

## VIII. Living with COVID-19: Entering the “New Normal” Era in France

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### 1. Introduction

Two years after the beginning of the COVID-19 pandemic, a new war – a real, military one – is raging in Ukraine and threatening Europe. The sense of emergency is constantly present in the spirit of Europeans, especially in France where the use of state of emergency by the government has been widely criticised.<sup>1</sup> At least, the martial rhetoric has already been part of the French official discourse since 2020. “We are at war”, French President *Emmanuel Macron* had declared during his television address on 16 March 2020 with reference to the COVID-19 epidemic. Within the EU, the first cases of corona infections were registered in France at the end of January.<sup>2</sup> After a meeting of more than 2,000 people in a Protestant Free Church in Mulhouse from 17 to 21 February 2020, where the virus was suspected to have spread and made the meeting a virus hotspot, the number of infections in the country rose rapidly. Daycare centres, schools and universities were closed on 16 March 2020 by presidential decree, and a nationwide lockdown was put in place on 17 March 2020 and lasted until 11 May 2020.

When the whole country started to shut down, a law on the “*Etat d’urgence sanitaire*” (public health emergency) was passed by parliament on 23 March 2020 in an accelerated procedure (Art. 45 Para. 2 of the French Constitution).<sup>3</sup> This law served as a basis for crisis measures to be taken by the government, as it authorised the executive branch to issue regulations in numerous areas to combat the epidemic by means of decree-laws (*ordonnances*) or simple decrees (*décrets*) for a period of two months, which had

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1 See *inter alia*, Hennette-Vauchez, *La démocratie en état d’urgence*, Seuil, Paris, 2022.

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

3 The French government submitted the draft on 18 March 2020. The full title of the final law reads: *Loi n° 2020-290* du 23 mars 2020 d’urgence pour faire face à l’épidémie de COVID-19.

initially been extended until 10 July 2020 and eventually until 31 July 2022, *i.e.* until after the 2022 French presidential election.<sup>4</sup> An almost unmanageable number of regulations have been created around this law. Interventions under labour and social law can, in principle, be grouped into three normative constellations, namely the *broadening* of access to state support, the *increase* in the level of social benefits and the *extension* of expiring benefits. The basic idea behind these measures is obvious: the pandemic has paralysed economic activity and the French GDP shrank by 7.9% in 2020.<sup>5</sup> As a result, both individuals and companies have been losing their “life resources” and must therefore be provided for through government intervention. An aid package of EUR 45 billion was initially announced on 17 March 2020 by Minister of the Economy *Bruno Le Maire*, but on 9 April 2020 already the government increased its support to EUR 110 billion.<sup>6</sup> After the joint proposal of France and Germany for the recovery in the whole EU, French Prime Minister, *Jean Castex*, has announced on 3 September 2020 a recovery plan of EUR 100 billion for France which aims at reconstructing the French economy with new ambitions (ecological transition; industrial sovereignty or independence; and social cohesion). One year after the announcement, the French Ministry of Economy explained in a note that EUR 47.4 billion had already been spent on different initiatives and “by the end of August, France Relance will have supported 8885 industrial companies, 86% of which are very small or small and medium businesses, to make EUR 11.7 billion in productive investments and to maintain or create 231,000 industrial jobs”.<sup>7</sup>

The general development of the French reaction to the corona pandemic can thus be described as three successive periods: “React” or limiting the expansion of the virus by a general lockdown (from March to May); “Rebound” or short-term adjustments leading towards an exit of the public health emergency (from May to August); and “Reconstruct” or long-term recovery program with important changes in the economic structure (from

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4 In the economic and the social sector, see Art. 11 of Law n° 2020-290. According to Art. 37 of the 1958 Constitution, matters not subject to a parliamentary reservation (Art. 34) or the possibility of issuing *ordonnances* (Art. 38) may be regulated by decrees (*décrets*) of the President or Prime Minister and *arrêtés* of the rest of the administration. For the latest law extending the emergency period, cf. [Loi n° 2021-1465](#) du 10 novembre 2021 portant diverses dispositions de vigilance sanitaire.

5 Cf. [Data published by the French Statistical Office \(INSEE\)](#).

6 The promise of the government has meanwhile become law. See Art. 27, Law n° 2020-473 of 25 April 2020 ([Loi de finances rectificative pour 2020 II](#)).

7 [France Relance, un an après](#) (6 September 2021).

