption:

- payers of contributions who, during the periods indicated in the Act, reported less than 10 insured persons to social insurance[30] In the case of these payers, the exemption covered 100% of contributions due for the period from 1 March 2020 to 31 May 2020. The same exemption was extended to social cooperatives (regardless of how many persons they reported for insurance);
- payers of contributions who, during the periods specified in the Act, reported to social insurance at least 10, but no more than 49 insured persons. The exemption covered 50% of contributions due for the period from 1 March 2020 to 31 May 2020;
- persons conducting non-agricultural activity (in practice, mainly entrepreneurs) paying contributions exclusively for their own social insurance or health insurance. The exemption covered 100% of the contri-

29 It has been pointed out in the literature that, in fact, this is a case of remission of dues for contributions, but on different terms than those set out in the Act on the social insurance system – M. Pogonowski, Zwolnienie z obowiązku opłacenia składek na podstawie tarczyza antykryzysowej na tle poprzednio obowiązujących rozwiązań dotyczących umorzenia składek, Labour and Social Security Journal, 10/2020, p. 38.

30 E.g., employees, but also persons performing work on a basis other than employment (e.g., contractors, i.e. persons performing work on the basis of civil law contracts) were included.

butions due for the period from 1 March 2020 to 31 May 2020. The possibility to benefit from this exemption was initially limited only to those persons whose income from this activity in the first month for which the application for exemption from the payment of contributions is submitted was not higher than 300% of the projected average monthly gross remuneration in 2020 (that is, PLN 15,581). For the period from 1 April 2020 to 31 May 2020, the exemption could also cover those persons running non-agricultural activity who exceeded the indicated income amount[31], provided that their income did not exceed PLN 7,000;
– clergy persons, for whom the exemption covered 100% of the contributions due for the period from 1 March 2020 to 31 May 2020; these persons did not have to meet any additional conditions[32].

Additionally, the possibility of exemption from the obligation to pay contributions for subsequent periods was provided for in the course of subsequent amendments to the Anti-Crisis Law. It was possible to exempt from the obligation to pay contributions for November 2020 those entities (mainly entrepreneurs) that were affected by the next lockdown. These entities could obtain an exemption from contributions if the revenue from their activity obtained in November 2020 was at least 40% lower than the revenue obtained in November 2019. The exemption applied to those entities whose predominant object of activity was explicitly indicated in Article 31zo(10) of the Anti-Crisis Law (e.g. catering activities, activities of tour guides, activities of cinemas, theatres, operas). However, with regard to entities whose predominant activity consisted in running school shops, the exemption from contributions covered the period from 1 November 2020 to 30 March 2021, provided that the revenue from that activity was at least 40% lower in November 2020, December 2020, January 2021, February 2021 or March 2021 in relation to the revenue obtained in September 2019 or September 2020. On the other hand, considering the prolongation of lockdowns in particular sectors of the economy, the legislator authorised the Council of Ministers through the Anti-Crisis Law to determine, by way of a regulation, other periods of exemption for unpaid contributions, for all or certain payers of contributions who were entitled to exemption for unpaid contributions under Article 31zo Para. 1-3, or to extend this

31 Income is revenue minus deductible expenses.
32 M. J. Zieliński, Szczególne rozwiązania w prawie pracy i prawie zabezpieczenia społecznego wprowadzone w związku z pandemią COVID-19. Zagadnienia ogólne, Labour and Social Security Journal, 5/2020, p. 16.

exemption to other payers of contributions, having regard to the duration of the state of epidemic emergency or the case of epidemic, the effects caused by them, the restrictions on business activity resulting from these states and the areas of economic and social life particularly affected by the consequences of COVID-19. Such regulation was issued on 26 February 2021 and provided for further exemptions for selected groups of payers for the periods specified therein[33].

The legislator specified the time limits within which applications for exemption from the obligation to pay contributions had to be submitted. The set deadlines were substantive law deadlines and could not be restored[34]. In the case of requirements related to achieving a specific income or revenue, ZUS relied on the applicants' declarations. An appropriate verification system was provided for. ZUS provided the tax authorities with information on the revenue/income declared by the applicants, and the authorities were obliged to inform ZUS in case of any discrepancies between the revenue or income declared in the application for exemption from paying contributions and the revenue or income declared for tax purposes.

It is worth noting that the exemption from the obligation to pay social and health insurance contributions covered not only the part of the contribution financed by the payer, but also by the insured person[35]. Therefore, in accordance with the provisions of the Act on the Social Insurance System, the payer deducted contributions from the employee's remuneration, but did not transfer them to the Social Insurance Institution, which can also be described as a special kind of financial assistance directed to the payers of contributions. Such a solution did not and will not in the future have a negative impact on the right to social insurance benefits or their amount. The legislator clearly indicated that contributions which were exempted from the obligation to be paid are treated as paid contributions.[36]

33 Regulation of the Council of Ministers of 26 February 2021 on the support of economic participants affected by the COVID-19 pandemic.

34 K. Jaworska, Komentarz do art. 31zp [w:] Komentarz do niektórych przepisów…, op. cit., online access LEX.

35 For example, in Poland the pension insurance contribution is paid in equal parts by the employer and the employee.

36 This significantly differentiates the institution of exemption from the obligation to pay contributions from the "classic" cancellation of dues for contributions. In the latter case, the redeemed contributions are not treated as paid contributions, see M. Pogonowski, Zwolnienie z obowiązku..., op.cit., p. 39.

e) Special Cash Benefits for Entrepreneurs and Contractors

aa) Standstill Benefit[37] (Article 15zq et seq. of the Anti-Crisis Law)

The Standstill Benefit is one of the forms of assistance introduced in connection with the epidemic condition, for entrepreneurs and persons performing work based on a civil law contract. Pursuant to Article 15zq(1) of the Anti-Crisis Law, this benefit is available to persons conducting non-agricultural business activity on the basis of the provisions of the Act of 6 March 2018 (Entrepreneurs' Law) or other specific provisions and persons performing an agency contract, a contract of mandate, another contract for the provision of services to which, in accordance with the Act of 23 April 1964 (Civil Code) to which, in accordance with the Act of 23 April 1964, the provisions on mandate apply, or a contract for specific work if persons involved are not subject to social insurance under any other title.

While employees were entitled to demotion pay for the downtime caused by the pandemic under labour law, entrepreneurs and persons employed under civil law contracts are not entitled to such benefits. For them, not working due to lockdown meant losing their source of livelihood. They were therefore particularly exposed to the instability or even total loss of income due to the COVID-19 pandemic, due to the lack of orders, or the cancellation of ongoing or concluded contracts[38]. The purpose of the Standstill Benefit was therefore to provide social security by granting ad hoc financial support[39]. Entrepreneurs were entitled to this benefit if they met the following conditions:

– they did not suspend their non-agricultural economic activity, and income from non-agricultural economic activity obtained in the month preceding the month of filing an application for a Standstill Benefit was at least 15% lower than the income obtained in the month preceding that month, or if they suspended their non-agricultural economic activity after 31 January 2020;

37 Standstill Benefit is a form of financial support paid due to business downtime.
38 M. Barański, Komentarz do art. 15zq [w:] Komentarz do niektórych przepisów…, op. cit., online access LEX.
39 J. Szyjewska-Bagińska, Świadczenie postojowe jako element techniki socjalnego wsparcia w zabezpieczeniu społecznym, Ubezpieczenia Społeczne. Teoria i Praktyka, No. 3/2020, p. 2.

– they were not subject to social insurance on account of a title other than running a non-agricultural business activity within the meaning of Article 8(6) of the Act on the Social Insurance System.

In turn, persons performing work based on civil law contracts were entitled to this benefit if they fulfilled the following conditions jointly:

– the civil law contract was concluded before 1 April 2020;
– the revenue from the civil law contract obtained in the month preceding the month in which the application for the Standstill Benefit was submitted was not higher than 300% of the average monthly salary from the previous quarter;
– they were not subject to social insurance on another account.

This benefit is equal to 80% of the amount of the minimum wage applicable in 2020 (then it was PLN 2,080)[40]. Originally, it was to be granted no more than three times. However, due to the prolonged lockdown in certain sectors of the economy, additional Standstill Benefits for entrepreneurs were introduced, which could be paid out one, two, four or even five times – depending on the sector in which the entrepreneur was active. Additional Standstill Benefits were regulated in the aforementioned regulation of the Council of Ministers of 26 February 2021 on support for economic participants affected by the COVID-19 pandemic. It also specifies additional conditions to be met by an entrepreneur to obtain an additional Standstill Benefit (a specific decrease in revenue from the business).

The Standstill Benefits were and are paid and granted at the request of entitled persons (in the case of entrepreneurs) or at the request of a contracting party (in the case of contractors and persons performing a work contract, the application was submitted by a principal or a contracting person). Applications for benefits may be submitted no later than within 3 months of the month in which the epidemic state is declared to be over. The handling of the benefits was entrusted to the Social Insurance Institution (ZUS), although it should be emphasised that they were not social insurance benefits[41] (which is clearly discernable in the case of persons performing paid work under contracts for specific work who are not subject to social insurance in Poland at all, but who could acquire the right to the benefit). The benefits are financed from the state budget.

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40 The law also provided for certain exceptions (in some cases it amounted to PLN 1,300).

41 J. Szyjewska-Bagińska, Świadczenie postojowe…, op. cit., p. 2; Autorka ta świadczenie postojowe zalicza do świadczeń socjalnego wsparcia (ibidem, pp. 12-13).

bb) Compensation for Business Expenses (Article 15zzc of the Anti-Crisis Law)

Another instrument of support is granted to self-employed persons. This term, within the meaning of Polish labour law, refers to natural persons who carry out a business activity, but who do not employ any persons in this activity. These persons could be granted co-financing of part of the costs of running a business in the event of a drop in business turnover following the occurrence of COVID-19. Co-financing could be granted in the amount of 50%, 70% or 90% of the minimum wage, depending on how high the drop in turnover was. It could be paid for no more than 3 months. The subsidy could be granted under an agreement concluded with the starost and was paid in monthly instalments. The self-employed person was also obliged to conduct business activity for the period for which the subsidy was granted, under pain of the obligation to return the subsidy. Also, regarding this instrument of support, the legislator authorised the Council of Ministers to extend the three-month period of subsidy; however, the Council of Ministers did not use its vested competence.

cc) Loan for Micro-Entrepreneurs (Article 15zzd of the Anti-Crisis Law)

Loans were an instrument addressed solely at micro-entrepreneurs[42]. They could, based on an agreement concluded with a starost, receive a one-off loan from the Labour Fund to cover current costs of running a business in order to compensate the negative effects of the COVID-19 pandemic. The loan could be granted up to the amount of PLN 5,000 (in practice, it was granted to all applicants in this amount), on application submitted to a Poviat Labour Office[43] competent for the location of the entrepreneur. The loans were granted without any additional conditions, including that the micro-entrepreneur did not have to demonstrate any decrease in income or revenue. The loan repayment period could not be longer than 12

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42 A micro-entrepreneur is an entrepreneur who, in at least one of the last two financial years, jointly fulfilled the following conditions:
a) employed on average less than 10 employees and
b) achieved an annual net turnover from sales of goods, products, and services as well as from financial operations not exceeding the PLN equivalent of EUR 2 million; or the sum of the assets of its balance sheet drawn up at the end of one of those years did not exceed the PLN equivalent of EUR 2 million.

43 A Poviat is the second-level unit of local government and administration in Poland, equivalent to a county, district or prefecture in other countries.

months, with grace in repayment of the principal of loan and interest for 3 months from the date of granting the loan. It should be noted, however, that for most borrowers the loan was non-refundable, as in accordance with Article 15zzd Paragraph 7 of the Anti-Crisis Law, the loan with interest was subject to cancellation if the micro-entrepreneur conducted business activity for a period of 3 months from the date of being granted the loan.

dd) Financial Support for Micro- and Small Enterprises (Article 15zze4 of the Anti-Crisis Law)

Grants for micro- and small entrepreneurs[44] were an instrument similar to loans. Subsidies were granted by starosts, based on agreements concluded with entrepreneurs, from the resources of the Labour Fund to cover the current costs of business activity to prevent the negative effects of the COVID-19 pandemic. The subsidy could be granted only to micro- and small entrepreneurs conducting activity in certain branches of the economy, specified in Article 15zze4 of the Anti-Crisis Law. The condition for the grant was a decrease in revenue, namely that the revenue from this activity obtained in October or November 2020 was at least 40% lower than the revenue obtained in October or November 2019, respectively. The subsidy could be granted up to the amount of PLN 5,000 and was non-refundable, unless the entrepreneur did not carry out any economic activity for a period of 3 months from the date of being granted the subsidy (in that case he was obliged to return it). In addition, in the regulation of the Council of Ministers of 26 February 2021 on support for business participants affected by the COVID-19 pandemic, additional subsidies were provided for groups of entrepreneurs specified in the regulation (depending on the type of activity of a given entrepreneur and a decrease in revenue from business activity, subsidies could be granted even

44 A small entrepreneur is an entrepreneur who, in at least one of the last two financial years, fulfilled jointly the following conditions:
a) employed less than 50 employees on average per year and
b) achieved an annual net turnover from sales of goods, products, and services as well as from financial operations not exceeding the PLN equivalent of EUR 10 million, or the sum of the assets of its balance sheet drawn up at the end of one of those years did not exceed the PLN equivalent of EUR 10 million
c) is not a micro-entrepreneur.

several times, and the deadline for submitting applications was set for 31 August 2021).

4. *Social Protection*

a) *Increase in Unemployment Benefit (Article 15 of the Solidarity Allowance Act)*

Pursuant to Article 15 of the Solidarity Allowance Act, the provisions of the Act of 20 April 2004 on employment promotion and labour market institutions[45] were also amended. The main change concerned an increase in the amount of unemployment benefit. As a result of the amendment, as from 1 September 2020, the basic amount of the benefit has been PLN 1,200 per month for the first 90 days of drawing the benefit and PLN 942.30 per month for subsequent days of drawing the benefit (as compared to PLN 823.60 and PLN 646.30, respectively, before the amendment)[46]. It should be noted that in Poland, unemployment benefits are granted to unemployed persons who fulfil the requirements set out in the Act.

b) *Sickness Benefit in the Case of Quarantine/Isolation*

Sickness benefit is a sickness insurance benefit which is due to insured persons who are unable to work due to illness[47], if they meet the conditions specified in the provisions of the Act of 25 June 1999 on cash benefits from social insurance in the event of sickness and maternity[48]. However, measures to prevent the spread of COVID-19 often required the isolation not only of persons infected with coronavirus (often showing no symptoms of the disease), but also of persons who had been exposed to the infection through contact with a person who had tested positive for coronavirus. These persons were initially sent to quarantine (persons suspected of being

45 Consolidated text, Journal of Laws 2019, item 1482, as amended.
46 The regulations also provide for a so-called increased benefit (120%) and a reduced benefit (80%), depending on the length of service entitling to the benefit.
47 R. Babińska-Górecka, Zasiłek chorobowy [w:] Wielka Encyklopedia Prawa. Tom XII. Prawo socjalne, ed. H. Szurgacz, Warsaw 2017, pp. 386-388.
48 Consolidated text. Journal of Laws. 2021, item 1133 as amended, hereinafter referred to as the Benefit Act.

infected because of contact with an infected person[49]) or isolation (persons who tested positive) by decision of the health authorities before automatic quarantine and isolation arrangements were introduced. In this situation, doubts have arisen as to whether these persons are entitled to sickness benefits (sick pay under labour legislation and sick pay from social insurance). The provisions of the Benefit Act provided for the right to sickness benefit in a situation where an insured person could not perform work as a result of a decision issued by a competent authority. For the avoidance of doubt, a provision has been added to this Act, according to which the right to sickness benefit is also granted to an insured person who cannot perform work as a result of being subjected to the obligation of quarantine, home isolation or isolation referred to in the provisions on prevention and elimination of infections and infectious diseases in humans, also in the case where the quarantine or isolation resulted directly from the provisions of the law and not from a decision of the sanitary authorities. As a rule, this benefit is equal to 80% of the average monthly remuneration of a given insured person. The Anti-Crisis Law has also introduced an increased sickness benefit during the period of an epidemic threat or epidemic state for medical professionals (100%) employed in medical entities.

It is also worth mentioning that in December 2020, provisions of Articles 4ha and 4hb were added to the Anti-Crisis Law, which introduced the possibility for persons in home isolation or quarantine to work remotely if the employer agreed to such work.

c) *Additional Care Allowances related to the Closure of Educational Institutions (Article 4, 4a, 4d of the Anti-Crisis Law)*

The Anti-Crisis Law also provided special cash benefits for parents or guardians of children in connection with the closure of a crèche, children's club, kindergarten, school or other institution attended by a child, or with the inability to be provided care by a nanny or day care provider due to COVID-19. The insured parent/guardian of a child was then forced to stay at home to care for the child, which made it impossible to perform work (unless they provided remote work). Although the Benefit Act provides for a care allowance in the event of the closure of the above-mentioned

49 As well as persons staying in compulsory quarantine in connection with crossing the border of the Republic of Poland – see K. Piwowarska, Benefits due to COVID-19, Monitor Prawa Pracy, No. 11/2020, p. 22.

facilities or the nanny's illness, it is only available for the care of a child up to the age of 8 and for a maximum of 60 days per calendar year. The ongoing epidemic and the necessity to close schools for many months resulted in Article 4 of the Anti-Crisis Law introducing an additional care allowance which parents were entitled to due to the closure of schools until 28 June 2020, regardless of the age of the child (until the end of the 2019/2020 school year). It was payable in the amount specified in the provisions of the Allowance Act (80% of the average monthly salary of the insured person concerned) to one of the parents/guardians. The period of drawing the supplementary care allowance was not included in the 60-day allowance period referred to in the Benefit Act[50].

Under the amended legislation, the right to the additional care allowance was also granted to officers of the Police, the State Fire Service, and other services as well as farmers.[51] In addition, the right to additional care allowance has been granted to guardians of adults with disabilities in the event of a COVID-19-related closure of schools, revalidation and education centres, support centres, occupational therapy workshops or other day-care centres of a similar character attended by a person with disabilities.

d) Solidarity Allowance

By way of the Act of 19 June 2020 on the solidarity allowance granted to counteract the negative effects of the COVID-19 pandemic[52] special financial support was introduced for persons who had lost their source of income (work) due to the economic situation caused by the COVID-19 crisis, referred to as the Solidarity Allowance. This benefit entitled beneficiaries to PLN 1,400 per month from 1 June to 31 August 2020. Persons who met the following cumulative conditions were entitled to it:

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50 That is why it is described as 'additional' - M. J. Zieliński, Szczególne rozwiązania..., op. cit., p. 14.

51 The Polish system of common social insurance does not cover farmers, who have special arrangements referred to as "agricultural social insurance"; the regulations concerning farmers do not provide for a care allowance – which is available to insured persons in the common social insurance system. The benefit for farmers was financed from the state budget funds – see D. Wajda, Świadczenia socjalne finansowane ze środków publicznych w związku z epidemią COVID-19, Labour and Social Security Journal, 5/2020, p. 60.

52 Journal of Laws. 2020, item 1068 as amended, hereinafter referred to as the Solidarity Allowance Act.

- they were subject to social insurance under an employment contract for a total period of at least 60 days in 2020;
- the employer, after 15 March 2020, terminated the employment contract by notice, or the employment contract was terminated at the end of the period for which it was concluded, after 15 March 2020;
- the person is not subject to social insurance, farmers' social insurance or health insurance during the period of receipt of the allowance (although certain exceptions were provided for in relation to health insurance).

Determination of entitlement to the Solidarity Allowance takes place at the request of the entitled person, submitted to the Social Insurance Institution (ZUS) no later than 31 August 2020, although this benefit too, like the Standstill Benefit, is not a social insurance benefit. The Social Insurance Institution informs the entitled person about granting the allowance or issues a decision refusing to grant it (in the latter case, the decision could be appealed to the Social Insurance Court). These benefits were financed from the Labour Fund, and persons receiving Solidarity Allowance were subject to retirement and disability insurance on this account. Contributions to these insurances were financed from the state budget.

5. Conclusion

In conclusion, the Polish legislator reacted very quickly to the problems related to the spreading COVID-19 pandemic. The first law was passed as early as 2 March 2020, and the first significant amendment, providing for several solutions presented in this study, already entered into force on 31 March 2020 (on the day of enactment), i.e. only 2 weeks after the introduction of the epidemic state and of lockdown. The proposed solutions met social expectations – they introduced a number of support benefits for persons who lost their jobs or were unable to work due to the closure of certain sectors of the economy, and granted financial support to entrepreneurs, including loans, subsidies, exemptions from the obligation to pay social insurance contributions, facilities in the organisation of remote work, financial support aimed at maintaining jobs (subsidies to salaries and social insurance contributions).

The solutions undertaken in the area of broadly understood labour law were therefore aimed at protecting life and health, but also at mitigating the dramatic consequences of the pandemic for economic life[53]. As subsequent months have shown, the solutions adopted have to a large extent fulfilled their role; above all, they have succeeded in preventing a sharp rise in unemployment[54]. Unfortunately, the speed of the changes introduced has repeatedly reflected the poor quality of the detailed legislative solutions[55] creating problems of interpretation which have required rapid, successive amendments. Most of the regulations introduced were and are of a transitional nature related to the crisis caused by the pandemic[56], and some of them have already ceased to be in force. It seems that only some of the solutions may also be applicable in the future – in the area of labour law and social law, this mainly concerns remote working. The epidemic has also resulted in an accelerated digitalisation of state institutions, including the Social Insurance Institution.

53 Ł. Pisarczyk, Prawo pracy wobec kryzysu, Państwo i Prawo, No. 12/2020, p. 73.
54 Although there was great concern in this regard at the beginning of the pandemic, see S. Adamczyk, B. Surdykowska, The Economy and the World of Work Enter Uncharted Land. Some Preliminary Reflections around the Development of the COVID-19 Pandemic, Labour Law Monitor, No. 4/2020, p. 9.
55 D. Wajda, Świadczenia socjalne…, op. cit., p. 62.
56 K. Walczak, Kilka uwag na temat zatrudnienia w dobie pandemii i po jej zakończeniu, Monitor Prawa Pracy, No. 6/2020, p. 9.

XVIII. Russia: The Path Dependence of Old Concepts and Targeted Support Measures in the COVID-19 Pandemic

Olga Chesalina

1. Introduction

The first coronavirus infection in Russia was detected in late January 2020, while the more comprehensive outbreak of the disease began in March 2020.[1] Russia was and still is seriously affected by the coronavirus pandemic. According to official data, on 8 December 2021 over 284,823 corona-related deaths had been reported.[2] During the whole time of the pandemic, no nationwide state of emergency (*режим чрезвычайной ситуации*) was declared at the federal level. However, in some regions of the Russian Federation (hereinafter – RF) the state of readiness (*режим повышенной готовности*) and the state of emergency in accordance with regional legislation were declared.[3] The declaration of these regimes served as a basis for different restrictive measures or bans on sports, entertainment and cultural events as well as for the shutting down of shops, restaurants, etc. Depending on the coronavirus situation, the restrictions and bans were lifted and then later reintroduced. In addition, further restrictive measures followed based on the legislation on health and epidemiological well-being of the population. Coronavirus infection has been added to the list of diseases that pose a danger to others.[4] Such diseases can serve as a justification for

1 Coronavirus (COVID-19) in Russia - Statistics & Facts.
2 Real-Time Data.
3 The legal basis for such measures is Федеральный закон № 68-ФЗ от 21 декабря 1994 г. "О защите населения и территорий от чрезвычайных ситуаций природного и техногенного характера" [Federal Law No. 68-FZ of 21 December 1994 "On the Protection of the Population and Territories from Natural and Man-Made Emergencies"], by which the notion of "the state of emergency" was supplemented on 1 April 2020 by the phenomenon "the spread of disease that poses a danger to others. In some regions (e.g. Moscow and Moscow region) the spread of coronavirus was considered an instance of force majeure.
4 Постановление Правительства РФ № 66 от 31 января 2020 г. [Resolution of the Government of the RF No. 66 of 31 January 2020].

refusing or cancelling a residence permit, a patent or a work permit for foreign citizens and stateless persons in the RF.[5]

Many social and economic support measures for citizens and the real economy in response to the coronavirus pandemic (e.g. new cash benefits or increase of social benefits, deferral of social contributions and taxes, tax reliefs, moratoriums on bankruptcy procedures, etc.) were initially launched by the President of the RF in his instructions and decrees and after that adopted by the parliament or by the Government.[6] The majority of support measures were provided for in the federal legislation. Some additional support measures were provided for also in the regional legislation of the subjects of the RF. Collective agreements play a comparatively minor role.

To ensure the sanitary and epidemiological well-being of the population and to slow down the spread of the pandemic, externalising and internalising approaches were used. Hereby, in some cases the state switched from externalising measures (sickness benefits) to internalising measures like remote work (see below under 4 e). Furthermore, the internalising measures were extended. A new internalising instrument to ensure the sanitary and epidemiological well-being of the population and to slow down the spread of the pandemic, namely "non-working paid days" (*нерабочие оплачиваемые дни*), was introduced in March 2020.[7] Since then, non-working days have been declared several times: from 30 March until 30 April 2020[8]; from 6 to 8 May 2020[9] from 4 to 7 May 2021[10], from 30 Octo-

5 Приказ Министерства здравоохранения РФ № 384н от 29 июня 2015 г. [Order of the Ministry of Health of the RF of 29 June 2015 N 384-n].

6 Instructions following President's Address to the Nation on the Spread of Coronavirus Infection in the Country of 25 March 2020, Перечень поручений по вопросам противодействия распространению новой коронавирусной инфекции (COVID-2019) в регионах Российской Федерации [Instructions following President's Address on the Spread of Coronavirus Infection in the Regions of 15 April 2020].

7 Указ Президента РФ №206 от 25 марта 2020 г. «Об объявлении в Российской Федерации нерабочих дней» [Executive Order of the President of the Russian Federation No. 206 of 25 March 2020 "On Declaring of Non-Working Days in the RF"].

8 Указ Президента РФ № 239 от 2 апреля 2020 г. [Executive Order of the President of the Russian Federation No. 239 of 2 April 2020].

9 Указ Президента РФ № 294 от 28 апреля 2020 г. [Executive Order of the President of the Russian Federation No. 294 of 28 April 2020].

10 Указ Президента РФ № 242 от 23 апреля 2021 г. [Executive Order of the President of the Russian Federation No. 242 of 23 April 2021].

ber to 7 November 2021[11]. This term had not been used in the labour legislation before, and it does not comply with the categories "days off" and "non-working holidays" (Art. 111 and 112 of the Labour Code (hereinafter – the LC) and for this reason, it raises a lot of questions concerning its correct application.[12] In 2020 during non-working days, only employees of certain (essential) enterprises and remote workers could work. Dismissal of employees during non-working days is only permissible at the initiative of the employees themselves, in accordance with the agreement between the parties or upon expiration of a fixed-term employment contract.[13] Nevertheless, according to some estimations, the number of registered unemployed persons in 2020 rose by almost 30% during non-working days.[14] Employers must pay wages in the full amount to all their employees, not depending on whether they are performing their work (e.g. remotely) or are exempted from the duty to work. In other words, the state has shifted the financial responsibility for the fulfilment of a task in the public interest to employers. Not working during the non-working days is not considered as downtime. Nevertheless, many employers paid wage in accordance with the rules for downtime.[15] In 2021, in response to the low efficiency of this instrument, the regulation on non-working days was relaxed and employers were allowed to determine a number of employees to ensure the functioning of the organisation during non-working days. Many employers included the majority of their employees in this category.[16]

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11 Указ Президента РФ №595 от 20 октября 2021 г. [Executive Order of the President of the Russian Federation No. 595 of 20 October 2021].

12 Ostrovskaia, Covid-19 and Labour Law: Russian Federation, in: da Rocha/Pepino/Martins (eds.), Legal Responses to COVID-19 Around the World, 2020, pp. 188-192; Lyutov/Davletgildeev, One Year after the Official Recognition of Covid-19 as a Pandemic: Case of the Social Situation in Russia.

13 Письмо Федеральной службы по труду и занятости № 0147-03-5 от 9 апреля 2020 г.[Letter of the Federal Service for Labour and Employment No. 0147-03-5 of 9 April 2020], Para. 7; Lyutov/Davletgildeev, (supra fn. 12).

14 Sabelnikova, Operational Monitoring of Social Processes, Center of Macroeconomic Analysis and Short-Term Prognosis.

15 Golovina, The Coronavirus Pandemic (COVID-19) as a New Challenge to Labor Law [Пандемия коронавирусной инфекции (COVID-19) как новый вызов трудовому праву], Labour Law in Russia and Abroad [Трудовое право в России и за рубежом], 3/2020, p. 3.

16 Sychenko, Workers' Protection in [sic] Covid at the Employers' Expense: Russian Experience, paper prepared for presentation at the "7th Conference of the Regulating for Decent Work Network" Virtual Conference, International Labour Office Geneva, 6-9 July 2021.

2. *Job Retention*

a) *Changes in Unemployment Rates during the Pandemic*

According to official statistics, the unemployment rate in Russia increased from 4.6% in 2019 to 5.9% in 2020[17]. The unemployment rate reached a peak of 6.4% in August 2020[18], which was the highest rate in the last eight years, and then gradually began to fall. Many jobs have been lost in manufacturing, construction, retail and hospitality services while in some sectors an increase in employment has been seen.[19] In September 2021, the unemployment rate dropped to 4.3%, which is the lowest level in the last two years and corresponds to pre-pandemic levels.[20] On the one hand, these statistical data could indicate the effectiveness of the measures taken. On the other hand, the answer may also lie in the decrease in the level of unemployment benefits in 2021 by comparison with a temporary increase in 2020, and in a substantial decline in the number of migrants working in Russia after the outbreak of the pandemic[21] accompanied by a filling of the vacancies with local employees.

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17 Уровень безработицы в России в июле снизился до 4,5% впервые с осени 2019 года [Russia's Unemployment Rate Fell to 4.5% in July for the First Time since Autumn 2019].

18 Занятость и безработица в Российской Федерации в августе 2020 г. [Employment and Unemployment in the RF in August 2020].

19 World Bank Group. Russia's Economy Loses Momentum Amidst COVID-19 Resurgence, Awaits Relief from Vaccine. Russia Economic Report. December 2020. Vol. 44, p. 27.

20 Безработица в России в сентябре снизилась до исторического минимума [Unemployment in Russia Fell to a Historic Low in September], 29 October 2021; Глава Минтруда заявил о возвращении безработицы к допандемийному уровню [Head of the Labour Ministry Said that Unemployment Rate is Back to Pre-Pandemic Levels, 14 October 2021].

21 Sedlov/Kubishin/Soboleva, Рынок труда иностранной рабочей силы в России: влияние пандемии Россия и мир в XXI веке [Migrant Labour Market in Russia: Influence of the Pandemic, in: Russia and the World in the 21st Century], 3/2021, pp. 59-72.

b) Limitation of Dismissals

One of the peculiarities of Russian labour law is that it "protects employees from the very fact of dismissal".[22] The employment protection index (hereinafter – EPI) in Russia (2.86 in 2012) is significantly higher than the average EPI among OECD countries (2.09 in 2014)[23]. In particular, it is very difficult to dismiss some categories of employees, e.g. pregnant women and persons of pre-retirement age. The Prime Minister of Russia issued a warning to employers who attempted to dismiss employees on the grounds of redundancy because of the coronavirus pandemic and he recommended employers to use flexible forms of work like remote work or flexible time schemes.[24] The Ministry of Labour clarified that the company may declare downtime (time in which the employer cannot provide work for operational reasons) due to an unfavourable economic situation.[25] During the downtime, the employer in accordance with Art. 157 of the LC should pay an employee 2/3 of their wage. This payment may de facto be lower than the minimum wage since only the whole wage must be not less than the statutory monthly minimum wage of 12,792 roubles (153 EUR) in 2021.

According to general labour law rules, an employer may reduce working hours (without agreement with the employee) only due to reasons relating to a change in organisational or technical working conditions, e.g. changes in production techniques and technologies, structural reorganisation of production and other reasons (Art. 74 (5) LC). However, a pandem-

22 Kovács/Lyutov/Mitrus, Labour Law in Transition from Centrally Planned to Free Market Economy in Central and Eastern Europe, in: Finkin/Mundlak (eds.), Comparative Labor Law, 2015, p. 425.

23 OECD, Strictness of Employment Protection – Individual Dismissals (Regular Contracts) – 2008-2019.

24 Мишустин пригрозил проверками за увольнения на фоне пандемии [Mishustin has Threatened Inspections for Dismissals during the Pandemic], RBK, 21 March 2020; Lyutov, in: Application of Key Labour Law Provisions during the COVID-19 Pandemic in Belarus, Georgia, Kazakhstan, Kyrgyzstan, and the Russian Federation, ILO 2021, p. 26.

25 Письмо Министерства труда и социальной защиты РФ № 14-2/10/П-3710 от 23 апреля 2020 г. [Letter No. 14-2/10/P-3710 of the Ministry of Labour and Social Protection of the RF of 23 April 2020], Point 6 of Recommendations, Письмо Министерства труда и социальной защиты РФ № 0147-03-5 от 9 апреля 2020 г., п. 7 Приложения [Point 7 of the Annex to Letter No. 0147-03-5 of the Ministry of Labour and Social Protection of the RF of 9 April 2020].

ic is not a reason to reduce working hours according to this regulation.[26] Furthermore, even if the conditions of Art. 74 (5) are fulfilled, the employer would have had to give prior notice at least two months in advance, which is not suitable for flexible reactions in a pandemic. The Government has allocated over 4 billion roubles to regions for the creation of temporary jobs, including for those with reduced working time.[27] The employer may not use unpaid leave[28] and dismiss employees on pandemic grounds.[29] Nevertheless, in many cases employers in violation of the law forced employees to use unpaid leave or dismissed employees as if at the own will of the employee (*увольнение по желанию работника*) but not for the economic reasons listed in the LC, as well as cut wages or even did not pay any at all.[30] Companies dismissed more than 3.5 million employees during the COVID-19 pandemic from 1 April to 20 June 2020. The most significant number of personnel who lost their jobs was recorded in Moscow at 585,800.[31]

c) *Subsidies and Wage Loans*

The most popular support measures were/are subsidies and wage loans, the aim of which is twofold: on the one hand, to support the viability of business activities and to cover any documented business expenses; on the other hand, to prevent staff reductions. Affected small- and medium-sized

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26 Письмо Министерства труда и социальной защиты РФ № 14-2/10/П-3710 от 23 апреля 2020 г. [Letter No. 14-2/10/P-3710 of the Ministry of Labour and Social Protection of the RF of 23 April 2020].

27 Постановление Правительства РФ № 980 от 4 июля 2020 г. [Resolution of the Government of the RF No. 980 of 4 July 2020].

28 Письмо Министерства труда и социальной защиты РФ № 0147-03-5 от 9 апреля 2020, п. 20 Приложения [Point 20 of the Annex to Letter No. 0147-03-5 of the Ministry of Labour and Social Protection of the RF of 9 April 2020].

29 Информация Министерства труда и социальной защиты РФ от 27 апреля 2020 г. [Information of the Ministry of Labour and Social Protection of the RF of 27 April 2020].

30 Совет по правам человека направил в Правительство Рекомендации по защите социальных и трудовых прав работников [Presidential Council for Civil Society and Human Rights. The Human Rights Council has submitted Recommendations for Protecting Workers' Social and Labour Rights to the Government], 23 April 2020; Shuvalova, Законодательство о трудоустройстве [The Legislation on Employment], Юрист [The Lawyer], 9/2020.

31 Number of Dismissals in Russia from April 1 to June 20, 2020, by Federal Subject.

enterprises (SMEs) were provided for at the beginning of the pandemic with subsidies for a six-month period[32] and interest-free loans for 12 months[33] in the amount of one minimum wage per employee per month as long as they can maintain at least 90% of the employees. From June 2020 until April 2021, a credit scheme for affected economic sectors was launched with loans in the amount of one minimum wage per employee per month at a preferential interest rate of 2%. If the employer maintains 90% of his employees, the loan will be forgiven; if the employment rate falls below 90% but not below 80%, the employer has to pay back only half of the loan and the interest rates.[34] From 9 March until 1 July 2021 and again from 1 November 2021 to 30 December 2021 subsidised loans were granted for the affected sectors at a preferential interest rate of 3% in the amount of one minimum wage per employee per month for either 12 or 18 months; if the company cannot retain 90% of its employees, it has to pay back the loan in full at the usual, not a preferable interest rate.[35]

In 2021, subsidies were provided for in the amount of three minimum wages for the employment of unemployed persons that were registered at the public employment office as of 1 August 2021, or of graduates of 2020, persons with disabilities, single parents or parents with many children, and some other categories of persons registered as unemployed[36].

32 Постановление Правительства РФ № 576 от 24 апреля 2020 г. [Resolution of the Government of the RF No. 576 of 24 April 2020].

