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

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1. Introduction

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

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

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

1 Source: DataSebrae.

2 Cardoso/Domingues/Magalhães/et al. Pandemia de Covid-19: impactos da crise e da renda básica emergencial. In: Políticas Sociais: acompanhamento e análise, Ipea (Instituto de Pesquisa Econômica Aplicada), 28/2021, 539-559 (539).

3 Alvarenga, Brasil sai de lista das 10 maiores economias do mundo e cai para a 12ª posição, aponta ranking. G1. 03.03.2021.

4 Instituto Brasileiro de Geografia e Estatística, PNDA COVID19. The Emergency Aid is discussed below.

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

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

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

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

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

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

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

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

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

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

2. *Job Retention*

a) *Special Labor Rules*

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

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

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

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

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

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

11 Medida Provisória 927, de 22.03.2020.

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

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

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

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

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

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

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

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

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

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

18 Lei 14.020, de 06.07.2020.

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

20 Medida Provisória 1.045, de 27.04.2021.

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

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

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

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

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

22 Lei 14.020, de 06.07.2020.

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

24 Id., p. 3.

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

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

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

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

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

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

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

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

c) Credit for the Payroll of Small and Medium Enterprises

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

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

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

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

32 Medida Provisória 944, de 03.04.2020.

33 Lei 14.043, de 19.08.2020.

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

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

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

3. *Supporting the Economy*

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

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34 Id.

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

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

37 Id.

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

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

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

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

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

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

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

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

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

44 Art. 2 Lei 14.161, de 02.06.2021.

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

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

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

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

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

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

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

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

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56 Art. 2 § 6 Medida Provisória 992, de 16.07.2020.

57 Exposição de Motivos da Medida Provisória 992, de 16.07.2020.

58 N. 14 da Exposição de Motivos da Medida Provisória 992, de 16.07.2020.

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

60 Pereira. O Papel dos Bancos Públicos na Concessão de Crédito para os Pequenos Negócios Brasileiros durante a Pandemia COVID-19. Dissertação, Universidade Federal do Ceará, 2021.

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

4. Social Protection

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

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

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

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

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

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

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

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

63 Lei 13.982, de 02.04.2020.

64 Medida Provisória 1000, de 02.09.2020.

65 Medida Provisória 1039, de 18.03.2021.

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

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

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

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

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

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

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

70 Id.

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

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

b) "Brazil Aid"

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

71 Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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c) Measures to Make Access to Social Security Easier

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

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

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

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

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

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

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

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

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

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

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

86 STF. Medida Cautelar na Arguição de Descumprimento de Preceito Fundamental 662 – Distrito Federal, 03.04.2020. DJE 85, 07.04.2020.

87 Before that, the per capita income had to be lower than ¼ of the minimum wage.

88 Lei 13.982, de 02.04.2020.

89 Lei 14.176, de 22.06.2021.

90 Paiva/Pinheiro. BPC em Disputa: como alterações operacionais e regulatórias recentes se refletem no acesso ao benefício. Publicação Preliminar. Texto para Discussão. Ipea, 2021, p. 39 et seq.

91 Lei 13.982, de 02.04.2020.

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

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

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

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

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

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

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92 Portaria Conjunta 3, de 05.05.2020.

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

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

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

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

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

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

5. *Conclusions*

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

96 Art. 7 Portaria 109, de 22.01.2020.
97 Portaria 337, de 24.03.2020.
98 Art. 3 of Portaria 419, de 22.06.2020 (altered by Portaria 647, de 16.06.2021).
99 Instrução Operacional 4/2020 – SAGI/DECAU, de 30.04.2021.
100 As regards strategies of internalization and externalization for the solution of social problems, the latter occurs when the state tries to mobilize rules existing in the same field where the problem occurs in order to articulate its solution proposal – this is the case with regulation by means of labor norms. Externalization takes place when the state articulates its solution at another level by creating an external system, which is the case with the creation of social security systems. See Zacher. Das soziale Staatsziel. In Isensee/Kirchhof. Handbuch des Staatsrechts. Vol. 1, C. F. Müller, 1987, 1046-1111, No. 72.

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

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

In 2020, the fiscal and parafiscal measures implemented in Brazil were equivalent to 17.2% of the GDP. The Emergency Aid accounts for 56% of the Federal Government's expenditures. Another important measure was the implementation of the Emergency Benefit, combined with other measures, particularly credit policies focused on micro, small and medium businesses. But even regarding these topics there were mismatches: at

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the end of 2020, the pandemic reached an alarming level again, but the payment of the Emergency Aid was only resumed in April 2021, credit programs were frozen and the federal budget for 2021 is in a slow process of approval.[101]

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

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

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

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

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

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

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

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

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

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

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

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