September onwards). The latest strategy is, basically, to live with the virus and France is said to be recovering from the “fifth wave” of COVID-19 caused by the Omicron variant. From late 2020 to the beginning of 2022, Emmanuel Macron and his cabinet announced night-time curfews, whereas lockdowns have been avoided, even during the most complicated period of the fifth wave (*i.e.* January 2022) which saw almost 400,000 new COVID cases daily.<sup>8</sup>

This strategy of progressive return to “normality” is based on a vast campaign of vaccination: according to the statistics of the government, more than 90% of adults in France have been completely vaccinated against COVID-19 in 2022.<sup>9</sup> The latest stage of this strategy consists in the abolition of the general requirement to show a COVID certificate (“Pass sanitaire”) since 14 March 2022 (exceptions only exist for access to hospitals, and the obligation of wearing a mask still applies in all public transportation).<sup>10</sup> With these new measures, France is trying to maintain its economic and social life in a status where COVID-19 should only play a minor role. This “New Normal” is clearly stated in a document of the French Ministry of Labour, where measures against COVID-19 in companies do not seem different from any other health measures against, for example, an ordinary flu.<sup>11</sup>

In the field of social policy, the main focus is on stabilising the labour market (2), supporting companies and the self-employed (3) and securing the income of individuals and families (4). Throughout the whole pandemic period, the support of the state has undergone a transformation which can be analysed as a process of specification: whereas the initial phase of the crisis was characterised by a general enlargement of the short-time work scheme, the following periods have seen a restriction of this support and the creation of more and more measures for specific groups (for small businesses, for businesses suffering more intensively from the social distancing measures, for families with low income, etc.) and it is

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8 *Données relatives aux personnes vaccinées contre la Covid-19 VAC-SI* (updated daily).

9 Rosier, *Covid-19 : le pic de la cinquième vague enfin franchi en France*, *Le Monde*, 3 February 2022.

10 *Décret n° 2022-352* du 12 mars 2022 modifiant le décret n° 2021-699 du 1er juin 2021 prescrivant les mesures générales nécessaires à la gestion de la sortie de crise sanitaire ; see also, Ministère des solidarités et de la santé, *Recommandations sanitaires générales dans le cadre de la lutte contre le COVID-19*, 15 March 2022.

11 Ministère du travail, *Guide repère des mesures de prévention des risques de contamination au Covid-19*, 15 March 2022.

expected today that these measures are going to be restricted further and will eventually disappear altogether when the social and economic life gets back entirely on its traditional course (some measures have already been abolished; see hereafter). Whatever the measures, they all reflect the strong will of the government to participate actively in the safeguarding of the social and economic life during the pandemic. This is possible only thanks to national solidarity (5).

## 2. Job Retention

The first visible consequence of the pandemic is an increase in unemployment. Before the corona crisis hit the French economy, a continuous fall in unemployment had been observed for 2019.<sup>12</sup> The corona pandemic put an end to this trend. The data from the French employment agency show an increase in unemployment of 0.8% in the first quarter of 2020 (around 28,000 more unemployed persons than in the last quarter of 2019)<sup>13</sup> and the National Statistics Institute predicted in early September 2020 that the unemployment rate would rise to about 9,5% by the end of the year.<sup>14</sup> In March 2020 alone, over 24,000 workers lost their jobs (amounting to an increase of 7.1%)<sup>15</sup> and the unemployment rate arrived indeed at its peak in late 2020, staying at the level of 9%. Despite the crisis, this increase is not easy to understand and is more indicative of a certain proliferation of precarious work in recent years as normally in France workers and their jobs receive strong protection.

As far as health protection is concerned, for example, the French legislator has, on grounds of a law passed in 1982, recognised the right of workers to refuse to work (*droit de retrait*, literally: right to withdraw from work) in situations where there is a serious risk to life or health.<sup>16</sup> 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

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

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

14 Insee, [Notes et points de conjoncture de l'année 2020](#), 8 September 2020.

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

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

emphasised: the Chamber of Social Affairs of the Court of Cassation (*Cour de cassation*) has always declared such dismissals null and void in its jurisprudence.<sup>17</sup> In order to keep employees despite the closure of a company, employers usually resort to “partial employment” or short-time work, for which easier access conditions were created during the corona crisis. At the beginning of July 2020 – almost two months after the end of the general lockdown, the authority registered more than 14 million “partial workers” – affecting over 60% of workers in the private sector.<sup>18</sup> In addition, the crisis has forced the government to provide further funds or authorisations for appropriate work organisation in times of crisis, such as special bonuses for employees and flexible holiday planning. Two years after the implementation of the measures that will be presented below, the statistics regarding the French labour market seem to show that the aim of job retention has been globally achieved. The unemployment rate descended to 7.4%, which is a significant decrease since the highest rate reached in autumn 2020 (8.8%).<sup>19</sup>

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

So-called “partial work<sup>20</sup> 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

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- 17 E.g. Chamber of Social Affairs, 28 January 2009, n° 07-44556. For more information see Mouly, “Conditions du droit de retrait et impartialité du juge”, *Droit social*, 2015, p. 189. An interesting exercise of this right in the current corona crisis can be found in a lawsuit against Amazon (France). The company had obviously taken inadequate measures to protect workers’ health. Several workers exercised their right of withdrawal, and a trade union federation took the company to court, resulting in an order for the company to reduce activities. See *Tribunal judiciaire de Nanterre, Ordonnance* no. 20/00503 of 14 April 2020. The Court of Appeal of Versailles rejected the appeal (no. 20/01993, 24 April 2020).
- 18 Cf. Ministère du travail, [Situation sur le marché du travail](#) au 7 juillet 2020. This number began to decline afterwards, since the government had restricted the benefits of short-time work at the beginning of June 2020.
- 19 INSEE, [Au quatrième trimestre 2021, le taux de chômage diminue de 0,6 point à 7,4 %](#), 18 February 2022.
- 20 This term was only introduced in 2013. Before, it was called either “partial unemployment” or “technical unemployment”. In 2013, the various systems were standardised and made easier. See Baugard, “L’indemnisation de l’activité partielle après la loi du 14 juin 2013 et le décret du 26 juin 2013”, *Droit social*, 2013, p. 798.

