



MAX PLANCK INSTITUTE
FOR SOCIAL LAW AND SOCIAL POLICY

working papers law

Ulrich Becker

Linxin He

Eva Maria Hohnerlein

Anika Seemann

Nikola Wilman

Protecting Livelihoods in the COVID-19 Crisis:

Legal Comparison of Measures to Maintain Employment, the Economy and Social Protection

Updated Version

Volume 7
November / 2020

Cite as: MPISoc Working Paper 7/2020

© Max Planck Institute for Social Law and Social Policy, Munich 2020.

All rights reserved.

ISSN 2511-2635 (Print)

ISSN 2365-8290 (Internet)

Max Planck Institute for Social Law and Social Policy

Amalienstraße 33, D-80799 Munich, Germany

Tel.: +49 (0)89 38602-0 · Fax: +49 (0)89 38602-490 · E-mail: hagn@mpisoc.mpg.de

<http://www.mpisoc.mpg.de>

Preface

The present study describes, categorises and analyses reactions to the pandemic crisis in five European countries from a systemic perspective – legislative and administrative measures that can to some extent be attributed to “social law” in the sense of social protection law. With this focus in mind, our study intends to illustrate how the welfare state is reacting to the COVID-19 crisis.

The measures examined are characterised by their multitude, their variety and their rapid changeability. It is difficult to keep track, in particular if one wants to include the whole range of measures. Therefore, we had to concentrate on specific aspects, namely job retention, supporting the economy and in particular the economic existence of the self-employed, and access to social protection. It goes without saying that our stock-taking is necessarily of a rather provisional nature. It reflects the situation as of the beginning of November 2020 (the hyperlinks were last checked on 2 November), a time in which a second wave of the coronavirus has hit Europe and, in response, new measures are either being planned or have already been put in place.

There is more to come, and it is difficult, at this moment in time in which the pandemic disease is still spreading, to foresee how long measures will last and how they will shape the welfare states in a post COVID-19 era. That does not inhibit an assessment of whether the measures enacted so far have the potential to lead to structural changes of traditional welfare state architectures. Yet, all results will have to be revisited once a ‘new normality’ will have taken shape.

We would like to thank Christina McAllister for translating parts of this paper and her valuable assistance in bringing it into a readable form.

Munich, November 2020

Ulrich Becker
Linxin He
Eva Maria Hohnerlein
Anika Seemann
Nikola Wilman

Contents

I. Social Policy and Social Law in Times of Crisis <i>Ulrich Becker</i>	9
II. The Community Steps Up: Changing Responsibilities in Germany <i>Ulrich Becker</i>	23
III. “Collective Agreement” – Danish Social and Labour Market Policy in the COVID-19 Crisis <i>Anika Seemann</i>	41
IV. (Still) Too Little, Too Late? – Crisis Management in England <i>Nikola Wilman</i>	61
V. The Temporary Return of National Solidarity in France <i>Linxin He</i>	81
VI. Italy: Lost in the Jungle of Social Shock Absorbers and Fragmented Systems <i>Eva Maria Hohnerlein</i>	97

I. Social Policy and Social Law in Times of Crisis

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 predicted¹ – 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 they were first implemented, and the economy and society will recover. What the long-term repercussions of the interim shutdown 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 other economic slumps triggered by external shocks.

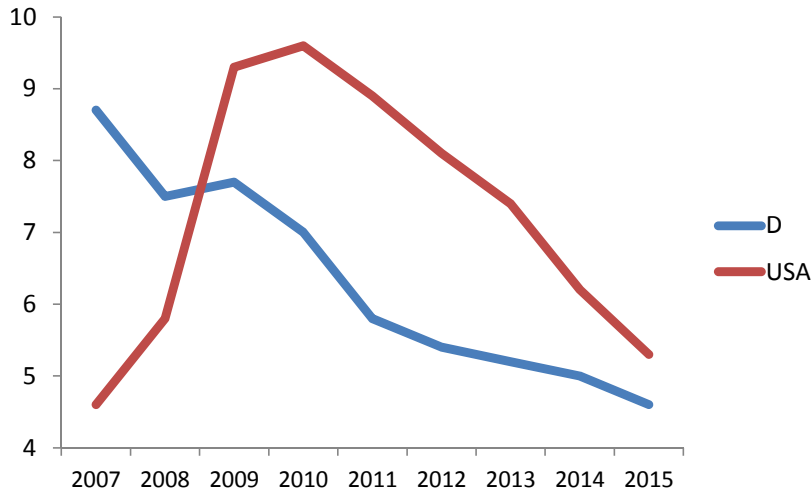
A look at the development of the unemployment rate before, during and after the financial crisis of 2008, which is shown below, is revealing: The curves can be seen as symbolising different social policy approaches. The divergence between social models is well reflected in the data for Germany and the USA². 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 lose their jobs.³ More generous compensation payments may, under certain circumstances, balance out this loss. To that effect, “*flexicurity*” has been

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.

2 [OECD Data](#).

3 Cf. also [Quade, Verantwortung und ihre Zuschreibung im Recht der Arbeitsförderung](#), 2009.

promoted by the European Commission as a combined model⁴ 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 Semester⁵, 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.

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

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](#), p. 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.

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.

If, however, despite these 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 conclusions 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 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 crises 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 less⁸, as was done especially in England in the 19th century (“deserving and undeserving poor”),⁹ and as has

8 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](#).

9 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

been widely discussed in US welfare policy.¹⁰ 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 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 responsibilities 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,¹¹ 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.¹² Yet, at least two kinds of compensation benefits are well established all over Europe: one being compensation for war victims, the other compensation for victim of crimes, and the latter also has a basis in European law¹³. 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 responsi-

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 work houses 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 work-house 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.”

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

11 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.

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

13 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' right](#).

ble 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.¹⁴ 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 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 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.¹⁵ 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.¹⁶ 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.

14 Whereas it is not the obligation to protect peoples' life cf. *Becker*, [Soziales Entschädigungsrecht](#), 2018, p. 107 et seq.

15 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](#).

16 Cf. *Becker*, [Soziales Entschädigungsrecht](#), 2018, preface (p. 5).

3. *Questions and Foci*

a) 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 tend to change within a very short period of time because the lack of suitable blueprints and of experience requires constant adjustments.

aa) 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 by labour law and provision of social benefits by 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 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 can also 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.

bb) Second, and with regard to the dynamics of the measures, stocktaking remains on a volatile factual basis due to rapid developments. For this reason, it has been limited to a fixed date, namely end of October 2020. We are planning to conduct a follow-up study later on that will also provide more information about a process, namely how welfare state measures are implemented and changed to cope with the crisis.

b) The study includes three large European countries, *Germany*, *France* and the *United Kingdom*, which not only pursue different social, employment and industrial policy approaches, but have also reacted to the corona crisis with different speed and intensity. Concerning the United Kingdom, however, the study will concentrate 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* is included as this allows to bring in aspects of the Scandinavian welfare state model, but will also 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.).¹⁷ Finally, *Italy* deserves special attention. Here, in the first European hotspot of the coronavirus spread, drastic disease control measures were taken early on, and thus not only the need for action in terms of health policy but also in social and economic policy became particularly apparent very quickly.

At the same time, Italy points beyond the scope of the comparison of national crisis management measures drawn here. The situation there has triggered a discussion about European solidarity and thus raised crisis management to the level of the European Union: How should, can or must the Union react? What do the EU Member States owe to each other in terms of mutual assistance? Such discussions are familiar from earlier crises. They revolved, especially in connection with the 2008 financial crisis, around financial transfers and the introduction of a European unemployment insurance¹⁸ but did not lead to a solution that would have got to the root of the problem. Now the pandemic is hitting economies that in some countries still have not recovered from this financial crisis, and although no one in the affected countries can be blamed for its outbreak, the question of national responsibility for combating it remains relevant. Nevertheless, despite all the controversy over the form and extent of the measures, there now seems to be consensus between the Member States on one point: namely, that the EU cannot refuse mutual assistance even if there have to be changes in the existing treaties.¹⁹ In this respect, too, the sharing of responsibilities is at the forefront, namely between the Union and the national level.²⁰ This requires separate consideration and cannot be examined

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

18 Cf. only 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.

19 [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](#) 87.4 billion euros in financial support for member states.

20 Cf. [Regulation \(EU\) 2020/461](#) 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 of 30 March 2020 (OJ L 99/9).

in greater detail here.²¹ It should be noted, however, that in their individual crisis management the EU Member States remain integrated into the EU 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 crisis²², the Union has largely been left out of the picture when internal borders were closed. The consequences of this – in the context of the more general debate on European solidarity and the increasingly difficult maintenance of the rule of law – will have to be discussed elsewhere.

4. Comparative Perspectives

a) General Aspects

Coming back to the crisis management measures at national level, the following country reports show, first of all, that all countries are in crisis mode. Some were quicker, others more hesitant, in acknowledging the fact that the pandemic is leading to challenges of an unprecedented scale – a fact that has become undeniable over the last months and has become even more obvious now that a second wave of coronavirus has hit Europe. All countries have been trying to meet these challenges and set up social policy programmes shortly after the first curfews and contact restrictions were 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. From a bird's eye perspective, three aspects deserve to be highlighted.

First, the procedures and form 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

21 It should be mentioned that a very fundamental step has been taken by the European Council by [adopting conclusions](#) on the recovery plan and multiannual financial framework for 2021-2027 in July 2020 and allowing for EU debts. Yet, the implementation is still under discussion.

22 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 911/1](#)), amended by Communication of 3 April 2020, [C\(2020\) 2215 final](#).

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 contributions 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 of 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. In Germany, short-time work benefits have long been used in cases of complete loss of work (“short-time work zero”, i.e. subsidised temporary layoffs). In Denmark, new benefits had to be created for this case, and a special programme has also been planned for England to avoid redundancies. In both countries, this does not only lead to new types of social benefits, but also to a partial departure from the flexibility of a labour market policy that had been characteristic of the two countries up to now, with protection against dismissal relaxed during normal periods.
- There is little common ground with regard to *labour law* in its role of supporting job retention. While Germany and England have refrained from doing so, Denmark and France have introduced special holiday regulations and Italy 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 the 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.²³ In England and in Italy, the role of this social protection approach is visible, but supplemented respectively: in England this has been achieved through a new programme to support self-employed workers, in Italy through special payments. In this respect, a combination between social protection and social compensation is being used, and a certain emphasis on social compensation can also be observed in both other countries. France has followed the compensation approach by establishing a solidarity fund for small businesses and the self-employed. But in Denmark, too, the idea of compensation for damages is at the forefront. Whereas in Germany there is still few evidence of how COVID-19 emergency aid relates to state liability law and existing compensation schemes, Denmark abolished its provision under which social compensation is to be paid according to disease law at the beginning of the crisis in order to create scope for more flexible compensation payments.

- *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 everywhere. 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 are temporarily 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 (Denmark) to special benefits for the most needy (France), to a partial (Italy) or flat-rate waiver of a means test (Germany). A reform in England stands out in particular. Here, the *Universal Credit*, the still relatively young symbiosis of assistance and support services, has been raised in general and to a considerable extent. This is to be seen in context with the particularities of the situation there, showing a highly fragmented labour market with many new forms of employment and a relatively low level of social security that is in line with the tradition of the *Beveridge Plan*.

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

c) *Crisis Reactions and Welfare State Architectures*

The last point leads to the question of what country-specific arrangements the crisis management measures will have to deal with and how the latter may have a retroactive effect on these arrangements. In *Germany*, the concept of social compensation currently largely overshadows the granting of all social protection benefits; it levels out differences in the various types of these benefits, without allowing conclusions to be drawn about future adjustments in view of the special nature of the situation. In *Denmark*, the consensus model, not only of democracy but also of the welfare state, has proved to be the basis for crisis management and has made it possible to temporarily modify even core principles such as that of ‘flexicurity’. Carried by widespread support from the labour market and across the political parties, major compensation schemes in force from March until August 2020 secured jobs and incomes. With the gradual phasing-out of the costly compensation schemes, Denmark was then able to rely on its comparatively flexible unemployment insurance system, access to which was temporarily expanded in order to soften the effects of the phase-out of the compensation schemes. With its tradition of tripartite decision-making and the accessibility of its unemployment insurance system for most types of labour market participants, Denmark appears to have been well equipped to handle the effects of this unprecedented crisis. In *England*, too, the state is now intervening massively into the market economy, but still under special circumstances: It is no coincidence that here – unlike in other countries – the preservation of the economy was on the agenda before the preservation of jobs, and it is to be expected that the existing labour market with many poorly protected jobs will lead to an increase in social inequality. In this respect, the attempt to, if only temporarily, strengthen a universal instrument of social protection by way of the *Universal Credit* fits the picture.

From a social policy point of view, the consequences of the pandemic in France and Italy are particularly interesting. In *France*, because despite all the difficulties in making the measures taken effective, they have – so far – been reviving national solidarity. At the same time, however, the question arises as to what impact they will have on the still relatively new and publicly highly controversial efforts to address the labour market and social policy reforms. Although the French government insists in official discourses upon the value of solidarity and provides, in effect, massive financial support for protecting livelihoods, the attention has been gradually moved from saving lives to economic recovery. Without any hesitation, the government concentrates its efforts on adapting short-time work and extending the newly created solidarity fund (for the self-employed and small businesses). In *Italy*, too, the crisis is hitting a country undergoing socio-political changes. It is struggling to find the right balance between flexibility and the protection of employment relationships and to improve and universalise the fragmented, often ineffective and, above all, incomplete social protection systems. This is where the crisis can be expected to be of a certain help, because it increases the pressure to reform. But this is only true if there is already agreement on the necessity and content

Social Policy and Social Law in Times of Crisis

of reforms. This, however, is unlikely to be the case anywhere. Italy already adopted major reforms of social assistance and unemployment insurance in response to the 2008 crisis; the pandemic highlighted the problems that remained unresolved in the social protection architecture. Some reactions to the crisis amount to improvements of existing schemes, while others constitute new ones aimed at filling protection gaps.

Thus, we are taught the same lesson that we have been taught through the last financial crisis:²⁴ Times of crisis, with their tendency to provide 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 of the welfare state once the crisis has been overcome.

²⁴ See Becker/Poulou (eds), *European Welfare State Constitutions after the Financial Crisis*, 2020 (forthcoming).

II. The Community Steps Up: Changing Responsibilities in Germany

1. Introduction

After a short period of hesitation, German governments reacted quickly to the COVID-19 crisis. 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 end². 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 responsibilities⁴. 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 diverse from one region to another due to a certain obstinacy of *Länder* governments.

Since the end of April, gradual easing measures have been announced and implemented⁵. Initially, the question remained open as to the extent to which local differentiations were reasonable or even necessary. However, it was always clear that this question had to be raised and answered. After all, lifting restrictions is legally and politically much more difficult than mandating them. While a quick and comprehensive elimina-

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 [§ 5 IfSG](#), introduced via art. 1 of [the Law on the Protection of the Population in the event of an epidemic situation of national import of 27 March 2020](#) (Federal Law Gazette = *Bundesgesetzblatt* – BGBl. I, p. 587).

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](#).

tion 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,⁶ 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’⁷) gained a rather dubious fame. From this point on, there is a growing need to comprehensively balance legally protected interests and justifying 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 terms⁸ and brought before courts for review.⁹

A certain federal diversity was also noticeable in terms of economic and socio-political reactions. As early as mid-March 2020, both the Federal Government¹⁰ and the *Länder*¹¹ 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 156 billion euros¹² that is intended to keep the economy running,¹³ 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 103 billion euros.¹⁴ Although the long economic upswing in recent years has left considerable scope for support measures, the pandemic will lead to insolvencies and to changes in the economic landscape – and it is uncertain how effective and how useful government rescue efforts will ultimately be. It is also foreseeable that the corona crisis will lead to an increase in unemployment¹⁵ –

6 See [Bund-Länder-Beschluss of 6 May 2020](#).

7 See [The Guardian of 30 September 2020](#).

8 It is thus not very surprising that publishers are issuing new handbooks, guidelines and online modules, and that overview articles and court decisions can be found in especially prepared “corona” internet pages and journals.

9 See for an overview [information of the Federal Bar Association](#) (*Bundesrechtsanwaltskammer*).

10 Cf. [Budget Supplement Law \(Gesetz über die Feststellung eines Nachtrags zum Bundeshaushaltsplan für das Haushaltsjahr 2020 – Nachtragshaushaltsgesetz 2020 – of 27 March 2020](#), BGBl. I 2020, p. 556. On the budget constitutional implications see *Schwarz*, COVuR 2020, p. 74.

11 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.

12 § 2 para. 1 Budget Supplement Act 2020 (fn. 10).

13 See for financial support in extension of digital infrastructure and child care infrastructure [Gesetz über begleitende Maßnahmen zur Umsetzung des Konjunktur- und Krisenbewältigungspakets](#) of 14 July 2020 (BGBl. I, 1683).

14 [Law of 14 July 2020](#) (BGBl. I, p. 1669); see [information of the Federal Treasury](#) (BMF).

15 For further details on this – and also the effects of prolonged unemployment and statistical recording – see Bundesagentur für Arbeit, Auswirkungen der Corona-Krise (fn. 34), p. 8 et seq.

even though, right at the start, 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*)¹⁶. 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 2008¹⁷ and been reduced again from 2012¹⁸. 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) III¹⁹. Corresponding links between the labour market and socio-political objectives²⁰ have always been characteristic of the German unemployment

16 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. [§§ 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](#).

17 [Measures package of the Federal Government](#) “Beschäftigung durch Wachstumsstärkung”, November 2008.

18 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).

19 Unlike in [§ 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, [§ 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 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” ([§ 116 para. 1 sent. 2 AVAVG](#)). This purpose had not yet been mentioned in the regulation of “support for short-time workers” (“*Kurzarbeiterunterstützung*” in [§ 130 AVAVG](#) of 16 July 1927 (RGBl. I; p. 187), which, however, had to be authorised or mandated respectively.

20 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

insurance and do not per se lead to particular problems in the interpretation of the qualifying conditions²¹.

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 followed²², the government introduced a draft law on 12 March 2020 to improve the regulations for short-time work benefits²³ for a limited period in response to the crisis. It was discussed and adopted one day later in three deliberations in the Bundestag²⁴. The law was published in the Federal Law Gazette²⁵ on the same day and entered into force on 15 March 2020. The speed with which the procedure was conducted is remarkable²⁶. 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 affected²⁷ – in the hands of the executive, albeit for a limited time until the end of 2021²⁸.

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.

- 21 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 [§ 95 SGB III](#), recital 4 et seq.
- 22 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.
- 23 [BT Dr. 19/17893](#).
- 24 [BT PIPr. 19/153](#) (*Zusatzpunkt 19*).
- 25 [BGBl. I, p. 493](#).
- 26 Cf. on “acceleration phenomena”, their classification and evaluation see *Schwerdtfeger*, Krisengesetzgebung, 2018, p. 27 et seq., 156 et seq.
- 27 According to [§ 3 KugV](#) (fn. 29) the right stipulated in [§ 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.
- 28 [§ 109 para. 5 SGB III](#) and [§ 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.

On this basis, the Federal Government Regulation on the Facilitation of Short-Time Work (*KugV*) was issued on 25 March 2020²⁹. 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 cent³⁰; 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.³¹ In addition, the employer is fully reimbursed for any social security contributions incurred³². A further improvement was brought about by the regulation on the Period of Entitlement to the Short-Time Work Benefit (*KugBeV*) of 16 April 2020³³: 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) 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*³⁴. In June 2020, about 13% of all employees in Germany received this benefit.³⁵ Second, the loss of working hours was very high at least in the sectors that have been hit particularly hard by the crisis³⁶, 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’³⁷. Third, economic recovery will take time, even if catch-up effects had been

29 [Kurzarbeitergeldverordnung](#) (BGBl. I, p. 595).

30 [§ 1 no. 1 KugV](#), by derogation from § 96 para. 1 sent. 1 no. 4 SGB III.

31 [§ 1 no. 2 KugV](#), by derogation from § 96 para. 4 sent. 2 no. 3 SGB III.

32 [§ 2 para. 1 KugV](#).

33 Provision on the period of receipt of short-term work benefit [Kurzarbeitergeldbezugsdauerverordnung](#) (BGBl. I, p. 801).

34 In March and April there were 751,000 applications (cf. [§ 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 § 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, it has started to decrease (May: 5.92 million, June: 4.63 million, July: 4.24 million), see BA, [Arbeitsmarktbericht September 2020](#), p. 9.

35 Employees subject to mandatory social insurance, preliminary findings of the BA, see [Arbeitsmarktbericht September 2020](#), p. 9.

36 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. 34), p. 7.

37 On loss of salary see [§ 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.

expected to occur relatively quickly once the consequences of the pandemic will have been overcome.³⁸ In some sectors the loss of wages is cushioned by collective agreements that provide for an increase in *Kug*, to some extent under differentiated conditions and at levels of between 70% and 97%³⁹. Under the Second Social Protection Package⁴⁰ which was adopted on 20 May 2020⁴¹, *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)⁴² to 70% (or 77%) after the fourth reference month, and to 80% (or 87%) after the seventh reference month⁴³. 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 jobs⁴⁴. 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 all⁴⁵; 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”⁴⁶ 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 assistance⁴⁷. Under current plans, the *Kug*-“topping-up” rules will be extended from December 2020 to December 2021.⁴⁸

38 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.

39 Cf. overview provided by the German Trade Union Confederation, [DGB](#).

40 Information provided by the German Federal Ministry of Labour and Social Affairs, [BMAS](#).

41 [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](#).

42 [§ 105 SGB III](#); on the requirements for the increase see [§ 149 no. 1 SGB III](#) in connection with [§ 105 no. 1 SGB III](#).

43 [§ 421c para. 2 SGB III](#).

44 [§ 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. 61. Cf. on additional income *Zieglmeier*, Corona-Schutzschirm: Kurzarbeit und Kurzarbeitergeld, DSrR 2020, pp. 729, 733 et seq.

45 [BT Dr. 19/18966](#), p. 26.

46 [BT Dr. 19/18966](#), p. 27.

47 On this motive see blog entry by *Bispinck/Schulte* of the Institute of Economic and Social Research ([WSI](#)) of 14 April 2020.

48 Draft of a bill for securing employment (*Beschäftigungssicherungsgesetz*), [BT Dr. 19/23480](#), p. 12.

b) Other Measures in a Divided Labour Market

The job support measures also include the new regulation in § 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 weeks⁴⁹. The time limit is reminiscent of the right to continued pay of wages⁵⁰, without any explanations having been given by the legislator⁵¹.

The situation is somewhat different with regard to efforts to counteract pandemic-related changes in the demand for labour⁵². These include, on the one hand, the expansion of marginal employment through the Social Protection Package⁵³, which is primarily intended to benefit the agricultural sector⁵⁴, the expansion of additional income opportunities for pensioners⁵⁵, the change in the crediting of income for recipients of student funds under the Federal Education Assistance Act (*BAföG*)⁵⁶ and flexibilisation of parental leave⁵⁷. Another aspect is the increased flexibility of working hours⁵⁸. On the

49 At a monthly maximum amount of EUR 2,016, [§ 56 para. 2 sent. 3 IfSG](#) and, upon receipt of insurance protection according to [§ 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.

50 [§ 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.

51 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.”

52 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).

53 [§ 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).

54 [BT Dr. 19/18107](#), p. 27.

55 [§ 302 para. 8 SGB VI](#) in the version amended by the Social Protection Package (fn. 53). On this see *Schlegel*, Ausweitung der Hinzuverdienstmöglichkeiten für Rentner, NZS 2020, p. 336 et seq.

56 [§ 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](#)).

57 [§ 27](#) Law on Parental Pay and Parental Leave (*Bundeselterngeld- und Elternzeitgesetz* – BEEG) as amended by Law of 20 May 2020 (BGBl. I, p. 1061).

58 By way of introducing the power to issue statutory instruments in [§ 14 para. 4](#) Law on Working Time (*Arbeitszeitgesetz* – ArbZG).

basis of the COVID-19 Working Time Regulation⁵⁹, the working day can be extended, rest periods shortened and work on Sundays and public holidays can be arranged for⁶⁰. All this applies to certain activities which, in this context, are not labelled as “system-relevant”⁶¹ but are listed in detail as being in the special general interest⁶².

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 but later on exempted.⁶³ A special bonus for care workers was introduced in May.⁶⁴ The possibilities under labour law for ordering overtime remain unchanged⁶⁵ – 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 Commission⁶⁶, used the consultations on the

59 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).

60 [§§ 1 para. 1 sent. 1, 2 sent. 1](#) and [3 para. 1 sent. 1](#) COVID-19-ArbZV.

61 Cf. on this fn. 44 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.

62 [§ 1 para. 1 sent. 2 and para. 2](#) COVID-19-ArbZV.

63 On the basis of a communication by the Federal Ministry of Finance ([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).

64 [§ 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).

65 *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.

66 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.