33 Постановление Правительства РФ № 422 от 2 апреля 2020 г. [Resolution of the Government of the RF No. 422 of 2 April 2020].

34 Постановление Правительства РФ № 685 от 15 мая 2020 г. [Resolution of the Government of the RF No. 685 of 15 May 2020], Постановление Правительства РФ № 685 от 15 мая 2020 г. [Resolution of the Government of the RF No. 696 of 16 May 2020].

35 Постановление Правительства РФ №279 от 27 февраля 2021 г. [Resolution of the Government of the RF No. 279 of 27 February 2021], Постановление Правительства РФ № 1850 от 28 октября 2021 г. [Resolution of the Government of the RF No. 1850 of 28 October 2021], ФОТ 3.0.

36 Постановление Правительства РФ № 362 от 13 марта 2021 г. [Resolution of the Government of the RF No. 362 of 13 March 2021], Постановление Правительства РФ № 915 от 16 июня 2021 [Resolution of the Government of the RF No. 915 of 16 June 2021], Постановление Правительства РФ № 1607 от 24 сентября 2021 г. [Resolution of the Government of the RF No. 1607 of 24 September 2021].

3. *Supporting the Economy*

The coronavirus pandemic has strongly affected the economy. Since March 2020, the state has taken a wide range of measures to help businesses to mitigate the effects of the pandemic. Some measures are directed at broad categories of individual entrepreneurs and enterprises, whereas a range of measures are targeted at companies and SMEs operating in the economic sectors most affected by coronavirus. The Government of the RF has approved a list of sectors in the Russian economy that were worst hit by the spread of coronavirus (hereinafter – list of sectors or affected sectors).[37] The list includes the following sectors: transportation, culture and leisure activities, sports, tourism, hospitality, catering, activities of supplementary education organisations, non-state educational institutions, conference and exhibition activities, consumer services, dental practices and retail business, media and print production.

From 15 March 2020 to 31 December 2020, the validity of licenses and permits for different kinds of economic activities was prolonged.[38] For organisations and individual entrepreneurs in the affected sectors in 2020, a moratorium on bankruptcy procedure for six months was declared.[39] Another element in support of SMEs in the affected sectors was the reduction of credit burden[40] and concessional loans[41]. For companies in the affected sectors of the economy in 2020, deferrals of taxes were provided, and hereby the respective extension periods depended on the level of revenue

37 Постановление Правительства РФ № 434 от 3 апреля 2020 г. «Об утверждении перечня отраслей российской экономики, в наибольшей степени пострадавших в условиях ухудшения ситуации в результате распространения новой коронавирусной инфекции» [Resolution of the Government of the RF No. 434 of 3 April 2020].

38 Постановление Правительства РФ № 109 от 4 февраля 2021 [Resolution of the Government of the RF No. 109 of 4 February 2021].

39 Федеральный закон № 98-ФЗ от 1 апреля 2020 г. «О внесении изменений в отдельные законодательные акты Российской Федерации по вопросам предупреждения и ликвидации чрезвычайных ситуаций» [Federal Law No. 98-FZ of 1 April 2020 “On Amendments to Certain Legislative Acts of the RF regarding the Prevention and Elimination of Emergency Situations”].

40 Постановление Правительства РФ №346 от 3 апреля 2020 г. [Resolution of the Government of the RF No. 436 of 3 April 2020].

41 Постановление Правительства РФ № 372 от 31 марта 2020 г. [Resolution of the Government of the RF No. 372 of 31 March 2020]; Постановление Правительства РФ № 378 от 31 марта 2020 г. [Resolution of the Government of the RF No. 372 of 31 March 2020].

declines.[42] From 1 April to 1 July 2020, affected SMEs from the list of sectors were exempted from rent payments on state property, and from 1 July to 1 October a deferral of rent payments was granted.[43]

The amount of tax already paid on professional income for the year 2019 was refunded to taxpayers.[44] However, in 2019 the privileged tax regime "tax on professional income" had been introduced only experimentally in some regions (Moscow and Kaluga regions, as well as in the Republic of Tatarstan).[45] For this reason, only few freelancers benefitted from this measure. Notwithstanding, since 2019 up to now, all payers of the tax on professional income are granted deductions on this tax.

For employers and entrepreneurs mentioned in the list of sectors, the amount of pension contributions was reduced. For some months (from April until June 2020) employers – SMEs mentioned in the list of sectors – were exempted from the payment of pension contributions for their employees.[46] All SMEs, initially from 1 April 2020 until 31 December 2020 and after this time period without time limitation, are exempted from contributions on social insurance for sickness and maternity, and the rate of pension and health insurance contributions on the share of wages that is above the minimum wage was/has been reduced from 30 to 15%.

42 Tax Holidays; Постановление Правительства № 409 от 2 апреля 2020 г. [Resolution of the Government of the RF No. 409 of 2 April 2020]; Постановление Правительства РФ № 570 от 24 апреля 2020 г. [Resolution of the Government of the RF No. 570 of 24 April 2020]; Федеральный закон № 102-ФЗ от 1 апреля 2020 г. "О внесении изменений в части первую и вторую Налогового кодекса Российской Федерации и отдельные законодательные акты Российской Федерации" [Federal Law No. 102-FZ of 1 April 2020 "On Amendments to Parts One and Two of the Tax Code of the RF and Certain Legislative Acts of the RF"].

43 Deferral of Rent Payments.

44 Постановление Правительства РФ № 783 от 29 мая 2020 г. [Resolution of the Government of the RF No. 783 of 29 May 2020].

45 From 1 July 2020 this tax regime is applied in the whole territory of Russia, Федеральный закон №422-ФЗ от 27 ноября 2018 г. «О проведении эксперимента по установлению специального налогового режима "Налог на профессиональный доход» [Federal Law No. 422-FZ of 27 November 2018 "On the Experimental Introduction of the Special Tax Regime 'Tax on Professional Income'"].

46 Федеральный закон № 172-ФЗ от 8 июня 2020 г. «О внесении изменений в часть вторую Налогового кодекса Российской Федерации» [Federal Law No. 172-FZ of 8 June 2020 "On the Amendments to Part Two of the Tax Code of the RF"].

Furthermore, at the beginning of the pandemic, a deferral of insurance contribution payments for six months was allowed for.[47]

It is estimated that the total cost of the 2020 fiscal package amounted to about 3.5% of GDP, while in 2021, the anti-crisis fiscal package is expected to be only at around 1.5% of GDP.[48] However, researchers stress that despite the impressive amount of funds allocated for measures to mitigate the economic impact, these measures did not compensate for a significant part of the losses of businesses and in many cases were insufficient for the survival of businesses.[49] Companies in affected sectors that have shut down their operations still bear rental costs and have to pay tax and insurance payments, which have been deferred but not abolished.[50] In the first half of 2021, 724,000 legal entities and individual entrepreneurs left the market, which is the highest number since 2013. The expiration of the state support measures has been identified as one of the important reasons for this development.[51]

4. *Social Protection*

In general, it can be said that neither fundamental changes in social legislation were made nor new forms of social security were introduced in response to the pandemic. However, the duration of payment of some social benefits was extended, some new cash lump sum benefits were introduced, the application procedures for benefits were simplified and the level of several social benefits has been increased. The cost of social spending is estimated at 0.3 % of GDP over two years.[52] In the case of some benefits (e.g. the minimum level of unemployment benefits and of sickness benefits) the increase was temporary, while for some other benefits (monthly childcare benefits up to the age of 18 months; the maximum level of unemployment benefit) it was permanent. For example, the minimum level of sickness

47 Федеральный закон № 102-ФЗ от 1 апреля 2020 г. «О внесении изменений в часть вторую Налогового кодекса Российской Федерации» [Federal Law No. 102-FZ of 1 April 2020 “On Amendments to Parts One and Two of the Tax Code of the RF and Certain Legislative Acts of the RF”].

48 International Monetary Fund. Policy Responses to COVID-19. Russia.

49 Lyutov/Davletgildeev (supra fn. 12), p. 3.

50 Lyutov/Davletgildeev, (supra fn. 12), p. 2.

51 Vinogradova, Безвременно закрыто: за полгода в РФ ликвидировано 725 тыс. компаний [Closed Down Prematurely: 725,000 companies liquidated in Russia in Six Months], Известия, 16 July 2021.

52 Supra fn. 48.

benefit increased temporarily (from April to 31 December 2020) so that it would not be less than one minimum wage per month.[53] This regulation helped increase the level of social protection during the pandemic since in some regions the factual wage level is below the minimum wage (e.g. in the Kurgan Region 12.4% of the population receive a wage below the minimum wage level)[54]. In general, the size of sickness benefits depends on the length of the insurance period and lies between 60% and 100% of the average wage of an employee. The abovementioned monthly childcare benefit up to the age of 18 months has been increased more than twofold since 1 June 2021: non-insured persons (e.g. unemployed persons, students) receive a benefit in the minimum amount of 6,752 roubles (75 EUR) per child (previously 1,500 roubles (17 EUR) for the first child and 3,000 roubles (35 EUR) for the second child and each additional child). Insured persons are now entitled to 40% of the average salary but not more than 13,504 roubles (149 EUR) (previously 6,000 roubles/71 EUR).[55]

a) *Extension and Increase of Unemployment Benefits*

An unemployment insurance system existed in Russia only from 1991 to 2001. Since then, unemployment benefits have been paid from the state budget as a form of state support. In Russia, foreign citizens can be registered as unemployed persons with a goal of finding a suitable job, but they are not entitled to unemployment benefits. In the context of the pandemic, representatives of civil society sent a proposal to the Government

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53 Федеральный закон № 104-ФЗ от 1 апреля 2020 г. [Federal Law No. 104-FZ of 1 April 2020], Art. 1 Point 1.

54 Зарплатное неравенство: сколько и где официально зарабатывают россияне [Salary Inequality: How Much and Where Russians Officially Earn], RBC, 20 July 2019.

55 Федеральный закон № 81-ФЗ от 19 мая 1995 г. с изм. внесенными Федеральным законом № 166 от 8 июня 2020 г. «О внесении изменений в отдельные законодательные акты РФ в целях принятия неотложных мер, направленных на обеспечение устойчивого развития экономики и предотвращение последствий распространения новой коронавирусной инфекции» [Federal Law No. 81-FZ of 19 May 1995 "On State Benefits for Citizens with Children" with Amendments Introduced by Federal Law No. 166 of 8 June 2020 "On the Introduction of Amendments to Certain Legislative Acts of the RF with a View to Adopting Urgent Measures Intended to Ensure Sustainable Development of the Economy and Prevent the Consequences of Spreading a New Coronavirus Infection"].

of the RF to extend this entitlement to foreign citizens but to date, this proposal has not been supported.[56]

As a reaction to the coronavirus crisis, unemployment benefits were extended and increased. The minimum unemployment benefit amount of 1,500 roubles (17 EUR) was raised to 4,500 roubles (53 EUR) for the period from March to August 2020.[57] The maximum amount was significantly raised from 8,000 (93 EUR) to 12,130 roubles (141 EUR, corresponding to the amount of the minimum wage at that time[58]). For the period from April to June 2020, for the first time, the unemployment benefit was supplemented by a lumpsum benefit for children up to the age of 18 years amounting to 3,000 roubles (35 EUR) per child.[59] For unemployed persons who lost their entitlement to unemployment benefits as of 1 March 2020, benefits were extended for three additional months.

From April 2020 until 31 December 2021, citizens could register remotely as unemployed and apply for unemployment benefit using the platform "Work in Russia"[60]. Previously, an application to the public employment office could only be made personally at the place of registration.[61] Because of the increased level of unemployment benefits and the simplification of the registration procedure, the number of registered unemployed persons increased rapidly in spring 2020.[62]

The abovementioned increases in unemployment benefits in 2020 were of a temporary nature. In 2021, the level of unemployment benefits decreased significantly. The minimum amount of unemployment benefit has dropped back to 1,500 roubles (the minimum amount before the pandemic). The maximum amount of 12,130 roubles introduced in 2020 is now

56 Lyutov/Davletgildeev, (supra fn. 12).

57 Постановление Правительства РФ № 346 от 27 марта 2020 г. «О размерах минимальной и максимальной величин пособия по безработице на 2020 год» [Resolution of the Government of the RF No. 346 of 27 March 2020 "On the Minimum and Maximum Amounts of Unemployment Benefits for 2020"].

58 It was the first time the maximum amount of the unemployment benefit reached the level of the minimum wage.

59 Постановление Правительства № 844 от 10 июня 2020 г. [Resolution of the Government of the RF No. 844 of 10 June 2020].

60 Portal of Public Services of the RF. Obtaining the Unemployment Benefit.

61 Kopytok/Kuzmina, Безработица времен COVID-19: что могут рассказать административные данные? [Unemployment during COVID-19: What can the Official Data Tell us?].

62 Zubarevich/Safronov, Regions of Russia in the Acute Phase of the COVID Crisis: Differences from Previous Economic Crises of the 2000s, Regional Research of Russia, 4/2020, Vol. 10, p. 451.

paid only in the first three months of unemployment, after which the maximum amount drops to 5,000 roubles (58 EUR) for the fourth, fifth and sixth month of unemployment. In 2020, 45% of the unemployed (including those formerly employed in the shadow economy, graduates, long-time unemployed persons, "new" self-employed persons, etc.) received the unemployment benefit in the minimum amount.[63]

In short, the unemployment benefit offers no protection against poverty. Already in 2013 and in 2017, the European Committee of Social Rights expressed the opinion that the minimum level of the unemployment benefit was manifestly inadequate and largely below the minimum subsistence level (in 2021: 11,653 roubles/139 EUR); in 2017, the Committee maintained its finding of non-conformity of the Russian regulation on this point with the principles of Art. 12 of the European Social Charter.[64] It seems that the situation has not significantly improved. Many decisions made by the Constitutional Court of the RF are based on the broad scope of the discretion of the legislator in the field of unemployment, including the determination of benefit levels.[65]

b) *Protection against Unemployment of Self-Employed Persons*

In general, individual entrepreneurs can claim unemployment benefits only on the minimum level. In 2020, for a short period of time (three months and latest until 1 October), the amount of the unemployment benefit for entrepreneurs who stopped their activity after 1 March 2020 was increased to the maximum level.

For self-employed persons who do not have entrepreneur status, e.g. for "freelancers" (*самозанятый*) – payers of the tax on professional income (*налог на профессиональный доход*)[66] – the size of the unemployment benefit was not increased at all; they are entitled to unemployment bene-

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63 Sychenko (supra fn. 16); Meeting concerning the Situation on the Labour Market, 27 March 2020.

64 Chesalina, The Legal Framework of Unemployment Benefits in Russia, Davulis (ed.) Labour Law Reforms in Eastern and Western Europe, 2017, p. 483; Conclusions 2013 - Russian Federation - Article 12 – Right to Social Security; Conclusions 2017 - Russian Federation - Article 12 – Right to Social Security.

65 Определение Конституционного Суда РФ №550-О-О от 12 апреля 2011 г. [Decision of the Constitutional Court of the RF No. 550-O-O of 12 April 2011].

66 Chesalina, Social and Labour Rights of "New" Self-Employed Persons (and in Particular Self-Employed Platform Workers) in Russia, Russian Law Journal, 2/2020, p.71 et seq.

fits in the minimum amount under the condition that they have stopped their activity. Many of the "freelancers" who were active in the platform economy (especially drivers on demand) had to stop their activity at the beginning of the coronavirus pandemic. However, many of them did not deregister themselves as payers of tax on professional income because they were not aware that this was a condition for the entitlement to the unemployment benefit. Now, the public employment offices are filing many claims for repayment of unemployment benefit.[67]

c) *Family Benefits*

Numerous one-time and monthly benefits from the state budget were introduced on a temporary basis (for several months) for families – citizens of the RF, and for children – citizens of the RF. Such benefits are not dependent on income and are not taken into account when receiving social assistance: one-time payment for children aged 3 to 16 years in the amount of 10,000 roubles (119 EUR) from 1 June 2020[68]; one-time payment for children up to the age of 8 in the amount of 5,000 roubles (59 EUR) from 1 June 2020[69] and from 17 December 2020[70]; monthly payments for children under 3 years of age for the months of April to June 2020 in the amount of 5,000 roubles[71]; one-time payment for children from 6 to 18 years in the amount of 10,000 roubles from 1 July 2021.[72]

On the one side, state budget-financed cash benefits for families with children fit into a current system of family benefits which consists of some social insurance benefits (the maternity benefit and the monthly childcare benefit until the child reaches the age of 18 months) and different family benefits from the state budget. For this reason, new family cash benefits do not change the nature of the system of family benefits. On the other side,

67 Sukhovskaya, Самозанятый получал пособие по безработице? Придется вернуть назад [Did the Self-Employed Receive Unemployment Benefits? It has to be Paid Back], Главная книга [Principal Book], 22/2020, СПС «Консультант Плюс» [Legal Database "Consultant Plus"].

68 Указ Президента РФ № 249 от 7 апреля 2020 г. [Executive Order of the President of the Russian Federation of 07 April 2020 No. 249].

69 Указ Президента РФ № 797 от 17 декабря 2020 г. [Executive Order of the President of the Russian Federation of 17 December 2020 N 797].

70 Ibid.

71 Supra fn. 68.

72 Указ Президента РФ №396 от 2 июля 2021 г. [Executive Order of the President of the RF No. 396 of 2 July 2021].

the new benefits are provided only for citizens of the RF, while recipients of other, already existing insurance family benefits (related to salaried employment) can be foreign citizens or stateless persons permanently or temporarily residing in the RF.

First evaluations indicate that despite the fact that the group "families with children" were prioritised over other recipients of social benefits, the support measures helped to compensate only a part of the lost income: for families with children under 7 years: 43%; for families with children over 7 years: 24%. Support measures[73] have not made families with children better off than those without children, as the income gap in families with children was already significantly higher (than in families without children) before the pandemic. The poverty rate for families with children increased from 21-26% to 31-35%.[74] On average, the poverty rate rose during the pandemic among the whole population from 12.5% to 20%, and among families with children from 21-26% to 31-35%.[75] The new family cash benefits (irrespective of whether they are means-tested or not) rather fulfil the function of protecting against poverty and show resemblance to social assistance.

d) Social Assistance

During the pandemic no reforms of the general social assistance system occurred (e.g. abolishing of means-testing or simplification of existing rules). However, different new means-tested benefits for several groups of citizens of the RF, including for families, were introduced. From 1 July 2021 on, a monthly benefit amounting to half the subsistence minimum level (as of 2021, the subsistence minimum level per capita is 11,653 roubles/approx. 140 EUR) is provided to women registered at the hospital in the early stages of pregnancy if the family income per capita is below the subsistence minimum level. Furthermore, means-tested benefits were introduced in the amount of half the subsistence minimum level for single mothers/

73 It means all family benefits, including means-tested benefits.
74 Институт социальной политики НИУ ВШЭ. Поддержка семей с детьми в условиях пандемии COVID-19 [Institute of Social Policy of the Higher School of Economics. Support of Families with Children under the COVID-19 Pandemic. Discussion Paper #4, p. 6 et seq.
75 Ibid.

fathers in need with children aged 8 to 17 years.[76] From 1 January 2020 on, additional monthly benefits were introduced to families whose per capita family income does not exceed the subsistence minimum level in the respective subject of the RF, in the form of payments for each child from 3 to 7 years in the amount of 50% of the subsistence minimum level. Since 1 January 2021, the conditions for this benefit (the eligibility rules) were tightened: Apart from a per capita income below the minimum subsistence level since 1 January 2021, it is required that assets and savings do not exceed a certain size. The amount of the benefit varies from 50 to 100% of the subsistence minimum level.

e) *Protection of Vulnerable Persons*

At the beginning of the first wave of the pandemic, the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing recommended employers to transfer to remote work persons with chronic diseases, reduced immunity and pregnant women.[77] From 6 April 2020 until 1 May 2021, all insured persons older than 65 years were ordered to self-isolate, with the exception of those who worked remotely or were on paid leave.[78] These persons were allowed to leave their dwelling only for an important reason, e.g. to buy food or to take a walk. The isolation and exclusion of pensioners from public life has been criticised by some researchers.[79] As compensation for their lost wage, a sickness benefit for this period was paid from the Social Security Fund. The regime of self-isolation is to be distinguished from the regime of quarantine for persons who were

76 Постановление Правительства РФ № 1037 от 28 июня 2021 г. [Resolution of the Government of the RF No. 1037 of 28 June 2021].

77 Письмо Федеральной службы по надзору в сфере защиты прав потребителей и благополучия человека № 02/6338-2020-15 от 7 апреля 2020 г. «О рекомендациях по профилактике коронавирусной инфекции (COVID-19) среди работников» [Letter No. 02/6338-2020-15 of 7 April 2020 from the Federal Service for the Supervision of Consumer Rights Protection and Human Welfare on Recommendations for the Prevention of Coronavirus Infection].

78 Постановление Правительства РФ № 402 от 1 апреля 2020 г. [Resolution of the Government of the RF No. 402 of 1 April 2020].

79 Egorova/Duflo/Shpakovsky, Современные проблемы правового регулирования смягчения угроз для населения и бизнеса последствий пандемии коронавируса COVID-19 [Current Problems of Legal Regulation Admitted to Mitigate Threats to Population and Business from the Coronavirus COVID-19 Pandemic], Юрист [Lawyer], 11/2020.

in contact with persons infected with coronavirus. Persons in quarantine were also entitled to sickness benefit in accordance with Art. 7 of Federal Law No. 255-FZ[80] (introduced long before the pandemic). In the case of a breach of the regime of self-isolation, the sickness benefit had to be paid back to the Social Security Fund; also the administrative liability was provided for such violations[81]. The employer was obliged to ensure that employees complied with the self-isolation regime[82]. For these persons, the possibility to use social cards for concessionary and free travel on public transport was suspended in order to ensure the effective enforcement of the provision. A one-off targeted social assistance payment was provided for compliance with the self-isolation regime for persons older than 65 years in Moscow in the amount of 4,000 roubles (48 EUR)[83]. As of 1 May 2021, employers were recommended to transfer primarily employees of 65 years of age or older to remote work instead of implementing a regime of self-isolation.[84] However, the Russian labour legislation, according to which in 2020 the reform of remote work was carried out[85], does not contain the special obligation of the employer to allow for remote work only for older workers or for other categories of employees. In Russia, there are many working pensioners since generally the pension is not sufficient to make ends meet. During the pandemic, the number of working pensioners increased from 7.3 million in 2019[86] to 8.9 million in April 2021[87].

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80 Федеральный закон № 255 от 29 декабря 2006 г. «Об обязательном социальном страховании на случай временной нетрудоспособности и в связи с материнством» Federal Law No. 255 of 29 December 2006 "On Compulsory Social Insurance Against Temporary Incapacity for Work and in Connection with Maternity"].
81 See Art. 20.6.1 of the Code of Administrative Offences.
82 Оплата труда в период самоизоляции [Remuneration during the Period of Self-Isolation].
83 Выплаты по самоизоляции приходят пенсионерам автоматически [Self-Isolation Payments Automatically Come to Pensioners], Moscow24, 27 March 2020.
84 Постановление Правительства РФ № 300 от 2 марта 2021 г. [Resolution of the Government of the RF No. 300 of 2 March 2021].
85 Chesalina, The Reform of Remote Work in Russia, Dispatch No. 33 – Russia, 2021.
86 В Минтруде назвали число работающих пенсионеров в России [The Ministry of Labour has Named the Number of Working Pensioners in Russia], Российская газета [Rossiyskaya Gazeta], 1 September 2019.
87 В России подсчитали количество работающих пенсионеров [The Number of Working Pensioners in Russia has been Calculated], 25 August 2021.

Russia has a large informal sector, estimated at 20.7% in 2020[88] with a significant share of self-employed persons. Informally employed persons are lacking labour law protection and protection in case of sickness, but they are still eligible for social benefits not connected to the employment status (family benefits, social assistance). Furthermore, persons working in the informal sector are (or can be) insured in the compulsory medical[89] insurance system in accordance with the rules for the non-working population.

Migrants (especially those who work/live in Russia temporarily) have been one of the most vulnerable groups[90] during the pandemic.[91] There are different estimations as to how many migrants were in Russia before the pandemic and how many of them had to leave Russia during the pandemic. According to one estimation, there were 3.5 million official migrants and additionally between 3 and 5 million undocumented migrants.[92] According to another estimation, there were between 9 to 12 million migrants (official as well as undocumented) until April 2020, and after the beginning of the pandemic there were between 7 and 8 million migrants remaining in Russia.[93] Many of the migrants had lost their jobs and their accommodation and were at an elevated risk of exposure to coronavirus. Foreign citizens, including migrants, have no access to social assistance. Migrants temporarily residing in Russia are eligible to sickness payment only if their employer or their employers (if they changed jobs) has/have paid insurance contributions for them not less than six months

88 Cit. of Karpushkina/Danilova/Voronina/Savelieva, Assessing the Impact of Employment in the Informal Sector of the Economy on Labor Market Development, Sustainability 2021, 13, 8435.

89 Федеральный закон № 326-ФЗ от 29 ноября 2010 г. «Об обязательном медицинском страховании в Российской Федерации» [Federal Law No. 326-FZ of 29 November 2010 "On Compulsory Medical Insurance"], Art. 23, 24.

90 The other group is that of homeless persons.

91 Cook/Twigg, Can Russia's Health and Welfare Systems Handle the Pandemic?, Current History, 119/819, 2020, p. 255.

92 Sychenko, Введение [Introduction], Правовое регулирование социально-трудовых отношений отношений с иностранными гражданами: междисциплинарный подход: монография. Под общ. ред. Хохлова/Сыченко [Khokhlov/Sychenko (eds.), Legal Regulation of Social and Labour Relations with Foreign Citizens: An Interdisciplinary Approach: A Monograph], 2019, p. 14.

93 Sedlov/Kubishin/Soboleva (supra fn. 21), p. 64.

(in total) before the illness[94]; they are not eligible to maternity or family benefits (ordinary and extraordinary) and pensions.[95] In fact, before starting to work, foreign citizens temporarily residing in Russia have to submit to the employer a voluntary health insurance contract (policy) valid in Russia. In the context of the pandemic, from 15 March 2020 until 15 June 2021[96] the following regulations were suspended/prolonged: the periods of the temporary stay, the temporary or permanent residence of foreign citizens and stateless persons in Russia, and of the validity of documents (visa, residence permit and so on). For this period, migrants were exempted from monthly payments (charges) for work permits ("patents"). Despite the fact that the permit costs devour a significant part of their income, these measures were/are not sufficient to prevent in-work poverty and to support unemployed people who were left without a livelihood.[97]

5. Conclusion

The coronavirus pandemic has put the economy, the labour market and the social security system in Russia through a severe stress test. Since the beginning of the pandemic, the authorities have introduced a wide range of support measures to help businesses mitigate the impacts of the pandemic. Russian legislation does not provide for an unemployment insurance and an instrument like "short-time work". However, wage subsidies and wage loans introduced since 2020 fulfil the same function as short-time work in Germany or new job retention schemes in Denmark or the UK: to support the viability of businesses and maintain employment.[98] However, the level of such support (in the amount of a minimum wage per employee) was/is not sufficient and adequate to fulfil its functions. In general, the measures to support the economy are still not sufficient to keep businesses afloat and to maintain workplaces. Almost all measures

94 Filippova, Обязательное социальное страхование иностранных граждан в РФ [Mandatory Social Insurance for Foreign Nationals in the Russian Federation], in: supra fn. 87, p. 266 et seq.
95 Other treatment for the purposes of social insurance can be provided for by way of international agreement (e.g. between GUS or EAEU member states).
96 Указ Президента РФ № 274 от 18 апреля 2020 г. [Executive Order of the President of the RF No. 274 of 18 April 2020].
97 Lyutov/Davletgildeev, (supra fn. 12).
98 Seemann/ Becker/ He/ Hohnerlein/ Wilman, Protecting Livelihoods in the COVID-19 Crisis: A Comparative Analysis of European Labour Market and Social Policies, Global Social Policy, 2021, p. 14.

intended to protect businesses have a temporary character; only the reduction of social contributions for SMEs has the potential to be of permanent character.

Until now, at least two stages in adapting different (economic, social and labour market) measures can be distinguished. At the first stage, during the first wave of the pandemic, temporary measures were relatively generous. Since 2021, the level of many ad hoc and of some permanent benefits[99] was reduced; the conditions for entitlements (to social benefits like unemployment benefit and means-tested family benefits as well as for temporary economic instruments like loans) were tightened.

Plenty of new ad hoc cash social benefits and temporary increases of the level of existing benefits were implemented to compensate lost income, i.e. as temporary measures of crisis compensation. Hereby, the level of some important social benefits (the maximum level of unemployment benefit; monthly childcare benefit for children up to 18 months) was increased permanently. The need to increase their level was discussed even long before the pandemic, but only the coronavirus crisis trigged their increase. The level of sickness benefits was increased temporarily but the sickness benefits were/are used in a more universal way and are dedicated to compensating lost income for persons who were ordered the regime of self-isolation or quarantine. The state has resorted to the targeted social support for families through ad hoc measures (lump sum benefits) and has not created or expanded universal social support mechanisms (social assistance). Unlike many European countries, in Russia the self-employed are covered by the unemployment benefits scheme. However, the level of unemployment benefits for the self-employed is insufficient even to protect against poverty.

The implemented support measures have not changed the architecture of the social security system in Russia but rather entrenched/underlined some of its existing features:

- fragmentation of the social insurance system and the social security system (*система социального обеспечения*) and resorting to cash lump sum benefits from the state (or regional) budget during the crisis situation;
- the social security system is still tailored to salaried employment;
- in Russian social security law, the majority of scholars (and also practitioners) include into the systems of family benefits insurance bene-

99 E.g. unemployment benefits.

fits as well as benefits from the state budget, including means-tested benefits. For this reason, in the literature, the introduction of new means-tested family benefits is considered as the expansion of support measures for families with children and not as an expansion of social assistance;
- the unemployment benefit is granted to many categories of unemployed persons, including the self-employed, but does not fulfil the function of income replacement nor of protection against poverty;
- other social benefits (in particular, many kinds of non-means-tested family benefits) can in the best case protect against poverty, but also not replace lost income;
- foreign citizens are excluded from social protection benefits (apart from coverage in some social insurance schemes);
- self-employed persons, migrants and homeless people belong to the most vulnerable groups.

Until now, the transformation from the Soviet system of social protection to a comprehensive social insurance system has not yet been completed in Russia. If the coronavirus pandemic takes longer, it may lead to further developments toward more social protection through budget-financed social payments to certain groups rather than to the extension of the social insurance system.

During the pandemic, the state resorted to different internalising measures, in particular, for job retention and also to ensure the sanitary and epidemiological well-being of the population (in particular "non-working paid days" were introduced). The imposition of additional duties and financial obligations on employers during the pandemic was highly debated/criticised in Russia.[100] However, there is a lack of legal discussion or claims, from the point of view that this instrument may interfere with the fundamental rights of employers and concerning the legal justification for the financial and factual responsibility of the employer for the fulfilment of a task in the public interest (beyond the duties arising from the employment relationship). As is already known from the past[101], employers try to keep their labour costs as low as possible and try to shift them to employees by violating the labour and social legislation. As past experience has shown, sooner or later, as a reaction to such practice, the state, apart

100 Lyutov/Davletgildeev, (supra fn. 12); Golovina (supra fn. 15); Sychenko (supra fn. 16).

101 See Chesalina/Becker, Die Verantwortung des Arbeitgebers für den sozialen Schutz in Russland, 2018.

from monitoring the enforcement of regulations, has to intervene and take back its part of the responsibility[102] and/or provide state guarantees[103] and/or modify/ease the respective burdens on employers. Such an easing of burdens has already occurred concerning the regulation of non-working days by permitting the employers to determine themselves the number of employees who may work despite of "non-working paid days".

102 From 2006 to 2021, the employer had to pay sickness and maternity benefits to employees. Since many cases of non-payment of benefits were reported, the state had to intervene. Starting from 2012 in the framework of pilot projects, finally since 1 January in 2021 in the whole country, this duty was shifted back to the Social Insurance Fund, cf. Federal Law No. 243 of 3 July 2016.

103 In 2007, the Constitutional Court of the RF derived from the constitutional right to social security and the equality principle a state obligation to pay unpaid pension contributions on behalf of the employer if enforcement of the contributory debt from the employer was not possible.

XIX. Social Protection and the Pandemic in Slovenia: Between Income Protection, Social Policy and Politics

Grega Strban and Luka Mišič

1. Introduction: From "Slovenian Constitutional Hardball" to Record-High Numbers of COVID-19 Cases and Deaths

The COVID-19 epidemic was first declared in Slovenia in March 2020.[1] Ever since, anti-corona measures that were adopted by the Slovenian government and parliament have been put under great scrutiny both by the professional public as well as non-governmental organisations, unions, and the civil society at large. Several acts were successfully challenged in front of the Slovenian Constitutional Court, whilst the Human Rights Ombudsman dealt with 324 COVID-19 related cases by April 2020 alone. These cases concerned, among others, measures in the field of social security and healthcare,[2] in which patients were faced with an almost general ban on the provision of COVID-19-unrelated medical services during the first wave of the epidemic. By October 2020, the number of cases dealt with reached 1,038, with most of them concerning social security rights, such as the right to healthcare and institutional care, equality and protection against discrimination, the protection of dignity, personal rights, safety and privacy, and restrictions of personal liberties.[3] Public disclosures also indicated that individual preliminary medical assessments of nursing home residents were made, deciding on whether it was sensible to transfer them to hospitals and offer them intensive care treatment should they become diagnosed with COVID-19 or whether they should remain and be treated in designated areas of the nursing homes. Such assessments were

1 Order on the declaration of the state of epidemic of COVID-19 in the territory of the Republic of Slovenia (Odredba o razglasitvi epidemije nalezljive bolezni SARS-CoV-2 (COVID-19) na območju Republike Slovenije), Official Gazette RS, No. 19/20 to 68/20. The order was passed on 12 March 2020 and entered into force the same day at 6 p.m.

2 See Varuh človekovih pravic in obravnava s covid-19 povezanih zadev of May 2020.

3 See Coronavirus Pandemic in the EU – Fundamental Rights Implication (Slovenia) of 3 November 2020, p. 2.

supposedly made without the knowledge or consent of both residents and their family members.[4]

After the first period of the epidemic, with its revocation in May 2020,[5] marked by a triumphant air parade dedicated to healthcare professionals, who were able to witness an unexpected yet mesmerising juxtaposition of Slovenian PC-19 propeller planes and American F-16 fighting jets, the number of COVID-19 cases rapidly increased in autumn 2020. After the second declaration of the epidemic in October 2020,[6] Slovenia began to experience some of the highest reported numbers of cases per number of inhabitants on a global scale. According to Johns Hopkins, Slovenia, a country of approximately two million inhabitants, has experienced 449,149 COVID-19 cases altogether, with 5,506 of them resulting in death. So far, 2,805,830 vaccine doses have been administered, whilst only 1,179,177 or 56.48% of the population are fully (two times) vaccinated.[7] According to the Covid Observer, Slovenia almost made it to the global podium concerning the number of COVID-19 cases per number of inhabitants, whilst coming in thirteenth in the world concerning non-recovered cases per number of inhabitants.[8]

Soon after the epidemic was first declared in March 2020, the government began to rule by governmental decrees, allowing for swift and unchallenged promulgation of much-needed rules aimed at preventing and eliminating the negative effects of the epidemic, however commonly failed to satisfy crucial constitutional standards such as the principle of legality, legal clarity, certainty, predictability and, last but not least, the democratic state principle. On several occasions, the decrees were misinterpreted prior to their passing by government representatives, including ministers, in their prime time media appearances. According to Bardutzky and oth-

4 See Republika Slovenija, Zagovornik načela enakosti: Razmere v domovih za starejše v prvem valu epidemije Covida-19, Poročilo o raziskavi Zagovornika načela enakosti of May 2021, pp. 17, 70.

5 Ordinance on the revocation of the COVID-19 epidemic state (Odlok o preklicu epidemije nalezljive bolezni SARS-CoV-2 (COVID-19)), Official Gazette RS, No. 68/2020.

6 Ordinance on the declaration of the COVID-19 epidemic state in the territory of the Republic of Slovenia (Odlok o razglasitvi epidemije nalezljive bolezni COVID-19 na območju Republike Slovenije), Official Gazette RS, No. 146/2020. The Ordinance's temporal scope of application was limited to 30 days. Nevertheless, it was prolonged several times and the epidemic officially lasted until 16 June 2021 (last prolongation passed in Official Gazette RS, No. 73/2021).