of time or reduces its activities due to extraordinary circumstances.<sup>21</sup> 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)<sup>22</sup> and only contributions to unemployment insurance are deducted<sup>23</sup>. As in Germany, this mechanism was already used during the 2008 financial crisis.<sup>24</sup> 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.<sup>25</sup> This is to prevent abuse. In principle, the procedure involves considerable time and material expenditure for the companies concerned, which can be particularly difficult to manage in crisis situations.

In the corona crisis, the government placed particular emphasis on short-time work in order to “avoid dismissals” and “mitigate the economic consequences for the companies”.<sup>26</sup> In order to provide better and more efficient support to these companies, executive regulations in the form of a *décret*<sup>27</sup> and an *ordonnance*<sup>28</sup> have been issued, which had led to the following changes:

- The scope of application has been extended: almost all employment relationships are covered. For example, homeworkers employed by individual employers can now also be given short-time work status if they have to accept a reduction in working hours.<sup>29</sup> Companies that do not have a business in France but employ workers in France can also apply for short-time work benefits.<sup>30</sup>
- 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

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

22 Art. R5122-18 French Labour Code.

23 Art. L5122-4 French Labour Code.

24 Calavrezo and Lodin, “Le recours au chômage partiel entre 2007 et 2010: forte augmentation de la fin 2008 à l’automne 2009”, diminution ensuite, DARES analyses, January 2012, n° 004.

25 Art. R5122-2, French Labour Code.

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

27 *Décret n° 2020-325*, 25 March 2020.

28 *Ordonnance n° 2020-346*, 27 March 2020.

29 Art. 7 *Ordonnance n° 2020-346*.

30 Art. 9 *ibidem*.

covered by the state. Normally, reimbursement by the state is limited to an hourly wage of around €7.50<sup>31</sup>, 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).<sup>32</sup>

- The maximum duration of benefit receipt is extended from 6 to 12 months.<sup>33</sup> 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.<sup>34</sup>
- To speed up and simplify matters, the approval procedure has been temporarily suspended.<sup>35</sup> In principle, it is sufficient if the employer sends an application to the administration within 30 days of the start of the part-time work. However, even the 30-day retroactive effect of the application made possible by this has been extended: on 9 April, the Ministry of Labour set 30 April as the deadline for the unrestricted retroactive effect of applications.<sup>36</sup> The time limit for a response from the administration has been greatly reduced, from 15 days to two days.<sup>37</sup> Failure by the administration to respond continues to be considered as an approval.

In order not to exclude employees whose working hours are difficult to calculate (e.g. artists, freelance journalists, etc.) from short-time work benefits, the government has adopted several simplifications via the decree of 16 April 2020.<sup>38</sup>

After the end of the lockdown, the government has gradually modified these exceptional measures.

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

32 Art. 1, 7) Décret n° 2020-325, 25 March 2020.

33 Art. 1, 6) *ibidem*.

34 See [Arrêté of 31 March 2020](#).

35 Art. 1, 2) *ibidem*.

36 This means that hereby all applications made by this key date can be granted retroactively. See directives on the [internet page of the French Ministry of Labour, Employment and Economic Inclusion](#).

37 Art. 2, 3) *ibidem*.

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

First of all, the state has reduced its share in the financing of short-time work benefit. From 1 June 2020 to 31 May 2021, the state did not fully finance the benefit any more, but only 85% of the benefit (or 60% of the wages of the employee). The rest had to be paid by the employer. From 1 June 2021 to 31 March 2022, this rate was further reduced to 74% of the benefit (or 52% of the wages). After 31 March 2022, the state would only pay for the normal part of its contribution to the short-time work, namely 60% of the benefit (for sectors which are severely affected by the pandemic such as the catering sector, hotels, cultural and sport sectors, there were exceptions putting higher charges on the state.<sup>39</sup>) Employees have also seen their benefits reduced after 1 July 2021. If they received 70% of their gross wages before, the rate returned to the normal rate of 60% of the gross wage on 1 July 2021. As already indicated in the introduction, one sees clearly here the will of the government to return to the normal regime without further overloading the budget of the state.