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 50 billion euros and provided for a one-off payment for three months of 9,000 euros for companies with up to five employees (full-time equivalents), and of up to 15,000 euros 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 2020⁶⁷. 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 2020.⁶⁸ They are supplemented by state-owned programmes, some of which also include larger companies.⁶⁹ 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.⁷⁰ 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.⁷¹

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”)⁷² providing a further volume of 24.6 billion euros. 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 150,000 euros. The maximum amount for enterprises with up to five employees (full-time equivalents) is 3,000 euros per month, and up to 5,000 euros 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 750 billion euros and those that had already been in difficulties⁷³ before 31 December 2019. Payments from the first and the second package may be cumulated but have to

67 Cf. the [key points](#) decision by the cabinet of 23 March 2020.

68 Overview on this in a [joint press release](#) by the the Federal Ministry for Economic Affairs and Energy (BMWi), the Federal Ministry of Finance (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](#).

69 In [Baden-Württemberg](#) up to 50 employees; in [Bavaria](#) up to 250.

70 The maximum amount in [Bavaria](#) is EUR 50,000 Euro (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).

71 Cf. below, fn. 103.

72 See [cornerstones of the Federal Treasury](#) (*Bundesfinanzministerium*); see also *Jahn*, *Corona-Erleichterungen beim Bezug von Kurzarbeitergeld werden verlängert*, NWB 2020, p. 2174.

73 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).

cover different damages (accrued costs). Applications have to be filed with federal agencies, the *Länder* are still competent for the payment.⁷⁴ At the beginning of October, about more than 124,000 applications had been filed with a volume of 1.5 billion euros; the actual payments of bridging aids amounted to 982 million euros, and those out of the emergency aid programme to about 13.8 billion euros.⁷⁵

As the numbers of infection rates have started to increase once again and new, albeit more differentiated lockdown measures than those seen in spring have been imposed from the beginning of November onwards, a third programme consisting of an extension and improvement of the bridging aid programme (“bridging aid III”) and the introduction of new payments (“extraordinary economic aid”) is currently being planned. The latter aid programme will have a volume of up to 10 billion euros and cover 75% of the turnover of the previous year (November 2019) of enterprises with up to 50 employees. The period of time covered is thus more specific, it is more universal as far as the addressees are concerned, and the mode of calculating is being changed, although the government argues that this is only meant to make the calculation of individual benefits easier.⁷⁶

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 culture professionals; they are addressed by support programmes of the *Länder*,⁷⁷ although their support remains rather modest,⁷⁸ and many practical problems with the implementation of such programmes have been reported. Most of them stopped in autumn, and new programmes will have to be set up.⁷⁹ The second group are students who receive support from a bridging aid set up by the Federal Ministry for Education and Research⁸⁰; it has a volume of 100 million euros and consists of two elements: a non-repayable grant of 100 to 500 euros per month for June, July, August and September; and a study loan (*KfW-Studienkredit*)⁸¹ covering up to 650 euros per month which is

74 See [implementation notes](#) as annex to the administrative agreement (*Verwaltungsvereinbarung*) between federation and *Länder*.

75 BMWi (IC3) – BMF (IA5), *Corona-Pandemie Dashboard Wirtschaft Deutschland*, 6 October, 6 p.m. p. 1, 2.

76 See [information of the Treasury](#) (BMF). See also [press release](#) of the conference of the chancellor and the prime ministers of 28 October 2020.

77 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 Nr. 301). See also the [programme for structural support](#) from the federation (*Neustart Kultur*).

78 E.g. in [Bavaria](#) up to 1,000 euros per month for up to three months, overall volume 140 million euros.

79 E.g. in Bavaria in form of a structural programme, see information of the competent [State Ministry](#).

80 See [additional implementation guidelines](#) (*Zusätzliche Nebenbestimmungen zur Durchführung der Überbrückungshilfe für Studierende in pandemiebedingten Notlagen*) of 20 August 2020.

81 See [information](#) of the *Kreditanstalt für Wiederaufbau – KfW*.

interest-free, but only until the end of 2021. The first programme has resulted in 135.000 applications with a volume of 60 Million euros;⁸² most probably, it will be extended in the context of the recently imposed measures.⁸³

For larger companies, the Federal Government set up an economic stabilisation fund at the same time as the emergency aid⁸⁴. It is thus building on the measures it took to support financial market companies in the course of the last financial crisis⁸⁵. The new fund is intended to support companies in the real economy, provided they were not in economic difficulties by the end of 2019⁸⁶. It aims to preserve jobs and supplier structures under the assumption that companies “increasingly face liquidity 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”⁸⁷. A prerequisite for stabilisation measures⁸⁸ is that other financing options are not available and that these “provide clear independent prospects of continuing operations after the pandemic is over”⁸⁹. The federal states have followed this example. With the Law on the Bavaria Fund and the Bavarian Finance Agency (*Bayern-Fonds- und Finanzagentur-Gesetz – BayFoG*)⁹⁰, Bavaria has set up a so-called *Bayern-Fonds* (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 fund⁹¹.

The two measures highlighted here are supplemented by further loan programmes with an 80 or 90 percent risk assumption by the German Reconstruction Loan Corpora-

82 [Information of BMBF](#).

83 [Information from the Tagesschau](#) as of 30 October 2020.

84 Law on the establishment of an economic stabilisation fund (Economic Stabilisation Fund Act – *Wirtschaftsstabilisierungsfondsgesetz – WStFG*) of 27 March 2020 (BGBl. I p. 543).

85 Through the Financial Market Stabilisation Acceleration Act (*Finanzmarktstabilisierungsbeschleunigungsgesetz – FMSStG*) of 17 October 2008 (BGBl. I pp. 1982, 1986).

86 [§ 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](#)).

87 [BT Dr. 19/18109](#), p. 22. Cf. also § 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”.

88 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 ([§ 21 para. 1 StFG](#)) and for the recapitalisation of enterprises ([§ 22 para. 1 StFG](#)).

89 [§ 25 para. 1 sent. 1 and 2 StFG](#).

90 [GVBl. 2020, p. 230](#).

91 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](#)).

tion (*Kreditanstalt für Wiederaufbau – KfW*)⁹², various tax breaks⁹³ and a guarantee programme for farmers⁹⁴. All in all, the Federal Government refers to a “protective shield”⁹⁵ or, respectively, a “protective umbrella for the economy with grants, guarantees, tax relief and unlimited liquidity assistance”, which it has put up to help those who “are facing economic difficulties”⁹⁶.

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”⁹⁷.

b) Uncertain 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, 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 companies⁹⁸. The restrictions were put into legally binding form vis-à-vis those affected by the *Länder*, for example in Bavaria first by a general ruling⁹⁹ and then by a regulation¹⁰⁰.

92 With differentiation according to the company’s amount of years in business, cf. information provided by [KfW](#).

93 Such as adjustments of advance payments, deferrals and tax exemptions of premiums for employees, cf. information provided by [BMF](#).

94 Combined with loans of up to EUR 3 million; cf. information provided by [Rentenbank](#).

95 Joint [press release](#) of BMWi and BMF of 30 March 2020.

96 With a general overview provided in the [information for companies and self-employed persons](#) published on the homepage. Cf. also charts provided by [BMF](#).

97 Newsletter ([Rundschreiben 2020/197](#)) of GKV-Spitzenverband of 24 March 2020, p. 3.

98 Cf. information provided by the [Federal Government](#).

99 [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).

100 Operating bans in line with § 2 of the Bavarian Infection Prevention Measures Regulation (*Bayerische Infektionsschutzmaßnahmenverordnung – BayIfSMV*) of 27 March 2020 (BayMBl. no. 158) and in line with § 2 of [2nd BayIfSMV](#) of 16 April 2020 (BayMBl. no. 205). Cf. now also § 4

These acts have their legal basis in § 32 IfSG¹⁰¹ – which is in principle (still) accepted at present¹⁰² although this statutory provision conferring powers to the executive is quite general and rather vaguely formulated which raised some concern with regard to the rule of law and the necessary democratic legitimisation.

However, the payment of the afore-mentioned benefits in the framework of emergency and bridging programmes is not directly linked to such security measures. To receive them, it is sufficient to evidence a threat to the economic existence due to “liquidity bottlenecks as a result of the corona crisis”¹⁰³. It is 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 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”¹⁰⁴. This category of benefits has its legal roots in budgetary law, as a provision

of [3rd BayIfSMV](#) of 1 May 2020 (BayMBl. no. 239). The (for the present) latest one is the [7th Regulation](#) of 1 October 2020 (BayMBl. no. 562).

101 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.

102 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) has pointed out that it appears “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. Legality confirmed by BayVGH of 7. July 2020, 20 NE 20.1497, recital 21; OVG NRW of 8 July 2020, 13 B 870/20.NE, recital 18 and of 22. July 2020, 13 B 886/20.NE, recital 36; VGH BW of 20 August 2020, 1 S 2347/20, recital 26; OVG Lüneburg of 24 August 2020, 13 MN 297/20, recital 23.

103 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)”.

104 Cf. e.g. I.1 of the relevant guideline in Schleswig-Holstein (Richtlinie zur Gewährung von Überbrückungshilfen als Billigkeitsleistung für von der Corona-Krise 03/2020 in ihrer Existenz be-

of the German Federal Budget Law (*Bundeshaushaltsordnung*) states that benefits for reasons of equity may only be granted if special funds are made available for this purpose.¹⁰⁵ 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,¹⁰⁶ 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”¹⁰⁷. § 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.¹⁰⁸ The origins of the corona programmes and of the compensation under § 56 IfSG are otherwise the same: the compensation provision was also designed as an “equity regulation”¹⁰⁹, which was intended to replace certain claims founded on state liability (general and unwritten *Aufopferungsanspruch*).¹¹⁰

It should be added that these observations find their confirmation with plans to introduce the above-mentioned extraordinary economic aid (see 3.a)). This new benefit will not only be clearly tailored to cover damages that will follow from new lockdown measures in November 2020. Its planning is also evidently driven by the conviction that those security measures must be accompanied by compensation benefits.

sonders geschädigte kleine Unternehmen, Angehörige der Freien Berufe und Soloselbstständige mit finanzieller Unterstützung des Bundes, ABl. SH 2020, p. 812): “in Form einer Billigkeitsleistung“.

105 [§ 53 Bundeshaushaltsordnung](#).

106 The rule was first established with the *Reichsseuchengesetz* of 1900 (§ 28) and was taken over into the *Bundesseuchengesetz* of 1961 (§ 49), the predecessor of the IfSG; see for the history and the contents *Becker*, Öffentliches Entschädigungsrecht, in: Huster/Kingreen (eds.), *Handbuch des Infektionsschutzrechts*, 2020, § 9 par. 45 et seq., 109 et seq. with further references. Clearly not relevant here is the compensation regulation in § 65 IfSG concerning the destruction of contaminated objects; for more detail see *Cornils*, Corona, entschädigungsrechtlich betrachtet, [On Matters Constitutional \(Verfassungsblog\)](#) of 13 March 2020.

107 The exact amount is regulated in [§ 56 para. 2-4 IfSG](#).

108 Different and for direct applicability: *Antweiler*, Betriebsuntersagung durch Covid-19-Rechtsverordnungen: Eigentumseingriff und Entschädigung, *NVwZ* 2020, pp. 584, 588 et seq.; *Bachmann/Rung*, in: Kluckert (ed.), *Das neu Infektionsschutzrecht*, 2020, § 15 par. 11. Against the applicability, also in analogy, regional court (*Landgericht – LG*) Hannover of 9 July 2020, 8 O 2/20, recitals 40 et seq.; LG Heilbronn of 29 April 2020, I 4 O 82/20, recital 25; *Bethge/Dombert*, Entschädigungsansprüche für Öffnungsverbote im Rahmen der Corona-Bekämpfung, *NordÖR* 2020, p. 329, 331; *Stöß/Putzer*, Entschädigung von Verdienstausschlag während der Corona-Pandemie, *NJW* 2020, p. 1465, 1466; *Struß/Fabi*, Entschädigungsansprüche für unternehmensbezogene Eingriffe nach dem IfSG, *DÖV* 2020, p. 665, 670; *Winter/Thürk*, in: Schmidt (ed.), *COVID-19*, 2020, § 17 par. 18; *Eckhart/Kruse*, in: *BeckOK IfSG*, 2020, § 56 Rn. 31 et seq.

109 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”.

110 [BT Dr. 14/2530](#), p. 88 on the revised version as amended by IfSG.

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 Package¹¹¹ to child benefits¹¹², and the second group includes the prolongation of the receipt of unemployment benefits¹¹³ as provided for in the Social Protection Package II¹¹⁴. 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 opportunities for finding and taking up new employment are seriously restricted”¹¹⁵.

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 manner¹¹⁶. In addition to a series of procedural simplifications, the assessment of whether a rent is appropriate has been suspended¹¹⁷ for an initial period of six months¹¹⁸. Assets are not taken into consideration if the applicant declares that s/he does not have substantial assets¹¹⁹. What is to be regarded as “substantial” remained completely open both in the legislative procedure¹²⁰ and in initial reports¹²¹. 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”¹²². The Federal Em-

111 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).

112 By linking it to the previous month's income and expanding the range of authorisations, [§ 20 Law on Child Benefit \(Bundeskindergeldgesetz – BKGG\)](#) as amended by art. 6 of the Social Protection Package I.

113 By three months via a new [§ 421d SGB III](#).

114 See fn 41.

115 [BT Dr. 19/18966](#), p. 27.

116 Via art. 1 and 5 of the [Social Protection Package I](#).

117 [§ 67 para. 3 SGB II](#), [§ 141 para. 3 SGB XII](#).

118 If the approval period starts between 1 March and 30 June 2020. The period can be extended until 31 December 2020 by decree, [§ 67 para. 6 SGB II](#) and [§ 141 para. 6 SGB XII](#). On the problem of compatibility with the principle of taking an approval decision for a scope of 12 ([§ 41 para. 3 sent. 1 SGB II](#)) *Burkiczak*, “Hartz IV“ in Zeiten von Corona, NJW 2020, pp. 1180, 1181.

119 [§ 67 para. 2 SGB II](#), [§ 141 para. 2 SGB XII](#).

120 [BT Dr. 19/18107](#), p. 25.

121 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. 118), 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, § 2 par. 15 et seq.

122 [BT Dr. 19/18107](#), p. 24.

ployment Agency decided to apply the new provision in accordance with the guidelines on housing benefit¹²³. The reason for this is that the term “substantial” is also 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”¹²⁴. 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.¹²⁵ 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.¹²⁶ 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.¹²⁷ 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.¹²⁸ And it is quite remarkable that the Federal Minister of Social Affairs is planning to extend the granting of an unconditional minimum protection benefit until the end of 2021 based 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”¹²⁹.

123 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 ([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).

124 [§ 21 no. 3](#) housing benefit law (WoGG).

125 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), § 21 recital 9. For a different interpretation and on the requirement of a “subjective element” see *Zimmermann*, WoGG, 2014, § 21 recital 5.

126 Which are by no means clarified by the exclusion in [§ 7 WoGG](#); cf. on this *J. Becker*, in: *Ru-land/Becker/Axer* (eds.), *Sozialrechtshandbuch*, 6th ed. 2018, § 29 recital 13 et seq.

127 Directive of the Federal Employment Agency (BA) (fn. 122), 1.2 para. 10 with reference to §§ [45](#), [48](#) SGB X.

128 Directive of the Federal Employment Agency (BA) (fn. 122), 2.4 with further references.

129 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.“

5. Outlook

a) When the pandemic hit Germany, the relatively 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 damage.

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 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 and climate change. 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,¹³⁰ 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 victims¹³¹ 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, and even if there are no corresponding subjective rights of persons hit by the crisis.¹³² It is not by chance that the

130 See for the recovery package with different measureas and an overall volume of 130 billion euros information of the [Federal Government](#).

131 Cf. *Becker*, [Soziales Entschädigungsrecht](#), 2018, p. 133 et seq.

132 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.

extraordinary economic aid currently being planned (see 3.a)) can be regarded as recognising this obligation for 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.¹³³ 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 will become 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 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.

133 On the background see above, I.2.

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

1. Introduction

As is the case in other countries, the COVID-19 pandemic has 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, and since then entry into the country has only been possible subject to specific conditions. 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 easing of restrictions. In May and June, 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 and economic life became necessary – albeit on much more limited scale than the measures taken in March. In line with the overall course of the outbreak, Denmark’s handling of the COVID-19 crisis from a labour market and social policy perspective can be divided into three stages: a first period between March and April 2020, which saw the rapid introduction of novel measures to protect jobs and incomes and keep the economy going; a period between May and August, which saw more long-term planning for economic recovery; and a third phase beginning in September, in which targeted labour market and social policy measures were introduced which aimed to limit the specific hardships that new restrictions were bringing.

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 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 addi-

1 [Trepartsaftale om midlertidig lønkomensation for lønmodtagere på det private arbejdsmarked](#) [Tripartite agreement on a temporary salary compensation in the private sector] of 14 March 2020.

tional tripartite agreements reached on 30 March 2020 and 18 April 2020.² Tripartite agreements are an established mechanism of labour market regulation in Denmark. The scope of the measures laid down in the aforementioned agreements, however, was 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

In addition to measures aimed at preventing redundancies and stabilising the economy, some provisions concerning social protection were adapted to the distinct challenges of the COVID-19 crisis. In the cross-party agreement of 19 March 2020, 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 adaptation 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

From May onwards, Denmark’s political parties and the labour market parties began to focus their attention on amending and phasing out the initial support schemes for the economy and individuals affected by the crisis in order to prevent long-term damage to the overall economy. 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 its report on 25 May 2020, in which it

2 [Aftale om styrkelse af trepartsaftalen om midlertidig lønkompensationsordning](#) [Agreement concerning the expansion of the temporary compensation scheme] of 30 March 2020; [Aftale om forlængelse af trepartsaftalen om midlertidig lønkompensation](#) [Agreement on the extension of the tripartite agreement on temporary salary compensation] of 18 April 2020.

3 [Aftale om covid-19 initiativer](#) [Agreement on covid-19 initiatives] of 19 March 2020.

4 [Aftale om hjælpepakker til lønmodtagere og virksomheder mv. i forbindelse med gradvis genåbning af Danmark](#) [Agreement on aid packages for employees and businesses etc. in connection with the gradual reopening of Denmark] of 18 April 2020; [Aftale om forlængelse og udvidelse af kompensationsordning til arrangører](#) [Agreement concerning the extension and expansion of the compensation scheme for event organisers] of 18 April 2020.

5 [Aftale om covid-19 initiativer](#) [Agreement on covid-19 initiatives] of 19 March 2020.

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 On the basis of the report, the labour market parties and the government reached an agreement on 5 June 2020 concerning the phase-out of the compensation schemes for private-sector businesses⁷, and the political parties of the *Folketing* reached a similar cross-party agreement on 15 June 2020 concerning the phase-out of the previously agreed measures. According to these agreements, the compensation schemes were to be phased out by 29 August.⁸ One of the chosen strategies to prevent hardships 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 700 million DKK (94 million EUR) support package with a view to promoting summer tourism in Denmark.⁹

When infection rates began to climb again in late August, and it became clear that new restrictions on public life would be needed, calls were made almost immediately for new, targeted support schemes for affected businesses. The new restrictions concerned in particular the early closure of restaurants, bars and caf es, first at a local level, with a nationwide 10 pm curfew introduced for the hospitality sector on 19 September. In addition, on 19 September the government limited public and private gatherings to 50 individuals, with that number subsequently being reduced to 10 individuals on 26 October. 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.¹⁰ The parties of the *Folketing*, too, reached new agreements with the government on 28 August, 20 September, 13 October and 27 October 2020 concerning those sectors affected by the new restrictions.¹¹ An important element of these agree-

6 [Report](#) by the economic expert group concerning the phase-out of the compensation schemes of 27 May 2020.

7 [Aftale omgradvis udfasning af den midlertidige l nkompressionsordning](#) [Agreement on the gradual phase-out of the temporary salary compensation scheme] of 5 June 2020.

8 [Aftale om udfasning af hj lpepakker, stimuli-initiativer og eksportinitiativer](#) [Agreement on the phase-out of compensation schemes, stimulus initiatives and export initiatives] of 15 June 2020.

9 [Aftale om sommerpakken](#) [Agreement on the summer package] of 19 June 2020.

10 [Trepartsaftale om en ny midlertidig arbejdsfordelingsordning p  det private arbejdsmarked](#) [Tripartite agreement concerning a new, temporary work reduction scheme in the private labour market] of 31 August 2020.

11 [Aftale om bedre vilk r til s rligt h rdt ramte dele af danskerhvervs-, idr ts- og kulturliv](#) [Agreement concerning improved conditions for especially hard hit parts of the Danish economy, sports and culture sectors] of 28 August 2020; [Aftale om kompensation til barer, restauranter og caf er mv. Ved begr nsninger p   bningstiden](#) [Agreement on compensation for bars, restaurants and caf es etc. in case of limitations on opening hours] of 20 September 2020; [Aftale om yderligere kompensation til s rligt h rdt ramte virksomheder mv.](#) [Agreement on additional compensation for hard hit businesses etc.] of 13 October 2020; [Aftale om udvidelse af hj lpepakker](#) [Agreement on the expansion of aid packages] of 27 October 2020.

ments was the extension of existing compensation schemes until the 31 January 2021 for those businesses affected by public restrictions.

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 since May have been supported by a vast majority of political 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 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 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. This makes the situation in Denmark a radically different one from that of other European countries.

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.

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.¹² The rights and obligations of employers and employees were laid down in a law adopted on 24 March 2020.¹³ 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 30.000 DKK (approx. 4,023 EUR).¹⁴ Originally, the maximum rate was 23,000 DKK (approx. 3,085 EUR) for salaried employees and 2,000 DKK (approx. 3,487 EUR) for non-salaried employees.¹⁵

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. 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, meaning that the extension was *de facto* only for four weeks. Employers were granted a corresponding right to make their employees take up to three weeks of holiday leave.¹⁶

While the salary compensation scheme was considered an overall success, there was agreement among the labour market parties, the political parties and economic experts

12 [Trepartsaftalen om midlertidig lønkompensationsordning til arbejdsgivere omfatter lærlinge og elever](#) [Tripartite agreement on temporary salary compensation includes apprentices] of 14 March 2020.

13 [Lov 2020-03-24 nr. 264](#) om arbejdsgiveres og lønmodtageres retsstilling ved lønkompensation a virksomheder i forbindelse med covid-19 [Act concerning the legal status of employers and employees in connection with the salary compensation scheme for businesses affected by 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 [Aktstykkennr. 108 \(FT 2019-20\)](#) of 17 March 2020.

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

15 See fn. 2.

16 [Lov 2020-06-26 nr. 958](#) omvarsling af ferie i den forlængede lønkompensationsperiode [Act concerning the notification of holiday leave in the extended salary compensation period].

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. The scheme remains available only to businesses affected by a mandatory business closure imposed by authorities as part of the measures to restrict the spread of the virus.

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 19,083 DKK per month (approx. 2,559 EUR). 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.¹⁷ In order 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.¹⁸

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*).¹⁹ The amended provisions on *G-dage* will were in force from 27 March 2020 until 31 August 2020 (originally up until 31 May, with extensions agreed on 18 April and 25 June 2020). The

17 [Arbejdskraftundersøgelsen](#), First Quarter 2019; Danmarks Statistik; A-kassernes afregning af medlemsbidrag, 1. Januar 2019, Styrelsen for Arbejdsmarked og Rekruttering.

18 See the [press release](#) of the Ministry of Employment of 12 March 2020.

19 [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 [Act on the amendment of the Act on active social policy, the Act on unemployment insurance and the Act on sick pay]; [Lov 2020-03-26 nr. 274](#) om ændring af lov om arbejdsløshedsforsikring m.v. og lov om arbejdsgiveres og lønmodtageres retsstilling ved lønkomensation af virksomheder i forbindelse med covid-19 [Act on the amendment of the Act on unemployment insurance etc. and the Act concerning the legal status of employers and employees in connection with the salary compensation scheme for businesses due to covid-19].

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.

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, and that they would operate alongside the existing tools for work reduction.²⁰ The scheme involves a modification of existing mechanisms of work reduction, including an increase in the supplemental unemployment benefit level to up to 143,50 DKK per hour (the equivalent of 23,000 DKK in case of full-time unemployment, roughly a 20% increase from the regular rate). In addition, employers have to contribute the equivalent of 3 *G-dage* to the scheme per month per employee. 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 regular membership fee per month. Employees gaining eligibility to unemployment benefits through the special provisions of 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. The temporary legal measures concerning the scheme will remain in place until 31 December 2020. Work reduction under this scheme will be possible for a period of up to four months and will be allowed to extend into 2021. The scheme as a whole reduces state spending, while providing new instruments for employers to prevent redundancies.