7 See Johns Hopkins of 21 December 2021.

8 See Covid Observer of 21 December 2021.

ers, the government also made repeated attempts of sneaking individual problematic solutions into different anti-corona pieces of legislation.[9] Not declaring a state of emergency (Article 92 of the Constitution[10]) and a temporary suspension of the human rights and fundamental freedoms during such state (Article 16 of the Constitution), it enacted all restrictive measures aimed at preventing the spread of the virus, such as travel restrictions between municipalities, curfews, etc., on grounds of the Communicable Diseases Act.[11] Described by Bardutzky and Zagorc as a pre-epidemic piece of legislation, even minor changes of the Act in 2020 did not expand the legal basis for the enactment of restricting measures.[12] According to the authors, its existing provisions were stretched to what they described as the very extremes and even beyond an acceptable legal interpretation to cover for some of the government's anti-corona ordinances. Among the most striking examples of such interpretations is the interpretation of Article 39(1)(2), allowing for the banning or limitation of movement in *infected* or *directly endangered areas*, so as to ban free movement and assembly in all public places and surfaces as well as access to public places and surfaces in the territory of Slovenia.[13] As recorded by Zagorc and Bardutzky, the decree contained an exhaustive list of 21 exceptions (work-related travel, supermarket access, use of public parks, etc.). Concerned about persons visiting parks, beaches and other open areas, especially in popular tourist destinations in the mountains and at the seaside, the government, which at that time had already been scorned by accusations of severe procurement irregularities concerning medical equipment, soon decided to impose a general ban on travel across municipalities, even if all statistical areas were commonly facing similar numbers of reported cases with the same rules of preventive conduct in place in the whole territory of Slovenia.

In the field of social protection, parliament enacted several measures of a mixed nature, falling somewhere in-between social security, social assistance and universal social protection measures, and social compensations. Those measures, also measures concerning the provision of sickness benefits in cash or in kind, are analysed in the following paragraphs alongside job retention measures and different kinds of subsidies aimed at supporting the economy. Most of them form part of so-called anti-corona

9 See Verfassungsblog of 1 April 2021.
10 Official Gazette of the RS, No. 33/91-I to 92/21.
11 Zakon o nalezljivih boleznih (ZNB), Official Gazette of the RS, No. 33/06 to 178/21.
12 See Verfassungsblog of 19 March 2021.
13 See Verfassungsblog of 26 April 2020.

legislative packages (hereinafter: ACLP) or consecutive pieces of umbrella legislation, aimed at preventing and eliminating the negative effects of the epidemic in different areas of public and private life. So far, ten such umbrella laws, amending numerous other acts with a single legislative act, were passed. However, the authors as a rule refer only to the initial piece of legislation that enacted a particular measure, commonly indicating the period in which the measure was in force, since consecutive pieces of amended or new legislation, forming a labyrinth of legal sources, in most cases prolonged and/or introduced minor changes concerning particular measures. Such amendments are highlighted whenever important or whenever peculiar changes were introduced.

2. *Job Retention*

The Slovenian parliament enacted three central job-retention measures that were first introduced in 2020, whilst also enacting a special measure for self-employed persons financially affected by the epidemic (discussed in section 3).

Employers who were unable to guarantee work due to the epidemic could receive full or partial reimbursements of wage replacement benefits paid to employees put on hold. Similar benefits were made available to employers who introduced short-time work, paying out wages and wage-replacement benefits to their employees during the epidemic, and to those who paid out wage-replacement benefits to quarantined employees or employees taking up additional childcare duties due to the closure of schools and kindergartens. Since most reimbursements were offered to employers either due to consumers' limited market access or, in some sectors, full shutdowns, they could be on the one hand considered as social compensations. On the other hand, businesses in several sectors, especially in different production sectors, did not experience a shutdown but were rather challenged by a global lack of demand and/or distortions in their supply chains. From this perspective, reimbursements could be considered as social subsidies offered directly to businesses, whilst indirectly offering social security to waiting or only part-time active employees. Reimbursements for employees that were put on hold were granted to 29,415 employers, concerning 200,460 employees in total, with most benefits paid in the food and beverage service sector and retail sector. Reimbursements concerning employees whose working hours were reduced were paid out to 3,691 employers, concerning 17,426 employees. Benefits were granted on grounds of ever-changing ACLPs between March or June and December 2020.[14] The measures came as a consequence of Articles 137 and 138 of the Labour Relations Act.[15] According to Article 137(6), employees who cannot perform work due to force majeure are entitled to half of the payment they would have received if they worked, however no less than 70% of the minimum wage. According to Article 138, an employer who cannot guarantee work to his employees due to a valid business reason may, as a job retention measure, instruct employees to remain on hold whilst paying them 80% of their three-month average wage.

a) Short-Time Work Subsidies

Reimbursements or state subsidies concerning employees whose working hours had been reduced due to the epidemic were introduced in June 2020 with the third ACLP (ZIUOPPE).[16] The measures were initially in force between June and December 2020. However, a conclusion on a partial reimbursement of short-time work prolonged the measures until June 2021.[17] According to Article 11 ZIUOPPE and the following, employers who – as a result of the epidemic – reduced working hours of their full-time employees, were eligible to receive reimbursements of between EUR 448 and EUR 112 per employee, depending on the number of remaining working hours, amounting to between 20 and 35 hours per week. The employer, either a business or a self-employed person employing others, must have been registered before March 2020 and unable to guarantee at least 90% of working hours to at least 10% of his staff. Public sector employers and indirect beneficiaries of the state or public municipalities' budgets that received more than 50% of their funding from public budgets were excluded from the said measure. As mentioned before, subsidies were granted to 3,691 employers and concerned only 17,426 employees. From this perspective, reimbursements concerning employees who became fully

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14 See Strokovna izhodišča za leto 2021, p. 26.

15 Zakon o delovnih razmerjih (ZDR-1), Official Gazette of the RS, No. 21/13 to 119/21.

16 Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic (Zakon o interventnih ukrepih za omilitev in odpravo posledic epidemije COVID-19, ZIUOOPE), Official Gazette of the RS, No. 80/20 to 112/21.

17 Decision on the extension of the measure of partial subsidising of reduced full-time work (Sklep o podaljšanju ukrepa delnega subvencioniranja skrajšanega polnega delovnega časa), Official Gazette of the RS, No. 190/20.

economically inactive but remained in employment proved to be either more attractive or actually more relevant for affected private sector employers.

b) Employees on Hold, Force Majeure and Isolation

Already the first ACLP (ZIUZEOP)[18] of April 2020 introduced reimbursements for employers whose employees were unable to perform work either on grounds of a valid business reason on the side of the employer or due to force majeure. Entitled employers – excluded from which were public sector employers and beneficiaries of the state or public municipalities' budgets that received more than 70% of their funding from public budgets[19] – who paid wage replacement benefits to their employees on grounds of the Labour Relations Act were eligible to receive a maximum state reimbursement in the amount of an average monthly wage in Slovenia from the year 2019.

Additionally, ZIUZEOP increased the amount of wage replacement benefits on grounds of force majeure so as to meet the higher amount of wage replacement benefits paid whenever work is not performed due to a business reason on the side of the employer. Altogether different ACLPs also introduced reimbursements for wage-replacing benefits paid to quarantined employees, whilst explicitly introducing different categories of force majeure (e.g. shut-down of public transport, closure of educational or care facilities).[20] Different measures were, as a rule, in force between

18 Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (Zakon o interventnih ukrepih za zajezitev epidemije COVID-19 in omilitev njenih posledic za državljane in gospodarstvo, ZIUZEOP), Official Gazette of the RS, No. 49/20 to 15/21.

19 Under special conditions, Article 24 ZIUZEOP also excluded employers in the financial and insurance sectors.

20 In cases of issued quarantine orders, Article 20 ZIUOPDVE for example afforded higher income replacement benefits to employees as if a business reason under Article 138 and not a force majeure reason under Article 137 existed. Also see Article 25 of the Healthcare Intervention Measures Act (Zakon o nujnih ukrepih na področju *zdravstva*, ZNUPZ), Official Gazette of the RS, No. 112/21 to 189/21, included in the ninth ACPL. The Act's amendment of December 2021offered (retroactively) state subsidies in cases of quarantine orders issued to self-employed persons, undertaking partners and farmers, groups of beneficiaries who were excluded from the first ZNUPZ.

March and December 2020,[21] with some measures, for example concerning work absence of quarantined employees or employees taking up additional childcare obligations, prolonged until June 2021.[22] As aforementioned, reimbursements were obtained by more than 29,000 employers, concerning over 200,000 employees by the end of 2020 alone.

During several periods of the epidemic, the Health Insurance Institute of Slovenia (HIIS) also began to pay out sickness cash benefits on grounds of ordered isolation in large numbers for the first time in its history. According to Article 29 of the Health Care and Health Insurance Act (ZZVZZ),[23] sickness benefits in cash are provided from the first day of work absence onwards on account of the HIIS in cases of ordered isolation. Needless to say, before the COVID-19 epidemic, cases of ordered isolation were rare and commonly concerned patients who got infected with exotic diseases abroad. In 2019, only 10 isolation orders amounting to a total of EUR 4,491 of associated costs for the HIIS were issued. In 2020 however, 690,062 working days were lost due to isolations, with costs skyrocketing to EUR 56.7 million.[24] After the contagion period has expired, the insured person, if still unable to work due to sickness, is entitled to receive sickness cash benefits under the general rules since the need for isolation no longer exists.

In cases of isolation orders issued to children who, for example, became infected in schools or kindergartens, parents not subject to the same measure are entitled to childcare-related work absence with benefits provided under the general rules in line with Article 30 and 31 of ZZVZZ, not on grounds of imposed isolation, but only if isolated children also fell sick. In cases of a child's isolation or quarantine, childcare-related work absence and associated income replacement benefits are paid under labour law provisions, just like in cases of closed schools and kindergartens, with benefits reimbursed to the employer by the Employment Services of Slovenia

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21 See Strokovna izhodišča za leto 2021, p. 26.

22 Decision on the extension of some measures from the Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19 and the Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of the COVID-19 Epidemic (Sklep o podaljšanju veljavnosti določenih ukrepov iz Zakona o začasnih ukrepih za omilitev in odpravo posledic COVID-19 ter Zakona o interventnih ukrepih za omilitev posledice drugega vala epidemije COVID-19), Official Gazette of the RS, No. 195/20 to 43/21.

23 Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju, Official Gazette of the RS, No. 72/06 to 196/21.

24 Letno poročilo ZZZS 2020, p. 68.

(ESS). According to HIIS,[25] the epidemic also introduced situations where insured persons were entitled to sick leave on different grounds, e.g. both isolation and sickness. In such cases, personal physicians have to determine the predominant or initial reason for the person's absence from work and the date when that reason has seized to be applicable. Interestingly, only the eighth ACLP provided special legal grounds concerning the prolonged treatment of COVID-19 patients (in cases of *Long Covid*).

3. *Supporting the Economy*

During different periods of the epidemic, parliament introduced several measures aimed at supporting the economy, either directly or by means of enhanced individual consumption. Some of the measures were already discussed in the previous paragraphs since the costs of several social security benefits (e.g. concerning short-time work, force majeure-related work absences) were directly consumed or partially or fully reimbursed by the general state budget. The state also took on part of the costs of social security contributions and occupational (pension) insurance contributions during the first period of the epidemic (see Articles 33 and 33.a ZIUZEOP), expanding the said benefit to self-employed persons and other contributors with the second ACLP. ZIUZEOP also automatically prolonged the right to social security contribution payment obligations that are borne by the state on behalf of the beneficiaries, e.g. for self-employed persons in the field of culture. Already the first ACLP introduced deferred payment of credit obligations, exemption from certain tax obligations and state guarantees for businesses, whilst the eighth ACLP, for example, enacted a peculiar and rather partial solution in the form of a EUR 50 subsidy for any employee whose salary is below the minimum, paid to their employers from January until June 2021. The same ACLP also lowered the minimum contribution base to the amount payable in case of a minimum salary instead of 60% of the average salary as stipulated by ZPIZ-2.

Possibly the most popular state aid was enacted via ZIUOOPE, the third ACLP, which granted tourist coupons worth EUR 200 to all adults, and coupons worth EUR 50 to all underage residents of Slovenia. Direct support to businesses also came in the form of rent payment exemptions concerning state-owned real estate or real estate owned by local municipalities, included in the sixth ACLP, or the partial reimbursement of fixed costs to

25 Odsotnost od dela in COVID-19.

the most affected businesses. The provision of coupons was repeated with the ninth ACLP, mostly providing specific state aid provisions concerning tourism and the economy at large, however this time the coupons were not earmarked for tourism-related consumption only.[26]

The ninth ACLP also offered state aids concerning annual holiday pays, specific support to service providers in the sector of winter tourism and the events industry, etc. As mentioned before, the greatest support for the economy possibly resulted from the fact that the government only imposed a strict lockdown during the first period of the epidemic, with more or less unlimited consumers' access to the market after early April 2020.

Importantly, parliament also enacted specific measures concerning self-employed persons. Already ZIUZEOP, the first ACLP, introduced a monthly basic income for self-employed persons in the amount of EUR 700 net per month for every month of the epidemic. The benefit was provided in a standard amount, independent from one's previous income from self-employment, thus representing a mixed social protection benefit, possessing elements of both social security and social assistance benefits, marked by a tint of universality. At the same time, the benefit could be considered as a social compensation for the loss of income experienced by self-employed persons due to the (initial and partial) shutdown of the economy. Nevertheless, it was not a universal basic income as some have tried to argue.

The benefit was granted to self-employed persons, including farmers and religious workers, who experienced a relevant loss of revenue compared to their prior months of establishment. However, it was made conditional upon the amount of one's future revenue concerning past and future reference periods, with unclear and uncertain conditions, having a negative effect on legal and economic certainty and predictability of potential recipients. Even if experiencing a relevant loss of income during the period of the epidemic, the recipients were obliged to return the said benefit if they experienced a relevant increase in income after the epidemic, e.g. during the summer months when several sectors experience a high increase in the number of costumers or clients. From this perspective,

26 Act on the Intervention Measures to Assist the Economy and Tourism Sector (Zakon o interventnih ukrepih za pomoč gospodarstvu in turizmu pri omilitvi posledic epidemije COVID-19), Official Gazette of the RS, No. 112/21 to 187/21. The ACLP was accompanied by a special emergency act in the field of healthcare. See Healthcare Intervention Measures Act (Zakon o nujnih ukrepih na področju zdravstva, ZNUPZ), Official Gazette of the RS, No. 112/21 to 189/21.

the measure, now considered only as a state loan, did not encourage (additional) work after the shutdowns. The same applies to the initially unclear and uncertain tax treatment of the benefit and its effect on other forms of social security, especially social assistance benefits. Similar to employers (see below), self-employed persons were also exempt from social security contribution payment obligations, if they experienced a relevant loss of revenue. For those not entitled to such exemption, deferred payment was made possible.

The rules on the monthly basic income for self-employed persons were amended with the fifth ACLP[27] that increased the amount of the benefit to EUR 1,100 net with exceptions, whilst limiting the possibilities for the non-payment of social security contributions. The said measure was prolonged until June 2021 via a decision from January 2021.[28]

4. Social Protection

During different periods of the epidemic, the general legislator amended or enacted several new social security and social assistance measures, whilst also introducing measures of a mixed nature. Next to the already discussed mixed benefits in the field of unemployment, parliament for example enacted a special one-off solidarity benefit for vulnerable groups among the population, considered a *sui generis* social protection measure marked by clear political goals of the government and/or parliament. Different solidarity benefits are discussed next to numerous changes in the field of healthcare and health insurance, concerning not only the provision of cash benefits and benefits in kind but also their special ways of financing during the epidemic.

a) Solidarity Benefits, Family Benefits, and Social Assistance

Next to several job retention measures and the automatic prolongation of the provision of several social assistance or family benefits on a monthly

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27 Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19 (Zakon o začasnih ukrepih za omilitev in odpravo posledic COVID-19, ZZUOOP), Official Gazette of the RS, No. 152/20 to 167/21.

28 See footnote no. 18.

basis (monetary social assistance, childcare allowance, etc.),[29] the first ACLP (ZIUZEOP), worth EUR 3 billion, also introduced a one-off solidarity benefit for retired persons (Article 57), for other vulnerable groups of persons such as social assistance beneficiaries or students (Article 58), and for what the legislator considered additional vulnerable groups of persons, such as family assistants, veterans of war, etc. (Article 58.a).

Even if no loss of income during the epidemic was experienced, retired persons received the said benefit under ZIUZEOP in the amount of EUR 300, 230 or 130, depending on the amount of their pension benefits (the lower the pension, the higher the allowance). Retirees entitled to a pension higher than EUR 700 were exempt from the measure. With the first amendment of the act,[30] a one-off solidarity benefit was also provided to unemployed recipients of disability benefits, to recipients of disability benefits whose working hours had been reduced, and to recipients of disability benefits who were put on hold by their employers. The benefit was also provided to occupational pension recipients whose pension benefits remained below EUR 700.

From this perspective, the one-off solidarity benefit – which was, as a rule, provided automatically and not as a claimable right – could be considered a social assistance benefit, even if grounded in a greatly simplified means test. However, if considered a needs-based benefit, it should have been provided to all recipients of low pension benefits after the first period of the epidemic had expired since the only additional life costs, resulting from the state of a public health emergency, were the costs of generally affordable protective masks and disinfectants, possibly also costs concerning compromised food stocks if made by the elderly in fear of a total shutdown or panic buyouts in grocery stores. The amount of the benefit was not taxed nor was it subject to social security contribution payment obligations; however, it was excluded from the means test when claiming social assistance benefits, except for extraordinary monetary social assistance. From this perspective, it could be considered a special kind

29 ZIUOPDVE or the sixth ACLP, for example, prolonged obligation deadlines for recipients of extraordinary monetary social assistance, facilitated access to social assistance benefits (lessened conditions concerning property) and, just like the first ACLP, also prolonged the provision of several social assistance and family benefits provided on a monthly basis. Importantly, it also administratively facilitated access to social assistance benefits, e.g. in e-form with no need of possessing a certified electronic signature commonly mandatory whenever accessing e-administration portals.

30 ZIUZEOP-A, Official Gazette of the RS, 61/2020.

of social compensation for endured (everyday) troubles resulting from the initial shutdown of public life. However, the predominant aim of the benefit might have been for the government to collect additional political points at the then still possible early elections.

The same applies to the one-off solidarity benefit for students receiving EUR 150 with not even a simplified means test put in place by the legislator. Even if the provision of emergency social protection benefits cannot be subject to complex administrative proceedings due to the great need for their timely provision, it is difficult to recognize relevant time constrains concerning the provision of such benefits to students. Like economically inactive retirees, students in general did not experience a loss of income nor did they incur relevant additional life costs during the first period of the epidemic. They might even have saved on transport and housing-related costs, since lectures were predominately held online. Even so, parliament granted universal benefits to all regular students resident in Slovenia, regardless of their place of study and related subsistence costs, income and property of their economically active family members, etc. To make matters worse, no much-needed income replacement benefits were granted to numerous students performing student work on grounds of a special civil law relationship for their clients in virtually all sectors of the economy.[31] The widespread phenomena of highly flexible and precarious student work, commonly used as a cover-up for actual employment relationships, commonly represents the only or vital source of income for students who then, during the initial shutdown of public life and most parts of the service industry, lost all of their income and, whenever not able to fall back on family assistance, began to fear poverty and social exclusion. Conversely, all private sector employees (i.e. standard workers), whose last salary did not reach the amount of three minimum salaries, received additional income in the form of a special, tax-free crisis allowance in the amount of EUR 200 on grounds of Article 33 ZIUZEOP. A special crisis allowance provided on behalf of the general state budget was granted to persons employed with disability companies and employment centres as well.

31 Student work represents a special form of temporary and part-time employment in which students (both university as well as high school students) perform work through student employment agencies for their clients. Its goal is to allow students to gain additional income and work-related experiences during their active studies within a work environment that is very flexible both for them and their clients. In reality, however, students commonly carry out student work within disguised employment relationships and even under fictitious student statuses.

The abovementioned one-off solidarity benefits were also included in the seventh ACLP (ZIUPOPDVE), during the second period of the epidemic with its circle of beneficiaries spreading even further (e.g. for full-age secondary students, long-term unemployed persons who lost employment during the epidemic) with the eight ACLP of February 2021.[32] ZIUPOPDVE also introduced one-off solidarity benefits for children up to the age of 18 in the amount of EUR 50, paid either on grounds of a claim or *ex officio* for recipients of childcare allowances, whilst raising the latter to EUR 100 per child during every month of a declared epidemic. Article 96 ZIUPOPDVE also granted one-off solidarity benefits for holders of farms and farming community members older than 65 and earning less than EUR 591.20 per month who were not entitled to receive the said benefit on grounds of a retirement status. Article 96(1) ZIUPOPDVE explicitly referred to the benefit's aim of enhancing the socio-economic position of its low-income and old-age recipients, most challenged by the dangers of the epidemic. Since a rational social (law) aim of the mixed benefit is once again rather hard to find, one cannot help but think of a link between the archetypical voter of Slovenia's major political party according to age, place of residency and obtained level of education, and the most common recipient of the discussed one-off solidarity benefit.

Similarly, the seventh ACLP did not, for example, increase the one-off childbirth assistance benefit, paid in the amount of EUR 350 to all parents resident in Slovenia,[33] but rather introduced an additional solidarity benefit for new-born children in the amount of EUR 500 if the child was born between 1 January 2020 and a year after the epidemic – as if the costs of buying childcare equipment, etc., had almost tripled during the year of ongoing emergency. Similarly, the first ACLP enacted a higher large family supplement.

It seems as if the government and parliament had taken the opportunity offered by the epidemic to splash cash at the electorate body, not minding the lack of targeting nor the lack of a clear social (law) aim of a number of mixed solidarity-based benefits or their long-term fiscal implications. However, if the aim of the provided benefits was to advance individual consumption, then such benefits should have been provided to the entire pop-

32 Act on Additional Measures for the Mitigation of the Consequences of COVID-19 (Zakon o dodatnih ukrepih za omilitev posledic COVID-19, ZDUOP), Official Gazette of the RS, No. 15/21 to 112/21.

33 See Article 68 of the Parental Protection and Family Benefits Act (Zakon o starševskem varstvu in družinskih prejemkih – ZSDP-1), Official Gazette of the RS, No. 26/14 to 92/21.

ulation under state aid and not social law provisions. Even more so since additional income obtained by vulnerable groups of persons might only cover their basic needs or needs of the family, which should have been met by sufficient social security measures (e.g. pensions, unemployment benefits) or social assistance measures (e.g. monetary social assistance, state scholarships), whilst not allowing for beneficiaries' or consumers' wants, wishes or desires to be fulfilled in the market. Concerning one-off solidarity payments for children and students and the increase in particular family benefits[34] mostly seems sensible only when considering the fact that additional life costs did arise from the epidemic in the field of education with the introduction of e-learning. The large family supplement was, for instance, increased by EUR 100 for families with 3 and EUR 200 for families with 4 and more children by ZIUPOPDVE.

b) Healthcare and Health Insurance

During the first period of the epidemic, the majority of non-urgent medical services were suspended by governmental decree[35] both within the public healthcare network as well as with private providers excluded from the public network.[36] The aim of the suspension was, on the one hand, to fight a more effective battle against the disease, with additional capacities, staff, medical equipment, etc., earmarked for COVID-19 patients and, on the other hand, to prevent additional spread of the disease within the premises of healthcare providers and through potentially infected healthcare professionals. In a broader sense, any suspension or deferral of (all non-urgent) medical services could be considered a form of triage, since it determined the priority of competing patients in accessing particular medical treatment. Even more so, only potential and yet unidentified COVID-19-related patients were in a sense given general priority over actual, non-COVID-19-related patients.

The suspension of medical services (and the right to health, the right to equal access to healthcare, the right to appropriate, quality and safe

34 Different ACLPs also waived kindergarten payments.

35 Ordinance on temporary measures in healthcare to contain and control the COVID-19 epidemic (Odlok o začasnih ukrepih na področju zdravstvene dejavnosti zaradi zajezitve in obvladovanja epidemije COVID-19), Official Gazette of the RS, No. 40/20 65/20.

36 If only public medical services had been suspended, access to healthcare would have become dependent on one's socio-economic status.

medical treatment, etc.)[37] represented an obvious example of how patients' rights may face limitations on grounds of public health and public safety legislation or for the sake of protecting the rights of others. It also represented an obvious example of how constitutionally guaranteed human rights and basic freedoms may face limitations on grounds of a legitimate, valid reason, such as public health protection, if meeting other criteria of the proportionality test. At the same time, mandatorily insured persons experienced a suspension of their health benefits in kind, which should have been provided within a two-sided social insurance relationship in which social security contributions were paid. The suspension of some and the increase of other medical programmes might also lead to complex reimbursement or compensation claims between medical providers and the HIIS.[38] During the second period of the epidemic, no general suspension of medical services occurred, with more organisational autonomy posed on hospitals rather than the Ministry of Health or the government.

As a precautionary measure concerning the spread of the disease on the one hand and as a measure aimed at decreasing the workload of general practitioners on the other, the fifth ACLP (ZZUOOP), for example, enabled employees to remain absent from work on grounds of sickness without having to showcase a certificate of ill health provided by their personal physician. Article 20 ZZUOOP granted three consecutive days of sick leave under the said conditions per calendar year.[39] Unlike general sickness benefits in cash, the costs of which are borne by the employer during the first 30 days of work absence, the costs of such short-term absences were taken on by the HIIS, with the latter receiving reimbursements of those costs from the general state budget. Hence, it was a *de facto* measure to disburden employers, not employees as patients.

Additionally, parliament or government enacted several administrative simplifications concerning access to benefits. Personal physicians, for ex-

37 See Patients' Rights Act (Zakon o pacientovih pravicah, ZPacP), Official Gazette of the RS, No. 15/08 to 177/20.

38 For an in-depth discussion of the said suspension, its reference to (medical) triage and the possibility to claim benefits in kind abroad due to increased waiting periods in Slovenia see L. Mišič, G. Strban, Regulation of Triage in Times of a Pandemic: Experiences from Slovenia (and Beyond), in: MLS 14 (2021) 2, pp. 199 ff.

39 ZIUOPDVE also facilitated reporting procedures between employers and the labour inspection concerning at-home work. During the (declared) epidemic, employers commonly relied on Article 169 ZDR, which allows for a one-sided imposition of at-home work in cases of natural and other disasters or other emergency situations in which the life, health or the employer's property is endangered.

ample, received authorisation to decide on longer sick leaves, and both HIIS-appointed physicians and medical committees received authorisation to decide solely on grounds of documentation without conducting in-person verification, etc. Administrative simplifications were also put in place concerning decisions on spa treatment, sanitary transport, and the use of medical appliances,[40] whilst the expiration of deadlines for the initial claim concerning the protection of patients' rights was suspended.[41]

Another important challenge introduced by the epidemic relates to the differentiation between cases of sickness and injury as private social risks and cases of accidents at work and occupational diseases following from a COVID-19 infection. As for example highlighted by the Health and Social Carers' Union of Slovenia,[42] several employers in the field deemed any absence from work resulting from a confirmed COVID-19 infection as absence on grounds of a private contingency. Generally, numerous employers suggested that a COVID-19 infection could not have occurred at the workplace due to the imposition of strict health and safety measures concerning the said disease.[43] Following such reasoning, it could only have its source in the employees' private sphere or come as a result from employees' health and safety violations, e.g. during work breaks. Interestingly, COVID-19 is not treated as an occupational disease, since it does not develop through a longer time period but, according to the accident-at-work definition stipulated by Article 66 of the Pension and Disability Insurance Act (ZPIZ-2),[44] results from an almost instantaneous exposure to the virus. From this perspective, it resembles an instantly occurring in-

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40 See Letno poročilo ZZZS 2020, pp. 25-26.

41 See Article 96 ZIUOPDVE and Article 59 ZPacP.

42 Sindikat zdravstva in socialnega skrbstva poziva k priznavanju okužbe Covid-19 na delovnem mestu kot poškodbe pri delu.

43 Another important question concerning health and safety measures was the question whether it should be employers or employees who pay for COVID-19 tests after testing has been made compulsory within the great majority of sectors. Since no health- and safety-related costs may come at the expense of employees, it is up to the employers to finance regular work-related COVID-19 tests. See Article 14 of the Health and Safety at Work Act (Zakon o varnosti in zdravju pri delu, ZVZD-1), Official Gazette of the RS, No. 43/11. However, the Ordinance on the temporary measures for the prevention and control of the infectious disease COVID-19 (Odlok o začasnih ukrepih za preprečevanje in obvladovanje okužb z nalezljivo boleznijo COVID-19), Official Gazette of the RS, No. 174/21 to 201/21, allowed for the reimbursement of test-related costs from the general budget. The tenth ACLP afforded financial support for purchasing quick antigen tests.

44 Zakon o pokojninskem in invalidskem zavarovanju (ZPIZ-2), Official Gazette of the RS, No. 96/12 to 196/21.

jury. According to Article 31 ZZVZZ, cash benefits concerning accidents at work and occupational diseases amount to 100% of the calculation base, whilst benefits concerning sickness and injury amount to between 90% and 70% of the calculation base, depending on the type of contingency and the period of the benefit's provision. As aforementioned, the costs of the benefit are borne by the employer during the first 30 days. Article 137 ZDR also limits the employers' provision of income replacement benefits concerning sickness and injury to a maximum duration of 120 days in a calendar year. No such limitation is posed when occupational disease and accidents at work are involved, making the provision of such benefits more expensive for the provider. Additionally, even if not exercised in practice, ZZVZZ allows for the imposition of a higher contribution burden for employers showcasing above-average numbers concerning cases of occupational diseases and accidents at work. However, ZIUPOPDVE somewhat resolved the situation by introducing reimbursement benefits for employers paying out income replacement benefits on grounds of Article 31 ZZVZZ and Article 137 ZDR. According to Article 46 ZIUPOPDVE, the general state budget took up the costs resulting from the difference in the amount of cash benefits paid on grounds of sickness and on grounds of occupational disease. Whenever an employee got infected and there existed great probability that the infection had its source in the workplace, the employer paid out the income replacement benefit in the amount of 100% of the calculation base under the rules governing the provision of benefits concerning accidents at work, whilst receiving the said reimbursement from the state as if it was a case of (private) sickness. The reimbursement mechanism, administered by the HIIS and financed by the state, remained in force until 31 December 2021 and was limited to the health and social services sector and cases in which health and safety regulations were fully respected. Interestingly, during the first period of the epidemic, all income replacement benefits paid on grounds of Article 137 ZDR were covered by the HIIS from day one onwards, with the social insurance carrier receiving compensation from the general state budget for this state aid measure aimed at supporting the economy. The measure was in force only until the end of May 2020.

During the epidemic, the general state budget also began to co-finance mandatory health insurance or directly took on particular healthcare costs stemming from the epidemic, an act commonly omitted by parliament since ZZVZZ does not provide a statutory basis for the state obligation of co-financing the insurance scheme, even if such obligation can be derived directly from Article 50 of the Constitution (The Right to Social Security). According to the Constitution, the state does not only possess a constitutional obligation of organising a variety of social insurance schemes but also has to secure their proper functioning.

Next to the already discussed reimbursements concerning employers' costs emerging from COVID-19 infections as accidents at work, the general state budget covered the majority of costs of unrealised health programmes, agreed upon through the general agreement in healthcare of 2019, covered the majority of costs emerging from health programme adjustments of individual healthcare providers due to the influx of COVID-19 patients, material costs related to the prevention of the spread of the disease within healthcare providers' premises, and, for example, published a tender for additional financial resources earmarked for the reduction of COVID-19-enhanced waiting periods in the public healthcare network. Additionally, the general state budget financed COVID-19-related drugs, patient transport fees, parents' cohabitation concerning hospitalised children, telemedicine, microbiological analysis, and, least but not least, voluntary influenza and COVID-19 vaccination programmes. Most measures remained in force until 31 December 2021, with the HIIS acting as an administrative agent for state-financed measures.[45] In addition, some healthcare providers, especially hospitals, might even have benefited financially or recovered from previous financial turmoil during the COVID-19 epidemic due to the rather high prices imposed on the HIIS for the treatment of COVID-19 patients.

d) Facilitated Access to Unemployment Benefits

In the field of unemployment, the legislator eased the conditions for the receipt of unemployment benefits for persons who became unemployed during the pandemic. The Slovenian labour market namely experienced a surge in number of cases of registered unemployment in April 2020, soon after the epidemic was declared, when more than 11,000 persons became unemployed in a month's time. Soon after, the numbers steadied at around 86,000 unemployed persons, reaching the ceiling in January 2021 with 91,449 unemployed persons. After January, the numbers plummeted, with only 65,379 unemployed persons registered in November 2021.[46] The rather low level of registered unemployment (75,074 as a yearly average in

45 For a full overview of measures see Letno poročilo ZZZS 2020, pp. 23 ff. See also p. 124.
46 See Gibanje registrirane brezposelnosti med 2017 in 2021.

2021), which is currently one of the lowest in Slovenian history, can on the one hand be ascribed to the (at least short-term) successful job retention measures introduced by parliament, and, on the other hand, to the fact that Slovenian society experienced very lenient restriction measures after the first and second period of the epidemic in spring and late autumn and winter during the transition from 2020 to 2021. The full functioning of the economy, coupled with almost unlimited consumers' access to the market, however seems to have taken its toll in terms of deaths.

Due to the fear of rising unemployment, parliament enacted several measures making unemployment benefits easily available. ZIUZEOP, the first ACLP, introduced a special temporary unemployment benefit available to unemployed persons who did not meet the minimum criteria for the receipt of standard unemployment benefits. Unlike the Market Regulation Act (ZUTD),[47] which stipulates a minimum insurance period of 10 months within 24 months prior to unemployment or 6 months of insurance records for employees or self-employed persons under the age of 30, Article 61.a ZIUZEOP allowed for the receipt of the benefit on the sole condition of losing employment after 13 March 2020, either on grounds of a business reason or due to the expiration of a fixed-term employment contract.

According to ZIUZEOP, a single day of prior insurance was enough to claim temporary unemployment benefits in the amount of EUR 513.64. Due to the standardised amount of the benefit, the latter, like several other social benefits enacted on grounds of emergency legislation, is of a mixed legal nature. On the one hand, it mirrors the idea behind traditional (income replacement) unemployment benefits whilst on the other hand, even if lacking a means test, it resembles traditional social assistance benefits, financed by taxation and paid within a one-sided social relationship between the beneficiary and the state. The beneficiary was also mandatorily insured in all branches of social insurance, as if he was a recipient of the unemployment benefit on grounds of ZUTD.

The measure was also included in the seventh ACLP (ZIUPOPDVE),[48] providing temporary unemployment benefits to persons losing employment after 18 October 2020, during the second period of the epidemic. In-

47 Zakon o urejanju trga dela (ZUTD), Official Gazette of the RS, No. 80/10 to 172/21.

48 Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of the COVID-19 Epidemic (Zakon o interventnih ukrepih za pomoč pri omilitvi posledic drugega vala epidemije COVID-19), Official Gazette of the RS, No. 203/20 to 112/21.

terestingly, Article 97 ZIUPOPDVE entitled recipients to the benefit in the standardised amount of EUR 513.64 *gross*, an important characteristic obviously missed by the legislator in ZIUZEOP, whilst explicitly limiting the period of provision according to the duration of the declared epidemic. The relationship between the first and the seventh ACLP concerning entitlement to a temporary unemployment benefit clearly indicates how some nomotechnical and possibly substantive legislative errors of emergency legislation were eliminated on an ongoing basis.

Unemployment-related measures were also included in ZIUOPDVE, the sixth ACLP,[49] which for example amended the definition of *satisfactory employment* from the ZUTD and allowed for the latter to be offered to unemployed persons straight after their registration with the unemployment offices. Under the general rules, *suitable employment*, for example one that matches a person's type and level of education, has to be offered first. The measure had a clear aim of preventing a rise in unemployment. ZIUOPDVE also enacted the suspension of unemployment benefits for unemployed persons taking up fixed-term employment in order to substitute for absent employees concerning activities necessary for the containment of the epidemic.

During times of a public health emergency, we were also able to witness a peculiar amendment to the ZUTD passed with the enactment of the Act Amending the Organisation and Work of the Police Act.[50] After the amendment, unemployed persons who are members of the auxiliary police force receive unemployment benefits also during the period of police training or when they perform actual police work. Prior to the said amendment, the provision of unemployment benefits, which now enhance (short-term only) the socio-economic status of unemployed auxiliary police staff while on duty, was suspended during such periods in order for them to receive benefits only when they are actually able to seek employment.

49 Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of the COVID-19 Epidemic (Zakon o interventnih ukrepih za omilitev posledic drugega vala epidemije COVID-19, ZIUOPDVE), Official Gazette of the RS, No. 175/20 to 112/21.

50 Zakon o spremembah in dopolnitvah Zakona o organiziranosti in delu v policiji (ZODPol-G), Official Gazette of the RS, No. 172/21.