Secondly, the government has put up a special benefit called “long-term short-time work benefit” (*activité partielle de longue durée*).<sup>40</sup> Its main characteristic is the possibility for the employer to benefit from short-time work for at most 24 months within a time span of 36 months. Furthermore, this benefit presupposes the conclusion of a collective agreement. This benefit scheme is only of a temporary nature and will end in December 2022. According to a study of *Unédic* published in February 2022, around 4,000 collective agreements have been concluded, yet in August 2021 more than three out of four employees worked for an employer who had not concluded an agreement and who does not have the intention to do so. The reason given by the employers who are not using the scheme are the following: some have only experienced the need for the basic partial activity scheme for some vulnerable workers, some believe that the restrictions were about to expire within a few months, and some consider it too complex to apply.<sup>41</sup>

In addition to the short-time work benefit, employers are free to grant additional payments. For example, car manufacturer PSA has reached an

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39 See *inter alia*, *Décret n° 2020-810* du 29 juin 2020 portant modulation temporaire du taux horaire de l'allocation d'activité partielle ; *Ordonnance n° 2021-1214* du 22 septembre 2021 portant adaptation de mesures d'urgence en matière d'activité partielle.

40 *Décret n° 2020-926* du 28 juillet 2020 relatif au dispositif spécifique d'activité partielle en cas de réduction d'activité durable.

41 *Unédic, Activité partielle (2020-2021). Etat des lieux et perspectives*, February 2022, p. 36.

agreement with the trade unions that provides for a company solidarity fund.<sup>42</sup> This initiative aims to achieve the goal of full payment of gross wages.

b) *Temporary Change in the Right to Leave and the Regulation of Working Hours*

Besides short-time work, companies could counter the effects of the crisis by introducing new holiday arrangements or reducing working hours. The Regulation of 25 March 2020 allowed employers to unilaterally order leave of absence for employees on the basis of a collective agreement.<sup>43</sup> The maximum number of such leave days could not exceed six working days, and the employer had to inform the employees concerned of this decision at least one day before the leave. These rules had been modified and extended in May 2021. The new rules lasted from 2 June 2021 to 30 September 2021 and the maximum number of leave days was brought up to eight working days.<sup>44</sup>

A similar rule applied to the use of company rest days (*jours de repos*) due to a reduction in working hours (*réduction du temps de travail, RTT*). The employer could unilaterally set these RTT days under certain conditions, up to a maximum of 10 working days.<sup>45</sup> The bank LCL, for example, chose this option instead of short-time work. A corresponding agreement was signed on 7 April 2020 and contained a new plan for the organisation of work.<sup>46</sup> On 15 April 2020 this regulation was extended to public employees (including civil servants).<sup>47</sup>

In addition, the Regulation of 25 March 2020 provided for special arrangements to make working time more flexible in key economic sectors

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

43 Art. 1, [Ordonnance n° 2020-323](#), 25 March 2020, portant mesures d'urgence en matière de congés payés, de durée du travail et de jours de repos.

44 [Loi n° 2021-689](#) du 31 mai 2021 relative à la gestion de la sortie de crise sanitaire.

45 [Ordonnance n° 2020-323](#), 25 March 2020, Art. 2 ff.

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

47 [Ordonnance n° 2020-430](#) relative à la prise de jours de réduction du temps de travail ou de congés dans la fonction publique de l'Etat et la fonction publique territoriale au titre de la période d'urgence sanitaire.

(e.g. the maximum working time was 60 hours per week until 31 December 2020).<sup>48</sup>

*c) Bonuses for Workers in Key Economic Sectors*

In order to keep the economy running despite the pandemic, a functioning supply system is needed, including delivery via food stores and many other food and beverage companies. At the beginning of the crisis, the right to refuse to work (*droit de retrait*) was frequently exercised. With a view to this, the government has introduced incentives to improve conditions for workers in systemically important enterprises. In concrete terms, this support consisted of a premium exempt from taxes and social security contributions, which the employer can grant as a lump sum of up to EUR 2,000.<sup>49</sup> 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.<sup>50</sup> Special attention has been paid to the health sector: staff members of certain public health establishments especially engaged in the treatment of COVID-19 have the right to a premium of EUR 1,500<sup>51</sup> and the remuneration of overtime work has also been increased.<sup>52</sup> The premium was reconfigured in 2021 in order to benefit workers not only on the frontline, but also “on the second line” under certain conditions.<sup>53</sup>

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48 *Ordonnance* n° 2020-323 du 25 mars 2020 portant mesures d’urgence.

49 *Ordonnance* n° 2020-385 du 1er avril 2020 modifiant la date limite et les conditions de versement de la prime exceptionnelle de pouvoir d’achat.

50 The criteria for differentiated granting of premiums are strongly disputed. Cf. explanations of the French Ministry of Labour, Employment and Economic Inclusion of 17 April.

51 *Décret* n° 2020-568 du 14 mai 2020 relatif au versement d’une prime exceptionnelle.

52 *Décret* n° 2020-718 du 11 juin 2020 portant indemnisation et majoration exceptionnelle des heures supplémentaires.

53 *Loi* n° 2021-953 du 19 juillet 2021 de finances rectificative pour 2021.