In conjunction with the above measures, training opportunities were expanded for individuals out of work or on reduced work 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.²¹ Training opportu-

20 [Lov 2020-09-11 nr. 1336](#) om adgang til iværksættelse af midlertidig arbejdsfordeling som led i håndteringen af covid-19 [Act concerning the introduction of temporary work reduction as part of the handling of covid-19]; [lov 2020-09-11nr. 1337](#) om ændring af lov om arbejdsløshedsforsikring m.v., lov om sygedagpenge og barselsloven [Act concerning changes to the act on unemployment insurance, the act on sick pay and the act on parental leave].

21 [Press release](#) of the Ministry of Employment of 22 March 2020.

nities were subsequently expanded significantly. By way of the tripartite agreement of 30 August 2020, opportunities 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 introduced by law on 17 March 2020, which will remain in place until 1 January 2021, 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 carrying out of work duties impossible.²² 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.

A novel measure introduced in September 2020 on the basis of an additional tripartite agreement reached on 10 September²³ concerns the granting of state-funded parental leave benefits to both employees and the self-employed 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 grants up to ten days of parental leave benefits per child under the age of 14. The law will remain in place until 31 December 2020.²⁴ The law expressly states 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.

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 financial support; b. public compensation and c. deferral of tax and social contribution payments.

22 [Lov 2020-03-17 nr. 212](#) om ændring a lov om sygedagpenge [Act on the amendment of the act on sick pay]

23 Trepartsaftale om midlertidig ordning med barselsdagpenge til forældre med hjemsendte børn som følge af covid-19 [Tripartite agreement concerning a temporary scheme concerning parental benefits for parents with children at home due to covid-19] of 10 September 2020.

24 [Lov 2020-09-29 nr. 1427](#) om ændring af barselsloven [Act concerning the amendment on the act on parental benefits]

a) Access to loans and financial support

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.²⁵ The details of the loan guarantee scheme were subsequently set out in a ministerial decree.²⁶

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. Any loans granted under this scheme will have to be paid back to the authorities by 21 April 2021. 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.²⁷ 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.

Given the increased importance of loan support and guarantee schemes following the phase-out of the major public compensation schemes on 29 August 2020, the timeframe for applying for loan support was extended until the end of 2020. In addition, loan guarantees by the state were increased first to 80% and later to 90%. In addition, a temporary state fund was created that was intended to be able to act as an “investor of last resort”. Applications for support are intended to be possible until 31 December 2021 and the fund is to be in operation until 31 December 2023.

The agreements of 19 September and 13 October 2020 also set aside a total of 200 million DKK (26.87 million EUR) to boost restaurants, cafés and bars. For each branch, businesses can apply for a one-off subsidy of up to 25.000 DKK (3,357 EUR), provided they use the money to make changes to their business, or reduce prices, by the end of the year. The scheme applies only to those restaurants, cafés and bars affected by the

25 See the [information sheet](#) of 12 March 2020 on the website of the Ministry of Economic Affairs.

26 [Bekendtgørelse 2020-04-06 nr. 384](#) om ændring af bekendtgørelse om garantiordning for udlån til store virksomheder [Decree on the amendment of the decree on a loan guarantee scheme for large businesses]; [Bekendtgørelse 2020-03-26 nr. 276](#) om garantiordning for udlån til store virksomheder [decree on a loan guarantee scheme for large businesses].

27 [Lov 2020-05-05 nr. 572](#) om rentefrie lån svarende til angivet moms og lønsumsafgift og fremrykket udbetaling af skatte kreditter m.v. i forbindelse med covid-19 [Act on interest-free loans corresponding to the amount of declared VAT and pay roll tax and advance payment of tax credits in connection with covid-19].

10 pm curfew. Applications for the one-off payment can be made until 15 November 2020, with payments intended to be made as soon as possible thereafter. These latest measures reflect the government's shift in focus from state funded public compensation schemes to loan support and guarantee schemes aimed to increase overall prospects for economic recovery.

The Danish government and parties of the *Folketinget* on 18 April 2020 agreed to grant an additional sum of 350 million DKK (approx. 47 million EUR) to the Danish innovation fund during the current calendar year. In October 2020, the government also earmarked 25 million DKK (3.36 million EUR) for grants for artists struggling as a result of the current crisis.

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 35% (originally 40%, but subsequently reduced by agreement of 18 April 2020), 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. The rate of compensation was based on expected revenue losses. The fixed costs included rent, interest rates and leasing costs (but not wages, taxes and social contributions). The period for which compensation could be sought was from 9 March until 8 August 2020 (extended twice). The maximum compensation that could be issued under this scheme was 110 million DKK (ca. 15 million EUR) per company (increased from 60 million DKK by way of the agreement of 18 April 2020). The compensation scheme was regulated in a ministerial decree.²⁸

A slightly modified version of this scheme was subsequently introduced for the period from 9 July until 31 August for those businesses affected by public closures, the lack of tourists resulting from entry restrictions at the borders as well as other restrictions. It was subsequently extended until 31 January 2021 for businesses that continued to be affected by these restrictions.²⁹ On 27 October 2020, the introduction of a new "light" version of this compensation scheme was announced by the government, allowing businesses affected by new restrictions to claim compensation more easily and

28 [Bekendtgørelse 20-05-05 nr. 574](#) om compensation for faste omkostninger til virksomheder i økonomisk krise som følge af COVID-19 [Decree on the compensation of fixed costs of companies in connection with the economic crisis caused by COVID-19], earlier: [Bekendtgørelse 2020-04-08 nr. 398](#) om ændring af bekendtgørelse om midlertidig kompensationsordning for virksomheders faste omkostninger [Decree on the amendment of the temporary compensation scheme for fixed costs of businesses]; [Bekendtgørelse 2020-04-02 nr. 350](#) om midlertidig kompensationsordning for virksomheders faste omkostninger [Decree on the amendment of the temporary compensation scheme for fixed costs of businesses].

29 [Aktstykke 2020-09-10 nr. 300](#).

swiftly, and in particular without the previously necessary declaration by an external revisor concerning the businesses’ finances. This is intended to make the scheme more easily accessible in particular for small businesses. The monthly maximum compensation rate under the “light” scheme is 50,000 DKK (6,715 EUR).

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 from 9 March until 8 July 2020 (originally until 18 April 2020 but subsequently extended).³⁰ The rate of compensation was 90% of the predicted revenue loss (originally 75%, but subsequently increased), up to a monthly maximum of 23,000 DKK (3,085 EUR) per applicant. It was a condition for receiving compensation under this scheme that the applicant’s annual income did not exceed 800,000 DKK (107,294 EUR) 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 10,000 DKK (1,341 EUR). For their employees, the 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. In addition, a special compensation with an increased compensation rate was introduced for self-employed individuals and freelancers whose main income is usually generated in the summer season. This compensation scheme compensates losses by up to 37,000 DKK per month in the months of May, June, July and August.³¹

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. The

30 [Bekendtgørelse 2020-04-01 nr. 332](#) om en midlertidig kompensationsordning for selvstændige mv. i økonomisk krise som følge af Covid-19 [Decree on a temporary compensation scheme for the self-employed in economic distress due to Covid-19].

31 [Bekendtgørelse 2020-07-14 nr. 1168](#) om en midlertidig kompensationsordning for sæsonafhængige selvstændige mv. i økonomisk krise som følge af COVID-19 [Decree on temporary compensation scheme for season-dependent self-employed individuals and others in economic hardship as a result of COVID-19].

compensation scheme for the self-employed was extended until 8 August, in the first instance, and then extended further until 31 August. For the summer scheme, the maximum compensation rate was increased to 100% for businesses affected by publicly mandated closures, but with the cap of 23,000 DKK (3,085 EUR) remaining in place. As is the case for other compensation schemes, the scheme remains in place for those facing continued restrictions, and has most recently been extended until 31 January 2021.

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 can 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.³² The self-employed can also receive parental benefits in case of a school closure or a COVID-19 infection of their child.³³

Under a further compensations scheme, financial losses may be compensated for events with more than 350 participants, which would have been held in Denmark between 6 March and 31 January 2020 (originally until 31 March 2020, with extensions agreed on 18 April 2020, 28 August 2020 and 27 October), and which had to be cancelled due to public measures to contain the virus.³⁴ The Danish government first announced this compensation scheme as early as 10 March 2020. It is regulated in a ministerial decree of 18 March 2020.³⁵ By way of the cross-party agreement of 18 April 2020, the compensation scheme was expanded to include recurring events, provided that they would have been held on every other day at most. However, the scheme allows for compensation for daily events that would have been held for a period of up to four weeks. This rule was adopted mainly with sports and music events in mind.

Since the most recent increase in cases has made new restrictions necessary since August 2020, a series of new, highly targeted compensation schemes have been introduced. The backdrop to the new measures was a nationwide 10 pm curfew for restaurants and bars, as well as a limitation on public and private gatherings to 50 and later to 10 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

32 § 43, [Lov 2020-03-17 nr. 212](#) om ændring af lov om sygedagpenge [Act on the amendment of the Act on sick pay].

33 [Lov 2020-09-29 nr. 1427](#) om ændring af barselsloven [Act concerning the amendment on the act on parental benefits]

34 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.

35 [Bekendtgørelse 2020-03-18 nr. 233](#) om kompensation for tab ved aflysning af større arrangementer som følge af COVID-19-afværgeforanstaltninger [Decree on the compensation of losses as a result cancellation of large events due to measures to counter the covid-19 pandemic].

culture sectors for the lost profits incurred due to the 10 pm 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.³⁶ 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 the new restrictions. The new schemes were intended to remain in place until the end of October in the first instance, but they were subsequently extended until the end of January 2021. The compensation schemes were extended to professionals under contract for the delivery of services for small events of at least ten participants by way of the agreement of 27 October 2020, showing how the compensation schemes are aimed to extend also to those more indirectly affected by the latest public health restrictions.

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.³⁷ The specific compensation schemes introduced since March 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 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 new public compensation schemes introduced since March have gone from very broad measures including the economy as a whole for losses incurred during the initial shutdowns, to very targeted schemes concerning losses in specific sectors, or losses caused on specific days or in specific contexts. This is in line with the overall political aim of phasing out the ‘status quo bias’ of the first measures, of maintaining a certain element of dynamism and adaptability within the labour market, and thereby to limit long-term damage to the economy. These increasingly specific measures aim to reach those most directly affected, without inhibiting overall economic recovery. The fact that the swift adoption of new, targeted schemes has been possible must be seen as a result also of the positive experience gained in joint decision-making during the early stages of the pandemic.

36 [Aftale om yderligere kompensation til særligt hårdt ramte virksomheder mv.](#) [Agreement concerning additional compensation for hard hit businesses etc]. of 13 October 2020,

37 §27, [Lov 2020-03-17 nr. 208](#) [Act on the amendment of the act on measures to counter infectious and other transmissible diseases].

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 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.³⁸ A law passed on 30 April 2020 introduced a similar extension for payroll tax payments.³⁹

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 adaptations 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 in August 2020, and was therefore subjected to a series of modifications over the summer months. 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 (*kombinatorer*). 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

38 [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. [Act on the temporary deferral of payment deadlines for A tax and labour market contributions, B tax and provisional labour market contributions, as well as the temporary deferral of declaration and payment deadlines and extension of payment deadlines for VAT etc.]; [lov 2020-06-14 nr.871](#).

39 [Lov 2020-05-05 nr. 572](#) om rentefrie lån svarende til angivet moms og lønsumsafgift og fremrykket udbetaling af skatte kreditter m.v. i forbindelse med covid-19 [Act on interest-free loan corresponding to the amount of declared VAT and pay roll tax and advance payment of tax credits etc. in connection with covid-19].

business activity insufficient.⁴⁰ Unemployment benefits are usually granted for a period of up to 24 months and are paid by the unemployment insurance funds.⁴¹ In light of the current crisis, this period was initially extended by three months (1 March 2020 until 31 May 2020) on the basis of the cross-party agreement of 19 March 2020 and a corresponding law passed on 26 March 2020.⁴² 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 2020.⁴³ The period was subsequently extended once more, until 31 August 2020.⁴⁴

In connection with the phasing out of the public compensation schemes for the self-employed, the government’s economic advisory committee recommended utilising the unemployment insurance system to prevent potential hardships. The membership rates for 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.⁴⁵

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 phase-out of the extraordinary measures of March and April 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, 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 measures re-

40 § 53, [Lov om arbejdsløshedsforsikring](#) [Act on unemployment insurance].

41 § 55, *Ibid.*

42 [Lov 2020-03-26 nr. 274](#), see fn. 19.

43 [Lov 2020-04-22 nr. 473](#) om ændring af lov om aktiv socialpolitik, lov om arbejdsløshedsforsikring m.v. og lov om sygedagpenge [Act on the amendment of the Act on active social policy, the Act on unemployment insurance and the Act on sick pay].

44 [Lov 2020-06-26 nr. 960](#) om ændring af lov om arbejdsløshedsforsikring m.v. og lov om sygedagpenge.

45 [Ibid.](#)

moved. 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.⁴⁶ 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.⁴⁷ 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 job seeking 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.

Following the government's announcement of a nationwide lockdown on 11 March 2020, the Danish Agency for Labour Market and Recruitment (*Styrelsen for Arbejdsmarked og Rekruttering*) suspended all activation measures related to unemployment benefits (as well as all corresponding sanctions). The initial ministerial decree limited the suspension to 30 March 2020. By a follow-up decree of 30 March 2020, all activation measures and sanctions were suspended indefinitely.⁴⁸ However, the activation measures were reinstated on 15 June. Jobcentres have been permitted to conduct appointments with jobseekers virtually or via telephone until the end of the year.

On the basis of the cross-party agreement of 19 March, 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 subsequent cross-party agreements, the period was extended until 31 January 2021. A corresponding amendment law was passed on 22 April 2020.⁴⁹ 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 4,405 DKK (591 EUR) per week. The extension of the period of eligibility to sick pay aimed mainly to prevent recipients from having to undergo a work fitness evaluation during the time of lockdown. With the most recent rise in infection rates, a

46 [Aftale om ekstraordinært løft af ledige](#) [Agreement concerning extraordinary support for the unemployed] of 17 June 2020.

47 [Lov 2020-06-30 nr. 1051](#) om ændring af lov om en aktiv beskæftigelsesindsats og lov om arbejdsløshedsforsikring m.v.

48 [Bekendtgørelse 2020-03-20 nr. 245](#) om delvis suspension af beskæftigelsesindsatsen som følge af Covid-19 [Decree on the partial suspension of activation measures as a result of Covid-19]; [Bekendtgørelse 2020-03-30 nr. 309](#) om ændring af bekendtgørelse om delvis suspension af beskæftigelsesindsatsen som følge af Covid-19 [Decree on the amendment of the decree on the partial suspension of activation measures as a result of Covid-19].

49 [Lov 2020-04-22 nr. 473](#) om ændring af lov om aktiv socialpolitik, lov om arbejdsløshedsforsikring m.v. og lov om sygedagpenge [Act on the amendment of the act on active social policy, the Act on unemployment insurance and the Act on sick pay]; [Lov 2020-03-26 nr. 275](#) om ændring af lov om sygedagpenge [Act on the amendment of the Act on sick pay].

new three-month extension has been agreed for the period from 31 October 2020 until 31 January 2021.

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 200 million DKK (26.86 million EUR) would be set aside for employees especially at risk of complications from COVID-19, and initial measures were put into place in May 2020.⁵⁰ Following an extension in August, the scheme will remain 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 several times and extended the possibility for additional loans until 31 January 2021.⁵¹ The law on extended loans for students expires on 1 March 2021.⁵² In addition, 18 million DKK (2.4 million EUR) were set aside specifically for PhD-students unable to complete their research in time.

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 2020.⁵³ The 225-hour rule entails that recipients of social assistance need to demonstrate that they remain available to the labour market by working at least 225 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.⁵⁴ In

50 [Lov 2020-05-20 nr. 657](#) om ændring af lov om sygedagpenge.

51 [Bekendtgørelse 2020-04-28 nr. 544](#) om udvidede muligheder for studielån som følge af covid-19 [Decree on extended possibilities for student loans as a result of Covid-19].

52 [Lov 2020-03-31 nr. 328](#) om ændring af SU-love [Act on the amendment of the SU-Acts].

53 [Press release](#) of the Ministry for Employment of 6 April 2020.

54 [Lov 2020-04-22 nr. 473](#) om ændring af lov om aktiv socialpolitik, lov om arbejdsløshedsforsikring m.v. og lov om sygedagpenge [Act on the amendment of the Act on active social policy, the Act on unemployment insurance and the Act on sick pay].

June, the period was extended once more, until 8 September 2020⁵⁵, and a further suspension was granted for the period from 1 November 2020 until 31 January 2021.

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, a one-off payment of 1,000 DKK (approx. 150 EUR) was agreed to be made to individuals who had been on social benefits in the April 2020. The measure was subsequently approved by Parliament and the payouts were made in September.⁵⁶ 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 and targeted measures to stabilise the labour market and the economy following the first shutdowns in March 2020. Joint agreements taken by the political parties of the Danish Parliament introduced support for the self-employed and economic stimulus measures and led to the adaptation of existing social legislation to the needs of the coronavirus pandemic. The measures initiated in March 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 the compensation schemes, and the question of how to provide targeted support for sectors of the economy that continued to face restrictions.

Denmark was quick by comparison to other states to phase out the costly salary and public compensation schemes which aimed at maintaining the pre-crisis ‘status quo’. The 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 coun-

55 [Lov 2020-06-26 nr. 959](#) om ændring af lov om aktiv socialpolitik [Act concerning the amendment of the act on active social policy].

56 [Lov 2020-08-21 nr. 1222](#) om engangstilskud til modtagere af forsørgelsesydelse [Act concerning one-off payment to recipients of social benefits]

try’s economic recovery, and 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 adaptation of the provisions on work reduction and the unemployment insurance system. While the new, temporary rules on work reduction still aim to maintain jobs, the overall focus of the measures has shifted away from the previous ‘status quo bias’, and towards allowing for a more dynamic labour market. This marks a step towards a return to the pre-crisis ‘flexicurity’ model. The phasing out of the schemes suggests both a policy intent to reinstate usual the labour market dynamics and to rely on of the pre-existing social security net during the next stages of crisis.

While the phase out of the compensation schemes of the first stage of the crisis thus appears remarkable when seen in a European perspective, it reflects the Danish approach to labour market policy: that a dynamic labour market is best for economic prosperity and for society as a whole. Job retention was seen as desirable only in the short run, mainly to avoid unnecessary job hiring costs. The decision to phase out the schemes also reflects the fact job loss does not carry the same financial hardships, and possibly also not the same social stigma, as in many other countries. In phasing out the compensation schemes, Denmark was able to rely to a large extent on its unemployment insurance system, with access rules amended slightly so as to extend eligibility to more individuals. This was seen in particular in relation to the self-employed, who were granted an accelerated access procedure for membership. While new compensation schemes have been introduced since August, these operate on a much more targeted basis. As seen in the new schemes, they are linked closely to the new restrictions, and aim to make money available as swiftly and unbureaucratically as possible.

In regard to individual social protection, the Danish government and the political parties of the *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.⁵⁷ 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

57 [See for example Organisationsaftale Mellem DI og CO-industri Vedrørende force majeure og hjemsendelse efter Industriens Overenskomst grundet COVID-19](#) [Agreement between DI and CO-industri concerning force majeure and the suspension of employers based on the Industries collective agreement following the Covid-19 outbreak] of 17 March 2020.

net is comparatively broad.⁵⁸ In addition, training opportunities have been made available to the unemployed, in conjunction with increased benefit rates, which will place individuals in a good position to secure employment in the post-crisis labour market.

Overall, Denmark's crisis management in the field of labour market and social policy overwhelmingly keeps in line with existing legal and political structures and conventions – irrespective of the unprecedented scope of the relief packages adopted. The 'un-traditional' measures of March and April were largely of a pragmatic, ad-hoc and temporary nature and were never meant to lead to fundamental changes to existing labour market and social policy. They have since been replaced with more traditional tools of labour market and social policy, although slightly adapted to the needs of the current crisis. But they also reflect something that is perhaps rather characteristic of the Danish welfare state: an understanding that the community acts in solidarity and averts hardships in times of national crisis by paying compensation to those affected.

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. The labour market parties will reconvene in November 2020 to decide on the next steps and to assess the blind spots of the current compensation schemes. This shows a willingness on the part of policy makers to remain flexible, to continuously try to improve existing schemes, and to strive to offer protection for those affected by the restrictions. The experience gained during the first wave of the pandemic means that joint decision-making is likely to continue to be a successful means of addressing the needs of the crisis.

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 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.

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.

58 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.

IV. (Still) Too Little, Too Late? – Crisis Management in England¹

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 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: after 23 March, all schools⁴ in the UK were closed, as well as most non-essential businesses⁵, particularly in the retail, hospitality and leisure sectors. Extensive curfews were imposed (what became known as a 'lockdown')⁶. Public health officers were given the power to require a person who had tested positive or who was potentially symptomatic to isolate.⁷ A 14-

1 Measures in Wales, Scotland and Northern Ireland may partly deviate due to the *devolution* (transfer of legislative and executive competencies to the Regions). For more details about the response at devolved government level see *Harris et al.*, *Coronavirus and Social Security Entitlement in the UK*, *Journal of Social Security Law*, 2020, pp. 66-68.

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.

6 For further details, see *Department of Health and Social Care*, [Coronavirus Outbreak FAQs: What You Can and Can't Do](#), 1 May 2020. The [Coronavirus Act 2020](#) passed on 25 March and the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#) (SI 2020/350) ('lockdown regulations'), enacted on 26 March, put the lockdown measures on a legal basis.

7 *Coronavirus Act 2020*, Sch. 21.

week voluntary self-isolation was recommended for clinically extremely vulnerable individuals.⁸ Also, lockdown regulations made it an offence for a person to leave their house to go to work if their work could be reasonably done from home.⁹ The Government warned that up to one-fifth of employees might be absent from work during peak weeks of the pandemic.¹⁰

Despite the lockdown, the number of cases continued to rise.¹¹ 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 pandemic¹²: “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.”

In addition to the health crisis, there was also the threat of an economic crisis of historic proportions. According to initial estimates by the Institute for Fiscal Studies (IFS), the economy would shrink by at least 5% in real terms this year, more than in the previous financial crisis.¹³ In addition, the unemployment rate was expected to rise to 10% in the second quarter of 2020.¹⁴ In response, the UK Chancellor of the Exchequer, *Rishi Sunak*, announced an extensive economic aid package worth a total of GBP 330 billion (around EUR 369 billion) 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 According to estimates by the IFS, the corona crisis will increase national debt from 55 to at least GBP 177 billion (approx. EUR 198 billion), i.e. from 2.4% to 8% of national income.¹⁷ The Office of Budget Responsibility (OBR) estimates the direct effect of the Government’s response to the pandemic at GBP 142.2 billion (EUR 157 billion) in 2020/21.¹⁸

⁸ See *Public Health England*, [Stay at Home: Guidance for Households with Possible Coronavirus \(COVID-19\) Infection](#), 28 April 2020.

⁹ *Health Protection Regulations 2020*, reg. 6 (2) (f) (see fn. 6).

¹⁰ *BBC News*, [Coronavirus: Up to Fifth of UK Workers ‘Could Be off Sick at Same Time’](#), 3 March 2020.

¹¹ On this see: *Linton*, *When Will the Covid-19 Pandemic Peak?* Cambridge-INET Working Paper Series, No. 2020/11.

¹² *Horton*, [COVID-19 and the NHS – “a National Scandal”](#), *The Lancet* 2020, p. 1022.

¹³ *Emmerson/Stockton*, [The Economic Response to Coronavirus will Substantially Increase Government Borrowing](#), Institute for Fiscal Studies, 26 March 2020.

¹⁴ *Office for Budget Responsibility (OBR)*, [Coronavirus Reference Scenario](#), 14 April 2020.

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 *Emmerson/Stockton*, 2020, (see fn. 13).

¹⁸ *Office for Budget Responsibility (OBR)*, [Fiscal Sustainability Report](#), July 2020, para. 3.8.

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.¹⁹ Only after heavy criticism by a number of MPs²⁰ 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 unprecedented package of support to protect people’s jobs and wages. And we are strengthening our safety net at the same time.”²¹

The UK government has since published COVID-19 recovery strategies, setting out plans for the phased re-opening of the economy.²² The summer saw a strong rebound in economic activity with the easing of the strict lockdown restrictions²³, increases in consumer spending and the full impact of the Government’s support measures. GDP grew by 6.6% in July, following an 8.7% increase in June.²⁴ Nevertheless, GDP was still 12% below its pre-pandemic level.²⁵

However, new national restrictions²⁶ as well as tighter localised measures²⁷ in response to rising COVID-19 cases²⁸ cast a cloud over the economic outlook, particular in sectors like hospitality. Economists therefore expect unemployment to increase, with the Bank of England forecasting that the unemployment rate will rise from 4.1% (in August) to 7.5% by the end of 2020.²⁹ Increased uncertainty has already resulted in the Treasury postponing the Budget previously scheduled for November.³⁰ Against this

19 For a summary of measures: *HM Revenue & Customs et al.*, [Financial Support for Businesses during Coronavirus \(Covid-19\)](#), 27 April 2020.