5. Conclusion: From Epidemic to Pandemic

By now, parliament has already passed the tenth ACLP,[51] this time worth around EUR 250 million. ZDUPŠOP reintroduced several one-off solidarity benefits and prolonged the provision of financially enhanced benefits in different fields of social security. Importantly, the act also introduced compensations for COVID-19 vaccine-related health impairments, even if COVID-19 vaccination is not mandatory, as well as health impairments stemming from the use of COVID-19 drugs with a temporary authorisation for use. The general rules of the ZNB namely provide only for a social compensation scheme concerning health impairments resulting from mandatory vaccination. Hopefully, the compensation scheme will encourage more persons to get vaccinated.

So far, ten ACLPs have formed an endless web of measures in different fields of social protection as well as support measures for the economy. Some are clearly targeted and possess a legitimate social (law) aim, whilst other are more of a broader social policy nature, with some reminiscent of pure politics. It seems as if parliament and government followed the constitutional obligation of adapting the law to changed societal relations in a way as to, on the one hand, limit and mitigate the negative effects of the epidemic in different areas of both public and private life, whilst seizing the opportunity of a public health emergency to gain additional political support from distinct groups among the Slovenian society. With ZDUPŠOP, parliament for example increased the highest pay grade for doctors and dentists. Such increase was not afforded to any other group of civil servants and public employees also working face-to-face with public service users during the epidemic. The measure clearly represents an improvised but likely irreversible increase in (senior) medical doctors' salaries, agreed upon without any social dialogue concerning other professional groups included in the uniform public salary system, not even nurses or other healthcare professionals (whose salaries were however also recently increased).

Next to a stack of consecutive one-off solidarity payments, the general legislator also took other bold but ill-considered steps in the field of social law. Even if bound by ILO Convention No. 158, parliament introduced a new cause for dismissal through which an employer could completely arbitrarily and one-sidedly – without a valid business or other genuine

51 Zakon o dodatnih ukrepih za preprečevanje širjenja, omilitev, obvladovanje, okrevanje in odpravo posledic COVID-19 (ZDUPŠOP), EPA: 2297 – VIII.

reason – terminate a contract of employment if the worker fulfilled old-age retirement criteria. The aim of the measure, first suspended, then revoked by the Constitutional Court,[52] was, on the one hand, to offer a more flexible employment environment to the economy, whilst, on the other hand, furthering the employment of younger persons. The government proposed the said measure even though Slovenia is showcasing low levels of employment among the elderly population and without even making employment of a junior employee mandatory after an older employee has been dismissed.

Despite increased public spending due to the epidemic, the government also proposed the imposition of a "social cap" on high wages (more precisely, an upper limit posed on social security contribution payment obligations), a dream come true for representatives of the economy that would relieve high earners and their employers from contributory obligations after a certain amount of personal income from employment has been obtained, thus reshaping the well-established notion of vertical solidarity within different social insurance groups. Needless to say, the increased amount of high-earners' disposable income could offer additional income to private insurance providers, both in the field of healthcare and life insurances.

Additionally, the proposed enactment of a limited contributory base, later withdrawn by the government, coincided with the passing of the Long Term Care Act (ZDOsk),[53] a vital piece of legislation in the field of social security that was proposed and publicly discussed amidst a health crisis, and that will require additional and, as a rule, independent public sources of financing once in force, sources which the current government did not propose, nor parliament did enact. Finally, parliament also passed an amendment to ZUTD, which substantially increased the maximum amount of unemployment benefits (by almost EUR 1,000) for Slovene-resident cross-border workers – high earners, commonly employed in Austria and Italy – at the sole expense of the Member State (hereinafter: MS) of last employment.[54]

Concerning Article 50 of the Constitution (Right to Social Security) and its associated basic social rights, parliament possesses a "legislative reservation" or a margin of appreciation in relation to the constitutional

52 Decision of the Constitutional Court of the RS, No. U-I-16/21 of 18 November 2021.

53 Zakon o dolgotrajni oskrbi, ZDOsk, Official Gazette of the RS, No. 196/21.

54 See European Law Blog of 7 April 2021.

provisions whenever passing legislation in the social field. As a general rule, this applies to a variety of positive rights as well as taxation. In a way, the margin of appreciation should apply even more to cases of ACLPs passed by parliament, since the latter has to rapidly adapt the law to the ever-changing societal conditions. However, even then both the general legislator and the government should not only adhere to key constitutional standards such as the rule of law principle but should also enact targeted and substantiated measures with a clear social aim.

Importantly, the epidemic was and remains a (global) pandemic. It thus also put to the test the cooperation among Member States of the European Union (hereinafter: the EU) in the field of healthcare. Regulations on the coordination of social security systems, first substantive regulations ever passed,[55] namely establish a legally binding cooperation mechanism among MS' public healthcare systems, established and operating either in the form of a (de)centralised national health service or in the form of a social health insurance scheme. The question is, for example, whether an insured person from one MS could be vaccinated against COVID-19 or be treated as a COVID-19 patient in another MS, e.g. if no resources were available in the MS of insurance.[56]

Since the EU social security coordination mechanism only links national social security systems for persons who move within the EU, the reply has to be sought for in the national legislation of distinct MSs. Hence, if COVID-19 vaccination (considered as preventive healthcare) and the medical treatment of COVID-19 patients (both benefits in kind in the terms of the Coordination Regulations) are part of the public healthcare system of a given MS, they are also subject to and within the material scope of the social security coordination mechanism. In some MSs, holders of PD S1 are entitled to such benefits in kind. However, things might become complicated with holders of the European Health Insurance Card (EHIC). In some MSs, their entitlement to benefits namely depends on the medical necessity and the foreseen duration of the stay in the host MS, e.g. fewer benefits in kind are provided for short-term tourists and more for students or, for example, seasonal workers. Additionally, in several MSs, one's (legal

55 See Regulations 3 and 4 from 1958. Today, Regulations (EC) 883/2004 and (EC) 987/2009 are in force. G. Strban, Social Rights of Migrants in the European Union, in: Regional Aspects of Integration: European Union and Eurasian Space : Monograph / K. Malfliet, А. И. Абдуллин, Г. Р. Шайхутдинова [и др.] ; отв. ред. Р. Ш. Давлетгильдеев, Statut, Moscow 2019, p. 73.

56 Compare with the CJEU decision in C-268/13 - Petru, EU:C:2014:2271.

or habitual) residence might be the decisive factor. Some MSs are also inclined to demand cost reimbursement from the MS of insurance.[57]

However, many MSs consider COVID-19 vaccination and the treatment of COVID-19 patients as a (national) public health concern. In this case, it is also a general state's concern, thus financed out of general budget rather than included among the benefits provided within a social health insurance scheme.[58] Then, benefits are to be considered mostly as a social compensation in their legal nature, rather than a traditional social insurance benefit in kind. Social compensations are also explicitly excluded from the material scope of coverage of the social security Coordination Regulations.[59] In such cases, a bilateral agreement would have to be concluded among the respective MSs in order to enable COVID-19 vaccination or the treatment of COVID-19 patients in another MS. Even so, other (non-COVID-19) patients might be affected by any focus posed on COVID-19 patients only, since many (non-urgent) programmes have been put on hold in order to deal with the immediate health threats of the epidemic. If waiting periods should become too long, limiting access to equal or equally effective benefits in kind in due time in the home MS, prior authorisation according to the social security Coordination Regulations would have to be provided and treatment in another MS enabled.[60]

Similar questions arise in respect to the Cross Border Healthcare Directive.[61] Also under the said legal act, the national organisation of healthcare might be relevant. However, the Directive explicitly excludes "public vaccination programmes against infectious diseases which are exclusively aimed at protecting the health of the population on the territory of a Member State and which are subject to specific planning and implementation measures."[62] This provision could also apply to COVID-19 vaccination programmes. Moreover, the treatment of COVID-19 patients is, as a rule, provided in the form of hospital treatment and some MSs might require

57 See the replies to the questionnaire of the Administrative Commission for the Coordination of Social Security Systems (AC 240/21, from October 2021).

58 Ibid.

59 See Article 3(5)(b) Regulation (EC) 883/2004 in which social compensation benefits are listed in an exemplifying manner only (and not exclusively).

60 See also L. Mišič, G. Strban, Functional and Systemic Impacts of COVID-19 on European Social Law and Social Policy, in: E. Hondius (et al.) (eds.), Coronavirus and the Law in Europe, Intersentia, Cambridge, Antwerp, Chicago 2021, pp. 984 ff.

61 See Directive 2011/24/EU on the application of patients' rights in cross-border healthcare, OJ L 88, 4.4.2011.

62 Article 1(3)(c) Directive 2011/24/EU.

prior authorisation, similar to the one required under the Coordination Regulations.[63]

Once this national epidemic and the global pandemic are over, the World will never be the same again. The same applies to the way we perceive and carry out work, the way we perceive public healthcare systems or, in general, the way we perceive different measures in the field of social protection that proved vital during different periods of the public health emergency. We can only hope that all will change for the better and not only for the select few, but for society (national and European) at large. It goes without saying that the pandemic has proved that more cooperation (within the EU and globally) is required to successfully deal with common challenges posed to humanity.

63 On the distinctions of possible justification concerning prior authorisation under both instruments see the CJEU decision in C-243/19 – Veselības ministrija, EU:C:2020:872.

XX. Protecting Livelihoods in the COVID-19 Crisis: The South African Experience

Letlhokwa George Mpedi

1. Introduction

a) COVID-19 as a Global Pandemic

The World Health Organization (hereinafter the WHO) assigned the designation Coronavirus of 2019 (hereinafter COVID-19) to the disease caused by the novel coronavirus SARS-CoV2. The WHO declared COVID-19 a global pandemic.[1] In a speech delivered on 11 March 2020, the WHO Director stated that: “WHO has been assessing this outbreak around the clock and we are deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction. We have therefore made the assessment that COVID-19 can be characterized as a pandemic. Pandemic is not a word to use lightly or carelessly. It is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death. Describing the situation as a pandemic does not change WHO’s assessment of the threat posed by this virus. It doesn’t change what WHO is doing, and it doesn’t change what countries should do. We have never before seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a coronavirus.”[2]

COVID-19 has since impacted every facet of life the world over.[3] Furthermore, as the virus lingers on and presents itself in waves, its negative effects on, *inter alia*, lives and livelihoods promise to be felt for years to come.[4]

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1 See, for further reading, Cucinotta D and Vanelli M “WHO Declares COVID-19 a Pandemic” (2020) 91 Acta Biomed 157.

2 World Health Organization “WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19 – 11 March 2020” (accessed on 10 January 2022).

3 Statistics South Africa COVID-19 Pandemic in South Africa Demography Volume (Statistics South Africa (2020)) iii.

4 See, for example, Statistics South Africa Business Impact Survey of the COVID-19 Pandemic in South Africa (Statistics South Africa (2020)), Statistics South Africa

b) COVID-19 Statistics in South Africa

The Republic of South Africa (hereinafter South Africa), just like many countries of the world, has not been spared the virus. That country confirmed its first case of the virus on 5 March 2020.[5] As shown in *Table 1* below, the COVID-19 statistics have grown exponentially since the first case was reported.

Table 1: COVID-19 Statistics in Soutg Africa as of 28 January 2022

Tests conducted	Positive Cases			Recoveries		Deaths	
	Active	*New*	*Total*	*Rate*	*Total*	*Daily*	*Total*
22 195 053	67 178	3 789	3 598 288	95.5%	3 436 326	133	94 784

Source: "Update on Covid-19 (Friday 28 January 2022)" (accessed on 29 January 2022).

c) Legal Basis for Measures to Restrict COVID-19 in South Africa

It was acknowledged at the onset of the pandemic that: "The coronavirus is spread by contact between people. If people do not travel, the virus does not travel."[6] To curb the spread of the virus and enable key sectors such as health to prepare adequately,[7] South Africa, similarly to many other countries all over the world,[8] declared a national state of disaster on 15 March 2020 and a national lockdown that commenced on 26 March 2020.[9] Although the *Constitution of the Republic of South Africa, 1996* (here-

Results from Wave 2 Survey on Impact of the COVID-19 Pandemic on Employment and Income in South Africa (Statistics South Africa (2020)) and Statistics South Africa Social Impact of COVID-19 (Wave 3): Mobility, Migration, and Education in South Africa (Statistics South Africa (2020)).

5 National Institute for Communicable Diseases "First Case of COVID-19 Coronavirus Reported in SA" (accessed on 10 January 2022).

6 President Cyril Ramaphosa: "South Africa's Response to Coronavirus COVID-19 Pandemic, 23 April 2020" (8 January 2022).

7 Disaster Management Act, 2002: Declaration of a National State of Disaster, 2020 (Published under No. 313 in GG 43096 of 15 March 2020).

8 See, for example, Bjørnskov C and Voigt S "This Time is Different? – On the Use of Emergency Measures During the Corona Pandemic" (2021) European Journal of Law and Economics (published online: 27 July 2021).

9 It is worth noting that at that stage a total number of confirmed cases of COVID-19 had spiralled from 61 to 402 cases in eight days. The national lockdown, in a nutshell means, among others, that individuals are confined to their

inafter the Constitution) does make provision for the declaration of the state of emergency,[10] it does not provide for the national state of disaster. That said, the legal rules and regulations dealing with COVID-19 must be consistent with the Constitution which is the supreme law of the country.[11] The declaration of the national state of disaster is provided for as part of the powers and duties of the national government[12] in Section 27 of the *Disaster Management Act* 57 of 2002. The COVID-19 rules and regulations, which are largely based on the *Disaster Management Act*, are therefore framed in law. This makes the COVID-19 legal restrictions, to some extent, accessible and predictable.[13] Another important point to note is that the restrictions can be challenged in a court of law.[14] The Constitution makes provision for the right of access to courts[15] and the enforcement of rights.[16]

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places of residence (except under certain limited circumstances such as seeking medical attention, purchasing food, medicine, and other similar supplies), interprovincial travel was banned, except in certain limited instances such as travel to attend a funeral; and the sale of alcohol and tobacco products was prohibited. The national lockdown was introduced by the Disaster Management Act 57 of 2002. These regulations limit some basic rights and freedoms (Section 27(2) of the Disaster Management Act).

10 Section 37 of the Constitution.

11 Sections 1(c) and 2 of the Constitution.

12 Part of the Disaster Management Act 57 of 2002.

13 See, for a discussion on the effectiveness and predictability of law from a social security perspective, Mpedi LG "The Effectiveness and Predictability of Social Security Law: Constitutional Perspectives from the Republic of South Africa" in Ndulo M and Emeziem C (eds) The Routledge Handbook of African Law: A Historical, Political, Social, and Economic Context of Law in Africa (Routledge (2022)) 264.

14 Rautenbach IM "Unruly Rationality: Two High Court Judgments on the Validity of the COVID-19 Lock-Down Regulations" (2020) 4 Tydskrif vir die Suid-Afrikaanse Reg 825.

15 Section 34 of the Constitution provides that: "Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

16 According to Section 34 of the Constitution: "Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are – (a) anyone acting in their own interest; (b) anyone acting on behalf of another person who cannot act in their own name; (c) anyone acting as a member of, or in the interest of, a group or class of persons; (d) anyone acting in the public interest; and (e) an association acting in the interest of its members."

d) Economic and Social Measures in Response to COVID-19

The restrictions flowing from the lockdown of the country were bound to impose some suffering of one form or another on natural and juristic persons. It was, for example, anticipated that "[d]uring this period of lockdown, companies will have to shut down and employees laid off temporarily."[17] COVID-19 worsened the persistent and rampant unfavourable socio-economic factors, such as inequality, abject poverty, unemployment, an ailing economy and diseases, issues that had plagued South Africa even before the advent of COVID-19.[18] This point was aptly summed up in *The South African Economic Reconstruction and Recovery Plan* as follows: "The outbreak of the Covid-19 pandemic in March, 2020, found a vulnerable South African economy. In fact, at the time [the] pandemic reached our shores, the South African economy had experienced two consecutive quarters of a recession. As a result, the Covid-19 pandemic deepened the economic crisis. Many people lost their jobs, many have gone without income for extended periods, and many are going hungry every day. Inequality is expected to widen and poverty to deepen. […] The stagnation of the economy for a long period coupled with the Covid-19 crisis has also led to low levels of capacity utilization in the various sectors of the South African economy. This trend is projected to continue; painting a dire picture for gross fixed capital formation. A significant reduction in the gross fixed capital formation variable is a troubling development; given that this variable is critical in sustaining and growing the productive base of the economy."[19]

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17 Preamble of the COVID-19 Temporary Employee/Employer Relief Scheme (C19 TERS), 2020 (Directive by the Minister of Employment and Labour in Terms of Regulation 10(8) Issued by the Minister of Cooperative Governance and Traditional Affairs in terms of Section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002)).

18 Mubangizi JC "Poor Lives Matter: COVID-19 and the Plight of Vulnerable Groups with Specific Reference to Poverty and Inequality in South Africa" (2021) 65 Journal of African Law 237, Du Plessis M "Police and Power in a Pandemic: Reflections on the Rise of Police Brutality during COVID-19 and its Implications on Social Justice in South Africa" (2021) 15 Pretoria Student Law Review 31 at 43–44, Ranchhod V and Daniels RC Labour Market Dynamics in South Africa in the Time of COVID-19: Evidence from Wave 1 of the NIDS-CRAM Survey (Southern Africa Labour and Development Research Unit (2020)).

19 The South African Economic Reconstruction and Recovery Plan (accessed on 16 January 2022).

Consequently, the government announced some economic and social measures to counter COVID-19. This, it is argued, is a direct response to the reality articulated by President Cyril Ramaphosa that: “Our people need to eat. They need to earn a living, companies need to be able to produce and to trade, they need to generate revenue and keep their employees in employment.”[20] The government response is bifurcated into three phases[21] as shown in *Table 2* below:

Table 2: Three Phases of the Government’s COVID-19 Response

Phases	Explanation
First phase Declaring COVID-19 a national disaster	Measures to mitigate the worst effects of the pandemic on business, on communities and individuals (e.g., tax relief, the release of disaster relief funds, emergency procurement, wage support and funding to small businesses).
Second phase Economic response	Economic response to stabilise the economy, address the extreme decline in supply and demand and protect jobs.
Third phase Economic strategy	Economic strategy to drive the recovery of the economy as the economy emerges from the pandemic.

The COVID-19 relief measures are largely underpinned by a ZAR 500 billion[22] COVID-19 fiscal package[23] consisting of *income support measures*, *credit guarantee schemes*, *wage protection* and *main or direct budget funding*. The COVID-19 fiscal package is divided as follows:

20 “President Cyril Ramaphosa: South Africa’s Response to Coronavirus COVID-19 Pandemic, 23 April 2020” (accessed on 8 January 2022).

21 Statement by President Cyril Ramaphosa on Further Economic and Social Measures in Response [to] the COVID-19 Pandemic, Union Buildings, Tshwane, 21 April 2020.

22 1 EUR = 17.3814 ZAR (as on 30 January 2022).

23 This is approximately 10 per cent of the gross domestic product of South Africa (Statement by President Cyril Ramaphosa on Further Economic and Social Measures in Response to [the] COVID-19 Pandemic, Union Buildings, Tshwane, 21 April 2020).

Table 3: Composition of the ZAR 500 Billion Relief Package

ZAR 500 Billion COVID-19 Fiscal Package			
ZAR 70 billion *Measures of income support (tax relief)*	ZAR 200 billion *Credit guarantee scheme*	ZAR 40 billion *Wage protection*	ZAR 190 billion *Main or direct budget funding*
Temporary tax relief such as tax deferrals and postponement of some payments to South African Revenue Service (e.g., employee tax).	Scheme to provide private bank loans, guaranteed by the government, to eligible businesses.	Temporary employee/employer relief scheme benefit, funded by Unemployment Insurance Fund surplus funds, to employees and employers who have closed operations or part thereof because of COVID-19.	Budget allocations to national, provincial, and local government.

Source: Auditor-General (South Africa) *First Special Report on the Financial Management of Government's Covid-19* Initiatives (Auditor-General (South Africa) (2020)) 8.

The COVID-19 relief package is essential for the fulfilment of fundamental rights, particularly among the vulnerable and marginalised members of society, during the pandemic. This assertion should be understood from the perspective that the Constitution makes provision for everyone's right to have access to health care, food, water and social security.[24] The state must "take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights."[25] In addition, every child[26] in South Africa has "the right to basic nutrition, shelter, basic health care services and social services."[27] The aforementioned rights, which are enforceable,[28] are not absolute. They can be limited under the limitation clause.[29] Furthermore, Section 41(1)(b) of the

24 Section 27(1) of the Constitution.
25 Section 27(2) of the Constitution.
26 Section 28(3) of the Constitution defines a 'child', for the purpose of this section, as "a person under the age of 18 years."
27 Section 28(1)(c) of the Constitution.
28 Section 38 of the Constitution.
29 Section 36 of the Constitution. This section provides that: "(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including – a. the nature of the right; b. the importance of the purpose of the limitation; c. the nature and extent of the limitation; d. the relation between the limitation and its purpose; and e. less restrictive means to achieve the purpose. (2) Except as provided in Subsection (1) or in any other

Constitution dictates that: “All spheres of government and all organs of state within each sphere must secure the well-being of the people of the Republic [of South Africa].”[30]

2. *Jobs and Income Protection*

The COVID-19 restrictions negatively impacted jobs and the income of many workers in South Africa.[31] Some workers had their salaries reduced. In addition, some unfortunate workers were laid off temporarily[32] while others were retrenched. This eventuality was foreseen by the government and countered by introducing the *COVID-19 Temporary Employee/Employer Relief Scheme (C19 TERS), 2020*.[33] The scheme was established to pay “benefits to the contributors who have lost income due to COVID-19 pandemic”[34] and “minimise [the] economic impact [of] the loss of em-

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provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.” Also see Van Staden M “Constitutional Rights and their Limitations: A Critical Appraisal of the COVID-19 Lockdown in South Africa” (2020) 20 African Human Rights Law Journal 484.

30 Section 239 of the Constitution defines an ‘organ of state’ as “(a) any department of state or administration in the national, provincial or local sphere of government; or any other functionary or institution – (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or judicial officer.”

31 This should be understood from the context that South Africa subscribes to the common law principle of ‘no work, no pay.’ In addition, the South African labour law does make provision for the dismissal of employees for economic reasons (Section 189 of the Labour Relations Act 66 of 1995). These are dismissals due to no-fault of a worker.

32 Article 1.1.6 of the COVID-19 Temporary Employee/Employer Relief Scheme (C19 TERS), 2020 (hereinafter the C19 TERS Directive) defines ‘temporary lay-off’ as “a temporary closure of business operations due to [the] COVID-19 pandemic for the period of the National Disasters.”

33 Notice 215 of 2020. According to the preamble of the C19 TERS Directive: “During this period of lockdown, companies will have to shut down and employees laid off temporarily. This means that employees are compelled to take leave, which is not out of choice. We therefore anticipate that employees may lose income. Employers are encouraged to continue to pay employees, but where this is not economically possible; we have created a special benefit under the Unemployment Insurance Fund as per the Directive Covid-19 Temporary Employee/Employer Relief Scheme.”

34 Article 2.1.1 (a) of the C19 TERS.

ployment of the COVID-19 pandemic."[35] *C19 TERS* is a wage protection benefit to employees and employers who have closed operations or part thereof due to COVID-19.[36] It is funded to the tune of ZAR 40 billion through the Unemployment Insurance Fund (hereinafter the UIF) surplus funds. It is important to note that these benefits are delinked from the UIF's regular benefits[37] (i.e., unemployment benefits,[38] illness benefits,[39] maternity benefits,[40] parental benefits,[41] adoption benefits,[42] commissioning parental benefits,[43] and dependant's benefits[44]). They only pay for the cost of salary for the employees during the temporary closure of the business operations.[45] The salary benefits are capped at a maximum of R17,712 per month and per employee.[46] In addition, an employee is paid in accordance with an income replacement rate sliding scale (38%-60%).[47] It should be noted that "any remuneration received for work performed by the employee in any period shall not exceed 100% of the remuneration that the employee would ordinarily have received for working during that period."[48] This entails that "[i]f the remuneration earned plus the sliding scale benefit is more than the ordinary salary, the benefit is reduced accordingly."[49] To qualify for the relief provided under *C19 TERS*, the company must show that it is registered with the UIF, it complies with

35 Article 2.1.1 (b) of the C19 TERS.
36 See COVID-19 Temporary Relief Scheme, 2020 (Published under GenN 215 in GG 43161 of 26 March 2020 as amended by GenN 240 in GG 43216 of 8 April 2020, GN R486 in GG 43265 of 4 May 2020, GN R541 in GG 43330 of 15 May 2020, GN R595 in GG 43353 of 26 May 2020, GN R878 in GG 43611 of 13 August 2020, GN R968 in GG 43693 of 7 September 2020 and as corrected by GN R486 in GG 43265 of 4 May 2020).
37 Article 3.2 of the C19 TERS.
38 Section 12(1)(a) of the Unemployment Insurance Act 63 of 2001 (hereinafter the UIA).
39 Section 12(1)(b) of the UIA.
40 Section 12(1)(c) of the UIA.
41 Section 12(1)(cA) of the UIA.
42 Section 12(1)(d) of the UIA.
43 Section 12(1)(dA) of the UIA.
44 Section 12(1)(e) of the UIA.
45 Article 3.3 of the C19 TERS.
46 Article 3.4 of the C19 TERS.
47 Ibid. Also see Schedule 3: Scale of Contributor's Entitlement to Benefits of the UIA.
48 Article 5.3 of the C19 TERS.
49 Unemployment Insurance Fund "Frequently Asked Questions" (accessed on 1 April 2022).

the application procedure for the financial relief scheme, and its closure is directly linked[50] to the COVID-19 pandemic.[51]

The isolation of persons is being used throughout the world as one of the measures aimed at curbing the spread of the coronavirus. Accordingly, an employee who is in quarantine[52] for fourteen days due to the COVID-19 pandemic qualifies for the pre-existing illness benefit in terms of Part C of the UIA.[53] This is subject to the following conditions: "4.2 Confirmation from both the employer and the employee must be submitted together with the application as proof that the employee was in an agreed pre-cautionary self-quarantine for 14 days. 4.3 In this instance, the confirmation letters from the employer and employee shall suffice. 4.4 Should an employee be quarantined for more than 14 days, a medical certificate from a medical practitioner must be submitted together with [a] continuation form for payment."[54]

To avoid double-dipping, an employee who is being paid by the employer during the period of quarantine is not entitled to the TERS benefit.[55] Despite the foregoing, the COVID-19 TERS experienced a series of challenges.[56] These include the following: concerns with supporting documents and banking details; non-qualifying individuals (e.g., the incarcerated and deceased) drawing TERS benefits;[57] payment challenges (e.g., overpayments and underpayments, duplicate payments and unsubstantiated payment made);[58] mismanagement (e.g., non-compliance with the instruction note, discrepancies relating to the appointment of service providers

50 There are differencent ways in which companies can show that their financial distress is directly linked to COVID-19. These include liquidation proceedings initiated by creditors. See, for further reading, De Hutton J "COVID-19: Financial Distress – Insolvency and Restructuring" (accessed on 1 April 2022).

51 Article 3.7 of the C19 TERS.

52 According to Article 1.1.4 of the C19 TERS, 'quarantine' means "separating a symptomatic individual potentially exposed to a disease from non-exposed individuals in such a manner so as to prevent possible spread infection or contamination."

53 Article 4.1 of the C19 TERS.

54 Articles 4.2–4.4 of the C19 TERS.

55 Article 5.3 of the C19 TERS.

56 See Auditor-General South Africa First Special Report on the Financial Management of Government's Covid-19 Initiatives (Auditor-General South Africa (2020)) and Auditor-General South Africa Second Special Report on the Financial Management of Government's Covid-19 Initiatives (Auditor-General South Africa (2020)).

57 Ibid.

58 Ibid at 45-46.

and the unfair awarding of contracts);[59] applicants below the legal age of employment;[60] [61] double-dipping;[62] application verifications issues[63] (e.g., lack of verification of the applicants representing employers, incorrect system calculations of TERS benefit payment in first lockdown period, inadequate verification of employer details; inadequate system functionality for bank confirmation of uploaded documents, lack of consideration of salary portion paid by the employer in the calculation of pay-out in first lockdown period; and lack of verification of employee salaries submitted during benefit claims); and companies failing to pay the benefits to the employees.[64]

3. *Supporting the Economy*

a) *Measures of Income Support*

These measures, which were first announced on 21 April 2020,[65] consist of four-month skills development levy holiday contributions starting from 1 May 2020,[66] fast-tracking of value-added tax (VAT) refunds, payment

59 Ibid at 47.

60 Auditor-General South Africa First Special Report on the Financial Management of Government's Covid-19 Initiatives (Auditor-General South Africa (2020)) 43.

61 The general rule is that the employment of children under the age of fifteen or under the minimum school leaving age is prohibited in South Africa (Section 43(1)(a)-(b) of the Basic Conditions of Employment Act. In addition, South Africa has ratified on 30 March 2000 the International Labour Organisation Minimum Age Convention 138 of 1973). Section 28(1)(e) of the Constitution provides every child in South Africa with a right "to be protected from exploitative labour practices" and the right "not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age; or place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development" (Section 28(1)(f) of the Constitution).

62 Auditor-General South Africa First Special Report on the Financial Management of Government's Covid-19 Initiatives (Auditor-General South Africa (2020)) 43.

63 Ibid 41.

64 Department of Employment and Labour "UIF Appoints Forensic Auditors to Start the 'Follow the Money Project' for Covid-19 TERS Payments" 7 November 2020.

65 Statement by President Cyril Ramaphosa on Further Economic and Social Measures in Response to [the] COVID-19 Pandemic, Union Buildings, Tshwane, 21 April 2020.

66 Section 10 of the Disaster Management Tax Relief Act 13 of 2020.

deferral for exercise taxed on alcoholic beverages and tobacco products; deferral for filing and first payment of carbon tax liabilities for three months i.e., 31 July to 31 October 2020), postponing the implementation of certain *2020 Budget Review* measures (e.g., measures to broaden the corporate income base by restricting net interest expense deductions to 30 per cent of earnings), increasing the expanded employment tax incentive amount, increasing the proportion of tax to be deferred and the gross income threshold for automatic tax deferrals, and case-by-case application to SARS (South African Revenue Services) for waiving of penalties.[67]

b) Credit Guarantee Scheme

The credit guarantee scheme provides private bank loans, guaranteed by the government, to qualifying businesses.[68] The funds borrowed through this scheme can be utilised to cover operational expenses (e.g., salaries, rent and lease agreements and contracts with suppliers).[69] The banks are not under any obligation to provide COVID-19 loans.[70] They are at liberty to utilise their regular risk-evaluation and credit-application processes.[71] In addition, they may require business owners to sign surety for the loan.[72] Only one COVID-19 loan can be provided per business.[73] The COVID-19 loan is offered at a single agreed lending rate and interest as well as capital

67 National Treasury (Republic of South Africa) Economic Measures for COVID-19 (National Treasury (Republic of South Arica) (2020) (accessed on 31 January 2022).

68 A ‘qualifying business’ is defined as businesses in good standing with their banks at 31 December 2019, registered with SARS and financially distressed as a result of the Covid-19 outbreak and subsequent lockdowns (National Treasury (Republic of South Africa), South African Reserve Bank and The Banking Association of South Africa Answering your Questions about the COVID-19 Loan Guarantee Scheme (National Treasury (Republic of South Africa), South African Reserve Bank and The Banking Association of South Africa (2020)) 3).

69 National Treasury (Republic of South Africa), South African Reserve Bank and The Banking Association of South Africa Answering your Questions about the COVID-19 Loan Guarantee Scheme (National Treasury (Republic of South Africa), South African Reserve Bank and The Banking Association of South Africa (2020)) 1.

70 National Treasury (South Africa) Economic Measures for COVID-19 (National Treasury (South Africa)) (accessed on 23 January 2022).

71 Ibid.

72 Ibid.

73 Ibid.

repayments start after six months, and businesses have a maximum of 60 months to repay the loans.[74]

c) Main or Direct Budget Funding

The national, provincial[75] and local governments[76] experienced a decline in revenue due to COVID-19. Notwithstanding the decline in revenue, these spheres of government have a pivotal role in the fight against the pandemic. By way of an example, provincial governments oversee a sizeable component of the public health system that is responsible for caring for COVID-19 patients.[77] Local governments are accountable for the delivery of access to water and sanitation, temporary shelter for the homeless people and sanitising public transport infrastructure.[78]

Through the main or direct budget funding, which consists of budget allocations, the national, provincial, and local governments were empowered to deal with the pandemic in their spheres of responsibility. For example, the government spending on health care and related services

74 Ibid.

75 According to the National Treasury (Republic of South Africa) (National Treasury (Republic of South Africa) Supplementary Budget Review 2020 (National Treasury (Republic of South Africa) (2020)) 19): “Provinces are anticipating a decline in their own revenues of approximately R4 billion, or 18.7 per cent of the amount tabled in the 2020/21 budgets. Tax receipts from casinos and horse racing have declined. Fees paid for public health services have also fallen, as fewer patients are accessing non-COVID-19-related health services.”

76 The National Treasury (Republic of South Africa) (National Treasury (Republic of South Africa) Supplementary Budget Review 2020 (National Treasury (Republic of South Africa) (2020)) 19) reported the revenue challenges facing the local governments as follows: “Municipalities, which depend largely on their own revenues, face significant financial stresses. Metropolitan municipalities reported that their revenue collected in April fell by about 30 per cent on average. This decline is due to a combination of lower demand for services such as electricity and water, and significantly higher non-payment rates for municipal bills. The extent to which municipal bills are paid in the months ahead will depend on the duration of restrictions on economic activity, the pace of recovery and the application of revenue collection measures. Many local governments were already in financial distress. Now the risks posed by their failure to adhere to funding benchmarks – such as retaining one to three months’ worth of cash coverage – are materialising.”

77 National Treasury (Republic of South Africa) Supplementary Budget Review 2020 (National Treasury (Republic of South Africa) (2020)) 18.

78 Ibid at 19.

was expanded to cover the costs associated with "the treatment of those affected by the disease, as well as efforts to manage its spread through the population including mass testing and contact tracing, and the procurement of personal protective equipment."[79]

4. Social Protection

a) Social Assistance

To alleviate the plight of those individuals that are most severely affected by COVID-19, the government augmented the value of the tax-financed social grants[80] as follows:

Table 4: Adjustments to Social Grant Spending (2020/2021)

	Baseline per month (Rand)	Number of beneficiaries	Top-up (Rand)	Top-up %
Child support	445	12,811,209	300	67.4%
Old age	1,860	3,672,552	250	13.4%
Disability	1,860	1,045,388	250	13.4%
Foster care	1,040	339,959	250	24.0%
Care dependency	1,860	155,094	250	13.4%

Source: National Treasury (Republic of South Africa) *Supplementary Budget Review 2020* (National Treasury (Republic of South Africa) (2020)) 15.

In addition, the government introduced two new social assistance grants (see *Table 5* below), i.e., the COVID-19 Social Relief of Distress (hereinafter the SRD)[81] and a caregiver allowance that replaces the child support grant top-up.[82] All existing caregivers automatically qualified and

79 National Treasury (South Africa) Economic Measures for COVID-19 (National Treasury (South Africa)) (accessed on 23 January 2022).

80 See, for further reading, Bhorat H, Oosthuizen M and Stanwix N "Social Assistance amidst the COVID-19 Epidemic in South Africa: A Policy Assessment" (2021) South African Journal of Economics 1.

81 Article 3(k)(viii)(cc) of the Amendment to the Directions Issued in Terms of Regulation 4(5) of the Regulations Made under Section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002): Measures to Prevent and Combat the Spread of COVID-19 of 9 May 2020.

82 Article 3(k)(vii)(hh) of the Amendment to the Directions Issued in Terms of Regulation 4(5) of the Regulations Made under Section 27(2) of the Disaster

received the caregiver allowance together with their existing monthly benefit.[83] The COVID-19 SRD was provided to distressed "(i) South African Citizens, Permanent Residents or Refugees registered on the Home Affairs databases; (ii) currently residing within the borders of the Republic of South Africa; (iii) above the age of 18; (iv) unemployed; (v) not receiving any form of income; (vi) not receiving any social grant; (vii) not receiving an unemployment insurance benefit and do not qualify to receive an unemployment insurance benefit; (viii) not receiving a stipend from the National Student Financial Aid Scheme and other financial aid; (ix) not receiving any other government COVID-19 response support; and (x) not a resident in a government-funded or subsidised institution."[84] Notwithstanding the aforementioned eligibility requirements, it was established by the Auditor-General of South Africa that non-qualifying applicants were approved and paid the special COVID-19 SRD grant.[85]

Table 5: New Social Assistance Grants

	Amount per month (Rand)	Number of beneficiaries
Social Relief of Distress	350	700,000 - 8 million
Caregiver allowance*	500	7,167,022
*Replaces child support grant top-up from the second month.		

Source: National Treasury (Republic of South Africa) *Supplementary Budget Review 2020* (National Treasury (Republic of South Africa) (2020)) 15.

The South African Social Security Agency has the discretion to determine the most suitable method for disbursing the abovementioned social grants.[86] Depositing the COVID-19 SRD grant into a beneficiary's bank

Management Act, 2002 (Act No. 57 of 2002): Measures to Prevent and Combat the Spread of COVID-19 of 9 May 2020.