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

The government already decided by decree in January 2020 to grant sickness benefits to people in quarantine or isolation because of COVID-19.<sup>54</sup> The entitlement to this benefit was independent of whether the person had already been covered by statutory health insurance before the isolation. The waiting period of 3 days, which is common for the normal sickness benefit, was abolished due to the pandemic. The original aim of this measure, which was based on national solidarity, was to enable French citizens who had been brought back from abroad to join the statutory sickness insurance scheme immediately. Since 9 June 2021, quarantine measures have been abolished for employees who are fully vaccinated. For those who are still subject to an isolation, sickness benefits can always be granted after their return to France and a declaration by their employer.<sup>55</sup>

The use of sickness benefits to face the challenge of COVID-19 has undergone several revisions: A first modification<sup>56</sup> in March 2020 was an extension allowing parents to receive sickness benefit if they have to look after their underage children (up to the age of 16) at home, and if they are therefore unable to work; in April, the government included the parents of children with disabilities and did not impose an age limit.<sup>57</sup> The duration of the receipt of benefit was also extended.<sup>58</sup> Concerns about fraud through this new extension have been pointed out in certain discussions.<sup>59</sup>

In similar situations, employees are at the same time entitled to a supplement to sickness benefit from their employer.<sup>60</sup> The total benefit is then 90% of the gross salary. From 1 May 2020, however, these beneficiaries received only the short-time work benefit instead of sickness benefit, as this became more favourable for employees.<sup>61</sup> This measure was first planned

54 *Décret n° 2020-73* du 31 janvier 2020 portant adoption de conditions adaptées pour le bénéfice des prestations en espèces pour les personnes exposées au coronavirus.

55 For a summary of these measures, see Assurance maladie, *Covid-19: isolement des salariés à la suite d'un retour de l'étranger*, 22 novembre 2021.

56 *Décret n° 2020-227* du 9 mars 2020.

57 *Décret n° 2020-459* du 21 avril 2020.

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

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

60 Art. L1226-1, French Labour Code. See also, *Décret n° 2020-193* and *Décret n° 2020-434*.

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

to last until the end of 2020, but a decree in August 2020<sup>62</sup> decided that the exceptional measure would expire on 31 August 2020. Only several groups of vulnerable persons were allowed to continue to benefit from the short-time work scheme beyond 1 September 2020. They also had to obtain from their doctor an isolation certificate that indicated their need of protection. The certificate was re-evaluated in September 2021. The decree mentioned these groups in a short list: it covers, for example, patients already suffering from an active cancer, people of at least 65 years of age and with diabetes, and certain patients suffering from AIDS. These groups of persons can also obtain free masks supplied by the government.<sup>63</sup>

### 3. Supporting the Economy

#### a) Deferral and Abolition of Taxes and Social Security Contributions

To address the financial difficulties of companies, the government first approved a deferral of taxes and social contributions in March 2020. The payment of contributions, for instance, was postponed for three months.<sup>64</sup> The measure was extended for a further two months. This meant that all tax deadlines until the end of May 2020 were postponed by three months. In April 2020, the Minister of the Economy *Bruno Le Maire* announced that the government did not rule out the possibility of a general abolition of levies in principle.<sup>65</sup> This measure was adopted by parliament in the third “Amending Law of Finances for 2020”.<sup>66</sup> The concrete conditions were fixed by a decree on 1 September 2020.<sup>67</sup> The scope of the abolition covered the activities of companies with less than 250 employees from 1 February to 31 May 2020 which had been severely affected by the pandemic or which depended on such activities. For companies with less

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62 *Décret n° 2020-1098* du 29 août 2020 pris pour l'application de l'article 20 de la loi n° 2020-473 du 25 avril 2020 de finances rectificative pour 2020.

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

64 See [decision of URSSAF](#).

65 Hue, “Coronavirus: les entreprises risquant la faillite pourraient être exonérées de charges”, RTL, 8 April 2020.

66 *Loi n° 2020-935* du 30 juillet 2020 de finances rectificative pour 2020.

67 *Décret n° 2020-1103* du 1er septembre 2020 relatif aux cotisations et contributions sociales des entreprises, travailleurs indépendants et artistes-auteurs affectés par la crise sanitaire.

than 10 employees, activities from 1 February until 30 April 2020 that did not enter the former scope were not to be counted for social security contributions. However, in order to apply for the relief, a company also had to prove that it had suffered from a clear decrease in turnover during the lockdown, and the government has also fixed a maximum sum for the total relief.

These measures have been continuously reviewed and consolidated during the following waves of COVID-19.<sup>68</sup> Without going into too many details, it is useful to point out that the focus of the existing measures concern primarily companies with less than 250 employees that have suffered from administrative shutdown or a significant loss of their turnover. In December 2020, the “Social Security Financing Law for 2021”<sup>69</sup> created a subsidy for the payment of social security contributions for certain employers equal to 20% of the amount of gross salaries due for the periods of pandemic. According to the spirit of a gradual return to normality, the exemption of social contributions has been abandoned (except for shutdown cases) and subsidies have been decreasing progressively, but are still maintained today.<sup>70</sup> At the same time, the government equally created a “transitional fund” in September 2021, in order to help companies that have difficulties in obtaining liquidities for their various payments. In effect, it is important to take a closer look now at the financial support granted by the state.