20 [Urgent Question on Coronavirus Employment Support](#), HC Deb 19 March 2020, cc1137-1153.

21 *HM Treasury et al.*, [Chancellor announces workers’ support package](#), 20 March 2020.

22 *Cabinet Office*, [Our Plan to Rebuild: The UK Government’s COVID-19 Recovery Strategy](#), 11 May 2020, last updated 24 July 2020.

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

24 *Office for National Statistics (ONS)*, [Coronavirus and the Impact on Output in the UK Economy: August 2020](#), 9 October 2020.

25 *Ibid.*

26 *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.

27 *Department of Health and 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 and Social Care*, [Local COVID alert levels: what you need to know](#), 12 October, last updated 27 October.

28 As on 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.

29 *Bank of England*, [Monetary Policy and Financial Stability Report – August 2020](#), 6 August 2020.

30 *BBC News*, [Autumn Budget to Be Scrapped this Year](#), 23 September 2020.

backdrop, on 24 September, the Chancellor announced his *Winter Economy Plan*³¹, including a further series of measures to support businesses and jobs.

On 31 October, the Prime Minister announced a second national lockdown across England from Thursday 5 November until Wednesday 2 December.³² 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 winter, and that local measures were not sufficient.³³ The regulations require the closure of all nonessential shops, restaurants, pubs and leisure facilities. Schools and universities as well as childcare remain open, unlike the first national lockdown (March 2020).

2. Job Retention

At the beginning of the year, the UK labour market had its highest employment rate of 76.5% since comparable records began in 1971.³⁴ The UK unemployment rate was 3.9% in February 2020.³⁵

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 workers³⁶) and temporary agency workers (approx. 5% of all workers³⁷) in recent years, as well as the sharp decline in the number of jobs in the public sector due to privatisation³⁸. 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.³⁹

³¹ *HM Treasury*, [Winter Economy Plan](#), 24 September 2020.

³² *Cabinet Office*, [New National Restrictions from 5 November](#), 31 October 2020, last updated 1 November 2020.

³³ *Sample*, [Covid: Ministers Ignored Sage Advice to Impose Lockdown or Face Catastrophe](#), *The Guardian*, 13 October 2020.

³⁴ *Office for National Statistics (ONS)*, [Employment in the UK: March 2020](#), 17 March 2020.

³⁵ *Office for National Statistics (ONS)*, [Unemployment Rate](#) (aged 16 and over, seasonally adjusted). At the end of 2011 the unemployment rate was still at 8.5%.

³⁶ See *Office for National Statistics (ONS)*, [Labour Market Economic Commentary: March 2020](#), 17 March 2020.

³⁷ See *Office for National Statistics (ONS)*, [EMP01 SA: Full-time, Part-Time and Temporary Workers \(seasonally adjusted\)](#), 17 March 2020.

³⁸ 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.

³⁹ *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 lockdown, young workers and those in precarious employment have been disproportionately affected by wage losses and unemployment.⁴⁰

According to the British Chamber of Commerce, around 37% of companies intend to lay off at least two-thirds of their staff.⁴¹ 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 20th March the government announced a temporary wage compensation programme, the so-called *Coronavirus Job Retention Scheme (CJRS)*.⁴²

Under the (original) *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 2,795).⁴³ In addition, employers could claim *Employer National Insurance Contributions (NICs)* and auto-enrolment pension contributions that are payable on the reduced rate of pay, so that a maximum grant of GBP 2,804 (EUR 3,135) could be received per employee.⁴⁴

Employers can only make a claim for employees that are designated as ‘furloughed’, a new concept in UK employment law: Employees remain technically employed but must be instructed by their employer to cease paid work for at least three weeks (by mutual agreement⁴⁵).⁴⁶ Initially, a partial reduction of working hours was not possible. In this respect, the measure was not comparable with the German short-time work model.⁴⁷ However, on 12 June the Government published details of a *flexible furlough*

⁴⁰ 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.

⁴¹ *British Chambers of Commerce*, [BCC Coronavirus Business Impact Tracker](#), 8 April 2020.

⁴² The statutory basis for the Scheme is s. 76 of the *Coronavirus Act*. 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 three further Directions on 22 May 2020 (*CJRS Treasury Direction No.2*), on 26 June 2020 (*CJRS Treasury Direction No. 3*) and on 2 October (*CJRS Treasury Direction No. 4*). The latter has been recently [updated on 14 October](#). In addition, there is also a range of [Government Guidance](#).

⁴³ *CJRS Treasury Direction No.1* (fn. 42), para. 8.2.

⁴⁴ *CJRS Treasury Direction No.1* (fn. 42), para. 8.1 (b) (c).

⁴⁵ This requires an agreement between employer and employee incorporated into the employee's employment contract (also possible in electronic form). See *CJRS Treasury Direction No.1* (fn. 42), para. 6.7.

⁴⁶ *CJRS Treasury Direction No.1* (fn. 42), para. 6.1.

⁴⁷ Short-time work, which has been rarely resorted to in British labour law, is regulated in Chapter III, Part XI of the [Employment Rights Act 1996 \(ERA\)](#). 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

*scheme*⁴⁸, running from 1 July to 31 October.⁴⁹ Under the revised rules, employees can carry out part-time work for their employer while also receiving *CJRS* payments.⁵⁰ Only employees who have been furloughed for a full three weeks before 30 June can be furloughed under the revised scheme⁵¹, unless they are returning from family-related leave⁵². Also, from 1 August, employers will be required to make steadily increasing contributions towards the costs of furloughed employees.⁵³

Under the *CJRS*, the term ‘employee’ is defined expansively by reference to UK tax law⁵⁴, i.e. all those employees can be furloughed who were registered for payroll accounting via the *Pay As You Earn Scheme, PAYE*, on or before 19 March 2020 and whose income amounts were reported to HMRC (HM Revenue & Customs) no later than the date of salary payment (so-called *Real Time Information, RTI*). It therefore covers many workers who would not normally be ‘employees’ for the purposes of UK employment law. Yet, it excludes those who are not paid through *PAYE* even if they would be found by an Employment Tribunal to be ‘limb (b) workers’ or even ‘employees’ for the purposes of employment law. This excludes many atypical workers who are falsely classified as ‘self-employed’ for tax purposes.⁵⁵ The Government emphasises that the programme includes not only full-time and part-time employees but also employees with flexible or zero-hour contracts who are on *PAYE*.⁵⁶ However, the decision to furlough rests with the employer. The employer can simply reduce the working time of these employees to zero hours without designating them as furloughed.⁵⁷ Also, the employer still has the option for the sake of convenience to dismiss an employee or initiate redundancies, which exposes the limitations of UK dismissal law.⁵⁸ A number of

(from 6 April 2020: GBP 30); maximum amount: GBP 145 (GBP 150 from 6 April 2020). [See also here.](#)

48 *HM Revenue and Customs*, Policy Paper: [Changes to the Coronavirus Job Retention Scheme](#), updated 1 July 2020; *CJRS Treasury Direction No.3* (fn. 42).

49 *CJRS Treasury Direction No.3* (fn. 42), para. 40 (a).

50 *CJRS Treasury Direction No.3* (fn. 42), para. 10.1.

51 *CJRS Treasury Direction No.3* (fn. 42), paras. 10.2 (a) and 10.3.

52 *CJRS Treasury Direction No. 3* (fn. 42), paras. 10.2(b) and 11.

53 From August the grant no longer covers employer NICs and pension contributions; from September, employers are required to pay 10% of a furloughed employee’s salary, from October 20%. See *CJRS Treasury Direction No.3* (fn. 42), paras. 33.1, 31.3 and 31.4.

54 See *CJRS Treasury Direction No. 1* (fn. 42), paras. 13.1, 13.2. and 13.3.

55 *Cabrelli/D’alton*, [Furlough and Common Law Rights and Remedies](#), UK Labour Law Blog, 8 June 2020.

56 HM Revenue & Customs, [Check which Employees You Can Put On Furlough to Use the Coronavirus Job Retention Scheme](#), 14 May 2020, last updated 2 October.

57 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.”

58 On this problem see in detail: *Ford/Bogg* (fn. 57).

companies, particularly in the aviation industry, have already announced significant mass redundancies.⁵⁹

Also, it is often unclear how the programme relates to other labour law provisions, in particular concerning the payment of statutory sick pay⁶⁰, protection against dismissal⁶¹ and taking annual leave. In the context of dismissal, one of the key questions is whether it is 'fair'⁶² for an employer to dismiss employees as redundant when the *CJRS* is available to provide employers with financial support to retain staff. In the case of annual leave, one of the issues under discussion is whether the employer can require workers to take annual leave before or while they are on furlough. This question arises in particular due to an amendment of the working time regulations⁶³, according to which under certain conditions a carry-over of the holiday entitlement to the following two years can be granted.⁶⁴

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 *Job Seeker Allowance (JSA)* at the same rate as their unemployed counterparts⁶⁵, so that through the *CJRS* their maximum allowance has increased.⁶⁶

The *CJRS* was initially to run for four months, starting on 01 March 2020. However, the online service for registration⁶⁷ has only been available since 20 April 2020. On 12 May, the Chancellor announced that the *CJRS* would continue until the end of October.⁶⁸ By 19 July, the total number of jobs furloughed under the scheme was 9.5 million, the total number of employers furloughing was 1.2 million. The total value of claims made GBP 29.8 billion (EUR 33 billion).⁶⁹

With the *CJRS* originally ending on 31 October, many employers were forced to consider whether they can subsequently retain some or all of their employees. In order to support employers to keep on their employees, the Government has announced the *Job Retention Bonus*, a one-off payment of GBP 1000 (EUR 1107) to UK employers for every furloughed employee who remains continuously employed through to the end of January 2021. The average earnings of these employees must be above the *Lower Earn-*

⁵⁹ Partington/Partridge, [Airline Job Losses Could be On Scale of 1980s Mining Industry, Report Warns](#), the Guardian, 10 June 2020.

⁶⁰ See *CJRS Treasury Direction No. 1* (fn. 42), para. 6.3.

⁶¹ See on this: *Practical Law Employment*, COVID-19: [Coronavirus Job Retention Scheme \(furlough\)](#), Thomson Reuters.

⁶² *Office for Budget Responsibility (OBR)*, Fiscal Sustainability Report, July 2020, (fn. 18), para.3.12.

⁶³ [Working Time \(Coronavirus\) \(Amendment\) Regulations 2020](#) (SI 2020/365).

⁶⁴ Bogg /Ford, [Furloughing and Fundamental Rights: The Case of Paid Annual Leave](#), UK Labour Law Blog, 6 April 2020.

⁶⁵ Equivalent to GBP 322 (EUR 355) per month, albeit with the option of claiming *UC* on top of that depending on savings and total household income.

⁶⁶ *Harris et al.* (fn. 1), p. 73.

⁶⁷ [See here](#).

⁶⁸ *HM Treasury*, [Chancellor Extends Furlough Scheme until October](#), 12 May 2020.

⁶⁹ *HM Revenue & Customs*, [HMRC Coronavirus \(COVID-19\) Statistics](#), updated 4 September.

ings Limit (GBP 520/month) (EUR 576/month) and the bonus will be paid out from February 2021.⁷⁰

In response to rising COVID-19 case numbers and restrictions being tightened, on 24 September, the Chancellor announced, as part of its *Winter Economy Plan*⁷¹, a new wage support programme. To counteract a wave of anticipated redundancies after the planned wind-down of the *CJRS* at the end of October, a replacement *Job Support Scheme (JSS)* was devised. Under the scheme, employers would be responsible for paying the normal contracted wage for any time which the employee works. The Government initially announced that it would pay a third of hours not worked⁷², up to a cap of GBP 697.92 per month (EUR 772.66), with the employer also contributing a third. This was to ensure employees earn a minimum of 77% of their normal wages, subject to the cap on government contributions. In contrast to the furlough scheme, employees could not be made redundant during the period for which the employer is claiming a grant for that employee. However, with stricter lockdown restrictions coming into force on 14 October⁷³, the Chancellor announced an expansion of the *JSS* to support businesses legally required to temporarily close their premises due to coronavirus (local or national) lockdown restrictions (so-called '*JSS Closed*'). The Government would support eligible businesses by paying two thirds of each employee's salary (or 67%), up to a maximum of GBP 2,100 a month (EUR 2,325). Employers would not have to contribute towards wages, but would have to cover *NICs* and pension contributions. Businesses would only be able to claim while they were subject to restrictions and employees must be furloughed for a minimum of seven consecutive days.⁷⁴ On 22 October, reacting to yet more stringent coronavirus measures, the Chancellor announced further changes to the *JSS* for companies experiencing reduced business activity due to coronavirus (so-called '*JSS Open*'): the level of employer contributions was to be reduced to 5% of a worker's usual wage, down from the previous level of 33%. Also, the number of hours an employee must work before a company can benefit would be cut to one a day (20%) from previously 33%.⁷⁵ Announcing the new national lockdown on 31 October (see above, *I.*), the Prime Minister declared that the original furlough scheme, the *CJRS*, will remain open for an additional month, with the level of the grant mirroring levels available under the *CJRS* in August: The Government will pay 80% of wages up to a cap of GBP 2,500 (EUR 2,795) and employers will pay *NICs* and pension contributions only for the hours the employee does not work. As under the current *CJRS*, flexible furloughing will be allowed. The *JRS* has been postponed until December. In addition, business

⁷⁰ *HM Treasury*, [Plan for Jobs](#), 8 July 2020, p. 8; *CJRS Treasury Direction No.4* (fn. 42), Part 2.

⁷¹ See above fn. 31.

⁷² Since the maximum hours an employee will not work is 67%, the maximum government contribution will be 22%.

⁷³ *Prime Minister's Office*, [Prime Minister Announces New Local Covid Alert Levels](#) 12 October 2020.

⁷⁴ *HM Treasury*, [Job Support Scheme Expanded to Firms Required to Close Due To Covid Restrictions](#), 9 October 2020, last updated 12 October 2020.

⁷⁵ *HM Revenue & Customs*, [Check if You Can Claim the Job Support Scheme](#), 30 October 2020.

premises forced to close in England are to receive grants up to GBP 3,000 (EUR 3,330) per month under the *Local Restrictions Support Grant*.⁷⁶

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) is the *Self-Employment Income Support Scheme (SEISS)*⁷⁷ which is intended to be formally comparable to the furlough scheme. The scheme has paid taxable⁷⁸ grants amounting to 80% of past profits, for a three month-period, also limited to GBP 2,500 (approx. EUR 2,795) per month.⁷⁹ In order to be eligible, the past⁸⁰ profits must not exceed GBP 50,000 (approx. 55,895 Euro). Also, the eligibility criteria exclude those who became recently self-employed (i.e. after April 2019) and those whose trading profit from self-employment constitutes less than 50% of their total annual income.⁸¹ According to calculations, the programme therefore covers at most 62% of all self-employed persons.⁸² Also, to make a claim, the self-employed must carry on trade that has been “adversely affected” by the pandemic⁸³, a requirement deviating from the *CJRS* where the guidance seems to expand the scope beyond employers directly affected by coronavirus.⁸⁴

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.⁸⁵

SEISS was opened for applications on 13 May and was to close initially on 13 July. However, on 29 May the Government announced a second round of *SEISS*, with those

⁷⁶ HM Treasury, [Furlough Scheme Extended and Further Economic Support Announced](#), 31 October 2020.

⁷⁷ 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 updated their guidance on *SEISS: 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 8 October.

⁷⁸ The grants are subject to Income Tax and self-employed NIC ([Finance Act 2020](#), s. 106 and Sch. 16).

⁷⁹ *SEISS Treasury Direction*, para. 6.1.

⁸⁰ Either in the previous year or averaged over three years.

⁸¹ *SEISS Treasury Direction*, para. 4.2.

⁸² 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.

⁸³ *SEISS Treasury Direction*, para. 4.2(a)

⁸⁴ Mangan, COVID-19 and Labour Law in the United Kingdom, *European Labour Law Journal*, 2020, p. 341.

⁸⁵ Hendy, 2020 (fn. 57), p. 13 ff.

eligible able to claim a second grant, worth 70% of their average monthly trading profit, for a further three months, capped at GBP 6,570 (EUR 7,274) in total and again paid out in a single instalment.⁸⁶ The online service for applications for the second grant was opened on 17 August, the closing date for application is the 19 October 2020.⁸⁷ As of midnight 17 August, 296.850 claims were made, worth GBP 768.9 million (EUR 851 million) in total.⁸⁸ The Office of Budget Responsibility (OBR) estimates the gross costs of the first grant scheme to be GBP 8.1 billion (EUR 9 billion), the costs of the second grant scheme to be GBP 7.1 billion (EUR 7.9 billion).⁸⁹ By 19 July, 2.7 million claims had been made for the first grant scheme, worth GBP 7.8 billion (EUR 8.6 billion) in total. By contrast, by 19 July, the total number of jobs furloughed under the *CJRS* was 9.5 million, worth GBP 29.8 billion (EUR 33 billion).⁹⁰

The Chancellor announced a six-month extension to the *SEISS*, to apply from November 2020 to April 2021.⁹¹ The extension will be in the form of two taxable grants, paid in two lump sum instalments. The first grant (covering three months' worth of trading profits from 1 November to 31 January) will cover 40% of average monthly trading profits, paid out in a single instalment and capped at GBP 3,750 (EUR 4,162) in total. The second grant will cover a three-month period from the start of February to the end of April, though to date the Government has not stated what the level of the grants will be. The online service for the next grant will be available from 14 December 2021.⁹²

To compensate for the cost of the programme, the Chancellor announced an adjustment of social security contributions for the self-employed and employees.⁹³ Currently, the self-employed pay an income-related social security contribution of 9% (compared to 12% for employees); also, they 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.⁹⁴

⁸⁶ [The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs \(Self-Employment Income Support Scheme Extension\) Direction.](#)

⁸⁷ *HM Treasury*, [Millions of Self-Employed to Benefit from Second Stage of Support Scheme](#), 17 August 2020.

⁸⁸ *HM Revenue & Customs*, [HMRC coronavirus \(COVID-19\) statistics](#), updated 25 August 2020.

⁸⁹ Just under 20% will return to the Exchequer in additional income tax and NICs. See *Office for Budget Responsibility (OBR)*, Fiscal Sustainability Report, July 2020, (fn. 18), para. 3.20 – 3.

⁹⁰ *HM Revenue & Customs*, [HMRC coronavirus \(COVID-19\) statistics](#), updated 4 September 2020.

⁹¹ *HM Treasury*, Winter Economy Plan, 24 September 2020, (fn. 31), para.2.5.

⁹² *HM Revenue & Customs*, [Self-Employment Income Support Scheme Grant Extension](#), 7 October 2020, updated 30 October 2020.

⁹³ *HM Treasury*, [Chancellor Outlines New Coronavirus Support Measures for the Self-Employed](#), 26 March 2020: “If we all want to benefit equally from state support, we must all pay equally in the future.”

⁹⁴ *Islam*, [Coronavirus: UK Government Unveils Aid for Self-Employed](#), BBC News, 26 March 2020.

b) Liquidity Assistance

In the current Summary of Business Conditions, which is regularly carried out by the Bank of England, the companies surveyed assess the economic situation as more threatening than during the financial crisis of 2009.⁹⁵

The Government has therefore put together a comprehensive package of measures to secure the liquidity of companies. These liquidity programmes, most of which have been announced and initiated in the meantime, include in particular the *Coronavirus Business Interruption Loans Scheme (CBILS)*⁹⁶, launched on 23 March, the *Coronavirus Larger Business Interruption Loans Scheme (CLBILS)*⁹⁷, launched on 20 April and the *Bounce Back Loans Scheme (BBLs)*⁹⁸, launched on 4 May. The schemes are overseen by the British Business Bank, a government-owned business development bank, but applications are made to and funding decisions are made by a range of accredited lenders. No interests and fees will be charged to the beneficiary enterprises for the first year and no repayments are due for that period either. The three schemes will stop accepting applications between September and November 2020. By 16 August, the three schemes had disbursed over GBP 53 billion (EUR 59 billion) through over 1.2 million loans, of which the *BBLs* accounted for 92% of loans and 67% of funds disbursed.⁹⁹

The *CBILS* supports small and medium-sized enterprises¹⁰⁰ with financing of up to GBP 5 million (approx. EUR 6 million) with a term of 6 years. The loans are 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.¹⁰¹ The *CLBILS* extends the standard *CBILS* approach to larger businesses¹⁰², financing up to GBP 25 million (EUR 28 million).

With the *Coronavirus Bounce Back Loans*¹⁰³, the government introduced a further financing programme for all businesses, regardless of turnover, for loans of up to GBP 50,000 (approx. EUR 55,895) with a term of up to 6 years (start: 4 May 2020). The

⁹⁵ Bank of England, [Agent's summary of business conditions](#), 26 March 2020.

⁹⁶ 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.

⁹⁷ Department for Business, Energy & Industrial Strategy, [Apply for the Coronavirus Large Business Interruption Loan Scheme](#), 3 April 2020, last updated 28 May.

⁹⁸ Department for Business, Energy & Industrial Strategy, [Apply for Coronavirus Bounce Back Loan](#), 27 April 2020, last updated 4 May.

⁹⁹ HM Treasury, [HM Treasury Coronavirus \(COVID-19\) Business Loan Scheme Statistics](#), 27 May 2020, updated 18 August 2020.

¹⁰⁰ With an annual turnover under GBP 45 million.

¹⁰¹ See, among others, *The Guardian*, [Just £ 1.1 bn of Covid-19 Bailout Loans Have Been Issued to Small UK Firms](#), 15 April 2020.

¹⁰² With an annual turnover between GBP 45 million and 500 million (between approx. EUR 50 and 559 million).

¹⁰³ Department for Business, Energy & Industrial Strategy, [Apply for a Coronavirus Bounce Back Loan](#), 27 April 2020, last updated 4 May 2020.

scheme offers streamlined application procedures and loans are 100% backed by the Government.

There are two further general loan schemes: The *Covid Corporate Financing Facility (CCFF)*, a support programme of the Bank of England, is aimed at larger companies to overcome short-term liquidity or financing bottlenecks. The *Coronavirus Future Fund* is 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.¹⁰⁴

Other (sector-specific) financial assistance includes, for example, the *Retail and Hospitality Grant Scheme*¹⁰⁵, which supports companies in the retail, hospitality and leisure sectors with direct grants of up to GBP 25,000 (EUR 28,000). Smaller companies can also receive grants under the *Small Business Grant Fund (SBGF)*¹⁰⁶.

As part of his *Winter Economy Plan*, the Chancellor announced the extension of the *Coronavirus Business Interruption Loans* and *Bounce Back Loans* to ten years, with additional opportunities for (interest-only) payment holidays for the latter. All loan schemes would remain open to new applications until 30 November.¹⁰⁷

c) Relief in Taxes and Social Security Contributions

In addition to the above-mentioned financial assistance, relief measures for a number of public-law dues are intended to maintain the liquidity of companies: for example, the business rates for all businesses in the retail, hospitality and leisure sector will be suspended for the tax year 2020/2021 ('business rates holiday')¹⁰⁸. In addition, a number of payment deferrals will be granted: the deadlines for payment of Value Added Tax (VAT) will be extended by three months¹⁰⁹; for self-employed persons, income tax payments due in July 2020 will be postponed to January 2021.¹¹⁰ As part of his *Winter Economy Plan* the Chancellor announced a *New Payment Scheme* which allows businesses that have deferred their VAT payments to repay what they owe over 11 interest-

¹⁰⁴ Department for Business, Energy & Industrial Strategy et al., [Apply for the Coronavirus Future Fund](#), 20 April 2020, last updated 20 May 2020.

¹⁰⁵ Department for Business, Energy & Industrial Strategy et al., [Financial Support for Businesses during Coronavirus](#), 3 April 2020, last updated 9 July.

¹⁰⁶ Ibid.

¹⁰⁷ HM Treasury, [Winter Economy Plan](#), September 2020, (fn. 32), para. 2.8.

¹⁰⁸ 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.

¹⁰⁹ HM Revenue & Customs, [Deferral of VAT Payments due to Coronavirus](#), 26 March 2020, last updated 26 September.

¹¹⁰ HM Revenue & Customs, [Defer your Self-Assessment Payment on Account due to Coronavirus](#), 15 May 2020, last updated 15 October 2020.

free payments in 2021/22.¹¹¹ Also, self-assessment tax payers will have additional time to pay back their taxes due in January 2021.¹¹²

On 26 May 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.¹¹³

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.

In its July Fiscal Sustainability Report, the Office of Budget Responsibility (OBR) forecast that the unemployment rate would peak at a level between 9.7% and 13.2% compared to a rate of 3.9% in the first quarter of 2020.¹¹⁴ Also, the labour market statistics for May-July 2020, published on 15 September, showed, for the first time since the pandemic, a rise in unemployment, while redundancies and the number of people claiming unemployment benefits also increased.¹¹⁵ Although some labour market measures, such as the *CJRS* and *SEISS*, may have alleviated demand on the benefit 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. Between 16 March (the lockdown started on 23 March) and 9 July, 2.9 million new claims applications for *UC* were made, with the daily volume peaking at 135,900 on Friday 27 March. As a consequence, the total number of people on *UC* in Great Britain rose from 3 million in March to a provisional figure of 5.6 million in July.¹¹⁶

¹¹¹ *HM Treasury*, Winter Economy Plan, September 2020, (fn. 32), para. 2.12.