83 Ibid.

84 Article 3(k)(viii)(cc) of the Amendment to the Directions Issued in Terms of Regulation 4(5) of the Regulations Made under Section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002): Measures to Prevent and Combat the Spread of COVID-19 of 9 May 2020.

85 Auditor General (South Africa) First Special Report on the Financial Management of Government's COVID-19 Initiatives (Auditor-General (South Africa) (2020)) 30.

86 Article 3(k)(viii)(ff) of the Amendment to the Directions Issued in Terms of Regulation 4(5) of the Regulations Made under Section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002): Measures to Prevent and Combat the Spread of COVID-19 of 9 May 2020.

account is the most convenient way to transmit the grant. However, this is easier said than done considering large numbers of unbanked and underbanked members of the South African population.[87] The South African Post Office (SAPO) was used as temporary means to disburse the grant. Given, *inter alia*, the fact that post offices are widespread in the country, SAPO became "the de-facto payment channel."[88] This resulted in overcrowding at the post office, which is not ideal under COVID-19 circumstances that require social distancing. Another important point to be noted is that the COVID-19 SRD grant: "[…] has uncovered the pitfalls of disjointedness and questionable integrity of the state's databases. The grant has sharply pushed all stakeholders to think of [the] government's service provision data as a single data ecosystem. Therefore, the improvement of the special COVID-19 SRD grant will mainly be premised on the integration of [the] government's service provision data ecosystem."[89]

b) Public Health

The implementation of a lockdown at the onset of the pandemic slowed the spread of COVID-19 in South Africa.[90] The health sector interventions implemented at this stage were "focussed mainly on behaviour change (for example, social distancing, wearing masks and not going to work when sick), early detection of cases through community screening and testing, contact tracing, disease surveillance and public health campaigns to reduce transmission of the virus in communities."[91] An amount of R21 billion was reprioritised to public health services.[92] The key spending areas included public health interventions (e.g., testing and supporting the National

87 The goal articulated in the National Development Plan (National Planning Commission (Republic of South Africa) National Development Plan 2030: Our Future – Make it Work (National Planning Commission (Republic of South Africa) (2012)) 150) to increase the proportion of the population that is banked to 90 per cent by 2030 is to be welcomed.

88 Department of Social Development "Minister Lindiwe Zulu: Update on Social Development intervention during COVID-19, 26 February 2021" (6 February 2022).

89 "Minister Lindiwe Zulu: Socioeconomic Interventions to Mitigate Impact of Coronavirus COVID-19 Pandemic, 30 July 2020" (accessed on 23 January 2022).

90 National Treasury (Republic of South Africa) Supplementary Budget Review 2020 (National Treasury (Republic of South Africa) (2020)) 14.

91 Ibid.

92 Ibid.

Institute for Communicable Diseases); expanding hospital capacity; and acquiring personal protective equipment, supplies (e.g., hospital beds, linen, oxygen and ventilators) and hiring additional personnel.[93] It is regrettable that some of the monies that were meant to strengthen the public health services in the fight against the pandemic ended up being lost to, among others, fraud and corruption.[94]

c) COVID-19 Vaccine Injury No-Fault Compensation Scheme

The COVID-19 Vaccine Injury No-Fault Compensation Scheme (hereinafter the Scheme) has been established as an integral component of the COVID-19 vaccination roll-out.[95] The objective of the Scheme is to "provide expeditious and easy access to compensation for persons who suffer harm, loss or damage as a result of vaccine injury […] caused by the administration of a COVID-19 vaccine […] at a facility within the Republic [of South Africa...]".[96] The Scheme and its funds[97] are administered by the National Department of Health.[98] Eligibility to compensation under the Scheme extends to a "person who has suffered harm, loss or damage caused by a vaccine injury […] resulting from the administration of a COVID-19 vaccine […] at a facility within the Republic [of South Africa]"[99] as well as "a dependant of a deceased person, who has suffered harm, loss or damage caused by the death of the deceased person, whose death was caused by a vaccine injury […] resulting from the administra-

93 Ibid.

94 See, for example, Auditor-General (South Africa) First Special Report on the Financial Management of Government's Covid-19 Initiatives (Auditor-General (South Africa) (2020)).

95 Regulation 89(1) and (2) of the Regulations Issued in terms of Section 27(2) of the Act 57 of 2002 of 29 April 2020.

96 Regulation 89(3) of the Regulations Issued in terms of Section 27(2) of the Act 57 of 2002 of 29 April 2020.

97 The Scheme is funded through "funds appropriated by an Act of Parliament to the vote of Health or from contingencies in terms of appropriation legislation or the Public Finance Management Act; and (b) funds donated to the Scheme" (regulation 91(1) of the Regulations Issued in terms of Section 27(2) of the Act 57 of 2002 of 29 April 2020).

98 Regulation 90(1) of the Regulations Issued in terms of Section 27(2) of the Act 57 of 2002 of 29 April 2020.

99 Regulation 93(1) of the Regulations Issued in terms of Section 27(2) of the Act 57 of 2002 of 29 April 2020.

tion of a COVID-19 vaccine […] at a facility within the Republic [of South Africa]."[100] This Scheme, which is not unique to South Africa,[101] is an essential component of measures aimed at addressing vaccine hesitancy[102] by improving public trust in the vaccine.[103]

5. Outlook

a) Economic Reconstruction and Recovery Plan

The South African Economic Reconstruction and Recovery Plan (hereinafter the Plan) is a strategy that has been developed by the government to address the socio-economic challenges faced by the country which were compounded by, among others, the COVID-19 pandemic. The Plan is based on a clear understanding that: "A response to the economic impact of COVID-19 calls for interventions that also address the structural problems that beset the South African economy prior to the impact of the coronavirus. This means crafting interventions that bring about an outcome that decisively deals with the impact of the coronavirus on the South African economy and the last standing structural challenges that have been inhibiting the type inroads that we needed to have made as an economy and a people."[104]

The Plan is based on the following cornerstones:

100 Regulation 93(2) of the Regulations Issued in terms of Section 27(2) of the Act 57 of 2002 of 29 April 2020.

101 See D'Errico S et al '"First do no harm". No Fault Compensation program for COVID-19 Vaccines as feasibility and wisdom of a policy instrument to mitigate vaccine hesitancy" (2021) 1116 Vaccines 1.

102 Ibid at 8.

103 Mungwira RG et al "Global landscape analysis of no-fault compensation programmes for vaccine injuries: A review and survey of implementing countries" (2020) 15 PLoS ONE 1.

104 The South African Economic Reconstruction and Recovery Plan (accessed on 16 January 2022).

Table 6: Cornerstones oft he Reconstruction and Recovery Plan

Principles	Protection for low-income workers, the unemployed and vulnerable workers; enhancement of the capacity of the economy to grow and create decent jobs; ensuring that local communities, particularly historically marginalised communities, are removed from the vicious cycle of under-development; strengthening the productive capacity of the economy; maintaining the planned levels of investment in public sector infrastructure; ensuring localised procurement of key inputs, to strengthen and deepen backward and forward linkages within the domestic industrial base; strengthening the capacity of the state to intervene in the economy and to deliver on social services; and crafting employment-intensive ways in which a turnaround can be achieved.
Focus areas	Infrastructure roll-out, localisation through industrialisation, energy security, food security, support for tourism, green economy interventions, public employment programmes, and macro-economic policy interventions.
Enablers	Ensuring optimal revenue collection, fiscal sustainability, improved efficiency of spending, elimination of wastage and corruption and improved state capacity to collect revenue; increased access to finance, ensuring expanded access to the R200 billion COVID-19 credit facility; establishment of a state bank and the amendment of Regulation 28 of the Pension Funds Act in order to unlock funding for long-term infrastructure projects and high-impact capital projects, as well as facilitate direct access to the pension funds pool of resources by Development Finance Institutions (DFIs); increased issuing of green infrastructure bonds as a critical step in reducing the carbon footprint and in order to secure the funding of infrastructure at concessional cost (increased capacity for project preparation to develop projects to bankability); regulatory changes to reduce the cost of doing business and facilitate ease of doing business; building a state that is equipped to deliver; a social compact for fair choices and sustainable trade-offs; skills development and a population that is equipped for the new normal; communications and the digital economy; and economic diplomacy and further integration into the African continent.

Source: The South African Economic Reconstruction and Recovery Plan (accessed on 16 January 2022).

While the plan is to be welcomed, it has been criticised for its lack of funding details.[105] In addition, it has been accused of being "off to a rocky start with a limited number of its three-month targets achieved, or showing little signs of progress."[106]

105 Merten M "SA's Economic Reconstruction and RecoveryP: The Devil is in the Details and with the National Command Council", Daily Maverick, 11 October 2020 (accessed on 19 February 2022).

106 De Villiers J "Ramaphosa's Economic Plan: 26 Targets in Three Months – But Only Five Met", News24, 8 February 2021, (accessed on 19 February 2022).

b) Empowering the Vulnerable Groups

It is abundantly clear that COVID-19 impacts people differently.[107] The ability of individuals and their families to fathom life under COVID-19-imposed hardships varies from one person to another.[108] COVID-19 accentuated the plight of the vulnerable and marginalised groups and categories of persons who are, notwithstanding the various previously mentioned government interventions, in more ways than one at the mercy of the pandemic. These groups, which suffer(ed) the most, include the urban and rural poor,[109] informal sector workers,[110] the unemployed,[111] and migrant workers.[112] This is largely due to the precarious position of these groups and categories of persons in the labour market, the social protection system and life in general. Accordingly, South Africa needs to, *inter alia*, intensify efforts to extend social protection coverage in terms of access and the quality of benefits to these groups and categories of persons. The social protection interventions should, as illustrated in *Diagram 1* below, consist of preventative, compensatory and reintegrative measures. Therefore, it is pleasing to note that the South African "[p]ost-COVID-19 recovery strategies have converged around job-creation and income support."[113]

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107 Devereux S and Cuesta J "Urban-Sensitive Social Protection: How Universalised Social Protection can Reduce Urban Vulnerabilities post-COVID-19" (2021) Progress in Development Studies 1 at 5.

108 Mubangizi JC "Poor Lives Matter: COVID-19 and the Plight of Vulnerable Groups with Specific Reference to Poverty and Inequality in South Africa" (2021) 65 Journal of African Law 237.

109 Devereux S and Cuesta J "Urban-Sensitive Social Protection: How Universalised Social Protection can Reduce Urban Vulnerabilities post-COVID-19" (2021) Progress in Development Studies 1.

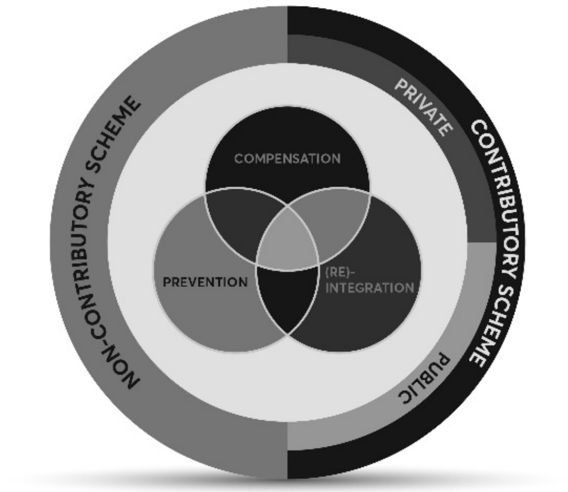
110 See, for example, Bassier I et al Locked Down and Locket Out: Repurposing Social Assistance as Emergency Relief to Informal Workers (Southern Africa Labour and Development Research Unit (2020)) and Mpedi LG "COVID-19 and Social Protection in SADC: Impact, Responses and Lessons" in Olivier M, Smit N and Kalula E (eds) Liber Amicorum: Manfred Weiss (Juta (2021)) 233 at 240 – 242.

111 See, for example, Mpedi LG "Commentary on the Unemployment Insurance Act and the Unemployment Insurance Contributions Act" in Thompson C and Benjamin P South African Labour Law (Juta (2021)) J1-(i).

112 See, for example, Mpedi LG "COVID-19 and Social Protection in SADC: Impact, Responses and Lessons" in Olivier M, Smit N and Kalula E (eds) Liber Amicorum: Manfred Weiss (Juta (2021)) 233 at 242 – 244.

113 National Treasury (Republic of South Africa) Budget Review: 2022 (National Treasury (Republic of South Africa (2022)) 11.

Diagram 1: Social Protection Programmes and Objectives



Source: Mpedi LG "Law and Industry 4.0 in South Africa: A Social Security Perspective", paper presented at the University of Johannesburg, Faculty of Law Indaba, 30 August 2018.

c) *Equitable Access to Healthcare*

Access to healthcare is entrenched in the Constitution as a fundamental right.[114] Nevertheless, such a right is nothing more than a pipe dream for many South Africans. On the one hand, the indigent members of society are compelled to rely on the under-resourced and deteriorating public health services.[115] On the other hand, the affluent have the privilege of utilising world-class private health facilities.[116] While any person can contract COVID-19 and, in some unfortunate cases, perish from it, the

114 Section 27(1)(a) of the Constitution provides that: "Everyone has the right to have access to health care services, including reproductive health care."

115 See Strban G and Mpedi LG "The right to healthcare: Slovenian, South African and cross-border perspectives" in Fourie E and Škerl JC Universality of the Rule of Law: Slovenian and South Africa Perspectives (Sun Press (2021)) 165 at 172 – 176.

116 Ibid.

virus can to a certain degree be regarded as a poor person's disease. This assertion stems from the fact the poor invariably lack the means to afford nutritious food, medication, and health services.[117] Apart from COVID-19, many poor persons must contend with other diseases that were prevalent even before the arrival of the pandemic such as human immunodeficiency virus and acquired immunodeficiency syndrome (HIV/AIDS), malaria and tuberculosis.[118] Accordingly, the efforts which commenced before the advent of COVID-19 to introduce a National Health Insurance system in South Africa are to be welcomed. *National Health Insurance Bill 11* of 2019 sets out a legislative framework for the achievement of universal access to quality health care services in South Africa in line with the right of access to healthcare as contained in the Constitution.[119]

d) Basic Income Grant Debate

The uneven impact of the pandemic, especially on the poor and marginalised members of society,[120] gave new impetus to the calls for the introduction of a Basic Income Grant (hereinafter the BIG) in South Africa.[121] These calls were bolstered by the overall impact of the COVID-19 SRD[122] on the poor and vulnerable groups and categories of persons.[123] It is argued that the COVID-19 SRD, which has been extended

117 See Statistics South Africa Social Impact of COVID-19 (Wave 3): Mobility, Migration and Education in South Africa (Statistics South Africa (2020) 11.

118 See Staunton C, Swanepoel C and Labuscgaigne M "Between a Rock and a Hard Place: COVID-19 and South Africa's Response" (2020) Journal of Law and the Biosciences 1.

119 Preamble of the National Health Insurance Bill 11 of 2019.

120 Mubangizi JC "Poor Lives Matter: COVID-19 and the Plight of Vulnerable Groups with Specific Reference to Poverty and Inequality in South Africa" (2021) 65 Journal of African Law 237.

121 Devereux S and Cuesta J "Urban-Sensitive Social Protection: How Universalised Social Protection can Reduce Urban Vulnerabilities post-COVID-19" (2021) Progress in Development Studies 1 at 15-17.

122 See Department of Social Development (South Africa) The Rapid Assessment of the Implementation and Utilisation of the Social COVID-19 SRD Grant (Department of Social Development (South Africa) (2021)).

123 In announcing a further extension of the COVID-19 SRD, President Cyril Ramaphosa, during the State of the Nation Address which took place in Cape Town on 10 February 2022, remarked that: "Since the onset of COVID-19, the Social Relief of Distress Grant has provided support to more than 10 million unemployed people who were most vulnerable to the impact of the pandemic.

on several occasions since it was launched in 2020, should be converted into a BIG to support persons aged 18 to 59[124] who are without or little income.[125] There is a dire need for a social protection measure in South Africa to address the gap currently covered by the COVID-19 SRD. This lacuna has been acknowledged at Cabinet level by President Cyril Ramaphosa[126] and the Minister of Social Development, Lindiwe Zulu.[127] Only time will tell whether the COVID-19 SRD will be replaced by the BIG or not.

Some people used that money to start businesses…As much as it has had a substantial impact, we must recognize that we face extreme fiscal constraints. A fiscal crisis would hurt the poor worst of all through the deterioration of the basic services on which they rely."

124 It should be mentioned that this age group is currently not covered by the tax-financed social assistance scheme.

125 See Senona E, Torkelson E and Zembe-Mkabile W Social Protection in a Times of COVID Lesson for Basic Income Support (Blacksash (2021)) 51-52.

126 President Ramaphosa reported during the 10 February 2022 State of Nation Address that: "Mindful of the proven benefits of the grant, we will extend the R350 SRD Grant for one further year, to the end of March 2023. During this time, we will engage in broad consultations and detailed technical work to identify the best options to replace the grant. Any future support must pass the test of affordability, and must not come at the expense of basic services or at the risk of unsustainable spending. It remains our ambition to establish a minimum level of support for those in greatest need."

127 She asserted that: "As much as we are meticulously noting what works with the COVID-19 SRD grant, we are equally welcoming and encouraging deeper public discourse that is centred at innovating sustainable social protection coverage solutions that are targeted at addressing poverty and inequality by developing our society: the world's most unequal society! Therefore, every South African must contribute towards meaningfully defining the paths that will engineer our society into the new normal wherein, as we envisaged in the National Development Plan (NDP), the social protection coverage is extended to the missing middle parts of our population. Therefore, we call upon each South African to bring their innovative, ingenious, creative solutions to the possibilities, design and scale of the BIG solution" ("Minister Lindiwe Zulu: Socioeconomic Interventions to Mitigate Impact of [the] Coronavirus COVID-19 Pandemic, 30 July 2020" (accessed on 23 January 2022)).

XI. Temporary Changes and Long-Term Problems – Regulating the Swedish Labour Market and Social Security System during the COVID-19 Pandemic

Sara Stendahl and Thomas Erhag

1. Introduction

The ongoing COVID-19 pandemic has substantially impacted Swedish society and has given rise to an increased need for quick but often temporary action to protect jobs and income, support business, and strengthen social protection. Sweden has used a "softer" approach to public health measures to keep workplaces, schools, and more social parts of society open. The measures on keeping distance, wearing masks, etc., have mainly been issued in the form of recommendations (sermons) without being combined with tough sanctions (sticks). Still, the consequence of the pandemic is visible in labour market statistics, with a record number of persons being given notice of redundancy in early 2020. According to Statistics Sweden (SCB), the unemployment rate rose during the first phase of the pandemic, which hit specific sectors especially hard, e.g., hotels and restaurants.[1] This sector is also characterised by having many persons in part-time or temporary/seasonal employment.[2] An increase of redundancies has been seen in all sectors of the labour market, showing that business is under much pressure. Unemployment is now at a high level, partly due to the pandemic,[3] also in comparison with other EU countries.[4]

To address the problems on the labour market, particularly the risk of mass unemployment, the Swedish government early in 2020 relocated resources for short-time work allowance (furloughed workers) combined with other forms of support aimed at providing for employers and busi-

1 SCB, Arbetsmarknaden under coronapandemin, Statistiska meddelanden AM 110 SM 2101, read 08/01/2022.
2 OECD Policy Responses to Coronavirus (COVID-19). Distributional risks associated with non-standard work: stylised facts and policy considerations, p. 4.
3 SCB (Statistics Sweden), Arbetslöshet i Sverige, 2021-09-14, read 14/02/2022.
4 Eurostat, Euroindicators, 89/2021 – 30 July 2021.

nesses to hibernate during the crisis.[5] The social security system has also been an essential tool for providing necessary support and reforms, mainly implemented through government ordinances following a COVID-19-initiated delegation of powers by parliament to the government as an extraordinary exception to the Social Insurance Code (SFB).[6] The changes that have been introduced aim to reinforce the measures recommended by the Public Health Agency.[7] More specifically, the amendments have extended the scope of financial support by relaxing benefit conditionality for employees and the self-employed, including an increase in the level of benefit rates and direct support for employers by providing wage cost subsidies. Changes have also been made to the application process for benefits, and additional funding has been allocated to local administrations to cope with the rising number of requests from claimants.[8]

Sweden is a country with an extensive and universal social security system that supports the labour market and the welfare of all residents. The infrastructure supports both employees and self-employed persons who are incapacitated for work or have lost their jobs due to the crisis. A temporary wage subsidy scheme was introduced to help employers retain employees and provide compensation for income lost during the crisis period. When coronavirus was first detected in Sweden in early 2020, the reported absences from work due to sickness surged.[9] Government

5 Lag (2013:948) om stöd vid korttidsarbete. This strategy aims to prevent layoffs and unemployment by furloughing workers, and is not part of the social security regulations. Caroline Johansson and Niklas Selberg describe COVID-19 and Labour Law: Sweden, Italian Labour Law e-Journal Special Issue 1, vol. 13 (2020) COVID-19 and Labour Law. A Global Review. Section: National Reports.

6 Socialförsäkringsbalk (2010:110).

7 The Swedish approach consisted of recommendations without penalties and fines and was initially aimed at preventing crowding and ensuring social distancing, yet keeping society open, see, e.g., HSLF-FS 2020:12, 16 April 2020. Anyone with symptoms was ordered to stay at home. Over time, these recommendations have been tightened, with the most recent revisions being introduced on 18 January 2021 (HSLF-FS 2021:3).

8 For an overview of actions taken in social security see Thomas Erhag, Social Security during the Pandemic – The Case of Sweden, in Devetzi/Stergiou (eds.), Social Security in Times of Corona – A legal Comparison of Selected European Countries, Sakkoulas Publications 2021, pp. 155-176. This article is a deepened and widened analysis of the action taken to counter the adverse effects of the COVID-19 pandemic but is partly a major revision of the earlier publication by Erhag.

9 Data from the Försäkringskassan (Social Insurance Agency), read 14/02/2022.

subsidies to employers to offset sick pay costs amounted to SEK 5 billion in May 2020, but only SEK 1 billion in September.

2. *Job Retention*

One of the essential support measures for workers and businesses in response to the COVID-19 crisis is the short-time work allowance (furlough). The Short-Time Work Allowance Act[10] was introduced in 2013 in the aftermath of the financial crisis of 2008. Still, it had not been implemented before the pandemic.[11] The possibility of short-term work is widely acknowledged in the labour market. Agreements on short-term work between the social partners have been made in 558 of 666 collective agreements in the private sector, covering 90 per cent of the more than 2 million persons employed in the private sector.[12]

The legislation on short-term work has been particularly relevant during the pandemic because it aims to prevent terminations of employment contracts and consequently prevent unemployment. The act allows employers to reduce employees' working time, with the government covering a larger share of the employer's wage costs. The employee and the employer share the remainder of these costs.[13] An employee can have reduced working hours and still receive more than 90 per cent of their wages, with personnel costs being reduced by up to 50 per cent for the employer. The government covers up to 75 per cent of the employer's expenses in case of reduced working hours for six months. This may be extended for three months. Not all employees are eligible for the support. It applies to persons with permanent and temporary employments but under the condition that they have been employed for three months. Self-employed persons are not able to claim support. Statistics from December 2021 show

10 Lag (2013:948) om stöd vid korttidsarbete. Temporary and more generous rules for 16 March to June 2021 entered into force in April 2020, lag (2020:375) om stöd till korttidsarbete i vissa fall. This statute was later changed by further extending the more generous support for the period between 1 December 2020 and 30 September 2021, lag (2021:54) om stöd till korttidsarbete i vissa fall.

11 Caroline Johansson and Niklas Selberg, COVID-19 and Labour Law: Sweden, Italian Labour Law e-Journal Special Issue 1, vol. 13 (2020) COVID-19 and Labour Law. A Global Review. Section: National Reports, p. 3.

12 Ekonomifakta, Korttidspermittering, read 14/02/2022.

13 From February 2021, new rules for financial support for short-time work entered into force and were applied retroactively from 1 December 2020.

that the allowance has been given to almost 600,000 employees with a preliminary cost of 48.2 billion SEK for 2020 and 2021.[14]

3. Supporting the Economy

There have been several measures adopted by the Swedish government and the *Riksdag* seeking to support the economy in general. The supportive measures directly aimed at workers and employers to protect jobs and income have been combined with various measures to ease pressure on struggling businesses and ultimately provide for the possibility of "hibernation" during periods of significant loss of turnover. Besides direct grants aimed at covering compensation for fixed costs, the tax system has been an essential instrument for relief with lowered social security contributions, deferment of tax payments including VAT combined with the possibility of credit guarantees and loans. Rent support has been offered to specific sectors. Employers have been given incentives to be generous to workers by offering employees perks without them having to pay income tax on the value. This section will briefly comment on three categories of support, a) loans and direct financial support, b) compensation for fixed costs and c) deferment of tax payments.

a) Loans and Direct Financial Support

To support the self-employed category, who do not receive support from other measures, the government introduced direct financial support for businesses suffering from a significant negative impact of COVID-19 on their business turnover, *omsättningsstöd* (turnover support). Since the self-employed do not benefit from short-term work allowance support and have a comparatively low degree of membership in unemployment insurance funds, it can be assumed that turnover support is an essential economic and social measure. The turnover support was first introduced for March to July 2020,[15] and continuously prolonged from August 2020 to

14 Ekonomifakta, Korttidspermittering, read 14/02/2022.
15 Förordning (2020:893) om omsättningsstöd till enskilda näringsidkare för mars-juli 2020.

September 2021.[16] In December 2021, the support was reintroduced with a possible extension until March 2022.

Turnover support can be awarded if the decline in net sales is almost exclusively caused by the effects of the spread of COVID-19 and if sales amount to at least SEK 200,000 in 2019 and are not covered by insurance, damages, or similar. For support to be paid out, sales must be less than a certain percentage of net sales for the reference period being the corresponding period during 2019 (has varied between 60 and 70 per cent). The support will amount to a certain percentage of lost sales (has varied between 75 and 90 per cent depending on the period) and is capped to a maximum of 24,000 SEK per month for each self-employed person. Access to unemployment insurance has had an effect on the amount being paid out.

Companies, especially small and medium-sized, have also been offered loans to secure functioning credit support during the pandemic. *Almi*, a state-owned venture company, was given new capital, 3 billion SEK, to increase lending. The Swedish export credit was expanded with up to 200 billion SEK for state support and commercial credits to Swedish export companies, and *Exportkreditnämnden*, the agency for promoting export and internationalisation for Swedish companies, was given extra room (500 billion SEK) for credit guarantees to companies and banks making it easier for business to access capital.[17]

b) Compensations for Fixed Costs

Omställningsstöd (adjustment support) is intended for natural and legal persons doing business in Sweden and being registered for F-tax (independent firm) and aims to cover fixed costs. The adjustment support was introduced in July 2020 as a direct consequence of the pandemic. It could be given to companies whose total net sales for March and April 2020 were less than 70 per cent of the total net sales for the corresponding period in 2019 if the spread of the COVID-19 disease caused the decrease in sales.[18] During the immediately preceding financial year, the net sales must have amounted to at least SEK 250,000. The requirement for F-tax did

16 Förordning (2021:143) om omsättningsstöd till enskilda näringsidkare för augusti 2020-september 2021.

17 Ministries of Finance, Enterprise and Innovation, and Foreign Affairs, Press release 23 March 2020, read 14/02/2022.

18 Lag (2020:548) om omställningsstöd.

not apply to foundations, non-profit associations and registered religious denominations that are exempt from tax liability. Adjustment support was later provided at 70-90 per cent of the percentage loss of turnover, calculated on the company's fixed costs for the relevant period. The support was capped for the applicable periods (e.g., 97 million SEK for August to September 2021). Fixed costs refer to costs for rent and leasing, interest, depreciation of fixed assets and necessary repairs of such assets, electricity, water, sewage, internet and telephony, heating, insurance, animal feeding, franchise fees, permits, as well as royalties and intellectual property license fees. Costs for wages are not included. The Swedish Tax Agency is the authority that decides on eligibility for support, and the support is paid out through a crediting of the tax account. The support has been extended and successively covered different periods during the pandemic, with minor changes to the conditions by government ordinance (March-April 2020, May 2020, June-July 2020, August-October 2020, November-December 2020, January-February 2021, March-April 2021, May-September 2021). The government reintroduced the support in December 2021 for December 2021-March 2022. The support is considered as state aid according to EU state aid rules. Consequently, the government had to apply for and get the support approved by the European Commission before paying out.

To reduce costs for companies, a rent subsidy was introduced for April-June 2020, January-March 2021, April-June 2021 and July-September 2021. The grant meant that landlords who reduced the fixed rent for companies in vulnerable industries could apply for support to compensate for part of the reduction. For April-June 2020, compensation was given with a maximum of 50 per cent of the reduced fixed rent, however, with a maximum of 25 per cent of the original fixed rent. From January 2021, the support was strengthened to provide compensation with 50 per cent of the reduced fixed rent, up to 50 per cent of the original fixed rent.[19]

c) *Deferment of Tax Payments*

At the early stages of the pandemic, the government activated legislation on the deferment of tax payments for companies.[20] Special deferment

19 Förordning (2020:237) om statligt stöd när vissa lokalhyresgäster fått rabatt på hyran. Förordning (2021:273) om statligt stöd när vissa lokalhyresgäster fått rabatt på hyran under 2021.
20 Prop. 2019/20:132.

legislation was already in place in 2009 due to the financial crisis. Under normal circumstances, deferment of paying taxes can be accepted in cases of exceptional reasons[21]. Still, during the financial crisis, deferment was accepted generally, albeit for a limited period, if there were no special reasons against it.[22] Accordingly, concerning the difficult situation for Swedish industry and business life during the pandemic, the government concluded that it once again was reason enough to consider extraordinary measures and activated the possibility of deferment in line with the legislation from 2009.[23] Deferment was made possible for taxes due between January and September 2020 but this period was later prolonged until January 2021.[24]

Deferment was made possible not only for employers' payment of preliminary income taxes and social security contributions but also for VAT. The reason was to secure liquidity of the business, and the deferment was combined with a fee of 0.3 per cent per month on the tax payment. The idea was to expect payback of taxes within 12-15 months, but according to a PM from the Ministry of Finance, the period for repayment will now be further extended.[25]

An example of a more elaborate use of taxes for economic relief is the immediate but temporary reduction in social security contributions.[26] Employers only had to pay pension contributions between 1 March 2020 and 30 June 2020.[27] In more concrete terms, this implied reduced payroll taxes; the employer's contribution amounts typically to 19.80 per cent on

21 Skatteförfarandelagen (2011:1244).

22 Lagen (2009:99) om anstånd med inbetalning av skatt i vissa fall.

23 Prop. 2019/20:132, p. 32.

24 Prop. 2020/21:166. Extra ändringsbudget för 2021 – Förlängda ersättningar på sjukförsäkringsområdet, stöd till företag, kultur och idrott samt andra åtgärder med anledning av coronaviruset.

25 Ministry of Finance, Fi2021/02865, En ytterligare förlängning av anståndstiden för att möjliggöra avbetalning av tillfälliga anstånd.

26 Social security contributions are, with a marginal exception, paid by employers and self-employed persons. These contributions have little or no formal connection to the right to benefits. Social security contributions are paid monthly to the tax authorities together with income taxes. With the exception of the pension contribution, social security contributions are not separated from the state budget. All social security contributions are both legally and practically considered as taxes meaning that the absence of payment will not have an impact on the right to benefits.

27 Lag (2020:202) om särskild beräkning av vissa avgifter för arbetsgivare. Prop. 2019/20:151 Extra ändringsbudget för 2020 – Ytterligare åtgärder på skatteområdet med anledning av coronaviruset.

the employee's total payroll, of which 10.21 per cent is earmarked for old-age pension.[28] A similar support measure for social security contributions was also provided for the self-employed. Such support to employers was limited to a maximum of 30 employees and on wages up to a maximum of SEK 25,000 per month. The regular social security contribution rate for self-employed persons is 28.97 per cent of their net business profits. To contain the economic consequences for this group, a relief measure was introduced for 2020, with the regular pension contribution rate of 10.21 per cent only applying to annual profits that exceeded SEK 100,000. The government later reduced the social security contributions for young persons between 18 and 23 years of age. The contribution rate on wages up to SEK 25,000 will be reduced to 19.73 per cent instead of the regular rate of 31.42 per cent between January 2021 and March 2023.[29] A further reduction was made for June-August 2021. During this period, employers only paid pension contributions of 10.21 per cent to stimulate the economy. The government has also proposed that this "summer discount" be applicable during June-August 2022.[30]

In other cases, taxes are waived (exempt) to provide specific incentives for pandemic-friendly behaviour. Examples are provided by "fringes" that would usually be taxed, such as the employer offering free parking for persons who do not want exposure through collective transport, or offering gifts to employees as a friendly gesture for hard(er) work. Under normal circumstances, the value of these benefits would be subject to income tax, but temporary exceptions have been made during the pandemic.[31]

4. Social Protection

The social security system represents a key component in the government's policy response to the pandemic. By launching a wide range of time-limited social security measures, the system has been used to mitigate the negative social and economic consequences of COVID-19. The ongoing

28 An additional payroll tax, allmän löneavgift, is paid at 11.62 per cent for both employers and the self-employed.
29 Prop. 2020/21:1, Budgetproposition.
30 Prop. 2020/21:202 Extra ändringsbudget för 2021 – Förstärkt nedsättning av arbetsgivaravgifter för 19-23-åringar under juni-augusti 2021. Fi2021/03061, Förstärkt nedsättning av arbetsgivaravgifter för 19-23-åringar under juni-augusti 2022.
31 Prop. 2019/20:166.

pandemic has substantially impacted Swedish society and has increased the need for social protection and growing pressure on the social security system. The social security system is a social "infrastructure" designed to alleviate social risks by providing financial assistance when such risks materialise. Due to the introduction of the possibility of delegation and subdelegation, several COVID-related social security provisions could be issued by the government, or by a public agency, with reference to "extraordinary events in peacetime". From March 2020, social security has been an essential instrument in distributing financial support in the wake of rising sickness absences. Other policies have targeted the need to contain the spread of infection, ease the pressure on the health care system and improve the financial situation for families with children.

In September 2021, with more than 70 per cent of the population vaccinated, a low spread of infection in society and some of the considerable pressure on healthcare lifted, the Swedish government decided to disassemble several social security measures designed to dampen the negative social consequences of the pandemic.[32] In hindsight, it can be concluded that the September rollback was premature and reversed. This back-and-forth pattern in regulating COVID-related protective measures adds yet another level of complexity to an already overall cluttered image of legislative actions. Below, we outline the main protective steps related to unemployment, students, sickness and families with children. We can identify three main phases (so far): An initial phase (spring of 2020), a second phase (winter of 2020-2021) and a potential third phase (winter of 2021-2022). The overall aim of all protective measures has been to mitigate the negative social impact of the pandemic and ease pressure on health care services. It is hard to say what the situation might have been like without them. Still, statistics so far indicate that the massive and costly measures invested in social protection, while not providing a total shield from negative social impact, still maintained a level of stability.

32 Already in April (see prop. 2020/21:166, pp. 51 and 53) the government had linked the share of vaccinated persons in the population with some of the different extraordinary social security measures. Initially, there was hope to reach a level of 70% of the population to be vaccinated already in June, but this target was not met. In Prop. 2020/21:208, extra ändringsbudget för 2021 – Förlängda ersättningar på sjukförsäkringsområdet, stöd till företag, kultur, idrott och civilsamhälle samt andra åtgärder med anledning av coronaviruset, a new target was set: September 2021.

a) Protective Measures related to Unemployment

Swedish unemployment insurance is partly voluntary as organised in line with the Ghent model and was, before the outbreak of COVID-19, criticised. A study commissioned by the government described unemployment insurance as having “low coverage, complicated administration, lack of accuracy and low predictability”.[33] Other labour regulations and collective agreement-based solutions have been developed to complement statutory unemployment insurance, such as the Job Security Foundation and the rules on furlough. Still, these are generally not available to groups most at risk in the labour market, such as hourly workers, people with fixed-term employment and the self-employed.

As unemployment insurance is partly voluntary, a person who is not a member of an unemployment insurance fund or does not meet the eligibility criteria will only receive a basic flat allowance of SEK 365 per day. Workers who have been a member of an unemployment insurance fund for at least one year (membership requirement) and were employed for at least six months during that year (work requirement) are entitled to unemployment benefits calculated in relation to their salary. Compensation from the unemployment insurance fund will be paid out for a maximum of 300 days, or 450 days if the unemployed person has children under 18 years. During the first 200 days of unemployment, the worker’s compensation amounts to a maximum of 80 per cent of their base salary. After that, the compensation payment amounts to a maximum of 70 per cent of the worker’s base salary. Compensation is only paid up to a maximum of SEK 910 per day for the first 100 days; from day 101 to day 300, the maximum amount of compensation is SEK 760 per day. The compensation period usually commences after a 6-day waiting period. The total compensation expressed in SEK generally means that the level of income protection is low compared to other areas of social security. Of course, the low level of coverage and comparatively low benefits indicated that something needed to be done during the initial stage of the pandemic.