### *b) Financial Support for Small Enterprises and Self-Employed Persons*

In accordance with the Public Health Emergency Act (Article 11(1)(a)), the government set up a solidarity fund for a minimum period of three months.<sup>71</sup> This fund was intended to support small businesses with a maximum of 10 employees, an annual turnover of no more than EUR 1 million

68 In practice, expressions such as subsidies “Covid 2” and “Covid 3” are frequently used to name the measures adopted at each new wave of shutdown or curfew.

69 *Loi n° 2020-1576* du 14 décembre 2020 de financement de la sécurité sociale pour 2021.

70 For more details, see the recent *Décret n° 2022-170* du 11 février 2022.

71 *Ordonnance n° 2020-317* du 25 mars 2020 portant création d’un fonds de solidarité à destination des entreprises particulièrement touchées par les conséquences économiques, financières et sociales de la propagation de l’épidémie de COVID-19 et des mesures prises pour limiter cette propagation. See also, *Décret n° 2020-371*, 30 March 2020.

and a taxable profit of no more than EUR 60,000, which were severely affected by the curfew, i.e. which had to keep their business closed due to the crisis or lost more than 50% of their normal turnover. There are also measures in favour of companies in certain sectors such as the catering trade and the tourism industry. They initially receive a lump sum cash payment of a maximum of EUR 1,500. In a second step, companies that have suffered heavy losses (especially if they are unable to pay their debts) can again receive up to EUR 5,000. The self-employed are included in these schemes. In addition to the new unemployment benefit established in 2019<sup>72</sup>, they will receive a further EUR 1,500 from the solidarity fund if they have lost more than 50% of their income.<sup>73</sup> The fund is mainly financed by the state, but the regions are free to contribute. Such support through national solidarity can be understood as social compensation. The approach does not appear to be new, but here it offers an example of the rapprochement between natural and legal persons: it is about the rescue and compensation of (legal) persons severely affected by the corona crisis. The question remains, however, whether such compensation is sufficient. Originally planned for three months, the fund was extended and adapted to new situations continuously.<sup>74</sup> Since September 2020, the government decided to extend its access to companies with less than 50 employees in the cities affected by the curfew (instead of the initial limit of 10), while the latest regulation concerning the fund in January and February 2022 shows a clear restriction of the beneficiaries<sup>75</sup>.

As is the case for social contributions, the solidarity fund will progressively disappear from the landscape of support for companies and the government has been trying to replace it with other measures: since 2021, the government has set up a new subsidy called “fixed expenses of companies” (*coûts fixes des entreprises*). This scheme compensates 90% (70% for companies with more than 50 employees) of the loss. The amount of aid received by companies under the “fixed expenses” scheme is limited to EUR 12 million per group for the duration of the crisis. A recent decree adds that the amount of this aid cannot exceed the effective loss of the

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72 Art. L5424-25, French Labour Code.

73 *Ordonnance* n° 2020-317 du 25 mars 2020.

74 *Ordonnance* n° 2020-705 du 10 juin 2020 relative au fonds de solidarité à destination des entreprises particulièrement touchées par les conséquences économiques, financières et sociales de la propagation de l'épidémie de covid-19 et des mesures prises pour limiter cette propagation.

75 Cf. *Décret* n° 2022-348 du 12 mars 2022.

company.<sup>76</sup> Similar subsidies have also been created in order to help start-ups<sup>77</sup> or to overcome temporary difficulties due to a rebound of the pandemic<sup>78</sup>.

Moreover, the state is offering companies a guarantee for new bonds so that companies of all sizes can receive immediate liquidity assistance.<sup>79</sup> The government has also decided to grant aid to small businesses (including self-employed persons) that are no longer able to pay their rent, water, gas and electricity costs because of the corona epidemic.<sup>80</sup> Their access to the infrastructure of general interest must remain guaranteed despite late payment. Here, too, one can speak of a comparability between natural and legal persons, whose “existence” must be protected from the consequences of the virus. With the new recovery plan, the government is going to adopt different measures to promote employment, especially through vocational training and support for small and medium-sized businesses in recruitment. Recently, the guarantee has been extended to 30 June 2022, with the ambition of equally helping companies that might encounter financial difficulties due to the war in Ukraine.<sup>81</sup>

#### 4. Social Protection

The crisis has not only affected continuing employment relationships. Except for those who are in quarantine and can no longer work (see 2.d) above), the unemployed will no longer be able to find access to the labour market and beneficiaries will lose their rights if they are unable to submit

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76 *Décret n° 2022-223* du 21 février 2022 modifiant l'aide dite « coûts fixes consolidation » visant à compenser les charges fixes non couvertes des entreprises dont l'activité est particulièrement affectée par l'épidémie de covid-19 instaurée par le décret n° 2022-111 du 2 février 2022.