¹¹² *HM Treasury*, Winter Economy Plan, September 2020, (fn. 32), para. 2.13. See also: *HM Revenue & Customs* press notice, [Self-Assessment Customers to Benefit from Enhanced Payment Plans](#), 1 October 2020.

¹¹³ [Statutory Sick Pay \(Coronavirus\) \(Funding of Employers' Liabilities\) Regulations 2020](#) (SI 2020/512). The maximum refund is GBP 191.70 (EUR 211) (equivalent to two weeks' maximum SSP) multiplied by the number of employees enrolled in PAYE schemes, reg. 3.

¹¹⁴ *Office of Budget Responsibility (OBR)*, [Coronavirus Analysis](#), 14 July 2020.

¹¹⁵ *Office for National Statistics (ONS)*, [Labour Market Overview, UK: September 2020](#), 15 September 2020. Comparing the quarter of January-March 2020 with the quarter for May-July 2020, unemployment levels have risen by 50,000. The pandemic has not yet resulted in the expected flow from employment to unemployment, although this will be partly due to the *CJRS* as furloughed workers are classed as employed. See *House of Commons Library*, [Coronavirus: Impact on the Labour Market](#), 14 October 2020, p.4.

¹¹⁶ *House of Commons Library*, [Coronavirus: Universal Credit during the Crisis](#), 4 September 2020, p. 9.

In response, the Government implemented a number of changes to the benefit system, such as increases to benefit levels, the suspension of work-related conditionality as well as measures to facilitate social distancing (e.g. changes to assessments and Job centre appointments) and to support those who need to isolate or shield (e.g. changes to *Statutory Sick Pay, SSP*).¹¹⁷

a) Enhanced sick pay entitlement and support during self-isolation

Under British law, ‘employees’¹¹⁸ who are unable to work due to illness are entitled to *Statutory Sick Pay (SSP)* for up to 28 weeks.¹¹⁹ However, the benefit level is very low (GBP 95.85 = EUR 107 per week since 6 April 2020), which is less than 30% of the national minimum wage.¹²⁰ In this respect, one can hardly speak of a wage replacement benefit, but rather of minimum social security.¹²¹ Moreover, it is only available to ‘employees’ earning above GBP 120 (EUR 134) per week (GBP 118 or EUR 132 before 6 April 2020)¹²², which will in principle exclude those in precarious forms of employment¹²³, notably care workers.¹²⁴ 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)¹²⁵ 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.¹²⁶ Since 16 April, this extension of the definition of “limited capability for work” has also applied to employees who are deemed clinically extremely vulnerable and at very high risk of severe illness from the virus and who have been officially ad-

¹¹⁷ Most of these measures are, however, intended to be temporary or remain under review.

¹¹⁸ ‘Employees’ in this sense are those employees that pay Class 1 National Insurance Contributions (NICs).

¹¹⁹ [Social Security Contributions and Benefits Act 1992](#), part XI, sections 151-163; [Statutory Sick Pay \(General\) Regulations \(SI 1983/894\)](#).

¹²⁰ *Hendy*, 2020, (fn. 57), p. 1 ff.

¹²¹ Flat-rate benefits, which focus on covering a certain minimum level of need are however typical of Beveridge-type social security systems.

¹²² 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 Sched.11 paras 1 and 2.

¹²³ *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.

¹²⁴ *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.

¹²⁵ 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).

¹²⁶ *Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations (SI 2020/374)*, reg. 3.

vised to follow shielding measures.¹²⁷ However, the recently changed Government's Guidance regarding shielding now states that from 1 August, those particularly vulnerable groups could return to work and that they are no longer eligible for *SSP* on the basis of being advised to shield by the government. Extremely vulnerable persons living in very high alert level areas may be eligible for *SSP* if they receive an individual formal shielding notification.¹²⁸ The changes made to *SSP* in response to COVID-19 were initially limited to eight months from 13 March 2020. However, this time limit was removed and changes made indefinite, if under Government's review.¹²⁹

Low earners (see above) and the self-employed do not qualify for *SSP*. They can, however, apply for *Employment and Support Allowance (ESA)*¹³⁰ if they have a "limited capability for work"¹³¹, however normally only from the eighth day of illness.¹³² The Government has announced that this will also be available from the first day for those affected by COVID-19.¹³³ *ESA* is worth GBP 74.35 (EUR 82) per week for the first 13 weeks.¹³⁴

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, a new GBP 500 (EUR 554) 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.¹³⁵ Local authorities will 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.¹³⁶

¹²⁷ [Statutory Sick Pay \(General\) \(Coronavirus Amendment\) \(No.3\) Regulations 2020](#) (SI 2020/427).

¹²⁸ *Public Health England*, [Guidance on Shielding and Protecting People who are Clinically Extremely Vulnerable from COVID-19](#), 29 September 2020, updated 15 October 2020

¹²⁹ *Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations* (SI 2020/374), reg. 4.

¹³⁰ The income-based element is currently being phased out and replaced by *Universal Credit*, however, the contribution-based element remains available.

¹³¹ [Welfare Reform Act 2007](#), s.1 (3) (a)

¹³² [Welfare Reform Act 2007](#), Sched. 2 para. 2; [Employment and Support Allowance Regulations 2008](#) (SI 2008/143), reg. 144(1), as amended.

¹³³ [Employment and Support Allowance and Universal Credit \(Coronavirus Disease\) Regulations 2020](#) (SI 2020/289), reg. 2.

¹³⁴ *Department for Work & Pensions*, [Benefit and Pension Rates 2020 to 2021](#), 9 April 2020.

¹³⁵ *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 2012, on 28 September, 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).

¹³⁶ 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 *Department of Health & Social Care*, [Briefing and Q&A for Local Authorities on Changes to Self-Isolation](#), September 2020.

b) *Extra support for those on low incomes or without work*

All persons with no or low incomes, who have not yet reached the legal retirement age can apply for *Universal Credit (UC)* ¹³⁷. The standard allowance of *UC* has been increased by GBP 20 (EUR 22) per week from 6 April 2020. 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 355 to approx. EUR 458).¹³⁸ Also, the maximum *Local Housing Allowance (LHA)*¹³⁹, for the purposes of *UC* and *Housing Benefit*, has been increased to cover a higher proportion of rent.¹⁴⁰ The Secretary of Work and Pensions has since confirmed that this was a “permanent uplift”.¹⁴¹

However, there has been no corresponding increase of the ‘benefit cap’ which limits the total amount of out-of-work benefits a household can receive.¹⁴² Many families subject to the cap are therefore not reached by the temporary increase in the safety net and the benefit increases will mean that more families will become subject to the cap.¹⁴³ Of 154,000 households now affected by the cap, 52,000 are single parents with at least one child under five.¹⁴⁴

UC is normally assessed and paid monthly, with payments made in arrears. Currently, a one-month advance payment can be applied for, which is then deducted from subsequent benefit payments.¹⁴⁵

For the self-employed receiving *UC* there has been a suspension of the ‘Minimum Income Floor’ (MIF)¹⁴⁶. Initially, this applied only to those self-employed claimants directly affected by coronavirus, but the MIF was soon suspended for all claimants.¹⁴⁷

¹³⁷ The *Universal Credit* is to be phased in gradually throughout the UK for low-income earners or jobseekers by 2023. It merges all existing means-tested allowances (so-called ‘legacy’ benefits) and tax credits for people of working age and children into one universal benefit. It replaces: *Income-based Jobseeker's Allowance*; *Income-related Employment and Support Allowance*; *Income Support*; *Working Tax Credit*; *Child Tax Credit*, and *Housing Benefit*. See [Welfare Reform Act 2012](#), Part I.

¹³⁸ [Social Security \(Coronavirus\) \(Further Measures\) Regulations 2020](#) (SI 2020/371) Reg. 3(1) to (2).

¹³⁹ 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.

¹⁴⁰ *Social Security (Coronavirus) (Further Measures) Regulations* (SI 2020/371) reg. 4.

¹⁴¹ *House of Lords Economic Affairs Committee*, [Oral Evidence: The Economics of Universal Credit](#), 2 June 2020, Question 119.

¹⁴² [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.

¹⁴³ *Institute for Fiscal Studies (IFS)*, [If the Cap Doesn't Fit?](#) 7 April 2020.

¹⁴⁴ *BBC News*, [Coronavirus: Huge Increase in Families Hitting Benefit Cap](#), 6 August 2020.

¹⁴⁵ *Department for Work & Pensions*, [Find Out About Money Taken Off Your Universal Credit Payment](#), 8 October 2020.

¹⁴⁶ 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.

¹⁴⁷ *Social Security (Coronavirus) (Further Measures) Regulations 2020* (SI 2020/371) reg. 2.

Regulations in force from 30 March suspended work availability and work search conditionality for claimants for a three-month period¹⁴⁸, thereby recognizing the added difficulty many claimants face in returning to the labour market.

It has been argued that these changes to benefit levels and conditionality requirements have turned the *UC* into “a rather different animal”¹⁴⁹ 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”¹⁵⁰. The suspension of conditionality was lifted from the beginning of July as the DWP began the process of reopening Job centres to begin “a return to normal” in order to “help people to get ready again for the world of work”.¹⁵¹ For this purpose and to help replace the employment support schemes (see above), the Government published, on 8 July, a *Plan for Jobs*¹⁵². 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.

c) Support for local authorities

The ongoing funding crisis¹⁵³ in local authority budgets is likely to be aggravated by the pandemic, leading to further reductions in key social services, such as direct payment support for the disabled and homeless services.¹⁵⁴ In response, the Government launched an initial GBP 1.6 billion (EUR 1.8 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 559 million) to be paid out to the local authorities, through which they are to counter-finance a reduction in council tax¹⁵⁵ for particularly vulnerable persons.¹⁵⁶

148 *Social Security (Coronavirus) (Further Measures) Regulations 2020* (SI 2020/371) reg. 6(1),(2).

149 Bennet, [Coronavirus- the Making or the Unmaking of Universal Credit](#), University of Bath Institute for Policy Research Blog, 6. April 2020.

150 *House of Commons*, [Covid-19: DWP Update](#), 4 May 2020, Vol. 675.

151 *House of Commons*, [Covid-19: DWP Update](#), 29 June 200, Vol. 678.

152 *HM Treasury*, *Plan for Jobs*, July 2020 (fn. 70).

153 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.

154 *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.

155 *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.

156 *Ministry of Housing, Communities & Local Government (MHCLG)*, [Council Tax: Covid-19 hardship fund 2020-21 – Local Authority Guidance](#), 24 March 2020, p. 4 f.

5. 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 surly be described as one of the most remarkable announcements in the history of peacetime labour law¹⁵⁷ 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 do not necessarily provide effective protection for all those at work. *SSP* and *SEISS* only benefit employees or self-employed persons with a certain income level. Also, so-called 'limb (b) workers' who are classed neither as employed or self-employed frequently fall outside the scope of both the *CJRS* and the *SEISS* schemes.¹⁵⁸ 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 *CJRS* and the *SEISS* in an advisory capacity.¹⁵⁹ However, the limited extent of social dialogue and the probably rather negligible influence of the trade unions¹⁶⁰ on the concrete design of the programmes is particularly evident in their low focus on the protection of the most vulnerable participants in the labour market, notably those in precarious employment.¹⁶¹ These persons are particularly hard hit by the consequences of the crisis and affected at an early stage. However, *UC* frequently remains their only option, the level of which, despite a recent increase, remains very low. Many benefits are also paid out with a considerable delay¹⁶² or are planned 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

¹⁵⁷ *Bogg/Ford*, [Legislating in Times of Crisis: The Coronavirus Job Retention Scheme](#), UK Labour Law Blog, 23 March 2020.

¹⁵⁸ In the recent decision *R (Adiatu & IWGB) v HM Treasury* [2020] EWHC 1554 (Admin) (15 June 2020) the court held that the situation of limb b workers who are outside the PAYE system and employees or workers within it is analogous to some extent. However, the discrimination against those outside the PAYE system could be justified due in particular to the considerable practical difficulty in determining their income and status and the inappropriateness of a new criterion for entitlement without notice in the midst of the pandemic.

¹⁵⁹ As expressed by the [Chancellor of the Exchequer](#): "[...] thanks to the Trade Union Congress, the CBI and other business groups, for our constructive conversations."

¹⁶⁰ 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%).

¹⁶¹ *Novitz*, 2020, p. 6 (see fn. 123). 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.

¹⁶² See e.g. *British Chambers of Commerce, BCC Coronavirus Business Impact Tracker*, 8 April 2020, (fn. 41).

safety regulations: only ‘employees’ have the right to refuse to attend work for health and safety reasons.¹⁶³ 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 are neither comprehensive nor inclusive and often limited in time. It is estimated that approximately 3 million individuals are excluded from the government support schemes.¹⁶⁴ 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”.¹⁶⁵ 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 as part of the *Winter Economy Plan*. The original version of the *JSS* was significantly less generous than the furlough scheme, with employers paying at least 55% of normal wages for only 33% of normal hours worked, compared to 10% (in September), rising to 20% in October of the normal wages for those in furlough under the *CJRS*. Commentators suggested that it would still be cheaper to employ one person full time than two people part time under the *JSS*.¹⁶⁶ 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.¹⁶⁷ Facing increasingly stringent restrictions due to the second phase of the pandemic, the level of state contributions has since 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.

The policy transformation is therefore hardly sufficiently profound to speculate about a paradigm shift as some commentators seem to indicate¹⁶⁸. Rather, moving into the next stage of the pandemic, existing inequalities seem to be at risk of being perpetuated: The IFS Deaton Review of Inequalities has recently noted that some of the main

¹⁶³ *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.

¹⁶⁴ *Hitchings*, *Unprecedented Times*, *Journal of Social Welfare and Family Law*, 2020, p. 277.

¹⁶⁵ *Booth*, [UK Coronavirus Response Utterly Hypocritical, Says UN Poverty Expert](#), *The Guardian*, 26 April 2020.

¹⁶⁶ *Johnson*, [Sunak Has Bought himself Time, but his Big Test Will Come as Crisis Eases](#), Institute for Fiscal Studies 28 September 2020.

¹⁶⁷ *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, GBP146.9 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.

¹⁶⁸ *Elliot*, [The Coronavirus Crisis May Lead to a New Way of Economic Thinking](#), *The Guardian*, 22 March 2020.

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.¹⁶⁹

¹⁶⁹ *Blundell et al.*, COVID-19 and Inequalities, Fiscal Studies, June 2020, p. 291-319.

V. The Temporary Return of National Solidarity in France

1. Introduction

“We are at war”, declared French President *Emmanuel Macron* 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.¹ 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 as per 16 March 2020 by presidential decree, and a nationwide lockdown was put in place on 17 March 2020 that 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).² 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, and it was extended until 10 July 2020.³ 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 government expects GDP to shrink by 9% in 2020.⁴ As a result, both individuals and companies are losing their “life resources” and must therefore be pro-

1 Retrospectively, several cases of suspected infections (without proof via genetic sequences of the virus) already took place in November 2019.

2 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](#).

3 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 law extending the emergency period, cf. [Loi n° 2020-546 du 11 mai 2020 prorogeant l'état d'urgence sanitaire et complétant ses dispositions](#).

4 According to the latest [data published by the French statistical office \(INSEE\)](#), French GDP fell by 5.8% in the first quarter of 2020 and by 13.8% in the second quarter (in contrast, GDP fell by 1.9% in the first quarter of 2009, i.e. due to the global financial crisis, and started to increase already in the second quarter). See also, [INSEE, point de conjuncture](#), 8 September 2020.

vided 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.⁵ After the joint proposal of France and Germany for a recovery fund for the whole EU, the newly appointed French Prime Minister, *Jean Castex*, announced on 3 September a recovery plan of EUR 100 billion for France which shall reconstruct the French economy, with new ambitions (ecological transition; industrial sovereignty or independence; and social cohesion).

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 making short-term adjustments leading towards an exit from the public health emergency (from May to August); and “Reconstruct” or establishing a long-term recovery program with important changes in the economic structure (from September onwards). The latest strategy is, in effect, to live with the virus, and the development of the pandemic has precisely shown that France, as well as other European countries, must be prepared for the challenges of the “second wave” of COVID-19. Regarding the increasing number of positive tests, *Emmanuel Macron* and his cabinet announced on 14 and 15 October that the state of emergency would be declared again on 17 October (probably lasting until 1 December).⁶ A night-time curfew was imposed in nine major cities including Paris, Lyon and Marseille. The objective of the government was to avoid a lockdown, while containing sufficiently the spread of the disease. However, these efforts have proved to be insufficient, since the rapid increase of COVID patients⁷ has forced the French government to revise its original plan after only ten days. On 28 October, President *Macron* made a new television address to the nation, declaring that the country would be shut down from 30 October onwards. A new decree specifies that, contrary to the first lockdown, daycare centres, schools and public services shall remain open, but the vast majority of restaurants, shops, sports and cultural centres must close again.⁸ *Jean Castex* announced immediately after the presidential address that the government was ready to add EUR 20 billion in order to support the lockdown measures.⁹ The government shall also review its restrictive measures after two weeks and, if infection levels have by then been contained so as to no longer present a danger to the nation, the lockdown can be terminated on 1 December.

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

5 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](#)).

6 [Décret n° 2020-1257](#) du 14 octobre 2020 déclarant l'état d'urgence sanitaire.

7 France registered more than 50,000 new cases of corona infections on 25 October.

8 [Décret n° 2020-1310](#) du 29 octobre 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire.

9 The press conference held by the Prime Minister is available [here](#).

and families (4). Across the abovementioned three periods, the support of the state has undergone a transformation which can be analysed as a process of specification: whereas the first period was characterised by a general enlargement of the short-time work scheme, the last two 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.). Whatever these measures are, 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 made 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 2019.¹⁰ The corona pandemic put an end to this trend. 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)¹¹ and the National Statistics Institute predicted in early September that the unemployment rate would rise to about 9.5% by the end of the year.¹² In March alone, over 24,000 workers lost their jobs (amounting to an increase of 7.1%)¹³. 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.¹⁴ 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 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.¹⁵ In order to keep employ-

10 A total of 3.1% less unemployment as compared with the previous year. See [statistical data of the French Employment Agency \(Pôle-Emploi\)](#).

11 Pôle-Emploi, [Demandeurs d'emploi inscrits à Pôle emploi au 1er trimestre 2020](#), 27 April 2020.

12 [INSEE, point de conjuncture](#), 8 September 2020.

13 Dares, [Les demandeurs d'emploi inscrits à Pôle emploi : statistiques mensuelles nationales](#), 27 April 2020.

14 Loi du 23 décembre 1982. Today Art. L4131-1 ff. French Labour Code.

15 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 ex-

ees 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 – 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.¹⁶ 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.

a) “*Partial Work*” or *Short-Time Work (activité partielle)*

So-called “partial work”¹⁷ 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 of time or reduces its activities due to extraordinary circumstances.¹⁸ 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)¹⁹ and only contributions to unemployment insurance are deducted²⁰. As in Germany, this mechanism was already used during the 2008 financial crisis.²¹ 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.²² 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 is placing particular emphasis on short-time work in order to “avoid dismissals” and “mitigate the economic consequences for the

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).

16 Cf. Ministère du travail, [Situation sur le marché du travail](#) au 7 juillet 2020. These numbers began to decline afterwards, since the government had restricted the benefits of short-time work at the beginning of June.

17 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.*

18 Art. L5122-1 seq. French Labour Code.

19 Art. R5122-18 French Labour Code.

20 Art. L5122-4 French Labour Code.

21 *Calavrezo/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.*

22 Art. R5122-2, French Labour Code.

companies”.²³ In order to provide better and more efficient support to these companies, executive regulations in the form of a *décret*²⁴ and an *ordonnance*²⁵ have been issued, which have led to the following changes:

- The scope of application has been extended: almost all employment relationships are covered. For example, home workers employed by individual employers can now also be given short-time work status if they have to accept a reduction in working hours.²⁶ Companies that do not have a business in France but employ workers in France can also apply for short-time work benefits.²⁷
- 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 covered by the state. Normally, reimbursement by the state is limited to an hourly wage of around EUR 7.50²⁸, 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).²⁹
- The maximum duration of benefit receipt has been extended from 6 to 12 months.³⁰ 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 2020.³¹
- To speed up and simplify matters, the approval procedure has been temporarily suspended.³² In principle, it is sufficient if the employer sends an application to the administration within 30 days of the start of the short-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.³³ The time limit for a response from the administration has been greatly reduced, from 15 days to two days.³⁴ Failure by the administration to respond continues to be considered as an approval.

23 Art. 11, I, 1), b) of Law n° 2020-290.

24 [Décret n° 2020-325](#), 25 March 2020.

25 [Ordonnance n° 2020-346](#), 27 March 2020.

26 Art. 7 [Ordonnance n° 2020-346](#).

27 Art. 9 *ibidem*.

28 Art. R5122-12 and D5122-13, French Labour Code.

29 Art. 1, 7) [Décret n° 2020-325](#), 25 March 2020.

30 Art. 1, 6) *ibidem*.

31 See [Arrêté of 31 March 2020](#).

32 Art. 1, 2) *ibidem*.

33 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](#).

34 Art. 2, 3) *ibidem*.

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 by decree of 16 April 2020.³⁵

After the end of the first lockdown, the government planned to gradually modify these exceptional measures. First of all, the state has reduced its share in the financing of the short-time work benefit. Since 1 June, the state does not fully finance the benefit any more, but only 85% of the benefit. The rest must be paid by the employer. For sectors which are severely affected by the pandemic such as the catering sector, hotels, cultural and sport sectors, the share of the state remains 100%. However, nothing changes for the employee, who always receives 70% of the gross wage.³⁶ Secondly, the government has put up a special benefit called “long term short-time work benefit” (*activité partielle de longue durée*).³⁷ Its main characteristic is the possibility for the employer to benefit from the short-time work for at most 24 months in a time span of 36 months. Furthermore, this benefit presupposes the conclusion of a collective agreement. Besides these measures, the French government also announced a reform of the short-time work which should be revealed in November. According to the information already released, the new scheme would strongly reduce the participation of the state in the financing of the benefits. The amount of the benefit finally received by the employees would also decrease to 60% of their gross wage.³⁸ With the second lockdown, it is no longer possible to carry out the reform in November. Instead, the government announced that the existing measures shall be maintained at least until the end of the year.³⁹

In addition to the short-time work benefit, employers are free to grant additional payments. For example, car manufacturer PSA has reached an agreement with the trade unions that provides for a company solidarity fund.⁴⁰ 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 can try to counter the effects of the crisis by introducing new holiday arrangements or reducing working hours. The Regulation of 25 March 2020 allows employers – until the end of 2020 – to unilaterally order leave of

35 [Décret n° 2020-435](#) du 16 avril 2020 portant mesures d'urgence en matière d'activité partielle.

36 [Décret n° 2020-810](#) du 29 juin 2020 portant modulation temporaire du taux horaire de l'allocation d'activité partielle

37 [Décret n° 2020-926](#) du 28 juillet 2020 relatif au dispositif spécifique d'activité partielle en cas de réduction d'activité durable.

38 [Projet d'ordonnance](#) et projet de décret relatif à l'activité partielle, 4 September 2020.

39 [Décret n° 2020-1316](#) du 30 octobre 2020 relatif à l'activité partielle et au dispositif d'activité partielle spécifique en cas de réduction d'activité durable.

40 PSA Automobiles, 7 April 2020, [Accord social et solidaire, protecteur de la santé des salariés et de l'entreprise du groupe PSA](#).

absence for employees on the basis of a collective agreement.⁴¹ The maximum number of such leave days may not exceed six working days, and the employer must inform the employees concerned of this decision at least one day before the leave. A similar rule applies 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 can unilaterally set these RTT days under certain conditions, up to a maximum of 10 working days.⁴² The bank LCL, for example, has chosen this option instead of short-time work. A corresponding agreement was signed on 7 April 2020 and contains a new plan for the organisation of work.⁴³ On 15 April this regulation was extended to public employees (including civil servants).⁴⁴

In addition, the Regulation of 25 March 2020 provides for special arrangements to make working time more flexible in key economic sectors (e.g. the maximum working time is now 60 hours per week).⁴⁵

c) Bonuses for Workers in Key Economic Sectors

In order to maintain the economy despite the pandemic, a functioning supply system is needed, including 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 consists of a premium exempt from taxes and social security contributions, which the employer can grant as a lump sum of up to EUR 2,000.⁴⁶ 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.⁴⁷ Special attention has been paid to the health sector: staff members of certain public health establishments especially engaged

41 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.

42 *Ibidem*, Art. 2 ff.