Several temporary changes were made in April 2020 and planned to be in force between 13 April 2020 and 3 January 2021.[34] The government has extended this period until the end of 2022 and included the costs in

33 SOU 2020:37, p. 139. Ett nytt regelverk för arbetslöshetsförsäkringen.
34 Prop. 2019/2020:146. Extra ändringsbudget för 2020 – Ytterligare åtgärder med anledning av coronaviruset.

its budget for 2021.[35] Specific high-risk groups were targeted with these reforms, such as employees in sectors where work is often time-limited, or persons performing work "by the hour".[36] The amendments also aimed to make unemployment insurance more accessible for the self-employed. The changes introduced an increase of the income-related benefit from day 101 of unemployment onwards. The basic daily allowance, available for those not eligible for income-related benefits, has temporarily been raised from SEK 365 to SEK 510 (SEK 8,030 to SEK 11,220 per month). As for income, the coverage of the income-related benefit has temporarily been expanded as the cap has been raised for the first 100 days of unemployment.

Furthermore, the 6-day waiting period has been suspended. Temporary modifications of the membership and work conditions were made to boost membership and the number of persons qualified for income-related benefits. Usually, a 12-month membership in an unemployment insurance fund is required to be eligible for income-related unemployment benefits. Still, now a 1-month membership will count as four months of membership between March and December 2020, thus allowing members to qualify after only three months of membership. A temporary change to the required period of employment for eligibility has also been introduced to facilitate access to income-related unemployment benefits. Workers are now required to have worked at least 80 hours a month over six months or 480 hours for six consecutive months and at least 50 hours per month (part-time work) after that over a total period of 12 months. The requirement now is for part-time and hourly workers to have worked 60 hours a month over six months or 420 hours for six consecutive months and for at least 40 hours per month (part-time work) after that over 12 months to qualify for income-related unemployment benefits. Self-employed persons are also eligible for this benefit if their business is temporarily closed (the requirement that the company must have been operational for five years has been abolished).[37] The ordinary regulation requires phasing out and shutting down the business for the entrepreneur to receive any benefits.

The impact of the coronavirus crisis on the labour market is visible in the official statistics, with an increase in unemployment since March 2020.[38] According to Arbetsförmedlingen (Swedish Public Employment Service),[39] 120,000 persons lost their jobs in 2020, a number that has prob-

35 Budgetproposition för 2021. Prop. 2020/2021:1.
36 Budgetproposition för 2021. Prop. 2020/2021:1. Utgiftsområde 14, p. 40.
37 Lag (1997:238) om arbetslöshetsförsäkring, 36 §. SFS 2020:217.
38 Statistics Sweden (SCB), Arbetskraftsundersökningarna (AKU).
39 Swedish Public Employment Service.

ably been curbed by the high number of approved applications for short-time work permits (75,000); there are now a total of nearly 580,000 short-time workers according to Tillväxtverket (Swedish Agency for Regional and Economic Growth).[40] Unemployment insurance funds have also experienced an inflow of new members since the outbreak of COVID-19.[41]

b) Protective Measures related to Students and Higher Education

Government policies introduced to minimise the adverse effects of COVID-19 can also be found within the system of higher education. Following a decision that it should be clarified that in case of extraordinary events in peace-time, either the government or a public authority given delegated powers had the mandate to decide by ordinance on rights for students to receive study support during leave[42] such a decision was also made.[43] Thus, it was decided that students would be allowed to keep their already granted study grants, study loans or study support (even if no longer able to study). Also, it was decided that students claiming study grants were exempted from the demand to show a doctor's certificate when taking care of sick children. These measures were agreed upon in April 2020 and made retroactively effective from 1 January 2020.[44]

Ordinarily, students receiving study grants can only have incomes up to a set level and still receive a maximum grant. If incomes are higher, the grant will be lowered. Due to the pandemic and in an effort to unburden a struggling healthcare sector, the construction with a "free amount" was set aside making it easier for students (mainly medical students, nursing students and students in other care-oriented education) to work extra within their line of education. The lack of restrictions in combining income from work and study grants also worked more broadly to the advantage of people at economic risk due to a failing labour market. During 2020 and 2021, there were no restrictions on how much money students could

40 Swedish Agency for Economic and Regional Growth.
41 IAF, Fler medlemmar I arbetslöshetskassorna, 15/04/2020, read 14/02/2022.
42 Prop. 2019/20:132, Extra ändringsbudget för 2020 – Åtgärder med anledning av coronaviruset.
43 Förordning (2020:201) om studiestöd vid spridning av viss smitta, 3-5 §§.
44 Förordning (2020:201) om studiestöd vid spridning av viss smitta, 6 §.

earn through work and still receive entire study grants.[45] In 2022, this temporary adjustment was ended, and it is no longer in place.

In terms of the effects of the pandemic on the educational system, one can note the following: People in the process of repaying their study loans can apply for a decrease in the amount for repayment in situations of exceptional economic hardship (for instance, if receiving social assistance). In 2020, there was a 25 per cent increase in approved applications on these grounds. Another criterion that can lead to approved postponement of repayment is that the person is again registered as a student (returning to studies). In 2020, there was a 13 per cent increase in approved applications on these grounds, and there was a distinct increase in the number of people studying – a development made easier due to abolishing the "free amount" mentioned above.[46]

c) *Protective Measures related to Sickness*

In April 2020, COVID-19 was listed as a contagious disease. This meant that if health care workers became infected at work, the infection would qualify as a work injury. The same would also be true for persons who otherwise treated a contagious person at work and contracted coronavirus.[47] The same month, in April 2020, several temporary changes to sickness insurance were introduced. It was decided that they were to enter into force retroactively from 16 March 2020 and remain effective until 31 December

45 In a similar manner as described above, it was first decided to enter a clarification in the Study Grant Act that in case of extraordinary events in peacetime, either the government or a public authority is given delegated powers, has the mandate to decide by ordinance on whether the incomes of students should be dealt with in another manner than regulated, see prop. 2019/20:146 Extra ändringsbudget för 2020 – ytterligare åtgärder med anledning av coronaviruset. A delegation from parliament to the government in cases of "extraordinary events in peacetime" is now in place, Studiestödslagen (1999:1395) 2 kap. 10 § 4 p. SFS 2020:199. Later, such an ordinance was issued and the change implemented: Förordning 2020:201 om studiestöd vid spridning av viss smitta, 2 a §.

46 Centrala Studiestödsnämnden (CSN), Hur har pandemin påverkat återbetalningen av studielån?, read 08/01/2022.

47 SFS 2020:1045, changing förordning (1977:284) om arbetsskadeförsäkring och statligt personskadeskydd. If qualified as a work injury, an employee will receive full compensation in case of incapacity for work. This amendment is permanent.

2020.[48] Additional changes were presented by the government in June 2020[49] and extended in November 2020.[50] Later, the government extended the measures to last until 30 April 2021 and reserved the necessary financial resources decided by the government based on the delegated powers.[51]

The early amendments introduced in spring 2020, and to be described in more detail below, extended the scope of financial support by relaxing benefit conditionality for employees and the self-employed and by giving direct support to employers by providing wage cost subsidies during sick pay periods. Changes were made to the application process for benefits, and additional funding was allocated to local administrations to cope with the rising number of requests from claimants.

The focus was already, from the beginning, on short-term benefits, allowing workers who were experiencing only mild symptoms to stay at home by compensating them. Similarly, it was made possible for parents to stay at home, income compensation was provided when their children were ill, or schools closed. At the same time, the government subsidised employers' costs when their employees could not work.[52]

Under normal circumstances, sickness benefits are paid out when a worker is sick and incapacitated for work. Income loss during the first 14 days of sick leave is usually compensated by the employer, who pays sick pay. Following this 14-day period, the employee can apply for sickness benefits from Försäkringskassan. The first day of sick leave is a 1-day waiting period. A self-employed person's sickness benefits are covered by Försäkringskassan immediately, but the waiting period may range from 3-30 days, depending on the chosen plan. The amount of benefits the

48 Prop. 2019/2020:132, Extra ändringsbudget för 2020 – Åtgärder med anledning av coronaviruset.

49 Prop. 2019/2020:187, Extra ändringsbudget för 2020 – Ersättning till riskgrupper, kapitalinsatser i statligt ägda företag och andra åtgärder med anledning av coronaviruset.

50 Prop. 2020/21:46. Extra ändringsbudget för 2020 – Förlängd rätt till ersättning för riskgrupper.

51 Förordning (2020:195) om vissa sjukpenningförmåner med anledning av sjukdomen COVID-19.

52 The support to employers to help cover extensive costs for sick pay has been renewed in several steps: Prop. 2020/21:84 Extra ändringsbudget för 2021 – Förlängda ersättningar på sjukförsäkringsområdet, stöd till företag och andra åtgärder, covered time until 30 April 2021. Prop. 2020/21:166, Extra ändringsbudget för 2021 – Förlängda ersättningar på sjukförsäkringsområdet, stöd till företag, kultur och idrott samt andra åtgärder med anledning av coronaviruset, extended the measure until 30 June 2021.

self-employed person receives depends on his or her previously reported income, declared in his or her tax return.

As part of the spring-2020 COVID-related reforms, a temporary flat benefit was introduced to compensate for the loss of income during the first day of sickness. A worker could apply to Försäkringskassan for reimbursement and his or her lost wages were paid out as sickness benefits for one day.[53] Self-employed persons were also eligible for a similar flat fee for the given waiting period of up to 14 days. The sickness benefit for self-employed persons was thus paid from the first day of reported sickness, and not once the waiting period was over.

The government also introduced a compensation for employers for extraordinary costs related to sick pay during the first 14 days of the employee's sick leave period. High-risk protection for excessive employer sick pay costs does exist.[54] Hence, if the employer's sick pay costs, including taxes and contributions, exceeded 0.5 per cent of total wage costs, the employer would receive compensation. This temporary support measure lowered the applicable threshold and thus made it accessible for smaller businesses as well.

Also temporarily, medical certification supporting the need for leave due to illness had to be provided from day 15 of the sick leave period and not on day 8 as is usually the case.[55] This change was intended to relieve the pressure on the health care system.

Preventive sickness benefits *for certain risk groups*, introduced by ordinance (2020:582) were introduced as temporary benefits providing for exceptions to SFB Chapter 27 (preventive sickness benefit) and SFB Chapter 46 (disease carrier allowance). The amendment aimed to provide benefits to individuals who belong to specific risk groups, i.e. persons with certain diseases at more risk than others during the pandemic. If such persons stayed at home to avoid infection but did not have the possibility to work from home, they were eligible for this particular benefit. Under normal circumstances, they would not qualify for benefits under the SFB.

In December 2020, when the second wave was a fact, the government proposed critical temporary changes to how incapacity for work was to be

53 Förordning (2020:195) om vissa sjukpenningförmåner med anledning av sjukdomen COVID-19. The exceptions to this ordinary regulation on sick pay described here was initially only supposed to apply until 31 December 2020, but has now been extended, förordning (2020:1030).

54 Lag (1991:1047) om sjuklön, Art. 17.

55 Förordning 2020:196 om ändring i förordningen (1995:1051) om skyldigheten att lämna läkarintyg m.m. i sjukpenningärenden i vissa fall.

assessed in case of long-term sickness.[56] The current system is not flexible enough in a pandemic, as workers with a good prognosis and who are likely to return to their jobs will lose their sickness benefits. Many of these persons are also waiting for scheduled medical care, which has been postponed due to the tremendous challenges the health care system is currently facing.[57] Under normal circumstances, assessing an employee's capacity for work on day 180 determines whether they can return to their regular workplace/employer or whether the employee can work in any other available job on the labour market (SFB Chapter 27 Art. 48). This provision has been quite controversial as it implies that a person who is no longer able to work in their regular job can be forced to apply for another available position on the labour market and will thus be considered unemployed instead of sick and will consequently lose their sickness benefit. There are negative financial consequences for an individual regarded as unemployed compared to being a recipient of sickness benefits. A new, more flexible system for the rehabilitation of this group of workers was introduced on 15 March 2021.[58] The COVID-related measure that made exceptions from the 180-days-rule mentioned above was applicable from 21 December 2020 up until 14 March, when the new regulation came into force.[59]

As the second wave of the pandemic phased out during the spring and summer of 2021 and the process of getting the population vaccinated gained speed, the government decided on extensions of protective measures step-by-step, applying relatively short periods. In April 2021, the government proposed to prolong all the measures described above: the compensation to employees for the waiting day, compensation to employers for the 14-day sick pay period, compensation to risk groups and their relatives (in need of isolation), the lowering of qualification criteria in sickness insurance and the extension of the period on sick leave before sick persons need a doctor's certificate.[60] In May, the same protection measures were proposed to be extended once more, this time until the end

56 Prop. 2020/21:78 Vissa ändrade regler inom sjukförsäkringen. Förordning 2020:711 om undantag från vissa bestämmelser om sjukpenning med anledning av sjukdomen COVID-19.

57 Prop. 2020/21:1 Budgetproposition.

58 Prop. 2020/21:78 Extra ändringsbudget för 2021- Vissa ändrade regler inom sjukförsäkringen.

59 Prop. 2020/21:83 Förstärkta stöd till företag, nedsättning av arbetsgivaravgifter för unga och andra åtgärder med anledning av coronaviruset.

60 Prop. 2020/21:84 Extra ändringsbudget för 2021 – förlängda ersättningar på sjukförsäkringsområdet, stöd till företag och andra åtgärder med anledning av coronaviruset, read 14/02/2022.

of September and with a note that measures should be in force until the vaccination target was met and 70 per cent of the population had been vaccinated.[61] However, some measures, like the relaxed demand on when to show a doctor's certificate, had already as this point been prolonged until the end of the year.[62] A prolongation was effected until the end of 2021 for the exception introduced regarding the point during a person's sick period at which his work capacity was to be estimated with a view to any other work on the labour market.[63]

In September 2021, the vaccination goal was met. Some of the protective measures were ended: the compensation to employees for the qualifying day, the compensation to employers for the 14-day sick pay period, the compensation to the self-employed for their qualifying days, the compensation to risk groups and their relatives (in need of isolation), the lowering of qualification criteria in sickness insurance and the extension of the period before you need a doctor's certificate.[64] In December 2021, when the fast spread of the Omicron variant of the virus had become an undeniable fact, the Department of Social Affairs decided to propose reversals of several of the September roll-backs. The compensation for the waiting day was proposed to be re-introduced for the period of 8 December 2021 to 31 March 2022.[65] Other examples of proposed roll-backs included the compensation to persons belonging to a risk group (and their relatives),[66] and a proposal to yet again, in a second step, extend the period before a doctor's certificate was needed in case of a claim for sickness benefit.[67] These proposals are pending until a majority in the parliament

61 Prop. 2020/21:208 Extra ändringsbudget för 2021 – förlängda ersättningar på sjukförsäkringsområdet, stöd till företag, kultur, idrott och civilsamhälle samt andra åtgärder med anledning av coronaviruset, read 14/02/2022.

62 Prop. 2020/21:208.

63 Vårändringsbudget 2020/21:99.

64 The time limit had been set by the government in prop. 2020/21:208 Extra ändringsbudget för 2021 – förlängda ersättningar på sjukförsäkringsområdet, stöd till företag, kultur, idrott och civilsamhälle samt andra åtgärder med anledning av coronaviruset, and at this point no further extension had been decided. Thus, no special decision was necessary to end it, as it merely expired.

65 On 8 December 2021, the government presented a new action plan in preparation for a new wave of COVID-19. At the same time, it proposed a re-introduction of measures to keep infections down and also economic benefits in line with earlier policies.

66 Forsakringskassan, Coronaviruset – det här gäller, 1 April 2022.

67 Proposal from the Department of Social Affairs, 23 December 2021; if accepted, the proposal is included in the revised budget to be decided by parliament in January 2022 (along with the proposal mentioned above from 8 December.

agree on financing, and a decision is expected in January 2022. If positive, the measures will be accessible retroactively. Whether the winter of 2021 is the beginning of a third phase in terms of the number of people falling ill from the pandemic is hard to say at the time of writing this report. Still, by the end of 2021, the government was prepared to re-introduce also other, already tried-out protective measures if needed.

The disease carrier allowance, a benefit that already existed but was rarely used before the pandemic, was frequently applied from March to May 2020 and later during the second wave, which started in October 2020. In December 2020, there were 9000 recipients of this benefit compared to 15 the previous year. In the first phase of the pandemic, in March 2020, the number of new cases of sickness increased by 89 per cent.[68] During the beginning of the second wave of the pandemic in November 2020, the increase in new cases of sickness was 35 per cent more than in 2019 (the comparable figure for April was an increase of 105 per cent). Applications for the temporary compensation of the 1-day waiting period during a sickness period varied from 200,000 applications per week in May 2020 to 100,000 weekly applications from September onwards. This temporary compensation was re-introduced on 8 December 2021.[69] Government subsidies to employers to offset sick pay costs amounted to SEK 5 billion in May 2020, but only SEK 1 billion in September.

Other measures were less used, such as the preventive sick benefit initially estimated to target 200,000 recipients; still, by June 2020, less than 2200 had applied. The main explanation for the miscalculation is that more people could work from home than predicted. A benefit that decreased during the period was the benefit paid to people taking care of a close relative (a decrease of 30 per cent). The reduction of applications for the care benefit is related to the limitations in access to the elderly population (isolated due to the high risks, especially during the first phase of the pandemic).

The proposal suggests that the extended period is to last until 31 March 2022. Similarly, the demand to show a doctor's certificate to receive the disease carrier allowance was temporarily lifted altogether during the period 27 December 2021 - 31 March 2022, read 14/02/2022.

68 Försäkringskassan, "Socialförsäkringen och coronaepidemin. En översikt av nyttjandet av socialförsäkringen under coronaepidemin 2020", Socialförsäkringsrapport 2021:1, Social Insurance Report, June 2020.

69 Försäkringskassan, Effekter som covid-19 har på sjukförsäkringen. Delrapport 2, Svar på regeringsuppdrag, 2021-09-01, read 08/01/2022.

d) Protective Measures Targeting Pregnant Women and Families with Children

Following the outbreak of COVID-19, parents of children belonging to a risk group and parents, in general, faced significant challenges, especially when schools started to close. Therefore, the government passed an ordinance to adopt temporary measures to introduce exceptions to the SFB for parents whose children had recently been seriously ill and when schools began to close.[70] The ordinance stipulates that if schools are closed, the temporary parental benefit will be made available to parents who cannot work (from home) and who would otherwise suffer a loss of income. The same provision applies to parents whose children have recently been seriously ill. The purpose of these temporary provisions is to provide increased protection for children who may be at higher risk of becoming severely ill. In the fall of 2022, the government decided to prolong the temporary measures described above. At first until 31 January 2022, but at a later stage during the fall, this date was proposed to be postponed to the end of March 2022.[71]

In 2020 and 2021, during the period July 1 to December 31, the government decided on an added benefit to top up housing allowance, a benefit directed at low-income families with children.[72] The benefit was 25 per cent of the estimated housing allowance (maximum), which could mean an added SEK 1325 each month.

In February 2021, the unique COVID risks identified concerning pregnant women caused the government to change a regulation that aims to secure safety at the workplace for pregnant women. Thus, COVID-19 was added as a legitimate reason to be awarded benefits during pregnancy if your work environment was such that the employer could not secure your safety. The employer makes the assessment and decides whether the work environment is safe.[73]

Not surprisingly, the costs for temporary parental benefits (leave to care for a sick child) reached record levels in March-April 2020. The number

70 Förordning (2020:244) om viss tillfällig föräldrapenning med anledning av sjukdomen COVID-19.

71 Department of Social Affairs, read 08/01/2022.

72 Prop. 2019/20:167. The time-limited extraordinary benefit was constructed as a special benefit not to be taken into account in, or affecting, the calculation of the ordinary housing allowance.

73 AFS 2020:3, Smittrisker, Arbetsmiljöverkets föreskrifter om ändring i Arbetsmiljöverkets föreskrifter AFS 2018:4 om smittrisker.

of days when parents used temporary parental benefits increased by 90 per cent in March 2020.[74]

5. Conclusion

It is not for us to pass judgment on whether the general strategy followed by Sweden to fight coronavirus has been efficient or not. Sweden initially had very high mortality rates, its health care system is again struggling to cope with the third rise in COVID-19 hospitalisations, and there is an urgent need to take care of a growing "debt" in health care.[75] The pandemic has indeed had a substantial negative social and economic impact on many sectors of society. But this said, there are also indications that crisis management, reflected in the almost endless number of revised, extraordinary state budgets, has found ways and means to counteract and avoid some of the worst potential risks.

This article described various critical measures where the legislator wanted to stabilise and strengthen livelihood opportunities and basic income security. Support could have been provided with the help of existing legal infrastructure but has been expanded concerning the pandemic as an *extraordinary event*. In retrospect, the regulatory changes have been characterised by short-sightedness. Still, the temporary solutions sought have recurred in several rounds in the same way the pandemic has gone in waves.

Furlough is an example of a previously established crisis method that was reactivated and used as support during the pandemic. There are examples of other activities where e.g. the ordinary tax procedures have been set aside due to what the legislator refers to as extraordinary circumstances. Deferment of payment of taxes means temporary liquidity support but is due to be paid back with an interest rate. The legislator has other than economic reasons in mind for taxes on work and social security contributions when giving costly discounts on the employer's wage taxes.

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74 Försäkringskassan, "Socialförsäkringen och coronaepidemin. En översikt av nyttjandet av socialförsäkringen under coronaepidemin 2020", Socialförsäkringsrapport 2021:1, Social Insurance Report, June 2020.

75 For an analysis of the measures taken in the health care sector, see Ana Nordberg and Titti Mattsson, COVID-19 Pandemic in Sweden. Measures, Policy Approach and Legal and Ethical Debates, In BioLaw Journal – Rivista di BioDiritto, pp. 731-739.

The social insurance system has been a vital infrastructure used for support measures. SFB has now been changed to the extent that the government quickly has the mandate to take specific steps in the case of extraordinary events. The temporary COVID-19 regulations made it easier for employed persons to stay at home with symptoms since the economic effects of staying at home are not as severe now as they are during normal circumstances. Social security legislation has been adapted to meet the altered needs caused by the pandemic. The government is temporarily shouldering a higher share of the risk under the current extraordinary circumstances, especially regarding short-term benefits for employees and financial support for employers. We have witnessed changes to short-term benefits to address the risk of sickness, family, unemployment, and increased beneficiaries. The results are reflected in the costs and transfers that have been made via the benefits regulated in social security legislation. Statistics indicate that the temporary initiatives represent an essential support mechanism, and social insurance was generally used more frequently during 2020 because of COVID-19.[76] Unemployment insurance is a particular case because the previously identified weaknesses in the system were so strongly exacerbated during the onset of the pandemic.

One indication on whether or not the different social security reforms were successful in mitigating the feared social consequences of the pandemic could be looked for in the reports from the National Board of Health and Services, the agency responsible for overviewing social assistance. According to the National Board of Health and Services, there has been no increase in social assistance recipients during 2020; on the contrary, a slight decrease is noticeable. However, the total amount of aid paid out increased, as did the share of recipients who received assistance for an extended period. There was no decision to increase levels of social assistance as a response to COVID-19, thus the figures reflect an increased need for assistance among eligible individuals. It is hard to know to what extent this development was caused by COVID-19, as it is a continuation of a trend that had existed already before the pandemic broke out[77]. Still, during 2020, groups that received more assistance included an increase of women in low-paid work and unemployed in the age-span 55-65, groups that might have been hit harder than others by how COVID-19 affected the labour market. It seems that in spite of the social security reforms

76 Försäkringskassan, Korta analyser 2020:5.

77 Socialstyrelsen, "Utvecklingen av ekonomiskt bistånd i spåren av covid-19 – faktablad 4", 2021-10-07, Dnr 5.7-24430/2020.

instituted to dampen negative social effects of the pandemic, the reforms did not prevent these groups from an increased dependence on social assistance. This said, given the overarching trends in social assistance there might be more complex explanations for this development that might include but also reach beyond the pandemic. There seem to be no drastic changes in these figures for 2021.[78]

Another indication of how successful the social protection measures have been in mitigating the negative social and economic consequences is to look at figures from the Bailiff's office. In figures from September 2021 presented by the Bailiff, a distinct increase in evictions of families with children after COVID-19 is identified (the highest number since 2015). At the beginning of the pandemic, many landlords were open to unique, temporary solutions, but fewer solutions were available as time passed.[79]

There were, in retrospect, some general delays in the initial legal response. In a comparative perspective, it seems as if the pre-pandemic situation in Sweden was unusual, with either no, or unclear legal possibilities for the government to act swiftly on extraordinary events in peacetime. Whatever else, one prediction is that the changes made in different bills to secure governmental action in exceptional times are likely to stay.

The measures introduced during the pandemic cost an additional SEK 400 billion in government spending in 2020-21 alone.[80] What is less clear are the more long-term effects of the crisis on the labour market and social security policy. The temporary changes have indisputably revealed areas and issues that represent a temporary challenge and also a major broader challenge for the Swedish welfare state.

78 Socialstyrelsen, "Utvecklingen av ekonomiskt bistånd i spåren av covid-19 – faktablad 4", 2021-10-07, Dnr 5.7-24430/2020.

79 Kronofogden, Fler vräkta barnfamiljer i spåren av pandemin, 19/09/2021, read 14/02/2022.

80 An additional SEK 1000 billion has been made accessible through loans and financial guarantees. The SEK 400 billion is an estimate for all action taken. One can compare this to the normal budget for social security in Sweden (excluding administration, old-age pensions and unemployment) which is around SEK 225 billion per year. Försäkringskassan, Socialförsäkringen i siffror 2019.

XXII. Consolidating Solidarity in Taiwan during the COVID-19 Crisis

Nai-Yi Sun

1. Introduction

In the early hours of 31 December 2019, a medical officer of the Taiwan Center of Disease Control noted chatter and unconfirmed reports of medical and official documents about an outbreak of pneumonia caused by an unknown coronavirus in Wuhan, China, circulating on social media. Having learned bitter lessons from the SARS pandemic in 2003, the Taiwanese officer was alerted by the first signs of a pandemic. Twenty years earlier, the Taiwanese government fought strenuously against SARS due to lack of a clear crisis management system, a vague legal basis for disease control measures[1], and exclusion from the international community, in particular, the WHO.

Based on the previous experience, this time the Taiwanese government reacted rapidly to the uncertain circumstances. On 31 December 2019, on-board disease control for all incoming flights from Wuhan was implemented. Afterwards, strict border control, quarantine, intensive case tracing and widespread mandatory mask-wearing policies were in place to prevent a massive outbreak in addition to a months-long shutdown of public and economic activities. Even the community outbreak in May 2021 was brought under control within a few months with a short-term lockdown over the summer of 2021. Overall, Taiwan had a comparatively low infec-

1 Due to nosocomial infection of SARS, in 2013 the Taipei City mayor commanded the isolation of an entire city hospital, locking in patients and their companions, medical staff, administration personnel and cleaning workers without any coordinating measures for two weeks. This order resulted in more victims during the poorly segregated quarantine. Besides political responsibility, the constitutionality of compulsory isolation was also a controversial issue. Addressing this question, Interpretation No. 690 of Taiwan's Constitutional Court examined the constitutionality of relevant regulations with reasonable scrutiny. It particularly took into account the professionality of infectious disease control, recognised the need for wide discretion of authorities and allowed them to deprive people of personal liberties with a quarantine order and not injunction.

tion rate until a larger community outbreak occurred in May 2021, and daily activities have been impacted less in Taiwan than in other countries. This success shaped a feeling of solidarity and boosted the self-confidence of the Taiwanese people, even when they were again confronted with isolation from the international society during the COVID-19 pandemic and shortage of vaccines because purchases were hindered by China.[2]

The abovementioned measures are provided for by the Infectious Disease Control Act (傳染病防治法). Taking lessons from SARS, the Act had been comprehensively amended to strengthen governmental capacities for disease prevention and control in 2004. Referring to the US model of Disease Control and Prevention, the Act authorises the central competent authority, the Ministry of Health and Welfare, to establish the central epidemic command centre in case of a severe epidemic to unify command and coordinate the central and local governments with civil society to implement disease control measures. The Act further provides a series of prevention and control measures, and also compensation in case of quarantine and designation of personnel and materials.

In response to the challenge of COVID-19, the parliament enacted a time-limited act in March 2020, the "Special Act for Prevention and Relief Revitalisation Measures for Severe Pneumonia with Novel Pathogens," (hereafter COVID-19 Special Act) (嚴重特殊傳染性肺防治及紓困振興特別條例) which entered into force retroactively on 15 January 2020 and expires on 30 June 2022, or on a later date approved by the President of the Executive Yuan. The COVID-19 Special Act supplements the Infectious Disease Control Act and provides a comprehensive legal basis not only for further freedom restriction and privacy invasion for the purpose of disease control, but also for compensation, financial relief and tax reduction. Particularly in light of the socio-economic impact of the pandemic, Paragraph 9 of this Act authorises the government to provide relief, subsidies and revitalisation measures for industries, enterprises, medical care institutions and relevant practitioners, and necessary assistance for their employees[3].

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2 By Yimou Lee and Ben Blanchard, Taiwan Says China Blocked Deal with BioNTech for COVID-19 Shots, Reuters, 26 May 2021; Raymond Zhong and Christopher F. Schuetze, Taiwan Wants German Vaccines. China May Be Standing in Its Way, New York Times, 16 June 2021, (last visited: 14/02/2022).

3 For an overview of the COVID-19 Special Act see Wen-Chen Chang, Taiwan's Fight against COVID-19: Constitutionalism, Laws, and the Global Pandemic, VerfBlog, 21 March 2020, DOI: 10.17176/20200321-122752-0 (last visited: 15/12/2021).

Several Regulations for relief and revitalisation were issued by the competent ministries based on the authorisation of the Special Act[4].

The COVID-19 Special Act also allows extraordinary budget amounting to NT$ 60 billion and lifts the central government debt ceiling to revitalise the economy. Accordingly, the parliament approved several extraordinary budget plans for COVID-19-related measures from 2020 to 2021. By June 2021, NT$ 260 billion had been approved to support “Relief Package 4.0”, and the ceiling of the total extraordinary budget had been lifted to NT$ 840 billion through amending the COVID-19 Special Act[5]. Meanwhile, the “Quintuple Stimulus Voucher”, part of the fourth budget planning designated by the Executive Yuan for economic stimulation, had also been approved by parliament[6].

The need for the extraordinary budget can be understood through a perception of the Taiwanese economy and the gaps in the existing social security schemes. Taiwan’s economy is deeply globalised; the essential business sectors and subcontract manufacturers are integrated into the global supply chain. Unlike in classical industrial countries, the economic and industrial structure of Taiwan is characterised by a significant representation of small and medium-sized enterprises (hereafter SMEs)[7] and self-employment. In 2020, SME employment constituted 80.94% of total employment in Taiwan, and the proportion of employees in SMEs

4 The relevant regulations were issued by the Ministry of Labour, the Ministry of Economic Affairs, the Ministry of Finance, the Ministry of Health and Welfare, the Ministry of Agriculture, the Ministry of Transportation and Communication, the Ministry of Education and the Ministry of Culture.

5 For an overview on the extraordinary budget for COVID-19-related measures, see internet site of the Directorate-General for Budget, Accounting and Statistics of the Executive Yuan, R.O.C. (Taiwan) (last visited: 15/12/2021).

6 Cf. Newsletter of the Executive Yuan, R.O.C. (Taiwan) on 9 September 2021 (last visited: 15/12/2021).

7 The criteria of SMEs vary from state to state. According to the Standard of Identifying Small and Medium-Sized Enterprises revised in 2020, this term refers to an enterprise whose paid-in capital is no more than NT$ 100,000,000, or which hires fewer than 200 regular employees; an SME with fewer than 5 regular employees is defined by this standard as a ”small-scale enterprise“. In the EU, according to EU Recommendation 2003/361, an SME refers to enterprises with fewer than 250 employees whose turnover is less than EUR 50 million or whose balance sheet total is less than EUR 43 million; a company with fewer than 10 employees and whose turnover or balance sheet total is less than EUR 1 million is defined as a micro company.

came to 76.12% of total employment[8], while the average employment in SMEs in OECD countries contributed only 68% to total employment, with 59% in Germany and 42% in the US[9]. The management of Taiwanese SMEs is often family-oriented, highly flexible and tolerant to risk and is characterised by highly mobile employees[10]. Basically, the whole system orientates itself towards economic liberalism and adjusts itself flexibly to international market competition[11]. However, the "economy first"-driven policies over the last decades without core values have led to overfatigue and unjust working conditions, especially as Taiwan's industries are facing direct challenges from the rising Chinese economy[12]. The weakness of such a socio-economic structure is a relatively low proportion of investment for innovation, less motivation towards industrial upgrading, and consequently an ever-widening wealth gap.

The negative impact of socio-economic inequality has been mitigated, to some extent, by the network of social insurance schemes which cover the social risks of sickness, unemployment and occupational accidents, and provide for invalidity, old age and survivors' pensions. Furthermore, some residual welfare systems, such as social assistance, continue to serve as a social security net. The National Health Insurance and unemployment insurance played a primary role for social protection during the pandemic. From the beginning of the COVID-19 outbreak, the comprehensive database of the universal health insurance that covers nearly all residents has been used to distribute epidemic prevention materials, distinguish infected and uninfected patients, and establish vaccination priority, in spite of the legality of such measures being questioned in view of personal

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8 Ministry of Economic Affairs, R.O.C. (Taiwan), The White Paper of SMEs in 2021 (2021 中小企業白皮書), Oct. 2021, 43, Table 2-1-1. For statistical details see: Small and Medium Enterprises Administration, Ministry of Economic Affairs, R.O.C. (Taiwan), SMEs Statistics in 2020, Total Employment of Small and Medium Enterprises by Industry in 2020 (last visited: 15/12/2021).

9 OECD, OECD SME and Entrepreneurship Outlook 2021, 28 June 2021, 195, 270.

10 Tzong-Ru Lee and Irsan Prawira Julius Jioe, Taiwan's Small and Medium-Sized Enterprises (SMEs), Education About Asia, Vol. 33, No. 1, Spring 2017, 32 (33).

11 Chi-Jen Wu (吳啟禎), Everyone Is an Innovator: Towards an Innovation-Driven Economy in Taiwan through Working Conditions Improvement (公平經濟新圖像 – 一個勞動主權與創新機制的視角), in Hsiu-Hsin Lin & Rwei-Ren Wu (林秀幸、吳叡人) (eds.), The Human Conditions of Taiwan's Sovereignty (主權獨立的人間條件), 2020, 55-85.

12 Minn-Tsong Lin (林敏聰), Towards a Social Democratic State: A Discussion on the Taiwan Factor (邁向「台灣社會民主國」–「台灣因素」初探), in Hsiu-Hsin Lin & Rwei-Ren Wu (林秀幸、吳叡人) (eds.), The Human Conditions of Taiwan's Sovereignty (主權獨立的人間條件), 2020, 135-161.

data protection[13]. The loss of income in case of redundancy was partially covered by unemployment insurance, which generally provides 60% of an applicant's average insured monthly salary for 6 months[14].

Nevertheless, the domestic and cross-border impact of the COVID-19 pandemic on the economy exceeded the coverage of the social security system. Though the domestic economy was less damaged compared to those in other countries in 2020, certain sectors, such as tourism and transportation, were particularly affected by the steep decline in global mobility, directly and indirectly resulting in massive furlough and layoffs. Meanwhile, lockdown measures triggered by the outbreak of the disease from May to September 2021 hit all sectors and caused a severe recession. The financial hardships faced by the self-employed and other vulnerable groups and even employers of SMEs could not be covered by normal schemes of social security and state subsidy for entrepreneurs. Relevant relief packages were programmed in addition to existing schemes, and corresponded with the framework of job retention, economic support and social security. During the level 3 epidemic alert lockdown in summer 2021, the government extended the framework particularly to parents with children sent home from school, the self-employed, and employers of businesses under mandatory closure.

2. *Job Retention*

a) *Short-Time Work Benefits?*

In Taiwan, the Employment Insurance Act was enacted in 2002 and entered into force in 2003[15]. Aiming to avoid redundancy when employers' businesses suffer an operational loss or business contraction during an

13 Wesley Yi-Hung Weng (翁逸泓), Processing of Data concerning National Health Insurance in the Context of the COVID-19 Outbreak: Applications and Limitations (健保科技防疫與個資保護：防疫個人資料之應用與界限), Angel Health Law Review (月旦醫事法學報告), No. 51, January 2021, 7-19; Chen-Hung Chang (張陳泓), Legal Issues Concerning the Use of National Health Insurance Cards by the Government in Identifying Cardholders: Reflections on Statutory Reservation and the Secondary Use of Personal Data (健保卡作為政府辨識持卡人身分用途之法律議題：法律保留與個資目的外利用之思考), Angel Health Law Review (月旦醫事法學報告), No. 51, January 2021, 20-34.