77 *Décret n° 2022-221* du 21 février 2022 instituant une aide dite « nouvelle entreprise consolidation ».

78 *Décret n° 2022-222* du 21 février 2022 instituant au titre du mois de novembre 2021 une aide dite « coûts fixes novembre ».

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

80 *Ordonnance n° 2020-316* du 25 mars 2020 relative au paiement des loyers, des factures d'eau, de gaz et d'électricité afférents aux locaux professionnels des entreprises dont l'activité est affectée par la propagation de l'épidémie de COVID-19.

81 See the information given by the French Ministry of Economy, [Prêt garanti par l'Etat](#).

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

a) *Extension of Unemployment Benefits*

As mentioned before, unemployment has risen sharply due to the corona crisis, before its stabilisation due to the emergency measures. Many unemployed workers risk losing their rights to unemployment benefits because they cannot find new employment. For this reason, the government had initially extended the granting of expiring unemployment benefits until 31 July 2020 at the latest.<sup>82</sup> This may be accompanied by an increase in the level of benefits: the introduction of a new assessment base through the reform of unemployment insurance in 2019, which could lead to a reduction in current benefits, was suspended during the two first waves of the pandemic<sup>83</sup> and entered into force only on 1 October 2021.<sup>84</sup> Due to the lockdown during the second wave of the pandemic, the rights of the unemployed were further extended from October 2020 to June 2021.<sup>85</sup>

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.<sup>86</sup> In a press release, the Ministry of Health announced a special assistance for families with low income.<sup>87</sup> This aid consisted of a lump sum that was to be automatically transferred on 15 May 2020 by the family benefit funds (*Caisses d'allocations familiales*). The aid was intended

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82 *Ordonnance n° 2020-324* du 25 mars 2020 portant mesures d'urgence en matière de revenus de remplacement mentionnés à l'article L. 5421 2 du code du travail.

83 *Décret 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.

84 *Décret n° 2021-1251* du 29 septembre 2021 fixant la date d'entrée en vigueur de certaines dispositions du régime d'assurance chômage.

85 *Ordonnance n° 2021-135* du 10 février 2021 portant diverses mesures d'urgence dans les domaines du travail et de l'emploi.

86 Art. 11, I, 6), Loi n° 2020-290.

87 Ministry of Health and Solidarity, 15 April 2020, [COVID-19: le Gouvernement annonce le versement d'une aide exceptionnelle de solidarité aux foyers les plus modestes](https://www.gouvernement.fr/info-presse/le-gouvernement-annonce-le-versement-d-une-aide-exceptionnelle-de-solidarite-aux-foyers-les-plus-modestes).

for persons and families already receiving the minimum benefit (*Revenu de solidarité active* and *Allocation de solidarité spécifique*). In principle, a family should receive EUR 150 and an additional EUR 100 per child. In total, more than four million families were to receive this aid. Persons who receive housing benefit (*Allocation pour logement*) can also receive support if they have children. It is not difficult to see that through these measures the government wants to support families in providing childcare at home, since the closure of schools and daycare centres has burdened families with additional costs. In total, the government will have raised about EUR 880 million for all the measures mentioned above.<sup>88</sup> The government also decided to increase the benefit for the start of school (or “back-to-school allowance”, *Allocation de rentrée scolaire*) in 2020 by EUR 100 (the total sum is about EUR 490 per child).<sup>89</sup> About three million families were eligible for this benefit.

Following the decision on the curfew in late 2020, the government also decided to renew its support for modest persons and households. The benefit of EUR 150, always completed by the additional benefit for children, was paid again to those who satisfied the aforementioned requirements. A federation for social work (*Union nationale interfédérale des œuvres et organismes privés non lucratifs sanitaires et sociaux*) denounced the insufficient state aid for the “new poor” caused by the pandemic.<sup>90</sup> It is also evident that the French government has chosen a minimum reaction to the highly heterogeneous situations of persons who have been in precarious employment. In his interview on 14 October 2020, President *Macron* justified the renewal of the lump sum benefit by the necessity to incentivise people to return to work. It is true, as has already been mentioned above, that the recovery plan “Relance France” has focused on the creation of new jobs.

As a recent report of the French National Assembly points out, around EUR 2.2 billion were paid as a special benefit to persons and families with modest revenues.<sup>91</sup> After the two payments, no supplementary benefit was

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

89 *Décret n° 2020-985* du 5 août 2020 relatif à la majoration exceptionnelle de l'allocation de rentrée scolaire en 2020.

90 UNIOPISS, « *Booster* » les minimas sociaux: une priorité, dès maintenant !, 15 October 2020.

91 Assemblée Nationale, *Rapport d'information sur l'évaluation de l'adaptation des politiques de lutte contre la pauvreté au contexte de crise sanitaire*, 17 février 2022, p. 55.

granted by the government and with the return to normality, it seems that the only way to gain more resources is to actively search for a job.