43 There are, of course, alternative methods, such as rearranging one's holiday or one's working hours. See e. g. [an LCL agreement](#).

44 [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.

45 [Ordonnance n° 2020-323](#) du 25 mars 2020 portant mesures d'urgence.

46 [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.

47 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](#).

in the treatment of COVID-19 have the right to a premium of EUR 1,500⁴⁸ and the remuneration of overtime work has also been increased⁴⁹.

d) Granting of Sickness Benefit in cases of “Incapacity to Work”

The government already decided by decree in January to grant sickness benefits to people in quarantine or isolation because of COVID-19.⁵⁰ The entitlement to this benefit is independent of whether the person was already 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.

The scheme has already been revised twice: The first amendment⁵¹ in March 2020 was an extension allowing parents to receive sickness benefit if they have to look after their under-age children (up to the age of 16) who stay at home, and if they are therefore unable to work; the second amendment in April included the parents of children with disabilities and did not impose an age limit.⁵² The duration of the receipt of benefit was also extended.⁵³ Concerns about fraud through this new extension have been pointed out in certain discussions.⁵⁴

In similar situations, employees are at the same time entitled to a supplement to sickness benefit from their employer.⁵⁵ The total benefit is then 90% of the gross salary. From 1 May 2020, however, these beneficiaries received the short-time work benefit instead of sickness benefit, as this was more favourable for employees.⁵⁶ This measure was first planned to last until the end of 2020, but a decree in August⁵⁷ decided that the exceptional measure would be terminated on 31 August. Only several groups of vulnerable persons have been allowed to continue to benefit from the short-time work scheme from 1 September. The decree mentioned these groups in a very short list: it covers, for example, patients already suffering from an evolving cancer, people of at least 65 years

48 [Décret n° 2020-568](#) du 14 mai 2020 relatif au versement d'une prime exceptionnelle.

49 [Décret n° 2020-718](#) du 11 juin 2020 portant indemnisation et majoration exceptionnelle des heures supplémentaires.

50 [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.

51 [Décret n° 2020-227](#) du 9 mars 2020.

52 [Décret n° 2020-459](#) du 21 avril 2020.

53 Previously, the duration of receipt of benefit was restricted to 20 days. Now, it has been extended until isolation measures have ended.

54 *Morvan*, Arrêts maladie fictifs et Covid-19: une pratique contagieuse, *Droit social*, 2020, p. 373.

55 Art. L1226-1, French Labour Code. See also, [Décret n° 2020-193](#) and [Décret n° 2020-434](#).

56 Art. 20, Loi n° 2020-473 du 25 avril 2020 de finances rectificative pour 2020.

57 [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.

of age who are diabetics, certain patients suffering from AIDS. These groups of persons can also obtain free masks supplied by the government.⁵⁸

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. The payment of contributions, for instance, was postponed for three months.⁵⁹ The measure was extended for a further two months. This meant that all tax deadlines until the end of May were postponed by three months. In April, 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.⁶⁰ This measure was adopted by the Parliament in the third “amending law of finances for 2020”.⁶¹ The concrete conditions were fixed by a decree on 1 September.⁶² The scope of the abolition covers the activities of companies with less than 250 employees from 1 February to 31 May 2020 which have been severely affected by the pandemic or which depend on such activities. For companies with less than 10 employees, activities from 1 February until 30 April that do not fall within the former scope shall not be counted for social security contributions. However, in order to apply for the relief, a company must also prove that it has suffered from a clear decrease in its turnover during the lockdown; the government has also fixed a maximum sum for the relief in total.

Anticipating the second lockdown, the government reiterated the possibility to defer social security contributions due for November.⁶³ Moreover, enterprises that are obliged to close during the lockdown shall benefit from a complete exemption of the obligation to pay contributions.

58 Arrêté du 10 juillet 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19.

59 See [decision of URSSAF](#).

60 *Hue*, [Coronavirus: les entreprises risquant la faillite pourraient être exonérées de charges](#), RTL, 8 April 2020.

61 [Loi n° 2020-935](#) du 30 juillet 2020 de finances rectificative pour 2020.

62 [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.

63 URSSAF, [Mesures exceptionnelles pour accompagner les entreprises dans le cadre du reconfinement](#), 30 octobre 2020.

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.⁶⁴ This fund was originally intended to support small businesses with a maximum of 10 employees, an annual turnover of no more than one million euros and a taxable profit of no more than EUR 60,000, which are severely affected by the curfew, i.e. which have to keep their business closed due to the crisis or have 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 will 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 2019⁶⁵, they will receive a further EUR 1,500 from the solidarity fund if they have lost more than 50% of their income.⁶⁶ 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 in June and will be available until the end of the year.⁶⁷ According to the government's information in September 2020, more than four million applications have already been submitted and the total sum of the subsidy has amounted to over six billion euros.⁶⁸ After the announcement of the curfew and especially with the second lockdown, the government has decided to extend subsidy access for companies with less than 50 employees in the cities affected by the curfew (instead of the initial limit of 10). The amount of the subsidy has also been increased: from now on, all enterprises with less than 50 employees that are obliged to close can receive a maximum of EUR 10,000 regardless of their previous activities; enterprises with less than 50 employees that are considered to be severely affected by the pandemic and losing more than 50% of their turnover, even if they are not forced to close, can also receive a maximum of EUR 10,000.⁶⁹

64 [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.

65 Art. L5424-25, French Labour Code.

66 [Ordonnance n° 2020-317](#) du 25 mars 2020.

67 [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.

68 See Ministère de l'économie, [Aide du Fonds de solidarité – Tableau de bord interactif](#).

69 See Ministère de l'économie, [Fonds de solidarité pour les entreprises, indépendants, entrepreneurs](#).

Moreover, the state is offering companies a guarantee for new bonds so that companies of all sizes can receive immediate liquidity assistance.⁷⁰ The total sum of this support is estimated at around EUR 300 billion. Initially provided until the end of 2020, the state guarantee was extended at the beginning of the second lockdown and will last until 30 June 2021.⁷¹ The state provides equally direct liquidity supports, which can for example amount to EUR 10,000 for enterprises with less than 10 employees and to EUR 50,000 for enterprises with less than 50 employees. The government 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.⁷² Their access to infrastructures 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.

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 their documents in time. There are also people who need help through medical treatment. All these people should be protected via greater income security.

a) Extension of Unemployment Benefits

As mentioned before, unemployment has risen sharply due to the corona crisis (see 2. above). Many unemployed risk losing their rights because they cannot find new employment. For this reason, the government initially extended the granting of expiring unemployment benefits until 31 July 2020 at the latest.⁷³ This could 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 cur-

70 *Arrêté* du 23 mars 2020 accordant la garantie de l'Etat aux établissements de crédit et sociétés de financement.

71 See Ministère de l'économie, [Prêt garanti par l'État](#).

72 [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.

73 [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.

rent benefits, has been currently suspended.⁷⁴ The degressive mechanism that reduces benefits after 182 days of unemployment has also been suspended.⁷⁵

A further decree was issued on 16 April 2020⁷⁶ with a more specific legislative provision on the duration of the extension. The extension period varies between 30 and 91 calendar days, depending on the date on which the benefit entitlement ends. The decree also facilitates the receipt of unemployment benefits during the crisis, for example by making some changes to the prospective entitlement of the unemployed. The government announced in July that there would be further negotiations with the social partners in autumn in order to determine the concrete rules of the unemployment insurance. In the meantime, trade unions are calling for a complete abolition of the reform of 2019. The government has nevertheless remained silent regarding this demand.

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.⁷⁷ In a press release, the Ministry of Health announced special assistance for families with low income.⁷⁸ This aid consists of a lump sum that was automatically transferred on 15 May 2020 by the family benefit funds (*Caisses d'allocations familiales*). The aid is intended 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 plus an additional EUR 100 per child. In total, more than four million families will 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 to raise about EUR 880 million for all the measures mentioned above.⁷⁹ The government has 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).⁸⁰ About three million families are eligible for this benefit.

74 [Décret n° 2020-361](#) du 27 mars 2020 portant modification du décret n° 2019-797 du 26 juillet 2019 modifié relatif au régime d'assurance chômage.

75 [Arrêté du 11 mars 2020](#) relatif à l'application du dispositif de dégressivité de l'allocation d'aide au retour à l'emploi en cas d'accomplissement d'une action de formation par l'allocataire.

76 [Décret n° 2020-425](#) du 14 avril 2020 portant mesures d'urgence en matière de revenus de remplacement mentionnés à l'article L. 5421-2 du code du travail.

77 Art. 11, I, 6), Loi n° 2020-290.

78 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](#).

79 Art. 27, Law n° 2020-473 of 25 April 2020 (Loi de finances rectificative pour 2020 II).

80 [Décret n° 2020-985](#) du 5 août 2020 relatif à la majoration exceptionnelle de l'allocation de rentrée scolaire en 2020.

Following the decision on the curfew, the government has also decided to renew its support for modest persons and households. The benefit of EUR 150, always supplemented with the additional benefit for children, will be paid again to those who satisfy the aforementioned requirements. A federation for social work (*Union nationale inter-fédérale des œuvres et organismes privés non lucratifs sanitaires et sociaux*) has denounced the insufficient state aid for the “new poor” caused by the pandemic.⁸¹ It is also evident that the French government has chosen a minimum reaction to the highly heterogeneous situations of persons who have been in a precarious employment. In his interview on 14 October, President *Macron* has justified the renewal of the lump sum benefit by the necessity to incentivise people to return to work. It is true that, as has already been mentioned above, the recovery plan “*France Relance*” has focused on the creation of new jobs. However, it is not yet foreseeable whether these jobs are going to improve the precarious situation of the newly jobless persons or not.

c) Recognition of COVID-19 as Occupational Disease

Since the beginning of the pandemic, legal scholars had 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, is difficult to be associated with the working conditions and the causal link is 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, through a decree on 14 September, the government has added COVID-19 to the list of occupational diseases.⁸² However, the conditions for the recognition remain relatively strict: the patient must have 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.

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*).⁸³ Furthermore, medical care for illegal residents has been extended by three months⁸⁴ and benefits for disabled persons that require an administrative decision by six months⁸⁵. In addition, access to medical care

81 UNIOSS, «Booster» les minimas sociaux: une priorité, dès maintenant!, 15 October 2020.

82 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.

83 Art. 1, I, II, [Ordonnance n° 2020-312](#) du 25 mars 2020 relative à la prolongation de droits sociaux.

84 Art. 1 IV, *ibidem*.

85 Art. 2, *ibidem*.

has been made easier, for example in the case of requests for such care from persons residing illegally.⁸⁶ Guarantees of unemployment benefits have been offered to persons working in the drama and film industry etc.⁸⁷ The specific measures cannot be presented in full as further legislation is being adopted on an ongoing basis.

5. Outlook

The COVID-19 epidemic presents 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.⁸⁸ The extension, increase and prolongation of social benefits place 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 work⁸⁹ alone at the beginning of the first lockdown. Regarding the second lockdown, the government envisages a total cost of up to 15 billion euros per month in order to support the economy: 7 billion for short-time work, 6 billion for the solidarity fund, 1 billion for social security contributions and 1 billion for rents.⁹⁰ The desired preservation of social protection has led to the establishment of a solidarity fund using the method of social compensation⁹¹.

Even if other forms of solidarity play a role in overcoming the crisis, national solidarity in France is clearly in the foreground. However, the rising financial pressure has led the government to privilege the economic reconstruction of the country. Except for the short-time work scheme, which will undergo reforms with long-term effects, 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 protecting 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 cer-

86 Art. 1, III, [Ordonnance n° 2020-312](#) du 25 mars 2020 relative à la prolongation de droits sociaux.

87 [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.

88 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.

89 UNÉDIC, Continuité et maîtrise du pilotage de l'Assurance chômage, 26 March 2020.

90 See the press conference held by the Prime Minister on 29 October (available [here](#)).

91 Cf. *Knetsch*, Haftungsrecht und Entschädigungsfonds, Mohr Siebeck, Tübingen, 2012, pp. 46 seq., 144.

The Temporary Return of National Solidarity in France

tainly 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 is not just temporary, especially when the pandemic is regaining force, endangering therefore uncountable livelihoods once more.

VI. Italy: Lost in the Jungle of Social Shock Absorbers and Fragmented Systems

1. Introduction

Italy was the first European country to be seriously affected by the corona pandemic. Already 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) and later extended.¹ More than 27,900 people had died with or from COVID-19 as of 30 April 2020.²

Since the end of February 2020, the Italian government has issued a whole set of decree laws³ as well as an abundant number of implementing decrees⁴ and other regulations to gain control over the spread of the virus.⁵ The massive restrictions on public life with closure of business activities and social distancing were initially limited to a few “red zones” in Lombardy and Veneto, based on the first Corona Decree Law No. 6 of 23 February 2020, converted into Law No. 13 of 5 March 2020⁶. It served as a model for a series of decrees that subsequently authorised the government to gradually expand

1 The first extension period lasted until 15 October 2020, subsequently protracted until 31 January 2021, Decree Law (Decreto-legge = D.L.) No. 125 of 7 October 2020 (Gazzetta Ufficiale = GU No. 248 of 7.10.2020).

2 The death rate increased to 36,474 by 18 October 2020 (<https://coronavirus.jhu.edu/region/italy>).

3 A decree law is a decree having 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.

4 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.

5 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.

6 [D.L. 23 febbraio 2020, n. 6](#), converted into Law No. 13 of 5 March 2020 with amendments (GU No. 61 of 9.03.2020). The closure of any activity except essential services (including food, agriculture, newsagents, veterinary, pharmacy and transportation) was mandated by DPCM of 1 March 2020. Subsequent decree laws and DPCMs updated and adjusted the measures to contain the pandemic over time, in particular at the onset of the “second wave”, cf. decreto-legge [7 ottobre 2020, n. 125](#), recante «Misure urgenti connesse con la proroga della dichiarazione dello stato di emergenza epidemiologica da COVID-19 e per la continuita' operativa del sistema di allerta COVID, nonche' per l'attuazione della direttiva (UE) 2020/739 del 3 giugno 2020»; DPCM of 18 October 2020, DPCM of 24 October 2020.

the measures adopted throughout the national territory, extending their scope and coverage. One of the earliest measures adopted to contain the pandemic was the closure of all day-care centres, schools and universities, as mandated by DPCM of 4 March 2020, later followed by a lockdown of social and economic life throughout the country.⁷ The unprecedented nationwide shutdown of all non-essential economic and other activities was adopted by DPCM of 22 March 2020⁸, and was extended several times, until 3 May 2020⁹. Not even in times of war had there been such strict curfews and such drastic restrictions on the economy.

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, 60% of industrial enterprises had come to a standstill and every second enterprise (a total of 2.2 million companies) was blocked.¹⁰ Many citizens literally ran out of money due to lack of income, especially in the poor regions of Southern Italy.¹¹ The travel and tourism sector has been affected particularly hard.¹² The economic shock hit a country that had not yet recovered from the preceding recessions of 2009 and 2011, and that, moreover, suffered from major inequalities, regional disparities and fragmentation of the labour market. The dire situation before the pandemic is linked to long-term problems: The employment rate in the last quarter of 2019 stood at only 59.2%¹³, well below the EU average; the share of self-employed persons is still comparatively high at about 22%, precarious employment relationships due to involuntary part-time work and fixed-term contracts (often with very short employment periods¹⁴) have increased.¹⁵ While the unemployment rate had fallen to just below 10% at the beginning of 2020¹⁶, the average duration of unemployment had al-

7 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 “agile working”, paid rest periods and holiday leave.

8 The DPCM names the economic sectors that are allowed to continue their activities on the grounds that they are indispensable for the supply of essential goods and services (health, agriculture, food).

9 Cf. [DPCM of 26 April 2020](#), which, during “Phase 2” from 4 May 2020, envisaged a gradual relaxation of the restrictions on the personal freedom of movement and the resumption of production or operations for various sectors affected by the forced closure.

10 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.

11 As *La Repubblica* reported on 23 April 2020, 10 million citizens are only a small step away from absolute poverty.

12 The travel industry generates 13.2% of national product and employs 15% of the workforce.

13 68.3% for men, 50.1% for women, cf. Istat, Mercato del Lavoro, IV trimestre 2019, [statistiche flash](#), 12 March 2020.

14 About half of those workers have a temporary contract of less than six months, and probability of transition into a permanent position has been declining.

15 For labour market data prior to the pandemic cf. European Commission, Commission Staff Working Document, Country Report Italy 2020, Brussels, 26 February 2020 SWD(2020) 511 final, p. 36 et seq.; Istat, [Il Mercato del Lavoro 2019](#). Una lettura integrata, Rome 2020.

16 Men: 8.7%; women: 11.5%; the regional peak was highest in the South with an average rate of 17.4%.

ready been at 27 months before the corona crisis. The workforce encompasses 23.3 million workers, including 5.286 million self-employed workers (21.7%) of which 3.655 million are solo self-employed without any employee. During the first semester of 2020, the employment rate dropped to 57.6%, while the rise in unemployment affected mainly workers with fixed-term contracts and the self-employed.¹⁷ The share of the working poor has been stagnating at a high level.¹⁸ Moreover, informal undeclared employment in the shadow economy has been estimated to account for 12.1% of GDP in 2017, involving about 3.7 million individuals.¹⁹

Over the years, Italy has collected vast experience with wage guarantee schemes to keep companies alive in protracted crisis situations. In the wake of the 2008 global financial crisis, Italy adopted fundamental labour market reforms aimed at overcoming inequalities in the traditional wage guarantee system (known as *Cassa Integrazione Guadagni, CIG*) and at expanding protection of the unemployment insurance system to include some types of self-employment (coordinated continuous collaborators, co.co.co).²⁰ Nonetheless, fragmented social protection schemes remained in place in a segmented labour market.

To cushion the impact of the closure of many economic activities, provided for under DPCM of 9 March 2020 and later replicated in numerous decrees, the government adopted a first “economic package” with support measures totalling EUR 25 billion under Decree Law No. 18 of 17 March 2020, (so-called *Cura Italia* Decree), converted

17 Istat, Mercato del Lavoro. II trimestre 2020, [statistiche flash](#), 11.9.2020.

18 On the causes and characteristics of precarious work in Italy see *Barbieri*, Il lavoro povero in Italia: determinanti strutturali e politiche di contrasto, in: *Lavoro e Diritto*, 1/2019, pp.5-27; the entire issue is dedicated to the topic of in-work poverty (“La povertà nonostante il lavoro”). Initial statistical analyses by the central research department of Italy's largest social security provider, the *Istituto Nazionale della Previdenza Sociale (INPS – Direzione Centrale Studi e Ricerche)* on the impact of the pandemic on workers' employment biographies and related parameters in the so-called “blocked” economic sectors support the assumption that these sectors are particularly affected by “in-work poverty”, cf. *Tridico*, L'impatto del COVID-19 sul sistema di sicurezza sociale e previdenza sociale, University of Venice Ca' Foscari, Economics Tuesday Talks, presentation of 28 April 2020.

19 *Melis*, Lavoro nero: 3.7 milioni senza tutela, in [Il Sole 24 Ore, 6 April 2020](#).

20 The labour market reforms started with Law No. 92/2012, later superseded by the enabling Law No. 183/2014 (known as Jobs Act) with implementing legislative decrees (*decreti legislativi*, D.lgs.) No. 22 of 4 March 2015 (concerning unemployment protection and promotion of employment) and No. 150 of 14 September 2015 (concerning activating labour market policies). The protection of the unemployed and underemployed has been improved in 2019 by the new universal means-tested minimum income scheme, known as the citizenship income (*Reddito di cittadinanza, RdC*), cf. Art. 1-13 of [D.L. No. 4 of 28 January 2019](#) concerning urgent provisions on the citizenship income and pensions (“*Disposizioni urgenti in materia di reddito di cittadinanza e di pensioni*”), converted with modifications into law No. 26 of 28 March 2019. For an assessment cf. *Bozzao*, Guaranteed minimum income in Italy: income support, work proactivity and social inclusion (Italian Decree Law No. 4/2019), *Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS)* 2/2019, pp. 205-219.

with amendments into Law No. 27/2020.²¹ The emergency package was intended to support businesses, as well as workers and families, based on wage guarantee provisions, parental leave, agile working, a temporary dismissal ban, and more detailed provisions to combat the spread of coronavirus in the workplace.²² The measures deal in particular with safeguarding work and employment, securing the liquidity of companies through the banking system or through delaying payments of tax and social security contributions, and securing the income of families.²³ For social benefits under D.L. 18/2020, the social security institution INPS had approved and, to a large extent, paid out benefits for 11.5 million people, totalling EUR 10.2 billion by 23 April 2020.²⁴

The first package of measures has been supplemented by Decree Law No. 23 of 8 April 2020 (so-called “Restore Liquidity” Decree), converted with amendments by Law No. 40 of 5 June 2020.²⁵ D.L. 23/2020 provided additional funding of EUR 400 billion, and granted financial resources to Italian companies in preparation of the gradual re-opening of business activities and phasing out of the lockdown during “phase 2” of the emergency, via a state guarantee of bank loans linked to commitments to enter into collective agreements, in view of maintaining occupational levels.

The economic challenges of phase 2, scheduled for 4 May 2020²⁶, have been addressed by further emergency legislation: Decree Law No. 34 of 19 May 2020 (so-called “Relaunch” Decree), converted with amendments into Law No. 77 of 17 July

-
- 21 [Decreto-Legge 17 March 2020, No. 18](#), 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” (*Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19. Proroga dei termini per l'adozione di decreti legislativi*), in force since 17 March 2020. After a positive vote of confidence on 23 April 2020, the D.L. was converted into a parliamentary law, with numerous amendments, on 24 April 2020, cf. Law No. 27 of 24 April 2020, (GU Serie Generale [No. 110 of 29.04.2020 Suppl. Ordinario No. 16](#)), in force since 30 April 2020.
 - 22 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 up-date of 16 June 2020; [Tiraboschi](#), Il caso italiano, in: [www.cielolaboral.com](#); detailed contributions in [Pileggi](#) (ed.), *Il Diritto del Lavoro dell'emergenza epidemiologica*, Lav. Prev. Oggi, Special Issue, 2020.
 - 23 Economic measures to secure the livelihood of families, workers and businesses had previously been taken in a similar way for the so-called red zones in Lombardy and Veneto, cf. [D.L. No. 9 of 2 March 2020](#) on “Urgent measures to provide support for families, workers and businesses in the context of the epidemiological emergency by COVID-19” (*Misure urgenti di sostegno per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19*).
 - 24 Cf. [Tridico](#), cit. (supra fn. 18).
 - 25 [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” (*Misure urgenti in materia di accesso al credito e di adempimenti fiscali per le imprese, di poteri speciali nei settori strategici, nonche' interventi in materia di salute e lavoro, di proroga di termini amministrativi e processuali*), in force since 9 April 2020, partially modified by D.L. No. 34 of 19 May 2020 (Relaunch Decree).
 - 26 The subsequent “phase 3” of the pandemic concerned the gradual re-opening of regional and national borders, starting on 3 June 2020.

2020²⁷, Decree Law No. 52 of 16 June 2020 (not converted),²⁸ and Decree Law No. 104 of 17 August 2020 (so-called August Decree)²⁹. The decree laws continued to provide economic and social measures for workers and businesses confronted with severe income disruptions, in most cases confirming or extending the scope of previous interventions. Modifications adopted concerned the provision of reduced or enlarged benefit rates for additional periods, or involved some fine-tuning as to eligibility criteria. The main objectives have been to strengthen existing social protection schemes, in particular those related to short-time work, to simplify access to unemployment benefits during the pandemic, and to introduce a new, temporary income support as special one-time payments (bonus) without means-testing for all those self-employed and atypical workers not covered by existing social insurance schemes for the loss of income. The Relaunch Decree introduced a new temporary minimum income measure (*Reddito di emergenza*) to compensate for income losses incurred during the pandemic for individuals not covered by any social protection scheme, e.g. in case of informal or very marginal non-standard work. Emergency legislation also replicated interventions used in the past to cope with particular labour market problems in Italy, such as the legalisation of irregular or undocumented migrant work in certain sectors, and interventions to promote employment, including exemptions or rebates in social security contributions for employers. Further adjustments were adopted by Decree law No. 137 of 28 October 2020 (so-called “Ristori” Decree) which sought to provide “refreshments” for the economic sectors affected directly or indirectly by the new series of restrictive measures to contain the second wave of the pandemic in October 2020.³⁰

-
- 27 D.L. 34/2020 on “Urgent measures regarding health, support for labour and the economy, as well as social policies in the context of the epidemiological emergency by COVID-19” (*Decreto-legge 19 maggio 2020, n. 34, recante misure urgenti in materia di salute, sostegno al lavoro e all'economia, nonche' di politiche sociali connesse all'emergenza epidemiologica da COVID-19*), converted with amendments into Act No. 77 of 17 July 2020, coordinated version published in [GU No. 180](#) of 18 July 2020, s.o. No. 25. The Relaunch Decree provided for additional funds amounting to EUR 155 billion, covering interventions from 18 May to 31 July 2020.
- 28 D.L. 52/2020, on “Further urgent measures regarding wage guarantee benefits, as well as the prolongation of deadlines concerning the emergency minimum income and the legalisation of undeclared work” (*Ulteriori misure urgenti in materia di trattamento di integrazione salariale, nonche' proroga di termini in materia di reddito di emergenza e di emersione di rapporti di lavoro*), in force 17 June 2020, [GU s.o. No. 151](#), 16.06.2020.
- 29 [D.L. 104/2020](#) on “Urgent measures to sustain and relaunch economy” (*Misure urgenti per il sostegno e il rilancio dell'economia*), in force since 15 August 2020, converted with amendments by Law [No. 126](#) of 13 October 2020, in force since 14 October 2020. For a consolidated version cf. [GU Serie Generale No. 253, 13.10.2020](#) – Suppl. Ordinario No. 37).
- 30 [D.L. 137/2020](#) on „Further urgent measures regarding health protection, support for workers and businesses, justice and safety, related to the epidemiological emergency from Covid-19” (*Ulteriori misure urgenti in materia di tutela della salute, sostegno ai lavoratori e alle imprese, giustizia e sicurezza, connesse all'emergenza epidemiologica da Covid-19*), GU No. 269, 28.10.2020, in force 29 October 2020. The *Ristori* Decree allocated EUR 2 billion (out of a total of EUR 5.4 billion) to restore economic activities.