14 Paragraph 16 of the Employment Insurance Act.

15 Employment Insurance Act, (last visited: 14/02/2022).

economic slump, the latest social insurance scheme granted short-time work benefits to the insured under the concept of "employment stability measures", which provides 50% of the difference between the average and the reduced monthly insurance salary[16]. However, the short-time work benefits adopted by the Employment Insurance Act required an inappropriate unemployment rate and relied on an improper definition of unemployment for short-time work benefits schemes to be triggered[17].

The Regulation of Employment Promotion Under the Employment Insurance authorised by the Employment Insurance Act in 2010 stated that more than 2.2% of the workforce has to be on unemployment benefits for at least three months by employment insurance statistics, and that this figure cannot rebound over the three months for the central government to introduce the short-time work benefits scheme[18]. The criteria did not correspond to the real unemployment rate, because the number of beneficiaries on unemployment benefits as per the employment insurance statistics depends not only on the circumstances of the economy, but also on the qualifications for and period of unemployment benefit receipt. Even when masses of employees were placed on furlough during the financial crisis of 2007-2008, the requirements could not be fulfilled. Almost one year after the start of financial crisis in August 2008, the unemployment rate calculated according to the regulation was only 2.04% in July 2009 and decreased to 1.56% in the next month[19], while it had reached 6.07% in

16 Section 12 of the Regulation of Employment Promotion under the Employment Insurance (last visited: 14/02/2022).

17 Jia-He Lin (林佳和), Arbeit & Recht III: State and Labour Market Regulation, Labour Contract (勞動與法論文集 III：國家與勞動市場、勞動契約), 2014, 83-113. Yu-Fong Wu & Jan-Juy Lin (吳玉鳳、林建智), On Salary Compensation of Employment Stability Measures under the Employment Insurance Scheme in Taiwan in Comparison with Short-Time Compensation Schemes in the UK, France and Germany (從英國、法國、德國縮短工時補貼制度評析我國就業保險僱用安定措施薪資補貼), in: Ming-Cheng Kuo & Hong-Yong Lim (郭明政、林宏陽) (eds.), Short-Time Compensation and Partial Unemployment Benefit (短工津貼與部分失業給付之比較研究), 2016, 99-161.

18 According to Section 5 of the Regulation of Employment Promotion under the Employment Insurance, the percentage of employment benefits recipients must be over 2.2% of the total number of beneficiaries and insured employees, and not decrease in three consecutive months, in order for employment stability plans to be enacted.

19 The unemployment rate of the employment insurance scheme is based on statistics retrieved from the monthly statistics of June, July and August 2009 by the Bureau of Labour Insurance, Ministry of Labour, R.O.C. (Taiwan) (last visited: 15/12/2021).

July and 6.13% in August 2009 according to the statistics of the Statistical Bureau in Taiwan[20].

In consideration of the fact that the short-time work benefit was never applicable to workers placed on furlough, the regulation was amended in 2019 to lower the criteria for the unemployment rate from 2.2% to 1%, and to eliminate the three-month no-rebound requirement. Nevertheless, the amended regulations were still not suitable to respond promptly to the challenges of the labour market posed by the COVID-19 crisis. The difference in the unemployment rate between the employment insurance calculations and the ILO definition adopted by the Statistical Bureau remained unsolved. Since the outbreak of COVID-19 in 2020 up to August 2021, the unemployment rate calculated under the employment insurance never exceeded 1%[21]; therefore, the government could not initiate the legal mechanisms to provide salary compensation for furloughed employees. A further reform of short-time work benefits with other indicators instead of the unemployment rate calculated under the employment insurance scheme is needed[22], although it will be too late to meet the current challenge.

b) Supplementary Measures for Employment Stability

In order to counteract wage loss and mass redundancy due to the COVID-19 pandemic, salary subsidies have been paid directly to employees and also through employers. This section focuses on the former measures, while the details of the latter schemes will be explained in Part III.a. of this article. The Ministry of Labour issued the “Regulation of Reliefs for Employees Affected by the COVID-19 Pandemic issued by the Ministry of Labour Affairs” (勞動部對受嚴重特殊傳染性肺炎影響勞工紓困辦法) based on the COVID-19 Special Act and introduced a series of supplementary measures in the form of an administrative plan similar to the benefits under the employment insurance scheme, but financed by the

20 See National Statistics, R.O.C. (Taiwan) (last visited: 15/12/2021).

21 For the unemployment rate under the employment insurance in 2020, see Wei-Wen Lai (賴偉文), Reconsider the Starting Requirements of Employment Stability Measures during the Pandemic (從疫情衝擊反思我國僱用安定措施的啟動標準), Economic Outlook (經濟前瞻), No. 194, March 2021, 33 (35, Table 1); for the unemployment rate from March to August 2021, see Website (last visited: 15/12/2021).

22 Wei-Wen Lai, ibid., 36-37.

Employment Security Fund[23] rather than by contributions. All schemes were designed to run temporarily, will be invalidated with the expiry of the COVID-19 Special Act, and are to be amended constantly by the Ministry of Labour depending on current demands.

For insured employees under the employment insurance scheme, including both full-time and part-time workers, those that have been furloughed for more than 30 days, with mutual agreements with their employers about work hour reduction registered at the local authority of labour affairs, are eligible for benefits offered by the *Secure Employment Scheme*. There are three categories of monthly benefits: NT$ 3,500 for those whose wage loss did not exceed NT$ 7,000; NT$ 7,000 for wage loss between NT$ 7,001 and NT$ 14,000; and NT$ 11,000 for wage loss above NT$ 14,001[24]. In this respect, the measure does not function as income replacement. In other words, it is not comparable with the short-time work benefits of the employment insurance scheme.

The furloughed employees are also encouraged to attend vocational training programmes introduced by the *Recharge and Restart Training Scheme*, which grants employees livelihood allowances up to NT$ 23,040 per month (NT$ 160 / training hour, max. 144 training hours per month) during training[25]. Employers providing vocational training programmes for their own furloughed employees are eligible for governmental subsidies of up to NT$ 3,500,000, which is almost twice the normal subsidy. The programme also requires that employers must not lay off furloughed employees during the training period and maintain 90% of the original employment.

Besides the employment maintaining programmes, the government also widened access to employment in the private and public sectors for jobseekers. With the *Immediately On Board Scheme*, the Workforce Development Agencies of the Ministry of Labour recommended part-time jobs in the public interest in public sectors such as the security sector (e.g. guards maintaining order at mass vaccination sites) to registered jobseekers. Participants were granted "working allowances" or "disease control

23 According to Paragraph 55 of the Employment Service Act, employers of foreign workers are obligated to contribute a special levy to the Employment Security Fund as financial resource for domestic employment promotion or regulatory affairs of foreign workers.

24 For the content of the Secure Employment Scheme (安心就業計畫) see Website (last visited: 15/12/2021).

25 For the content of the Recharge and Restart Training Scheme (充電再出發計畫) see Website (last visited: 15/12/2021).

allowances"[26]. Their National Health Insurance and Labour Insurance contributions were also covered by this programme. Though the scheme was legally defined as social assistance benefits under a public law relationship between the public agency and the part-time workers[27], it obviously also functioned as employment promotion to refresh employees' willingness to work affected by the pandemic to secure their livelihoods. On the other hand, under the *Making Employment Stable Scheme*, private enterprises without furlough or mass redundancy during the pandemic were especially encouraged to recruit the unemployed candidates recommended by the Workforce Development Agencies. Both employers and recruited employees were supported by this plan; the former can apply for wage subsidies on the condition of continued employment, and the latter are eligible for reemployment incentives[28].

c) *Extended Measures for Securing the Livelihood of Employees and the Self-Employed*

During the level 3 epidemic alert from 19 May to 27 July 2021, public and business activities were restricted more severely and comprehensively than during the previous period. Employees were confronted with financial difficulties not covered by the furlough-related benefits or unemployment benefits. For example, due to operation deficits, some employers negotiated wage reductions with their employees without reducing work hours. Other employees were paid less because they requested personal leave in addition to legal holidays for quarantine or to care for infected family members. Employees with flexible wages depending mainly on performance and bonuses also faced substantial wage loss. Having considered the diverse circumstances, the Ministry of Labour offered various supplementary aids for different recipients.

26 The working allowance is paid by the minimum hourly wage, to a maximum of 80 hours per month and up to a maximum of 960 hours. If jobseekers are recommended to participate in disease control activities, they will be granted an additional disease control allowance of a maximum of NT$ 2,000 per month.

27 See Point 7 of the Immediately On Board Scheme (安心即時上工計畫), (last visited: 15/12/2021).

28 For full-time employment with monthly wage above the basic wage, employers are eligible for NT$ 15,000 every two months for each employee, and up to NT$ 30,000; a recruited employee can receive reemployment incentives of NT$ 10,000 every two months and up to NT$ 20,000. See Points 9 and 11 of the Making Employment Stable Scheme (安穩僱用計畫), (last visited: 15/12/2021).

A one-off aid of NT$ 10,000 was provided by the *Livelihood Aid for Employees of Compulsorily Closed Businesses Scheme* for employees affected by mandatory lockdown measures[29]. With particular regard to the financial impact on employees at middle or low wage levels, the *Aid for Employee's Livelihood Scheme* granted the one-off aid to full-time employees with a monthly insured salary of between NT$ 24,000 to 34,800 who suffered more than 20% wage reduction from May to July 2021 compared to their previous wage level in April 2021[30]. Part-time employees with a monthly insured salary not exceeding NT$ 23,100 were also entitled to this lump sum relief according to the *Aid for Part-Time Employee's Livelihood Scheme*[31].

In contrast to employed work, the self-employment rate in Taiwan reaches 11.47%[32], a rate higher than that of industrial countries such as the US, Germany and Japan, and this form of employment contributes significantly to the economy[33]. The self-employed are not insured by the Employment Insurance, but are included in the Labour Insurance. According to the *Regulation of Relief for Employees Affected by the COVID-19 Pandemic*, to qualify for livelihood aid, the self-employed would need to be insured under the Labour Insurance and have a means-tested standard yearly income of less than NT$ 408,000. The sum of benefits depends further on the level of insured salary. Qualified self-employed persons whose insured salary is less than NT$ 24,000 were granted a one-off aid of NT$ 30,000, and those whose insured salary exceeds NT$ 24,000 were granted NT$ 10,000[34].

In addition to the general livelihood relief scheme, self-employed persons in specific sectors are covered by various schemes with similar measures provided by the respective ministries: the self-employed in the cul-

29 See the Livelihood Relief for Employees of Compulsorily Closed Businesses Scheme (勞動部因應嚴重特殊傳染性肺炎協助各部會辦理停業員工生活補貼計畫), (last visited: 15/12/2021).

30 See the Relief for Employees' Livelihood Scheme (勞動部因應嚴重特殊傳染性肺炎辦理受僱勞工生活補貼計畫), (last visited: 15/12/2021).

31 See the Relief for Part-Time Employees' Livelihood Scheme (勞動部因應嚴重特殊傳染性肺炎影響辦理部分工時受僱勞工生活補貼計畫), (last visited: 15/12/2021).

32 National Statistics, R.O.C. (Taiwan) (中華民國統計資訊網), Briefing of Manpower Survey Results in 2020 (2020 年人力資源分析調查提要分析), Table 6 (last visited: 15/12/2021).

33 According to OECD Data, in 2020, the self-employment rate was 6.3% in the U.S., 9.6% in Germany, and 10% in Japan. See: OECD (2021), Self-Employment Rate (Indicator), (last visited: 15/12/2021).

34 Paragraph 5 and 6 of the Regulation of Relief for Employees Affected by the COVID-19 Pandemic.

tural industry such as literary and art workers, including nationals and immigrants with alien permanent resident certificates, and those in the transportation and tourism industries such as taxi drivers, tour bus drivers, tour managers and tour guides were supported with one-off livelihood aids of NT$ 30,000[35]. Peasants and fishermen whose individual income from non-agricultural sectors did not exceed NT$ 500,000 in the previous year were granted one-off benefits of up to NT$ 30,000[36].

The livelihood reliefs for employees were financed by the Employment Security Fund, while the aids for self-employed persons were not within the concept of employment stability and were thus financed through the budget. Precisely speaking, both measures aimed to satisfy the basic needs of employees and the self-employed during the pandemic and were essentially in line with emergency assistance with modified means-test standards, rather than income replacement against furlough or unemployment. However, such cash benefits also help employees stay in the employment relationship, and support the self-employed in securing their basic livelihood by maintaining minimal business operation.

3. *Supporting the Economy*

The abovementioned Regulations authorised by Paragraph 9 of the COVID-19 Special Act also include several measures to support businesses and revitalise the economy. All measures were subjected to the policy

35 The livelihood reliefs for the self-employed in the cultural industry are regulated by the Regulation of Relief and Revitalisation for Artistic Industries and Enterprises Affected by the COVID-19 Pandemic issued by the Ministry of Culture (文化部對於受嚴重特殊傳染性肺炎影響發生營運困難產業事業紓困振興辦法); The livelihood aids for self-employed workers in transportation and tourism industries are provided by the Regulation of Relief and Revitalisation for Industries and Enterprises of Transportation and Tourism Affected by the COVID-19 Pandemic issued by the Ministry of Transportation and Communication (交通部對於受嚴重特殊傳染性肺炎影響發生營運困難產業事業紓困振興辦法).

36 Livelihood Relief Schemes for Peasants, Fishermen and Self-Employed Fishermen (農民生活補貼作業規範、實際從事漁業勞動之漁民生活補貼作業規範、無一定雇主或自營作業之漁民生活補貼作業規範), which implements Paragraph 5-1 of the Regulation of Relief and Revitalisation for Agricultural Industries and Enterprises Affected by the COVID-19 Pandemic issued by the Ministry of Agriculture (農業委員會對於受嚴重特殊傳染性肺炎影響發生營運困難產業事業紓困振興辦法).

guidelines announced by the Executive Yuan[37], and the respective ministries further fill in the concrete content pursuant to the specific situations of affected sectors. In general, the measures can be divided into two categories: (a) subsidies for operation of enterprises and liquidity assistance, and (b) deferral or exemption of tax payment and social insurance contributions. Furthermore, measures especially to be highlighted were the *Triple Stimulus Vouchers* in 2020 and the *Quintuple Stimulus Vouchers* in 2021, which to some extent were based on the concept of basic income, but in an alternative form that encouraged the general public to spend instead of depositing money, as discussed in (c) below.

a) *Subsidies for the Operation of Enterprises and Liquidity Assistance*

The regulation issued by the Ministry of Economic Affairs provides an overview of operational support for enterprises affected by the COVID-19 pandemic[38]. Support was provided according to industry sector, the enterprise scale, or the extent of turnover deduction. Affected industries primarily include the manufacturing and service industries such as gastronomy providers and retailers; other industries indirectly affected by disease control measures can be accredited on a case-by-case basis by the Ministry of Economic Affairs. Within the designated affected industries, affected enterprises are defined as businesses that suffered over 15% turnover reduction in any month (or the average of two consecutive months) in 2020 or 2021 in comparison with the average turnover of the second half of 2019 or the same period of any year between 2018 to 2021. Businesses with over 50% of decrease in turnover or which underwent compulsory termination of operation are defined as enterprises suffering financial hardships.

Since the outbreak of the COVID-19 pandemic, businesses qualified as enterprises suffering financial hardships included sectors of transportation, aviation, manufacturing and technical support services, exhibition and

37 The relief policies in 2020 emphasise cash benefits, making loans easier and easing financial burdens (要現金、助貸款、減負擔). In 2021, the Relief Package 4.0 sustains this existing guideline and accelerates application for individuals, extends the supportive measures for businesses and raises the budget for liquidity assistance. See press release of 24 Sep 2021 of the Executive Yuan of Taiwan (last visited: 15/12/2021).

38 The Regulation of Relief and Revitalisation for Industries and Enterprises Affected by the COVID-19 Pandemic issued by the Ministry of Economic Affairs (經濟部對受嚴重特殊傳染性肺炎影響發生營運困難產業事業紓困振興辦法).

trade services, tourism, education services, arts and cultural services as well as providers of welfare services, childcare and long-term care services. The government granted these businesses subsidies on the condition that the businesses did not furlough or dismiss employees, deduct salary or impose any other disadvantages against their employees. Dissolution of businesses or other similar actions were not allowed. The subsidies partially covered salary payment for employees, operational costs or impact on turnover[39]. The sum of subsidies varies from sector to sector, and also depends on whether the business has been terminated. In general, subsidies for salary payment were granted with a replacement rate ceiling or a fixed rate during the grant period. For example, employers suffering financial hardships in the services industry are granted NT$ 30,000 in lump sum indirectly for each employee during the period of compulsory closure if the regular salary payment did not reach the basic wage level; the other enterprises in the sectors of transportation, aviation, manufacturing and exhibition suffering financial hardship may apply for a subsidy of 40% of salary payment, but not exceeding NT$ 20,000 of each employee for 3 months[40]. Subvention for operational costs, impact on turnover or business termination loss was paid in lump sum form, calculated by a fixed rate for the respective number of employees.

To the affected enterprises, the Taiwanese government offered various access possibilities to loans to secure liquidity, for which enterprises can apply to postpone the principal repayment term. The government provides additional subsidies to lenders to offer interest deduction to beneficiary enterprises. For new cases, the government introduced two loan schemes for all enterprises with a term of up to 3 years: the *Loan for Operation* and the *Loan for Working Fund* for SMEs, with additional subvention to SMEs for interest up to 1 year. The loan for operation scheme, 100% backed by the SME Credit Guarantee Fund Taiwan, was exclusively for the purposes of financing salary payment and rents for offices and factories, amounting to up to NT$ 6,000,000. The other scheme aims at maintaining the liquidity of affected businesses. It provided loans with partial guarantees of up to 90%, also supported by the SME Credit Guarantee Fund Taiwan. The loan

39 Besides the cash relief and other loan assistance, the supportive measures stipulated by the regulation mentioned above also included industrial upgrading, digital transformation, consumption promotion, facilities improvement, trade promotion, personnel training, and the deferral or instalment of utility bills.

40 Paragraphs 5 and 5-1 of the Regulation of Relief and Revitalisation for Industries and Enterprises Affected by the COVID-19 Pandemic issued by the Ministry of Economic Affairs.

limit differs on the scale of enterprises, up to NT$ 150,000,000 for SMEs and NT$ 500,000,000 for larger businesses. In both cases, no credit fees are charged during the guarantee period.

The liquidity assistance measures are carried by the Taiwan Central Bank and government-owned banks in cooperation with private banks. There were also specific loan schemes for particular industries such as agriculture, fishery, stock farming, industrial innovation and arts and culture, provided by the competent ministries. Moreover, individual employees were included in the loan scheme with loans of up to NT$ 100,000 for each person; such loans were backed partially by the SME Credit Guarantee Fund with interest subsidy for 1 year[41].

b) Deferral and Exemption of Tax Payment and Social Security Contributions

In association with the disease control measures, Paragraph 4 of the COVID-19 Special Act provided that employers, including agencies, enterprises, schools, legal entities and organisations, offering paid leaves to their employees in quarantine or isolation may deduct 200% of the salary payment from their income declaration in the current year and therefore be exempted from tax. The same shall apply to employers who provide paid leave for employees taking vaccination leave or leave to care for their children under junior high school due to the closure of childcare services and schools during the epidemic period. Under these circumstances, employees with paid leave would not be eligible for epidemic-related compensation from the government[42]. This mechanism illustrated a private-public sharing of financial burdens resulting from epidemic-related measures.

Furthermore, the Ministry of Finance in Taiwan modified the tax collection procedural rules to provide a tax deferral scheme for employees and employers suffering financial hardship in the epidemic-related recession[43]. Enterprises could qualify as recipients of operation subsidies provided by the competent ministries, or, in the case where an enterprise's turnover

41 The subsidies and loan schemes for specific industries and employees are regulated by the respective legal orders.

42 See Section "IV. a" of this article.

43 The Ministry of Finance issued in 2020 the "Reviewing Rules of Tax Collection Authorities Regarding Application for Deferral or Instalment of Tax Payment by Taxpayers Impacted by the COVID-19 Pandemic" (稅捐稽徵機關)受理納稅義務人因特殊嚴重傳染性肺炎 (COVID-19) 疫情影響申請延期或分期繳納稅捐審核原則) and amended it in 2021.

in 2020 and 2021 had dropped more than 15% in any month or any two consecutive months compared to the average turnover of the second half of the previous year or the same period of any year since 2018, it can apply for profit-seeking enterprise income tax deferral, or an instalment plan. Deferral could be effected for up to one year and instalment plans could be arranged for up to 3 years. The same also applied to employees who were replaced on furlough or dismissed, or for those whose salaries or working days were reduced due to the pandemic.

With regard to social insurance contributions, Paragraph 4 of the Regulation of Reliefs for Employees Affected by the COVID-19 Pandemic stipulates a deferral plan for Labour Insurance, Employment Insurance and Labour Pension contribution payments. The qualified applicants include employers and the self-employed of affected sectors and furloughed employees. The maximum length of deferral is 6 months. Regarding National Health Insurance contributions, employers and insured persons from affected sectors may apply for deferral, instalment or interest-free loans for payment. The latter two instruments are regular relief measures for insured persons suffering financial hardship, provided by the National Health Insurance Act.

According to Paragraph 9-1 of the COVID-19 Special Act, all subsidies, allowances, reliefs and compensations provided by the government according to this Act or the Infectious Disease Control Act are exempted from tax.

c) Stimulus Vouchers

Among the economic revitalisation measures listed in the regulation of the Ministry of Economic Affairs, the stimulus vouchers were the most significant ones. The policy aimed to stimulate domestic consumption and boost GDP after lifting public activities restrictions. Instead of cash distribution, which may be partially converted into deposit, stimulus vouchers came with an expiration date and were limited to consumption; they could not be deposited in banks, exchanged for cash, or used to pay taxes, fines, official fees or utility bills or bank loans. This measure was taken in 2009 in response to the recession caused by the global financial crisis. Every citizen without an age limit was given consumption vouchers worth NT$

3,600[44]. The scheme was financed by a special governmental debt at 85.7 billion NT dollars and contributed 0.28% to 0.43% towards the GDP, less than the desired effect of 0.66%[45]. Regarding the COVID-19 pandemic, the COVID-19 Special Act authorised the competent ministries to adopt revitalisation measures to expand domestic demand and consumption. The Ministry of Economic Affairs thereby issued regulations in 2020 and 2021 to publish stimulation vouchers after lifting social activities restrictions[46].

In June 2020, with previous experience under its belt, the Taiwanese government issued *Triple Stimulus Vouchers* in printed and digital form as a modified consumption voucher. All citizens, including immigrants with alien resident certificates, were eligible to purchase Triple Stimulus Vouchers worth NT$ 3,000 at the price of NT$ 1,000; citizens of low or middle-low-income households could receive vouchers free of charge. In conjunction with other vouchers for invigorating tourism, cultural and sports activities provided by various ministries and local governments, as well as discounts provided by private sellers, the turnover of tourism, gastronomy and retail businesses increased conspicuously in the second half of 2020. The number of furloughed employees therefore decreased from approx. 30,000 persons in June 2020 to 5,000-6,000 persons in December 2020[47]. After downgrading the level 3 epidemic alert to level 2 in July 2021, the Taiwanese government further granted *Quintuple Stimulus* Vouchers directly to citizens free of charge in August 2021, set to expire on April 30, 2022. Both voucher schemes were financed from governmental debts; the former cost 51 billion NT dollars, and the latter120 billion NT dollars. However, the government's financing capacity was not

44 Tain-Jy Chen (陳添枝), The Planning and Implementation of Taiwan's Consumption Voucher Schemes to Invigorate the Economy (「振興經濟消費券」政策之規劃與推動), Taiwan Economic Forum (台灣經濟論衡), Vol. 7, No. 2, February 2009, 26-38.

45 Department of Economic Research of the Council of Economic Planning and Development (經建會經濟研究處), The Statistic and Impact Evaluation of Implementation of Consumption Voucher Schemes (振興經濟消費券執行相關統計及影響評估), Taiwan Economic Forum (台灣經濟論衡), Vol. 7, No. 11, November 2009, 62 (66-68).

46 Regulation for Issuing the Triple Stimulus Voucher due to the COVID-19 Pandemic (因應嚴重特殊傳染性肺炎振興三倍券發放辦法) in 2020 and Regulation for Issuing the Quintuple Stimulus Voucher due to the COVID-19 Pandemic (因應嚴重特殊傳染性肺炎振興五倍券發放辦法) in 2021.

47 The Ministry of Economic Affairs, R.O.C. (Taiwan), The Evaluation Report of Implementation Effectiveness of the Triple Stimulus Voucher (振興三倍券執行成效評估書面報告), July 2021(last visited: 15/12/2021).

unquestioned as the ceiling of governmental debt expanded. The actual contribution of Quintuple Stimulus Vouchers to the economic growth rate and employment still remains to be evaluated[48].

4. Social Protection

a) Epidemic-related Compensatio

In conjunction with the restriction measures of disease control that have restrained personal liberty and family life and resulted in loss of wages and work, a series of social compensation benefits has been introduced by legislators and the government to balance the tension between the protection of personal freedom, the mitigation of economic disadvantages of individuals, and the improvement of public health. Paragraph 3 of the COVID-19 Special Act rules that public and private employers must ensure disease prevention isolation leave for employees in quarantine or isolation or those that need to care for their infected family members. The Special Act further forbids dismissing employees, deducting bonuses or imposing other unfavorable penalties on grounds of absence from work for the above reasons. Individuals that did not violate relevant regulations during quarantine or isolation, and that were not paid salary or subsidies during disease prevention leave were granted an epidemic compensation of NT$ 1,000 per day. The same applies to caregivers who take leave to care for their quarantined or isolated family members. In addition, an NT$ 100,000 funeral assistance was provided to survivors of COVID-19-affected victims.

Considering the fact that parents have often had to take unpaid leave to care for their children due to the closure of childcare services and schools during the epidemic, the Ministry of Education and the Ministry of Health and Welfare provided parents, custodians or actual caregivers of children in elementary schools or younger and children with disabilities under 18 years of age eligible with a lump sum compensation benefit in the amount

48 Despite the global recession due to the pandemic, the annual GDP growth rate in Taiwan reached 3.12% in 2020. In comparison, the GDP growth rate of China was 2.3%; Japan, -4.6%; Korea, -0.9%; worldwide, -3.4%. Resource: Taiwan National Statistics; OECD Interim Economic Outlook Projection (last visited: 15/12/2021).

of NT$ 10,000 for each child under the *Disease Prevention Compensation for Family Scheme*[49].

b) *Emergency Aid for Vulnerable Groups*

At the beginning of the COVID-19 outbreak from March to June 2020 and during the level 3 epidemic alert period from May to July 2021, the Taiwanese government immediately targeted the most vulnerable groups in the existing social assistance scheme. Under the *Supplementary Livelihood Aid Scheme for Vulnerable Groups* proposed by the Executive Yuan, the elderly, disadvantaged children and youth, and persons with disabilities that qualified as social assistance beneficiaries were granted supplementary aid amounting to NT$ 1,500 per month without need for additional application[50]. Other vulnerable minorities without secure financial capacities, those not classified as low-income households and excluded by profession-related reliefs, were “caught” by some residual schemes. For example, the Ministry of Education provided grants and rent aid to college and university students suffering financial hardship due to the level 3 epidemic alert[51].

Furthermore, based on Paragraph 3 of the COVID-19 Special Act mentioned above, the competent authority shall provide assistance in accordance with the Public Assistance Act to individuals who take leave or cannot work due to disease control measures if their livelihoods were affected. The legal mission has been fulfilled through various profession-related or social insurance status-related schemes by the competent ministries. The government has also extended the existing social assistance scheme temporarily during the epidemic to vulnerable workers in the informal economy such as street vendors or those in irregular working conditions

49 Under the Disease Prevention Compensation for Family Scheme (孩童家庭防疫補貼), the Ministry of Health and Welfare is responsible for children under 2 years old, while the Ministry of Education is responsible for children between 2 and 12 years old and children with disabilities. The improvement of the qualification process and cash delivery is dealt with by respective administrative systems. See Website (last visited: 15/12/2021).

50 For the Supplementary Livelihood Aid Scheme for Vulnerable Groups by the Executive Yuan (防疫期間行政院關懷弱勢加發生活補助) for 2020 see Website, for 2021 see Website (both last visited: 15/12/2021).

51 The aid scheme for students is based on the “Regulation of Reliefs and Revitalisation for Educational and Supportive Facilities and Businesses Affected by the COVID-19 Pandemic” (教育部對受嚴重特殊傳染性肺炎影響發生營運困難產業事業紓困振興辦法).

such as casual workers who were neither included by the social insurance schemes for civil servants, lecturers, farmers or employees and the self-employed, nor covered by any governmental reliefs. The *COVID-19 Emergency Aid Scheme* provided by the Ministry of Health and Welfare categorised citizens living below the extended poverty line according to modified means-testing and without any support from social insurance or other supportive schemes, and that are suffering a financial crisis due to reduced income, into 3 categories, and granted different levels of flat-rate emergency aid ranging from NT$ 10,000 to NT$ 30,000 per household under a "catch basin" scheme[52]. Noting the potential hindrances of recipients receiving the benefits, the government simplified and sped up means-testing and approval procedures. In cases where evidence of income shortage was not available, an affidavit or authorisation to investigate personal financial data from the applicant would suffice.

5. Conclusion

Learning from the experience of the SARS outbreak in 2003 and considering the obstacles to participating in the global health cooperation net, the government reacted immediately to the spread of COVID-19 at the end of 2019. The Infectious Disease Control Act and the COVID-19 Special Act provide a comprehensive legal framework for intervention in personal freedoms to combat the spread of infectious diseases. Most disease control measures, such as mandatory mask-wearing, restriction of gatherings, mandatory testing, digital contact tracing, quarantine and compulsory closure of businesses were, and continue to be, widely accepted by the community. In light of some critical events, such as the unexpected entry restrictions applied to citizens who had temporarily visited China during the Luna New Year vacation in 2020, and revelation of an undocumented foreign caregiver due to infection while working in hospital, the entire society was engaged in an intense debate about with whom and to what extent people in Taiwan were united. Under the concept of "The whole island stands in solidarity," a consensus of health solidarity emerged beyond nationality, but limited by geographic borders[53].

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52 For the COVID-19 Emergency Aid Scheme by the Ministry of Health and Welfare (衛生福利部因應疫情擴大急難紓困實施計畫) for 2020 see Website, for 2021 see Website (both last visited: 15/12/2021).

53 After overcoming the vaccine shortage crisis, the Taiwanese government announced in December 2021 the COVID-19 vaccination programme for undocu-

Nevertheless, the expansion of government power was not sufficiently controlled nor balanced by judicial review with the sheer authorisation delegated by the COVID-19 Special Act. Questioned, for example, were the legality and constitutionality of some measures such as the duration of isolation for positive cases, restriction of foreign travel for certain professions such as physicians, digital tracing of infected persons and their contacts, establishment of vaccination priority groups, and the most recent policy that starting in 2022 all personnel in designated facilities shall be vaccinated with 2 shots or tested negative for COVID-19[54]. However, no political action for further legal amendment has yet been taken. For a young democratic society like Taiwan, it needs to be thoroughly deliberated how to strengthen health solidarity under the rule of law.

Solidarity for health shall be further strengthened with the commitment of the community members to support each other during the crisis. Without supporting aid for enterprises and individuals whose financial basis had been undermined by disease control measures, the spread of COVID-19 could not have been effectively controlled. In response to the recession and the threat to citizens' individual existence, the COVID-19 Special Act and numerous regulations of relief and revitalisation issued by the respective ministries have constructed a temporary legal framework

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mented foreign workers and guaranteed no reporting to authorities, no punishment, no future immigration control and no charge.

54 Huang, Cheng-Yi. Soft Regulation and Hard Compliance in Taiwan, Regulatory Review, 11 June 2020 (last visited: 15/12/2021); Chung-Lin Chen (陳仲嶙), Revisiting the Boundaries of Legal Reservation from the Controversy Over the Anti-Epidemic Travel Ban (從防疫出國禁令爭議再訪法律保留的疆界), Law and Life Science (法律與生命科學),Vol. 9, No. 1, June 2020, 1-37; Wen-Yu Chia (賈文宇), Do We Need to Talk About Constitutionalism for Epidemic Prevention? (防疫還要談憲政主義嗎?), Law and Life Science (法律與生命科學), Vol. 9, No. 1, June 2020, 39-65; Shin-Rou Lin (林欣柔), The Power and Limits of Public Health under the COVID-19 Pandemic (新冠肺炎流行下的公衛權力與界限), Law and Life Science (法律與生命科學), Vol. 9, No. 1, June 2020, 67-89; Chin-Wen Wu (吳秦雯), From SARS to COVID-19: The Legal Framework for the Prevention and Control of Infectious Diseases and the Restrictions of the Fundamental Rights under Judicial Interpretation No. 690 (從 SARS 到 COVID-19：司法院釋字第 690 號解釋架構下之傳染病防治法制與基本權限制), Law and Life Science (法律與生命科學), Vol. 9, No. 1, June 2020, 91-112; Wen-Tsong Chiou, Chuan-Fang Wu, Ching-Yi Liu, Ting-Chi Liu, Wesley Yi-Hung Weng (邱文聰, 吳全峰、劉靜怡、劉定基、翁逸泓), Disease Control through Technical and Personal Data Protection, Part I and Part II (科技防疫與個人資料保護（上）（下）), Court Case Times (月旦裁判時報), No. 106, April 2021, 85-102; No. 107, May 2021, 88-104. A series of legal conferences with regard to COVID-19 and the rule of law also took place in the second half of 2021.

supplementary to the existing institutions. They have increased benefits to support affected groups, including employees, the self-employed, business owners and vulnerable groups. In order to ensure timely aid to those in need, eligibility was relaxed and the number of beneficiaries therefore enlarged. But the existing measures and institutions of employment stability benefits, economy stimulating packages and the social security system were not configured by the temporary programmes[55].

Some critical issues for the future development of labour and social policy and the legal systems in Taiwan have been identified. First, the legal mechanism of short-time work benefits did not work, even though the triggering threshold of employment stability measures was lowered in 2019. During the pandemic, the government quickly adopted measures to secure furloughed employees' livelihood under the authorisation of the COVID-19 Special Act, yet no attention has been paid to the systematic failure of the employment insurance system. The flaw could continue to exist after the pandemic, because traditionally, labour and social policies are not the focus of political campaigns as compared to economic policies in politics.

Meanwhile, the pandemic-related recession has brought to light the financial vulnerability of the self-employed and SMEs as well as the fragmented status of the social security system for workers in the informal economy or in irregular work relationships. The relaxation of eligibility criteria or waiver of means-testing to grant epidemic-related benefits has helped more beneficiaries and resolved the problem temporarily. To some extent, issuing and granting stimulus vouchers for all citizens was a universal and unconditional benefit. However, the crisis-driven relief is either one-off or time-limited. In the current crisis and even in the long-term, no structural changes for employment promotion and social security schemes can be expected in Taiwan.

On the other hand, the epidemic-related compensation for quarantine, isolation and caring reimbursed personal loss for the common good, suggesting that the whole society stood with the disadvantaged individuals and groups in solidarity. These motives became well-known terms in society. Whether the Taiwanese scheme can be characterised as a "social compensation" benefit is worth further discussion. In the legal literature, the German academic concept of social compensation is introduced by legal

55 Suetgiin Soon, Chelsea C. Chou and Shih-Jiunn Shi, Withstanding the Plague: Institutional Resilience of the East Asian Welfare State, Social Policy Administration, Vol. 55, Issue 2, March 2021, 374–387.

scholars and adopted by the Grand Justices of the Constitutional Court in Taiwan in Constitutional Interpretation No. 767 regarding the drug injury relief scheme in 2018. However, the drug injury relief scheme is financed by deposits of manufactures and importers, rather than by taxation. The relief scheme was not rooted in solidarity, and therefore is inconsistent with the original concept of social compensation. It is evident that even the Grand Justices have misunderstood the legal character of drug injury relief[56]. On the contrary, in the case of epidemic-related compensation, the whole society supported through taxation individuals that had lost earnings directly or indirectly due to restriction measures. In this respect, it can be considered as a social compensation scheme[57].

Taiwan has learned its lessons from SARS and has so far efficiently contained the COVID-19 pandemic. A broad consensus on solidarity for health has therefore been built and strengthened. What are thus the next lessons we can learn from the crisis-related social and labour policy measures? Basically, most COVID-19-related measures, e.g. job retention, economy revitalisation and social protection rely on previous initiatives and existing institutions[58]. This time, the concept of social compensation plays a more significant role than usual for maintaining solidarity for health. The commitment of the state to accounting for affected citizens during the pandemic crisis expresses also an institution based on the social state principle already recognised by Constitutional Interpretation No. 485, manifesting that all members in the democratic society stand with each other in solidarity.