*c) Recognition of COVID-19 as Occupational Disease*

Since the beginning of the pandemic, legal scholars have been discussing the possibility to recognise COVID-19 as an occupational disease in order to activate the corresponding social protection. However, it was argued that the disease, as well as flu, was difficult to be associated with working conditions and the causal link was thus hard to establish. However, the public authority has gradually increased its will to recognise the specific working conditions for employees in the health sector or in similar conditions. Finally, with a decree on 14 September 2020, the government added COVID-19 to the list of occupational diseases.<sup>92</sup> However, the conditions for the recognition remain relatively strict: the patient must present severe breathing difficulties (which means the necessity of an oxygen therapy) and should have been working directly in person in places of medical care, hospital services etc. In May 2021, a decree was adopted in order to regulate the procedure of the recognition of COVID-19 as an occupational disease.<sup>93</sup>

*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*).<sup>94</sup> Furthermore, medical care for illegal residents has been extended by three months<sup>95</sup> and benefits for disabled persons that require an administrative

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92 More precisely, the change happens both in the general scheme for employees and in the agricultural scheme. See, *Décret n° 2020-1131* du 14 septembre 2020 relatif à la reconnaissance en maladies professionnelles des pathologies liées à une infection au SARS-CoV2.

93 *Décret n° 2021-554* du 5 mai 2021 relatif à la procédure de reconnaissance et à la réparation des accidents du travail et des maladies professionnelles.

94 Art. 1, I, II, *Ordonnance n° 2020-312* du 25 mars 2020 relative à la prolongation de droits sociaux.

95 Art. 1 IV, *ibidem*.

decision by six months<sup>96</sup>. In addition, access to medical care has been made easier, for example in the case of requests for such care from persons residing illegally.<sup>97</sup> Guarantees of unemployment benefits have been offered to persons working in the drama and film industry.<sup>98</sup> Special temporal benefits have been granted to students (adults under 25 years old), etc.<sup>99</sup>

The specific measures cannot be presented in full<sup>100</sup> and it can be said that the measures are generally occasional and sporadic in nature. The total amount of subsidies is certainly important (more than EUR 2.5 billion), but the level of poverty is still alarming. Reform suggestions have been made to reinforce the protection of those who are especially in need during the pandemic.<sup>101</sup>

### 5. Outlook

The COVID-19 epidemic has presented France with unusual challenges and the French government has reacted with exceptional measures. Even in a state of emergency, the government must remain loyal to its commitment with regard to the mandate of the “Social Republic” (Article 1(1) of the French Constitution). The measures taken with a relatively remarkable speed are essentially based on national solidarity (Art. 1 of the French Social Code). The protection of life and health (above all, but not only of workers) takes precedence over economic calculations, at least in the official declarations of the government.<sup>102</sup> The extension, increase and prolon-

96 Art. 2, *ibidem*.

97 Art. 1, III, *Ordonnance* n° 2020-312 du 25 mars 2020 relative à la prolongation de droits sociaux.

98 *Décret* n° 2020-928 du 29 juillet 2020 portant mesures d’urgence en matière de revenus de remplacement des artistes et techniciens intermittents du spectacle.

99 *Décret* n° 2020-769 du 24 juin 2020 portant attribution d’une aide exceptionnelle de solidarité liée à l’urgence sanitaire aux jeunes de moins de vingt-cinq ans les plus précaires.

100 For a list of all measures, see France Stratégie, *La lutte contre la pauvreté au temps du coronavirus*, 18 October 2021, p. 15.

101 Assemblée Nationale, *Rapport d’information sur l’évaluation de l’adaptation des politiques de lutte contre la pauvreté au contexte de crise sanitaire*, 17 février 2022, p. 108 ff.

102 French health policy (organisation and financing of hospitals, treatment of medical and long-term care personnel, etc.) was last year and has now during the crisis been strongly criticised. In reply to this criticism, President E. Macron announced, in his television address to the nation of 13 March 2020, a massive investment plan for the health system.

gation of social benefits places a heavy burden on public finances. The unemployment insurance fund was required to spend between EUR 800 million and EUR 2 billion per week due to short-time work<sup>103</sup> alone. The desired preservation of social protection has led to the establishment of a solidarity fund using the method of social compensation<sup>104</sup>. Even if other forms of solidarity play a role in overcoming the crisis, national solidarity in France is clearly in the foreground. However, rising financial pressure has led the government to privilege the economic reconstruction of the country. Due to the temporary nature of the measures, the pandemic seems to have brought about only minor changes to the French social system, as well as to the social policy of the government. National solidarity has served as the last protective shield against the pandemic, whereas the government sees the future of the French social system in a more activating and flexible economy. This vision is certainly helpful for the ecological transition which has been taken into account in the recovery plan. But it also contains the risk that social cohesion – the third part of the plan – is merely seen as an instrument to reach the new economy, instead of an end in itself. Facing all the blatant and latent tensions – or even contradictions – in the governance of the pandemic in France, one can only hope that the return of solidarity will not be lost in the “new normal” French welfare state.

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

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