2. Job Retention

During corona-related business closures, short-time working solutions and a temporary ban on redundancies were the preferred means used to prevent unemployment, protect existing employment contracts and stabilise the labour market.³¹ Other instruments for preserving jobs under labour law provisions included the use of “flexible working” (*lavoro agile* or smart working)³² whenever possible, but also the exhaustion of paid leave periods and holiday leave³³. 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 Existing Wage Guarantee Schemes

As in previous economic crises in Italy, the instrument of short-time work benefits through the “Ordinary Wage Guarantee” scheme (*Cassa Integrazione Guadagni Ordinaria, CIGO*)³⁴ for temporary suspensions of work or reductions of working time played a central role in 2020. It offers protection for existing employment during temporary productivity problems linked to an exogenous crisis. The *CIGO* scheme provides for 80% of previous earnings for hours not worked, with a fixed maximum set by the National Institute for Social Protection (INPS). Despite various efforts to extend the statutory wage guarantee scheme to smaller companies, access to such schemes has re-

31 During the mandatory lockdown, many workers and employers were unable to fulfill their contractual obligations due to external constraint. According to Italian labour law, employers were freed from the obligation to pay wages, if employees were not sick or in quarantine or if they could perform their work via agile working.

32 Art. 39, 75, 87 D.L. 18/2020. In practice, it is usually simple telework.

33 Under Italian labour law, employers cannot force their employees to take holidays for a certain period. The only exception to this rule is in the case of leave remaining from previous calendar years. Special rules in the context of short-time work arrangements may stipulate that the approval of short-time work is subject to the prior exhaustion of other flexibility instruments such as using up any remaining days of holiday leave. The emergency decrees do not give the employer any further options, but leave it at recommendations to use the instrument of residual leave if possible. Cf. Adapt, [Scheda No. 4](#), Congedi retribuiti e utilizzo delle ferie durante la crisi da COVID-19.

34 The *CIGO* is the main wage guarantee instrument that employers can activate to cushion temporary problems in production activity, normally available for a period of 13 weeks (extendable to a total of 52 weeks). The “Extraordinary Wage Guarantee” scheme (*Cassa Integrazione Guadagni Straordinaria, CIGS*) is a special wage guarantee scheme authorised by the Ministry of Labour and Social Policies. It is meant to cover very specific longer-term crisis situations related to restructuring processes in companies with more than 15 employees (or more than 50 employees in case of commercial activities) for a period varying between 12 to 24 months within a mobile five-year period (extendable to 36 months under certain circumstances). After the economic crisis of 2008, the coverage of wage guarantee schemes has been extended by creating a “Wage Guarantee Fund in Derogation” for special cases (*Cassa Integrazione in Deroga, CIGD*), and by contractual schemes. On the various forms and functions of wage guarantee schemes in Italy see *Cinelli*, *Diritto della previdenza sociale*, 15th edition 2020, p. 329 et seq.

mained extremely fragmented.³⁵ The pandemic thus highlighted pre-existing shortcomings of such fragmentation and underlined the urgent need of comprehensive reform in view of achieving more universal, encompassing social protection.³⁶

During the corona crisis, emergency legislation has significantly simplified the use of wage guarantee schemes, in particular by adopting the novel justification of “COVID-19 emergency” (*Emergenza COVID-19*).³⁷ The new “emergency” reason was initially introduced by D.L. 18/2020 and confirmed by subsequent decree laws. Thus employers who had to suspend or reduce their economic activities due to the corona crisis were permitted to activate the wage guarantee scheme³⁸ during the period starting 23 February 2020 to 31 August 2020 for an initial maximum of nine weeks,³⁹ subsequently increased in several steps to a total of 18 weeks covering a timeframe up to 31 October 2020. The August Decree added another 18 weeks available in two tranches of nine weeks each, to cover the period between 13 July and 31 December 2020 (Art. 1 D.L. 104/2020). Art. 12 Decree law No. 137/2020 granted 6 more weeks for employers

35 In addition to the traditional statutory wage guarantee schemes *CIGO* and *CIGS*, contractual wage guarantee instruments have been established through collective bargaining agreements concluded between social partners in various sectors not covered by statutory instruments. These instruments include so-called Bilateral Solidarity Funds (*Fondi di solidarietà bilaterali*) under art. 26 of D.Lgs. 148/2015, and so-called “Alternative Bilateral Solidarity Funds” which apply to the craft and temporary agency work sectors where such schemes had been established already before the 2015 reform. A third instrument which has been introduced in the wake of the global financial crisis of 2008 is the so-called “Wage Integration Fund” (*Fondo di integrazione salariale, FIS*) managed by the National Social Security Institute INPS for all those companies with an average of more than five employees which are not covered by any other wage guarantee scheme (*CIGO*, Bilateral Solidarity Funds or Alternative Bilateral Solidarity Funds). The *FIS* grants two different benefits, depending on the size of the company: an ordinary benefit (*assegno ordinario*) for employees working in a company with an average of more than 15 employees; and a solidarity benefit (*assegno di solidarietà*) for employees working in a company with an average of more than five employees (art. 30, 31 D.Lgs. 148/2015). On details regarding the various measures 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.

36 *Faioli*, La prospettiva del “more than just” per il sostegno al reddito durante e dopo la pandemia, *Rivista del Diritto della Sicurezza Sociale (RDSS)* 2/2020, pp. 409-420; *Renga*, La sicurezza sociale alla prova di *stress*, *RDSS* 2/2020, pp. 319-334; *Cinelli*, “Il welfare al tempo della pandemia”. Note a margine, pensando al “dopo”, *RDSS* 2/2020, pp. 301-317.

37 *Mesiti*, La tutela previdenziale temporanea speciale dei lavoratori nell’emergenza Covid-19, in: *Pileggi* (ed.) cit. (supra fn. 22), 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.

38 The “COVID-19” benefits qualification applies to employers who are covered by the ordinary Wage Guarantee Fund, by a Bilateral Solidarity Fund or by the *Fondo di Integrazione Salariale (FIS)*, art. 19 paras. 1, 6, 7 D.L. 18/2020 as amended by the conversion law. In this case, access to the ordinary wage compensation benefit from the *FIS* is exceptionally also granted to employees whose employer employs on average more than five (instead of more than 15) employees, art. 19 para. 5 D.L. 18/2020. Upon request of the employer, INPS can pay the benefit directly in this case.

39 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.

who suffered disruptions in their business activities related to the pandemic, to be used between mid-november 2020 and end of January 2021.

Special emergency provisions relaxed access conditions to the wage guarantee schemes: Employers did not have to provide any evidence of the temporary character of the crisis nor the absence of fault. As an important feature underlining the increased responsibility assumed by the state throughout the pandemic, the government exempted employers which activated the wage guarantee scheme from the additional social security contribution normally due for the financing of the instrument. Other derogations under the COVID-19 rules concern the so-called 1/3-limit for loss of earnings due to short-time work (which allowed short-time work with zero working hours), or the relaxed time limits for activating the *CIGO*. Access to short-time work benefits is further facilitated as the requirement of an effective prior employment period of at least 90 days for employees and the activation conditionalities for benefit recipients have been suspended. Furthermore, procedural provisions related to the involvement of trade unions have been relaxed: consultation and information procedures are to be carried out online and within a shortened three-day timeframe. Simplified access to benefits is also supported by provisions of the Relaunch Decree according to which employers may request INPS to grant direct payments to employees in short-time work.⁴⁰

In addition, the umbrella of the ordinary wage guarantee scheme *CIGO* based on the new “COVID-19” pandemic justification has been expanded to companies for which the extraordinary wage guarantee scheme (*CIGS*) had been activated (art. 20 D.L. 18/2020) and which would be excluded from accessing the *CIGO* umbrella under normal conditions. Likewise, access barriers for employers who fall under the *FIS* wage guarantee scheme have been removed during the pandemic: They were allowed to switch to the ordinary benefit (*assegno ordinario*) scheme, even if solidarity benefits (*assegni di solidarietà*) had already been paid for their employees (art. 21 D.L. 18/2020). 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.⁴¹

As to the level of benefits, no special rules have yet been adopted during the pandemic. According to the general provisions, the initial replacement rate of the wage supplement scheme amounts to 80% of total gross wages for hours not worked, with an upper limit depending on total wages.⁴² The scheme does not provide for any minimum level of the benefit. Benefits used under the corona-related short-time work scheme are

40 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.

41 Cf. art. 93 D.L. 34/2020 (Relaunch Decree) and art. 8 D.L. 104/2020 (August Decree).

42 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.

not counted towards the statutory maximum duration for regular benefits under the various wage guarantee schemes (*CIG, FIS* or the Bilateral Solidarity Funds).

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, at least until summer 2020.⁴³ The extension in the maximum duration has been accompanied by various modifications with different objectives. Some modifications were aimed at extending coverage, for instance in favour of agricultural workers, by abolishing limits on access and use.⁴⁴ But in some cases, access conditions were adjusted, in particular under the August Decree No. 104/2020, in order to better target the benefits to those businesses most affected by the economic consequences of the pandemic. Accordingly, some mandatory social security contributions to the wage guarantee scheme have been re-introduced for employers resorting to the additional 18 weeks of short-time work after summer 2020. The contributions are due for the second half of the additional 18 weeks if the loss in turnover has been less than 20%.⁴⁵ The pandemic-related contribution rates vary according to the revenue losses incurred, but the additional financial costs for businesses are lower than social security contributions under normal conditions, suggesting that the government still assumes increased responsibility for keeping businesses alive during the pandemic.

In order to support rapid access to wage guarantee benefits during the corona crisis, an agreement was signed on 30 March 2020 between the government, the social partners and the Italian Banking Association ABI. According to the agreement which will be valid until 31 December 2020, banks may anticipate the payments of wage guarantee benefits up to EUR 1,400. In reality, the promise of rapid assistance was often not kept, partly because the social administrations had difficulties to tackle the sheer amount of applications, partly because applicants themselves committed errors in the application procedure.⁴⁶ Another critical aspect has been identified in a lack of priorities in times

43 Conversely, a comprehensive period of up to three months had been provided for employers whose business premises are located within the red zones according to DPCM of 1 March 2020, art. 19 para. 10-*bis* of D.L. 18/2020 as amended by the conversion law.

44 For the adjustment provisions regarding the special scheme for agricultural workers CISOA (*Cassa Integrazione Salariale Operai dell'Agricoltura*), cf. art. 19 para. 3-*bis* of D.L. 18/2020, as amended by art. 68 para. 1, litt. e) of D.L. 34/2020; art. 1 para. 8 of D.L. 104/2020.

45 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.

46 A total of 7.35 million eligible workers were registered with the INPS for wage guarantee benefits as of 23 April 2020, cf. *Tridico* cit. (supra fn. 18). 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 represents 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 September 2020.

of limited financial resources. Many employers had applied for short-time work benefits although they had not suffered any loss in turnover.⁴⁷

b) Re-introduction of the Wage Guarantee Scheme in Special Cases

As part of the Corona emergency measures Italy also re-introduced the wage guarantee scheme in special cases (*Cassa Integrazione Guadagni in Deroga, CIGD*) which had been used after the global financial crisis of 2008. The instrument is intended to extend coverage to small companies in the private sector with less than 5 employees not covered by any other wage guarantee scheme.⁴⁸ Private households as employers had been explicitly excluded,⁴⁹ whereas access to the *CIGD* instrument for a period of up to 9 weeks in the timeframe between 23 February and 21 October 2020 was granted to professional athletes who are employed by a sport association and covered by the Statutory Pension Fund for Professional Athletes.⁵⁰ Entitlement to wage guarantee benefits for these athletes requires that gross earnings during the sportive season 2019/20 did not exceed the sum of EUR 50,000. The scheme is complex as it involves many actors, including the Regions and Autonomous Provinces.

While access rules differ to some extent from those for the *CIGO* scheme, the maximum duration rules replicated those for the *CIGO* scheme during the pandemic. In this respect, the corona pandemic continues the previous trend towards (temporary) universalisation of the protection by wage guarantee schemes while upholding a fragmentation of rules.⁵¹ The complexity of this special scheme made it difficult to disburse financial aid quickly.

c) Relaxed Renewal of Fixed-Term Contracts

Under COVID-19 rules some restrictions related to the renewal or extension of fixed-term contracts have been waived. In particular, companies that had used wage guarantee benefits were permitted to renew or extend the duration of fixed-term em-

47 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.

48 Art. 22 D.L. 18/2020. By 23 April 2020, INPS had registered 4.3 million beneficiaries entitled for wage guarantee benefits in special cases. The benefits are limited by the resources allocated to each Region or Autonomous Province (up to a total of EUR 3,293.2 million).

49 However, de facto, persons with seasonal employment contracts in tourism or agriculture as well as persons in training or internship (*tirocinanti*) are not covered by wage compensation schemes.

50 Introduced by art. 2 para. 2 D.L. 104/2020, modifying Art. 22, para. 1-*bis* D.L. 18/20. In case of sport associations located in one of the early hot spot regions (Lombardy, Veneto, Emilia Romagna) the maximum duration of *CIGD* benefits extends to 13 instead of nine weeks.

51 It is unclear whether the crisis regulation for *CIGD* cases also implies the temporary abolition of other labour law conditions (such as a 12-month period of pre-employment or the prior exhaustion of holiday and exemption entitlements).

ployment contracts already in place, even without any objective reason generally required by law.⁵² In addition, any company that wished to renew or extend fixed-term contracts in place on 23 February 2020 was allowed to do so without objective justifying reason. Such measures have been confirmed under subsequent decree laws.⁵³

d) Temporary Ban on Dismissal

From the date of entry into force of the *Cura Italia* Decree (17 March 2020), collective redundancies and individual dismissals for an important objective reason were prohibited for 60 days. Any collective redundancy procedures already in progress and initiated after 23 February 2020 were mandatorily suspended.⁵⁴ Accordingly, those who wished to close their company may not give notice of dismissal but had to look for alternatives (namely wage guarantee schemes). Only dismissals based on misconduct were still possible.⁵⁵ This very strict ban was highly controversial, and some of the modifications linked to subsequent extensions entailed substantial uncertainties. Social policy experts feared that, once the measure expired, a wave of redundancies of “apocalyptic proportions” could be the consequence. The extent to which the government can prevent this, for example by making the granting of bank loans to companies conditional on the companies taking care of employment levels in consultation with the trade unions, remains completely open at present.⁵⁶ So far, the ban on dismissals has been replicated several times by subsequent decree laws, but the August Decree started to introduce exceptions and modifications. According to the revised provisions the maximum duration of the ban became blurred and turned into a mobile ban depending on the use or non-use of wage guarantee schemes or of exemptions from social security contributions.⁵⁷

52 Art. 19-*bis* D.L. 18/2020 as amended by the conversion law.

53 Art. 93 para. 1 D.L. 34/2020 (Relaunch Decree) provided for a voluntary extension, Art. 93 para. 1-*bis* D.L. 34/2020 as amended by conversion law No. 77/2020 introduced an automatic statutory extension for periods of suspension during the pandemic, subsequently abolished by Art. 8 D.L. 104/2020. The voluntary extension is possible until 31 December 2020 for a maximum duration of 12 months, subject to the general maximum limit of 24 months for fixed-term contracts under Italian labour law.

54 *Biasi*, Covid-19 and labour law in Italy, *European Labour Law Journal* 2020, vol. 11(3), 306-309 (309).

55 Art. 46 D.L. 18/2020. The ban does not apply to employees during the probationary period without protection against dismissal.

56 Such a requirement is provided for by art. 1 para. 2, litt. 1) of D.L. 23/2020 (Restore Liquidity Decree). Cf. on the issue of protection against dismissal *Pileggi*, *Una riflessione sul diritto del lavoro alla prova dell'emergenza epidemiologica*, in: *Pileggi* (ed.) cit. (supra fn. 22), pp. 3-5.

57 The Relaunch Decree Law extended the temporary dismissal ban until 17 August 2020; more recently 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).

e) New Paid and Unpaid Leave Provisions and Baby-Sitting Bonus as Alternative

The closure of schools and child-care facilities from 5 March 2020 up to the beginning of the school year 2020/21 particularly affected employees and self-employed workers who care for children. The government created several emergency leave provisions: An ad hoc special parental leave (*congedo parentale*) covers parents of children up to the age of 12 (and disabled children without age limit) with particular care needs due to the suspension of all educational, didactic and care services, including specialised care services for severely disabled children. The parental leave is protected by a social security benefit and addresses employees in the private sector, self-employed and atypical workers registered with the separate social security *scheme (gestione separata)* at INPS, and traditional self-employed workers registered with INPS social security schemes. The duration of the special parental leave, initially set for up to 15 days for both parents, was subsequently increased to a total of 30 days, to be used between 5 March and 31 August 2020.⁵⁸ The special benefit provided by the social insurance institution INPS amounts to 50% of the usual monthly earnings or income and is thus higher than during the regular parental leave periods (where it is only 30%).⁵⁹ Both parents are entitled to paid leave, but not simultaneously.⁶⁰ Parents of older children aged between 12 and 16 years were entitled to additional parental leave for the total period of school closure and suspension of educational services, albeit without income replacement benefits and without pension rights acknowledged for this period. Both, 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. For both age groups, parents can also take advantage of this leave on a flexible hourly basis.⁶¹

If parents work in strategic professions and need to be present at the workplace, they can instead receive a bonus amounting to EUR 600 later extended to a maximum of EUR 1,200 to cover the costs for baby-sitting services used since 5 March 2020. Parents working in the health, rescue and defence sectors were entitled to EUR 1,000, subsequently increased to EUR 2,000. In contrast to the additional parental leave entitlement,

58 Art. 23 D.L. 18/2020; art. 72 D.L. 34/2020. In the case of children with a confirmed serious disability, the age limit does not apply. In addition to employees in the private sector, this also covers self-employed persons insured in the special administrations of INPS. An analogous exemption for the public sector is provided for under art. 25 D.L. 18/2020.

59 The benefit for atypical and self-employed workers exclusively covered by the *gestione separata* at INPS is 50% of 1/365 of earnings used to determine maternity benefits for these workers. In case of parents covered by one of the three traditional special pension schemes for the self-employed, the benefit equals 50% of the daily conventional earnings established for each typology of self-employment.

60 The benefit is not accessible if the other parent receives wage guarantee benefits (or unemployment benefits) or is unemployed.

61 This flexibility has been introduced by the Relaunch Decree Law, as amended by Law No. 77/2020.

also self-employed persons who are not insured with INPS (i.e. also the liberal professions) were entitled to the baby-sitting bonus.⁶²

Employees and self-employed who are normally taking care of a severely disabled family member were entitled to get 12 days of paid care leave (art. 24 D.L. 18/2020) in addition to the paid leave of three days per month under the Disability Law.⁶³ The additional paid leave had to be used in March and April 2020. The paid leave for family carers was subsequently extended for another 12 days to be used in the months of May and June 2020 (art. 73 D.L. 34/2020). Entitlement to the additional care leave periods 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 care leave can be taken flexibly also on an hourly basis.⁶⁴ The wage replacement benefit is equivalent to 100% of the effective daily or hourly earnings.

Since the re-opening of schools in September 2020, a new special parental leave has been introduced for parents of children up to the age of 14 under quarantine. The leave entitlement is available up to 31 December 2020 and can be added to parental leave on other grounds. A tax-financed benefit of 50% of earnings is granted. Entitlement requires that the quarantine was imposed because of contacts in school or during specified didactic activities (music and language courses), that the parent cannot resort to mobile working and that the other parent is not in a short-time working arrangement or otherwise available.⁶⁵

f) Sickness Benefit in Case of Quarantine

Workers who are infected with the COVID-19 virus are entitled to sick pay or sickness cash benefits. The same entitlement has been extended to all workers that have been ordered to stay in 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 is treated as a sickness period.⁶⁶ 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. For instance, employees are entitled to continued payment of wages by the employer, while workers can claim sickness benefits from the INPS. The traditional self-employed

62 Art. 23 para. 8 D.L. 18/2020; art. 25 para. 3 D.L. 18/2020. The baby-sitting bonus can be used for summer camps and for care provided by grandparents.

63 Art. 33 para. 3 Law No. 104 of 5 February 1992 (*Legge-quadro per l'assistenza, l'integrazione sociale e i diritti delle persone handicappate*).

64 Art. 24 D.L. 18/2020; INPS circular No. 45/2020.

65 Art. 5 D.L. No. 111 of 8 September 2020, on "Urgent provisions to cope with immediate financial needs and to provide support for starting the school year, in the context of the epidemiological emergency by COVID-19" (*Disposizioni urgenti per far fronte a indifferibili esigenze finanziarie e di sostegno per l'avvio dell'anno scolastico, connesse all'emergenza epidemiologica da COVID-19*), as amended by art. 21-*bis* of D.L. 104/2020, modified by Law No. 126 of 13 October 2020.

66 Art. 26 D.L. 18/2020.

workers who are registered with the corresponding special pension schemes of INPS are not covered by social insurance for sickness cash benefits. However, self-employed professionals and collaborators registered with the *gestione separata* at INPS are entitled to sickness cash benefits in case of hospital stay and sick leave.⁶⁷ 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.⁶⁸ Contrary to the usual rule, the state bears the costs for sick pay or sickness benefits instead of the employer or the INPS.

Dependent workers with special health risks due to a severe disability or severe medical conditions (e.g. treatment with immunosuppressive drugs and similar conditions of increased fragility) were entitled to a special absence from work which was considered as equivalent to a hospital stay.⁶⁹ This provision allowed for extended sick leave with corresponding sickness benefits up to 15 October 2020.⁷⁰

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 workforces 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 a 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, which often have little or no financial reserves. Instruments adopted for this purpose include non-repayable subsidies, provisions for access to credit through the guarantee fund for SME, 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

67 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. Mandatory quarantine is not to be taken into account for the maximum duration.

68 For self-employed professionals the daily rate of sickness cash benefits depends on the number of previous contribution periods and amounts to EUR 11.29 if 3 to 4 monthly contributions have been paid in the 12 months prior to sick leave; EUR 16.94 in case of contributions for 5 to 8 months, and EUR 22.58 in case of contributions for 9 to 12 months.

69 Art. 26 para. 2 D.L. 18/2020, art. 87 para. 1 D.L. 18/2020.

70 Art. 26 para. 2 D.L. 18/2020, as amended by D.L. 104/2020 and conversion law No. 126/2020. 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 as of 16 October 2020.

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), *Tiraboschi*, cit. (supra fn. 22), p. 2.

of labour market policies, with particular emphasis since the relaunch phase, the creation of new employment opportunities is incentivised and rewarded by a temporary exemption from social security contributions in case of any new permanent employment contract⁷², and by a temporary reduction of social contributions in case of new fixed-term contracts for seasonal workers in the tourism and spa sectors.⁷³ 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*).⁷⁴ Many of the government measures are supplemented by regional legal interventions.⁷⁵

a) Compensation for Self-Employed Persons

Emergency provisions introduced a new flat-rate benefit (*indennità*) of EUR 600 for workers not covered by any wage guarantee scheme, in particular self-employed workers, to compensate for loss of earnings. Initially created as a one-off payment limited to the month of March 2020,⁷⁶ the emergency support was extended in time for single additional months, e.g. for April, May and/or June 2020, while coverage was expanded to some employment sectors previously excluded.⁷⁷ At the same time, the monthly amount has been differentiated across different sectors, varying between EUR 600 and 1,000 per month.⁷⁸ Along with the short-time work benefit, this is one of the most important measures in the fragmented system of benefits for protecting livelihoods during the corona crisis.⁷⁹ It is paid by INPS and is in most cases significantly lower than the

72 Art. 6 D.L. 104/2020 stipulates total exemptions for 6 months (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.

73 Art. 7 D.L. 104/2020 provides for a temporary exemption of three months as of 15 August 2020.

74 Art. 27 D.L. 104/2020 provides for a 30% rebate on social security contributions in the period of October to December 2020.