In view of the diverse mutations of the virus with its yet unknown impact on people's health, the disease control measures are expected to stay in place for some time. In a sense, emergencies are becoming the new normal. In the meantime, the pandemic directly or indirectly impacts the

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56 Nai-Yi Sun (孫迺翊), Development in Law 2017-2018: Social Law (2017 年至 2019 年社會法發展回顧), National Taiwan University Law Journal (臺大法學論叢), Vol. 48, Special Issue (Nov. 2019), 1761 (1787-1790). For the common background regarding public compensation in the context of social policy see: Ulrich Becker, Social Policy and Social Law in Times of Crisis, in: Protecting Livelihoods in the COVID-19 Crisis: Legal Comparison of Measures to Maintain Employment, the Economy and Social Protection, MPISoc Working Papers 7/2020, 9 (13-14).

57 In addition to social compensation for quarantine, isolation and vaccine injury, the Infectious Disease Control Act provides also compensation for the expropriation of private land, products, buildings, facilities, transportation means and other resources for disease control.

58 Suetgiin Soon, Chelsea C. Chou and Shih-Jiunn Shi, supra note 55, at 383-384.

restructuring of the global supply chain. The domestic economy and the labour market are facing transformations and social policies need a reorientation accordingly. For further development towards a social state in the face of dynamic and continued socio-economic challenges, it is critical and essential to put more effort into reforming the institutional inadequacies of the social security systems, systemise emergency aid, and improve the existing institutions to provide more comprehensive protection to cover irregular employment and employees in transforming sectors.

XXIII. Conclusions – On Risk and Solidarity in Times of Global Crises

Anika Seemann

1. 'Protect Livelihoods' – The Second Project Phase

When the SARS-CoV-2 virus began to spread around the globe in early 2020, it soon became clear that extraordinary legal measures would have to be employed to protect livelihoods and prevent widespread social hardship. All countries at the centre of this study had swiftly imposed comprehensive sanitary measures to curb the spread of the virus. These were all variations of the instruments that have been employed by humankind for centuries in seeking to reduce the spread of disease: social distancing, isolation, and quarantine.[1] The COVID-19 pandemic marked the first time that such measures were introduced on such a broad scale across the globalised, widely interconnected economies of the twenty-first century. The effect of this was not just eerie silence in the streets, a stark contrast to the fast pace of present-day life. It also meant that beyond the more immediately visible effects of the sanitary measures, economies were affected by disruptions in global supply chains and cross-border employment relations, as well as by the rapid decrease in consumer demand across a wide range of sectors. The sanitary measures, in conjunction with the effect they had on the economy, soon posed a significant risk of financial hardship to individuals, which was addressed, both directly and indirectly, through measures to support the economy, to protect jobs, and by granting additional social protection.

As a result of the widespread and sudden disruption to the economy witnessed in early 2020, there was an immediate need to stabilise markets to avoid bankruptcies and a deep recession. Companies had to be able to continue to take out loans, payments had to be made, and planning certainty was needed. This was a necessary step to be taken to stabilise the prosperity of the market economies upon which social protection measures rest. The logic of market capitalism – in its myriad forms exemplified

1 Peter Baldwin, *Fighting the First Wave - Why the Coronavirus Was Tackled So Differently Across the Globe* (Cambridge: Cambridge University Press, 2021).

by the countries studied by this project – had to be maintained as far as possible, so as not to upend the logic of employment relations and social welfare systems as we know them. But businesses needed significant state support for an interim period, given that the pandemic had come as such a sudden external shock to the system. Granting such support was usually among the first measures taken by countries as they imposed lockdowns and other sanitary restrictions. In doing so, many countries were able to employ mechanisms such as capital buffers established in the wake of the Global Financial Crisis.

It also became clear that extraordinary measures to safeguard employment relations were needed. The ordinary principles of labour law, while catering for extenuating circumstances, could not meaningfully cushion the effects of such a rapid economic downturn as that seen in the first quarter of 2020. Economies were hit at such a scale that relying only on regular labour law provisions would have led to widespread hardship for workers in the form of significant salary reductions, the non-payment of salaries, and, ultimately, widespread dismissals. But swift and widespread dismissals as a response to a sudden, and possibly short-lived, economic shock would have also damaged companies themselves by causing widespread disruptions to workflows and by risking the cost-intensive loss of 'job matches' (for the reason that new recruitment campaigns and onboarding would potentially need to be carried out soon after). In early 2020, there was a conviction in economies across the globe that the economic recovery after the initial shock would be V-shaped, making it sensible for states to invest considerable amounts of money in the short term to avoid damage to the economy in the long term.

In parallel to the adoption of measures concerning the job market and the economy, the ordinary principles of social law needed to be adapted to cater for the pandemic context. First and foremost, the self-employed who for no fault of their own stood without an income, were typically granted direct payments to maintain an income source. This meant that in many countries, the self-employed and other types of workers outside of regular labour relationships were included in widespread 'social programmes', often for the first time. In countries with large informal sectors, widespread lump-sum payments were issued to provide a source of income, however low. In addition, many of the ordinary social security schemes were changed so as to cater for the specific context of the pandemic. Individuals whose benefit period would have expired, but who would have only been able to find a job with great difficulty, typically had their maximum benefit periods extended.

All of these measures had the aim, in full or in part, of limiting individual financial hardship. The underlying reason for these widespread state interventions in the ordinary workings of the economy, the labour market and social welfare was that the pre-pandemic principles of the market economy, first and foremost self-responsibility, could no longer feasibly apply. Based on no fault of their own, individuals were threatened by unemployment, loss of earnings and little chance of finding alternative sources of income. This project has looked at the measures states took during the crisis in the field of economic policy, labour market policy, and social protection with the aim of preventing or limiting individual hardship. The case studies of this project therefore did not look at economic policy or labour market measures in total, but only in as far as measures could be understood *as social policy.* All of the measures discussed in this paper were, in essence, about limiting individual hardship and, ultimately, about preserving the social order of the society in question.

This study covers twenty-one country studies from around the globe. By now, countless 'tools', 'trackers' and 'dashboards' have become available online to provide a quick overview of the COVID-related policy measures adopted since the outbreak of the pandemic.[2] However, these resources usually do not offer an analytical assessment of how the measures need to be systematised legally, how their distinct shape can be explained, and what they might mean for the future of the welfare state concerned. With regard to more scholarly analyses of the pandemic, on the other hand, many fine studies have already emerged. But these tend to overwhelmingly focus on the health perspective or the economic dimension of the pandemic response, and rarely do they take a legal analytical perspective from the distinct perspective of social law.[3] What this research project set out to offer, therefore, is a first in-depth analysis of the distinct social protection dimension of the crisis response. The individual papers have set out in detail how the crisis measures interacted with existing welfare state institutions, what their legal nature was, how the relationship between collective risk and individual responsibility was negotiated and shifted during the

2 See for example: Mary Daly, Bernhard Ebbinghaus, Lukas Lehner, Marek Naczyk, and Tim Vlandas, Supertracker: The Global Directory for COVID Policy Trackers and Surveys, Department of Social Policy and Intervention (Oxford, 2020).

3 Some excellent studies include: Adam Tooze, *Shutdown – How Covid Shook the World's Economy* (New York: Penguin, 2021); Malte Thießen, *Auf Abstand – eine Gesellschaftsgeschichte der Coronapandemie* (Frankfurt: Campus-Verlag, 2021); Peter Baldwin, *Fighting the First Wave – Why the Coronavirus Was Tackled So Differently Across the Globe* (Cambridge: Cambridge University Press, 2021).

crisis, what unique challenges countries faced in implementing a crisis response, and whether any long-term changes to each welfare state can be expected from the experiences made during the pandemic.

Overall, the second phase of the 'Protecting Livelihoods' project has confirmed the findings of the first phase (See I. Introduction). However, the second phase, offering an additional sixteen country studies, has also been able to add very relevant nuance and context to the manifold ways in which the crisis measures were employed and what impact they had. The following pages will provide a brief account of the chapters' key findings and the project's overall conclusions.

2. The Types of Measures Employed – A Global Survey

The chapters in this study highlight how countries across the globe followed a similar rationale when taking measures in the field of economic, labour market and social policy. All countries sought to prevent hardship and keep the economy going. However, despite all countries in this paper following the same core considerations in choosing their economic, labour market and social policy response to the pandemic, there was significant practical variation when it came to the various schemes and mechanisms employed.

With regard to job retention, two categories of schemes were typically employed: either tax-financed schemes or schemes financed via unemployment insurance funds. This at first glance suggests a highly different organisational structure and method of financing. However, such a binary distinction belies the fluidity of how these two types of schemes were employed during the pandemic: while many countries employed so-called short-time work schemes financed via the unemployment insurance funds, the state typically had to step in during the COVID-19 pandemic because the funds themselves would not have been able to cover the cost. We also saw hybrid schemes, such as in Poland, where measures were co-financed via the Guaranteed Employee Benefits Fund.

A further difference between the schemes has been that some measures relied on existing mechanisms, such as the short-time work schemes in Germany and Italy, which had already been established before the pandemic, whereas others, including the wage replacement schemes of Denmark and the UK, were entirely novel mechanisms. However, again, any such distinctions drawn about the origins and frameworks of such schemes are less clear-cut than they may at first seem: existing schemes were often adapted, as in the Netherlands, where despite the existence of an earlier short-time scheme, a new scheme (NOW) was introduced. In other countries, such schemes were pre-existing, such as the short-time work scheme in Sweden, which had been introduced in 2013, but had never actually been used before. In Taiwan, a scheme existed but the economic threshold to trigger it was never met, not even during the COVID-19 pandemic. The pre-existence of a scheme does not necessarily mean, therefore, that there was widespread experience with it and that a better crisis response could be expected. Further practical distinctions between the schemes relate to whether they were proportionate to salaries (see for example Australia for a non-proportionate scheme) and whether they were paid to employers or directly to employees (again, in Australia they were in part paid directly to employees).

Support for the economy was provided through a wide range of state measures, including access to low-interest loans, loan guarantees, the deferral of the payment of taxes, social contributions, and debts in general, as well as compensation for the self-employed. These measures were found, albeit in varying shapes, in all of the countries surveyed in this project. However, there were key differences when it came to their scope, partly related to the fiscal means available to individual countries. In addition, many countries adopted compensation schemes for company fixed costs, including the Netherlands, Poland and Germany. Sector-specific support measures were also adopted in many countries, and this typically included the tourism, hospitality, music and events sectors (Netherlands, Denmark, Slovenia). Some countries, including Slovenia, Taiwan and Ireland, also granted consumer coupons and vouchers, to be spent in specific sectors. A similar concept was the underlying idea of the 'Eat Out to Help Out' scheme adopted in England in the summer of 2020.

The measures concerning social protection included a wide range of approaches, and it is perhaps in this context that country-specific variations were the most pronounced. Depending on the nature of the economy, the size of the informal sector and the organisational structure of the social protection system, the measures ranged from generalised ad-hoc lump sum payments to carefully calculated increases of benefit levels and finely adjusted extensions of maximum benefit periods. Almost all countries surveyed in this project saw an increase and extension of unemployment benefits. In some countries, a special type of unemployment benefit was introduced for the recently unemployed, leading on the one hand to concerns of a divide between different groups of unemployed. On the other hand, these measures were able to cushion the shock for those who had recently and perhaps unexpectedly become unemployed. It is perhaps no surprise that they were found in countries such as Ireland and New Zealand, which otherwise have very low unemployment benefit rates.

The pandemic also saw the introduction and expansion of sickness benefits to cater for the wide range of new sick leave constellations, as well as the increased frequency of sick days. Sickness benefits were typically paid to individuals in isolation or quarantine. In addition, many countries made sickness benefits more generous by making individuals or their employers eligible to receive benefits from the first day of quarantine or infection, rather than keeping waiting days in place. This was of course also a key step in curbing the transmission of the virus, in that individuals should not be incentivised or forced to turn up to work in spite of an infection or close contact due to financial worries. Parents shouldered a significant burden during the pandemic and were affected by the closure of day-care facilities, or the sickness or quarantine of their children. This was typically considered in the introduction and expansion of sickness benefits. In addition, social assistance was used in multiple forms. In many cases, lump-sum payments were made within the institutional framework of social assistance, and increased levels of social assistance were adopted for some groups. At the same time, given the speed at which measures had to be adopted, this type of social assistance was often granted without a means test, effectively removing one of the core characteristics of social assistance. This reflects more generally how many of the measures adopted during the pandemic were not labelled accurately by the legislator, but also how the debates surrounding the pandemic response often did not consider the underlying logic of social protection systems.

3. Modalities of Risk-Sharing and the Legal Nature of the Crisis Response

The country studies of this project have not only presented the wide array of measures adopted during the pandemic, but they have also analysed them from an institutional and legal perspective. This has allowed the studies to provide key insights into how the financial burden of the pandemic was divided between groups such as those covered by social insurance, employers, and the state, meaning by extension the larger collective. Ultimately, the way in which individual and collective responsibility were calibrated during the pandemic is one of the central dimensions for understanding the values and norms underpinning the crisis response. As the country chapters have shown, assessing the principles according to which the crisis burden was divided requires a deep understanding of their financing, their coverage, and the levels of compensation of the schemes.

The empirical description of schemes and the analysis of the principles upon which they rest were therefore closely interwoven. Based on the findings presented in the country chapters, some general conclusions can be drawn:

The short-time work schemes that operate within contributory unemployment insurance systems are financed – at least in part – by the contribution payers, meaning (typically, in social insurance systems) employers and employees. In principle, this would mean that short-time work, a key instrument for economic stability and overall societal prosperity, would not be shouldered by society as a whole, but only by the social contribution payers. This is not uncontroversial, in particular as it might deplete unemployment insurance funds of their resources and lead to a more long-term increase in benefit rates. However, as we saw in Section 2, it is important to bear in mind that during large-scale crises such as the COVID-19 pandemic, the state typically steps in and provides financial support from taxpayer-generated funds, essentially leading to a division of the crisis burden across several groups.

The more widely used mechanism during the crisis, however, have been state-funded measures, generated through tax, and therefore shouldered by the collective of taxpayers. This was the case in relation to many wage-replacement schemes, as well as the extraordinary measures for the self-employed. These measures temporarily set aside the traditional division of responsibility in the respective welfare state. Whereas in many countries, the self-employed typically have access to residual welfare benefits only, and are responsible for generating their own safety nets, this logic was deliberately suspended during the pandemic. There emerged a sense and practice of responsibility towards groups that stood without this safety net, changing the modalities of how the market and state approach individual economic risk and responsibility in 'normal times'.

However, a simple categorisation according to 'types' of schemes would be too simple in showing the risk division during the pandemic. In evaluating how the financial burden of the pandemic has been distributed exactly, one will need to look at the coverage and compensation levels of each scheme. Very few schemes covered losses in full. This was typically only the case when, for example, a business was *directly* affected by government-mandated restrictions, rather than being more indirectly affected by the economic downturn. In general, the schemes offered partial compensation or wage coverage only. The job retention schemes differed significantly with regard to the levels of compensation they provided and any additional requirements they stipulated: Whereas some schemes required employers to continue to pay the full wage to employees, with a certain percentage covered by state funds, other schemes saw a reduction in working hours or salary, meaning that the employees indirectly shouldered part of the burden. In some schemes, employees had to pay a contribution not in accepting a reduced salary, but in taking a specific amount of holiday leave while their work duties were suspended (Brazil, Denmark). Rather than state grants, some countries offered loans to cover wages. Likewise, the lump-sum payments or schemes for businesses' running costs were rarely covered in full.[4] This means that employers, businesses and – in part – employees also had to shoulder part of the financial burden and that the crisis burden was often carefully divided across a range of actors. Paying attention to these differences is important in understanding more fully how the crisis burden was divided between different actors.

When it comes to country-specific differences with regard to the division of the crisis burden, one conclusion that can be drawn is that the level of compensation granted in part reflects the traditions of the market and welfare system concerned. It is no surprise, for example, that employers in both China and Russia received comparatively low levels of compensation, as they have traditionally had a strong role in their post-communist market economies. Compensation rates in Denmark and Sweden were comparatively high and were the result of carefully negotiated agreements with all labour market parties, reflecting the strong tradition of tripartite agreements and industrial relations in these countries. In the 'liberal' welfare states, the crisis response has, in part, also been typical of these countries, with low compensation levels present in Australia and New Zealand, for example. England stands out as an exception in this regard, with its wage replacement scheme adopted in March 2020 even exceeding that of Denmark in terms of its generosity. In other regards, however, in particular when it comes to the self-employed and social protection measures, the English response has been more typical of its residual welfare state.

With regard to the legal classification of the social policy measures employed during the pandemic, the country studies of this project have highlighted the challenges of clearly defining them from a legal perspective. While it is more or less immediately visible what the *institutional* anchoring of a scheme is, the precise *legal* nature is often more difficult to establish. This is because, as we have seen, some schemes – first and foremost the short-time work schemes – rely on hybrid financing mech-

4 Schemes which dramatically 'overpaid' (such as the Australian JobKeeper) are exceptions in this regard and do not rest on a meaningful shift in dividing risk, but rather appear to have been an implementation error.

anisms combining contributions and tax funding. Other measures have been tweaked, essentially changing their core legal characteristics. Social assistance that is stripped of the requirement for a means test, for example, is no longer social assistance from a legal perspective, even if the legislator retains its name. The schemes become instead a type of compensation, paid by the taxpayers' collective, for the actual (or in some cases assumed) financial damages of the pandemic. Neatly separating this from other legal instruments remains a difficult task, however. As the chapter on Slovenia has shown, with the measures' focus on economic recovery, they can equally be said to amount to a subsidy for certain sectors of the economy. During the pandemic, the legal categorisation of the measures became relevant first and foremost in the context of state aid rules, but as we shall see in the following, it is of fundamental importance in a number of other ways.

4. *The Normative Bases of the Crisis Response*

Determining the legal nature of the crisis measures is an essential step not just in understanding the division of risk and responsibility which they employ, but also for determining their normative bases – and, ultimately, the adequacy of the crisis response. It is remarkable that the countries studied in this book – countries which follow radically different welfare traditions and have very different economies, labour markets, infrastructures and financial means – have adopted similar crisis measures. As we have seen, the main difference has been in regard to the institutional anchoring of the measures and the level of compensation granted. However, the underlying thought – that some form of collective financial response to businesses and individuals affected was not just needed but adequate – appears to have guided decision-makers in all countries under study. What, then, is the normative basis of such a response? While decision-makers in some countries may have been guided by core constitutional principles, such as the right to social assistance or the welfare state principle, these constitutional provisions in and of themselves do not explain sufficiently why communities have stepped up in the context of the pandemic and, in many cases, also gone significantly beyond the 'modicum' which would typically have been sufficient to satisfy specific constitutional requirements.

It appears, instead, that *solidarity* has been the guiding normative principle in relation to the crisis response. Despite the country studies representing very different societies, with different legal orders, values, traditions and welfare state institutions, there seems to have been a similar underlying notion of solidarity guiding them. This solidarity can be defined as an act of collectively and temporarily stepping in and supporting those in need so that they may regain their ability to function independently and self-responsibly. However, the chapters in this book have also highlighted that further research is needed on the concept of solidarity in today's welfare states, and in particular in the context of crises. It is also important to stress that solidarity will be understood differently at different times and in different societies and institutional contexts (as shown for example in the chapter on France).

One might also argue that the stability of the welfare state – and the constitutional order as a whole – could provide a normative argument for the interventions seen during the pandemic. Welfare states are delicate constructs, culturally distinct, and with values guiding them that have typically evolved over many decades if not centuries. Levels of inequality that may be acceptable in one country might be totally unacceptable in another. However, what welfare states tend to share is the challenge that any extreme disruption to their finely calibrated redistributive mechanisms may pose a threat to their existence in the long term. If entire social groups, in particular the self-employed, informal workers or social benefit recipients, had been left to their own devices in the pandemic, then this could have led to these groups no longer placing faith in the welfare state – and the state more generally –, involving the risk of the rise of new political movements that could destabilise the legal-political order. In this sense, the measures also contribute to ensuring 'social peace', and, by extension, legal-political stability, in that they try to leave the existing balance of inequality and equality intact.

The unclear legal and normative anchoring of the crisis response also means that it becomes difficult to subject it to judicial review. This is a problem for the entire legal community: while some groups have received generous support, others have been overlooked. However, it would have been challenging to invoke in front of courts the right to higher levels of compensation. While countless legal disputes have arisen out of the pandemic response, the question of the adequacy of protecting livelihoods remains a particularly challenging one. For courts to decide on whether a response was adequate, a clear understanding of its legal nature and normative basis is needed. However, it is not just those who feel they may have been overlooked and not received a sufficient level of payments or benefits who have an interest that the question of adequacy has a clear legal and normative basis. It is also relevant to the community at large to be able to review how and on what basis tax funds are spent. While intense political debate concerning the provision of an adequate response took place throughout the pandemic, some disputes are only just reaching the courts and many complex questions concerning the normative bases of the crisis measures are yet to be resolved.

5. *Challenges Faced in Providing an Adequate Response*

The chapters in this book have also highlighted the wide range of practical challenges that presented themselves in providing an adequate crisis response.

The first such challenge, discussed also in the Introduction of this book, stems from the rapid and unpredictable spread of the virus. The speed with which measures had to be adopted in early 2020 was unprecedented, leading to broad-brush schemes with many initial oversights, leaving entire categories of workers and businesses outside their scope. The fact that most schemes were based on emergency legislative powers of course meant that there was insufficient time to review them, or to follow the usual parliamentary hearing stages, which in part explains such oversights. This situation could be found across the globe, as the studies in this book have shown. An additional challenge, stemming directly from the nature of the pandemic, concerned the extension, reintroduction, and modification of the measures of the first wave during subsequent waves of the pandemic. While initial oversights could be corrected over time, this also led to a growing complexity of the measures (as discussed for example in the chapters on Australia and Denmark). Such changes were often also complemented by a change in the economic rationale underpinning the measures, further complicating the picture (see below, 6).

Closely related to the ad-hoc manner in which the measures had to be adopted was the problem that many labour market groups largely remained outside the reach of the measures. 'Atypical workers', migrants, and informal labourers faced particular challenges virtually everywhere. However, this was only in part a result of the fact that the given schemes had been adopted so fast. Partially, this also resulted from deliberate policy decisions, in line with pre-existing approaches to specific groups in the labour market. This pertains in particular to foreign workers, who often faced more unfavourable conditions (for example in Russia and Australia). In addition, there may have been problems of representation. With larger industry sectors having more lobbying power, and in some countries labour market parties even having sat at the negotiating table during the pandemic, their needs could be considered in the adoption of the crisis schemes. This was not the case for 'atypical workers'. Institutional path dependencies may have been a further factor for why some groups were treated less generously. In particular in social insurance-based welfare states, there was simply no pre-existing institutional structure through which to swiftly build schemes for the self-employed. Some countries sought to remedy this by establishing new schemes, including the Netherlands. Ultimately, however, these schemes were often much less generous than those for standard workers. It is perhaps needless to say that there were particular challenges in countries with large informal sectors. Here, largely lump-sum payments, often at low levels, tended to be the norm (for example in Brazil and Mexico).

Beyond coverage, there were countless challenges concerning the dispersal and review of payments. These corresponded closely with more general infrastructure challenges. Where digital infrastructure was less present or integrated, for example, dispersal could take longer, as seen for example in Germany. In South Africa, where many individuals do not hold a bank account, the dispersal of payments became a challenge from a sanitary perspective: payments were made via the South African Post Office, leading to large crowds at the Post Office. Lack of digital infrastructure could also be a challenge when it came to fraud, given that the high case load meant that applications could not be handled manually, at least not with any meaningful degree of scrutiny. During the pandemic, when large sums had to be dispersed quickly if they were to fulfil their purpose, there were few control mechanisms and fraud was not uncommon. The degree to which countries managed to conduct productive fraud control varied significantly, and correlated also with the presence of transparent, efficient, and digital infrastructure.[5] Some schemes also required a final calculation (such as in the Netherlands), with repayments to be made of funds not actually needed. In other countries, such repayments were optional.

A final challenge, to which some of the authors have drawn attention, is that the pandemic response has been shaped to a significant degree by politics and political opportunism. Allocation of financial means and solidarity in the welfare state are extremely contested even in 'ordinary' times. The pandemic concerned core questions of inequality, redistribution, and solidarity. While the usual rules no longer applied, and there was a general consensus that extraordinary measures were needed, the pandemic was still marked by widely differing attitudes in the population as to what measures

5 Amy Yuan Zhuang, Digitaliserede økonomier har klaret sig bedre gennem pandemien, Economic Memo, Danmarks Nationalbank, 18 August 2021.

would be appropriate. As several of the chapters in this book have shown, politicians regularly wove their pandemic response closely together with election campaigns, seeking to please certain parts of the electorate at the expense of a more coherent approach. This was shown for example in the case of Slovenia, but also in Brazil and the Czech Republic. However, such dynamics will have been present to some degree in all of the democratic countries surveyed in this project.

6. *Phasing Out the Crisis Measures*

A particular concern with regard to all of the measures discussed in this book has been the question of when and how to phase them out and return to the balance of individual responsibility and collective support characteristic of 'ordinary' times. In general, there was widespread agreement in the countries surveyed that the measures introduced to protect livelihoods would be in place for a limited period of time only. However, ending support and returning to the ordinary principles of the social market economy also meant that this could cause immense hardship from one day to the next – in particular as full economic recovery had not taken place when restrictions began to be lifted, but also because consumer behaviour had changed dramatically during the pandemic. Formerly bustling business districts remained quiet, as few workers returned to full-time work in the office. This meant that sectors in inner city districts that had relied on office workers, such as the hospitality sector, saw a radical decrease in demand. Many individuals still avoided large indoor gatherings, even long after restrictions had ended, meaning that cultural and nightlife venues continued to suffer indirectly from the pandemic. However, phasing out support meant that some form of economic hardship would be inevitable, unless the state decided to subsidise unviable businesses. The project has shown that especially the Nordic and liberal welfare states focused early on a swift economic recovery and the avoidance of the so-called 'status quo bias' (see for example Australia, Denmark, England and Ireland). However, to some degree such concerns lay at the heart of all decision-making during the pandemic.

A first, soft way of generating an impetus for businesses and individuals to return to ordinary social market principles was to make the pandemic measures less generous over time and change them slightly in an attempt to generate incentives for business activity. This was a common approach in the countries surveyed in this project. The short-time work schemes NOW of the Netherlands exemplify this shift in rationale well. As the authors state: '*while NOW 1.0 sought to "maintain the employment of workers for the hours worked before the downturn [in productivity], NOW 2.0 stated the less strictly formulated goal of maintaining the employment of 'as many people as possible*"'. Several of the contributors to this project have highlighted how the concept of self-responsibility regained increasing emphasis in official measures and political communication (see for example the chapters on Germany, the Netherlands and China).

Several countries, including Australia and Ireland, also introduced new benefit types to cushion the phase-out of more generous schemes. In Ireland, the Pandemic Unemployment Payment (PUP) was intended to soften some of the effects of the phase-out of the more generous short-time work scheme. Another option was to make access to existing social protection schemes easier for groups hit by the pandemic. This was done in Sweden and Denmark, for example, where individuals were granted a special access route into the (voluntary) unemployment insurance funds by retroactively paying 12 months of membership fees, thereby becoming eligible straight away for unemployment benefits as the crisis measures were being phased out.

However, several challenges remain. First of all, the phase-out of the measures could not be conducted in the linear way that many economic advisors and political decision-makers had advocated during the first wave of the pandemic. The risk of social hardship would have been too high had one followed a rigid approach during the many unpredictable phases of the pandemic. Decision-makers needed to retain some form of flexibility so as to match the changing challenges of the pandemic and the measures therefore came to largely mirror the pandemic waves. Throughout the pandemic, political pressure remained high to maintain or reintroduce the crisis measures in order to avoid hardship. Due to the various pandemic waves, there was therefore some degree of back and forth. And as many measures are still in place in some form at the time of writing, some of the challenges of the phase-out will only become fully visible at a later point in time. This was highlighted in the chapter on Japan, for example, where the repayment deadlines for special COVID-19 loans is likely to lead to renewed social hardship. It can be expected that many individuals and business actors will face such repayment challenges also across the globe.

7. Assessing the Impact and Success of the Measures

Assessing the impact and success of the measures at the centre of this study remains difficult at the time of writing. The pandemic is not yet over and some of the more long-term changes to economic market activity and consumer behaviour remain unclear. However, it is certain that the pandemic response measures discussed in this book have cushioned some of the most devastating effects of lockdowns and other sanitary measures to curb the spread of the virus. Estimates suggest that a significant number of jobs were saved due to the short-time work and wage replacement schemes. Economic recovery was facilitated by the broad spectrum of measures that in direct and indirect form supported the economy. And, finally, by tweaking social protection measures and granting extraordinary payments, individuals have had more income at their disposal in supporting themselves and their families than they would ordinarily have had.

However, this is not to say, of course, that the measures have prevented hardship universally. The crisis put into stark relief the weaknesses of each welfare state and the groups most at risk of standing without a safety net. 'Atypical workers', a broad term which can include part-time workers, fixed-term employees, gig workers, the self-employed/solo-traders as well as informal or illegal workers, were hard hit by the pandemic and often fell between the cracks of the COVID schemes. A full economic assessment of the COVID-19 measures will need to look at the effects the schemes have had on these highly different groups of labour market participants. This will also be important in trying to assess the potential gender differences in relation to the crisis measures. As some chapters of this book have shown, the COVID response measures suggest a gender bias. Men, for example, were often favoured in wage subsidy schemes as they tended to be in the full-time regular employment these schemes aimed at. Women overall appear to have suffered disproportionately as a result of the crisis, as they are more frequently in part-time or 'atypical' work. When it comes to the overall effects of the measures, it also needs to be borne in mind that they may have had unintended effects, such as reinforcing gender roles within households. More research is therefore needed with a view to the effects of the measures on different groups within the labour market.

The chapters of this book have also shown that there are very different ways in which one can seek to measure the success of the COVID response. As the authors show for the case of Poland, 'the proposed solutions met social expectations'. This is not an irrelevant finding in an area as politically contested as social protection. If one of the findings is that the welfare state succeeded in maintaining or establishing public trust in the welfare state and its institutions, then this can have a long-term impact on the more general support of the welfare state, the collective willingness to engage in financial redistribution and the welfare state's underlying principles of solidarity. Future research will have to show in what ways the pandemic has changed public perceptions of welfare state institutions, but also of specific social schemes such as social assistance. As suggested by Ulrich Becker in this book's Introduction: If the middle classes increasingly rely on social assistance or other social benefits, basic social attitudes towards concepts such as poverty and unemployment may shift, and with this, the general willingness to support the welfare state, potentially also leading to changes in regard to some of the stigma at times associated with claiming benefits. More broadly, the pandemic may also lead to more long-term societal reconsiderations of the ideas of risk, merit and inequality in the market economy.

8. *The Post-Pandemic Welfare State*

One of the questions that this research project set out to address was whether the pandemic response has led to any changes in the welfare states concerned. Despite the very different regime types under study, the answer to this question is similar for all countries: the special COVID-related measures were in place for a limited period of time only, and did not bring about any institutional or system-related changes to the welfare states in question. States did not introduce a radically different welfare state architecture, but largely stayed within the institutional frameworks that had developed over long periods of time. The underlying principles of their welfare states were usually only set aside for a short duration of time. Only in select countries, such as in Italy, did the pandemic accelerate certain institutional reform tendencies, in this case towards the universalisation of schemes. The more general changes observed by the authors of this project concerned not the institutions or principles, but rather the practical operation of welfare administrations, first and foremost with regard to digitalisation, as seen for example in Greece and Poland.

This is not to say, however, that the welfare states are the same as before the pandemic. The pandemic has triggered intense political debates over the role of the welfare state in the twenty-first century. Discussions have re-emerged about the role of the welfare state towards the self-employed in particular. This is due to several factors. Since the end of the twentieth century, the self-employed have become an increasingly complex group with many different social needs. Given that many self-employed are in a highly precarious position, including for example gig workers, an argument could even be made that it is *especially* this group that should be included in the welfare system. An additional factor is that the increased pace at which the economy is changing due to technological developments means that many workers will (want to) shift between self-employed work and being in an employment relationship over the course of their working lives, a process which is hampered by the existence of different social protection systems for these groups. The problem about how this can be achieved remains complex, in particular for the traditional *Bismarckian* social insurance systems. However, the debate has been intensified by the pandemic and it is likely that some form of changes and processes towards universalisation will take place, at least for some groups of self-employed workers.

The pandemic has also reinforced awareness of the risk of sudden, external economic social shocks more generally. The frequency of crises already witnessed in the twenty-first century means that the core mechanisms and modalities of the welfare state need to be carefully evaluated so as to make them fit for a fast-changing interconnected global economy that is susceptible to disruption. As the worst of the pandemic appears to have passed, new global crises have emerged or become more acute: climate change is gaining pace, and the war in Ukraine has – beyond the immediate humanitarian catastrophe – intensified supply chain disruptions, added to already-soaring energy prices and increased the cost of many essential food products across the globe. The United Kingdom is in a full-blown 'cost of living' crisis, with an estimated one in ten parents 'very likely' to have to rely on food banks in the next three months.[6] Such developments also require us to carefully reassess what key ideas of the welfare state such as self-responsibility and merit mean in today's labour economies. More fundamentally, this needs to be accompanied by a careful assessment of the meaning of the concept of 'work' in the twenty-first century, and further research into how economic prosperity becomes available to all and how social justice can be measured and achieved.

Finally, the pandemic has put social compensation law into focus. This 'last resort' of legal measures will become increasingly important over the next decades as our economies face more and more 'uninsurable' risks brought about by war and climate change. The question of what would be an adequate response to future pandemics and other disasters is a difficult one to answer and will need to be debated in the specific context of a society's values, economic structure, and financial possibilities. It is a challenging time to be optimistic about economic prosperity and equality. But this makes it all the more important that societies engage with the core values and principles that bind them together.

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6 Tom Ambrose, Almost one in 10 parents 'very likely to use UK food bank in next three months', The Guardian, 18 April 2022.

List of Contributors

Becker, Ulrich, Prof Dr, Director at the Max Planck Institute for Social Law and Social Policy

Bouwmeester, Maarten, PhD Student at the Faculty of Law, University of Groningen

Carney, Terry, Dr, Professor Emeritus at the University of Sydney Law School

Chesalina, Olga, Dr, Senior Research Fellow at the Max Planck Institute for Social Law and Social Policy

Dewhurst, Elaine, Dr, Senior Lecturer in Employment Law at the University of Manchester

Erhag, Thomas, Dr, Professor of Public Law at the University of Gothenburg

Ferreira Barbosa, Jeferson, Dr, Postdoctoral Researcher at the Pontifícia Universidade Católica do Rio Grande do Sul

Fletcher, Michael, Dr, Senior Research Fellow at the Institute for Governance and Policy Studies, Victoria University of Wellington

Górnicz-Mulcahy, Agnieszka, Dr, Associate Professor at the Faculty of Law, Administration and Economics, University of Wrocław

He, Linxin, Dr, Associate Professor at the Faculty of Law, Université Paris 1 Panthéon Sorbonne

Hohnerlein, Eva Maria, Dr, Senior Research Fellow at the Max Planck Institute for Social Law and Social Policy

Matsumoto, Katsuaki, Dr, Professor at the Faculty of Social Welfare, Kumamoto Gakuen University

Mendizábal-Bermúdez, Gabriela, Dr, Professor at the Faculty of Law and Social Sciences, Autonomous University of the State of Morelos

Mišič, Luka, Dr, Assistant Professor at the Department for Labour Law and Social Security Law at the Faculty of Law, University of Ljubljana

Mpedi, Letlhokwa George, Dr, Professor of Law and Deputy Vice-Chancellor: Academic at the University of Johannesburg

Poulou, Anastasia, Dr, Judge at the Administrative Court of First Instance, Athens

Przybyłowicz, Ariel, Dr, Assistant Professor at the Faculty of Law, Administration and Economics, University of Wrocław

Sarlet, Ingo Wolfgang, Dr, Professor of Constitutional Law at the Pontifícia Universidade Católica do Rio Grande do Sul

Seemann, Anika, Dr, Senior Research Fellow at the Max Planck Institute for Social Law and Social Policy

Štefko, Martin, Dr, Associate Professor in Labour and Social Security Law at the Faculty of Law, Charles University in Prague

Stendahl, Sara, Dr, Professor of Public Law at the University of Gothenburg

Strban, Grega, Dr, Professor of Social Security Law and Dean of the Faculty of Law at the University of Ljubljana

Sun, Nai-Yi, Dr, Professor at the College of Law, National Taiwan University

Wang, Yifei, PhD Student at the Max Planck Institute for Social Law and Social Policy

Wilman, Nikola, Senior Research Fellow at the Max Planck Institute for Social Law and Social Policy