75 Cf. compilation of regional measures by ANFIA (*Associazione Nazionale Filiera Industria*), Emergenza COVID-19. Misure regionali a sostegno delle imprese, Bollettino Adapt, 6 April 2020.

76 Art. 27 D.L. 18/2020.

77 Art. 84 para. 8 D.L. 34/2020 provided for an emergency support of EUR 600 for April and May 2020 respectively, in favour of precarious groups of self-employed who had ceased, reduced or suspended their activity as a consequence of the pandemic, including self-employed workers without a VAT number who had been engaged with occasional contracts pursuant to art. 2222 civil code in the period between January 2019 and 23 February 2020, and had paid social contributions to the *gestione separata* for self-employed workers for at least one month for such contracts during this period; door-to-door salespersons with income of more than EUR 5,000 in 2019 from such activities, if they were holding a VAT number and affiliated exclusively to the *gestione separata* for self-employed workers. Art. 84 para. 10 D.L. 34/2020 extended protection to self-employed stage artists and other self-employed workers covered by the special pension fund for this sector under the condition that they had paid contributions for at least 7 days in 2019 and had earned not more than EUR 35,000 in 2019. This provision is more favourable than for other types of intermittent work.

78 Art. 98 D.L. 34/2020 (Relaunch Decree).

79 Cf. tabular overview with eleven classifications in Adapt, Scheda No. 5, Misure di sostegno al reddito durante la crisi da COVID-19, p. 8.

maximum rate of the short-time working benefit. It covers self-employed persons (*lavoratori autonomi*) registered with one of the three traditional special schemes for self-employed persons (craftsmen, traders, farmers)⁸⁰ and distinct groups registered exclusively in the *gestione separata*⁸¹ at INPS, namely the self-employed with a VAT number (*partita IVA*)⁸², those without a VAT number engaged in occasional activities and without any contract in place on 15 August 2020⁸³ and the coordinated and continuously employed freelancers (*co.co.co.*), including the self-employed engaged in activities for various sport associations⁸⁴, extended to self-employed collaborators engaged with the Olympic Committees, and to self-employed artists covered by the special pension scheme for the performing artists and show-business people.⁸⁵ The benefit cannot be cumulated with a statutory pension or with the general minimum income benefit (*RdC*).⁸⁶ A special regulation applies to those self-employed persons who were resident or working in one of the northern Italian municipalities on 23 February 2020 which were completely sealed off as early hotspots of the pandemic. Depending on how long they had to stop their business activities, they became entitled to a tax-free compensatory benefit of EUR 500 for up to three months.⁸⁷

A novelty has been the extension of the one-off emergency support of EUR 600 for the month of April 2020 to entrepreneurs and freelancers covered by one of the autonomous mandatory pension funds for the liberal professions, established under private law. These professionals became entitled to an increased amount of EUR 1,000 for May 2020⁸⁸. The entitlement has been limited to those freelancers and professionals whose income did not exceed EUR 35,000 in the 2018 tax year and whose professional

80 Art. 28 D.L. 18/2020. Coverage extends to professional agricultural entrepreneurs registered with the scheme for farmers, and helping family members affiliated with the respective schemes.

81 This special scheme was introduced by art. 2 para. 26 of Pension Reform Law No. 335 of 8 August 1995.

82 Art. 9 para. 2, litt. d) of D.L. 104/2020 included explicitly self-employed persons holding a VAT number and working as door-to-door sellers whose annual income in 2019 exceeded EUR 5,000.

83 Art. 9 para. 2 litt. c) of D.L. 104/2020, extended by art. 15 D.L. 137/2020.

84 Art. 96 D.L. 18/2020 (for March 2020), art. 98 D.L. 34/2020 (April and May 2020); art. 12 D.L. 104/2020 (June 2020); art. 17 D.L. 137/2020 (November 2020, increased to EUR 800).

85 Art. 38 D.L. 18/2020; art. 84 para. 10 D.L. 34/2020; art. 9 para. 4 D.L. 104/2020. Entitlement was initially restricted to self-employed artists affiliated to the special pension fund for artists and assimilated workers (Ex-ENPALS) who had paid a minimum of 30 daily social insurance contributions in 2019 and whose income did not exceed EUR 50,000. The Relaunch Decree (Art. 84 para. 10 D.L. 34/2020) extended protection to more occasional self-employment, as entitlement was extended to those who had paid at least contributions for 7 days in 2019 and had an income not exceeding EUR 35,000 in 2019; the same conditions applied for the May benefit, Art. 9 para. 4 D.L. 104/2020.

86 Art. 27, 28 D.L. 18/2020. The benefit can be combined with a survivor's pension, cf. INPS circular No. 49 of 30 March 2020. Until 17 April 2020 almost 4 million applications were made under these regulations.

87 Art. 44-*bis* D.L. 18/2020, as amended by conversion law No. 27/2020. The municipalities involved are listed in DPCM of 1 March 2020 (Annex 1). The entitlement had originally been established through art. 16 D.L. 9/2020.

88 Art. 13 D.L. 104/2020.

activities suffered disruptions due to corona-related restrictions, as well as to freelancers with an income of between EUR 35,000 and EUR 50,000 in the 2018 tax year who have given up, reduced or suspended their self-employed or freelance activities due to corona. For this group, the compensation is subject to stricter conditions than for other self-employed persons, and it is financed from a special fund (*Fondo per il reddito di ultima istanza*) to cover COVID-19-related income losses.⁸⁹ Unlike for most other self-employed individuals, a similar compensation (under the name of *contributo economico mensile*) of up to EUR 600 has been set up for a longer initial period of up to three months in favour of honorary judges if they are not deployed due to the suspension of all deferrable court proceedings as stipulated since 9 March 2020.⁹⁰

b) 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.⁹¹ The deadlines for this have been postponed several times, using respite periods with instalments. 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.⁹² Originally, the temporary deferral of advance tax payments and payments for pension and welfare contributions as well as insurance premiums for statutory accident insurance applied only to the tourism industry. Decree Law 23/2020 extended this relief to the areas of sport, art and culture, transport, the catering industry, education and care. In addition, special tax exemptions have been adopted during the pandemic, including the regional tax for industrial activities IRAP, the real estate municipal tax IMU, and other minor charges like the stamp duty.⁹³ 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

89 Art. 44 D.L. 18/2020 in connection with the Interministerial Decree of 28 March 2020. An activity is considered to have been terminated in cases where the VAT number (*partita IVA*) was deregistered between 23 February and 31 March 2020. A reduction or suspension of activity requires that the income in the first quarter of 2020 has decreased by at least 33% compared to the first quarter of 2019. The law also requires that the contribution obligations for 2019 be fulfilled in the respective pension fund. Cumulation with the analogous emergency aid from D.L. 18/2020 or with the *RdC* minimum income benefit under D.L. 4/2019 as amended by Law 26/2019 is excluded.

90 Art. 119 D.L. 18/2020.

91 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.

92 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.

93 Art. 24 D.L. 34/2020 (IRAP); art. 9 D.L. 137/2020 (IMU); a great variety of support measures, often addressing specific economic sectors can be found in art. 25 to 52-ter D.L. 34/2020.

months (art. 13 D.L. 137/2020). The *Ristori* Decree also introduced additional contribution exemptions under particular circumstances.⁹⁴

c) 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 (so far up to December 2020)⁹⁵ and tax credits for special corona disinfection measures.⁹⁶ 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.

Certain sectors, such as the agricultural and fisheries sectors, may receive advance subsidies from the special funds of the European agricultural policy, with advances being increased from 50% to 70% (art. 78 D.L. 18/2020). In addition, aid may be granted for access to bank loans. A key instrument is state guarantees (sureties) for business loans totalling around EUR 200 billion and other state guarantees totalling EUR 200 billion for exports and to top up the guarantee fund for SMEs. Depending on the size or turnover of the business, the guarantee covers between 100% and 70% of the amount financed.⁹⁷ 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” (art. 1 para. 2, litt. 1) of D.L. 23/2020). 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).

94 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.

95 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.

96 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.

97 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.

4. Social Protection

In addition to the abovementioned benefits (in particular the short-time working benefits and compensation for self-employed workers) several interventions granted economic support for different groups of atypical workers and for private households facing losses of income from work or excluded from social benefits.⁹⁸ Access conditions to existing social benefits linked to activation measures have been relaxed.

a) Temporary Income Support for Atypical Workers

Flat-rate compensation payments for losses in income (*indennità*) without means-testing are also provided for various groups of atypical workers who, due to the specific and mostly discontinuous nature of their employment, do not have access to wage guarantee schemes. As in the case of self-employed workers, the emergency support of EUR 600 initially introduced for the month of March 2020 has been extended to single additional months, but with amounts varying between EUR 500, 600 or 1,000. Coverage of this payment started to encompass employees with seasonal employment contracts in the tourism industry and in thermal spas whose employment contract was involuntarily terminated between 1 January 2019 and 17 March 2020, who do not receive a pension from their own insurance and who are without employment as per key date of 17 March 2020.⁹⁹ A second category consisted of agricultural workers with a fixed-term employment contract who worked in agriculture for at least 50 days in 2019.¹⁰⁰ The third category is that of workers registered with the *Fondo pensioni lavoratori dello spettacolo* (Stage Artists' Pension Fund) who paid at least 30 daily contributions in 2019 and did not receive income in excess of EUR 50,000 from their work.¹⁰¹ In none of these cases may there be an employment on the key date of 17 March 2020. As in the case of the self-employed, the benefit is incompatible with a public pension based on personal entitlement or with the *RdC* benefit (*reddito di cittadinanza*).¹⁰² Access conditions for this temporary emergency benefit are more lenient as compared to the benefits provided by unemployment insurance and minimum income schemes, but in practice, the proce-

98 E.g. by means of 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). On access to the benefits of statutory accident insurance for people who have been proven to have contracted the COVID-19 virus while working, cf. art. 42 para. 2 D.L. 18/2020.

99 Art. 29 D.L. 18/2020.

100 Art. 30 D.L. 18/2020.

101 Art. 38 D.L. 18/2020. The emergency payment is available to all artists and assimilated workers covered by the special pension fund, encompassing forms of self-employment and dependent employment. Until 17 April 2020, the INPS recorded around 81,000 applications for benefits in this regard.

102 Art. 31 D.L. 18/2020, INPS circular No. 49 of 30 March 2020 (the benefit can be combined with a survivor's pension).

dures to pay out this new income support have been very complicated and time-consuming.

Subsequent legislation has extended personal coverage of this emergency benefit to previously excluded sectors or groups of atypical workers, with differentiated benefit amounts and other specific conditions. The Relaunch Decree thus extended coverage to domestic workers at a reduced rate of EUR 500 for April and May 2020 respectively (art. 90 D.L. 34/2020). In addition, the temporary measure was extended to on-call workers employed as seasonal workers in the tourism sector, to seasonal workers (including on-call workers) employed in sectors others than tourism and thermal spas, (with at least 30 working days between 1 January 2019 and 31 January 2020) and home sales representatives. The August Decree further expanded personal coverage to maritime workers who ceased, involuntarily, their labour contract between January 2019 and 17 March 2020. These workers were entitled to compensation benefits of EUR 600 for June and July 2020 respectively. The August Decree also introduced an increased benefit of EUR 1,000 for June 2020, in favour of various types of seasonal workers, including stage artists with short-term temporary agency employment.¹⁰³ As a new feature, frontier workers who had involuntarily ceased their activities as of 23 February 2020 and were excluded from wage guarantee schemes or unemployment benefits were to be covered by a similar type of compensation benefit.¹⁰⁴

b) Unemployment Benefits

The general unemployment insurance scheme (*Nuova Assicurazione Sociale per l'Impiego, NASpI*)¹⁰⁵, its special scheme for workers with a coordinated and continuous collaboration contract and project workers (*Disoccupazione per collaboratori, DIS-COLL*)¹⁰⁶ and the unemployment insurance for the agricultural sector¹⁰⁷ have been subject to only slight adjustments during the pandemic. Under normal conditions, the schemes provide income protection depending on the duration of employment covered by insurance contributions before the period of unemployment.¹⁰⁸ The *NASpI* benefit is

103 Art. 9 D.L. 104/2020; the increased payment for seasonal workers of the most affected sectors (tourism, thermal spas and stage artists) was further extended by art. 15 D.L. 137/2020.

104 Art. 103-bis D.L. 34/2020 as amended by conversion law No. 77/2020. Conditions for entitlement are defined by interministerial decree.

105 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*).

106 This special unemployment insurance covers freelance workers without a VAT number who are insured exclusively under the *gestione separata* at INPS, and holders of research grants.

107 D.L. 338/1989 as amended by Law No. 389/1989.

108 *NASpI* requires at least 13 weeks of contributions to unemployment insurance over a four-year reference period and effective employment of at least 30 days during the 12 months immediately preceding unemployment. The *DIS-COLL* benefits are subject to simplified conditions: entitlement requires only a minimum of one month of contributions to the insurance scheme in the period from 1 January of the calendar year prior to the year when the gainful activity terminated; alternatively,

granted for half of the period for which insurance contributions were paid in the four years before the onset of unemployment, resulting in a maximum duration of 24 months. The maximum duration of the *DIS-COLL* benefit is normally limited to six months.¹⁰⁹ Both benefits require a waiting period of 7 days which has not been suspended during the corona crisis. However, the maximum duration of unemployment benefits (*NASpI* and *DIS-COLL*) has been extended by two months.¹¹⁰ 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 an upper limit (2020: EUR 1,335 per month). The benefit is progressively reduced by 3% per month from the fourth month (91st day) onwards.¹¹¹ The rules on benefit reduction have been waived during the additional months granted during the pandemic.

The adjustments adopted due to corona also relaxed access conditions for unemployment benefits by suspending the conditionalities for labour market integration.¹¹² The exception to this is participation in vocational counselling and training measures which can be completed in the home office; in addition, beneficiaries are obliged to accept reasonable job offers within their own community of residence.¹¹³ Access to benefits has also been facilitated by the postponement of the application deadlines.¹¹⁴ On 1 April 2020, the social security institution INPS registered 1.3 million cases of payment due to unemployment and 180,000 pending applications for unemployment benefit.¹¹⁵

c) *Minimum Income Protection*

Minimum income protection during the pandemic has been subject to various adjustments. In the early phase of the pandemic, provisions amended some eligibility cri-

the unemployed worker has to show the existence of at least one month of a collaboration relationship which produced income of half of the amount that is needed to be credited one month of contribution (art. 15 D.lgs. No. 22/2015; Law No. 128/2019).

109 The duration of benefits is determined by the number of months corresponding to half the number of months of contributions paid in the period from 1 January of the year preceding the date of cessation of gainful activity to the date of cessation.

110 Initially in favour of workers who had exhausted such benefits in the period from 1 March 2020 to 30 April 2020, and later extended to cases when benefit receipt terminated between May and June 2020.

111 Art. 4 D.Lgs. 22/2015. The monthly maximum amount is adjusted annually.

112 Art. 40 D.L. 18/2020.

113 Art. 40 para. 1-*bis* D.L. 18/2020, introduced by conversion law No. 27/2020.

114 The deadline for claiming the benefit is extended by 60 days (from 68 to 128 days), art. 33 D.L. 18/2020.

115 The overall increase in applications for unemployment benefit during the first semester of 2020 has remained modest, due to the ban on dismissals. However, applications for *DIS-COLL* benefits increased more significantly by 43.1%, peaking in April 2020 with an increase of 222.5%, cf. INPS, Report mensile, cit. (supra fn. 46), p. 20.

teria of the general minimum income support (*RdC* according to D.L. 4/2019), 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 (*Reddito di emergenza, REM*).

The *RdC* scheme is the basic universal minimum income scheme for destitute households. 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 including a lengthy residence requirement of 10 years, conditionalities for job offers, and complicated means-testing rules that use income indicators not up-dated to the current income situation.¹¹⁶ The main adjustments to the *RdC* benefit scheme have been limited to the temporary suspension of conditionalities for four months, such as the obligation to stipulate an agreement aimed at labour market integration (*patto di lavoro*), to accept an offer of employment or to participate in activating measures, and the corresponding sanctions for non-compliance.¹¹⁷ Furthermore, certain notification obligations were suspended for the period from 23 February to 1 June 2020.¹¹⁸ 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.¹¹⁹ 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. Although the number of households receiving at least one monthly *RdC* benefit increased significantly in 2020, to reach 1.277 million (involving 3.2 million persons) by 6 October 2020, many impoverished households affected by income losses during the lock-down remained excluded.¹²⁰

116 The economic indicator for the assessment of poverty for 2020 (indicator of the equivalent economic situation = *ISEE* 2020) is referred to 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, so-called “Decreto crescita”), 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”*, Giappichelli: Torino, 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.

117 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.

118 Art. 34 para. 1 D.L. 18/2020, INPS, Messaggio No. 1608 of 14 April 2020. Normally, recipients of the minimum benefit *RdC* are obliged to notify authorities within certain time limits of, among other things, changes regarding family members living in the household, income or assets; failure to do so may lead to withdrawal of the benefit.

119 Art. 94 D.L. 34/2020.

120 INPS data, updated to 15 October 2020. The average benefit per household was EUR 570 in September 2020, cf. INPS, *Reddito/Pensione di Cittadinanza, Reddito di Inclusione e Reddito di Emergenza*, Osservatorio statistico, lettura dati al 6 ottobre 2020.

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. 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.¹²¹ Access to the so-called family card (*carta della famiglia*)¹²² was also extended until the end of 2020 to needy families with only one or two children (instead of at least three) under the age of 26.¹²³

To address income poverty of households that remained excluded from *RdC* benefits and any other COVID-19 income support, the new emergency minimum income *REM* was created by art. 82 of D.L. 34/2020. The benefit should cover minimum existence needs without reference to housing needs and had to be claimed not later than 31 July 2020. In case of approval the benefit was to be granted by two monthly instalments starting in the month of application, later extended by additional payments.¹²⁴ The benefit amount is determined by multiplying the basic amount of EUR 400 with the scale of equivalence corresponding to the household composition. The parameters used for the scale of equivalence are the same as for the *RdC* benefit¹²⁵, but the upper limit has been set at a lower level¹²⁶. The *REM* benefit can thus range from EUR 400 to 800 (up to EUR 840 in special circumstances). Eligibility criteria include residence in Italy, that the family income in April 2020 was below the potential amount of the *REM* benefit, and that the *ISEE* indicator was below 15,000 EUR. The criteria for the means-test are more lenient than for the *RdC* benefit: movable assets referred to 2019 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 must not exceed EUR 15,000, while real estate assets and durable goods are not considered at all.¹²⁷

Apparently, families were reluctant to claim this benefit, as INPS has registered less than 1/3 of the expected number of applications during the first three weeks after the

121 On a corresponding allocation to the Communal Solidarity Fund, introduced via Law 28/2012, cf. DPCM of 28 March 2020, *recante* “*Criteri di formazione e di riparto del Fondo di solidarietà comunale 2020*”; ordinance (*ordonanza*) of the President of the Council of Ministers No. 658 of 29 March 2020.

122 The digital card designed for buying goods and services on special discount was introduced via Law 208/2015 in order to relieve large families and has since been revised through the relevant budget laws (last amendment in 2020).

123 The extension of coverage was already provided for under D.L. 9/2020 (art. 30).

124 Art. 23 D.L. 104/2020 (August 2020); art. 14 D.L. 137/2020 (November and December 2020).

125 The equivalence scale value attributed is 1 for the first adult member, 0.4 for any additional adult and 0.2 for any member aged less than 18.

126 The maximum level for the *REM* scale is 2 (or 2.1 in presence of household members with severe disability or long-term care needs), but 2.1 (2.2 in special cases) for the *RdC* benefit.

127 By contrast, means-testing rules in case of *RdC* require that movable assets referred to 2019 should not exceed EUR 6,000, increased by EUR 2,000 for any additional family member, up to a maximum of EUR 10,000, the *ISEE* indicator must not exceed EUR 9,360, while real estate assets exceeding EUR 30,000 as well as certain durable goods exclude entitlement.

measure had entered into force.¹²⁸ As of 31 July 2020, INPS registered 600,000 applications for the *REM* benefit, with an approval rate of 46%.¹²⁹

5. Outlook

Thanks to its many years of experience with wage guarantee schemes for short-time working Italy was not completely unprepared, at least not for the economic shock caused by the corona measures in 2020. The social and labour market policy responses were largely based on the existing, highly fragmented social security systems and a number of ad-hoc measures for those at the margins of social protection schemes. The result is a jungle of micro-measures across various economic sectors.

Crisis legislation focused primarily on wage guarantee instruments to avoid redundancies and on special benefits for workers who, as self-employed or atypically employed persons, have no access to wage compensation systems. Although the legislator has been particularly concerned to provide rapid assistance to the employed in short-time work and thus to strengthen demand, the implementation of the measures has encountered some bureaucratic hurdles. Many interventions were aimed at extending the personal scope of the protection arrangements, and the idea of not leaving anyone behind permeated all economic decree laws adopted during the pandemic. However, the overall protection provided for various occupational categories presents some critical aspects, due to a lack in priorities for the access to benefits in combination with limited resources, and a plethora of single measures without a coherent framework.

This points to the need to overcome the fragmented legal framework of existing social protection related to wage guarantee and unemployment schemes alike, and to strengthen universalisation efforts. Unsurprisingly, social protection for the various forms of self-employment and atypical employment turned out to be highly insufficient and prompted special ad-hoc interventions to provide temporary income support not linked to means-testing. It is difficult to categorise this type of COVID-19-specific emergency payments within the Italian social benefits system. The short-term access of self-employed persons to a lump-sum benefit certainly serves to bridge financial bottlenecks until these persons have access to other liquidity assistance and transfer payments. At the forefront is the idea of collective responsibility for income losses induced by government action (*factum principis*).

At any rate, the pandemic provided a clear picture of the multiple insufficiencies affecting the Italian protection schemes aimed at supporting income of workers. The gaps in protection resulting from insecure and fragmented labour market conditions added to the persisting social inequalities and regional disparities. Whether or not the crisis period can help to develop structural answers to the existing gaps in protection is an open

¹²⁸ *La Repubblica*, 10 June 2020.

¹²⁹ With an average amount of EUR 572, cf. INPS, *Reddito/Pensione di Cittadinanza, Reddito di Inclusione e Reddito di Emergenza*. Osservatorio statistico, July 2020, p. 9-10.

question: Different political actors have announced divergent ideas on the future path of labour market reform, in particular in terms of social shock absorbers and other income protection schemes. While the Ministry of Economy and Finance claimed to stop all coverage extensions of the wage guarantee system used during the 2020 pandemic, and return to the standard protection by 2021, the Ministry of Labour and Social Affairs seems to favour comprehensive reform efforts regarding income protection schemes. An expert committee established in July 2020 presented first guidelines for future reform which should overcome the overall fragmentation of protection schemes for the unemployed or underemployed. The guidelines suggest to provide more universal protection within a single public wage guarantee system, to abolish the special *CIGD* and *FIS* sub schemes, and to extend coverage of the extraordinary wage guarantee scheme *CIGS* to all productive sectors and to all companies irrespective of the number of employees. Moreover, as a direct response to the pandemic, they propose to introduce the reason of “natural disasters and state of national emergency declared by government decree” as a new ground for activating wage guarantee benefits based on social insurance. A further novelty of the proposal is to extend wage guarantee schemes to self-employed workers. The experts suggested furthermore a minimum income component to be integrated into the wage guarantee scheme, in line with the general means-tested *RdC* scheme. The general unemployment insurance scheme should be linked to the wage guarantee scheme and be extended to self-employed workers registered exclusively with the *gestione separata* for atypical workers at INPS. Instead of a maximum duration of six months as currently provided under the special unemployment scheme for this group, a minimum duration of six months has been suggested. From a different point of view, social welfare experts discussed about the feasibility of an Emergency Citizen's Income of sorts that is not means-tested, without sanctions, and based on simpler procedures and documentation requirements.¹³⁰ The pandemic provided ample insights into the flaws of the *RdC* minimum income scheme which deliberately excludes a considerable part of households exposed to extreme poverty. Although the *RdC* scheme needs to be revised for various reasons, the adoption of more structural adjustments to cope with the challenges resulting from the 2020 emergency experience has not been envisaged as yet.

The pandemic has created a fertile ground for debating about urgently needed reforms of the fragmented landscape of Italian social protection. Whether or not the measures taken so far and current reform proposals will ultimately be sufficient to maintain social cohesion in Italy remains an open question.

130 Corresponding projects have been submitted by the forum “*Disuguaglianze e Diversità*” of former Minister *Fabrizio Barca* and by the Italian Alliance for Sustainable Development (ASVIS) of former Minister *Enrico Giovannini*.